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I would like to present a critique of a popular new approach to domestic violence called “differentiation,” which is premised on the assertion that there are at least two primary types of domestic violence and that they are profoundly different in ways that require recognition in all contexts. While the idea of different domestic violence “types” is not entirely new, Johnson’s differentiation theory has been widely and rapidly accepted in large part because of its claim to empirical proof. In my view, this theory is a case study in the unreliability of empirical “proof” of DV types (or more broadly any interpersonal definitions) - and is a powerful example of how social science informs (sometimes for better, often for worse) family law. The theory has already done damage in the custody context, in sadly predictable ways.

In brief, Johnson’s theory is that there are different types of domestic violence and that differentiating is essential to any valid discussion (including adjudication) of domestic violence. His types are based on the degree to which the relationship violence is part of a dynamic of domination and control (“intimate terrorism”) or is instead, merely “situational.” Based on these core distinctions he asserts numerous potential differences in motivation and impact. While his descriptions of the two categories have changed over time and become increasingly fluid and indistinct, in general, as is reflected in its name, “situational” or “common” couple violence is portrayed as less serious, less dangerous, and less troubling than “intimate terrorism,” which is impliedly far more dangerous and violent.¹

This typology has been rapidly and uncritically adopted by custody evaluators and judges as well as both family court and some domestic violence professionals and even scholars. Its appeal may stem not only from its claim to empirical support, but also its resolution of the seemingly irreconcilable battle between feminists and non-feminists over whether domestic violence is truly a gender-based problem. By *simultaneously* validating *both* the feminist paradigm of power and control - typically male on female violence - and the non-feminist paradigm of non-gendered, non-control based violence, Johnson's typology has found many adopters across the politics of this field. Loretta Frederick, *Questions about Family Court Domestic Violence Screening and Assessment*, 46 Fam. Ct. Rev. 523-30 (2008). Ver Steegh, *Differentiating Types of Domestic Violence: Implications for Child Custody*, 65 La. L. Rev. 1379, 1399-1400; Appellant’s Opening Brief in *E.J. v. D.J.*, No. 10-FM-375 at n. 26, p. 39 (on file with author); *Malenko v. Handrahan*, 979 A.2d 1269 (2009); *C.A. v. J.B.*, 2011 Ind. App. Unpub. LEXIS 957 (Ind. App. 2011

¹ Some of the limited critiques to date recognize that since much coercive control abuse is not overtly very violent, the name “intimate terrorism” may be misleading – although the dangerousness signaled by coercive control is largely undisputed. Evan Stark, *Rethinking Custody Evaluation in Cases Involving Domestic Violence*, 6 J. Child Custody 287, 312 (2009).

If Johnson had merely asserted that there are two (or more) types of domestic violence and that the control context of the relationship differentiates them in important ways, the theory might be debatable but would be less destructive in its applications in court. However, Johnson uses his empirical analysis to argue that situational couple violence is the vast majority of domestic violence (70-80%); and that control-based “intimate terrorism” is quite rare (10-20%). Michael Johnson, *A TYPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE* (Northeastern University Press: 2008).

Unfortunately, albeit predictably, by validating the idea that most domestic violence is not gender-based, is merely “situational,” and is not terribly serious, the typology has already contributed to troubling decisions in custody cases, by facilitating courts’ minimization of domestic violence which is raised in the course of litigation. Frustratingly, after 30 years of reformers’ combating courts’ treating domestic violence as “just a relationship problem,” a “mutual” problem, and not a serious concern, Johnson’s “situational couple violence” (or “common couple violence”) has suddenly resurrected and validated exactly those paradigms. Coming from a self-avowed feminist, who has worked in domestic violence shelters, and having won some respect from the domestic violence field, the theory has the potential to undo thirty years of reform advocacy in one fell sweep.

This article critiques Johnson’s theory from both analytic and empirical perspectives. It first examines the typology’s empirical “proof” and finds it wanting. Johnson does not do his own empirical research – rather, he re-analyzes previously collected data from earlier studies, most of which were not asking the same questions he is. Significantly, Johnson’s claim that the vast majority of domestic violence is situational couple violence is based - not on objective data - but rather, on his own arbitrary choice of “cut-points” to create two groups among the data he is looking at. A different choice of cut-point which treated fewer control behaviors as representing controlling abusive relationships would lead to the opposite numerical conclusion: that situational (non-control based) violence is far *less* common than control-based violence. Since whichever “type” of domestic violence is seen as the “norm” will have substantial implications in custody litigation – where family courts are already inclined to believe that fathers fighting for custody are presumptively decent people – this choice of “cut-point” is critical.

In addition, the theory is subject to the critique that the categories are potentially contradictory and also potentially convergent rather than distinct. Situational couple violence may become “intimate terrorism” over time. Situational couple violence which is not mutual but perpetrated by only one partner, is implicitly going to develop “control” within the relationship. Even Johnson’s empirical analysis of the different populations contradicts his theory – that only “intimate terrorism” cases would be found in shelters and the legal system. For all these reasons, as well as Johnson’s admitted lack of information or even theory about how the types relate to custody and children’s welfare, the theory should be excluded from the custody

context unless and until true empirical support linking the typology to custody emerges.