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Opportunistic behavior in the principal-agent model of policing: The case of a convicted field officer in Norway

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ABSTRACT

While the criminal justice system is designed to determine whether a police officer as an offender is guilty or innocent, the principal-agent model of policing can provide insights into police officer behavior in law enforcement. Agency theory suggests that the chief as a principal and the field officer as an agent may have different preferences, varying knowledge, and opposite risk willingness when it comes to policing. For example, goals may justify means. In this article, the case of a convicted police officer in Norway is discussed based on principal-agent theory.

Keywords: Agency theory; principal-agent model; police officer; goal orientation; police criminality.

BIOGRAPHY

Petter Gottschalk is professor in the department of leadership and organizational behavior at BI Norwegian Business School in Oslo, Norway. He has been the chief executive officer (CEO) at several companies including ABB Datacables and Norwegian Computing Center. Dr. Gottschalk has published extensively on internal investigations, knowledge management, fraud examination, financial crime, police investigations, organized crime, and white-collar crime.

Opportunistic behavior in the principal-agent model of policing: The case of a convicted field officer in Norway

INTRODUCTION

The police are agents of the government, while field officers are agents of police chiefs (Mitnick, 1975). A relationship of agency implies that an agent is acting on behalf of a principal (Bosse and Phillips, 2016; Jensen and Meckling, 1976). This relationship can be challenging when a police officer is tasked with special assignments such as dialogue with criminal biker gangs, drug dealers and informants in the shadow economy (Leinfelt and Rostami, 2012; Politiet, 2012). The rule of the game can be very different in undercover operations and in dealing with transnational organized crime (Gottschalk and Markovic, 2016). A recently convicted field officer in Norway illustrates dilemmas found in the principal-agent model of policing (Oslo tingrett, 2017), where the issue is police deviance and criminality (Davidson and Gottschalk, 2014). **Explicitly, if we apply principal-agent theory to undercover policing, it provides a framework to gain insights into why police might break the law.**

The conviction after a **four-month** trial was appealed from Oslo District Court in 2017. Borgarting Court of Appeal in Oslo is expected to have its hearing in 2019. In the meantime, the verdict of 21 years imprisonment for the police officer is an interesting case for a study of the principal-agent model of policing as presented in this article.

CONVICTED POLICE UNDERCOVER OFFICER

A senior police officer in Norway was sentenced to the maximum of 21 years in prison in September 2017. He was convicted for aiding a drug smuggler for many years and taking bribes from the smuggler. The case captivated a nation accustomed to clean law enforcement. The field officer Eirik Jensen was once in charge of combating Oslo's criminal gangs

including Hells Angels and other biker gangs. He denied the accusations against him, and his lawyer said he would appeal the serious verdict from Oslo district court (Sætran et al., 2017). During the four months' trial in the spring of 2017, prosecutors accused Jensen of aiding a smuggling ring for more than a decade by providing information on police and customs staffing, much of it via hundreds of cryptic mobile phone text messages, in return for illegal payments (Sætran et al., 2017).

Jensen's co-defendant Gjermund Cappelen, who admitted organizing the imports of tons of hashish, was the prosecution's key witness and was sentenced to 15 years in prison. Many observers were surprised that the organized criminal Cappelen was sentenced less severely than the deviant police officer Jensen. People were surprised that the judge had more trust in statements from Cappelen than in statements from Jensen, where Cappelen received a rebate in his sentence because he blew the whistle on Jensen.

"This case is unique in Norwegian legal history", Oslo district court judge Kim Haeger said as he read the unanimous verdict against the police officer and the drug smuggler. "Jensen has actively and deliberately contributed to a well-organized and extensive import of hashish", he said (Solsvik, 2017).

Jensen and his lawyers argued during the trial that the evidence of contact with criminals was merely a result of normal police work intended to extract information, and that he had not received any money or gifts. He had simply done his job in fighting organized crime.

"We lost the battle, but we hope to win the war", Jensen's attorney John Christian Elden told reporters after the verdict was made public. "There will be an appeal" (Solsvik, 2017).

Such cases are rare in Norway, ranked the world's sixth-least corrupt country by watchdog Transparency International, and this case generated vast media coverage, including an unusual live television broadcast of parts of the trial as well as live television broadcast when the judge read the 105-page verdict for four hours (Oslo tingrett, 2017).

In the Stockholm gang model book edited by Leinfelt and Rostami (2012), Eirik Jensen wrote a chapter on how his team had successfully disarmed gangs in Oslo. Jensen headed the Oslo gang project as it was established in 2006. The project was initiated after massive shooting among rivaling gangs in Norway's capital Oslo. The gang war had reached the city's central areas with innocent victims. The residents of the capital said they now felt unsafe to get in the midst of new violent settlements. Eirik Jensen implemented a dialogue strategy towards the gangs, where he and his team met on a regular basis to trade information (Politiet, 2012). For example, when a chapter of Hells Angels planned its 15th anniversary in Oslo, then a dialogue with officer Jensen occurred. Hells Angels were able to rent a hotel in Oslo based on a recommendation from Jensen, and they had a party in their club house where everything was allowed. In return, Hells Angels promised not to turn up in public places or bars where people might become worried and scared.

The verdict from Oslo district court concluded that (Oslo tingrett, 2017: 83):

After this, the court finds that, beyond any reasonable doubt, Jensen has received benefits from Cappelen by NOK 247,800 (about US\$ 31,000). The amount applies to the above-mentioned values of a Tag Heuer watch (NOK 17,000), repair of a TW steel watch (NOK800), furnishing a bathroom for approximately NOK 200,000 and NOK 30,000 hidden in the wall. In addition, the court finds beyond reasonable doubt that there is also payment from Cappelen to Jensen of NOK 420,000, which is documented in messages dated December 9, 2009, June 12, 2010, and January 29, 2012, totaling NOK 667,800.

The above quote relates to the corruption offense. The following quote relates to unauthorized disclosure of information (Oslo tingrett, 2017: 73):

The main aspect for the issue of guilt is that Jensen, through his ongoing support and assistance, including all the silence and sunshine messages, has consciously and

coherently given Cappelen the impression that he and his cannabis business is always under protection. As shown above, Cappelen from the mid-1990s has perceived that his running cannabis imports are truly protected by Jensen, and Jensen has, among other things, by silence and sunshine messages almost continuously – until Cappelen was arrested December 19, 2013 – consciously strengthened Cappelen in his belief.

The court further finds it beyond any reasonable doubt that Jensen’s intent also covers the extent of Cappelen’s imports – that they were in the “100 kilos class”.

Both Jensen and Cappelen ended up appealing the sentences, Jensen because he pleaded not guilty, and Cappelen because he deserves more rebate for blowing the whistle on Jensen.

Hearings in the court of appeal are expected in 2019 in Oslo, Norway. In the meantime, it is indeed interesting to reflect on principal-agent perspective in the Jensen case.

PRINCIPAL-AGENT THEORY

The principal-agent theory is among the dominant theories **addressing management challenges in organizations**. The agency problem arises whenever one party (a principal) employs another (an agent) to create value. The interests of the principal and agent diverge, and the principal has imperfect information about the agent’s contribution. Agency theory is based on the assumption of narrow self-interests (Bosse and Phillips, 2016), mainly on the side of agents. According to the principal-agent perspective, exchanges between the two parties encourage private gain (Pillay and Kluyers, 2014).

This article refers to the chief of police who is the most senior police officer in the police district, ultimately responsible for the district’s policies, procedures, and conduct of all staff.

While the chief of police can be defined as the principal who needs a field officer’s policing work, the police officer can be defined as the agent carrying out law enforcement work on behalf of the police district. In this perspective, the relationship between officer and chief can

be studied in terms of agency theory with principal and agent. The seemingly cooperating parties are engaged in an agency relationship defined as a contract under which one or more persons (the principals) engage another person or persons (agents) to perform some service on their behalf and delegate some decision making authority to the agent(s) to enable the agent(s) to perform the services (Jensen and Meckling, 1976).

Agency theory describes the relationship between the two parties using the metaphor of a contract. According to social contract theory, transactions can involve actors whose ability to comprehend their moral implications is inherently limited (Barry and Stephens, 1998). A formal contract, guidelines and regulations have the potential of preventing negative deviant behavior, but they have not the potential of causing any positive efforts on the part of agents, according to contract theory. Luo (2002) even suggests that contracts such as employment arrangement encourage opportunistic behavior, and Goldstraw-White (2012) argues that weaknesses in organizational systems will be exploited.

It specifically addresses which issues affect the relationship. Let us apply this to the relationship between the officer and the chief. Agency theory is primarily used for situations where two parties enter into a contract, but the reasoning of the theory is also relevant when no formal contract is signed or what might be more relevant, the contract does not deal with the issues brought forward by agency theory. An agency relationship arises whenever an individual or an organization is authorized to act for or on behalf of another individual or organization (Benson and Simpson, 2015).

Agency theory is a management theory sometimes applied to crime, where normally the agent, rather than the principal, is in danger of committing crime. For example, a chief executive officer (CEO) may commit financial crime as a white-collar criminal to benefit themselves (occupational crime) or to benefit the organization (corporate crime). The board as

the principal is considered unable to control activities of the CEO (Gottschalk, 2017; Vadera and Aguilera, 2015).

In agency theory, there are three problems: preferences (principal and agent may have conflicting values or goals), knowledge (principal and agent may not have the same information and insights), and risk (principal and agent may not have the same kind of risk aversion or risk willingness).

In terms of preferences, the principal's and the agent's best interests may not be in line with each other. Desires and goals of principal and agent may be in conflict. In fighting organized crime, some in law enforcement may find it sufficient to avoid shootings and similar incidents so that the people can feel safe in public places. Others in law enforcement may ignore public safety and instead be on the hunt for illegal goods and services and the associated illegal profits. The chief may be in favor of the first strategy of public safety, while the field officer may be in favor of the second strategy of fighting organized crime.

In terms of knowledge, it is difficult or expensive for the principal to verify what the agent is actually doing. There is a knowledge asymmetry between the two parties. While the chief knows the overall objectives, rules and routines in law enforcement, the officer knows informants and networks of offenders. While the chief spends most of the time in meeting rooms, the officer spends most of the time in the field with other officers and potential suspects.

In terms of risk, the principal and the agent may have different attitudes towards risk. The chief may not understand the threats that a field officer faces, while a field officer may become paranoid and suffer from conspiracy theories both related to the police force and to the underground world. The chief may be afraid of losing the job if law enforcement targets are not met, while the officer may be afraid of reprisals from the criminal world. The chief

may be afraid of bad media coverage of the department, while the officer could not care less about journalists.

In agency theory, agents are treated as opportunistic agents motivated by individual utility maximization. A field officer involved in undercover operations and other activities towards organized crime might not be out for money. The utility can be found in power and influence, excitement and experience.

The chief as a principal expects the agent to make decisions in the best interest of the principal. However, due to agency problems, an agent may not make decisions in the best interest of a principal. On the contrary, an agent may be succumbed to self-interest, opportunistic behavior and ignorance of requests from principals. Generally, deviant behavior is considered to be a consequence of the principal's inability to control and prevent the agent from abusing the position for personal utility (Li and Ouyang, 2007).

Agency theory describes the relationship between principal and agent using the concept of work-based interactions. The agent carries out work on behalf of the principal in an organizational arrangement. If the chief of police would suggest that officer Jensen's dealings with organized criminal Cappelen were approved or within guidelines, then the Norwegian Bureau for the Investigation of Police Affairs would not have prosecuted Jensen.

The Norwegian Bureau for the Investigation of Police Affairs is a national investigation and prosecution agency. The purpose of the Bureau is to investigate cases where employees of the police or prosecuting authorities are suspected of committing criminal offences in the course of duty.

PRINCIPAL-AGENT UNDERCOVER OPERATIONS

Eirik Jensen was doing undercover policing for the police district. The chief of the police district can be defined as the principal, while Jensen is an undercover agent. The principal-

agent model of policing argues that the agent must act with the knowledge and skills at his or her disposal for the principal's goal, without regard for any other goals that may bear in his relation with the principal, including any self-goals. The field officer as an agent is a fiduciary who holds a legal as well as ethical relationship of trust with his or her principal (Mitnick, 1975: 28):

The agent holding the fiduciary norm must act diligently, with the skills at his disposal, for the principal's goal, without regard for any other goals that may bear on his relation with the principal, including any self-goals. The norm may be expected in contractual discretionary agency, typically under conditions of trust, under principal dependency, or under agent domination of the principal's interests.

At the most general level, police work is the application of a set of legally sanctioned practices designed to maintain public order by imposing the rule of law on people who live in, or travel through a given place which is internationally recognized as a geographically defined territory under the control of a particular national state (Sheptycki, 2007). The set of policing practices cover core issues like law enforcement through crime investigation and crime prevention, security issues involving mainly surveillance and counter-terrorism on a population, and jurisdictional issues in relation to having the legal authority to act in a particular place and under what legal framework and conditions. The police are given the power to use force legitimately in the course of fulfillment of their tasks (Ivkovic, 2009). Policing organized crime remains problematic. In the UK, Harfield (2008) argues that organized crime challenges long-held paradigms about police management and operations. He argues that organized crime has developed to become an issue beyond the competence of conventional policing. In the USA and Canada, Beare and Martens (1998) made the same observation. Harfield (2008: 72) found that government "response will be based on trying to adapt a policing infrastructure intended for other policing functions rather than dealing with

the problem of organized crime itself". The case to be studied in this article is a relevant example of how a field officer found his own ways of dealing with the problem of organized crime.

An important element in policing organized crime lies in dealing with the interface between organized crime groups and the legitimate environment, which are of vital importance to the existence of this kind of criminal activity. Contacts, relationships and exchanges between organized criminals and field officers are a threat to the legitimate environment, but they offer opportunities for organized crime prevention and detection. In the Netherlands, Bunt and Schoot (2003) identified three kinds of interfaces between organized crime groups and the legitimate environment. Firstly, the demand from the licit environment for illegal products and services forms a breeding ground for organized crime groups. **A typical example is drugs.** Secondly, persons whose knowledge or skills enable organized crime groups to carry out their criminal activities. **A typical example is deviant attorneys.** Thirdly, criminal groups make use of other opportunities or tools present in the licit environment. **A typical example is the communication infrastructure in society.**

Opportunistic behavior in the principal-agent model of policing can lead to police crime.

UNODC (2006) classify misconduct issues in policing into the following seven categories:

1. Physical abuse: Indiscriminate and careless use of powers delegated to police officers is a major factor in alienating the public.
2. Prisoner mistreatment: Treatment in custody can include threat or direct use of violence (i.e. torture).
3. Evidence manipulation: Falsification and destruction of evidence to sabotage or otherwise change the prosecution case.
4. Corruption: Personal gain is a primary motivation for much criminal behavior.

Because of the special trust and responsibilities placed in police officers, the

opportunities for them to abuse that trust to obtain money or advantage are considerable. At the same time, because police officers have inside information, understanding and influence over the criminal justice system, they are also often in a position to shield themselves from detection. Using public office for private gain is common in police forces in many parts of the world.

5. Unauthorized disclosure of information: Police organizations collect, hold, or have access to a significant amount of information, some of it of a private nature about victims, witnesses, crimes, and suspects, and much of it is confidential. That same information will have a market value for criminals, journalists and private investigators that can be realized by unscrupulous police staff with access to it.
6. Extortion: A common abuse of integrity in some countries relates to the enforcement of regulations where informal on-the-spot fines are negotiated with the alleged offender.
7. Sexual misconduct: Witnesses, suspects or informants can be abused in vulnerable situations.

The Norwegian police officer was sentenced to 21 years imprisonment by a district court for corruption (item 4) and unauthorized disclosure of information (item 5). Twenty-one years is the maximum penalty for all kinds of crime in Norway.

DISCUSSION

In a principal-agent perspective, there is an opportunity for offenders to carry out the regular job at the same time as crime is committed, because the principal is unable to monitor what the agent is doing, what knowledge the agent applies, and what risks the agent is willing to take (Chrisman et al., 2007; Li and Ouyang, 2007; Williams, 2008). Agency theory argues

that the principal is unable to control the agent because of lack of insight and access to activities performed by the agent.

In the role of police officer, the agent is expected to report back to superiors and register information in computer systems. Cappelen was defined in court as an informant, while Jensen classified him as a source. This is an important distinction in Norwegian police, since police officers are obligated to register information from informants, but not from sources. Integrity and accountability are important elements in policing. Integrity is the quality of being honest and morally upright. Integrity implies the absence of misconduct. Misconduct is an attempt to deceive others by making false statements or omitting important information concerning the work performed, in the results obtained by or the sources of the ideas or words used in a work process. An important element of integrity is the consistency between actions and words, which can be thought of as the basis of trust in people (Turhani, 2015). A person with integrity must be able to see all conflicting variables in a situation, while resisting the temptation to focus narrowly on information that fits own experiences, views, or self-interest (Killinger, 2010).

Accountability refers to situations in which someone is required or expected to justify actions or decisions. Accountability implies individual responsibility for decisions and actions (Smith, 2009). Accountability depends on the explanations and justification of police actions. Both integrity and accountability can be questioned for the principal as well as the agent in this case. For the police officer as an agent, the court found that integrity was violated through misconduct and crime. However, in his book “On the Inside – The Story of my Police Life”, Jensen claims both integrity in terms of consistency between actions and words, and accountability in terms of responsibility for decisions and actions.

Goal orientation is another perspective to discuss the case of a convicted field officer in Norway. In goal-oriented organizations, goals tend to justify means – even criminal means –

to achieve desired objectives (Jonnergård et al., 2010). There is a greater extent of criminogenity – that is propensity to commit crime – in organizations that primarily or exclusively are controlled and managed by ambitious goals, because failing achievement may have very negative consequences, while achievement of goals may have very positive consequences for the organization as well as for the individual. Pressures on the organization as well as on the individual generate willingness to violate the law (Dodge, 2009). In this perspective, the field officer might have perceived support for his means as he achieved goals concerned with gangs and other organized criminals (Oslo tingrett, 2017: 14):

Jensen has stated in the court that his field of work in the police from 1993 to 2011 has essentially been a matter of severe gang, MC and drug crime, including management responsibility and informant treatment in connection with this. He has described his career and his methods in the book “On the Inside – The Story of my Police Life”.

Parts of the book are documented in court, and several police witnesses have in court explained what Jensen’s duties have been.

There is no doubt that Jensen and his group was successful in combatting gangs and other organized criminals in Oslo for more than a decade. Given achievements of goals, he may have perceived that his means were acceptable also to others. Leaking information to one criminal in exchange for information on other criminals was one of his means. Exchanging friendly favors and gifts with criminals was another kind of means applied by Jensen.

CONCLUSION

In the criminal justice system, a defendant is either guilty or innocent. Oslo district court had a “digital approach” the prosecuted police officer, who was found guilty on both charges of corruption and unauthorized disclosure of information. He received the maximum sentence of 21 years. Application of theory enables a discussion of what can be found between digital 0

(innocent) and 1 (guilty). **The concept of digital prosecution and conviction might be explored in future academic research and practice.**

This article has illustrated how principal-agent theory can shed light on the principal-agent model of policing when fighting organized crime. The chief as a principal and the officer as an agent may have different preferences, knowledge and risk willingness when fighting organized crime. Goals tend to justify means, even when means include law violations.

The recently convicted field officer in Norway illustrates dilemmas found in the principal-agent model of policing, where the issue is police deviance and criminality. Explicitly, when we apply principal-agent theory to undercover policing, it provides a framework to gain insights into why police might break the law.

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