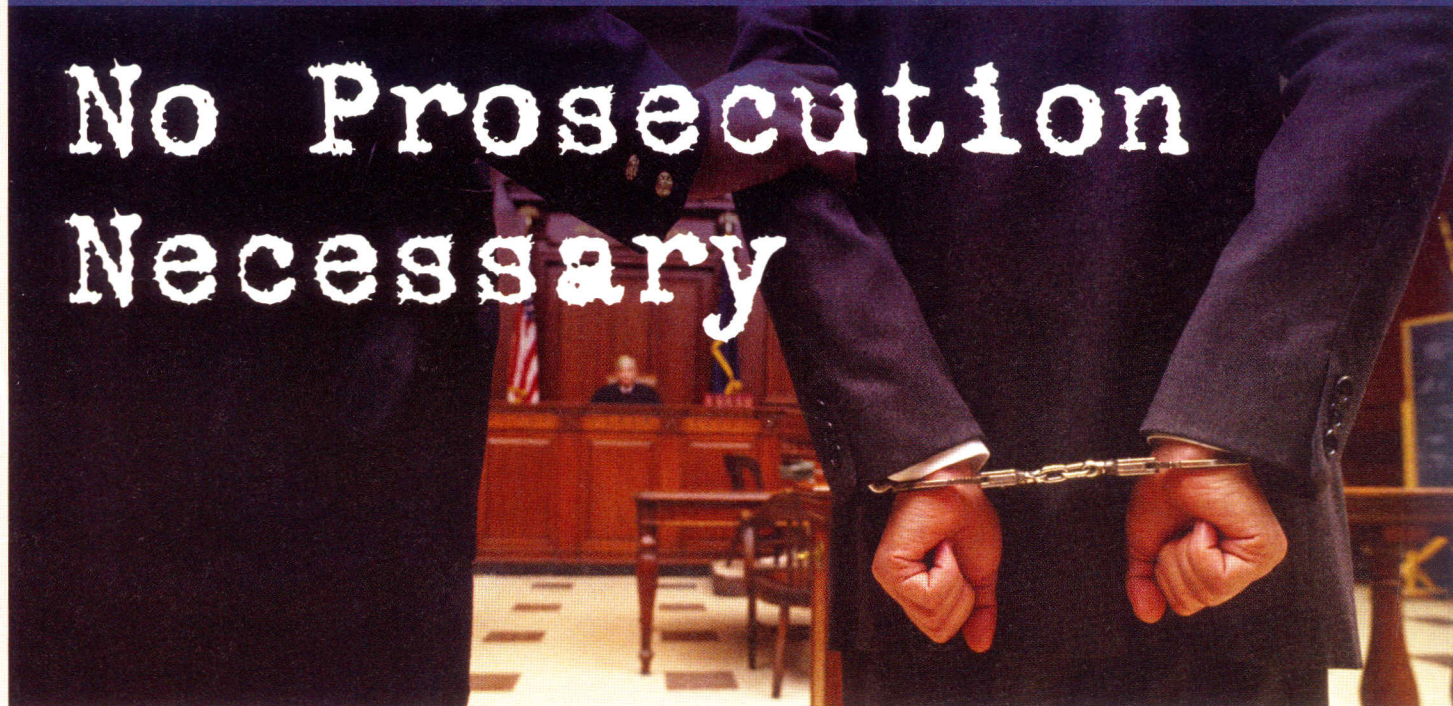


# No Prosecution Necessary



The feminist movement has traded ideological purity for power, causing the undermining of due process protections and the imprisonment of men without charges or trial.

by Stephen Baskerville

Liberals rightly criticize America's high rate of incarceration. Claiming to be the freest country on Earth, the United States incarcerates a larger percentage of its population than Iran or Syria. Over two million people, or nearly one in 50 adults, excluding the elderly, are incarcerated, the highest proportion in the world. Some seven million Americans, or 3.2 percent, are under penal supervision.

Many are likely to be innocent. In *The Tyranny of Good Intentions* (2000), Paul Craig Roberts and Lawrence Stratton document how due process protections are routinely ignored, grand juries are neutered, frivolous prosecutions abound, and jury trials are increasingly rare. More recently, in *Three Felonies a Day: How the Feds Target the Innocent* (2009), Harvey Silverglate shows how federal prosecutors are criminalizing more and more of the population. "Innocence projects" — projects of "a national litigation and public

policy organization dedicated to exonerating wrongfully convicted people through DNA testing" — attest that people are railroaded into prison. As we will see, incarcerations without trial are now routine.

The U.S. prison population has risen dramatically in the last four decades. Ideologically, the rise is invariably attributed to "law-and-order" conservatives, who indeed seldom deny their own role (or indifference). In fact, few conservatives understand what they are defending.

Conservatives who rightly decry "judicial activism" in civil law are often blind to the connected perversion of criminal justice. While a politicized judiciary does free the guilty, it also criminalizes the innocent.

But traditionalists upholding law and order were not an innovation of the 1970s. A newer and more militant force helped create the "carceral state." In *The Prison and the Gallows* (2006), feminist scholar Marie Gottschalk points out that traditional conservatives were not the prime instigators, and blames "interest groups and social movements not usually associated with penal conservatism." Yet she names only one: "the women's movement."

While America's criminalization may have a number of contributing causes, it

coincides precisely with the rise of organized feminism. "The women's movement became a vanguard of conservative law-and-order politics," Gottschalk writes. "Women's organizations played a central role in the consolidation of this conservative victims' rights movement that emerged in the 1970s."

Gottschalk then twists her counterintuitive finding to condemn "conservatives" for the influx, portraying feminists as passive victims without responsibility. "Feminists prosecuting the war on rape and domestic violence" were somehow "captured and co-opted by the law-and-order agenda of politicians, state officials, and conservative groups." Yet nothing indicates that feminists offered the slightest resistance to this political abduction.

Feminists, despite Gottschalk's muted admission of guilt, did lead the charge toward wholesale incarceration. Feminist ideology has radicalized criminal justice and eroded centuries-old constitutional protections: New crimes have been created; old crimes have been redefined politically; the distinction between crime and private behavior has been erased; the presumption of innocence has been eliminated; false accusations go unpunished; patently innocent people are jailed with-

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out trial. "The new feminist jurisprudence hammers away at some of the most basic foundations of our criminal law system," Michael Weiss and Cathy Young write in a Cato Institute paper. "Chief among them is the presumption that the accused is innocent until proven guilty."

Feminists and other sexual radicals have even managed to influence the law to target conservative groups themselves. Rack-teering statutes are marshaled to punish non-violent abortion demonstrators, and "hate crimes" laws attempt to silence critics of the homosexual agenda. Both are supported by "civil liberties" groups. And these are only the most notorious; there are others.

Feminists have been the most authoritarian pressure group throughout much of American history. "It is striking what an uncritical stance earlier women reformers took toward the state," Gottschalk observes. "They have played central roles in ... uncritically pushing for more enhanced policing powers."

What Gottschalk is describing is feminism's version of Stalinism: the process whereby radical movements commandeer the instruments of state repression as they trade ideological purity for power.

### Path to Prison

The first politicized crime was rape. Suffragettes advocated castrating rapists. Elizabeth Cady Stanton and Susan B. Anthony, who opposed it for everyone else, wanted rapists executed.

Aggressive feminist lobbying in the legislatures and courts since the 1970s re-defined rape to make it indistinguishable from consensual sex. Over time, a woman no longer had to prove that she was forced to have non-consensual sex, but a man had to prove that sex was consensual (or prove that no sex had, in fact, happened). Non-consent was gradually eliminated as a definition, and consent became simply a mitigating factor for the defense. By 1989, the Washington State Supreme Court openly shifted the burden of proving consent to

the defendant when it argued that the removal of legislative language requiring non-consent for rape "evidences legislative intent to shift the burden of proof on the issue to the defense" and approved this blatantly unconstitutional presumption of guilt. The result, write Weiss and Young, was not "to jail more violent rapists — lack of consent is easy enough for the state to prove in those cases — but to make it easier to send someone to jail for failing to get an explicit nod of consent from an apparently willing partner before engaging in sex."

Men accused of rape today enjoy few safeguards. "People can be charged with virtually no evidence," says Boston former sex-crimes prosecutor Rikki Klieman. "If a female comes in and says she was sexually assaulted, then on her word alone, with nothing else — and I mean nothing else, no investigation — the police will go out and arrest someone."

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Almost daily we see men released after decades in prison because DNA testing proves they were wrongly convicted. Yet the rape industry is so powerful that proof of innocence is no protection. "A defendant who can absolutely prove his innocence ... can nonetheless *still* be convicted, based solely on the word of the accuser," write Stuart Taylor and K.C. Johnson in *Until Proven Innocent*. In North Carolina, simply "naming the person accused" along with the time and place "will support a verdict of guilty." Crime laboratories are notorious for falsifying results to obtain convictions.

The feminist dogma that "women never



**Dead to rights:** In any dispute between a man and woman that involves the legal system, men are almost always denied their right to a trial by jury. Cases are often heard by a judge surrogate — a lawyer dressed like a judge — and there is no presumption of innocence.



lie” goes largely unchallenged. “Any honest veteran sex assault investigator will tell you that rape is one of the most falsely reported crimes,” says Craig Silverman, a former Colorado prosecutor known for zealous prosecutions. Purdue University sociologist Eugene Kanin found that “41% of the total disposed rape cases were officially declared false” during a nine-year period, “that is, by the complainant’s admission that no rape had occurred.” Kanin discovered three functions of false accusations: “providing an alibi, seeking revenge, and obtaining sympathy and attention.” The Center for Military Readiness (CMR) adds that “false rape accusations also have been filed to extort money from celebrities, to gain sole custody of children in divorce cases, and even to escape military deployments to war zones.”

In the infamous Duke University lacrosse case, prosecutor Michael Nifong suppressed exculpatory evidence and prosecuted men he knew to be innocent, according to Taylor and Johnson. Nifong himself was eventually disbarred, but he had willing accomplices among assistant prosecutors, police, crime lab technicians, judges, the bar, and the media. “Innocent men are arrested and even imprisoned as a result of bogus claims,” writes Linda Fairstein, former head of the sex-crimes unit for the Manhattan District Attorney, who estimates that half of all reports are unfounded.

Innocence projects are almost wholly occupied with rape cases (though they try to disguise this fact). Yet no systematic investigation has been undertaken by the media or civil libertarians into why so many innocent citizens are so easily incarcerated on fabricated allegations. The exoneration of the Duke students on obviously trumped-up charges triggered few investigations — and no official ones — to determine how widespread such rigged justice is against those unable to garner media attention.

The world of rape accusations displays features similar to other feminist gender

crimes: media invective against the accused, government-paid “victim advocates” to secure convictions, intimidation of anyone who defends the accused. “Nobody dependent on the mainstream media for information about rape would have any idea how frequent false claims are,” write Taylor and Johnson. “Most journalists simply ignore evidence contradicting the feminist line.” What they observe of rape characterizes feminist justice generally: “calling a rape complainant ‘the victim’ — with no ‘alleged’.” “Unnamed complainants are labeled ‘victims’ even before legal proceedings determine that a crime has been committed,” according to CMR.

Rape hysteria, false accusations, and distorted scholarship are rampant on university campuses, which ostensibly exist to pursue truth. “If a woman did falsely accuse a man of rape,” opines one “women’s studies” graduate, “she may have had reasons to. Maybe she wasn’t raped, but he clearly violated her in some way.” This mentality pervades feminist jurisprudence, precluding innocence by obliterating the distinction between crime and hurt feelings. A Vassar College assistant dean believes false accusations foster men’s education: “I think it ideally initiates a process of self-exploration.... ‘If I didn’t violate her, could I have?’”

Conservative critics of the Duke fiasco avoided feminism’s role but instead em-

phasized race — a minor feature of the case but a safer one to criticize. Little evidence indicates that white people are being systematically incarcerated on fabricated accusations of non-existent crimes against blacks. This is precisely what is happening to men, both white and black, accused of rape and other “gender” crimes that feminists have turned into a political agenda.

The Kobe Bryant case demonstrates that a black man accused by a white woman is also vulnerable. Historically, this was the more common pattern. Our race-conscious society is conditioned to remember lynching as a racial atrocity, forgetting that the lynched were usually black *men* accused by white women. Feminist scholars spin this as “the dominant white male ideology behind lynching ... that white womanhood was in need of protection against black men,” suggesting fantastically that white “patriarchy” used rape accusations to break up a progressive political romance developing between black men and white women. With false rape accusations, the races have changed, but the sexes have remained constant.

### Violent Lies

“Domestic violence” is an even more purely political crime. “The battered-women’s movement turned out to be even more vulnerable to being co-opted by



**A travesty caused by a travesty:** Because some male batterers got away with abusing women by threatening future harm, feminists had laws altered so that men could be incarcerated for abuse without any evidence of abuse — and be arrested for name-calling and criticism.





**Feminism** gained political clout in the 1970s — about the same time men began losing due process rights. Here some feminist leaders, including feminist writer Betty Friedan (in red coat), participate in carrying a torch from New York to Houston, Texas, to the 1977 National Women's Convention.

the state and conservative penal forces," writes Gottschalk, again with contortion. Domestic violence groups are uniformly feminist, not "conservative," though here too conservatives have enabled feminists to exchange principles for power.

Like rape, domestic "violence" is defined so loosely that it need not be violent. The U.S. Justice Department definition includes "extreme jealousy and possessiveness" and "name calling and constant criticizing." For such "crimes" men are jailed with no trial. In fact, the very category of "domestic" violence was developed largely to circumvent due process requirements of conventional assault statutes. A study published in *Criminology and Public Policy* found that no one accused of domestic violence could be found innocent, since every arrestee received punishment.

Here, too, false accusations are rewarded. "Women lie every day," attests Ottawa Judge Dianne Nicholas. "Every day women in court say, 'I made it up. I'm lying. It didn't happen' — and they're not charged." Amazingly, bar associations sponsor seminars instructing women how to fabricate accusations. Thomas Kiernan, writing in the *New Jersey Law Journal*, expressed his astonishment at "the number of women attending the seminars who smugly — indeed boastfully — announced that they had already sworn out false or grossly exaggerated domestic violence complaints

against their hapless husbands, and that the device worked!" He added, "The lawyer-lecturers invariably congratulated the self-confessed miscreants."

Domestic violence has become "a backwater of tautological pseudo-theory," write Donald Dutton and Kenneth Corvo in *Aggression and Violent Behavior*. "No other area of established social welfare, criminal justice, public health, or behavioral intervention has such weak evidence in support of mandated practice." Scholars and practitioners have repeatedly documented how "allegations of abuse are now used for tactical advantage" in custody cases and "become part of the gamesmanship of divorce." Domestic abuse has become "an area of law mired in intellectual dishonesty and injustice," according to the *Rutgers Law Review*.

Restraining orders removing men from their homes and children are summarily issued without any evidence. Due process protections are so routinely ignored that, the *New Jersey Law Journal* reports, one judge told his colleagues, "Your job is not to become concerned about the constitutional rights of the man that you're violating." Attorney David Heleniak calls New Jersey's statute "a due

process fiasco" in the *Rutgers Law Review*. New Jersey court literature openly acknowledges that due process is ignored because it "perpetuates the cycle of power and control whereby the [alleged?] perpetrator remains the one with the power and the [alleged?] victim remains powerless." Omitting "alleged" is standard even in statutes, where, the *Massachusetts Lawyers Weekly* reports, "the mere allegation of domestic abuse ... may shift the burden of proof to the defendant."

Special "integrated domestic violence courts" presume guilt and then, says New York's openly feminist chief judge, "make batterers and abusers take responsibility for their actions." They can seize property, including homes, without the accused being convicted or even formally charged or present to defend himself. Lawyer Walter Fox describes these courts as "pre-

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fascist”: “Domestic violence courts ... are designed to get around the protections of the criminal code. The burden of proof is reduced or removed, and there’s no presumption of innocence.”

Forced confessions are widespread. Pennsylvania men are incarcerated unless they sign forms stating, “I have physically and emotionally battered my partner.” The man must then describe the violence, even if he insists he committed none. “I am responsible for the violence I used,” the forms declare. “My behavior was not provoked.”

### **Child-support Chokehold**

Equally feminist is the child-support machinery, whereby millions have their family finances plundered and their lives placed under penal supervision without having committed any legal infraction. Once they have nothing left to loot, they too are incarcerated without trial.

Contrary to government propaganda (and Common Law tradition), child support today has little to do with fathers abandoning their children, deserting their marriages, or even agreeing to a divorce. It is automatically assessed on all non-custodial parents, even those involuntarily divorced without grounds (“no-fault”). It is an entitlement for all divorcing mothers, regardless of their actions, and coerced from fathers, regardless of their fidelity. The “deadbeat dad” is far

less likely to be a man who abandoned the offspring he callously sired than to be a loving father who has been, as attorney Jed Abraham writes in *From Courtship to Courtroom*, “forced to finance the filching of his own children.”

Federalized enforcement was rationalized to reimburse taxpayers for welfare. Under feminist pressure, taxpayers instead *subsidize* middle-class divorce,

through federal payments to states based on the amount of child support they collect. By profiting off child support at federal taxpayer expense, state governments have a financial incentive to encourage as many single-mother homes as possible. They, in turn, encourage divorce with a guaranteed, tax-free windfall to any divorcing mother.

While child support (like divorce itself) is awarded ostensibly without reference to “fault,” nonpayment brings swift and severe punishments. “The advocates of ever-more-aggressive measures for collecting child support,” writes Bryce Christensen of Southern Utah University, “have moved us a dangerous step closer to a police state.” Abraham calls the machinery “Orwellian”: “The government com-

mands ... a veritable gulag, complete with sophisticated surveillance and compliance capabilities such as computer-based tracing, license revocation, asset confiscation, and incarceration.”

Here, too, “the burden of proof may be shifted to the defendant,” according to the National Conference of State Legislatures. Like Kafka’s Joseph K., the “defendant” may not even know the charge against him, “if the court does not explicitly clarify the charge facing the [allegedly?] delinquent parent,” says NCSL. Further, “not all child support contempt proceedings classified as criminal are entitled to a jury trial,” and “even indigent obligors are not necessarily entitled to a lawyer.” Thus defendants must prove their innocence against unspecified accusations, without counsel, and without a jury.

Assembly-line hearings can last 30 seconds to two minutes, during which parents are sentenced to months or years in prison. Many receive no hearing but are accused in an “expedited judicial process” before a black-robed lawyer known as a “judge surrogate.” Because these officials require no legislative confirmation, they are not accountable to citizens or their representatives. Unlike true judges, they may lobby to create the same laws they adjudicate, violating the separation of powers. Often they are political activists in robes. One surrogate judge, reports the



**To reduce prison overcrowding,** re-institute justice. Purdue University sociologist Eugene Kanin found that “41% of the total disposed rape cases were officially declared false” because the women recanted their testimony.



*Telegraph* of Hudson, New Hampshire, simultaneously worked "as a radical feminist lobbying on proposed legislation" dealing with child support.

Though governments sensationalize "roundups" of alleged "deadbeat dads," who are jailed for months and even years without trial, no government information whatever is available on incarcerations. The Bureau of Justice Statistics is utterly silent on child-support incarcerations. Rebecca May of the Center for Family Policy and Practice found "ample testimony by low-income non-custodial parents of spending time in jail for the nonpayment of child support." Yet she could find no documentation of their incarceration. Government literature "yields so little information on it that one might be led to believe that arrests were used rarely if at all. While May personally witnessed fathers sentenced in St. Louis, "We could find no explicit documentation of arrests in St. Louis." In Illinois, "We observed courtrooms in which fathers appeared before the judge who were serving jail sentences

for nonpayment, but little information was available on arrests in Illinois."

We know the arrests are extensive. To relieve jail overcrowding in Georgia, a sheriff and judge proposed creating detention camps specifically for "deadbeat dads." The Pittsburgh City Planning Commission has considered a proposal "to convert a former chemical processing plant ... into a detention center" for "deadbeat dads."

Rendered permanently in debt by incarceration, fathers are farmed out to trash companies and similar concerns, where they work 14-16 hour days with their earnings confiscated.

### **More Malicious Mayhem**

Other incarcerations are also attributable to feminism. The vast preponderance of actual violent crime and substance abuse proceeds from single-parent homes and fatherless children more than any other factor, far surpassing race and poverty. The explosion of single parenthood is usually and resignedly blamed on paternal abandonment, with the only remedy

being ever-more draconian but ineffective child-support "crackdowns." Yet no evidence indicates that the proliferation of single-parent homes results from absconding fathers. If instead we accept that single motherhood is precisely what feminists say it is — the deliberate choice of their sexual revolution — it is then apparent that sexual liberation lies behind not only these newfangled sexual crimes, but also the larger trend of actual crime and incarceration. Feminism is driving both the criminalization of the innocent and the criminality of the guilty.

We will continue to fight a losing battle against crime, incarceration, and expansive government power until we confront the sexual ideology that is driving not only family breakdown and the ensuing social anomie, but the criminalization of the male population. Ever-more-repressive penal measures will only further erode freedom. Under a leftist regime, conservatives must rethink their approach to crime and punishment and their unwitting collusion with America's homegrown Stalinists. ■