**Flagrant Criminal Offences in Chile:**

**Bracketing and Contextualizing Indisputability**

**Abstract**

Drawing on ethnographic data gathered in lower criminal courts and in one unit of the prosecutors’ office in Santiago, I explore the way in which criminal offences considered “flagrant” are constructed and treated by the Chilean criminal justice system. After reviewing the literature on legal technicalities in relation to documents, procedures and ostensibly irrelevant aspects of bureaucratic work, I show that the indisputability of flagrant criminal offences is essentially fictionalized through practices that make it possible to avoid directly referring to the alleged facts while presuming a certain perspective that mirrors that of the police. The flagrant of indisputable character of a criminal offence—the result of applying the legal fiction of the alleged criminal’s apprehension *in flagrante delicto*—conveys certain epistemological and ontological assumptions about how to determine what happened and what exactly constitutes the criminal offence. More precisely, it conveys assumptions about what cannot, for the moment, be known and what can therefore be ignored throughout the judicial process.

**Keywords**

Chile – criminal justice – lower courts – technicalities – misdemeanors – *in flagrante delicto*

The courtroom was full. I was seated in a corner on one of the six benches assigned to the public, and it took me some time to realize that other attendees had taken very specific places depending on their relationships to the principals in the case: those who knew the defendant sat on the three benches directly behind the desk of the defense attorney, whereas those who knew the victim sat on the three benches behind the desk of the prosecutor. Earlier in the afternoon, these friends and family members of both victim and defendant had been arriving and congregating in the hallway of the court building; while waiting for the hearing to begin, they were chitchatting about the alleged assault, phoning other people, and speculating about its potential outcome.

It was the last case—and the most serious one—being handled by the court that afternoon. The defendant was accused of assaulting his live-in partner and had been found by police in possession of a firearm without the appropriate permits—allegedly, of course, because at this stage in the judicial, the evidence is preliminary and a trial needs to take place before a defendant can be considered guilty. That the woman who sat next to the prosecutor and who was the victim in the case had been indeed assaulted seemed obvious, however. She had bruises on her face and arms and had walked into the courtroom with some difficulty.

After the gendarmes brought the defendant in handcuffs to the courtroom, the prosecutor spoke first, presenting the particulars of the case, reading aloud excerpts from the police report and elaborating on them. The previous night, the male defendant— angry because the female victim had arrived home later than she had said she would—beat her up. She then took a “selfie” of her injuries and sent it to her mother, who in turn called the police. Several policemen went to the victim’s home, found a firearm hidden in a closet and arrested the defendant. The prosecutor asked for pre-trial detention (*prisión preventiva*) while more evidence was being gathered in preparation for the trial. In response, the defense attorney argued that the defendant did not know about the firearm; that it belonged to the victim’s husband, who was in prison at that time; that the charge of illegal possession of weapons (*porte ilegal de armas*) was not relevant because the home, and therefore the weapon, belonged to the victim; and that, with the information available at that point, his client could be accused only of assault, a charge for which house arrest would be sufficient. Ultimately, the judge, after asking the prosecutor to repeat the contents of two reports in the file—one issued by a physician describing the gravity of the injuries and another assessing the domestic violence risk as “high”[[1]](#footnote-1)—ruled that the defendant would remain in jail. We heard a muffled curse—“bitch” (*perra*)—muttered by one of the relatives of the defendant, and, heavily guarded, the defendant left the courtroom to return to jail.

In my fieldwork, I had approached these judicial hearings skeptical of their ability to deliver the criminal justice system’s promises of fairness. I had read a great deal about their tendency to punish people with certain demographic characteristics—members of poor and marginalized populations, as was probably the case of the defendant here. And yet, I left that courtroom absolutely convinced that this man had assaulted that woman. The fact that the beating had happened only the night before, the tense conversations and intense looks exchanged by people attending, and the visible bruises of the woman contributed to this perception. Yet how could I be so certain that the man was guilty? Why did this aggression seem so evident and obvious to me? Was it similarly evident and obvious to the prosecutor, the defense attorney and the judge in the case? To the police officers who went to this couple’s home and found her injured? In fact, this case was one of many that are brought to these courts every day in which defendants are found *in flagrante delicto* by police, clearly committing the criminal offence, and are therefore arrested and detained. Through these actions, the criminal justice system is attributing a degree of indisputability to these criminal offences, its enforcement and judicial arms convinced that these criminal offences did indeed occur and were committed by the defendants who are then brought, in handcuffs, to these courtrooms.

Yet, this matter-of-fact acceptance of the indisputability of the defendant’s guilty conduct is a subject of debate and controversy in the criminal justice system. In an adversarial legal system such as that in Chile, legal procedures seek to devise a series of mechanisms that structure the confrontation carried out between the two opposing sides. No matter how determinative of guilt it may be, no video, picture or testimony alone can render the legal procedures nor the need for investigation irrelevant; therefore, in principle, the flagrant character of a crime does not have any place in the criminal justice system. “It is impossible, in any case,” wrote Latour (2010 [2002], 151), “to define the expression ‘to say the law’ if we eliminate from it the hesitations, the winding path, the meanders of reflexivity: the reason why we represent justice as blind, and holding scales in her hands, is precisely because she hesitates.” Where are these hesitations in the case of flagrant criminal offences? How is evidence, understood not as partial but as “obvious” and “clear” confronted, challenged, acknowledged or rejected during these specific legal procedures? How is this particular legal notion, the *flagrante delicto*, applied, and what role does it play in practical “truth-making routines” (Maguire and Rao 2018)? What “engines of truth” (Schneider 2015), “technologies of doubt” (Good, Berti, and Tarabout 2016) or “factuality operators” (*opérateurs de factualité*]; Dulong 1997; Chateauraynaud 2004)—concepts that refer to practical ways to attribute veracity to legally relevant facts—are engaged in the legal treatment of flagrant criminal offences?

In this article, I explore the way in which public discussions on delinquency in Chile construct the indisputability and the accepted facts of flagrant crimes. Specific socio-legal mechanisms using specific ways of connecting facts and law, truth and procedures are applied to cases of people caught *in flagrante delicto* so that flagrant crimes and other types of crime receive different treatment. Drawing on ethnographic data gathered in lower criminal courts and the prosecutors’ office in Santiago, as well as on the scholarly literature on legal technicalities (Riles 2005) and its attention to documents, procedures and ostensibly irrelevant aspects of bureaucratic work, I show that the flagrant character of criminal offences, as the defendants move from their encounter with police to the courtroom, is bracketed, made inconsequential to the case, and contextualized as being the result of the generalized social problem of increased delinquency and social pathology. The flagrant character of a crime conveys certain epistemological and ontological assumptions about how to determine what happened and what constitutes the criminal offence. More precisely, they indicate what cannot, for the moment, be known and what therefore can be ignored throughout the judicial process. In these cases, everything is organized so that actors in the criminal justice system are able to avoid asking themselves the same question that bothered me so much, “How can I be so sure?”

**Tracking flagrant criminal offences in Santiago**

Unlike most Anglo-Saxon common law criminal justice systems, in which detention is initially the prerogative of the police, civil law traditions explicitly declare when someone can be legally detained. The Chilean Criminal Procedure Code describes two such situations: when a judge has issued an arrest warrant (*orden de detención)* or when the person is caught *in flagrante delicto*. This latter case is described in the Article 130 of the Code:[[2]](#footnote-2)

It will be understood that someone is in situation of flagrancy when he or she: a) is currently committing the offence; b) just committed it; c) fled the place where the offence was committed and is pointed out by the victim or other person as the author or accomplice; d) is found, within an immediate time following the perpetration of the offence, carrying objects proceeding from the offence or with signs, on him/herself or in their clothes, that could make the person suspect of having participated in the offence, or with the weapons or tools that could have been used to commit it, and e) is pointed out by victims asking for help, or in-person witnesses, as the author or accomplice of an offence that had been committed within an immediate time, f) appears in an audio-visual recording committing the crime or simple criminal offence which is accessed by police within an immediate time. For the purposes of letters d), e), and f) it will be understood as immediate time all that time that passes between the realization of the fact and the capture of the defendant, as long as no more than 12 hours had passed.

 The ambiguity of the article’s provisions can be explained by the successive modifications made since 2000, when the Criminal Procedure Code was adopted.[[3]](#footnote-3) Since then, the Chilean Congress has increasingly extended the scope of the article to cover more offences and to take account of new forms of communication technology. For example, the original article did not specify the amount of time that could elapse between commission of the offence and detention other than to refer to the “just committed” criminal offence; this time period was later defined as no more than 12 hours. Originally, only victims could identify the alleged culprit, but this provision was later expanded to include witnesses as well. In addition, in 2016, videos of the offence were added as legal evidence for justifying detention. As a result, in practice, someone who appears committing a crime in a video can be detained by the police for up to12 hours following the crime.[[4]](#footnote-4) Although modifications made to the text of the article have been criticized by some jurists, who have argued that its current version violates the spirit of criminal procedure reform (Meneses Pacheco 2010; Vitar Cáceres 2011), most controversies surrounding the legal regulation of crime in Chile do not focus on the modifications to articles regulating detentions *in flagrante delicto*, but rather on those regulating police’s rights to ask for IDs and to strip-search people (Duce 2016).[[5]](#footnote-5)

Article 130 itself, therefore, raises little public controversy, which is consistent with its role in criminal procedures in Chile: the flagrant character of the offence merely influences the detention of a person and should not in principle, have an important impact on the adjudicative outcome of the case. Its provisions are intended to always be followed along with those of the other articles in the codes that describe the actual offences. Because article 130 does not refer to any specific criminal offence, any crime from murder to issuing threats, including sexual harassment, and from robbery to driving while intoxicated, can lead to detention if the offender is caught in *flagrante delicto*. Article 130’s technical focus on legal mechanisms and not on the crimes themselves contrasts with the widespread public attention given to “flagrant crimes” in discussions on delinquency in Chile, which are intensely evoked, examined and debated in both governmental and private conversations. The apparently peripheral character of this article contrasts as well with the way in which the criminal justice system treats “flagrant crimes.” Despite little systematic evidence thereof (Fondevila and Quintana-Navarrete 2020), flagrant crimes are seen as “good” cases for prosecutors, who can build their reputations on “easy” and notorious cases in which a suspect, witnesses and evidence have already been identified and verified,[[6]](#footnote-6) making it more likely to obtain a guilty verdict in a trial (Ríos Leiva 2012). Studies in Argentina (Kostenwein 2018) and Chile (Fandiño et al. 2017; Pásara 2009; Castillo Val, Tapia Mansilla, and Urzúa Salvo 2011) have shown that the perception of flagrant crimes as “good” cases works as a self-fulfilling prophecy, thereby casting doubt on the effectiveness of the criminal justice system in handling criminal offences that are not flagrant.

After the police detain someone *in flagrante delicto*, they must inform the prosecutors’ office within 12 hours of the arrest; at that point the prosecutor must decide whether the person should be released. If the decision is made to detain the suspect, he or she must be brought to court to participate in a detention review hearing (*audiencia de control de detención*) before a judge before another 12 hours have elapsed.[[7]](#footnote-7) The legal objective of these hearings is to determine whether the defendant’s detention was conducted by police in accord with their official prerogatives and, when applicable, the articles regulating detentions *in flagrante delicto*. In practice, at these hearings, less than 1% of detentions are declared illegal (Fandiño et al. 2017), and the application of Article 130 is seldom questioned (Rebolledo et al. 2008). Rather, these hearing serve as the defendant’s arraignment (*formalización*) during which the prosecutor explains the charges and proposes a legal procedure for apply to the defendant, depending on the offence, the defendant’s criminal record, and the prosecutors’ judgement. Infrequently, in some less serious cases, the prosecutor can request an expedited procedure (*procedimiento abreviado* or *procedimiento simplificado*) to close the case quickly. If the judge grants use of this procedure, a short sentence is imposed on the defendant who accepts responsibility for committing the offence or who agrees to be the subject of a summary trial, one in which the judge will evaluate the case and determine a sentence with the rather scarce information available at that point of the criminal investigation. Often, in such cases, the judge will impose a sentence equivalent to time already served; that is, the amount of time the defendant has already spent in detention. None of these procedures and hearings are limited only to defendants detained *in flagrante delicto*, but can also be used for those detained for other reasons as well. Nonetheless, in practice, most of those detained for committing flagrant offences are processed through the judicial system using these procedures. The suspects are caught and arrested, and if the prosecutor decides to pursue the case, they are arraigned in a court hearing within 24 hours of their detention.

Therefore, from a strictly legal perspective, “flagrant crimes” do not exist in Chile: the flagrant character is an attribute of the detention and not of the offence. Taking Article 130 as a methodological starting point, in this article I follow flagrant crimes as they move from the locations where police “find” them to their treatment at detention review hearings. I did not follow the same individual case through the different stages, but rather tracked flagrant crimes as a category that configures practices—specifically, as a technicality, essentially a legal fiction—through the treatment of different judicial cases. I am interested in flagrant crimes not so much in terms of how they emerge as the result of cognitive operations of classification carried out by particular individuals—although they do—as much as they facilitate certain situations in which the indisputability that made the crime flagrant in the first place can be put aside and replaced by references to a generic context of urban delinquency. I focus on the role *in situ* of technical and material devices, such as legal provisions and case files, to show how “different realities or versions of the crime in question are enacted by different parts of the criminal justice system” (Lam 2015, 54), beginning with the translation from the police’s version of facts into the administrative and bureaucratic language of law, and ending with the questioning—or rather the lack of questioning—of facts at the detention review hearings. By following Article 130 and its resulting connections with other legal provisions, documents, people, other cases considered to be similar, and the alleged facts, I question the presumed stability of legal rules and “track the slow composition of a unique trajectory of legal truth; to register the specific processes and techniques deployed to fuse a continuous pathway out of scattered elements of uncertain relevance” (McGee 2015, 62). I document the fragility and contingency of Article 130 as it is applied in the criminal justice system, simplifying people’s predicaments and contorting them to make them fit within preestablished categories while selectively invoking issues of delinquency and crime.

This article draws on data collected during 18 months of ethnographic research conducted in Santiago between 2018 and 2020. Although I observed many different legal sites, and gathered many different types of materials, this article is based mainly on the observations I carried out in a regional prosecutors’ office (150 hours) and in lower criminal courts (300 hours). The analysis is based on two ethnographic accounts, both written in Spanish: one describes daily life in the prosecutors’ office, and the other examines quotidian experiences in the public spaces of the court building where detention hearings take place, including descriptions of the hearing themselves. The two sites where I conducted observations play different roles in the Chilean criminal justice system: the specific prosecutors’ office that I observed handles all kind of cases reported by police, whether or not they involve detentions, and the lower criminal courts treat both *in flagrante delicto* cases and non-flagrant offences, according to different procedures. The prosecutors’ office and the criminal courts work together when offenders are detained.

**Law, bureaucracies and technicalities**

For more than 50 years, socio-legal scholars have been empirically researching institutions responsible for applying criminal law. David Sudnow’s work (1965) on a public defender office, Robert Emerson's examination (1973 [1969]) of a juvenile court, and Malcolm Feeley's study (1992 [1979]) of a lower criminal court are paradigmatic. These authors showed that, in these places, much more was at stake than simply applying laws, and that the different actors involved mobilized knowledge and preconceptions regarding actions they were supposed to be taking, what is considered a , and who is suspected of committing it. Recent studies have continued these empirical and fieldwork-based analyses, more directly addressing questions of race, gender, and social class. They show how criminal law intersects with logics of marginalization (Barrett 2012; Gonzalez Van Cleve 2016) and how legal mechanisms, such as legal hearings (Besnier 2007; Gagné 2018; Russell, Carlton, and Tyson 2020), negotiations between prosecutors and defense attorneys (Bowen 2009), and the use of expedited procedures to treat misdemeanors (Christin 2008; Kohler-Hausmann 2018) reinforce the marginalization of already peripheral groups, despite the mixed and ambivalent attitudes of the different actors toward this unintended outcome.

Another growing body of literature focuses on institutions involved in the application of criminal law does not take law as the point of entry to the analysis but rather the state as an entity that, through mundane practices, is reified as an autonomous social institution (Mitchell 1999). Describing, examining, and documenting these mundane practices as research objects in their own right, and not as mere manifestations of an apparently discrete and fixed institution, gave shape to the approach of the anthropology of the state (Sharma and Gupta 2006). Studying the state from within, this literature has opened up a broad range of ethnographic fields, particularly the examination of bureaucracies and the daily practices and situations that happen in the name of the state, from local welfare offices in neighborhoods to international organizations. One particular space of interaction—that between citizens and bureaucrats—has attracted significant research attention (e.g., Lipsky 2010 [1980]). Drawing on ethnographic fieldwork in offices managing welfare and poverty-related benefits, Watkins-Hayes (2009), Dubois (2010 [1999]), Auyero (2012) and Zacka (2017) have shown how bureaucrats balance normative considerations and make sense of regulations as they exercise discretion in implementing them; how political identities, modalities of political participation, and *de facto* policies are shaped through these relationships; and how what happens at the lower levels of government organizations matters as much as what happens at their top. Using research methods more closely aligned to anthropology, the work of Didier Fassin and others has explored “the heart of the state”—meaning, “literally, to penetrate the ordinary functioning of public institutions, but also, metaphorically, to examine the values and affects underlying policies and practices” (Fassin 2015 [2013], 2). These researchers have done fieldwork in mental health centers, courts, and employment centers, among other places, showing how political processes that occur at the micro-level are shaped by specific moral economies and subjectivities. When applied to courts and institutions involved in the criminal justice system, although reflecting specific disciplinary and national traditions (Biland and Steinmetz 2017), this literature sheds light on how these institutions not only may differ from, implement, or question political projects of justice, fairness, and impartiality—the socio-legal scholar’s “external” perspective—but also how the criminal justice system, through its daily, mundane internal bureaucratic practices, participates in moral and ethical *de facto* economies.

At the heart of this quest for understanding the ways in which the state’s practices unfold is Latour’s ethnography of the *Conseil d’état* (State council; 2010 [2002]). Unlike research approaches that reproduce the distinction between law and society, isolating the technical legal specificities of state organizations’ work and focusing instead on exclusively “social” phenomena, Latour’s invitation to study the “making of law” inaugurated an empirically grounded focus on law itself; the socio-legal scholar’s “internal” perspective became the object of study. Latour inquired directly into law’s mechanisms of enunciation, qualification, and imputation, its “obsessive effort to make enunciation *assignable*”(Latour 2010 [2002], 274). Latour’s focus is not so much on individuals’ and institutions’ moralities, subjectivities, and discretion or on policies and the state’s projects but on the legal tools themselves—rules, standards, documents, and files—that connect people, things and assertions and make this continuous imputation possible. Contributing to or inspired by this literature, a series of studies have been carried out on documents and states’ documentation practices. Among many others, Hull (2012) and Weller (2018), using ethnographic approaches, have explored the indexical role of documents in addition to their semiotic one, highlighting both the mundaneness and complexity of bureaucratic artifacts, such as maps, certificates, and files.

Within this project of taking “law seriously … opening up the black box of legal knowledge and paying renewed attention to its particular forms, rationalities and logics” (Sylvestre et al. 2015, 1362), the work of Annelise Riles on “technicalities” stands out. In her fieldwork exploring the work of lawyers in charge of drafting and filling out the multiple forms and agreements required for the creation of contracts in large financial institutions in Japan, she focused on the role and use of collateral, “the paradigmatic private regulatory device” (Riles 2011, 224), in international financial markets. She has analyzed the specificities of collateral as a legal tool that coordinates parties’ actions but, at the same time, appears to play a marginal role in the overall transaction, appearing to be simply a means to an end. Yet, as Riles explains, international markets function on the assumption that the other party will honor its obligations, an assumption which is ultimately uncertain; the provision of collateral can reduce that uncertainty, but it cannot eliminate it. As such, it is a legal fiction:

Why would market participants believe in something so fictional? The answer is that they don’t, at least in the traditional sense of ‘belief.’ For them, these fictions are just techniques, tools, means to an end. From the point of view of those who deploy them, legal fictions are more like machines than stories – they are practical interventions with concrete consequences…. It is rather a command, or a mutual agreement, simply to act “As If” (Riles 2011, 173).

Riles (2011) terms legal fictions a “working truth in the meantime.”

Legal fictions have been widely theorized by specialists in legal theory as essential lubricants to the legal process. There is general agreement that they both imply some awareness of falsehood and yet play a role by making law “move forward”: through legal fictions, it is possible to suspend the facts but retain the normative consequences (Del Mar 2013). Yan Thomas (2005), for example, claims that legal fictions assume that something that we know is false, but unlike presumptions, they are not meant to be refuted. By treating collateral as a legal fiction, as “a guarantee of something that by definition cannot be guaranteed” (Riles 2010, 804), Riles goes beyond doctrinaire discussions. She posits that, by deeply examining how collateral is used in practice in international financial markets by sitting next to and talking to the lawyers drafting legal agreements and contracts between financial institutions in Japan and the United States, and adopting the anthropology of the state’s approach, we can learn about how law is created: through “modes of action which are lodged in rich, culturally-specific, layers of texts, practices, instruments, technical devices, aesthetic forms, stylized gestures, semantic artifacts, and bodily dispositions” (Pottage 2004, 1). Another example of this ethnographic approach to legal research is Barbara Yngvesson’s work (2007, 2010) on adoption as upheld by legal fictions on kinship and nationality. Similarly, although they rely on analyses of legal cases and of archives, studies on financial swaps (Cornut St-Pierre 2019)—a type of legal contract used in financial markets—and on patent law and its definition of “invention” (Pottage and Sherman 2010) follow a similar analytical path: by looking at the seemingly irrelevant and mundane aspects of technical legal devices, particularly as they articulate assumptions of truth and falsehood—playing a series of epistemological “tricks” on reality to resolve situated dilemmas—these researchers can tell stories about the financialization of the world, industrial manufacture, technocracy, identities, and race.

I aim to tell stories, too, by analyzing the idea of a criminal offence caught *in flagrante delicto* in Chile as a legal fiction. Article 130’s tortuous attempt to describe all the possible situations in which a person can be found so evidently committing a crime illustrates the complexity of the practical dilemma confronting actors in the criminal justice system: it is highly unlikely that a police officer will encounter someone at the very moment he or she is committing a criminal act—reaching into the pocket of a distracted passerby, punching someone in anger, threatening a neighbor, shoplifting something from the supermarket, or mugging someone in the park. Very few people are actually caught *in flagrante delicto*, “in blazing crime,” as the Latin expression defines it, but that does not matter. The criminal justice system functions by assuming that this was the case and thus makes legal the detention of the person considered to have committed the criminal offence. The idea that the suspect was caught *in flagrante delicto* supports the drafting of “a script for a particular kind of collaboration” (Riles 2011, 59), “as if” the accused person was indeed caught red-handed committing the crime. For this legal fiction to “work,” it is irrelevant whether the person was, in reality, caught in the act. Thus, this legal tool makes it possible to not discuss whether legal provisions about detentions in Chile are, or not, respected and applied in practice, but to focus instead on the offence’s flagrant character. The mechanics of the legal fiction become a working truth in the meantime (Riles, 2011), articulating and connecting people, things and practices in such a way that, as I will show, the flagrant character of the criminal offence, its indisputability, can be overlooked and put permanently “on hold.” In the same way that “patent law had to fictionalize scarcity” (Pottage and Sherman 2010, 4) to justify the conception that the exact same innovative idea cannot be held by more than one person, the tool of the detention *in flagrante delicto* allows for the fictionalization of indisputability.

**Bracketing indisputability: Documentary practices**

While municipal security guards are surveilling the streets, they detain someone who has apparently just mugged a passerby; the neighbors call the police after hearing a man assaulting his partner; someone is driving drunk and is pulled over by police. All these situations may lead to the detention of people *in flagrante delicto*, which will ultimately be carried out by the police.[[8]](#footnote-8) Legally, the police are the ones deciding whether a person should be detained; that is, whether the conditions described by Article 130 are met. If they decide that these conditions are satisfied, the police then must inform the prosecutors’ office within the next 12 hours. Urban logics of marginalization and the over-policing of specific populations (Dammert 2016), as well as the use of detention as the privileged tool for dealing with situations related to security and public order (Brisson-Boivin and O’Connor 2013, Yi 2016), certainly play a role in the police’s decisions. However, these considerations are irrelevant to my fieldwork’s focus, which is on what happens after the police have already decided to detain an individual through the offenders’ hearings in court. My initial point of observation is the prosecutors’ office.[[9]](#footnote-9) Police officers in the field call clerks in this office to inform them about their detention decisions. In these phone conversations, these highly trained clerks arrange the facts temporally and spatially, separate the relevant from irrelevant information, and propose a preliminary legal qualification for the case. They also write a narrative describing what happened based on what was reported by the police officer. This description will be part of the file but has little importance from an evidentiary perspective, because, legally, what is important is the police report (*parte policial*) itself. Yet, this narrative serves an important control and coordination function between police and the prosecutors’ office, stating not only what police report about the case but also when and how they make these reports.

At this stage of the criminal procedure, the alleged facts of the offence that led to someone’s detention do not matter as much as when and where they happened. In their calls with the police, the clerks ensure that the place where the criminal offence supposedly occurred falls within their office’s jurisdiction and that the length of the detention complies with legal provisions—that 12 hours have not elapsed between the alleged offense and the detention nor between the detention and the call. Once the clerk records this information on the computer, along with the preliminary narrative of the case, a file with an internal number is created. A prosecutor then has to formally make a decision: Will the detained person, at this point called the “defendant” (*imputado*), go through a detention review hearing at the criminal court? Whether a defendant remains in detention depends on the type of criminal offence of which the person is accused and, except in some very specific cases, is made “routinely”: “*Routinely* means an immediate typical understanding of the circumstances and on attribution of some normal meaning” (Lempert and Sanders 1986, 78). Did the defendant steal something valued less than a certain amount of money? If so, the offender will be released. Did the defendant threaten or assault someone or refuse to take the breathalyzer when apparently driving drunk? If so, the offender will remain detained and undergo a court hearing. In every case, the file will include the name of the prosecutor who formally made this decision, and if the defendant remains detained, another clerk will coordinate the scheduling of the detained person’s hearing. The detained person will be directly brought to the criminal court by police, and not to the prosecutors’ office.

At the prosecutors’ office, clerks also receive calls about situations that are not flagrant offences in which a person is not detained by virtue of Article 130, but has allegedly committed a crime that had been recently reported to police: a family returning home after a weekend away finds their house has been robbed; a woman who is walking has her wallet grabbed by someone streaking past, and a mother is told by her daughter that she had been abused by a member of the family some months ago. All these situations are reported to the police who, in turn, call the prosecutors’ office to report the crime and receive instructions on what to do next, because prosecutors are the ones legally in charge of guiding criminal investigations in Chile. Should the police pursue an investigation, bring the victim to a medical center, or try to interview the perpetrator? A case number is assigned to all the calls that this office receive, but only information about those cases in which the suspect is detained and will remain in detention is transferred to a physical file, one that is called a “file folder” (*carpeta*). These file-making operations characteristically implement a way of working case by case (Weller 2018) “vertically” (Vismann 2008): they connect the arenas of “law itself” and the “world out there” (Van Oorschot and Schinkel 2015).

All law and documents approach reality “obliquely” (Hull 2012, McGee 2015). Yet, in the files produced for the cases of people detained *in flagrante delicto*, the symmetry between the file and reality is the result of the processes that contribute to those files’ creation, and not of the indisputability of the criminal offence itself. It is likely that with all kind of legal cases and files, law and documents indeed approach reality “obliquely,” but in the case of flagrant crime cases in Chile, the mechanisms by which files are created allow actors to avoid discussion about this apparent symmetry. Whereas in other cases there are occasions, such as trials, for iteratively and recursively returning to the facts (Scheffer 2010)—to challenge them; to question; and to uphold and refute signatures, countersignatures, stamps, and seals, sometimes rather than “facts” (Suresh 2019)—detention *in flagrante delicto* launches a series of practices in which the criminal offence itself—the theft, the assault, the threat—is not discussed. In essence, the legal fiction of the detention *in flagrante delicto* permeates the subsequent judicial process. The detailed enumeration of the different situations in which a person can be legally detained according to Article 130 contrasts with the simplicity of most flagrant crimes. One typical call describing such a case might go as follows:[[10]](#footnote-10)

* Office of the public prosecutor[*Fiscalía*]. Good evening, how can I help you?
* This is the policeman (*carabinero*)Luis González, I would like to report a procedure with a person arrested for a minor assault (*lesiones leves*).
* Tell me.
* The victim arrived home from work and found out that his neighbor had used his parking spot. This is a very crowded street and, apparently, they had somehow distributed the parking spots and this one was the one for the victim. But it’s informal and there is a history of conflict between them because of the parking situation…
* Ah, ok, so there is a history of conflict here.
* Yes, so when the victim arrived, he was mad that he couldn’t park his car, so he went to knock at the door of this man (*sujeto*), the defendant (*imputado*), and asked him, apparently kindly to move the car so he can park his…
* Ah, ok, I see.
* But this guy didn’t want to, so he started shouting that he was tired of this neighbor, the victim, always hassling him because of the parking; and then the other, the victim, replied shouting too. You know how it is, the whole conflict escalated, and the defendant took a wood stick he had in his house and hit the victim with the wood stick; the victim has minor injuries on his arms. At that point, with the brouhaha, other neighbors had arrived and controlled the guy, the defendant, and called us.
* Ah, ok, does the defendant have injuries as well? Was it more a fight or an assault?
* No, it was really an assault. I don’t think the victim wanted to fight; he wanted to talk to the defendant; the other neighbor said that this guy, the defendant, is the violent one…
* I understand, tell me, at what time did this happen?
* About 7 pm, when the victim arrived home.
* Time of the arrest?
* 7:45 pm.
* Ok, give me the information on the victim and the defendant please.
* [The policeman gives the information on both the victim and the defendant: complete name, address, phone number, and, most importantly, personal identity number.[[11]](#footnote-11)]
* Did you check the identity of the defendant?
* Yes, it’s verified.
* Did you bring the victim to a health center?
* Yes, I have the report from the medical center here.
* Can you read the description of the injuries please?
* The report says: “hematoma on right upper-arm consistent with minor injuries.”[[12]](#footnote-12)
* Ok, the defendant will be in the detention hearings tomorrow morning.

At the end of the conversation, the clerk shares with the policeman the number assigned by the system to this case and the name of the prosecutor in charge of it. Between that call in the evening and the next morning, a clerk in this office will prepare the file for this case, which will have the following elements: the narrative written by the clerk who received the call, the criminal record of the defendant if he or she is already in the criminal justice system, a medical report describing the victim’s injuries, if any, and the most important document—the police report describing what happened from the point of view of the police, including the victim’s statement.

The mandated documents and information for each case are standardized in the procedures of the prosecutors’ office, but certain types of cases require additional documents or more detailed versions of the required materials. In domestic violence cases (*amenazas en contexto VIF*), some documentation that proves the relationship between the victim and the defendant is required. In incidents that cause damage to property (*daños*), it is important to include evidence of the estimated cost of that damage. In assault cases, the medical report should be particularly detailed. When the victim claims that the defendant is making serious threats, the report needs to repeat what the defendant allegedly said, including all the swear words and insults, which will be read out loud at the hearing, making for a jarring blend with the formality of law procedures: “a curious mix of theatre and the mundane” (Sylvestre et al. 2015, 1347).

In none of these cases, however, do the documents included in each file directly address the criminal offence itself; rather, they communicate the value of a damaged piece of property, the gravity of an injury, the relationship between two people, the wording of a threat. Whether this good, this injury, this relationship or this threat corresponds to the legal definition of the criminal offence in which the detained person participated is contingent on filing practices. This evidence is constructed through narrative and documentary practices that add more documents but not necessarily more information about the criminal offence. The material in the file is compiled and edited by the clerk based on what he or she is told by the police, who base that information on what the victim told them. Even though routine scrutiny of this chain of reporting is a common feature of adversarial procedures, the legal fiction of the detention *in flagrante delicto*, in which actors collaborate to act “as if” the policeman had witnessed the assault, allows such scrutiny to be avoided.

For each case involving detention and a subsequent detention hearing, the prosecutors’ office staff will review and print the file documents, place them in a paper folder, and assign the case a new number that matches the court’s filing system. To highlight key information that will be useful to the prosecutor, who will likely first see these documents only a few moments before the hearing starts, the clerks affix Post-it notes to relevant sections of the material.

At the detention hearings, the file that was carefully assembled some hours earlier becomes the main protagonist. The case draws primarily on the police report; other documents are rarely shown or referred to in court. At the hearing, the prosecutor reads excerpts of the police report, particularly the parts that correspond to the definition of the crime according to the criminal code. The defense attorney then responds, reading from documents taken from the same file, which is physically exchanged between the two of them during the hearing; they pass it back and forth between their desks in front of the judge. At this point in the judicial proceedings, there is nothing more on which the two lawyers could rely on for their arguments; there is no more evidence than what is in that file. When the two lawyers do engage in discussion, it is not about the offence itself but about these types of questions: Is the police report worded in a way appropriate to the type of crime? At what time was the person detained, and when was the prosecutor informed about it? Do we know the approximate cost of the damage caused by the defendant? Does it matter that the defendant had been accused of but not convicted for similar crimes before? If the defendant is the owner of the house where the victim has been living for only a few weeks, must the defendant leave the house if he or she has made threats of violence? Paradoxically, the least important thing in these hearing is what supposedly so unquestionably—in such a “flagrant” way—happened. Evidence seems to be more a question of following the correct procedures than of determining what actually occurred (Engelke 2008).

**Contextualizing indisputability: The (police’s) eyewitness gaze**

One call received at the prosecutors’ office stood out from the many others. It involved an elderly woman who had been assaulted by a security guard, according to what she told the police officer. As it is normally the case with people who are suspected of assault, the security guard had been arrested. “Why would the security guard assault this woman?” the clerk at the prosecutors’ office asked the police officer over the phone. I could imagine the police officer on the other end of the line shrugging their shoulders while saying, “I don’t know; apparently she asked him a question and that bothered him.” Usually, clerks do not question whether what the police reported to have happened actually took place.[[13]](#footnote-13) Typically, conversations revolve around what documents need to be produced and what kind of investigative actions the police need to carry out, not about the situation itself. This is not because the clerks, prosecutors and police are incompetent, but because the details are supposed to be sorted out later: at this point in the legal process, it is sufficient that someone alleges that he or she was the victim of an assault, as stated clearly in Article 130. Twenty minutes after the initial call, however, the police officer sent the clerk a video, which had been sent to the police by someone who witnessed the alleged assault. The video clearly shows that the elderly woman is the one smacking the guard’s head with her handbag. With this new information, the security guard was released.

That actors in the criminal justice system draw on practical, not exclusively legal, knowledge to sort out cases has been widely noted in socio-legal scholarship (Emerson 1973 [1969], Sudnow 1965); in fact, sentencing determinations have been found to be mostly based on practical knowledge. Similarly, flagrant criminal offences in Chile can be adjudicated by drawing on extra-legal knowledge, as the clerk did when doubting the elderly woman’s account. Yet the application of Article 130 has no extra-legal elements: the law itself guides the actions of the different actors involved, who do what they do precisely because they all assume that these particular criminal offences, the flagrant ones, happened in a certain way. Had it not been for the video, which was made available almost by chance, the case of the arrested security guard would have proceeded with all the necessary documents—primarily the police report stating the facts as reported by the alleged victim—and the guard would have been detained *in flagrante delicto*. Applied initially *in situ* by police but travelling through different physical and symbolic places—the street, the prosecutors’ office and the courtroom—and mobilizing ideals of police discretion, prosecutorial and judicial efficiency, and justice’s fairness and rights—Article 130 provides a way not only to cognitively classify criminal offences but also to practically put into motion the criminal justice system, in such a way that only situations that happened at the local scale of the street and the neighborhood are entitled to be heard.

A police officer calls to report the case of a woman who had allegedly been raped the night before; or the case of a mother who apparently saw her brother and her minor daughter kissing and touching each other in the home’s living room; or the case of a man who had been defrauded by someone who pretended to have kidnapped her son;[[14]](#footnote-14) or the case of a woman who, having recently obtained a job as housekeeper and being alone in the house, allegedly orchestrated the robbery of all the goods inside the house. In all these cases, police called to make a report and share the names of the presumed culprits, creating a file in the prosecutor’s system and eventually making them the subject of further investigation. Yet in none of these cases did the police detain the alleged offender. “Why?” I would ask myself, thinking about all the other situations where police called after they had already detained the suspects. “Why didn’t the prosecutor office’s clerk tell the police to detain the suspect? Why haven’t the police done it already?” The legal answer to the first question is that prosecutors cannot order a person to be detained: that is the prerogative of the police. The sociological answer to this question, however, involves a broader understanding of what can and cannot be supported by applying the legal fiction of the detention *in flagrante delicto*: the *voir dire* chain of authority, truth and trust that is produced by the subsequent, documented telling of the story of what happened from victims and witnesses to police, and later from police to clerks and prosecutors, does not operate in these cases. These cases will not be treated as flagrant criminal offences because, in practice and in specific situations, the legal fiction of the detention *in flagrante delicto* presumes a certain scale—one that mirrors the police’s gaze that reverberates in the hearing rooms of the lower criminal courts, where defendants and victims, and their families, find themselves together again.

Shifting my observation viewpoint from the clerk who is listening to police to those attending the lower criminal court where detainees are brought, I can see that, in contrast to other courtrooms in the same building where non-detained defendants are scheduled to appear, this room is packed. Friends and family members of the detainees try to establish eye contact with those on the other side of the glass that separates the public from where the formal discussion takes place; they also ask questions of the security guards. They discuss among themselves what could legally happen to their relative, friend or neighbor. Some cry, some go into the hallway to talk on the phone, some struggle to hear what people at the other side of the glass are saying, and some try to keep their children quiet. Large retail stores, frequent targets of shoplifting, are represented by lawyers sitting on the other side of the glass, next to the prosecutor.

Most people in attendance are there because they know the person who is detained, but some are the victims of a crime or are accompanying a victim. When they are present, victims participate in the process by discussing and validating the measures that prosecutors may propose. “Do you agree with what the prosecutor is asking for?” the judge may ask the victim, momentarily seated next to the prosecutor on the other side of the glass. “Yes, I want him to leave our home,” the victim may characteristically reply during the hearing in a case of domestic violence when the man is detained after having assaulted his partner. “I will kill you next time,” shouts someone in the hallways; a detainee who has just been released is greeted by his mother, who hugs him tightly. In the general atmosphere of the courtroom and the hallway, we get a glimpse of the kind of situations that brought people there.

Most common criminal offences that are reported to the police and to the prosecutors’ office are threats of violence, robberies (*hurtos*), and minor assaults (*lesiones leves*; Author, XXX). Although the proportion of these cases that began as *in flagrante delicto* detentions is not documented,[[15]](#footnote-15) my observations in both the prosecutors’ office and the courts indicate that those kinds of criminal offences are the ones that primarily result in detention. Essentially, most flagrant criminal offences treated by the criminal justice system in Chile are not crimes as serious as homicides or rapes but rather what would be called misdemeanors in Anglo-Saxon contexts. For example, a police officer making a traffic stop may discover that someone is driving a car reported stolen two weeks ago; a woman calls the police after her ex-husband threatens to kill her; two young men are spotted fighting on the streets; stolen purses, wallets, and cellphones are reported. “Used by various organizations and institutions to organize, sort, classify, relate, and explain” (Valverde 2003, 14), the flagrant character of the criminal offence mobilizes a specific context: an urban world of ordinary violence, economic precariousness, simple get-rich quick schemes, and unsophisticated actions. No doubt, these are worrisome situations that may have serious consequences on victims and communities in general. Yet from the perspective of how the criminal justice system distinguishes between cases, more serious situations—presumed homicides, thefts of large amounts of money, situations with some kind of public relevance—are treated according to their specificity and individuality, in contrast to most flagrant crimes. Analyzing judicial strategies, Wilenmann and Arístegui (XXX) have shown how, in Chile, mass processing of misdemeanors follows specific patterns of collaboration between the different entities involved in their treatment.

 One paradigmatic type of flagrant crimes is a robbery in a supermarket or a store, when someone shoplifts something. The Chilean criminal code only defines “robbery” (*hurto*) in general and does not distinguish it from shoplifting. If the commercial value of the stolen goods is lower than a set level, the suspect who is initially detained will be released; if it is higher, the person detained will be brought to the court to a detention review hearing. In both cases, the documents that are part of the file are standardized: a legal statement signed by the security guard of the supermarket or the store describing what he or she personally saw on the security camera footage, and a receipt detailing the value of the stolen things are enough. During my fieldwork, I heard about cases and saw detention reviews of people who had allegedly stolen bottles of liquor, diapers, car fresheners, blue jeans, cosmetics, backpacks, bedsheets, cheese, meat, coats, and a drill, among many other disparate things. Once a young man was detained for stealing a heater: “he took and appropriated, for profit [*con ánimo de lucro*] and against the will of its owner, a Toyotomi heater valued in $150,000 pesos [USD $210], crossing the cash register’s zone without paying its value,” said the prosecutor, with no one raising an eyebrow. While his grandmother wept next to me in the court’s hearing room, I could not stop wondering how the defendant could possibly steal something of that size. Over time, I learned that people accused of shoplifting are very resourceful in their stealing strategies, yet their creativity would end up being reduced to the same patterned description provided by police. In any case, what exactly happened and whether the defendant did indeed commit the criminal offence, at least at this point in the judicial treatment of the case, are beyond the point.

Every day, in the hallways of the building where the detention review hearings take place, victims, lawyers, and families and friends of the detainees gather outside the different rooms, waiting for the hearings to start. Nobody knows exactly when each will begin, because each case is treated consecutively in an order unknown to the public. In fact, each court has its own way of organizing cases, mostly by the severity of their consequences or, in what ends up with almost the same result, the kind of procedure that the prosecutor will apply to each case— beginning with the simplest cases in which the prosecutor proposes to “suspend” the case, often for a year, if the defendant follows certain conditions, such as avoiding approaching the victim of the assault or entering the store where the robbery was committed, and finishing with the most serious cases, in which the prosecutor will likely ask the judge for pre-trial detention and the defense attorney will respond by trying to obtain less serious pre-trial restrictions (*medidas cautelares*). This sequence of hearings, which is informally established by courts and discussed with prosecutors and defense lawyers beforehand, outside my own observation viewpoint, is an attempt to make them more efficient. Defendants whose cases are grouped together will have their cases treated simultaneously. “You all will be offered something by the prosecutor if you accept certain conditions,” the judge will explain to all of them at the same time, for example. In this context, what the defendants did does not matter as much as into which group they are classified.

Flagrant crimes happen in a generic street that seems the extension of the courtrooms’ hallways. To be considered “flagrant,” they need to be witnessed eventually by someone in the street, surveilling a store, or hearing the screams of someone inside a neighboring house. Threats, robberies, muggings, domestic drug traffic (*microtráfico*)[[16]](#footnote-16) carrying a knife or a firearm on the street, and assaults are all situations that happen at this street scale. Those committing larger offences, such as complex drug traffic schemes or sophisticated white-collar fraud—or violations happening at a smaller scale, such as sexual abuse occurring in the intimacy of a household—will never get caught *in flagrante delicto*. (In the latter cases, police and prosecutors will probably await the results of other investigative procedures before pushing for an arrest.) The legal fiction of the detention *in flagrante delicto* assumes the scale at which it can be applied: the street or the local scene. This type of gaze goes beyond the police’s exclusive scope of work and pervades the definition of flagrant crimes used by the lower courts. It is what Valverde (2011) calls the “generic eyewitness gaze,” the one upon which the broken-windows theory is based and in which what matters is what could be “seen” by some curious journalist who will “write graphically and concretely, but about generic rather than specific objects and places and persons … a generic street rather than a real place” (Valverde 2011, 573).

**Conclusions**

In this article, I retell a story that has been told many times in different national contexts and by drawing on different methodologies: the criminal law system contributes to the marginalization of already marginalized populations by monitoring and managing their lives (Kohler-Hausmann 2018; Feeley 1992 [1979]) and subjecting them to legal procedures in which the individuality of their cases does not matter as much as their characteristics as members of certain social groups (Makaremi 2015 [2013]; Christin 2008). Many of my interlocutors would describe the Chilean criminal justice system using the metaphor of “a machine,” one that is designed to target poor people and treat them in a standardized way. Indeed, this type of treatment was confirmed by my observations.[[17]](#footnote-18) How does a system whose ideal is to treat people impartially end up actually discriminating against one particular “clientele” (Jobard and Névanen 2007)? The social sciences have offered many complementary answers, such as criminal behavior engaged in by certain groups, profiling practices by police, and bias by actors in the criminal justice system.[[18]](#footnote-19) In this article, I accepted the invitation extended by socio-legal scholars working on legal technicalities (Valverde 2009, Riles 2016, 2005) to inquire into what seems merely technical and to explore the epistemological and ontological claims made by those legal tools. In other words, the work of these scholars led me to presume that legal tools, when applied in practice, produce and are associated with certain evidential regimes in which certain people, criminal offences, documents, and other procedures participate.

As a tool in the Chilean criminal justice system allowing prosecutors, defense attorneys and judges to presume a certain proximity between “the truth” of what happened but was experienced by a very few persons and its legal treatment, the detention *in flagrante delicto* works as a legal fiction, “a technique for working with and in the meantime.… It defines and manages the near future, the time for which this particular commitment holds true” (Riles 2010, 803). Actors in the criminal justice system know that defendants caught *in flagrante delicto* were not caught red-handed but rather were arrested by virtue of a legal provision that defines a flagrant crime in a broad and ambiguous way, in a wide array of situations, permitting police to respond by taking actions from running in hot pursuit to knocking on the door of someone whose neighbors accused of having done something illegal the night before. How do these wide-ranging situations all fall eventually into this same practical category of flagrant criminal offences? What do they have in common? Their indisputability is fictionalized through practices that make it possible to avoid directly referring to the alleged flagrant facts and to point instead to a context of generalized urban delinquency and prompt police intervention. These bracketing and contextualization practices, as well as actual practices that include the production of documents and the execution of ritualized procedures, such as legal hearings, contribute to the fictionalization of the evident and obvious character of certain criminal offences.

When police, prosecutors, clerks, defense attorneys and judges collaborate around criminal offences committed *in flagrante delicto*, they are treating facts that are considered to have happened recently, in which the system worked promptly to capture the alleged culprit; in these cases, facts are considered “fresh,” and so are witnesses’ and police’s recollection of them. This swiftness of the detention of a person and the quick and timely intervention of law and order extend to the way in which legal procedures move forward: the file must be created in less than 12 hours and the arrested person has to be in a court in less than 24 hours. The case can even find a judicial solution at the detention review hearing. However, this speed also means that only a limited amount of information can be collected. The facts may be fresh, yet there is no time to gather all the potential evidence that may be needed. So prosecutors use what information they have, but paradoxically, that does not relate directly to the criminal offence itself: the flagrant character of the facts that legally justified the detention of the defendant is not directly addressed by the procedures. Rather than relying on proven facts, police, prosecutors, clerks, defense attorneys and judges work with what they have: their practical knowledge of what happens on the streets, constantly pointed out to them by the crowds gathered in the courtrooms, and the common features of the many aggregated cases they treat, which can all be grouped within some collective story of the community in which these events (may) happen.

 Finally, my findings show the heuristic productivity of the analysis of technicalities for a socio-legal approach to criminal law. Used as a method rather than as a theory (Riles 2016), the analysis of technicalities in the application of administrative or public law helps us interpret people, situations, interactions and documents that otherwise would have been reduced to variables or to gaps between law-in-the-books and law-in-practice. When this approach is used to answer research questions traditionally associated with administrative or public law, and thus with the state—its power, its sovereignty, its authority—we are able to grasp the complexities of the workings of the criminal justice system in practice, rather than as areas of opposition between the state, understood as an abstract entity, and laypeople. Following cases of detentions *in flagrante delicto* in Chile through their treatment by the criminal justice system allows us to see that, despite intentions or perceptions, they are constructed through a series of practices that fictionalize their indisputability. These fictionalization practices are located both at the heart of the rule of law and at the margins of the society—affecting the poor and dealing with the bulk of low-level criminal offences—and are carried out through mundane practices of street-level bureaucrats. This reminds us that vulnerability and power are not necessarily opposed but rather cohabit in the rough-and-tumble of everyday life (Das 2004). Looking at technicalities, especially at those that involve the rule of law as both a guarantee of rights and the potential of punishment, is a way of looking at this rough-and-tumble of everyday life. That police, prosecutors, judges, defense attorneys and clerks at the different offices involved can avoid the question of “how can I be so sure?”—the one that opened this text—in the case of flagrant crimes through specific “material-semiotic networks of controversy and dispute” (McGee 2015, 65) can inform us about questions of justice and rights as much as can statistics on sentencing and doctrinaire discussions.

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1. In cases of domestic violence, before any proceedings, clerks at the prosecutors’ office conduct a quantitative assessment of the risk for the victim, based on a questionnaire that awards a given number of points to each answer. If the victim answers “yes” to questions such as “Does the defendant have access to weapons?” or “Has the defendant threatened to kill you before?” the score is higher. [↑](#footnote-ref-1)
2. Original text in the Chilean Criminal Procedure Code: “Se entenderá que se encuentra en situación de flagrancia: a) El que actualmente se encontrare cometiendo el delito; b) El que acabare de cometerlo; c) El que huyere del lugar de comisión del delito y fuere designado por el ofendido u otra persona como autor o cómplice; d) El que, en un tiempo inmediato a la perpetración de un delito, fuere encontrado con objetos procedentes de aquél o con señales, en sí mismo o en sus vestidos, que permitieren sospechar su participación en él, o con las armas o instrumentos que hubieren sido empleados para cometerlo, y e) El que las víctimas de un delito que reclamen auxilio, o testigos presenciales, señalaren como autor o cómplice de un delito que se hubiere cometido en un tiempo inmediato. f) El que aparezca en un registro audiovisual cometiendo un crimen o simple delito al cual la policía tenga acceso en un tiempo inmediato. Para los efectos de lo establecido en las letras d), e) y f) se entenderá por tiempo inmediato todo aquel que transcurra entre la comisión del hecho y la captura del imputado, siempre que no hubieren transcurrido más de doce horas.” [↑](#footnote-ref-2)
3. A new criminal procedure code was adopted in Chile in 2000, when the country, as did many others in Latin American, implemented substantial changes in its criminal justice system, shifting from an inquisitorial to an adversarial one. However, legal rules describing detentions *in flagrante delicto* changed little from the previous criminal procedure code (Vitar Cáceres 2011). [↑](#footnote-ref-3)
4. Changes introduced by Ley 20.074 in 2005, Ley 20.253 in 2008 and Ley 20.931 in 2016. [↑](#footnote-ref-4)
5. This discussion resembles the ones on “stop and frisk” policies that have taken place in Anglo-Saxon jurisdictions that raise questions on profiling and police abuse. [↑](#footnote-ref-5)
6. Those crimes that are not flagrant include those reported by victims but that require further investigation to identify a suspect and gather evidence. A common example is a robbery in which the victim does not know who committed it. In such cases in which offenders are not caught *in flagrante delicto*, prosecutors need to ask judges for detention orders after they have the name of a suspect and have gathered some evidence. [↑](#footnote-ref-6)
7. The purpose of this first detention hearing differs from that in other criminal justice systems, where it is held to set conditions for the defendant’s release pending trials such as by imposing bail (studied, for example, by Kohler-Hausmann (2018)); or to initiate legal procedures that result in a quick summary trial, such as immediate appearance trials (*comparutions immédiates*) in France (Christin 2008; Makaremi 2015[2013]); or to determine whether the case can be treated according to the procedure in flagrancy (*procedimiento por flagrancia*) in Argentina (Kostenwein 2020). In Chile, the detention review hearing applies to all types of detentions and all kind of crimes. [↑](#footnote-ref-7)
8. On the basis of civilians’ rights to detain other civilians who are clearly committing a criminal offence, some municipal governments in Chile have authorized security squads to patrol the streets. Although these squads may carry some kind of specialized equipment, they have the same rights as civilians concerning detentions. When they “detain” someone, they must quickly inform police, who are the ones who properly do the arrest. [↑](#footnote-ref-8)
9. Because of the large number of cases that require the quick intervention of prosecutors, and as a management strategy, the *Ministerio Público* (the General Prosecutors’ Office) in Santiago, the capital of Chile, created specialized offices, operating 24 hours a day, that are in charge of handling these detentions; these offices are called *fiscalías de flagrancia*. In the rest of the country, individual prosecutors “on call” deal with these cases. [↑](#footnote-ref-9)
10. To protect the anonymity and privacy of people involved in the cases reported to this office, and to respect the conditions imposed to me when I obtained the authorizations to carry out my fieldwork—which included listening to these calls in real time—I do not refer to specific cases but rather describe typical situations in a general fashion. When I describe a specific call, as I do in this section, my field notes are altered in such a way that I do not include the date or time I wrote, and I change some details to make the story unrecognizable but still representative of the situation I observed. [↑](#footnote-ref-10)
11. All Chileans and foreigners with legal permanent residency in Chile have an identification number (*Rol único nacional*) administered by a centralized national registration service and widely used by different institutions in the country. [↑](#footnote-ref-11)
12. In cases in which victims are injured, police take them to a public health care center to be assessed by a medical specialist, who is mandated to write a report stating the gravity of the injuries. The severity of injury determines the charges and consequently the kind of legal procedure that can be applied to the case. [↑](#footnote-ref-12)
13. There is an important exception to this affirmation: cases of police abuse. During my fieldwork, many situations of police abuse in the context of social protests were reported and even broadcast live on TV or social media. When police would call to report arrests of protestors, trying to justify the injuries of detainees by saying, for example, that they “strongly resisted” arrest, staff at the prosecutors’ office would try to get more details about the case than they typically would. However, this exception confirms my analysis, because police abuse during arrests and detention is considered, in itself, to be something exceptional. [↑](#footnote-ref-13)
14. This is a relatively common type of fraud in Chile: someone calls telling a compelling story about a member of the family in danger and then asks for money to remedy the situation. [↑](#footnote-ref-14)
15. The prosecutors’ office does not publish statistics on detentions *in flagrante delicto*. The main distinction they make for cases they receive is between “known defendant” (*imputado conocido*) and “unknown defendant;” flagrant crimes fall in the category of criminal offences with a “known defendant” but this category cannot be used as a proxy for them, because not all criminal offences with a known defendant are flagrant. A recent study estimated that the proportion of flagrant crimes has progressively increased in the last years, rising from 6% of total cases in 2006 to 14% in 2012 (Fandiño et al. 2017). [↑](#footnote-ref-15)
16. [↑](#footnote-ref-16)
17. The typical situation that leads to the detention of someone for domestic drug traffic, as described by police, is the defendant seen “exchanging something” with a passerby on the street and then found carrying drugs, cash, and maybe a weighing scale. I did not systematically record the characteristics of the defendants in the hearings I observed—their employment, level of education, or the neighborhood where they lived, for example. However, many were unemployed or had informal jobs and lived in peripheral and poorer neighbourhoods of Santiago. [↑](#footnote-ref-18)
18. The list of scholarly work in these topics is immense. I refer the reader to the reviews made by Stuart, Armenta, and Osborne (2015) on the “legal control of marginal groups” and by Rios, Carney, and Kelekay (2017) on ethnographies of crime, both with an emphasis on the United States and using qualitative approaches. [↑](#footnote-ref-19)