



**PRIVATE POLICE:
THE FUTURE OF POLICING AND THE BROADER
REGULATORY FRAMEWORK**

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Introduction

There is a contemporary trend towards societies embracing a range of regulatory options – a ‘co-production of regulation’¹ – in which interested persons² all play a role in the maintenance of order and enforcement of the law. Peter Grabosky calls this phenomenon a “quasi-regulatory relationship for mutual benefit”,³ while Ian Ayres and John Braithwaite refer to a “regulatory tripartism” of government officers, self-policed entities and public interest groups in the process of regulation.⁴ More recently, David Bayley and Clifford Shearing have coined the term “regulatory multi-lateralisation”⁵ in exploring similar themes.

Each of these concepts hovers around the same phenomena. Regulation of activities (be they the activities of corporations, businesses or individuals) is now being carried out more and more by means of agencies *other* than those empowered under ‘police’ legislation. It is not coincidental that this is occurring at a time when the limitations of the criminal law and criminal justice systems as agencies of social control are being recognised⁶. Moreover, as governments have sought to withdraw from many areas of their traditional justice activity, ‘lay’ functionaries and private police agencies have assumed roles in a regulatory ‘mix’.⁷

This ‘mix’ is part of a trend away from the ‘state as commander’ style of law enforcement, towards a ‘state as facilitator’ style of social, environmental and business regulations. This latter style invokes formal regulatory tools and official police service activity, *together with* informal regulatory strategies carried out by private personnel who serve in maintaining proper business activities and striving to ensure the security of individuals and communities. David Bayley expresses this as follows:

Security is being provided increasingly by commercial firms through the market, by businesses to their own employees and customers, and by private residential communities. Volunteers ... have also been encouraged to share responsibility for public safety with the public police, as in Neighbourhood Watch, citizens’ patrols, and community crime prevention councils. ... [This involves] the relocation of authority, either to non-state auspices altogether or to lower levels of government. Multilateralisation as well as devolution involve the reconstruction of criminal justice in decentralised ways so that it responds to local needs, reflects local morality, and takes advantage of local knowledge.⁹

1 See Nalla, M. and Kumar, K.S. (1999), ‘Social Control and Collective Regulation: Law Enforcement and Private Policing in the 21st Century’, paper presented at the 6th International Police Executive Symposium, Hyderabad, India, July 1999, at 4, in Das, D. and Wiatrowski, M. (eds) *Policing Public Order*, Prentice Hall, forthcoming, 2003, and drawing upon the ideas of Sykes, R. (1977), ‘A Regulatory Theory of Policing’ in Bayley, D. (ed), *Police and Society*, Beverly Hills: Sage.

2 ‘Stakeholders’ such as public and private policing service personnel, industry representatives, consumer group activists, trade unionists and so forth.

3 Grabosky, P. (1995), ‘Using non-governmental resources to foster regulatory compliance’. *Governance*, 8(4), 527-550; Grabosky, P. (1999), ‘Crime of the Times’. *Security Australia*, 19(4), 39-40.

4 Ayres, I. and Braithwaite, J. (1992), *Responsive Regulation: Transcending the Deregulation Debate*. New York: OUP, at 98.

5 A term used by Bayley and Shearing to describe the various permutations of policing offered by private and volunteer providers, see Bayley, D. (2001), ‘Security and Justice for All’, in Strang, H. and Braithwaite, J. (eds) *Restorative Justice and Civil Society*, Cambridge: Cambridge University Press; Bayley, D. and Shearing, C. (2001), *The New Structure of Policing: Description, Conceptualisation and Research Agenda*, Washington DC: National Institute of Justice; Shearing, C. (2001), ‘Transforming Security: A South African Experiment’, in Strang, H. and Braithwaite, J. (eds), *Restorative Justice and Civil Society*, Cambridge: Cambridge University Press.

6 Fisse, B. and Braithwaite, J. (1993). *Corporations, Crime and Accountability*, Melbourne: Cambridge University Press at 219-221.

7 Braithwaite, J. (2000), ‘The New Regulatory State and the Transformation of Criminology’, *British Journal of Criminology*, 40, 222-238.

8 A trend explored by Grabosky (op cit) footnote 3.

9 Bayley, D. (2001), ‘Security and Justice for All’, in Strang, H. and Braithwaite, J. (eds) *Restorative Justice and Civil Society*, Cambridge: Cambridge University Press, 211-212. This, says Bayley, quoting Shearing, involves the ‘responsibilising’ of communities, refer Shearing, C. (2001), ‘Transforming Security: A South African Experiment’, in Strang, H. and Braithwaite, J. (eds) *Restorative Justice and Civil Society*, Cambridge: Cambridge University Press, at 18 and 23.

Observers have highlighted, too, the way in which police are now attempting to mobilise private citizens for more specific *police* purposes, a tactic seen by some as an attempt by police services to re-exert their control over an increasingly fragmented system¹⁰.

Two thoughts spring to mind immediately. Firstly, it is arguable that, if the aim of the exercise is for governments to provide the sort of security and deterrence to crime that a community desires, it should not matter which formal or informal tools, persons or agencies, uniformed personnel or not uniformed personnel, are engaged in that task¹¹. Secondly, given the dispersal of policing and surveillance activities undertaken by a vast array of control agents, the nature of 'policing', certainly as it may formerly have been understood, has changed irrevocably.

The Trend Towards 'Quasi'-Policing

What forms are these dispersed and fragmented models assuming? The following groupings provide a reminder of the breadth of 'policing' activities in the context of 'multi-lateralisation'. The most obvious identifiable 'group' is private security firms, discussed first. But there are other manifestations of policing that require discussion as well. These are discussed below also.

Policing by the Use of Private Security Personnel

Modern security and order maintenance is now undertaken on a daily basis by a host of private personnel, security operatives and other licensed and unlicensed officers. These people may be working for government agencies or government-owned enterprises, private security operations or private companies, and they all exercise some degree of enforceable power over others. Indeed, private providers alternative to public police, in terms of numbers of personnel and annual expenditures at the very least, now dominate the 'order maintenance' landscape in Australia, and many other nations as well¹². All of this is not particularly surprising, given that the publicly funded agents of order maintenance that were initiated and grew during the nineteenth century development of modern policing never really eradicated the private forms of policing that had preceded them.

The world market for private, contractual security and policing services grows rapidly¹³. There are now many public and private 'order maintenance' options readily taken up by public and private agencies and individuals alike. As Philip Stenning writes:

[I]t is now almost impossible to identify any function or responsibility of the public police which is not, somewhere and under some circumstances, assumed and performed by private police in democratic societies.¹⁴

10 Johnston, L. (1999), 'Private Policing: Uniformity and Diversity', in Mawby, R.I. (ed), *Policing across the World: Issues for the Twenty-first Century*, London: UCL Press, 226-238 at 232. One could note the creation of the Australian Protective Service as an example of the federal government joining the open market by creating a 'fee for service' body.

11 An allied question is the effect upon the relevance of the state in crime control, post-multi-lateralisation. It should be noted, says Kempa, that the state is still a powerful unit of political organisation. See Kempa, M. (2000), 'Thinking About Political Reform Through the Prism of Policing: A Review Essay of Les Johnston's Policing Britain: Risk, Security and Governance', *Policing and Society*, 10, 301-316 at 310.

12 Prenzler, T. and Sarre, R. (1998), 'Regulating Protective Security in Australia', *Trends and Issues in Crime and Criminal Justice*, No. 98, Australian Institute of Criminology.

13 It is predicted that the world market for private contracted security services will grow 8.4 per cent per annum until 2004 when it will approach the US\$100 billion threshold, refer "Private Security up 8% a year to 2004", *Security Australia*, March 2001, 6.

14 Stenning, P. (2000), 'Powers and Accountability of Private Police', *European Journal on Criminal Policy and Research*, 8(3), 325-352 at 328.

The dichotomy between “public” and “private” police and policing is no longer clear, if it ever was. Indeed, the distinction between public and private policing operatives and operations continues to blur irrevocably¹⁵. New terms have been coined to describe what is under observation, such as a ‘pluralisation’ of policing¹⁶, ‘hybrid policing’¹⁷, or ‘continuum of activity’¹⁸, a ‘security quilt’¹⁹, ‘parapolicing’²⁰, ‘greying’ of policing²¹, a ‘fragmentation of policing’²², and a ‘mixed economy’ of protection²³. Even the term ‘security personnel’ has lost some currency. Two researchers at least now refer to security operatives as ‘social control entrepreneurs’²⁴.

People and businesses more generally use private police personnel for a range of different reasons, both ideological and practical. Suspicions of government, profit, and vigilantism²⁵ feature amongst them. So pervasive is the mix today that policing theorists are moving beyond the public/private debate, preferring to review models of complementarity (“how would we like the future to look?”) rather than engaging in an ideological dialectic (“are the processes of privatisation effective and worthwhile?”). This theme has been reiterated by Brian Forst:

The great contemporary challenge confronting public safety ... is not primarily to decide whether privatization is a good thing. It is to find a way to shape and coordinate our resources and energies to secure the safety of those quarters of society that are least able to afford effective security, public or private. Wealthy communities can afford to take care of themselves both publicly and privately, and they do so. Poor people, especially minorities living in areas with the highest concentrations of crime, cannot. Sworn police officers must be made available in sufficient numbers and with effective systems of accountability to ensure that those areas are adequately served and protected²⁶.

Policing by State and Federal Administrators

In addition to those ‘policing’ officials who wear uniforms and exercise on behalf of their principals, there are child welfare officers, health and safety inspectors, parking officers, animal welfare officers and so forth who add much to the regulatory policing landscape. For example, ‘policing’ of family violence is carried out by child welfare counsellors through mandatory reporting regimes. Health and safety inspectors engage in ‘policing’ by enforcement of health and hygiene laws and educational tasks required thereunder. There are also many boards and agencies that combine judicial functions with inquisitorial and investigative ‘policing’ functions. These include tribunals responsible for ‘policing’ violations of sporting codes, and human rights and equal opportunity commissions responsible for the enforcement of, for example, anti-discrimination and racial vilification legislation. The Australian Competition and Consumer Commission (ACCC) and its State consumer protection counterparts (under fair trading legislation) are prominent agencies of

15 Themes explored in Sarre, R. (2000), ‘Issues of governance for 21st century policing and security: a theoretical overview’ *Police Practice and Research: An International Journal*, 1(2), 169-181; Sarre, R. and Prenzler, T. (2000), ‘The Relationship Between Police and Private Security: Models and Future Directions’, *International Journal of Comparative and Applied Criminal Justice*, 24(1), 91-113.

16 Bayley, D. and Shearing, C. (1996), ‘The Future of Policing’, *Law and Society Review*, 30, 585-606.

17 Johnston, L. (1992), *The Rebirth of Private Policing*. London: Routledge at 114.

18 Jones, T. and Newburn, T. (1998), *Private Security and Public Policing*, Oxford: Clarendon Press.

19 Ericson, R. and Haggerty, K. (1997), *Policing the Risk Society*, Toronto: University of Toronto Press.

20 Rigakos, G. (1999), ‘Hyperpanoptics as Commodity: the Case of the Parapolice’, *Canadian Journal of Sociology*, 24(3), 381-409. Note that this term is not the same as ‘paramilitary’ police which is a phenomenon that falls outside of the ambit of this paper.

21 Hoogenboom, R. (1991), ‘Grey Policing: A Theoretical Framework’, *Policing and Society*, 2, 17-30.

22 Johnston, L. (1999), ‘Private Policing: Uniformity and Diversity’, in Mawby, R.I. (ed), *Policing across the World: Issues for the Twenty-first Century*, London: UCL Press, 226-238 at 231.

23 Loader, I. (1997), ‘Private Security and the Demand for Protection in Contemporary Britain’, *Policing and Society*, 7(3), 143-162 at 147.

24 Nalla, M. and Kumar, K.S. (1999), ‘Social Control and Collective Regulation: Law enforcement and private policing in the 21st century’, Paper presented at the 6th International Police Executive Symposium, Hyderabad, India, July 1999.

25 Vigilantism is linked to private security in so far as it occurs as a response to the perceived shortcomings of the state provision of law and order. Unlike private security, vigilantes are independent of the state, loosely organised and sporadic in action, see Abrahams, R. (1998), *Vigilant Citizens*, Cambridge: Polity Press. Vigilantes include groups, like frontier terrorists, that security firms are routinely asked to detect and deter, thereby highlighting the inadequacy of any definition of private security that endeavours to include vigilantes.

26 Forst, B. and Manning, P.K. (1999), *The Privatization of Policing: Two Views*, Washington DC: Georgetown University Press at 40.

social control, responsible both for ‘policing’ fraud on consumers and ‘policing’ anti-competitive behaviour. State environmental protection agencies have responsibility for formal investigations and prosecutions. They have power to investigate and ‘police’ any activity likely to compromise environmental responsibility²⁷. Within their jurisdictions, many of these agencies now have considerable powers to enter property, seize evidence, give directives, require appearances and halt operations.

Policing by ‘Administrative’ Justice

As part of this trend towards ‘quasi-policing’, there has been, in the last decade in Australia, a conscious shift away from the systems of criminal justice towards private justice and ‘non-criminal’ outcomes²⁸. Those accused of breaches of environmental regulations or corporate laws, or charged with minor drug offences, taxation evasion and social welfare fraud, for example, are now more likely to receive a summons from an agency to whom responsibility has been delegated and face civil proceedings or an administrative tribunal than a criminal court²⁹. The corporations law³⁰ provisions now have corporate criminal provisions and corporate civil provisions³¹ that look very much alike³².

Policing by Specialist Policing Agencies

Budget and personnel figures indicate that most of the specialist policing agencies outside of the more recognised police services in Australia are relatively small, but significant players nevertheless on the regulatory landscape³³.

27 For example, Gunningham, N. and Sinclair, D. (1999), ‘Regulatory Pluralism: Designing Policy Mixes for Environmental Protection’, *Law and Policy*, 21, 49.

28 Sarre, R. (2001), ‘Alternatives to the Criminal Courts: Some considerations of civil and administrative options in the process of legal regulation’, *Caribbean Law Review*, 11(1), 25-38.

29 Matthews, R. (1989), ‘Privatization in Perspective’, in R. Matthews (ed), *Privatizing Criminal Justice*, London: Sage, 1-23; Gilligan, G., Bird, H. and Ramsay, I (1999), ‘The Efficacy of Civil Penalty Sanctions Under the Australian Corporations Law’, *Trends and Issues in Crime and Criminal Justice*, 136. Canberra: Australian Institute of Criminology; Buerger, M. and Mazerolle, L. (1998), ‘Third Party Policing: A theoretical analysis of an emerging trend’, *Justice Quarterly*, 15(2), 301-327.

30 *Corporations Act 2001* (Cth) came into operation 15 July 2001.

31 For example, in *ASC v Nomura International PLC* (1998) 29 ASCR 473, a stock market manipulation case, the Australian Securities Commission (ASC, now the Australian Securities and Investments Commission or ASIC) successfully ‘prosecuted’ Nomura using civil proceedings.

32 Tomasic, R. (2000), ‘Corporate Crime and its Regulation: Issues and Prospects’ in Chappell, D. and Wilson, P. (eds), *Crime and the Criminal Justice System in Australia: 2000 and Beyond*, Sydney: Butterworths, 259-270 at 264.

33 Prenzler, T. and Sarre, R. (2002), ‘The Policing Complex’ in Graycar, A. and Grabosky, P. (eds), *The Cambridge Handbook of Australian Criminology*, Melbourne: Cambridge University Press, 52-72.

Table 1 illustrates the length and breadth of these ‘regulatory’ bodies.

Table 1 - Composition of Specialist Public Sector Policing Agencies

Agency	Targets/functions	Jurisdiction	Personnel	Year established	Allocation/ expenditure
Protective Security Co-ordination Centre	Co-ordination of security for holders of high office, visiting dignitaries and diplomats	National	*72.0	1977	26,411,000
Australian Protective Service	Guarding Commonwealth property	National	*731.0	1984	61,166,731
National Crime Authority#	Organised criminal activity	National	410.0	1984	48,355,841
Australian Customs	Smuggling, illegal entry	National	4,043.0	1985	544,593,000
NSW Crime Commission	Organised crime, drug trafficking.	NSW	93.0	1986	9,432,000
Australian Securities and Investments Commission	White collar crime	National	1,225.0	1991	145,533,000
Queensland Crime & Misconduct Commission**	Organised and major crime & public sector misconduct	Queensland	**285.0	2001	**27,000,000
Australian Institute of Police Management	Executive education, policy input	National	26.0	1960	3,258,823
Australian Bureau of Criminal Intelligence#	Clearinghouse for criminal intelligence	National	66.0	1981	6,422,937
Australasian Centre for Police Research	Research assistance to police	Australasia	15.0	1983	1,277,783
AUSTRAC	Monitoring financial transactions, money laundering and fraud	National	49.0	1988	9,588,732
National Crime Statistics (ABS)	Crime statistics	National	5.0	1990	510,203
CRIM TRAC	Clearinghouse for forensic data	National	31.0	2000	8,006
National Institute of Forensic Science	Facilitate the use of forensic evidence	National	4.0	1991	1,060,074
Law Enforcement Co-ordination Division	Co-ordination of policing primarily at a policy level	National	*53.0	1997	8,072,000
WA Ombudsman	Public sector misconduct	WA	35.0	1972	2,294,000
Victorian Ombudsman	Public sector misconduct	Victoria	23.0	1973	2,776,018
NSW Ombudsman	Public sector misconduct	NSW	*91.5	1975	7,219,000
Commonwealth Ombudsman	Public sector misconduct	National	85.0	1976	8,667,925
Tasmanian Ombudsman	Public sector misconduct	Tasmania	21.0	1978	483,300
NT Ombudsman	Public sector misconduct	NT	13.0	1978	1,158,000
Police Complaints Authority	Police Misconduct	SA	*12.6	1985	925,930
Independent Commission Against Corruption	Public sector misconduct	NSW	146.0	1989	15,268,000
Police Integrity Commission	Police misconduct	NSW	93.0	1996	14,837,000
Anti-Corruption Commission	Public sector misconduct	WA	58.0	1996	10,270,958
Totals			7,699.1		\$956,369,261

Source: 1998/99 annual reports and Tim Prenzler’s personal correspondence with agencies. Found in Prenzler, T. and Sarre, R. (2002), ‘The Policing Complex’, in Graycar, A. and Grabosky, P. (eds), *The Cambridge Handbook of Australian Criminology*, Melbourne: Cambridge University Press, 52-72 at 55. Allocation/expenditure figures are the total revenue from government or expenditure for 1998/99. Where both figures were available, the highest figure is displayed. * Full time equivalent.

** A new body combining the Queensland Criminal Justice Commission and the Queensland Crime Commission, estimates from October 2001.

It was announced by the Justice Minister on 4 April 2002 that the NCA would amalgamate with the Australian Bureau of Criminal Intelligence to form an Australian Crime Commission, an issue that is currently being hotly debated.

Many of these organisations were created for the purpose, essentially, of combating corporate fraud and white collar crime. While their successes have been mixed, and while many have often been the subject of allegations of token enforcement and buck-passing³⁴, when added together they present a significant policing profile.

Policing by Intelligence Services and the Military

A case might be made for including the Australian Security Intelligence Organisation (ASIO) in this list, particularly given the introduction of legislation, in April 2002, by the Howard government to allow the holding of suspects wanted by ASIO for questioning on terrorism charges for forty-eight hours without representation³⁵. The *Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] (Cth)* is, at the time of writing, being explored by the Senate Legal and Constitutional Legislation Committee of the Australian Parliament.³⁶

The military, too, long associated with having provided the basis for the policing styles assumed by colonial Australia³⁷, assumed extra powers by virtue of the Sydney 2000 Olympic Games security. Almost 4,000 troops were deployed for the Games under the Defence Legislation Amendment (Aid to Civilian Authorities) Act 2000 (Cth) in order to counter terrorist threats. While State, Territory and Commonwealth governments have always had the power to request call-out of defence forces in Australia in situations of extreme emergency, this legislation was passed to ensure that the Commonwealth had a process in place should it need to protect its own interests while, at the same time, including safeguards and accountability mechanisms. The Act requires three ministers to be satisfied that police cannot deal with a situation before the military are called in³⁸.

Policing by Private Civil Action

Privately funded, non-governmental options have been recognised as important in the fight against crime, especially corporate crime³⁹. Moreover, there have been documented instances where victims of childhood sexual abuse have instituted their own actions for compensation, and succeeded against the perpetrators of the harm⁴⁰. Civil litigation, too, in the United States has had a significant effect in removing, from urban and suburban settings, much physical and social blight that has been identified as giving rise to criminal activity, an innovation referred to as 'third party

34 Grabosky, P. and Braithwaite, J. (1986), *Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies*, Melbourne: OUP, at 2.

35 "ASIO's new powers to hold suspects", *Adelaide Advertiser*, 19 December 2001, p 11. The legislation went before the Senate Legal and Constitutional Legislation Committee in April 2002.

36 Refer "Terrorism bills excessive according to Law Council", FindLaw Australia, 19 April 2002.

37 McCulloch, J. (2001), *Blue Army: Paramilitary Policing in Australia*, Carlton South: Melbourne University Press, at 34-44.

38 The new provisions authorise the use of the military where domestic violence is occurring or is likely to occur, and the relevant State or Territory is not able to protect Commonwealth interests against the domestic violence. See Ransley, J. 'Policing Public Order and Public Space: New Roles and Powers', an unpublished paper presented to ANZSOC conference, February 2002, Melbourne. There is no requirement for prior consultation with the government of the State or Territory, although once called out, the military are required to cooperate with the relevant police service. Commonwealth interests are not defined, but are likely to include enforcement of Commonwealth laws, and protection of property and persons connected with the Commonwealth. 'Domestic violence' is not defined, but seems to exclude foreign threats, and conduct that does not display some physical threat. The protection of States and Territories is also provided for. The relevant government must ask the Commonwealth for assistance. Defence forces are given extensive powers to search, seize, control movement and to use reasonable force in designated areas, but they must wear their uniforms and name badges while doing so. There is no requirement for warrants or arrest prior to detention.

39 Fisse, B. and Braithwaite, J. (1993), *Corporations, Crime and Accountability*, Melbourne: Cambridge University Press; discussed in Sarre, R. (2002) 'Responding to Corporate Collapses: is there a role for corporate social responsibility?' *Deakin Law Review*, 7(1), 1-19.

40 Laster, K. and Erez, E. (2000), 'The Oprah Dilemma: The Use and Abuse of Victims' in Chappell, D. and Wilson, P. (eds), *Crime and the Criminal Justice System in Australia: 2000 and Beyond*, Sydney: Butterworths, 240-258 at 253.

policing⁴¹. Carefully used civil remedies, for example, have had a significant impact in controlling the distribution and use of illicit drugs⁴² and empowering local neighbourhoods to ensure local authority compliance with regulatory standards⁴³. As Tomasic notes:

With the change in the nature of government and the increasing reliance upon non-governmental bodies to perform public functions, it is essential that regulatory action becomes more creative and is more broadly based so as to draw more effectively upon the strengths of the regulated as well as the regulator⁴⁴. (emphasis added)

Policing by Utilising a Network of Civil Institutions and Self-Policing

Michael Brogden and Clifford Shearing, in analysing the post-Apartheid period in South African history, proposed a 'dual model' of policing in which order maintenance networks are grounded primarily in local societies and only secondarily in the state itself⁴⁵. Clifford Shearing expresses the possibilities thus:

Once policing is seen as something that is, and can be, done by other institutions besides the South African Police, new possibilities for transformation become available. This approach, we argued, was well suited to South Africa where governance has not been the sole preserve of the state and where the struggle against apartheid has given rise to a vast network of popular policing initiatives. Whatever problems these initiatives might have, and certainly many questions can have been raised about them, the culture that has guided them has not been the culture of Afrikanerdom. These institutions of popular policing, we concluded, provided a basis for radically reforming policing. What is more, as these institutions already existed they could be mobilised relatively easily and quickly to bring about change. What was required to do this was a recognition that policing could be done through a network of civil institutions outside the state⁴⁶.

Indigenous communities, too, in some of the more remote areas of Australia have recognised the value of 'self-policing' models⁴⁷. Likewise, what are referred to as "community warden" or *Stadswacht* schemes have been introduced into a number of cities and towns in the United Kingdom⁴⁸ and Europe⁴⁹.

41 Buerger, M. and Mazerolle, L. (1998). 'Third Party Policing: A theoretical analysis of an emerging trend', *Justice Quarterly*, 15(2), 301-327.

42 Graycar, A., Nelson, D. and Palmer, M. (1999). 'Law Enforcement and Illicit Drug Control', *Trends and Issues in Crime and Criminal Justice*, 110. Canberra: Australian Institute of Criminology, citing Mazerolle, L. and Roehl, J. (eds) (1998). *Civil Remedies and Crime Prevention*, *Crime Prevention Studies*, volume 9, Monsey, NY: Criminal Justice Press.

43 Grabosky, P. (1995), 'Using non-governmental resources to foster regulatory compliance', *Governance* 8 (4), 527-550; Grabosky, P. (1996), 'The Future of Crime Control', *Trends and Issues in Crime and Criminal Justice*, 63. Canberra: Australian Institute of Criminology; Grabosky, P. (1999). 'The Future of Crime Control', unpublished paper presented to the *National Outlook Conference*, 23 March 1999, Canberra: Australian Institute of Criminology.

44 Tomasic, R. (2000), 'Evaluating Corporate Law Enforcement and Corporate Regulation in Australia', unpublished paper presented to the 2000 ALTA Conference, University of Canberra, ACT, at p 13.

45 Brogden, M. and Shearing, C.D. (1993), *Policing for a New South Africa*, London: Routledge.

46 Shearing, C. (1995), 'Transforming the Culture of Policing: Thoughts from South Africa', *Australian and New Zealand Journal of Criminology*, Special Issue, 54-61 at 58.

47 Blagg, H. and Valuri, G. (2002), 'Profiling Night Patrol Services in Australia', Report of a research project for National Crime Prevention and ATSIC; Tangentyere Council 2001, Report to the Office of the Status of Women, Department of the Prime Minister and Cabinet, National Indigenous Family Violence Grants Programme, Alice Springs: Tangentyere Council Remote Area Night Patrol.

48 Stockdale, J.E., Whitehead, C.M. and Gresham, P.J. (2001), *Neighbourhood Wardens: An Evaluation of Selected Schemes*. Police Research Series Paper 145, London: HMSO, referred to in Blagg and Valuri (op cit).

49 Hauber, A., Hofstra, L., Toomvliet, L. and Zandbergen, A. (1996), 'Some New Forms of Functional Social Control in The Netherlands and Their Effects', *British Journal of Criminology*, 36, 199-219, referred to in Blagg and Valuri (op cit).

Policing by Consensually-Based Control

Clifford Shearing and Philip Stenning have encountered a policing phenomenon they describe as the 'Disney Order', a unique form of policing not perceptible to the naked eye. Consensually-based control is a pervasive style of social control that is enforced through the mind-set of staff who are employed for a range of functions, but whose security function pervades everything that they do.⁵⁰ In a business 'environment', one can expand the realms of traditional policing to include staff members who engage in surveillance activities from behind innocuous guises such as street sweepers and entertainers.

The Challenges Ahead: Discussion

What is described above are the variations on the policing theme now manifest in modern societies. While private security personnel make up the most overt of these 'groups', the other manifestations add to a policing 'quilt' that is as broad as it is diverse. It is a trend that is set to continue and expand.

This is not to say that some commentators have not voiced their concerns about pluralised regulatory trends. Les Johnston is concerned about the possibility of an excessive amount of exclusionary and un-coordinated policing in the future. He maintains that the key issue for policing in the twenty-first century will be about governing and managing increasing diversity, and asks

How ... are fragmented policing systems to be governed so as to maximize democratic accountability, justice and effectiveness?⁵¹

The challenge for governments, says Johnston, is "how to incorporate autonomous citizens so that their actions do not degenerate into arbitrary violence and injustice"⁵². Ian Loader echoes this theme in the context, more specifically, of private security firms and personnel:

It seems plausible to suggest ... that if the commodification of security continues apace, it will be affluent, residential areas which will benefit, leaving impoverished, crime-blighted communities ever more vulnerable. One all too foreseeable consequence of the current mushrooming of private security will be a deepening of prevailing social and spatial inequalities in the distribution of criminal victimization.⁵³

Mark Findlay *et al* express their concerns too, thus:

The explosion of private security services now largely dominates the protection of corporate private property. ... Certain new investigation and prosecution agencies, with enhanced powers and unfettered by protections of due process, operate in ways which do not recognise the traditional sequences of criminal justice.⁵⁴

In other words, policy makers should be exploring ways of encouraging diverse forms of policing, but, at the same time, ensuring that they keep human rights and accountability issues to the fore.

[W]e need to develop the idea that security is a public good, available to all citizens within a political community on account simply of their membership of that community.⁵⁵

⁵⁰ Shearing, C. and Stenning, P. (1987), 'Say "Cheese!" The Disney Order That is Not So Mickey Mouse' in Shearing, C. and Stenning, P. (eds), *Private Policing*, Newbury Park, CA: Sage.

⁵¹ Johnston, L. (1999), 'Private Policing: Uniformity and Diversity', in Mawby, R.I. (ed), *Policing across the World: Issues for the Twenty-first Century*, London: UCL Press, 226-238 at 236.

⁵² Johnston, L. (2000), *Policing Britain: Risk, Security and Governance*, Harlow: Pearson Education Limited at 146.

⁵³ Loader, I. (1997), 'Private Security and the Demand for Protection in Contemporary Britain', *Policing and Society*, 7(3), 143-162 at 158. For example, are those who defend their privacy through private means discouraging principles of democratic participation and social integration?

⁵⁴ Findlay, M., Odgers, S. and Yeo, S. (1999), *Australian Criminal Justice*, 2nd edition, South Melbourne: OUP, at 76.

⁵⁵ Loader, I. (1997), 'Private Security and the Demand for Protection in Contemporary Britain', *Policing and Society*, 7(3), 143-162, citing Walzer, M. (1983), *Spheres of Justice: A Defense of Pluralism and Equality*, Oxford: Martin Robertson. Emphasis in the original.

For example, there is a suspicion amongst some commentators of the forms and powers of what may appear to some to be a surfeit of specialised agencies like those referred to above, with a consequence of inconsistencies, anomalies and lack of visibility in practice.

Their existence and operation have confirmed a re-emphasis of control commitment ... towards [images] with the far greater potential to undermine economic stability and democratic freedoms.⁵⁶

Is there a way through all of this? David Bayley and Clifford Shearing⁵⁷ argue that it is possible for states and communities to adopt and adapt these new forms of private policing and quasi-policing, including privatised and diversified models of civil and administrative justice, but only if two key tenets remain in place. These two tenets are, firstly, if governments can ensure the ability of poorer communities to sustain self-governing, self-policing initiatives, and, secondly, if there is a renewed commitment to community-based responses within public policing. If community policing can remain well entrenched, they say, governments can concentrate upon developing the self-disciplining and crime-preventative capacity of poor, high crime neighbourhoods.

This requires government not only to reform the police but to redistribute political power with respect to one of the core functions of government. This is a lot to ask, because, faced with shortcomings in public safety, governments will be tempted to enhance directiveness rather than encourage devolution ... Fortunately ... there seems to be a growing realization in democratic, individualistic societies that in order to create a more humane, safe, and civil society, government must be reinvented, specifically, that grassroots communities must be made responsible for central aspects of governance. The rethinking of security that our proposals require is consistent with this rethinking of governance. Restructuring is a problem that may contain the seeds of its own solution⁵⁸.

Conclusion

We live in an era of public and private regulatory flux⁵⁹. The upshot of this is a society in which policing is now conducted not just by those people commonly referred to as 'the police' but by a host of private and non-government operatives who use a range of empowerment tools and resources at their disposal, not just the criminal law. This trend is set to continue. We must remain committed to observing and monitoring these trends. In considering the public policy ramifications of diverse policing models and an expansion of surveillance, one should remain mindful of the dictum⁶⁰ that society should strive for those outcomes that deliver the greatest overall freedom for the public as a whole. The freedom from anti-social conduct that we all desire should not come at any price.

56 Findlay, M., Odgers, S. and Yeo, S. (1999), *Australian Criminal Justice*, 2nd edition, South Melbourne: OUP at 96.

57 Bayley, D. and Shearing, C. (1996), 'The Future of Policing', *Law and Society Review*, 30, 585-606.

58 Ibid at 604-605.

59 Ayres, I. and Braithwaite, J. (1992), *Responsive Regulation: Transcending the Deregulation Debate*, New York: OUP, at 14.

60 Braithwaite, J. and Pettit, P. (1990), *Not Just Deserts: A Republican Theory of Criminal Justice*, Oxford: OUP.