

PRESENT AT THE CREATION THE INCEPTION AND DEVELOPMENT OF THE INSTITUTE OF CRIMINOLOGY

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The account which follows is based principally on personal recollection. It has been verified where possible by reference to such fragmentary records as are available. It is in part responsive to another account which, it will be argued, is seriously defective and misleading. But memory is always selective and frequently faulty so no claim is made to have provided a definitive, objective chronicle of what actually happened. The annals of crime are replete with examples of the unreliability of eye-witness evidence. And contemporary history writing is probably more likely to be contaminated by the author's prejudices and values than writing about periods long past.

The Institute of Criminology at the University of Sydney was the brain child of Professor Kenneth Shatwell, Dean of the Law School from 1947 to 1973. It was conceived in the early 1950s although parturition did not occur until around the end of that decade. According to one account "the Institute was formally created in 1959".² But it would be more accurate to say that it was informally created at that time.

When I was appointed Senior Lecturer in Criminology in 1961 no criminological teaching, research or activity of any kind was in progress; although some library purchases in the field of criminology had been made. It was not until December 1966 that the "Senate *formally* recognised the organisation and programme of the Institute and granted authority to use the University crest".³

The first annual report on the activities of the Institute was submitted to the Senate in 1967. By this time Mrs B. Shatwell had been appointed Honorary Secretary in addition to the appointment of three other lecturers: Mr Paul Ward was appointed to the position of Lecturer in Statistics in October 1964; Dr Oliver Briscoe was

1 Associate Professor Gordon Hawkins was Director of the Institute of Criminology from 1981 to 1985

2 O'Malley, P. and Carson, K., "The Institutional Foundations of Contemporary Australian Criminology" (1989) 25 (3) *The Australian and New Zealand Journal of Sociology* 337

3 Shatwell, K.O., "Memorandum on the Institute of Criminology in the Faculty of Law, University of Sydney: a draft report dealing with the history of the Institute of Criminology" Submitted to Professor Bruce Williams, Vice Chancellor, University of Sydney, 27 September 1972 p 8 [italics added]

appointed Senior Lecturer in Forensic Psychiatry in May 1965; and Dr Duncan Chappell was appointed Lecturer in Criminal Law and Criminology in December 1965. In the same year, four postgraduate courses in Criminology leading to the degree of LLM and four Diploma courses in Criminology were established.

In May 1965, an Advisory Committee was established under the chairmanship of Sir Leslie Herron, Chief Justice of New South Wales. Membership of the Committee was by invitation and Professor Shatwell had recruited a body of members which has been described as incorporating "what amounted almost to a Who's Who of the New South Wales judicial system".⁴ The Committee included three other judges in addition to the Chief Justice; the Chairman of the Metropolitan Bench of Stipendiary Magistrates and another magistrate; the Minister of Justice, the Attorney-General and the Solicitor-General for New South Wales; the New South Wales Commissioner of Police; the Comptroller-General of Prisons, the Principal Probation Officer, and the Principal Parole Officer.

Formal recognition and approval by Senate came long after the Institute was fully operational. The fact that so much had taken place *before* the Institute attained formal recognition was not fortuitous. It was Professor Shatwell's view that it was always a mistake, if anything innovative or unprecedented was contemplated, to seek official approval in advance. To go through normal bureaucratic channels was to court endless prevarication and delay. On the other hand, presented with a *fait accompli*, the authorities would be unlikely to raise objections or make difficulties. Nor, in the event, did they.

It has been observed that the early advocates of criminology in Australia "made great efforts to ally its cause with influential officials within the criminal justice and correctional systems and with the relevant state ministerial figures".⁵ This was true both in the case of Dr Norval Morris and the establishment of the University of Melbourne's Department of Criminology in 1952, and in that of Professor Shatwell and the University of Sydney's Institute of Criminology later in the decade. In Sydney, the cultivation of this kind of extra-mural support was both politically astute and essential as there was no great interest in, nor sense of a need for criminological studies, either in the Faculty of Law or elsewhere.

It has been suggested that the enlistment of this kind of support and the establishment of the Institute of Criminology in the Law School had unfortunate consequences in that criminology became "crucially tied ... to the legal profession and to the administration of the criminal justice system". Alliance "with academic lawyers and state criminal justice and correctional officials" is said to have meant that the

4 O'Malley and Carson, *supra* n.2 at 337

5 *id.* 341

Institute's operations were "in practice policed by state officials and members of the legal profession". An article entitled "The Need for Criminology in Australia" by "two senior members of the Sydney University Institute", which appeared in *The Australian Law Journal* in 1967, is described as reflecting the "subordination of criminology to the criminal justice system".⁶

To one who was 'present at the creation', this account seems to bear an almost inverse relation to the facts. To describe the desultory and intermittent involvement of state criminal justice and correctional officials in the affairs of the Institute as an exercise in "Hegemonic Control"⁷ is, to say the least, whimsical. Their membership of the Advisory Committee was, in most cases, due to urgent proselytism by Dean Shatwell. Moreover, they were commonly outnumbered by others quite unconnected with the administration of criminal justice. These included: the Professor of Psychology and the Professor of Psychiatry at the University of Sydney and the Director of State Psychiatric Services; the Head of the Department of Social Work at the University of Sydney and the Head of the Department of Sociology at the University of New South Wales; and two doctors who were special Advisors on Alcohol and Drug Addiction. It may be worth mentioning also that the article which O'Malley and Carson see as subservient to the criminal justice system, was regarded by the New South Wales Commissioner of Police as highly critical.

The suggestions that the Institute of Criminology was "squarely under the control of the law school"; that "law [was] firmly in the driving seat"; and that the way in which the Institute was established and organised "bonded and subordinated the discipline to the legal profession";⁸ bear little relation to reality. By most members of the Faculty of Law the creation of the Institute was regarded as something of an aberration on the part of Dean Shatwell. If there was any interest on their part in establishing "the hegemony of the law in the criminological field",⁹ it was very well concealed.

The statement that in Sydney "law and lawyers clearly played a leading role in shaping early criminological development",¹⁰ represents an extraordinary misapprehension. The first three appointments to the staff of the Institute (Hawkins, Ward and Briscoe) were not lawyers. Indeed they had no legal qualifications whatever. Apart from Dean Shatwell (about whose role more will be said later), the only lawyers who played any part in early criminological development were the late Robert Roulston and Duncan Chappell. Roulston, as Senior Lecturer in Criminal

6 *id.* 335 and 340; Hawkins, G. and Chappell, D., "The Need for Criminology in Australia" (1967) 40 *The Australian Law Journal* 307-314. In an earlier version of O'Malley and Carson's article circulated in 1988, the Hawkins/Chappell article was described as characterised by "rather abject subservience to the criminal justice system".

7 O'Malley and Carson, *supra* n.2 at 335

8 *id.* 349 and 351

9 *id.* 350

10 *id.* 337

Law, was certainly involved from the beginning. But so far from playing a leading role in early criminological development, his attitude in those early years, while not unfriendly, could best be described as one of quizzical scepticism. It is hard to imagine a less likely agent of "domination by lawyers".¹¹ Moreover, Duncan Chappell, who had just completed his PhD at the Cambridge University Institute of Criminology, although a lawyer, was less "bonded and subordinated ... to the legal profession" than any of his colleagues. Nor were practising, as opposed to academic, lawyers any more enthusiastic. Dean Shatwell would have been happy to achieve a "strong alliance with the legal profession".¹² But for most members of the legal profession, criminology was, and continues by many, to be regarded as a dilettantish and useless pursuit, rather than a serious subject of study.

It would not be inaccurate to say that Dean Shatwell's own approach to criminology was somewhat dilettantish. As for the first three recruits to the teaching of criminology at Sydney, their approaches to the subject were as diverse as their backgrounds. It has been rightly said that "contemporary criminologists have tended to emphasise approaches derived from their own disciplines".¹³ In this instance, the relevant disciplines were philosophy (Hawkins), psychology (Ward), and psychiatry (Briscoe). Until 1965, the teaching of criminology was confined to undergraduates. The principal textbooks assigned to students were not written by lawyers but by sociologists: Sutherland and Cressey's *Principles of Criminology* and G.B. Vold's *Theoretical Criminology*. The only person who might have tried to ensure that law and lawyers played a leading role in shaping early criminological development was Dean Shatwell. As Professor W.L. Morison put it, "the activities of the Institute were beyond the scope of most of the Department [of Law]".¹⁴ But Shatwell showed no inclination to exercise any commanding influence; indeed his abstention from interference with either the form or substance of criminology courses was almost total.

His approach to criminology was both highly idiosyncratic and eclectic. It was also somewhat amorphous so that even if he had wanted to impose his views on others it would not have been easy for him to do so. It was impossible to discern any guiding principle behind the varied array of topics which he would from time to time recommend as suitable for investigation or research. His interest in any particular matter was often evanescent. He was not committed to any substantive view about the explanation of either criminal behaviour or the incidence of crime, and never espoused or commended any particular theoretical orientation. But that is not to say that his interest in the subject was desultory and aimless.

11 *id.* 336

12 *id.* 341

13 Morris T., "Criminology" in Bullock, A. and Stallybrass, O., eds, *The Fontana Dictionary of Modern Thought* (1977) p 144

14 Morison, W.L., "Emeritus Professor K.O. Shatwell" (1989) 12 (1) *The Sydney Law Review* ix

His initial interest in criminology seems to have derived in part from what the French call *nostalgie de la boue* and, in particular, a fascination with the careers of those for whom crime is a way of life. It was also partly derived from a conviction, based on observation, that the criminal justice system in New South Wales was ineffective, corrupt and inequitable in its operation. When we first met in England in 1960, the two objects of criminological study with which he was principally concerned were those defined by Nigel Walker as "the 'natural history' of criminal behaviour" and "ways of dealing with criminal behaviour ... sometimes called 'penology'".¹⁵

His conception of the subject was strongly influenced by personal contact with Professor Leon Radzinowicz, Director of the Institute of Criminology at the University of Cambridge, and Professor Norval Morris who was the first Head of the Department of Criminology at the University of Melbourne. In particular, on the issue of the relationship between the theoretical and practical aspects of criminology, he agreed with Radzinowicz that "to rob it of practical function is to divorce criminology from reality and render it sterile".¹⁶ He also shared Norval Morris's hope that the development of knowledge in the field of crime and criminal justice should not only have practical application but lead to reform.

Shatwell also accepted Radzinowicz's contention that "one of the best ways for criminologists to maintain an empirical and realistic attitude, is to remain in close contact with those engaged in the administration of criminal justice and the treatment of offenders".¹⁷ His agreement with this was reflected in the composition of the Institute's Advisory Committee. It was also reflected in the establishment in 1965 of postgraduate courses in criminology leading to the degree of LL.M and to diploma courses in criminology. The latter were, as Duncan Chappell put it, "intended mainly for persons lacking degrees or other tertiary qualifications who were members of the police force, or other sections of the public service involved in criminal justice including officers from the departments of justice, corrective services, and child welfare".¹⁸

The first diplomas in criminology were awarded in 1967. Since then, more than 500 candidates have completed the course. Writing in 1983, Chappell noted that the largest group of candidates "comprised officers from the New South Wales Police Force, most of them possessing no previous tertiary education qualifications and admitted under the special by-law provisions of the Faculty of Law. He went on to say:

...of the remainder, most persons had law qualifications, many of them magistrates from throughout NSW. By 1980, following some fifteen years of teaching within the diploma program, a significant proportion of those in senior management positions within the

15 Walker, N., *Crime and Criminology: A Critical Introduction* (1987) p 5

16 Radzinowicz, L., *In Search of Criminology* (1961) p 168

17 *id.* 179

18 Chappell, D., "Australia" in Johnson, E.H., ed, *International Yearbook of Contemporary Developments in Criminology* (1983) p 18

criminal justice system in NSW had attended the diploma course and, in most instances, successfully completed it.¹⁹

The diploma course covered the areas of crime causation, statistics and research methods, psychiatry and the criminal law, and the administration of justice. The completion rate for the course averaged 80 per cent. Chappell remarks that although "exposure to the literature and research methodologies of criminology is believed to have been beneficial ... it is unfortunate that no external agency has conducted an evaluation of these benefits".²⁰ It may be mentioned that although some diploma graduates have subsequently been appointed to such positions as Commissioner of Police, Chief Magistrate and Law Reform Commissioner, there have been others who have since served terms of imprisonment.

A 1980 Faculty memorandum regarding the diploma claims that a major educational benefit of the course lay in the mixed nature of the groups which the classes brought together.

The course brings into one class people from both sides in the adversary system of criminal justice. Policemen especially tend to talk only to other policemen and one of the most frequent unsolicited comments received by teachers in that diploma from successful students is how much benefit they have obtained from being in a class where they can discuss their views and hear the often opposing views of other students and/or the lecturers".²¹

Most of those with experience of the course would agree with Dean Shatwell's claim that the course had "greatly benefited by the admission of suitable diploma students actively involved in various aspects of criminal law enforcement, whether as police, magistrates (present or future), prison officers or child welfare officers".²²

Shatwell believed that, in addition to the teaching of criminal law at undergraduate and post-graduate levels, the Institute should fulfil a community education function and foster public interest in, and discussion of, topics of importance and concern in the criminal justice field. Accordingly in the late 1960s, he initiated a series of public seminars dealing with issues related to crime and criminal justice. Public seminars continue to be held by the Institute and are open to anyone wishing to participate. Audiences are "typically made up of judges, members of the legal profession, employees of government departments and agencies, academics and researchers, students, representatives of community action groups, the media, and members of the corporate sector".²³

The seminar format involves the circulation of papers to participants which are then spoken to on the day by their authors and form the basis of discussion at the seminar. Seminar topics remain extremely varied, ranging from highly specific matters such as male sex offences in public places and incest, to more general

19 **ibid.**

20 **id.** 18 and 32

21 **id.** 33

22 Shatwell, *supra* n.3 at 9

23 **Introducing the Institute of Criminology 1990** (1990)

subjects like white collar crime and sentencing. The object of the seminars is not to instruct nor to indoctrinate, but to provide a forum for discussion and the free expression of opinion.

The introduction of the public seminar programme provided, for the first time in Australia, an active forum for meetings by academics, criminal justice practitioners and others knowledgeable in the field from all over the country. Today, the Australian Institute of Criminology in Canberra also performs this function. Until the Australian Institute got underway in the mid 1970s, Sydney alone provided what Sir John Barry called "a common market ... for the formulation and presentation of ideas and hypotheses and, where it is available, verified knowledge upon criminological topics".²⁴

The papers and discussion were recorded from each seminar and later published in the *Proceedings of the Institute of Criminology*. The *Proceedings* has now been superseded by the Institute's journal, *Current Issues in Criminal Justice*. This journal continues to enjoy an even wider readership than its predecessor, both in Australia and overseas.

In addition to the Institute's journal, members of the staff of the Institute and those associated with it, either as senior scholars or students, published a wide range of articles in criminological or legal journals and books. In the decade of the 1970s alone some of the books published include: Morris and Hawkins *The Honest Politician's Guide to Crime Control* (1970); Ward and Woods, *Law and Order in Australia* (1972); Woods and Stein, *Harsh and Unconscionable Contracts of Work* (1972); Chappell and Wilson, *The Australian Criminal Justice System* (1972); Hawkins and Misner *The Criminal Justice System in the Northern Territory* (1973); Campbell and Whitmore, *Freedom in Australia* (Rev. ed. 1973); Zimring and Hawkins, *Deterrence* (1973); Roulston, *Introduction to Criminal Law in New South Wales* (1975); Ward, *Computerization of Criminal Data* (1975); Grabosky, *Sydney in Ferment* (1976); Hawkins, *The Prison* (1976) and *Beyond Reasonable Doubt* (1978); Elliott, *Ground for Concern* (1977); and Purvis, *Corporate Crime* (1979). In the past decade, some notable publications by former Institute students include: Homel, *Penalties and the Drink-Driver* (1980); Avery, *Police Force or Service* (1981); Francis, *Migrant Crime in Australia* (1981); Findlay, *The State of the Prison* (1982); Scutt, *Even in the Best of Homes: Violence in the Family* (1983); Kirby, *The Judges* (1984); and Kauffman, *Prison Officers and Their World* (1988).

In his review of the growth of criminology in Australia, Duncan Chappell remarks that "an indigenous brand of criminology [has not] developed in the Antipodes".²⁵ Certainly nothing comparable with what has been called "the Chicago

24 Barry, J.V., "The President's Foreword" (1968) 1 ANZ *Journal of Criminology* 3

25 Chappell in Johnson, *op.cit. supra* n. 18 at 25

school of criminology"²⁶ has developed in Sydney. In this connection it is notable that O'Malley and Carson are critical of the Sydney Institute for not having engaged in "the business of theorising the Australian legal order and criminal justice system", but having adopted an approach which is "empiricist and policy related [and] heavily invested with pragmatism".²⁷

This is not altogether inaccurate but at the same time not entirely deplorable. The results of "theoretically propelled research"²⁸ too often tend to reflect the *parti pris* of the investigator and to confirm the theory that provides the propulsion. As social historian J.H. Hexter has remarked, those who "would rather arrive at conclusions than start with them may see some virtue in a work plan that places the conclusion at the end rather than at the beginning of an investigation."²⁹ Moreover, to describe the criminology which was taught at Sydney as empiricist or pragmatist or positivist is misleading in that it implies that there was some kind of consensus among those who taught the subject which would justify the application of those, or some other, fashionable party-labels.³⁰ In fact there was no uniformity of substantive interest or ideological commitment. Nor did Shatwell or any of his successors as Director of the Institute attempt to impose or encourage some specific theoretical orientation.

Thus in publications by those associated with the Institute, there is a considerable diversity in style, subject and method of treatment. The history of criminology is sometimes taught as though it were a series of conflicts between opposing "schools" or election campaigns between rival factions. This is a perfectly legitimate teaching device. But when the history of criminology in Australia is written, it will be very hard to fit Sydney into this kind of conceptual framework unless perhaps eclecticism is regarded as a satisfactory classification for that purpose.

In an essay of this nature it is difficult to avoid a note of what has been called "self-congratulation and institutional boosterism".³¹ But it is surely not egregious to claim that the Institute has made a respectable contribution to the enlargement of knowledge of crime and delinquency, and of the operation of criminal justice systems in Australia. The resulting critical examination of the interrelated problems of crime, its control and the administration of criminal justice has, in some areas, led to reform. In this connection it is not irrelevant to mention that John Avery, the present

26 Short, J.F., "On Criminology and Criminologists" in Short, J.F., ed, *Delinquency, Crime and Society* (1976) p 1

27 O'Malley and Carson, *supra* n.2 at 333 and 350

28 *ibid.*

29 Hexter, J.H., *Reappraisals in History* (2nd ed. 1979) p 25

30 See also O'Connor, M.E., "A Decade of the Australian and New Zealand Journal of Criminology 1968-1977" in (1980) 13 *The Australian and New Zealand Journal of Criminology* 11-21 and Findlay, M. and Hogg, R., "Introduction" to Findlay, M. and Hogg, R., eds, *Understanding Crime and Criminal Justice* (1988)

31 Zimring, F., "Preface" to Hawkins, G. and Zimring, F., eds, *The Pursuit of Criminal Justice* (1984) p ix

New South Wales Commissioner of Police and member of the Advisory Committee of the Institute, is a graduate of the criminology diploma course.

It would be foolish to pretend that the Institute has by its efforts produced any substantial diminution in the squalor, inefficiency and inequity which continue to characterise the administration of justice in New South Wales. The most that can be said is that it has drawn attention to some of those ills, made specific suggestions for amelioration, and contributed to knowledge of the facts which is an essential precondition of effective reformatory action. That is no small claim to make on behalf of a venture which was seen by many members of the Faculty at its inception, as an ill-judged and eccentric enterprise. The Institute of Criminology, in the fourth decade of its existence and the last decade of the century, under the directorship of Mark Findlay, one of its former postgraduate students, may well develop along new and quite different lines. As Antonio says in *The Tempest*, "what's past is prologue". What's to come is in the hands of a new generation.

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