

Introduction: Criminal Justice and Families

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“It is important to admit that we study things that trouble or intrigue us”

—Hertz (1997)

I am troubled. Imagine this scenario: You are a family scholar, and you have just taken a position at a University in a country with the following conditions: the highest incarceration rate in the world, a criminal justice system which has been held accountable to virtually nobody, a land where minorities and women received harsher punishments for violations of the law, a place where conservative estimates project between 1 and 2 million children with an incarcerated parent, a system of government whereby judges no longer had the ability to fashion a punishment to fit a particular crime, and, finally, a country that spent more money on law enforcement than education. Where are you? According to a report by the National Criminal Justice Commission (NCJC), “Welcome to the United States” (Donzinger, 1996).

CRIMINAL JUSTICE AND AND FAMILY POLICY

Families impacted by systems of criminal justice are virtually invisible and too often excluded from discourse pertaining to family policy. I

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am amazed at the lack of attention these issues have received in the family studies and sociology literature, especially given the “paradigm shift” from the monolithic family to family pluralism (see, for example, Allen & Demo, 1995). The trend toward “inclusion” and emphasis on diversity has sparked debates regarding the nature of “the family” and policies impacting families, and it provides the impetus for Mason, Skolnick, and Sugarman’s (1998) recent book, *All Our Families: New Policies for a New Century*. The goal of the book is to reflect the complexity of modern families. The editors’ state, “[N]o other work we know about explores the family as broadly as we do, or from so many disciplines” (pg. ix). While this work *is* inclusive of many kinds of family configurations previously ignored or stigmatized by other texts, it fails to consider the connections between criminal justice policies and families. Mason et al. (1998) contend that the family has become perhaps *the* political issue of the nineties, but I believe the exclusion of the alarming number of families and children impacted by criminal justice policies renders their recommendations for child-centered family policy *incomplete*.

George Martin Jr.’s (1997) recent chapter “An Agenda for Family Policy in the United States” provides an even more blatant example of the exclusion of issues pertaining to criminal justice and the implications for family policy. Martin defines four cornerstones of national family policy, including cash benefits, health services, paid work leave, and childcare. He looks to Sweden as the country epitomizing the good “welfare state” and bemoans the U.S. as a “welfare state laggard . . . one of the few developed nations that lacks a family policy” (pg. 290). Perhaps it is not that the U.S. *lacks* a family policy as Martin contends, but that we as family scholars have *failed to fully identify it*. Indeed, the U.S. may be a welfare state laggard when compared to Sweden but is extremely *active*, in contrast, in matters pertaining to social control and criminality. Could it be that the lion’s share of family policy in the United States falls within the realm of criminal justice? In contrast to our standard call for government to provide “more,” could this be an area where a call for “less” might benefit families?

This special issue is an attempt to bring the debate “home” and emphasize an important but unarticulated element contributing to “an insecure situation for the child” (Mason, Skolnick & Sugarman, 1998, pg. 11). Indeed, Mason et al. (1998) note that too much insecurity for the family or the child puts children at risk and examine divorce, poverty, remarriage, abuse, and social stigma from growing up in a gay or lesbian household as contributors. They stress policy reform and acceptance of *evolving* families—all well and good—but fail to address how government policies

within the rubric of criminal justice intersect with and contribute to family insecurity, disruption, and poverty. The NCJC comments: "In sum, these families (i.e., families interfacing with systems of criminal justice) have been left off the national agenda for family preservation" (Donzinger, 1996, pg. 154). Unfortunately, it seems to be so within the context of family scholarship as well.

Having discourse within family scholarship on criminal justice is important for several reasons. Cheal (1991) notes the connection between social science and political, legal, and administrative institutions. Challenging questions about social scientific discourse, knowledge, and power are raised when we consider the role of social scientists in shaping family policy. The term "family policy" is usually taken to mean a widely agreed upon set of objectives for families toward which "the state" deliberately shapes programs and policies. Cheal notes how the concept of family policy increases awareness of how a wide range of government programs affect or potentially affect families. Often, however, the effects on families are not always taken into account in policy planning by politicians or by government bureaucrats. The remarkable lack of discourse in the field regarding criminal justice policy and families reflects, in part, the limited role of social scientists in shaping knowledge and influencing government interventions in this area. Part of this situation could be due to family scholars' ambivalence in general about family policy as an application for sociological knowledge. According to Cheal, sociologists tend to be *cautious* about the uses to which power over others might be put, a caution which systems of government might benefit by embracing. Critical "reassessments" (to use Cheal's terminology) are crucial in examining the linkages between family policy and oppressive social structures. Silence on the part of family scholars could have far-reaching implications in terms of how families are impacted by current criminal justice policies.

BE CAREFUL WHAT YOU WISH FOR: THE FEDERALIZATION OF CRIME

Coleman and Ganong's (1999) recent book on intergenerational relationships concludes with a call for society-wide safety nets and a greater federal presence for vulnerable families. This kind of suggestion, fairly common in family policy discourse, reflects an assumption that government can and should help families and that these efforts are generally benign. Conservative critique, which challenges this view, is often dis-

carded as invalid or, at the very least, heartless. Yet, families have a complicated relationship with government, and it is worthwhile to consider that complexity, including harm stemming from government efforts. Scholarly recommendations concerning how best to help families and to what extent federal and state governments should control those efforts should be sophisticated, complete, and well thought out, rather than superficial recommendations simply calling for "more."

Trends in criminal justice provide an important context to carefully examine the interface between government and families, because it is an area that has become highly federalized with disastrous results not only for law enforcement but also for families. For example, a recent American Bar Association report admonishes Congress to stop generating criminal statutes as a way to prove they are "tough on crime" and deal with highly publicized societal ills. Overall, the report concludes that the federalizing trend has eroded civil liberties and created confusion concerning roles and responsibilities of federal law enforcement in local criminal matters ("The Federalization of Criminal Law," 1999).

The use of mandatory minimum sentencing provides evidence of the costs of government doing "more" and highlights the often-mixed relationship between government and families. Mandatory minimums also reflect the increasing tendency of the U.S. to federalize crime and to develop "national standards," which many of us in the field have typically been trained to view as a *good* thing. Similar to Martin's (1998) perspective, family policy analysts typically bemoan states' diversity and look toward the federal government to develop and implement uniform standards in the interest of *equity*.

This kind of thinking is most clearly reflected in the welfare, education, and health care debates. As Arditti and McClintock detail (this issue), disguised in part as the congressional response to end racial discrimination in sentencing, mandatory minimum sentences have in fact failed to prevent discrimination and have had far-reaching effects on family stability and parent-child relationships. Discrimination simply has *shifted* in terms of its location in the process of criminalization. For example, the act of *charging* an individual with a particular crime known to carry a fixed sentence is ripe with opportunity to discriminate and is fertile ground for racial disparities to emerge (see, for example, Tonry and Hatlestad, 1997 concerning the subjectivity of drug charges; Walchter's, 1997 comments on Grand Jury proceedings; and Donzinger's 1996 discussion of arrest and plea bargaining processes).

CRITICAL SOCIAL THEORY AND CRIMINAL JUSTICE

Critical Social Theory (CST) provides a framework to examine criminal justice and families, in that it helps make visible that which previously has been hidden, and offers insights to scholars of social control. Noteworthy is Foucault's postmodern analysis *Discipline and Punish* (cited in Agger, 1998) whereby criminology is viewed as a discourse/practice that creates the category of criminality in a "disciplinary society." The discourse is imposed punitively on behaviors that were formerly viewed as socially legitimate or previously ignored as "bizarre." Deviance, from Foucault's perspective is viewed in terms of the experiences and meanings that construct it in order to normalize certain behavior and discipline others.

Government plays a self-interested role in socially constructing criminal behavior in terms of defining for us what is in the "public good" as well as how best to stamp out threats to the public order. The NCJC's report provides scalding criticism regarding how the Department of Justice and other crime control bureaucracies distort and misinterpret statistics on a variety of parameters related to crime, resulting in "crime myths" that are widely believed and reinforced by the media (Donzinger, 1996). For example, one of the most popular myths is that violent crime is rampant; therefore, the need for government protection and intervention continues to mount. The myth that crime bureaucracies, including prisons, are essential and "doing good" contribute to their persistence and growth, regardless of the actual effects on the citizenry (Hagedorn, 1995).

Challenging the positivist position, which posits that facts and values are a true reflection of some objective reality, critical theorists argue instead that "all knowledge is perspectival and flows from certain metaphysical, epistemological, and political commitments" (Agger, 1998, pg. 179). Hence, it is possible that an analysis and critique of the world "as it is" can also simultaneously suggest that the world is *flawed and can or should be changed*. Knowledge is seen as an *active* construction rather than a value free mirror of the world. Such a perspective challenges, for example, the necessity and benefits of the thriving prison industry in this country by forcing us to question whose interests are best served and how this might connect with court systems and legislative developments that support these interests.

CST also provides a useful lens to consider systems of domination, exploitation, and oppression—relatively uncharted territory for family

scholars within the context of criminal justice. Yet, the processes associated with criminalizing broad classes of people and their subsequent exclusion from opportunity structures is fertile ground for scrutiny and reassessment. Domination is considered to be structural: CST seeks to reveal the roots of oppression, be they political, economic, cultural, or based on discourse, gender, or race. CST asks how domination impacts people's lives? Furthermore, CST purports that structures of domination are reproduced through people's "false consciousness," fostered by positivist social science that portrays society as covered by intractable laws.

CST holds that positivism is a form of *ideology*. Ideology represents social change as impossible (hence the need to uphold the status quo or intensify current efforts). Agger (1998) reminds us that ideologies are not "sheer illusion" but must in some respects correspond to reality as people experience it. Ideologies are subtle attempts to portray the present as both rational and necessary, especially given the apparent alternatives. This premise mirrors exactly what has happened during the past 20 years in criminal justice policy. CST is aversive to ideology or, at the very least, seeks to expose it.

THE SPECIAL ISSUE

Critical Social Theory inspires research that not only emphasizes social reform, but the work itself is political action in that scholars want their work to raise people's political consciousness by "demonstrating how domination operates and how domination can be resisted" (Agger, 1998, pg. 179). CST emphasizes the inherent resistance that people mount against their labeling and differential treatment. Within a CST framework, consistent with Foucault's observations, "discipline" is never innocent and always implies value judgments about appropriateness that reflect and reinforce power.

It is with a critical theorist's lens that this special issue of *Marriage & Family Review* is born. The issue is a snapshot of important issues facing contemporary families; virtually all authors demonstrate the need for sentencing reform and a rethinking of criminal justice policy. This issue provides a unique outlet for works that represent a challenge to positivism in the sense that it is possible to "deconstruct" definitions of criminality and question methods of punishment. Clear (1994) emphasizes that the practice of "penal harming" (i.e., administering painful punishment) within the context of criminal justice is self-injurious and

has various detriments not only to the offender, but to relationships among citizens and society in general. Emphasized in this collection is the harm caused by a massive “penal response” to criminal offenders, their families, and communities.

Much of what I have outlined in the introduction is thematically evident in the articles included in the collection. For example, Schindler and Arditti, Snyder, Carlo, and Mullins, and Arditti and McClintock emphasize the implications of a “get tough” mentality on youth, families, and communities. Imprisonment is redefined as an institutionalized bureaucracy and as a method of punishment with harmful consequences for the vast number of youth and parents who are incarcerated. Hairston considers these effects for fathers, while Snyder, Carlo, and Mullins examine the implications of imprisonment for women and evaluate one state program to facilitate connection between mothers and their children. While most articles in the collection clearly demonstrate the negative implications of a “penal response,” Fox, Sayers, and Bruce provide a controversial consideration of a more therapeutic response for perpetrators of domestic violence.

True to the aim of Critical Social Theory, the special collection of articles deconstructs ideology and exposes oppression. For example, Rosen discusses the ideological discourse influencing prisoners’ relationships with their families as well as the legal and constitutional context of such relationships. He demonstrates how “family” becomes both a reward for the prisoner and a threat to the prison system’s autonomy. Arditti and McClintock deconstruct “cultural threat” ideology that drives and sustains the “War on Drugs” and highlight the disproportionate impact of drug policies on minorities. Snyder, Carlo, and Mullins and Morash and Robinson explore the oppression of women in the system along with the multi-layered implications of gendered aspects of the criminal justice system.

I hope that this issue stimulates researchers, policymakers, scholars, and practitioners to take a new look at how government influences families in a time of unprecedented growth in prison populations and retributive justice. By giving voice to the scholarship and experiences of the authors as well as the knowledge of those who are under study, this collection is an attempt to make the invisible visible and to begin a discourse in the field that places criminal justice as a centerpiece of family policy.

EDITOR'S NOTE

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