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Third Party Policing

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Third Party Policing

Third party policing represents a major shift in contemporary crime control practices. As the lines blur between criminal and civil law, responsibility for crime control no longer rests with state agencies but is shared with a wide range of organizations, institutions or individuals. The first comprehensive book of its kind, *Third Party Policing* examines this growing phenomenon, arguing that it is the legal basis of third party policing that defines it as a unique strategy. Opening up the debate surrounding this controversial topic, the authors examine civil and regulatory controls necessary to this strategy and explore the historical, legal, political and organizational environment that shape its adoption. This innovative book combines original research with a theoretical framework that reaches far beyond criminology into politics and economics. It offers an important addition to the world-wide debate about the nature and future of policing and will prove invaluable to scholars and policy makers.

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Governance, risk and crime control

A police officer recently told us a story about a "rogue" caravan park. The caravan park was a known problem site with an average of twenty calls being received each month by the police department about disturbances, domestic disputes, drug dealing, car breaks and malicious damage at the park. Police had power under state laws to enter caravans and issue directions to prevent serious nuisances, including a provision that allowed them to exclude offenders from the park for up to twenty-four hours (*Police Powers and Responsibilities Act 2000* (Qld) ss368–371), but this was not preventing the problems from recurring. After many frustrating attempts to deal with the problem, the police learned that the manager was in violation of capacity conditions set in a permit from the local council (issued under the Brisbane City Council Local Law *Caravan Parks and Relocatable Home Parks 2000*), slotting more residents into the park than was allowed. The police created a crime control partnership with the local council as well as with the company that held the caravan park insurance policy. The local council instigated action (for failure to comply with the conditions of the permit, an offence attracting a maximum penalty of up to 50 penalty units or $3750 under s13 of the Local Law, and also leading to possible revocation of the permit, under s19). The insurance company investigated the caravan park and cancelled their insurance because of breach of policy conditions. The caravan park manager was thus compelled to adhere to the capacity rules: he reduced the caravan capacity by twenty vans and evicted seventy-two people from the park. His goal was to avoid council fines and re-invoke his insurance policy. The caravan park owner was thus inducted as one of the third party partners. He was unwilling, yet nonetheless a third party partner and made responsible for reducing the problems associated with the park. The calls

for police service were reduced from twenty to three calls per month and the gains continue to be maintained.

We refer to this type of policing as "third party policing" where a multiple of regulatory "nodes" (including both willing and unwilling partners) come together to solve a crime problem. As the example above illustrates, third party policing occurs within a legal framework that establishes the authority for police to partner with or coerce third parties, the contexts in which they can do that, and the types of intervention this may produce. Indeed, we argue that it is this legal basis of third party policing that both defines it as a unique strategy and distinguishes it from other policing interventions, most notably problem-oriented policing.

Third party policing is a growing phenomenon in policing. Indeed, our analysis of applications to the Goldstein problem-oriented policing awards (1993–2003) shows that about 50 percent of problem-oriented policing (POP) projects have utilized at least one third-party policing tactic. What is interesting, however, is that our systematic reviews of third party policing evaluations (see Chapters 5 and 6) show that less than one third of third party policing interventions occur as part of a problem-oriented or situational crime prevention initiative. Indeed, most third-party policing initiatives operate outside of the SARA (Scanning, Analysis, Response and Assessment) four-step approach to problem-solving. Third party policing initiatives are typically ad-hoc, episodic and many have been implemented in response to "external pressures" operating on the police. We argue that these "external pressures" are increasing not by accident, but rather as a result of societal transformations that have shifted the responsibility and interest in crime control across a range of regulatory "nodes." Thus, third party policing is further distinguished from other models of policing through its intrinsic links with societal trends in regulation. Indeed, we argue that the recent proliferation of third party policing has not occurred in a vacuum or as an idea born at the grassroots of policing. Rather, we argue that the pace, context and prominence of third party policing initiatives has escalated in recent years for two reasons: first, in response to the "blurring" of civil and criminal laws (see Chapter 4) and second, as one of many consequences in the move from centralized state control to a system of de-centered networks of governance and crime control agents. The development of third party policing is, we suggest, part of a general transformation of government and governance taking place in contemporary society.

Third party policing is defined as police efforts to persuade or coerce organizations or non-offending persons, such as public housing agencies, property owners, parents, health and building inspectors, and business

owners to take some responsibility for preventing crime or reducing crime problems (Buerger and Mazerolle, 1998: 301). In third party policing, the police *create* or *enhance* crime control guardians in locations or situations where crime control guardianship was previously absent or non-effective. Sometimes the police use cooperative consultation with community members, parents, inspectors and regulators to encourage and convince third parties to take on more crime control or prevention responsibility. Central, however, to third party policing is the use of a range of civil, criminal and regulatory rules and laws, to engage (or force) third parties into taking some crime control responsibility.

What do we know about this police strategy? Is it effective? Is it fair? How is third party policing distinct from (or a part of) problem-oriented policing and community policing? What is the legal basis for third party policing? What is the coercive basis for third party policing? What has propelled third party policing to prominence? What is the future for third party policing? These, among others, are some of the questions we shall seek to answer in our book. In short, our book provides a critical analysis of the use of legal levers and third parties in crime control activities.

What's to follow?

Our first chapter introduces readers to the global context in which third party policing operates and provides a thumbnail sketch of some themes that we will return to in various chapters in the book. In Chapter 2 we delve into the role of the public police in the new regulatory state and we discuss the challenges of police-regulator partnerships within the context of third party policing. In Chapter 3 we provide a detailed analysis of the dimensions of third party policing. We discuss the types of problems that third party policing addresses, the types of ultimate and proximate targets and the nature of civil levers used to control and prevent crime problems. Chapter 4 surveys the types of law likely to be useful in third party policing, and the types of sanctions available under those laws in Australian, United States, Canadian and British jurisdictions. We examine the consequences for the law arising from police cooption for criminal justice purposes and ask several questions: what are the unintended consequences of co-opted law? Will third party policing have an impact on the law it uses, perhaps through the imposition of further judicial or administrative controls to counter any abuses by police? We also explore the prospect of challenges against the application of civil processes and standards of proof for criminal law purposes.

Chapters 5 and 6 provide the results of a systematic review of third party policing evaluations. We review the extant literature on third party policing and discuss the evidence that has been gathered so far on its effectiveness as a crime control/crime prevention strategy. In Chapter 7 we discuss the equity issues surrounding third party policing initiatives. In this chapter, we discuss some of the potential and actual side effects of third party policing. For example, we will discuss potentially negative side-effects of third party policing such as the impact of eviction, retaliation from domestic violence perpetrators, retaliation from displaced or arrested drug dealers, and strained relations with service providers and local regulators (e.g. building inspectors, local council code enforcers etc). Chapter 7 also unpacks the variety of ethical issues that the practice of third party policing poses and suggests some strategies that would ensure greater accountability across the range of third party policing activities. In this chapter we examine whether and how use of persuasion and influence by third parties, at the request of or on behalf of police, can be made ethical and accountable. We examine the problematic nature of decisions *not* to become involved in controlling or preventing crime: that is, to under-police – to focus on one housing estate or shopping center and at the expense of another – can be even more significant than the decision to over-police. In this chapter we also examine incentive-based systems of compliance that exist in regulatory networks outside of the criminal justice system and we explore ways that third party policing could likewise adopt incentive-based systems of control.

Our final chapter, Chapter 8, points to the future of third party policing both in terms of future research as well as our ideas for where third party policing might take us into the twenty-first century. We discuss the assumptions underlying third party policing and offer insights as to what factors inhibit or enhance adoption of third party policing in democratic countries. In this chapter, we provide some likely answers to the following types of questions: Why are some officers more likely to use third party policing tactics than others? Why are there spatial (by country, jurisdiction and neighborhood) variations in the distribution of third party policing activities? What organizational characteristics of police departments are more likely to support the adoption of third party policing? Under what circumstances or conditions does third party policing use the most coercive of tactics to insure compliance? In this chapter we also explore the challenges of mobilizing the police as well as third parties to engage in third party policing practices. We discuss the challenges that police managers face in mobilizing their subordinate officers to engage third parties in their crime control or crime prevention activities. We also review the issues that confront the police

in their efforts to motivate and mobilize third parties. In particular, we ask to what extent are police making use of formal law, and to what extent do they rely on persuasion or threats?

The transformation thesis

In this introductory chapter, we argue that the development of third party policing is part of a pattern of major change, indeed a transformation, of government and governance taking place in contemporary society. This political, legal, economic and social transformation has affected not only the institutions of government and civil society, but is also transforming how we think about and research problems like crime, its prevention, and its control. Old disciplines and divisions are giving way to new networks of knowledge. John Braithwaite (2000: 222) illustrates this with his analogy of the new biological science themes (DNA, evolutionary biology, ecology) that now dominate the discrete disciplines (zoology, botany) of thirty years ago. His point is that new globalizing forces are also affecting the social sciences, and we need to think outside the old boxes, incorporating insights and methods from criminology, sociology, law, politics, regulatory studies, psychology, policing studies and whatever else helps in understanding the problem at hand.

The new knowledge affecting crime control and policing is arising around big organizing themes like governance, risk and plurality, and this chapter explores these themes as they affect and shape our topic of third party policing. We begin by surveying the notion of transformation that has dominated recent theoretical debate in the separate fields of sociology, politics, economics, regulation and criminology. Despite their separate disciplinary origins, we demonstrate how these debates all cluster around our big themes of governance, risk and plurality. We go on to examine the specific application of these themes to police and policing, and show how third party policing is a logical extension of the transformation that has been taking place in government and the provision of its services. The themes from the various theoretical debates both inform our understanding of third party policing and point to some of its problems and pitfalls. The object of this chapter then, is to place the rise of third party policing in the context of broader trends in governance and crime control.

An increasing body of recent literature places "the late modern state," or developed western economies at any rate, in a condition of change, upheaval, transformation or even catastrophe. O'Malley (2000: 153) categorizes three main themes from the most notable of this "transformation"

literature – the replacement of penal modernism by postmodern criminal justice (see Simon, 1995; Reiner, 1992, 1994; and also Garland, 1996, 1997, 2001); the rise of risk as a dominant social structure (see Feeley and Simon, 1992, 1994; Ericson and Haggerty, 1997; Kemshall, 2003); and the "death of the social" and the displacement of the modernist welfare state by neo-liberal governance (Rose, 1996; O'Malley, 1994; Cohen, 1995; Haggerty, 2004). O'Malley's focus is on the criminological and sociological literature, but related debates have been occurring in other social sciences. Social theorists (Giddens, 1990; Beck, 1992; Rose and Miller, 1992) developed the transformation notion about social and economic structures in general. The politics and public policy literature has been focused on changes in governance structures and the rise of policy networks (Rhodes, 1997; Bevir, Rhodes and Weller, 2003; Loughlin, 2004), while economists and regulation scholars predate all of these debates with their concern from the 1970s onwards with changes in regulatory structures (see Clarke, 2000; Baldwin, 2004). Finally, it is impossible to ignore the contribution of Michel Foucault (1991) and the body of governmentality literature developing around his later writings on the nature of government and its ability to control and be controlled by those it governs (see for example Dean and Hindess, 1998; Rose, 2000).

While some of these debates may seem far removed from police and what they do, writers like David Bayley and Clifford Shearing (1996) have applied the transformation thesis specifically to policing, saying "future generations will look back on our era as a time when one system of policing ended and another took its place" (p. 585). Loader (2000) suggests this transformation to be one from "the police" as the guardians of order and security, to policing by a plural and fragmented selection of providers and technologies:

> We are living in the midst of a potentially far-reaching transformation in the means by which order and security are maintained in liberal democratic societies, one that is giving rise to the fragmentation and diversification of policing provision, and ushering in a plethora of agencies and agents, each with particular kinds of responsibility for the delivery of policing and security services and technologies. What we might call a shift from police to policing has seen the sovereign state – hitherto considered focal to both provision and accountability in this field – reconfigured as but one node of a broader, more diverse "network of power". (p. 323)

Dupont, Grabosky and Shearing (2003) suggest the contemporary debate to be about the "governance of security," by which they mean that public security from both external and internal threats is now provided by a "constellation of institutions, whether formal or informal, governmental or