

MAKING CRIME

A Study of Detective Work

Richard V. Ericson

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Centre of Criminology
University of Toronto

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To Dianna. She too has
sacrificed for this. And then
there is Edward Greenspan,
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Doob, Edwards, Leyerle,
McCulloch, Mewett, Saywell,
and Waddams. In generously
providing their time and advice
they have furthered my
education on the meaning of
duty and discretion.

Preface

In this book we explore general investigation detective work and its place within policing, crime control and wider processes of social control. We accomplish this through an observational study of detectives operating within two general investigation detective offices in a Canadian municipal police force, and by relating our findings to the socio-legal literature. While general investigation detectives represent only a small fraction of a police force membership (less than 10 percent of the Force we studied), they have an important role within any force. They are assigned the task of routinely processing cases brought to their attention by others (usually uniform patrol officers), and of arriving at a conclusion for the cases by giving them specific designations (e.g., whether a "crime"; type of offence; clearance category; type of charge). This work of "making crime" is particularly important to the extent that the policing mandate, and the legitimacy that flows from it, is defined primarily in terms of the control of "crime" and "criminals."

While there have been a multitude of studies on the patrol police and some other aspects of contemporary policing, there are few studies on detective work. Moreover, the existing published socio-legal studies have been conducted only in American jurisdictions and have been based largely upon interviews, document analysis, and/or un-systematic observation (Skolnick, 1966; Greenwood *et al.*, 1975; Sanders, 1977; Wilson, 1978 and Manning, 1980). The present study is a contribution to the understanding of an area of policing that is only beginning to be explored and documented. It contributes to a comparative examination of detective work in that it is the first study in the context of Canadian legal and social organizations. It also contributes through the use of systematic observation methods along with document analysis.

There are several themes in the book which are interconnected to develop a portrait of detectives at work. In their routine, everyday work detectives deal primarily with cases in a reactive manner, that is, after they have been brought into the police organization and been made into police property by patrol officers. The detectives' task is to make what they can of these cases within the organizational criteria of the police force and the wider organization of crime control. Detectives work cases that they see as promising and disregard or finesse others which have little apparent prospect for investigative payoff. They are motivated to do this to gain organizational reward, control the level of their work, and achieve satisfaction from what is often a routine and boring job.

Detectives are skilled at doing this, largely because they work within an enabling environment. At least compared with their patrol officer colleagues, detectives have autonomy from their supervisors. They also have autonomy within the law, as they learn to use the ostensibly controlling procedural law to their organizational advantage. Furthermore, they have a "positional advantage" (Cook, 1977) vis-à-vis other segments of the police force and the other organizations of crime control. This comes about because they operate in conditions of low visibility, which in turn places them in a powerful position via the control of information.

In these circumstances, detectives are able to transform citizen conflicts into the property of the police organization (Christie, 1977), to be used according to various criteria of their own detective units, the police force, and the wider organization of crime control. When they decide not to work a case, or to unfound it, or to re-interpret it, there is little or no review that might challenge what detectives have made of the case. When they decide to proceed against a "criminal" who can be identified with a "crime" in a case, detectives are typically able to accomplish outcomes that are consistent with their objectives. Justices routinely grant warrants, releases, and bail conditions in accordance with detective requests. Defence lawyers and Crown attorneys cooperate with detectives in working out plea settlements and sentence recommendations so that most accused plead guilty and receive a disposition within a predictable range. Along with judges, the other agents of the court typically accept the detectives construction of cases, and the organizational actions of the courts rest in important ways on the facts of cases as presented by detectives.

As discussed in Chapter 1, from the inception of the new police in 1829 most of these elements have continually been a part of detective work. While detective work only gradually became institutionalized as an integral part of public police forces, it has always been characterized by the relative autonomy of its practitioners through enabling rules, low visibility, and information control. In contemporary settings these elements are the foundation of the detectives' working environment and shape their working ideology and practices.

While there is a certain durability of these elements, we differ somewhat from the emphasis given to them and their implications for detectives' discretion (power) as depicted in some contemporary accounts of detective work. Contrary to the portrayal of many (e.g., Skolnick, 1966; Reiss, 1971; Wilson, 1978), but in accordance with Greenwood *et al.* (1975) and Manning's (1980) findings, we document that detective work is largely reactive rather than proactive. Detectives working in general investigation detective units respond mainly on the basis of occurrence reports submitted by patrol officers who in turn have received complaints from citizens. Obviously the existence of the complaint, the nature of the account given by the complainant, and the filtering of this account by the patrol officer, are things which are usually created externally to detective units. Moreover, detectives are

rarely able to proceed with an investigation which starts out "cold" and ends up with a chargeable suspect. Rather they are dependent on others to identify and produce suspects, and their main work is routine processing and preparing documents on suspects who have been produced by others. *Initially* detectives are reactive, although they may later do some proactive work to validate, deflect, or alter the complaint; at least initially, the control of cases is in the hands of persons other than detectives.

Once a case is taken on by detectives, what is made of it is very much in their control (for a supporting study, see Sanders, 1977). The only real threat to their control is the possibility of a citizen complaint that they did not perform their duty properly. Thus, an important part of detective work is expending energy on cooling out citizens and otherwise finessing cases to minimize this threat.

Detective discretion lies in information control: the investigations they do or do not undertake; the questions they do and do not ask; the interpretations they do and do not give to the answers; the written accounts they give and what they leave out; the formulations they give to other actors and their ability to predict that these will be routinely accepted by others as legitimate for purposes of action. Detective discretion also resides in enabling legal rules and other organizational rules, which provide them with a framework to formulate legitimately their actions and their accounts.

Our study provides rich and unique data on how detectives accomplish case control once they have received it. While they do their work routinely, they are not automatons in the way that some accounts suggest (e.g., Greenwood *et al.*, 1975). Our portrayal is of workers who are subject to controlling influences; who work in response to these controls and sometimes find ways around them to accomplish their organizational tasks as they see them; and, who in turn exert considerable control over the process. This is a dialectical process between organizational structures and the persons who respond to them and constitute them.

Obviously, our study is not an evaluation of a particular detective operation nor of detective work in general. Our interest is in understanding the organization of general investigation detective work and its implications for understanding crime, criminality, and processes of social control.

We conclude that there are senses in which detectives have both more and less power than other researchers have documented or other commentators have imagined. We stress that the various policy alternatives that are usually debated (e.g., changing the law, changing the structure of the police organization, professional socialization of officers) are not as simple and straightforward as they sometimes appear to be. For example, there is a very different legal context in Canada, with procedural law which has generally developed in more of a "crime control" direction than in the United States. Yet, our data suggest that general investigation detectives in Canada operate in

similar ways to their American counterparts, and achieve similar outcomes. Apparently the procedural law makes little difference, functioning in both jurisdictions for crime control (McBarnet, 1979).

Perhaps most of the proposals for reform have little impact because reformers know too little about what it is they are trying to reform. Even the most concrete proposals for reform do not take up the concrete facts about the nature of detective work. These facts and control of them are embedded in many constraints other than those usually talked about. First and foremost detective work is conducted within organizational contexts (as defined by Silverman, 1970), including the community policed, the law and court apparatus, and the police force. If one understands these organizational contexts, one can readily appreciate the inevitability of such things as detective control over the process, the point that "crime" is not an entity constituted independently of the organizations established to deal with it, and the realization of the limited capabilities of detectives and other members of crime control organizations to deal with the "crime problem" through deterrence and detection.

It will be appreciated that this study is about one very small segment in the total machinery of State control. This book must be seen as only one step in a continuing project which examines all aspects of "policing," defined in terms of all governmental efforts for controlling, developing, shaping, and refining the population.

Based on one reviewer's reading of an earlier draft of this manuscript, I am disposed to make one more point about the nature of this project. In the description and analysis of the data there are, of course, some things which some audiences might view as questionable activity on the part of detectives or other actors. For example, comments with racial overtones, "colourful" language, flexible use of time on duty, and questionable exercises of authority are occasionally included as they form a natural part of the description and analysis that inform the central issues of the book. This research did not take a survey orientation to these phenomena by counting them up, analyzing them, and providing a commentary on them. These things occasionally appear as part of detective work, as they do in all other occupational settings.

Toronto, Ontario
August 1980

Richard V. Ericson

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Detectives and the Making of Crime

Detective Work in Perspective

In the evolution of the “new police” after Peel’s reforms of 1829, detective work had a very secondary role. While the new police were explicitly established to penetrate civil society and keep surveillance over the population (Silver, 1967: 12-15)¹, this surveillance was to be done by *visible* uniformed beat officers. Indeed, in the beginning there were no detectives who were part of the new police. For the first ten years the task of criminal investigation remained with the magistrates and Bow Street runners, who continued the previous practice of doing work on a fee paying basis, and who explicitly combined the police and judicial functions (Moylan, 1929: 13-14; Cobb, 1957: 72; Miller, 1979: 15).

The early years of the new police were chaotic. There was an enormous turnover rate as the new commissioners responded to discipline problems by the multiplication of disciplinary rules backed up by the punishment of dismissal.² One problem stemmed from the fact that while Commissioner Mayne explicitly defined effectiveness in terms of crime reduction, he had no officers trained in criminal investigation. His officers either established lucrative liaisons with the Bow Street runners, or simply had their cases “scooped” by the runners. Moreover, many of the more serious and notorious cases they worked on failed to produce convicted offenders. These problems, combined with perceived threats from Irish political groups, provided the basis for the argument that the new police required their own investigative branch.

The first traces of a detective branch appeared in the work of an Inspector and Sergeant who were assigned to a series of murder cases in the late 1830s. This *de facto* detective team was incorporated into the first detective branch, which was established in 1842 with six sergeants and two inspectors. However, this branch remained within the general administration of the Force, and even by 1868 only 15 out of the 8000 members of the Metropolitan London Police were designated for detective work. In 1877, an inquiry revealed that three senior detectives were involved in illegal gambling operations; this led to the establishment of a House of Commons Committee, which in 1878 recommended and had accepted a proposal to establish a distinct

detective operation (Criminal Investigation Division or "Scotland Yard").

In short, it was almost 50 years following the inception of the new police that a distinct detective operation was established. Moreover, while detectives were assigned rather more specialized tasks relating to criminal investigation and enforcement, their goals were defined in terms of the overall function of the new police as reproducers of order. While there were occasional experiments of appointing "gentlemen of good education and social standing" directly to the detective branch (e.g., from 1878-1884), these experiments were judged a failure. As a result, all detectives were socialized into the police occupation by extensive work on the beat as uniformed officers, thus ensuring similarities in organizational outlook between uniform officers and detectives. This outlook was related to the stated goals of reproducing order, which included the containment and control of crime through *surveillance and criminal law enforcement*.

Even in the earliest days, this work of patrolling and controlling the population was no more exciting for detectives than it was for uniformed officers. The essence of work was routine surveillance and mundane information processing.

[My analysis] suggests that, as compared with the tasks of Sherlock Holmes, or Dr. Thorndyke, [CID work] is not exciting. The detective side of police work, in an English force at all events, is, it must be admitted, a somewhat matter-of-fact occupation, in which hard work and knowledge of the criminal classes are essential. Crime in real life is largely the work of professional criminals of poor intellectual capacity, no social accomplishments or charms, and little imagination, though they may have a great deal of low cunning. To cope with them successfully, powers of abstract reasoning and scientific knowledge or apparatus serve less than the more commonplace resources which may be summed up in the word 'information,' including under the term not merely the assistance derived from informants but close and constant personal observation of criminals, their ways, haunts, and associates, backed by an efficient system to ensure the identification of old offenders. It may need a 'master brain' to defeat the machinations of 'master criminals,' but, as someone has said, it requires an ordinary policeman to deal with ordinary crooks, and it is from them that society has most need to be protected.

(Moylan, 1929: 178)

A major reason why the detective branch took so long to become established, and why it was kept with a low level of manpower and other resources, was the British cultural resistance to State control that was not visible. The schoolmaster standing in front of his pupils, the prison warden standing in the control tower of the panopticon, and the uniformed police constable standing on the street observing and being observed in "public," posed no threat to those who put these agents in their positions. However, the idea that these agents would not be

visible was abhorrent. The very idea of a plainclothes police was strongly attacked, and even after the detective branch was established much of the continued criticism of their work could be interpreted as reflecting an underlying resistance to a "secret police."

The old police had been in plainclothes, but once the new police were established in uniforms, any plainclothes operations were viewed as the ominous beginnings of a secret police. One indication of this fear is the fact that in the first 40 years of operation, police officers in the Metropolitan London Force were not allowed to appear in plainclothes, even when off duty, without special permission (Moylan 1929: 152). Initial attempts by the Force to use plainclothes officers in anti-crime patrols were attacked by magistrates, who refused to prosecute people accused of assaulting plainclothes officers (Reith, 1943: 82, 102). In 1833, a Select Committee of the House of Commons inquiry into the case of a police officer who infiltrated a working class union, expressed its strong disapproval of the officer's actions and emphasized that deployment of plainclothes officers should be limited to specific cases of crime detection and prevention where no other means are available. Moylan (1929: 152-153) argues that this case had a major effect in forestalling the development of the detective side of police work.

By the 1860s and 1870s, growing public debate and concern over the problem of serious crimes and the inability of the police to deal with them created an enabling environment for the expansion of the detective operation. As Miller (1979: 20) expresses it, this was the first period in which "fear of criminals outweighed fear of detectives." However, even during this period the relative size of the detective operation remained miniscule and the place of detective work remained under suspicious scrutiny. Thus, in his report of 1869, Commissioner Henderson stated, "There are many great difficulties in the way of a detective system; it is viewed with the greatest suspicion and jealousy by the majority of Englishmen and is, in fact, entirely foreign to the habits and feelings of the nation."

In the 1880s the CID continued to be criticized, although the immediate target for the attack was their inability to catch notorious suspects such as Jack the Ripper. Miller (1979: 21) notes that this led Punch to refer to the CID as "the defective police." The criticism continued well into the twentieth century. For example, the MacMillan Committee (1928) on the duties of the police in regard to street offences and the Lee Commission (1929) on police powers and procedure both said that the CID should not be used for detecting "street offences." The Lee Commission also condemned the detectives' "method of bluff," and their use of minor offences for detention of suspects regarding major investigations (Moylan, 1929: 165).

The concerns of the press, and of governmental committees and commissions, indicate that from the very beginning detectives searched for innovative strategies to achieve their surveillance and law enforcement goals. Compared with their colleagues in uniform, detectives had greater autonomy to set their own schedule and

priorities, to work away from the watchful eyes of superordinates, and to develop techniques which would produce the information essential for investigation and the production of evidence. As Cobb (1957: 152) states in discussing a case worked on by the first detectives,

[T]hat crime was one of the many failures of those years. But in the process of failing, Inspector Pearce and Sergeant Otway did something which had not been done in the force before, but which was absolutely essential in detective work: they acted without authority or orders, and even disappeared for several days—exactly as the Police Officers [before the new police] had done.

Along with their colleagues in the uniform branch, the early detectives were faced with the problem of winning public acceptance in order to ease their surveillance and enforcement tasks. This could not be achieved by force; indeed, the ineffectiveness of military intervention strategies for handling civil disputes was one of the factors that led to the founding of the new police (Silver, 1967). Detectives and other police officers had to devise means of establishing cooperation with the citizenry on a face-to-face, day-to-day basis. As Bittner (1970: 98) observes, in the contemporary context, "[T]he most important 'trick' in police work is not to make people obey but to make it possible for them to obey." A version of this "trick" was performed on the first day of operation of the new police. From that day onward, thousands of permutations and combinations of strategies were employed to accomplish and perfect this trick. The legitimacy of the police was no more secure than a house delicately constructed out of playing cards; however, by playing the right cards in their exchanges with the citizenry, and by refusing to withdraw after the occasional collapse, the police managed to build up legitimacy credits and to reproduce the glass menagerie of social order.

The success of the police, both ideologically and practically, depended on convincing people to accept the official code of illegal behaviour, and to turn to 'official' channels for redress.

To win this cooperation, the police manipulated their powers of discretion. They often chose not to take their authority to the letter of the law, preferring not to "press their luck" in return for tacit compliance from the community. In each neighbourhood, and sometimes street by street, the police negotiated a complex, shifting, largely unspoken 'contract.' They defined the activities they would turn a blind eye to, and those they would suppress, harness or control. This 'tacit contract' between normal neighbourhood activities and police objectives, was sometimes oiled by corruption, but more often sealed by favours and friendships. This was the microscopic basis of police legitimacy, and it was a fragile basis at best. (Ignatieff, 1979: 445)

In the present century, and especially since World War II, this fragile basis of police legitimacy has been reinforced by other forces.

Police surveillance has gradually become institutionalized as a taken-for-granted fact of everyday life (Foucault, 1977). People who have almost given up their lives as soldiers or industrial workers, who have dedicated their lives to unrespectable work in order to appear respectable, have come to view a questioning of the police as more of a threat than anything the police might do to violate their rights (Friedenberg, 1975: 38, 65). In times of economic surplus, the police have multiplied without much public regard to questions of efficiency (cost effectiveness) nor to the wider social implications of their constructive tendencies (Ericson, 1980).³ The police have replaced cowboys as cultural heroes. The value conflicts, angst, and need to *feel* secure (rather than to *be* secure) among the citizenry is played out and relieved in television "cop shows" that are at the same time episodic and endless (cf. Hurd, 1979). The police hire full time press officers, and organize massive public relations campaigns, using the peoples' resources to convince them that they (the people) would have even less resources through increased crime if they did not accept extravagant police presence in their midst. In short, on the micro-level of police-citizen transactions, the mecro-level of police organizational constructions, and the macro-level of policing as an integral part of the political economy, the police now stand erect on reinforced concrete. Police infiltration into everyday life means people literally accept the saying that "the police are the people, and the people are the police."⁴

In Canada, we have inherited the tradition of public policing that began with London's new police, and we have allowed the public police to become accepted as a major force in our midst. However, apart from a very few research efforts (e.g., Brown and Brown, 1973; Grosman, 1975; Mann and Lee, 1979; Ericson, 1980; Shearing, Farnell and Stenning, 1980), the development and operation of policing has not been examined systematically. Moreover, to date there has been no socio-legal inquiry into detective operations in Canada. Indeed, inquiry into detective work is a neglected area of police studies in all Anglo-American jurisdictions (the five major empirical works to date are Skolnick, 1966; Greenwood *et al.*, 1975; Sanders, 1977; Wilson, 1978; and Manning, 1980). As a result there is inadequate understanding of the detective function as it relates to the uniform patrol function and to other aspects of policing.

A review of the contemporary socio-legal literature provides some general knowledge about the place of general investigation detective work vis-à-vis other aspects of State financed policing. Most large-scale, bureaucratized police forces have evolved a sharp division of labour between their patrol and detective operations. In general, criminal investigation (including the processing of suspects and accused persons) is turned over to detectives at the earliest possible juncture (Cain, 1971: esp. 68; Chaiken, 1975: vii; Ericson, 1980).⁵ As a consequence, patrol officers are sometimes viewed as "nursemaids" of detective specialists, and this creates patterns of tension and conflict (Angell, 1971: esp. 192; see also Banton, 1964).