

5 Getting Away with Murder

Criminal Diagnostics

Criminal defendants increasingly claim that their criminal behavior was caused by social toxins that excuse or mitigate their guilt. . . . These claims are not aberrational doctrinal proposals, but rather are sophisticated extensions of existing criminal doctrine commensurate with scientific advancements.

Patricia Falk, "Novel Theories of Criminal Defense Based upon the Toxicity of the Social Environment," 1996

BATTERED WOMAN SYNDROME DEFENSE

In 1978, a sophisticated insanity defense was used successfully to win the acquittal of a Michigan housewife, Francine Hughes, in the so-called "burning bed" case. The technical rationale for pleading temporary insanity was to make evidence of long-standing abuse admissible in court. The defense attorney, Ayrton Greydanus, argued that the battering itself caused Hughes' insanity, not any frailty inherited with gender. (Stark 1995)

The battered woman syndrome defense is invoked increasingly these days in a number of trials for murder across the country in which a woman is charged with killing her man, or ex-man, under conditions that are less than a fair fight. She sets fire to his bed as he lies passed out, or shoots him as he sleeps, and she is charged with murder. In the past, the women in such cases were routinely

tried, convicted, and sent off to the slammer, juries being notoriously unsympathetic to the crime of burning people alive as they sleep.

Drawing on fashionable dysfunctional family theory and traditional legal theories of diminished culpability, Arrested Feminist clinicians, along with their attorney cohorts, crafted a novel defense for the women in these cases. According to their reasoning, these battered women had been so abused by their men that they had lost the ability to act rationally, lost the ability to premeditate their actions, lost the ability to foresee the consequences, and lost the ability to control their behavior. The abuse they received at the hands of their men had rendered them utterly impotent, utterly without responsibility for anything they might do, and utterly without responsibility for the killing of their batterers.

Lenore Walker, who almost graced our television sets as a defense witness in O. J. Simpson's criminal murder trial, claims to have successfully employed the BWS defense in over 150 murder trials, though forensic psychologist Charles Patrick Ewing and others have questioned the basis for these claims. Reviewing twenty-six cases in which expert testimony on BWS was admitted, Ewing reports that in seventeen, roughly two out of three, the battered woman defendant was convicted of murder, manslaughter, or reckless homicide (Stark 1995).

In one third of the cases in which the BWS defense was allowed to be presented, the woman was acquitted. The same study found that in 100 percent of the cases in which the evidence was excluded, the women were convicted.

The women mounting a battered woman syndrome defense for their crimes claimed that they had been driven mad as a consequence of longtime abuse at the hands of their men.

Yes, mad. The most poisonous, dangerous—deranged!—element of the battered woman syndrome defense is not the recognition that the ordinary rules of self-defense do not apply well to situations in which the two participants are of greatly differing physical stature. That would almost make some sense. We do, after all, have a number of laws that seem to rest on the assumption that if two 170-pound men are having a dispute wherein, for example, one fellow says to the other, "I'm going to kill you, you son of a bitch," and lunges forward, and the

second guy whams his fist into the first's esophagus and crushes his windpipe, killing him, then it is not murder but self-defense.

Now, for a number of reasons like size and acculturation, this scenario runs into difficulties when we try to apply it to a man and a woman in a dispute. Women's advocates might well have made the claim that the customary male response to repeated insults and threats is unavailable to most women since the probable outcome of attempting to punch a threatening, insulting male is a vicious beating or even death at the hands of the male. Since escape from the home into another life of economic strength and safety is generally an alternative that exists only in the minds of prosecutors, the battered woman in such a situation might well feel that knocking her assailant off as he sleeps or is passed out drunk is her only realistic way out of the situation. Given the number of women who ~~try~~ try so hard to escape these men through the legitimate means of separation and restraining orders and who in the end are killed by them, she may well be right.

Is this inequality of strength and combat skill the basis of the battered woman syndrome defense? Of course not. We're dealing with a *mental illness syndrome* here. That a battered woman kills her man as he sleeps is not the sensible act of a person trapped in an impossible situation from which society will not rescue her, Oh, no. It is the crazy act of a mentally disordered woman driven mad by the conduct of her man. Arrested Feminist attorneys and the feminized psychology establishment have to see it that way. To see it as an act of power, of taking control, of actively, willfully killing the enemy, is completely out of keeping with seeing all women as the helpless victims of men. They'd rather see them as crazy than as taking charge as well as they can given realistic constraints. That is nuts.

Let's get the syndrome out of this defense and name it for what it is: women taking the law into their own hands when the law refuses to protect them from their men. Whatever juries might make of that, at least they won't be blinded by the dust of a pseudo-syndrome.

The Societal Family

The modern view that today's dysfunctional family is a microcosm of modern society as a whole is more than a metaphor for today's clinicians, it is a fundamental truth about the roles people play in life and the reasons they play them.