Section 5: Third party policing: prospects, challenges and implications for regulators

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Third party policing: prospects, challenges and implications for regulators

Abstract

'Third party policing' describes police efforts to persuade or coerce third parties, such as landlords, parents, local governments and other regulators, and business owners, to take some responsibility for preventing crime or reducing crime problems. In third party policing, the police create crime control guardians in locations or situations where crime control guardianship was previously absent. Sometimes this results from cooperative consultation with community members. At other times, the police use coercive threats, with the backing of a range of civil and regulatory laws, to engage third parties into taking some crime control responsibility. Our paper describes the dimensions of third party policing and identifies its prospects and challenges, including its implications for regulators.

Introduction

A central part of police work is forging partnerships with individuals, groups, and organisations in an effort to control and prevent crime. Police team up with building inspectors, environmental regulators, community groups, business leaders, local government personnel and anyone else who is ready, willing and able to work with police. But what happens when police co-opt and coerce regulators and individuals to help the police pursue their crime control and crime prevention functions? What happens when regulators and individuals are unmotivated or unwilling to go outside of their routine activities to take on a crime control or crime prevention responsibility? This process of cooption and coercion by the police is part of what Michael Buerger and Lorraine Mazerolle have termed 'third party policing' (1998: 301).

Third party policing is defined as police efforts to persuade or coerce other regulators or non-offending persons, such as health and building inspectors, housing agencies, property owners, parents, and business owners, to take some responsibility for preventing crime or reducing crime problems (Buerger & 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 to encourage and convince third parties to take more crime control or prevention responsibility. At other times, the police use coercive threats, with the backing of a range of civil and regulatory laws, to engage third parties into taking some crime control responsibility.

Third party policing exists in many forms. For example, in some police agencies the police might use coercion or persuasion of third parties to solve ongoing problems within the context of their problem-oriented policing program. In other police agencies, third party policing might exist as an especially designed, stand-alone policing program. The Beat

Health Program in Oakland, California (Green 1996; Mazerolle, Price & Roehl 2000) is an example of a stand-alone third party policing program that targets property owners in a systematic way to control drug and disorder problems in their tenancies.

In most police agencies, however, the police implement third party policing in very unconscious, episodic ways during routine patrol work. This category of third party policing activities, that occurs outside of any programmatic intervention, includes coercive and ad hoc conversations with bar owners, parents, property owners, local government regulatory officers and other persons that the police at least believe to have some responsibility for creating or controlling the conditions that encourage or aggravate lawless behaviour. These ad hoc third party policing activities occur frequently and without any systematic consideration of the ethical challenges. It is on this ad hoc, episodic category of third party policing that we focus much of our attention in this paper.

We are concerned here first with establishing the dimensions of third party policing, and identifying its prospects and challenges. But second, we aim to analyse the interrelationships between third party policing and regulation, particularly in the move to the new regulatory state. As notions of enforcement give way to compliance, pluralism, and regulatory networks, where does policing fit, and in particular, how does the police relationship with other regulators work? The first part of this paper describes third party policing, the second part analyses its place in the new regulatory state, the third part looks at challenges, and we conclude by discussing future directions and prospects.

What is third-party policing?

Purpose of action

We identify two primary purposes of third party policing activities: crime prevention or crime control. In crime prevention, the police seek to anticipate crime problems and reduce or alter the underlying criminogenic conditions that may cause crime problems to develop or escalate. Third party policing that has crime prevention as its purpose of action operates to control those underlying criminogenic influences that may (or may not) lead to future crime problems. By contrast, third party policing that seeks to control existing crime problems explicitly aims to alter the routine behaviours of those parties that the police believe might have some influence over the crime problem. The apparent influence of 'involved parties' in creating criminogenic conditions might be conscious or unconscious, it might be explicit or implicit, and it might be planned or unplanned.

Initiators of third party policing

A variety of collectivities and individuals initiate third party crime control activities. Prosecutors, individual citizens, community groups and regulatory agencies are all potential initiators of third party crime control practices. For example, taxation laws regulate business practices and give taxation agents the authority to compel businesses to adopt accounting methods and procedures that reduce risks and the likelihood of business fraud. Aviation regulators compel airport management corporations to adopt standard screening practices that are thought to reduce illegal importation, immigration and terrorism. In both of these examples, a regulatory agency compels a third party to engage in practices that are potentially outside of their routine activities in an effort to control crime problems. We define these practices as 'third party crime control' and distinguish them from third party policing on the basis of who it is that initiates the crime control action. In this paper we do not focus on explicating the dimensions of third party crime control. Rather, this paper focuses on the police as the initiators of third party policing. Third party policing, as we define it here, involves the police identifying a problem, co-opting a non-offending person to take on a crime control role, and using a range of civil and regulatory laws to insure the co-opted person (or persons) complies with the will of the police.

Focal point

The focal point of third party policing can be people, places or situations (Mazerolle & Roehl 1998; Smith 1998). Sometimes third party policing efforts are directed specifically at categories of people such as young people, gang members or drug dealers. To address some types of crime problems, the focal point of third party policing efforts might be directed against specific places, more often than not places that have been defined by the police as 'hot spots' of crime. Drug dealing corners, parks where young people hang-out, and public malls are typically the focal point of third party policing activities that address specific places as opposed to certain categories of people.

Another focal point of third party policing activities includes situations that give rise to criminogenic activity. Examples of criminogenic situations include bus stop placements that facilitate strong-arm robberies, late opening hours of bars that lead to bar room brawls, and the general availability of spray paint in hardware stores operating in high-risk communities. In third party policing, the police utilise the principles of situational crime prevention (Clarke 1992) to coerce government agencies to change the locations of bus stops, reduce the opening hours of problematic bars and restrict the sale of spray paint to minors.

Types of problems

Third party policing can, in theory, be directed against a broad range of crime and quality of life problems (Finn & Hylton 1994; National Crime Prevention Council 1996). However, most examples and evaluations of third party policing comprise police efforts to control drug problems (Eck & Wartell 1998; Green 1996; Mazerolle, Kadleck & Roehl 1998) and disorderly behaviour.

There are several reasons why third party policing tends to proliferate in efforts to control low-level, street types of crime activity: first, third party policing practices, as we define it, tend most to occur at the grassroots of policing and in episodic, ad hoc ways. The ad hoc nature of third party policing means that the police are largely not conscious of their implementation of third party policing, linkages are not made between various third-party policing practices, and best practices are not openly discussed, developed and distributed. Second, third party policing is not an articulated or developed doctrine (but see Buerger & Mazerolle 1998; Roach, Anleu, Mazerolle & Presser 2000). As such, very little discourse surrounds third party policing activities and there exists very little systematic assessment of third party policing practices (for an exception see Mazerolle & Roehl 1998). Third, the marginalised, young, and disadvantaged targets of third party policing activities are least likely to challenge the basis of third party policing practices (White 1998). Finally, the principles of third party policing are used by regulatory agencies to address non-street crimes such as high level drug marketing, white collar offending, and fraud. We define these activities, however, as third party crime control (see above). Hence, while we recognise that third party crime control activities occur in many settings and forums, we argue that third party policing, as we define it, is likely to continue to be relegated to occupy the 'street' level territory of policing.

Ultimate targets

The ultimate targets of third party policing efforts are people involved in deviant behaviour. In theory, the ultimate targets of third party policing could include those persons engaged in any type of criminal behaviour including domestic violence, white-collar offending, street crime and drug dealing. In practice, however, the ultimate targets of third party policing are typically those offenders that are vulnerable, disadvantaged and/or marginalised. Young people (White 1998), gang members, drug dealers (Green 1996), vandals, and petty criminals typically feature as the ultimate targets of third party policing.

Proximate targets, burden bearers and third parties

A key defining feature of third party policing is the presence of some type of third person (or third collectivity) that is utilised by the police in an effort to prevent or control crime. The list

of potential third parties is extensive and can include property owners, parents, bar owners, shop owners, local and state governments, insurance companies, business owners, inspectors, and private security guards. Indeed, any person or entity that is engaged by the police to take on some type of role in controlling or preventing crime could potentially be identified as a third party or what Buerger and Mazerolle (1998) refer to as 'proximate targets' and what Mazerolle and Roehl (1998) have referred to as 'burden-bearers.' These are the people or entities that are coerced by the police and who carry the burden for initiating some type of action that is expected to alter the conditions that allow crime activity to grow or exist.

Proximate targets of third party policing are often stakeholders or regulators that are identified by the police as being useful levers in controlling a crime problem. Indeed, the roles in third party policing can change rapidly; they are varied depending on the situation, sometimes reciprocal in nature and idiosyncratic to the problem at hand. Indeed, the proximate targets of a third party policing activity in one context may become the ultimate targets of third party policing in another context. Moreover, cooperative police partners in one context might become hostile 'partners' in another context. We suggest that the dynamic nature of third party policing reflect the fluidity and chaotic nature of crime prevention and crime control more generally.

Legal basis

Another defining feature of third party policing is that there must be some sort of legal basis that shapes police coercive efforts to engage a third party to take on a crime prevention or crime control role. The most common statutory basis of third party policing includes local, state, and federal statutes (including municipal ordinances and town by-laws), health and safety codes, uniform building standards, and drug nuisance abatement laws, and liquor licensing. We point out that the statutory basis does not necessarily need to be directly related to crime prevention or crime control. Indeed, most third party policing practices utilise laws and regulations that were not designed with crime control or crime prevention in mind (for example health and safety codes, uniform building standards). For the vast majority of third party policing activities, the statutory basis that provides the coercive power for police to gain the 'cooperation' of third parties derives from delegated legislation and obscure, non-legal sources.

Types of sanctions and penalties

Civil sanctions and remedies vary greatly, including court-ordered repairs of properties, fines, forfeiture of property or forced sales to meet fines and penalties, eviction, padlocking or temporary closure (typically up to a year) of a rented residential or commercial property,

licence restrictions and/or suspensions, movement restrictions, lost income from restricted hours and ultimately arrest and incarceration (Mazerolle & Roehl 1998). Often, several civil remedies and sanctions may be initiated simultaneously to solve one problem.

Tools and techniques

Dozens of examples can be provided to illustrate the processes by which third parties are recruited and used by the police. Against the backdrop of a legal foundation to force a third party to cooperate, the police operate on a continuum to engage third parties in their crime prevention or crime control activities. At the more benign end of the spectrum, the police can approach third parties and politely ask them to cooperate. The police might consult with members of the community as well as local property owners and ask them about ways that they see fit to control an existing crime problem or help them to alter underlying conditions that the police believe might lead to future crime problems. At this low-key, benign end of the spectrum, the ultimate sanctions that might be unleashed on third parties most likely go unnoticed. The police may themselves consciously utilise their persuasive powers, yet not be conscious to the alternative methods of coercion that they may resort to if the third party target proves to be an unwilling participant.

At the more potent end of the spectrum the police coerce third parties to participate in their crime control activities by threatening or actually initiating actions that compel the third party to cooperate. We point out that there are several stages in the forcible initiation of third parties in taking a crime control role: the first stage may involve a building services agency issuing citations to a property owner following building inspections of their property (Green 1996). The latter stages of this most coercive practice involve the initiation of prosecutions against the non-compliant land-owner and ultimately court-forced compliance by the third party.

Types of implementation

There are many different ways that police implement third party policing practices including implementing third party policing within the context of problem-oriented policing or situational crime prevention programs. Problem-oriented policing provides the management infrastructure (Goldstein 1990), step-wise approaches to solving a crime problem (Eck & Spelman 1987) and situational crime prevention offers the police with a range of ideas for reducing crime opportunities (Clarke 1992, 1995). When third party policing is implemented as part of police problem-solving or crime prevention efforts, the theory of third party policing provides the procedural and strategic foundation for how opportunities might get blocked and problems solved.

In some jurisdictions, forms of third party policing are now being mandated by governments, such as the crime and disorder reduction partnerships established under Britain's *Crime and Disorder Act 1998* which require police and local authorities to work together to formulate and implement strategies for the reduction of crime and disorder in their local areas (Loader 2000).

Another way that the police might implement third party policing is through 'contracting out' crime control. In this situation, the police might recruit a third party and initiate early efforts to control crime. At some stage in the crime control process, the police might contract with a 'fourth party' and step to one side. In this situation, the police abdicate their crime control responsibility to this fourth party contractor and leave the crime control arena for the fourth party to manage.

The most common manifestation of third party policing, however, is the ad hoc utilisation of third party principles initiated in a subconscious manner by patrol officers who are simply trying to find a way to solve a problem. These police are simply 'flying by the seats of their pants'. There is no script for them to follow, no police department policy that they are working within, and generally very little accountability for their actions. The police are working within the law, but using the law for their gain with little regard to the possible negative side-effects.

Third party policing and the new regulatory state

The previous section of this paper introduced and examined the notion of third party policing. This section explores its place and importance within broader contemporary discourses about regulation, risk and governance, and the role of police in the new regulatory state.

The new regulatory state

The civil and regulatory controls necessary to third party policing exist in an historical, legal, political and organisational environment that has undergone fundamental change quite independently of the policing environment. The most recent shift towards deregulation and the rhetoric of market solutions has, in fact, led to a new form of regulation (Braithwaite 1999, 2000). But the new regulators differ from the old, state-centred models. They recognise a plurality of regulatory methods, departing from reliance on command and control as the only way of securing compliance, towards theories of responsive regulation (Ayres & Braithwaite 1992). Here, regulation becomes a layered web, with strands contributed by public agencies, professional and community organisations and individuals, and increasingly international organisations as part of globalised regulatory networks (Braithwaite & Drahos 2000). The new regulatory state then is based on neo-liberal combinations of market competition, privatised institutions, and de-centred, at-a-distance forms of state regulation (Braithwaite 2000). The new forms of governance require strong central state control of the

direction of regulation and risk management, with many of the operational regulatory and compliance functions shifted not only to the market, but to the community and to other social institutions.

The impact of these changes on regulatory agencies is to transform them from reactive, hierarchical command structures to problem-oriented, team-based units focused on risk management (Sparrow 1994, 2000). The emphasis moves from after-the-event use of formal legal sanctions, to cooperation, persuasion and the creation of incentives for compliance. The attraction for the regulated is the comfort that the 'big stick' of coercive sanctions will only be used as a last resort, and also that those who are regulated will have some input into the rule-making and compliance processes. The attraction for governments is also twofold — first, persuasion and the other techniques are cheaper and give quicker results than the formal legal process, but more importantly, they help build an image of government as supportive of business, rather than focused on bureaucracy and red tape.

The changing role of police

The new regulatory state necessarily affects the policing of crime and social order as a fundamental function of government. Garland (1996) suggests that contemporary governments have sought to re-define their responsibilities in relation to the control of crime by shifting the onus beyond state agencies onto the organisations, institutions and individuals of civil society. The most immediately noticeable effect has been the shift from state dominated policing to the situation where most developed economies have more private than state police (Shearing & Stenning 1987), with the private security market in Australia at least double the size of the public police (Prenzler & King 2002). As private security guards replace police in public and private buildings, community centres, even public space, and as private prison administration proliferates, the role of the state increasingly becomes one of regulating standards rather than actually performing most policing and criminal justice functions.

One logical conclusion of this trend sees the state as putting criminal justice out to competitive tender, with police services competing with private security, local government, community agencies and other bidders for contracted functions. The end result is a '…reconstitution of policing as a mechanism of governance oriented to the management of conduct across civil society, and the advent of a loosely coupled network of policing agencies' (Loader 2000: 333–4) and a partial shift in the control of policing away from the state towards political subcentres (Shearing, 1996). Ericson and Haggerty (1997) describe the impact of compliance-based regulatory enforcement on police as a transformation, centred on the role of police as information brokers, the dissemination of police intelligence becoming a primary form of social control. That is, the function of police becomes essentially one of intelligence-gathering, analysis, and distribution to other agencies and individuals with a capacity to take further action.

In some ways these developments in governance theories fit well with criminological theory, which has seen both notions of 'responsibilisation strategy' as a way of spreading crime control functions to individuals and non-state organisations (Garland 1996), and 'actuarial justice' as an application of risk management to criminal justice (Feeley & Simon 1994; Anleu, Mazerolle & Presser 2000). Responsibilisation strategy, like the new governance theories, owes a debt to Foucaldian notions of the limits of governmentality by the state, with the solution being the involvement of a broader range of civil society in criminal justice and government functions. One of the features to emerge from it has been the notion of police partnerships, now entrenched in legislation in the United Kingdom with the requirement for police and local authorities to develop cooperatively crime and disorder reduction policies. Actuarial justice has required a shift in the management of crime towards the calculation of risk, based on the use of intelligence, monitoring and surveillance, well beyond the boundaries of traditional policing. These trends place police in a central, gatekeeping role as knowledge coordinators in networks of regulatory agents and actors (Ericson & Haggerty 1997). In this way, we observe a transformation of public enforcement agencies in the new regulatory state, focusing on the emergence of regulatory networks as a location for third party policing.

The role of third party policing

In this transformation of the policing function to one located in a network of agencies and individuals, rather than one state agency, the notion of third party policing serves an organising role. It helps formalise and rationalise the partnerships between police and other agencies for crime control and crime prevention purposes, and to present these partnerships as a coherent response to a changing regulatory environment. By examining the occurrence, challenges and prospects of third party policing, we highlight changing regulatory roles, and particularly the increasing crime control and prevention roles of agencies such as local authorities, and health, housing, safety, building and environment regulators and the symbiotic relationships between these regulators and the public police.

What are the challenges?

Coordination

What then, is the impact of trends in regulation and governance on third party policing? Much of the literature on third party policing and the use of civil remedies in policing assumes that regulatory agencies have a focus on formal sanctions — the issuing of breach notices, followed up by prosecution for non-compliance (Mazerolle & Roehl 1998). This fits well with old-style command and control regulators who rely on these methods to perform their functions. But in the new regulatory state the focus is on building communities of interest

between the regulator and the regulated, and other professional and community groups. Formal sanctions become a tool of last resort. What is more, any perceived coupling of the regulator with the police, as a formal arm of the criminal justice system, could prove counter-productive. The use of regulatory sanctions in policing may help achieve police aims, but may undermine regulatory goals. The challenge, then, is for police and regulators to form partnerships to develop ways of working cooperatively to advance both sets of goals. Unplanned, ad hoc third party policing is unlikely to achieve this.

Mobilisation issues

There are many other challenges facing the implementation of third party policing within this new regulatory state, for example, the difficulties which confront police managers in their efforts to motivate and mobilise their police sub-ordinates to engage in traditional and community policing modes of policing. In addition, police managers face challenges in mobilising police to engage in ethical and accountable third party policing practices, and to consider the broad range of methods that police can utilise to engage third parties in third party policing activities.

Disproportionate implementation

Another challenging issue with third party policing is the potential disproportionate allocation of police and regulator resources. It is not clear, at least to date, how third party policing might either entrench or alleviate inequities in the distribution of regulatory resources. On the one hand, the proliferation of third party policing might work towards making middle and upper class property owners more responsible for their housing stock and thus improve the conditions for lower class residents. On the other hand, third party policing has the potential to add additional (and more complex) burdens on already over-policed groups in society.

Displacement

Another issue that challenges the effectiveness and value of police crime control programs is the extent that the intervention will lead to problems being displaced to nearby places (spatial displacement) or to some other time (temporal displacement), being committed in another way (tactical displacement), or being transformed into some other kind of offence (target displacement) (Cornish & Clarke 1987; Gabor 1978, 1990; Reppetto 1976). These negative displacement effects happen when a police intervention reduces a crime problem at one place, or in one particular situation, but fails to protect other nearby places or situations from offenders who are not discouraged or deterred from committing a crime. We are also interested in police efforts when the opposite effect occurs: that is, when a police intervention like third party policing creates a diffusion of the crime prevention benefits (Clarke & Weisburd

1994). This 'diffusion of benefits' occurs when crime control measures not only reduce crime opportunities at targeted places or situations, but also reduce crime at other places not the subject of the crime control efforts.

Unintended consequences

We identify many 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 (for example building inspectors, local council code enforcers etc). We also suggest that there are significant consequences for the law arising from police cooption for criminal justice purposes. The theory surrounding the unintended consequences of legal action is well documented (Bottomley & Parker 1997), but what of the unintended consequences of coopted 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 note the potentially positive side effects of third party policing. Examples of positive side effects of third party policing include the creation of collective efficacy and social cohesion within some neighbourhoods (Sampson, Raudenbush & Earls 1997), the establishment of positive relations between the police and local service providers, the creation of some responsibility within otherwise negligent organisations, and more satisfied police officers.

Accountability

Third party policing does not necessarily sit well with traditional notions of democratic governance, ethics and accountability. Legal and institutional mechanisms directed at controlling and making accountable police use of power do not necessarily affect other providers of policing functions, particularly those that are not state agencies. Problems will occur, first, when these mechanisms do not extend to the new situations arising under third party policing, for example if there are no established protocols or rules for the situation. Secondly, problems may arise because of the plurality of policing agents, including the possession by numerous agencies of coercive, intrusive, legal powers over citizens' lives, and the impact of the 'quiet force' of these agencies, in terms of their impact on usage of public space, patterns of action and inaction, surveillance decisions and decisions about how, when and over whom to use their powers (Loader 2000). Other problems will arise if there is conflict between the ethical and accountability regimes of police and the third party organisation, whether it is a state regulator, housing authority, or business-owner. Finally, there is the need for accountability and ethical considerations to be taken into account in choosing when and where to deploy third party policing — to consider whether that decision means potential crime victims elsewhere or at other times are being abandoned to their fate.

Directions for the future

We suggest that there are several ways of overcoming accountability and ethical hurdles, including the need for new legal frameworks as well as managerial, training and administrative responses, both within police services and likely proximate targets. This may be seen in training programs for state agency regulators, but also for local authorities, housing associations and individual property owners. Furthermore, there is a need for formal recognition of the crime control and prevention roles of many agencies other than the public police, and of systematic planning for the performance, funding and accountability of those functions in a way that integrates with police planning and performance mechanisms.

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