



Ambiguous exchanges and the police

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Abstract

This article analyses exchange relationships involving public police agencies and external institutions. It specifies three general forms of exchange (Coercion, Sale and Gift), then observes that, in practice, the three may not be mutually exclusive. It identifies ambiguities that may exist within exchange relationships, and discusses the implications of these for three important aspects of police performance: efficiency or value for money; equity in the distribution of police services; and the legitimacy of the police organisation. The article concludes that managing ambiguity in exchange relationships has become a challenge of 21st century policing, and that police are well advised to elaborate guidelines in place to govern their exchange relations.
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1. Introduction

Police departments engage in all manner of exchanges with institutions and individuals outside their ranks. They command assistance from common citizens. They buy and sell goods and services. They receive donations from business and from ordinary individuals (Ayling et al., 2006).

At times, these exchanges have been inherently criminal transactions. Coerced confessions and “third degree” methods were common practice a century ago in English-speaking democracies (Skolnick and Fyfe, 1993, pp. 43–48),¹ and still take place

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¹As an example, see the discussion of Chief Justice Hughes of the lower court decisions leading up to the Supreme Court Decision: *Brown v Mississippi*, 297 US 278, 56 S.Ct. 461, 80 L.Ed. 682 (1936).

tries.² Although rare as a matter of official policy, police have sold all varieties and, and have traded dispensation in return for cash or favours. And gifts to explicit anticipation of special consideration have long been commonplace.

ly, at least in advanced democracies, most of the exchange along the three : of coercion, sale, and gift is completely legitimate. Requiring assistance to law it by mandating record keeping and disclosure of transactions by second-hand ers makes the fencing of stolen goods more difficult to accomplish. Fee-for- user-pays policing helps defray the cost of deploying public police to secure nts of a commercial or private nature such as concerts and professional sporting addition to uniforms, firearms and motor vehicles, police purchase products as kitchen and bathroom fittings and equipment, specialised apparel (riot gear, its, bomb suits, diving gear, etc.), photographic equipment, musical instruments ck in the form of dogs and horses (Ayling and Grabosky, 2006). And they ts in cash and in kind, including petrol, pushbikes, office space, and ations equipment (Pilant, 1998; NSW Police Service, 2000, pp. 61–62; Singh,

ologists and historians of exchange relationships remind us that such ps rarely exist in their “pure” form. In the past, considerable ambiguity has 1 forms of exchange. The transition from prehistoric societies of hunters and o contemporary market economies was an evolutionary one (Polanyi, 1944). 10) describes how the exchange of gifts in 16th Century France was in some prlude to buying and selling. In addition, she observes how the giving of some t fact compulsory, dictated by strict customs. Mauss (1950) discusses how lavish med by the indigenous peoples of what is now British Columbia in Canada and fic Northwest of the United States were really demonstrations of power. He goes to some gifts as a blend of the voluntary and the obligatory. Hyde (1979, p. 70) fning gifts to minimise the recipient’s sense of debt. He observes that whenever or the recipient begins to treat a gift in terms of obligation, it ceases to be a gift. 172) refers to exchange relations as a “spectrum of reciprocities” ranging from sm at one pole, to outright theft at the other. Sponsorship, as a form of gift some explicit obligations on the part of the recipient, is part way along the towards commercial exchange which, with its explicit weighting of value, is the centre.

icle explores some of the ambiguities inherent in exchange relationships ublic police organisations. It is based on archival research as well as interviews : executives from a number of jurisdictions. While we acknowledge that different ts have varied approaches to these exchanges, our aim is to outline some general e goal is practical as well as analytical. In addition to reaching a better ling of the nature of these relationships, we outline the implications that these s may have for three important criteria of police performance: efficiency or money, equity in the distribution of police services, and the legitimacy of the ce organisation. We look first at various pairs of relational types (Sale/Coercion, Gift, Gift/Sale), and identify basic patterns of overlap. We then identify ces in which the types of exchange relations may be sequentially linked. The

ten (2006) for a report about the brutalisation of suspects by police officers in Chicago in the 1970s

article concludes with a discussion of the implication of these ambiguities and linkages for police administration.

2. The interface of commerce and duress (Sale/Coercion)

Commercial exchange is not entirely without its coercive elements (Barnhizer, 2006, pp. 3, 41). The structure of markets may make for ruthless outcomes. A monopolistic provider can charge all the market will bear for its products. A monopolistic purchaser may reduce the profit margins of its suppliers to negligible levels. A large retailer such as Wal-Mart can prescribe not only price to its suppliers, but can also specify details of packaging and content. If one wishes to sell to Wal-Mart, one follows its dictates. As has been said, “When McDonald’s says ‘Jump’, 500 suppliers ask ‘How high?’” (Earle, 1996).

2.1. Coercion in sales by police

Police are not without market power of their own, which in some instances may be reinforced by the coercive power conferred upon them. Some commercial arrangements are inherently coercive. Consider, for example, the institution of user-pays policing in which police charge for the provision of their services. In some jurisdictions, promoters of public events for profit, such as rock concerts or sporting events, are required to engage police services for the delivery of traffic control or event security, to a specified extent and at a specified fee. In Australia, for example, both New South Wales and Victoria Police make it quite clear in their user-pays policing policies that the ultimate responsibility for assessment of policing needs for events lies with the police. Organisers are “to accept police advice” on this matter (NSW Police Service 2004, para 5.4).³ Under these circumstances, if the event is to take place, the promoter has no choice but to purchase the service. No fee, no event.

This is a variation on an old theme of hypotheated licence fees, discussed more than two centuries ago by Colquhoun (1795 [1969]). He recommended that various “suspicious trades” such as second-hand goods dealers, “Persons keeping Slaughtering-houses for Horses,” and “Wholesale purchasers of Rags, and unserviceable Cordage” be licensed, with the revenue derived from licence fees dedicated to policing with the object of ensuring the integrity of the respective markets (pp. 541–551).

2.2. Coercion in sales to police

2.2.1. Police as coercive consumers

Police may also be coercive consumers of goods and services. The larger police agencies, with staff numbering in the thousands if not tens of thousands, wield substantial buying power. While a police service may not enjoy the clout of Wal-Mart, they too can dictate to suppliers, particularly when the product or service in question is of a specialised nature having few other potential buyers.

The relationship between police and informants provides another example of the overlap of coercion and sale. The exchange of money for information is often a feature of the

³See also Victoria Police, *Managing the Delivery of Police Services to Sporting, Entertainment & Other Events: Your Questions Answered* (brochure for event organisers).

police-informant relationship. Police can wield sticks as well as offer carrots, sometimes simultaneously. It is not unknown for police to use threats, such as the threat of prosecution, to secure informants' cooperation. The presence of threat would introduce an element of coercion into what might otherwise be a commercial relationship. Similarly, police may request information in return for a nominal payment and protection of an informant's illegal activities, with the clear implication that if the information is not forthcoming, not only will the protection be withheld but there may be police intervention to prevent those activities continuing (Marx, 1988, pp. 156–157).

2.2.2. Police as coerced consumers

Police themselves may be vulnerable to coercion in their capacity as consumers. When faced with a monopoly supplier, or with circumstances in which a change of suppliers would entail prohibitive transaction costs (for instance, the acquisition of certain IT hardware or software or of certain counter-terrorism related items), police may simply have to accept the terms dictated to them. Under these circumstances, the police are at the mercy of the market.

3. Compulsion and benevolence (Coercion/Gift)

3.1. Gifts that compel

In some cultures, norms of reciprocity are powerfully binding. The French sociologist Marcel Mauss saw some gifts as a blend of the voluntary and the obligatory. Social obligations could include both an obligation to give, and the obligation to reciprocate (Mauss, 1950, pp. 16, 17).

Lavish gift giving in some pre-industrial societies was an ostentatious demonstration of power. Similarly, today if gifts are given publicly, they may result in prestige for the giver and a diminution of status and even stigmatisation for the recipient, which only the ability and opportunity to reciprocate can ease (Pinker, 1971, pp. 135–175). "Most of us", says Pinker (1971, p. 153), "prefer a measure of equivalency in our social relationships". While few if any police executives will admit to feeling indebted to a benefactor, the risk of unconscious favouritism, or the potential for perception of favouritism, can exist. So it is that gifts can be subtly coercive.⁴ One former police executive told us that he would find it very difficult "to accept a gift from [company X] and then have to go in and conduct an investigation" if allegations of wrongdoing, even unrelated to the gift, should arise. For this reason, many jurisdictions prohibit their police organisations from accepting gifts altogether. In other jurisdictions, personal gifts to police officers are unacceptable but gifts to the organisation may be allowed, provided they do not involve the police in giving anyone 'special consideration'.⁵

Conditional gifts, such as a gift of cash given with the proviso that it is spent on a particular activity, can compel police to spend more time on that activity than they might otherwise choose to do. In addition, some gifts, by their nature, can lock a recipient into a course of action that might otherwise not be taken. Gifts of particular equipment or

⁴The drug marketing practices of pharmaceutical industry representatives provide some interesting illustrative examples. See Elliott, 2006.

⁵See, for example, New Zealand Police, General Instructions dealing with Sponsorship, S582(1)(c).

premises could mean that police agendas are reshaped in new directions. Assistant form of computers, software and technical support given by Alberta Energy Commission the Royal Canadian Mounted Police in the late 1990s appears to have proved catastrophic an investigation into 'oilpatch vandalism' in Northern Alberta off the ground to the point of prosecution (Blatchford, 2000; Nikiforuk, 2000).

Of course, the police organisation may always decline a gift, particularly where it offered by a donor with whom the police do not wish to be associated because of a potential conflict of interest. The association between alcohol and violence may lead some police not to accept gifts from the alcohol industry. Some police services will not accept gifts from industries (such as cigarette manufacturers) whose interests may conflict with more government policy (for example, health promotion). The New South Wales Police Sponsorship and Endorsement Policy, for example, makes this explicit in Section 5.3 with "Government and Police Service Sponsorship Limitations".⁶

3.2. Gifts that are compelled

The act of extortion may be represented by joining the polar opposites of a continuum of reciprocities, so that it becomes a circle of reciprocities. Extortion is a person's demand for something of value, accompanied by the threat of harm in the event of non-compliance. Extortion threats may be implicit (Chin, 1996, pp. 35–36). When a group of rough-looking youths enter a shop and ask the shopkeeper if he would like to contribute to their social club, the shopkeeper will usually understand the consequences of turning them down.

Mild forms of extortion are deeply embedded in some cultures. Davis (2000) reminds us of the tradition of Charivari, where young childless couples were visited by boisterous villagers demanding payment in return for ceasing their revelries. This, it is the logic of the time-honoured Halloween custom of "Trick or Treat."

The line between bribery and extortion is not a bright one (Noonan, 1984, pp. 5). Bribery is the offering of some consideration in return for favourable treatment. I demand \$50 with the understanding that you will not write me a speeding ticket. Extortion is a demand for some consideration in return for favourable treatment. You threaten me a speeding ticket unless I pay you \$50. However, reality is rarely that simple. Bribery and extortion, key elements may be implicit.

It may be unstated, but understood, that companies awarded government contracts back 10% to a designated official. It may be unstated, yet understood, that a contractor performed pursuant to the contract will not be made unless the kickback is forthcoming. The quid pro quo is rarely articulated, probably to provide for the deniability in the event that the criminal law is mobilised. Yet it may be well understood by both parties. Where either practice becomes routinised, no threats need be made, favours requested. The distinction between bribery and extortion disappears.

3.3. Legitimate requests of a quasi coercive nature

In many jurisdictions, because of their power and legitimacy, police command a great deal of respect (Loader, 1997; Tyler, 2004, pp. 86–87). While some citizens might ignore or

⁶See also Victoria Police, 2005, Donations and Sponsorship, VPM 205-5, Section 4.1.

request (other than a request pursuant to the compulsory powers that police might exercise) their citizens may be more instinctively obedient. Where an individual perceives a lack of asymmetry of power relations, that person may feel unable to decline a request by a powerful party. Some police agencies will not solicit contributions from the public for this reason.⁷ The risk of damage to their legitimacy is just too great. In the past, those police agencies that lack legitimacy often do so for a reason. This may be a reputation for heavy handedness in dealing with the public. Citizens who ignore a request from such agencies often do so at their peril.

mercer and benevolence (Sale/Gift)

is with strings attached: commerce masquerading as gift

earliest forms of exchange in human societies, before the advent of money, were the evolution of exchange relationships from gifts to modern commerce has not been complete. Nor is it yet complete. Hyde (1979, p. 139) observes of gift and commodity that it is ever seen in its pure state, for each needs at least a touch of the other.⁸ Mauss used the term “contractual gifts” to refer to emerging obligations of exchange. Gifts may be explicit or implicit. The requirement that a private citizen engage in a user-pays basis is straightforward. The distinction between fee-for-service and the sponsorship may be less so. Consider relationships between police and the sector in relation to sale and gift, where differentiating between sponsorship and policing is sometimes difficult. Such circumstances may arise where the managers offering mail offer to underwrite the cost of police presence on site during opening of a shopping mall to provide complimentary office space for the police. Depending upon the eye of the beholder, the shopping centre manager’s donation of office space to police may appear as a gift, or an example of user-pays policing.

A similar perspective may be taken on the relationship between the New York City Foundation (NYCPF), Major League Baseball, and the Motion Picture Association (MPA). The contributions of the last two organisations to the NYCPF support the trademark infringement unit by providing funds for the undercover purchases of clothes, CDs and DVDs.⁸

Sponsorship of police patrols by local authorities and others in many parts of the world is another example of a ‘gift’ arrangement which might just as easily be described as user-pays policing. In Cornwall, UK, for instance, the Polzeath Council, and residents have paid for the police overtime needed so that officers can patrol a popular beach in summer (Gibbons, 1996, p. 23).

In the United States during the first decades of the 20th century, police often intervened in disputes on behalf of management. The interventions in question tended to be protection of strikebreakers and/or of employers’ property (Ray, 1995, p. 425). It is uncommon for local employers to provide in-kind support (such as temporary help) to police in these situations. Employers also supplemented the costs of local law enforcement (Fishback, 1995, p. 436).

⁷ Rouge Police Department in Louisiana is one of these: <http://brgov.com/dept/brpd/faq.htm> (accessed 18 October 2006).

⁸ <http://www.nycpfoundation.org/news.asp> (accessed 18 October 2006).

Perhaps the difference between a gift and a commercial arrangement lies in who controls the activity—under a sponsorship arrangement, the police; with user-pays policing, the client (Grabosky, 2004, p. 73). However sometimes, as the above examples illustrate, this is not entirely clear. Both sides may have a say over the nature and limits of police involvement in the activity. The dispositive factor may be the presence or absence of a formal agreement that would specify the role of the police on site.

The term “loss leader” refers to a commercial arrangement whereby a seller offers a product at a greatly reduced price in order to pave the way for continuing commercial relationships at more typical market rates. A seller may be happy to wear the short-term loss if it will contribute to the development of a long term, and more lucrative, commercial relationship.

Consider the offer of a software manufacturer who proposes, free of charge, to develop a personnel administration system for a police agency. Depending upon the architecture of the product, the recipient may be captured, in a commercial sense. When the time comes to update the system, the recipient may be faced with a stark choice: engage a new provider to replace the system, or purchase a new system from a new provider, or pay the existing provider whatever it wishes to charge for updates. The transaction costs involved in a change of supplier may see the police locked into a commercial relationship (Dehoog and Salamon, 2002, p. 326).

One of the authors recalls a shopping experience in Indonesia where he thought he had driven a particularly hard bargain. Toward the close of the transaction, the apparently reluctant merchant gave the impression that he was giving the item away at cost. Feeling somewhat guilty about his meanness, the shopper took the goods and turned from the counter. Before he reached the door of the shop, the shopkeeper caught up with him and gave him a small gift. Even in western cultures, regular customers may be rewarded by a grateful vendor. And the practice of extending extra hospitality to clients (or potential clients) is not uncommon.

4.2. Gift masquerading as commerce

The term “sweetheart deal” refers to a commercial exchange in which one of the parties does the other a favour. Where gifts outright are prohibited by law, laundering mechanisms may be used to portray a gift as a sale, at a peppercorn price.

Government Acquisitions (GA), a private company located in the state of North Carolina, USA, arranges corporate sponsorship of police vehicles.⁹ A company pays for a vehicle which GA buys, and GA then ‘sells’ it to a public police organisation for \$1. In return for the gift of the vehicle, police allow carefully vetted company advertisements on the vehicle’s hood, boot and quarter panels for 3 years. At the end of that period the vehicle is ‘sold’ back to GA for \$1 (Mollenkamp, 2003, p. 80).

5. The police as managers of ambiguity: conclusions and implications

As the eminent economic historian Polanyi (1944) demonstrates, the emergence of market economies did not occur overnight. The evolution of exchange relationships has left us with some interesting ambiguities.

⁹ See <http://www.gavpd.com/home.asp> (accessed 18 October 2006).

The earliest forms of commerce took the form of an exchange of gifts. Commercial exchange was later to become more routinised. Gifts to the leader became obligatory, and then evolved into taxes. The two existed in a parallel, but hardly voluntary, form during part of this trajectory. Today, there are a few generous souls who make bequests to the tax collection agency, but not many.

5.1. Mixed motives

More often than not, the motivations that underlie exchange are mixed. The proffer of a gift may be driven by the desire for celebrity, or with the expectation of some form of reciprocity. Hyde (1979) refers to "the 'tyranny of gift' which uses the bonding power of generosity to manipulate people". The Hindu epic, The Mahabharata cites a number of motives underlying gifts, including pity, free choice, desire of merit, desire of profit, and fear.¹⁰

5.2. Linked exchanges

Exchanges, of course, do not occur in a vacuum. Any given police agency exists in a web of relationships, some coercive, some commercial, some charitable, and some hybrid. One form of exchange may follow, or give rise to, another.

The use of foundations or charitable trusts to receive donations on behalf of police organisations may serve to protect against the appearance of impropriety that might emerge from a direct donor–recipient relationship. But it is no guarantor. Ironically, it may have just the opposite effect. For example, if a police foundation is able to raise and spend money on behalf of a police department, it may be able to circumvent basic procurement safeguards. These arrangements appear to have operated in Los Angeles to fund consulting contracts with former associates of the Chief of Police. In the words of Professor Erwin Chernerinsky, "It's a way of the government spending money but not following all of the procedures for competitive bidding.... When the police foundation goes out and buys things on its own, or hires consultants on its own, all of those protections are not followed" (quoted in Weissenstein, 2003). The vulnerability of participants to allegations (justified or not) of impropriety is obvious.

Arguably less controversial is the use of gifts to foster subsequent sales. Donations to the New York City Police Foundation enabled it to engage an agency to license the NYPD logo for use on action figures, stuffed toys, bicycles, and children's sleepwear.¹¹

5.3. Efficiency, equity and legitimacy

It matters how police/private arrangements are characterised, and that these ambiguities are recognised, because this affects the kinds of considerations the police bring to bear in assessing the benefits and dangers of entering into those exchanges, as well as the types of controls needed over the relationships generated by them. More thought is required on the conditions under which 'gift' should be encouraged. For instance, if sponsorship is seen

purely as a gift, police may not recognise that they have something the sponsor with which they can bargain. And if the relationship between informants and purely as a commercial exchange, there is a danger that appropriate safeguards against improper use of coercion will not be considered.

When is a gift equivalent to a commercial transaction? One of our responses to this question is to consider the course of discussing corporate sponsorship of policing activities, suggested by sponsor benefits to some extent, if only in terms of acknowledgement and as a prestigious agency of government. However, competitors of a successful sponsor be forgiven for feeling "left out," especially if the sponsorship engagement is bilateral negotiations. For the police to confer a promotional opportunity upon an entity without allowing for competitive bidding may strike some as both inefficient. It has been suggested that sponsorship arrangements should be a process that mimics that of procurement tendering (Independent Commission on Corruption, 2006, pp. 11, 29).

Police in many, if not most, contemporary industrial societies are firmly in the political spotlight. Accountability measures are stringent, media scrutiny and political oversight is unrelenting. It is not surprising, therefore, that there is in a significant degree of self-regulation with regard to their exchange. Indeed, it would not be inappropriate to refer to some police as "super-police" in their management of exchange relations. Hyde (1979, p. 73) reminds us that rarely if ever relate examples of gifts proffered by witches having been their intended recipients. Gifts from evil people must be refused, lest the donor be bound to that evil. This is a lesson that sophisticated police organisations learn: they are unlikely to accept gifts from companies or industries with an unsavoury image.

The *raison d'être* of some gifts is to establish a bond between donor and recipient. Douglas (1990) reminds us, "A gift that does nothing to enhance social connection is a contradiction." By contrast, the sale of a commodity leaves little connection between donor and seller. A degree of bonding between the police organisation and the community serves (or of significant institutions within that community) is entirely appropriate. Matters, however, is that interests other than the donor's are not excluded. The exchange must not leave a feeling of obligation within the recipient.

The environment of political sensitivity in which contemporary police agencies operate cannot be understated (Fleming, 2004). The maintenance of a positive image cannot be part of policing's core business. Indeed, one of the police officers who spoke expressed discomfort with the mere use of the term "coercion."

Managing ambiguity in exchange relations has become a challenge of policing. Just as the Mahabharata contains long lists of what kinds of things to avoid from what kind of people, under what circumstances, so too do many police agencies have elaborate guidelines governing their exchange relations. And for good

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¹⁰The Mahabharata, Book 13: Anusasana Parva: KM Ganguli translation See CXXXVIII, p. 282. see <http://www.sacred-texts.com/hin/m13/m13b103.htm> (accessed 23 October 2006).

¹¹See <http://www.nycpolicefoundation.org/ontheboard.asp?categoryId=6> (accessed 18 October 2006).

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