Book Reviews

Follow this and additional works at: https://scholarlycommons.law.northwestern.edu/jclc

Part of the Criminal Law Commons, Criminology Commons, and the Criminology and Criminal Justice Commons

Recommended Citation
BOOK REVIEWS
REVIEW ARTICLE

THE CREATION OF DELINQUENCY:
ETHNOMETHODOLOGY AND EPistemological NIHILISM*

C. RONALD HUFF**

This "new" edition of Cicourel's widely-discussed 1968 volume should have included a title change so that fewer readers might be misled as to its contents. In his Introduction (the only new feature of this otherwise unrevised "revised" edition), the author reminds us that his study of juvenile justice was based on two California cities, where he focused on "those occasions where decisions are made by bureaucratically responsible officials in the system of juvenile law enforcement and justice" (p. xi). What we really have here is a study of decision-making by individuals working in bureaucratic, socially organized settings. Unfortunately, for those who might be misled by the book's title, this is not a study of social organization; rather, it is a study which takes place within the context of complex organization. It is a difference which makes a difference. A more appropriate title for this book might have been something like The Social Psychology of Labelling Delinquents.

Much of this book consists of Professor Cicourel's exhaustive (and often exhausting) microsociological analyses of case materials gathered during his four year study of interactions between juveniles and representatives of the police, probation departments, and juvenile courts. Central to the author's argument is his assertion that these interactions often lead to the "creation" of delinquency via the labelling process, or what Cicourel refers to as "the creation of history." Drawing on his extensive case materials (police and probation reports, field notes, verbatim transcripts, and other sources of data), Cicourel contends that official statistics on delinquency are, in reality, reified idealizations of what were, originally, much more complex events. The typification process, which is a product of data reduction inevitably, leads to distortions, and such distortions and oversimplifications provide grounds for challenging the integrity of official statistics which so often are cited by persons attempting to describe or explain the delinquency problem.

I have no difficulty in accepting Cicourel's descriptive documentations of how official discretion is used and misused. I have witnessed similar events on many occasions in psychiatric, correctional, and social welfare settings. I have observed civil commitment hearings in which constitutionally protected behavior such as a sudden change in religious beliefs and church affiliation was cited by a psychiatrist as a clinical indicator of acute personality disorganization and, therefore, reason for commitment to a mental hospital. So I have no quarrel with Cicourel's assertion that it happens. Nor would I insist—as some others have—that there must be some controlled, empirical demonstration of higher rates of recidivism before one can argue that labelling may have negative effects. Hirschi, for example, says: "Evidence that the juvenile justice system has no effect on the subsequent delinquency of the child is not evidence that it has effects elsewhere." My own view is that unwarranted restrictions on freedom can and do result from the labelling...

** Assistant Professor, Department of Sociology and Anthropology, Purdue University.

process and the misuse of official discretion and that such restrictions are basically inconsistent with the principles of a democratic society. Insofar as studies of labelling in general, and Cicourel's book in particular, document and describe such processes, I regard them as valuable contributions to the literature on the workings of the juvenile justice system. It is not necessary to show that confinement in a reformatory leads to increased recidivism if one accepts the thesis that involuntary confinement per se, in the absence of due process and the establishment of guilt beyond a reasonable doubt, is unjust and therefore is an undesirable effect.

So it is not on any of the above grounds that I would quarrel with Cicourel; rather, I find his study to be deficient in other respects. First, this study fails to integrate the data and findings into a systematic, theoretical framework which might improve our knowledge and understanding of complex organizations, juvenile delinquency, or both. Second, there are problems that arise from the epistemological implications of Cicourel's arguments concerning the possibilities of knowing "what happened."

While the case materials presented by the author are valuable illustrations and descriptions of labellers at work (I use some of them in my own classes), they do not take us very far theoretically. We have long known that human beings distort information, stereotype, and engage in selective perception. And we have known since 1938 that some theorists believe that these processes, when they occur in the juvenile justice system, actually "create" the delinquent. But none of this knowledge helps us to construct a systematic theory of juvenile delinquency. Similarly, one would be technically correct in arguing that without law, there could be no crime. This sort of tautological semanticism, however, is theoretically sterile. For that reason, I must conclude that Cicourel's study does not contribute much to the theoretical literature on either juvenile delinquency or complex organization. Rather, he repeatedly stresses the point that juvenile delinquency is a socially constructed phenomenon but does not provide the reader with any systematic analysis of the social structure which generates juvenile delinquency.

Finally, it seems to me that if Professor Cicourel's propositions were carried to their logical conclusions, we would arrive at an epistemological position that would make the current anomic in criminological theory look reassuring by comparison. Specifically, if we accept Cicourel's views on the possibilities of "knowing" anything for sure, we would all become agnostics. Each observer's construction of reality, it seems, would have to be compared with that of another observer, and so on until the level of "proof" required in making claims to knowledge would be so unreasonable that the chances of generating or testing any theory would be remote. Perhaps this sort of nihilism helps explain the absence of a theoretical framework in Cicourel's book.


It is an interesting coincidence (and it appears to be as coincidental as two separate events can be in a world of interconnected parts) that the past decade has seen an increase of concern over problems of ethics in human research and over problems of crime and anti-social behavior. At first glance, it would seem that these two areas of anxiety might conflict, and might even serve as countervailing forces to neutralize each other. If one were to assume that research into crime can lead not only to the generation of knowledge about criminals, judicial processes, effectiveness of penological measures, and hence to a diminution of crime, then one might expect concern over ethics of research to fade away in an era of increasing and evidently justifiable fear of criminals. However, the problem of social researchers and their ethics, or lack of same, appears to be derived more from the outcry of the public, scholars, and sometimes government officials over the medical and biological abuses that have occurred in the past, rather than from what constraints on researchers might do to the fight against crime. This would be a heartening thought if one were convinced that concern over ethics had not been fed by a generally cynical attitude as to the efficacy of criminological research.

The conference from which this book derives its title was held at the University of Bielefeld

2 F. Tannenbaum, Crime and the Community (1938).
in West Germany in March 1974. It was attended by twenty-five German and ten American participants. Several papers from that conference, all by Americans, are brought together for this book, and all the papers are important, make distinct contributions, and deal with relevant and troublesome issues. The answers are not here (they seldom are, in any work), but the questions are posed, and demand further discussion. It is difficult to see how such discussion can proceed without constant reference to this excellent collection.

No one can contend that the ethical questions confronting researchers are easy to solve. The general thrust of these papers seems to favor the researcher; however, consideration must also be given the public and those researched. Unlike physicians, lawyers, and even some psychologists, most social science researchers are not licensed. Sometimes the researchers are working out of hospitals, prisons, and other institutions which can be held accountable and which hold the researcher in check. While this brings in some complicating factors of conflict of loyalties, it also serves as some form of social control on the researcher. But the sociologists and other social scientists are often doing things on their own, and not infrequently the work is being conducted by a graduate student as part of a dissertation study, which is given little supervision by a busy mentor.

That such social scientists, the budding ones and the established ones, have often grossly violated the elementary ethical canons would be reason for ongoing concern; more troublesome, as I see it, is that they have to answer to no one but themselves. Who are the gatekeepers, and where are they to be found? Will the sociologists, through one of their organizations, award a medal to someone who enters the home of an individual he has traced, lies to that person about the purpose of the visit, and then uses a grant given for one purpose in order to obtain information for another? Sometimes the question is posed: How else could the knowledge be obtained? It is an absurd question, as the analogy with biology and medicine (so often drawn in this book) can easily demonstrate. A wealth of knowledge about the human species, even knowledge that can eventually save more lives than will be destroyed in the experimentation, can be garnered if biologists could test suspected carcinogens on newborn infants instead of on mice, but humanist ethics forbid such activities. It is not a matter of costs versus benefits, but of ethical costs that go beyond any conceivable benefits. This is not to contend that social science research has the same potential for unethical enormity and harm to the subjects, but merely that it is irrelevant to suggest that a line of research is acceptable because it is the only possible method of obtaining certain information.

The researcher who has studied crime and deviance (and other activities, as well, such as in community studies) often cites his willingness to protect the anonymity of respondents (including the uninformed respondent, who did not even know that he was being spied upon). This anonymity is not always as easy to protect as the good will of the social scientist might lead one to believe. Communities, hospitals, and prisons, become easily recognized by the cogniscients, and once recognized, an administrator or an inmate is likewise not protected. Superficial changes in the names of a city or state often worsen the matter, because the researcher (in preparing the manuscript for publication) often allows himself free expression of opinion in the unfounded belief that his thinly veiled pseudonyms are impenetrable. If he changes a great deal of the material he may be falsifying the data and misleading his colleagues; and if he changes very little he may be violating the canons of confidentiality. This is not an insoluble problem, for considerable changes can be made without altering the substance of the work, but very few students, and I would add very few professionals, are both sensitive to the problem and capable of carrying out the act of masking without distortion.

Confidentiality is seen by several of the contributors to this volume as primarily concerning the legal rights of the researcher. They argue that there should be a researcher's "shield statute," similar to that now being widely discussed and debated for newsmen, so that the anonymity of subjects is protected. There are many problems and innumerable exceptions, as legal scholars have pointed out, in all areas of privileged communication. The physician, spouse, lawyer, or clergyman is not invariably free from obligation to report matters to authorities and to refuse to testify when subpoenaed. Whether the privileges physicians and others
BOOK REVIEWS

1978

EDWARD SAGARIN
Professor of Sociology
City College of New York and
Graduate Center,
City University of New York


In the Preface to the Handbook of Criminology
Daniel Glaser writes: “The objective of this book is to present the most comprehensive and authoritative statement possible on all aspects of criminology.” Although this is a demanding bill of goods to fill, the final product comes remarkably close to filling it. In terms of both the number and variety of criminological topics discussed and the generally high quality of the discussions, the *Handbook* makes an important contribution to the literature which attempts to assess the state of the art in criminology. Although there are lacunae, this work contains many detailed summaries of the adequacy of our knowledge in a variety of criminological topics.

The book is divided into four parts, the first of which deals with theoretical and empirical explanations of criminal behavior, the second with law enforcement and adjudication, the third with corrections and the fourth with the prevention of crime. The first part covers the widest range of material and includes offenders and offenses, sociological and biological theories of crime and discussions of specific forms of criminal behavior, viz., violent, sex, drugs, white collar, professional and collective. The second part is more focused, dealing only with police, prosecutors and courts, with the last topic being discussed from both American and comparative perspectives. The issue of discretion is common to many of the contributions in this section and serves as a unifying theme. The section on corrections is quite comprehensive and discusses theoretical and administrative issues in the area. There are specific contributions on behavior modification, jails, prisons, juvenile institutions, community corrections, parole, probation, reform efforts and evaluation. The last section on prevention is the shortest, containing only two essays, one presenting an economic approach to the study of crime and the second a more general discussion of prevention.

Although the comprehensive nature of the work is commendable, there are some criminological areas that are either ignored or dealt with inadequately. Among them are the psychological and psychiatric approaches to crime, methodological issues and criminal statistics, female criminality, race and crime, community-based corrections, the evaluation of intervention strategies, prediction and crime prevention. Although these topics are not covered adequately in the handbook, their absence does not detract from the overall comprehensiveness of the work nor from the generally high caliber of the papers that are included.

In sum, the *Handbook of Criminology* is a quite useful addition to the criminological literature. It should be of value to the professional, both academic and administrator, as well as advanced students.

Terence P. Thornberry
University of Pennsylvania Center for Studies in Criminology and Criminal Law


The book behind this sexy title is a substandard work of urban anthropology coupled to an excellent analysis of the legal and cultural meaning of homicide in Houston, Texas. Lundsgaarde's basic thesis is that there is an interaction between rules, sanctions, and homicide in any community. He argues that the lack of legal concern or sanction for most killings is both a reflection of the cultural meaning of homicide in Houston and a precursor to additional deaths. He concludes that only strangers to stranger killings are likely to result in long prison terms.

Lundsgaarde's point is well taken. But he errs in his belief that the cultural meaning of homicide in Houston differs from its meaning in other American communities. Much of this parochialism results from a lack of consideration of other research on the legal and social meaning of homicide. His neglect of the substantial body of literature on the meaning of southern violence is especially damning. His discussion of the broadening of the meaning of justifiable homicide to include property and non-immediate or minor threats is very similar to that of Kalven and Zeisel's study in *The American Jury*, a classic which he does not cite.

However, the basic problem of this book is not bibliographical but empirical. Lundsgaarde's primary data source is the 1969 files of the homicide division of the Houston Police Department and subsequent court records. He presents police reports and transcriptions of many cases and apparently expects the reader to connect particular incidents to the structure...
of his theory. I had great difficulty doing this and I felt that a great deal of this substantial body of data was wasted. Much more can be learned about the cultural meaning of violent death from Malinowski's in-depth examination of one incident among the Trobriand islanders than from the theoretically unconnected incidents reported in this book.

In general, Lundsgaarde promises much more than he delivers; however, the book is not without value. It is useful for comparison with earlier studies of homicide in Houston and with studies of homicide and violent crime in other cities. Comparison with other cities shows that the percentage of deaths resulting from firearms, and the probability of a grand jury "no bill" are higher in Houston than in other cities, and the definition of justifiable homicide is very wide in Houston.

Lundsgaarde's discussion of the meaning of "homicide as custom and crime" (Chapter Six) is excellent. In this chapter he demonstrates how law and custom interact and result in sometimes clear but usually fuzzy legal definitions of criminal acts. However, this chapter is written in the tradition of legal rather than anthropological research with many citations and historical references. In this chapter more than any other he succeeds in making his point about the relationship of crime, sanctions, and culture. However, the value and presentation is negated by the sloppiness and lack of insight in the remainder of the book.

Lundsgaarde believes that criminology has failed to develop an adequate social theory of homicides because it has failed to recognize the interrelationship of culture and crime. The perspective of urban anthropology can add to our understanding of violent crime; however, the few valuable insights in this book seem to come from a legal rather than an anthropological tradition. I believe this book would be of value only to researchers actively studying criminal violence.

Richard Block
Associate Professor
Loyola University of Chicago


Police methods and practices have been under close and constant scrutiny for some years. The best known Supreme Court decisions of the last decade dealt with the constitutional validity of the most basic investigatory police practices: electronic eavesdropping, searches and seizures, interrogation of defendants and eye-witness identification. The Criminal Investigation Process, though, does not direct its attention to the Court's objections to investigatory methods in recent years. The focus here is on the role of police investigators' work in crime solving.

The authors have undertaken to discover current investigative methods employed by police departments throughout the country, assess the effect of police investigation on solving crimes and determine the usefulness of new technology in police work. Data were obtained through distribution of questionnaires (300 sent, 153 answered), personal observation by the researchers of police detectives at work and collection of information contained in departmental records and case files.

Most detectives receive little substantive supervision and are largely left to structure their own workday. This is a matter of general knowledge. In fact, the autonomy of police investigators is the primary characteristic of their work. Learning how investigators make use of their time is enough to make this book worth reading. For example, a considerable amount of a detective's time is spent engaged in administrative activity, public relations work and activities designed to prevent crime.

Regarding the efforts of detectives actually aimed at solving crimes, it is first noted that police agencies are reluctant to read professional publications advocating a systematized approach to investigation and prefer to rely on trial-and-error street experience. Preparation for most detective work is still a matter of on-the-job training. The most distressing news about the investigative process as it is currently carried out is that it seems not to contribute much to the solving of crimes. Data gathered indicate that detective work is not characterized by hard work or "special action" leading to case solutions and that most cases are "solved" either because the solution is obvious or because of routine methods of suspect identification. Extensive, complicated detective work as described in fictional detective stories is rarely applied to identify a criminal culprit. The study
indicates that most cases are cleared through simple means or they are never cleared. For example, analysis of one group of cases demonstrates that most thefts are solved because the suspect is usually caught in the act or observed leaving the scene and the automobile license number recorded. Residential burglaries are solved “mostly . . . by luck.” In many such cases the victim or witness knows the suspect. Perhaps because of the “self-solving” nature of most crimes, use of sophisticated devices to collect and process physical evidence has not expanded greatly since technical capabilities of the departments have grown.

For these reasons, the authors conclude that it is inappropriate to view the investigator’s role as that of solving crimes. Their belief that most of what little work is devoted to solving crimes could be performed by clerical personnel and that any justification for the work of investigators must lie in areas other than crime solution should cause police administrators to reevaluate their own investigative units.

Alice L. Chathas
Assistant State’s Attorney
Cook County, Illinois


In 1974 the Yale Law School, with monetary support from the Daniel and Florence Guggenheim Foundation, organized a clinical workshop to address reform of the federal sentencing and parole systems. Scholars, students and professionals representing federal sentencing, probation, parole and corrections areas met frequently to consider these issues. This book, whose authors were workshop participants, is both a report of that workshop and a public education effort to develop support for a proposed federal sentencing statute which also grew out of the workshop.

The foreword was written by Senator Edward M. Kennedy who credits the workshop findings with constituting the foundation of Senate Bill 2699, “The Sentencing Guidelines Bill” which he introduced in the 94th Congress.1 This reviewer agrees with Senator Kennedy that the book is an important one to be read and debated by anyone interested in the issue of sentencing reform.

The major strength of this book is its concise yet thorough discussion of issues central to sentencing reform. It is apparent that the workshop took into account major relevant works, reports and recommended standards. The book describes impediments to a just and effective sentencing system, proposes solutions, argues against other proposed solutions and covers issues which still need to be addressed. The workshop concluded that:

Substantial disparities are the inevitable result of judicial discretion exercised by 378 federal district judges across the country, unfettered by legislatively established criteria and not subject to the uniform requirements of procedural regularity and prescribed substantive criteria that appellate review lends to almost every other area of the law. (p. 10)

The provisions described and defended in this book seek to remedy this situation by providing a procedural framework within which judges must justify each sentence by relating it to the major purposes of sentencing. In addition the system would provide for appellate review of the sentences, replace the present parole system with a determinant sentencing scheme and eliminate good-time and substitute a fixed, well-defined early release program. A final very important provision of the proposed statute would establish a National Commission on Sentencing and Corrections to devise guidelines for federal sentencing policy and to provide feedback on its effectiveness.

A major conclusion of the workshop is that sentences in America are excessively long. Accordingly the recommended maximum sentence lengths for different offense classes have been substantially reduced in the proposed statute. Comparisons in recommended sentence length between this proposal and other pieces of federal legislation are clearly presented in table form. Other differences are presented in a tedious and somewhat confusing narrative format.

One major area identified as requiring further thought is the relationship of the sentencing criteria to guilty pleas. The issues related to this question are fully identified in contrast to the remaining issues which are so briefly

---

presented as to leave questions in the reader's mind concerning just what the issues are.

With only these minor shortcomings, the book remains an effective advocate for the sentencing reform it describes. It is a useful source document by which readers with varying backgrounds can quickly review the major issues. In thinking through these issues on the federal level, the reader will also be better equipped to understand sentencing reform legislation currently enacted or proposed in many states.

Marilyn C. Slivka
Adult Probation Department
Court of Common Pleas
Philadelphia, Pennsylvania


Police: Street Corner Politicians is a study of twenty-eight randomly selected policemen and their adaptations to the problem of coercive power inherent in police work. The research site is a graft free professional organization and the sample was drawn from all officers who had been selected and trained under the department's new professional standards.

Following their interviews and a follow-up observation one year later, each subject was assigned to one of four types in a typology of adaptations to the use of coercive power. The professional policeman (Type 1) conformed to Weber's model of a professional politician. He was able to morally reconcile the use of force while maintaining empathy for his fellow man. The remaining types were nonprofessional adaptations: (Type 2) enforcers—cynics who believed in the strict enforcement of the law; (Type 3) reciprocators—those who were unwilling to use their coercive powers; (Type 4) avoiders—those who eschewed situations which did not involve a clear-cut violation of the law.

Type 4 was the most dangerous adaptation as "the strong, the mean, the indifferent, the victimizers of the world had free access to their prey where the police were avoiders."

For several reasons this work contributes to the burgeoning literature on police behavior. It is a well written analysis of the developmental process involved in police adaptations to the use of coercive power. Students of the police will find Muir's typology to be very useful. Furthermore, the research adds to James Q. Wilson's description of police order-maintenance duties. Each of the scenarios depicted in Muir's section on the paradoxes of coercive behavior falls within the purview of order-maintenance duties. The role of a street corner politician may be the key to these duties. Muir's professional police officer copes with disorderly situations when law enforcement activities are inappropriate or not applicable. The "professional" uses his personal qualities and verbal skills to de-fuse the situation and open up lines of communication between him and the citizen. The nonprofessional officer, according to the typology, is unable to deal with the subtleties and ambiguities involved in order-maintenance duties.

The author also presents an insightful discourse into the dynamics involved in the police officer's separation of his official contacts into "governables" or "rebels," à la Skolnick and the "symbolic assailant." Finally, the reader becomes painfully aware that the introduction of professional standards by police organizations does not insure "professional" responses on the part of individual officers. But, then, one can still speculate as to the findings in a graft ridden nonprofessional police organization.

Thomas Barker, Dean
School of Law Enforcement
Jacksonville State University
Jacksonville, Alabama