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Stuck on Love

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ABSTRACT

Professor Ann Scales wrote about places where legal feminism has become stuck, and how it might become unstuck. This Essay focuses on a particular point of "stuckness" in legal feminism: how to treat women who love intimate partners who are abusive. This Essay argues that although feminist legal scholars have discussed in great depth the many reasons a woman in an abusive relationship might *need* to preserve her relationship, they have inadequately exposed, or even acknowledged, the reasons she might *want* to preserve her relationship. In particular, this Essay argues, feminist legal scholars avoid or ignore the fact that a primary reason many women stay in abusive relationships is for love. According to many feminist legal scholars, love is a product of false consciousness. With more and better information, abused women would come to understand that they don't "really" love their partners, and that leaving, rather than staying, is the solution. Scales argued that false consciousness is a weak analytical tool for a variety of reasons, discussed in this Essay in subpart II.B. More importantly, she argued that within legal feminism, false consciousness is a "conversation stopper" and a "thought stopper." In short, Scales attempted to get feminist legal scholars out of the muck of false consciousness. This Essay documents how feminist legal scholars are stuck on love in the context of intimate partner abuse, and applies Scales's lessons for getting unstuck.

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I. INTRODUCTION

Ann Scales wrote about places where legal feminism has become stuck, and how it might become unstuck.[1] One place of stuckness is the concept of "false consciousness."[2] This is the notion that an oppressed group (such as women in a patriarchal society) might falsely buy into the ideology of an oppressive social system, and that these internalized beliefs both conceal and act against the oppressed group's (women's) real interests.[3] One example, observed by Scales, is the view that women who have been physically abused by their male partners, but who do not wish to end their relationships with those partners (such as by refusing to cooperate with the criminal prosecution of them), are deemed to be suffering from false consciousness.[4] By internalizing any number of dominant ideologies—for example, that a "little bit" of domestic violence is acceptable in intimate relationships[5]—women perpetuate their own physical oppression by men.

In my own work in the field of intimate partner violence, I have observed that, while feminist legal scholars have discussed in great depth the many reasons a woman might *need* to preserve her relationship,[6] we have done a poor job exposing, or even acknowledging, the reasons she might *want* to preserve her relationship.[7] In particular, we ignore the fact that a primary reason many women stay in abusive relationships is for love.[8] From a feminist perspective, love is a product of false consciousness.[9] With more and better information, abused women would come to

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1. ANN SCALES, LEGAL FEMINISM: ACTIVISM, LAWYERING, AND LEGAL THEORY *passim* (2006). Scales divides her only book, a culmination in many respects of her corpus of scholarship, into two parts: "Places of Stuckness: Roles, Rules, Facts, and the Liberal View of Human Nature," and "Places Beyond Stuckness: Feminist Notions, Controversies, and Promises."

2. *Id.* at 44, 120 (describing "false consciousness" as a term that signifies "a continuing source of feminist infighting and paralysis").

3. *Id.* at 124 ("Most political theorists define false consciousness as a belief that is 'false,' that is both produced by and reinforcing of an oppressive social system, and that conceals and acts against the believer's real interests.").

4. Ann Scales, handout from presentation of her book LEGAL FEMINISM, *supra* note 1, at the University of Denver Sturm College of Law (Apr. 2007) (on file with author). For a review and critique of this argument, see Margaret E. Johnson, *Balancing Liberty, Dignity, and Safety: The Impact of Domestic Violence Lethality Screening*, 32 CARDOZO L. REV. 519, 561–73 (2010).

5. *See, e.g.*, Dan M. Kahan, *Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem*, 67 U. CHI. L. REV. 607, 628 (2000) ("Though not as prevalent as it once was, the view that occasional violence is a normal part of family life persists. Many decisionmakers either hold this view or empathize with individuals who do. Predictably, these decisionmakers refuse aggressively to enforce condemnatory domestic violence laws." (footnote omitted)). Kahan argues generally that when the law is much more condemnatory of a social norm than the average decision maker tasked to enforce it, the decision maker resists enforcing it. *Id.* at 607. This, in turn, reinforces the very norm that lawmakers seek to change. Kahan calls this a problem of "sticky norms," and describes intimate partner violence as falling squarely within it. *Id.* at 628.

6. *See infra* note 15.

7. *Id.*

8. *See infra* note 17 and accompanying discussion.

9. As observed recently by Leigh Goodmark:

understand that they don't really love their partners, and that leaving, rather than staying, is the "real" solution.[10]

Scales argued that false consciousness is a weak analytical tool for a variety of reasons, discussed in subpart II.B. of this Essay.[11] More importantly, she argued that within legal feminism false consciousness is a "conversation stopper and a thought stopper."[12] Scales attempted to get us unstuck. In this Essay, I document how feminist legal scholars are stuck on love in the context of intimate partner abuse, and I apply Scales's lessons for getting us unstuck.

II. THE LACK OF LOVE IN THE LITERATURE

A. How Legal Feminists Avoid and Apologize for Love[13]

Within the literature on intimate partner violence, many scholars have observed that the law provides a one-size-fits-all solution: separation of the parties.[14] To illustrate why separation cannot be the only solu-

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> Rather than listening to women who want to stay in their relationships, though, those women are said to have traumatically bonded or are told that they are rationalizing away the abuse in order to protect their emotional commitments. . . .
> . . . Hesitation or unwillingness to end a relationship means that the woman is being coerced, threatened, or controlled; from the feminist perspective, such women might be accused of "false consciousness."

LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM 100 (2012).

10. *Id.* ("We must focus on love, the literature argues, in order to show women that they don't really love their partners, but rather are bonded with them in an unhealthy manner, and that separation, not saving their relationships, should be their goal.").

11. *See* discussion *infra* II.B.

12. SCALES, *supra* note 1, at 120.

13. For the purposes of this Essay, I include the work of legal scholars who have written extensively about how the law might more effectively address intimate partner violence, and who have grappled with the tension between protecting women and respecting their autonomy of decision making (or agency). The list quite certainly is non-exhaustive but includes a number of the most prolific scholars on the subject, including Kathy Abrams, Donna Coker, Clare Dalton, Deborah Epstein, Sally Goldfarb, Leigh Goodmark, Cheryl Hanna, Margaret Johnson, Laurie Kohn, Tamara Kuennen, Christine Littleton, Martha Mahoney, Holly MacGuigan, Kris Miccio, Linda Mills, Emily Sack, and Elizabeth Schneider, to name several but not all.

14. *See, e.g.*, GOODMARK, *supra* note 9, at 80–105 ("[D]omestic violence law and policy continues to rely almost exclusively on separation-based remedies. The focus on separation springs from a core belief that women in violent relationships should not remain in those relationships."); Cheryl Hanna, *Because Breaking up Is Hard to Do*, 116 YALE L.J. POCKET PART 92, 94 (2006) ("We should always rethink our strategies and avoid one-size-fits-all approaches. The criminalization of domestic violence is still in its infancy, and we have much to learn about what works best and for whom."); G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement*, 42 HOUS. L. REV. 237, 307 (2005) ("Both law and popular culture equate existence of violence with separation from the relationship."); *id.* at 305 (describing the predominant, or "[p]rotagonist[]," ideology underlying the current criminal justice system approach as emphasizing the need for victims to leave their relationships as a deeply problematic one-size-fits-all approach); Nancy Ver Steegh & Clare Dalton, *Report from the Wingspread Conference on Domestic Violence and Family Courts*, 46 FAM. CT. REV. 454, 456 (2008) ("In many jurisdictions domestic violence cases, identified principally by evidence of physical violence, are handled on a one-size-fits-all basis."); *see also* DONILEEN R. LOSEKE, THE BATTERED WOMAN AND SHELTERS: THE SOCIAL CONSTRUCTION OF WIFE ABUSE 20 (1992) ("The collective representation of wife abuse leads to the common sense conclusion that a woman *should* leave such a relationship, and this prescription is part of the collective representation: A woman experiencing wife abuse must

tion, several scholars have brilliantly unearthed the many rational reasons that victims of intimate partner violence need, or want, to preserve their intimate relationships. Amongst these are safety (the well-documented fact that separation is the most dangerous time for victims), finances, cultural norms, religion, and immigration status, to name but a few.[15] Feminist legal scholarship, addressing intimate partner violence, richly and deeply covers this particular topic.

Rarely in this body of work, however, do scholars explore in any depth the idea that love for a partner may be the primary reason a woman wants to preserve her relationship.[16] This dearth of discussion is remarkable, considering that empirical data clearly show that women explicitly state that love is a key reason explaining why they stay.[17]

Even more remarkably, those few scholars who acknowledge love rarely use the word *love* in their writing. Rather, we opt for more clinical, sanitized terms. Instead of love, scholars use terms such as "connection"

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leave her relationship." (emphasis added)); Sally Engle Merry, *Wife Battering and the Ambiguities of Rights*, *in* IDENTITIES, POLITICS, AND RIGHTS 271, 304 (Austin Sarat & Thomas R. Kearns eds., 1995) (arguing that the price women pay for going to court is separation, and that the law expects women to sever connections with violent men); Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1498 (2008) ("The cumulative effect of these [mandatory] reforms was a transformation of legal policy from the assumption that battered wom[e]n should stay to the assumption that they should leave."); Leigh Goodmark, *Law is the Answer? Do We Know that for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 8 (2004) ("[A]lmost all of these legal interventions are premised on the notion that battered women want to end their relationships, invoke the power of the legal system to keep their batterers away, and ultimately sever all legal ties with their abusers."); Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 59 (2006) ("A decision to effectively end a relationship is initiated by the prosecutor on behalf of the state, adjudicated as a criminal matter, and criminally enforced. It becomes an extension of the imperative to treat DV as a crime.").

15. *See* Tamara L. Kuennen, *Private Relationships and Public Problems: Applying Principles of Relational Contract Theory to Domestic Violence*, 2010 BYU L. REV. 515, 530–36 (2010) (reviewing the literature discussing the multiple reasons that explain why a woman might want or need to preserve the intimate relationship).

16. There are just a handful of exceptions where love is explored as a reason for staying in a violent relationship. *See* Katharine K. Baker, *Dialectics and Domestic Abuse*, 110 YALE L.J. 1459, 1474–75 (2001) (reviewing ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING (2000)) ("[Women] do not necessarily want to be in a position where they can just leave. They want to be in relationships in which they forgive. They may even want to be in relationships that involve some relinquishment of self, autonomy, and power. And what is more, they are not alone. Women who are not in battering relationships and men who do not batter want these kinds of relationships too." (footnotes omitted)); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 19–21 (1991) (observing that women's response to violence in a relationship relies on numerous goals: their experience of the violence, economic security, love of partner, and view of life outside of the relationship, among others). *See generally* LINDA G. MILLS, INSULT TO INJURY: RETHINKING OUR RESPONSES TO INTIMATE ABUSE 25–31 (2003); Cheryl Hanna, *Rethinking Consent in a* Big Love *Way*, 17 MICH. J. GENDER & L. 111 *passim* (2010) (discussed in detail *infra* Part III).

17. *See* Catherine Donovan & Marianne Hester, *'I Hate the Word "Victim"': An Exploration of Recognition of Domestic Violence in Same Sex Relationships*, 9 SOC. POL'Y & SOC'Y 279, 282 (2010) (reviewing a body of empirical studies that have concluded that "[l]ove for a partner and hope for the future of the relationship are amongst key reasons given by people in heterosexual and same sex relationships for staying in or returning to domestically violent relationships").

and "emotional attachment."[18] To fully appreciate the degree of discomfort such sanitized words display, one need only imagine saying, "I feel emotionally attached to you," or "I am deeply connected to you," rather than, "I love you," to one's spouse or partner before hanging up the phone or turning in for the evening. Or imagine explaining to someone outside of the relationship how you feel about your partner by saying: "I feel very emotionally connected to her."

Worse, on the rare occasions when scholars explicitly acknowledge that women may love their partners, we frequently are apologetic,[19] suggesting that we (feminist legal scholars) resign ourselves to "accept" the reality that the women we are advocating for do, indeed, love their partners.[20]

If listening to women subjected to abuse is important to feminist legal scholars, as they claim, and if women are "experts on their own lives, attuned to the likelihood of future abuse," why do we not defer to a woman's expression of love, and her desire to continue an intimate relationship, even when it is abusive?[21] Our treatment—whether it be avoidance or apology—illustrates our stuckness with regard to how to treat women who love their abusive partners.

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18. *See, e.g.*, Deborah Epstein et al., *Transforming Aggressive Prosecution Policies: Prioritizing Victims' Long-Term Safety in the Prosecution of Domestic Violence Cases*, 11 AM. U. J. GENDER SOC. POL'Y & L. 465, 476–79, 493 (2003) (describing in detail the multiple "[r]elational [f]actors" that go into a woman's decision making regarding whether to preserve the relationship, using "emotional connection" and "emotional attachment," though mentioning the word *love* one time, on page 493 ("A woman may love her partner but also be afraid of him.")); Goldfarb, *supra* note 14, at 1500 (describing "*mutual emotional commitment*, companionship, intimacy, and sharing," but never using the word *love* (emphasis added)); Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1113–14 (2009) ("The current [civil protection order] laws are particularly well situated to permit petitioners to construct a remedy that redefines a relationship that is tainted by abuse but nonetheless is meaningful—connected by children, economics, *emotional, and psychological ties*." (emphasis added) (footnote omitted)); Kuennen, *supra* note 15, at 537 ("A victim may choose to stay in a relationship that she knows is dangerous because the *intimate connection* is worth the risk." (emphasis added)).

19. *See* GOODMARK, *supra* note 9, at 98 ("The domestic violence literature tiptoes carefully around the concept of love. The literature accepts the idea that some women subjected to abuse do, in fact, continue to say that they love their partners despite the abuse. But the literature explains this love away, almost apologizing for the desire of women to continue their relationships.").

20. *See, e.g.*, LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE 90 (2008) ("We need to ensure that every battered woman has the opportunity and ability to leave her relationship, receives sufficient counseling to make the most independent choice possible, and is fully informed about available alternatives. But *we also need to understand and accept that some women will decide to continue a connection* with an abusive partner . . . ." (emphasis added)); Goldfarb, *supra* note 14, at 1500–01 (describing the multidimensional emotions that abusive relationships produce, such as "mutual emotional commitment, companionship, intimacy, and sharing," and thus concluding that the aspiration of many women to remain with their partners "*should not be dismissed as naïve or misguided*" (emphasis added)).

21. This is a central question posed by Leigh Goodmark. *See* GOODMARK, *supra* note 9, at 100.

B. Love As a Product of False Consciousness

Scales traced the concept of false consciousness to political theorist Friedrich Engels and discussed its heritage prior to becoming associated, in this country, with dominance feminism in the 1970s.[22] Pertinent to the present discussion is Scales's working definition of false consciousness as "a false belief that is produced by and reinforces existing power arrangements in society, and that is held in spite of being contrary to the holder's own interests."[23]

This concept of false consciousness comes up in two ways for scholars who write about intimate partner violence. The first is that women in abusive relationships do not really understand the danger they are in.[24] More specifically, women who say that they love their abusive partners, and thus choose not to support criminal prosecution, or choose not to seek restraining orders, or who otherwise generally do not avail themselves of legal remedies designed to separate them from their partners, are unable to fully or realistically or rationally appraise their risk of danger.

Empirical data, however, make indisputably clear that women in abusive relationships appraise their danger more accurately than any assessment tool out there.[25] To date, there is no tool social science has to offer that women who have experienced abusive relationships cannot more accurately outscore.[26]

The second, much more complex argument is that a woman in an abusive relationship doesn't really love her partner; rather, what she experiences as "love" is actually an unconscious, conditioned reflex to living in a sexist, oppressive culture that tells her she *must* be with a man at all costs. This is what Scales called the "cult of true womanhood."[27] The argument proceeds that if the woman was conscious of her own oppression, she would be able to make an authentic choice. In this instance, the choice would be either: (1) not to love a partner who is abusive, or (2) desire to leave a partner who is abusive.

Scales argued, persuasively, that false consciousness is a weak analytical tool for several reasons. First and foremost, an accusation of false consciousness implies that "there is a 'true' consciousness accessible to the critic against which the consciousness of the criticized can be con-

22. SCALES, *supra* note 1, at 123–29.
23. *Id.* at 129.
24. *See* Johnson, *supra* note 4, at 559–61 (describing an important part of danger assessment as whether "women suffer from a false consciousness of their risk of future violence or a diminished capacity" in decision making).
25. *See id.*
26. *See id.*
27. SCALES, *supra* note 1, at 132 (internal quotation marks omitted).

trasted."[28] Scales flatly rejected this notion. One cannot claim to objectively know another's interests.[29]

Even if an outsider could gain access to another's "true" consciousness or genuine interests, another of "the obvious analytical problems"[30] with false consciousness is figuring out how to measure whether the person is choosing beliefs that are consistent or inconsistent with their genuine interests. As Scales stated, "Even if we could presume to interfere in another's interests, what interests would we need to be talking about? Short- or long-term interests? Individual or group-based interests? What interests can we isolate and which should we include? Economic, psychological, communicative, technological, sexual, intellectual, political?"[31]

Finally, Scales asked: "Could it never be said that I have a genuine interest in undermining my own interests . . . ?"[32]

For all of these reasons, Scales rejected the term false consciousness, which she characterized as "debilitating for feminist efforts."[33] Rather, she argued, what is important is recognizing what the concept has meant or could mean. "For all the postmodern critique and other sources of destabilization of political action, we have got to have some concepts (and names for) the traps and, yes, falsehoods, that invite people without power to participate in their powerlessness."[34]

Scales did not coin a new term, but she thoughtfully described two levels of responsible inquiry into oppressive falsehoods: personal and political.[35] Regarding the personal, she observed:

> When I have thought of people (especially those I like and otherwise trust) as being wrong or deluded, my conclusions tend to follow from having observed similar mistakes or delusions among my own internalized oppressions. I have no doubt that it is my responsibility to continue to take that self-inventory, nor any doubt that I will uncover more sources of self oppression.[36]

Consequently, the political:

> The responsibility of being a political actor, a lawyer, an author, a teacher, a parent—a human—is to find evidence and good arguments

28. *Id.* at 129.

29. *Id.* ("The now widespread belief in the social character of knowledge renders suspect any suggestion of objective knowledge about other people's interest or even one's own interests.").

30. This is Scales's characterization. *Id.* at 129–30 (internal quotation marks omitted).

31. *Id.* at 130.

32. *Id.*

33. *Id.* at 133.

34. *Id.* at 134.

35. This allusion to the personal and political, or personal is political, is not lost on Scales's audience.

36. SCALES, *supra* note 1, at 134.

> and alternatives in every situation where it appears that a person or group could profitably reinterpret her or their own experience. And it is never that "you are completely wrong and worthless." These interactions are always partial; it is *this* [partial] aspect of experience that could be reinterpreted . . . .[37]

Rather than ignoring, denying, or patronizing women who experience and express love for their intimate partners, even in the context of abuse, we must ask women to examine their own feelings and beliefs. We might probe whether the love they feel is only loosely, or rather is quite closely, tied to the cult of true womanhood. We might ask if the love they feel causes them to surrender to the identities of their partners.[38] We might not like their answers. We might also ask if the love that women feel is a source of strength.[39] Or a source of safety. Or even a source of survival.[40] Perhaps it is any and all of these; perhaps it is none. Examining, rather than denying, love in the context of intimate partner violence should be the business of feminist lawyers. And examining, rather than denying, our discomfort with love in the context of intimate partner violence should be the business of feminist legal scholars.

C. Other Reasons Explaining Why We Don't Talk About Love

There certainly are reasons, other than false consciousness, explaining why feminist legal scholars do not explore, let alone address, the love a woman may feel for an abusive partner. First, it could be a political disaster for the battered women's movement, for it could jeopardize the hard-fought battle to get the state to take domestic violence seriously, and to treat domestic violence as a serious crime rather than a private "relationship problem" to be dealt with in the home.[41] "How could we possibly take seriously women's accounts of love and hope without undermining the little protection from male violence women have been able to wrest from the legal system, without indeed increasing our already

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37. *Id.*

38. *See* Baker, *supra* note 16, at 1474 (arguing that some women may desire to relinquish their selves to that of another).

39. E-mail from Evan Stark, Assoc. Professor of Pub. Admin. & Dir. of Master's in Pub. Health Program, Rutgers University, Dir. of Div. of Urban Health Admin., UMDNJ School of Pub. Health to author (Mar. 20, 2013, 3:47 PM) (on file with author).

40. *See id.*

41. Scholars in the field do indeed make these arguments. *See, e.g.*, Christine A. Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23, 51 (1989) ("Often it appears as if feminist questioning of the [law's] impulse toward separation should at least wait until women can count on the *law* allowing them to separate."); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1688–90 (2004) (warning that the divide amongst feminists with regard to aggressive state interventions threatens the ground gained: "Isn't this where we were over twenty-five years ago?").

overwhelming vulnerability?"[42] This is indeed a dilemma for battered women's advocates and activists.

One piece of this political problem is, as Leigh Goodmark describes, "the need to prevent a return to [outdated and] discredited theories about why women subjected to abuse stayed with their abusers."[43] She cites as examples masochism and learned helplessness.[44] If feminist legal scholars were to fully bring to light the fact that many women love their abusive partners, they risk that women will once again be seen as pathological.

This is indeed a problem, but is not insurmountable. We have new theoretical constructs to temper, if not alleviate, this concern.[45] In the past two decades, researchers have done extraordinary work to differentiate among types of physical aggression that occur in intimate partnerships.[46] These theories call for critical examination of the context of aggressive acts and words, and specifically of the intent of the perpetrator and the effect on the victim. Aggression, according to lead theorists, exists on a continuum: at one end, there is situational "fighting" that is not uncommon or outside of community norms; at the other end, there is the use of coercively controlling tactics—including, but not limited to, violence—that are deliberately intended to restrict the victim's liberty and to control every aspect of her life.[47]

Perhaps some degree of aggression in intimate relationships is acceptable. Renowned sociologist Evan Stark argued that if scholars writing in the area of intimate partner violence accepted the possibility that not all violence in relationships is abusive (and the flip side of this coin, that many forms of coercive, but nonviolent, conduct *are* abusive), we might better understand, explain, and address the most dangerous, and always-gendered, type of intimate partner violence: "coercive control."[48] Currently, what the law labels "domestic violence" is a misnomer. A woman who slaps her husband once is as much a perpetrator of the crime of domestic violence under the current legal regime as a man who is both

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42. GOODMARK, *supra* note 9, at 98 (quoting Littleton, *supra* note 41, at 47) (internal quotation marks omitted).

43. *Id.*

44. *Id.* ("Researchers once theorized that masochism kept women from leaving . . . . [S]ome have claimed that learned helplessness is simply masochism devoid of its erotic component.").

45. This is not to say that Goodmark's concerns are exaggerated or misplaced; I too worry, despite these new constructs.

46. Goodmark provides an overview of these theories. GOODMARK, *supra* note 9, at 38–40.

47. *See* EVAN STARK, COERCIVE CONTROL: THE ENTRAPMENT OF WOMEN IN PERSONAL LIFE 104–06 (2007).

48. Evan Stark's work is highly respected by legal scholars who argue for law reform in domestic violence cases. Stark's differentiation amongst types of "domestic violence" has been widely discussed. He argued that there is a difference between "fights," "assaults," and "coercive control," the latter being the most serious and debilitating, perpetrated by men against women for the purpose of restricting the woman's freedom and dignity and, consequently, where feminists should focus their attention. *See id.*

violent *and* dominates every aspect of his partner's life, such as what she wears, whether she may have friendships outside of the relationship, and how much money she has. The current legal definition is problematic not only because it focuses too narrowly on discrete incidents of physical violence, without capturing the many coercive tactics shy of using violence that a perpetrator may use to control every aspect of a victim's life, but also because it is too broad; within its net is caught fighting—what couples in intact relationships do, sometimes, that simply does not fall outside of a community norm.[49]

If feminist legal scholars were more discerning in targeting legal sanctions on the intent and consequences of coercive control, portraying it as the domination of a life, rather than continuing to use less politically charged words such as abuse or control, they could broaden

> the demand for justice beyond the relatively narrow emphasis on violence-free relationships, put[] the attainment of substantive equality back on the table, and suggest[] an agenda of rights and redistribution that would attract constituencies from civil rights and labor that have kept their distance because of our emphasis on policing.[50]

Still, Stark recognizes the political risk:

> [R]eintroducing domination as the focus of concern will cost us allies with no particular sympathy for feminist issues, including those opponents of "violence against women" who accept traditional gender hierarchies and view women paternalistically. . . . In the current climate of reaction, the media may counter talk of domination by putting our battered sisters and their supporters back into jumpsuits; picturing them as crocks, cranks, harpies, or worse . . . .[51]

But, he argues, "ledgers have two sides. Reassigning attention to domination could constitute a new audience, attract a cohort of activists energized by a desire to be free rather than merely safe, and lay the foundation for new alliances to replace those we lose."[52]

In addition to attracting new allies, the systematic differentiation of intimate partner violence into types and degrees could generate a productive conversation between scholars who do not write in the field of intimate partner violence and those who do. Many legal scholars who write about the law and intimate relationships (such as family law scholars and "law and emotion" scholars) write as if marriage and "normal" intimate

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49. Goodmark attempts to resolve these problems when she redefines the crime of domestic violence in Chapter 2. GOODMARK, *supra* note 9, at 29–53.

50. STARK, *supra* note 47, at 371.

51. *Id.* at 370.

52. *Id.* Stark here refers to activists in civil rights and labor who have been repelled by the law-and-order and policing emphases of the battered women's movement, and to thousands of men and women who have been turned off by the current victimization narrative. *Id.* at 370–71.

relationships do not involve fights, physical aggression, or coercion.[53] Kathy Abrams observed that because the law does not engage with intact-intimate and familial relationships, but rather with relationships that are breaking up, scholars have under-investigated the fear, pain, despair, and abuse that occur in "normal" relationships.[54]

It has long been interesting to me to read family law articles suggesting comprehensive, forward-looking reforms, and then to see a carefully worded exception qualifying the reforms as inapplicable to relationships marked by intimate partner violence.[55] Given the prevalence of intimate partner violence, these scholars' reforms likely do not apply to nearly half of all the relationships they describe.[56] On the flip side of this coin, scholars writing in the area of intimate partner violence have under-investigated, if not dismissed, many of the emotions that occur in intact relationships.[57] Namely, love.

III. GETTING "UNSTUCK"

That feminist legal scholars writing in the field of intimate partner violence are stuck on love would be of less concern to Scales than if we

53. *See, e.g.*, Steven K. Berenson, *The* Elkins *Legislation: Will California Change Family Law Again?*, 15 Chap. L. Rev. 443, 489 (2012) ("There is virtually universal agreement that except in rare cases involving domestic violence[,] . . . negotiated agreements in family law cases benefit both the parties to the dispute, the court system as a whole, and the children who are the subject of the dispute."); Deborah Cantrell, *The Role of Equipoise in Family Law*, 14 J.L. & FAM. STUD. 63, 63 (2012) (reviewing the legal scholarship in family law over the last twenty years, and proposing that "courts and court-annexed programs build out practices of equipoise," defined as a "mode of processing information and emotions that disrupts habituated and unhelpful interactions between persons and instead encourages thoughtful engagement with emotions, resulting in reduced adversarialness and constructive problem solving," but never mentioning or addressing cases involving domestic violence); Andrew Schepard, Kramer vs. Kramer *Revisited: A Comment on* The Miller Commission Report *and the Obligation of Divorce Lawyers for Parents to Discuss Alternative Dispute Resolution with Their Clients*, 27 PACE L. REV. 677, 679 (2007) (arguing that lawyers should have the obligation to advise clients regarding mediation and alternatives to litigation in family law cases, but stating, "[M]ediation may not be appropriate in cases involving serious allegations . . . of domestic violence."); Elizabeth S. Scott, *Marriage, Cohabitation and Collective Responsibility for Dependency*, 2004 U. CHI. LEGAL F. 225, 246 (2004) ("It is well established that secure relationships with parents contribute in critical ways to healthy child development and that family dissolution imposes financial and psychological costs on children. Other than in situations of domestic violence, . . . children's development usually is enhanced if their parents' relationship endures.")

54. Kathryn Abrams, *Barriers and Boundaries: Exploring Emotion in the Law of the Family*, 16 VA. J. SOC. POL'Y & L. 301, 307–08 (2009) (explaining the barriers to acknowledging emotion in family law, one of which being that the legal system does not engage with intact families and thus we have scant understanding of the feelings of despair, jealousy, and pain that are normal parts of relationships).

55. A wonderful exception to this norm, and one I hope to see replicated, is Clare Huntington's discussion of the typologies of violence and how her proposed "reparative model" of family law could apply to some types of abusive relationships in which there has been a history of violence. *See* Clare Huntington, *Repairing Family Law*, 57 DUKE L.J. 1245, 1312–16 (2008).

56. Martha Mahoney beautifully made this point more than two decades ago. Despite the statistics showing domestic violence to be "extremely widespread in American society," and the fact that the statistics themselves are "widely reproduced, there is little social or legal recognition that domestic violence has touched the lives of many people in this society . . . . This radical discrepancy between the 'mysterious' character of domestic violence and repeatedly gathered statistics reflects massive denial throughout society and the legal system." Mahoney, *supra* note 16, at 10–11.

57. For a detailed discussion on this theory of "Getting Unstuck," see *infra* Part III.

stayed stuck. Any place of stuckness is a place, and an opportunity, to be recognized; and Scales argued, to be constantly reinterpreted.[58]

A. An Illustration of Getting Unstuck

In a recent article, Cheryl Hanna discussed love in the context of intimate partner violence.[59] Her article is exceptional not only for this reason, but also because it is a departure from her previous work; she reinterprets her prior, closely held and widely cited position regarding the value of women's personal autonomy in intimate partner violence.

In the article, Hanna observed: "What to do about the role of love in relation to those choices that we make creates a particular dilemma for feminist legal theory."[60] A key strand of her argument is that while women may not choose to be involved in intimate relationships that are abusive, they may accept the relationships nonetheless. After all, she observes, the "nearly universal desire [for love and] to be in a relationship . . . often leads us to accept situations we never anticipated or wanted."[61] "Yet, the law, neither in theory nor in practice, does a very good job at understanding the role love plays when we consent to things that may cause us heartache and harm."[62]

The article explores the question, left open after *Lawrence v. Texas*,[63] of under what circumstances individuals should be allowed to consent to activity that occurs in the context of their private, intimate relationships. Hanna examines, among others, a case involving intimate partner violence.[64] When the police responded to the home, the victim told them that her husband had threatened to "kill her by snapping her neck and that he told her he had a gun in the house."[65] The victim did not support the prosecution, and she recanted during trial. As of the writing of Hanna's article—ten years after the trial—the couple was still married and living together.[66]

In that case, Hanna argues, the victim did not necessarily consent to the discrete threat, but Hanna asks us to think more expansively about consent and what it means.[67] While a victim may not "choose" her part-

58. SCALES, *supra* note 1, at 38 (describing how points of stuckness can be chalked up to "essentially contested concept[s]"—ones that have "permanent potential critical value" to be examined and reinterpreted (quoting W. B. Gallie, *IX. Essentially Contested Concepts*, 56 PROC. ARISTOTELIAN SOC'Y 167, 169, 193 (1956)) (internal quotation marks omitted).

59. Hanna, *supra* note 16.

60. *Id.* at 128.

61. *Id.* at 113.

62. *Id.* at 127.

63. 539 U.S. 558 (2003).

64. Hanna, *supra* note 16, at 145–48 (examining *People v. Brown*, 117 Cal. Rptr. 2d 738, 743 (Cal. App. Dep't Super. Ct. 2001), in which football star Jim Brown was accused of threatening his wife, Monique).

65. *Id.* at 145.

66. *Id.* at 148.

67. *Id.* at 146–47.

ner's anger or aggression, she may "put up with it."[68] She understands the risks to herself. She values the relationship. Perhaps the consent, then, is to the relationship as a whole.[69] Why should the state intervene, Hanna asks, particularly after *Lawrence*, in which the Supreme Court recognized that love can be an expression of autonomy and thus protected as a liberty interest?[70]

The problem is where to draw the line. Hanna asks a number of questions: Are there "instances in which the law ought not respect an individual's expression of love?"[71] Such as when she is at risk of lethal violence?[72] In that circumstance, should not a prosecutor prosecute, despite the victim's desire to preserve the relationship because she loves her partner?[73] And if individual women, rather than state prosecutors, decide whether to prosecute men for crimes of physical and sexual violence, is this not the practical equivalent to allowing a defense of consent?[74] The state is allowing the woman to consent both to the discrete act of violence that is the subject of the prosecution, and it is allowing her to consent to remain in a risky relationship.[75]

Hanna grapples with each of these questions, and she concludes that there is no right answer.[76] In each case, there is the potential for men to exploit women, and in each case, the women "derive some benefits, . . . pleasure, . . . joy, or . . . love[,]" and "also suffer some harm . . . from both male . . . aggression[] and . . . state intervention."[77]

Hanna concludes that feminist legal scholars must continue to struggle with these tensions.[78] To remain relevant, feminist legal theory should "persuade us to accept ambivalence, and to be open to changing our minds because of the complicated nature" of women's (and men's) lives.[79] Indeed, Hanna herself, as evidenced by the article, changed her mind; she acknowledges that in past scholarship, she did not give adequate weight to the privacy and liberty interests of victims, and to the

68. *Id.* (internal quotation marks omitted).

69. To be clear, Hanna does not equate consent with choice; women who love their abusive partners do not choose to be abused. Rather, Hanna argues that women who remain in abusive relationships may be willing to risk being abused because of their love. *Id.* at 136, 146–47.

70. *Id.* at 128 (discussing *Lawrence*, 539 U.S. 558).

71. *Id.* at 129.

72. *Id.*

73. *See id.* at 138–39.

74. *See id.* at 139–42.

75. If the law allows women in violent, intimate relationships to decide when the state should intervene (i.e., allows women to consent to remain in risky relationships), "the consequence would be less legal restraints on men in the fulfillment of their sexual and aggressive desires." *Id.* at 135.

76. *Id.* at 155.

77. *Id.*

78. *Id.* at 156.

79. *Id.*

damage to women's overall autonomy when the state intervenes against their wishes.[80]

B. Moving Forward

A fundamental tenet of feminism is listening to women's voices.[81] Catharine MacKinnon (who Scales was devoted to) described listening to and believing what women say as the "methodological secret" of feminism.[82] As stated previously, feminists working in and writing about the battered women's movement have described women subjected to abuse as "the experts on their own lives, attuned to the likelihood of future abuse."[83] This description is not ideological gloss; it is grounded in fact. Women in abusive relationships are the best predictors of their risk of re-abuse. As discussed previously, victims outscore every metric designed by social scientists to assess future risk.[84]

It is not only risk of re-abuse (in an already abusive relationship) that poses a danger to women. It is the existence of the intimate relationship itself. Relationships, like sex, can be dangerous.[85] When women choose, in the face of such risk, to both enter into and to preserve their relationships for love, perhaps it is because they value love more than, or at least as much as, physical safety. To remain relevant, feminist legal scholars must grasp the importance of love and intimate relationships in women's lives.[86]

IV. CONCLUSION

Feminist legal scholars are stuck on love in the context of intimate partner violence. This stuckness presents an opportunity to become unstuck if we accept it instead of chalking it up merely to false consciousness or some other conversation stopper.[87] If we do not take the opportunity to consider the importance of love, then we will base the laws, policies, and decisions we make about intimate partner violence on seriously incomplete or erroneous information. But if we examine, rather

80. *Id.* at 144.

81. GOODMAN & EPSTEIN, *supra* note 20, at 90; ELIZABETH M. SCHNEIDER, BATTERED WOMEN & FEMINIST LAWMAKING 71–73 (2000) (discussing the importance of accounting for women's particular experiences when crafting law and policy); *see also* Linda C. McClain, *Toward a Formative Project of Securing Freedom and Equality*, 85 CORNELL L. REV. 1221, 1225–32 (2000) (discussing two different forms of feminist critique within the context of constitutional theory and empiricism).

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

83. GOODMARK, *supra* note 9, at 100.

84. For a review of empirical work illustrating that women are the best predictors of future violence, see Margaret Johnson, *supra* note 4, at 559–60.

85. *See* Baker, *supra* note 16, at 1475 ("Relationships of any kind—platonic, sexual, or familial—can be emotionally and physically dangerous, but they may also be inevitable or at least desirable.").

86. *Id.* at 1460–61 (reviewing SCHNEIDER, *supra* note 81).

87. *See* SCALES, *supra* note 1, at 120–21.

than deny via the vehicle of false consciousness, the importance of love, we could better dismantle the notion that women who stay in abusive relationships are helpless or crazy. Scales's dismantling and reinterpretation of the concept of false consciousness provides feminist legal scholars with this opportunity.