

OBJECTIFYING MEN: RETHINKING IOWA’S RULE OF PROVOCATION

“Representation of the world, like the world itself, is the work of men; they describe it from their own point of view, which they confuse with the absolute truth.”¹

-Simone de Beauvoir

ABSTRACT

The rule of provocation, or the heat of passion doctrine, developed at common law to protect homicide defendants from the death penalty following a conviction for murder. The common law doctrine relies on an objective reasonableness standard, requiring that defendants’ actions align with those of the “reasonable man.” States have since adopted or developed their own versions of the rule of provocation, and there has been movement in some states to subjectivize the standard. The common law rule, using an objective reasonable person standard, was adopted and codified by Iowa in the nineteenth century. This outdated standard is no longer protecting defendants’ liberties when they are held to the standard of a reasonable man. Today, the rule of provocation does little more than excuse the actions of individuals who lash out in the heat of passion in the right way.

This Note will explore the sexist history of the objective common law standard, which only accounts for the actions of the reasonable man—in fact, at common law, the rule of provocation did not apply for female defendants. Removing “man” from the “reasonable person” did not adequately remedy the sexist foundation of Iowa’s voluntary manslaughter law to protect women who kill in the heat of passion. Further, this Note will explore the differences in aggression between the sexes and how the rule of provocation excuses male aggression and does nothing to protect women who lash out at their abusers. Finally, this Note will suggest that Iowa courts and lawmakers join the states who have adopted, or are adopting, a subjective standard of reasonableness in their rule of provocation.

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I. INTRODUCTION

“Across many subject areas, the law commonly attempts to distinguish between objective and subjective tests,” including in criminal law.² The rule of provocation defense,³ derived from the common law, employs both subjective and objective elements.⁴ This defense is not without criticism. One criticism is “that provocation and a loss of self-control is an inappropriate basis for a partial defen[s]e.”⁵ Another criticism of the rule of provocation is the tension between the legal construct and present society because of the perceived gender bias inherent in the defense.⁶ The historical reasonable person standard is premised on male components and does not adequately reflect the people of modern society.⁷

There are arguments for reforming the defense, and arguments for abolishing the defense.⁸ Either option would be preferable to the current standard.⁹ Perhaps in an ideal world, where a person would never lash out in the moment as an emotional response, there would be no need for such a defense, but we do not live in such a world, and humans are fallible. If there must be a rule of provocation, it must

2. R. George Wright, *Objective and Subjective Tests in the Law*, 16 U. N.H. L. REV. 121, 121 (2017).

3. *Girouard v. State*, 583 A.2d 718, 721 (Md. 1991) (outlining the Rule of Provocation and its elements).

4. *See infra* Part III.

5. LENNY ROTH & LYNSEY BLAYDEN, *PROVOCATION AND SELF-DEFENCE IN INTIMATE PARTNER AND SEXUAL ADVANCE HOMICIDES*, at i (2012).

6. *See id.* Other criticisms are that the test for the defense is conceptually confusing and difficult for juries to understand, and provocation is better suited as a sentencing consideration as there is no longer a mandatory sentence for murder. *Id.*

7. *See* Marvin L. Astrada & Scott B. Astrada, *Law, Continuity and Change: Revisiting the Reasonable Person Within the Demographic, Sociocultural and Political Realities of the Twenty-First Century*, 14 RUTGERS J. L. & PUB. POL'Y 196, 200 (2017).

8. ROTH & BLAYDEN, *supra* note 5, at i.

9. The Author believes the rule of provocation excuses acts of violence committed out of ill will, the exact type of will that the law should not excuse, and should be abolished. However, it is unlikely that such sweeping reform will occur in Iowa, and as such this Note will argue for reforming the rule, a still-preferable alternative to the current law.

account for provoked responses in *all* people, not only men.¹⁰ The reasonable person standard cannot be objective—not only is it shaped by its sexist roots, but it also embodies the biases that pervade human thinking.¹¹

The subjectivity of the Model Penal Code's (MPC) "extreme mental or emotional disturbance" standard is better apt to address today's diverse population.¹² For these reasons, a subjective reasonable person standard that accounts for at least some of the defendant's personal characteristics and life experiences is preferable to an objective one.¹³ This Note asserts that Iowa, a state which currently employs an objective reasonable person standard,¹⁴ should abandon this outdated common law standard and join the states adopting a subjective standard.

II. THE COMMON LAW RULE OF PROVOCATION

English courts in the sixteenth and seventeenth centuries developed provocation as a partial defense to murder—a defense that, if accepted, resulted in a conviction for manslaughter rather than murder—when the death penalty was mandatory for persons convicted of murder.¹⁵ "English courts adopted the 'reasonable man' standard in the middle of the nineteenth century."¹⁶ This period considered married women to be the property of their husbands, and the reasonableness requirement was decidedly inapplicable to women due to their "irrational nature."¹⁷

At common law, a murder could be mitigated to manslaughter when the intentional homicide was shown to have been committed in a sudden heat of passion as the result of adequate provocation.¹⁸ The rule of provocation at common law required that, "There must have been adequate provocation; . . . [t]he killing must have been in the heat of passion; . . . [i]t must have been a sudden heat of passion . . . ; [and t]here must have been a causal connection between the provocation, the passion, and the fatal act."¹⁹ Traditional circumstances of

10. See Astrada & Astrada, *supra* note 7, at 200.

11. See *infra* Part VI.C.

12. See *infra* Part IV.

13. See JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 534 (7th ed. 2015).

14. IOWA CODE § 707.4(1) (2025).

15. ROTH & BLAYDEN, *supra* note 5, at 1.

16. Danielle Rosiejka, Note, *Killing for Possession and Killing for Survival: Gender and the Criminal Law of Provocation and Self-Defense*, SETON HALL L. STUDENT WORKS 1, 8 (2012), https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1074&context=student_scholarship [<https://perma.cc/UA42-4R6R>].

17. *Id.*

18. *Comber v. United States*, 584 A.2d 26, 42 (D.C. 1990) (citation omitted).

19. *Girouard v. State*, 583 A.2d 718, 721 (Md. 1991).

adequate provocation include: “[E]xtreme assault or battery upon the defendant; mutual combat; defendant’s illegal arrest; injury or serious abuse of a close relative of the defendant’s; [and] the sudden discovery of a spouse’s adultery.”²⁰ “For provocation to be ‘adequate’ it must be ‘calculated to inflame the passion of a reasonable *man* and tend to cause *him* to act for the moment from passion rather than reason.’”²¹ Adequate provocation “must vary with the myriad shifting circumstances of *men*’s temper and quarrels.”²²

III. THE IOWA RULE OF PROVOCATION

At common law, the Iowa Supreme Court held that there was no precise line between provocation that would mitigate an offense from murder to manslaughter and provocation that would not.²³ The court stated,

Reasonableness is the test. The law contemplates the case of a reasonable *man*—an ordinary reasonable *man*—and requires that the provocation shall be such as might naturally induce such a *man*, in the anger of the moment, to commit the deed. The rule is that reason should at the time of the act be disturbed by passion to an extent which might render ordinary *men*, of fair, average disposition, liable to act rashly and without reflection, and from passion rather than judgment.²⁴

Iowa applied the common law definition of manslaughter until the Iowa Criminal Code became effective in 1978, statutorily defining the offense.²⁵ The statutory definition essentially followed the common law.²⁶ In 1980, the Iowa Uniform Jury Instruction stated,

Regardless of how sudden, violent and irresistible the passion may be, if there is an interval of time during which a reasonable person would . . . have time to reflect and bring *his* passion under control, or, . . . a person of ordinary reason and temperament to regain *his* control and suppress the

20. *Id.* at 720. At common law, words alone were not adequate provocation. *Id.* at 722.

21. *Id.* at 722 (emphasis added) (citation omitted).

22. *Commonwealth v. Paese*, 69 A. 891, 892 (Pa. 1908) (emphasis added).

23. *State v. Watkins*, 126 N.W. 691, 692 (Iowa 1910); *see also* *State v. Davis*, No. 06-1606, 2007 WL 2712031, at *4 (Iowa Ct. App. Sept. 19, 2007) (citing *Watkins*, 126 N.W. at 692).

24. *Watkins*, 126 N.W. at 692 (emphasis added) (citation omitted). *Watkins* has been cited by the Iowa courts as recently as 2007. *See Davis*, 2007 WL 2712031, at *4.

25. *State v. Taylor*, 452 N.W.2d 605, 608 (Iowa 1990) (Andreasen, J., dissenting).

26. Kermit L. Dunahoo, *The New Iowa Criminal Code: Part II*, 29 DRAKE L. REV. 491, 586 (1979-1980).

impulse to kill, then the act of the defendant was not committed solely by reason of passion caused by a “serious provocation.”²⁷

Today, Iowa essentially follows the common law defense of provocation: when a crime would otherwise be murder, adequate provocation will reduce it to voluntary manslaughter.²⁸ The difference between a conviction for voluntary manslaughter rather than murder is drastic—10 years in prison versus a life sentence.²⁹ A conviction for murder in the first degree under the Iowa Code is a class “A” felony, punishable by a mandatory life sentence without the possibility of parole.³⁰ A conviction for voluntary manslaughter under the Iowa Code is a class “C” felony, punishable by no more than 10 years in prison and a fine between \$1,370 and \$13,660.³¹

Iowa courts align with the general view at common law that the absence of malice is the distinction between murder and manslaughter.³² Under the Iowa Code,

A person commits voluntary manslaughter when that person causes the death of another person, under circumstances which would otherwise be murder, if the person causing the death acts solely as the result of sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a person and there is not an interval between the provocation and the killing in which a person of ordinary reason and temperament would regain control and suppress the impulse to kill.³³

The *Iowa Practice Series* identifies categories that constitute “reasonable provocation,” all of which are substantively identical to the common law

27. *Id.* at 587 (emphasis added) (quoting IOWA STATE BAR ASS’N, II IOWA UNIFORM JURY INSTRUCTIONS ANNOTATED (CRIMINAL), at No. 717 (1978)). Iowa Jury Instruction 700.16 currently reads, “Passion is not sudden, violent, and irresistible if there is an interval of time during which a reasonable person would, under the circumstances, have time to reflect and bring [his] [her] passion under control and suppress the impulse to kill.” IOWA STATE BAR ASS’N, IOWA CRIMINAL JURY INSTRUCTIONS § 700.16 (2020).

28. Tom Stacy, *Changing Paradigms in the Law of Homicide*, 62 OHIO ST. L.J. 1007, 1020 (2001); *Taylor*, 452 N.W.2d at 605–06.

29. Compare IOWA CODE § 707.2(2) (2025) (“Murder in the first degree is a class ‘A’ felony.”), and IOWA CODE § 902.1(1) (2025) (“Upon . . . a judgment of conviction of a class ‘A’ felony[,] . . . the court shall . . . commit the defendant into the custody . . . for the rest of the defendant’s life.”), with IOWA CODE § 707.4(2) (2025) (“Voluntary manslaughter is a class ‘C’ felony.”), and IOWA CODE § 902.9(1)(d) (2025) (“A class ‘C’ felon, not an habitual offender, shall be confined for no more than ten years . . .”).

30. *Id.* §§ 707.2(2), 902.1(1).

31. *Id.* §§ 707.4(2), 902.9(1)(d).

32. *Taylor*, 452 N.W.2d at 606.

33. IOWA CODE § 707.4(1) (2025).

provocation circumstances with an additional category for miscellaneous types of provocation.³⁴

Section 707.4 of the Iowa Code utilizes both a subjective and objective standard, both of which must be met for a defendant to be convicted of voluntary manslaughter.³⁵ Subjectively, “the defendant must [have] act[ed] solely as a result of sudden, violent, and irresistible passion” in order to meet the requirement.³⁶ There are two objective requirements. Objectively, “[t]he sudden, violent, and irresistible passion must result from serious provocation sufficient to excite such passion in a *reasonable person*.”³⁷ Objectively, there must not have been “an interval between the provocation and the killing in which a person of ordinary reason and temperament would regain his or her control and suppress the impulse to kill.”³⁸

IV. THE MODEL PENAL CODE

The MPC's “extreme mental or emotional disturbance” (EMED) provision mitigates a homicide that would otherwise be murder to manslaughter when it is “committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness . . . shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be.”³⁹ The law is more subjective in MPC jurisdictions by putting emphasis on the defendant's state of mind, and it is not entirely conclusive as to which characteristics of the defendant may be considered when determining what a reasonable person in the defendant's situation would have done.⁴⁰ Age, gender, physical disabilities, and other physical characteristics are generally permissible, but the defendant's intellectual disabilities, psychological makeup, or temperament tend not to be.⁴¹ The drafters intended for “‘the cause and intensity of the actor's emotion’ to result in a successful defense.”⁴²

34. 4 ROBERT R. RIGG, IOWA PRACTICE SERIES: CRIMINAL LAW § 3:30 (2024-2025 ed.) (citing W. LAFAVE & A. SCOTT, JR., SUBSTANTIVE CRIMINAL LAW § 7.10(b) (1986)).

35. *State v. Inger*, 292 N.W.2d 119, 122 (Iowa 1980) (explaining the objective and subjective elements of Iowa Code § 707.4).

36. *Id.*

37. *Id.* (emphasis added).

38. *Id.*

39. MODEL PENAL CODE § 210.3(1)(b) (AM. L. INST. 1962).

40. See DRESSLER, *supra* note 13, at 534–35; Ariel Joanne Pinsky, *Heating Up and Cooling Down: Modifying the Provocation Defense by Expanding Cooling Time*, 54 GA. L. REV. 761, 773–74 (2020).

41. See DRESSLER, *supra* note 13, at 535.

42. Pinsky, *supra* note 40, at 774 (quoting Dan M. Kahan & Martha C. Nussbaum, *Two Conceptions of Emotion in Criminal Law*, 96 COLUM. L. REV. 269, 321 (1996)).

The emotion does not have to be aggression or anger; any extreme emotion will suffice.⁴³

V. THE QUESTION OF SUBJECTIVE VERSUS OBJECTIVE STANDARDS

The concept of the reasonable person or reasonable man is essential to criminal law, found in the law of murder, duress, provocation, and self-defense.⁴⁴ Likewise, “the question of objective and subjective standards in the criminal law is ubiquitous.”⁴⁵ To what extent does, or should, the law incorporate the characteristics and life experiences of the defendant in the reasonable person?⁴⁶ What should the identity of the reasonable person be?⁴⁷ The common law reasonable man standard was wholly objective, and Iowa courts accordingly adopted an objective reasonable person standard.⁴⁸

The substance of the provocation defense is dependent on the jurisdiction.⁴⁹ There has been movement in some jurisdictions to make the standard subjective by including at least some of the defendant’s personal characteristics and life experiences in the reasonable person standard.⁵⁰ Criminal codes have made advancements away from the strictly objective reasonable person test.⁵¹ “The majority of U.S. states retain the common law [rule] of provocation.”⁵² In some such states, “provocation” [only] results in a lower category of murder rather than manslaughter.⁵³ Statutory reform in twelve jurisdictions adopted some version of the MPC’s EMED provision.⁵⁴ A minority of states have abandoned the common

43. *See id.*

44. Victoria Nourse, *After the Reasonable Man: Getting Over the Subjectivity/Objectivity Question*, 11 NEW CRIM. L. REV. 33, 33 (2008).

45. *Id.* at 35.

46. *See* JOSHUA DRESSLER & STEPHEN P. GARVEY, CRIMINAL LAW: CASES AND MATERIALS 297 (7th ed. 2015) (discussing whether a defendant’s circumstances should be considered to justify a killing from a retributivist and utilitarian perspective).

47. *See* Nourse, *supra* note 44, at 35.

48. *See* State v. Inger, 292 N.W.2d 119, 122 (Iowa 1980).

49. Pinsky, *supra* note 40, at 764.

50. DRESSLER, *supra* note 13, at 534–36.

51. *See id.* at 534; e.g., State v. Thunberg, 492 N.W.2d 534, 536–37 (Minn. 1992).

52. Mitchell N. Berman & Ian P. Farrell, *Provocation Manslaughter as Partial Justification and Partial Excuse*, 52 WM. & MARY L. REV. 1027, 1031 n.1 (2011).

53. *Id.* (listing Illinois and Texas as examples).

54. Michal Buchhandler-Raphael, *Fear-Based Provocation*, 67 AM. U. L. REV. 1719, 1728 (2018) [hereinafter Buchhandler-Raphael, *Fear-Based*].

law rule of provocation altogether in favor of an EMED partial defense based on the MPC.⁵⁵

VI. WHERE THE OBJECTIVE STANDARD FALLS SHORT

Proponents of objective tests in law assert that objective tests are clearly defined, straightforward, and preferable to subjective tests because they are impartial and apply the same to all people.⁵⁶ “The objective standard . . . is necessary to promote the Rule of Law”⁵⁷ “The ‘Reasonable Person Standard’ . . . is supposed to represent the most objective and unbiased perspective . . . possible”⁵⁸ “The law is supposed to apply equally and uniformly to all.”⁵⁹ Objective laws apply equally regardless of any “race, creed, class or other collective.”⁶⁰ This creates predictability in the law.⁶¹

While the Iowa criminal law today may not directly reference gender, it cannot escape its gendered roots.⁶² Rather than “developing a new standard free from a history of sex discrimination and free of gendered language, the legal community[, including Iowa,] continues to hold [women] to a standard of reasonableness . . . rooted in the male experience.”⁶³ Because of this, objectivity not only fails to account for the history and circumstances of the defendant at hand, but it also fails to account for the history and circumstances of the law itself.⁶⁴

When English courts developed the provocation defense in the sixteenth and seventeenth centuries, “[i]t was considered *virtuous* for a man of honour to respond

55. Berman & Farrell, *supra* note 52, at 1031 n.1. The MPC mitigates a homicide from murder to manslaughter if it occurred “under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse.” MODEL PENAL CODE § 210.3 (AM. L. INST. 1962).

56. See, e.g., Harry Binswanger, *What Is Objective Law?*, CAPITALISM MAG. (Dec. 12, 1990), <https://capitalismmagazine.com/1990/12/what-is-objective-law/> [https://perma.cc/PY9Q-UWQ5].

57. Kevin Jon Heller, *Beyond the Reasonable Man? A Sympathetic but Critical Assessment of the Use of Subjective Standards of Reasonableness in Self-Defense and Provocation Cases*, 26 AM. J. CRIM. L. 1, 8–9 (1998).

58. Linda L. Peterson, *The Reasonableness of the Reasonable Woman Standard*, 13 PUB. AFF. Q. 141, 141 (1999).

59. *Id.* at 146.

60. Binswanger, *supra* note 56.

61. See *id.*

62. See Antonia Elise Miller, Note, *Inherent (Gender) Unreasonableness of the Concept of Reasonableness in the Context of Manslaughter Committed in the Heat of Passion*, 17 WM. & MARY J. WOMEN & L. 249, 258 (2010).

63. Rosiejka, *supra* note 16, at 8 (citation omitted).

64. See *id.*

with *controlled* violence to certain forms of offensive behaviour.”⁶⁵ If a man overreacted to some degree, but not so much as to be disproportionate, the overreaction was considered part of his natural human frailty.⁶⁶

“[C]riminal law has been developed by male common-law judges, codified by male legislators, enforced by male police officers, and interpreted by male judges and juries.”⁶⁷ When the Iowa Criminal Code statutorily defined manslaughter in 1978, the state had never had a woman serve as a member of the Iowa Supreme Court.⁶⁸ It was not until 1986 that Judge Linda Neuman was appointed to the Iowa Supreme Court, and became the first woman to serve as a member in the court’s 150-year history.⁶⁹ In fact, when Judge Neuman was appointed in 1982 to serve as a district court judge in the Seventh Judicial District of Iowa, she was only the second woman in Iowa history to serve in such a position.⁷⁰ Thus, the common law in Iowa was developed by male common law judges and, for the first part of the codified rule of provocation’s history, interpreted solely by male judges.⁷¹

A. *The Forgotten Reasonable Woman*

Inherent in the concept of objective and subjective reasonableness is gender bias, and this bias is particularly stark in cases involving killing in the heat of passion.⁷² Although many criminal laws rely on standardized reasonableness, in

65. ROTH & BLAYDEN, *supra* note 5, at 1 (citation omitted).

66. *Id.* at 1–2.

67. Laurie J. Taylor, Comment, *Provoked Reason in Men and Women: Heat-of-Passion Manslaughter and Imperfect Self-Defense*, 33 UCLA L. REV. 1679, 1681 (1986); *see also* Miller, *supra* note 62, at 253 (“From the top down, the American legal system is male-dominated and has been shaped by male influences.”); Alda Facio, *The Law: An Art or a Science?*, 7 AM. U. J. GENDER SOC. POL’Y & L. 355, 369–70 (1999) (“With respect to those who drafted the law, we must ask who drafted it; how many women participated; were women or men present who were committed to eliminating discrimination against women; what did the male drafters of the law think about inequality between men and women; what were their objectives in wanting to change the status quo; what people or things did they want to protect; and which privileges are retained, which are modified, and which are eliminated?”).

68. *See* State v. Conner, 292 N.W.2d 682, 685 (Iowa 1980) (“Prior to the enactment of the new criminal code on January 1, 1978, manslaughter was defined only by case law.” (citing State v. Shimon, 182 N.W.2d 113, 114–15 (Iowa 1970))); *The Honorable Linda K. Neuman*, IOWA DEP’T OF HUM. RTS., <https://humanrights.iowa.gov/honorable-linda-k-neuman> [<https://perma.cc/26DQ-V7WU>].

69. *The Honorable Linda K. Neuman*, *supra* note 68.

70. *Id.*

71. The objective reasonable person standard laid out by *State v. Inger* was decided in 1980, six years before a woman would serve on the state’s highest court. *See* 292 N.W.2d 119, 122 (Iowa 1980).

72. *See* Miller, *supra* note 62, at 250.

cases of voluntary manslaughter, the reasonable man standard is strikingly harsh for women perpetrators held to the standard of a reasonable man.⁷³ The provocation defense has historically been associated with typical male responses, making it more suited for men than women even with modern changes.⁷⁴ “Men have been encouraged to be more overt with their anger. . . . [While women] are encouraged to keep their anger down.”⁷⁵ “[A] sex-blind reasonable person standard. . . ignore[s] the experiences of women,” and is prejudicial to them; “societal norms . . . reflect . . . behavior that is acceptable to men but offensive to women.”⁷⁶

At common law, one of the established categories of adequate provocation, adultery, particularly demonstrates the defense's gender divide.⁷⁷ At common law, provocation by adultery was invoked exclusively by men.⁷⁸ It was unclear until the twentieth century whether a woman *could* claim adultery as the provoking event.⁷⁹ Even with the modern rule of provocation “now framed in gender neutral terms, the adultery [provocation] defense still is invoked almost exclusively by men who have killed their wives.”⁸⁰ Today, research shows that men and women react differently to adultery, yet almost “every jurisdiction will recognize provocation induced by the sight of a wife's adultery.”⁸¹

It's mostly cases where men have killed women, and juries tend to think it is reasonable for men to lose it when they hear about adultery. There is some academic criticism that it's based on a narrow macho conception of protecting your sexual property, but the jury verdicts aren't changing.⁸²

73. *Id.* at 250–51.

74. ROTH & BLAYDEN, *supra* note 5, at, 5.

75. Melissa Dittmann, *Anger Across the Gender Divide*, 34 MONITOR ON PSYCH. 52, 52 (2003) (internal quotation marks omitted).

76. Elizabeth L. Shoenfelt et al., *Reasonable Person Versus Reasonable Woman: Does it Matter?*, 10 AM. U. J. GENDER SOC. POL'Y & L. 633, 647–48 (2002).

77. *See* Stacy, *supra* note 28, at 1039.

78. *Id.*

79. *Id.*

80. *Id.*

81. Donna K. Coker, *Heat of Passion and Wife Killing: Men Who Batter/Men Who Kill*, 2 S. CAL. REV. L. & WOMEN'S STUD. 71, 72 (1992); Miller, *supra* note 62, at 266.

82. Tamar Lewin, *What Penalty for a Killing in Passion?*, N.Y. TIMES (Oct. 21, 1994), <https://www.nytimes.com/1994/10/21/us/what-penalty-for-a-killing-in-passion.html>. These harrowing words were spoken by Stephen Schulhofer, at the time a criminal law teacher at the University of Chicago. *Id.* They are no match for those spoken by Judge Robert E. Cahill: “I seriously wonder how many men married five, four years would have the strength to walk away without inflicting some corporal punishment.” *Id.*

“[C]riminal law has held and continues to hold female defendants to a male standard of reasonableness.”⁸³ When applying the reasonableness standard objectively, it is under the guise of the stereotypical male.⁸⁴ The phrase “reasonable man” is not a neutral term, but is, and always has been, latent with gender bias and a history of discrimination against women.⁸⁵ The reasonable man was sometimes considered to be the “public embodiment of rational behavior.”⁸⁶

Many of the cases at common law involved angry males and victims who were typically female.⁸⁷ Iowa, adopting the common law, has seen the same results. In *State v. Kinzenbaw*, the defendant (male), and the victim (female) were involved in a long romantic relationship and fought frequently.⁸⁸ The defendant and the victim had an argument over going to a party, resulting in the victim attending the party with another man—her roommate’s brother.⁸⁹ When she returned from the party, the defendant and the victim argued.⁹⁰ “The victim was fatally shot outside the condominium where she lived”⁹¹ She was shot seven times at close range, “once in the abdomen, several times in the chest and right arm, and once in the head.”⁹² “[A]fter the first two shots there was a pause [and] the victim screamed: ‘Oh, God, no, Dave.’”⁹³ She died shortly thereafter.⁹⁴ The defendant was charged with murder in the first degree.⁹⁵ The defendant was convicted of voluntary manslaughter.⁹⁶ The Iowa Court of Appeals stated that there was “substantial evidence” to uphold the conviction, reasoning that the evidence indicated the

83. Taylor, *supra* note 67, at 1691.

84. Miller, *supra* note 62, at 251.

85. Ronald K.L. Collins, *Language, History and the Legal Process: A Profile of the “Reasonable Man”*, 8 RUTGERS-CAMDEN L.J. 311, 315 (1977); Rosiejka, *supra* note 16, at 8.

86. Rosiejka, *supra* note 16, at 8.

87. DRESSLER & GARVEY, *supra* note 46, at 312.

88. 344 N.W.2d 258, 259 (Iowa Ct. App. 1983).

89. *Id.* at 260.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* at 259.

96. *Id.* For another example, see *State v. Couser*, 567 N.W.2d 657 (Iowa 1997). In *Couser*, the defendant (male) and his girlfriend, the victim (female), lived together. *Id.* at 658. Police responded to a 911 emergency call from the defendant and found the victim’s dead body. *Id.* “Her jugular vein had been severed with a utility knife.” *Id.* The fatal injury had occurred roughly 24 hours before the defendant called 911. *Id.* The Iowa Supreme Court stated that “[i]t was undisputed that [the defendant] had used a deadly weapon to intentionally cut [the victim’s] throat with the goal of ending her life.” *Id.* at 660. Yet, the defendant, who was tried for first-degree murder, was only convicted of voluntary manslaughter. *Id.* at 658, 660.

parties had a “volatile relationship” and there was considerable evidence of the defendant arguing with the victim before shooting and killing her.⁹⁷

When men successfully raise provocation after killing their partners, the provocation often alleged is infidelity or their partner leaving them.⁹⁸ In contrast, “when women kill their partners and successfully raise the defen[s]e, there is often a history of physical abuse in the relationship.”⁹⁹ Women homicide defendants have been forced to face “legal categories that do not accommodate their behavior” and trial and sentencing courts “that ignore or misunderstand their actions and motivations.”¹⁰⁰

“[T]he lives of men have been taken to represent those of humans overall.”¹⁰¹ “[T]he legal standards that define adequate provocation and [heat of passion] reflect a male view of understandable homicidal violence.”¹⁰² In *State v. Taylor*, an eight-month-old child was left in the care of his mother’s fiancée, the defendant (male).¹⁰³ The defendant grabbed “the child victim by the arms and sh[ook] him back and forth violently, resulting in the destruction of blood vessels surrounding his brain.”¹⁰⁴ The child died as a result of the injuries caused by the defendant.¹⁰⁵ The defendant was convicted of voluntary manslaughter.¹⁰⁶ The district court stated that, “[T]he defendant’s action was the result of frustration, an immature reaction, not a fixed purpose or designed to do some physical harm to [the child].”¹⁰⁷ The Iowa Supreme Court affirmed the conviction for voluntary manslaughter.¹⁰⁸ When tasked with the care of a fussy child, a man claimed to have become so frustrated that he killed the child; the woman lost her child, and the man was only convicted of voluntary manslaughter, punishable by a maximum of 10 years’ imprisonment.¹⁰⁹ This exemplifies the male view of understandable

97. *Kinzenbaw*, 344 N.W.2d at 260.

98. ROTH & BLAYDEN, *supra* note 5, at 5.

99. *Id.*

100. *Taylor*, *supra* note 67, at 1682.

101. CAROLINE CRIADO PEREZ, INVISIBLE WOMEN: DATA BIAS IN A WORLD DESIGNED FOR MEN XI (2019).

102. *Taylor*, *supra* note 67, at 1679.

103. 452 N.W.2d 605, 605 (Iowa 1990).

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* at 606 (alteration in original).

108. *Id.* at 605.

109. *See id.*; IOWA CODE § 707.4(2) (2025) (“Voluntary manslaughter is a class ‘C’ felony.”); *id.* § 902.9(1)(d) (“A class ‘C’ felon, not an habitual offender, shall be confined for no more than ten years . . .”).

homicidal violence—“men [are] more aggressive than women when the provocation induce[s] frustration”¹¹⁰

“Voluntary manslaughter has never been a female-friendly doctrine.”¹¹¹ An objective application of the reasonable person standard under the modern approach disadvantages female defendants, because prevailing gender stereotypes and societal norms influence what is considered reasonable.¹¹² The relationship and dynamic between male and female perspectives muddy the understanding of reasonableness.¹¹³ “What exactly constitutes reasonableness when a legal subject is at the center of an intricate web of legal relationships with the surrounding community and the State?”¹¹⁴ It is a double standard for men to judge women by the standards of men since masculinity is in part constructed by the use of violence.¹¹⁵

B. *The Objective Standard Only Accounts for Male Aggression*

The criminal law should avoid assuming that similar criminal behavior is gender-neutral.¹¹⁶ Criminal behavior is not gender-neutral.¹¹⁷ Men and women kill each other under different circumstances and with different motives, a disparity which the law has ignored.¹¹⁸ Homicide is a male-dominant act, and provocation is a male-centered and male-dominated defense.¹¹⁹ “[F]emale homicide defendants do not, and cannot, conform to gender stereotypes, as homicide is a ‘male’ crime.”¹²⁰

Although both men and women kill, homicide is a primarily male act.¹²¹ In 2020, an estimated 21,570 homicides occurred in the United States.¹²² Of the

110. Thomas F. Denson et al., *Aggression in Women: Behavior, Brain and Hormones*, FRONTIERS IN BEHAV. NEUROSCIENCE, May 2, 2018, at 1, 4; see Taylor, *supra* note 67, at 1679.

111. Emily L. Miller, Comment, *(Wo)Manslaughter: Voluntary Manslaughter, Gender, and the Model Penal Code*, 50 EMORY L.J. 665, 667 (2001).

112. Rosiejka, *supra* note 16, at 8.

113. Astrada & Astrada, *supra* note 7, at 206–07.

114. *Id.* at 206.

115. Nourse, *supra* note 44, at 49.

116. Taylor, *supra* note 67, at 1683.

117. Miller, *supra* note 62, at 266.

118. Taylor, *supra* note 67, at 1683.

119. *Id.* at 1680; Joshua Dressler, *Why Keep the Provocation Defense?: Some Reflections on a Difficult Subject*, 86 MINN. L. REV. 959, 975 (2002).

120. Miller, *supra* note 62, at 271.

121. Rosiejka, *supra* note 16, at 6.

122. Ryan Lucas, *FBI Data Shows an Unprecedented Spike in Murders Nationwide in 2020*, NPR (Sept. 27, 2021, 1:12 PM), <https://www.npr.org/2021/09/27/1040904770/fbi-data-murder-increase-2020> [<https://perma.cc/43RT-BY2L>].

reported homicide offenses, there were 14,835 offenders and 11,220 victims.¹²³ Men accounted for 10,520 of the offenders, and 8,644 of the victims.¹²⁴ Women accounted for 1,594 of the offenders, and 2,542 of the victims.¹²⁵ In Iowa, 111 homicide offenses occurred in 2020.¹²⁶ Men accounted for 96 offenders and 78 victims, while women accounted for 19 offenders and 34 victims.¹²⁷

Acts of homicide committed by females are so different from those committed by males that women and men may be said to live in two different cultures, each with their own subculture of violence.¹²⁸ “[M]en and women perceive [and experience] anger differently, . . . and handle [their] feelings of frustration and rage in different ways”¹²⁹ “Women tend to internalize negative affect as guilt and hurt rather than externalize it as anger directed at a target.”¹³⁰ This “results in low overall rates of deviance [with] occasional instances of extreme violence.”¹³¹ Female defendants may kill out of fear of physical violence threatened by the deceased. A person who has endured long-term physical abuse by the deceased may kill their abuser out of fear, even if in the moment of the killing there was not an imminent threat to the defendant’s life.¹³² As a result, women face difficulties proving the legal excuses and justifications which may reduce a charge of murder to manslaughter.¹³³ In circumstances where such defendants cannot satisfy the requirements of self-defense, provocation may be the only other viable defense, but the existing provocation doctrine would not apply to

123. FBI CRIME DATA EXPLORER, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend> [https://perma.cc/8E87-4TSW] [https://perma.cc/3RYL-KSMP].

124. *Id.*

125. *Id.*

126. Katie Akin, *FBI Data: Iowa Saw Record High Murder Rate in 2020*, IOWA CAP. DISPATCH (Sept. 27, 2021, 5:02 PM), <https://iowacapitaldispatch.com/2021/09/27/fbi-data-iowa-saw-record-high-murder-rate-in-2020/> [https://perma.cc/X5E2-VUJU]. This is nearly a 60 percent increase from 2019, when there were 70 homicide offenses. *Id.*

127. FBI CRIME DATA EXPLORER, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend> [https://perma.cc/L4UZ-5RGB].

128. See Taylor, *supra* note 67, at 1681.

129. Rebecca Sladek Nowlis, *Comparison of Anger Expression in Men and Women Reveals Surprising Differences*, UCSF (Jan. 28, 2000), <https://www.ucsf.edu/news/2000/01/97456/comparison-anger-expression-men-and-women-reveals-surprising-differences> [https://perma.cc/4R59-RXY7].

130. Robbin S. Ogle et al., *A Theory of Homicidal Behavior Among Women*, 33 CRIMINOLOGY 173, 173 (1995).

131. *Id.*

132. See Buchhandler-Raphael, *Fear-Based*, *supra* note 54, at, 1742–43.

133. See Taylor, *supra* note 67, at 1682.

this situation.¹³⁴ Female-perpetrated homicides generally occur in the home as a result of long-term abusive relationships.¹³⁵ This makes women less likely to act in the “heat of passion” as defined by the common law, but still to be blinded by the same type of rage.¹³⁶ Under the rule of provocation, defendants must have acted immediately following a single and sudden triggering incident.¹³⁷ This leads to unjust results. A victim’s adultery, which is not punishable by law, may be treated as an adequate mitigating circumstance, but a prolonged or ongoing history of physical or sexual abuse of the killer by the victim—punishable crimes—may not be.¹³⁸

While anger frequency and intensity does not differ by gender, the expression of anger does, with men more likely to express their anger in outwardly aggressive ways.¹³⁹ Anger and aggression are not the same thing; anger is an emotion that can be expressed in many ways, while “[a]ggression is a behavior with an intent to harm someone or something.”¹⁴⁰ Beyond anger, aggression and violence are often also motivated by fear or jealousy, or as a means to maintain power or to accomplish a goal.¹⁴¹ The discrepancy in aggression between the sexes is instead influenced by the societal view of masculinity. Anger in men is viewed as masculine, while women are discouraged from acting out in anger and are instead encouraged to be compromising, nurturing, and empathetic.¹⁴² Since aggression and violence are generally considered male problems, much less is known about female aggression.¹⁴³

In day-to-day interactions, women “take advantage of their anger just as frequently as men” do, but tend to engage in indirect forms of aggression.¹⁴⁴ Provocation can cause women to be just as aggressive as men, and women and men are equally aggressive when confronted with a physical attack or an unjustified insult.¹⁴⁵ “Women seem to be more comfortable holding anger in” and tend to stay angry for a longer period of time, “but when the situation calls for it,

134. Buchhandler-Raphael, *Fear-Based*, *supra* note 54, at 1744.

135. See Ogle et al., *supra* note 130, at 173.

136. See *id.* at 175–76; Taylor, *supra* note 67, at 1682.

137. Buchhandler-Raphael, *Fear-Based*, *supra* note 54, at 1744.

138. Stacy, *supra* note 28, at 1040.

139. Ryan Martin, *Are Men Angrier Than Women?*, PSYCH. TODAY (June 10, 2021), <https://www.psychologytoday.com/us/blog/all-the-rage/202106/are-men-angrier-women> [https://perma.cc/GJN7-MY5B].

140. *Id.*

141. *Id.*

142. See Dittmann, *supra* note 75, at 52.

143. Denson et al., *supra* note 110, at 5.

144. Nowlis, *supra* note 129; see Denson et al., *supra* note 110, at 14.

145. Denson et al., *supra* note 110, at 4.

they act on their [anger].”¹⁴⁶ However, the fear of being harmed inhibits direct aggression in women, and women anticipate greater danger than men when deciding to aggress.¹⁴⁷ Homicides committed by women exhibit “much more consistency in their characteristics and circumstances than” homicides committed by men.¹⁴⁸ The common roots for women’s anger tend to be “powerlessness, injustice and the irresponsibility of other people.”¹⁴⁹ Men are more aggressive than women when the provocation is insulting to their intelligence or induces frustration.¹⁵⁰ Men tend to perceive provocation more intensely than women.¹⁵¹ Men’s anger tends to be more aggressive both physically and passively, and men experience impulsivity dealing with their anger and frequently have a revenge motive.¹⁵²

C. The Reasonable Person Is Biased Towards Reasonable Men

Although the standard is a reasonable person, it may as well be a reasonable man. Human minds are not computers—a person’s reasoning cannot escape influence from their biases and societal evolution.¹⁵³ The term “androcentrism” refers to the societal tendency to position men as the gender-neutral standard while positioning women as gender-specific.¹⁵⁴ Male bias is the “implicit belief that a word describing an undefined person describes a man.”¹⁵⁵

Androcentrism is distinct from other forms of gender bias because it is not a dislike for women or belief in male superiority—it is “the tendency to conflate men with people while construing women as specifically gendered” and distinct.¹⁵⁶ Male experience has come to be seen as universal, while the female experience is seen as niche.¹⁵⁷ This social tendency is the product of a way of thinking pervasive

146. Nowlis, *supra* note 129.

147. Denson et al., *supra* note 110, at 4.

148. Ogle et al., *supra* note 130, at 173.

149. Dittmann, *supra* note 75, at 52.

150. Denson et al., *supra* note 110, at 4.

151. *Id.*

152. Dittmann, *supra* note 75, at 52.

153. Dennis J. Baker, *The Impossibility of a Critically Objective Criminal Law*, 56 MCGILL L.J. 349, 351–52 (2011).

154. April H. Bailey et al., *Is Man the Measure of All Things? A Social Cognitive Account of Androcentrism*, 23 PERSONALITY & SOC. PSYCH. REV. 307, 307 (2019).

155. Anna Lindqvist et al., *Reducing a Male Bias in Language? Establishing the Efficiency of Three Different Gender-Fair Language Strategies*, 81 SEX ROLES 109, 109 (2019).

156. April H. Bailey et al., *Implicit Androcentrism: Men are Human, Women are Gendered*, 89 J. EXPERIMENTAL SOC. PSYCH. 1, 1 (2020) [hereinafter Bailey et al., *Implicit Androcentrism*].

157. PEREZ, *supra* note 101, at 12.

throughout history, where male is a given and female is additional.¹⁵⁸ This bias is particularly prevalent with men.¹⁵⁹

1. *The Impact of Androcentrism*

The impact of androcentric thinking can be relatively small—the top shelf set at a male height norm, thermostats set at male temperature norm—until it is not: crashing in a car whose safety measures were not designed for women.¹⁶⁰ Androcentrism is present “when a study, analysis, or research project is conducted from the [male] perspective and presents [the male] experience as” if it is the only human experience.¹⁶¹ Studies of male behavior overgeneralize and assume that the male sex presents results valid to both sexes.¹⁶² Research has acknowledged that male and female bodies perform differently in crashes.¹⁶³ But an average female crash test dummy does not exist.¹⁶⁴ Automotive safety policy and research is designed to protect the average male body.¹⁶⁵ Bias in the way cars are crash-tested correlates with the way cars are subsequently manufactured, and this bias can be injurious or even fatal for female drivers.¹⁶⁶ Similarly, drug dosage trials tend to be done on men, rather than both men and women.¹⁶⁷ Most drugs currently in use were approved based on clinical trials conducted on men. This has led to women experiencing adverse drug reactions nearly twice as often as men, and women being widely overmedicated.¹⁶⁸ The historical exclusion of women from pharmaceutical trials, and the belief that studies of men would apply to women without modification, can be injurious for women.¹⁶⁹ These are only a couple of the many ways in which androcentric thinking is pervasive in society, to the downfall of women.

158. *See id.* at 21.

159. *See* Bailey et al., *Implicit Androcentrism*, *supra* note 156, at 1.

160. *See* Caroline Criado Perez, *The Deadly Truth About a World Built for Men – From Stab Vests to Car Crashes*, THE GUARDIAN (Feb. 23, 2019, 3:59 PM), <https://www.theguardian.com/lifeandstyle/2019/feb/23/truth-world-built-for-men-car-crashes> [<https://perma.cc/6786-KU2E>].

161. Facio, *supra* note 67, at 364.

162. *Id.* at 365.

163. Keith Barry, *The Crash Test Bias: How Male-Focused Testing Puts Female Drivers at Risk*, CONSUMER REPS. (Oct. 23, 2019), <https://www.consumerreports.org/car-safety/crash-test-bias-how-male-focused-testing-puts-female-drivers-at-risk/> [<https://perma.cc/RR3M-2XSD>].

164. *Id.*

165. *Id.*

166. *Id.*

167. *See* Irving Zucker & Brian J. Prendergast, *Sex Differences in Pharmacokinetics Predict Adverse Drug Reactions in Women*, BIOLOGY OF SEX DIFFERENCES, 2020, at 1, 2.

168. *Id.* at 1.

169. *See, e.g., id.* at 2.

Language and the way in which people communicate is no exception. Language often displays androcentrism in the use of terms such as *mankind* to refer to people generally.¹⁷⁰ In a study where participants were asked to fill in missing words in a story, they were more likely to refer to male characters as “the person” and female characters as “the woman.”¹⁷¹ Genuinely gender-neutral words are read as male.¹⁷² Male bias automatically and unconsciously equates gender-neutral words with men or masculinity.¹⁷³

Seemingly gender-neutral concepts like “person” are not actually conceptualized as gender-neutral and are not equally likely to be perceived as male or female.¹⁷⁴ People tend to think of a *person* as a man.¹⁷⁵ Results from three studies using the Implicit Association Test (IAT) showed that participants associated broad human concepts like “person” with men more than women.¹⁷⁶ When asked to give an example of a person, men are more likely to list a man.¹⁷⁷

When asked to conceptualize the “reasonable person,” it is expected that one would imagine the average person who is similar to most other people.¹⁷⁸ However, the effect of androcentrism makes it more likely that a “person” will be thought of as a man—efforts toward objectivity do not account for this implicit bias.¹⁷⁹ This is why the reasonable person standard cannot truly be applied objectively; it cannot escape societal evolution—a reasonable person will still be more likely to be thought of as a reasonable man.¹⁸⁰ The reasonable man standard was originally believed to be gender neutral; at the time, “man” was the generic word to mean person.¹⁸¹ Then society changed, the law evolved, and “man” changed to “person.”¹⁸² Now, the law must again evolve—there is a better understanding of the unavoidability of socialization and bias in a person’s thought process. The effect of androcentrism makes it more likely that a reasonable person will be

170. Bailey et al., *Implicit Androcentrism*, *supra* note 156, at 3.

171. Mykol C. Hamilton, *Masculine Bias in the Attribution of Personhood: People = Male, Male = People*, 15 PSYCH. WOMEN Q. 393, 397–98 (1991).

172. PEREZ, *supra* note 101, at 9.

173. Lindqvist et al., *supra* note 155, at 109.

174. PEREZ, *supra* note 101, at 9.

175. Bailey et al., *Implicit Androcentrism*, *supra* note 156, at 1. This illustrates the “tendency to conflate men with people.” *Id.*

176. *Id.* at 3.

177. *Id.*

178. Miller, *supra* note 62, at 263.

179. *See id.* at 264–65.

180. *See id.*

181. Margo Schlanger, *Gender Matters: Teaching a Reasonable Woman Standard in Personal Injury Law*, 45 ST. LOUIS U. L.J. 769, 770 (2001) (quoting Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3, 22 (1988)).

182. *Id.*

thought of as a man, even absent the gendered language. Thus, the criminal law continues to hold female defendants to a male standard of reasonableness.¹⁸³

If androcentrism were considered in the creation and application of laws, it would be “obvious that a law cannot have the same effect on both sexes.”¹⁸⁴ Gender-neutral or generic rules necessarily disregard the existence of women.¹⁸⁵ Androcentrism can be remedied by analyzing facts from the perspective of gender “by asking what implications or effects the fact has on each sex.”¹⁸⁶ This involves asking how women and men have experienced this fact, how they have resisted it, and how their experiences relate, in order to account for the needs and experiences of both.¹⁸⁷ “[S]ensitivity to the genders of the victim and the offender is necessary to avoid equating male behavior with human behavior”¹⁸⁸

VII. AFTER THE REASONABLE MAN: IOWA’S PATH FORWARD

The objective standard is purportedly gender-neutral—a reasonable person—supposedly intended to hold all people to the same standard.¹⁸⁹ This neutrality and objectivity cannot escape its roots in the reasonable man.¹⁹⁰ The reasonable man standard historically did not apply to women, who were considered to be incapable of reasonable, rational thought.¹⁹¹ Objective reasonableness thus cannot be said to be inherently gender-neutral.¹⁹² “Begin[ning] with the premise that sexism exists and is present in all human activities,” the law should be scrutinized to “identify and eliminate it wherever possible.”¹⁹³ “[H]ow do most people feel about the conduct that the law intends to regulate; how do men and women differ in this regard . . . [?]”¹⁹⁴

Both objective and subjective reasonableness standards have their own respective faults.¹⁹⁵ The issue may appear as a double-edged sword. When

183. Taylor, *supra* note 67, at 1691.

184. Facio, *supra* note 67, at 366.

185. *Id.*

186. *Id.* at 365.

187. *Id.*

188. Taylor, *supra* note 67, at 1723.

189. Miller, *supra* note 62, at 264.

190. *Id.* at 265.

191. *Id.*

192. *Id.*

193. Facio, *supra* note 67, at 369.

194. *Id.* at 370.

195. See Miller, *supra* note 62, at 264 (explaining that both objective and subjective reasonableness standards have idealized and genderized notions of reality, but the primary difference “lies in the extent to which the jury is permitted to consider a defendant’s individual characteristics”).

reasonableness is subjectively applied, like in the MPC approach, and the defendant's gender is considered, "women defendants fall victim to societal stereotypes and are judged against prescribed female gender roles."¹⁹⁶ But while the objective standard is purported to be gender-neutral, gender is a factor in a person's (including a judge or juror) experiences and perceptions.¹⁹⁷ The most likely answer is that there is no approach, test, or standard that will overcome social evolution—reasonableness itself is an idealized view of reality.¹⁹⁸ Sexist attitudes and norms continue to exist in society and courts of law, and as such "there is no reason to believe that a gender-neutral standard of assessment exists."¹⁹⁹

Although both objective and subjective reasonableness face their respective problems of gender inequity, the MPC's subjective standard of reasonableness is far preferable to the common law standard.²⁰⁰ The common law rule of provocation is underinclusive; it only accommodates the typical reactions of angry defendants who manifest sudden impulsivity.²⁰¹ It does not account for the reactions of certain types of people "whose behavior does not externally manifest as [a] loss of self-control."²⁰² The objective standard developed before the "modern understanding of how individuals deal with psychological and physical trauma."²⁰³ The objective rule of provocation does not account for situations where defendants were provoked to kill by emotions other than anger, such as fear, or the defendant's actual perceptions of the external circumstances.²⁰⁴ Female defendants may kill their abuser out of fear, even if in the moment there was not a presence of sudden, violent, and irresistible passion.²⁰⁵ Not all provoked defendants externally show the types of reactions associated with loss of control—a defendant provoked by fear, rather than anger, may have little evidence suggesting the loss of self-control.²⁰⁶

The MPC was "designed to sweep away 'the rigid rules that have developed with respect to the sufficiency of particular types of provocation, such as the rule

196. *See id.* at 251.

197. *Id.* at 264–65; Shoenfelt et al., *supra* note 76, at 655.

198. *See* Miller, *supra* note 62, at 264.

199. Peterson, *supra* note 58, at 153.

200. *See* Miller, *supra* note 62, at 272; *id.* at 267 n.150 ("In recent years, states have begun to embrace the Model Penal Code's approach.").

201. Michal Buchhandler-Raphael, *Loss of Self-Control, Dual-Process Theories, and Provocation*, 88 *FORDHAM L. REV.* 1815, 1834–35 (2020) [hereinafter Buchhandler-Raphael, *Loss of Self-Control*].

202. *Id.* at 1835.

203. *See* Pinsky, *supra* note 40, at 766.

204. Buchhandler-Raphael, *Loss of Self-Control*, *supra* note 201, at 1835; Miller, *supra* note 62, at 272–73.

205. Buchhandler-Raphael, *Fear-Based*, *supra* note 54, 1740–41, 1758.

206. Buchhandler-Raphael, *Loss of Self-Control*, *supra* note 201, at 1837.

that words alone can never be enough.”²⁰⁷ The MPC’s extreme mental or emotional distress can develop as the result of any emotion, like depression, anxiety, distress, agitation, or shock; it can even result from a series of events, rather than a single cause.²⁰⁸ This approach is better suited for the type of human behavior the rule of provocation was intended to address.²⁰⁹ “The provocation doctrine was historically designed to recognize that there are aspects of our cultural background and history that may cause reasonable people to behave in ways that are offensive to the criminal legal system.”²¹⁰ The objective understandings of wrong and harm may change when considering what is bad, harmful, or wrong depending on the social context.²¹¹ Something objectively harmful in one context may be entirely different in another context.²¹²

Iowa law adopted a rule of provocation that is an outgrowth of the common law, including the objective reasonable person standard that originates in the common law standard for a reasonable man.²¹³ Rather than developing a new standard, Iowa continues to hold women to a standard of reasonableness rooted in the male experience.²¹⁴ Changing “man” to “person” does not remedy the fact that the rule of provocation was written to excuse male violence.²¹⁵ Nor does it address the fallibility of gender-neutral language.²¹⁶ The understanding of androcentric thinking means women in effect are still being held to the standard of a reasonable man.²¹⁷ A juror’s mind cannot help but to replace “person” with “man,” especially when thinking about homicide and violence, which are overwhelmingly male acts.²¹⁸ Thus, the reasonable person standard effectively holds women to a male standard of violence and loss of self-control.

The importance of the rule of provocation as a partial defense cannot be overstated. In Iowa, the difference between a conviction for murder and a conviction for manslaughter is drastic.²¹⁹ A conviction of voluntary manslaughter is a class “C” felony, while a conviction of murder is a class “A” felony—the

207. *People v. Casassa*, 404 N.E.2d 1310, 1316 (N.Y. 1980) (citation omitted).

208. *Pinsky*, *supra* note 40, at 774.

209. *See id.*

210. Michal Gilad, *Provocation and Multiculturalism*, 46 CRIM. L. BULL. 1097 (2010).

211. *Baker*, *supra* note 153, at 352–53.

212. *Id.*

213. *See Stacy*, *supra* note 28, at 1020; *State v. Taylor*, 452 N.W.2d 605, 606 (Iowa 1990) (citing *State v. Inger*, 292 N.W.2d 119, 122 (Iowa 1980)).

214. *See Miller*, *supra* note 62, at 265.

215. *See id.* at 254.

216. *See id.* at 264–65.

217. *See id.* at 253–54, 265.

218. *See id.* at 249, 265–66.

219. *See IOWA CODE* §§ 707.2, 707.4, 902.1, 902.9 (2025).

difference is 10 years in prison versus a lifetime.²²⁰ Ensuring that all murder defenses are equally accessible to all defendants is imperative—it can be the difference between 10 years in prison and a life sentence.

Iowa courts applying the rule of provocation should join the jurisdictions moving toward a subjective application. The MPC standard best accounts for the female experience.²²¹ The law cannot escape its history of sexism, but the understanding of gender bias can help the law progress forward. Gender bias must be exposed from behind the guise of objectivity and efforts must be made to understand female violence.²²² Iowa must join the states advancing away from the stringent reasonable person test, and progress toward the subjectivity of the MPC's provision.²²³ Policymakers need to reexamine the statutory definitions of voluntary manslaughter and the rule of provocation.²²⁴ “Women must be set free from their historical role as victims,” and their experiences must be incorporated into the understanding of what constitutes reasonableness.²²⁵

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220. IOWA CODE §§ 707.2, 707.4, 902.1, 902.9 (2025).

221. *See supra* notes 200–12 and accompanying text.

222. *See* Miller, *supra* note 62, at 252, 274.

223. *See* DRESSLER, *supra* note 13, at 534.

224. Miller, *supra* note 62, at 252.

225. *Id.* at 274.

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