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Lorraine Mazerolle, Janet Ransley
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CHAPTER 1

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

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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

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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.

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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

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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"

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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

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private, commercial or voluntary, that provide for social control and conflict resolution" (p. 331).

Given this broad and disparate literature, how can we make sense of the transformation thesis, and assess its relevance to third party policing? While many approaches are possible, we choose to tackle this task in broadly chronological and thematical sections, examining in turn the rise of neo-liberalism and the death of the Keynesian welfare state, the impact on civil society or the "death of the social", the alternative explanations of the governmentality school, the role of risk and the rise of the postmodern new penality. This discussion will then lead into an examination of the current state of police and policing.

Liberalism, the welfare state and neo-liberalism

A common concern runs through much of the literature we are examining – how does government work, how does it relate to society, how are its decisions and policies put into effect? While Foucault (1979) described government broadly as "the conduct of conduct", it is generally taken to mean the exercise of state sovereignty in some formal institutional way (Burchell, 1996). In modern western societies, this occurs through some form of democratically elected, political government exercising power through a public service framework. This model developed from the sixteenth century onwards, driven by complementary forces. One force was what Foucault (1979) described as the movement from sovereignty to governmentality. By this he meant that the sovereign state was one focused on the maintenance of the ruler's territorial power against both external and internal threats. This was replaced by the governmental state, less reliant on force and domination, and more on the development of technologies for governance, both of the state and of the self, where the object of exercising power is generally to increase the well-being of the governed (Burchell, 1996; Rose, 1996; Hindess, 1998). This move then, was one from despotism to natural rights, from sovereignty to solidarity, where the goal of governance becomes the integration of society (Boyne, 2000). The process of governmentalization incorporates and explains the development and extension of democratic forms of governance, and liberal notions of individual rights and autonomy.

While governmentalization was a political force driving the development of western models of government, another force was the emergence of new ways of governing economic life (Hindess, 1998). Adam Smith's account of a liberal economy saw the free market as the most efficient mechanism for maintaining an effective society, with a minimal role for government

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intervention and regulation (Fitzgibbons, 1995). These notions underpinned liberal conceptions of independent, responsible and autonomous citizens engaged in a minimally regulated public sphere, left to get on with their lives without interference, but also suffering the consequences of their own choices. The role of government was to maintain the free market, and to protect the integrity and security of the state, both from external threats, and from the internal threat of crime and disorder. The classically liberal state then, was limited to being a "nightwatchman" (Nozick, 1974), with functions simply to protect "its citizens from violence, theft, fraud" and to promote a stable marketplace by maintaining a law of contract that could govern market transactions (Braithwaite, 2000: 223). The real business of society took place outside government, in the market.

Liberalism ruled, in its various manifestations, until confronted by the catastrophic financial events of the late 1920s and 1930s, but also by the growth of unionism and labour parties at the start of the 1900s. They believed that strong government control was necessary both to contain the excesses of capitalism, and to increase the range of services available to working people, such as education, health services and occupational safety laws. The markets would not do these things, and it was the proper role of governments to step in and shape society.

From around World War II to the 1960s then, the dominant western framework was a Keynesian one, where the welfarist state operated through government to control and regulate the economy, society and the provision of services to the community. In this conception of the state, government is everything and all social, economic, regulatory and political action occurs within its framework. The emphatic shift to a Keynesian framework occurred with the New Deal in the United States (Braithwaite, 2000), where government sought to recover from the depression of the early 1930s through a program of controlled economic stimulation, accompanied by detailed, central regulation of economic activity. Within subsequent Keynesian systems there was considerable variation, permitting both the British welfare state, with its national health system and government-owned industries, and the United States system of free enterprise subject to a detailed system of regulation, but the uniting theme was that governments were in control, regulating markets, structuring society, ensuring the provision of services (Loughlin, 2004). Some of the tightest controls were reserved for the economy, where financial policies, practices and trading were strictly regulated so as to maintain a strong and stable marketplace: "trade controls, particularly quotas and tariffs, were major instruments of government intervention (Gow, 1997: 116)."

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The 1960s challengers to Keynesian government argued for a return to liberalism, and hence their identification as neo-liberals, advocates of a new, modernized form of liberalism. Neo-liberals based their conception of government on several precepts, including a minimal role for the state, the need for a free market, the idea of individual responsibility, freedom of choice and the need to accept the consequences of that choice (Ericson, Barry and Doyle, 2000). Hayek (1949) argued that economies had become too large and complex for central states to govern effectively, and that control had to be returned to the local – constituted by the market. The most immediate need was a massive reduction in the role of the state – government was, big, bloated, and getting in the way of an efficient marketplace. The mantra for reform became deregulation, privatization, tax cuts and reductions in the size and power of the public sector (Mitchell, 2001). This agenda was followed later by a plan that promoted internationalization, globalization and free world trade. Particularly with the economic crises of the early 1970s, including the oil crisis and the overtaking of western manufacturing industries by second world competitors, the welfare state became the villain, with its excesses responsible for these economic ills. The result has been described as "a genuine political revolt, a growing demand for fewer public programs and reductions in taxes" leading to California's Proposition 13 in 1978, freezing taxes, followed by the election of the governments of Ronald Reagan and Margaret Thatcher (Feeley, 2003: 123). The political attack on welfarism was sustained by economic and cultural critiques – increasing taxes in the 1970s had not stopped unemployment from increasing and service levels from declining (Pratt, 1999, 2002).

So the last decades of the twentieth century saw major economic and social change as the reformers sought to return the Keynesian state to something like what had preceded it. In fact, what they created was something quite different, not a deregulated state but a new regulatory state, as discussed in the next chapter. But despite this, there was change, and that change did amount to a transformation of the role of governments in western developed economies. The contrast between Keynesian welfare states and neo liberal states is between centrally controlled, closed, essentially redistributive economies, and open, global, competition-based economies:

> The distinctive policy objectives of Keynesian welfare states were the promotion of full employment in relatively closed, national, "autocentric" economies through demand-side management and the provision of redistributive welfare rights enabling new forms of mass and collective consumption. Conversely, the objectives of Schumpterian welfare states are to strengthen the structural competitiveness of national economies, through the promotion of

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> (organisational, product, labour process and market) innovation in relatively open, "globalised," economies, and to subordinate social policy to the needs of flexible labour markets and/or the constraints of international competition.
> (Stenson and Edwards, 2001: 73)

The mechanics of the transformation to neo-liberalism are familiar. They include (see Davis and Rhodes, 2000; Mitchell, 2001; Ericson, Barry and Doyle, 2000):

- deregulation of key industries, especially banking and financial services, and a new focus on the outputs of regulation, such as quality assurance, rather than detailed oversight of inputs and activities;
- privatization of commercial activities previously operated by governments, particularly in key industries such as aviation, banking and telecommunications, and in some places, in the provision of basic infrastructure and services (e.g. water, gas and electricity in the UK and in Victoria in Australia);
- leading to a reduced role for the state and increased responsibility by individuals for themselves;
- reduction of barriers to free trade and competition, both within states and globally;
- marketization of non-privatized government services, to make public services operate on private sector terms (e.g. contracting out, intra-agency purchaser-provider splits);
- imposition of corporate management, or new public management, on public sector agencies (including performance standards and evaluation);
- decentralization of decision-making and implementation, including to the local level;
- tax incentives for businesses and enterprising individuals.

In Australia for example, a relatively late entrant to the field and therefore able to follow the models established in the United States, United Kingdom and elsewhere, the federal government deregulated banking and the financial markets, gave up its control over the dollar and interest rates, reduced taxation and eventually introduced a transaction tariff to lessen the reliance on income tax, reduced the size and functions of the public service, privatized previously government run businesses in banking, aviation, shipping telecommunications and many other industries, and developed new models for welfare provision (see Goldstein and Hart, 2003, for a discussion of economic reforms in the 1980s). It mandated competition policy for services provided by state government entities, to replace the previous emphasis

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