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The Female Face of Misogyny: A Review of Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence by Leigh Goodmark and The Feminist War on Crime: The Unexpected Role of Women's Liberation in Mass Incarceration by Aya Gruber

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Keywords

domestic violence, crime, criminal, rape, backlash, intimate partner violence, decriminalization, incarceration, women's liberation

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Acknowledgements

Thank you to all those women over decades and centuries across the globe who gave unselfishly their time and treasure in large and small ways to help another woman to safety and freedom. Thank you for moving the needle of human rights for women toward equality. Your work is appreciated by women around the world and will not be forgotten. You live on in the lives you saved and the hearts you healed.

THE FEMALE FACE OF MISOGYNY

A REVIEW OF *DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED POLICY APPROACH TO INTIMATE PARTNER VIOLENCE* BY LEIGH GOODMARK (UNIVERSITY OF CALIFORNIA, 2018) AND *THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN'S LIBERATION IN MASS INCARCERATION* BY AYA GRUBER (UNIVERSITY OF CALIFORNIA PRESS, 2020)

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KEYWORDS

Domestic violence, decriminalization, feminist, crime, intimate partner violence, women's liberation, incarceration

This is a review of two books that advocate for the decriminalization of domestic violence. The authors, both professors at U.S. law schools, claim that the arrest of batterers is contributing to mass incarceration of men. They claim that it was feminists who focused single-mindedly on incarceration as a punishment for battering rather than addressing the problem in a holistic manner. Both authors point to real issues—the misbehavior of law enforcement personnel and the horror of U.S. prisons. They use these problems to set up one vulnerable group against the other: battered women against Black men. Unfortunately, the solutions they propose will solve nothing and help no one. Racism and sexism, birthed from patriarchy, are the genesis of both problems. We need to attack the root of the problem, not resurrect a failed regimen that offered no protection for women and no accountability for abusers.

Telling the truth about women's lives is a radical act. Susan Faludi, Pulitzer Prize-winning journalist, wrote the book *Backlash: The Undeclared War Against American Women* in 1991 about what happened when women told the truth. Reminiscent of these two books, the Faludi's introduction is entitled, "Blame it on Feminism," which is what is happening here.

After Shere Hite told the truth about women's lives, in *The Hite Report* in 1976, she had to move to Europe because of relentless attacks on her. Like physics, for every action, there is an equal and opposite reaction. The reaction against women telling the truth about their lives, seeking equality, and structural change in the world is always a strong, sometimes violent backlash, often led by other captured women.

I started my work on violence against women as a law student in 1977 by volunteering at a local shelter. As a lawyer, I represented battered women and molested children from 1980 – 1998. At Community Legal Services I ran the Domestic Violence project in the mid 1980s. I was the first employee of the Arizona Coalition Against

Domestic Violence from 1986-1989, which I also helped to found. I later returned to the Coalition in 2000 for three years as policy director. Since 1998, I have done human rights work across the globe, living in six different countries and working in 14. Mostly I focused on violence against women and children.

When I moved to Russia in 1998, domestic violence was not a crime unless the woman spent more than three days in the hospital from her injuries. With a population of 150 million, there were an estimated 14,000 women a year murdered in domestic violence incidents. That was thought to be an underestimate because figures were not widely available. In comparison, the U.S. had approximately 300 million people with an average of 3,000 women murdered a year in domestic violence incidents. Decriminalization did not make Russian women safer. Nor will it here.

I rely on my years of experience and research on domestic violence to counter these calls to decriminalize domestic violence and blame mass incarceration of men on feminists who have worked for decades to defend battered women. I review first *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence* (2018) by Leigh Goodmark. Then I turn my attention to *The Feminist War on Crime: The Unexpected Role of Women's Liberation in Mass Incarceration* by Aya Gruber.

Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence: Wrong on the Theory of Crime and Punishment:

Leigh Goodmark, author of *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence*, is a professor of law at the University of Maryland Francis King Carey School of Law where she teaches courses on gender. She clerked at a U.S. District Court, practiced law at a neighborhood free clinic, and was the director of the American Bar Association (ABA) Center on Children and the Law.

In *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence*, none of the doctrine, theories, claims, arguments, or conclusions are correct. The book is wrong on the theory of crime and punishment, wrong on the history of the early movement fighting violence against women, wrong on factual statements, and wrong on the cause of mass incarceration. There are uncited allegations, anecdotes used as data, and correlations suggesting causations. It is full of contradictions and lapses of logic as well as littered with logical fallacies.

Goodmark and I agree on some things. The criminal justice system is criminal but is not just. Some say the criminal justice system is working exactly how it was intended to work—as protection of the property of rich, white men and as a method of control for everyone else.

I also agree with Goodmark that the jail and prison system in the U.S. is a horror and ought to be the shame of the nation. It wasn't always that way but today the "criminal justice" system needs to be fixed from bottom to top, beginning to end.

However, much of the book is built on a false premise that advocates for battered women only looked to the criminal justice system for solutions in the first place. They did not. The claim that early advocates only looked to the criminal justice system is false. That is revealed by the history of the battered women's movement as witnessed by those of us who were there. The argument is a strawman—a false argument designed to be easily knocked down.

From the beginning, the history of the movement shows work on a multifaceted campaign all at the same time. I started working in the anti-violence against women movement in 1975. We worked from local to national; from young to old; in every cultural and ethnic group, and in every institution—schools, public health, law enforcement, academia, housing, welfare, politics, religion, finance, and government. We knew that arrest didn't stop the violence. It only gave the victim enough time to escape. We knew punishment didn't change the attitude of the abuser—we hoped it would change the attitude of society.

In fits and starts, with backsliding and painful losses, we have made progress, but we have far yet to go. As reported in a report on gender equality from UN Women (Gender Equality, 2020):

Amid this crisis there has been some important progress. Three quarters of countries now have laws against domestic violence, and there is growing evidence that violence can be prevented. Child, early, and forced marriage, especially in some countries in South Asia, has recently declined. There have also been steps forward in efforts to end female genital mutilation (FGM) (p. 12).

Many problems remain and the number of women abused by a current or previous partner is still high, survivors are stigmatized and shamed, and fewer than 18% of victims report the crimes or seek help. One in five adolescent girls aged 15 to 19 has already experienced intimate partner violence in the previous 12 months. Currently, many women are required by law to obey their husbands (in 19 countries), and marital rape is often not explicitly criminalized (in 111 countries) (UN Women, 2020, p. 22).

Battered Women Are Not the Cause of Mass Incarceration

Mass incarceration is indeed a problem in the United States and has been since the 1970s. Targeting of African American communities has resulted in the overrepresentation of men of color in prison. But contrary to all logic and common sense, the argument is made in *Decriminalizing Domestic Violence* is that it's not racism that causes incarceration. It's not violent or lying police who frame defendants. It's not prosecutors who overcharge or judges or juries who throw the book at defendants. It's not schools that punish and expel students of color at astronomical rates starting the school to prison pipeline or prison officials who discipline Black inmates more to keep them longer. It's not drugs or over policing, or guns, or racial profiling. It's not sentencing disparities like the difference between crack and powder cocaine. None of this is the reason for mass incarceration according to Goodmark. She contends that the reason for mass incarceration is battered women.

This argument is ludicrous. Although Americans of African descent have been telling us for 400 years that racism is the problem, we still refuse to listen. Book after book, from Alexander's *The New Jim Crow* (2012) to Blackmon's *Slavery By Another Name* (2009), document the racist justice system. Study after study identifies racism as the culprit and yet somehow the blame is not laid at the feet of the power structure that maintains racism. In this book, it's laid at the feet of another vulnerable group—battered women.

While the country did move to a punitive structure in criminal justice in the 1970s, it wasn't women who advocated for those changes. It wasn't women who removed

earned release time or started for-profit prisons or ended the college and vocational programs in prison or stopped the counseling. Big money is made by private corporation in prisons—by warehousing people. Goodmark says the rise and fall in crime is not tied to criminal justice policy but to economic policy.

A recent Harvard University report could not figure out the cause of overrepresentation of African Americans in prison. So, they studied it—again. And they found it was not Black-on-Black crime, or video games, or rap songs. It was not poverty, or single parent homes, or laziness. It is what it's always been—racism (Bishop et al., 2020).

The modern War on Drugs started under Richard Nixon in the late 1970s. It is acknowledged as one of the prime drivers of incarceration. Racism motivated the actions and stopped any reforms (Osler, 2020). The War on Drugs was a prime cause and racism prevented meaningful reform—not battered women.

In another recent study in the Southwest U.S., researchers found that African and Native Americans were far more likely to be booked into jail as opposed to being cited and released. They concluded that overrepresentation of racial/ethnic minorities in the criminal justice system cannot be attributed to greater use of drugs and alcohol in general (Camplain et al., 2020). Racism, classism, and the War on Drugs drive mass incarceration (Henwood, 2020).

To understand the increase in incarceration, follow the money. In 2017 alone, mass incarceration cost \$182 billion — turning a massive profit for big banks and for-profit prison operators and trapping mostly low-income Black and Latinx people in a cycle of economic and political disenfranchisement (Reich, 2020).

Low Reporting of Violence Against Women

Repeatedly, throughout the book, Goodmark admits that few people who are victims turn to law enforcement and that intimate partner violence (IPV) is chronically underreported. Therefore, the supposition that IPV causes mass incarceration is illogical. As we know since the 1970s, victims turn first to family and friends for assistance. Then they turn to institutions such as doctors, counselors, or churches. Only when all else fails, do they turn to law enforcement. That fact is echoed in the book, “the majority of people subjected to criminal abuse do not seek assistance from the criminal legal system” (p. 32). Therefore, it cannot be the cause of mass incarceration.

The author states that statistics show that only about 50% of the incidents of domestic violence are reported. Even with this relatively low percentage of reporting, allegedly only 60-70% of arrests lead to charges and only 25-50% of those arrested are convicted. Only 50% of women who are murdered had any contact with law enforcement. While wild claims are made about a robust response system and prisons full of men who were arrested for IPV, there is no citation for that claim and it simply is not in my experience and opinion a credible contention. An understanding about data or empirical evidence seems to be missing. In the Evan Stark's book, *Coercive Control*, (2007) he breaks down the data scientifically showing what proportion of cases result in men going to prison. It is a very small percentage.

The U.S. Department of Justice (Reaves, 2017) found that an average of 1.3 million nonfatal domestic violence victimizations occurred annually in the United States during the 10-year aggregate period from 2006 to 2015. Police were notified of more than half (56%) of these victimizations. When police responded to the scene, they took a

report 78% of the time. A victim or other household member signed a criminal complaint against the offender in about half (48%) of victimizations reported to police. The offender was arrested or charged in 39% of reported victimizations, either during the initial response or during the follow-up period. So half were reported, half of those signed a complaint, and less than half of those were charged—that comes out to about 10%.

Victims did not report because of privacy (32%), protecting the offender (21%), they thought the crime was minor (20%), and fear of reprisal (19%). Overall, domestic violence victimizations involving serious violence (31%) were less likely than victimizations involving simple assault (13%) to be reported due to fear of reprisal. Regardless of the severity of the incident, female victimizations (24%) were four times as likely as male victimizations (6%) to go unreported to police due to fear of reprisal. Male victimizations (28%) were more likely than female victimizations (17%) to go unreported to police because the victim felt the crime was minor or unimportant. Goodmark's theory that great numbers of men are being battered by women and just not reporting it is simply not true; men are far more likely to report if there is injury. The most harm is to women; the most fear is for women.

According to victims, the most common police action during their initial response was to take a report (78%). Police questioned persons during 36% of their initial responses. Less frequently, they conducted a search (14%) or collected evidence (11%). In other words, they were not treating it like a crime (Reaves, 2017).

Police arrested the offender during about a quarter (23%) of their initial responses to nonfatal domestic violence victimizations. This initial and immediate arrest for a short period, such as three days, is precisely what the movement fought for in order to give the victim time to flee and make the point to the abuser that this behavior was not permitted.

When domestic violence victimization involved a female victim, the offender was arrested during the initial police response only 32% of the time when the victim was seriously injured, compared to 16% of the time when the victim was uninjured. When the victimization involved a male victim, the offender was arrested during the initial police response 44% of the time when the victim was seriously injured, compared to 16% of the time when the victim was uninjured. Again, note that when the victim was male, the police, usually male themselves and some of them abusers too, were more likely to arrest the woman. The discrimination against women and failure of the protection mechanism of the law is evident.

In addition to contact with police during their initial response to the victimization, an estimated 40% of victims had contact with police at a later date about the same victimization. In about a third (34%) of victimizations, police took specific follow-up actions during this later contact, such as taking a report, questioning persons, conducting a search, collecting evidence, or making an arrest. These data rebut the argument that the U.S. has a robust response to domestic violence or one that does not discriminate between women and men.

When researchers asked the victim, the U.S. Department of Justice (Berzofsky et al., 2017) found that 62% of victimizations by someone the victim knew well were not reported versus 51% committed by a stranger. When victims were asked why they didn't report, they said they were afraid or didn't want to get the person in trouble (38%).

From 1994 to 2010, the percentage of serious violent crime—rape or sexual assault, robbery, or aggravated assault—that was not reported to police declined from 50% to 42%. It is no surprise that the highest percentage of unreported crimes were theft (67%) and rape or sexual assault (65%). One-third of crimes that involved a weapon and injury to the victim went unreported to police. This fear of and failure to report puts battered women at extreme risk and is exactly what decriminalization would increase. As the statistics show, the argument that battered women are the cause of mass incarceration is a false claim.

Decriminalization Would Hurt Women of Color

National reports on vital statistics (Heron, 2018) found that in 2016, for the age group of non-Hispanic Black girls, aged 1-19, unintentional injuries caused 27.8% of deaths and homicide caused 15.5% of deaths. For the age group 20-44 years, unintentional injuries caused 17.7% and homicide 7% of deaths. We do not know what those “accidents” were, but the homicide rate for young Black women is shockingly high.

Looking at white women in 2016: for 1-19-year-olds 36% of deaths were from unintentional injuries and 4% were from homicide; for 20-44-year-olds, its 36% unintentional injuries and 2.5% homicides. So, while “homicides” are lower, “unintentional injuries” are higher among white women.

Goodmark bemoans the harm to women of color but in fact, women of color were as likely or more likely to call the police for IPV than white woman. Heron (2018) shows that of all victimizations, whites were reported at 55%, Blacks at 59%, Hispanics at 64%. All three groups were equally likely to have signed a complaint (49%). Contrary to Goodmark’s argument, people of color are calling the police more often for protection from IPV not less.

Looking at the data, people in rural areas call the police at a rate of 59%, while people in urban areas do so at 57% and people in the suburbs at 54%. For the offenders arrested, 49% were Hispanic, 42% were Black, and 39% were white. Geographical placement of arrests was 41% urban, 34% rural, and 40% suburban. According to Pew Research (Igielnik & Brown, 2018), the poverty rate is somewhat higher in rural (18%) and urban (17%) areas than in suburban (14%) counties.

Suburbs account for 45% of the U.S. population placement; urban is 35%; rural is 20%. Making some assumptions from these data, the poorest areas (rural) call the police the most. The richest areas, suburbs that also represent the majority of the population, call at the second highest rate. While the cities, in between economically, call at the lowest rate. This conflicts with the authors argument that violence occurs among the poor and not the rich. In fact, rich women in rich suburbs call more than people in poorer cities.

In the Berzofsky report cited above, we learn that a greater percentage of victimizations against white non-Hispanics (54%) than Black non-Hispanics (46%) went unreported to police. White women were more likely not to report than Black women. So while the author claims to be concerned about Black women, the data shows that is who her policies would hurt most. Whites reported in 46% of the cases, Hispanics in 49%, Blacks in 51% and Indian/Alaskan at 61%. This suggests that victims of color are in fact using the system for protection rather than eschewing it. So, decriminalizing it would harm these victims the most.

Over 20% of unreported violent victimizations against persons living in urban areas were not reported because the victim believed the police would not or could not

help. So, it's the failure of police to help, not police intervening that is causing victims not to report. That failure to help is the problem we should concern ourselves with, not punishing the victims of IPV even further. When asked about police being biased or causing the respondent more trouble or the offender was himself a police officer, only 2% said that was true. So, in fact the argument that victims of color are not calling because of fear of the officers is not supported by the data.

A greater percentage of violent victimizations against persons in households with an income of \$50,000 or more (56%) went unreported, compared to households with an income of less than \$25,000 (50%). So contrary to the author's lament that violence is worse among the poor, it is simply less reported as the movement said from the outset.

Household characteristics associated with violent crime victimizations also contributed to differences in the rationale for not reporting victimizations to police. For instance, unreported violent victimizations against persons living in urban areas (21%) were more likely to not be reported because the victim believed that the police would not or could not do anything to help, in comparison to unreported victimizations against people living in suburban (12%) and rural (16%) areas. So again, it's the failure of the police to act appropriately that is the problem, not the law.

While arguing for decriminalization, Goodmark admits that arrests works: "criminalization increases accountability, at least when police make arrests" (p. 31). In fact, the criminal justice system response has been sabotaged from the beginning so the question of whether it could be an effective tool is not known. We do know that it is dangerous to suggest that decriminalizing IPV will help women of color.

Theories on Crime

Goodmark admits that law establishes the public set of meanings and shared understandings of what is acceptable in a society. That is why we have to be sure it is a crime to beat women. Anything less is not acceptable.

Goodmark makes the unfortunately too common mistake, as does Gruber in *The Feminist War on Crime: The Unexpected Role of Women's Liberation in Mass Incarceration*, of confusing "gender" for "sex" and claims that IPV is a "gender" problem. Sex is a biological determination. Gender is a socially created identification ascribed to someone by those in power in the society to maintain the status quo. It changes over time and cultures. In some cultures, it's the women's job to farm; in others, only men farm. These are not "natural," or "inborn," or "genetic" traits. They are socially determined by those in power to solidify that power.

As a lawyer, I find the theoretical basis of the argument laid out by the author to be unconvincing. According to her, criminal policy should be based on four things—only acts that harm people should be criminal (so damaging property, trespassing, or killing animals should not be criminal); and then only if it would deter those acts (the value of deterrence is much debated); and do more good than harm; and if less intrusive methods do not exist.

It's impossible to imagine where her contention comes from. Most murderers kill only once. So, punishing a murderer does not deter murders. Putting murderers in prison certainly does more harm than good because it never brings back the dead person and seldom improves the living one. There are other less intrusive methods, such as home detention. So, should we decriminalize murder? Obviously, not.

The law serves many purposes. Four accepted principal ones are establishing standards; maintaining order; resolving disputes; and protecting liberties and rights. Five accepted theories of crime and punishment are: Retributive, Deterrent, Preventive, Expiatory, and Reformatory (Theories of Punishment, 2020).

The retributive theory is revenge—an eye for an eye, an example is cutting off the hand of a thief. We hope we have gotten past that. The second theory is deterrent that has two purposes: to make an example of the wrongdoer for others and to prevent the wrongdoer himself from doing it again (incapacitation). Part of the reason for making IPV a crime is to make an example to society that such behavior is not acceptable. A short incapacitation is useful to allow the victim to escape and to make a point to the abuser. From the beginning, those working in domestic violence never advocated for long sentences.

The third theory is preventive, that is, it disables the offender. This can result in “lock him up and throw away the key responses” when carried too far. We know long detentions are both ineffective and harmful. The expiatory theory is to pay money to purify the person and to compensate the victim—hence victim compensation used in criminal and civil actions. Restorative theories of justice fit in here as well. The reformatory theory is that crime is a disease of the person and the society. Sexism is a structural problem and violence against women is both a creator and result of sexism. It is not just a problem of the person but the society also, and that is another reason why IPV should not be decriminalized.

Many theories abound about why people commit crime—some are based on the individual and some on the community. The reasons, like so much else in this arena, are many, variable, and complex. Among the theories based on individuals, we have the choice theory that criminals weigh the cost/benefit; the classical theory that persons decide it's advantageous; the labeling theory that you become what you are called; the life course theory that specific events cause stress and actions; the positivist theory that abnormality causes individuals to cause crime; rationale choice is another cost/benefit idea; strain theory says when we are frustrated we turn to crime; and trait theory is that we were born with it.

Among the community theories are the conflict theory that stress among the different social classes is the reason; critical theory that elites decide and thus we disagree with their control; routine activity is that it's inevitable in every society; social control theory says society must put guardrails in place to keep individuals within bounds; social disorganization says that breakdowns in communities are responsible; and social learning says that people learn what is around them and replicate it.

These are of course simplistic explanations of the theories but not one of them explains everything. Some lend themselves to community work and some to individual work. That is one reason the response is not “one size fits all”—and never has been—so we have to do everything at the same time. But the four-point theoretical basis of the author is based on no widely accepted theory of crime or punishment and has to be discarded.

Counter-Factual Historical Narrative

In *Decriminalizing Domestic Violence*, Goodmark seems to be unaware of the feminist history of the movement against violence against women. She claims the early movement only focused on law enforcement solutions. This is not the case.

For example, at an early national conference in 1987, the conference title is “presenting practical approaches for responding to the problem.” The program has an extensive list of topics from legislation to education, from culture to child custody, from hospital emergency room protocol to victim compensation, and many more (2nd Annual Conference on Domestic Violence..., 1987). The topics listed in the table of contents of *Decriminalizing Domestic Violence*, such as public health and criminal justice, have always been discussed by the movement against violence against women.

I also have an agenda for the Southern Arizona Task Force on Domestic Violence in Tucson, Arizona, 1991, where the keynote speaker was a psychotherapist talking about solution-focused approaches including counseling for the men. Responders from a panel then discussed the law from a judge’s perspective, legislative solutions, children, shelter services, treatment for men, feminist issues, a diversion program, and a comprehensive community approach.

Goodmark is incorrect in claiming that solutions other than law enforcement have not been discussed in the anti-violence movement. The battle to stop violence against women has not been going on for just the last 30 years as the author seems to think. The first shelter was reportedly opened in 1967, but that was certainly not the beginning of trying to stop violence against women in this country. Carrie Nation (1846-1911) is well known from the temperance movement that fought and won to end alcohol consumption in the U.S. because of its relation to violence against women and children by men who were drinking. She won her battle when the 18th Amendment was ratified and lost it again when the 21st Amendment repealed it. The book mentions taxing alcohol as a method of decreasing violence. Nation was well ahead of her.

But Nation, like the early 20th century warriors against violence, was not a one-tune woman. She also led women’s marches in Topeka, Kansas; refused to wear a corset because of the harmful effects on internal organs; worked on prison reform; helped the poor with meals and clothes; and in 1901 established a shelter for wives and children of alcoholics in Kansas City, Missouri—an early example of today’s women’s shelters.

Betty Ryan in Phoenix, AZ set up a battered women’s shelter in 1974. She had escaped a battering spouse and wanted to help others—that is how most shelters started. Until she was evicted from her own agency over thirty years later, the organization refused any government money because she knew the corrupting influence of funding.

In 1986 when I was working at Community Legal Services, Maricopa County, Arizona, had a county wide task force to deal with violence including all sectors of public and private representation from business to medical, from education to law enforcement, from childcare to counseling, from pastors to lawyers. This kind of work evolved into the Coordinated Community Response Team that has been a staple of IPV work for more than 35 years. The movement has always been intersectional and multidimensional.

The formative years of the movement were entirely run by battered women themselves. They started the shelters often by simply letting women stay in a room in their own homes. They did what “counseling” was done—from one who had suffered the same thing. They hid and transported the women away from abusers and built the underground railroad. Women of color were pivotal from the beginning.

It is simply not true, as Goldmark claims, that laws to deal with IPV have been around all along. For example, *The Pennsylvania Child Welfare Resource Center*, 310:

Domestic Violence Issues: An Introduction for Child Welfare Professionals (2006) outlines a domestic violence timetable. The following are key dates for laws and law changes:

- Early settlers in America based their laws on an Old-English common-law that explicitly permitted wife-beating for correctional purposes. The states tried to break away from that law by saying that the husband is only allowed to whip his wife with a switch no bigger than his thumb (Early 1500s)
- Mississippi's Supreme Court allowed a husband to administer "moderate chastisement in case of emergencies" (1824)
- Alabama was the first state to rescind the legal right of men to beat their wives (1871)
- Maryland was the first state to pass a law that made wife-beating a crime, which is punishable by 40 lashes or a year in jail (1882)
- North Carolina courts declared that a criminal indictment could not be brought against a husband unless the battery is so great as to result in permanent injury, endanger their life or is malicious beyond all reasonable bounds (1886)

From the 1900's to the 1960's:

- Beatings as cruel and inhumane treatment, became grounds for divorce in New York, but the plaintiff must establish that a sufficient number of beatings have taken place (1966)

In the 1970's:

- Most U.S. states allowed wives to bring criminal action against a husband who inflicts injury upon her (1975)
- In Pennsylvania, an old town ordinance was still on the books that no husband shall beat his wife after ten at night or on Sundays (1976)

In the 1990's:

- For the first time judges are required to consider any history of spousal abuse before determining child custody or visitation rights. (1990)
- The Surgeon General ranks abuse by husbands to be the leading cause of injuries to women ages 15-44. (1992)
- The American Medical Association releases guidelines that doctors screen women for signs of domestic violence. (1992)

The civil laws Goodmark mentions—landlord tenant protections, unemployment and job protections, protection orders, and so on—were all things started by the early warriors. Early advocates worked with public health, training of medical staff, posters in women's bathrooms, questions on health intakes, rape evidence kits and protocols,

and firearms control. The national and international agencies, such as Center for Disease Control (CDC) and World Health Organization (WHO), designated IPV as the world's most pressing problem in 1996—24 years ago. This is proof of the years of work advocates did on all levels from local to global. These things don't happen overnight or because of an official's sudden awakening—the advocates work for many years made these things happen.

To decriminalize domestic violence makes violence the woman's personal problem. The *personal is political* as National Organization for Women (NOW) made clear more than forty years ago. The need for structural change is precisely because violence in the home is not our personal problem. Rape is not our personal problem. Both are profoundly part of public policy and part of the structure of patriarchy that keeps women locked into inequality. The failure to know about or understand the early movement is irresponsible scholarship and leads to incorrect and dangerous conclusions.

Internal Contradictions and Lapses of Logic

Constant contradictions abound throughout *Decriminalizing Domestic Violence*. On one page, the author writes that IPV causes mass incarceration; on the next page, she writes that few IPV incidents are reported and even fewer perpetrators are arrested. On one page, shame is a good thing; on another it's a bad thing. On one page patriarchy is bad and toxic masculinity is the problem; on the next, women are as violent as men and have no empathy. One gets whiplash trying to follow the author's claims.

On one page the author suggests that women should not call law enforcement as a first response and on the next she admits that prior to calling law enforcement women have already tried family, friends, and the community. She urges prevention but admits it doesn't work. She says men need sanctions and boundaries but then says we should abolish them. She says the cause of the violence is living in a bad neighborhood but moving to a good one doesn't help. She says women should go to the community and then gives example after example of how the community fails.

One irony of blaming the problem on the women is that in spite of the fact that all the police, all the prosecutors, all the judges, and all the jailors cannot stop men's violence, they still expect women alone to do so. Many laws regarding child custody blame women for failing to stop men's violence so women lose their children for *failure to protect*. This is not just obvious lunacy; it is blatant discrimination and results in harm—sometimes death—to children.

The author destroys her own argument by referring to the case of former sports doctor Larry Nassar case in which 150 women testified about the abuse and harm he did to them. Yet the community including parents, teachers, coaches, school administrators, and law enforcement protected him for more than 23 years while at least 250 girls were abused. If anything, the community protects the abuser, not the victim. The worldwide, decades long scandal involving priests in the Catholic Church sexually and physically abusing children is another example. The role of religion in causing and perpetuating violence against women and girls is never mentioned in the book, although religion is a huge player in this problem.

Apparently Goodmark does not notice, but the entire chapter on human rights is an argument against the rest of the book. We do need to sign and ratify all international human rights documents, and we do need to pay more attention to human

rights. But that requires due diligence meaning prevention, protection, and punishment. International best practice requires a criminal law against IPV and enforcement of that law to hold the abuser accountable. To decriminalize domestic violence would violate the international documents the author says we should adopt. Crime is personal and political. To decriminalize IPV makes it solely personal and makes a political statement that women are not important. Our lives don't matter.

When the Battered Women's Movement Got Lost

The availability of money starting in the mid 1980s caused the movement to lose its way. As usual, once money came into the mix, with strings attached, it perverted the movement. This money came from patriarchal governments that had no intention of losing its power but could no longer ignore the grass roots movement. The money was not exclusively for law enforcement—much of it was for the care and processing of battered women rather than ending domestic violence.

I observed that the so called “professionalism” of the movement with money for salaries resulted in many battered women who knew best, and who had been laboring long and hard with little or no pay being forced out of their positions. Often, they were replaced with “professionals”—young, college women who had little life experience. The director of one of our most successful shelters in Phoenix for battered woman reported that she was told by the board to stop saying she was a survivor when she spoke in public. They claimed it diminished her. She refused and quit rather than succumb to their degradation.

Many of us fought hard to keep the focus on battered women, their voices, and their experiences, and to remember our goal of ending violence not creating a social service system to deal with the survivors. In many ways we lost.

The Blame Game

Early anti-battering warriors knew that men would not give up power easily. Former slave and abolitionist, Frederick Douglass, was clear when he said “...Power concedes nothing without a demand. It never did and it never will” (Douglass, 2000). Human right struggles take decades if not centuries. Women claiming their right to vote took over 70 years in the United States. The Equal Rights Amendment struggle is at 97 years. The civil rights struggle from the 1960s has gone on for over 65 years. Lynching was just made a federal crime in 2020, though Ida B. Wells started that campaign in 1892—128 years ago.

Yet because the battered women's movement has not been a complete success in the last forty years, the premise in the book is that we should abandon it. This is not only foolish and dangerous; it is historically ignorant. Every vulnerable and oppressed group loses over and over again. But we cannot give up. We come up with new strategies. We fight harder. We fight smarter. We change the frame. We develop new tools. But we never say—we give up.

Making something against the law signals the lowest level of behavior that a society will accept. It sets standards. Making something against the law doesn't stop the act. Murder happens every day. Should we decriminalize it because the law doesn't always work? Of course not. We recognize that killing another person is unacceptable. Decriminalizing IPV says that beating women is acceptable. That is the wrong thing to do.

As organizers have known for a long time, law doesn't create change. People make change by movements, by organization, by education, by sustained protest. We can look to abolition, women's right to vote, union organizing, the civil rights movements for Blacks, women, gays, and the people with disabilities community. The legislatures and courts did not just wake up one day and say—let's do this. A change in culture created the shift and the law was forced to follow.

The backlash is fierce, and our opponents don't give up either. Giving money to the movement was the first attack. It allowed the movement goals to be co-opted and turned toward state solutions. Another strategy of an attack is to use the vulnerable group against itself.

When you are going to attack women, it is always beneficial to find a woman to do it. Male politicians can then wring their hands and say well women say "yes" and women say "no," so I just don't know what to do. By using women, it shields the real actors and real motives.

As outlined in this review, the claim that decriminalization would make women better off doesn't fit with theories of crime or punishment. It doesn't fit with the facts, and it doesn't square with history. It isn't supported by legal cases or best practices. The claim that women reporting violence against them is the cause of mass incarceration is a hoax.

Decriminalizing domestic violence will do harm. That harm will be to individual people - some of whom won't live through it. Stand in front of the hundreds of red Silent Witness figures who represent women and children killed in IPV or walk among the clothes lines of t-shirts from victims and tell them that the violence done against them was not criminal.

A third strategy of attack is to pit one vulnerable group against another; as these books are doing by pitting Black men against battered women. That is one of the saddest aspects of this particular backlash. Pitting Black men against white women was done in the fight for the 15th amendment after the Civil War when the word "male" was put into the Constitution for the first time over the vociferous objection of the suffragists. It was done in Illinois in 1981 to stop the ERA when a group of Black male legislators withheld their votes to kill the ERA. Now it's happening again by claiming that women are the cause of Black men being in prison. The proponents are pitting vulnerable groups against each other to create more racial tension among vulnerable groups who need to be allies not enemies. We should not allow ourselves to be divided and conquered.

As Aceil Rashid (2020) has written, abuse of women is ingrained in our cultural fabric as deeply as the American Dream and racism, and it is long past time men spoke out. The CDC now calls domestic violence a public health hazard experienced by one in three women and one in 10 men. Rashid says that parents and peers socialize men to uphold toxic masculine norms. Cultural leaders pile on from the military and faith-based institutions. It's men who must change their behavior. It's women and children we must keep safe.

But as usual women's work for centuries to end violence is being ignored, trivialized, attacked, lied about, and erased. It illustrates complete disrespect for the legacy of women who have worked so hard, suffered so much, and often died in their struggles to end violence against women. We need to see this travesty for what it is and abolish it.

Continuation of the False Narrative: *The Feminist War on Crime*

For those of you who remember Herman's Hermits singing "I'm Henry the 8th I am," it goes— "Second verse, same as the first." The second book, *The Feminist War on Crime: The Unexpected Role of Women's Liberation in Mass Incarceration*, by Aya Gruber, continues much the same as the first.

The author, Aya Gruber, is a professor of law at the University of Colorado Law School where she teaches criminal law. She clerked at a U.S. District Court and was previously a prosecutor and a public defender.

The Feminist War on Crime (2020) is more nuanced and admits that there were several different strands of "feminism" often at odds but then blames the losers of those arguments for outcomes the author doesn't like. She uses many statistics from 1998 and since we have been through two economic crises since then and far newer statistics are available, 22-year-old data is not that relevant.

She makes statistical claims that are not supported by the evidence, such as, the U.S. Department of Justice Bureau of Statistics shows that sex offenders in prisons are 12.4% of the population while drug offenders are 15.7%. With 65% of sexual assaults not reported, this is unlikely. The U.S. Department of Justice reports the following: drug offenses 46.1%; weapons, explosives, arson 20.1%; sex offenses 10.9%; extortion, fraud, bribery 5.5%; burglary, larceny, property 5.1%; robbery 3.4% (Department of Justice, 2020).

The Feminist War on Crime exhibits equal opportunity by attacking the First and Second Wave of the women's movement, and millennial women. Gruber writes that the First Wave feminists were racist and blames them for much of society's ills though they were not in power. She gives them no credit for what they did achieve, and that we often take for granted, including voting and running for office; riding a bicycle; wearing bloomers; and going to college.

Contrary to the author's claim, historically, courts did not believe women; they protected the property of men. When women stepped out of line, they were sometimes punished by being sent to a mental institution or prison. Those who fought prostitution were called "purists," the same name-calling that prostitution abolitionists are subjected to today.

The book's thesis does what she accuses others of doing—reducing complex issues to simple ones. Of course, mistakes were made; name a movement in which they weren't. But many of the same problems continue today—girls are forced to marry at 12-years-old in Colorado City (Webb, 2003; Bistline, 2004); Latinx women are sterilized without their knowledge or consent in Immigration Customs Enforcement facilities (Chapin, 2020); the "sex-wars" continue with the pro-and anti-prostitution camps.¹ It's all about men's entitlement and money. Much of the book's arguments are made up of misattribution and the blame game. Throughout western Christian history women have been blamed for everything since Eve in the Bible. But again, as in the Goodmark book, religion is not mentioned as a site of discrimination, patriarchy, or the abuse against women.

The Second Wave feminists (into which category I fit) are attacked for the battles lost and not given any credit for the battles won, such as women in sports, wearing

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¹ You can read about the different perspective at <https://www.questia.com/library/psychology/abnormal-psychology/sex-crimes/prostitution>

pants, getting a credit card, having a career, keeping their own name, and a choice about how and when to have children. I'm pretty sure the author wasn't born then and seems to be looking at a world that I certainly never saw though I was there. Like every other movement, we made mistakes and hindsight is good, but it's called hindsight for a reason. Even today white people are learning to understand the privilege we have and what to do about it.

Gruber admits that the vicious backlash against women after the 1960s started by Nixon's administration and continuing with Reagan in the 1980s doomed our work. She mentions drivers of mass incarceration such as Reagan President's Task Force on Victims of Crime in 1982 and his "War on Drugs," and the Attorney General's Task Force on Family Violence in 1984, naming Attorney Generals John Ashcroft and Jeff Sessions and the non-governmental organization Concerned Women of America. That backlash continues today with the president Trump administration and his Supreme Court nominees. None of them were or are feminists.

The author also admits that the anti-battered women's movement started out radical and anti-authoritarian to its core. It was grass roots activists that built it; we were against the police and against taking government money. Some of us still are. But like every movement, its early leaders were removed, the sharp edges got filed down, concern for money took over, and compromises were made. The competing groups of feminists (she calls them leftists, anti-patriarchy and legal) battled over many issues. Some of us were in all three groups—talk about complex! She asks whether the issue is power or patriarchy. It's both and more.

As a lawyer, I find it surprising that she chastises attorneys in the movement for doing what we are obligated by law and ethics to do--represent our client. Tools of the law were used to get justice for victims. The structural changes from *Bruno v. Codd* established the right of battered women to get aid from the police, the same as other victims. *Scott v. Hart* established that battered women were entitled to equal protection under the law. It does not negate that social problems of poverty, racism, patriarchy, and sexism are the baseline determinants. No one denied that battering was rooted in economic, psychological, or cultural conditions precisely because we knew it was rooted in sexism, that is patriarchy. We never proposed a simple solution to battering—lock up the batterers. That is an absolutely false rewriting of history and an erasure of women's heritage.

Not to be left out, Gruber attacks millennials too. Allegedly the campus rape explosion is just another panic and added to mass incarceration. Far more sympathy is expressed for the accused males than for the female victims who might, she writes, be making false allegations. False allegations are also made of murder, robbery, car theft, fraud, burglary, and even car accidents. No one suggests we should decriminalize them.

#MeToo Under Attack

Allegedly the argument to decriminalize domestic violence is about concern for women of color, though the *#MeToo* movement was founded by Tarana Burke, a Black woman. The *#MeToo* movement is called carceral and punitive. Most of the abusers who have been removed from power have been wealthy, white men, and they have for the most part not gone to prison. She argues we should topple powerful men by political action not criminal actions. *#MeToo* is political action. It brought the violence to the surface. It gave women around the world a voice they did not have before. That is political action.

The *#MeToo* movement gave a legal name and definition about the treatment of women that allowed it to be shown as structural inequality. Things have to be named before we take action. Sexual harassment at work and stalking are two examples. Before they were named, there were no Title VII discrimination lawsuits for sexual harassment; there were no criminal cases against abusers for stalking their ex-wives.

A new book was just released by Full Court Press, *#MeToo and the Impact on Law*, by Ann Noel and David Oppenheimer, two law professors at Berkeley who are Directors of the Berkeley Center on Comparative Equality and Anti-Discrimination Law (Noel and Oppenheimer, 2020). They point out in the introduction that the legal breakthrough was defining “sexual harassment as sex discrimination” because it is... “a vector and dynamic of structural inequality with major white supremacist and class-based (poverty, economic vulnerability) dimension.”

#MeToo brought visibility for highly placed people. But lower down not much actually changed. Some of the men were forced out with shame by insurance and investors fearing reputational damage, not by lawsuits. But there seemed to be a reversal in momentum after the Congressional hearing for Supreme Court nominee Kavanaugh, where, once again, a woman was not believed while a violent man, blustering and sputtering, was.

Because of the backlash and attempts to silence women, California passed a law prohibiting the use of lawsuits to stop women’s freedom of speech and ability to petition for redress of grievances. When the use of “nondisclosure” agreements became well known as a way to silence women, those too became illegal. Internationally women have been silenced by defamation claims in Australia, France, Israel, and they have been jailed when they make accusations in Egypt. Keeping the abuse private as these two books urge is exactly the wrong move.

Gruber joins the men whining that *#MeToo* has *gone too far*. However, when one side has been used to getting all the advantages, equality feels oppressive. For example, studies have shown that in elementary school classrooms, teachers tend to call on boys far more than girls. The teachers, mostly women, didn’t believe they were doing it but the videos proved otherwise. A procedure was worked out to ensure that boys and girls were called on equally. The boys then complained, saying they were being ignored. They were receiving 50 percent of the attention, but since they were used to a much higher percentage, they felt oppressed.

Likewise, in the *#MeToo* movement, men cry that they are denied due process. Women have never gotten due process. What about those 250 girls that Larry Nassar abused over 30 years? What about the thousands of children abused by priests around the world? While some are successful in lawsuits, many still struggle for simple justice. What about their due process?

Lawyers especially should know that words matter. If I call the police and report my car stolen, I’m the victim. If I walk into the police station because I’ve been mugged, I’m the victim. But if I report that I have been raped or sexually assaulted, I’m no longer the victim, now I’m the *accuser*. While sexual assault laws have been modified in most places to no longer require proof of physical violence or that I fought back as hard as I could, they still require that I show lack of consent. If I, as the victim, have to show “lack of consent,” then consent was assumed. It is assumed that any sexual encounter with a male is consented to by women. I don’t have to prove that I didn’t loan my car or donate the contents of my wallet. This is a problem of embedded systems

of bias, conscious and unconscious. It illustrates that structural inequality is the problem not individual relationships. It is a societal problem not a personal one. It needs a societal solution.

Sex Is Not Going Away

Women are criticized in *The Feminist War on Crime* for thinking that sex is ubiquitous and a fundamental issue. In the world I live in, sex is ubiquitous—from “reveal” parties to death, from pink ribbons on babies so you know their sex, to over sexualized little girls in beauty pageants, from deformed Barbie dolls to sexting and pornography on the Internet, from the extra workload at home to sexual harassment at work, from prostitution to genital mutilation for vagina lifts. Any woman who has ever seen the tabloids at the checkout stand, watched television, listened to the radio, seen ads on the Internet, received circulars in the mail, been cat called on the street, seen a teen or a woman’s or a fashion magazine knows that sex is ubiquitous in our culture.

While actions from cat calling on the street to stranger rape in your own bed are nowhere near the same, they are on a continuum. Cat calling tells women—men have the right to examine you in public for sex and control your experience. It is “grooming” to teach women to accept that they don’t control their own sexuality—men do. The “male gaze” is what determines women’s value and actions.

Historically women’s sexuality does not belong to and is not controlled by women. That is still true today by culture or even law in some countries. In the past, women were married off by fathers for reasons of power, money, politics, and had little power to resist. When women protested, they could be consigned to mental asylums at the whim of men.

In *The Feminist War on Crime*, rape is trivialized especially in suggestions that date rape is not “real rape.” Now it can be called *noninjurious rape*. I have no idea what that would be. The now thoroughly debunked Freudian idea that women fantasize rape is mentioned as it is that “rape culture” is a figment of feminist imagination. Child abuse is minimized, although statistics show that one in three girls and one in four boys are sexually abused. Child sexual abuse is labeled a “moral panic” claiming it’s not widespread. These are dangerous falsehoods to be spreading.

The Reason for High Incarceration Rates

While blaming feminists, in *The Feminist War on Crime*, Gruber admits it was changes in sentencing that kept incarceration rates sky high. Cynthia Thomas (2020) reports that over the past thirty years the number of women and girls involved in the criminal justice system has skyrocketed. Thomas attributes this to a more expansive law enforcement “War on Drugs” that impacts women uniquely.

One study suggests that the entire increase in the prison population from 1980 to 2001 can be explained by sentencing policy changes (Alexander, 2012). In a study of the federal system (Rehavi & Star, 2012), the researchers conclude the entire sentencing disparity can be explained by the initial charging decision of the prosecutor. The prosecutor decides whether to charge a crime with a mandatory minimum and the research shows that they use that alternative disproportionately for Blacks and not for whites. These decisions are beyond the control or influence of feminist advocates.

As attorney Bryan Stevenson (2014) points out, in 1980, there were 41,000 people in prison for drugs. In 2014, that number increased to 500,000. In 1980, the state spent \$6.9 billion on prisons; today they spend \$80 billion. The real reasons for mass

incarceration are policies such as three strike laws, truth in sentencing, War on Drugs, mandatory minimums, transferring youth to adult court, and the school to prison pipeline, which has the racist outcome of imprisoning more Black men. All of these are policies and laws passed by state legislatures and administrations that were not feminist and did not have an equal representation of women in decision making positions.

In a new study (Baughman & Wright, 2021) the authors write:

It has long been postulated that America's mass incarceration phenomenon is driven by increased drug arrests, draconian sentencing, and the growth of a prison industry. Yet among the major players—legislators, judges, police, and prosecutors—one of these is shrouded in mystery (p.1).

Their study focuses on prosecutorial behavior. They found that while arrests went down, prosecutions went up. They conclude that: "Prosecutors unknowingly contribute to mass incarceration through individual charging decisions" (p. 65). Prosecutors are not a profession filled with feminists—75% of them are male while over 90% of them are white (Baughman & Wright, 2021).

There Is No One Feminist

While on the one hand admitting there were various factions of "feminism," the author still makes statements such as, "Arrest became the official feminist position..." There is no such thing as an official feminist position—now or then. A lot of these absolutist statements are not warranted such as the authors' discussion of Hales law, legal permission to beat women, and the myth that domestic violence calls are the most dangerous.

Gruber discusses two tracks of the *Take Back the Night* movement and claims that the anti-pornography track lost the battle. I contend that the war is still going on. The victims of prostitution who run the anti-prostitution organizations today decry the continued arrest and punishment of prostituted women. That is called sexism based in patriarchy and why the *Nordic Model* that does not blame the women, but the facilitators and abusers is the most successful approach.

The author's conclusion suggests a program not grounded in any reality. She talks about the "feminists' preferred method." What feminists? Which of the three (or more) strands? She urges all feminists to unite around her theme but there is no "every woman"—never was and never will be. The issues surrounding women and violence always require context, are complex, and diverse.

She suggests that rather than focusing on men, we focus on the underlying circumstances. Patriarchy is the underlying circumstance that allows racism, sexism, poverty, and discrimination to flourish. You cannot focus on a problem without naming the problem and insisting on accountability for the perpetrators. I lived in an apartment building in Moscow for two years where "everyone" was responsible for maintenance and cleaning of the lobby, stairs, and elevator—so no one did it.

She clearly does not want to name those who are doing the harm but has no problem asking the victims to let it all go. She asks feminists to adopt an unconditional stance against criminalization. That is a hard line in the sand with no context, no complexity, no diversity. That is doing precisely what she has accused the movement of

doing. It would be incredibly ignorant and dangerous to take such a stand for historical, social, and political purposes.

Gruber ends by saying: It is time for feminists to choose. Which feminists? Does she mean the ones in the National Organization for Women and the League of Women Voters and Junior League? Or perhaps the ones in the Women's Liberation Front and Women's Human Rights Campaign? Or Sister Song and We Want the Land Collective? Or "The Squad"? Feminists are not monolithic. We cannot be reduced to a one-dimensional meme.

Conclusion

Backlash is what happens when women tell the truth about their lives. These books constitute part of the backlash that is going on against women today. Both authors are very reluctant to blame men for the violence against women but are eager to blame women for decisions we did not and could not make. As Carrie N. Baker, director of the Program for the Study of Women and Gender and a co-founder and former co-director of the Five College Certificate in Reproductive Health, Rights and Justice, said in 2020: "Patriarchy likes to get women to do their dirty work."

Rather than fight among ourselves, we need to unite and fight "the man." While patriarchy uses women for the attack, it's all about keeping men's power and if you don't know that, then you are a fool. As Floyd (2020) wrote on Facebook:

Women who carry water for the patriarchy just so they can have a slightly longer leash and stand a few rungs up in oppression from other women, particularly marginalized women, make me a special kind of angry. Being a master's favorite dog is still having a master and being a dog.

ACKNOWLEDGMENTS

Thank you to all those women over decades and centuries across the globe who gave unselfishly their time and treasure in large and small ways to help another woman to safety and freedom. Thank you for moving the needle of human rights for women toward equality. Your work is appreciated by women around the world and will not be forgotten. You live on in the lives you saved and the hearts you healed.

AUTHOR BIOGRAPHY

Dianne Post graduated from University of Wisconsin in 1969 with a B.A. in Correctional Administration and worked at the California Youth Authority. She attended San Jose State College and obtained a Masters Degree in 1973 in Psychology and worked at a state mental hospital in an alcoholic ward and in the movement to close down large mental health institutions and move people into smaller community-based treatment centers. She graduated from University of Wisconsin Law School in 1979. After 18 years of representing battered women and molested children in court, she began to do international human rights work on violence against women.

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