

CRITIQUE

*Aaron V. Cicourel: KINSHIP, MARRIAGE, and DIVORCE in
COMPARATIVE FAMILY LAW*

*Paul J. Bohannan and Karan Huckleberry: INSTITUTIONS of
DIVORCE, FAMILY, and THE LAW*

MARVIN B. SUSSMAN

Western Reserve University

I HAVE A TERRIBLE habit when I read fiction, especially murder mysteries, of reading the last chapter before I would normally reach it and consequently obtain the outcome to the problem being developed step by step by the author. I began reading Professor Cicourel's paper early this week when it arrived, and I should have gone to the last few paragraphs in which he states clearly the objectives of this scholarly effort, namely, that researchers undertaking any kind of investigation should shake off the use of a priori schemes, typologies, structural elements, and the like and turn their attention to how individuals go about solving the problems of day-to-day living. One should pay more attention to the respondent's solution to a social problem and thus use the respondent's replies as categories of analysis rather than using a researcher's set of categories which are based upon a presumed and articulated set of meanings. This is the major thrust of this paper to which I want to return shortly.

The beginning of the paper does not clue in the reader as to what is the major argument for a useful research marriage between law and sociology in the delicate areas of family, marriage, and divorce. Early in the essay, pages are devoted to an explosive display of notions, hunches, meaningful theoretical formulations, arguments, polemics, and redundancies. Cicourel is correct in his initial statement that there are very few sociologists looking at laws pertaining to the family in order

to discover new knowledge about kinship and family processes. In a project, in the analysis and writing stages, concerned with patterns of property disposition through inheritance, the legal processes involved and the activity of the families involved (I am somewhat frightened to use the term family after reading this paper because it may reflect some ideal-typical structural meaning), we found very few guidelines for undertaking this research. But fortunately, and now having read this paper I would say correctly, we did approach the problem by a method which enabled our heirs and legatees and potential heirs of all legally related family units to express themselves freely about such matters as the meaning of inheritance, family relationships, probate processes, lawyer's behavior, and the like. I think my colleagues, Professors Cates and Smith, and I, however, are still somewhat frightened by our efforts in this uncharted research territory.

Cicourel discovers, as others have, that there is a commonality of problems between a behavioral science and a profession regarding the formulation of theory; the development of workable research designs, feasible techniques, and quality hardware; the problems of verification of knowledge; the meaning of data, both non-verbal and verbal communication; linguistic equivalence; strategies for obtaining reliable data; and problems of objectification. He demonstrates very succinctly the problems of meaning when sociologists and other behavioral scientists do studies concerned with relationship between independent and dependent variables and when data are gathered in predetermined categories. He is correct in stressing that studies using such variables as social class, family structure, and occupational level and then linking these variables to outcome or dependent variables such as earned income, rate of divorce, occupational achievement, and mental illness require the researcher to provide an explanation of the relationship between the two variables which is based chiefly on intuition, imagination, speculation, and common sense. The researcher provides inferences about the social process and social organization and supposedly he bridges the gap between the two variables.

At this point a more intelligent reviewer of this paper would have realized that the author is beginning to make a case for the symbolic interactionist approach to research and much of what follows is devoted to illustrating that a contextual or social interactional framework is most opportune for comparative studies of family law via examination of kinship, marriage, and divorce.

This argument is very convincing, but arriving at a key approach to comparative research does not by itself provide all the conditions of feasibility for undertaking extremely arduous comparative projects. Comparative studies require some articulation about a central problem or issue of the human condition—something which is fundamental and important to all societies, some issue or problem which requires some form of solution if there is to be continuity of the society over time. The section of the paper devoted to Goodenough's componential analysis and Professor Schneider's comments about it is aimed at pressing home the point that terminological systems or typologies of labels and categories are not the best procedure for understanding social, organized activities over time: how these activities begin, are carried out daily, and terminate eventually. In a variety of contexts and with interesting examples extracted from court cases or training novice lawyers, the author successfully smashes the image and arguments for structural analysis. One can travel down the road a great distance with Professor Cicourel, especially when he points out that there is an overwhelming tendency in the traditional survey and componential analysis to be primarily concerned with ideals or structural meanings—meanings which are closed by theoretical fiat or unstated common knowledge. In common terminology the structural approach is somewhat detached from "where the action is"! He wisely suggests that all human beings in the course of everyday events want to obtain closure to their actions and this requires decision-making on their part. The task of the researcher, therefore, is to permit the individuals he is studying to close events in their own way, and all procedures and measurements should correspond with the respondent's closing procedures. In taking this approach one gets closest to the meaning of behavior and the meaning of such terms as kinship, marriage, divorce—terms which should correspond to the reality of the behavior practiced in the society and thus close the gap between the ideal and the real. The logic of this argument is that, if one obtains pragmatic and empirical definitions of behavior, in time these definitions will become standardized, idealized, and institutionalized. For example, if changes in the conception of the family occur so that when the word is stated in court or elsewhere it conjures up an image of an unstable unit rather than a stable one, I think that in time it will become part and parcel of our reference system and being so identified will, as time marches on, become less related to reality. Where I disembark from the boat Cicourel is sailing is in the

implication that when one uses structural terms such as family or mother or father one automatically implies ideal-typical meanings. The argument raised by Cicourel is that the term "family" is used generally throughout the land and that, especially among lawyers and family sociologists, it conjures up a picture of individuals related by marriage and blood, living together, working together, playing together, going to church together, and generally being happy together. "Mother" connotes warm, friendly, understanding, affectionate, hard working, homemaker, etc. It is my contention that such terms used in structural analysis are necessary reference points for understanding the organization of human behavior and do not in any way conjure up such valued meanings. One looks upon the family as a form of organization that has the potentiality of carrying out biologically and culturally derived roles which, if carried out within a set of expectations, can provide gratification of basic and derived needs for its working members. The use of these terms does not express value meanings, and I contend that lawyers, physicians, sociologists, and others pick up values concerning the happy and normal family just as anybody else does in the society from sources which influence and perhaps control the lives of all members of the society.

It is my feeling that often when one makes an argument for the relevance of a particular theoretical approach or methodology, one goes so far in making the case that it is possible to throw the baby out with the bath water. I have mentioned the need for reference points and guidelines to organize ideas and observations and to give meaning to that which is being observed. I would have been less discomforted by some of the arguments in this paper if the author had devoted some attention to the integration of structural analysis with the interactionist approach. Obviously there is a close interrelationship. If I could conceptualize initially that structural elements are reference points or ideals and, if so, are pervasive in influencing one's actions, then how can one assess their relevance to the everyday behavior of individuals who obviously are being influenced in some measure by these ideals?

However, Cicourel is not to be admonished for not attempting to bridge this gap in social theory; since few have attempted and even fewer have succeeded in doing so, and he is pioneering in a new substantive area. One of his more convincing arguments for the approach concerning how people accomplish the tasks of daily life comes from demonstrating the difficulties of comparative divorce studies using ab-

stract categories, the wide range in meaning and the significance of divorce in various societies. This paper should be read several times, because after each reading new vistas become exposed. The many problems for research raised in this paper will keep doctoral students at work for a long time.

Professor Bohannon and Miss Huckleberry present in their paper the dilemmas of American lawyers regarding divorce in our society. The basic technique used by the investigators is to survey the legal literature for their data. From their review they delineate four basic functions of divorce:

1. Remarriageability
2. Solution of marital difficulties
3. Alimony and support
4. Property settlements.

They recognize that each of these terms disguises a rather complex situation and, while they are not as explicit as Professor Cicourel is in his paper regarding the stereotyping effects of such terms, and specifically divorce, they nevertheless suggest, although not clearly, that current words like divorce, remarriage, alimony, and the like mean a lot of different things to a lot of different people.

One of the more interesting observations made in this paper is that divorce cases are very low on the scale of desirable work roles of lawyers. The authors do not develop systematically the reasons for the current stereotyping of divorce cases as messy and "dirty work," but enough is suggested to draw the following picture. It is quite apparent that the *time* required to handle adequately a divorce case—and in "adequate" I would include the prospects for counseling a successful divorce or marriage—is demanding and, consequently, financially unrewarding. Lawyers find it as financially unprofitable in the run-of-the-mill lower- or middle-class divorce case as they do in wills and probate work. The money is not there, and lawyers do function within a matrix of economic as well as professional norms. Another point is the stigmatizing effects perceived by lawyers if they have to become like marriage counselors or to be associated with a lower-status professional in a collegueship relationship. Another notion is that lawyers are trained to operate in combat under the adversary process and a concept of counseling involving the needs and interests and motivations

of all parties involved. This idea of counseling is not to be found in the core curriculum of the law school. Still another point is that the society has imposed upon law professionals as well as the laity a set of attitudes and values which support the self-degrading process whereby, in order to qualify for a divorce, one has to assemble and expose to the public eye all evidence of marital dereliction. One suspects that operating here are two seemingly contradictory but actually complementary processes: on the one hand, such exposure supplies a vicarious enjoyment of that which is called immoral, yet yearned for, by most able-bodied persons; and, at the same time, it is a vindication of the posture of the Calvinistic ethic. The self-degrading process makes all who view it safe at any price!

In spite of these ambivalences and ambiguities regarding the appropriate posture for lawyers in the marriage counseling field, a few adventuresome ones have obtained sufficient credentials to become certified clinical members of the exclusive American Association of Marriage Counselors; 12 of 600 or 2 per cent display their marriage counseling certificates with their law diplomas.

Regarding the stigmatized posture on divorce held by lawyers, I would like to stress a point related to their own personal experience in marriage and divorce. A venerable and honorable sociologist, known to all of us, expressed to me on several occasions the great difficulties he and others had years ago to obtain funds for research on problems related to marriage and the family. His thesis was that when he submitted applications for funding to foundations and government agencies, he was bound to run into one or more individuals of a panel or review committee who was in, or had been in, extreme marital difficulties or for whom divorce was a traumatic experience. The reactions to his proposals or to him personally expressed ambivalence, hostility, and the attitude "where were you when I needed help?" I think he made a relevant point to this discussion, for I have noted the same thing. It has not been until very recently that some of us using our consultant role effectively have been able to place behavioral scientists into government positions and that, consequently, now we find marriage and the family research well supported and this factor of the personal experience of review panel members somewhat neutralized. This example is to suggest that one needs to study the basic experiences of lawyers in their own family lives in order to assess their competence and capability for handling divorce cases and the role they can play in making this

work less stigmatizing and in changing societal orientations concerning divorce.

The authors make some strategic observations that society is opposed to the notion of successful divorce and lawyers have simply taken on this dominant view of society. I do feel, however, that the public view is changing and the notion of successful divorce is taking hold in many quarters. One indication is that divorces which are worked out considering the best interests of all involved do not jeopardize as much the social or occupational status of individuals as they did a decade or two ago.

There is an excellent discussion of the differences between divorce counseling and marriage counseling and of the extreme difficulties of lawyers ever taking on "preventive medicine" roles aimed to safeguard the institution of marriage and the family. One can liken the problem to that of the psychiatrist who has to spend a considerable amount of time on each case; who has a limited rate of success; who has to stretch his intellect continuously, a drain on one's physical and psychological well-being; and whose successful cases are not as visible as those of the surgeon. Keeping people normal and functioning is not an outcome greatly cherished, highly prized, and richly rewarded and does not create as much enthusiasm as defending the rights of an injured individual.

The conclusion that the family as the general back-up institution is not itself supported by adequate back-up institutions when it (the family) fails in its varied tasks is contrary to the findings of over fifteen years of research on urban kinship systems. Empirical research by Litwak, Farber, Leichter, Winch, and myself among many others indicates a viable and functioning kin network of nuclear related families engaged in social and economic exchanges along intergenerational and bilateral kin lines. Many of these activities are normal and routine, involving exchanges of services or social interaction; others are in response to crises such as divorce, death, separation, and loss of occupation; still others are of the "kith and kin" type—help in migration, birth of a child, etc.; and others are ceremonial—family reunions, gatherings at holidays, etc. The point is that the family unit is not an isolated one and can usually obtain, from other kin member units, help when needed in forestalling an impending divorce action and emotional and financial support, housing, advice, etc., after a divorce occurs. Divorce is a condition, not a back-up institution, which modifies nuclear and kinship

family arrangements and brings into existence new reciprocities, exchanges, and bargaining among family members.

Finally, this paper indicates support for Professor Cicourel's notions that there is a need for terminological and conceptual clarity in this field and raises the question as to whether divorce is a good indicator of family failure. The authors are limited in their discussion to the types of materials they used, and my major conclusion is that they have provided the basis for some significant research in this area. They and others could begin to study the lawyers themselves, their family problems and experiences, and their attitudes, perceptions, and stigmatized orientations concerning marriage and divorce in this society.