

FAMILY-BASED JUSTICE IN THE SENTENCING OF DOMESTIC VIOLENCE

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While historical research has noted the importance of the 'family' in criminal justice, recent empirical work has tended to neglect the emphasis placed on the family in the criminal process. Drawing on Daly's work on familial justice, this paper investigates the role of the family in the sentencing of offenders in a specialized domestic violence court. We examine both the likelihood of incarceration and the determinants of sentence length, and find that conceptions of the family continue to have an important influence on these criminal process outcomes. In cases in which the victim has suffered serious injuries, offenders in intact relationships are more likely to be sentenced to jail, yet, at the same time, when incarcerated, these offenders receive shorter sentences. Thus, even as researchers are documenting broader shifts away from the promotion of substantive values through the criminal process, the current study suggests the continued relevance of 'family-based justice' in the sanctioning of offenders, so that moral imperatives continue to intersect with the actuarial logic of modern penal practices.

Introduction

In *The Policing of Families*, Jacques Donzelot (1979) classically demonstrates the central role of the family in understanding criminal justice policy. Donzelot's work highlights how state agencies and legal regulations throughout nineteenth-century France often sought to solve social problems through the 'family unit', instead of policing the behaviour of individuals directly. This is most striking in his analysis of the French juvenile court: Donzelot finds that the law was not relied on to control juvenile behaviour directly, but that this court was instead a forum for regulating families and promoting proper family life. Promoting well run families—even in situations closely related to the criminal law such as the juvenile court—became a central technique for acting on a wide set of social problems (1979: 94). In this way, 'the family' was a primary site for legal regulation and was nurtured in alliance with state interests.

There is, of course, a wealth of literature on the role of the family in state and legal forums (e.g. Black 1976; Bourdieu 1998; Haney 2000; Merry 1994; 2002). Yet, beyond Donzelot's work, surprisingly little empirical research within sociological criminology has taken up the role of the family within the everyday processing of criminal justice. The research that does exist has tended to focus on one set of outcomes—to explain how different ideas of family roles can explain differences in the judicial treatment of male and female offenders (Daly 1987; 1989; Eaton 1986; Hedderman and Gelsthorpe 1997; Worrall 1990).

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A touchstone of this research remains Daly's interview-based research with US judges in criminal courts. Drawing on these in-depth interviews, Daly (1987; 1989) demonstrates that preserving a specific vision of the family unit—one that highlights the need to maintain intact families that can care for children—helps to explain judicial leniency in sentencing female offenders. As a general matter, Daly finds that judges justified more lenient sentencing for familial defendants; yet, this leniency is particularly pronounced for familial women, whose 'caretaking labour' is thought to be more important than the economic support provided by familial men. Daly concludes that leniency towards female offenders is not mere paternalism on the part of judges, but instead reflects a state-based concern with ensuring the availability of intact families, caretaking labour and child-rearing.¹

This judicial attention to family-based gender roles has been further documented in the United Kingdom, where Hedderman and Gelsthorpe (1997) conducted interviews with nearly 200 magistrates to explore the sentencing of female and male offenders. This research found that when sentencing male offenders, magistrates generally gave little attention to the family responsibilities borne by men—these magistrates 'were clear that being a parent would only mitigate against a sentence for a man if he was a single parent with sole responsibility for his children' (p. 45). In contrast, the majority of magistrates indicated that female offenders should not be sentenced to prison if they had childcare responsibilities, as this would punish 'the family rather than the offender alone' (p. 45).

These suggestive findings indicate that there is a continued judicial emphasis on promoting specific visions and roles of the family. Indeed, even beyond the courtroom, the ideology of the family proves salient; as Carlen (1998: 80; 1983) finds, in women's prisons, the myth of the happy family prevails, even if it is merely 'an empathetic collusion in the still dominant ideological illusion of "happy familiness"'.

Yet, much remains unstudied; most notably, research to date has been limited to comparing what drives the differential sentencing of men and women, with little attention to how visions of the family might motivate sentencing more generally. This is perhaps because, beginning in the early 1990s, a surge of interest developed in the increasing actuarialism of criminal justice policy (Wacquant 2005). This drew attention away from studying the role of the family, toward the management and 'warehousing' of offenders (Shichor 1997). Feeley and Simon (1992) suggest that this is part of a broader criminal justice shift in which substantive societal goals (including the promotion of intact and well run families) are replaced by actuarial attention to internal organizational efficiency and management (e.g. Hannah-Moffat 1999; MacKenzie 2001). As Crawford and Newburn (2002) demonstrate in their study of restorative justice programmes for youth, the dominance of this managerialist emphasis can marginalize the contributions of family members so that even when explicitly integrated into the process, their contribution may become more symbolic than substantive.

In this paper, we seek to reintroduce attention to the family within this shifting criminological emphasis on actuarialism and organizational efficiency. In so doing, we draw

¹ Daly points out, however, that this family-based model of sentencing is a 'double-edged sword' for women (1989: 30). While women's caretaking role within the family may lead to more lenient sentences, it might also explain why police and courts have been reluctant to intervene in cases of domestic violence. The common thread, she argues, is that 'children and families, not women, are the primary objects of the court's protection' (p. 30). Daly's conclusions, as a result, draw out for contemporary criminology the findings of broader sociological research on the interplay between families and state regulation.

particular inspiration from David Garland's (2001; 2004) nuanced analysis of contemporary criminal justice. As Garland indicates, the turn to managerialism does not exclude the parallel promotion of other policy goals within criminal justice. For Garland, families continue to play an important part of the process in two ways. First, the perceived decline of the conventional family underscores the need for increased formal state control, including the surveillance, incapacitation and management of offenders. Second, Garland identifies that alongside managerialism, we are witnessing increased attention to victims of crime. This brings the family back into the criminal justice process by mobilizing the interests, needs and concerns of victims' families as a lens through which criminal justice decisions are reached (e.g. Levi 2000). As a result, we can conclude that the family serves a *dual and differentiated function* whereby the family prompts increased state control to account for its presumed failures while, at the same time, the family enjoys deferential treatment by individual criminal justice decision makers.

The Family and Criminal Processing of Domestic Violence

Perhaps the most salient location in which to situate this continued emphasis on the role of the family in criminal justice, including the dual role that we locate in Garland's work, is in the criminal justice processing of domestic violence cases. Within this setting, contests over the proper role of state control over 'the family' have set the terms of the policy debate during the past few decades. An earlier unwillingness to intervene in cases of domestic violence has often been explained as a reluctance to intervene in the domestic, private order of the family in which it was perceived that the state had no direct interest (see e.g. Dobash and Dobash 1979; Pleck 1987; Schechter 1982; Fineman and Mykitiuk 1994). For instance, Merry's (2002) historical work on gender violence in Hawaii found that nineteenth-century conceptions of family life, including a reluctance to break apart families, determined the shape of legal intervention in these cases. And, as many have documented, the more recent shift toward treating domestic violence as a public problem has been equally prompted by the argument, raised by social movement activists, that undue deference toward 'families' places women and children at risk of violence (Mirchandani 2005; Merry 2002; Ellis 1984).

As a result, there has been an increasing recognition that formal state control, through the policing, prosecution and sentencing of domestic violence offenders, is necessary. In large part, these efforts at criminalization have been successful with many jurisdictions implementing mandatory charging policies, no-drop or pro-prosecution policies and specialized domestic violence courts. Yet, if deference to the family in state policy has been replaced with a willingness to intervene, this raises the question of whether 'the family' or 'familial-based justice' (Daly 1987; 1989) has continued to play a role in the everyday processing of these cases.

To address this question, we focus on the role of the family in a specialized domestic violence court. As Mirchandani (2005: 380, 408–13) emphasizes, a unique feature of these courts is that they represent the coalescence of moral and value imperatives (stemming from the battered women's movement) and the emphasis on specialization, efficiency and processing valued by the state and reflected in the new penology. Our goal is to study whether and how, in the context of these management-based courts, the substantive values of 'the family' identified by Donzelot and Daly continue to be encouraged and promoted. Specifically, we examine whether family-based factors produce

different punishments for defendants in cases of domestic violence in a specialized domestic violence court.

We argue that assessing the role played by a familial ideology (cf. Eaton 1983; 1986) in this context is crucial given that the defendants are before the courts for criminal offences perpetrated against victims whose very existence—through their familial relations—traditionally may have acted to mitigate the offenders' punishment.² In addition, our study offers a unique opportunity to examine how a court, designed to promote a state interest in organizational efficiency, responds to violence occurring in intimate or familial relations. Finally, because our sample is restricted to male defendants, our analysis provides an examination of how family-based justice may serve to distinguish some male offenders from others.³ Below, we review the literature that has examined the relationship between family-based factors and criminal justice decision making before turning to our analysis.

Previous Research

Within sociological criminology, research has tended to hypothesize that state control and sanctions will be less severe when deployed against members of 'families'. This proposition has been formalized in Donald Black's (1976) general theory of the behaviour of law in which he contends that the amount of law applied will vary inversely with the availability of other forms of social control (such as the presumed informal control exercised by the family). Yet, existing research is more ambivalent in its conclusions with respect to the role of families and, in the context of domestic violence, this hypothesis is itself confounded by the fact that the very individuals who might be otherwise perceived as sources of informal control for defendants are also the victims of the defendants' crimes.

To date, as noted above, the literature that has examined the role of family-based factors on criminal justice decision making has largely focused on how such factors lead to gender differences in sanctioning (Bickle and Peterson 1991; Daly 1987; Eaton 1986; Flavin 2001; Hedderman and Gelsthorpe 1997; Kruttschnitt and McCarthy 1985; Worrall 1990). Studies that have examined the effect of family-based factors for men have found that marital status increases the likelihood of a prison sentence (Bickle and Peterson 1991: 383), but that living with family or children may have either no effect on sentence length (Bickle and Peterson 1991: 383) or may mitigate sentencing severity (Flavin 2001: 628). Within the context of domestic violence, research has focused on how these cases are treated more leniently than non-family violence precisely because they occur within the family context (e.g. Ferraro and Boychuk 1992). For the most part, though, studies have yet to systematically examine whether family-based factors actually matter *within* the context of family violence, or, put another way, whether the type of 'family' matters when processing cases of domestic violence.

The limited research that examines the role of 'family factors' within domestic violence focuses, as with most research on domestic violence (e.g. Kingsnorth *et al.* 2002; Dawson and Dinovitzer 2001; Schmidt and Steury 1989; Sherman and Berk 1984), on

² Daly's (1987) work differentiates between 'family-based justice' and 'family ideology', with the latter placing insufficient attention to the intersection of gender and family in the criminal process. In this paper, which focuses on male offenders, we do not emphasize this distinction.

³ Men comprise 95 per cent of all the defendants in the full sample.

police and prosecutorial discretion. However, family factors are generally included as statistical controls without explicit attention to the normative question of a familial ideology. A recent study by Wooldredge and Thistlethwaite (2005), for example, considers the role of victim/offender cohabitation on the likelihood of re-arrest for domestic violence offenders and finds lower re-arrest likelihoods for defendants who do not live with the victim (see also Wooldredge and Thistlethwaite 2002). However, they do not contextualize this finding through the presence of a ‘family ideology’; rather, their conclusions suggest that victims who are not living with the defendant may be leaving the abusive relationship after charges are filed, resulting in dropped charges and lower rates of re-arrest.

When studying conviction and sentence outcomes in cases of domestic violence, few studies explicitly consider the role of the victim–offender relationship in predicting case outcomes (see, e.g. Olson and Stalans 2001; Ventura and Davis 2005). The existing work has reached inconsistent conclusions. In her exploratory study of domestic violence cases in a Virginia court, Cramer (1999) found that married defendants were more likely to be convicted than defendants who were not married to the victims. Combined with other predictors of case outcomes such as race, gender, available evidence and prior criminal record,⁴ Cramer concludes that the typical guilty case comprised a ‘white male, married to or living with the victim, with a previous criminal history and whose case file included Polaroid pictures of the crime’ (1999: 1144). In this way, marital and cohabiting relationships appear to intensify the state reliance on criminal sanctions.

In contrast to these harsher measures for married defendants, Cretney and Davis (1997: 153) find that offenders are *less likely* to receive custodial sentences when they are still in a relationship with the victim (see also Dawson 2003). Similarly, when asked, public defenders in the Massachusetts Gender Bias Study report that they believe sentences to be lower when the victim and defendant are married (Supreme Judicial Court of Massachusetts 1989: 93). These findings perhaps echo Hanna’s argument that in the punishment of domestic violence, ‘[t]he judicial system remains reluctant to break up the family via criminalization’ (Hanna 1998: 1539).

Other research finds even more ambivalent results when examining the family in the context of criminal sanctioning. Kingsnorth *et al.*’s (2002) recent study of domestic violence cases in Sacramento, presaging the above findings of Wooldredge and Thistlethwaite (2005), finds that even when defendants are not cohabiting with the victim, being married to the victim *reduces* the likelihood of criminal prosecution, but that the victim–offender relationship (i.e. whether they are married and/or cohabiting) does not affect sentence length (Kingsnorth *et al.* 2002: 568). Based on these findings, Kingsnorth *et al.* suggest that ‘prosecutors seek to protect the marital relationship from the potentially destabilizing effects of criminal prosecution so long as the victim is no longer in the situation of heightened vulnerability implied by cohabitation’ (2002: 563).⁵ While being mindful of the risk of violence, the marital relationship was here being actively protected by the courts by a reduced reliance on criminal prosecution. Below, we draw on this work in our analysis of family-based factors in a specialized domestic violence court.

⁴ We note that Wooldredge and Thistlethwaite’s (2004) examination of outcomes in cases of intimate violence in Cincinnati also includes a measure of whether the defendant lives with their spouse and child. However, this measure was then modelled as part of a composite factor incorporating a range of SES measures and, as a result, the direct effects of this variable cannot be ascertained.

⁵ Instead, factors such as whether the defendant was convicted by jury trial, the need of the victim for medical attention, felony convictions and prior convictions for domestic violence all increase sentence length, while the absence of any weapon (in contrast to use of a gun) and being currently on probation for domestic violence reduce the sentence term.

Research Setting

The data for this study were gathered from prosecutors' files for domestic violence cases from a specialized domestic violence court at Old City Hall in Toronto, Ontario (K-Court).⁶ The K-Court initiative was implemented to improve the criminal justice response to intimate partner violence and related crimes by relying on a coordinated community response model. In this context, intimate partner refers to legally married spouses, common-law partners or dating couples, whether current or estranged. In keeping with the cases that fall within K-Court's operational mandate, this study includes intimate violence that takes the form of assaults, sexual assaults, threats and/or harassment. As part of a broader evaluation of the K-Court programme, all cases were tracked from the initial laying of a charge to final disposition. Cases that did not reach a final disposition were tracked until they dropped out of the process. Efforts were then made to document prosecutors' reasons for case attrition based on notations in the case files.⁷ Case tracking took place from 1 April 1997 to 31 March 1998, roughly corresponding to the first year of the K-Court initiative. A total of 474 cases were tracked. Information was gathered on over 70 different variables pertaining to victim, defendant and case characteristics as well as criminal justice variables and outcomes.

Screening decisions are made by a small group of prosecutors assigned to K-Court on a full-time basis. This assignment ensures that cases are handled from start to finish by the same prosecutor, assigned to the case early in the process. The overall objectives are to provide a sense of continuity to the prosecution process, increase the quality of prosecutions and improve service to the complainants/victims. K-Court prosecutors are committed to more vigorous prosecution of cases and to increased cooperation with participating police divisions so as to improve the quality of investigations and increase the number of successful outcomes.⁸ K-Court prosecutors are also expected to meet with all willing complainants well before trial to discuss the facts of the case, determine the readiness of the complainant to testify, answer any questions the complainant might have and present a supportive, understanding position regardless of the complainants' attitude to the prosecution. This is designed to increase the likelihood that a victim will continue to work with the prosecution.

A final component of the specialized domestic court is the Victim–Witness Assistance Program (VWAP). Unless a guilty plea is entered at the bail hearing, victim/witness workers attempt to contact the victims in all K-Court cases, by telephone or by letter, soon after

⁶ K-Court is part of the Provincial Court in Ontario. While all criminal matters begin in Provincial Court, only certain offences can actually be tried by a provincial court judge. Offences under the Criminal Code can either be classified as summary conviction offences (e.g. trespassing at night or vagrancy), indictable offences (e.g. murder, forcible confinement or aggravated assault) or hybrid offences for which the prosecution elects to proceed summarily or by indictment (such as assault, uttering threats or criminal harassment). The jurisdiction of the Provincial Court in criminal matters is limited to summary conviction offences, hybrid offences for which the prosecution elects to proceed summarily or proceedings by way of indictment in which the defendant elects, when provided by the Code, to be tried in front of a provincial court judge. Finally, since there are no jury trials in Provincial Court, all trials in K-Court are heard by judge alone.

⁷ We recognize that written reports and notes offer researchers a less accurate picture of the case than is available to the prosecutor at the time of his/her decision. However, prosecutors generally noted information on the primary variables used in this analysis clearly and consistently.

⁸ For example, a key component of the K-Court initiative is the systematic collection of evidence by police. This includes victim statements (including audio and/or video statements), transcripts of 911 tapes, photographs (primarily of victim injuries), medical reports and background information on the victim–offender relationship. Prosecutors are also committed to more actively pursuing the admission of this evidence at trial. The expectation is that this could lead to increased convictions (by trial or by guilty plea) on the strength of the available evidence, without necessarily requiring the victim to testify at trial.

the bail hearing or detention order. This can play an important role in preventing future violence because victims are most open to information about how to reduce their vulnerability immediately after the crime (Davis *et al.* 1997; Friedman and Tucker 1997). The role of the VWAP is to provide victims with information about the court process, referrals to community organizations and government agencies, personal escort and support at trial, and support for the victim during meetings with the prosecutor. More specifically, victim/witness workers notify their clients about scheduled court appearances, they solicit their input prior to a guilty plea by their abuser and offer a tour of the court to make victims more comfortable with the process. When victims agree to meet with the assistance programme, it is expected that victim/witness representatives will provide them with enough support so that they are prepared and comfortable with testifying at trial.

The court is presided over by judges who are assigned to K-Court on a rotational basis for one week each month for a period of three months. This approach is intended to keep the same judges involved in K-Court for the length of any one case, thereby keeping the case wholly within K-Court. At the same time, rotating judges out of K-Court avoids identifying them as part of a court designed to successfully prosecute such cases and allows judges to deal with cases other than domestic violence during this period.

Methods and Measurement

Dependent variables

Our analysis examines two stages of the sentencing process. For those cases in which defendants were convicted, we examine the type of disposition. This outcome is modeled as a dummy variable that is coded 1 if the defendant was sentenced to jail and 0 if he received a non-custodial sentence (i.e. conditional sentence, conditional discharge, absolute discharge, suspended sentence or peace bond). For those cases in which the defendant was sentenced to jail, our second analysis examines the predictors of sentence length. Table 1 provides the means and standard deviations for the dependent and independent variables in our analyses.

Key independent variables

Drawing from Flavin (2001), we consider two forms of social control: child-based social control (the offender has dependent children) and kin-based social control (the degree to which the offender is emotionally and/or economically tied to another individual). The first measure captures the offender's parental status through a dummy variable that was coded 1 if the defendant and/or victim had children or shared childcare responsibilities and 0 if they did not. The second variable represents the relationship between the defendant and the victim. A dummy variable is coded 1 if the victim and defendant were in an intact relationship at the time of the incident and 0 if they were estranged. We argue that emotional and/or economic ties will be perceived by the courts to be stronger if the offender and the victim are in an intact relationship.⁹

⁹ Data limitations precluded further comparisons of various relationship types such as married versus cohabiting couples (e.g. Hedderman and Gelsthorpe 1997).

Control variables

Prior research demonstrates that the processing of domestic violence cases can be influenced by a number of factors, including the degree of injury to the victim. As such, we construct a dummy variable that is coded 1 if the victim suffered serious injuries and 0 if there were minor injuries or no injuries as a result of the incident (see also Rauma 1984; Schmidt and Steury 1989).¹⁰ Second, given that defendants may be charged with a number of different offences when arrested (i.e. assault, aggravated assault, sexual assault, threats, etc.), we focus on the ‘primary’ or most serious charge that was laid. This measure is coded 1 if the defendant was charged with either aggravated assault or sexual assault while the reference category includes all other, lesser charges. Third, we control for whether the defendant used a weapon during the offence (see also Kingsnorth *et al.* 2002) using a measure that is coded as 1 for presence of a weapon and 0 if no weapons were used.

Drawing from Cramer’s (1999; see also Dawson and Dinovitzer 2001) finding that the availability of pictures documenting evidence of the crime are important determinants of guilty verdicts, we also control for the amount of evidence that was collected and available in each case. These measures are particularly salient within our research setting which functioned as an ‘enhanced prosecution’ court in which police are encouraged to gather additional corroborating evidence rather than relying solely on victim participation in the prosecution process. We include a measure that is coded 1 if there was corroborating evidence (such as photos, medical reports, 911 transcripts or witness statements) and 0 if there was none.

Prior research has also identified a number of defendant characteristics that play a role in the criminal justice process and, therefore, we control for three key characteristics: age of the offender, offender’s employment status, and the offender’s prior criminal history (see, e.g. Cramer 1999; Wooldredge and Thistlethwaite 2004).¹¹ Age is measured in years, while employment status is a dichotomous measure that is coded 1 if the defendant was employed and 0 if he was unemployed. The measure of prior history is a dummy variable that is coded 1 if the defendant had a prior record for domestic violence with the same victim and 0 otherwise. Finally, one case processing variable is included—the defendant’s plea—that is coded as 1 if the defendant plead guilty and 0 otherwise.

Because victim participation in the prosecution of domestic violence cases is often identified as one of the most important factors in the decision to prosecute (Davis *et al.* 1997; Dawson and Dinovitzer 2001; Schmidt and Steury 1989; Ursel 1995; Vera Institute 1977), we control for this factor as well. Victim cooperation is modeled as a dummy variable coded as 1 when the victim cooperated with the prosecution; no victim cooperation is the reference category.¹²

¹⁰ Minor, of course, is a relative term when used to describe injuries sustained during a violent incident. Furthermore, a focus on physical injuries disregards the emotional and verbal abuse that a victim may sustain. Unfortunately, data were not available on the latter, which is a common problem in research on domestic violence.

¹¹ While Cramer (1999) found that race of the offender was important, we were not permitted to collect data on the race/ethnicity of the offender or the victim.

¹² Our measure of victim cooperation is based on notations in prosecutors’ files indicating whether a victim recanted or requested that the charges be dropped or whether prosecutors perceived the victim to be ‘hostile’ or ‘on-side’. As such, this measure is based on prosecutors’ subjective assessment of victim cooperation. It is, in fact, these subjective assessments that are key to understanding the role of the victim in the prosecution process. Prosecutors’ perceptions of victim cooperation are instrumental in the decision to prosecute and this study assesses how cooperation may impact the sentencing process.

TABLE 1 *Descriptive statistics (n = 299)*

	Mean	Std deviation
Sentence length (n = 96)	111.51	10.76
Jail sentence	0.32	0.47
Relationship intact	0.73	0.45
Children	0.51	0.50
Offence characteristics		
Serious injury	0.13	0.34
Aggravated sexual assault	0.19	0.40
Weapons present	0.14	0.35
Corroborating evidence	0.70	0.46
Offender characteristics		
Offender age	34.92	10.04
Offender employed	0.59	0.49
Domestic prior	0.17	0.37
Guilty plea	0.80	0.40
Victim cooperated	0.47	0.50
Missing data dummy variables		
Missing data cooperation	0.32	0.47
Missing data employed	0.12	0.33
Missing data domestic prior	0.10	0.30
Missing data evidence	0.18	0.38
Missing data kids	0.30	0.46
Injury* intact	0.10	0.31

Analytic Techniques

Modeling sentencing decisions, as we do in this paper, poses a classic case of selection bias because defendants who did not receive a custodial sentence are excluded from the analysis. As a result, the data are left censored. To correct for this bias, prior research has tended to model sentence length using a Tobit analysis that provides unbiased efficient estimates in such cases (Albonetti 1997; Bushway and Piehl 2001). Tobit analyses have become widely used in sentencing research because this technique assumes that the two stages of the sentencing process (the decision to incarcerate and the sentence length decision) are influenced by the same set of factors and, in fact, it treats them as one process. With the rise of sentencing guidelines that circumscribe judicial discretion in many jurisdictions, these two stages of the process are indeed becoming more similar (Albonetti 1997; Bushway and Piehl 2001).

Yet, a second path of research has chosen not to pursue Tobit analyses, precisely because past studies shed doubt on whether the decision to incarcerate and the decision on sentencing are processed identically (e.g. Peterson and Hagan 1984; Kingsnorth *et al.* 2002; Steffensmeier and Demuth 2000). This has most recently and convincingly been developed by Steffensmeier and Demuth (2000), who argue that instead of assuming that the same factors influence these two stages of the process, Ordinary Least Squares (OLS) models with a Heckman sample correction factor are the appropriate technique (Berk 1983; Berk and Ray 1982; Heckman 1976; 1979; Klepper *et al.* 1983). This is especially appropriate in the Canadian context, in which there are few guidelines for sentencing (particularly compared with the United States) and in which we should expect that the two stages of the sentencing process are more likely to be independent of each other.

Following this research, then, we model the two sentencing stages separately, using a logit model for the first analysis and an OLS model with a Heckman sample correction

factor for the analysis predicting length of sentence. The analyses we describe below control for a range of measures related to sentencing outcomes, allowing us to examine the independent effects that the familial ideology may play in sentencing decisions.

Results

Type of sentence

We begin by modeling the determinants of being sentenced to jail. The results in Model 1 of Table 2 indicate that the two familial factors—relationship status and the presence of children—are not significantly related to the type of sentence received by defendants. However, we find that employment status is a significant predictor of being sentenced to jail. The data indicate that being employed reduces the odds of an offender being sentenced to jail by 58 per cent. We also find that a defendant's prior record for domestic violence is significantly and positively related to the likelihood of being sentenced to jail: having a prior domestic conviction increases the odds of a jail sentence by 263 per cent compared with having no such criminal record.

Because prior research demonstrates that seriousness of injury is an important determinant of domestic violence case processing (Dawson and Dinovitzer 2001; Rauma 1984; Schmidt and Steury 1989), we estimate a second model to investigate the effect of family status for the most severe cases of domestic violence. We do so by introducing an interaction term that represents the combination of intact relationship status and

TABLE 2 *Logistic regression predicting the likelihood of being sentenced to jail (n = 299)*

	Model 1			Model 2		
	Coefficient	Std error	Odds ratio	Coefficient	Std error	Odds ratio
Relationship intact	-0.193	0.324	0.825	-0.501	0.351	0.606
Children	0.617	0.391	1.854	0.639	0.397	1.895
Offence characteristics						
Serious injury	0.829	0.438	2.292	-1.115	1.021	0.328
Aggravated sexual assault	0.599	0.427	1.820	0.648	0.432	1.911
Weapons present	0.073	0.466	1.075	0.052	0.470	1.053
Corroborating evidence	0.425	0.482	1.530	0.564	0.489	1.757
Offender characteristics						
Offender age	-0.006	0.014	0.994	-0.004	0.015	0.996
Offender employed	-0.876	0.305**	0.416	-0.910	0.309**	0.403
Domestic prior	1.289	0.355***	3.629	1.257	0.356***	3.515
Guilty plea	-0.238	0.342	0.788	-0.196	0.346	0.822
Victim cooperated	-0.099	0.371	0.906	-0.209	0.379	0.811
Missing data dummy variables						
Missing data cooperation	-0.010	0.392	0.990	-0.112	0.398	0.894
Missing data employed	-0.023	0.455	0.977	0.039	0.458	1.040
Missing data domestic prior	-0.446	0.555	0.640	-0.526	0.561	0.591
Missing data evidence	0.675	0.543	1.964	0.764	0.549	2.146
Missing data kids	0.293	0.431	1.340	0.233	0.439	1.263
Injury* intact				2.371	1.089*	10.703
Constant	-0.991	0.865	0.371	-0.880	0.874	0.415
-2 log likelihood	-164.126			-161.464		
Pseudo R ²	0.126			0.140		

* $p < .05$; ** $p < .01$; *** $p < .001$ (two tailed).

serious injury.¹³ This technique allows us to parcel out whether family ideology is mobilized only in particular contexts with cases in which victims suffer serious injury serving as one context in which we expect these norms may be deployed differently.

The results of this model (presented in Model 2 of Table 2) indicate that for cases in which the relationship between the victim and offender is intact *and* in which the victim suffered serious injury, the likelihood of an offender being sentenced to jail increases by 970 per cent. In this second model, the effects of domestic priors and being employed remain significant and retain the same direction as in the baseline model. The effect of relationship status, then, is conditioned by the presence of injury, with injuries amplifying the effect of relationship status.

Length of sentence

Our second analysis investigates the determinants of sentence length for all offenders sentenced to jail ($n = 96$) and these results are displayed in Table 3. As described above, we use OLS regression with a Heckman correction for sample selection bias; the correction model includes those variables that were significant in predicting the likelihood of being sentenced to jail, namely having domestic priors and the offender’s employment

TABLE 3 *Heckman selection model predicting sentence length, correcting for those who were not sentenced to jail (jail sentence $n = 96$; full model $n = 299$)*

	Model 1		Model 2	
	Coefficient	Std error	Coefficient	Std error
Relationship intact	-16.990	4.097***	-55.847	23.325*
Children	9.271	0.576***	-4.522	29.214
Offence characteristics				
Serious injury	51.228	18.987**	-52.885	71.468
Aggravated sexual assault	0.405	17.684	56.720	27.126*
Weapons present	1.152	12.659	-34.278	30.294
Corroborating evidence	-14.242	12.845	7.910	37.863
Offender characteristics				
Offender age	-1.543	1.117	-1.169	1.321
Offender employed	-62.588	26.534*	-3.003	29.263
Domestic prior	96.615	36.146**	0.902	37.671
Guilty plea	-0.818	19.173	-12.626	23.995
Victim cooperated	-4.214	5.587	3.034	25.885
Missing data dummy variables				
Missing data cooperation	-3.114	9.494	-43.993	26.487
Missing data employed	-47.789	31.459	-33.341	31.619
Missing data domestic prior	66.213	25.131**	134.893	44.667**
Missing data evidence	-20.743	37.673	22.281	41.035
Missing data kids	40.747	10.797***	15.949	31.944
Injury* intact			105.934	79.000
Constant	18.213	85.714	203.569	99.774*
Correction factor	14.695	147.320	-0.232	0.604
-2 log likelihood	-711.6294		-734.2123	

* $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$ (two-tailed).

¹³ We also ran additional models (for both the logit and OLS/Heckman regressions) to test for the effect of the interaction between presence of children and relationship status; however, this interaction was not significant.

status. The first model includes all independent variables used in the regression predicting the likelihood of being sentenced to jail. In this first model, we find that both measures of family status are significant predictors of sentence length, yet they have diverging effects. First, consistent with expectations, we find that offenders whose relationship with the victim is intact receive shorter sentences—17 days shorter—compared with offenders whose relationship with the victim is estranged. Second, in contrast to findings from prior studies of the role of children in the sentencing of female defendants, we find that when the male defendant has a child with the victim, sentence lengths *increase* by nine days. We again find a mitigating effect for employment status, with employed offenders receiving sentences that are 63 days shorter than the sentences received by those who are unemployed, and we again find an aggravating effect for having a prior record, with domestic priors increasing sentence lengths by 97 days. Finally, in cases in which the victim has suffered a serious injury, offenders are sentenced to an additional 51 days of incarceration.

In the second model of Table 3, we again introduce the interaction term for intact relationship by injury. The results indicate that offence seriousness results in significant increases in sentence length: when the primary offence is an aggravated sexual assault, sentences are 57 days longer. Model 2 of Table 3 also indicates that the interaction between intact relationship status and injury is not significant. However, in this final model, the coefficient for intact relationships becomes larger and remains significant. The resulting effect is that where there is no presence of injury, intact relationships reduce sentence length by 56 days (see Jaccard and Turrisi 2003). Given that the interaction term is not significant, our discussion below will focus on the results from Model 1. Finally, the results in Table 3 also indicate that the sample correction factor is not significant. This suggests that there is no evidence of a sample selection problem in estimating sentence length.

Discussion

Over the past decade, comparatively little attention has been placed on ‘family-based justice’ in the criminal courts. In the context of domestic violence, the research that has pursued this question has reached ambivalent conclusions. By explicitly modeling familial factors at the two key decision points that determine sentence outcomes, the present study allows us to gain analytical purchase on this question. We find that despite the emergence of specialized courts to deal with the complexities faced by families in the context of domestic violence, conceptions of what is good for the family appear to still motivate the decision making of criminal justice officials.

Our findings suggest two key sites through which the family is mobilized in the sentencing of domestic violence. First, our data point to the continued importance of the relationship between the victim and the offender—and, more precisely, whether their relationship is intact—in the sanctioning of these cases. We find that courts are more likely to incarcerate offenders in intact relationships when the victim has suffered serious injuries (cf. Kingsnorth *et al.* 2002); yet, at the same time, courts appear reluctant to break apart these families for too long, with offenders in intact relationships receiving shorter sentences than offenders estranged from their victims, even controlling for the presence of injury (Table 3, Model 1).

Second, in contrast to previous research (e.g. Daly 1987; 1989), our findings do not support the conclusion that children are the key to family-based justice—at least in the context of male defendants in a specialized domestic violence court. In fact, we find

that the presence of children exacerbates sentence lengths. While prior research suggests that for female offenders, having children may result in more lenient sentences because of their primary care-giving role (Daly 1987; 1989), the current study suggests a different configuration for male offenders, with fatherhood related to harsher sentencing patterns. This pattern may well reflect changing ideas about what is ‘good’ for families, with violence in the home perhaps shifting the ways in which judges conceive of the ‘family’. While further research is needed to understand the motivations for this differential treatment, we speculate that this finding may also reflect assumptions about the potentially detrimental effect that violence in the home poses for children.

Conclusion

Taken together, the data in this study provide us with nuanced insight into the function of criminal punishments and the ways in which these are mobilized by courts in protecting and promoting family relationships. That offenders who remain in relationships with their victims are more likely to receive a custodial sentence, yet receive shorter jail sentences, suggests that the courts may be ‘managing’ intimate relationships by using jail as a ‘cooling-off period’. When offenders are in relationships and causing serious injury to their partners, they are physically removed from the home, receiving a jail sentence more often than unmarried offenders. Yet, when offenders are in intimate relationships, independently of the degree of injury suffered by the victim, they are more quickly returned to the home by being sentenced to jail for shorter periods of time. That men who are employed are also more quickly returned to the home may be a further reflection of the courts’ desire to maintain familial structures by ensuring men’s continued economic contributions to the family unit—all the while reinforcing the traditional gendered roles of mothers and fathers.¹⁴ As a result, if state intervention in ‘the family’ has become normative in this context, courts are still reaching results that protect and promote a family ideology.

Beyond domestic violence, these findings have broader import for sociological criminology. As others have described (Kempf-Leonard and Peterson 2000; Butts and Mears 2001; Mackenzie 2001; Mirchandani 2005), specialized courts are part of a broader shift away from moral uses of the criminal law, toward a more actuarial model of management and classification. Yet, as Garland’s (2001) work suggests, these managerial models can themselves include important moral dimensions.

As a result, while Garland’s work attends to the broad policy impact of families in criminal justice, this study provides evidence of a homologous impact of ‘family-based justice’ in deciding individual criminal cases. As Garland notes (2004: 172), the organizational interests of criminal justice actors are ‘determined by the real structure of that environment and the competing forces that operate within it’, so that, despite a turn to managerial imperatives, protecting a vision of the family, documented by Donzelot and Daly for different moments in the past two centuries, continues to be a prevalent part of everyday decision making in the criminal courts.

¹⁴ The findings regarding the mitigating effect of employment status on the sanctioning of domestic violence offenders is suggestive of the argument—seen in Daly’s (1987) work and others—that the male role in childrearing has more to do with breadwinning than care-giving. To further explore this relationship, we tested for two additional interactions in all our models: the first was between employment status and having a child and the second was between employment status and being in an intact relationship; neither interaction was significant. As a result, we can only speculate about the implications of our findings regarding employment status and further research is needed to parcel out these effects.

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