

**SAGE CRIMINAL  
JUSTICE SYSTEM ANNUALS**

Volume 23

# PRIVATE POLICING

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# **PRIVATE POLICING**

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Volume 23. **Sage** Criminal Justice System Annuals

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**Clifford D. Shearing**  
**Philip C. Stenning**

*Editors*



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# FOREWORD

DAVID H. BAYLEY

This book is much more important than its title suggests. It does not tell the story, now familiar through the pioneering scholarship of Shearing and Stenning, of the unexpected and dramatic development of private security. Instead, it demonstrates compellingly that to understand police institutions, entirely new analytic categories must be developed. Not that these unusually able essays ever say that explicitly. The authors were too intelligent, or subtle, to know how trite—indeed ritualistic—such assertions can be. But that is the cumulative message. And a great virtue of the book is that by juxtaposing current analytic categories with the empirical richness of “policing,” readers will be prompted to take that next big step themselves.

The essays establish several important propositions about policing. They show that policing has been done under an enormous variety of auspices—national and local governments, revolutionary and nonrevolutionary parties, neighborhoods, churches, landowners, workers, peasants, businesses, and professional associations. Even more interesting, varieties of policing are complexly mixed. This complexity is not a modern phenomenon, but seems to have been common in other historical periods. Societies of very diverse sorts—as different as classical capitalism and socialism—are affected by similar policing imperatives, specifically the need to make it effective and legitimate. At the same time, differences in social structure affect the forms that policing takes. Although the proportions in the mixture vary, similar forms appear again and again. In particular, “public” and “private” policing never wholly supplant one another. Indeed, the distinction itself becomes prob-

lematic in many circumstances. Public and private police institutions cooperate, sometimes interpenetrate, and often share modes of operation. Today in North America, for example, public police are discovering the utility of ordering through compliance, whereas private police are recognizing obligations to deter. Finally, the creation of accountability over institutions should properly be seen as a form of policing. Policing is a reciprocating engine in that groups regulate individuals but individuals collectively regulate groups.

Paradoxically, then, these essays show that the notion of private policing crumbles when examined closely. So too does the more fundamental concept of "police." Significantly, Shearing and Stenning use the word "policing" in the book's title, indicating a concern with activity of a certain kind, not with particular persons. The other authors refer to "ordering," "regulating," and "controlling." So general becomes the concern that they might have included "governing," stripped of its connotative connection with states.

In exposing the intellectual constraints of the dichotomy between public and private forms of policing, the book forces the reader to confront general questions about social ordering. Taken together, the essays show that ordering may be a singular activity but one that is done by different people, to different people, in different ways, and on different occasions. Similar questions should be asked about it in all times and places, rather than assuming a priori that it comes in a few qualitatively different forms such as public or private. Harold Lasswell, the distinguished American political scientist, once said that the study of politics was about who gets what, when, and how. This book, then, suggests that the study of policing is about who, how, to whom, and when.

One might dismiss this broadening of intellectual focus as a commonplace instance of breaking out of inherited analytic categories. The gods of legend ate their children; intellectuals eat their parents. But there is more to it than that. The accumulating work on ordering by anthropologists, sociologists, historians, political scientists, criminologists, and legal scholars is forcing fundamental reconceptualization. The physical sciences, said Thomas Kuhn in *The Structure of Scientific Revolutions* (1962), advance in large jumps when existing theoretical formulations no longer accommodate diverse observations. The essays in *Private Policing* show that "contradictions" in the study of ordering are becoming clear to many people. What is especially promising is that reconceptualization is not taking place by fiat, each scholar creating a unique



typology. Rather, the process is being informed by induction, through the astute insights of people working with different materials. At the risk of going out on a limb, these essays fortify my impression that we are in a period of unique intellectual creativity with respect to the study of authority and order, more narrowly policing and law, that may touch the foundation of disciplines. Whether this proves to be the case or not, *Private Policing* is remarkably successful in freezing for inspection the leading edge of the debate.

## REFRAMING POLICING

CLIFFORD D. SHEARING  
PHILIP C. STENNING

The decision by Sage to publish a collection of essays such as this on private policing is very timely for a number of reasons. In the first place, after a long period in which the phenomenon of private policing was almost totally ignored by criminologists and others, the last decade has seen a small but significant and growing number of scholars beginning to turn their attentions to this neglected topic. The result has been a steady flow of official (for instance, Kakalik and Wildhorn, 1971; U.S. National Advisory Committee on Criminal Justice Standards and Goals, 1976; Cunningham and Taylor, 1985), scholarly (Spitzer and Scull, 1977a, 1977b; Shearing and Stenning, 1981, 1983), and more popular (Draper, 1978) writing on the subject. Most of this work has been largely descriptive in character and it is only now, with our improved understanding of what private policing *is*, that we are in a position to ask the right questions about what it *means* for policing, for civil liberties and privacy, and for social control more generally. One objective of this collection is to pose, and suggest some tentative answers to, such questions.

Second, what the extant research on the subject plainly demonstrates is that in the years since World War II the phenomenon of private security has been growing exponentially, and continues to do so, not only in North America (as many non-North Americans would like to think) but in many other places in the world. Indeed, one of the most impressive (to some, even startling) features of modern private policing is its pervasive, international character. The analytical tools that scholars have applied to the understanding

of public policing—confined, for the most part, to nationally based organizations—have for this reason become increasingly inadequate. Many of the implications of this pervasive, international character of private policing are specifically addressed in the essays collected in this volume.

More than this, however, our current understanding of private policing has alerted us to the fact that the development of this phenomenon in recent years has been changing the very nature and objects of policing itself, such that an appreciation of the character and meaning of policing in the latter half of the twentieth century can no longer afford to assume that it is most typically (or even most importantly) about crime, law enforcement, or punishment. Rather, as we have suggested in our own work and as reflected in many of the contributions in this volume, policing must nowadays be understood more broadly as quintessentially about order, and the myriad ways in which it can be established and maintained. At this point of our understanding, it is perhaps trite to say (although as recently as 15 years ago it would not have been) that “police” are no longer simply large men in somber uniforms who run around trying to catch criminals.

The study of private policing does not simply challenge our commonsense notions of what policing is, however. As many of the contributions in this volume testify, it also forces us to reconsider some of our most fundamental notions about what is “public” and what is “private,” and into which of these categories the function of policing is most appropriately placed. The public-private distinction, in fact, has been central—albeit often implicitly rather than explicitly so—to most scholarly writing on the subject of policing.

In these introductory paragraphs, therefore, our primary focus will be on filling out this conceptual context by examining the way in which the public-private distinction has developed and been used in the study of policing.

Although it would be possible, and perhaps logically neater, to discuss the public-private distinction abstractly by showing how it is central to, and arises out of, a liberal-democratic philosophical framework, it is more useful in setting the context for the chapters in this volume to adopt a more pragmatic approach. This can be done by reviewing the way in which the private-public distinction has been used and developed in conventional, liberal histories of policing (Reiner, 1985). To do so we focus our attention on developments leading to the emergence of the public police as we now know them in the English-speaking world, for it is these histories

that have established the conceptual frame within which modern policing is most commonly viewed. Although we restrict our attention here to English policing, the analysis these histories have generated can be used, as Bayley (1985a) makes clear, in articulating a much more generalizable conceptual framework.

The public-private distinction has been utilized in two inter-related ways by liberal historians to explicate the emergence of modern public policing: The first has to do with the definition of order, the second with the responsibility for maintaining it.

The origins of contemporary public policing have been sought in the development of the idea of a public peace. This notion arises through a process that began in antiquity when order was defined in terms of a multiplicity of private peaces (Keeton, 1975: chap. 1). Maitland (1913: 108) provided one of the most colorful (if historically questionable) descriptions of the process through which the notion of a single "public peace" was constructed when he wrote that the peace of the King "devours" competing private peaces to become *the* public peace. The political and territorial base for this process began with the development of kingdoms and was finalized with the emergence of the nation-state as a public authority that claimed to encapsulate all other authorities (Bayley, 1985b). The Mort d'Arthur legend describes the early period of this development in which rival kings struggled for political and territorial sovereignty in what is now Britain.

Inherent in the idea of a nation-state is the notion that the state is the public authority and all other authorities operating within its territory are subordinate to it. Private authorities can be authorized, at the discretion of the state, to define separate private peaces so long as they are not in conflict with the public peace. Bayley (1985b: 28) talks of the state "encapsulating" private authorities and of "groups capable of authorizing policing nesting inside one another like Chinese puzzle boxes" (1985a: 8). The space for private orders that the state permits determines the extent of private liberties. Hobbes (1668/1968: 264) provides one of the best-known statements of this principle within the liberal frame:

The Liberty of the subject, lyeth therefore only in those things, which in regulating their actions, the sovereign hath praetermitted: such as is the liberty to buy, and sell, and otherwise contract with one another; to choose their own abroad, their own diet, their own trade of life and institute their children as they themselves think fit; & the like.

The oft-quoted adage that "a man's home is as his castle" is an expression of the understanding that in liberal societies individuals are accorded some space in which to act as private authorities. Their subordination to the state, and its definition of order, is clearly expressed in the remainder and less familiar portion of this quotation: "and *while he is quiet*, he is as well guarded as a prince in his castle" (Smith, 1978: 551, our emphasis).

In tracing the development of the nation-state and the movement from autonomous private peaces to a single dominant public peace, the implicit assumption has been that this is a linear, and irreversible, process. Within this context the public-private distinction becomes relevant primarily with respect to the distribution of responsibility for maintaining public order. Historical accounts written within this liberal frame have examined the emergence of modern public policing in terms of this dimension. The modern public police are viewed as the end point in a process whereby the state progressively accepted responsibility for maintaining public order, which had previously been delegated to (or simply left with) private entities. This process has been presented as one in which responsibility for the maintenance of order is made consistent with the source of its definition. These histories tend to adopt a normative implication: a "publicly" defined peace should properly be "publicly" maintained. Thus, the emergence of modern public police, as full-time salaried employees of the nation-state claiming a monopoly over order maintenance, is constituted as both proper and inevitable.

Within this context evidence that private organizations are doing a great deal of contemporary policing both in public and private places (for a review see Shearing and Stenning, 1981) comes as a bit of a shock. The conceptual consequences of this shock are minimized, however, if this evidence is absorbed into the above frame (see Kuhn's, 1970 discussion of how paradigm shifts are avoided). This can be done with the minimum of frame disruption by abandoning the assumption that the move from private to public responsibility for maintaining public order is linear and irreversible. When this is done private policing comes to be viewed as the reinvolvement of the private sector in assisting the state in maintaining public order. The presence of private policing is thus revealed as a sort of contemporary manifestation of frankpledge—an Anglo-Saxon system, formalized by the Normans, that required local communities to assist in the maintenance of the King's peace. When the ideology of policing is presented in this way, the vital liberal premise

that the state is an encapsulating authority that monopolizes the definition of the peace remains intact.

This construction of private policing and its place in the contemporary context sets the parameters for debate about the evolution of policing, and more generally, control. Thus, the pivot around which debate has turned has been discussion about the extent to which private involvement in control signals a decline in, or an addition to, state control (see, for example, Cohen, 1985). Although this argument is not yet settled, the balance of evidence clearly favors those who take the latter position. This conclusion has directed attention to an examination of how public and private control mechanisms are, or should be, articulated.

The liberal construction and the debate and research it has generated have been of considerable heuristic value in drawing attention to questions about the scope and nature of contemporary control as well as the manner in which responsibility for it is shared between the public and private sectors. Research within this frame has dominated the exploration of private involvement within order maintenance and much has been learned from it. Several of the chapters within this volume—as well as much of our own work (see Shearing and Stenning, 1981)—operate within this frame and demonstrate its usefulness in raising critical questions. Gary Marx, for example, examines both the way in which public and private police agencies cooperate with each other in undercover work and the consequences of the strategies they use to do so for the nature of contemporary policing.

The advantages of operating within the previously mentioned frame have, however, not been without cost. What the retention of the liberal framework has done has been to direct our attention away from features of contemporary private policing that suggest that its consequences may be considerably more radical than the comparison with frankpledge allows. In other words, although the liberal frame has been maintained in a manner that has permitted scholars to question the assumption that the state has exclusive *responsibility* for maintaining public order, it has not permitted the more radical suggestion that contemporary private police are evidence of the reemergence of private authorities who sometimes effectively challenge the state's claimed monopoly over the *definition* of order. Yet, as we have argued elsewhere (1983, 1984), what is now known about private policing provides compelling evidence in support of precisely this conclusion, namely, that what we are witnessing through the growth of private policing is not merely a reshuffling of

responsibility for policing public order but the emergence of privately defined orders, policed by privately employed agents, that are in some cases inconsistent with, or even in conflict with, the public order proclaimed by the state.

Once one begins to break out of the liberal frame in this way, it becomes apparent that other critical assumptions that have been taken for granted also require serious reexamination. Of particular importance in exploring the challenge that private policing represents is the manner in which the liberal frame structures the political-legal landscape. What it does is construct and juxtapose two ideal entities: the state and the individual. The category "individual" has taken on a residual character in that if a political legal entity is not part of the state it is then conceived of as an individual. This analytic strategy has made possible the political-legal sleight of hand through which corporations are treated, for certain important purposes, as "individuals" even though they are empirically very different from flesh and blood individuals and, indeed, very often are more similar to states. Although this piece of conjuring has maintained the liberal frame it has not been useful in facilitating an understanding of critical aspects of private policing. Most important, it has obscured the similarity between the state and large corporations as political-legal entities. The latter's stature as authorities with the resources and power to rival the influence of the state *and* with jurisdiction over substantial territories and communities has not been adequately explored. This has been particularly detrimental to our understanding of the role of corporations in defining and maintaining social order.

Thus, although the liberal frame has been heuristically useful in the ways we have noted, it is clear that if its assumptions continue to hold sway, it will not be possible to consider the more radical implications of private policing noted earlier. Shedding these assumptions is, however, as we know from our own experience, a slow and difficult process. Nonetheless, it is one that we need to begin. Several chapters in this volume begin to explore this uncharted terrain.

In suggesting the need to move beyond the liberal frame as an analytic base for the examination of private policing we, of course, do not wish to downplay in the slightest the importance of the liberal assumptions as the empirical context within which private policing has and continues to develop. Indeed, it is only by giving full recognition to the political-legal assumptions that the liberal frame makes possible that many of private policing's most enigmatic features can be understood. The lack of understanding (and

concern) over the legal authority of private policing agents, for instance, is directly attributable to this ideological environment that they inhabit, as is much of the unquestioning legitimacy that the public, and governments, accord them (Shearing et al., 1985b).

Corporate orders are defended on the grounds that corporations, like any other "persons," have a right to a sphere of private authority over which they have undisturbed jurisdiction. Furthermore, this right is sacrosanct, for to encroach upon it would undermine the very freedoms that are definitive of liberal democracy. The irony is that it is the liberal frame itself (with its emphasis on the relative rights of "individuals," especially property-owning ones) that has legitimated the development of huge multinational corporations into powerful private authorities whose very existence, and activity, mock the liberal frame.

With contemporary corporations as the modern-day equivalents of feudal lords, reigning supreme over huge feudal estates, the search for a historical parallel leads us back beyond frankpledge to more ancient concepts of private peaces and conflicting private authorities. Indeed, the very distinction between private and public takes on a new significance that blurs, and contradicts, its liberal meanings. This is true not only because private "individuals" are engaged in the maintenance of public order but also because more and more public life is nowadays conducted on privately owned and controlled property. Because our definitions of public and private are so inextricably bound up with the ownership and control of property, however, the control of such essentially public life on privately owned property has continued to be treated as an essentially private matter.

However, to conclude from this disjuncture between ideology and the real world that the private-public dichotomy should be abandoned altogether as an analytical tool (Spitzer, 1982; Klare, 1981, 1982) would be premature. This distinction's roots are far deeper and more fundamental than the liberal frame that has simply shaped an ancient experientially based dichotomy for political and ideological purposes. A wiser course than scrapping the distinction altogether may be to explore the ways in which it has been successfully deployed to support political and economic orderings, and to see whether it cannot fruitfully be reframed as an analytically useful concept.

The essays in this volume serve this purpose well. The collection begins with a thoughtful chapter by Albert Reiss, in which he seeks to develop a conceptual framework for understanding the



public and private realms within which policing (both public and private) is undertaken. Stuart Henry, in the chapter that follows, broadens the conceptual frame to encompass what he sees as a dialectical relationship between the public and private spheres in the production of order and justice.

These theoretical contributions are followed by a historical review by Nigel South in which he examines in some detail the circumstances surrounding the emergence of modern public police forces during the eighteenth and nineteenth centuries, and the underlying reasons for this apparent transfer of responsibility from the private to the public realm. Robert Weiss's chapter looks at this shift from the other side as it were, tracing how a large American corporation utilized its private policing resources during the mid-twentieth century, and the relationship between these in-house police and their public (state) counterparts in securing industrial discipline.

Both Austin Turk and Gordon West discuss the ambivalent character of collective or "community" policing. Turk critically considers the ideology behind such community policing in the context of a North American urban environment, whereas West examines the concept at work in the very different conditions of revolutionary Nicaragua.

Gary Marx's essay brings us right to the heart of the question of how (and how much) public and private police utilize each other's services in the investigation and prevention of various kinds of crime. The two pieces that follow (by Susan Shapiro, and John Braithwaite and Brent Fisse, respectively) take up this theme of public-private cooperation and competition as it applies to the policing of corporate crime and disorder. Each of these chapters considers how responsibility is divided (and shared) between public and private authorities and what explanations can be advanced for this allocation of responsibility.

Pursuing the theme of private corporate policing, Nancy Reichman illustrates the transformations that are occurring in the nature of policing methods to suit the needs and objectives of corporate "clients." This leads us to Michael Clarke's chapter which reflects on the question of why certain policing strategies (and certain allocations of responsibility between public and private authorities) make more sense than others in addressing particular policing problems. This is followed by Peter Manning's careful analysis of one such strategy (compliance policing), which he examines in the context of nuclear regulation. This raises the question as to whether policing strategies are related to the public-private character of those on whose behalf policing is undertaken.