

**Vacating the State: Free Market Alternatives to Domestic Violence Policy**  
**By: Patrick MacFarlane**

**I. Introduction**

From a young age, we are taught that monopolies produce situations in which consumers, laborers, and competing businesses are easily and unfairly exploited. From there, the traditional logic goes, the state must step in to prevent predatory business practices.<sup>1</sup> Ironically, according to the accepted Public Goods Theory, we are also to believe that essential infrastructure like public utilities, roads, and policing, must *themselves* be both collectivized and monopolized by the state, because of their importance in facilitating a civilized society.<sup>2</sup> Bolstered by the Public Goods Theory, the state enforces its monopoly on essential services through the legitimized use of coercive violence,<sup>3</sup> resulting in a product that, despite the political process, is neither responsive nor accountable to the public. While the state's monopoly of critical infrastructure produces problems that pervade throughout society, the realm of domestic violence policy (and policing in general) is especially rife with unintended consequences caused by the state's immunity to market forces.

For most of American history, the state has not only been complicit in the commission of domestic violence, but has patently and effectively legitimized it.<sup>4</sup> In response, the battered women's movement emerged as a private,<sup>5</sup> grassroots response, providing resources to women who could not count on the state for relief. Over time, the battered women's movement

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<sup>1</sup> Despite the fact that most private monopolies emerge *because of* state assistance. See HANS-HERMANN HOPPE, *THE ECONOMICS AND ETHICS OF PRIVATE PROPERTY* 4 (2nd ed. 2006).

<sup>2</sup> *Id.* at 4 n.3.

<sup>3</sup> MURRAY ROTHBARD, *FOR A NEW LIBERTY* 58 (1973).

<sup>4</sup> *Emily J. Sack, Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 *WIS. L. REV.* 1657, 1662-6 (2004).

<sup>5</sup> *Id.* at 1675 (“In addition, the Violence Against Women Act, passed in 1994 . . . offered the promise of substantial funding . . . for victim advocacy organizations, which traditionally had been run without state financial support or control.”).

<sup>6</sup> began to affect public policy by influencing the state apparatus, creating mandatory policies and state-funded social resources for abuse victims<sup>7</sup> despite the fact that many battered women's advocates remained skeptical of state involvement, seeing the state as a traditional enforcer of "the patriarchy."<sup>8</sup>

By analysing the state's shortcomings within the field of domestic violence, and policing in general, this paper will ultimately assert that the anti-domestic violence movement was incorrect to look to the state for solutions to a complex and delicate societal issue. Accordingly, Section II will document the relationship between the battered women's movement, the private sector, and the state.

Just as the battered women's movement emerged as a non-state, grassroots cause, Section III will assert that the movement should once again look beyond the purview of the state. It will do so by identifying why the state, from an economic perspective, is utterly incapable of effectively solving social issues like domestic violence. Section IV will offer successful, existing private alternatives, and theorize the scalability of these models. In concluding, Section V will suggest a course of action and briefly warn against the danger of further state involvement.

## **II. The State, the Private Sector, and Battered Women's Advocates**

Although as a reflection of contemporary sentiment, the state is historically complacent in the commission of domestic violence. "At the time of [the United States'] founding, wife-beating was approved as integrally connected to a system in which wives ceased to exist as independent legal entities upon marriage. Because husbands could be held responsible for their

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<sup>6</sup> Now termed "the anti-domestic violence movement." This paper will use these terms interchangeably.

<sup>7</sup> *Id.* at 1666-75.

<sup>8</sup> *Id.* at 1675-77.

wives' conduct, it was believed that they had the right to control their wives' behavior, through physical violence if necessary."<sup>9</sup>

Indeed, as recently as the 1970's "wife beating was considered a private matter between husband and wife in which the state should not intrude . . . Police officers were trained to separate spouses at the scene of a domestic incident and, if necessary, to tell the husband to 'cool off' by 'taking a walk around the block.'" Throughout this time, domestic incidents were deemed "low priority," where police either responded hours late, or not at all. Because of the state's monopoly on "essential services" like law and policing, victims of domestic violence were often left without legal recourse.<sup>10</sup>

The state's unwillingness, or inability, to effectively respond to situations of domestic violence is evidenced by the fact that it was the private sector itself, unburdened by the "popular will," that first began to address the issue. This phenomenon began in 1885 with the Chicago "court watch" program facilitated with help from the Women's Club of Chicago.<sup>11</sup>

Associate Professor Emily J. Sack of Roger Williams University School of Law recounts the private impetus behind the emergence of the Battered Women's Movement, and its reluctant pursuance of state involvement:

[t]he early battered women's advocacy movement was a grassroots effort to provide services and shelter to domestic violence victims, *independent of state involvement* (emphasis added). Given battered women's experience with the justice system, it was obvious that the state was not the source of help for domestic violence victims. Moreover, as a theoretical matter, many advocates viewed the state as an enforcer of a patriarchal system, with an interest in maintaining the status quo of male dominance over women. The state's condonation of male violence against women exemplified this interest.

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<sup>9</sup> *Id.* at 1661-2.

<sup>10</sup> *Id.* at 1661-1665.

<sup>11</sup> EVE S. BUZAWA, CARL G. BUZAWA, & EVAN D. STARK, RESPONDING TO DOMESTIC VIOLENCE 2 (Laura Kirkhuff et al. eds., 5th ed. 2017).

However, many battered women's advocates realized the need to effect systemic change, and focused not only on assistance to individual women, but also on revamping the laws and policies that ignored domestic violence as an issue for the public justice system. In order for the public's attitude toward domestic violence to change, the state's traditional role in tolerating domestic violence had to be attacked. These advocates pushed for the direction of state resources to battered women, such as the funding of battered women's shelters and community-based victim advocacy groups. Battered women's advocates also worked to change laws and policies to increase access for domestic violence victims to civil protection orders against their abusers. In addition, they advocated for increased enforcement of criminal law, including aggressive police involvement and prosecution in domestic violence cases.<sup>12</sup>

Through the late twentieth century and into the twenty-first, an uneasy alliance developed between the state and battered women's advocates. "[t]he tension lay in whether the battered women's movement could partner with the state without being co opted by it."<sup>13</sup>

In tandem with these aggressive state policies, our textbook lists three other factors that constitute "the revolution" in domestic violence policing. They include: 1) the development of legal, health, and social service resources, both private and publicly funded, and 2) the proliferation of awareness and knowledge.<sup>14</sup> However, both the Buzawa text and Associate Professor Sack note that criminalization and arrests constitute "the heart of public reforms," which have rested "heavily on reforming criminal justice and legal intervention with offenders and victims." From this point, it is evident from the text that social service agencies and individual rehabilitation efforts have taken a backseat to criminalization.<sup>15</sup>

Despite this trend toward criminalization, Professor Leigh Goodmark notes that there is "no reliable social science data ties the drop in the rates of intimate partner violence to

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<sup>12</sup> Sack, *supra* note 3, at 1666.

<sup>13</sup> *Id.* at 1676.

<sup>14</sup> Buzawa, et al., *supra* note 9, at 1-2.

<sup>15</sup> *Id.* at 2. See also Leigh Goodmark, *Should Domestic Violence Be Decriminalized?*, 40 Harv. J.L. & Gender 53, 55 (Winter, 2017).

criminalization . . . [or to the] Violence Against Women Act.”<sup>16</sup> Moreover, Professor Sack is critical of the ultimate effectiveness of these aggressive policies, stating that in some ways they have “revictimized” victims of intimate partner violence. She notes that mandatory arrest and prosecution take autonomy away from victims by aggravating violence against them, subjecting racial minority perpetrators to a racist judicial system, or initiating the deportation of immigrant abusers.<sup>17</sup> To battered women’s advocates, these are all important and valid concerns, especially in light of their ultimate goal: “the impact of these policies on the safety and autonomy of battered women.”<sup>18</sup>

In light of legitimate concerns presented by Professor Sack and other battered women’s advocates, the movement has reached an interesting crossroads:

while some battered women’s advocates may distrust government intervention in domestic violence issues, none would want to return to the period when abuse was perceived as only a private family matter in which the state should not intrude. Therefore, the solutions they propose reflect the ambivalence of not wanting to rely on government intervention and yet not wanting the government to abandon battered women.<sup>19</sup>

From this crossroads, a split emerges in the movement. One group favors a continuance of aggressive, mandatory policies, while the other opposes them. Despite this split, both groups favor “increased state services for battered women, including greater access to shelters, economic assistance, and employment opportunities.”<sup>20</sup>

While admitting that mandatory policies have their flaws, Professor Sack argues that a return to discretionary policies would regress the movement to the mid-1970s, when state actors

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<sup>16</sup> Goodmark, *supra* note 14, at 55-6.

<sup>17</sup> Sack, *supra* note 3, at 1678-80.

<sup>18</sup> *Id.* at 1679.

<sup>19</sup> *Id.* at 1687-8.

<sup>20</sup> *Id.* at 1688.

saw intimate partner violence as a private matter in which the state should not interfere.<sup>21</sup> She continues:

[r]ather than abandoning mandatory criminal justice policies that even their critics recognize have several benefits, we should address directly the problems with the implementation of these policies, and examine the laws and policies that create consequences for arrest and prosecution with which we disagree.<sup>22</sup>

Complicating these efforts (which Professor Sack details as consisting of state-centric reforms, research, and community outreach)<sup>23</sup> are competing political influences such as men's rights activists, "conservative 'feminists,'" and resistance from within the criminal justice community itself.<sup>24</sup>

In light of 1) the severe political resistance that anti-domestic violence advocates face, 2) growing concern for mass incarceration in the United States, and 3) lingering doubts concerning the effectiveness of mandatory policies (not to mention the regressive threat of repealing said policies), the remainder of this paper will argue that anti-domestic violence advocates, and indeed society in general, is fatally incorrect in appealing to the state as a real solution to the problem of domestic violence.

### **III. The State's Antiquated Business Model**

What is the state? Why, despite the political process, is the state unable to adapt to the diverse minutiae of both individual and public demand?

According to German sociologist Franz Oppenheimer, the state is "the organization of the political means." He further articulates:

There are two fundamentally opposed means whereby man, requiring sustenance, is impelled to obtain the necessary means for satisfying his desires. These are

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<sup>21</sup> *Id.* at 1688-9.

<sup>22</sup> *Id.* at 1697.

<sup>23</sup> *Id.* at 1722-1738.

<sup>24</sup> *Id.* at 1697-1721.

work and robbery, one's own labor and the forcible appropriation of the labor of others . . . I propose in the following discussion to call one's own labor and the equivalent exchange of one's own labor for the labor of others, the 'economic means' for the satisfaction of need while the unrequited appropriation of the labor of other will be called the 'political means' . . . The State is the organization of the 'political means.'<sup>25</sup>

Because the state does not obtain its resources through the process of voluntary exchange, its very existence is not beholden to the demands of those it purports to serve. If victims of domestic assault are dissatisfied with the service that the agents of the state provide, the state will continue to be funded through compulsory taxation,<sup>26</sup> thus immunizing itself against the wrath of unbridled market forces.

Moreover, without the price discovery process unique to the private sector, there is no means by which the state may accurately calculate where to efficiently allocate resources:

The preeminence of the capitalist system consists in the fact that it is the only system of social cooperation and division of labor which makes it possible to apply a method of reckoning and computation in planning new projects and appraising the usefulness of the operation of those plants, farms, and workshops already working. The impracticability of all schemes of socialism and central planning is to be seen in the impossibility of any kind of economic calculation under conditions in which there is no private ownership of the means of production and consequently no market prices for these factors . . . In the capitalist system all designing and planning is based on the market prices. Without them all the projects and blueprints of the engineers would be a mere academic pastime. They would demonstrate what could be done and how. But they would not be in a position to determine whether the realization of a certain project would really increase material well-being or whether it would not, by withdrawing scarce factors of production from other lines, jeopardize the satisfaction of more urgent needs, that is, of needs considered more urgent by the consumers. The guide of economic planning is the market price.<sup>27</sup>

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<sup>25</sup> MURRAY ROTHBARD, *ANATOMY OF THE STATE* 15 (2009) (citing FRANZ OPPENHEIMER, *THE STATE* 24-27 (1926)).

<sup>26</sup> On the other hand, a business that generates revenue through voluntary exchange will lose the customers that it fails to serve.

<sup>27</sup> LUDWIG VON MISES, *BUREAUCRACY* 18-9 (1972).

The state, in lacking the ability to accurately allocate resources, will never be able to serve its customers as efficiently as the private sector. To suppress this reality, the state will simply outlaw competition, or use its coercive regulatory power to either patently, or effectively, relegate responsibility to a private monopoly, often excluding said monopoly from traditional legal liability.<sup>28</sup>

Furthermore, within its legal monopoly, the state also claims the power to arbitrate disputes, to which the state itself is a party.<sup>29</sup> Often, whether for practical reasons or otherwise, it precludes itself from personal liability to those it fails to protect.

For example, in *Town of Castle Rock v. Gonzales*,<sup>30</sup> the Supreme Court concluded that:

[R]espondent did not, for purposes of the *Due Process Clause*, have a property interest in police enforcement of the restraining order against her husband . . . This result reflects our continuing reluctance to treat the *Fourteenth Amendment* as ‘a font of tort law,’ but it does not mean that states are powerless to provide victims with personally enforceable remedies.<sup>31</sup>

In this case, the Castle Rock Police Department failed to enforce a permanent restraining order, resulting in the abduction and eventual deaths of three young girls, ages ten, nine, and seven, at the hands of their estranged father.

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<sup>28</sup> As in the case of public utilities.

<sup>29</sup> Outside of the current paradigm, this would be flagrant conflict of interest. This issue is not solved through “separation of powers” or federalism; See Hans-Hermann Hoppe, *The Paradox of Imperialism*, The Mises Institute: Mises Daily Articles (June 4, 2013), <https://mises.org/library/paradox-imperialism>. (“Conventionally, the state is defined as an agency with two unique characteristics. First, it is a compulsory territorial monopolist of ultimate decision-making (jurisdiction). That is, it is the ultimate arbiter in every case of conflict, including conflicts involving itself. Second, the state is a territorial monopolist of taxation. That is, it is an agency that unilaterally fixes the price citizens must pay for its provision of law and order. Predictably, if one can only appeal to the state for justice, justice will be perverted in favor of the state. Instead of resolving conflict, a monopolist of ultimate decision-making will provoke conflict in order to settle it to his own advantage. Worse, while the quality of justice will fall under monopolistic auspices, its price will rise. Motivated like everyone else by self-interest but equipped with the power to tax, the state agents' goal is always the same: to maximize income and minimize productive effort.”); see also MURRAY ROTHBARD, *FOR A NEW LIBERTY* 59-60, (1973) (citing JOHN C. CALHOUN, *A DISQUISITION ON GOVERNMENT* 25-7 (1953) (discussing the futility of “separation of powers.”)).

<sup>30</sup> *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

<sup>31</sup> *Id.* at 768.

The incident occurred after their mother, suspecting their abduction, phoned police at 19:30 20:30, 22:10, and 00:10. Throughout the phone calls, she was informed that there was nothing the police could do about the restraining order. They simply advised her to wait and see if her estranged husband brought the girls back.

At 20:30, the estranged husband called, indicating to the respondent that he had taken the girls to a theme park in Denver. Respondent immediately called the police department and requested they check the theme park for his vehicle and put out an “all points bulletin.” They refused to do either.

Fed up with the lack of response, at 00:50 she drove to the police station and filed an incident report. “The officer who took the report ‘made no reasonable effort to enforce the TRO or locate the three children. Instead, he went to dinner.’” At 03:20, the estranged husband arrived at the police station with a 9mm handgun and effectively committed suicide by discharging it at armed police officers. In the cab of his truck, police “found the bodies of all three daughters, whom he had already murdered.”<sup>32</sup>

In the interest of protecting federalism and state sovereignty, the Supreme Court made the proper decision by excluding liability under the *Fourteenth Amendment*, thus leaving the door open for states to create “a system by which police departments are generally held financially accountable for crimes that better policing might have prevented.”<sup>33</sup> However, from the perspective of a victim of domestic violence, this result may be unsatisfying, as many states have not done so, or have done so only in a narrow sense.<sup>34</sup>

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<sup>32</sup> *Id.* at 666-7.

<sup>33</sup> *Id.* at 768-9.

<sup>34</sup> *Id.* at 769 n.15.

Even though some states have recognized or provided common law and statutory relief that “afford[s] a cause of action for police failure to enforce restraining orders,” the case law articulates a general rule that governmental liability requires the undertaking of a special duty.<sup>35</sup> This general doctrine is clearly delineated in *Warren v. District of Columbia*,<sup>36</sup> where the court dismissed a series of complaints related to inadequate policing:

The Court, however, does not agree that defendants owed a specific legal duty to plaintiffs with respect to the allegations made in the amended complaint for the reason that the District of Columbia appears to follow the well-established rule that official police personnel and the government employing them are not generally liable to victims of criminal acts for failure to provide adequate police protection . . . This uniformly accepted rule rests upon the fundamental principle that a government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen . . . At any given time, publicly furnished police protection may accrue to the personal benefit of individual citizens, but at all times the needs and interests of the community at large predominate. Private resources and needs have little direct effect upon the nature of police services provided to the public. Accordingly, courts have without exception concluded that when a municipality or other governmental entity undertakes to furnish police services, it assumes a duty only to the public at large and not to individual members of the community.<sup>37</sup>

Assuming the state’s legitimacy, it absolutely makes sense why government actors are excluded from liability for failing to provide adequate police protection, absent a special duty. The state, by its very nature, is unable to accurately allocate resources and is not beholden to market signals, resulting in individual consumers that are often unsatisfied with the service they receive. If a duty to protect individuals was imposed upon police and governmental actors, absent a special relationship, the courts would not only be inundated with a deluge of claims, but would have to pay out these claims with taxpayer funds, which are obtained coercively from the public.

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<sup>35</sup> *Id.*

<sup>36</sup> *Warren v. District of Columbia*, 444 A.2d 1 (D.C. App.) (1981).

<sup>37</sup> *Id.* at 11.

To this point, Section III has illustrated how the state is: 1) immunized against market forces, 2) unable to accurately allocate resources, and 3) for various reasons, shielded from legal liability. These shortcomings stem from the state's fundamental moral failing: that the state delegates to itself, its actors, its private-sector friends, and its dependents, rights that either don't exist, or are that are not possessed by all private individuals.

To illustrate this point, the reader will refer to Justice Ginsburg's dissent from *Castle Rock v. Gonzalez*:

Surely, if respondent had contracted with a private security firm to provide her and her daughters with protection from her husband, it would be apparent that she possessed a property interest in such a contract. Respondent's claim of entitlement to this promised service is no less legitimate than the other claims our cases have upheld, and no less concrete than a hypothetical agreement with a private firm.<sup>38</sup>

While dicta, this quotation underscores the fact that the public sector, its agents, and (in certain situations) friendly private-sector elements, are often subject to a different standard than everyone else. Moreover, the state is the only organization in society that has the ability to define and allocate such power.

In *Castle Rock*, the police undertook a duty to enforce the respondent's restraining order. In this instance, a contract that would otherwise have imposed a private security firm with the duty to protect the respondent is unenforceable within the purview of the state. The Supreme Court effectively permitted the City of Castle Rock to be excluded from liability for its own failure to recognize such a duty.

The bright-line rule in *Warren* bodes even worse, not only for victims of domestic assault, but for every American who calls the police for protection. Although it is logical, from a

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<sup>38</sup> *Castle Rock*, *supra* note 29, at 791 (Ginsburg, J., dissenting).

public policy standpoint, not to impose unlimited liability upon traditional government police, the state's model leaves individual victims of police misconduct largely without legal recourse. This policy unburdens police officers from the strict liability that would otherwise punish negligent or dangerous private security firms who contracted with individuals for protection.

Even when the state's actors do follow through with the criminal legal service they have monopolized, the nature of the service has caused massive societal problems, because it is driven by political and not individual demand. For instance, the criminalization of domestic violence has

been critiqued on a number of fronts: it is ineffective, it focuses disproportionately on people of color and low income people, it ignores the larger structural issues that drive intimate partner violence, it robs people subjected to abuse of autonomy and it ignores the pressing economic and social needs of people subjected to abuse.<sup>39</sup>

In addition to the above stated negative consequences, "scholars have argued that the turn to criminal law to address domestic violence has contributed to the phenomenon of mass incarceration."

Generally speaking, criminalization, the state's primary response to not just domestic violence policing,<sup>40</sup> but policing in general, has been called "a 'remarkable' failure, 'perhaps the greatest in American history.'"<sup>41</sup>

Since 1980, the incarceration rate in the United States has increased exponentially. Levels of incarceration have increased by five times during the life of the anti-domestic violence movement. The United States incarcerates approximately 2.2 million people, with another 5 million under the scrutiny of parole and probation officers. While the criminalization of domestic violence may not have been the primary cause of the increase in mass incarceration in the

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<sup>39</sup> Goodmark, *supra* note 14, at 58.

<sup>40</sup> *Id.* at 56.

<sup>41</sup> *Is.* at 69.

United States, scholars have argued that the turn to criminal law to address domestic violence has contributed to the phenomenon of mass incarceration.<sup>42</sup>

This exponential increase in the prison population is an abomination to any nation that proclaims itself to be “The Land of the Free.”

Professor Goodmark continues to question the effectiveness of criminalization in reducing or deterring instances of domestic violence, especially in spite of its negative consequences, concluding that, as above stated, there is:

[n]o reliable social science data ties the drop in the rates of intimate partner violence to criminalization or to the increased funding and criminal legal system activity spurred by the Violence Against Women Act.<sup>43</sup>

However, decriminalization seems to be an unsatisfying answer, given the fact that intimate partner violence is a victim-based crime more deserving of police attention than non-violent drug offences.

Setting aside the inconclusive deterring effect that traditional, state-centric “solutions” have had on intimate partner violence, prosecution is, by its very nature, reactionary and not preventative. The criminal process may only take place *after* a family member has been beaten and *after* children have been exposed to violence. In order to effectively prevent violent crime, victim advocates should themselves use the profit motive to create private, preventative business models in a way that makes the state obsolete.

#### **IV. Private Alternatives**

In Section III, this paper attempted to illustrate the state’s fundamental shortcomings as a provider of essential services, specifically in policing domestic violence. Section IV will

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<sup>42</sup> Goodmark, *supra* note 14, at 56.

<sup>43</sup> Goodmark, *supra* note 14.

demonstrate how and why, within the purview of domestic violence, a market-driven security force is preferable to a state-centric model.

In contrast to the state's model of domestic violence policing, private, voluntary models do not receive their funding from civil asset forfeiture, federal grants, or coercive taxation. Because private entities do not have a guaranteed source of income, they must satisfy the demands of their consumers. If a private security agency failed to protect their individual consumers, they could go out of business or lose business to a competitor.

Within the state's monopoly, if the police perform poorly, victims are oftentimes simply out of luck.<sup>44</sup> Moreover, because of guaranteed funding, the police have little incentive to tailor their policies to individual demand, save perhaps significant political will or public outcry. Even if enough political will manifested to enact targeted, popular reforms, without the profit motive, the state would be unable to tailor its policy to individual demand, or accurately participate in the price discovery process.<sup>45</sup>

Accordingly, a private security firm could, and has, outpaced the police within the purview of domestic violence policing. For example, since 1995, the Victory Program at the Detroit Threat Management Center, staffed by volunteers, has protected over one thousand victims of domestic violence and stalking, free of charge.<sup>46</sup> In tandem with protecting at-risk individuals, Detroit Threat Management Center's Victory program offers additional services that the police usually do not have the resources to provide like, monitoring parenting exchanges, providing "bug-out" relocations for abuse victims, performing court and school escorts, and even

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<sup>44</sup> See generally Castle Rock, *supra* note 29; see also Warren *supra* note 35.

<sup>45</sup> As discussed above.

<sup>46</sup> Victory Program, Threat Management Centers, <http://www.threatmanagementcenter.com/vctryprg.htm>.

providing kidnap recovery services. Since its inception in 1995, “no individual or family has ever been injured [or] killed after coming to Detroit Threat Management Center for help.”<sup>47</sup>

Because the Detroit Threat Management Center is a 100 per cent, for-profit enterprise that does not receive any taxpayer funding, government grants, or subsidies, the profit motive requires them to tailor their services to the individual demands of their customers.<sup>48</sup> Moreover, if a customer is not satisfied with the services Detroit Threat Management provides, there is no one forcing a business or philanthropic relationship. Customers are free to seek security services elsewhere.<sup>49</sup>

By providing security for landlords and non-violent threat management consulting, the Threat Management Center generates enough profit to facilitate altruistic, community resources like self defense training, neighborhood patrols, and bodyguard services for vulnerable individuals and families. Their altruistic nature, aside from fulfilling their employees, has the added benefit of producing good PR credibility for the company. By analyzing feedback provided by the price mechanism and the profit motive, they are able to accurately delineate which policies are profitable from those that are not in a way that government agencies are incapable of doing by their very nature.<sup>50</sup>

Guided by the profit motive, which allows business owners to quickly judge whether their efforts are creating real value, Detroit Threat Management has identified the state’s

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<sup>47</sup> *Id.*

<sup>48</sup> Charitable giving, while not as precise as profit mechanism, are still a reliable indicator of good business practices. Private charities are usually careful to allocate donated funds towards a good use. In contrast, the public sector oftentimes equates failure with a lack of funding.

<sup>49</sup> This merely underscores the need for additional private security firms. Through market forces, these firms must compete with each other for clients. Skeptics may imagine a chaotic situation, where security firms physically battle for clients, but it is best to keep in mind that violence opens the door for legal consequences and represents a pure loss of revenue. Violence is bad for business, and private firms do not have the benefit of large tax bases to guarantee funding.

<sup>50</sup> Mises, *supra* note 26.

reactionary model of policing as ineffective and unproductive. Commander Dale Brown, the founder of the Detroit Threat Management Center explains the success of his alternative business model, which focuses on prevention and not prosecution:

I created a sustainable system. I trained people as bodyguards to create excellence in managing human threats through nonviolent approaches. And as a result it turns out that wealthy people get wealthier when there's less death, carnage, lawsuits, injuries, and incarcerations on their property. This means that they like my peaceful approach, because it means more prosperity for them. But my focal point was community family safety, not allowing violent criminals to attack families. So it's a win for everyone, and it's sustainable because it's profitable . . . people need to know that there is prosperity with preventive protection as a model for managing human threats . . .

When I came to Detroit I found out that the law enforcement community was bent on one thing, and that's prosecution. No matter how much I pleaded with them to protect the population, they just weren't interested as a group, African Americans as well as Caucasian officers. It was across the board. The preoccupation was in predatory policing with the idea that we need to incarcerate people by any means necessary, setting up police stings, selling drugs, anything to do to create conditions for crime and then hold the people accountable to go to prison for those crimes that were preventable. And that's what I do. I prevent violent criminal activities. My staff is focused on public safety through non-violence by creating conditions where violence cannot occur, because predators cannot prey upon the families and the businesses. And it's profitable for everyone and positive . . .

I created prosperous outcomes over and over again without losses, without injuries, without deaths, no killings of unarmed people, of innocents. And we have been attacked. We started seeing, you know, in the most ultra-violent situations, and I learned through these extremely violent conditions better ways outcomes, and all I can tell you is it was also because I had to. I'm accountable. I have no qualified immunity. That means if I put my hands on someone it has to be legal. There has to be a way for me to explain this as a civilian. And as a result, we've had no court cases in twenty years, no lawsuits in twenty years.<sup>51</sup>

In addition to providing security and community services, Threat Management Center has partnered with several philanthropic organizations to provide victims with the counseling

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<sup>51</sup> *Ep. 597 Can the Private Sector Protect Against Crime? This Case Study Will Blow Your Mind*, THE TOM WOOD SHOW (Feb. 19, 2016) (<http://tomwoods.com/597>).

resources that they need. These organizations include: “Safe Horizon,” “Turning Point,” “Interim House of the Metropolitan Detroit YWCA,” and “Haven.”<sup>52</sup>

Despite the great resources that these philanthropic organizations provide,<sup>53</sup> many of the same economic principles that prevent the state from adapting to market demand still apply to nonprofits and public social services. This is because so of them receive state assistance through the form of special tax exemptions, subsidies, and legal privileges that shield them from pure market forces and the profit motive. With more innovative business plans, there is no reason to believe that other, private businesses are incapable of stepping in to replace non-profits<sup>54</sup> and state-based social services. To achieve this, the state must lower the barrier of entry for new businesses. Once it is easier to start a business, domestic violence advocates must step up to the plate and innovate with similar philanthropic, private enterprises. Eventually a competing web of private businesses should be able to step in to replace state-based services.

## **VI. Conclusion, and a Warning**

The anti-domestic violence movement was birthed as a grassroots, non-state social undertaking because many of its original advocates saw the state as protecting and legitimizing domestic violence. Since then, the movement has attempted to use the state to influence public policy. This marriage has proven to be troublesome, because the state, by its very nature, is incapable of adapting to individual demand. As a result, mandatory policies and aggressive

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<sup>52</sup> Collaborative Organizations, Threat Management Centers, <http://www.threatmanagementcenter.com/afftorgs.htm>.

<sup>53</sup> There is nothing wrong with completely non-state charity, but it most likely cannot, by itself, shoulder the entirety of demand.

<sup>54</sup> Nonprofits are unable to increase their productivity as efficiently as for-profit businesses. Lacking the profit-loss motives, nonprofits cannot participate in an accurate price discovery process. Additionally purely private enterprises use profit to invest in capital which, in turn, increases productivity. Furthermore, without an accurate price discovery process, a nonprofit is incapable of knowing where to invest capital to bring about the mov

criminalization has further undermined victim autonomy and contributed to mass incarceration without definitively affecting the volume of intimate partner violence.

If past performance is to be indicative of future results, the anti-domestic violence movement should abandon the state as the primary means for expanding victim autonomy and preventing instances of intimate partner violence. While victims now have some recourse, if forward progress is to be maintained, the movement must begin to think outside the purview of the state and seed private enterprise with competing business models.

In response, the state must lower the barrier of entry for these business to take root and stay out of their way. It is of the utmost importance that the state not grant these businesses subsidies or extra legal protections, lest they become despotic, corrupted by political influences, or simply another wing of the state itself. Just as the anti-domestic violence movement emerged as a positive, grassroots effort, it must remain so by condemning state involvement.

Indeed, when the government supercharges “private” industry with artificial demand, legal privileges, and subsidies, the results are disturbing. For instance, to deal with mass incarceration, the Justice Department created demand for “private” prisons. These Frankenstein inversions of free market enterprise have been rightfully lambasted in the media for their deplorable treatment of prisoners.<sup>55</sup>

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<sup>55</sup> See Brittany Hunter, Don't Confuse "Private" Prisons with Free Market Prisons, The Mises Institute: Mises Wire (Aug. 29, 2016), <https://mises.org/blog/dont-confuse-private-prisons-free-market-prisons>. It is nearly impossible to predict exactly how private security firms, such as Detroit Threat Management would deal with the question of incarceration. Most victims of violent crime merely wish to be made whole. For now, the Detroit Threat Management is based on a preventative business model, which means protecting victims from abusers by making the abuse impossible. That being said, libertarian legal theorists have outlined how entire voluntary, non-state legal systems would work. Many have questioned if prisons would be made obsolete through a better business model. If prisons would exist, theorists like Robert Murphy have suggested that their purpose would be to secure restitution and could be funded through competing insurance firms. However, these theories are beyond the scope of this paper. For more information, *See generally* BRUCE L. BENSON, THE ENTERPRISE OF LAW: JUSTICE WITHOUT THE STATE (1990); BRUCE L. BENSON, TO SERVE AND PROTECT (1998); DAVID D. FRIEDMAN, THE MACHINERY OF FREEDOM (3RD ED. 2003); ROBERT MURPHY, CHAOS THEORY (2002).

It is difficult to predict precisely how the free market would solve social problems. However, this reality is merely illustrative of the fact that individual demand may only be met through what Adam Smith described as the *invisible hand* of the marketplace. Operating outside of the voluntary marketplace, the state exercises immoral, coercive violence to secure its funding and its legal monopolies, thus insulating itself from the wrath of consumer demand on the free market. If anti-domestic violence advocates continue to ally themselves with the state, they will never be able to tailor policy to the individual demand of the victims for whom they advocate.