Exploring the boundaries of policing: striking the balance between hard and soft policing + over- and under-policing in modern law enforcement.

Drivers: Hong-Kong Police Force and prof. W. Bruggeman

Prof. dr. W. Bruggeman

13 May 2016

1. Introduction.
   The police are a unique organisation: they represent law and order, they should embody democratic legitimacy, possess legal rights to use force and are societies first point of call against risk, danger, crime and civil unrest.
   The police should symbolise objectivity, transparency and decency. Act as a protector, not for certain groups only, but for all citizens. Be present wherever and whenever necessary, 7 days a week, 24 hours a day, for the benefit of societies at large. These are the traditional values of any police organisation.
   However, listening to the presentations at the first Pearls in Policing conference, Professor Fijnaut shared his observation that the developments in policing and police research can be put under three headings: 1) clashes, 2) balances, and 3) shifts. Although police reform is now happening almost all over the world, this is unfortunately still the case.
   In a rational society, reform would be a matter of social deliberation. But our society is not always rational. Implementing reforms mean struggle, in the streets and in the halls of power. The beneficiaries of the social structure fight for their power and wealth, leading sometimes to irrational, compromised law and policy.
   This article is limited to the available publications and own research, but it is clear that there is a need to explore the limits of policing beyond the Anglo-American world. In fact the law and policing is likely to be interpreted and understood in textually specific ways, having different meanings and being prioritised in different ways. In order to understand the conditions and the boundaries of policing, including its legal, cultural, political, social and historical context, more specific studies are necessary, on top of the general ideas and practices being illustrated in this article.
   Some proposals for reform are realistic, other seems often utopian to a society. The remaining question is then how and under which conditions just/good policing can be identified, confirmed and promoted.

2. The limits of policing

2.1 Positioning of policing in general
   Policing cannot be studied without exploring first security problems in general.
   Security problems are varying rapidly in nature and scope. In considering current threats, the
changing role of the state and the public police is a challenging issue. Before exploring the environment to meet the future of policing, it is worthwhile to explore what the role of the police is.

The question about policing has a theoretical and a practical (realistic) dimension. Police organisations have a wide range of responsibilities and tasks, of which law enforcement is only part. Maintaining public order is another growing area of responsibility. Policing is neither social service, nor law enforcement only. In many countries policing related regulations tend to follow the concept of policing becoming broader and moving beyond the institutions of the public police to include other security and regulatory agencies, ideally all working together in partnerships.

The role of public police is legally fixed on a country by country basis. Police, policing and the governance of human security have undergone massive conceptual changes all over the world. Whatever attempt we undertake to identify convergent police systems: in reality the police systems of different countries have historically varied markedly. While identifying shifts in policing arrangements in many countries, these are based on changing circumstances that are occasionally global and mainly localised.

Policing can be defined as intentional action involving the conscious exercise of power of authority that is directed towards rule enforcement, the promotion of order or assurance of safety.

But policing appears nowadays to become increasingly fragmented and complex (Reiner, 2000). In the context of this contribution, two characteristics of policing earn special attention:

- the police come more than any other organisation in contact with the bottom layer of society (posing problems of police ethics and corruption);
- by law, the police has a hierarchical relation with the citizens providing a balance of power.

Policing is not limited to the public police. Especially during the last decades many other actors are becoming active in the area of security. It is clear that governance must devolve power and share the work of social control with official and private organisations and communities as we are now moving toward a world in which the state will have less power than other actors and it is these actors who will define more and more national and international policy. Active engagement by citizens and communities is and will remain essential in changing social behaviour.

In order to acquire an overview of all security organisations the following mapping picture gives an impression of their current social positioning (Prof. Bigo).
After having explored the boundaries of policing, the question is then open what the position of each policing organisation will be in the future and to what extent the specificity of the role of public policing agencies is or has to be conserved?

Any mapping of future police models has to be done against the broader background of political, economic, social and cultural developments that, in turn, have their impact on security thinking in general and policing in particular. Such mapping models can help to identify possible ways to create the environment to meet future needs of policing. Moore’s strategic triangle may help us to throw some light as to what is or could be ‘right’ in policing.

2.2 Exploring limits of (public) policing

General
Exploring limits of policing is a surprising, exciting but also difficult issue. These limits can be studied by focussing on two different aspects:
- first recognising the limits in effective policing (what works?)
- and, second, exploring the limits of due and acceptable policing. This study is focussing on the second interpretation.

But why should we explore limits of policing? The main reason for this is to explore what is just or good policing and to search for a correct level of order. By doing this, it is necessary to realise that in general policing values, laws and rules depend on the context as well at local, national at as international level. And, it is clear already now, that not only in fragile states or countries, but also in countries that enjoy relative stability and prosperity, models of policing are subject to evaluation and reflection. Therefore, a situational approach has to be guaranteed after that once general principles and standards have been identified, helping to ensure a certain (maximum) level of coherence.

So, exploring these limits (functional/factual, formal/informal, internal/external) can help in finding a more global understanding of policing and may narrow down the gaps between different policing concepts and offer opportunities for exploring joint policing concepts.

Therefore, when discussing the limits of public policing, two main options can be taken into consideration: first by focussing on the basis of the minimum and maximum limits of (public) policing (the vertical dimension: the ‘what’ question) and second by focussing on the
respective role and activities of policing actors (the horizontal dimension: the ‘how’’ question, including soft and hard policing).

A short overview of previous findings related to defining possible limits of policing.
What is sure when studying the police and limits of policing is to realise, that despite 150 years of organised policing, their role, function and general operating practices are reasonably constant: generalised patrolling of public places, specific focus on criminal offending and places where crime is seen to be the most problematic, and follow-up criminal investigations that are beyond the scope of the responding officers.
What is changing are the ways these functions and activities are and may be exercised. These changes give us indications to what extend the limits of policing are evolving. However, policing will always be a combination of the power to use force and morality, while never excluding individual citizens with problems form their support and service. Without that translating the social mandate would remain an abstract emptiness. Therefore, the police should be highly cautious about formulating and applying their own moral rules.

Before doing this, it is interesting to take into account that there is a difference between the image of policing and the reality of policing. This became also known as the crime fighting myth. Within the police one can also distinguish between two worlds of policing: the world of the street where decisions are freely taken depending on the situation, and the world in the office, where the paperwork is dominant and the policeman is expected to adhere to organisation obligations. In this context prof. B. Hoogenboom was making during our previous meeting, a distinction between fictional and factual policing.

The gaps between what the police think they should do (fight crime) and public perceptions (expectations, satisfactions and frustration) of police priorities (maintain order) is often widening. If such gaps continue to widen, police become a ‘foreign’ agent in community and business settings, further lessening the legitimate authority they are given by their constituents, or abrogating such authority to private agents and structures. A policing service that is more focused on maintaining its distance from its tasks and general environment is a service that spends more energy on boundary maintenance than on production.

2.3 Limits of policing based on a more holistic approach.

Horizontal and vertical aspects of policing.

Surprisingly not much information is available in relation to minimum and maximum policing and these concepts are not very familiar for police chiefs and strategic leaders.

Maximum policing (over-policing)

---

33 Bringing the police back in. Notes on het lost found character of the police, in: Police studies, 2009 (www.smp.nl)
5 Bruggeman, W. Pearls in policing, 2015
The vertical aspect is about **minimum and maximum policing** (national and international). The first question arising is whether there is a minimum and a maximum level of policing and when do under- and over-policing start (Crowther, 2004).

Basic or minimum (eventually ‘under-policing’) levels of policing include worldwide access to policing activities as defined before in the so-called basic policing responsibilities. All citizens around the globe should be offered a *minimum* and therefore equal level of basic public policing. This means that there should be no exclusive situations (such as no-go areas, regions without any assurance of public policing). In many countries this is far from reality.

Under-policing occurs when basic policing functions are no more exercised for example due to capacity problems.

The *maximum level* of policing (eventually ‘over-policing’) shows the limits of policing especially when using power, exploring personal data and/or exercising other particular policing activities. As many police chiefs and also the public have and do even cultivate very high policing expectations, the expected maximum level of policing is expanding, often beyond policing capabilities. The Pareto law breaks down where a good or service is ‘intangible’, such as the provision of security. Appetites for security could be fanned indefinitely, as there are no real physical limits for how much “security” a human being could hope to consume.

Tending to maximise safety policies has had far reaching implications. Sceptics think that this includes new forms of social control, disciplining and stigmatising, often generating new anxieties. Illustrating this is what happening now in a number of European countries. Open is the question how fair is it after recent attacks to legitimate to change laws and practices to deal with organised crime and/or terrorism and how far this ‘threat’ is being used to diminish liberal norms and civil rights – with marginalised communities being the first victims.

If police and prosecutors are the only tool, sooner or later everything and everyone will be treated as criminal. This is increasingly the way of life in some countries, a path that involves ‘solving’ social problems (and even some non-problems) by throwing cops at them, with generally disastrous results.

Underlying remains the question: from when on do you live in a ‘police state’ and to what extend are new forms of policing acceptable?

The horizontal aspects of policing are about **soft and hard policing**. As over the past years the theory of tough policing has become more important, mainly due to some threatening local crime situations, terrorist attacks or growing violence in general, concepts such as zero risk...
policing have had a huge impact on the relations with the citizens. A more repressive style of policing is diminishing the influence and impact of proactive, pre-emptive and preventive policing. In addition, the hardening of social and racial divisions, the discrediting of legal authority, a reduction of civic tolerance, a tendency towards authoritarianism visible in many societies, do all have impact on policing strategies and tactics. Privatisation and civilisation are part of an active ‘responsabilisation’ strategy, by means of which state agencies encourage actions by non-state organisations and actors and individual actions. It is clear that self-responsibility is a big issue in modern societies. Blurring of public/private boundaries is the result and this is having a huge impact on hardening the public police strategies and tactics, especially when so-called soft policing is handed over to these organisations and initiatives.

The question is then: who is deciding on and who is judging whether public policing is offered in the right way and under acceptable conditions? The main stakeholders impacting on what is just or right policing are:
- law makers and the judicial system;
- the public: policing by consent (individual public interests) and societal (democratic policing);
- the police authorities,
- and police leaders themselves: via business models, priorities ..

First upcoming but basic questions when exploring the boundaries of policing are:
- from what level of problems and incidents on is the police taking or should the police take care?
- what is the room and role given to other partners and agencies, or from what level on is the police disconnecting or leaving responsibility (adapting minimum levels of policing) to others or engaging in a partnering procedure?
- are there universal grounds for policing or is this solely a subject of national interest?
- what is the level of overall coherence?
- are there joint standards for policing?
- is national and international policing (e.g. security sector standards) conflicting?
- to what extend do police strategies impact on the police functioning?
- what are the overall and specific accountability and control mechanisms?

Impacting factors.
As aid before, the limits of policing differ very much from country to country, mainly due to contextual issues. This is not only resulting from the evolving impact of insecurity on our society, but also intrinsically linked to specific other contextual factors. The fact that the police are not simply answerable to the law along raises questions about some of the extra-legal factors influencing police decisions and actions. Policing has always been driven by rulers and later governments and the social, economic and political systems that shape them. Just as the sea has many elements shaping its tides and their corresponding influences around the globe, policing too has observable tides, which also influence public safety, perception and fear of crime, and concerns for the legitimacy of policing as a social institution. Such tides are represented in macro-level social, economic and political changes, as well as the structures and functioning of current governmental efforts to control crime and social disorder.

From the 1960s onwards attention focussed on police occupational culture(s) as one important set of extra-legal factors, with rank and file culture being regarded as involving and interplay of a sense of mission, action-oriented behaviour and cynicism; suspicion, isolation, solidarity, pragmatism and authority machismo, intolerance, prejudice and conservatism. However, the extent to which these informal rules influence police action and subvert legal rules remains a thorny issue.

Beyond scare resources and new challenges to public order, it follows already now that police laws and current ways of exploring the future are the most significant blocks to recalibrate the system for policing with a newly professionalised public service at its core.

Acknowledging all this, it is important to explore the main impacting factors.

- A first impacting factor is police (-ing) legislation.
  The law is always the surrounding frame for all police work. The rule of law is a principle that situates the relationship between citizens and authorities within a legal framework. Basically the limits of policing are set in national and a growing number of international laws and regulations. Legal systems differ conceptually in their notion of justice, their rules governing legal processes, the production of evidence and the role of the police and the judiciary.
  The purpose of the police is to uphold the norms and values in society and in this sense police are also norm enforcers. But frequently, combining the (theoretical) judicial order with social reality, police find themselves in a somewhat contradicting position.
  To varying degrees the law structures also regulate and govern police decisions and behaviour, whether low-level decisions are made on the street by operational officers about whether to stop, search, arrest and/or detain someone, or are more strategic decisions.
  Often, police services feel more and more that they lack both the appropriate legal powers to deal with some (new) security problems. Police laws are often no more adapted to police needs, are too rigid and to detailed. Sometimes, laws are flexible and fluid.
  First, the situation shifts and changes in its emphasis between historical periods and between societies and jurisdictions, thus underscoring the intimate connection between the law and society. The law – and the criminal law in particular-expresses some degree of agreement about the norms and values within any given society about acceptable forms of behaviour, though the extent of this agreement contentious.
  Policing and criminal justice do have also serious moral and practical limitations. Policing is inherently problematic from a liberal or social democratic perspective as it involves the potential for coercion and infliction of pain, and is justifiable only if necessary and proportionate, giving rise to the rich literature of philosophical grappling with the possible justification of violence and punishment. Until the mid-90s policing was not a political issue, but a consensual symbol.
  After the 1970s/80s when evaluation research questioned the efficacy of traditional law enforcement tactics, this was conducive to a climate of ‘nothing works’. But then there was the resurgence of can-do confidence amongst law enforcement agencies. Policing, prevention and punishment came to be taken as panaceas for crime, provided they were tough and/or smart enough. Since then the ‘cops’ have been augmented by burgeoning private security sector and citizen reponsabilisation, leading to undoubtedly more effective target-hardening and situational opportunity reduction. Crime and its control became the focal points of popular culture and practices.
  Additionally, and due to the rapidly rise of crime rates and the appearance of new forms of crime and terrorism and public order riots (e.g. the Brixton disorders in 1981), tough law and practice was more and more ensured. There was in several countries also remorseless growth of
police powers. But until the 1980s policing was dominated by what Dixon calls legalistic bureaucratic understanding of the role of the laws in policing. From this perspective, the law alone was viewed as sufficient to govern the police by regulating, controlling and requiring the police to account and explain for their actions. Moreover, it was believed that more restrictive rules, effectively enforced would modify police behaviour and limit opportunities for deviation from the law. This understanding of the role of the law in policing camouflaged the discretionary, political, partisan biased and potentially discriminatory nature of police, as well as the potential for it to be influenced by extra-legal factors.

Law changes in its emphasis between historical periods and between societies and jurisdictions, thus underscoring the intimate connection between the law and jurisdictions. A second reason for this is because it requires interpretation. No matter how carefully prescribed legal rules are, inevitably they cannot and perhaps should not provide a formal answer to the diverse and idiosyncratic rang of circumstances and setting that the police encounter and in which the police are called on to make decisions and to act. Without this flexibility the law would be a blunt instrument which may be unnecessarily rigid and harsh. This also means that discretion is the inevitable corollary of the law and legal rules. Police laws also explain how the police are granted certain powers such as to use force and why this is central to their role in society. They also explain how the use of police powers is central to the legitimacy of the police as a social institution. Legitimacy means quite simply, whether the actions of the police are regarded by the public as valid and just. This is based on three factors: normative consent to police authority, the legality of police actions and the sharing of beliefs and values between the police and citizens. Legitimacy is also changing over time.

As laws in policing often relate to the exercise of police powers, changing laws do change the limits of policing. Police powers relate, for example nowadays to stop and search arrest, detention, interrogation, investigation and surveillance, as well as to the use of force. Legal challenges illustrating current dilemmas are: data protection, (technical) surveillance, profiling, stop-and-search, (proportional) use of force, arrest and detention, informants and undercover officers, stop and search activities.

So it is obvious that in some countries there are indications of systems that are out of tune with the concerns of today’s richly diverse, multifaceted, technologically savvy, global society. More and more often, police agencies are subject of overregulation. To detailed regulations harms flexibility and personal initiatives. Several police regulations are often outdated and not enough future proof.

Unfortunately, in some countries, neither the rule of law, nor human rights standards play (at least not obviously) an active determining factor in the conduct of operational policing. Concepts of administration of justice, law enforcement, the role of the prosecutor and the role of the police are mainly based on human rights thinking. But human rights thinking is based on common law notions and differ on certain points from the legal principles of civil law (mostly seen on the European continent). Unfortunately, developing nations generally consider human rights as a hindrance, rather than the basis of their work (EU Luxembourg, 2013). And for that reason, human rights have increasingly encountered conceptual challenges, leading to a sense of hesitancy, more especially concerning the claim of universality and their actual use in developing nations and failed states.

And last but not least, now and even more in the future, policing organisations have not only to respect the policing legislation, but also to advise the law makers in a constructive and future oriented way and avoid provocative strategies and activities by policing beyond the laws in place.

---

11 Bittner, E., The functions of the police in modern society, Maryland, National institute of Mental Health, 1970
- A second factor: police (-ing) strategies.

(Future) police strategies need to have congruence, a certain ‘fit’ with the structures and processes of modern society. But next to differences in legal traditions, countries also differ in policing. Although many public policing responsibilities are similar, not only the scope but also the values of policing do differ.

Still, in some countries the basic strategy is more about “order enforcement” then “law enforcement”. And what is sure: when the law enforcement becomes the lawbreaker, the result is an assault on the law itself and on all institutions of public authority.

Over the past years the theory of tough policing has become more important in many places. As a result the police is deliberately widening the gap with citizens. Citizens ought to be afraid of the police, because ‘without threat the police can’t be effective’.

Two major dilemmas when designing policing strategies are:
- a proactive versus a reactive approach of the police task;
- a preventive versus a repressive style of policing.

Although community oriented policing in its many guises is still the dominant philosophy guiding most public policing reform (Reiner, 2010), other policing strategies (problem oriented policing, zero risk policing) do have a growing influence. And as stated before, it is also clear that corporations and the public do not feel that the public police on their own are capable of meeting their full range of security needs in all forms of collective space.

Beginning in the 1960’s and especially in the US policing has been consumed with different notions: police-community relations, team policing, community and problem oriented policing, broken windows and zero tolerance policing and intelligence led policing. At the same time policing has enhanced its military apparatus in the creation of specialised weapons and response units, which now have social and political justification amid public fears of terrorism.

Moreover, the congruence of broken windows and zero-tolerance policing with long held police conceptions of their roles has introduced a rationale for continuing to pursue policing primarily as crime control, even when the idea of ‘crime’ has taken on new dimensions. Emphases on the ‘technologies’ of the police, most particularly how police take actions, where, when and with what results are highlighted in programs emphasising situational crime, prevention, problem-solving and forms of crime analysis. Each of these technologies runs in countercyclical motion to traditional police strategies and tactics.

When focusing on terrorism for example, an overarching reactionary and ‘adversial’ approach, will lead to a disconnection between the factors leading to the emergence of terrorism and the drivers of change and this disconnect represents a significant challenge for counter-terrorism strategies.

Public trust and legitimacy are essential in policing. Police always feel the need to develop (new) policing strategies which contribute to a ‘trust society’. But it can be argued that policing strategies in ‘high-trust’ or ‘low-trust’ societies require different policing strategies.

Policing strategies in ‘high trust societies’ require different policing strategies than ‘low trust’ societies such as transitional states, developing states weak states and failing states.

In this context it is also important to mention that especially the introduction of new technologies gave rise to the risk to become a surveillance society. This is a major concern especially in modern policing societies. Innovations are too often lacking a professional approach. There are sure signs of organisations that are being pulled in too many directions, being asked to do too many things that are out of alignment with its core functions, authorities, and capacities. Principles of legality, proportionality and necessity are in supplement of the police core values (such as indecency, objectivity, fairness ..) being the general guidelines for policing. But studies show that police moral and officer health is in decline (Duxbury and Higgings, 2012). Illustrating this is the fact that police are not immune to corruption, misuse of

13 Van Reenen, 2010
power, cynicism and other dark sides, such as misuse of power or the tendency to gloss over mistakes. Therefore if the police want to be seen as trustworthy, they must recognise their own dark side and find ways of dealing with it. As well the individual misbehaviour, the culture and the structure of the organisation, and the large political and economic framework in which the organisation functions need to be subject of this review procedure. If the police want to retain their credibility, they must publicly acknowledge these dark sides, because only then will they be able to handle appropriately.

But, most harming is the so called ‘noble cause’ syndrome, to express justification of police deviancy (Neyroud and Beckley, 2001). Punch even notes that “the metaphor of ‘rotten orchards’ indicates that it is sometimes not the apple, or even the barrel, that is rotten but the system, or significant parts of the system (Punch, 2003). Those who are subject to discriminatory, arbitrary and corrupt police practices likely associate the police with the abuse of authority and poor governance, either of an ineffectual or authoritarian flavour.

- A third factor: a growing interaction between economics and change of limits of policing (M. Kempa, 2014).

Policing and economics are mutually related, conceptually (at the level of ideas), structurally (at the level of social forces and institutions) and instrumentally (at the level of individuals).

Frequently public forces are lacking resources in order to cover the whole security spectrum and this gives rise to more private initiatives. Nowadays, the challenges of public policing posed by current economic pressures are frequently resulting in restructuring of public sector institutions like the police.

We are currently in a time period of great political and economic transition… our policing philosophies, institutions, and practices are not only increasingly expensive, but are also imperfectly suited to current and future policing needs. Public police agencies are increasingly pressured to reform in order to find efficiencies to meet government budget shortfalls. Today’s fiscally-driven environment demand optima performance for less

Approaches from the industrial and economic sector, comprising pareto optimal considerations and marginal cost, are confronted with fundamental social expectations and the legal mandate of the police.

When governments run out of money and can no longer meet unanchored public demand private providers step in to fill the void and often further fan the flames of demand – as evident in the recent expansion of the private security industry. This gives rise to an even greater gap between the poor and the rich.

The question is then where is the right balance between public and private policing and how can they been kept in balance? And from when on can minimum policing no more be guaranteed?

- A fourth factor: policing professionalism (including policing culture).

Policing is subject of a rapid changing environment.

The idea of (new) professionalised (public) policing expanded and came to dominate. Alongside the gradual expansion and consolidation of modern uniformed policing, many developing industries and corporations prefer to take care of their own security, hiring private actors to secure their plants and activities.

In an increasing global world that is linked through hyper-communication technology, the police are only capable of dealing with this problem through networks of new technological resources. Global partnerships, electronic surveillance and massive data analysis and storage capacity are therefore necessary to deal with new crime. Some are opting for ‘big brother solutions” and exaggerating in organising a so called ‘surveillance society’. But with police disengagement, and the conditions for turs being lost, over time communities begin to view even random and sporadic police patrols as “big brother invasive monitoring and repression rather than preventive and protection measures.

Therefore the question is where the limits are and who is finally in control? This is depending about the central role of the public police and the fragmentation of the policing spectrum.
A. Crawford has identified five models describing the relationship and interaction between public and private police organisations:
- the monopolistic model whereby forms of policing are integrated within hierarchical state police organisations (third party policing);
- steering model, whereby the police seek “to govern at a distance the policing activities of others;
- networked or nodal model, whereby plural policing providers connect in horizontal partnerships in the co-production of security;
- market model with competition (and conflict) structures and relations between divergent providers.
The more public police are in control, the more democratic policing principles can be guaranteed. If not, democratic policing principles have to cover all policing activities, and not only those of the police.

As police and security organisations received over the past 20 or 30 years considerably more resources and policy attention to improve their effectiveness. What first began as experiments and reforms within regular police services, later on extend to other (new or renewed) functions ‘beyond the police’ such as public auxiliaries, community warden, anti-social behaviour teams and civilian policing and of which most were initiated by the advent of the so-called ‘local governance of crime’. Re-enforced so called administrative policing strengthened the administrative authority of the police. Other policy measures have been developed such as imposing street or place restrictions or restraining orders. The coordination and integration of a growing multitude of measures, programs and agencies into a coherent policy and strategy represented a genuine challenge. It remained unclear which agency was supposed to do what, when and where. New surveillance functions lacked appropriate training and supervision.

But in the meantime and primarily due to the fact that some measures had been declared in contradiction with human rights (e.g. Terrorism acts), there has been a rapid return to form as the many governments have reverted to though law and order.

- A sixth factor: technological developments
Police will have to keep abreast with developments in techniques and science, in particular forensic science. Police agencies will be required to increase their capacity in dealing with these developments and using them to their advantage.

Nowadays ‘tomorrow’s technologies’ of control quickly become today’s political imperative and contentious policies appear increasingly irresistible. In general, technology should not dictate our values and rights, but neither should promoting innovation and preserving fundamental rights be perceived as incompatible.

The obvious danger in placing blind faith in technological fixed to complex phenomena like crime, terrorism and illegal immigration is enhancing further militarisation of the police. Technology undoubtedly can assist in police investigations. But there is no evidence to suggest that it prevents terrorism or crime because technology can do nothing to address the multifaceted ‘root causes’ of these social problems.

So, there are strong arguments for regulating, professionalising and if needed limiting and resisting the development of the security-industrial complex. Especially, privacy and civil liberties groups oppose some initiatives as disproportionate and are particularly concerned. The effect of law enforcement technology and militarised activities on civil liberties and democracy, meanwhile is already all too clear. While certainly having a legitimate role to play if adequately regulated, technologies

like CCTV and DNA profiling have generally been made available to the police with too often inadequate controls or regard for individual human rights. The sometimes rushed legislation on the introduction of new initiatives has then frequently come at the expense of democratic debate. Subsequently, serious privacy concerns have been ignored and serious questions remain about the usefulness, reliability and accuracy of the underlying technology.

So finally, the question remains open whether the idea that policing is based on common values such as freedom, liberty, justice, fundamental rights, democracy are still valid concepts are becoming myths. And if that is the case, what is the chance that the political elites and law enforcement agencies will allow a meaningful public debate and to what extend are they ready to change course in order to balance the needs of mobility, security and civil liberties?

Surveillance is a normal aspect of the management and governance of modern life. But in the developed and in parts of the developing world, surveillance societies have started to emerge.

So the question for especially law enforcement agencies is: what’s wrong with it and from when on it is this type of policing no more acceptable?

Surveillance societies are societies which function, in part, because of the extensive collection, recording, storage, analysis and application of information on individuals and groups in those societies as they go about their lives. Each features, in different measure, such as the routine collection of data about individuals with the specific purpose of governing, regulating, managing or influencing what they do in the future may become a subject leading to a fundamental debate about what is acceptable policing.

A surveillance society is one where technology is extensively and routinely used to track and record people’s activities and movements. This includes systematic tracking and recording of travel and use of public services, automated use of CCTV, analysis of buying habits and financial transactions, watching the work-place and monitoring of communications. This can often be in ways which are invisible or not obvious to ordinary individuals as they are watched and monitored.

A surveillance state is a country where the government engages in pervasive surveillance of large numbers of its citizens and visitors. Such widespread surveillance is usually justified as being necessary to prevent crime or acts of terrorism, but may also be used to stifle criticism of and opposition to the government.

Mass surveillance is the intricate surveillance of an entire or a substantial fraction of a population in order to monitor that group of citizens. The surveillance is often carried out by governments or governmental organisations, but may also be carried out by corporations, either on behalf of governments or at their own initiative. Depending on each nation's laws and judicial systems, the legality of and the permission required to engage in mass surveillance varies.

Thinking about society using surveillance as a concept enables to mount an ethical, social and spatial critique of the information processing practices which are part of the way society is formed, governed and managed. It enables us to question and evidence its impact on the social fabric: on discrimination, trust, accountability, transparency, access to services, mobility, freedoms, community and social justice. Moreover it enables to engage in debates with regulators, businesses and journalists about the consequences of their surveillance-based activities.


---

15 Hates, B., Arming big brother: the EU’s security research programme, Amsterdam, Transnational Institute, 2006
Militarisation or demilitarisation (e.g. South America) of the police is subject of current fundamental discussions. The use of force and the threat of force are at the very heart of the militarisation of the police.

From the perspective of (de-)militarisation the relations between the police and the military have evolved throughout the years. New security threats emerged and heavily influenced the relationship between both security actors. Combating these new threats calls for a comprehensive approach by both police and military. Furthermore peacekeeping missions into post-conflict regions do have many elements of public order management in them and collaboration with local police is often inherent to his remit. Hybrid arrangements and to some extent blurring boundaries emerge which generate questions about transparency and democratic control.

But it is quite difficult to measure processes of (de)militarisation. These processes refer to the finding that the police are increasingly dealing with problems that have become more difficult, large-scale, international and violent in recent decades. Evolutions in human trafficking, arms trafficking, drug trafficking, transnational crime and terrorism requires cooperation that exceeds the strict limits of internal security and requires the use of special methods, techniques and appropriate violence.

Technological developments and (de)militarisation are most frequently interlinked. State police and security forces have been equipped with more and more military equipment. Also local and global surveillance systems (the introduction of biometric identifiers, RFID, electronic tagging and satellite monitoring), paramilitary equipment for public order and crisis management and the militarisation of border controls are just illustrating that technological advances in law enforcement are often welcomed uncritically, but rarely are these technologies neutral, in their application or effect. The militarisation of the police and the ‘politeisation’ of the military, and ideologies like the war on drugs, and the privatisation of public space, have an important impact on the conditioning of policing.

Change processes stress the fact that changes on a macro, mezzo and micro level are needed. The macro level refers to the vision of the role and position of the police and army in our societies, which is being influenced by political decisions in the domain of security and the functioning of the state. The mezzo level refers to the organisation implications of a militarisation or demilitarisation in terms of effects on variables such as the structure, strategy, culture, human resources and education of the police and army. And finally the micro level refers to variables in relation to what is actually going on in the field.

Spawned by the military-industrial complex, the security-industrial complex has developed as the traditional boundaries between external security (military) and internal security (security services) and law enforcement (policing) have eroded. The military have shifted from defending the territory of the state to the fight against international terrorism and the defence of individual and collective human rights. The

---

process of militarisation of the police refers to the finding that the police are increasingly dealing with problems that have become more difficult, large-scale, international and violent.

The traditional barriers between internal and external security and policing and military operations have been eroded. So there is an increasing overlap of functions and capabilities required for military and non-military security purposes. The rhetorical transition from ‘crime-control’ to ‘war on crime’ and ‘war on terror’ also reflects to the transition of routine activity into a state of crisis. The most illustration can be found in the numerous forms of special units that have been organised in police organisations around the world such as the SWAT units\(^{20}\). Also the sharing of training and technology between the police and the military is expected to produce a shared mind-set which is considered to be typical for the process of militarisation of the police and a challenge for ongoing evolutions towards more democratic policing. Gendarmerie forces are and in-between solution in many countries.

For police the use of force, coercion and threat together with a good information position) seems to be the open door to effective policing. Politicians and the public are dual in this: on the one hand they wholeheartedly agree with firm police action against those who threaten their security, on the other hand voices are raised because the militarisation of police threatens democratic principles.

A basic question is what distinguishes the police from the military in policing? The militarisation of the police includes more than ‘just expressing war rhetoric and becoming more heavily armed. The degree of militarisation (measured at the levels of the socio-political, the organisational and the operational dimension) can vary in time and space and gendarmerie forces can be situated at the continuum of the process of militarisation. Actually in many countries basic police functions are exercised by military (national or international) forces.

In addition to that the media nowadays feed the idea that the police is caught up in a process of militarisation. Also the call for arming police more heavily after recent terrorist attacks or the deployment for special intervention teams that feed this idea.

- A sixth factor: political influence.

At the same time, many countries wrestle with economic problems, political disagreement and growing signals of pure populism, industrial dispute and urban and ethnic tensions between police and citizens.

In many countries the political influence on policing is still a dominant policing factor. Especially in democratic countries, the impact of politics on policing is growing.

In autocratic regimes the role of police is very closely tied to maintaining the government, often ‘securing order’ through violent means. Under these conditions law enforcement tends to be associated with the (para-) military, where civilian police duties are often relegate under the much broader theme of State Security.

Public policing is more and more a joint action by public, semi-public and private actors, but the exact role of state actors in governance networks\(^{21}\) is highly debated. Some scholars argue that as a result of the paradigm shift from government to governance, state actors lost their ability to steer society. They complain of a hollowing out of the states and speak of governance without government as a consequence of privatisation, contracting out and public-private partnerships. Others argued instead that government actors are ‘important actors among many others’. Although upwards, downward and horizontal shifts in steering activities and power have caused national governments to lose their monopoly in defining society interest, allocating public value

\(^{20}\) Special weapons and tactics units.

\(^{21}\) Now we moved in many countries from government to governance.
and implementing policy, national governments remain importantly unique players in the public domain by the fact that they possess important resources such as legitimacy and authority backed up by formal laws, constitution, taxation and the ability to use physical force22.

- An eighth factor: internationalisation of policing.

Overall coherence between national policing strategies, international policing and police-reform in post-conflict areas is often lacking. The bilateral and multilateral sharing of information, evidence, technology and capability building through international presence of police forces are now well accepted by most of the police forces. Relationships and cooperation models will have to evolve beyond the current (even strong) operational cooperation. Police have to evolve their international capabilities along the lines of police-led diplomacy, making the difference by harmonising laws, and working with partner on better policy formulation, better legislation, stronger rule of law frameworks, and greater understanding of both the criminal cycle and the root cause of crime. Therefore international policing is impacting very much on the limits of also national policing.

- and a last but not least factor: accountability and control. Abusing police power should be banned from all policing activities. Acting outside the limits of policing can be misconduct or not. Public police forces are much more subject of accountability and control then other services. At the one hand this is a guarantee for democratic policing, but is at the other hand limiting very much the popularity of public policing compared to private policing.

3. To conclude

Policing is an evolving concept, although the role and function of the police are reasonable constant. In order to better police and to prepare the future there is a need to constantly explore what is just or good policing. In a society undergoing constantly significant political, social and economic challenges, the policing needs, philosophies and strategies, institutions and practices are fast changing and may not be able to effectively and efficiently meet current and future policing needs. Many decisions are too often made on an ad hoc basis, be it by law makers, authorities or the police leaders, impacting on the limits of policing. Moore’s value-led policing model offers a valid basis for exploring the boundaries of policing and for striking the balance between hard and soft policing, under- and over-policing in modern and future law enforcement. Multiple factors (such as legislation, policing strategies, economic capabilities ...) do have fundamental impact on the choices to be made. Therefore it is important to exploit all possible opportunities.

22 Hoppe, Governance of public problems, Bristol, The policy press, 2010
based on a solid policing philosophy and a clear and well balanced future vision. Just/good policing must be put into the context of differing societies, jurisdictions and economic capabilities. Nevertheless there is an urgent need to further explore possible and preferred policing futures, in order to avoid over and under-policing and to well balance soft and hard policing, based on a set of solid decision making principles and criteria. Finally, it is all about: PREPAREDNESS, LEGITIMACY AND CREDIBILITY, AND TRUST

4. For discussion
   So it is clear that just or good policing is an evolving and complicating concept, influenced by historical, contextual and situational factors. Over- and under-policing have to be avoided. Although concepts differ from one country to another, basic questions are:
   - do we see/need universal standards in good, over- and under-policing?
   - marrying the fundamental right on security with (new) fundamental rights on police response and services: is there a global answer?