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Domestic Violence and Family Law: Criminological Concerns

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Abstract

The battered women's movement in the United States contributed to a sweeping change in the recognition of men's violence against female intimate partners. Naming the problem and arguing in favor of its identification as a serious problem meriting a collective response were key aspects of this effort. Criminal and civil laws have been written and revised in an effort to answer calls to take such violence seriously. Scholars have devoted significant attention to the consequences of this reframing of violence, especially around the unintended outcomes of the incorporation of domestic violence into criminal justice regimes. Family law, however, has remained largely unexamined by criminologists. This paper calls for criminological attention to family law responses to domestic violence and provides directions for future research.

Keywords

Domestic violence, family law, child custody, family court, family studies.

Introduction

The battered women's movement in the United States (US) contributed to a sweeping change in the recognition of men's violence against female intimate partners. Naming the violence and arguing in favor of its identification as a serious problem meriting a public response were key aspects of this effort (Coker 2001; Schneider 2000). Criminal and civil laws have been written and revised in an effort to answer calls to take such violence seriously, with most substantive changes on the order of reforms to policing and legal practice, especially around arrest and orders for protection (Buzawa 2012; Coker 2001; Gerstenberger and Williams 2013; Schneider 2000). As Radford and Hester (2006) observed, increased attention to domestic violence has coincided with rising social control and 'tough on crime' rhetoric which ostensibly relies on the moral authority of victims to justify changes in criminal justice practice. Radford and Hester (2006) note that:

... this has been an ambiguous trend for feminist and anti-violence campaigners as on the one hand it is a welcome trend for the criminal justice system to be holding domestic violence perpetrators accountable for their abuse. On the other hand, there is a civil libertarian unease about the broader punitive framework, and skepticism about whether or not it all works. Support and advocacy for

women experiencing domestic abuse are also essential. (Radford and Hester 2006: 9)

Criminologists have devoted significant attention to the consequences of the reframing of domestic violence as a crime problem. Scholars in criminology, law, and social work have investigated the operation and positive and negative outcomes of legal responses to violence (see for example Bell et al. 2011; Breines and Gordon 1983; Pleck 1987, 1989; Ptacek 1999). In addition to changes in criminal law and its application, criminologists have investigated the utilization and efficacy of civil legal remedies to domestic violence (Connelly and Cavanagh 2007; DeJong and Burgess-Procter 2006; Fleury-Steiner, Fleury-Steiner and Miller 2011). They have also highlighted the unintended outcomes of the incorporation of domestic violence into criminal justice regimes as new policies have variously been co-opted, resisted, and ignored in practice (Daniels 1997; Durfee 2012; Ferraro 1996; Goodmark 2011; Kim 2012; Miller 1989; Miller and Meloy 2006; Moore 2008; Ptacek 2009; Richie 2012). As Radford and Hester (2006) put it:

Few believe or have ever argued that the criminal justice system alone can adequately deal with domestic violence. In the UK and US, we have seen an associated 'criminalization of social policies' so that managing fear of crime is linked in with the policing of poor communities, the regulation of welfare claimants, single mothers, asylum seekers, and other people living on the margins. (Radford and Hester 2006: 9 [internal citation omitted])

As a result, some scholars have called for a turn away from legal responses to violence against women (Bumiller 2010; Goodmark; 2011; Richie 2012). To date, however, the criminological conversation has rarely broached the subject of family law and domestic violence.

Family law and domestic violence

In addition to frequent engagement with criminal law and civil orders for protection, family law is a central system of concern for abused women (Cuthbert et al. 2002; Hardesty 2002; Hardesty and Ganong 2006; Lemon 2000; Miller and Smolter 2011; Schneider 1994; Schneider 2000; Slote et al. 2005). Family law systems are located at the intersection of contradictory gendered expectations. In family court, abused mothers find themselves in a catch-22 situation where they are expected to separate from their abusers and divorce for the sake of the children. If the child protection system is involved, mothers face removal of their children for failure to protect if they maintain contact with abusers or fail to prevent male partners from abusing the children. However, at separation, divorcing mothers are expected to facilitate, promote, and encourage ongoing contact between their children and their abuser, also ostensibly for the sake of the children (Gill and Radford 2007; Hannah and Goldstein 2010; Prezkop 2011; Schneider 2000). Despite lip service to concerns about domestic violence and state laws requiring its consideration at custody determination, maximum contact with the male parent in heterosexual couples is currently prioritized in US family courts (Jaffe, Lemon and Poisson 2003; Lemon 2000; Schneider 2000; Stark 2009). As Clare Dalton (1999) explained:

In the context of custody and visitation, the explicit preference that children maintain significant contacts with both parents after separation and divorce and the tendency to see marital dysfunction as the product of conflict rather than abuse have led specialists in partner abuse to accuse family courts of ignoring abuse and its consequences for both adults and children. (Dalton 1999: 276)

The prioritization of maximum contact has been formally institutionalized via multiple iterations of presumptive joint custody practices such as 'friendly parent' schemes and efforts to link child support payments to what is currently termed 'parenting time' (Prezkop 2011; Zorza

2007). These policies and the patriarchal ideologies underpinning them have produced a family court climate in which abused mothers are frequently required to participate in joint custody and visitation arrangements with their abuser. These women risk losing custody of their children to the abuser if they are not willing to facilitate such arrangements (Cuthbert et al. 2002; Morrill 2005; Prezkop 2011; Rosen and O'Sullivan 2005; Schneider 2000; Slote et al. 2005). The United States is often presumed to be enlightened about domestic violence, even begrudgingly granting asylum to some abused women from other countries. However, at least one American woman has successfully gained asylum in The Netherlands after she was forced to flee the US when a family court awarded custody of her children to the father who was abusing them (Here and Now 2013; The Netherlands Embassy 2012).

Studies of 'divorce outcomes' appear to be the taken-for-granted basis of pervasive claims that divorce and mothers' sole custody are harmful to children. The research on divorce outcomes largely comes from the interdisciplinary field of Family Studies, which specializes in research in the interest of strengthening families. University Family Studies programs are geared to preparing students for work in family and human services, such as in psychology, social work, counseling, and mediation. As in other interdisciplinary fields, scholars disagree about the best ways to conduct research and the meanings of study findings. As an American Psychological Association literature review of the consequences of divorce for children explains:

Despite decades of psychological research, there is still considerable debate in the field concerning the effects of divorce on children. While most studies have reported at least some negative consequences of divorce for children, few, if any, have examined factors associated with children's positive adjustment. More recent research underscores our need to better understand the impact of marital conflict pre-divorce and family environment on child adjustment. Some children do well post-divorce and others do not. However, not enough is known to disentangle the impact of contextual factors that often accompany divorce (e.g., financial pressures and marital conflict) from the impact of the divorce itself. (American Psychological Association 2004)

The importance of the increased risk of physical violence, stalking, and homicide at separation in relation to family law processes is sharply contested despite this being a key context for ongoing and lethal violence by male partners (Radford and Hester 2006). For example, The National Violent Death Study data indicate that domestic violence and divorce are frequently the context for homicides of intimate partners. Data from 2003-2005 show that 75 of 208 male-perpetrated homicide/suicides were in retaliation for a divorce request or breakup and 34) were in the context of family law such as divorce, custody, child support or protection order (Logan et al. 2008: 1060). A recent large study in Sweden found that 'approximately 10% of all women become victims of post-separation stalking or assault' in their lifetimes, and these forms of violence and abuse are highly correlated with male partners' controlling behaviors during the relationship (Ornstein and Rickne 2013: 1).

Child safety is narrowly conceived in family law despite this context. Even extensively documented histories of physical and sexual abuse are regularly dismissed in the interest of promoting maximum contact with fathers (Morrill 2005; Schneider 2000; Rosen and O'Sullivan 2005; Slote et al. 2005). Despite clear evidence that separation requires greater rather than lesser protection from violence and abuse, and the literature documenting not only the overlap of partner and child abuse but also the damaging effects of exposure to violence, men's physical violence against adult female partners is frequently deemed irrelevant to parenting in family court. Lack of recognition of the various means of manipulation, controlling behavior, and threats that form the fabric of abusive relationships is incomprehensible in the resulting family law discourses about domestic violence (Stark 2009).

In addition to physical and emotional abuse, critical criminologists have begun to document what Miller and Smolter (2011) termed 'paper harassment', using civil and family law processes to retaliate against women and children who report abuse, especially at divorce. The family law system in particular regularly mandates continuing engagement between abusive fathers and protective mothers. Custody orders often require ongoing scheduled contact between the abuser and those reporting abuse. 'Paper harassment' thus provides a venue for ongoing abuse following attempts at separation, effectively enlisting powerful institutions in coercive control of survivors (Miller and Smolter 2011). This type of harassment is the latest variation on the victim blaming and discrediting tactics that have cropped up in response to public acknowledgement of abuse by family members and intimates stretching back to the early twentieth century (Olafson, Cordwin and Summit 1993; Salter 2012; Smart 2000). While research in family studies, social work, public health, and law have begun to document abuse that occurs in the context of family law proceedings (Hardesty 2002; Hardesty and Chung 2006; Hardesty and Ganong 2006; Haselschwerdt, Hardesty and Hans 2010; McMurray 1997; McMurray et al. 2000), criminology stands to make a much greater contribution to this conversation. Such inquiries fit well within the remit of critical and feminist criminologies.

Family law, retrenchment, and social harm

The move to no-fault divorce in the United States in the 1970s facilitated rising divorce rates. It also contributed to uncertain child custody outcomes at divorce as a poorly defined 'best interest of the child' standard was applied at custody determination (Schneider 2000). Lobbying to influence which factors were deemed important in determining the best interest of the child intensified as the federal government encouraged US states to offload the cost of supporting children from social systems onto individual fathers. Financial incentives for state child support collection schemes were implemented as part of the retrenchment of public welfare programs during the 1980s. The confluence of rising divorce rates, child support enforcement, and legal intervention into domestic violence contributed to the coalescence of organized resistance to interventions in violence against women in the form of antifeminist men's and fathers' groups (Dragiewicz 2008, 2012).

But these were not the only groups to emerge in the face of changes to divorce law and practice. Increasing privatisation of fact finding in the family court (another outcome of rising divorce rates), no fault divorce, poorly defined criteria for custody determination, and efforts to offload the costs of state functions onto private citizens contributed to the growth of a cottage industry comprised of forensic psychologists, special masters, Guardians ad Litem, mediators, and parenting coordinators who assess, report, and testify for pay in child custody cases. These quasi-judicial personnel regularly invoke social science research on violence and abuse as part of their practice. They also increasingly contribute to a published literature via their own journals which propose and promote theories that are useful in their paid consulting work. Often couched as academic or 'evidence based' recommendations for practice, this literature blurs the lines between peer reviewed social science research, professional practice, and lobbying. For example, The National Council on Family Relations (NCFR) refers to itself as 'the premier professional association for the multidisciplinary understanding of families' (National Council on Family Relations n.d.). NCFR publishes *The Journal of Marriage and Family (JMF)*, which it identifies as 'the leading research journal in the family field and has been so for over 70 years. *JMF* is consistently the most highly cited journal in family studies' (National Council on Family Relations n.d.). The crossover between professional practice and scholarship in family studies means that there is greater potential for personal financial interests in research findings than in disciplines where there is more of a separation between paid practice and research. Academic criminology could contribute a wider variety of social science scholarship to this field. Clare Dalton (1999) argued that, because social science research on domestic violence was divided along ideological lines which either defined it as trivial conflict or serious coercive control, practitioners could choose the ideology that fitted best with their pre-existing beliefs

and refer to that research. We can observe this dynamic in professional practice around family law and domestic violence. For example, the earliest federally funded research on mediator practices and training around domestic violence found that domestic violence cases were rarely screened out of mediation even when it was detected (Thoennes, Salem and Pearson 1995). Likewise, the most recent research on child custody evaluators found that:

Ninety-four percent of the evaluators reported that they always or almost always directly inquired about domestic violence. However, 38% never used instruments or standard protocols to screen for DV, and another 24% used them only some of the time. Some evaluators (15%) used only a general personality-psychopathology instrument, such as the MMPI, rather than a specific instrument to assess DV. (Saunders et al. 2012: 11)

The largest study to date (comprised of 465 child custody evaluator respondents) found that evaluators' 'belief in false [intimate partner violence (IPV)] allegations was related to recommendations for custody-visitation arrangements that would increase abuser-child contact' (Saunders, Tolman and Faller 2013: 8). Saunders and colleagues also found that 'the belief in false IPV allegations was significantly related to other beliefs about IPV and custody, such as the belief that survivors alienate children from the other parent, harm the children if they do not co-parent, and IPV is not important to consider in custody and visitation decisions' (2013: 8). Saunders and colleagues found '[t]here was support for the hypothesis that beliefs regarding patriarchal norms, a just world and social dominance would be related to the belief that mothers make false IPV allegations. More important, these core beliefs, especially patriarchal norms, were related to all five outcomes that favored offenders' (2013: 8). In other words, '[t]hese findings indicate that broader beliefs supporting discrimination against women and social hierarchies underlie specific beliefs about custody and IPV' (Saunders, Tolman and Faller 2013: 8). This research on professional practice related to family law points to the importance of education about criminological domestic violence research in the field.

Family law, criminology and social harm

Although a surprising amount of the divorce and custody literature from family studies refers to delinquency and criminality as a putative outcome of divorce and mother custody, claims about the criminogenic influence of single mothering and divorce are rarely critically assessed in criminology. Likewise, the divorce and child custody literature that is the primary object of such references does not often cite the large specialized literature on domestic violence even where it is directly relevant.

Instead, concerns about the safety and well-being of abused women and their children are buried in individualizing discourses that gloss over the violence and structural inequalities that engender the social ills attributed to divorce. In the highly gendered and explicitly heterosexist discourse of family studies, negative outcomes of divorce are frequently attributed to 'fatherlessness,' the term used in this literature to refer to mother custody. This essentialising, value-laden term poses mother custody as an inherently inferior family structure which is presumed to be damaging to children. There is no parallel literature on 'motherlessness'.

The essentialist positioning of father presence as the defining factor in child outcomes is ideological rather than scientific, supported by loose references to a particular family studies literature and field of practice which takes the superiority and naturalness of heterosexual nuclear family forms as a given. The family studies research discursively referenced (but rarely cited) in popular and policy discussions about children's 'divorce outcomes' is characterized by a surprising inattention to violence and abuse. Despite the voluminous research literature on violence and abuse in families and the prevalence of divorce, most of the family studies literature continues to assume that divorce is the problem rather than a potential solution to

problems in families (Arditti and Madden-Derdich 1995; Smart and Neale 1999; Veevers 1991). The 'divorce as disaster' frame is reflected in popular media as well, where it seems to be intensifying rather than abating in recent years (Adams and Coltrane 2007).

Complicating the intersection between family law, abuse, and child custody is child support policy. Recent reforms intended to increase the collection of child support mean that a greater number than ever before of adults and children will be drawn into the family law system in the United States (Administration for Children and Families 2012, 2013). According to the US Department of Health and Human Services Administration for Children and Families (ACF), a proposed federal policy currently being piloted in selected states:

... requires states to establish access and visitation responsibilities in all initial child support orders, just as custody arrangements are typically settled at the same time divorces are finalized.... These services will not only improve parent-child relationships and outcomes for children, but they will also result in improved collections. (Administration for Children and Families 2012: 273)

The ACF goal is to redistribute financial responsibility for poor children from the state onto low income fathers. ACF notes that '[child] support provides about 40 percent of family income for the poor families who receive it, and 10 percent of income for all poor custodial families' (ACF 2013: 252). The states implementing the pilot prioritise increasing father custody and visitation, as indicated by the Ohio pilot program website. It states: 'The purpose of the program is to increase safe parenting time opportunities for children by establishing parenting time orders at the same time as child support orders' (Ohio Commission on Fatherhood n.d.). Elsewhere, the website identifies the pilot project goal as 'safe parenting time for children'. However, the Ohio program's domestic violence screening tool is remarkable crude. It reads:

Instructions: Please read each of the following activities and fill in circle that best indicates the frequency with which the other party acts in the way depicted.

How often does your partner?

1. Physically hurt you
2. Insult or talk down to you
3. Threaten you with harm
4. Scream or curse at you

The associated 'Domestic violence scoring matrix' assigns points for response options Never (1) Rarely (2) Sometimes (3) Fairly Often (4) Frequently (5) and a blank labeled Total (Ohio Commission on Fatherhood n.d.). The proposed federal change in child support procedures stands to bring every single family which has a child support payment into the remit of the family court to establish a legal order about custody arrangements, with this screening tool as the point for consideration of domestic violence.

While these changes in custody policy are explicitly intended to offload the cost of child maintenance from the state onto individual parents, a majority of states also apply 'proportional offset formulas' which decrease payment amounts relative to the number of 'overnights' children spend with each parent. Although motivated by austerity, the proposed federal changes cannot be understood without attention to gender, racism, and class due to their differential impact on different families. 'Responsible fatherhood' programs promote marriage and male breadwinning in minority communities in order to push children and mothers off of welfare rolls. At the same time, given that many states now cut child support payments in proportion to 'parenting time', efforts to push joint custody will decrease support obligations for middle and upper income divorced parents. However, the earning ability of the lower income parent, usually the mother who has absorbed the professional and permanent financial disadvantage of child rearing, is not altered by the percentage of parenting time allocated to each parent. Nor is

the cost of raising a child lessened proportionately with joint custody arrangements. Such facially neutral income support policies penalize all lower income parents, but are especially damaging for survivors of abuse who face increased pressure to promote easy access to fathers even when they are abusive. Often custody arrangements are made via ostensibly restorative and non-adversarial practices like mediation which many abused women experience as coercive and unsafe (Hardesty 2002; Hardesty and Chung 2006; Hardesty and Ganong 2006; Haselschwerdt, Hardesty and Hans 2010; McMurray 1997; McMurray et al. 2000; Miller and Smolter 2011).

Privatization of income support via responsabilising low income fathers on the one hand and appeasing higher income fathers on the other presents a barrier to abused women who seek to leave an abuser who is the father of her children. Despite requirements to consider domestic violence as a factor at custody determination in nearly every state, the interests of abused parents and their children are left by the wayside in these schemes. In family law systems where violence is a salient factor, state interests in privatized patriarchies win out.

Violence against women, law and social democracy

Recent critical criminological critiques of domestic violence policies and practices have called for a turn away from the law based on serious concerns about the ways in which criminal law, in particular, is deployed in ways that reproduce harm within the larger discriminatory social context (Bumiller 2010; Goodmark 2011; Richie 2012). However, the focus on disempowering women by restricting their agency has failed to engage with the realities of family law. At divorce, women and men are forced into participation in family law processes which overwhelmingly fail to take violence and abuse into account. As part of divorce agreements, child custody and support orders increasingly force unwilling parties into heterosexual co-parenting, regardless of the presence of violence and despite improvements in recognizing violence in other areas of civil law.

The possibilities of legal responses to violence in the family law system will be profoundly shaped by state approaches to a number of social and structural issues including income support for mothers and their children and the privatization of fact finding and legal orders enforcing heterosexual, patriarchal family structures. As the US moves to tether child support to custody orders, abused women's need for safety and support stand to be subsumed by competing exigencies.

In addition to calls for police and court accountability, anti-violence advocates have addressed the need to improve housing, employment, wages and child care as part of efforts to decrease men's violence (Menard 2001). Criminologists can contribute to this discussion by listening to the concerns and priorities of survivors of violence and thinking carefully about the persistent gender, class, and racialised inequalities that lead to violence and produce many of the shortcomings and inconsistencies of legal responses to violence against women. This includes investigating what is happening on the ground in the family courts, participating in debates about the nature of violence and abuse, and turning critical faculties toward the interests driving conflicting policy changes as well as resistance to them. As Postmus et al. (2009) put it:

Our intervention strategies must go beyond offering emotional support; we must offer survivors help locating and securing the types of tangible services (financial assistance, child care, transportation, housing, and educational assistance) that will support their survival and the termination of abuse. Perhaps, as some advocates are doing, it is time to bring greater emphasis and awareness to economic justice and the self-sufficiency of survivors. (Postmus et al. 2009: 865)

At the same time, critical criminologists cannot abandon the law. As Martha T McClusky (2010) argued:

Critical feminism rejects the fantasy that we stand outside law's power in some neutral space free from imperfect empirical assumptions and imperfect political and social commitments. We always live embedded in law, privileged or penalized by legal institutions; all our actions or inactions work to reinforce or change a legal regime and the assumptions about the empirical world that legal regime helps shape. Refusing to know about, care about, or respond to the injustices that pervade our daily lives is itself an action with potentially far-reaching and complex effects on others. (McClusky 2010: 363)

Calls for expanded social programs to promote substantive equality are one important part of efforts to reduce the social harm caused by violence and abuse, but criminologists cannot abandon legal systems. Furthermore, people are much more likely to be pulled into family law systems than criminal legal systems. If 50 per cent of marriages end in divorce, family law and policy have massive implications for substantive equality. Where the marriage has ended due to abuse, the potential for harm, help, and healing are all multiplied within the system.

Conclusion

There is a pressing need for criminologists to contribute to building our understanding of what happens in family courts, how people end up there, and what survivors need in order to develop short- and long-term strategies to promote safety and well-being. There are several ways this might happen.

Criminologists can engage with the literature on families, divorce, and abuse. Few scholars would disagree that interdisciplinarity is important to understanding crime and social harm. However, despite prevalent common sense assumptions about the criminogenic nature of certain types of families, there has been little exchange between family studies scholars and criminologists. Both fields would benefit from such a conversation. For example, there is a wealth of information about the impact of child sexual abuse on addiction that has been surprisingly poorly integrated into criminology. While criminologists have been critical of the 'war on drugs', we have been mostly silent about the relationship between child sexual abuse and addiction and other social problems.

Criminologists can participate in knowledge translation activities. Given that decisions about domestic violence and child custody are frequently decided by judicial and pseudo-judicial personnel in the family court, criminologists can contribute to safe practices by writing for and speaking to practitioner audiences in formats and publications that are accessible beyond password protected university databases. This requires the production of accessible publications and talks that help practitioners to answer questions they know they have as well as to consider factors they hadn't even thought to question.

Criminologists can study what happens in practice. There is a dearth of the most basic information about what happens in family courts, and this applies when domestic violence is an issue. Practitioners have many questions about how violence affects separation and divorce processes. To date, very few criminologists have taken up this context for study. Criminological inquiries around domestic violence and law have mostly focused on arrest policies and the outcomes of orders for protection without much regard for the history, community, interpersonal, and individual context in which they occur.

Criminologists can learn from those involved in the violence. Survivors' voices need to be at the center of this research agenda. A key part of this inquiry will be to develop an understanding

of the different priorities and issues for different survivors. As same-sex marriage is adopted in more states in the United States, the experiences of more survivors of violence by same-sex partners will undoubtedly play out differently to those of straight couples in court. Likewise, the contradictory forces created by millions of dollars being poured into marriage and fatherhood promotion programs in under-resourced and racialized communities and welfare surveillance practices that discourage cohabitation create specific resource needs. For immigrant women whose visa and custody status is explicitly linked to their spouse, another set of concerns is at the fore.

Just as we can learn from survivors how best to assist them, criminologists can learn much more from perpetrators of domestic violence. Criminologists have spent an inordinate amount of time studying the outcomes of different arrest policies without adequate regard for the ways that policing, prosecution, and sentencing practices play out on the ground. While studies of interventions can potentially guide better practice, perpetrators provide the best source of information about why they use violence and what can prevent it. This is not to say that we should simply take perpetrators' accounts at face value. However we can learn a lot about community norms and collective efficacy by paying attention to the techniques of neutralization abusers use and others mimic in responding to survivors and perpetrators.

Criminologists can investigate the protective and harmful content and impact of collective efficacies rather than assuming a constructive consensus exists on violence and abuse. Now that 'domestic violence awareness' is pervasive in countries like the United States, it's time to address the thornier issues of community norms and cultural change to prevent violence and abuse. This requires confronting conversations about why and how laws and reforms have not been working as well as they could. It also requires a more nuanced discussion about the ways in which norms around violence are contradictory, contested, historically contingent, and subculture-specific. Recognition of the availability of multiple – sometimes conflicting – knowledges of the same issue, or even the same event, demands the articulation of the values informing claims that legitimate and undermine various narratives.

Criminologists can address epistemology. The scourge of atrophied 'evidence based practice', the continuing fetishization of ostensibly representative sample surveys, a lack of conversation with scholars in other fields that deal with violence and abuse, and criminologists' unwillingness to acknowledge the politics of scholarly knowledge production are central concerns for those of us who seek to understand violence and responses to it. We need to have honest conversations about the persistent unwillingness to foreground consent in discussion about rape, the pervasiveness of sexism, reluctance to deal with child sexual abuse in the family, idealization of heterosexual nuclear families, and the contradictory social norms promoting and proscribing men's and women's violence. We also need to be cognizant that self-critique will be appropriated in the service of efforts to eliminate those legal remedies and resources that are currently available, with specific risks for different survivors along the lines of established social hierarchies (Pleck 1987; Ptacek 2009). Attention to the history of antiviolence and anti-oppression social movements and the forms of resistance they have always faced can provide a map of the perils and possibilities of multiple formal and substantive approaches to social justice.

Ultimately, the idealization of patriarchal families and co-parenting post-separation play out differently across lines of gender, sexuality, age, income, immigration status, ethnicity, and skin color. Empirical research on what happens in family court is almost non-existent in the United States. What does exist mostly ignores violence and abuse. There is a real need for research from critical criminologists whose income is not linked to paid testimony and whose lines of inquiry are not dictated by federal funding which is increasingly focused on crude performance indicators. Accordingly, I hope that more criminologists who are interested in violence and abuse will turn their attention to the important field of family law.

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References

- Administration for Children and Families (2012) *Proposed Appropriation Language Administration for Children and Families Payments to States for Child Support Enforcement and Family Support Programs, Fiscal Year 2013*. Washington, DC: Department of Health and Human Services.
- Administration for Children and Families (2013) *Justification of Estimates for Appropriations Committees, Fiscal Year 2014*. Washington, DC: Department of Health and Human Services.
- Adams M and Coltrane S (2007) Framing divorce reform: Media, morality, and the politics of family. *Family Process* 46(1):17–34.
- American Psychological Association (2004) *An Overview of the Psychological Literature on the Effects of Divorce on Children*. Washington, DC: American Sociological Association. Available at <http://www.apa.org/about/gr/issues/cyf/divorce.aspx> (accessed 9 January 2014).
- Arditti JA and Madden-Derdich D (1995) No regrets: Custodial mothers' accounts of the difficulties and benefits of divorce. *Contemporary Family Therapy* 17(2): 229–248.
- Bell ME, Perez S, Goodman L and Dutton MA (2011) Battered women's perceptions of civil and criminal court helpfulness: The role of court outcome and process. *Violence Against Women* 17(1): 71–88.
- Breines W and Gordon L (1983) The new scholarship on family violence. *Signs* 8(3): 490–531.
- Bumiller K (2010) The nexus of domestic violence reform and social science: From instrument of social change to institutionalized surveillance. *Annual Review of Law and Social Science* 6(1): 173–193.
- Buzawa ES (2012) The evolving police response to domestic violence. *Journal of Police Crisis Negotiations* 12(2): 82–86.
- Coker D (2001) Crime control and feminist law reform in domestic violence law: A critical review. *Buffalo Criminal Law Review* 4(2): 801–860.
- Connelly C and Cavanagh K (2007) Domestic abuse, civil protection orders and the 'new criminologies': Is there any value in engaging with the law? *Feminist Legal Studies* 15(3): 259–287.
- Cuthbert C, Slote K, Ghosh Driggers M, Mesh CJ, Bancroft L and Silverman J (2002) *Battered Mothers Speak Out: A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Courts*. Wellesley, Massachusetts: Wellesley Centers for Women. Available at <https://www.wcwonline.org/Archived-Projects/battered-mothers-testimony-project> (accessed 26 August 2013).
- Dalton C (1999) When paradigms collide: Protecting battered parents and their children in the family court system. *Family Court Review* 37(3): 273–296.
- Daniels CR (ed.) (1997) *Feminists Negotiate the State: The Politics of Domestic Violence*. Lanham, MD: University Press of America.
- DeJong C and Burgess-Proctor A (2006) A summary of personal protection order statutes in the United States. *Violence Against Women* 12(1): 68–88.
- Dragiewicz M (2008) Patriarchy reasserted: Fathers' rights and anti-VAWA activism. *Feminist Criminology* 3(2): 121–144.
- Dragiewicz M (2012) 'You only get what you fight for': Theorizing the backlash against the US battered women's movement. In Winlow S and Atkinson R (eds) *New Directions in Crime and Deviancy: Papers from the York Deviancy Conference*. London: Routledge: 173–188.

- Durfee A (2012) Situational ambiguity and gendered patterns of arrest for intimate partner violence. *Violence Against Women* 18(1): 64–84.
- Ferraro K (1996) The dance of dependency: A genealogy of domestic violence discourse. *Hypatia* 11(4): 77–91.
- Fleury-Steiner RE, Fleury-Steiner BD and Miller SL (2011) More than a piece of paper? Protection orders as a resource for battered women. *Sociology Compass* 5(7): 512–524.
- Gerstenberger CB and Williams KR (2013) Gender and intimate partner violence does dual arrest reveal gender symmetry or asymmetry? *Journal of Interpersonal Violence* 28(8): 1561–1578.
- Gill A and Radford L (2007) Domestic violence policies under New Labour: Wasted years? In Roberts R and McMahon W (eds) *Social Justice and Criminal Justice*. London, UK: Centre for Crime and Justice Studies: 105–120.
- Goodmark L (2011) *A Troubled Marriage: Domestic Violence and the Legal System*. New York, NY: NYU Press.
- Hannah MT and Goldstein B (eds) (2010) *Domestic Violence, Abuse, and Child Custody: Legal Strategies and Policy Issues*. Kingston, NJ: Civic Research Institute.
- Hardesty JL (2002) Separation assault in the context of postdivorce parenting: An integrative review of the literature. *Violence Against Women* 8(5): 597–625.
- Hardesty JL and Chung GH (2006) Intimate partner violence, parental divorce, and child custody: Directions for intervention and future research. *Family Relations* 55(2): 200–210.
- Hardesty JL and Ganong LH (2006) How women make custody decisions and manage co-parenting with abusive former husbands. *Journal of Social and Personal Relationships* 23(4): 543–563.
- Haselschwerdt ML, Hardesty JL and Hans JD (2010) Custody evaluators' beliefs about domestic violence allegations during divorce: feminist and family violence perspectives. *Journal of Interpersonal Violence* 26(8): 1694–1719.
- Here and Now (2012) 'No Way Out But One'. Available at: <http://hereandnow.wbur.org/2012/06/06/domestic-violence-out> (accessed 9 January 2014).
- Jaffe PG, Lemon, NKD and Poisson SE (2003) *Child Custody and Domestic Violence: A Call for Safety and Accountability*. Thousand Oaks, California: Sage.
- Kim ME (2012) Challenging the pursuit of criminalisation in an era of mass incarceration: The limitations of social work responses to domestic violence in the USA. *British Journal of Social Work* 47(3): 1276–1293.
- Lemon NKD (2000) Custody and visitation trends in the United States in domestic violence cases. In RA Geffner, PG Jaffe and M Sudermann (eds) *Children Exposed to Domestic Violence: Current Issues in Research, Intervention, Prevention and Policy Development*. New York, NY: Haworth Press: 329–343.
- Logan J, Hill HA, Black ML, Crosby AE, Karch DL, Barnes JD and Lubell KM (2008) Characteristics of perpetrators in homicide-followed-by-suicide incidents: National Violent Death Reporting System—17 US states, 2003–2005. *American Journal of Epidemiology* 168 (9): 1056–1064.
- McCluskey MT (2010) Defending and developing critical feminist theory as law leans rightward. In Fineman MA (ed) *Transcending the Boundaries of Law: Generations of Feminism and Legal Theory*. New York, NY: Routledge: 352–366.
- McMurray A (1997) Violence against ex-wives: Anger and advocacy. *Health Care for Women International* 18(6): 543–556.
- McMurray AM, Froyland ID, Bell D, and Curnow DJ (2000) Post-separation violence: The male perspective. *Journal of Family Studies* 6(1): 89–105.

- Menard A (2001) Domestic violence and housing: Key policy and program challenges. *Violence Against Women* 7(6): 707–720.
- Miller SL (1989) Unintended side effects of pro-arrest policies and their race and class implications for battered women: a cautionary note. *Criminal Justice Policy Review* 3(3): 299–317.
- Miller SL and Meloy ML (2006) Women's use of force voices of women arrested for domestic violence. *Violence Against Women* 12(1): 89–115.
- Miller SL and Smolter NL (2011) 'Paper abuse': When all else fails, batterers use procedural stalking. *Violence Against Women* 17(5): 637–650.
- Moore D (2008) Feminist criminology: Gain, loss and backlash. *Sociology Compass* 2(1): 48–61.
- Morrill AC (2005) Child custody and visitation decisions when the father has perpetrated violence against the mother. *Violence Against Women*. 11(8): 1076–1107.
- National Council on Family Relations (n.d.) *The Journal of Marriage and Family* Available at <http://www.ncfr.org/jmf> (accessed 26 August 2013).
- Olafson E, Corwin DL and Summit RC (1993) Modern history of child sexual abuse awareness: Cycles of discovery and suppression. *Child Abuse & Neglect* 17(1): 7–24.
- Ohio Commission on Fatherhood (nd) *Parenting Time Opportunities for Children - PTOC12*. Columbus, Ohio: Ohio Commission on Fatherhood. Available at <http://www.fatherhood.ohio.gov/Programs/SpecialProjects/ParentingTimeOpportunitiesforChildren.aspx> (accessed 26 August 2013).
- Ornstein P and Rickne J (2013) When does intimate partner violence continue after separation? *Violence Against Women* 3(19):617–633.
- Pleck E (1987) *Domestic Tyranny: The Making Social Policy Against Family Violence from Colonial Times to the Present*. New York: Oxford University Press.
- Pleck E (1989) Criminal approaches to family violence, 1640–1980. *Crime and Justice* 11: 19–57.
- Postmus JL, Severson M, Berry M and Yoo JA (2009) Women's experiences of violence and seeking help. *Violence Against Women* 15(7): 852–868.
- Przekop M (2011) One more battleground: Domestic violence, child custody, and the batterers' relentless pursuit of their victims through the courts. *Seattle Journal of Social Justice* 9(2):1053–1106.
- Ptacek J (1999) *Battered Women in the Courtroom: The Power of Judicial Responses*. Boston: Northeastern University Press.
- Ptacek J (2009) Resisting co-optation: Three feminist challenges to antiviolence work. In Ptacek J (ed) *Restorative Justice and Violence Against Women*. New York: Oxford University Press: 5–36.
- Radford L and Hester M (2006) *Mothering Through Domestic Violence*. London: Jessica Kingsley Publishers Ltd.
- Richie BE (2012) *Arrested Justice: Black Women, Violence, and America's Prison Nation*. New York: NYU Press.
- Rosen LN and O'Sullivan CS (2005) Outcomes of custody and visitation petitions when fathers are restrained by protection orders: The case of the New York family courts. *Violence Against Women* 11(8): 1054–1075.
- Salter M (2012) Invalidation: A neglected dimension of gender-based violence and inequality. *International Journal for Crime and Justice* 1(1): 3–13.
- Saunders DG, Faller KC and Tolman RM (2012) *Child Custody Evaluators' Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations*. Washington, DC: National Institutes of Justice.

- Saunders DG, Tolman RM and Faller K (2013) Factors associated with child custody evaluators' recommendations in cases of intimate partner violence. *Journal of Family Psychology* 27(3): 473–483.
- Schneider EM (2000) *Battered Women and Feminist Lawmaking*. New Haven, Connecticut: Yale University Press.
- Schneider EM (1994) The violence of privacy. In MA Fineman and R Mykitiuk (eds) *The Public Nature of Private Violence: The Discovery of Domestic Abuse*. New York, NY: Routledge: 36–58.
- Slote KY, Cuthbert C, Mesh CJ, Driggers MG, Bancroft L, and Silverman JG (2005) Battered mothers speak out: Participatory human rights documentation as a model for research and activism in the United States. *Violence Against Women* 11(11): 1367–1395.
- Smart C (2000) Reconsidering the recent history of child sexual abuse, 1910–1960. *Journal of Social Policy* 29(01): 55–71.
- Smart C and Neale B (1999) *Family Fragments?* Malden, Massachusetts: Polity Press.
- Stark E (2009) Rethinking custody evaluation in cases involving domestic violence. *Journal of Child Custody* 6(3-4): 287–321.
- The Netherlands Embassy (2013) Dutch government, attorney to receive children's humanitarian award. Media release, 10 May. Washington, DC: The Kingdom of the Netherlands. Available at <http://dc.the-netherlands.org/news/2013/05/humanitarian-award.html> (accessed 8 January 2014).
- Thoennes N, Salem P and Pearson J (1995) Mediation and domestic violence. *Family and Conciliation Courts Review* 33(1), 6–29.
- Veevers JE (1991) Traumas versus stressors. *Journal of Divorce and Remarriage* 15(1-2): 99–126.
- Zorza J (2007) The 'Friendly Parent' concept: Another gender biased legacy from Richard Gardner. *Domestic Violence Report* 12(5): 65–78.