

The Pursuit of Criminal Justice

Essays from the
Chicago Center

Edited by
Gordon Hawkins
and
Franklin E. Zimring

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To H.W.M.

Preface

This volume celebrates nearly two decades in the life of the Center for Studies in Criminal Justice at the University of Chicago. In these pages, the reader will find a variety of essays, topics, and authors, and perspectives that we regard as representative of the eclectic character of the center. There are two further components of the volume. First, Gordon Hawkins sets out in his introductory essay to place the center in the historical and intellectual context of the history of criminological research at the University of Chicago. Second, we provide a comprehensive bibliography, by topic, of the center's publications over the period 1965–82.

Is such a project worthy of independent publication? In discussing this question with colleagues, we began by noting that library shelves are already groaning under the weight of volumes of self-congratulation and institutional boosterism that have not left the world of ideas a better place. To organize a volume around the contribution of a single research institution is often parochial and occasionally unseemly. But the arguments that developed in favor of the enterprise persuaded us to go forward. The first consideration was the essays themselves. Diverse in scope and perspective, most of them seem to us to have stood the test of time quite well and to be of potential value to future students of criminology, criminal justice reform, and criminal law. Many were scattered beyond the reach of a student or academic researcher—episodically published, misclassified, and fugitive literature in a disorganized field. We felt that individually the essays deserved a wider audience. Collectively, these contributions portray a broader vision of the study of law and legal institutions than has been fashionable in academic American law.

Second, these essays and their supporting bibliography are intended as an introduction to the much broader literature in each topic. Our own researches have suggested that such guidance is frequently unavailable to nonspecialists.

Criminal justice is a set of topics, not a discipline. For those who view problems as opportunities for reform, it is a field of opportunity without limit. Knowledge and change are achieved through slow and incremental processes. In the life of institutions, seventeen years is a long time. We have not, in that time, developed a cure for crime or reduced the squalor of even

one Chicago courtroom of first instance. But some seeds were sown, and some light was shed on the interrelated problems of crime, its control, and the path to criminal justice.

Franklin E. Zimring

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Introduction

Gordon Hawkins

“Chicago is the great American city,” wrote Norman Mailer in 1968, “Perhaps it is the last of the great American cities.”¹ Yet the features of the city he noted—the decaying Loop with its screeching El, the malodorous carnage in the slaughterhouses, “the largest gang of juvenile delinquents on earth,” and “the people [who] had great faces, carnal as blood, greedy, direct, too impatient for hypocrisy, in love with honest plunder”²—are not the kind that figure in the guidebooks. Nor would they usually be regarded as sources of civic pride.

But cities, like the people who build and inhabit them, are often loved and celebrated for their defects as much as for their virtues. This is certainly true of Chicago. For most of the world the name of the city is still a byword for lawlessness, underworld violence, and organized crime. It is known, affectionately, as the city where Capone reigned, Dillinger died, and the St. Valentine’s Day Massacre occurred, rather than the place where Dreiser wrote, Sullivan and Miës van der Rohe built, and where Fermi fathered the self-sustaining nuclear chain reaction. The rare distinction of its architecture, its unequaled collection of nineteenth-century French paintings, the preeminence of its symphony orchestra under Reiner and Solti are ignored in favor of the squalid and lethal operations of not-particularly-well-organized organized criminals during and after the Prohibition era of the 1920s and early 1930s.

Ironically, it is by no means certain that Chicago’s reputation for inordinate crime and corruption is entirely deserved. The city has had a long and vigorous tradition of investigative reporting; reformers have been remarkably effective at conducting exposés; and Chicago sociologists were more diligent than scholars in any other city in analyzing organized crime, juvenile delinquency, and political corruption. As a result, crime and corruption in Chicago were exposed to public scrutiny to a degree unparalleled anywhere else. Historian Mark Haller has suggested that “Chicago deserves a reputation for the vigor of its newspapers and scholars; instead it has a world-wide reputation for crime and corruption.”³

However that may be, the city has undoubtedly made a substantial and sometimes spectacular contribution to the volume of crime in America, not merely organized crime, but crime of all varieties. What is less well known

outside a fairly narrowly defined circle, however, is that Chicago has also been the home of two separate, sustained major attempts to contribute to the enlargement of knowledge of crime and delinquency and also of the operation of the criminal justice system. Both of these exercises originated in and were supported by the University of Chicago, although they developed independently at different periods of time and in different departments of the university—specifically, in the Department of Sociology in the 1920s and in the Law School in the 1960s.

The Chicago School of Criminology

This volume is the product of and reflects the work of those associated with the second of these two enterprises—the Center for Studies in Criminal Justice at the University of Chicago Law School, established in 1965 with the support of the Ford Foundation. But it seems appropriate by way of introduction to say something about that earlier undertaking, which played a part of major significance in the development of criminological scholarship and research. This is of more than merely antiquarian interest. The authors of one criminological textbook observe in relation to some of those earlier Chicago studies of juvenile crime how “quaint its delinquents seem to us today, in their knickerbockers and cloth caps and pre-atomic innocence.” But they add that no subsequent work on the subject “has been accompanied by a body of data comparable in quantity or relevance to that of the Chicago school.”⁴ Moreover, as James F. Short has noted, “among research traditions most basic to both continuity and change in criminological thought, perhaps none has been so important to research, theory, and social action with respect to crime and delinquency as that associated with Clifford A. Shaw and Henry D. McKay and the ‘Chicago school.’”⁵

The fact is that in Chicago in the 1920s not only did crime flourish to such a degree that “all the statistics of the time suggested a crime wave of major proportions,”⁶ but there also developed in this period the first serious attempts at the empirical study of urban crime. The Chicago school of criminology, sometimes referred to as the “Chicago Ecological School,” pioneered the investigation of social factors affecting urban delinquency and crime and laid the foundation of sociological criminology in America.

A remarkable series of works, which have become sociological classics, appeared within a period of six years—Frederic M. Thrasher’s *The Gang* (1927); Clifford Shaw’s *Delinquency Areas* (1929), *The Jack-roller* (1930), and *The Natural History of a Delinquent Career* (1931); Shaw and Henry D. McKay’s *Social Factors in Juvenile Delinquency* (1931); John Landesco’s *Organized Crime in Chicago* (1929); Harvey W. Zorbaugh’s *The Gold Coast and the Slum* (1929); and Walter C. Reckless’s *Vice in Chicago* (1933). One could also add as belonging to that era Edwin Sutherland’s *The Professional*

Thief (1937) for which the original manuscript which forms the core of the book was complete in 1930.

These books were the work of students and former students of the Department of Sociology at the University of Chicago, which, under the leadership of Ernest W. Burgess, W. I. Thomas, and Robert E. Park, dominated the intellectual and professional development of sociology for a period of almost half a century.⁷ The textbook that Burgess and Park coauthored, *Introduction to the Science of Sociology*, largely determined the direction and content of American sociology after 1921, when it first appeared.⁸

In the 1920s, the Chicago sociology department did a great deal of highly original research in urban ecology, ecology in this context meaning the interrelationship of social phenomena and their environment. The rapid growth of cities in nineteenth-century America had led to the concentration of interest in the city as a sociological phenomenon. Chicago was a rapidly expanding city. Professors in the department were interested in the city and closely connected to it. Ernest Burgess had a large number of contacts with community agencies. Robert Park saw the favorable opportunity for urban study. As early as 1915 he urged the department to take advantage of the research opportunities to use “the city as its laboratory.”⁹ Under their joint influence “the scholarly output in [urban ecology] was in fact so abundant that the department . . . acquired the reputation for almost exclusively concentrating on spatial distributions in its own city.”¹⁰

In these early years, Burgess developed what later became known as his “zonal hypothesis.” He distinguished five zones typically found within a city: (1) a central business zone, (2) a zone of transition (some industry, slums, and first settlement areas), and (3–5) progressively more desirable residential areas. At least for modern, industrial, expanding cities, he hypothesized that newly migrating populations poured into the slums because they were close to available work and were all they could afford. His research showed that as each racial or national group moved into the slum areas—the zones of transition—it experienced severe social disorganization. The characteristic extremes of poverty, disease, and social and behavioral pathology were a product of this social disorganization and not, as was widely believed, a demonstration of the inferior genetic quality of the immigrants.

It is not difficult to see the implications of this approach for the study of criminal behavior or to understand the proliferation of studies dealing with this aspect of urban life. In the 1920s “perhaps the most conspicuous aspect of the reputation of the city of Chicago . . . was the magnitude of its crime.”¹¹ And it was precisely in the zones of transition or “interstitial zones,” as Frederic Thrasher called them, that the highest rates of crime and delinquency were found.

Initially research centered on juvenile delinquency. Frederic Thrasher had done a master's thesis on Boy Scouts in 1918. He then began a study of boy gangs, culminating in his 1926 dissertation, "The Gang: A Study of 1,313 Gangs in Chicago." He found a marked tendency for urban juvenile delinquency to occur in groups of boys and for delinquency to be especially prevalent in the interstitial zones of the city.

At about the same time, Clifford Shaw and his associates at the Illinois Institute for Juvenile Research were also doing work on juvenile delinquency. Shaw had done graduate work in the Chicago sociology department, and his work at the institute was a continuation of this effort. He and Henry McKay collaborated closely with Burgess and the Chicago graduate students for almost thirty years.¹²

Burgess characterized Shaw as "the father of modern scientific research in juvenile delinquency."¹³ Shaw published several books on the subject, including three which were lengthy life histories of juvenile delinquents. Empirical American sociology was "popularized and transmitted to all corners of the world by the Shaw monographs more than by any other examples of this brand of social research."¹⁴

Shaw's writings were also based on the "zonal" hypothesis of Burgess. He mapped Chicago and found areas of particularly high incidence of delinquency in the slums.¹⁵ In addition to research, Shaw helped to create the Chicago Area Project in 1934. This was an effort to get members of a community to rebuild community organization in high-delinquency neighborhoods. It was hoped that organized activity and indigenous leaders would lessen the influence of gangs.

While Thrasher, Shaw, and McKay studied the incidence and distribution of juvenile delinquency, John Landesco, a graduate student in the Department of Sociology and a protégé of Ernest W. Burgess, concentrated his attention on adult criminals, in particular those involved in organized crime. His research in this area occupied the major part of his time for nearly eight years and resulted in *Organized Crime in Chicago*, which Mark Haller said in 1967 still stood "alone as a scholarly attempt to understand the social roots of organized crime in an American city."¹⁶ Landesco found that adult criminals were recruited from juvenile gangs in the same slum neighborhoods that had been the focus of attention for Thrasher, Shaw, and McKay. "The gangster," he wrote, "is a product of his surroundings in the same way in which the good citizen is a product of his environment."¹⁷

The other work carried out at this time that provided important hypotheses and data about a major form of criminal behavior was Edwin Sutherland's *The Professional Thief*, not published until 1937.¹⁸ This work begins with a description of the profession as experienced by one professional thief, but it differs from the "case history" or "life history" documents produced by Clifford Shaw and his associates in a number of significant respects.¹⁹

In the first place, the structure and organization of the description is determined by the fact that it was elicited in response to questions prepared by Sutherland. Second, the material thus obtained was supplemented by the incorporation of other material derived by Sutherland from some eighty-five hours of discussion with his informant. Third, the resulting document is liberally annotated by Sutherland on the basis of information derived from supplementary sources such as other professional thieves and the representatives of municipal and private police systems. Finally, the descriptive material is followed by two chapters in which certain hypotheses and generalizations suggested by that material are elaborated and discussed.

For the scholar reviewing the work of these pioneers, two curious features emerge. First, this “first fine careless rapture” of seminal ideas was not followed by consolidation and further growth. It is true that Shaw and McKay continued their work, adding to their “massive documentation of empirical regularities,”²⁰ revising and updating their original material in *Juvenile Delinquency and Urban Areas*, published in 1942; and that after Shaw’s death this work too was revised and updated and issued in a new edition in 1969.

But although in the later editions more data, including comparative data and case materials, were added and some changes in theoretical perspective were made, this represented the tending of land already under cultivation rather than the breaking of new ground. Although some work in what is called “the Chicago tradition” has continued in other places, focusing on various theoretical and empirical issues raised in the early years, from Chicago itself no other substantial criminological work in that tradition has emerged since those early years.

The second puzzling thing is that, although the influence of the Chicago pioneers is frequently and even fulsomely acknowledged in innumerable articles and books, no full survey, much less a systematic analysis and evaluation of their work and the nature of their influence on research, theory, and social action, has ever appeared. Indeed, in his introduction to the revised 1969 edition of Shaw and McKay’s *Juvenile Delinquency and Urban Areas*, James F. Short draws attention to the piecemeal character of such critical examination as their work has attracted. In a reference to the theoretical continuity and the empirical, logical, and operational adequacy of that work, he remarks: “While attempts have been made to assess one or another of these aspects of Shaw and McKay’s work and are scattered in the literature, no comprehensive assessment has been published.”²¹

This is not the place nor have we the temerity to take up the challenge implicit in that statement. In this context, it will be sufficient to note some of the salient characteristics of the criminological work carried out during that golden age of Chicago sociology. First, the most striking and pervasive feature is the emphasis on empiricism. Indeed, this aspect of their studies

has by some critics been regarded as the Chicago school's greatest weakness.²² Edward Shils has noted that such works as Thrasher's *The Gang*, Zorbaugh's *The Gold Coast and the Slums*, Reckless's *Vice in Chicago*, and Landesco's *Organized Crime in Chicago* "did not set out to demonstrate any explicitly formulated sociological hypothesis."²³ He points out that they were not engaged in building or testing hypotheses but rather that "they attempted to illustrate with direct, firsthand reports some process or interrelationship which appeared . . . to be of crucial significance in the modern world or in human behavior in general."²⁴

There is some truth in this criticism. Yet reluctance to embark on hypotheses, coupled with stress on firsthand observation, accurate description, and careful verification of facts is surely preferable to what is more frequently encountered in the social and behavioral sciences: theory tottering on stilts of sparse facts and gratuitous assumptions. Nor can it be said that any of the writers under consideration were crassly or narrowly empiricist in the sense that they were indifferent to theoretical reasoning and engaged in the mere compilation of factual information guided by no principles of selection.

For example, the notion of the city as a mosaic of separate neighborhoods and cultures enabled them to observe these cultures as others before them had not done. They could view seriously and objectively the culture of gangs or professional thieves, or organized criminals, and analyze each in its own terms. They did not see criminal cultures as necessarily pathological and were able to analyze criminal careers much as other sociologists might analyze legitimate careers. This was a liberating contribution to criminological theory.

Although they appear to have been relatively abstemious when it came to speculative construction, this was not because they were engaged in what Shils calls "aimless and enthusiastic botanizing."²⁵ It was due to the fact that in their case, theory was controlled by observation rather than observation by theory. As Howard Becker puts it, "The research scheme did not grow out of a well-developed axiomatic theory, but rather from a vision of the character of cities and city life. . . . Everything was material for the developing theory. And studies of all kinds done by a variety of methods, contributed to its development."²⁶ In relation to social history, J. H. Hexter has remarked that those who "would rather arrive at conclusions than start with them may see some small virtue in a work plan that places the conclusion at the end rather than at the beginning of an investigation."²⁷ The Chicago work plan possessed that virtue.

It also possessed a corollary virtue—theoretical formulations when achieved were not treated as immutable inscriptions on the tablets in the Ark of the Covenant. Harold Finestone has clearly brought out the way in which Shaw and McKay made shifts in their theoretical perspective as their work progressed because their data resisted analysis in terms of their earlier

hypotheses. Thus, beginning with an emphasis on social change and social disorganization as factors in the genesis of delinquency, they moved toward a functionalist position which emphasized relationships between delinquency and more stable features of social structure.²⁸

But it is not because of their conceptualizations, suggestive as some of them have proved to be, that the work of Shaw and McKay and their colleagues is so significant; it is because they observed the facts. To give just one example, the importance of association in groups in the genesis of juvenile delinquency, which Thrasher and Shaw and McKay emphasized, was derived from simple observation; yet it is of major significance. Shaw and McKay found that of 5,480 offenders, more than 80 percent had committed their crimes in association with others.²⁹ The implications of that discovery, both for the interpretation of criminal statistics and the framing of criminal justice policy, have still not been fully recognized.³⁰

The second characteristic of the Chicago school is one described by Shils as having fulfilled "a momentarily important function in the development of social science."³¹ The Chicago scholars pioneered the method of research now known as participant-observation within sociology. Despite their failure to make a "direct contribution to a systematic theory of human behavior and social organization," says Shils, they established "an unbreakable tradition of firsthand observation, a circumspect and critical attitude toward sources of information and the conviction that the way to the understanding of human behavior lies in the study of institutions in operation and of the concrete individuals through whom they operate."³²

It is impossible to exaggerate the importance of this method. The pursuit of a general theory of human behavior in society made up of "hypotheses fitted into a general system of propositions, internally consistent with one another," may be legitimate exercise, but it frequently leads to the construction of systems in which "the chief intellectual content is an elaborate terminology."³³ Often they are so tenuously related to reality that determining the nature of the relationship becomes itself a new field for study and scholarly research.

At a lower level of abstraction this is no less important. One of the principal reasons Landesco's *Organized Crime in Chicago* stood "alone as a scholarly attempt to understand the social roots of organized crime in America" is that, unlike the vast majority of studies of this topic, it was based on firsthand observation.³⁴ Landesco had been an immigrant boy on Chicago's West Side, and it was on the basis of extensive contacts with criminal groups in the city that he was able to recognize the roots of organized crime in the culture and social structure of the neighborhoods in which the gangsters had been raised and to reject implicitly the view (held not only by early sociologists but also by members of a presidential task force forty years later) that it represented an exotic import from Southern

Italy. Similarly, Thrasher's *The Gang* had remained for over half a century the most comprehensive and thorough analysis of the phenomenon of juvenile gangs ever written. It is significant that when it was reissued in 1963, James F. Short remarked, "Recent enthusiasm for abstract conceptualization, particularly of varieties of delinquent subcultures, has outstripped the data at hand, and we are badly in need of new empirical studies."³⁵

Third, in addition to empiricism and insistence on the importance of firsthand observation, the work of the Chicago school was characterized to a remarkable degree, both in respect to methodology and to the selection of subjects for investigation, by eclecticism. This seems to have been due in part to the fact that Albion Small, who founded the sociology department in 1892 and remained head of it until 1925, unlike other leading sociologists of the time, "had no *idée maitresse* about the nature of society; he was not committed to any substantive view about the constitution and working of society, and he did not require that his colleagues agree with him about anything other than the need to improve sociology."³⁶ As a result, Small was an extremely open and flexible head of department and made no attempt to impose or encourage any kind of homogeneous consensus. It is not surprising, therefore, that, as Morris Janowitz notes, "the style of scholarship of the leading members of the Chicago School was exceedingly diverse [and the] school contained theoretical viewpoints and substantive interests which were extremely variegated."³⁷

This diversity in style, theoretical orientation, and substantive interest was matched by equal variety in methods of investigation. In addition to quantitative data like census, police and court figures, commitment and recidivism statistics, a great variety of other material, such as cartographic data, official and unofficial documentary evidence, reports of participant observation and interviewing, case histories, and autobiographies, was assembled. Landesco's citation of lists of attendants and pallbearers—including senators, congressmen, aldermen, and judges—at the funerals of gangsters (designed to demonstrate the intimate relations between politics and organized crime) provides a striking example of the utilization of unconventional material. At times it seems almost as though they were collecting data for an exercise in "total history" by some future Le Roy Ladurie. In fact, they produced, as Edward Shils puts it, "a body of knowledge of one large-scale society such as exists for no other society in history."³⁸

Finally and, for many of those involved, most importantly, there was from the beginning a firm commitment to social policy issues and social action. "Chicago's poverty and wealth, filth and luxury, agitation and crime, attracted international attention, as did its ill-managed and corrupt municipal government. . . . Albion Small hoped the new discipline of sociology would ultimately serve to improve society. Chicago was an excellent place in

which to begin.”³⁹ This commitment was reflected in the early years in such things as Charles Henderson’s involvement nationally in prison reform, Robert Park’s active role in the Illinois Commission on Race Relations, and W. I. Thomas’s membership in the Chicago Vice Commission. The most striking example of the movement “from the ivory tower of academia to the workaday world of high crime-rate neighborhoods” was the Chicago Area Project (or projects), the principal activity of which was the development of youth welfare organizations among residents of delinquency areas and direct work with delinquent individuals and groups.⁴⁰

Writing of McKay, Shaw, and Burgess, Daniel Glaser says, “Not only had these men pioneered in theory and research on juvenile delinquency, but they had also moved via the Chicago Area Project to do something significant about it.”⁴¹ It was in these projects that there originated the concept of the marginal worker, which Glaser refers to as “the most important idea in the field of crime prevention and protection.”⁴² Originally, the marginal workers were people like Shaw and McKay integrating social science with crime prevention activity. But Glaser describes the “ideal marginal worker in delinquency prevention, as originally conceived in the Area Projects” as being “a person who had been involved in delinquency and crime, had been helped by residents in the Area Project in obtaining self-sufficiency in a noncriminal life, and felt committed thereafter to help others make this transition.”⁴³ The marginal worker idea has since been adopted in a variety of delinquency prevention projects under such titles as “gang worker,” “extension youth worker,” and “street worker.”

The decline of criminological studies in the Department of Sociology coincided with the temporary decline of the department itself. The reasons for that decline have never been precisely determined. Edward Shils says, “In the course of time the original vision vanished, and there was left behind a tendency toward the repetition of disconnected investigations . . . busy work, done simply because the data and the labor power were available . . . never acquired the dignity of relevance or significance.”⁴⁴ Faris, in *Chicago Sociology, 1920–1932*, is, as Janowitz remarks, “politely circumspect about the ending of the period of preeminence.”⁴⁵ Faris writes of “the aging of the principal members of the second-generation faculty, . . . the pressures and distractions incident to the great depression and the Second World War” and says that “leadership in sociology has become shared more widely with other universities as a more balanced distribution of sociological effort prevails.”⁴⁶ According to Steven Diner, writing about “the eclipse of the department of sociology” in a final footnote to his account of the first three decades of the department’s history,

Whereas in the first thirty years it had consensus without homogeneity, the next quarter of a century saw the heterogeneity dissolve into conflict which was as temperamental as it was intellectual.⁴⁷