

HUMAN RIGHTS IMPLICATIONS OF NEW DEVELOPMENTS IN POLICING

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Abstract

This paper examines the implications of contemporary developments in the structures and practices of policing (both state and non-state) – particularly innovations in technologies of prevention – for human rights protections. In exploring the up-take of available prevention and repression practices, the chapter will distinguish between potential and actual use of control strategies. The paper concludes with a consideration of the implication of the developments canvassed for the capacity of established regulatory mechanisms to function as effective sources of human rights protection and considers what might be done to enhance the effectiveness of these protections within the contemporary security environment.

Introduction: shifts in policing

This paper explores human rights as governance mechanisms. That is, it considers human rights protections as mechanisms for shaping governance in ways intended to protect, and contribute to, human well-being -- especially well-being at the level of the individual. Accordingly, the paper's focus will be on the "governance work" that human rights mechanisms are *intended to do* and the ways in which this work is done *in practice*. This conception of rights avoids a common misrepresentation of rights as contradicting, or counterbalancing security, order and other concepts related to security risks. Human rights are understood as intended to enhance human security. Tensions and conflicts arise over the question of whose security is being enhanced.

An established and useful way of conceiving of the types of order that governance seeks to accomplish is to distinguish between forms of governance that promote broad collective interests (public goods) and other forms that promote more limited sectarian, corporate or individual interests (private goods). These forms are not exclusive sets of strategies, tactics, rules, philosophies, politics, etc. but are better understood as polar ends of a continuum of governance.

While the benefits, or goods, found at either end of this continuum are relatively clear, this clarity diminishes as one moves towards the middle. In the middle areas, goods have a hybrid or mixed character with both public and private features. Within the messy world of governance, most goods are located in the middle ranges of this continuum: they are public/private hybrids. In our analysis we will focus our attention primarily on governance goods that have a predominantly public character.

We will explore two issues that affect the relationship between the practices of governance and human rights aspirations. First, the assumptions, built into human rights (at the conceptual and institutional level), about the way in which public governance is organized. Our focus here will be on assumptions about both the authorities that authorize governance – traditionally, the state – and the way in which governance is provided. The second issue will be technologies of governance, that is, the means that

authorities authorize, and that providers use, in their governance work. We will here be especially concerned with technologies that enable governance processes to intrude on individual liberty.

In exploring these foci we will examine the ways in which human rights have been used to shape governance and the extent to which practices of governance have integrated the discourses of rights. We will also explore changes initiated by recent events, emerging phenomena, new technologies and political transformations.

As tools for producing “good” governance, human rights are intended to have universal application – they are intended to shape governance, especially public governance, wherever it takes place. That is, human rights are intended to establish minimum conditions that all publicly desirable orders (however else they differ) should realize.

This postulate of universality has been a source of considerable debate around the application of rights standards. Of particular concern has been the fact that constructions of such rights have typically had their origin in, and have typically been promoted by, Western (developed) nations. Two principal critical arguments have been advanced: first that these Western countries have not had a good track record with respect to upholding rights, and second, that this Western centrism has had distinct colonial echoes.

One of the most fundamental governance assumptions underlying human rights is an understanding that the state, for the most part, is and should be the exclusive source of authority for public governance, as well as the appropriate provider of such governance. Accordingly, rights have mostly focused on the relationship between states and citizens. This understanding of governance has its historical roots in Europe in the mid-1600’s – in particular in the Peace of Westphalia and in Thomas Hobbes’ enormously influential treatise *Leviathan*.¹ Both viewed the state as the only legitimate and effective source of public governance. Both were designed to bring an end to polycentric forms of public governance in Europe. In addition, while it is from Hobbes that the human rights discourse draws its assumption of the state as the exclusive source of authority for public governance, it is John Locke’s argument for limited government that has primarily shaped the vision of the role of the state within the modern conception of human rights.

This understanding of governance, and the normative agenda it seeks to realize, is deeply embedded within Western political thought and is fundamental to the ways in which human rights have been conceived and enacted. Human rights are intended to place demands on state governments to promote ends that will realize orders that are rights-compliant, as well as to constrain state governments to only employ rights-compliant means to achieve these orders.

The use of “right” within the phrase “human rights” makes the claim that the state has a duty to “rights holders” to ensure that they will enjoy certain outcomes. For example, a right to health or education obligates the state to ensure that its citizens have access to set minimums with respect to health care or education.

In exploring human rights as a governance mechanism, this paper will focus, in particular, on civil and political rights – what has use been called “first generation” rights. These are rights intended to shape the way in which governments govern. This is not intended to conceptually privilege civil and political rights over economic, social and rights. Rather it acknowledges that the bulk of the issues that this paper addresses are located within the sphere of civil and political rights.

The government institutions that have been regarded as most crucial to these first generation rights are the institutions of security, in particular the institutions of “criminal justice”. Within this set of institutions those concerned with *policing* (which we conceive of as the governance of security) have been regarded as particularly important. Together with various other institutions – particularly, the institutions of the “intelligence communities” and the military – policing institutions constitute points of contact between the state and citizens where force and coercion may be applied. These points of contact, and their associated regulatory frameworks, are central to this paper.

¹ Hobbes, T (1651, reprint 1985), *Leviathan*. London: Penquin Books.

The paper will be organized as follows. We will first briefly outline four broad rights which might be thought of as liberty rights, being i) the right to life; ii) the right to privacy; iii) free speech and political rights and iv) juridical or due process rights intended to limit what governance can do to provide for security. We will then provide a broad-brush consideration of developments in security governance that came to the fore during the final quarter of the 20th century. Following this we will turn our analytic attention to shifts in the operational context within which policing was exercised during this period. We will then focus our gaze further by exploring operational trends in policing that have particular relevance to the four human rights we have identified.

Human rights and policing: a brief overview

The objective of this section is to establish a baseline for our discussions on the governance of security. The rights listed below reference broad categories of human behaviour that human rights have sought to govern.

This policing-focused list is not exhaustive. Many human rights have little to do with policing and many are controversial and are not widely recognized. We believe that as far as the governing of security is of interest, four broad sets of rights merit special attention. They are the right to life and bodily integrity, to privacy, to freedom of dissent, and juridical rights. We paint with broad brush strokes as the formulation of rights, the institutions of security governance and the regulatory language vary considerably across the globe.

Right to life and bodily integrity

“Everyone has the right to life, liberty and security of person”
(Article 3, UDHR)

It is widely recognized that the most fundamental human right is the right to life, often regarded as the basis for all the other rights. This right is recognised and protected in all international and regional human rights treaties that deal with civil and political rights. It has been argued that “[i]t is the supreme right from which no derogation is permitted even in times of public emergency.”² As such, it is said to be “inalienable”: unlike many other rights, it cannot be modulated or made to depend on external conditions.

This definition of inalienability is obviously rejected by administrations that support the death penalty. Article 6(1) of UN International Convention on Civil and Political Rights (ICCPR), Art 4(1) of the American Convention on Human Rights and Art 4 of African Charter of Human and Peoples’ Rights prohibit the *arbitrary* deprivation of life, but do not specify the type of killing regarded as non-arbitrary. The European Convention on Human Rights (ECHR) gives a more precise definition, as it only prohibits intentional deprivation of life (with the exception of self-defence).³ Although it is regarded as fundamental, the right to life is not regarded as an absolute right – contra for instance, the prohibition of torture.

In spite of – or because of – the fact that the right to life is widely regarded as the most fundamental of rights, there has been much debate surrounding it. A crucial question has been to whom it applies, and in particular whether or not it applies to the unborn child. In the case of *Vo v France*⁴ the Grand Chamber of the European Court of Human Rights decided, for example, that the unborn child was not a “person” under the Art 2 of ECHR. On the other hand, Art 6(5) of the ICCPR states that the sentence of death shall not be

² Office of the High Commissioner for Human Rights. *General Comment No 6: The right to Life 30/04/82, CCPR General Comment*, accessible on <http://www.unhchr.ch/tbs/doc.nsf/0/84ab9690ccd81fc7c12563ed0046fae3>

³ Symonides, J. (2000), *Human Rights: Concept and Standards*. Paris: UNESCO Publishing, 75-76.

⁴ [GC] (2005) 40 EHRR 12.

imposed on pregnant women. The only convention that specially provides for the right to life “from the moment of conception” is Art 4 of the American Convention.

Interestingly, the right to life typically includes prohibitions directed against actions taken by private persons. For example, it has been argued that “the positive right to life includes a duty to prevent and punish killings and disappearances by private actors.”⁵ Similarly, the UN Human Rights Committee in its Communication regarding the submission of *Kindler v Canada* (470/91) argued that:

The standard way to ensure the protection of the right to life is to criminalise the killing of human beings. The act of taking human life is normally subsumed under terms such as “manslaughter”, “homicide” or “murder”. Moreover there may be omissions which can be subsumed under crimes involving the intentional taking of life, inaction or omission that causes the loss of a person’s life, such as doctors’ failure to save the life of a patient by intentionally failing to activate life-support equipment, or failure to come to the rescue of a person in life threatening situation or distress. Criminal responsibility for the deprivation of life lies with private persons and representatives of the State alike. The methodology of criminal legislation provides some guidance when assessing the limits for a State party’s obligations under article 2, par 1, of the Covenant, to protect the right to life within its jurisdiction.⁶

Weber’s state monopoly of legitimate violence is widely understood as being entrusted, in domestic conflicts, to state police.⁷ This is valid only in those countries where the military is exclusively dedicated to international conflicts. It is not the case in many countries, where the military are active in internal matters. In the most extreme, police organisations are actually part of the military structure. Be that as it may, organizations put in charge of domestic order maintenance can be said to be given a general right to use violence against citizens. Given this, the evidence suggests that if there are weaknesses in the integration of the right to life and bodily integrity into the regulatory framework that govern how these institutions operate, they are likely to find, and exploit, these gaps.

As we note below, recent developments in policing tactics have created, or reactivated, a number of flashpoints for potential violations of human rights. For instance, controversies over new technologies such as the Taser™ conducted energy weapon are forcing police organizations to review their use of force rules. Some police organizations have argued that such electroshock devices should be located at the lowest level of a force continuum so as to allow their use at the lower end of police-citizen conflict (when citizens refuse to follow police directions, for instance); others have given it a higher force value and consider it to be a step behind service firearms. This uncertainty is only multiplied by the fact that dozens of so-called “less-than-lethal” weapons are now available or under development (microwave, plasma and infrasound crowd dispersal devices, nets, glue and foam immobilization systems, laser incapacitation devices, etc.).

Also, military organisations are being given new police missions when maximum force is deemed necessary against dangerous individuals or groups. Military tactics, technologies and firepower are often presented as an appropriate, proportional response to terrorism, violent organized crime, international crime cartels, etc. The language of “war,” “enemies,” “interdiction,” “battlefields,” “denial,” etc. is closely linked to these new missions. All these raise new and important questions with regard to systems, mechanisms and levels for human rights accountability.

⁵ Joseph, S., Schultz, J. and M. Castan (2004), *The International Covenant on Civil and Political Rights: cases, materials, and commentary*. 2nd edition. Oxford: Oxford University Press, 183 par. 8.42.

⁶ United Nations Human Rights Committee. *Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights. Communication No. 470/1991 in the matter of Kindler v Canada*. 48th session., UN Doc. CCPR/C/48/D/470/1991 at B.

⁷ Weber, M. (1946), “Politics is a Vocation” in H. H. Gerth and C. Wright Mills (eds.) *From Max Weber: Essays in Sociology*. Oxford: Oxford University Press, 77-128.

In the third section of this chapter we will look at the complex ways in which policing models (and not simply tactics and technologies) affect officer-citizen interaction and impact on the use of force regulatory frameworks and practices. Indeed, as we will see, some models create demands that push practical reality well outside the reach of regulations, which become mere window dressing. This will include a discussion of how established conceptions of police-citizen interactions are becoming increasingly out of touch with the realities of contemporary policing assemblages and networks. Today use of force engagements, within public security governance structures, appear in various hybrid configurations where public, private and hybrid organisations and their members have variable duties, responsibilities, objectives, and are subject to variable levels of review and remedy.

Right to privacy, or to be “left alone”

Open societies define themselves by the freedom of action allowed to their members. The contrast they present to totalitarian societies may be summed up by the broad statement that an open society aims at the transparency of state institutions and the opacity of civil society, while totalitarian societies tend towards the opacity of the state and the transparency of civil spaces. Given this context it follows that the existence of a personal, “private” sphere of action, isolated from government scrutiny, constitutes an essential check on the state’s power over individual citizens.

Yet, a commonly accepted mission of all forms of policing is to watch public, as well as private, spaces. In fact in two separate moments of what is commonly accepted as the invention of police, the new institution was specifically and explicitly given a surveillance mission. An essential objective of the French police, when they were established in the 17th century, was to penetrate civil society in order to identify and neutralize threats to the state. Similarly a crucial objective of the Peel’s 19th century policing in London was to watch public spaces and prevent large-scale disorder (e.g. riots) through the identification and control of small-scale conflicts. Brodeur⁸ has referred to the former as “high policing,” meant to monitor and control political activities threatening the status quo, and the latter as “low policing,” aimed at everyday, common, “street” crimes. In both forms of policing surveillance, watching, identifying, sorting and recording are fundamental. As a consequence, while we have argued that “good” orders are human rights respecting orders, policing is nonetheless inevitably destined to rub up against the boundaries of the private sphere.

It is no wonder, then, that human rights prescriptions so often include some version of a “right to privacy”. Such a right is guaranteed for instance in Art 17 of the ICCPR, Art 8 of ECHR and Art 11 of American Convention on Human Rights. The UN Human Rights Committee, responsible for monitoring the implementation of the ICCPR, has pointed out that Art 17 of the ICCPR imposes obligations on states to adopt legislative and other measures to give effect to the prohibition against “interferences and attacks whether they emanate from State authorities or from natural or legal persons” on the right to privacy.⁹ The right to privacy is regarded as a complex right, which can be divided into a right to “individual existence” and a right to autonomy, which defines the limits of the state’s power over individuals.

Some national jurisdictions also provide for a right to privacy. In the United States the right to privacy is derived from the provisions of the 1st, 4th and 14th amendments to the

⁸ Brodeur, J-P. (2005), *Les visages de la police*. Montréal : Presses de l’Université de Montréal, 225-254.

⁹ Office of the High Commissioner for Human Rights. *General Comment No. 16: Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence and Protection of Honour and Reputation (Article 17)* accessible at: <http://www.unhchr.ch/tbs/doc.nsf/0/23378a8724595410c12563ed004aeecd?-Opendocument>.

Constitution, while in the United Kingdom, the Human Rights Act 1998, domesticates the Art 8 privacy provisions of the ECHR.¹⁰

The right to individual existence is the most closely linked to our ordinary conception of privacy. It refers to the protection of a person's identity, for example, name, appearance, gender, feelings, honour and reputation, integrity and intimacy, stipulating that certain characteristics, actions and personal data should be kept private. However, this right to privacy is a "qualified" right, meaning that some infringements and modulations are allowed, creating a variable geometry in its practical application. In both the US and the UK, privacy is protected as a qualified right.¹¹

Considerable jurisprudence has been developed around the limits of state surveillance. For instance, in *Klass v Germany*¹² the European Court of Human Rights argued that such surveillance needs to be justified in accordance with the law, that executive authorities should be subject to judicial control and that this control should be sensitive to the issue of proportionality. This line of reasoning is endorsed by the UN Human Rights Committee in its *General Comment on the Right to Privacy*,¹³ requiring states to enact laws to regulate areas like surveillance and ensure that decisions in individual cases are only authorized by the designated authority.

The issue of privacy is usually understood as revolving around the presence of unwanted or abusive consequences of surveillance and data collection. Just as surveillance is justified by the security and justice benefits it is purported to produce, it is criticised for the possible abuses that could take place, such as misuse of information (e.g. blackmail, ridicule), overly aggressive criminal justice approaches, etc., and potential increases in the control of everyday activities deemed undesirable.

There is however another aspect to privacy-mitigating practices that lie entirely outside of such preoccupations, as the right to "be left alone", or a right to autonomy. In this manifestation the consequences of surveillance and data collection are immaterial and it is the very fact that the state – or another entity – is intruding into one's private life that is deemed objectionable.

Finally, one less often identified aspect of privacy might be termed a right "to be forgotten". When unmediated human relationships generate conflicts, actions taken during these conflicts have a certain "shelf life" in the participants' memory; with time, details of events become blurred, emotional charges lessen, spoken words are forgotten. There have of course always been ways of creating extensive archives with a longer shelf life. This has become exacerbated, however, by electronic memories that can be extraordinarily broad – for example, huge swathes of electronic media, such as cell phone and email traffic. Such recordings may be very detailed and may be preserved for indeterminate lengths of time in multiple locations.

This is not only true of many personal relationships, but also of dealings citizens have with a variety of governance nodes including state nodes: crossing borders, travelling on airplanes, queries made to government offices, pictures taken by surveillance video and myriad other such, so-called "transactions" are kept on databases. A right to be forgotten seeks to cut down machine memory to human size, so to speak. It would also apply to instances of accepted state intrusion into private life (for instance, when a crime is committed). In such cases the memory of the intrusion, its justification and its results should, it is sometimes argued, also be limited. This is especially important in what has come to be called the "information society."

¹⁰ Goold, B. J. (2007), "Privacy, Identity and Security" in B. Goold and L. Lazarus (eds.) *Security and Human Rights*. Portland, Oregon: Oxford University Press, 46.

¹¹ Goold, B. J. (2007), "Privacy, Identity and Security" in B. Goold and L. Lazarus (eds.) *Security and Human Rights*. Portland, Oregon: Oxford University Press, 46.

¹² (1978) 2 EHRR 14.

¹³ Office of the High Commissioner for Human Rights. *General Comment No. 16: Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence and Protection of Honour and Reputation (Article 17)* accessible at: <http://www.unhchr.ch/tbs/doc.nsf/0/23378a8724595410c12563ed004aeecd?-Opendocument>.

In closing this section, we want to point to one important aspect of the increase in surveillance in most Western countries and elsewhere: that it is dependent on contingent processes of criminalization as well as less severe forms of regulation. As a constitutive element of social control, surveillance is ostensibly aimed at three types of behaviours. First, those that are, by nature, indisputably harmful, extremely dangerous and whose status as crimes is not controversial. Terrorism is one, so is violence against children, juvenile pornography, and human trafficking. In the second type are crimes and other behaviours that threaten or degrade key aspects of our life, whether or not they are particularly harmful, such as cybercrime. Third are a series of behaviours that are not crimes but are conceived of as forms of abuse or misuse of the state's welfare systems (illegal immigrants, welfare "parasites", or parents who send their children to a school in an area where they are not assigned to by the school board¹⁴). All of these behaviours have been used to justify more intensive surveillance and state intrusion in private lives.

Our first remark is that each category can and has been expanded at will to include new behaviours and to make them legitimate targets of surveillance. In countries where tolerance for surveillance is already high, mere regulation at the municipal level may suffice to legitimate and launch various surveillance practices. In others, more wary of state intrusion, new targets of surveillance might need full criminalization and public awareness campaigns. Either way, it must be understood that the adoption of privacy-threatening surveillance strategies and technologies is conditioned not simply by objective target behaviours, but also by the development of social control regulations.

Second, while the legitimization of surveillance rests on the identification of intolerable individual behaviours, often a phenomenon of "function creep" creates a different form of criminalisation, where practices of surveillance put in place to combat high-profile dangers, such as terrorism, end up being used against minor misbehaviour. Though surveillance cameras are often installed after horrific violent acts have taken place, they are then used to police far less egregious forms of deviance, such as failure to pick up after one's dog or garbage pails that appear on the kerb earlier than city council has deemed reasonable.

Right to free speech and other political rights

Here the distinction previously established between "high" and "low" policing is particularly important. Most police activities fitting the "low policing" paradigm have little chance of clashing with political activities (provided they remain non-violent). By contrast, "high policing" missions aim at the control of political activities deemed dangerous for the state, its institutions and its citizens. One aspect of the complexity of the matter is the identity, social position and political function of those who determine what threats are to be controlled. Another is the political and administrative processes through which their decisions are translated into policing missions.

We can place terrorism (defined as lethal attacks against civilians in furtherance of political objectives) at the extreme end of the very wide spectrum of political activities, and few would argue today that there is a need for the surveillance and control of terrorists and that this, where appropriately managed, should not be considered a violation of human rights outside of the limitations normally expected for qualified, non-inalienable rights. At the other end of the continuum we might find common dissent, which may irritate officials but is broadly thought to be an essential part of democratic politics. Freedom of expression, in particular, is widely regarded as an essential feature of

¹⁴ The case of Jenny Paton, secretly investigated by local officials who suspected she had misled them by giving out a wrong address so her children would go to a school outside of her district, is exemplary: <http://www.nytimes.com/2009/10/25/world/europe/2-5surveillance.html>.

democratic governance.¹⁵ Between these extremes lie many activities with a much more ambiguous status.¹⁶

Conceiving of political rights in this way highlights two areas of difficulty and potential violations. First, as has been underlined many times before, definitions of terrorism vary in the extreme and there is no reliable standard. The notion of terrorism is itself a “grab bag” of heterogeneous activities, some of which may be acceptable to some, in some contexts. In many countries, new offences relating to the funding of terrorist organisations, created in the wake of the 9/11 attacks, criminalize any type of support for groups who can be linked, directly or indirectly, to broadly defined terrorist acts. Many countries have used such laws to criminalize or at least hamper the activities of political opponents. In Canada, recent events in Sri Lanka have prompted thousands to take to the streets and demonstrate against the annihilation of Tamil resistance. Many bore flags of the Tamil Tigers, an officially designated terrorist organisation in Canada (and elsewhere), probably because few other visual symbols of Tamil resistance exist. Though no arrests were made, this open support for a terrorist organisation was illegal.

The second problem is simply a matter of limits: as with any continuum, the actual tipping point between allowed and forbidden political activities is difficult to establish and cannot be found in the nature of the acts themselves - it is a political decision. In peaceful liberal democracies the use of violence serves as the determining characteristic of terrorism. However, such a standard is hardly pertinent to less stable, less peaceful, or entirely disorganized states or regions. This is a consequence of a fundamental flaw of the notion of “terrorism”: its cultural location. Even within democracies, however, the violence standard is far from being as clear as it appears – especially since the police mission is usually to *prevent* violence, i.e. to intervene when the *threat* of violence, rather than violence itself, is identified.

In short, police surveillance of demonstrators and the prevention and repression of political violence (riots, terrorism) occurs at the fringe of normally accepted political speech and behaviour in democratic societies. In less democratic societies, police action against “subversive” and other seditious or blaspheming persons (self-identified opponents, political opponents, supporters, journalists, etc.), is extremely common.

It must be noted that the subject of free speech is undergoing a fundamental transformation with the democratization of mass communication and mass information. It is hard to predict what the world will look like in three, let alone in ten years, but the current trend is for almost all governments to lay various forms of claims over what many refer to as their “national cyberspace”. Conceived of as a new layer of space simply added to the common conception of territory (underground, surface, territorial waters, air, and orbital space), this claim to cyberspace is the source of:

- increased military presence on the Internet in the form of surveillance, control and “cyberwar”;
- increased budgets allocated to police organisations to “patrol” the Internet and to warn citizens of the dangers therein;
- new surveillance functions imposed on private enterprises by governments; and
- an increase in the detection and data-mining capabilities of intelligence agencies.

Yet rights to participate in political debate are some of the oldest explicitly stated forms of powers given to individuals by the state. Currently, statements concerning freedom of expression, religion, belief, opinion, thought, media, art, association, assembly and trade unions can be found in Arts 18 to 22 of the ICCPR, Arts 9 to 11 of the ECHR, Arts 12 to

¹⁵ Joseph, S., Schultz, J. and M. Castan (2004), *The International Covenant on Civil and Political Rights: cases, materials, and commentary*. 2nd edition. Oxford: Oxford University Press, 268.

¹⁶ See Christiansen, K. (2008), “The Conquest of Space: New York City’s New Frontier Of Social Control” in M. Deflem (ed) *Surveillance and Governance Crime Control and Beyond*. Bingley (UK): Emerald.

16 of the American Convention on Human Rights and Arts 8 to 11 of the African Charter on Human and Peoples' Rights.

Freedom of expression constitutes one of the essential foundations of a democratic society....This means that every formality, condition, restriction or penalty imposed on this sphere must be proportionate to the legitimate aim pursued.¹⁷

These rights remain a subject of considerable debate. Smith suggests that "international bodies have yet to rise to meet the challenge of coping with the information technology age and the ease with which information can be disseminated."¹⁸

Juridical rights

Because police was, from its inception, conceived of as part of what is often referred to as the "judicial system" – in reality there is no system, just an assemblage of parts – its interface with various aspects of criminal law has always been a subject of particular attention. As "enforcers of the law," individual officers, as well as their organisation, are conceived of as both users of, and subject to, the contents of criminal or penal codes or their equivalent. At the most obvious level, this means that, in most jurisdictions, police officers are forbidden to break the law (although their "powers" enable them to undertake actions that, if undertaken by others, would be illegal) in order to prevent and solve crimes, arrest criminals or protect the state. This is an extremely general statement and, thus, allows for exceptions. For example, police are in fact typically allowed to commit crimes in the course of investigations, for instance during undercover work against organised crime. In most cases these violations are closely monitored, limited to less serious crimes and sometimes to a few, specific officers or agents.

In addition to this general duty to respect the law, police are, through the courts, also submitted to a framework of rights regulation via "due process" requirements. These rights include the right to a fair trial (including representation, information about the accusation one faces, and the right not to be forced to testify against oneself) and rights of individual liberty (protection against abusive searches and seizures, protection against abusive detention). Not all these rights are relevant to police activity, but citizens are clearly protected against abusive crime fighting in the form of arrests, seizures and detention.

For instance, Art 5 of the ECHR provides that everyone has the right to liberty and security. This Article protects persons from arbitrary arrest and detention. Since police need to arrest and detain in the course of their fundamental missions, this clearly cannot be an absolute right. Article 5 states that a person can be lawfully deprived of liberty, provided this deprivation follows the framework of procedures prescribed by law.

This creates a tension between the necessities of police work and the apparent limitations imposed on its practitioners. Herbert Packer's¹⁹ early observation of multiple forms of tensions between the poles of "crime control" and "due process" remains as relevant as it was, even though, or perhaps because of, the fact that today's post 9/11 world is very different from Packer's world. Today, for example, in some jurisdictions the use of torture, the compelling of self-incriminating testimony and extended detention orders are now acceptable due process. Mimicking non-democratic states where no rule of law is expected, many Western countries, including the United States, have legalized various practices which were previously banned from the police toolbox. This has greatly reduced the ability of Western countries to put political pressure on other states to ameliorate their human rights record. It is, however, important to recognize that courts have generally attempted to preserve rights in the face of government encroachments. In *Hamdan v*

¹⁷ *Handyside v UK* (1976) 1 EHRR 737.

¹⁸ Smith, R. (2007), *Textbook on International Human Rights*. Oxford: Oxford University Press, pg 276.

¹⁹ Packer, H. L. (1964), "Two Models of the Criminal Process" *University of Pennsylvania Law Review*, 113(1), 1-68.

*Rumsfeld*²⁰ for instance, the US Supreme Court has held that military commissions that tried suspected terrorists in Guantanamo were in violation of the Uniform Code of Military Justice and the minimum protections of Common Article 3 of the Geneva Conventions.

Governing security in late modernity

It is now widely accepted that collective governance – understood as the intentional “shaping of the flow of events”²¹ so as to produce desirable public goods – has always been fundamentally polycentric. This fact of life, as mentioned above, contrasts sharply with the normative, state-centric ideal, often traced to the Peace of Westphalia of 1648 and the publication of Hobbes’ *Leviathan* four years later. This ideal presented good collective governance as only possible where public governance is state-centred.

Within this Westphalian normative conception, domestic or within-state governance is viewed as something that should, indeed must, be monopolized by the state if it is to be both effective and legitimate. Within this view, legitimate international governance requires the agreement of states and cannot be imposed upon them.

While this ideal has always been more a dream than reality, it is widely viewed as having been essentially realized during the latter half of the 20th century, within “developed” states. Indeed, to be “developed” has come to mean that public governance is effectively monopolized.

Fukuyama²² captured this idea nicely with his phrase, the “end of history”. Included in the “end” that Fukuyama had in mind was the end of a long process that finally led to the realization of this Hobbesian ideal of good governance towards the end of the 20th century. Indeed, this “end” is fundamental to our conception of liberal democracy. As we have already noted, an important corollary of this “end of history” argument is the claim that while “developed” states have reached this end point, many states remain “undeveloped”, and still have a distance to travel in reaching a state of good Westphalian governance. Today, states that are seen as either having not yet reached this condition of good governance, or having fallen back from it, are often referred to as “weak”, “failing” or “failed” states. Such states are typically seen as in need of external (Western) support in achieving the ideal form of governance.

It is within this context that the idea of universal human rights emerged and was developed. Today this “end of history” worldview continues to shape understandings of human rights as we come to the end of the first decade of the 21st century. It is for this reason that human rights instruments have always focused primarily on state governments as both the principal sources of protections for freedom and liberty and as the principal source of threats to them. Given this, it is necessary, in reviewing the ability of human rights to play this protective role as we enter the 21st century, to assess the extent to which this Westphalian worldview should still be assumed to be an appropriate conceptual context for human rights.

Much has been happening to governance, at domestic and international levels, since the euphoric “end of history” days imagined by Fukuyama. We cannot, of course, attempt a comprehensive review of these changes here. Rather, we will focus our attention on a set of changes that have led many scholars to shift their understanding of the governance context within which human rights protections are located.

In the remainder of this section we proceed as follows. First, we examine shifts in the conception, institutionalization and practices of *state* governance. These developments have taken place under various signs such as “partnerships”, “collaborative governance” and so on. They have done much to expand the reach of state governance through what

²⁰ 548 U.S. 557 (2006).

²¹ Parker, C. and J. Braithwaite (2003), “Regulation” in P. Care and M. Tushnet *The Oxford Handbook of Legal Studies*. Oxford: Oxford University Press, 119-145, 113.

²² Fukuyama, F. (1992), *The End of History and the Last Man*. New York: Free Press.

has been termed “rule at a distance” strategies associated with “privatized” or “neo-liberal” forms of governance. In discussing these developments, our focus will be on the provision of governance, that is, on shifts in who provides state authorized governance. This argument, that the pluralisation of governance can be best understood as a devolution of state governance, arises out of a Hobbesian conception and is thus, not surprising, the most widely accepted explanation.

Next, we turn our analytic attention to transformations in the auspices under whose authority and direction governance takes place. Here we consider claims that a fracturing or pluralisation of the auspices of governance has been taking place. This explanation directly challenges the claim that pluralisation is best understood as a devolution of state governance through the privatization of the provision of governmental services. The failure to pay sufficient attention to this set of developments has undermined our ability to understand the nature of shifts in governance and has undermined our ability to fully recognize the implications in shifts in governance for human rights.

Finally, we canvas a set of developments that cut across the first two, namely, a movement that has been identified by Beck as the advent of the “risk society.”²³ Within risk societies, governance shifts increasingly from being responsive to past problems to a concern with anticipating future problems. Within risk societies, the governance focus shifts to “correcting” problems *before* they occur rather than waiting for them to occur and then remedying them – what has been characterised as “governing the future.”²⁴

Each of these developments has, albeit in different but related ways, challenged the traditional governance assumptions that have accompanied the development of human rights thinking and institutional mechanisms for protecting rights. Together, they raise significant questions as to the best ways to advance the effectiveness of human rights as a source of protection for individuals in an increasingly complex world.

Neo-liberalism

There are many ways in which neo-liberalism can be understood. A common understanding, and the understanding we have in mind, is a mentality of governance that advocates privatization in the delivery of government services. An author commonly associated with this mentality is Friedrich Hayek.²⁵ Hayek was concerned about the ability of state governments to govern effectively, from a central location. In response to his concerns he looked for ways through which governments might take better advantage of local capacities and knowledge and, in so doing, govern both from the centre and from the periphery.

After reviewing alternatives, Hayek concluded that markets provided the most appropriate mechanism for coordinating local knowledge and capacity in ways that would enhance the ability of governments to govern effectively and legitimately. This advocacy of market mechanisms resonated with the work of Adam Smith in *Wealth of Nations* – although significant questions remain about how Smith’s writings have been interpreted, and whether he indeed did advocate a simple reliance on markets in governance.

A very simple expression of this neo-liberal mentality of governance (that Foucault terms a “governmentality”²⁶) has been provided by Savas,²⁷ through a nautical metaphor.

²³ Beck, U. (1992), *Risk Society: Towards a New Modernity*. London: Sage.

²⁴ Bayley, D. and C. Shearing (2001), *The New Structure of Policing*. Washington, DC.: National Institute of Justice.

²⁵ Von Hayek, F. (1988), *The Fatal Conceit: The Errors of Socialism*. Chicago: University of Chicago Press.

²⁶ Foucault, M. (1991), “Governmentality” in G. Burchell, C. Gordon and P. Miller (eds.) *The Foucault Effect*. London: Harvester Wheatsheaf, 87-104.

²⁷ Savas, E. (1982), *Privatizing the Public Sector: How to Shrink the Government*. Chatham (NJ): Chatham House.

Osborne and Gaebler,²⁸ in their enormously influential book *Reinventing Government*, drew on Savas to argue that while state governments are good at steering they are not particularly good at rowing, and so should stick, as far as possible, to steering governance while allowing others, particularly the private sector through markets, to do the rowing of governance. Savas' statement is as follows:

The word government is from a Greek word, which means "to steer." The job of government is to steer, not to row the boat. Delivering services is rowing, and government is not very good at rowing.²⁹

This "rule at a distance"³⁰ neo-liberal governance mentality has emerged, as we have noted, as the dominant explanation of privatization within governance. One can certainly point to many, many instances where this mentality has been played out within the security governance arena: examples here include the use of NGOs to deliver services such as parole supervision, the use of private security to guard police stations and government officials, the use of private sector mediators to resolve disputes and so on. Indeed, with respect to private security, in many countries governments are the largest client of private security services.

This explanation, however, only provides a very partial account of the extent to which governance generally, and security governance in particular, now involves non-state nodes. Yet, it has proved very attractive as it fits nicely within the conventional Westphalian framework. Having said this, the neo-liberal account did prove useful in identifying a significant set of developments within the governance of security that have had, and are continuing to have, a significant impact on human rights violations and the ability of established human rights mechanisms to provide protections against them. This impact has recently become particularly clear in the case of military interventions where private sector entities have been used to provide a variety of services that vary from logistical assistance to direct engagement in conflict. The Iraq war provides an example of heavy involvement of private military companies and other private security companies, including the much publicized use of private security personnel in prisons, such as at Guantanamo.

These and similar cases of the devolution of security governance provision to the private sector – often through processes of market competition – have yielded countless examples of human rights abuses. They also provide examples of the variety of ways in which the inclusion of private sector actors in both military conflicts and policing arenas can complicate enormously issues of control and accountability. For example, in these circumstances it has proved increasingly difficult to hold governments accountable for human rights violations committed in the name of governments by private security agents and their companies.

Private Governments

If there has been considerable change with respect to the *delivery* of state governance as a consequence of the privatization of governance provision, there has also been enormous change with respect to the shifts in *auspices* of governance. These changes, however, have taken place with much less fanfare and with much less scholarly, political and popular attention as they have not been policy driven in the way in which the neo-liberal shifts in governance have been.

²⁸ Osborne, D. and T. Gaebler (1992), *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*, Reading (MA): Addison-Wesley Publishing.

²⁹ Osborne, D and T. Gaebler. (1993), *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*. Harmondsworth: Penguin, 25.

³⁰ Rose, N. and P. Miller (1992), "Political Power Beyond the State: Problematics of Government" *British Journal of Sociology*, 13(2), 173-205.

In the 1980's Shearing and Stenning referred to the changes that had been taking place within the governance of security (both with respect to provision and auspices) during the latter half of the 20th century as constituting a "quiet revolution" in governance.³¹ Since then, the shifts in the provision of state security governance that we have just noted have received considerable attention – indeed they have become rather noisy. This has been particularly true with respect to the enormous growth of commercial private security. It is now widely recognized that private security constitutes a huge industry in terms of personnel, revenue and areas of penetration.

What has remained much quieter is the emergence of non-state auspices of governments who engage in authorizing and steering governance – what Macaulay has termed "private governments".³² Here too private security provides a useful source of evidence. Private security clients are not only governments. They are also private entities – in particular, private sector corporations. These private governments define their own spheres of order and decide how this order is to be maintained within their domain. These private auspices of governance, unless they are illegal, work inside legal "spaces" established by state law – for instance, property law and contract law. They exist within, rather than outside of, state law.

The fact that these clients are "private" does not, in itself, mean that the security objectives or goods they are promoting (the form of order they seek to establish) are "private" in the sense of being partisan, although this may well be the case. Again, private security provides a useful example. Private security hired by owners of "mass private properties" to provide order within spaces such as shopping malls, while seeking to preserve an order defined by these owners, typically provide a public peace as well.

This development of non-state auspices of security governance has fundamentally reshaped the nature of sovereignty in contemporary societies, in ways that are having enormous implications for human rights. This raises significant questions about the nature of governance, how it is authorized and legitimated and how it is and can be held to account.

To sum up, two related but different developments have been reshaping the landscape of security governance. First, a shift in provision of governance services from the public to the private sector, prompted by developments such as state disinvestment, neo-liberal economics, and deregulation have opened new markets for private sector enterprises to fulfil established state governance missions, such as domestic, national and international security. Second, while this has been happening, private auspices of security have been responding to demands that they provide order within the public spaces they have become responsible for, particularly with the emergence of new forms of mass private property such as shopping malls and industrial, recreational and residential enclosed, and often fortified, spaces. Both of these developments have had and are having important implications for established, and largely state-focused human rights mechanisms' ability to promote and protect human rights.

³¹ Shearing, C. D. and P. Stenning (1983), "Private Security: Implications for Social Control" *Social Problems*, 30(5), 493-506; Shearing, C. and P. Stenning (1981), "Modern Private Security: Its Growth and Implications" in N. Morris and M. Tonry (eds.) *Crime and Justice Annual Review of Research*. Vol. 3. Chicago: Chicago University Press.

³² Macaulay, S. (1986), "Private Government" in L. Lipson and S. Wheeler (eds.) *Law and the Social Sciences*. New York: Russell Sage Foundation.

As a consequence of these parallel developments, traditional police organisations no longer exercise a monopoly over order maintenance, investigation or surveillance. To accommodate this we require a more inclusive theoretical understanding of policing. In some instances police have become a secondary player, displaced from the centre of security governance by private entities and private expertise. This is particularly true in arenas such as cybercrime and for much white-collar crime where in-house experts often lead investigations, which they often complete without police involvement.

In placing these developments in context, it is important to recognize that private security is not a new phenomenon. In reality private security is far older than state-operated forms of police, even if we consider the earliest form of state policing to be the police of Louis IV in 1666. Many historical examples of widespread and wide-ranging private security can be found in many parts of the world (see box). What is relatively new is the idea that the state should, indeed must, monopolize policing – that is, be responsible for both the enforcement of its laws and the protection of its domestic territory and citizens. This is a thoroughly modern idea visible in the writings of Thomas Hobbes from the middle of the 16th century. With the emergence of Keynesians models of government, adopted early in the 20th century, the state acquired the financial means to be able to put this normative idea into practice.

To a significant extent what we are witnessing today is not quite a reversal of this state focused trend but a rather slowing down thereof. What has appeared as an explosion in resources, staff and profits for private security has actually not, for the most part, been associated with a *replacement* of existing police services. Indeed in many countries police officer per capita statistics are at an all-time high. What has grown much faster is the appetite for security (Loader,³³ Zedner,³⁴ etc).

As more and more communities come under private surveillance and security governance more generally, new concerns about legal, ethical and civil responsibilities of private governance agents and corporations are being raised. In terms of

Pinkerton's, labour and state sovereignty

The dimension of labor strife in the United States during the last third of the nineteenth century is to some extent evident in the fact that business was disrupted, usually by strikes, on 22,793 occasions between 1875 and 1900. In 47 of these instances, beginning with the Chicago "labor riots" (actually, the Chicago component of the national railroad strike) of August 1877, the National Guard was dispatched to protect the interests of business against those of unionized (or unionizing) workers. On at least 70 occasions, beginning with the September 1866 coal strike in Braidwood, Illinois, the Pinkertons were called in to serve as a special corps of strikebreakers, while in hundreds of other instances they were utilized as a guard force to secure company property against "vandalism" by the workforce. Most of all, the agency was retained by major corporations or corporate consortia to function as labor spies and provocateurs.

So pervasive was the latter activity that by the early twentieth century, an investigating committee headed by Wisconsin's Senator Robert LaFollette was led to observe how the infiltration and disruption of labor unions was a "common, almost universal practice in American industry." The purpose was to allow "private corporations [to] dominate their employees, deny them their constitutional rights, [and] 'promote disorder and disharmony.'" So effective was this technique that in 1888, for example, two Pinkerton detectives were able to have themselves elected as voting delegates of the Reading, Pennsylvania, local of the Brotherhood of Locomotive Engineers, and in that capacity attended the union's annual convention, providing "elaborate reports on the issues and discussions" immediately thereafter. In another instance, reported by the LaFollette Committee, a "union organization" consisted of "five officers and no members, with the officers all Pinkerton detectives." By 1929, it was officially estimated that as many as 200,000 labor spies of various sorts were employed by corporate America. While most of these were undoubtedly amateurs of one type or another, during the mid-1930s, General Motors alone was spending some \$400,000 per year for the services of professionals.

Churchill, Ward (2004), "The Trajectory of Political Policing in the United States, 1870 to the Present," *The New Centennial Review*, 4(1), 1-72; http://muse.jhu.edu/journals/new_centennial_review/v00-4/4.1churchill.html

³³ Loader, I. (1999), "Consumer Culture and the Commodification of Policing and Security" *Sociology*, 33(2) 373-392.

³⁴ Zedner, L. (2003), "Too much Security" *Internet Journal of the Sociology of Law*, 31.

human rights, a central focus of attention has been the uncertainty of the surveillance and the control mechanisms applicable to non-state entities.

Risk: governing the future

In our analysis to this point we have focused our attention on the sources of governance. That is, on the institutional nodes engaged in the direction and provision of security governance. We turn now to another crucial shift that has been taking place within the same timeframe – namely, a turn to the future in governance. These sets of changes, as we have suggested, are not independent and have played out together on the same governance canvas.

A thinker who has been acutely aware of this interdependence and who has profoundly influenced scholarship within the governance arena was Michel Foucault, who explored the idea of different mentalities of governance or what he termed “governmentalities.”³⁵ One key focus of his enquiries was neo-liberalism. Another was risk.

While risk management has always been a feature of governance scholarship, recently scholars have pointed to a shift in the way risk has been conceived. This has been accomplished by a shift in its salience. While established forms of governance, it is argued, have tended to focus on responding to risks once they have occurred – this might be thought of as “governing the past”³⁶ – the new risk governmentality shifts the focus of governance from the past to the future. Within a risk governmentality, the central question becomes how to “govern the future”.³⁷

A variety of reasons have been offered for this shift. One of these, proposed by Beck,³⁸ is that the nature of our contemporary world requires us to anticipate rather than respond to problems. Climate change provides a good example of the sort of danger that Beck had in mind. If we do not act to anticipate and ward off major climate change, once it happens it may well be too late to do anything about it. Beck’s own examples also included the risk associated with nuclear power and the

Racial and behavioural profiling: sorting out “risky” persons

First, the actuarial methods developed over the twentieth century and being used today rely exclusively on differences in offending rates and do not take account of the comparative elasticities of the different populations. Because members of different populations may in fact respond differently to policing and punishment, the use of existing profiling techniques may actually increase overall offending in society. If we had perfect knowledge of comparative elasticities and offending rates, then we could administer statistical discrimination in a perfectly efficient manner. But that is neither realistic nor likely in this lifetime.

Second, if we assume that people are perfectly inelastic to policing, the use of existing profiling techniques will cause a ratchet effect on the targeted population with devastating consequences on their employment, education, family, and other social outcomes. These are costs that are often ignored because the targeted individuals are criminally culpable. They are, however, costs that often overwhelm any benefits associated with actuarial methods. Selective incapacitation—as one underlying theory of punishment that might

justify a ratchet effect—is also problematic because it does not treat similarly situated offenders equally but instead uses membership in racial, gender, or other groups as a way to determine who is similarly situated.

Finally, and most importantly, if rational choice theorists are wrong to extol the virtues of profiling and if proponents of selective incapacitation

have failed to appreciate the devastating consequences on profiled populations, then why have so many people come to embrace the actuarial turn— with the limited exception of racial profiling? The reason, I suggest, traces to our deep desire to know, our urge to categorize, and our impulse to insure against risk.

Harcourt, Bernard (2008), “A Reader’s Companion to Against Prediction.” *Law and Social Inquiry*, 33(1), 265-283: 281.

³⁵ Foucault, M. (1991), “Governmentality” in G. Burchell, C. Gordon and P. Miller (eds.) *The Foucault Effect*. London: Harvester Wheatsheaf, 87-104.

³⁶ O’Malley, P. (2000), “Uncertain Subjects, Risk, Liberalism and Contract” *Economy and Society*, 29, 460-484.

³⁷ O’Malley, P. (2000), “Uncertain Subjects, Risk, Liberalism and Contract” *Economy and Society*, 29, 460-484.

³⁸ Beck, U. (1992), *Risk Society: Towards a New Modernity*. London: Sage.

possibility of critical incidents.

An important feature of risk governance is that it focuses on encouraging what might be thought of as “good orders” rather than as simply discouraging “bad orders”. The focus shifts from “wrongdoing” to “right-doing”. The language of “risk management” and the new forms of expertise bearing on its practicalities are concerned not simply with punishing improper, “risky” conduct, but in rewarding risk-reducing conduct.

A sector that has been particularly involved in both using and promoting this governance mentality has been the insurance industry. In promoting this shift, through the incentive schemes developed in relation to insurance products, the insurance industry has been instrumental in creating the conditions for other industries to emerge, in particular, the private security industry that provides insured clients with the goods and services, which insurance companies encourage their clients to adopt. Such goods and services include alarms, GPS products for vehicles, patrols and rapid (and often armed) response. In short, insurance has been crucial to the development of the private security industry.

This governance shift has profound implications for human rights, which have tended to focus on providing protections for individuals under backward-looking governance regimes. Forward-looking regimes bring to the fore concerns about what may occur in the future. This has opened wide the doors of speculation and an associated interpretative focus that is concerned with extracting “risk data” from current events.

This interpretative focus, though rational and mathematical in its appearance, rests on highly subjective and culturally located postulates, resulting, we would argue, in higher unpredictability than ever before. The risk of terrorist attacks is a case in point. Though many expert measurements exist, based on “hard data”, in fact the resulting “risk” assessments, based on probability and criticality (the severity of the consequences), are often founded on subjective impressions, on fear, on assumptions about public dread and on arbitrarily set levels of acceptable risks.

Indeed, a fundamental feature of Beck’s risk society is not the level or the nature of the risks it faces, but rather the importance given to all matters which can be presented as potential risks. Risk has become a new way of thinking about human societies. Risks must be evaluated, balanced, managed, avoided, and compensated. Experts and security analysts draw risk matrices and balance the results against the costs involved in countering or neutralizing identified risks. Politicians present situations as risks, threats and vulnerabilities. Citizens, it is claimed, now want to know (or are persuaded to want to know) where risks and risky persons are situated in their neighbourhoods.

Security risk management has been developed as a series of products that enable clients to effectively and efficiently distribute finite security resources in time and space in order to reduce their “risk exposure”. For police, this may mean increasing patrol density in so-called “hot spots” of criminality, while decreasing services in statistically safer neighbourhoods. In airport security it may mean submitting certain “risky” individuals to a higher degree of scrutiny because they fit a terrorist or drug mule profile.

This new risk management trend has at least three main human rights implications.

First, the redistribution of security production typically means unequal distribution of services. If security producers had at their disposal a perfect, complete portrait of all victimisations occurring in the spaces they are responsible for, this unequal distribution might well be thought of as being “fair,” since it could be argued that it would concentrate resources where they are most “needed”. However, no such picture exists and “risk priorities” are inevitably political decisions – often decisions that are masked by actuarial claims.

Second, risk management requires pertinent knowledge about the environment. Any risk evaluation is as good as the data it is based on and the subjective decisions made to interpret this data. The assumption is that the more data the better. Combined with the increasing power of new surveillance technologies, this has caused a new appetite for all forms of surveillance, in every sector of security governance. One consequence is that an increasing proportion of security-related activity is now focused on non-crime related matters, especially in surveillance of persons and spaces. As Shearing and Stenning

argued some time ago, the result of this is that it is now persons who constitute risks that have become the new offenders.³⁹

Third, risk management is speculative, meaning that any form of behaviour which may be deemed as a security risk must be thought of as an object of *prevention*. This prevention, barring the use of crystal balls, requires the identification of “leading trails” of precursors to this behaviour. Aside from behaviours, individual or group characteristics are also thought of as risk indicators. Simply belonging to certain ethnic, age, habit, social, gender, etc. group may mean that an individual fits the “profile” of a risky person. As Benjamin Goold⁴⁰ points out, “the growing use of also algorithmic surveillance in airports” is the basis for calculation of the risk that a particular passenger poses. This imposes certain “categorical identities” on the individual undermining “the way in which ordinary individuals understand themselves” and also carries the danger of institutionalizing “forms of cultural and ethnic discrimination.”

Security is produced by nodal assemblages

If the state no longer occupies a monopoly position (assuming it ever did), and governance is decentralized, enabled, authorized and managed from multiple peripheral positions, new attention must be given to the relationships between the producers of security, since these relationships are likely to have deep impacts on the structure of social control. Relationships are complex objects and have many facets.

First, they involve different levels of legal structuring. Links between police organisations and intelligence shops are heavily structured by laws and regulations; links between government entities and private security providers are structured by contracts and contract law; links between private security providers are structured by contract law and informal practice; links between NGOs and police are mostly informal; and a vast number of further links also differ in yet other ways. Research on this matter has barely scratched the surface and networks of security governance are still not well understood.

Second, relationships also differ according to the missions and mandate of the actors involved. Though collected under the “governance of security” umbrella, in practice security actors may have very different (if not contradictory) objectives. For example, financial institutions tend to have significantly different ordering objectives in response to various security concerns than actors within the criminal justice assemblage.

Third, the linkages between security producers are frequently shaped by internal organisational demands. For example, the cooperation of intelligence services with police services is often shaped by the former’s desire to cloak their everyday practices – which often revolve around highly sensitive personal information or state secrets – and the latter’s need to produce very public criminal justice results.

Fourth, networked actors are not simply “co-producers” of security: they are also competitors for various benefits, such as revenue, political capital, public image, funding, favourable laws and regulations and so on. As private security steps into more and more traditional police arenas and as police organizations commercialize their activities, new frictions are emerging.

Fifth, the legitimacy and political capital of networked actors varies considerably and is not stable over time. Today, for example, the ability of financial institutions to self-regulate is being questioned and more state-based regulatory structures are emerging.

Finally, “links” are complex objects and not simply generic relationships that can be assumed as mutually beneficial or neutrally goal-oriented. Linkages between security producers vary with respect to the level and nature of their compulsiveness: they include

³⁹ Shearing, C. D. and P. Stenning (1982), “Snowflakes or good pinches? Private security’s contribution to modern policing” in R. Donelan (ed) *The Maintenance of Order in Society*. Ottawa: Canada, Minister of Supply and Services Canada, 96-105.

⁴⁰ Goold, B. J. (2007) “Privacy, Identity and Security” in B. Goold and L. Lazarus (eds.) *Security and Human Rights*. Portland, Oregon: Oxford University Press, 59, 60.

official, state-imposed relations, business relations, once-off ad hoc relations in cases of emergency, and unofficial, unsupervised and unrecorded connections.

In summary, the trends we have canvassed have created a complex domain of security governance that moves beyond the simple Hobbesian understanding of governance arrangements that human rights discourses and understandings tend to assume.

Shifting technologies

Technological development impacts on security in two sets of ways.⁴¹ The first has to do with the operational environment of security producers: technologies that make new types of crimes possible (e.g. denial of service attacks on the Internet); technologies that transform established harms (e.g. distribution of juvenile pornography); and technologies that do not substantially modify conventional crimes but add a new element of protection – or vulnerability – to the individuals involved (e.g. selling marijuana through the Internet or using text messages to manage a prostitution network).

The second way has to do with the operational capabilities of security producers: the technologies they themselves use. Needless to say, many of the latter are adopted, or at least justified, by a corresponding transformation of the former; they are said to be responses to a changing world of new risks and new vulnerabilities (e.g. cybercops fighting cybercriminals). Others are adopted simply as new, more powerful or more efficient ways to produce security (e.g. electronic pulse weapons, cloaked as “saving lives” during routine police encounters).

Security technologies are either derived from technologies used for military purposes, such as armoured vehicles and elite force firearms (e.g. the now famous Heckler & Koch MP5 precision submachine gun) or simply adapted from various other forms of commercial technology, such as surveillance cameras. Apart from the military, none of the usual actors of security governance tends to be involved in the development of security technologies (with the notable exception of computer security firms).

It must be noted that even though the list of available high technology for security is endless and gets larger every day, in practice few of the devices available are used. Police, for example, adopted radio dispatch (1930), motor vehicles (1940) and computers (1990) extremely slowly. There are many reasons for this – including an occupational culture that encourages a reliance on established techniques.⁴²

Private entities, on the other hand, are much more likely to adopt new technologies. Today, for example, we find them using various forms of access control biometrics: in-crowd face recognition, deep packet inspection appliances for internet traffic surveillance, and many other high-tech identification and surveillance devices. Since access to private premises or services is in most instances considered to be a privilege rather than a right, visitors/clients are regarded as having voluntarily “chosen” to accept the forms of surveillance, identification and tracking they are being subjected to. The argument is that if they choose not to accept these practices they are free to, shop, work or live elsewhere.

Rather than providing a scan of the dozens of existing and new technologies, we focus our attention on two specific technologies as illustrative examples of trends in security governance: video surveillance and “less than lethal” weapons.

Video surveillance is perhaps most developed in the United Kingdom. Under various Home Office programs during the 1990s, camera systems were installed in many municipalities, beginning in London. Often referred to by the initial “CCTV” acronym, camera systems today are no longer “closed circuit” loops and tend to be open to many other systems. Further, thanks to infinitely more flexible means of recording, video-surveillance can produce databases that will be accessible by future systems (for future

⁴¹ On these and related aspects, see Leman-Langlois, S. (2008), *Technocrime: Technology, Crime and Social Control*. London: Willan.

⁴² Manning, P. K. (2008), “A View of Surveillance” in S. Leman-Langlois (ed.) *Technocrime: Technology, Crime and Social Control*. London: Willan, 209-242.

analysis, as more advanced software becomes available - for example, face, gait or behavioural recognition).

There are three broad types of research on video surveillance. The first has to do with the actual effects of the technology on crime and other undesirable behaviours. Surveillance is commonly thought to deter unwanted behaviour because once potential wrongdoers understand that they are being watched and recorded, their capacity to flee and enjoy the product of their misdeeds is thought to be greatly reduced. Research does not bear this out, at least not as a general statement. Cameras do deter *some* crimes, when particular conditions are met.⁴³ Violent crime appears not to be affected by the presence of cameras, but some property crimes are, notably theft inside motor vehicles and burglary. Crimes committed in open streets are less likely to be deterred by this form of surveillance than crimes committed in closed spaces such as parking garages. Yet, because of the pressure from system vendors, from institutions looking for “quick fixes” and because of the faith in camera surveillance within the public and in political circles, video surveillance is likely to have a bright future.

The second type of research looks at the ways in which video surveillance is being used in various settings. For instance, Norris and Armstrong⁴⁴ have explored the sociology of the control room and found that behaviours, and more importantly, persons in view are not constructed as risks in an “objective” manner -- the perceptions and subjectivity of the operators is reported to be a far better predictor of who will be targeted (for example, visible minority youths are typically under far more surveillance than other categories).

A third body of literature has looked at public perception of camera surveillance and has generally found that while members of the public are sceptical about the ability of technology to fight crime, they still prefer more surveillance to less. Privacy and related concerns are virtually nonexistent. One of us has conducted focus groups of city dwellers living and working under camera surveillance and none of the groups mentioned any concerns.⁴⁵

In short, camera surveillance may conflict with rights to privacy or “to be left alone” or forgotten, as described in the previous section, but this conflict is not one that appears to concern the general public. As long as cameras do not invade “intimate” space (the space where the body and bodily functions are visible), it is not felt to invade “private” space. This space is, however, increasingly being monitored as airports, for example, introduce backscatter and millimetre-wave scans that allow security personnel to look under clothing. To date these developments have not been associated with much, if any, public resistance.

Nevertheless, Benjamin Goold as has argued that even in public places, individuals expect a certain level of anonymity. What he calls the ability of the individual to merge in the “situational landscape” in public places, is lost if the individual is subjected to systematic and intrusive surveillance associated with new technologies such as CCTV. Consequently, Goold calls for privacy protections in the face of increasing CCTV surveillance. In his view, without such protections, there is a very real danger that CCTV will fundamentally transform how we use public spaces, and that we will deny ourselves the benefits associated with “being unknown in a society that increasingly demands us to identify ourselves.”⁴⁶

⁴³ An interesting meta analysis of the matter is in Welsh, B. and D. Farrington (2002), *Crime Prevention Effects of Closed Circuit Television: a Systematic Review*. London: Home Office Development and Statistics Directorate.

⁴⁴ Norris, C. and G. Armstrong (1999), *The Maximum Surveillance Society: the Rise of CCTV*. New York: Berg.

⁴⁵ Leman-Langlois, S. (2008), “The impact of Videosurveillance on the Social Construction of Security” in S. Leman-Langlois (ed.) *Technocrime: Technology, Crime and Social Control*. London: Willan, 27-45.

⁴⁶ Goold, B. J. (2006), “Open to All? Regulating Open Street CCTV and the Case for “Symmetrical Surveillance”” *Criminal Justice Ethics*, Winter/Spring 2006, 3-17: 5, 6.

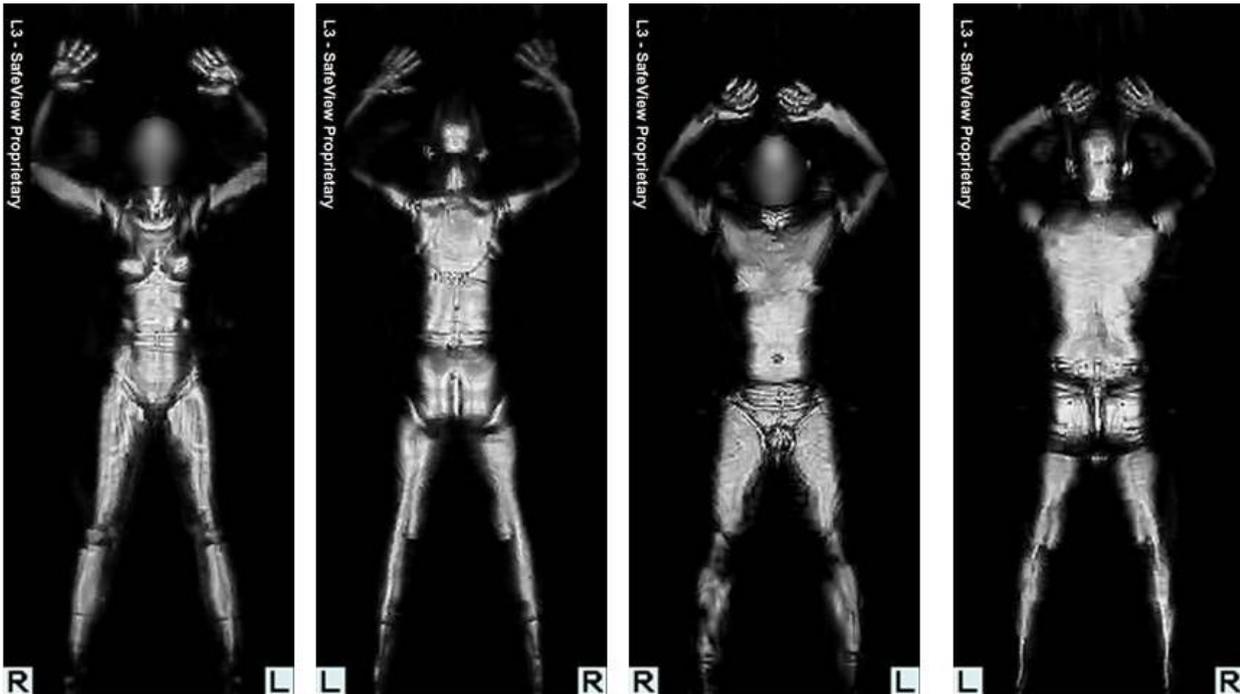


Figure 1: millimetre-wave scans. Image by US TSA

Cameras may well become less important as more and more aspects of our lives move to cyberspace. Life in the information society leaves countless traces in databases that could be located anywhere in the world. These traces, or “transactions”, including activities conducted directly in informational systems (blogging, emailing, tweeting, facebooking, utubing, browsing, etc.), as well as others where communication systems play a peripheral role (paying for groceries, applying for a government service), have an unpredictable longevity and might remain available for years to come. Various private, public and hybrid security nodes may use them in the future for job selection, behavioural analysis, evidence submitted to tribunals and other regulatory-body decisions, etc. Datamining software agents may examine and re-examine them many times, looking for patterns in cross-referenced databases. Face, voice, gait, writing, etc. recognition software may well produce information about us we don't suspect and are today unable to even imagine.

Our second technological illustration concerns so called “less-lethal” weapons, regarded as the most futuristic feature of the modern security arsenal. Taser International has been at the forefront of the commercialisation of its Taser™ M-26 and X-26 electric impulsion weapon as a way to “save lives.” In fact the technology remains unproven (the older M-26 has been retired by the Canadian RCMP in 2009, when test laboratories showed that its voltage output was highly variable and unpredictable) and something of a mystery. Indeed, the physiological mechanisms that produce its paralysing effect are still not entirely understood.

In terms of safety, medical tests remain inconclusive and mostly contradictory. During everyday use the weapon may be fired concurrently by a number of officers on a single target, and may be pulsed multiple times after being fired. Furthermore, unresponsive, uncooperative suspects may also be under the influence of drugs, alcohol, may suffer from medical or psychiatric conditions, etc., which may make them more vulnerable.

Recent statistics seem to show that the introduction of X-26s in police forces in the US has not resulted in increased deaths, but statistics, by definition, do not reflect rare cases. Taser International continues to claim that no case exists of a direct link between its products and the death of a person. Meanwhile, it has commercialized a low-cost (300USD) mass-market version of its product (the C2™), a military/crowd control multiple

shot/expandable version (the Shockwave™) and its multi-barrelled X3™. Though many watchdog organisations have recommended that the Taser be used as a replacement for the service revolver or as a weapon equivalent to a baton, in effect many police forces allow the weapon to be used at the least show of resistance, some at the level of verbal conflict and failure to cooperate.

The image of the Taser as a consequence-free, high-effect response to police, private, civilian, military response may easily lead to its being used in the place of normal police verbal interaction with difficult citizens. It may prove far simpler to just “taser” a suspect and fill out the paperwork than to “police by consent” and run the risk of escalation and further violence.

New policing targets

In conjunction with a changing culture of security, new targets of policing have attracted political and police interest in the last decades.

Transnational crime

“Glocalisation” references dual, opposed trends in the policing environment: on the one hand increasing concerns for immediate, specific, microscopic problems and conflicts (the local) and, on the other, the emergence of a global sphere of transnational crime, international cooperation, etc. At a local level, community policing, problem-solving policing and, to a large extent, intelligence-led policing, focus on block-by-block problems affecting security. Most private security also fit into this pattern. Problem-solving policing explicitly argues that each solution must be meticulously custom-tailored to the details of particular problems and is unlikely to be “exportable” to other areas.

At the global level, attention directed at transnational crime, and terrorism in particular, has encouraged police entities to become more aware of geopolitical trends and phenomena, to exchange information with foreign intelligence entities and to participate in multilateral policing agreements. This raises multiple issues, among which are:

- the matter of what is to be done with information that arises from foreign entities known to practice torture to obtain information. Since crime networks may span across jurisdictions where anti-torture rules are far laxer, information about members of such networks is bound to come from unacceptable forms of interrogation. Though information obtained under torture is generally not accepted as evidence in Western courts, police and intelligence organisations have many other uses for it. While torture is explicitly forbidden by all rights frameworks, it is difficult to argue that police should voluntarily refuse to see information which might prevent victimisation.
- Though some agreements are under democratic surveillance (e.g. Europol), others operate strictly under their members’ authority (e.g. ICPO/Interpol, SIS) with no oversight whatsoever. This means that there is no accountability for the transfer, duplication, re-analysis and archiving of information between their members.

Private entities can, of course, enter into any agreement they like between themselves, since for the most part the very few regulations that exist (e.g. those applicable to personal data) can very easily be circumvented by shifting processes from one jurisdiction to another – what Braithwaite and Drahos, in another context, term “forum swapping”.⁴⁷ This is perhaps easiest for transnational corporations. In these cases, “security” becomes the outcome of a very complex equation involving various financial, data, job and physical security matters for the corporation, its stockholders, its

⁴⁷ Braithwaite, J. and P. Drahos (2000), *Global Business Regulation*. Cambridge: Cambridge University Press.

administrator's, its clients, its partners and the governments who may be held responsible for in-existent or ineffective regulation.

Immigration and armed conflicts

On the global side, new problems in policing and security have resulted from movements in population as well as from the medium- and long-term effects on the security environment brought about by changing demographics, armed conflicts, economic and ever frequent environmental crises. This issue extends far beyond the reach of security governance and has to do with immigration policy, integration programs, housing, jobs and community programs, real estate distribution, infrastructures and the way cities are built. There is typically little security nodes can do to prevent the appearance of ghettos of marginalized populations since they tend to be at the symptomatic end of such trends rather than at the source.

One might conclude that security governance is destined to pick up the pieces of problems created by others, and that one solution would be to adopt a broader view of security, which includes all aspects of "human security:" food, shelter, health, etc. Yet this view remains, for many, utopian. What seems likely is that actors within security governance will remain, for the foreseeable future, alienated from the actual causes of many of the problems they face.

This introduces an interesting tension. On the one hand, as we have seen, there is a move to future-focused forms of governance that seek to govern pathways to the future. At the same time, as we have just noted, this coexists with a reactive orientation that eschews governing causes. This tension tends to be "resolved" within security assemblages, precisely because they do not constitute integrated systems but are made up of nodes and sub-nodes that can and do express different logics through their established, habitual responses. This idea of nodal arrangements that permit assemblages to operate under different logics has been taken advantage of within computer programming by what is termed "object oriented", as opposed to "system oriented", programming. What is required is not a system but merely an assemblage of objects that may be programmed very differently. What enables them to function as a working assemblage is that the objects "know" how to communicate with each other. Object oriented programming sees itself as modelled on the way in which the physical world operates, where very different objects can interact, while remaining very different.

One potential consequence of this alienation from causes in some domains is that better, more efficient security may excuse, or otherwise render permissible, the depredations and the negligence that continue to produce the contexts within which security problems take root. For instance, better protection against the incursions of marginalized immigrant populations into middle-class neighbourhoods may give the impression that the problems of social exclusion and marginalisation have been solved.

Mass immigration from unstable countries raises many potential areas of concern. These vary in intensity according to the political situation prevailing in the receiving country. In liberal democracies, newcomers are sometimes unaccustomed to "democratic" security and policing practices and are sceptical, to say the least, of official control authorities. This, combined with the simple fact that even the best police and security organisations have their share of abuse of power, deviance and corruption, can produce explosive conditions. France and Canada have had riots and violence when police actions and strategies became viewed as abusive. In addition, migrants escaping wars and other conflicts sometimes arrive with deep psychological scars and strong resentment against ethnic groups they hold responsible for their predicament.

Regardless of the political situation, migrants may face less than welcoming populations in their adoptive country and may be marginalized. In the last few years massive economic migrations from Zimbabwe to South Africa have strained ethnic relationships and engendered violence and crime. African migration to Europe and South American migration to the USA have posed similar problems. The USA "Minuteman" phenomenon is a case in point: worried about the apparently ineffective border security provided by police, the military and by US Customs and Border Protection officials, citizens have

organised into watch posses and patrol high-intensity crossing spots, using radios and portable phones to notify the authorities of any illegal activity. Needless to say, the potential for catastrophic errors and abuses is extremely high.

Finally, when receiving countries are themselves weakened by various factors, migratory movements can easily strain their resources, as well as those of international NGOs and organisations, such as the Red Cross or the UN. In all cases, critical levels of political instability may result, which make any form of normal policing or security work nearly impossible.

In some unstable and semi-governed countries, transnational corporations have resorted to military-level private security to protect their premises and installations, complete with military armaments and tactics.⁴⁸ Effectively answerable to no democratic authority, and accountable only to investors in foreign countries, such corporations have considerable leeway in matters of security. Yet, non-state actors have long been recognized as subjects for international human rights regulation, principally in international humanitarian law. Common Article 3 of the 1949 Geneva Conventions places responsibility on states and non-state parties to internal armed conflicts to ensure that the minimum standards of humanity are maintained in these conflicts. More recently, a growing and authoritative body of international human rights law has emerged regulating the corporations and businesses in the areas where they exercise influence.⁴⁹ The Organisation for Economic Co-operation and Development's (OECD) *Guidelines for Multinational Enterprises* and the International Labour Organization's *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* are two of the most prominent intergovernmental regulations. John Ruggie, the Special Representative of the Secretary-General (SRSG) on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, has also pointed out the emergence of "a multi-stakeholder form of soft law Initiatives" such as Voluntary Principles on Security and Human Rights (VPs). These mechanisms promote corporate human rights risk assessments as well as the training of security providers in the extractive sector.⁵⁰

⁴⁸ Singer, P. W. (2003), *Corporate Warriors: the Rise of the Privatized Military Industry*. Ithaca (New York): Cornell Studies, 80-81.

⁴⁹ Clapham, A. (2006), *Human Rights Obligations of Non-State Actors*. Oxford: Oxford University Press, 195-270.

⁵⁰ See the Kimberley Process Certification Scheme (Kimberley), aimed at curbing the sale of conflict diamonds and the Extractive Industries Transparency Initiative (EITI). *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie: Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts A/HRC/4/35* 19 February 2007 p.7 at: <http://daccessdds.un.org/doc/UNDOC/GEN/G-07/108/85/PDF/G0710885.pdf?OpenElement>.

Despite initiatives such as those just noted, the international human rights legal framework remains weak. To the extent that regulations exist, they do so largely in the form of “soft law” (non-legally binding principles). Nonetheless, private actors are finding themselves being pressured through litigation or moral censure to ensure that their operations respect human rights.

Private security companies, subcontracted by states or other actors in armed conflicts, have also come under the spotlight. Whether defined as “mercenaries” or private military companies, their conduct has increasingly become the subject of human rights litigation in jurisdictions such as the United States. So far the picture remains mixed – with valuable policy moves taking place whilst these regulatory initiatives are simultaneously ignored. Thus, while the United Nations has also adopted the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* and established the Working Group on the Use of Mercenaries, and while the Organization of African Unity *Convention for the Elimination of Mercenarism* has been in effect for a number of decades, several African states have chosen to try suspected mercenaries under their own national laws.⁵¹

One situation where weakened states may face the consequences of armed conflict is in the aftermath of a civil war or major domestic unrest. South Africa (see box), Ireland and Indonesia are interesting examples. In these cases, migratory influxes still occur, but they are mostly internal – with the addition of populations returning from exile. However, the main problem is typically both the operational context of policing as well as the institutions of policing and security themselves, which often lack legitimacy in the eyes of sizable portions of the population. Consequently, one of the main objectives of security governance by official police institutions, in these cases, is to repair trust in the state and respect for state-issued rules.⁵² Relationships between security providers and members of the public may be strained, and are often confrontational.

Traditional police has shown that it is entirely incapable of dealing with most of these problems and tends to approach their consequences as generic types of local conflicts and ordinary crimes. When tension mounts, they often resort to intensive policing tactics, which makes matters worse by antagonizing citizens.

Political transition in South Africa

After the apartheid years South Africa elected its first democratic government in 1994 and quickly set up a Truth and Reconciliation Commission where agents of the previous government, as well as members of the former violent opposition, could obtain amnesty (protection from both criminal and civil proceedings) in exchange for their telling the truth about the “shameful past.” Few agents of the apartheid security forces took on the offer and most amnesty submissions concerned the 1990-1994 pre-election period of instability rather than the 1960-1990 apartheid past per se. In short, that meant that the majority of those who had either – or both – wielded abusive power or abused their powers as state officials did not take part in the reconciliation process. Further, extremely few trials were ever held, with mixed results. In consequence, the abusers of the past remained in their post inside various security organisations. Also incapable of dealing with very high crime numbers and plagued by rampant corruption, police has a serious trust deficit within the population. Finally, since the police force now has to offer police services to the entire population of South African citizens, rather than the 10% who controlled the apartheid government until 1994, resources are spread much too thinly*. Within this context the rise of private security has been meteoric.

*Van der Spuy, Elrena (2004), “South African Policing Studies in the Making,” B. Dixon and E. van der Spuy, *Justice Gained? Crime and crime Control in South Africa’s Transition*, London, Willan, 193-226.

⁵¹ Clapham, A. (2006), *Human Rights Obligations of Non-State Actors*. Oxford: Oxford University Press, 301.

⁵² O’Rawe, M. (2007), “Human Rights, Transitional Societies and Police Training: Legitimizing Strategies And Delegitimizing Legacies” *St. John’s Journal Of Legal Commentary*, 22(1), 99-259.

Cybercrime

Cyberspace and actions that take place “there” are often problematic for police and other security providers since their location in “real” space is problematic. When actual individuals are involved, they must, of course, be located somewhere but often far removed from their “victims” or the “scene” of their crime. In everyday practice, police today approach cybercrime as networked individuals and their machines, all of which can be located on a map, arrested or seized.

The current response by many governments to the spatial conundrum has been to simply conceive of cyberspace as if it were a newly discovered “layer” of sovereign territory (underground, surface [and sea], air, space, cyberspace). So far, this has meant increasing budgets to insure and to protect the state’s “presence” in its “national cyberspace.” Following this conception, the military is becoming heavily involved in cyberspace control, as are intelligence shops and police. In one of its more benign guises, a virtual police station has been created in Second Life by the Vancouver police. But the principal focus of cyberpolicing is to attempt to govern information flows.

Cybercrime is now part of our vocabulary and the notion that there is a recognizable object in the real world that corresponds to it is widely accepted. The media, in particular, have used this concept in much of their coverage of computer and networked crimes. Yet, in reality “cybercrime” is a vague concept covering extremely diverse sets of activity. Some examples may serve to illustrate.

Cybercrimes are not necessarily hi-tech crimes. Worldwide “419” (so dubbed after the anti-fraud article in the Nigerian Criminal Code) advanced-fee scams use simple emails to entice neophyte or blindingly greedy web users to forward money or personal financial information to foreign brokers who promise a share of moneys transferred from inactive accounts, trust funds and other hidden “Eldorados”. Targeted emails may have been gathered through various forms of misuse of databases or may have been generated randomly.

Other forms of scams involve the creation of fraudulent websites or applications in order to mislead victims. Phishing, for instance, only works if the victim believes that the website he or she is visiting is genuine – and is legitimately asking for confidential data. Fake antivirus scams lead victims to believe that their computer is infected and can only be repaired, for a fee, through the use of special software kits.

Hackers – another fuzzy concept and a word used in contradictory ways – may break into commercial and government databases for fun, for the challenge, or in order to resell the information to various interested parties. This is usually thought

of as a misuse of information and a computer security problem. Hackers also use various methods to gain control of remote computers and may use them as a network of robots (a

The Pirate Bay

The Pirate Bay is the world’s largest bittorrent tracker. Bittorrent is a filesharing protocol that in a reliable way enables big and fast file transfers.

This is an open tracker, where anyone can download torrent files. To be able to upload torrent files, write comments and personal messages one must register at the site. This is of course free.

The members at The Pirate Bay represents a broad spectrum of file sharers. Therefore material that seem offensive might be available. Do not contact us if there is anything you find offensive, instead focus on the material that you find positive. The Pirate Bay only removes torrents if the name isn't in accordance with the content. One must know what is being downloaded. (accordance with the content also means any torrents which description is made to match a certain search phrase that is not relevant will also be deleted).

Only torrent files are saved at the server. That means no copyrighted and/or illegal material are stored by us. It is therefore not possible to hold the people behind The Pirate Bay responsible for the material that is being spread using the tracker. Any complaints from copyright and/or lobby organizations will be ridiculed and published at the site.

The Pirate Bay was started by the swedish anti copyright organization Piratbyrå in the late 2003, but is since October 2004 separated and run by dedicated individuals. Using the site is free of charge, but since running it costs money, donations are very much appreciated.

www.piratebay.org

“botnet”) for various ends, such as massive spamming and distributed denial of service attacks (DDoS). Botnets of various sizes are available to hire through the internet.

Some hackers are motivated by political views and conceive of themselves as activists, or “hacktivists.” They steal information, deface websites or use various types of attacks (ping, DDoS, etc.) in order to paralyse their target’s file servers. For instance, in 2008 Estonian government computers were attacked after a monument in honour of World War II Russian soldiers was moved from its original location in downtown Tallinn to a less distinguished placement.

“Piracy” is a fundamental preoccupation of many powerful industries. A well known example, is the unauthorized distribution of music files and “cracked” computer games (games that will run on a computer without the need for the original CD or DVD) – this led to the shutdown of the original Napster service in 2001. The unauthorized exchange of software has now migrated to peer-to-peer networks and bittorrents, which are proving to be far more difficult to police and control. However, as the recent Pirate Bay case has shown, those involved in software exchanges are by no means entirely beyond the reach of law. Pirate Bay operators were sentenced to one year in jail and 2,7€ million in fines in April 2009. Interestingly, it seems there may be legal conflicts involved in this case. The judge in question is an active member of a Swedish copyright organisation and his judgement is under review for conflict of interest.

In response to conduct deemed damageable to their interests, many corporations have resorted to computer attacks themselves. For instance, Pirate Bay was the target of anti-piracy software designer Mediadefender in 2007, who intended to employ DDoS attacks against the bittorrent tracker site. The plan fell through when a hacker found and published Mediadefender staff emails describing the strategy.

Individual users also blackmail, harass, threaten, defame, etc. others in numerous new ways made possible by computer networks. Email is used, as are false profiles on Facebook, Livespaces and Twitter as well as blogs, Web pages, etc. The speed at which this can be done has greatly increased since the integration of most of these services with mobile phone services. A person may take a compromising picture or video, comment on it, and send it to their Facebook or to YouTube, all from their phone, in seconds. This will lead governments to try to increase its control over data flows, to regulate the Internet as it does other means of communication, to create “black lists” of forbidden or non-complying websites, etc. Whether or not these strategies actually succeed, whether or not they are justified, they certainly constitute an important encroachment on civil liberties, especially the right to free speech and the right to (virtually) assemble.

Finally, cybercrime also refers to the circulation of various forms of forbidden content on the Internet. Child pornography, Jihadist propaganda, stolen personal information, trade or national security secrets, and the like, can now be distributed farther, wider, longer, and at far less expense than was previously possible. Many governments are now blacklisting and blocking websites based on their contents.

Because of its fuzzy boundaries, cybercrime is in fact a battlefield of conflicting constructions of crime, victimisation and wrongdoing. It also takes place in a society where information has gained overwhelming importance in the routine activities of most citizens, centred on a network dependant on its unhindered flow.

Currently, the difficulty in effectively policing many forms of conduct for which control is demanded by industrial actors has given rise to severe punishments intended to serve as deterrents. In the USA, for example, the Digital Millennium Copyright Act (DMCA) allows for extremely high penalties for possession and distribution of music files, for instance, or for simply defeating copy protection tools.⁵³ The recent French “Hadopi” law provides for the surveillance of activities on the Internet and a 3-stage penal response. This has recently been declared unconstitutional, but the Minister has promised a revised system

⁵³ On this aspect, see Leman-Langlois, S. (2005), “Theft in the Information Age: Music, Technology, Crime and Claims-Making” *Knowledge, Technology and Policy*, 17(3-4), 140-163.

of automatic penalty, where the suspect is presumed guilty and may have his ability to access the Internet terminated.

In many countries the range of forbidden activities on the Internet is even broader. China has ordered that all computers sold in China be equipped with software, ostensibly intended to block pornography. In fact this software also blocks a list of political and journalistic sites. Many such websites are forbidden in China and the state operates as the central, national internet service provider (ISP). In Iran, those desiring to access the Internet must promise in writing that they will not attempt to visit sites deemed non-Islamic – though ISPs must submit to content control ordered by the state.⁵⁴

Increasing police attention to crimes online implies increasing surveillance of communications on the Internet. There are various ways of doing this, from direct analysis of personal computers to commandeering data from deep packet inspection appliances used by ISPs to shape traffic.⁵⁵ As more of our lives migrate to the Internet (for instance, for many of us our mail is now mostly email), this surveillance is far more powerful than often assumed.

If combined with behavioural analysis, even very partial surveillance can yield vast amounts of information. For instance, web-mining can provide a remarkably accurate psychological and social profile of individuals. Private entities are far more advanced in this since they have a stake in better targeting their millions of advertisements directed at web-users. Internet advertiser, Phorm,⁵⁶ already commercialises behavioural advertising software which analyses users' net traffic in order to identify their preferences, habits, and what form of advertising they are most likely to be responsive to.

Terrorism

The 9/11 attacks in the US triggered intensive government activity with respect to new regulation and expenses in almost every country in the world. Police organisations have received new budgets to forge new sections or task forces devoted to the “war on terrorism”. In the US, the FBI has become a counter-terrorism organisation, mostly abandoning its traditional missions.

Even in nearly terrorism-free countries, such as Canada, billions of dollars have been earmarked for new police, military and intelligence infrastructures and missions. Military force has been deployed on foreign soil and in many countries, activated on national territory for counter terrorism missions. Many other state, and private organisations have increased the resources they devote to counter-terrorism functions. In Canada, the extension of border controls to the premises of companies exporting goods to the US has meant increased perimeter security and stricter employee controls.

From the perspective of citizens' rights, this has led to various concerns:

Threats to privacy and autonomy

- Because counter-terrorism outfits have been criticized in the past for poor information-sharing, most notably in the very public Report of the 9/11 Commission in the USA, many governments and various national and international policing entities have implemented comprehensive information-sharing structures and regulations. One recent example is the USA's insistence on being granted full access to so-called passenger name records (PNR) for all aircraft flying to US destinations or travelling inside US air space.
- As many countries are moving towards the adoption, or increased application, of mandatory national identity cards and are now sharing the massive databases constructed for this purpose, the collection, dissemination and use of personal information has become a serious concern. As numerous recent scandals have

⁵⁴ Opennet, *Internet Filtering in Iran*, <http://opennet.net/studies/iran>.

⁵⁵ See <http://dpi.priv.gc.ca/>.

⁵⁶ <http://www.phorm.com/index.php>.

shown, neither governments nor private enterprises have demonstrated an ability to protect such data.

- The current conceptualisation of terrorism as the product of highly organized, centralised entities, such as transnational syndicates (e.g. al Qaeda), rogue states (Iran, Iraq, Afghanistan, etc.) or quasi-state organisations (Hezbollah, Hamas) has been used to justify what would hitherto have been regarded as illegitimate privacy intrusions. For instance, financial institutions have refused to open US dollar accounts for persons holding dual citizenship, since the USA Patriot Act changed the rules for banks doing business with the US government. Industrial corporations entering commercial relationships with the US government must now take cognisance of the nationality of their employees and may have to terminate employees who are from a list of “security risk” countries under the International Traffic in Arms Regulations (ITAR).
- Insurance companies offering terrorism coverage insist on terrorism-ready security.⁵⁷ This typically entails robust surveillance, access controls and personnel screening. Many insurance groups have pressured governments to make terrorism coverage mandatory for many types of installations.

Threats to juridical rights

- Since terrorism is understood as an extreme and imminent danger, policing and intelligence organisations have been given more powers and have been freed from some of the surveillance checks-and-balances they were previously subjected to. Foreign and domestic intelligence, as a result of the apparent globalisation of the threats, are no longer as distinct as they once were: today, powerful surveillance technologies initially reserved for spying on foreign states and nationals have been partly, or wholly, redirected inwards. For instance, in 2002, the US Department of Defense established a vast data-mining project, initially called, the Total Information Awareness project (TIA). Though later renamed the “Terrorist” Information Awareness project in the face of opposition, it was later cancelled. The USA-based Lawyers Committee for Human Rights has

Insuring against terrorism

The 2001 attacks have revealed the considerable increase in the potential size of losses in comparison with a finite market capacity. Attacks of comparable or even greater magnitude may be expected, and the threat of chemical, biological, radiological and nuclear (CBRN) weapons of mass destruction is real. The possible multiplication of medium-size terrorist attacks within a limited time frame is another major challenge. Terrorism risks are also all the more complex to manage in that they can be highly correlated.

Comparing the September 11 losses with those caused by earlier events reveals a break in the historical series. In addition to the nearly 3000 victims and the tragic human dimension of the attacks, the USD 31.7 billion insured losses are almost 1.5 times more than the insured losses from Hurricane Andrew, the second most costly event in the insurance industry, and more than thirty times as much as the worst terrorist attack in terms of insured property losses before 2001. The 9/11 attacks have thus evidenced that terrorism is potentially a catastrophic risk, sharing certain insurability features with other low probability and high consequences events, such as natural disasters.

The 2001 events called for a complete reassessment of loss scenarios for potential future attacks. Models of alternative terrorist attacks now include maximum loss scenarios considered unthinkable in the past, and a single attack resulting, of instance, in insured losses exceeding USD 90 billion for worker compensation losses alone are now considered plausible. Various features of modern terrorism can help to explain the rise in potential loss estimates. Terrorists’ motives have shifted from often regional to global goals and to maximising the number of casualties and victims. Their modus operandi, taking advantage of new technologies, the development of global networks and interdependencies between countries, allows for simultaneous attacks or the quasi-instantaneous propagation of damages at a low cost to the terrorists, entailing potentially exponential losses. The most worrying trend may be the ability to exploit the diffusion capacity of large critical networks (aviation, maritime and intermodal transport, water supply, electricity, public utilities, telecommunications, etc.), turning them against the target in order to maximize the destructive potential of attacks. Lastly, today’s terrorists may have access to far more lethal weapons. The possible use by terrorists of non-conventional chemical, biological, radiological and nuclear weapons (CBRN) represents a new and immense threat.

OECD (2005), *Terrorism Risk Insurance in OECD Countries*, Organisation for Economic Co-operation and Development Publishing.

⁵⁷ OECD (2005), *Terrorism Risk Insurance in OECD Countries*. Paris: Organisation for Economic Co-operation and Development Publishing.

pointed out that the project would collect such personal data as “religious and political contributions; driving records, high school transcripts; mail and internet search logs”.⁵⁸ Interestingly, despite its cancellation many of the projects datamining technologies have been put to use in other government programs, such as the CAPPSSII air travel security initiative.⁵⁹

- The global “war on terrorism” has given rise to new legal statuses, among which is the “illegal enemy combatant” used in the US to prosecute prisoners taken in Afghanistan and Iraq. This status allows the trial of the accused in military courts. Though contested in various courts, these developments are indicative of a general political trend.

Threats to life and bodily integrity

- Police forces often have legitimate access to extreme use of force measures in counter terrorism operations. This can and does lead to incidents such as the 22 July 2005 killing of Jean Charles de Menezes by London’s Metropolitan Police Service Anti-Terrorist Branch officers (who at the time had been under shoot-to-kill orders for little over a week – after the 7-7 attacks in London).
- Military organisations are now fulfilling international policing missions with military arsenal, including drone-delivered smart bombs used to interdict terrorists in foreign countries.

New policing strategies

Along with changing contexts and cultures, a number of trends in the organisation of police services have appeared over the past few years. Some have come and gone but a few seem more likely to remain. This section reviews some of these new operational trends and their impact on various human rights concerns.

Before we take a look at new trends in policing, a short description of what might be regarded as “conventional” or “traditional” policing is in order.

From the mid-20th century, most police forces in the Western world had entered an era of independent expertise and neutrality often referred to as “professional policing.” Having taken some distance from administrative and political power, police saw themselves as experts at fighting crime and producing security, mostly because of their adoption of effective bureaucratic management, expert technologies (the patrol car, the police radio, centralized dispatch, computerized databases, etc.), cutting edge scientific methods (investigative laboratory techniques, behavioural and demographic analyses, etc.), as well as better personnel recruitment and training. The two central pillars of this model are law enforcement and order maintenance.

Law enforcement encompasses the duties most often associated with popular understandings of police work: investigating crimes, identifying and arresting suspects. In both fiction and news coverage, police work is thought of as mostly revolving around these activities, and more specifically as focused on serious crimes against persons, organized crime, transnational networks, terrorists and the like. Though such work is indeed performed by police, and more specifically by criminal investigation departments (CID), in fact it represents but a small fraction of what most police organisations do.

Associated with this necessary broadening of our conception of police work it is also important to recognize that many non-police entities also perform investigative work.

⁵⁸ Galison, P. and M. Minow (2005), “Our Privacy, Ourselves in the Age of Technological Intrusions” in R. Wilson (ed.) *Human Rights in the 'War on Terror'*. Cambridge: Cambridge University Press, 258-294, 262, 263.

⁵⁹ Brodeur, J-P. and S. Leman-Langlois (2006), “Surveillance-Fiction : High And Low Policing Revisited” in K. Haggerty and R. Ericson (eds.) *The New Politics of Surveillance and Visibility*. Toronto: University of Toronto Press, 171-198.

Examples of such entities include credit reporters, insurance adjusters, private investigators, in-house security personnel and computer experts and analysts. Non-police government organisations also conduct investigations and enforce various laws. These include border protection services, tax and revenue services, social security, immigration, health, probation, etc. Finally, military services also investigate crimes committed inside and outside the military. In short, law enforcement is undertaken by a diverse set of players and is no means an exclusive police function.

Order maintenance, the second pillar noted above, is, in terms of both activity levels and resources, a more important feature of policing than law enforcement. It includes activities such as preventive patrol, emergency incident response, traffic control, call response and other types of interventions often referred to collectively as “services”. “Services” constitute a hodgepodge of activities that do not specifically constitute policing, but which actually take up much of line officers’ time. Order maintenance, especially prevention and surveillance functions, is also the primary function of private security.

Internationally, police forces vary significantly in their centralization, their closeness to the state, their involvement in politics, in their levels of corruption, in their degree of cooperation with other policing organizations, levels of officer training, in the priority given to their various missions and mandates, their levels of governance by regulatory and oversight frameworks, and so on. Often, all that police have in common is the sign “police”. Our effort at generalisation, therefore, does not attempt to find features common to every police force in the world – an impossible task. Rather, we want to present features which we believe to be dominant and widespread.

Community policing

Community policing (COP) is without a doubt the most talked about policing “model” today. What this sign references varies greatly across the world. Similarly, what actually happens in the name of “community policing”, if anything, varies greatly. A common way of conceiving of community policing is as an ensemble of tactics and recipes designed to enhance citizen cooperation and build partnerships with other security actors.

There are two principal normative discourses of community policing: first, one that sees it as a toolbox of alternative policing strategies and new ways of addressing street-level complaints and conflicts, and second, a more “holistic” conception that considers those tools as mere representations of deeper, more fundamental changes that are needed at the level of the *philosophy* of policing.

Within the latter conception, anything short of fundamental change does not add up to community policing and remains at the level of cosmetic alterations to conventional law enforcement and order maintenance. From the perspective of the first conception, the second holistic view amounts to an unwelcome and unrealistic fundamentalism that most police organisations are simply not prepared, or able, to deliver. In a recent study, Maguire and Mastrofski⁶⁰ found that no police organization in the US has actually adopted a holistic version of community policing.

Despite its diversity, and the debates about it, three principal features of community policing can perhaps be distinguished.

- First, local governance, meaning that police forces 1) have a decentralized command structure; 2) allow citizen input in the prioritisation of targets and the selection of strategies; and 3) are accountable to local structures. This requires the maintenance of good relations with members of the public.
- Secondly, a broadened mandate that involves, of course, law enforcement and order maintenance, but also a variety of social services as needed by citizens. It is argued that when services are relegated to low priorities, the police-citizen

⁶⁰ Maguire, E. and R. Mastrofski (2000), “Patterns of Community Policing in the United States” *Police Quarterly*, 3(4), 4-45.

relationship often suffers as citizens become dissatisfied with their police force. They also become more likely to rely on private entities to fulfil their needs.

- Thirdly, the acceptance (both by the police and the community) that police are only one, and not necessarily the most significant, social control and policing agent. Peace and order within any society are first and foremost the products of local, informal, and primary social control. State policing can only supplement this first level control when it becomes insufficient; it cannot effectively replace it. Community policing works by constructing and protecting neighbourhood-level processes that support and encourage informal social control. This requires police entering into a series of partnerships with citizens, with citizen groups, with NGOs, enterprises, private and community security structures, etc.

Community policing has provided significant opportunities for enhancing police accountability, control and oversight – especially since it does not posit police officers as isolated crime-fighting experts who need no further input from citizens. Citizens are conceived of as having useful local knowledge and no longer as a mere backdrop to police action. In this way, community policing works to reconstitute public-state power relationships.

If police go beyond the limited adoption of policing tactics favoured by the community policing philosophy (such as foot patrols) and involve at least part of the characteristics listed above, efforts at building a community police force are inherently democratic and citizen-friendly. The decentralization of decision-making powers and the involvement of citizens are likely to foster local empowerment, better rights protection and reduced state interference in everyday life.

However, a few facets of community policing are potentially at odds with human rights. Citizen cooperation revolves around the collection of local information from members of the public, about neighbourhood occurrences that may not constitute crime or even “antisocial” behaviour. This could lead police to building files on many citizens when no crime has been committed. The various partnerships entered into by police organisations may result in preferential treatment for certain areas or actors who manage to exert disproportionate influence on police priorities and strategies. Finally, increased attention to majority citizens’ complaints and wishes may marginalize minority groups.

Problem-oriented policing

Long subsumed under and integrated into community policing, problem-oriented policing (POP) is perhaps best considered as a distinct policing program. Most policing experts agree that it can work whether or not it is part of a broader transformation towards community policing.⁶¹ As will become clearer below, it is, however, far from a simple policing tactic and involves a shift in the actual provision of police services. Unlike the adoption of technologies (Segways™, Tazers™, portable computers, etc.) or tactics (foot patrols, crackdowns, etc.), implementing problem-oriented policing often entails far-reaching shifts in the way policing is conceived:

- As the name suggests, the notion of “a problem” is central to problem-oriented policing. A problem is conceived of as a recurring, chronic situation that may or may not involve actual violation of statutes or bylaws but troubles the peace and the normal enjoyment of premises and property or the normal conduct of day-to-day activities – or at least threatens to trouble them. A problem is not a new way of articulating a criminal event; it is meant to draw attention to its precursors, its

⁶¹ **Error! Main Document Only.** Braga, A. (2008), *Problem-Oriented Policing and Crime Prevention*. 2nd edition. Monsey (NY): Criminal Justice Press; Eck, J., Spelman, W., Hill, D., Stephens, D., Stedman, J. and G. Murphy (1987), *Problem-Solving: Problem-Oriented Policing in Newport News*. Washington, DC.:Washington Police Executive Research Forum and National Institute of Justice, US Department of Justice; Goldstein, H. (1979), “Improving Policing: a problem-oriented approach” *Crime and Delinquency*, 25(2), 236-258.

causes. Though it may involve acts that might legally constitute “crimes”, this is not the defining characteristic of a problem. Consequently, problem-oriented policing promotes a forward-looking, risk-focused conception of policing: it means attempting to modify underlying factors and causes that would otherwise continue to produce crimes in the future.

- Choosing to identify problems promotes a search for solutions. Since problems are not necessarily directly crime-related, solutions must be found outside of the established criminal justice tool box. Problem-oriented policing sees crime and criminality as symptoms of deeper, often hidden causes. The proper question is never, “how can we stop individuals from engaging in this kind of behaviour,” which is likely to lead to criminal justice or strategic solutions, but “*why* are individuals engaging in this kind of behaviour.” Even without a search for scientific explanations -- “root causes” – of human behaviour (which tend to fall far outside the reach of police), this question still opens a much broader field of exploration and encourages police to take a fresh and different look at the problems.
- There is no “crime problem”, only local problems – problem-oriented policing shifts attention away from generalized statistics and trends and promotes instead a “microscopic” approach to spaces. Because problem-oriented policing is not directly about crime, its practitioners must “think outside the box” and customize local solutions to local “problems”. These solutions are not likely to be exportable to other sites, though they may serve as examples of creative problem-solving more generally.
- Situations, rather than events, are the focus: events are unpredictable and unavoidable. Responding to events is a highly inefficient way to use police resources because the source of the event is not addressed. In the problem-oriented policing philosophy (which has become a central pillar of what has come to be called “environmental criminology”), efficient policing solves longstanding problems and solves them in a way that makes them less likely to reappear. It is concentrated on the situations (the “environment”) where events take root and produce repeated service calls, and aims to changing these situations/circumstances so that they are less likely to generate troublesome events. Thus, as noted, problem-oriented policing is future-oriented: it acts now to change event-producing contexts. One implication is that, given resource limitations, less importance will be given to enforcement, that is, to past events.

A radical consequence of these principles, from a traditional policing point of view, is that “law enforcement” shifts back to being a *means* to an end rather than an end itself. Police no longer exist to enforce the law; they exist to provide peace and security – though they may sometimes use laws in order to produce these results. Of course, what often happens in practice is that police often (given the nature of their resources and training)

Specialized Services a Competitive Advantage

Every industry has its own, specific security challenges. We can leverage our extensive knowledge in security with insight into specific industry-related challenges, enabling us to provide added value for our customers.

Understanding customers’ needs

Securitas services a wide range of customers in a variety of industries. They range from governments, airports, shopping centers, hospitals and residential areas to IT companies. Our customers face different risk situations, depending on the environment of the particular industry, and therefore have different security needs.

Years of experience in servicing customers in various customer segments, and within these segments several similar industries, have proven to us that the need for more tailor-made security solutions is strong. The benefits of specialization, both for the customer and for us, are also evident. These conclusions have resulted in our strategy towards specialization. We recognize the differences between customer segments and industries in terms of risks, needs and solutions. Within each industry, we also take advantage of the similarities, no matter the location, to reap the benefit of duplicating the solution. For example, a public hospital in Spain has similar security needs to one in Norway and an insurance company in Canada has similar needs to one in Germany. Understanding our customers’ needs and specific industry-related requirements gives us a competitive advantage.

Securitas (2008), *Annual Report, 2008*, p. 8.

engage in problem-oriented policing with traditional police solutions in mind (preventive patrol, citizen sensitization meetings, crackdowns and identity controls) and look for ways to apply them.

Private policing has a somewhat different relationship to problems and solutions: unlike the official, state-centred police, it has not developed an overarching philosophy or mission beyond the solving of its clients' local problems. However, for this reason, private policing or security is typically problem-oriented as this is very often what their clients insist upon (see box).

Problem-oriented policing is dependant on highly unpredictable levels of tolerance for various phenomena in any neighbourhood. Though individual officers and their organisation often regain or retain expert status in this model, citizen satisfaction remains an important element of the police's ability to fulfil its mandate. Studies have shown that citizen satisfaction is a positive factor in the willingness of citizens to partake in local informal social control, because they believe they are acting with official sanction and, if needed, with official protection.⁶² However, in multicultural or conflict-laden societies, responding to citizen demands is often hazardous, demanding masterful negotiation and delicate compromises. Many police conclude that it is far easier to wait for actual, obvious crimes to be committed.

Intelligence-led policing

Intelligence-led policing (ILP) is rapidly becoming the new orthodoxy in policing – it has certainly become the new mantra – and many regarded it as posed to replace other models such as community policing. In its first iteration intelligence-led policing involved a combination of three elements: 1) a risk management approach to crime control, based on the targeting of specifically identified individuals (involving heavy reliance on intelligence) who were regular repeat offenders; 2) the collection of intelligence about repeat offenders; 3) criminological knowledge useful for mapping, tracing and predicting criminal behaviour. Results were measured statistically. A typical conclusion reached has been that arresting just a few repeat offenders reduces overall crime statistics.

In times of scarce resources these and similar conclusions have proved to be very attractive to police – targeting fewer, more active delinquents was thought of as much more efficient than targeting the many others who are marginally involved in crime. This fits well with what has come to be called the Pareto 80/20: the principle holds that typically, across many fields, 20% of the input accounts for 80% of the output. Intelligence-led policing can be viewed as an outgrowth of problem-oriented policing philosophy, but with a Pareto twist: it identifies the “problem” as, typically, the existence of high-intensity offenders.⁶³ Intelligence-led policing can thus be seen as drawing on conclusions from across many problem-oriented analyses and then using the central conclusion of these – in particular, that using law enforcement to target repeat offenders provides a solution to this problem – to focus police resources.

Overtime, intelligence-led policing has evolved beyond this feature to include a much wider programme, one that draws it closer to the wider problem-oriented approach. This, however, has made it more difficult to define and separate out. According to Ratcliffe,⁶⁴ intelligence-led policing:

- is a management philosophy/business model;
- aims to achieve crime reduction and prevention and to disrupt offender activity;
- employs a top-down management approach;

⁶² Silver, E. and L.L. Miller (2004), “Sources of Informal Social Control in Chicago Neighborhoods” *Criminology*, 42, 551-583.

⁶³ Tilley, N. (2003), “Community Policing, Problem-oriented Policing and Intelligence-Led Policing” in T. Newburn (ed.) *Handbook of Policing*. Cullompton, Devon: Willan, 313.

⁶⁴ Ratcliffe, J. (2008), *Intelligence-Led Policing*. London: Willan, 87.

- combines crime analysis and criminal intelligence to produce crime intelligence
- uses crime intelligence to objectively direct police resource decisions; and
- focuses enforcement activities on prolific and serious offenders.

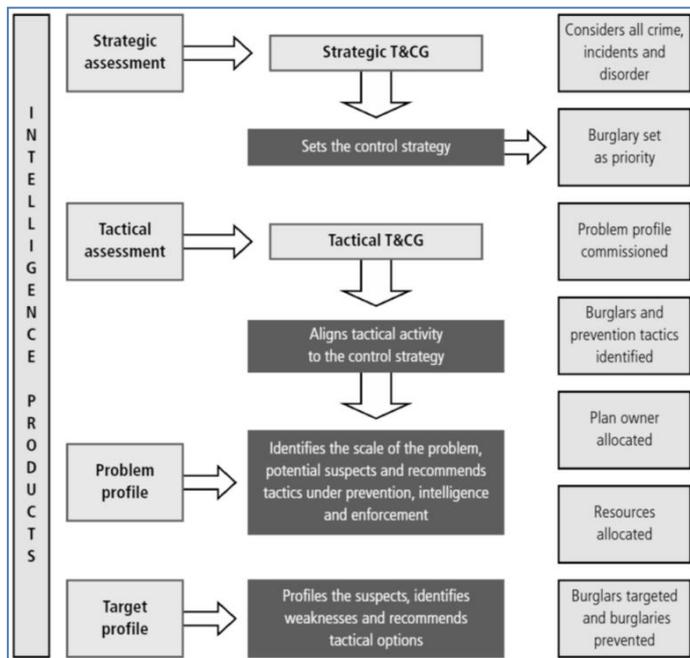


Figure 2: Interrelations of intelligence products. Association of Chief Police Officers (2005), *Guidance on The National Intelligence Model 2005*, National Centre for Policing Excellence: 72.

Given Radcliffe's conception, one way to understand intelligence-led policing would be as problem-oriented policing reshaped to fit the police toolbox – it, as it were, brings new ideas about policing back home to the police in ways that support their image of themselves as, if not monopoly providers, then certainly the key nodal providers within a policing assemblage.

The Association of Chief Police Officers⁶⁵ (ACPO) has a somewhat broader conception of ILP (see box) than Radcliffe, but one that fits with the interpretation just provided. ILP is regarded as including the conventional forms of intelligence (strategic, tactical/operational) as well as established forms of crime

analysis (problems, targets).

The ACPO model of intelligence-led policing attempts to encompass almost every aspect of conventional police mandates and organizes them around indicators compatible with the current statistical tools used by analysts: spaces (crime mapping), times (time series analysis), persons (criminal justice and intelligence files) and relationships (network analysis).

To date intelligence-led policing, like its precursors, has not been fully implemented anywhere. However, as computing tools become more available and affordable and police management and officers become more knowledgeable, it is likely to secure its position as the dominant model for policing by police. ILP is useful to police as it does much to restore their somewhat tarnished image over the last several decades.

One of the most seductive aspects of ILP for police, in addition to the re-centralisation of strategic and tactical decision-making and the consolidation of the ranks system (both were seen as hindrances under COP and POP models) to which we have just alluded, is that it offers police organisations a powerful symbol of high-tech expertise and professionalism. Intelligence-led policing rests on conceptions of crime, policing and society wholly in step with traditional police culture.

At the present – although this is likely to change once its advantages are fully recognized across the police -- criminal intelligence analysts and crime analysts⁶⁶ are usually

⁶⁵ Association of Chief Police Officers (2005), *Guidance on The National Intelligence Model 2005*. London: National Centre for Policing Excellence.

⁶⁶ The difference between the two is more historical than objective, but is very real; criminal intelligence analysts and crime analysts actually are represented by separate professional organisations (International Association of Law Enforcement Intelligence

positioned outside of the police rank structure, as “civilians,” with low job status, few promotion opportunities and definitely do not “lead” policing.

Intelligence-led policing is highly dependent on the development of new technologies promising better surveillance (data collection, analysis and distribution). The hope implicit in ILP is that this will with time be realized at four levels that may make ILP more attractive to human rights advocates. If this hope is to be realized, ILP would have to incorporate:

- Technologies that are at once less intrusive to ordinary citizens and more efficient at gathering information on “proper” (i.e. criminal) subjects. Ordinary citizens would remain more anonymous while wrongdoers are identified and dealt with.
- Better surveillance that would involve better control of those using the technology, in order to prevent abuse.
- More powerful, more effective and more efficient crime control through better use of police resources.
- Finally, better surveillance that would lead to more reliable criminal trial outcomes.

However, there might also be important downsides. Intelligence-led policing implementation – in its various guises – may well lead to a series of problems and potential human rights conflicts. The emphasis on surveillance and data collection may lead to the creation of massive databases that are unlikely to be expunged of erroneous, outdated or non crime-related data. June 2009 discussions of the so-called Stockholm programme for EU security and surveillance shows that unlimited data collection is conceived of, within this programme, as a powerful solution to a series of problems, such as transnational organized crime, illegal immigration, traffic in weapons, illicit substances and human beings, terrorism, etc. Limitations or control of this collection and retention of data are seen as unfortunate, albeit necessary concessions to human rights concerns, that will likely diminish the effectiveness of the programme.

Intensive policing

This brings us to the last of the policing developments that we will consider. So-called intensive policing – which may be considered a close cousin of intelligence-led policing – consists in a number of aggressive tactics, such as fielding greater numbers of personnel in selected areas in order to intensify “stop and check” tactics on targeted populations, “zero tolerance” approaches for selected target populations and areas, priority conducts, “crackdowns” on premises or groups involved in such conducts and increasing use of paramilitary units for routine tasks (routine arrests, warrant delivery, searches⁶⁷). What links intensive policing to ILP is that like ILP, it centralizes the resources available to police and thus can be seen as part of an ongoing and escalating response by police to regain ground that they believe has been lost to private security. One difference is that as ILP has been expanded in this way, it has lost, to some extent, its claim to being evidence-based. In general, research has not revealed a strong correlation between these tactics and crime reduction. Further, for the sorts of reasons we have canvassed in this paper there are growing concerns about serious liberty infringing side effects.⁶⁸ Yet

Analysts and International Association of Crime Analysts respectively). In general, criminal intelligence analysis refers to the work of identifying offenders, their activities and their relationships, while crime analysis consists in exploration of crime statistics.

⁶⁷ Kraska, P. (2001), *Militarizing the American Criminal Justice System: The Changing Roles of the Armed Forces and the Police*. Boston, MA: Northeastern University Press.

⁶⁸ Aitken, C., Mooreb, D., Higgsa, P., Kelsalla, J. and M. Kergera (2002), “The Impact of a Police Crackdown on a Street Drug Scene: Evidence from the Street” *International Journal of Drug Policy*, 13, 193-202; Dixon, D. and L. Maher (2005), “Policing, Crime and Public Health Lessons for Australia from The ‘New York Miracle’” *Criminology & Criminal Justice*, 5(2), 115-143.

these tactics are becoming increasingly popular and are not likely to disappear from the emerging police paradigm and associated “means” arsenal in the foreseeable future.

Given the nature of its links to other models – especially ILP as an expansion of it -- intensive policing is perhaps best not thought of as a policing model with an independent unifying philosophy, but rather as a style reflected in many new and popular approaches to order maintenance such as “broken windows policing” and “Compstat”.

“Broken windows” policing has its roots in a now famous magazine article written by James Wilson and George Kelling in 1982.⁶⁹ In this piece, the authors present a cogent argument linking low-level, and most importantly, highly *symbolic* evidence of disorder (an unrepaired broken window is thought of as signifying a lack of governance) to the criminalization of a neighbourhood, as a causal chain of disorganisation and fear promoting further disorder in a reinforcing spiral. This absence of governance is thought to makes citizens fearful, causing them to desert the public places that are then overtaken by criminal elements who see the site as free from surveillance and control (both formal and informal).

Like its close cousin, “reassurance policing”,⁷⁰ the target of broken windows policing is to lower the perception of risk for citizens in order to encourage them to “retake their neighbourhood” and thus deter criminal activity. Unlike reassurance policing, however, the intensive style of broken windows policing posits disorder less as a subjective value and more as an objective fact experienced by residents. The shift, noted above, that centralizes the police and their means can also be seen here, as broken windows policing is incorporated into an intensive style. The value and necessity of informal controls and the knowledge and capacity central to them is down-valued at the same time as police are identified as having the resources necessary to bring about a shift from disorder to order. This is nicely expressed in the link that has been established between “broken windows” and “zero tolerance” law enforcement by police.

There are close resonances between “broken windows” and what has come to be called “Compstat” policing within an intensive police style. Compstat refers to the system of computerized crime statistics analysis established by William Bratton, as a management tool, after he was named New York Police Commissioner in 1994.⁷¹ As a management procedure system, Compstat operates on two main fronts. First, it seeks to improve resource allocation and strategic deployment by “mapping” crime on to geographic locations and then keeping track of differences between these locations in terms of types of criminality. Second, Compstat improves managerial accountability by also keeping track of the successes and failures of each precinct captain and their upper management. Compstat meetings are used to measure and compare precinct performance as much as to devise ways to reduce crimes.

The actual anti-crime results of intensive policing methods, either in “broken windows” or Compstat form, are the subject of considerable dispute. Two questions raised in these disputes are of interest here: 1) whether intensive policing is acceptable as a police outlook and 2) whether it leads to abuse.

The extent to which intensive policing tactics are permissible depends on local laws. In many countries police officers are authorized to order citizens to identify themselves if they have broken the law or violated municipal or other regulations. In some countries laws allow mandatory identification even in the absence of any form of reproachable conduct. Yet others allow the removal, detention and questioning absent any form of justification or legal review.

How intensive policing is operationalized depends, in large measure, on the regulatory environment in which it operates and how rigorously regulatory constraints are applied. It has been argue, however, that even in the most protective regulatory environments

⁶⁹ Wilson, J. and G. Kelling (1982), “Broken Windows: The Police and Neighbourhood Safety” *Atlantic Monthly*, 249(3), 29-38.

⁷⁰ Quinton, P. and R. Tuffin (2007), “Neighbourhood Change: the Impact of the National Reassurance Policing Programme” *Policing*, 1(2), 149-160.

⁷¹ Bratton, W. (with P. Knobler) (1998), *The Turnaround: How America’s Top Cop Reversed the Crime Epidemic*. New York: Random House.

intensive policing inevitably leads to “overpolicing” of selected areas, while others, given limited resources, are “underpoliced”. As we suggested earlier, the justification offered for this is the disproportionate levels of crime between different urban areas and populations. This, as we have noted, is not as straightforward as it sounds, since in fact police statistics are very imperfect approximations of actual levels of crime. More importantly, statistics still have to be interpreted and priorities established -- an inherently political process. Notable imbalances in available police resources may result in a security inequality or a security deficit that by definition affects some more than others.

Transnationalisation of policing

The Transnationalisation of policing has many aspects. Perhaps the most frequently discussed aspects of transnationalisation are the growth of bi- and multi-lateral agreements between police organizations or between states, which usually aim at more effective information sharing and practical cooperation on investigative matters, especially with regards to organized crime and terrorism. Another is a lateral practice focused on the transfer of knowledge that is not context sensitive, usually referred to as “best practice”. The idea is to exchange strategies and tactics that have proven effective against a particular form of crime across the globe. A further feature of transnational policing that has drawn attention is the complex, informal and fluid networks of cooperation involving many state and non-state entities.

Deflem⁷² argues that the formalisation of policing, and its reconstruction as an expert set of discourses and practices, will work to isolate it from the direct, operational power of the state and will favour linkages with other like organisations wherever they may exist, beyond national borders. As for corporate security governance, it is already in a very advanced stage of globalisation. Narrow profit margins and intense demand have pushed towards the concentration of the field in a very limited set of dominant transnational corporations. For example, Securitas AB has 230 000 employees in 30 countries, and has progressively swallowed many of its competitors, small and large (Pinkerton, Burns, etc.).

Transnationalisation through official agreements takes two broad forms: the first involves treaties and conventions between states, and the other more or less codified agreements between police and non-police organisations directly. Europol, which was established as a consequence of the Maastricht Treaty, is under the control of member states and is a good example of the latter category. As of 2010, Europol will be integrated as part of the EU governance assemblage as a regular EU agency.

Walker⁷³ has noted that Europol has tended to follow the pattern of national police forces that favour the professionalization of police agencies and their isolation from state politics. In effect, this means that while organisations such as Europol may not, because of statutory limitations, become supra-national, they may well become *a-national*. This is bound to make matters of oversight and accountability even more complex than they already are.

Agreements between police organisations vary in their scope, formalisation and objectives. The scope may be narrow, such as involving exclusive problems, like drug trafficking, or extremely broad and open ended. Formalisation may be rigorous with written, explicit and exclusive contracts being drawn, or it may be entirely absent, as is the case with ad hoc or “network-based” understandings between individual police officers.⁷⁴

⁷² Deflem, M. (2007), “International Police Cooperation against Terrorism: Interpol and Europol in Comparison” in H. Durmaz, B. Sevinc, A.S. Yayla, and S. Ekici (eds.) *Understanding and Responding to Terrorism*. Amsterdam: IOS Press, 17-25.

⁷³ Walker, N. (2003), “The Pattern of Transnational Policing” in T. Newburn (ed.) *Handbook of Policing*. London: Willan, 111-135.

⁷⁴ Sheptycki, J. (2002), *In Search of Transnational Policing: Towards a Sociology of Global Policing*. London: Ashgate. Sheptycki shows that in most conditions informal

Coordination objectives may be limited to information sharing, but in some cases allow direct police intervention across national territories and may well include the creation of joint operational task forces. One of the earliest formal agreements between multiple police forces – i.e. not including their respective governments – is the International Criminal Police Organization (better known as “Interpol,” from its 1946 telegraphic address). Interpol has a governing body of representatives drawn from member states (see box) but its operational framework is set by police members. It has no oversight provisions and is not clearly accountable.

The “best practices” model, though uniform in its methodology and goals, takes on two distinct forms, depending on the nature of those exchanging information on practices. In one form, organisations from developed countries facing roughly equivalent problems, resources and cultures, swap “recipes” in various forums created to facilitate this. In the other form, developing countries – including failed or weak states, post-conflict states and other administrations considered as “junior players” or “learners” – come to such forums looking for “cut and paste” solutions to their local problems. A subset of this second form involves “teacher” administrations imposing their policing solutions and models on “learner” administrations. Examples include post-invasion Afghanistan, Columbia and other South American administrations.

In looking back on this review of developments in policing, the reader will no doubt be aware that, despite our warnings not to assume that security governance was a state-centred activity, we have focused greater attention on developments within state policing. This, in spite of the fact that non-state policing developments are taking place and that they have had, and will have, profound consequences for the ability of human rights mechanisms to offer rights protections. This uneven treatment is a consequence of the uneven availability of research data within the security governance literature. It should thus, not be interpreted as evidence that there have been more significant and extensive developments within the state as opposed to the non-state policing sector. In fact our judgement is that it is very likely that the reverse is true.

This unevenness of information is due, in no small measure, to the fact that state policy developments, as well as their implementation processes, tend to emerge with far more fanfare than developments within the non-state sectors. This fact may well have the unfortunate consequence, within the human rights community, of suggesting that the

agreements – circumventing red tape and multiple-level approval processes – are far more effective than formal ones.

ICPO – Interpol constitution

Article 6

The General Assembly shall be the body of supreme authority in the Organization. It is composed of delegates appointed by the Members of the Organization.

Article 7

Each Member may be represented by one or several delegates; however, for each country there shall be only one delegation head, appointed by the competent governmental authority of that country.

Because of the technical nature of the Organization, Members should attempt to include the following in their delegations:

- High officials of departments dealing with police affairs,
- Officials whose normal duties are connected with the activities of the Organization,
- Specialists in the subjects on the agenda.

Article 8

The functions of the General Assembly shall be the following:

- To carry out the duties laid down in the Constitution;
- To determine principles and lay down the general measures suitable for attaining the objectives of the Organization as given in Article 2 of the Constitution;
- To examine and approve the general programme of activities prepared by the Secretary General for the coming year;
- To determine any other regulations deemed necessary;
- To elect persons to perform the functions mentioned in the Constitution;
- To adopt resolutions and make recommendations to Members on matters with which the Organization is competent to deal;
- To determine the financial policy of the Organization
- To examine and approve any agreements to be made with other organizations.

ACPO, <http://www.interpol.int/Public/ICPO/LegalMaterials/constitution/>.

most severe challenges still come from the state-policing sector. Again, we have sought to make clear that this is not the case, but data limitations have hindered our ability to develop these arguments as fully as we would have liked. This research deficit requires attention if human rights scholars and activists are to keep up with and respond to the challenges to human rights being presented by developments within the governance of security.

Conclusion: shifts in policing and in human rights

In our discussion to this point we have sought to highlight some of the developments in the world of security governance that have raised concerns about the future development of human rights mechanisms. In this, our concluding section, we will review some of the developments within the human rights discourse that have sought to come to come to terms with this issue.

In his analysis of questions of order and justice in a post-911 world, Michael Freeman⁷⁵ argues that the tensions and anxieties that defined this world are not very different from the ones that framed the political and philosophical debates of 17th century Britain. These tensions, he notes, found expression within the works of Thomas Hobbes and John Locke. At the time, liberal scholars attempted to develop mechanisms for balancing the often conflicting demands that the governance of security raises. Today, anxieties over terrorism in liberal democracies provide a new instance of these tensions and the attempts to reconcile them.

Michael Ignatieff⁷⁶ in his influential book, *The Lesser Evil: Political Ethics in an Age of Terrorism*, has proposed a consequentialist criterion that would allow liberal democratic societies to decide on the “lesser evil” of restriction of some rights, while leaving these societies the ability to effectively respond to serious threats of terrorism. This is a position that many “security” and “human rights” advocates share (despite their differences), that a “fair balance” needs to be struck between security and human rights.

This call for a ‘fair balance’ was also stressed by the UN High Commissioner for Human Rights, the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights.⁷⁷ It can also be found in many of the resolutions of the United Nations on state counter-terrorism measures. For example, the UN Independent Expert on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, drew attention to this need for balance when it noted that Security Council Resolution 1373, adopted soon after the September 11 attacks on the US, had “regrettably, contained no comprehensive reference to the duty of States to respect human rights in the design and implementation of such counter-terrorism measures”.⁷⁸

In contrast, Fernando Teson, in an approach that resonates with the one we have adopted here, argues that the language of “balancing” is not helpful in seeking to integrate human rights into Hobbesian anxieties over security. As an alternative, he allows for restrictions to freedoms only if these restrictions are dedicated to the preservation of *freedom* rather than any other value such as security.⁷⁹ This has also been the position of the erstwhile Secretary General of the United Nations, Kofi Annan, when he rejected the notion of a trade-off between human rights and effective counter-

⁷⁵ Freeman, M. (2002), *Human Rights: an Interdisciplinary Approach*. Oxford: Oxford University Press.

⁷⁶ Ignatieff, M. (2004), *The Lesser Evil: Political Ethics in an Age of Terrorism*. Princeton: Princeton University Press.

⁷⁷ International Council on Human Rights Policy (2002), *Human Rights After September 11*. Versoix: International Council on Human Rights Policy, 19.

⁷⁸ Goldman, R. K. (2005), *Promotion and Protection of Human Rights: Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*. UNESCOR, Communication on Human Rights, UN Doc. E/CN.4/2005/103, 21.

⁷⁹ Teson, F. R. (2005), “Liberal Security” in R. Wilson (ed.) *Human Rights in the ‘War on Terror’*. Cambridge: Cambridge University Press, 57.

terrorism measures. In his words, “in the long term, we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism”.⁸⁰

The perspective we have brought to this paper is one that echoes Annan’s concern that if human rights are defined in opposition to security, then they are likely to find themselves trumped by security concerns. Lazarus and Goold, in their critique of the fair balance approach, make the further point that it also risks obscuring “genuine conflicts between the promotion of human rights and the pursuit of security”.⁸¹

An important development that may shift the terms of this debate is the emergence of the concept of “human security.” Within a Kantian outlook that prioritizes the individual, human security seeks to define security in ways that deliberately widen the established conceptualization, so that it comes to mean considerably more than the security of states. With the concept of human security, the focus of governance is shifted to the individual and the conditions for his well-being.⁸²

By shifting the conception of security in ways that include the Kantian values that human rights seek to promote and protect, advocates of a “human” conception of security have attempted to change the way the security debate is framed. Their intention is to reduce the tendency for state-centred framings of security to define security and human rights as natural opposites.

In reviewing these developments, Lazarus has called for greater clarity and precision in the deployment of concepts such as “human security,” warning that, along with associated arguments – for example the argument that security should be conceived as “a meta-principle grounding other rights” – could do more harm than good to the human rights project.⁸³ The dangers that Lazarus has in mind, are that if such conceptions take hold states might be tempted to abandon the more precise and binding language of rights for a more palatable and malleable concept like human security. If this were to happen, she fears that a “securitization of human rights” may significantly undermine the gains of the human rights project.

Ian Loader, a colleague of Lazarus at Oxford, has also sought to both extend and to clarify the reframing of security. He has suggested that one possible way of mediating this dilemma of security and rights is to locate rights “*within* a solidaristic and egalitarian practice of security”.⁸⁴ The challenge in shifting the framing of the debate over security and human rights, as these authors make clear, is how to reformulate the discussion on security and human rights without inadvertently reinforcing the problematic features of the security versus human rights contest that this paper has sought to identify. What is required as we have just suggested is ways of re-conceptualization both human rights and security as constitutive of each other.

This issue of re-framing the terms of the debate has constituted a sub-text that underlies much of the security governance developments we have canvassed here. Community policing, for instance, raises, albeit obliquely, the hope that a more people-focused form of policing will deliver a form of security that by definition is grounded in human rights and the associated values. In contrast, other developments, such as intelligence-led policing, while drawing on some of the themes found within the community policing dialogues, shift

⁸⁰ 40 U.N. ESCOR, 4453d mtg., at 3, U.N. Doc. S/PV.4453 (18 Jan. 2002), quoted in Foot, R. (2007), “The United Nations, Counter Terrorism, and Human Rights: Institutional Adaptation and Embedded Ideas” *Human Rights Quarterly*, 29, 489-514, 500.

⁸¹ Goold, B. and L. Lazarus (eds.) (2005) *Security and Human Rights*. Portland, Oregon: Oxford University Press, 16; see also Wilson, R. (2005), *Human Rights in the 'War on Terror'*. Cambridge: Cambridge University Press, 21.

⁸² MacFarlane, S. N. (2005), “Human Security and the Law of States” in B. Goold and L. Lazarus (eds.) *Security and Human Rights*. Portland, Oregon: Oxford University Press, 325-346, 347-361.

⁸³ Lazarus, L (2005), “Mapping the Right to Security” in B. Goold and L. Lazarus (eds.) *Security and Human Rights*. Portland, Oregon: Oxford University Press, 325-346, 328.

⁸⁴ Loader, I. (2005), “The Cultural Lives of Security and Human Rights” in B. Goold and L. Lazarus (eds.) *Security and Human Rights*. Portland, Oregon: Oxford University Press, 27-43, 42.

the terrain back towards the more established conception of security and human rights as being fundamentally at odds.

In terms of the perspective we have developed here, while policing styles such as intensive policing might offer much in terms of greater security in an increasingly insecure world, the danger is that this promise of security brings with it a conceptualization of security and rights that is likely to see the governance values underlying human rights increasingly being trumped by security values.

As one reviews the debates over security and rights, it is clear that human rights activists have been remarkably successful in exposing governance atrocities and the misuse of authority by security actors. This work is important and should continue. However, besides this oversight and monitoring role that the human rights sector has assumed, there are important questions that need to be raised on how governance incentives can be re-shaped, so as to encourage those involved in security governance to view and to practice the protection of human rights as an integral part of their security functions.

Mobilizing individuals to “do the right thing” is a much more challenging task, for human rights scholarship and advocacy, than drawing attention to the fact that they very often do “the wrong thing”. An implicit recommendation in this paper, that now needs to be made explicit, is that a rights discourse may not of itself be sufficient in responding to the task of protecting rights values within the governance of security. This may require the human rights community to “learn” much more from other discourses that has been the case.

If we accept that human rights and security should be mutually constitutive, as we have argued throughout, the task of reframing both terms is one that requires the engagement of security and human rights scholars and practitioners. Traditionally, human rights discourses have paid attention to the actions of the state and their implications for human rights and to the ways in which states have often been responsible for violating human rights. This, it has been argued, has resulted in a legalism and stateism that is impeding rights discourses from coming to terms with contemporary developments in governance.⁸⁵

It is precisely this legalism and stateism that this paper has argued that needs to be challenged.

This requirement is clearly visible with respect to the relationship between “crime” (as an expression of the widespread concern that people everywhere have for their security) and human rights. To the extent that human rights discourses have had something to say about crime, their focus has, for the most part, been on those instances where the state has been seen as culpable of violating the rights of the criminal suspects. Meanwhile, the field of human rights has been singularly disinterested in responding to concerns about crime.

As a consequence, the human rights discourse has been bewildering to victims of crime, who have viewed it as unsympathetic to their suffering. Angelina Godoy, in recognizing this, has cautioned that the distinction so often made between human rights violations and criminal violence has led to “a dangerous disconnect between the concerns that most citizens consider paramount and the issues traditionally advocated by rights groups”.⁸⁶

The new research agenda that scholars like Lazarus and Loader have identified, promises to go a long way towards responding to the concerns raised by Godoy. If this agenda is to be realized, it will require human rights scholars and activists to join with security scholars and practitioners in critically examining crime in a more complex manner, one that constitutes it as an integral concern of human rights groups.

⁸⁵ Jamieson, R. and K. McEvoy (2007), “Conflict, Suffering and the Promise of Human Rights” in D. Downes, C. Gearty and P. Rock (eds.) *Crime, Social Control and Human Rights: From Moral Panics to States of Denial, Essays in honor of Stanley Cohen*. Devon (UK): Sage, 422-441, 434.

⁸⁶ Snodgrass Godoy, Angelina (2005), “La Muchacha Respondona: Reflections on the Razor’s Edge Between Crime and Human Rights,” *Human Rights Quarterly*, 27(2), 597-624: 600.

In pursuing this agenda, the perspective we have adopted insists that research not be limited to understandings that consider states as monopolizing security governance. Scholars and activists working at the intersection of human rights and security need to recognize, more than they have done hitherto, that an extensive body of work exists that maps the realities of security governance as we enter the 21st century.

As private actors today have taken on more and more of the security functions that were previously thought of as the exclusive domain of states, many new rules aimed at regulating their conduct have emerged, as this reality has been recognized by those directing governance. Some of these rules have taken the form of hard law, which has been the subject of recent litigation in jurisdictions such as the United States. Equally important, however, is the soft law that has developed in the form of voluntary principles aimed at encouraging the ethical conduct of private actors. The body of knowledge emerging from developments in this area may provide important pointers to the future of the regulation of security functions in an increasingly pluralized world of security governance.

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