
THE POLITICS OF THIRD-PARTY POLICING

by

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***Abstract:** The recent emphasis upon the use of civil remedies as a problem-solving tool for the police has created a new quasi-doctrine called "third-party policing." The concept refers to police insistence upon the involvement of non-offending third parties (usually place managers) in the control of criminal and disorderly behavior, creating a de facto new element of public duty. Police efforts may be opposed in a variety of different ways, many of which transpire in the political arena. With references to a formal, multi-agency city program (SMART in Oakland, CA), and using examples from a small start-up police initiative (RECAP in Minneapolis, MN), this chapter examines both individual and collective resistance to third-party policing. Documented and potential forms of resistance are discussed, as are the political backdrops and mechanisms that lend themselves to each and the possible avenues by which police and city officials can overcome or thwart political interference.*

Politics is one of the means by which we resolve our differences over the forms and degrees of our public participation. It is also the means by which the larger polity imposes duties, limits and benefits upon private individuals (from taxes and selective military service to welfare eligibility and Social Security entitlements). Each new law, ordinance and government regulation is the culmination of a political process, altering slightly the dividing line between public and private life. This chapter examines salient elements of the political processes that created, and are being created by, a new change in that public/private boundary: the forced recruitment of agents, primarily

place managers (Eck, 1994), to act on behalf and direction of the police to control human behavior.

Buerger and Mazerolle (1998) first described the nascent doctrine of third-party policing as:

police efforts to convince or coerce non-offending persons to take actions which are outside the scope of their routine activities, and that are designed to indirectly minimize disorder caused by other persons, or reduce the possibility that crime may occur. Though the ultimate target of police action remains a population of actual and potential offenders, the proximate target of third-party policing is an intermediate class of non-offending persons who are thought to have some power over the offenders' primary environment. The police use coercion to create place-guardianship that was previously absent, in order to decrease crime and disorder opportunities. Third-party policing is both defined and distinguished from problem- and community-oriented policing by the sources and the targets of that coercive power [p. 301].

They identified increased enforcement of civil regulatory provisions (or the threat of such enforcement) as the lever to force property owners and place-managers to take actions that are not formally required by any regulatory code. The tentative nature of the authority of third-party policing suggests that there will be challenges to the new practices by persons seeking to avoid either the responsibility or the penalties. After first outlining the origins and mechanics of third-party policing, the following pages explore the individual and collective forms such resistance might take, and discuss the ramifications for problem-solving and third-party policing.

ORIGINS

Third-party policing is an outgrowth of the community policing movement of the 1980s and 1990s, the product of a convergence of three concurrent trends: computerized crime analysis, the application of civil remedies to crime problems, and an emphasis upon "quality-of-life issues" as a legitimate police strategy.

The introduction of computerized crime analysis created a new place-based focus for American police tactics.¹ Although police have long constructed "pin maps" showing the locations of certain crimes, the computer age has greatly expanded the ability to examine the full range of police activity, not just felony crimes. Through links to telephone companies' enhanced 911 databases² and cities' property management databases, crime analysts can quickly display patterns

of call activity, property ownership and other factors not reflected in official crime statistics. Among the new abilities are summarizing disorderly conditions from call data, and linking calls for police service that normally do not generate official reports to those that do (the relationship of "proowler" or "suspicious person" calls to burglaries or auto break-ins, for example). This new capacity has become a powerful force in shaping police strategy, beginning with the identification of problem properties as crime facilitators.

The use of civil ordinances as a remedial tool surfaced as part of problem-oriented policing (Goldstein, 1979; 1990) as early as 1985 in Newport News, VA (Eck and Spelman, 1986), and has been expanding ever since. It has been applied formally, as in the case of Oakland, CA's SMART Teams (Green, 1996) and the Tampa anti-drug initiatives (Kennedy, 1993), as well as informally, illustrated by the Minneapolis, MN, RECAP Unit (Buerger, 1992; 1994). The use of civil remedies discussed throughout this volume targets the conditions of ownership and guardianship that, when absent or insufficiently discharged, facilitate disorderly conditions and criminal activity.

The phrase quality-of-life issues has become central to the working vocabulary of a police establishment as it operationalizes the philosophical tenets of community and problem-oriented policing. Intellectually justified by the "Broken Windows" hypothesis (Wilson and Kelling, 1982), the new focus on quality-of-life issues stems from community concerns about things that police have traditionally dismissed as unimportant. Some of these issues deal with low-level disorderly behaviors that always have been within the police mandate but were only sporadically enforced: noise complaints, barking dogs, illegal auto repair operations in streets and alleys, public drinking, disorderly groups, public urination, low-level drug sales,³ illegal parking. Computerized mapping provides quick, easily recognized patterns of such problems from call data. Other community concerns, often articulated through community meetings rather than in calls for direct police service, have presented the police with a new set of duties; abandoned autos, and vacant buildings and unkempt lots, among others, now become police concerns as a matter of routine.

The Need for Third Parties

Some of the new duties can be discharged with the time-honored police response to community agitation: a crackdown. Sherman (1990) documented the predictable pattern of crackdowns, in which (generally) a large amount of police resources⁴ is suddenly directed at areas or problems that had received little or no attention before. The

initial results are usually dramatic: a steep decline in the targeted activities, with or without a correspondingly large "numbers production" of arrests or tickets. As the targeted activity declines, however, there is less and less for officers to do, and eventually the "back-off" phase begins. Officially or unofficially, the police do less, wander off to find more interesting territory and eventually move on to other problems. At the same time, the target population (whether it be drug peddlers, drinking drivers or parking scofflaws) either figures out the new rules, or comes to recognize that the crackdown is over. Activity resumes, and the measured rates of prohibited activity slowly rise back to (and sometimes beyond) their former levels.

As the police responsibility grows to include quality-of-life conditions as well as criminal incidents and disorderly conduct, the groups with whom the police interact have also grown to include property owners and place managers (Eck, 1994). Over the past decade, the problem of maintaining crackdown effects has led to a strategic shift away from sole reliance upon special units and task force-styles of crackdown. Though special units and large-scale operations continue to be integral to the original suppression of the undesirable activity, they are often unsuited to the separate task of maintaining the effects. Large-scale operations cannot be sustained because of the costs involved, and special units frequently must turn their attentions to similar problems in other parts of the city in order to justify their continued existence.

Largely as a part of the community policing movement, but also out of necessity, police administrators have been delegating greater responsibility to line officers, particularly the beat officers patrolling specific neighborhoods. Beat integrity supports beat knowledge, and beat knowledge is supplemented by crime analysis to produce something called "problem solving." This problem analysis and problem solving, done by officers who are on the streets constantly and have at least a theoretical investment in their areas, constitutes the primary maintenance strategy of American policing. The special nature of the problem-solving approach, and the greater interaction with place managers that it produces, provides considerable impetus for third-party policing.

"Third-party policing" is a double-edged phrase, referring to the policing of both disorderly characters by third parties and of the third parties by the police. Unlike traditional police enforcement, which centers on incidents of individual misconduct, third-party policing focuses on those who own or manage places identified as the locus of a series of such incidents, often over extended periods of time. The places may be identified through a variety of mechanisms: community complaints about the specific property; beat officers' recognition

of the regularity with which they are called to the address; routine analysis of crime and calls-for-service data; and occasionally a single heinous crime or event that brings to light unreported dissatisfaction. Police attention to the individual incidents continues, but is supplemented by efforts to enlist the place managers as partners to control undesirable behavior at their properties.

Because third-party policing impinges upon relationships previously considered private, the police need some external legitimizing authority for their intervention. Reiss (1971) noted that police authority is weakest when officers act on their own initiative, and strongest when they act on behalf of a citizen requesting assistance. As the individual call legitimates police intrusion into a private residence, police demands upon managerial practices are justified by the collective weight of calls for assistance, articulated through either crime analysis of call records or communal voices in open meetings or neighborhood surveys.

The police intervention is not justified simply by the failure of the place managers to fulfill their part of the contract with tenants or place-users; those remain civil matters, enforced according to the priorities and schedules of the appropriate agency. Third-party policing is invoked only when managerial neglect creates additional problems for the public peace and other third parties — those not party to the primary landlord-tenant or owner-customer relationship.

TACTICS OF THIRD-PARTY POLICING

When a place-based problem is identified, the first approach to the place managers by the police is usually friendly, or at least non-adversarial. Officers present the problem in terms of mutual concern, provide relevant and simultaneously legitimizing information,⁵ and ask for the cooperation of the owner and/or place manager. Depending on the jurisdiction and the history of the property, the request may be only that, with no further communication, or it may be backed with a full panoply of options for complying with the request — and the potential consequences for non-compliance.

Agencies with experience in the problem-solving approach equip their officers with a full range of information, including: public and private sources of funds for making capital improvements; property surveys and suggestions for improvements in Crime Prevention Through Environmental Design (CPTED); improvements, model leases for curbing the excesses of less-than-model tenants; and the like. That way, officers can present not only the problem but the resources available and possible approaches to a solution.

The cooperative approach is important for several reasons. Many owners and managers fully intend to be cooperative citizens and good neighbors. Some are unaware of the problems at or created by their properties; others know that there is a problem, but feel overwhelmed by conditions they do not believe they can control. The offer of police assistance is welcome, and helps to bolster the owners' confidence that the problem can be abated. In these more benign cases, policing through third parties is entirely a cooperative endeavor undertaken to bring a troubled property back to a condition desired by both the community and the owner. The softer, cooperative gambit is necessary in more resistant cases. When dealing with slumlords and persons known to be antagonistic or resistance to police requests, the "soft" approach is nevertheless an important first step, demonstrating that the police tried to gain cooperation before moving to more coercive measures. In courts, before regulative bodies, and in the court of public opinion, police requests for punitive action are almost always more favorably regarded if they represent the final step of a process rather than the first resort.

When the Cooperative Approach Fails

When the cooperative approach fails to achieve its goals, the police focus shifts somewhat from the ultimate targets to the proximate targets. The goals the police seek to achieve are the same; only the tactics differ in the more coercive stages of third-party policing. There is an operational assumption that the conduct of the intermediaries — the place managers, property owners, etc.⁷ — acts as a facilitator of the undesirable conduct of others. The strongest cases are those where the place managers are in active collusion with the troublemakers, but third-party policing may also be applied to those who passively enable criminal conduct through inaction and neglect. Because the proximate targets (the place managers) are not directly responsible for the behaviors ultimately targeted (the actions of their tenants, patrons or others), the arrest-based coercive powers of the criminal law are ineffective and the police must look for new tools and weapons.

The civil law codes are the new weapons of criminal law enforcement. Designed to mediate the nominally private transaction between willing seller and willing buyer (of residential space, recreational services or other commodity), civil codes impose minimum standards for things: structural integrity, cleanliness and safety issues such as fire detection and egress. Enforcement of the codes has traditionally followed a compliance model (Reiss, 1984), focusing on the correction

of conditions and utilizing negotiated timetables and plans where necessary.

By contrast, the actions demanded of place managers by the police concern the regulation of human conduct: tenant screening, place rules and their enforcement (including evictions) and the like. When place managers resist these suggestions, the police bring in regulators to enforce the civil code violations — deficiencies in things — found on the property. Although the properties are normally subject to such inspections as a condition of doing business, regular inspections are usually distributed over fairly long periods. When corrections are needed, property managers can make them in piecemeal fashion.

When police target a property for action because of behavioral problems associated with it, the normal rules do not apply. Regulators arrive en masse. All of the violations and demands to correct are delivered at once. The customary negotiations ("Well, this has to be fixed right away, but those two things I can cut you some slack on, just as long as you take care of them sometime soon") are no longer possible. Everyone understands that the inspection is no longer just about physical conditions, but also about the owner's/manager's intransigence in responding to the police requests.

The police use the accumulated weight of the code inspections (and repair orders, fines, summonses, etc.) as a weapon to gain compliance on other fronts. The task force visits also carry a symbolic message: there will be no reprieve from scrutiny until everything is corrected, and "everything" includes the behavioral issues that the police first sought action on. To avoid the repeated mass inspections and the close follow up on all repair orders, the place manager must take the other actions (not found in any applicable code) requested by the police.

In this way, the police unilaterally create a new form of public duty that has not been approved through the normal political channels. Police access to private places to deal with specific, time-bound problems of behavior ("the call" for police service) is different from access to nominally private business relationships to deal with less well-defined "conditions" that exist over time but have only a presumed link to specific behaviors. The expectations are different, often more costly, and the authority more open to challenge. As police already know, in both scenarios authority conveyed by third parties⁸ is fundamentally weaker than that provided by a direct participant in the situation, and the authority for place-specific problem-solving measures almost always comes from other third parties. In addition, the code enforcers are similarly detached from direct police control,

often working well outside the normal guidelines for their offices. The overall dynamic is sufficient to provide fertile ground for resistance.

RESISTANCE AND POLITICAL INFLUENCES

The police have traditionally refused to involve themselves in civil matters where the state is not a party and the disputes are between individuals. When the civil dispute resulted in a call for police services (such as landlord-tenant disputes and neighbor-trouble complaints), the police limited their role to controlling the collateral effects of the dispute (those that created or threatened a public disturbance of the peace). The core dispute was always referred to the civil authorities.

Third-party policing has fundamentally changed that approach, placing the police in a role as primary mediators at one end of the spectrum. At the other end, the police may go so far as to direct a landlord how to conduct his or her rental property business, or force the manager of a local bar considered a "den of iniquity" to take specific management actions dictated by the police. The motive for the actions is the improvement of conditions not associated with the business's "bottom line"; the authority for the intervention comes not from a single incident, but from the cumulative impact of a series of incidents and conditions over time.

Anchored in precedent, politics is nevertheless the mechanism by which laws are changed. Each new law — and new administrative regulations created by law — disturbs the previous balance, creating new demands, questions and conflicts. Under the American system of jurisprudence, our political system provides a forum in which both the substance and the application of laws may be challenged. Third-party policing is an emerging doctrine, not yet law and only haphazardly enshrined in administrative regulations. As such, it is vulnerable to political and legal challenges to its legitimacy.

Given the immense diversity of political forms throughout the country, there are many ways in which challenges to the new controls may be mounted. Individual resistance may take the forms of avoidance, exemption, subversion (corruption), cooptation or abandonment. Collective resistance hinges on the larger political mechanisms of repeal (a legislative or administrative function) or overturning of the legal basis for the controls (a judicial function), but may also extend to collective actions of collusion.

Individual Resistance

Avoidance

Avoidance is the near-universal form of resistance to police requests for third-party policing actions. It is usually accompanied by denial of the problem, or an offer of scapegoat alternatives (claims that the problem is actually the result of some other cause [Buerger, 1994]). If the police have adequate documentation of the problem, denial is fairly easy to overcome.

Even after the police have demonstrated the problem, avoidance can continue. Once the police have made their requests for actions, the place manager may agree fully, giving the impression that he or she is compliant, but do nothing once the police contact ends. In one memorable case in Minneapolis, during a meeting with the RECAP officer, a landlord turned to his resident manager and gave her explicit directions to carry out all the officer's recommendations. Once the meeting was over and the officer left the premises, the landlord countermanded all the instructions and told the manager to continue to do business as usual. The duplicity was not discovered until after the manager was later fired for unrelated reasons. At first there was concern that her revelations were just vindictive falsehoods; it took several months before sufficiently strong corroborative evidence was uncovered to establish that the landlord had just been paying lip service to the officer's requests (Buerger, 1992).

Resistance of this kind may be second nature to experienced place managers, based upon the legacy of prior police initiatives. Some who have been in business for a long time have no doubt seen several generations of earnest police officers at their doors, explaining problems at their properties, outlining plans of action and declaiming in serious tones about the consequences of non-compliance with police directives. Each time an officer left the scene and was never seen or heard from again, the place manager learned a lesson about dealing with the police: promise them anything, and they'll go away.

Effective third-party policing changes the nature of this interaction, but it takes time to effect a common recognition of the new rules of engagement. Avoidance can still be an effective foil to third-party policing in venues with limited capacity to enforce civil codes or to follow up requests for action. Officers who are transferred, work rotating shifts or are infrequently assigned to a particular area are somewhat limited in their ability to overcome avoidance.

Avoidance has several levels: a place manager or owner may ignore the regulatory summonses and repair orders as well as the police requests. Unless a jurisdiction has a well-constructed political

mechanism for boarding delinquent properties, like New York City's "Operation Padlock," avoidance can be an effective, low-cost form of resistance that takes advantage of the weakness of the political environment. Similarly, the "teeth" behind police civil actions against nuisance properties with drug or prostitution problems is the ability to apply civil forfeiture laws and seize the property from the owner. Such a legal process will place demands on the city attorney or corporation counsel's staff, typically already understaffed and overburdened with a wide variety of other duties. Introducing a drug forfeiture case that requires seizing (and running) an entire building can be a daunting task: city attorneys will not necessarily step to the task with the same enthusiasm that police officers propose it.

Making this type of enforcement action a top priority requires a broad consensus among the principals of municipal government. The different perspectives (and different sympathies) of the political players may not be automatically sympathetic to the police proposal. Creating a climate to encourage agreement that the action is important to the city — usually as a demonstration that "it can be done, and we will do it," to nudge reluctant place managers into compliance by symbolically raising the stakes for resistance — is a political exercise that requires slow, deliberate consensus building.

Exemption

When police persistence makes avoidance an impractical response, place managers may take the first step into politics by requesting an exemption: a statement that this request/regulation should not apply to them. The request is usually made of the police officer first, almost certainly without success. The next step is to "go over the cop's head," either to a higher ranking officer in the department or a political figure outside the agency.

Exemption often involve elements of denial and scapegoating. The authority figure is a new audience, and the place manager has the opportunity to present the problem in his or her terms, not those of the police officer. Minimization of the problem, scapegoating, "crying poverty" (Buerger, 1994) and a detailed explanation of every factor that should excuse the place manager from complying with the order are all part of the rationalization for exemption.

When enforcement of the civil codes is an element of the police coercion, place managers may ignore the police chain of command and appeal directly to the hierarchy of the enforcing agency. Knowing that the police do not have the authority or the expertise to enforce the civil codes, the place managers would seek to "pull the fangs" out of the police request by neutralizing the enforcement partner's role.⁹

Depending upon the situation, the chances of success may be even greater by approaching the housing, code or health inspector's office for exemption. Experienced landlords and place managers will have dealt with those offices for years, and have a ready knowledge of how the system works. Minneapolis landlords, for instance, knew exactly how much work had to be done to obtain a stay of enforcement of building inspectors' orders, and one building was so well-maintained physically that the building codes were an ineffective tool for reaching the behavioral problems associated with the premises (Buerger, 1992). In some cases, place managers may already have a comfortable working relationship with senior members of the inspecting staff that gives them more credibility with (and sympathy of) the nominal regulators than that enjoyed by the police.

One of the negative aspects of third-party policing is the new demands it places on the routines of other city or county agencies. Agencies are almost always limited in budgets and staff, and each regulatory agency has its own priorities that were established long before the police initiatives were devised. Place managers in some jurisdictions may find a ready partner for collusion in bureaucrats wishing to avoid the extra demands the police make on their routines. Obtaining an exemption from the administrators of the agency charged with the code enforcement effectively forestalls the police initiative. It can also be a powerful defense against further intervention by other city officials, though it has limits in that respect: the success or failure of this gambit often rests on the amount of grass-roots politics that has preceded the police action.

If the local council person is an ally of the police — or has a personal interest in the success of the initiative because of the volume of constituent complaints — granting an exemption to a problem landlord or place manager may well backfire on the agency bureaucrat. But if the groundwork has not been laid by the police (full documentation of the problem from all sources, prior notification to the municipal council and mayor or manager, etc.), the police request may well appear unreasonable against the self-serving background description that has been provided by the place manager.

It may sound odd to speak of such things as "politics," since the police culture has long held the shibboleth that it should be independent of politics (a legacy of the professionalism movement at the turn of the last century). Politicians sit high on the rank and file's list of stock villains, and most police officers expect their superiors to act as a buffer between them and "the politicians." Nevertheless, the need to build consensus and alliances to advance and defend a new program places the police in the arena of local politics.

The simple act of advance notification, and a summary description of both the problem and the project goals, is often sufficient to win the support of both police administrators and local political figures. Except in locally pathological situations, the police commanders and ward representatives have no particular need to be directly involved in a problem-solving venture. Their interests are usually two-fold: first, not to be surprised by questions about something they know nothing about; and second, to be able to associate themselves with good results.¹⁰

To some degree, this can be interpreted as a game of "who gets the pol's ear first" as a way of defining the battlefield, but that is too simplistic. Poorly conceived projects will not win support even with early notice, and occasionally there are legitimate differences in priorities. An officer's ardent desire to level a pernicious den of iniquity may run up against a concern about the number of affordable housing units in the community: even though the politicians may agree with the officer's definition of the problem, they may have reason to seek a different resolution to the situation, if possible. For that reason, early consensus building on the nature of the problem, the preferred outcome and the most desirable course of action toward that end are all essential — and inherently political — elements of problem solving.

Subversion/Corruption

The exemption dodge is based on an assumption of good-faith intervention on the place manager's behalf. Exemption has an evil twin in some jurisdictions, however: corruption. Bribing inspectors, judges or politicians is also a viable option in some jurisdictions. It is the seamy underside of politics, but represents an effective countermeasure to police action. Regulatory and enforcement processes are subverted by securing a powerful ally, capable of blocking or vetoing enforcement actions for reasons unrelated to the facts and issues of the case.

The softer side of the corruption issue is that of "influence." Bribery constitutes a direct quid-pro-quo: paying a certain sum of money in return for having a repair order lost or incorrectly written (to obtain procedural dismissal in court or administrative hearings); money changing hands to have a summons quashed or placed in some administrative limbo, etc. Influence rides on campaign contributions, favors, childhood associations, family relationships, club memberships and any number of other personal allegiances that would lead a bureaucrat or politician to intervene on a place manager's behalf. Influence merely means that the place manager's description of the

situation will be received more sympathetically than will that of the police.

Influence creates calls to the agency head (the police chief, the head of the regulatory agency or both), or conversations with the municipal attorney or the judge. Influence asks for postponements, set-asides, extra time and other tactics that either delay the orders beyond effectiveness or send fairly direct messages that the resources of the agencies shouldn't be wasted on this particular target. In extreme cases, influence gets the police officer transferred to other duties (as a "promotion" that "utilizes the officer's skills in another needed area" in benign circumstances; as outright punishment transfers in more dire ones), and can even lead to the evisceration of the entire police initiative.

Rarely does influence work for long periods of time, or for a second time, if there is an organized police effort. As they do when an arrest is thrown out of court for procedural violations, the police learn to try again. Because influence works in private space, the best counter tactic is to take the issue into public space. Using the political arena to their own advantage, the police build allegiances to create a groundswell of public criticism of the problem establishment, which in turn generates support for police attempts to change it or shut it down.¹¹ Embarrassment is the primary weapon, and it can be an effective one in the public realm. The patrons of influence usually do not enjoy unfavorable publicity, particularly if it portrays them in a light contrary to their cultivated public image. No one wants to open the morning paper to the headline, "Local Judge Lets Slumlord Off the Hook," or "Council Member Says Neighbors Must Put Up with Drug Bar."

In most cases, embarrassment is not the first weapon deployed: used prematurely, it creates enemies and can have devastating future repercussions. Like all such weapons, it is most effective when kept in reserve, as a threat. The goal of negative publicity about an establishment is primarily to neutralize the influence in the realm of private space, and it must be supported by equally vigorous lobbying in the private realm. "Politicking" links the vigorous public protest in the public arena to the police description of the situation, quietly conveyed to the Person Of Influence. Public protests create the opening for further behind-the-scenes negotiation, and the opportunity for the competing view of the situation to be heard on an equal footing with the place manager's original description.

Ideally, the police want to create a "turnabout" situation. In a role reversal of sorts, the individual to whom the place manager has appealed for intervention uses his or her influence instead on the supplicant. The political patron becomes the final voice that conveys to

the place manager the regulators' orders, and the knowledge that she or he has let things go too far not to comply with the police requests. There may be a mediation of some sort, so police cannot realistically expect unconditional surrender; the ultimate goal is enough compliance to eliminate the public nuisance.

Abandonment

The threat to abandon a property is a weapon available to the individual in the local political arena, especially in cities already afflicted with high numbers of abandoned and derelict properties. It is a more credible threat for the individual property owner who has no other assets in the city, because the loss of capital investment is balanced by the protection from the enforcement. Many of the properties targeted for SMART and RECAP actions, for example, were well below the mean in physical plant, requiring considerable expense to bring fully up to code. Persons owning multiple properties have greater exposure, since liens can be attached to other properties.

Abandoned properties are a matter of considerable concern to municipal agencies. While they stand, they present a negative aspect to the community: eyesores at best, they can become havens for derelicts, drug markets and shooting galleries, hiding and escape routes for criminals, hiding spaces for the street prostitution trade, fire hazards, unregulated dumping grounds, breeding grounds for vermin and any number of other problems. In addition to the loss of tax revenues while they stand fallow, the cost of reclaiming abandoned properties represents a considerable expense to cities and towns involving: legal fees for quick-take claims to transfer ownership to the municipality; public works costs to board, fence, and otherwise secure the properties; potential liability for injuries even to illegal trespassers; demolition costs; and the collateral costs of marketing the properties to obtain as fair a price as possible while transferring responsibility to a new owner as quickly as possible.

Like embarrassment, the threat of abandonment is most effective as a potential weapon. Walking away from a capital investment is not easily done, particularly by the individual investors. The threat is actually a negotiating tool — an attempt to create, for those without real influence, a sympathetic hearing like that provided by influence. Because it is limited in its effective application to out-of-jurisdiction (usually out-of-state) owners and the truly desperate, the threat of abandonment is not often successful.

In certain cases, the abandonment gambit can be neutralized if the police can demonstrate that the owner has already abandoned the property for all intents and purposes, and that the city and the

neighborhood would be better off with a boarded-up building. This can be particularly true in cities that have either a strong private-sector economy (a wealth of prospective responsible buyers), and/or a strong nonprofit presence specializing in rehabilitating derelict properties for low-income private ownership¹² and a good potential for quick turnover and reclamation.

Cooptation

Cooptation is a special entrepreneurial adaptation to third-party policing efforts that turns the police initiative into a slumlord's tool. Usually functioning at the low end of the housing stock market, it does not have a broad applicability but nevertheless represents a potentially important unintended consequence. In specific markets, the initial police complaint about the property can be used to justify raising rents or evicting tenants for non-criminal reasons.

Many properties become problematic when the owners stop treating them as long-term investments and begin treating them as short-term income generators. The physical plant is neglected, with repairs made sporadically and then only under order. Tenant screening comes to an end, replaced by the practice of accepting anyone with the rent money in hand (usually Section 8 clients, drug dealers or both). A full building takes priority over a safe and orderly building. A steady inflow of cash and a minimum of hassles replaces the normal duties of property management: it is not unusual for slumlords to be absent from their properties for years on end, employing marginally qualified "managers" who do little more than collect the rent and change light bulbs in the hall in exchange for a reduced rent (Buerger, 1992).

When such properties come under police scrutiny, some landlords turn the situation to their advantage, blaming the police as the bad guys who are "making me do this." When police calls are a part of the targeting process, for instance (as was the case in the RECAP experiment), the owner or manager may take action against the tenants placing the calls, threatening them with eviction because "they" are the cause of the problem. Often, the tenants who call the police about conditions created by other tenants are the same ones who complain about the physical plant, withhold rent and are otherwise burdensome to the landlord. Drug dealers, on the other hand, rarely complain about the conditions in their crackhouse, and they always have the month's rent on time — in cash, which can be an added incentive to the unscrupulous landlord who wishes to keep some income off the books. By evicting the tenants who are trying to maintain the property at a higher level, the landlord reduces the call lev-

els, buying time with the police (unless complaints also come from the surrounding neighbors) and making way for tenants who are less troublesome to the landlord.

Eviction is not necessarily the only option; raising the rent can be an equally effective way of convincing tenants to move. In addition, in some cases landlords can temporarily defeat the police scrutiny by playing "musical tenants": one RECAP landlord who had been given notice about a drug-dealing tenant in one of his buildings obligingly evicted the tenant — by relocating him to another of the landlord's buildings in another section of the city. The relocated tenant promptly resumed his drug sales from the new address, transplanting the problems into a new neighborhood.

Collective Resistance

Not all resistance is individual in nature. Like other forms of employment, property owners and managers form professional associations and relationships to advance their interests in the larger political process. They actively monitor pending legislation, as well as trends in other industries which may affect their livelihoods, and take collective action to defend their interests. Other less formal groups and associations coalesce locally, and may work covertly, in collusion with each other, to resist or neutralize the adverse impact of police attention.

Collusion

Under certain market conditions, the most effective way to rid oneself of police pressure about a property is to sell it. Ostensibly, the sale of a property to a new owner represents a gain for the community: there is a presumption that the new owner will treat it as a long-term investment, improving the conditions and being a good neighbor. That presumption requires the police to suspend the focused pressure brought on the former owner, and return to a more cooperative mode until the new owner demonstrates that he or she is unworthy of that approach. There are several collateral problems that can arise in the process.

A landlord wishing to sell a residential property may fill it with tenants without any regard to their social graces or source of income. At first blush, a fully occupied building is a desirable property: it means immediate maximum-income levels with minimal effort on the part of the new landlord. Since sales may be conducted through intermediaries, a new owner may never actually see the property he or she has purchased and may not be aware of the problems until formally notified by the police. First-time owners may have no experi-

ence whatever in the particular market they have entered, and become hapless sponsors of all sorts of unsavory activities, which they have no idea how to stop. (The naive owner tends to be most appreciative of police assistance, and correspondingly cooperative, but the problems caused by the place still take time to correct.)

Legitimate buyers may be in short supply, however, and good-faith negotiations take time. Selling the property to another owner of like mind, and then buying a new property from a third, is an effective dodge used by certain landlords. This technique is more applicable to rental property than to businesses like bars and saunas that require constant management, but the tactic is available across the board. Each sale of the property wins a reprieve for the old owner, and the new owner has a grace period — an informal exemption — during which time he or she is expected to bring the property up to code and correct the conditions that fostered the previous behavioral problems. Even a pending sale is sufficient to forestall action by some regulatory agencies: the municipality's interest is in a thriving, viable property or business under the care of an interested, involved owner.

Each new sale represents the possibility of rescuing a derelict property from the hands of an uncaring owner or manager, but that individual can use the uncertainty of the sale to his or her advantage. "The sale will be quashed if there are liens or other actions against the building," the owner argues, truthfully, in requesting that actions be held in abeyance. This liminal state may last for several months, during which time the owner or manager continues to reap what profits there are, while putting no capital and little effort back into the building. In Minneapolis, RECAP officers discovered that a number of bad properties were routinely sold among a small group of individual landlords who had no formal association, but always seemed to be associated with troublesome properties. One of the most difficult residential properties during the RECAP experiment changed hands four times in the course of a year, each time requiring the officer to start negotiations afresh, as conditions steadily deteriorated and the number of calls continued to rise. At the conclusion of the experiment, the building was sold for the fourth time, to the same individual who had owned it when RECAP began (Buerger, 1992).¹³

The "pending sale" has limits, of course: the existence of the prospective buyer can be checked, and there is always a possibility that the owner/manager will milk it too long and incur the police and regulatory actions anyway. For the pending-sale dodge to work effectively, the sale has to be timely and hence, certain.

The apparently informal collusion encountered in Minneapolis was partly the result of a change in the laws that provided tax incen-

tives for real estate investment (probably a further reward for selling a property rather than working to improve it). Whether it was a planned association or just a fortuitous coincidence is not known. Such situations represent a potential future development in third-party policing: the tracing of ownership patterns of troubled properties.

Informal collusions are at best a localized dodge — in some respects, an avoidance of the larger political arena. It is the formal associations, operating openly in the political arena, that pose the greatest threat to third-party policing. Even though the police bring pressure to bear on illegitimate practices, the expanded government control that third-party policing represents is a potential threat to all business owners. The extent and limits of the new controls are not known beforehand, and it is perhaps natural to assume the worst. Formal, collective responses will not only take place at the local level, seeking wider exemptions, but if necessary also at the state level, in judicial and legislative arenas.

Overturn

Still in its formative stages as a public doctrine, third-party policing is most vulnerable to being struck down in the judicial process. Like all untested police initiatives, third-party policing may function unobstructed until it is brought under judicial scrutiny. At that time, the entire premise can come under formal consideration by the courts, in a manner similar to the way the pat-down frisk came under judicial scrutiny in *Terry v. Ohio* (1968). Depending on the nature of the case that brings third-party policing to the attention of the courts, the policy may be considered on narrow procedural (due process) grounds or as a broad-based consideration of the entire doctrine.

Cases may come before the judiciary either on appeal of adverse judgments in lower (municipal) courts, or as pleas for an injunction against third-party policing interventions. Well-funded individuals may conduct their own appeals, of course, but it is equally likely that landlord associations will fund individual or class-action suits against initiatives they deem harmful to their mutual business practices. An outside player is the burgeoning property rights movement, which resists a broad range of what it deems government intrusions into private concerns — from zoning and other land use restrictions to eminent domain seizures. The formative nature of third-party policing makes it a potential target for exemplary action by property rights activists.

One of the factors that may limit the use of the appellate process may be the fact that the case will be civil in nature. Even though the police put pressure on place managers and landlords to control criminal conduct, the sanctions actually levied against third parties are entirely civil: housing court penalties, alcohol beverage control actions (fines or license suspensions, etc.), repair orders and health condemnation closings. Civil cases move much more slowly than criminal cases, unless there is a compelling reason for a higher court to extend jurisdiction over a case. Because third-party policing articulates a new variation on the civil/criminal law distinctions, however, there is a potential for much faster movement through the courts.

The questions raised by third-party policing are likely to focus on whether it is an unwarranted intrusion upon individual liberty. Unlike the land takings that have given rise to the loose coalition of the property rights movement, third-party policing intervenes in commerce, which is subject to government regulation despite the nominally private interaction between willing seller and willing buyer. The issue will not be one of separation of powers, nor of the appropriateness of using the civil law for a law enforcement purpose: both police and regulatory functions lie within the executive branch of government, and civil penalties ranging from padlocking to forfeiture have long been applied against public nuisance properties.

The central issue of third-party policing will most likely be the reasonableness of the remedy demanded by the state, as it is imposed by the police. The grounds for forfeiture are well-determined in the legal arena: the documentation of illegal conduct occurring on the premises, notice of same being given to the property owner and failure of the owner to take steps to correct the situation. The middle ground of third-party policing is less well-defined, as it reaches to the future conduct of persons unknown in the absence of demonstrable illegal activity. The legal shift is away from a requirement to correct actual conditions and toward a new requirement to prevent potential, unspecified conditions.

How well the concept of third-party policing will fare under such a review will depend upon several factors: the precision with which a doctrine of public duty is articulated; the fact-pattern of the individual case (including both the municipal support and the actions of the individual officers involved); the reasonableness of the relationship between the prescribed remedy and the results sought; and the level of organization and funding behind the appeal.

The Oakland SMART initiative is one example of a program with a greater chance to withstand appellate challenge. It clearly articulates the expectations of the owners and managers of a commercial place,

vetted through the existing political process (participation by various levels of elected and appointed officials, with public hearings and perhaps public referendum; proceeding upon legal advice from corporate counsel, etc.). The vulnerable cases are those in which third-party policing proceeds haphazardly, guided only by the intuitions of one or a handful of individuals in the police department, with little or no mooring in the surrounding legal and political environment.

Acts that shock or offend the conscience of the court (the *Rochin v. California* [1952] threshold) are the most vulnerable to judicial overturn. One exceptional case that takes the concept of third-party policing to its extreme (the regulatory equivalent of forced stomach pumping) may provide the grist for judicial review, and the fact-pattern of the individual case is critical. The entire use of third-party policing as a strategy could fail because a single officer used the instruments of third-party policing for the wrong reason, or against the wrong individual. Using the threat of civil inspection and sanctions as a means of settling a personal vendetta, demanding the eviction of an individual on mere suspicion of illegal activity (unsupported by articulable evidence), trying to shut down a bar or other commercial establishment in order to further the interests of a competitor and other scenarios provide an opening to examine whether a doctrine like third-party policing is a reasonable tool to provide government agents.

Even cases that are clear abrogations of existing law enforcement standards (involving the actions of rogue or "loose cannon" officers), and thus might ordinarily be decided on their own fact-pattern, open the door to greater scrutiny. Professional associations (landlords, bar owners, etc.) keep a close watch over court dockets for cases that have particular application to their membership, and the prospect of amicus briefs inserting constitutional issues above and beyond the fact pattern is a real one.

Repeal

Legislative action — a single law or group of laws that curtail or block the ability of the police to implement third-party policing — is one of the less likely threats, but one that cannot be discounted. A legislative approach may be undertaken either independently or in conjunction with a judicial appeal or even before third-party policing is applied in a jurisdiction. Use of the legislative option available to either side is also a recourse against an adverse judicial decision. If the judiciary strikes down a third-party policing approach because it lies outside the formal structures of the law, the legislative process may be used to establish it as part of the legal structure. (Similar

initiatives undertaken recently have been the constitutional amendments proposed to "protect" the flag from burning as a form of social protest, and the Religious Freedom Restoration Act.)

In the current political climate, it is unlikely that any elected official would propose a measure that could be portrayed as "forcing the police to allow drug markets to flourish" or "allowing slumlords to destroy a neighborhood," but it is equally unlikely that a bill would be that direct in its language. The legislative process is rife with opportunities to make subtler changes, in areas not immediately identified with crime control, that can have significant changes for the practice. For example, new legal protections for landlords and place managers can be inserted as riders on bills that are completely unrelated to property management. Procedures that protect landlords can be inserted in bills titled "Tenants' Rights;" while innocuous-sounding phrases like "good faith" can be given definitions so broad that they provide a powerful shield against punitive actions. In Minneapolis, hiring an on-site property manager was considered "good faith" enough to suspend all adverse actions, even though some landlords hired property managers who were incompetent or mentally handicapped (Buerger 1992). It is not necessary to say publicly: "We will not allow the imposition of third-party policing because it offends important political supporters"; the concept can be eviscerated by a series of small stumbling blocks, exemptions and procedural stalling points.

"Money talks" is a catchphrase of those who hold politics in disrepute, and it is a fact of life that political contributions buy influence. Like influence at the personal level, however, influence in the legislative process can be defined — and limited — by external constraints. A well-orchestrated initiative against a problem property or a larger scale "problem" common to many properties, complete with publicity (or the potential for it), creates a better backdrop for sustaining the concept of third-party policing. Such a cry is heard more distinctly if it comes from the citizens rather than the police, and creating such an outcry is an inherently political process. The influence of a local politician (especially one within a legislature's own party) can also carry clout, though it can be mediated by party considerations.

Once third-party policing moves into the legislative realm, it is no longer assured a favorable reception on its own terms. "Lip service" is not the exclusive province of recalcitrant landlords, and third-party policing can be embraced by politicians in theory without receiving any substantive backing. In the turbulent world of competing agendas, priorities can change rapidly. A promising political initiative can be sacrificed on behalf of another gain, either fully or by delay. A bill unfavorable to third-party policing, like the recent welfare bill, may

secure grudging acceptance, because the "return vote" is needed for an agenda considered more pressing. Unless third-party policing arrives at the legislatures with a high profile, it is at risk of changing from favored policy to expendable pawn overnight.

Neither judicial overturn nor legislative rebuff will necessarily spell the end of third-party policing, especially if local municipalities consider it a necessary tool for nurturing and maintaining order. As was the case with the overturning of the death penalty, judicial remand may carry the message to refine and narrow the scope of the application in the interests of fairness. What is expendable in the current legislature may be championed in the next, depending upon the political climate and the response of third-party policing advocates to the initial rebuff.

CONCLUSION

It is not enough to put forth a new idea, proclaim it a good thing, and sit back to await the accolades of others. In all cases — be it the initial demand for officially sanctioned legitimacy, or an attempt to rescue the concept from an adverse decision — any new public policy needs public allies who will remain constant throughout a long, up-and-down process. Marshaling such allies is inherently political, and requires a process outside the normal hortatory public relations work police departments engage in. Building a coalition is a different function than maintaining one, but there are several common features. The initiative needs to be properly identified (or "strategically positioned," in market terms); opposition must be anticipated from a variety of fronts; and carefully crafted responses to potential objections must be worked out in advance.

Positioning third-party policing as a prevention measure is perhaps the most logical approach to coalition building. Preventing crime and disorder is intuitively more attractive than reacting to undesirable conditions: it minimizes harm and provides the least possible drains on public resources. Third-party policing also makes tangible the concept of "coproduction" (shared responsibility for crime prevention), although the burden falls disproportionately on a select few.

However, "prevention" has heretofore been a voluntary activity usually subsumed under the heading of "good business practice." Making future prevention an obligation rests in most cases on past behavior, specifically, bad business practices, and there are interesting speculative elements that attach in that regard. These points comprise some of the bases for potential objections to the doctrine,

and are components of the third-party policing doctrine that should be worked out in advance of challenges.

What are the workable thresholds of expected order, for instance? Can we reasonably expect a hole-in-the-wall dive to become a Hilton Hotel or a Bull & Finch Pub overnight? Do occasional loud parties or domestic disputes impinge upon the peace of the neighbors to a degree comparable to a crackhouse or the operation of a brothel? Can the police apply the same expectations to illegal activities such as passing bad checks, which does not generate place-based disorder and is generally unrelated to house rules? What are the dimensions of "reasonable" expectations in bringing a derelict property up to code, particularly in those cases where the need exceeds the owner's available resources?

There is an economic reality of even the borderline cases, where the money available for repairs (through rental income or a building account) is far outstripped by the cost of the work needed. Mortgage companies do not allow landlords to skip payments in order to evacuate a building (evict all tenants) for rehabilitation purposes, or to change the population group. Police can be quite cynical about the "crying poverty" dodge, believing that experienced slumlords have ways of hiding the money from scrutiny. However, the issue can be very important to the small independent landlord, whose support may be crucial in both city politics and the private deliberations of the professional associations, and who are most likely to evaluate things from the perspective of "there but for the grace of God go I."

Third-party policing cannot afford the hard-line approach that sometimes attends police initiatives. Part of the process of positioning the initiative must include the equivalent of the sliding scale for enforcement, including workable definitions of what constitutes "good faith" remediation under standard circumstances, as well as the process for working out an equitable formula in unusual cases. It will be the responsibility of the authors (in this case, the police and their allies in city government) to present a well-developed plan that encompasses fairness as well as effectiveness; having such a plan is also helpful when responding to court challenges.

Another important component is how robustly the police information systems can distinguish between (1) problems generated at or by a premises, and (2) problems generated by the immediate neighborhood and attributed to the premises. This can be crucial when calls-for-service data is a part of target selection, as it was for RECAP. Consider the neighborhood bar that is unpopular because of the hubbub its patrons create as they leave the premises in the early morning hours. Local residents also complain of a public urination problem that they attribute to the bar's clientele, even though the

neighborhood borders an area inhabited by homeless squatters and many of the public urination complaints occur during a period when the bar is closed. Whether the bar should be "held accountable" for other disorderly conditions is a valid question under these circumstances, and the role of the police will be a difficult one. If they distinguish the urination condition from that of the closing-time mayhem, they may win the cooperation of the management for quieting departing customers but forfeit the support of the neighborhood for not pushing the public urination issue. Should they treat the neighborhood complaints as valid across the board, they may still be able to coerce a grudging compliance on the closing-time issue, but generate deep strains of distrust (invisible to the police) based on the unreliability of the call data and the unfair interpretation of it.

At what point are property managers, having served their time in terms of maintaining good order at an establishment, entitled to a fresh start on the order-maintenance continuum, free from regulatory oversight? The question is linked to the original targeting threshold in most cases, but it also speaks to the degree of control and the limited purpose of third-party intervention. The SMART program had a formal threshold for considering a problem to be "abated" (Green 1996), while RECAP developed a set of ad hoc criteria for moving an address from "active pressure" to "monitor" status. Formal mechanisms may have to stand against the long-held grudges of the neighborhood residents, who see the initial sanctions only as a prelude to shutting down a particular property: at some point the police may have to tell their former allies that the residual problems of the property are not severe enough to warrant continued special sanctions, and be prepared to suffer whatever loss of support ensues.

Having an articulable, relatively neutral threshold for "success" comes full circle, back to the issue of realistic goals. It is an important factor in distinguishing a reasonable, focused public policy from an unchecked police weapon. That, in turn, will be an important element in "selling" third-party policing initiatives to the broader polity, who do not have an immediate stake in it and can weigh its positive and negative points in more abstract terms. The policy must be reasonably focused in terms of outcomes and process, in order to satisfy the "there but for the grace of God go I" test of those who foresee or imagine the policy being applied against them.

Selling the program is the business of politics. Establishing a broad-based coalition of individuals and interest groups who agree upon the need for third-party policing, and who support the nature of the police solutions, is a political process. It requires more than just articulating the project or the doctrine from the viewpoint of its utility to the police. To be successful, the proposed doctrine and responsi-

bilities must embrace as many stakeholders as possible, and speak in conceptual terms meaningful to them as well as to the police. Because third-party policing imposes a new form of public duty, the dimensions, limits and rationale of that duty must be clearly understood across all points of the political spectrum.



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NOTES

1. Pierce et al. (1984) analyzed burglary patterns in Boston, while Figlio et al. (1986) examined metropolitan crime patterns. Shortly thereafter, Sherman (1987) conducted a comprehensive analysis of all calls for police service in Minneapolis. DMAP, the Drug Market Analysis Project, was the first large-scale initiative by the National Institute of Justice to integrate police records into useable real-time information via computers, focusing on drug market activity defined by physical places. Since that time, the market for crime-mapping programs has expanded dramatically, and more and more departments are adopting place-based analysis.
2. These databases identify to police dispatchers the location of each call's origin (e.g., Sherman et al. 1989; Gilsinan, 1989), in order to verify information obtained verbally and to cope with the phenomena of 911 hangups and inarticulate callers.

3. In New York City, beat officers had been directed to ignore low-level street dealing as an anti-corruption measure.
4. Police resources include, and can even be limited to, public announcements of a crackdown without any corresponding personnel deployments (Sherman, 1990).
5. Such as a summary of police calls, the results of criminal investigations, or crime maps and a summary of neighbor complaints about a property, etc.
6. CPTED covers a wide range of physical and psychosocial approaches to limit the opportunities for crime. The concept combines Newman's "Defensible Space" concepts (1972) with Barry Poyner's (1983) "Design Against Crime" ones. A parallel concept is Clarke's "Situational Crime Prevention."
7. Hereafter, these individuals will collectively be referred to as "place managers," although this use of the term is broader than Eck's (1994) original definition.
8. In this usage, the "third parties" are persons affected by, but not directly party to, the dispute or the spillover effects of the economic relationship: the occupants of the adjacent apartment whose peace and quiet is disturbed by the domestic dispute in the first instance, and neighbors whose peace (and sometimes safety) is diminished by the spillover from the problem property.
9. This can also occur within police agencies themselves. When the RECAP unit attempted to persuade Minneapolis Public Library officials to enforce certain conduct codes in a branch library, library officials approached the district commander of that area to have a beat officer stop in periodically as an alternative to RECAP's suggestions. Officials effectively "pulled rank" on the RECAP officer, by going to a higher authority within the police department and securing an action that required nothing of them and that (they claimed) made the further scrutiny of RECAP unnecessary.
10. Police officers tend to treat this act contemptuously, as "Phase 6 of the project": that is, "Praise and honors for the non-combatants." It is, however, a fairly cheap price to pay for future support for other initiatives, including budget requests.

11. Once the initial cooperative overtures are rebuffed, closing the premises often becomes the ideal outcome in the minds of the police, but that hope is often tempered by other realities.

12. Nationally, Habitat for Humanity represents one such venture. In Minneapolis in the late 1980s, Catholic Charities and the local Project for Pride in Living were extensively involved in property rehabilitations in neighborhoods targeted by RECAP.

13. The recognition of the pattern of changing ownership came late in the experiment, and the RECAP Unit's role changed shortly thereafter, before the officers had a chance to devise a counter strategy.