

The biological roots of heat-of-passion crimes and honor killings

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ABSTRACT. “Heat-of-passion crimes” are committed by jealous men against supposedly unfaithful mates, “honor killings” by vengeful relatives against female family members who have disgraced them. These terms are imprecise, and they overlap greatly in usage, but they are similarly, and troublingly, guilt-mitigating. Heat-of-passion crimes and honor killings are universally reported yet vary in incidence culture-to-culture. While typically among the most violent of domestic attacks, they are to different degrees protected in law. Nearly every culture has, or until recently has had, defenses to male culpability based on the supposed effects of provocation. The invention and persistence of these defenses needs explanation. This paper considers a biological perspective, in which heat-of-passion crimes and honor killings are understood as maladaptive by-products of an evolved male sexual aggression subject to intensification by external threats to paternal certainty. Moral and procedural implications of this perspective, as well as its limitations, are discussed.

Many cultures view men who attack mates caught in *flagrante delicto* as having been provoked sufficiently to excuse extreme punitive action, including beating, maiming, burning, and killing. In countries with developed legal systems, a defense is often based on mitigating factors derived from a lack of specific intent; if a man, presumptively a husband, was acting in a state of high emotional distress he was less culpable than he would have been if acting with economic motives or premeditation. This “heat-of-passion” defense in turn permits reduction or omission of penalties, especially within more patriarchal jurisprudential traditions, where the individualistic norms of presiding judges may supplant requirements of reasonable-provocation and reasonable-man doctrines.¹ Where the heat-of-passion defense obtains, so typically does its corollary, the “honor-killing” defense, which may exculpate relatives who have attacked women whose indiscretions or misfortunes have brought shame upon their families.

Put starkly, then, in much of the world, not only may men kill their wives but also their daughters, sisters, nieces, and cousins — their “family relatives” —

when promiscuous behavior is suspected. However, men in such cultures generally may not kill paramours, honor more heavily depending on the virtues of wives and family relatives than on betrayals beyond.²

The long history and wide distribution of heat-of-passion and honor-killing defenses presents a major obstacle to exclusively sociological explanations of human behavior. Absent extreme coincidence, these explanations cannot account for such similarity of tradition and law across continents, certainly not before the European discovery of the New World. It is the primary thesis of this paper that, however subtly or blatantly recognized, a right to kill unfaithful or disgraced women represents not the culture-to-culture proliferation of misogyny but the culture-*by*-culture expression of a biologically evolved behavioral pathology — strongly expressed in some cultures, less strongly in many others, faintly in the rest.

This examination will begin with ancient evidence and religious influences. It will then consider cultural and national differences, followed by a review of biological explanations of human behavior, especially evolutionary constructs of sexual selection and paternal

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uncertainty. The implications of these explanations will then be discussed, the paper concluding with a note on the utility of sociobiological research.

A broad definition of marriage will be used. While *Homo sapiens* is not unique as a pair-bonding animal, no other mammalian species shows anything like human marriage. Daly and Wilson describe cross-cultural species-typical features unique to sexual relationships in human marriages: mutual obligations, exclusive rights of sexual access, legitimization of children by fathers, and expectations that mutual obligations will last from pregnancy through child rearing. These relational elements have long existed, independent of specific domestic or other laws officially licensing mate unions as “marriage” and mates as “husband” and “wife.”³ In addition, many cultures have and continue to recognize legal marriage or equivalent heterosexual unions based on these species-typical features. Accordingly, and for rhetorical convenience, in this balance of this discussion the terms “wife” and “husband” will apply to the female and male partners, respectively, in any species-typical mate-union.

Historical roots

The Roman statesman Marcus Cato once said, “If you catch your wife in adultery, you can kill her with impunity; she, however, cannot dare to lay a finger on you if you commit adultery, for it is the law.”⁴ This statement was consistent with the status of women in Roman society. A father held the power of life and death over his daughter, and upon marriage that power was transferred to the daughter’s husband.⁵ Female adultery was a felony under Roman law, and the state actively prosecuted family members and others for not taking action against adulterous female relatives.⁶

Beliefs that a husband had the right to kill his unfaithful wife and her paramour can be traced back before the Romans to the Codes of Hammurabi, Nesilim, and Assura.⁷ Beliefs that a woman’s virginity belonged to her family were likewise expressed in the Codes of Hammurabi and Assura.⁸ Yet partly similar norms regarding premarital sex and adultery existed in ancient American cultures, which were founded by peoples who left Eurasia thousands of years before the Babylonian, Hittite, Assyrian, and Roman eras even began.

In the Valley of Mexico, between 150 B.C.E. and 1521 A.C.E., Aztec laws punished nearly every crime

with death. Death sentences for female adultery were performed by strangulation or stoning, which typically involved the crushing of the offender’s head.⁹ However, this sentence could be carried out only after a husband proved an offense. A husband catching his wife in *flagrante delicto* could not kill her. Rather, he was required to wait for trial or else be put to death himself.¹⁰

In Peru, between 1200 B.C.E. and 1532 A.C.E., the Incas punished adulterers by tying the lovers’ hands and feet to a wall and leaving them to starve to death.¹¹ The laws of the Incas additionally permitted the heat-of-passion defense in cases of males killing wives suspected of adultery. This defense was not extended to women, who were hung by their feet until dead if they killed their husbands for adultery.¹²

Religious dogmas, evidenced by religious verse, reveal an underlying respect for the sanctity of marriage in Roman, Babylonian, Aztec, and other cultures throughout time. In the Old Testament, prohibitions against adultery and premarital sex as well as death sentences for violations of them are present in the books of Leviticus and Deuteronomy.¹³ The New Testament contains similar prohibitions and punishments.¹⁴ And, although the Koran itself does not prescribe death for adulterers, many followers have interpreted such a punishment.¹⁵

Secular literary works further evidence societal acceptance of violent male tendencies toward promiscuous women. The quaisi-Arabian folk tale *A Thousand and One Nights* famously illustrates female interest in verbal courtship,¹⁶ but it also tells how King Shah-Zemon regained his health by killing his unfaithful wife.¹⁷ Other works, such as Shakespeare’s *Othello*, written not many generations after Henry VIII had twice made a public spectacle of beheading an allegedly unfaithful wife as a traitor, also carried messages of condemnation for adulterous behavior, though in Desdemona’s case falsity of accusation led to the murdering husband’s compensatory suicide.¹⁸

Cross-cultural perspectives

The phenomena discussed here can be differentiated by scenario, by the identities of victim and attacker and their relationship, and by that relationship’s implication for social or criminal penalty, if any.¹⁹

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The heat-of-passion defense

In early England, all felonies were capital crimes under common law. Murderers, being perpetrators of the highest of all felonies, were subjected to mandatory death sentences. However, English courts recognized exceptions to this rule when societal interests would be threatened through full enforcement of the law.²⁰ Hence, wartime killings, government executions, and killings performed in self-defense prompted the judicial creation of justified homicide.²¹ In keeping with this trend, the heat-of-passion defense arose to alleviate a perception of sentencing disproportionality in cases of killings performed upon sudden quarrels and without premeditation.²²

English courts held that certain provocations mitigated against legal requirements of malice aforethought, thereby negating the *mens rea* required for death-eligible convictions.²³ These courts defined categories of situations considered adequately provocative, which included physical attacks, unlawful arrest, mutual combat, violence against a close relative, and the observance of adultery.²⁴ As noted by Littman (1997), adultery is unique in its inclusion in this categorization for it is the only crime that involves no true physical affront.²⁵

A “reasonable man” standard, which required the lack of a “cooling off” period wherein the heat of passion might have dissipated, was central to the English categorization of provocation. Although this standard has reportedly never been confined to the viewpoints of adult males,²⁶ only in recent times have women joined judiciaries and juries, meaning that the “reasonable man” evolved for centuries through the common-law interpretations of males only. An analogous standard has also been used to impute the heat-of-passion defense in non-Western cultures, such as those of the Melanesian Islanders of Wogeo and the Nuer of East Africa.²⁷

The United States and other countries²⁸ have inherited the heat-of-passion defense from English common law. Currently, the heat-of-passion defense is present in every American state in some form. Many states have codified the defense as constitutive of the lower offenses of second-degree murder or manslaughter²⁹ while others maintain a single offense permitting common law interpretations of mitigating factors to reduce sentences.³⁰ Regardless of their mode, American heat-of-passion defenses follow the basic rationale that malice is absent when a husband discovers his wife in the act of adultery so long as there is ocular evidence or

other facts supporting a reasonable belief that adultery is being committed and there is no time to regain sensibilities or “cool off.”³¹ Further, like their English counterparts, American courts ruling on heat-of-passion defenses adopted a reasonable-man standard — *never* a “reasonable woman” standard — in assessing the adequacy of provocation.^{32, 33}

The patriarchal perspective of courts has long limited the ability of females to present a heat-of-passion defense. Under the theory of feminist jurisprudence, patriarchal laws often fail to consider women’s differing views on human nature.³⁴ Whereas men might invoke the heat-of-passion defense to protect proprietary interests in sexual relations, women may be more likely to justify violence to retain affections.³⁵

Though probative of male culpability, requisite heat-of-passion defense elements, such as ocular evidence and no time to cool off, may not be valid criteria for female culpability, which presumptively results from a more relationally oriented perspective of human nature. Thus, although women are less likely to commit violent offenses,³⁶ they are also less likely to assert the defense successfully when the heat of their passion has occurred later in time or has been spurred by reasons not provocative to a reasonable man.³⁷ One might then expect the imprisonment of females who offended during a legally unrecognized heat of passion. However, reported instances of female heat-of-passion crimes are too few and the resultant case law too sparse to garner support for or against this proposition.

Nevertheless, the lack of reported instances is useful to highlight the gender interest most often served by the defense. This is no coincidence, for the heat-of-passion defense was crafted from a male perspective to benefit male interests. Interestingly, some commentators posit that leniency toward “battered wives” who finally kill their husbands and leniency toward other women who kill intimates in self-defense represents an overdue diversification of the reasonable-man standard, raising many questions for future inquiries.³⁸

The honor-killing defense

In contrast to the heat-of-passion defense, the honor-killing defense provides more than the mere mitigation of criminal liability. In those countries permitting it, the honor-killing defense provides a complete justification and exoneration from criminal responsibility and punishment.

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Muslim religious law, or *shai'ah*, requires that a wife obey her husband, and her perceived failure to obey may be cited to help justify physical assault, even killing.³⁹ A legal defense derived from this principle, which protects reputational interests and preserves family honor,⁴⁰ is currently available to husbands in twenty or more Middle Eastern countries.⁴¹

The legal rationale distinguishing honor killings from heat-of-passion killings is that the former are inherently just actions and, hence, not criminal at all,⁴² even sometimes when prompted only by suspicion, rather than proof, of unfaithfulness.⁴³ For instance, there are many documented cases of male family members killing their daughters, sisters, and cousins for dating, for leaving home without permission, and for unproved accusations of pre-marital sexual contact.⁴⁴ Suspicions can be based on seemingly innocent social interactions, on flirting, gossip, or second-hand information, or, in some cases, on finding a less fully occlusive hymen than expected. Accusations need not depend on complicity of the female. For example, the conditions under which virginity has been lost may be held irrelevant; rape victims may become victims of "honor" almost as if they had engaged intentionally in premarital or extramarital sex.⁴⁵ Not only can honor-threatening sexual encounters be forced on a female, but sexual relations may qualify for honor-killing responses even if the involved female was incapable of resistance.

[I]n March of 1999, a 16-year-old mentally retarded girl who was raped in the Northwest Frontier province of Pakistan was turned over to her tribe's judicial council. Even though the crime was reported to the police and the perpetrator was arrested, the Pathan tribesmen decided that she had brought shame to her tribe and she was killed in front of a tribal gathering.⁴⁶

Jordan has the highest per capita rate of honor killings in the world.⁴⁷ In recent times, more than one-fourth of all reported homicides in Jordan have been committed in the name of honor.⁴⁸ Jordan's codification of honor killings permits justification in cases where a husband has killed his wife after observing her in sexual relations with another man.⁴⁹ Jordanian law also provides for mitigation of sentences where a husband or family member kills a wife after *suspecting* her of sexual relations with another outside the marriage.⁵⁰ This provision states that "[h]e who commits a crime in a fit of fury caused by an unlawful and dangerous

act on the part of the victim benefits from a reduction in penalty."⁵¹ Although this law provides mitigation for the killing of men who have sex with another man's wife or family member, this application of the law is rarely used since blame is generally placed on the female, the usual casualty of a family's dishonor.⁵²

Honor killings are surprisingly widespread. Reports submitted to the United Nations Commission on Human Rights document continuing occurrence in Bangladesh, Brazil, Ecuador, Egypt, Great Britain, India, Israel, Italy, Jordan, Pakistan, Morocco, Sweden, Turkey, and Uganda.⁵³ Honor killings have recently been accounting for over two-thirds of all homicides reported among Palestinians in the Gaza Strip and the West Bank. In 1997, roughly four hundred women were killed for honor in Yemen. In 1999, over a thousand Pakistani women were killed for this cause. Iraq and Iran, two of the more populous countries in which honor killings are thought to be frequent, do not report relevant statistics.⁵⁴

The United Nations Population Fund estimates that over five thousand women die in honor killings every year,⁵⁵ but data and its absence are similarly hard to interpret. One reason is reluctance to report. Another is that groups that recognize honor killings now live within states whose legal systems do not recognize honor killings. Still another reason is the link between honor killing and war.

Women have historically been the victims of wartime rape. In World War Two, Japanese soldiers forced thousands of women from occupied territories into prostitution, calling them "comfort girls."⁵⁶ The practice continues as a constant of male aggression. Women are strategically raped by soldiers to boost morale, control populations, and "taint" enemy bloodlines.⁵⁷ In Rwanda in 1994, rape of Tutsi women by soldiers was an integral part of a planned genocide.⁵⁸ In the most recent Balkan wars, Muslim and Croatian women were ordered raped to advance "ethnic cleansing." In the case of Muslim women, strategists apparently imagined that raped women would become honor-killing candidates,⁵⁹ and, indeed, some number *were* later killed⁶⁰ pursuant to a concept of male honor known as *Sharaf*.⁶¹ Under *Sharaf*, a woman's honor, or *'ird*, is permanently affronted by premarital or extramarital sex, while a male's honor is only temporarily affronted and is restored if the raped woman commits suicide. If she fails to commit suicide, the male's responsibility, supposedly, is to kill her.⁶²

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Yet honor killings are not solely a Muslim phenomenon and have been experienced in many cultures throughout time. The Germanic tribes of Western Europe, as well as the Chinese, Japanese, and other Asian cultures legally sanctioned the killing of unfaithful wives by their husbands to protect family honor.⁶³ Even in the United States, until recent times, wife killings by husbands were not considered a crime in some jurisdictions.⁶⁴ Most strikingly, in India and other countries with large Hindu populations new wives often are murdered by their husbands because of failed dowry demands.⁶⁵ These killings are extremely brutal and are typically accomplished by the husband burning the wife to death in an “accidental” kitchen fire. These “dowry deaths” are as prevalent in India as are domestic-violence killings in the United States.⁶⁶ Male behaviors such as these, and their official ratification, demand explanation.

Biological explanations

There are many sociological explanations for murder, and they are among the traditional foci of criminology. Proponents of social-control, differential-association, labeling, social-strain, and other theories offer persuasive explanations. However, these are explanations of *deviant* behavior, and killings normalized through *de facto* legalization are not strictly deviant. Further, sociological explanations are formulated in the context of collective cultural forces and group behavior,⁶⁷ not individual pathological predispositions.⁶⁸ In contrast, biological explanations focus on heritable traits that influence individual behavior. Misconceptions regarding this difference in perspective often result in unnecessary conflict between these two schools of thought,⁶⁹ especially when considering behaviors for which social scientists postulate motivators hard to explain through, or to reconcile with, evolutionary theory. However, an apparent absence of evolutionarily derived motivation does not render a specific behavior exempt from biological explanation.⁷⁰

Sociological explanations of behavior focus on immediate, or “proximate,” causes while biological explanations focus on “ultimate” causes. Proximate causes reveal external influences; ultimate causes reveal evolutionary processes.⁷¹ Proximate-cause explanations describe *how* behavior is immediately brought forth by stimuli; ultimate-cause explanations describe

why a behavior can be brought forth by stimuli.⁷² This proximate-ultimate distinction is well illustrated by contrasting analyses of legal exceptions benefiting men who kill their wives. In examining these exceptions, sociologists posit that legal systems were developed by men and are intentionally patriarchal.⁷³ But they do not explain *why* patriarchal systems might have developed such exceptions. Sociological explanations do not adequately explain why male perpetrators of *these* crimes, as opposed to male perpetrators of countless other crimes in which their gender is over-represented, receive special protection from the law. Such explanations do not explain why men are less likely to kill their wives for stupidity or laziness than unfaithfulness⁷⁴ and why the killing of a wife for reasons other than unfaithfulness or self-defense does not generally provide a legally cognizable defense.

Nevertheless, biological and sociological explanations are both necessary elements of any comprehensive explanation of human behavior.⁷⁵ Moreover, the very fact that these schools *do* maintain different definitions of causation may be what allows their peaceful coexistence.⁷⁶ Thus, we may begin with sociologically derived explanations and then “proceed backwards” in search of biological roots. This course of inquiry is consistent with natural selection, which is not teleological.⁷⁷

Sexual selection

In “Natural Selection; or the Survival of the Fittest,” the fourth chapter of his 1859 exposition, *On the Origin of Species*, Charles Darwin catalogued favorable traits preserved among successive generations.⁷⁸ In *The Descent of Man and Selection in Relation to Sex* (1871) Darwin reasoned that these traits were both physical and psychological and that they attracted mates.⁷⁹ Male physical traits found to be adaptive in mating included the peacock’s tail, the lion’s mane, the boar’s shoulder pad, the salmon’s hooked jaw, and, in *Homo sapiens*, tallness and muscularity. Male psychological traits found similarly to be adaptive included sexual aggressiveness, an asset in overcoming threats to “parental certainty,” the likelihood that any offspring is from a particular male or female.

Paternal certainty

Since females carry prospective offspring from conception through gestation to birth, they are virtually certain of parentage. In contrast, absent modern-day

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testing, *paternal* certainty is dependent on factors such as timing, virility, and female fidelity. Importantly, however, male fidelity to females does not generally increase paternal certainty other than by increasing chances for female reciprocation and male oversight.

Paternal certainty has always been of great importance to males willing to make investments in offspring thought to be their own. Many cultures have acknowledged this importance through social norms protective of male exclusivity in sexual relations and patriarchal laws against adultery and the like.⁸⁰ Heat-of-passion and honor-killing defenses are built upon such norms and rely upon such laws.

Varying levels of male aggression in humans and other species have been observed both in the competitive selection of mates and in their subsequent safeguarding, with reduction of paternal uncertainty the common result.⁸¹ Substantial support exists for the proposition that greater male aggression exists at later stages of mating rituals where males attempt to maintain paternal certainty through mental and physical coercion directed at females. This differential behavior, between that used to obtain a mate and that used to control her, is consistent with Darwin's original thesis maintaining that sexual selection is a struggle for existence.⁸² However, these types of aggression differ. At the initial mating stage aggression displays prowess to females and wards off competition from other males, whereas the aggression that follows mating constrains females and demonstrates proprietary rights to interloping males.

Darwin observed that those males losing competitions for mating opportunities may have few or no offspring but typically are not killed by the victors.⁸³ Actually, the male physical traits most likely to correlate with the killing of vanquished competitors — such as greater height and strength — may not figure much in female choosiness,⁸⁴ which is to say that female ancestors may actually not have preferred more powerful and aggressive males. The physical differences between the sexes were likely of little consequence to predators, who would have considered male and female prey nearly equal in their ability to resist being eaten and who would probably have had to dispatch only the female when feeding on a mated pair's offspring.⁸⁵ Second, assuming they were still able to avail themselves of another suitor's credible protection, females might simply have had little to lose, and some safety to gain, by

avoiding highly aggressive males.⁸⁶ If so, then the extraordinary level of aggressiveness demonstrated by the killers of mates and relatives may not be explained solely by mating influences on sexual selection.

Reciprocal fidelity

Whether evolved or invented and whether it be thought an expectation or an ideal, monogamy — or its serial variant — is a human norm. Even in societies allowing or preferring multiple simultaneous marriages, monogamy usually persists and may often prevail. Once committed to monogamy, each partner expects the other to be faithful and both presume reciprocal fidelity. Males then invest in the rearing of subsequent offspring because they believe them to be their own. Thus, in the Darwinian perspective, a husband's time, energy, and resources may be misdirected toward offspring not his own if his wife has been promiscuous.⁸⁷

Infidelity can arouse jealousy, which is easily transformed into aggression.⁸⁸ Cases of jealous *females* enforcing fidelity with violence are rare, however;⁸⁹ most killings of husbands by wives are performed in self-defense against aggression by the husband.⁹⁰ Thus, as is often the case, males assert primary control over females through aggression manifested across a spectrum ranging from subtle acts of intimidation to more severe forms of physical punishment. The most violent of these acts is inflicted upon young women at the height of their reproductive ability.⁹¹

Adaptive or Maladaptive Behavior?

Wife killing ensures that a husband will not have any future offspring with his dead former mate. So, why would behavior so deleterious to reproductive success be spawned by interests in maintaining that success? Various explanations have been posited.

One proposed by Daly and Wilson is that not all biologically influenced behavior results from the natural selection of the behavior observed.⁹² In many cases, "Behavior A" may be incidental to the natural selection of "Behavioral B." The one behavior may be, quite indirectly, the result of the other's evolution.⁹³ Daly and Wilson contend that wife killings by husbands may be considered "slip-ups" in a dangerous game where husbands use threats and violence to maintain control over their wives.⁹⁴ These killings may then be described as "nonadaptive byproducts of mas-

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culine psychological processes”⁹⁵ which themselves evolved from “sexually differentiated mental mechanisms of sexual proprietariness.”⁹⁶ These mechanisms, which include such acts as verbal threats and minor physical assaults, keep wives from other males with whom copulation could result in the husband accepting another man’s child as his own.

Several other explanations for wife killings are offered by Buss and Duntley under their “mate-killing module” theory.⁹⁷ These theorists focus on the circumstances of wife killings, which, they contend, are not heat-of-passion crimes at all but premeditated acts of male aggression and fantasy.⁹⁸ Their primary contention is that the argument of Daly and Wilson fails since premeditated killings cannot result from the mere “slip-ups” central to the by-product hypothesis. Buss and Duntley postulate their theory, which is directed at the literal death of the wife, and contend that mate-killing behavior here is adaptive. They offer four candidate explanations.

Buss and Duntley’s first adaptive explanation, to “prevent other wives from cheating or leaving,” applies in the context of polygamous societies. Any man would lose genetic fitness by killing a wife able to bear and raise children but would avoid rearing a child adulterously conceived; a polygamous man would also gain paternal certainty through deterring adultery by his remaining spouses. A flaw in this explanation is apparent when one asks why deterrence cannot be achieved by threats of violence and assaults short of actual murder. Surely, assaultive behavior occurs in many polygamous cultures with both specific and general deterrent effects. In those cultures, is the murder of an unfaithful spouse just a “slip-up” in lesson-giving?

The second explanation offered by Buss and Duntley, “salvaging lost honor,” is that promiscuous women are threats to male reputations and that killing an offending wife is the only perceived means of regaining respect.⁹⁹ Fitting this idea to evolutionary theory is not straightforward. Perhaps honor functions as a correlate of paternal certainty, assuming high status enhances genetic fitness. At best, this explanation differs little different from the “slip-ups” theory of Daly and Wilson.

Paternal certainty aside, a young woman’s chastity is a measure of her worth in many societies, if not all, and notably so Muslim societies.¹⁰⁰ If virginity enhances the prospect of attracting an honorable husband, one likely

to make full parental investment, then offspring will more likely attract their own honorable mates in turn. This dynamic is an evolutionary benefit not only to the bonded couple but also to their close relatives, who share many genes.¹⁰¹ However, killing a daughter or sister or cousin or in-law ensures she will not reproduce, suggesting another “slip-up” phenomenon.

Buss and Duntley have proposed two final explanations: “stanching the costs” and “pushing the man over the edge.”

According to the former explanation, men suspecting unfaithfulness kill their wives to kill the gestating offspring of paramours. Here, evolutionary benefit to the killing husband would depend on the likelihood of pregnancy given infidelity, the likelihood of infidelity given pregnancy, the likelihood of non-paternity given pregnancy, and the likelihood of legitimate pregnancy in future — a lot for an evolving *Homo* to calculate in a jealous fury. Many traits effect reproductive success, and at varying levels. Yet, not all are significant enough to trigger biologically cognizable effects.

According to the latter explanation, dejected men realizing that a relationship is ending kill their mates in final fits of rage caused by sudden recognition that their genetic-fitness ambitions have been frustrated. In support, Buss and Duntley have cited Wilson and Daly to the effect that estranged or separated wives are five to seven times more likely to be killed by estranged males than are those still living in marital households.¹⁰² Yet, the discovery of a spouse in *flagrante delicto* and the suspicions arising from a separation might result in largely similar jealousies and fears. Can premeditated acts qualify as “slip-ups”? Buss and Duntley have argued no, but Wilson and Daly have said yes, since impulsive conduct and accidental behavior “tell us nothing about the substance of marital conflict” and any conduct “that might have been provoked by the suspicion or discovery of unfaithfulness” deserves consideration.¹⁰³

From the biological perspective

Progressive societies judge crime in context. “Special circumstances” may magnify guilt and harshen penalties, while provocation may absolve or mitigate. Homicide and manslaughter laws in the United States were modeled on those in England, where the heat-of-passion defense was adopted to protect against mandatory and disproportionately severe

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death sentences for all felons.¹⁰⁴ Also like their English counterparts, Americans long ago abandoned the common-law rule that all felonies were punishable by death, and many states have abolished the death penalty. Curiously, though, they have not abolished the heat-of-passion defense.

The heat-of-passion defense cannot be justified as a protection against mandatory capital punishment in states with *no* capital punishment. In these states, non-justified killings are now deterred only by life imprisonment, and the heat-of-passion defense, when successfully asserted, merely mitigates against this sentence rather than death. So why do these states continue to permit the defense? And what about the rationale supporting the heat-of-passion and honor killing defenses in those cultures not following the English common law tradition?

In answering these questions, the biological perspective may be used as a platform from which to argue for or against the heat-of-passion defense. Proponents of the defense may argue exculpation, that men act according to biological influences and therefore lack full control of their faculties. However, legal defenses that rely on a doctrine of biological influences can be disturbingly reductionistic, embodying the long-notorious “naturalistic fallacy,” the assumption that what *ought* to be in society follows from what merely *is* in nature. Into this pitfall have tripped legions of biologically enthralled philosophers, activists, and lawmakers.^{105, 106}

Conclusion

The decriminalization of adultery leaves heat-of-passion and honor-killing defenses hard to justify, for individuals then are left to punish through private violence what society declines to punish through law.¹⁰⁷ Nevertheless, many cultures continue to accept heat-of-passion crimes and honor killings. Common among these cultures are the ideas that punishment should be based on perceptions of blameworthiness and that men who kill when affronted by unfaithfulness are less blameworthy than common murderers. From the biological perspective, heat-of-passion crimes and honor killings are maladaptive. They are by-products of an evolved male sexual aggression that is intensified by external threats to paternal certainty. Biology does not condone the killing of women suspected of promiscuity,

but a biological perspective may explain why these women are killed and why their killers are so frequently excused.

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