

Recommendations for a Hybridized Public Private Law Enforcement

Approach

Approved: Cheryl Banachowski-Fuller **3/28/2019**

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Acknowledgments

Pursuing a Master's Degree was a big step for me and could not have been possible without the never-ending support from my wife, Charissa. She cleared the way for me around a busy home to have the quiet time I needed to focus on this immense achievement, and I am forever grateful.

The faculty and staff of UW-Platteville have been supportive the whole way, and special thanks goes to Dr. Susan Hilal for the guidance, and especially encouragement, that was crucial in seeing this through.

Abstract

Purpose

The purpose of this study is to explore the use of privatized entities within the law enforcement sector, primarily focusing on the United States, but with a cursory look at similar practices worldwide. The study examines particular obstacles such as constitutional issues, costs, recruitment deficits, and training/standards necessary for implementation, and how those are overcome in its implementation. This study also looks at various privatization models within comparable institutions to see what could work in law enforcement and identify best practices from other sectors, like the military, that have used private entities to deliver some of its law enforcement services.

Methods

Information for this study came from a review of secondary sources. These sources were from accredited journals, textbooks, agency websites, and government reports. The significant components of the private and government law enforcement partnerships that are identified through this research were compared to determine if similarities exist among the successful (and unsuccessful) attempts. An additional examination of the constitutional and statutory boundaries that shape the law enforcement mission were evaluated to determine the left and right limits to these propositions. Ultimately, this examination resulted in a proposed model of the use of private agencies within the law enforcement field.

Key Findings

This paper concludes that a hybrid system of both public and private law enforcement is not only feasible, but already implemented successfully, elsewhere around the country. The use of private law enforcement, whether they are labelled private police, special police, security guards, or company police, has been implemented at varying stages within many states, and operate as an integral part of that jurisdiction's law enforcement efforts. A recommendation is made to close the distance between public and private law enforcement in terms of training, professionalism, and accountability in order to successfully transition the law enforcement arm of the criminal justice system into a blended landscape that best serves the public.

Table of Contents

Acknowledgments.....	ii
Abstract.....	iii
Purpose	iii
Methods.....	iii
Key Findings	iv
Table of Contents.....	v
Section I. Introduction	1
Statement of Problem.....	1
Purpose of Research	3
Significance or Implications of the Study.....	3
Methods.....	4
Limitations.....	4
Section II. Review of Literature.....	5
The Role of Private Law Enforcement.....	6
The Use of Privatized Law Enforcement in the US.....	6
Training and Performance Standards in Private Law Enforcement.....	9
Federal and State Law.....	11
The Decline of Public Law Enforcement	14
Examples of Privatized Law Enforcement Models.....	15
A Hybrid Model of Law Enforcement.....	17
The Drawbacks of Private Law Enforcement	19
The Advantages of Private Law Enforcement.....	21
Section III. Recommendations	23
A Recommendation for a Hybrid System of Public and Private Law Enforcement	23
Creating Training and Performance Standards.....	25
A Recommendation for Implementation.....	27
Section IV. Summary and Conclusion	31
Section V. References	33

A HYBRIDIZED LAW ENFORCEMENT APPROACH WITHIN THE CRIMINAL JUSTICE SYSTEM

Section I. Introduction

Statement of Problem

The criminal justice system in the United States, due to its sheer size and scope, is often cumbersome and performs an expansive and costly governmental task within society. Consequently, these expenses are sometimes incurred by cities and towns that are unable to sustain such costs. As such, some of the smaller municipal and rural departments end up dissolving and the larger agencies nearby are asked to assume those law enforcement duties. This is occurring more and more frequently, as seen in small towns such as Varnell, GA where they want a “bigger bang for their buck” so are funneling the money into other governmental functions instead of paying for a local police force (Whitfield, 2017). Manganas (2016) reported that over half of Pennsylvania’s municipalities are covered by Pennsylvania State Police due to a steady disbanding of small departments over the years. The fact that law enforcement capabilities are not always within the fiduciary range for certain municipalities speaks to the importance of being able to successfully outsource some, if not all, of these responsibilities.

One survey revealed that seventy five percent of Americans are on board with a complete overhaul of the criminal justice system, due to its perceived ineffectiveness (Simmons, 2007). One solution offered is the inclusion of privatized entities within the government that can assist with certain aspects of the overall mission of law enforcement. This blend of private companies and governmental agencies could assist in the economic quandary that a large governmental agency may incur. Coupled with the fact that private security is “expanding throughout the

globe”, there is a large population of privatized officers that could be sourced to assist in effecting solution (Ruddell, Thomas, & Patten, 2011, p. 66).

Arguments supporting the use of private agencies in concert with the government include things such as more financial independence and allocation, a decreased liability in terms of constitutional guidelines (they do not act as government agents), and private agencies are not bogged down in their decision-making by bureaucratic processes. The most common argument, however, tends to revolve primarily around the cost savings that would accompany relinquishing such an expensive endeavor. This is due in large part to the fact that the overall costs for hiring a privately contracted officer is dramatically less. Rahall (2014) explains that private security earns approximately 47% less than their public counterpart.

Arguments against this model point out that giving a private corporation that much power and responsibility could easily get out of hand and be extremely difficult to keep in check. Further, hiring outside private agencies would bring in individuals who would be unfamiliar with the area and people they are keeping safe (Rahall, 2014). Benish (2014) cautions that contracting certain services to private entities is not just a matter of buying their services, but also enlisting their corporate “logic” and “ethos” in the governmental charge. Tsimis (2012) argues that even the limited participation of privatized agents in civil judicial matters is a minefield of constitutional failings and is ultimately doomed to fail.

Lastly, those that argue against these types of arrangements do so on the grounds that there is a lack of continuity when multiple contracts are inevitably awarded over a period of time. It is also pointed out that a government agent, while performing law enforcement, acts as the representative for the government as the bearer of the laws in which they enforce. One could

argue that a private entity would not be acting in the interests of the government but merely as a private-sector employee. (Forst & Manning, 1999)

Purpose of Research

The purpose of this study is to explore the use of privatized entities within the law enforcement sector, primarily focusing on the United States, but with a cursory look at similar practices worldwide. The study will examine particular obstacles such as constitutional issues, costs, recruitment deficits, and training/standards necessary for implementation, and how those are overcome in its implementation. This study will also look at various privatization models within comparable institutions to see what could work in law enforcement and identify best practices from other sectors, like the military, that have used private entities to deliver some of its law enforcement services.

Significance or Implications of the Study

The significance of this research will be in addressing the workability and constitutionality of this merging of two entities and uncovering the scope of the privatized efforts in the law enforcement arm of the justice system. Through analyses of law enforcement agencies and their partnerships with private organizations, this study could be used to develop and/or identify a collaboration of the two that is efficient, legally sound, and replicable. There are some facets within the broad topic of privatization which may be found to be currently beneficial to the taxpayer, such as in corrections, but privatized companies operating within the law enforcement role could be a fairly new beneficial contribution to current research, as well as providing an impetus for future examination.

This study provides a recommendation for the use of private entities to help augment the law enforcement mission that serves the American citizenry. It develops a foundation for

creating a well-balanced law enforcement effort, while allowing for flexibility when having to staff those efforts. The recommendation could be used as a way forward, especially for areas that have difficulty in affording the necessary resources or maintaining proper staffing of sworn police officers.

Methods

Information for this study came from a review of secondary sources. These sources were from accredited journals, textbooks, agency websites, and government reports. The significant components of the private and government law enforcement partnerships that are identified through this research were compared to determine if similarities exist among the successful (and unsuccessful) attempts. An additional examination of the constitutional and statutory boundaries that shape the law enforcement mission were evaluated to determine the left and right limits to these propositions. Ultimately, this examination resulted in a proposed model of the use of private agencies within the law enforcement field.

Limitations

This research was limited to the amount of information publicly available. Additionally, the issue of private versus public law enforcement is not one that is isolated to the United States, but is a matter that is addressed worldwide. This means that much of the material gathered represented research and assessments on the same topic, but from the perspective of a different nation and its respective laws and cultures. The research that was conducted involving law enforcement in other countries was taken with that carefulness in mind, and the shared concepts were drawn and inferred for use in American law enforcement.

Section II. Review of Literature

The following literature review is divided into five parts. It begins with the history of the use of privatized law enforcement, up to its current status nationwide. The next part addresses the overall role that private law enforcement plays in the criminal justice landscape, particularly in law enforcement. It is followed by a look at the federal statutes and judicial mandates that shape those uses and roles that privatized companies play in law enforcement. Next, the decline and dissolution of many local law enforcement agencies are explored. Finally, examples of privatized law enforcement are highlighted to show where this private inclusion is being used today.

It is important to establish, for purposes of this research, the definition of privatized law enforcement. Throughout this paper there will be references to private police and private law enforcement. These references are made to include any privately-operated agency that performs a function that is within the scope of law enforcement. This can vary along the law enforcement continuum, from unarmed private security that is only concerned with loss prevention for a retail store, to private police that are essentially given the full array of police powers while under the employment of that company, and within its territorial jurisdiction.

The different jobs and functions that private law enforcement hold are often seen as mall security guards, railroad police, campus police, private detectives, concert venue security guards, and guards hired to protect assets and/or property. All of these jobs carry with them a different mission, depending on the importance that their employer places on specific tasks. However, all of these tasks that are performed fall under the large purview of law enforcement as a whole, thereby making them law enforcement for the purposes of this research.

The Role of Private Law Enforcement

One of the most significant differences between public and private security is in their functions as they presently exist. The primary role of private security is to “prevent crime and reduce disorder”, while public law enforcement is tasked to enforce a wide array of laws along with the usual mandate of serving the public and keeping the peace (Ruddell, Thomas, & Patten, 2011, p. 56).

Ruddell et al. (2011) state that private security is not bound by constitutional restrictions, therefore alleviating them from any legal compulsion or obligation to act in the presence of a crime. Simmons (2007) uses the example of a Macy’s Department Store which employs loss prevention officers. These security guards can stop and search suspected shoplifters without probable cause or consent, the very basis that dictates the actions of public law enforcement. These security officers are protecting the assets of their employer, but by doing so, are also enforcing shoplifting laws. This duality creates a role which can sometimes be difficult for the government to regulate and standardize since they are privatized corporations yet serving a governmental function. This can be further muddied by the arrest powers that are bestowed upon public police but are only given to private police as a detainment of an offender until those with governmental arrest powers can intervene.

The Use of Privatized Law Enforcement in the US

The heyday of what would be considered private criminal justice during modern times in the United States probably gained the most attention in the American frontier West in the 19th century. These vigilantes and hired guns meted out justice well outside the confines of the laws that governed the land at the time, and operated at the behest of private citizens and towns who paid for their services (Little & Sheffield, 1983).

The transition from private law enforcement to a public model began long before the time of posse's and six-shooters, however, and can be traced to the latter part of the 17th century and into the 18th century. The larger towns in the Northeastern United States, like Boston and New York, employed constables who were controlled by the local governments. These constables would patrol a neighborhood during the day, and designate night watchmen to do the same during the hours of darkness. The line became fuzzy between the constables and the "hired help" they could enlist, since the watchmen were not directly controlled by the government but were merely an opportunistic choice sometimes made on the grounds that no one else wanted to do the dangerous work (Rahall, 2014).

By the mid-19th century, many of the major cities in the United States had completely transformed their police forces into public agencies, and by the beginning of the 20th century almost all of them had followed suit. Congress attempted to curb some of the private participation in law enforcement by implementing the Anti-Pinkerton Act in 1893, but most pundits argued that it did very little to draw definitive lines while attempting to address the issue (Rahall, 2014).

In 1878, Congress passed the Posse Comitatus Act (PCA) which prohibited the United States military from intervening in the civilian execution of codified law. This stemmed from the Reconstruction Era after the Civil War, when federal troops were called upon to guard polling stations to prevent intimidation and violence from interfering with minorities, who wished to exercise their new right to vote (Dougherty, 2008).

Congress passed the Military Cooperation with Law Enforcement Act (MCLEA) in 1981, which broadened the role that the military could play while assisting local law enforcement. Unfortunately, this was codified under a different part of the United States Code, and often

conflicts with the existing PCA (Nevitt, 2014). This ambiguousness in the law keeps the military separate from most law enforcement efforts as an attempt to remain within those limits. One example of this is in the case of Navy boats that interdict on open water for things like drugs and illegal immigration. Because the Navy falls into the PCA military restriction, they are only allowed to assist with resources and not take any tangible action to that end. This requires the Coast Guard, who is “free from any PCA restrictions”, to have a representative on board who can apply those actions (Nevitt, 2014).

Mohseny and Jalilzadeh (2017) explain that the 1970’s saw a resurgence of public law enforcement and marked the era in which, for the first and last time, they outnumbered their private counterparts in the United States. That period was short-lived and since the 1980’s, private companies have gradually regained their prominent role in law enforcement, specifically in the task of crime prevention and control, and this resurgence is based primarily on a population boom coupled with an economic decline. The Reagan and Bush administrations are considered the “pioneers” of these most recent privatization trends during this time period, which has continued into present day.

By the year 2014, over 1.05 million people in the United States were employed as private police (Heaton, Hunt, Macdonald, & Saunders, 2016). In fact, the privatized presence has increased so dramatically that a 2007 study found that they outnumbered public law enforcement in the top 300 most densely populated cities in the United States. This suggests that, in terms of the broad law enforcement function, private agencies “dominate” that arena when it comes to sheer numbers (Simmons, 2007). Even when argued that they may serve a purpose that is varied from that of the public police within those cities, it is still evident that they contribute, at the very least, to a second side of the same coin (Ruddell, Thomas, & Patten, 2011).

One of the largest and most common examples of private police are campus police officers. These police forces are employed throughout the country, some universities retaining more than 300 officers to maintain the workload. Some states such as Minnesota and New York require their campus police to be fully sworn officers who are public employees, but others hire a private firm to fill this need. While those police officers are inherently private, they fall closer in the law enforcement continuum to public law enforcement officers than what would be considered a private security guard. This is because a large majority of these departments are accredited agencies with equally high standards and training as their public counterparts (Heaton, et al., 2016).

One such case is the University of Chicago, who established their own police department, the University of Chicago Police Department (UCPD), in the 1960's and it has grown to the point where today the force patrols 6 ½ miles surrounding the university to include housing areas, commercial areas, and residential neighborhoods. They expanded their jurisdiction after consulting the Uniform Crime Report (UCR) and determining that crime just outside the school's boundaries were directly impacting the safety of its students and staff. The officers undergo extensive pre-screening, training, and certification that is consistent with the Peace Officer Training and Standards (POST) certification for the state of Illinois, to include training at the Chicago Police Academy, but they ultimately defer to CPD officers when they arrive on a scene since they are not POST certified (Heaton, et al., 2016).

Training and Performance Standards in Private Law Enforcement

Post-9/11 America, and its heightened security, has brought with it a more powerful need for all actors in the law enforcement field, both private and public, to be thoroughly vetted and trained (Bowman, 2003). One related issue that private security is confronted with is the biases

that exist from outside perspectives with regards to their skills, abilities, and professionalism. Commonplace terms such as “renta-cops”, “wannabes”, and “guards” form derogatory foundations which can be difficult to overcome when the opportunities to change public perception are rare, due to their limited overall function in the law enforcement realm (Ruddell, Thomas, & Patten, 2011).

A big step that private security firms take is the creation of departmental policies that mirror their public counterparts. One of the leading private companies that offers policy-making and training to law enforcement is Lexipol. They are responsible for much of the policies created around the country and have contributed to approximately 95% of the law enforcement agencies in California alone (Eagly & Schwartz, 2018). Although they contribute policy manuals mostly to public agencies, they are a private endeavor and the fact that each policy they provide is copyrighted is more evidence to that fact. Each police department that employs Lexipol’s services can also subscribe to their Daily Training Bulletins (DTB) as well as any updates to their existing policies. There are many other agencies like International Association of Chiefs of Police (IACP) and state-level POST boards that could assist private agencies in obtaining policies that closely match the standards of public police departments.

In addition to policies, private law enforcement benefits from accreditation in order to give their officers more official standing within their role. Accreditation is a fairly new process, and the push for accreditation in public law enforcement first began in the 1970’s due to an increased campaign by the IACP. This was because the era leading up to that time was rife with perceived (and real) police misconduct, among other things, which damaged the public trust, especially in the minority communities. By 1979, the Commission on Accreditation for Law Enforcement Agencies (CALEA) established the first standards that would shape the modern

police force in the United States. CALEA accredited the first agency in 1984 and has since been joined by other associations that accredit law enforcement agencies (Bowman, 2003).

The attempts to evaluate and address these same training standards and accreditation for private security guards began around the same time in 1977, when the National Advisory Committee created the first private security task force report. This task force identified 80 different goals and standards but was only able to advise that those standards be implemented across the board. It was not until decades later when states began to pass legislation that established minimum standards for their private police.

With a similar goal in the construction of the IACP, the security industry founded the International Association of Security and Investigative Regulators (IASIR) to help regulate and standardize practices in that particular industry (Bowman, 2003). This organization has now grown to include 32 regulatory agencies in the United States and abroad with the goal of accrediting and standardizing the private law enforcement industry (IASIR, 2019).

Federal and State Law

There must be a distinction between a private actor performing law enforcement duties *on behalf* of the government, and someone performing law enforcement duties voluntarily outside of the purview and direction of the state. This is an important distinction because the former, albeit a private entity, would still be subject to the constitutional restrictions as a police officer (i.e. Fourth Amendment rights), while the latter would fall under the “private search” rule and would not be held to those standards (Brennan-Marquez, 2016).

While actions by private police may sometimes operate outside the confines of the law, that is not always the case. The Supreme Court, in the landmark *Civil Rights Cases*, 109 U.S. 3

(1883), created the State Action Doctrine when arguing a case of the government impeding on privately-owned businesses. This State Action Doctrine evolved over time to become the primary means by which private law enforcement is measured against its public counterpart (Harvard Law Review, 2010).

The State Action Doctrine was applied in this manner for the first time in 1946 when the Supreme Court ruled that private law enforcement was seen as an extension of public law enforcement in *Marsh v. Alabama*. The coastal town of Chickasaw, Alabama was owned by a shipbuilding corporation, when a visiting Jehovah's Witness attempted to solicit religious materials to the residents while standing near the town's post office. The town asked her to leave and then refused to give her the required license for solicitation, arguing that they had the right to refuse based on the town being private property. The solicitor, Grace Marsh, refused to leave and the town's police force, privately owned and operated, arrested and charged her with trespassing. The Supreme Court was given the task of determining her constitutional rights when weighed against the private property rights of the corporation. They determined that because the town, though privately owned, was open to the public its occupants were afforded the same constitutional rights as any other municipality (*Marsh v. Alabama*, 1945).

This example, when viewed through the Supreme Court decision, focused more on the Fourteenth Amendment rights of the individual and the private property rights of the corporation. However, the case also presented the issue of private police acting on behalf of the public. The Court found that even though the private security was not hired or employed by the government, it performed duties normally done by public officials, and the services themselves were public in nature. Because of this, the security force was determined to be "state actors", and therefore subject to the same legal standards as public police (Rahall, 2014).

The State Action Doctrine has been interpreted by the Supreme Court to be a three-pronged test: 1.) how much does the private actor depend on governmental support, 2.) is the actor performing something that is traditionally governmental, and 3.) are the injurious outcomes aggravated by governmental authority. From the surface, this appears to make it simple when determining the actions of private police, but as Simmons (2007) points out, this test makes it nearly impossible to distinguish between private law enforcement and a private citizen when they are essentially performing the same actions.

This doctrine was again put to the test when it was reviewed by the Ohio Supreme Court in *State v. Banaszak* (2014). After careful review of the three prongs when applied to campus police, it was determined that a private university's police department, though a private subdivision of the university, was considered a public office under the State Action doctrine (Willits, 2016).

In addition to federal laws, some states have decided to take on the task of codifying private police powers, comparable to those that a sworn police officer may possess. This has been prominent in North Carolina where Chapter 74E of the North Carolina General Statutes, The Company Police Act, created laws that set standards for privatized police. This was designed to “ensure a minimum level of integrity, proficiency, and competence” among all those given the job of law enforcement regardless if they were paid by the taxpayer or a corporation (Stein, 2013, p. 3). Places like railroads and shopping centers can hire a security firm to perform law enforcement, and once those officers meet the criteria under the Company Police Act, are given almost identical powers as that of the public law enforcement officers employed by the state. They can make arrests, issue citations, serve summons, and warrants, and use deadly force when necessary.

The restriction placed on these company police officers is that they can do so *only* within their “strict territorial jurisdiction limitations” (p. 2). This means that while outside of the property of whom they are employed, they no longer possess any police powers. South Carolina, for example, allows private police to be hired by a public school district as long as they are appropriately certified by their laws, and they retain the same powers as that of a sworn deputy while on school property. If the same school district were to hire a School Resource Officer (SRO), that officer would possess statewide jurisdiction as a sworn public police officer and carries those police powers outside of the school property. In either case, that officer would possess the capabilities to perform their duties while at the school, and many times the private officer is therefore found to be a more efficient hiring decision.

The Decline of Public Law Enforcement

The financial burden of maintaining a police force is becoming increasingly difficult in the United States, especially in smaller towns and rural counties. Wilkesburg, PA is one example where consolidating governmental efforts is a continual task because of the diminishing incomes and revenues. Because the police department is one of the largest expenditures for the community, it was the first to be looked at when determining the cost savings to disband the department (Manganas, 2016).

The costs for employing a single police officer, not to mention an entire autonomous department, can easily exceed the revenues available to these smaller communities. Bill Johnson, the Executive Director of the National Association of Police Organizations, states that a police officer on average will cost a municipality \$100,000 per year, not including the costs of vehicles and overall upkeep. Those costs, when deferred, can certainly alleviate some of the financial

strain, but can add an additional issue in the form of a power struggle between the municipality and its newly outsourced police department (Mentock, 2018).

Sometimes the dire economic circumstances of a community can drive these decisions with little or no notice. The town of Garden City, MO had its police force disbanded with virtually no warning, and the Cass County Sheriff's Office took over the law enforcement coverage, displacing the 7 officers employed by the town (Rosenberg, 2018). Other times, these decisions are made after a long grueling process by the municipality. Brooksville, FL voted to disband its police department after years of deliberation, in a move to save the city a net cost of almost \$2 million annually. They also relinquished their law enforcement coverage to the county (Behrendt, 2018).

Not all towns have been successful in their attempts to disband their local law enforcement. This has been primarily because of the pushback by either the community or police unions, even though the decisions themselves are made to help alleviate financial strain. For example, Foley, Minnesota attempted to replace their police force by implementing a 2-phased plan. They first outsourced the local police force to the county sheriff's office, and then later made a bid to turn that role over to a private firm. The town proper became so concerned about these drastic steps that the entire plan was scrapped and reversed to its original model, where the local police force was ultimately reinstated. A similar attempt was made in a downtown district of Chicago but was eventually abandoned when the police union intervened (Rahall, 2014).

Examples of Privatized Law Enforcement Models

There are many instances in the United States where a law enforcement function is performed by a privatized agent, but often their scope can be very narrow (Rahall, 2014). These include malls, concerts, department stores, and other similar venues where private security firms

are tasked with keeping the peace and enforcing laws like shoplifting, disorderly conduct, and assault. While their scope and reach within the criminal justice system may not always extend to that of their public counterpart (i.e. arrest powers, incarcerating offenders, authorized use of deadly force), they nevertheless are given the purpose of enforcing certain rules of conduct codified by their respective government(s).

One common example of bringing in privatized participation in law enforcement is the implementation of traffic cameras to enforce moving violations. Mercer (2012) points out that municipalities around the country have outsourced the task of observing and citing traffic offenders in an effort to save money and streamline the traffic court system. While these incidents have created a stir, and even some lawsuits, as to the state's ability to pass this task on to a third-party actor, it has largely remained a simple yet effective way of hybridizing law enforcement in a high traffic area without having to dedicate an officer to a specific intersection.

The use of privatization within the broad criminal justice system has gained much attention in the field of corrections. Jails and prisons around the country have investigated the use of privatized firms in the erection and operation of their correctional facilities, and some have even made the move to privatization. In 2006, 7% of incarcerated individuals in America were housed in private prisons or jails, and the number has increased ever since (Kish & Lipton, 2013).

Some of the reasons for this departure from publicly run facilities are the same that are seen in law enforcement, specifically the cost savings. These savings are seen in lower operating costs, more efficient procurement, and cheaper facility build projects. Although there is some disagreement as to the accuracy of assessing the true expenditures and savings of privately-run prisons, it has nevertheless been a growing trend in the United States (Kish & Lipton, 2013).

A Hybrid Model of Law Enforcement

The need for a partnership between private and public law enforcement is a long-standing one, but the concept usually is viewed as the two entities maintaining their own “lanes” while at the same time keeping the relationships close between the two. It has also been recognized as a successful approach to further reducing and preventing crime (Bowman, 2003). This segregation is not unlike the relationship within public law enforcement, when viewed laterally among the different levels of jurisdiction (i.e. state, federal, county, and municipal).

Barker (2018, p.9) explains that the biggest hurdle in creating a successful hybrid system is reconciling “complex moral, economic, and social objectives within a linked network of distinct law enforcement systems”. This alludes to the fact that once the actors within this system all derive from different (and sometimes competing) sources and objectives, it scatters the perceived singularity that exists in the public model.

Simmons (2007) argues that the ideal hybrid model for law enforcement is one where private agencies are the “predominant” actors, but revolve around, and are supported by a “robust” public police force. He further states that a move towards privatization in the criminal justice field is a move away from the punitive ideology that currently exists, and embraces a more “victim-centered” approach because it is not obligated to the systemic trends in the current criminal justice system. This does not suggest that the public mandate be replaced entirely, but that a combination of the two can find a tempered middle ground (p. 911).

Kahan (1999) suggests that fully replacing public law enforcement would be unwise, but that efforts should be made for private entities to *participate* in law enforcement efforts. He points out that inner-city churches that serve minority communities are in a great position to aid law enforcement due to the fact that they are “moral authorities” among their patronage as well

as being major stakeholders in the areas that experience high levels of crime. The use of private security in residential neighborhoods can have a “meaningful impact” on the reduction of crime over the long-term (Heaton, et al., 2016).

Sometimes businesses are the driving force behind private law enforcement being brought in to help augment the workload of the existing police force. Los Angeles business owners consolidated and agreed to pay a monthly fee in order to hire a private security firm that would patrol the neighborhood (Simmons, 2007). These efforts resulted in a significant reduction in crime, and has been replicated in other neighborhoods like Oakland, Atlanta, and Detroit (Stein, 2013).

This hybrid system of public and private entities within the criminal justice system exists in other areas beyond law enforcement. Barker (2018) states that the “classic example” of a hybrid system in the United States is seen in the realm of competition law, where the public laws are enforced by private regulatory parties. This hybrid system, although it fits this study’s definition of partnering public and private interests, is a poor example from a practical sense. This is because the *enforcement* of competition laws falls more in the administrative and economic realm and does not fit snugly enough into the criminal law enforcement sphere that is primarily addressed here. Nevertheless, this reinforces the theme that law enforcement is indeed multifaceted and cannot be explained or addressed merely through the perspective of police officers.

The United States military has used a hybrid privatized model for decades and has reached a point that, in terms of being mission-capable, it has been suggested that they would not be able to “wage war” without the use of contracted assistance (Bures & Carrapico, 2017). This sea change is, in some respects, best characterized by former Department of Homeland Security

Director Janet Napolitano who said that a paradigm shift was crucial from a “whole of government” to a “whole of nation” in order to increase the resiliency of the country (p. 232).

Greve (1990) pointed out that at the time of his studies in private enforcement of public law, the most prominent example in the United States was in environmental law. He explains that in the 1970’s, Congress created “citizen suit provisions” where private individuals or groups could sue private parties for infractions of federal environmental laws. These provisions were then strengthened over the course of the next couple of decades to the point where those plaintiffs were no longer suing as victims of a wrong, but as “private attorneys general” (p. 340).

This example, similar to the evaluation of competition law, has limited pragmatic value to the proposed system within this paper, but certainly underpins the idea that precedent exists for private parties to contribute in the enforcement of laws that are beyond municipal codes or property rights, but extend to laws established by Congress as well.

The Drawbacks of Private Law Enforcement

Ruddell, Thomas, and Patten (2011) explain that, while public and private law enforcement have the same broad function, “each entity has its own priorities and tasks”. Public law enforcement answers to the government(s) they represent, along with the community at large. Private security has equally private obligations and are a product of corporate mindsets and therefore are most likely interested in creating a “climate ~~favourable~~favorable for business” instead of worrying if the outcome is fair and impartial (p. 56). Some feel that these competing priorities make a completely privatized system incompatible with the priorities of the state (Bures & Carrapico ,2017).

Garoupa and Klerman, (2009) cautioned that private law enforcement is not completely immune to outside influence and can also be subject to things like corruption and bribery. Their

contention is that all of the existing research on police corruption consistently looked at improprieties only within public law enforcement, and this bias is what explains the lack of data supporting the same drawbacks within the private sector.

Brennan-Marquez (2016) argues that the biggest problem with completely outsourcing law enforcement is not that the enforcement itself would be privatized, but the initial investigatory steps would be conducted entirely within the private realm. In other words, communication firms, financial institutions, and detective agencies would find and build cases through privately contracted means without any governmental oversight, and with methods that would only be restricted by how much money they would be willing to spend on the efforts. Simmons (2007) cautions against a privately-run criminal justice system that extends too far beyond law enforcement and into the realm of adjudication, as the wealthier proponents would have the means to “buy their way out of trouble” (p. 987). Of course, because these are warnings against a methodology that does not currently exist, this is merely speculation on the amount of abuse of power that would evolve within this type of system.

This scenario of privately paid investigations would leave those companies theoretically abdicated of any Fourth Amendment obligations, which means that the private citizen would therefore be absent any of those protections. While this may seem like hyperbole, Brennan-Marquez (2016) simply uses it to make a point by stretching this private vs. government continuum all the way to one end in order to emphasize the importance that the Constitution plays in protecting its citizens from overreaching government intrusion. These protections and safeguards only function when the intrusion is governmental in nature, and when private actors are inserted into this scene, it must be done with caution and a deliberate approach.

Private law enforcement operates under a client-defined mandate, which means that whatever priorities and emphases a corporation has, can be manifested in the methods by which the law enforcement operates. For example, if a department store is most concerned about theft, but also emphasizes discreteness when confronting the offenders, a private law enforcement firm can defer to those wishes and shape their responses based on those priorities. In that same scenario, if a public police officer responds to a theft in a department store, the priorities are most certainly related to efficiency, which means that the offender and crime is dealt with in a way that may not necessarily align with the values of that private corporation (Simmons, 2007).

Finally, a disadvantage to including private law enforcement is that, over time, the potential exists for the private sector to grow to a degree where public police officers are inversely affected by that growth. Simply put, the more jobs offered to the cheaper, more accessible labor in the private sector, the more limited the jobs will become in the public arena (Sparrow, 2014)

The Advantages of Private Law Enforcement

The biggest reasons enumerated by governments desiring private inclusion of law enforcement are “rising pension obligations and declining revenue”. The rise of the former coupled with the decline of the latter has resulted in cities disbanding police departments, and reforming a more economically efficient model (Rahall, 2014, p. 635).

One advantage to a privatized model in terms of criminal justice is that the process is primarily victim-driven, instead of the predominantly punitive justice approach seen today. In this model the arm of justice is “only invoked where this serves the actual interests of the individual in question” instead of expending time and resources on every single crime, even the so-called victimless crimes (Tjong Tjin Tai, 2016, p. 77).

A reason that the need for more private law enforcement has gained so much traction in the eyes of the public is that they desire a more responsive approach to dealing with the issue of crime in society. Simmons (2007) argues that under the current criminal justice system, which relies heavily on incarceration as its main methodology, the balance favors the wealthy who are able to spend considerably more resources on efforts to avoid jail time.

This responsiveness is more easily gained through the use of private firms since the community would have more direct access to shaping the focus of the policing efforts. Sparrow (2014) explains that the shift to private law enforcement would, in a sense, trade the agenda founded on professionalism within the public realm, for a collaboration between the community and its law enforcement.

Another factor is that law enforcement officers in the public sector are becoming disparaged over the relatively low wages they earn compared to the risks taken on the job. Gross (2017) points out that new deputies in South Carolina make anywhere from \$30,000 to \$37,000, depending on the county, which causes some officers to leave and find better pay in the private sector.

Even higher pay does not always stem the flow of officers that are either unable to be recruited or retained. Jackman (2018) explains that Seattle police officers start on a salary of \$79,000 per year, but their applications have still declined by 50%. In a survey of 400 police departments, 66% of them stated that their overall number of applicants have similarly declined. A recent study on the loss of several officers in the Berkeley Police Department, found that one reason they left was that they used their marketable skills to find better paying private sector jobs, instead of having to deal with the increasing public pressures and scrutiny that comes with being a police officer (Raguso, 2018).

Taking into account these drawbacks and advantages can lead to the conclusion that enough benefits are present that outweigh the existing risks, for the inclusion of private law enforcement, but it must be tempered against those drawbacks that have been identified and approached with caution. It is from this careful viewpoint that a recommendation is made for the merger of private and public law enforcement to effect a more financially responsible answer to crime, that also contributes to equally meaningful and effective efforts on that front.

Section III. Recommendations

The use of law enforcement with the most efficient and effective methods is what municipalities around the United States strive for, with the purpose of spending the least amount of money to get the most out of their crime control efforts (Whitfield, 2017). Outsourcing law enforcement to private firms has been shown to be cost effective, but the idea of completely capitulating all government participation in that field is not a popular one (MacDonald, Klick, & Grunwald, 2016). Therefore, a blend of both public and private police and security is recommended for the purpose of achieving effective law enforcement while remaining financially viable for a given community.

A Recommendation for a Hybrid System of Public and Private Law Enforcement

A blended system of public and private entities within law enforcement will create a hybridized model that will draw upon the advantages of both sides. MacDonald, et al. (2016) conclude from their study that the most efficient way to utilize a hybrid system of private and public law enforcement is in a model where private police are hired to free up the existing public police officers who can then re-focus their efforts in other areas. This model adds more police presence to a location at a lower cost to the taxpayers than hiring additional public officers, while

at the same time gives the freedom of more strategic placement of public officers, since it allows a community to focus their better trained officers in the higher crime areas.

Many times, the advantage to a government hiring contracted police and security is the fact that they are able to make plans and decisions outside of the slow, bureaucratic process found within governmental departments. This is seen elsewhere in the criminal justice system, particularly in corrections. Morriss (2001) describes the benefit of private contractors in that field is that they have the ability to do building design and workforce planning in more innovative ways than their governmental counterparts. He uses the example of outsourced prison design where a contracted firm, Corrections Corporation of America, was able to redesign a prison which eliminated a post that previously employed 5 continuous employees, creating a savings of \$100,000 annually right off the top, without sacrificing any decrease in productivity or effectiveness. While this example highlights benefits inside the criminal justice system as it pertains to corrections, these same innovations could certainly be extrapolated within law enforcement as well, since at the very least there are many support positions (i.e. dispatchers, crime lab technicians, evidence custodians, etc.) that could be outsourced or “re-designed” at a savings for the taxpayers.

Implementation of a hybrid system relies on an appropriate ratio of public and private entities within that jurisdiction. Depending on the role(s) that the privatized individuals take on, that ratio can extend further towards a more prominent role for those private agencies. For example, if a municipality decides to employ a private firm to take on parking violations, business sector security, neighborhood patrols, along with other support-style tasks, it would leave only the more serious and difficult tasks like criminal investigations and patrols in high-risk areas for the public officers.

That ratio can also move the other way along that spectrum to a point where private firms are only given a minor part to play. For example, if a municipality only desires for private security to protect public property, such as parks and community venues, the law enforcement presence would heavily favor public officers. In short, the proposed hybrid system does not prescribe an arbitrary ratio of public vs. private law enforcement, but is situationally dependent upon the needs and desires of that particular jurisdiction.

Whatever extent is determined to include private partners in the law enforcement model, an implementation of a hybrid model within that arena must be done with careful planning and a measured approach to its results. Heaton, et al. (2016) cautions that, although private law enforcement can have a significant impact on serious crime when implemented alongside public law enforcement, those impacts are gradual, and the effects are rarely seen in the short-term. This suggests that a hybrid model for private-public law enforcement must be seen as a societal investment where the expectations should be couched to accommodate the length of time needed to see those returns.

Creating Training and Performance Standards

Bowman (2003) describes the need for training and performance standards within the private law enforcement sector as critical, and the efforts to that end have been ongoing. Training standards have steadily risen over the past decades for private security officers. In 1978 no states required training for their security officers as a prerequisite for performing their duties. By 1990 this improved, but the average security officer in the United States still received only four to six hours of training prior to beginning their first duty assignment. By 2004, half of all the states required a formal training curriculum for their introductory security officers (Manzo, 2009). This

progress is certainly reason for celebrating the advancement of training standards among privatized security and police, but there is still much room to improve.

This gap in training is further exacerbated by the fact that many private security officers perform their duties while armed. In 2012, the United Nations created new guidelines aimed at increasing the vetting process and improving the training standards for the armed security officers that they employed around the globe to help prevent catastrophes surrounding the use of deadly force (Pingeot, 2014).

Washington DC was reminded of this when it was recently confronted with the importance of training private police, as a result of two deaths in their community at the hands of private law enforcement. Two of its citizens were killed during separate incidents involving private security and police while in the performance of their prescribed duties. In one incident, an elderly man was killed during an altercation with armed security officers, while another suffered cardiac arrest while being detained by a private police officer. The mayor admitted that training presently existed for these officers and others, but that the curriculum and training program needed updated and enhanced (Juhasz, 2016).

This further emphasizes the need for policies that are relevant and effective. Those organizations like Lexipol and others create operating policies which closely resemble, if not a carbon copy, of public law enforcement agencies. This increased standard held up against private officers could only improve the efforts made by them, by giving them equal standing with their public counterparts in terms of policies and procedures. The most critical policies that were highlighted in the Washington DC cases were those surrounding the use of force continuum, and more specifically the presentation and use of deadly force.

A Recommendation for Implementation

Armed with the importance and effectiveness of a hybrid model, along with the emphasis on high training standards of private law enforcement, the task remains to implement this proposed model. This implementation will require careful planning but can be done with an approach that allows for necessary adaptation in the face of what will certainly be a significant systemic change within a municipality. A deliberate, and possibly incremental, implementation is crucial so that time can be given to acclimating the affected communities to the dynamics of public and private law enforcement. This implementation could conceivably be utilized among different levels of law enforcement, but for purposes of this plan will only be looked at from the perspective of a municipality-level jurisdictions.

Most likely public law enforcement already has a footprint within the municipality, and the eventual step would involve placing the private police in their role decided upon by the community. Feeney and Sult (2011) suggest that a three to five-year vision be put in place when implementing a new system to allow time to identify where the service could be improved, or to terminate it altogether. An effort must also be made to collaborate between the two entities to avoid competition or enmity from one or both. This step can be seen as simply a logistical function and merely placing the pieces in precisely the areas that are identified during the planning stages (Bucy, 1996).

Feeney and Sult, (2011) in their study of project management, identified the need for a roadmap when attempting to implement a plan that encourages accountability and efficiency. This roadmap should contain the tasks, priorities, and timelines necessary to see a plan through to its end, and to ensure that it is met with success. This roadmap can help to visualize the path needed to navigate throughout this process and help identify the important considerations needed

when implementing a hybrid system of law enforcement. Since this plan should also be built upon the efficiency of its actors (police) and the accountability by their constituents (the community), it is important to have a strategic plan that is also a collaborative effort.

Papke-Shields and Boyer-Wright (2017) propose a rational adaptive approach to seeing a complex project such as this to its successful conclusion. This approach employs the rational side of structured, strategic planning, and merges it with the adaptation needed as the project evolves over time. For this hybrid system, this simply means that it must be designed in a way that uses decades, if not centuries, of structured law enforcement planning, and incorporates ways in which it can adjust according to the unconventional step of including private law enforcement. These adaptations may simply be changes in the written policies or expectations from community leaders but could be as significant as delegating different tasks to the private and public police officers, or deciding on whether to arm certain security guards.

A main consideration presented in this plan involves a community defining and agreeing upon the roles that the public and private law enforcement entities will play within that jurisdiction. For example, determining if private police will participate in patrolling neighborhoods alongside the public officers, or that they remain largely in downtown districts during the hours of darkness, or merely serve as a means of protecting the property concerns of that community. This period will include conversations between the government who would potentially be outsourcing some of their law enforcement functions, the community who would be provided those services, and the private corporation(s) that is being considered for that job.

It is during this portion that careful consideration must be made as to the ratio of public vs. private police as well as how large of a contingent that a single private law enforcement firm is allowed to maintain within that municipality. Depending on the scope of the private police,

there may be a need for a large force that is to be hired, and it may be a smart strategy to include more than one firm to provide those services. Rahall (2014) warns that a private corporation that finds itself as “the only game in town” is more likely to exert their influences negatively, as well as make it very difficult to remove them once they are entrenched (p. 669).

Once that determination is made, steps can be taken to begin inserting (or replacing) the law enforcement in that municipality. During this transformative phase where the pieces are being put in place, it is the best opportunity to manage the costs of the project (Bjorvatn & Wald, 2018). This is because it has not been fully implemented and adjustments can still be easily made. One of the major contributors to the need for this hybrid system is cost effectiveness, therefore mindfulness must be paid to the bottom line.

An important step to consider once the implementation is complete, is that the model be evaluated and assessed as to its effectiveness and efficiency. Its effectiveness can be ascertained by collecting data under the current model and comparing those numbers to the model that existed previously. This information can provide data points that help a community look at the crime trends since the transition, but also at whether or not it came with a cost savings. The efficiency can then be determined by taking the results of that calculation and identifying the improvement (or decrease) in productivity through a cost analysis. Two primary considerations that should be made during this transition are 1.) to accurately track the progress of the new model, and 2.) placing measures that allow the stakeholders, in this case the community, to provide input as to the current and future status of the model (Feeney & Sult, 2011).

If a municipality finds that the hybrid model is effective but can be more efficient, then it can be reconfigured to adjust the ratio of private vs. public officers to achieve that goal. If it finds, however, that the hybrid model is not effective then it must be determined what factors

exist that may explain that deficiency. Training standards, defined roles, and community support can be looked at more in-depth to help understand the causation of ineffectiveness. These findings must also be weighed against the public's response to this new model to ensure that the consumers of that product are receiving what they expected from the new system.

Ultimately, if a hybrid system is found to be incompatible with the municipality in which it is integrated, a reversion can be made back to its original publicly owned and operated law enforcement model. It is important to note that a system is only as good as the results that are being seen in that community, and force-feeding a hybrid law enforcement model onto a community that does not receive the expected benefits is no better off than it was to start with.

Section IV. Summary and Conclusion

The topic of sharing law enforcement duties between the traditional public police officer and the privately outsourced security guard is often a flashpoint for many who feel that the job is too important, and the risks are too great to hand over to an officer with a poor professional image (Ruddell, Thomas, & Patten, 2011). Pushing back against those hesitations is a declining economy that drives many municipalities to search for an alternative to the costly task of maintaining a full staff of police officers, and the costs to sustain that are astronomical (Rahall, 2014).

In 2017, the U.S. spent \$100 billion on policing alone, without factoring in other large aspects within the criminal justice system such as corrections and the courts. Those costs reflect a significant portion of the budgets within the larger metropolitan areas and can sap valuable resources that could otherwise be used elsewhere. In 2017, the city of Oakland allocated 41% of their total budget towards law enforcement, with Chicago not far behind at over 39% (McCarthy, 2017).

The many recent controversial events in America surrounding police officers and the use of deadly force on its citizenry have created a landscape that has caused many police departments difficulty in recruiting and retaining their officers (Jackman, 2018). Towns like Wapato, Washington are spread so thin that their town of 5,000 people are supported by a police department with 4 officers and have had to rely on Yakima County to provide coverage. These sheriff's departments that are called upon to augment these towns across America will, at some point, certainly reach a tipping point (Balagtas, 2019).

While county-level law enforcement becomes increasingly active in the neighboring smaller towns and municipalities, they must still address their own area of responsibilities in the

rural community. Compounding this is the fact that crime has been on the rise in many of those smaller towns. Between 2006-2010, Iowa saw a 50% increase in violent crimes in their communities with a population of less than 10,000. Some of those smaller towns are not able to rely on a county asset and must sometimes use state-level resources. The residents of Josephine County, Oregon were forced to use the State Police as their response asset, and would often have to wait 2-3 hours for an officer until they were finally able to come to an agreement with the sheriff's department to assist (Greenblatt, 2018).

This has created a vacuum that can certainly be augmented by private police officers who can perform similar tasks but are often hamstrung by lower training standards (Bowman, 2003). By increasing those training standards and bringing in a comparable force of privately-operated law enforcement, this could serve a dual purpose of filling in the gaps within a police force, and also allowing the public police officers opportunities to focus on the more violent crimes (MacDonald, Klick, & Grunwald, 2016).

In conclusion, a hybrid system of public and private efforts in law enforcement is a viable alternative that can bring solutions to a problem that only continues to get worse as communities lose the ability to sustain police departments. And, since private security officers make an average of 47% less than their public counterparts, can be an economically efficient way to regain a better grip on crime control (Rahall, 2014).

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