

## Discouragement of Crime Through Civil Remedies: An Application of a Reformulated Routine Activities Theory

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### ABSTRACT

*This discussion develops an updated version of routine activities theory and assesses its potential for explaining the impact of civil remedies on crime discouragement. A reformulated routine activities theory is constructed by marrying its original precepts with other theories of crime. The updated approach provides a promising theoretical framework for understanding how nuisance abatement, juvenile curfews, and server liability laws impact on crime.*

**KEY WORDS:** routine activities theory; civil remedies

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### INTRODUCTION

Since its introduction two decades ago (Cohen and Felson 1979), routine activities theory has emerged as a leading approach for explaining crime. During its brief history, the theory has weathered debates over its conceptualization as a micro- or macro-level theory (Capowich 1999), criticisms of its assumptions (Jeffery 1993), and disquieting research findings (Massey, Krohn, and Bonati 1989). Still, the volume of research that acknowledges an intellectual debt to the routine activities approach continues to expand. This is due, in part, to recent attempts to marry routine activities with other theories of crime such as rational choice (Clarke and Felson 1993), situational crime prevention (Clarke 1997), and social disorganization (Bursik and Grasmick 1993; Miethe and Meier 1994). Routine activities theory has also figured prominently in the field's movement away from its offender-centered focus (Sutherland model) toward the study of criminal events (see Sacco and Kennedy 1996). As routine activities theory leaves its adolescence, it is a good time to reflect on past developments and future prospects for the maturing theory.

This paper charts the evolution of the theory in two parts. The first section seeks to uncover the key elements in an updated routine activity theory, while the second part is given to the application of the theory to a new area of research. Formally

stated, this investigation seeks: 1) to outline the primary tenets and current reformulations of routine activities theory, 2) to highlight linkages with other theoretical approaches to crime and critically assess how such mergers inform routine activities theory, 3) to explore the most current application of routine activities theory (the use of civil remedies to discourage crime), and 4) to identify shortcomings in routine activities theory and research.

The arguments presented are structured around a detailed review of the literature. The paper also attempts to uncover the relationship between a reworked routine activities theory and the expanded use of civil remedies to discourage crime. As such, this project seeks to join other theory-building efforts in this budding area of crime research (see Mazerolle and Roehl 1998; Buerger and Mazerolle 1998).

### THE RUDIMENTS OF ROUTINE ACTIVITIES

The discussion begins with a description of routine activities theory as originally conceived. This is accomplished by revisiting Cohen and Felson's explication of the theory (1979). The fundamental precepts presented here form the foundation for subsequent discussions of theory integration and model reformulation.

### **Theory of Crime**

In the 1970s, most criminological research focused on the motivations and characteristics of offenders. In contrast, Cohen and Felson investigated the characteristics of the criminal event rather than the characteristics of the offender. They offered the following explanation for their alternative approach: "Unlike many criminological inquires, we do not examine why individuals or groups are inclined criminally, but rather we take criminal inclination as given and examine the manner in which the spatio-temporal organization of social activities helps people to translate their criminal inclinations into action" (1979:589). In short, theirs is a theory of crime, not criminality.<sup>1</sup>

### **Key Concepts**

According to Cohen and Felson (1979), for a direct contact predatory crime to occur (e.g., robbery), three elements must converge at a particular time and place: 1) motivated offender with both criminal inclinations and the ability to carry out those inclinations, 2) suitable target, and 3) absence of capable guardians against a violation. If one of these components is missing, then a crime will not likely occur. Routine patterns of behavior (activities) affect the convergence of these three elements. Routine activities are defined as "recurrent and prevalent activities which provide for basic population and individual needs, whatever their biological or cultural origins" (1979:593). They include activities that occur in the home, at work, and at other places outside the home (e.g., grocery store, movie theater). The frequency of their convergence is also dictated by certain ecological factors such as the periodicity with which events occur (rhythm) and the timing of an offender's rhythms with those of the victim (1979:590).

The basic premise underlying routine activity theory is that structural changes in society increase criminal opportunities (Miethe and Meier 1994, p. 36). Cohen and Felson argue that the dramatic increase in crime since World War II is attributable to a shift from routine activities at home to activities outside the home. These changes in the routine activity structure of American society have led "to a corresponding increase in target suitability and decrease in guardian presence" (1979:598). For example, the movement of people from tightly-knit city neighborhoods to suburban bedroom communities, the ease of leisure travel, and the increasing participation of women in the work force have all led to fewer guardians in the home and more

targets outside it. At the core of the theory is an assumption that household and family activities entail lower risk of criminal victimization than those activities that take place outside the home. They contend that "nonfamily members are usually much more dangerous than family members are to each other" (1979:594).

The key tenets of routine activity theory are concisely summarized in three propositions offered by Miethe and Meier (1994:39). First, greater levels of non-household activity should increase victimization risks by increasing one's visibility and accessibility as a crime target. Second, higher levels of self-protection or guardianship should decrease individuals' risks and aggregate rates of predatory crime. Third, persons and property with higher subjective or material value to offenders should have higher risks of victimization than less attractive crime targets.

### **THEORETICAL LINKAGES**

Early on in its history, criminologists discovered the complementary nature of the routine activities approach and incorporated its tenets into other crime and criminality theories. It has become a stock ingredient in many popular theoretical integrations (Bursik and Grasmick 1993; Miethe and Meier 1994; Clarke 1997). In this section, key linkages between routine activity theory and rational choice, situational crime prevention, traditional social control, self-control, and social disorganization perspectives are uncovered. The goal is to gain a better understanding of the historical development and refinement of routine activities theory. For the most part, the extant linkages appear to be on solid theoretical ground. One dean of criminology sees merit in combining theories which share basic assumptions including rational choice, social control, routine activities, socialization, and social learning (Hirschi 1986:117).

### **Rational Choice**

More than any other theory included in this section, rational choice is most akin to routine activities. Although still a minority theory among criminologists, its use seems to be growing.<sup>2</sup> The theories are similar in their focus on characteristics of the crime rather than characteristics of the offender. They are also alike in other respects. However, before discussing other similarities, it is important to first describe the theory itself. The starting point for rational choice theory is the assumption that "offenders seek to benefit themselves by their criminal behavior; that this

involves the making of decisions and of choices, however rudimentary on occasion these processes might be; and that these processes exhibit a measure of rationality, albeit by limits of time and ability and availability of relevant information” (Cornish and Clarke 1986:1).

From this statement, it is possible to distill out the primary features of rational choice theory. First, the individual offender is the only unit of analysis, alternatively referred to as the individualistic postulate or methodological individualism (see Buchanan and Tullock 1962). Second, offenders are self-interested. That is, they only seek to benefit themselves through their actions. Third, the individual is portrayed as a rational actor. The offender, prior to making a decision to commit a crime, will weigh the risks and benefits for each decision alternative. This conception of the “reasoning offender” is rooted in Bentham’s utilitarianism. If perceived risks outweigh expected gains, the individual will not commit the crime.

Besides sharing common assumptions, routine activity and rational choice theories complement each other in significant ways. Whereas routine activity theory is silent on how an offender makes decisions, rational choice offers up a reasoning offender who seeks to maximize individual utility. Routine activity theory also informs the rational choice perspective. For example, routine activities theory adds target accessibility and the likelihood of getting caught (guardianship) to the reasoning offender’s decision calculus.

### **Situational Crime Prevention**

In a popular definition, situational crime prevention is described as “opportunity-reducing measures that (1) are directed at highly specific forms of crime, (2) involve the management, design or manipulation of the immediate environment in as systematic and permanent way as possible, (3) make crime more difficult or risky, or less rewarding and excusable as judged by a wide range of offenders” (Clarke 1997:4). As evidenced in this definition, situational crime prevention is a synthesis of many theories including routine activities (management and manipulation of environment through surveillance and target hardening), rational choice (making the crime more risky or less rewarding), and environmental criminology (specific design improvements to public housing to limit access by outsiders).<sup>3</sup>

The empirical research on situational crime prevention is quite voluminous.<sup>4</sup> The findings from two sources are offered to illustrate the breadth of

work done in this area. In his review of 122 evaluations of crime prevention programs, Poyner (1993) found that certain preventive techniques were quite effective against specific crimes. By way of example, studies show that car crime is reduced when surveillance over parking areas is increased and car security devices are used (e.g., electronic access control, car steering-column locks). For other crimes, target removal/modification or changes in environmental design (lighting, fencing) had the greatest preventive effects. In the second edition of his book *Situational Crime Prevention: Successful Case Studies* (1997), Clarke presents sixteen opportunity-reducing techniques. Many of these efforts overlap key elements in routine activities theory. For example, in one case (#14) researchers found that increasing the number of convenience store clerks working at night (surveillance by employees) reduced the number of robberies. In sum, a variety of situational factors do appear to reduce criminal opportunity.

### **Traditional Control Theory**

In the initial presentation of routine activity theory, Felson readily admits to taking offenders “as a given” (Felson 1995:54). However, in a later reworking of the theory, Felson (1986) corrected the simplistic portrayal of offenders by incorporating the effects of informal social control into the model. This was accomplished by linking routine activity to Hirschi’s control theory (1969). Felson reorganized routine activity theory to include a two step version of control theory. In the first stage, society establishes social bonds, which attach a handle to each individual. In the second stage, someone with sufficient knowledge of the potential offender (e.g., parent, other members of the community) is able to grasp the “handle” and exert control over the individual. Where the guardian is responsible for supervising the likely target, the “intimate handler” is responsible for supervising the likely offender. The individual is susceptible to informal social control by virtue of his/her bonds to society. “Informal social control requires both attaching handles to youths and organizing community life so that such handles can be grasped” (Felson 1995:54).

### **Self-Control**

Self-control theory has been synthesized into routine activity theory. Even though self-control is established early in life (see Gottfredson and Hirschi 1990), Felson argues that many people need gentle, or in some circumstances, forceful reminders to keep them from breaking societal

rules (Felson 1998). For most, informal social bonds keep desires in check. Those who exhibit the lowest levels of self-control may be subjected to formal mechanisms of social control (e.g., incarceration). In the end, he sees the need for a system of “assisted self-control” to ensure proper behaviors.

### **Social Disorganization**

Recently, researchers have started to bridge the previously cavernous divide between micro and macro understandings of crime and social context (Sampson and Wooldredge 1987; Bursik and Grasmick 1993; Rountree, Land, and Miethe 1994; Miethe and Meier 1994). Models that isolate micro (routine activities, rational choice) from aggregate level variables (social disorganization) are being overshadowed by sophisticated multi-level models that incorporate both sets of factors. In a sense, this is a return to the ecological roots of routine activities theory that placed offender, target, and guardian in a social context. Due to advances in statistical analyses of multi-level data, it is now possible to isolate the direct and interaction effects of micro and macro factors. Using hierarchical logistic model techniques, Rountree et al. (1994) found some positive direct effects (heterogeneity on the risk of burglary victimization) as well as interaction effects between neighborhood and individual opportunity factors for certain crimes.

### **REFORMULATED ROUTINE ACTIVITY MODEL**

Informed by the original routine activities theory and subsequent theoretical integrations, it is now possible to offer an updated routine activities model for further study and application. The reworked model includes: current conceptualizations of the three key elements of crime (motivated offenders, suitable targets, and absence of guardians); intimate handlers; places and place managers; responsibility levels for crime discouragement; and crime facilitators. Each is discussed in turn below.

### **Motivated Offenders, Suitable Targets, and Absence of Guardians**

Responding to twenty years of research, the original elements of routine activities theory have been refined in significant ways. As noted earlier, in the original theory, a good supply of “motivated” offenders was simply assumed. The motivation of offenders was not a primary consideration as evidenced by the following quotation: “The convergence in time and space of

suitable targets and the absence of capable guardians can lead to large increases in crime rates without any increase or change in the structural conditions that motivate individuals to engage in crime” (Cohen and Felson 1979:604). In the theory’s latest iteration, the “motivated” offender has been replaced by a “likely” offender (Felson 1998, 53). On the surface, this change in nomenclature appears to be a cosmetic move without any substantive value. However, the change reflects the adoption of the rational choice conceptualization of the “reasoning” offender. Now, offender decision making is cast in utilitarian terms – “Offenders seek to gain quick pleasure and to avoid imminent pain” (23). Further, the decision to commit a crime also depends on specific setting, offense, and type of offender. These changes reflect the blending between the two micro theories. The likely offender is still cast in decidedly negative terms. Predatory offenders are characterized as “impersonal” and lacking a care to “how the victim feels.” In the end, “the offender is most interested in helping himself” (54).<sup>5</sup>

Felson (1998:54-55) has recommended measuring the suitability of a target from the offender’s viewpoint. He has organized the offender’s “suitability considerations” into four areas. Simply stated, offenders consider the value, inertia, and visibility of a target, as well as access to the target. The concept of target suitability has evolved since its initial description. It now includes elements of rational choice and situational crime prevention. Houses that are located near a highway access ramp tend to have more problems with crime. Controls limiting access (fenced yards) or target visibility (off-street parking) may be instituted as crime prevention techniques.

In line with the other two elements just described, the concept of guardianship has been modified in light of new research findings. Most significantly, the concept of guardianship (originally conceived as a single relationship between protector and target) has been extended to three types of monitoring relationships – guardian/target, handler/offender, and manager/place. These items will be discussed in greater detail in the following sections.

Finally, it is also important to note that the explanatory power of routine activities theory has been extended beyond predatory crimes to other types of illicit activities such as juvenile delinquency, fights, and various forms of vice (see Felson 2002 generally). This is significant since it introduces a host of new dynamics not considered

in the original formulation (e.g., what is the target in a drug deal?).

### **Intimate Handler**

The “intimate” handler, the person(s) wielding informal social control over a handled offender, has been replaced by a “personal” handler who monitors likely offenders (Felson 1995:60). Some handlers are intimate with the offender (parent-child) while other relationships are hierarchical (principal sending kids back to school) or among strangers (a stranger questioning boys at a mall). The monitoring relationship between handler and offender is an extension of the original guardian concept. It forms one of the three structural relationships that discourage crime.

### **Place Management**

In the earliest statement of routine activities theory, places were narrowly conceived as the physical location where offenders, guardians, and targets converged. “Place” was not an active element in the facilitation or reduction of crime. Eck (1994) adds the relationship between place and place managers into the reformulated theory. For him, certain place managers can serve to discourage crime by looking after a particular place (e.g., doorman protects building, receptionist monitors entry to offices).

### **Responsibility Levels for Crime Discouragement**

Building on the earlier work by Clarke, Felson (1995) constructed a typology of guardian responsibility for crime discouragement. Controllers (handler, guardian, and manager) may assume one of four levels of responsibility (personal, assigned, diffuse job, and general). Personal responsibility is an intimate form of responsibility that is assumed by owners of businesses, family, and friends. Assigned responsibility is granted to employees who are given specific crime discouragement tasks. For example, a jewelry store worker is responsible for monitoring store displays to prevent pilferage. Diffuse responsibility is assumed by workers who have general assignments that may deter criminals (e.g., a hotel maid impairs a trespasser). Lastly, general responsibility is taken by any bystander or visitor whose presence alone discourages crime.

New research introduces another category to the level of responsibility typology described above – non-offending third parties. Buerger and Mazerolle (1998) describe the emergence of “third party policing” which are efforts to persuade or coerce non-offending persons to take actions that are outside their routine activities, and which are

designed to indirectly minimize disorder caused by other persons or to reduce the possibility that crime may occur (301). In short, an overt threat of legal punishment is used to force a non-offending third party to accept a guardianship role that they would not have accepted if not for the threat of legal sanction. The ultimate target of the police action is a group of actual or potential offenders. The third party is viewed as an intermediary who is thought to have some influence over the likely offenders. Place managers (e.g., owners of bars and landlords) may be compelled to take on an active guardianship role. This type of responsibility differs from the others described above in that it is a coerced responsibility enforced by the threat of legal sanction.

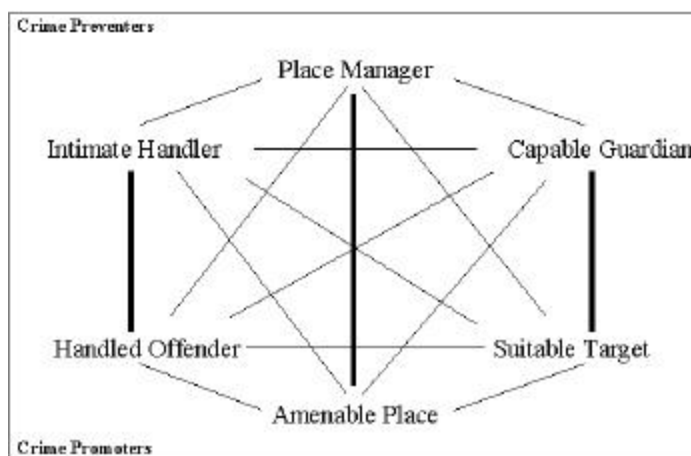
### **Crime Facilitators**

Clarke (1997) recommends an additional element in his crime opportunity structure – facilitators of crime. These are the physical resources that assist the offender to commit a crime. Many examples exist including getaway cars, weapons, stolen credit cards, and burglar’s tools among others.<sup>6</sup> Additionally, drugs and alcohol serve as crime facilitators if they reduce inhibitions held by the likely offender prior to the criminal act. Individuals not actively involved in the criminal act, but present at the scene, may serve as a source of encouragement for the offender. A crime may be committed to impress on-looking gang members, for example.

Figure 1 illustrates a modified routine activity theory model that reflects the relationships that discourage crime. The original elements of routine activity theory – offender, target, and absence of a guardian – are retained in the updated approach. The now familiar “crime triangle” formed by these three core components is evident in the new diagram.<sup>7</sup> At its core, the theory is still about the convergence of a likely offender, capable guardian, and suitable target within a particular crime setting. The new model provided here simply adds the important guardian relationships to the crime triangle.

The three vertical lines represent the guardian relationships between “crime promoters” (offender, target, and place) and “crime preventers” (handler, target guardian, and manager) (Eck 1999). These relationships, indicated by darkened lines, form the superstructure in a web of crime prevention. Crime is less likely to occur in a setting where the three guardian relationships are present and strong.

**Figure 1. The Web of Crime Discouragement**



Delinquent behavior is checked in a school environment characterized by the visible monitoring activities of teachers, administrators, school resource officers, and parents. When freed from adult supervision, the frequency of youth crime escalates. The other strands of the web indicate secondary factors in preventing crime. If the crime preventers work in concert to secure a particular location, then a criminal event is less likely to occur. The surveillance provided by a guardian may have a secondary influence on other crime promoters. That is, guardians may play simultaneous crime prevention roles. For example, a parent/chaperon may exercise personal control over a child at a school dance while providing general surveillance of the dance hall. In sum, when the ties are strong along multiple strands of the web, then the likelihood of a criminal event occurring is reduced. Of final note, the web of crime discouragement operates within a setting, which may include other people or objects that facilitate the commission of a crime.

**CIVIL REMEDIES, ROUTINE ACTIVITIES, AND CRIME DISCOURAGEMENT**

The goal of this section is to apply the reformulated routine activity theory just described to an emerging area of criminological research – the use of civil remedies to prevent crime. The three areas of civil law considered in the instant analysis are nuisance abatement, youth curfews, and alcohol server liability. Where appropriate, the academic literature is supplemented with relevant statutory and common law citations. Since this is a relatively new area of criminological inquiry, it is wise to begin with a brief overview of civil remedies and their relationship to crime prevention.

Civil remedies are procedures and sanctions specified by civil statutes and regulations that are used to prevent or reduce criminal problems and incivilities (Mazerolle and Roehl 1998:1). Civil remedies include restitution, fines/penalties, loss of government benefits and privileges (e.g., business and occupational licenses), forfeitures, injunctions/civil protection orders, and detention (Cheh 1991). The use of civil remedies has grown substantially since the mid-1980s. The earliest examples of civil remedy approaches targeted non-offending third parties, typically landlords and property owners, and used nuisance and drug abatement statutes to control problems (see also Buerger and Mazerolle 1998). Through the use of fines and property forfeitures, the statutes sought to compel landlords and owners to maintain nuisance- and drug-free properties.<sup>8</sup> Later applications targeted offenders directly. For example, local governments in California aggressively use public nuisance laws to prevent suspected gang members from congregating in targeted neighborhoods and public spaces (Werdegar 1999). Batterers, gangs, and delinquent youths are now commonly subjected to civil remedies that restrict their free movement and assembly (Mazerolle and Roehl 1998:2-3).

Another civil law intervention involves landlords and tenants. With increasing frequency, crime victims are taking civil action against landlords for allowing criminogenic conditions to develop and remain unabated in rental properties. In general, landlords owe “a duty to tenants...and guests to use ordinary care to protect them against an unreasonable and foreseeable risk of harm from the criminal acts of third parties” (Ruskell 2000). Courts in California and Texas recently found property owners negligent when they failed to

provide adequate security in the face of known threats (i.e., gang activity). In the Texas case, the landlord was faulted due to the property manager's complete lack of knowledge about criminal activity taking place at the apartment complex (see Ruskell 2000). Interestingly, this phenomenon has created a secondary market for crime analysis research. Some businesses now consult "crime vulnerability" studies to learn of potential crime problems at various store locations in order to mitigate exposure to civil liability suits (Stugrin 2001).

Why use civil rather than criminal remedies to discourage crime? First, there is a general perception that criminal law processes (i.e., arrest, prosecution, and incarceration) do not resolve the underlying causes behind most disputes. Civil remedies have a reputation for getting at the true criminogenic cause (e.g., coercing landlords to evict drug dealing tenants). Second, civil remedies are relatively inexpensive and easy to implement. A single person or a small group of neighbors can initiate a suit. Also, the burden of proof requirements are easier to meet in civil actions in comparison to criminal law violations (Mazerolle and Roehl 1998:3-4).

### **Nuisance Abatement**

"Nuisance abatement is a civil process by which a government agency, business, or private citizen sues the owner of a property that is the source of a public nuisance...to compel the end of the nuisance" (Eck and Wartell 1998:163-164). For example, under North Carolina law a public nuisance is defined as an act that unreasonably interferes with the health, safety, or property rights of the community (see generally Chapter 19 of North Carolina General Statutes). Drug dealing and prostitution constitute public nuisances under these laws. In general, three civil remedies are available for abating the nuisance: damages (only in cases where plaintiff has suffered some unique damage), injunctive relief (e.g., order directing a property owner to curb drug use at the site), or self-help (public authority may abate the nuisance, i.e., take the property through civil forfeiture, after due notice).

The elaborated routine activities model provides a useful framework for understanding the link between nuisance abatement and crime prevention. Eck's (1994) contribution to the theory, the management of place, is especially important here. Routine activities theory was originally developed to explain predatory crime. The addition of place managers to the web of crime discouragement expands the range of crimes

that may be explained by the theory. Prior to Eck's work, consensual crimes such as the buying and selling of drugs did not fit well into the original theory because the targets and controllers were not clearly specified. That issue has been overcome by recognizing the management of places as a necessary condition for the commission of a crime.

Since nuisance abatement involves the use of real property, our focus is on the place manager/amenable place relationship. Eck and Wartell (1998) found poor place management to be causally related to certain crimes (e.g., drug dealing). In the case of a rental property that is being used for the sale and distribution of drugs, the owner of the property has personal responsibility for supervising the rental unit. Day-to-day place management may be assigned to a building manager who seeks to ensure the proper functioning of the dwelling. Even though the property owner or his/her employee is not involved in the criminal behavior that may be taking place at the rental property, they still retain their original place management responsibility. There is a general recognition that property owners have the power and responsibility to regulate the behaviors of those people who use their property (Eck and Wartell 1998:163). As such, the property owner may be compelled (through tortious claims) to end the nuisance. In essence, the property owner is forced to become a more active place manager under the threat of civil punishment. More active place management leads to crime desistance and future crime prevention. In sum, the routine activities approach provides a useful theoretical base for understanding the relationship between civil remedies and crime prevention.

### **Juvenile Curfews**

In the United States, the use of youth curfews is a widespread practice. By 1995, almost 75 percent of the largest U.S. cities had a curfew (LeBoeuf 1996). Curfews seek to reduce the street presence of teenagers, especially at night. The primary rationale offered for curfews is to protect children and to deal with youth crime (White 1998:125). The implementation of curfews does vary somewhat across locales. Most rely solely on fines and court orders while others require juvenile and parental attendance at various social and community programming. Some cities have parental responsibility provisions in their curfew ordinances. In these cities, parents may receive hefty fines (\$500 in Dallas, Texas) if their child repeatedly violates the curfew. Another city fines

store owners who harbor curfew violators (LeBoeuf 1996).

We can again ply the tools of routine activities theory to understand the relationship between civil remedies such as curfews and crime prevention. First the types of supervisors and supervisory relationships that are at work should be identified. For Mazerolle and Roehl (1998:9), the emphasis is "more on problem youth, than problem places." In the language of routine activities, the primary relationship in the web of crime discouragement is the personal handler/likely offender dyad. Curfews, when viewed through this lens, are meant to increase the amount of adult supervision and control over juveniles by moving them into a household or other strictly regulated setting. Here, parents have a personal responsibility for supervising their children. Two other crime discouraging relationships also operate through youth curfews. First, the police play an important role in monitoring places for potential curfew violations and other delinquent acts. The police have assigned responsibility by virtue of their employment and formal duties in enforcing the ordinance. Second, as noted earlier, some curfews are expressly created to protect children. Curfews may be viewed as a way to enhance parental guardianship over the likely targets of street or gang-related crime.

### Server Liability

Many states have dram shop or civil liability acts which impose liability on the seller of intoxicating liquors when a third party is injured as a result of the intoxication of the buyer where the sale has caused or contributed to such intoxication. Such acts protect the third party not only against personal injuries and property damages resulting directly from affirmative acts of the intoxicated man, such as resulting from negligent operation of vehicle or assault and battery, but also against the loss of family support due to such injuries (Black 1990:494).

In North Carolina, it is illegal for a permittee to knowingly sell or give alcoholic beverages to someone who is intoxicated (N.C.G.S § 18B-305). The general purpose of this statute is to protect "the customer from the adverse consequences of intoxication" and to protect "the community from the possible injurious consequences of contact with the intoxicated person" *Hutchens v. Hankins* 63 N.C. App. 1, 303 S.E.2d 593 (1983).<sup>9</sup> In short,

the bartender/server may be civilly liable for damages caused by the inebriate.

Server liability laws place bartenders into a handler/likely offender relationship with patrons (these laws also establish bartenders as non-offending third parties). They are responsible for monitoring the alcohol intake of a potential class of offenders (heavy drinkers). Servers supervise likely offenders and their intake of a potent crime facilitator – alcohol (see Clarke 1997). This is important because studies have shown a relationship between customer intoxication and incidences of violence and drunk driving (see Stockwell 1997; Homel 1997). Servers can also play an important role in supervising the bar area (place managers) for illegal drug deals and other criminal activities. Table 1 summarizes key elements from the discussion of civil remedies, routine activities, and crime discouragement.

### CRITICISMS

Six concerns emerge from the preceding analysis. The first four items relate generally to routine activities theory while the final two points address important questions surrounding the use of civil remedies to discourage crime.

The first criticism centers on the issue of crime displacement. This is an enduring criticism of routine activities theory and like approaches (Clarke (1997:28) notes that it has always been the "Achilles' heel" of situational crime prevention). Some argue that the discouragement of a criminal event today does nothing to reduce the likelihood that a similar crime will be committed by the offender at another time and place. As the argument goes, guardianship simply moves crime from one area to another area. Clarke notes that much of the early literature on situational crime prevention reported some levels of crime displacement (1997:28). In their experiment on the prevention of shoplifting, Farrington et al. (1993) found anecdotal evidence of increased pilferage in nearby stores that did not use electronic tags. However, recent analyses have shown that displacement costs are low (Hesseling 1994; Clarke 1997) if they exist at all (Eck 1997). By accepting the "reasoning offender" concept, proponents of routine activities see a way out of this theoretical thicket. In rational choice theory, the offender has to reconsider whether alternative courses of action, that is the commission of a comparable crime elsewhere or at another time, is worth the risk.<sup>10</sup> At this time, displacement is no longer a given.



**Table 1. Summary of Key Elements – Civil Remedies, Routine Activities, and Crime Discouragement**

Civil Remedy	Types of Supervisor/ Objects of Supervision	Level of Responsibility	Crime Discouraged
Nuisance Abatement	Place Manager/ Amenable Place	Owner-personal Building manager-assigned Non-offending third party	Sale and distribution of drugs, crimes associated with drug activities (larcenies)
Juvenile Curfew	Personal Handler/ Likely Offender Place Manager/ Amenable Place Guardian/Suitable Target	Parents-personal Police-assigned	Non specific – vandalism, property crimes, gang fights
Server Liability	Personal Handler/ Likely Offender Place Manager/ Amenable Place	Bartender-assigned Non-offending third-party Bartender’s role is to control a crime facilitator (alcohol)	DWI, vehicular manslaughter, assaults

Second, routine activities theory tends to ignore the research literature that associates crime with offender characteristics (social learning, psychological, identity, self-esteem). The latest iterations of the theory have corrected this, in part, by moving toward a more complex and realistic conceptualization of the likely offender (Felson 1986; Ekblom and Tilley 2000). Third, there is a heated debate within the routine activities camp over the proper conceptualization of the theory as a micro or macro approach to crime. Capowich (1999) argues that the multi-level research found in Bursik and Grasmick and Sampson is more fruitful than the micro only approaches. Fourth, Pease (1997:234) is critical of the research that has been undertaken in the name of routine activities. He notes that most studies which test the theory are post hoc and descriptive. At this stage in its development, the theory is limited in its predictive capacity.

Fifth, the level of coercion that is necessary to bring about marginal changes in crime rates is a bit troubling. The threat of civil liability is the force that compels property owners and alcohol servers to do their jobs. In essence, individuals are forced to take on certain policing functions against their will. In a similar vein, curfews seem to infringe on the rights of broad classes of citizens, irrespective of their likelihood to commit a crime. Sixth, except in a few studies (see Mazerolle and Roehl 1998), there is little empirical evidence supporting the claim that civil remedies, in fact, suppress crime.

**CONCLUSION**

This paper developed an updated version of routine activities theory and examined its potential for explaining the impact of civil remedies on

crime discouragement. The reformulated theory was constructed by analyzing its original propositions, linkages with other perspectives, and results from previous empirical studies. The updated approach proved useful in understanding how nuisance abatement, juvenile curfews, and server liability laws impact on crime. Although the theory is rightly criticized for its lack of empirical support in several areas, it holds much promise for future study. The effectiveness of place managers based on some measure of coercion is a challenging question emerging from the analysis. Are those who are forced to become place managers better at it than those who accept the task on a voluntary or fee-for-service basis? In the end, the updated approach provides a promising theoretical framework for understanding how certain civil remedies may be used to reduce crime.

**NOTES**

<sup>1</sup> Commentators still lament the bias toward criminality research: “Virtually no attention is paid to the general qualities of criminal acts, to their connection to analogous noncriminal acts, or to the qualities of the targets involved in them. Instead, attention focuses almost entirely on offenders” (Gottfredson and Hirschi 1990:14).

<sup>2</sup> See Hechter and Kanazawa 1997, 201-203 for a detailed summary of crime and deviance studies conducted using a rational choice framework.

<sup>3</sup> Environmental criminology is itself an amalgamation of theoretical models including routine activities, rational choice, crime pattern, and human ecology (see Brantingham and Brantingham 1998).

<sup>4</sup> A thorough summary of the empirical research on place specific crime prevention is found in

Chapter 7 of the Maryland *Preventing Crime* Report (Eck 1997). Researchers offered a guarded conclusion: "Blocking crime opportunities at places can reduce crime under some circumstances" (7-39). Several tactics appeared more promising than others such as the use of multiple clerks in convenience stores and metal detectors in airports. In the end, relatively weak research designs prevented the research team from determining the effectiveness of many frequently used interventions (e.g., closed-circuit television and lighting improvements in public spaces and parking lots). The one place-based tactic that consistently reduced crime was the threat of civil action against landlords for maintaining public nuisances. This issue is addressed in greater detail later in the paper.

<sup>5</sup> Ekblom and Tilley (2000:382) offer up a morally reasoning offender whose criminal behavior is influenced by personal morality.

<sup>6</sup> Felson (1995) also notes the importance of prevention tools (e.g., mirrors to watch merchandise).

<sup>7</sup> A triangle figure is most often used to represent the three primary elements in routine activity theory (see Felson 1998:53). A variant of the triangle has been developed for use by law enforcement agencies to identify crime problems (Schmerler et al. 1998:9). The law enforcement "crime triangle" substitutes a "location" element for the "absence of guardian" feature in the original theory. Guardians are noted in the narrative accompanying the police "crime triangle," but are not incorporated into the visualization.

<sup>8</sup> There has been considerable development in the use of civil sanctions, such as business license forfeiture and health and building code citations, by integrated community service teams that include police, city license bureaus, and public health agencies (see, for example, Oakland, California's SMART program described in Green 1995).

<sup>9</sup> In North Carolina, the courts only recently recognized the liability of social hosts for the acts of intoxicated guests (see Shumate 1993 for an excellent discussion on the development of server liability).

<sup>10</sup> Proponents of the routine activity approach may also argue that crimes are not displaced easily because daily patterns are fairly strong (e.g., people tend to take the same routes to and from the store). To be displaced, the potential offender would need to have other, similarly situated targets within his awareness space.

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