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## THE LAW, GENDERED ABUSE, AND THE LIMITS AND POSSIBILITIES OF FEMINIST THEORY

Lisa D. Brush \*

LEIGH GOODMARK, *A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM* (2011). Pp. 263. Hardcover \$65.00.

The year 2013 marked the thirtieth anniversary of the publication of Catharine MacKinnon's *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*.<sup>1</sup> Although she does not cite this essay in particular, Leigh Goodmark<sup>2</sup> refers to MacKinnon as a founding theorist of dominance feminism.<sup>3</sup> As Goodmark recounts the history of feminist legal theory and activism in *A Troubled Marriage*,<sup>4</sup> dominance feminism provided the theoretical foundation for what became the United States legal system's response to women subjected to what Goodmark calls domestic violence.<sup>5</sup> Goodmark contends that this theoretical foundation was gravely flawed (she uses the past tense rather than the anthropological present when she refers to the history of a theory whose time Goodmark thinks has passed—and not a moment too soon).<sup>6</sup> “Convinced that the state should intervene on behalf of wom-

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1. Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence* 8 SIGNS 635 (1983).

2. Associate Professor of Law, Director of Clinical Education, and Co-Director of the Center on Applied Feminism at the University of Baltimore School of Law.

3. See LEIGH GOODMARK, *A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM* 10 (2011). Goodmark follows Abrams in using this modifier for feminist analyses that focus explicitly on describing, explaining, and remedying women's sexual and gender subordination. See Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304 n.1 (1995).

4. GOODMARK, *supra* note 3.

5. *Id.* at 14, 15. *Intimate partner violence* (“IPV”) is the currently popular social science term for the force and force-threats with which abusive partners shape the dynamics of relationships when they attack, belittle, coerce, or control their spouses, dates, or lovers. See LISA D. BRUSH, *POVERTY, BATTERED WOMEN, AND WORK IN U.S. PUBLIC POLICY* 25 n.9 (2011) [hereinafter BRUSH, *POVERTY, BATTERED WOMEN, AND WORK*]. *Domestic violence* apparently remains the common term in legal scholarship, and Goodmark uses it. Except when invoking others' writing, in which case I use their term(s), I refer to *partner-perpetrated abuse*, which captures the combination of physical violence, emotional cruelty, and coercive control characteristic of abuse in this era of extensive but uneven women's employment, enfranchisement, and feminist organizing. See EVAN STARK, *COERCIVE CONTROL: THE ENTRAPMENT OF WOMEN IN PERSONAL LIFE* 5 (2007). Goodmark refers to women “subjected to abuse” (rather than victims, survivors, or battered or abused women), a turn of phrase attractive to the extent that it refuses to make abuse a modifier of women, describes their situation aptly, and avoids the whole “victim/survivor” conundrum. GOODMARK, *supra* note 3, at 4. The passive voice grammatically obscures the political subject of men's abuse of women.

6. See GOODMARK, *supra* note 3, at 28.

en subjected to abuse, advocates urged the state to assume responsibility for policing and prosecuting domestic violence,” Goodmark begins.<sup>7</sup> The resulting legal response to partner-perpetrated abuse is:

excessively focused on physical violence rather than the totality of a woman’s experience of abuse, concerned primarily with separating women from their partners, regardless of the effectiveness of such policies or the desires of individual women, and bound to stereotypes of women subjected to abuse that take power from individual women and validate intrusions on women’s autonomy.<sup>8</sup>

Goodmark attributes the defects in the legal system’s response to women subjected to abuse primarily to the malign influence of dominance feminism.<sup>9</sup> Based on that attribution, she proposes that “[t]he time has come to reevaluate the legal system’s responsiveness to the complex and variable needs of women subjected to abuse” by “shift[ing] the theoretical lens through which domestic violence law and policy is viewed.”<sup>10</sup> Instead of dominance feminism, Goodmark urges, the lens of what she calls anti-essentialist feminism should shape the legal system’s response to women subjected to abuse.<sup>11</sup> This lens should moreover encourage “[t]hose who want to eradicate . . . abuse” to go beyond the law in the search for “multiple pathways for women to live autonomous lives free of abuse.”<sup>12</sup> Until this intersectional feminist theory, which privileges “the experiences of individual [diverse] women”<sup>13</sup> instead of “the experiences of white, middle-class, heterosexual women,”<sup>14</sup> has a chance “to permeate the legal structures, laws, and policies that make up the legal response to domestic violence,”<sup>15</sup> the relationship between domestic violence and the legal system will be the titular troubled marriage. Anti-essentialist feminism, Goodmark contends, leads not only to better ways to understand or reform the legal system, but also to the dissolution of feminists’ troubled and troubling commitment to the state and the law in particular as a route to social change.<sup>16</sup>

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7. *Id.* at 1.

8. *Id.* at 4. Goodmark joins many others in this indictment of the law-and-order response to partner-perpetrated abuse from very different perspectives. *E.g.*, LINDA G. MILLS, *INSULT TO INJURY: RETHINKING OUR RESPONSES TO INTIMATE ABUSE* 6 (2005); STARK *supra* note 5, at 7-8; Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 *STAN. L. REV.* 1241, 1243-44 (1991); SHERRY HAMBY, *BATTERED WOMEN’S PROTECTIVE STRATEGIES: STRONGER THAN YOU KNOW* (2013).

9. GOODMARK, *supra* note 3, at 3-4.

10. *Id.* at 4.

11. *Id.* at 4-5.

12. *Id.* at 197.

13. *Id.* at 4.

14. *Id.* at 5.

15. *Id.*

16. *Id.* at 137-38. The image of a troubled marriage in Goodmark’s title is ambiguous. Sometimes Goodmark identifies the trouble specifically in the way feminist activists have been wedded to legal strategies for countering and remedying the harms of men’s violence against women. Other times, she locates the trouble more generally between “domestic violence and the legal system,” as in the subtitle. Either way, Goodmark echoes the language but not the attitude of the classic essay by economist Heidi Hartmann. Heidi Hartmann, *The Unhappy Marriage of Marxism and Feminism: Toward a More Progressive Union*, 3 *CAPITAL & CLASS* 1 (1979). In particular, Goodmark’s simile is arguably more ironic than Hart-

Goodmark's synthetic, accessible, and critical account of the development, current condition, and possible futures of legal remedies for women subjected to abuse tracks the progress and perils of three decades of inspired feminist legal activism. Goodmark raises important questions about feminist theory and legal advocacy while engaging with longstanding debates about strategies for social change and the limits and possibilities of the state as a terrain of feminist struggle. In this thematic review, I seek to convey, contextualize, and assess Goodmark's argument. At the broadest level, Goodmark is weighing in on the contested issue of evaluating feminist activism and movement politics as well as the role of theory in feminists' projects of emancipation and reform. I read Goodmark's contributions in comparison to scholarship in the same and adjacent substantive areas. First, though, because of the central causal role Goodmark attributes to feminist legal theory in general and to dominance feminism in particular, and because she presents an important alternative and set of recommendations in the name of anti-essentialist feminism, I place Goodmark's argument in *A Troubled Marriage* in the context of debates in feminist state theory.

My intention is to highlight some of the controversial aspects of Goodmark's portrayal of feminist legal theory and feminist theories of the state. Her assessment of what has become standard operating procedure in the legal system's response to women subjected to abuse is consistent with both empirical and political critiques, and the more attention the book draws to the need for change in practice and policy, the better. However, the book is marred for the theoretically informed reader by Goodmark's tendency to oversimplify feminist state theory and overstate her causal argument. Further problems arise when Goodmark simultaneously relies on a Foucauldian critique of the state and legal power/knowledge, on the one hand, and offers a package of recommendations that features a markedly neo-liberal combination of market and therapeutic surveillance and discipline, on the other hand. I attribute this theoretical reductionism and concomitant problems to Goodmark's laudable good faith effort, in this first book, to make it comprehensible to as wide an audience as possible.

"Dominance feminists," Goodmark writes, "led by law professor Catharine MacKinnon, contended that male domination of women in the sexual sphere was the primary vehicle for women's continued subordination."<sup>17</sup> Goodmark continues:

Domestic violence law and policy reflects the influence of dominance feminism in its definitions of domestic violence, its images of "victims" and "perpetrators," its preference for separating women subjected to abuse from their partners, and its emphasis on the role of the state in righting power imbalances between women

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mann's because Goodmark is referring specifically to partner-perpetrated abuse, which is often hidden behind the euphemism of marital trouble.

17. GOODMARK, *supra* note 3, at 2.

subjected to abuse and their partners.<sup>18</sup>

This is a fair characterization of some aspects of a radical feminist analysis of partner-perpetrated abuse. It accurately conveys the importance of feminists' countering the hegemonic understanding of abuse (and rape, sexual harassment, and women's subordination more generally) as private, natural, divinely ordained, or all of the above, and therefore beyond the reach of the state, democratic politics, or the long arm of the law. It is certainly an accurate characterization of important aspects of the law-and-order approach to women subjected to abuse that has been in place throughout the United States (and Canada) since the early 1990s.<sup>19</sup> Goodmark explains that activists and advocates, guided by dominance feminism and the experience of battered women's movement founders (in this case, personified by advocate Barbara Hart):

articulated six goals for intervention by the legal system in cases involving domestic violence. Those goals were safety, first and foremost; followed by stopping the violence; holding perpetrators accountable; challenging the perpetrator's belief in his right to control his partner; restoration of women subjected to abuse—economically as well as to health, to life without fear, to relationships severed by the perpetrator; and enhancing the agency of women subjected to abuse.<sup>20</sup>

I suspect Goodmark would not object to a world with less violence, more accountability, and genuine restoration and enhanced agency for women subjected to abuse. However, Goodmark goes on to observe the mismatch between the goals of legal intervention and the goals of some women subjected to abuse who "might not rank safety first among their goals . . . [and] might also suggest that a number of goals are missing, including the desire to maintain a relationship with a partner despite the abuse and the desire to co-parent with an abusive partner."<sup>21</sup> From that mismatch, which she attributes to the essentialism of dominance feminism, Goodmark condemns the law-and-order approach altogether and with it the feminists who proposed that a democratic state ought to be a venue for struggling over the societal response to women subjected to abuse.<sup>22</sup>

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18. *Id.* at 3.

19. See generally Christina DeJong & Amanda Burgess-Proctor, *A Summary of Personal Protection Order Statutes in the United States*, 12 VIOLENCE AGAINST WOMEN 68 (2006); Ed Schollenberg & Betsy Gibbons, *Domestic Violence Protection Orders: A Comparative Review*, 10 CAN. J. FAM. L. 191 (1992).

20. GOODMARK, *supra* note 3, at 5-6 (citing Barbara J. Hart, *Arrest: What's the Big Deal?*, 3 WM. & MARY J. WOMEN & L. 207, 207-09 (1997)).

21. GOODMARK, *supra* note 3, at 6. See also MILLS *supra* note 8, at 9-10; Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1489 (2008); HAMBY *supra* note 8, at 18-20.

22. GOODMARK, *supra* note 3, at 6-7. See Nancy Fraser, *Feminism, Capitalism, and the Cunning of History*, 56 NEW LEFT REV. 97 (2009) [hereinafter Fraser, *Feminism*] (analyzing the "disturbing possibility" that "the cultural changes jump-started by the second wave [of feminist activism, including some of the key principles of dominance feminism], salutary in themselves, have served to legitimate a structural trans-

Goodmark makes several assumptions here, two of which I want to highlight. The one I like a lot is the assumption that women subjected to abuse are diverse, may want the abuse to stop without wanting the relationship to end, may not have their own physical safety as their top priority, and may not trust the police and courts as far as they can throw a grand piano. Most important is the assertion that diverse women who articulate these and other needs are neither deluded nor traumatized into false consciousness.<sup>23</sup> I agree with Goodmark and other observers—some of whom have been more sweeping than Goodmark in their condemnations of feminist analyses and advocacy strategies—that when researchers and advocates listen carefully to what women say they want and need, a complex and varied picture emerges.<sup>24</sup> Legal and social science scholarship, policy, and practice in a variety of disciplines will be greatly improved by incorporating these insights.<sup>25</sup>

The more questionable assumption is that feminists managed to integrate their analyses of women's plight and their radically transformative goals into the law-and-order approach to partner-perpetrated abuse. Even the most triumphalist accounts of feminist legal reform efforts of the 1970s-1990s<sup>26</sup> would see Hart's goals and MacKinnon's aspirations—"a new jurisprudence, a new relation between life and law"<sup>27</sup>—as assimilated into statute, policy, and practice in only the most fragmentary, contested, and partial ways. The nightmarish partisan foot-dragging in the spring of 2013 over reauthorizing the Violence Against Women Act<sup>28</sup> illustrates the fact that even at the most symbolic level, dominance feminism—indeed, feminism of any variety, or even a minimalist notion of bodily integrity, moral autonomy, and social respect as basic conditions of human flourishing<sup>29</sup>—is very far from

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formation of capitalist society that runs directly counter to feminist visions of a just society.”). *Id.* at 99.

23. See NANCY FRASER, *UNRULY PRACTICES: POWER, DISCOURSE, AND GENDER IN CONTEMPORARY SOCIAL THEORY* (1989) [hereinafter FRASER, *UNRULY PRACTICES*] (analyzing the struggle to define and politicize needs and the social, political, and material conditions required to meet them); HERBERT MARCUSE, *ONE-DIMENSIONAL MAN* 4 (1964) (distinguishing between “true” and “false” needs in support of his claim that “[t]he most effective and enduring form of warfare against liberation is the implanting of material and intellectual needs that perpetuate obsolete forms of the struggle for existence.”).

24. See, e.g., Tamara L. Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much is Too Much?*, 22 BERKELEY J. GENDER L. & JUST. 2, 7-8 (2007); Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U. J. GENDER SOC. POL'Y & L. 499, 514 (2003); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1738 (2004).

25. See generally BRUSH, *POVERTY, BATTERED WOMEN, AND WORK* *supra* note 5; KRISTIN BUMILLER, *IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE* (2008); MILLS *supra* note 8; STARK *supra* note 5; HAMBY, *supra* note 8.

26. See presentations and critiques in ROSE CORRIGAN, *UP AGAINST A WALL: RAPE REFORM AND THE FAILURE OF SUCCESS* (2013); STARK, *supra* note 5.

27. MacKinnon, *supra* note 1, at 658. See also Fraser, *Feminism*, *supra* note 22, at 105:

[U]nlike some of their countercultural comrades, most feminists did not reject state institutions *simpliciter*. Seeking, rather, to infuse the latter with feminist values, they envisioned a participatory-democratic state that empowered its citizens. Effectively re-imagining the relations between state and society, they sought to transform those positioned as passive objects of welfare and development policy into active subjects, empowered to participate in democratic processes of need interpretation. The goal, accordingly, was less to dismantle state institutions than to transform them into agencies that would promote, and indeed express, gender justice.

28. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54.

29. Jane E. Larson, *“Imagine Her Satisfaction”: The Transformative Task of Feminist Tort Work*, 33 WASHBURN L.J. 56, 56-57 (1993).

informing the law or legislators' approach to sexual and other violence and abuse. I suppose that this is an empirical question, and reasonable people could disagree. But even optimistic advocates of the position that there are "woman-friendly" states filled with feminist bureaucrats or "femocrats" who have profoundly changed the gendered character of law and policy<sup>30</sup> would question Goodmark's assumption that the many faults in the goals and procedures of the legal system's response to partner-perpetrated abuse are due primarily to too much of the wrong sort of feminist transformation of the law.<sup>31</sup>

Having made these assumptions, Goodmark then asserts that "[t]he battered women's movement has ceded control over the responses to domestic violence, enabling the state, through the legal system, to take primary responsibility for addressing domestic violence and to determine the objectives of that response."<sup>32</sup> Here, Goodmark joins a distinguished group of legal scholars (such as Janet Halley, Angela Harris, and Martha Mahoney) and political theorists (such as Wendy Brown, Kristin Bumiller, and Carol Smart) in critiquing feminism "for its portrayal of women as victims, its diminution of women's agency, its tendency toward essentialism, and its reliance on the state to redress women's powerlessness."<sup>33</sup>

This last point—that dominance feminism relies too much on law and the state to remedy the harms to at least some women living as subordinates in a sexist hierarchy<sup>34</sup>—rests principally on French post-structuralist Michel Foucault's argument that engaging with the law inevitably generates legal power/knowledge at the expense of other ways of knowing.<sup>35</sup> This critique of dominance feminism, in general, and MacKinnon's state theory, in particular, heightens rather than resolves the paradox of feminist efforts to change gender relations or women's life chances through strategies of legal reform.<sup>36</sup> I heartily agree with much of Goodmark's critique of the numerous ways that law-and-order responses to partner-perpetrated abuse (and rape)<sup>37</sup> fail many women. I am also friendly to many aspects of Foucault's critique of the legal/penal state.<sup>38</sup> However, I drop far less blame for this unhappy state of affairs at the door of feminist theory than Goodmark does. After all, MacKinnon's essay was all about the prospect of rooting feminist demands and cri-

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30. DOROTHY E. McBRIDE & AMY G. MAZUR, *THE POLITICS OF STATE FEMINISM: INNOVATION IN COMPARATIVE RESEARCH* 4-5 (2010).

31. *See id.*

32. GOODMARK, *supra* note 3, at 6.

33. *Id.* at 12.

34. *Id.* at 13.

35. *See* MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON*, 27-28 (Alan Sheridan trans., 2d ed. 1995) [hereinafter FOUCAULT, *DISCIPLINE AND PUNISH*]; MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* (Robert Hurley trans., 1978) [hereinafter FOUCAULT, *THE HISTORY OF SEXUALITY*]; Michel Foucault, *Two Lectures*, in *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS 1972-1977*, at 78-108 (Colin Gordon ed., 1980) [hereinafter FOUCAULT, *POWER/KNOWLEDGE*]. For examples of feminist appropriations, see WENDY BROWN, *STATES OF INJURY: POWER AND FREEDOM IN LATE MODERNITY* (1995), and CAROL SMART, *FEMINISM AND THE POWER OF LAW* (1989).

36. MacKinnon, *supra* note 1, at 643-45.

37. *See* CORRIGAN, *supra* note 26, at 17-18.

38. My friendliness is despite Foucault's failure to consider gender in governance, and not because he offers anything resembling a feminist theory of the state. *See* LISA D. BRUSH, *GENDER AND GOVERNANCE* (2003) [hereinafter BRUSH, *GENDER AND GOVERNANCE*]; *see also* FRASER, *UNRULY PRACTICES*, *supra* note 23.

tiques of law in a process of social and legal transformation that takes seriously diverse women's experiences and perspectives.<sup>39</sup>

When she poses anti-essentialist feminism as an alternative to dominance feminism, specifically as a feminist theory of the state and source of strategic decisions about whether, when, and how to use the law for responses to women subjected to abuse, Goodmark commits a classic syllogism. Only a little more baldly stated, the argument goes like this:

Dominance feminists engage the state.  
 Dominance feminism is essentialist.  
 Essentialism is bad.  
 Therefore, engaging the state is bad.<sup>40</sup>

Essentialism (the practice or theory of positing a unitary, universal, ahistorical, feminine-in-essence woman as the subject of feminist activism and the realist object of feminist theorizing;<sup>41</sup> “[d]ominance feminism’s tendency to assume the sameness of all women’s experiences”)<sup>42</sup> is only tangentially connected to MacKinnon’s willingness to propose that feminists use the power of politics and the state to disrupt men’s sexual subordination of women in the privacy of their own homes.<sup>43</sup> Yes, some women have more to fear than others from police intervention in their relationships, households, and communities. But even in this putatively anti-essentialist era, Evan Stark (to invoke just one important example) defines the harm of coercive control as men’s ability to “entrap women in personal life.”<sup>44</sup> It is not essentialism that suggests politicizing entrapment as a remedy, and all the anti-essentialism in the world will not help feminists theorize an alternative to state intervention or dissolve feminists’ “troubled marriage” to democratic processes, the state, and the law as the terrain of political struggle.

The problems feminists have with law and social policy cannot be attributed to the triumph of dominance feminism. Gender—at a minimum, gender polarization, androcentrism, and biological essentialism<sup>45</sup>—is a principle of organization in state institutions, ideologies, and capacities.<sup>46</sup> State actors and institutions, along with social policies, perceive, produce, and position women and men as different and unequal.<sup>47</sup> Feminist state theory—a gender lens on the state, if you will—helps make the gendered character and outcomes of the state and law visible, but the

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39. MacKinnon, *supra* note 1, at 639-40. See also Fraser, *Feminism*, *supra* note 22 (observing that “in rejecting the étatism of state-organized capitalism, second-wave feminists never doubted the need for strong political institutions capable of organizing economic life in the service of justice.”) *Id.* at 106.

40. GOODMARK, *supra* note 3, at 141-45.

41. *Id.* at 136.

42. *Id.* at 13.

43. *Id.* at 10-11, 13.

44. See generally STARK, *supra* note 5.

45. SANDRA LIPSITZ BEM, *THE LENSES OF GENDER: TRANSFORMING THE DEBATE ON SEXUAL INEQUALITY* 4 (1994).

46. FRASER, *UNRULY PRACTICES*, *supra* note 23, at 8.

47. BRUSH, *GENDER AND GOVERNANCE*, *supra* note 36, at 16.



flaws of the legal system's response to partner-perpetrated abuse are there whether you use feminism to look for them or not, just as the pattern of spots on a polarized windshield are there even when you don't see them because you are not looking through polarized sunglasses.<sup>48</sup> Yes, some of the mismatches between the available legal tools—protective orders, mandatory arrest, pro-prosecution policies<sup>49</sup>—and the needs of large groups of women subjected to abuse are rooted in mistaken assumptions of homogeneity among “battered women.”<sup>50</sup> Other mismatches are the unintended consequences of reform, as in the case of legal changes that give men greater access to the women they have abused.<sup>51</sup> Still other mismatches are the inevitable consequences of using democratic politics to mobilize for and make social change, while others are due to the disturbing ways the rise of neoliberalism has converged with feminist claims, resignified feminist critiques, and thwarted feminists' determination to transform politics and law.<sup>52</sup>

These mismatches and dilemmas are not exclusive to feminists. Critical race theory is not the cause of grossly disproportionate incarceration rates, stop-and-frisk policies, stand-your-ground laws, and the litany of other features of the racialized surveillance and incarceration state. Surely, anti-essentialism does not require that activists consign the state, law, and politics as a terrain of struggle to the people whose privileges it has hitherto protected as natural, as property, as democracy, or as neutral.

I do not grant Goodmark's assertion that the problems with the legal response to partner-perpetrated abuse are caused by dominance feminism. I do not buy the syllogistic logic of her reduction of feminist state theory to essentialism. I therefore question Goodmark's reliance on another set of feminist principles to correct those problems. The principles and agenda Goodmark articulates in the last three chapters of *A Troubled Marriage* have considerable merits as antidotes to the corrosive obsession with identifying the singular subject of feminism in the universal category of woman.<sup>53</sup> However, they do not constitute a feminist theory of the state or law. Goodmark recommends we construct anti-essentialist responses to domestic violence by avoiding essentialism (that is, by “[p]lacing the relationships, needs, goals, desires, and choices of individual women at the center of the legal response to domestic violence”),<sup>54</sup> humanizing men who abuse their partners, maximizing options, and retelling narratives of abuse so that the focus is on what women say they want

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48. *Id.* at 12-13.

49. BRUSH, POVERTY, BATTERED WOMEN, AND WORK, *supra* note 5, at 26.

50. Because of problems trying to identify the epistemological and ontological subject of feminism, whether the working mother or the battered woman, feminist theorists have been induced to suggest a more political process-oriented subject, such as women in collective action. *See, e.g.*, BRUSH, GENDER AND GOVERNANCE, *supra* note 36, at 84-85; LINDA M. G. ZERILLI, FEMINISM AND THE ABYSS OF FREEDOM 167-68 (2005); Lisa D. Brush, *Changing the Subject: Gender and Welfare Regime Studies*, 9 SOC. POL. 161 (2002) [hereinafter Brush, *Changing the Subject*].

51. *See* R. Amy Elman, *Unprotected by the Swedish Welfare State Revisited: Assessing a Decade of Reforms for Battered Women*, 24 WOMEN'S STUD. INT'L FORUM 39, 49-50 (2001).

52. Fraser, *Feminism*, *supra* note 22, at 111.

53. *See* ZERILLI, *supra* note 48, at 177-78.

54. GOODMARK, *supra* note 3, at 138.

and need.<sup>55</sup> Goodmark counters what she and other critics see as the central strategic failing of essentialist dominance feminism—its naïve willingness to rely on state intervention and legal reform—with a call for feminists to look “beyond law” to create more just outcomes (such as validation and vindication rather than criminal punishment) for women “unwilling to invite state intervention into their lives.”<sup>56</sup> This would be less objectionable, especially in the name of specific women, if it did not seem to entail abandoning politics. Goodmark’s proposal to move “beyond the law” seems embedded in the fantasy that truth and reconciliation commissions, markets, and community accountability are somehow not political institutions and processes, not potentially or actually informed by law and the state, and not profoundly gendered. Moreover, many of Goodmark’s substantive proposals (the use of microcredit to foster women’s entrepreneurship, for example, whether packaged as promoting “autonomy” or “community”) merely harness the dream of women’s emancipation to the engine of capitalist accumulation.<sup>57</sup>

I found it useful to read *A Troubled Marriage* in light of two recent books that till closely adjacent groves of feminist academe and policy concerning men’s violence against women: Evan Stark’s *Coercive Control*<sup>58</sup> and Rose Corrigan’s *Up Against a Wall*.<sup>59</sup> I use these comparisons to illustrate more concretely the admittedly abstract theoretical concerns I raised above.

Stark similarly celebrates and critiques the reputation for successful feminist legal reform of what Goodmark characterizes as the “spectacularly persuasive” arguments of dominance feminism.<sup>60</sup> Stark’s history of what he calls the violence approach to partner-perpetrated abuse claims that “[v]iewing woman abuse through the prism of the incident-specific and injury-based definition of violence has concealed its major components, dynamics, and effects, including the fact that it is neither ‘domestic’ nor primarily about ‘violence.’”<sup>61</sup>

Goodmark and Stark agree that, as Stark puts it, “[t]he domestic violence model has been an incredible success by conventional standards of intellectual productivity, funding, political credibility, or acceptance by courts and the general

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55. See Alesha Durfee, *Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders*, 4 FEMINIST CRIMINOLOGY 7, 26-27 (2009). The potential contradictions with this last point in particular are legion. Women whose narratives do not conform to legal conventions (because, for example, they lack access to legal representation) are less likely than women whose narratives are assimilated into prosecutors’ and judges’ understandings to obtain protective orders. See also Lorraine D. Higgins & Lisa D. Brush, *Personal Experience Narrative and Public Debate: Writing the Wrongs of Welfare*, 57 C. COMPOSITION & COMM. 694, 719-21 (2006) (noting the difficulties “subordinated rhetors” face in communicating about their experiences and analyses because they have to avoid both the rock of having their ideas ruthlessly assimilated into dominant discourses and the hard place of their ideas being illegible to those same discourses); FRASER, UNRULY PRACTICES, *supra* note 23.

56. GOODMARK, *supra* note 3, at 178.

57. Fraser, *Feminism*, *supra* note 22, at 110-111. See also Hester Eisenstein, *A Dangerous Liaison? Feminism and Corporate Globalization*, 69 SCIENCE AND SOCIETY 487 (2005).

58. STARK, *supra* note 5.

59. CORRIGAN, *supra* note 26.

60. GOODMARK, *supra* note 3, at 3.

61. STARK, *supra* note 5, at 10.

public.”<sup>62</sup> They concur, in addition, that current laws and criminal-justice system responses to domestic violence “focus disproportionately on physical abuse,” are rooted in racialized “[s]tereotypes of women subjected to abuse as passive, weak, and powerless . . . in need of salvation,” uniformly expect that women should separate from their partners, and “take power from individual women and validate intrusions on women’s autonomy.”<sup>63</sup> Stark and Goodmark reiterate long-standing critiques of the police state and its intrusions into the lives, families, and communities of women subjected to abuse, especially of the women most vulnerable to punitive<sup>64</sup> state intervention: women of color, poor women, single mothers, welfare recipients, and immigrants.<sup>65</sup> In contrast to Goodmark’s blaming dominance feminism for this sad state of affairs, however, Stark blames the ways the law-and-order state appropriated and co-opted feminist critiques of partner-perpetrated abuse of women.<sup>66</sup> He proposes re-conceptualizing the harm, crime, and legal system’s response to what he calls coercive control, replacing misdemeanor-level physical violence with liberty harms.<sup>67</sup> Stark’s approach is thus less epistemologically idealist in his assessment of what went wrong and less politically sanguine about theory as the solution to the problem of “how men entrap women in personal life”<sup>68</sup> than Goodmark’s.

In her work in the closely adjacent field of rape reform, Rose Corrigan documents and explains very similar processes of feminist demands for changes to the

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62. *Id.* at 11.

63. GOODMARK, *supra* note 3, at 3, 4.

64. Part of MacKinnon’s feminist critique of the gendered character of the state and law centers on the inadequacies of both liberal and Marxist theories and politics to propose state actions and institutional arrangements that might be in the interests of women as a group sharing certain concrete conditions, including systematic vulnerability to gendered violence. In her view:

[l]iberal strategies entrust women to the state. Left theory abandons us to the rapists and batterers. The question for feminism is not only whether there is a meaningful difference between the two, but whether either is adequate to the feminist critique of rape and battery as systemic and to the role of the state and the law within that system.

MacKinnon, *supra* note 1, at 643. In the current political climate, thirty years on, MacKinnon’s willingness to engage with the state perhaps seems quaintly optimistic, but not grossly misguided. Now, the workfare/prison state extends paternalist protectionism to no one. The liberal political imagination and will supporting public investment in health, welfare, education, and democratic participation are trumped by the punitive and disciplinary dynamics of the state: surveillance and incarceration, workfare, pitiless rules of property generating debt and foreclosure, and compulsory compliance with the “work hard and play by the rules” ethic of personal responsibility central to neo-liberalism. This is the part of the Foucauldian critique of the disciplinary state with which I wholeheartedly agree. See LOÏC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY 1-3 (2009); JAYE CEE WHITEHEAD, THE NUPTIAL DEAL: SAME-SEX MARRIAGE AND NEO-LIBERAL GOVERNANCE 6-7 (2011); Fraser, *Feminism*, *supra* note 22.

65. See, e.g., Ruth A. Brandwein, *Family Violence and Welfare Use: Report From the Field*, in BATTERED WOMEN, CHILDREN, AND WELFARE REFORM: THE TIES THAT BIND 45-58 (Ruth Brandwein ed., 1999) (pointing out that the “worthy” battered woman and the stigmatized “welfare cheat” are often the same person, and many of these categories of identity obviously intersect in the identities and social locations of many women—a basic point of anti-essentialism); JILL A. MCCORKEL, BREAKING WOMEN: GENDER, RACE, AND THE NEW POLITICS OF IMPRISONMENT 15-18 (2013); BETH E. RICHIE, ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA’S PRISON NATION 19-22 (2012); ROBERTA VILLALÓN, VIOLENCE AGAINST LATINA IMMIGRANTS: CITIZENSHIP, INEQUALITY, AND COMMUNITY 12-15 (2010).

66. See STARK, *supra* note 5, at 6-8.

67. *Id.* at 380-82.

68. See generally STARK, *supra* note 5.

legal and medical system's responses to rape. Corrigan observes that:

Early anti-rape activists framed a vision of legal reform based on rewriting criminal law, not asserting broad claims about a right to be free of violence or fear, or to equality. The anti-rape movement thus has no experience transforming its ideas about freedom or autonomy or bodily integrity into legally cognizable rights claims.<sup>69</sup>

Corrigan documents the institutional dynamics of law-and-order politics and medical expertise when feminist social movements are in abeyance, and attributes a considerable portion of the "failure of success" in rape reform to these phenomena.<sup>70</sup> She allocates another share of the blame to the ways feminist legal advocates moved on from legislative victories rather than pursuing a rights-based strategy for changing the legal and medical responses to rape.<sup>71</sup> Rape crisis center administrators and staff were left to fend for themselves in a partially transformed legal context and in settings—hospitals, courts, state-funded social service organizations—where they were often without material resources, credible expertise, or political leverage and thus unable to realize their modest immediate goals, let alone their transformative ambitions.<sup>72</sup> Corrigan concludes that, "if feminist 'movements' are made up of women figuring out and telling each other what they think makes sense, rape care advocates in the United States have told each other that feminist thinking about rape doesn't really work or make sense."<sup>73</sup> This sounds remarkably like what Goodmark observes about the troubled marriage between dominance feminism and the legal system. However, Corrigan's evidence leads her to conclude that the problem is less with feminism or feminist theory *per se* and more with "the ways that feminism has been re-shaped—and often abandoned—in part as a result of engagement with law and legal institutions."<sup>74</sup>

Stark, Corrigan, and Goodmark share the best aspects of feminist theorizing. All engage in stimulating efforts to (re)think aspects of *what is* in ways that provoke, propose, and perhaps prefigure and even prepare the way for *what might be*. I would argue that although they differ in their particulars (and perhaps in epistemological assumptions, but this remains a vexed issue), dominance feminism and anti-essentialist feminism are both utopian in the non-pejorative sense.<sup>75</sup> By non-pejorative utopianism, I mean that, applied to the question of social (including legal system) responses to women subjected to abuse, both theories provoke readers by mapping the contours of present inadequacies and calling them unjust. Both theo-

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69. CORRIGAN, *supra* note 26, at 202.

70. *See generally id.*

71. *Id.* at 8.

72. *See id.* at 16-17; *see also* PATRICIA YANCEY MARTIN, RAPE WORK: VICTIMS, GENDER, AND EMOTIONS IN ORGANIZATION AND COMMUNITY CONTEXT 224 (2005).

73. CORRIGAN, *supra* note 26, at 251.

74. *Id.* *See also* Fraser, *Feminism*, *supra* note 22.

75. *See* KATHI WEEKS, THE PROBLEM WITH WORK: FEMINISM, MARXISM, ANTIWORK POLITICS, AND POSTWORK IMAGINARIES 208 (2011) (theorizing utopianism as provocation, proposal, and pre-figurative practice).

ries propose taking seriously women's claims to being harmed by abuse, and both direct attention to the diverse remedies women generate from the vantage points of their particular experiences. In addition, both theories generate specific visions of alternate practices that might prefigure life in a world with more justice and opportunities for determining their life directions for women subjected to abuse. This is the best sort of political imagination we can ask of feminist theory,<sup>76</sup> and I am grateful for Goodmark's contribution to the challenge of re-seeing possibilities and making the world a better place for diverse women to live our lives.

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76. See ZERILLI, *supra* note 48, at 152-56.