

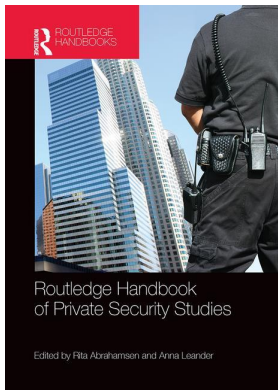
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THE PRIVATIZATION
OF SECURITY

Implications for democracy

Clifford Shearing and Philip Stenning

Concerns over personal and communal security are as old as human societies, but as societies have changed arrangements for achieving and maintaining security have evolved accordingly. In this chapter we consider the implications of these changes for the governance of security. We begin with evolution of the institutions of security and associated linguistic developments and the debates that underlie them. We then turn to the issues of governance that have been central to these debates. We conclude by considering the challenges that contemporary forms of security provision present for the realization of the democratic governance of security. We explain how major transformations in the provision of security, and especially the allocation between states and the private sector for doing so, have occurred across the world during the last thirty years or so. Globalization and the impact of technological change during this period have placed much security provision outside the regulatory capacities of nation states, and adequate alternative forms and institutions of transnational governance have not yet been devised, nor have recent developments in thinking about how democratic governance is to be realized been reflected so far in discussion of such possible alternatives.

Institutional developments, changing terminologies, emerging debates

In far distant times, a word that was commonly used to reference personal and communal security was 'peace'. In England in the sixteenth century, for instance, William Lambard (1581–2: 5) wrote of 'peace' in the following terms: "'peace": a withholding or abstinence from that injurious force or violence that unruly or boisterous men are in their natures prone to use towards others were they not restrained by laws and fear of punishment.' Individual citizens as well as communities were entitled to 'peace' (the consequences of 'breaches of the peace' varied with status and power). Typically, responsibility for ensuring peace and for holding to account (bringing to justice) those who 'breached the peace' was shared by all, or at least all adult males. Over time sovereigns began to claim something of a monopoly over the preservation of the peace, and the disciplining of those who breached it. This led to the emergence of the concept of a 'King's Peace', conceived of as a 'public peace' that applied across entire kingdoms.

This idea of a 'King's Peace', often attributed to King Arthur, initially only applied to certain places and people – for example, highways, markets, the king's court and its courtiers. Gradually it began, as the nineteenth-century historian William Maitland (1885) put it, to 'swallow up

lesser peaces' (e.g. the peaces of local noblemen, lords of the manor, etc.). By the seventeenth century this process of consolidation of the King's Peace was pretty much complete. The King's (or later Queen's) Peace was understood to apply to everyone, everywhere, with sovereigns claiming a monopoly over its maintenance and enforcement across the land. Its effective maintenance and enforcement, however, still depended on the acceptance, by adult male citizens and communities, of responsibility for this, there being no state apparatus through which it could be achieved. To ensure that this responsibility was fulfilled, sovereigns designated prominent local citizens as two classes of 'peace officers' – constables and justices of the peace – to represent his/her interests in peace preservation. The job of these officers was to ensure that the King's peace was preserved and that those who breached it were brought to justice before the royal courts.

Up until the late eighteenth century in England, personal and communal security were maintained and enforced by local citizens who acted under the auspices of sovereign law and legal institutions, and under the supervision of local peace officers, with communal sanctions for failure to meet these civic responsibilities. That, at least, was the theory.

The combined forces of demographic urbanization and the beginning of the industrial revolution in the eighteenth century, however, led reformers to the conclusion that these essentially rural arrangements for the governance of security were now inadequate. First, they depended on 'local knowledge' that had existed in relatively static rural agricultural communities, and second, security was maintained and enforced principally by, and in the interests of, landed gentry, enforced by their designated agents. Attempts to transfer these practices to cities were resisted by an emerging entrepreneurial, mercantile and industrial bourgeoisie whose members demanded a system of security maintenance that would meet the needs of their growing commercial and industrial enterprises. By the late eighteenth century this had led to the demand for state-sponsored 'police'.

The word 'police' came into the English language in the eighteenth century from France. At that time, it referred not to an institution, as it does today, but rather to a desirable state of affairs. In 1769, in his famous *Commentaries on the Laws of England*, for instance, William Blackstone described it thus:

The last species of offences which especially affect the commonwealth are those against the public *police* or *economy*. By the public police and economy I mean the due regulation and domestic order of the kingdom: whereby the individuals of the state, like a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners; and to be decent, industrious, and inoffensive in their respective station.

(Blackstone 1723–80: 162)

The original concept of 'police' thus bore some resemblance to the earlier concept of 'peace' and soon the term 'police' came to be used as a verb to refer to activities undertaken to 'preserve the peace'. It was not until the late eighteenth century with growing demands for the establishment of a state institution with responsibility for ensuring and enforcing 'police' or 'peace', that the term 'police' gradually ceased to refer to a desirable state of affairs and instead came to signify an institution that might be established to achieve this (see [Chapter 2](#), this volume).

The author of a *New Municipal Manual* published in Canada in the mid-nineteenth century nicely explained this shift in usage. Explaining the recent introduction of 'Police Boards' to govern the new police forces in what is now the province of Ontario, the author wrote (plagiarizing Blackstone, as quoted above):

The word ‘police’ is generally applied to the internal regulations of Cities and Towns, whereby the individuals of any City or Town, like members of a well governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners, and to be decent, industrious and inoffensive in their respective situations ... but the word, as here used, has a still more restricted meaning, for it is intended to apply to those paid men who in every City and Town are appointed to execute police laws, and who in many respects correspond with Constables of Rural Municipalities.

(Harrison 1859: 158)

Not surprisingly, the legal authority of these new ‘police officers’ was referred to in contemporary statutes (and still is in many jurisdictions) as the ‘original’ authority of ‘peace officers’, and their work came to be referred to as ‘policing’. As the American police scholar Egon Bittner (1970) famously argued in the twentieth century, the key defining characteristic of this work was the authority to use ‘legitimate’ force. Earlier, the German sociologist Max Weber had described a successful claim to a monopoly over the use of legitimate force as the key defining characteristic of the modern nation state.

Thus it was that by the late twentieth century domestic ‘policing’ – that is, the ‘keeping of the peace’ – had come, inaccurately, to be thought of as the exclusive preserve of the state and, in particular, the role and work of state-sponsored public police; inaccurately, because empirically most states have never realized a complete monopoly over policing. Nonetheless, policing scholarship at this time was almost exclusively preoccupied with the public police. During the latter decades of the twentieth century, however, the plausibility of the claim of a police monopoly over policing came increasingly to be challenged and this in turn had implications for democracy.

The co-existence of private and ‘public’ domestic security provision throughout the nineteenth and twentieth centuries came to be increasingly well documented in the literature. It was not until the latter half of the twentieth century, however, that the private (i.e. non-state-sponsored) provision of security began to receive serious attention from ‘policing’ scholars. This attention was a reaction to a growing body of evidence of a massive growth of private security organizations and personnel in the United States during the post-World War II decades. But it was not long before policing scholars in Canada, Europe, (later) Australia and (even later) South Africa and South America began to notice that this phenomenon was by no means unique to the United States, and a slowly emerging body of research literature on ‘private security’ developed.

At first, this literature focused on describing the growth, activities and auspices of private security provision, but soon questions began to be raised about what its implications might be for democracy and accountability. This included concerns about understandings of ‘policing’, the relationship between this growing private provision and ‘public policing’, the respective roles of ‘private’ and ‘public’ police, the governance of private security provision and how private providers of security were being and should be held to account. These concerns were reflected in robust debates about nomenclature – should private security provision be appropriately referred to as ‘private policing’, and if not, why not? Those who regarded ‘policing’ as the exclusive preserve of the state and its ‘public police’ resisted such usage. Others argued that ‘policing’ was simply another term for security provision.

Another term of crucial relevance to the relationship between security privatization and democracy is ‘globalization’. This is a term with a longer history than most people who write about it acknowledge, but which, during the last decades of the twentieth century, became ‘an

all-purpose catchword of public and scholarly debate' (Lechner and Boli 2008: 1). It has been applied to refer to the way that all manner of economic, political and cultural activities, enterprises and processes have expanded beyond the confines of, and hence effective regulation by, individual nation states into a transnational and international realm of operation. This may refer to the fact that such enterprises are simultaneously operating in multiple nation states, and/or that they are operating in spaces that are outside the boundaries of any nation state, such as the high seas, international air space, 'space' or 'virtual space'. From one perspective, globalization refers to the 'flows' of goods, services, people, money, communication and information between and among states. Its significance for policing can be quite simply stated: just as domestic enterprises require secure environments in which to operate effectively – environments that nation states have assumed responsibility for securing through laws and policing – so too do transnational or 'global' enterprises. This poses two critical challenges for policing. The first relates to the fact that there is no transnational or international equivalent either of a national government or of a domestic police service. The second derives from the fact that, with some notable exceptions based on international treaties, conventions and covenants, etc., there is no transnational or international equivalent of a comprehensive domestic body of uniform, national laws or justice institutions.

Much effort has been devoted in the last hundred years to make up for these deficits, but this remains very much 'work in progress'. Transnational and international security provision is just as, if not more, 'pluralized' than domestic security provision and has proved even more difficult to co-ordinate and govern. It is only within the last twenty years or so that a handful of policing and security scholars have begun to turn their attention to understanding these developments and to consider the challenges they present with respect to democratic values.

'Democracy', too, is a concept with a very long history. While there has been broad agreement that it refers to the idea of government according to the 'will of the people', agreement about what institutions and processes are required to achieve this pretty much ends there, and debates about the concept and realization of democracy are as robust now as they ever were, especially as the world has become more 'globalized'. Recent scholarship in this area has indicated a shift in focus from 'representative' democracy to 'deliberative' democracy, and from models and institutions of democracy to processes of democracy.

The twentieth-century English historian Sir Charles Reith (1952: 253) was one of the first policing scholars to draw a distinction between 'regime' and 'democratic' policing. Since the 1960s there has been a growing emphasis on the need for policing to be democratically accountable, and since the 1990s there has been a concern with developing strategies for transforming policing in states in transition from authoritarian to democratic governments. The transitions from state-dominated security provision to plural security provision, and from state-based to global security provision during the latter years of the twentieth century, have posed new challenges for achieving effective democratic accountability for both domestic and global or transnational policing. It is to the debates about how to respond to these challenges that we now turn.

Governing privatized and globalized security provision

Clearly, the modern pluralization (and especially privatization) and globalization of security provision poses enormous challenges for effective and accountable democratic governance. There has been broad agreement, at least in theory and at least in democracies, that the role of state-sponsored public police is to undertake policing in the broad public interest – that is, in the interests of the public or community at large – rather than in the usually narrower,

self-serving private, partisan or corporate interests of powerful people or organizations, be they politically powerful ruling elites or economically powerful corporations. Calls for community-based policing, democratic policing and policing by consent, as well as efforts to provide police with some defined independence from political direction, all reflect such expectations.

So long as state governments were thought to have a legitimate monopoly over policing, achieving such accountable democratic governance seemed to be, if not always easy in practice, at least theoretically possible, and there was no shortage of suggestions as to what laws, regulatory regimes and institutions were required to do so. Furthermore, establishing and maintaining appropriate regulatory mechanisms were seen to be well within the mandate, and usually the effective power, of established liberal democratic governments. With the pluralization, privatization and globalization of policing which developed in the late twentieth century, however, this assumption was increasingly questioned. In the context of today's market-driven understandings that argued for the devolution of the provision of services by governments to the private sector, established couplings of the public interest with the public sector and private interests with the private sector have become increasingly difficult to maintain.

These difficulties were aggravated by the fact that some transnational corporations have assets that exceed the GDP of states that seek, and depend upon, their investment. In such circumstances, many states are unable to dictate conditions for security provision. Instead, they find that they are 'required' to negotiate regulatory environments with corporations whose investment they want to attract. This means that they often find themselves having to trade off established ideals of democratic accountability against the political demands of promoting growth and economic development, with the latter not infrequently being given precedence.

This means that some corporations are able to negotiate effective 'immunity' from local laws, law enforcement and legal liability, as a condition of locating their businesses within a state. In extreme cases they may be able to enrol states to utilize tax resources to provide the security that they are able to command for their enterprises. Often this necessitates the purchase of private security provision when the requirements of the corporations involved cannot be met from existing state security resources, and domestic laws are frequently not flexible enough to provide for adequate accountability of such provision. The issue of accountability is significantly exacerbated when the 'host' country is not a democratic state (for examples, see Spearin 2003; Avant and Haufler 2012).

These challenges of democratic governance are difficult enough to meet with respect to providers who are operating within the territory of a nation state. Even more difficult is the challenge of devising mechanisms, institutions and processes to govern security provision beyond the boundaries of nation states. Conventional arrangements for democratic governance are simply not readily applicable in these international, extra-terrestrial and cyber-spaces, in which the public-private distinction becomes irretrievably blurred.

Scholars and policy makers have responded to these challenges in two quite different ways: some have focused on ways to adapt existing domestic governance institutions and processes and to devise international governance institutions and processes that mimic them; others have sought to rethink fundamental concepts of governance and democracy in ways that might help us to better understand these challenges, and suggest new forms of democratic governance that might generate effective responses to them.

Adaptation of existing governance structures

Since the 1960s states around the world have introduced laws and regulatory regimes to govern the activities of private security companies and personnel within their territories. Many of

these regimes have included accountability mechanisms through which complaints from the public can be investigated and adjudicated, with administrative sanctions available to discipline delinquent operators. To this extent there has been a consistent attempt to bring private security provision into conformity with democratic norms. The efficacy of these regimes, however, has been persistently questioned, with accusations that regulatory agencies have been inadequately funded to perform their functions effectively and have been ‘captured’ by those they are supposed to be regulating, and that private security companies based in other countries have been able to avoid any effective regulation at all.

In many countries, including the United Kingdom until the 1980s, the only regulation to which private security providers were subject was self-regulation. Self-regulation was typically undertaken by industry associations whose membership was dominated by the largest companies, and their self-regulatory regimes were frequently criticized as unrepresentative of the private security industry as a whole, and as promoting the interests of these large providers at the expense of smaller market players, rather than promoting broader public interests. Furthermore, both government regulation and self-regulation have applied, in most countries, only to contract security providers and not to the activities of corporate in-house security organizations (Button 2002).

With the gradual emergence of plural security provision and partnerships between public and private security organizations, there came a recognition that the separate regulatory regimes for public (i.e. state-sponsored) and private security provision that had developed were no longer adequate to ensure that domestic security provision conformed to democratic norms. Ideas about how to govern a plural policing environment were slow in coming. Significantly, the Patten Inquiry into the reform of policing in Northern Ireland eventually stepped up to the challenge, proposing a governance regime with a central ‘Policing Board’ responsible for regulating all the players, public and private, in a plural policing environment (Independent Commission on Policing for Northern Ireland 1999). Although much discussed by both practitioners and scholars at the time, the proposal was not adopted for Northern Ireland or anywhere else in the United Kingdom, and has so far not been implemented in any other country.

In the international sphere, attempts to establish governance regimes for the globalized plural policing and security environment have been few in number and of questionable efficacy. As has been the case with domestic security provision, efforts to establish an international governance regime have involved proposals both for state-sponsored regimes and self-regulatory regimes. State-sponsored regimes have been sponsored by the United Nations and by regional government organizations such as the European Union (EU) and the Organization of American States (OAS), but have focused on the governance of state-sponsored international security organizations such as UN Peacekeeping Missions, Interpol and Europol, with almost no attention to the roles and activities of transnational private security providers.

Attempts to establish a governance regime for the latter have been based on self-regulation, with the establishment of an organization named the International Code of Conduct Association (ICoCA). The ICoCA was originally launched with support from the government of Switzerland in 2009, and inspired by the ‘Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict’, published by the International Red Cross that same year. The ICoCA’s membership currently includes six governments, 140 private contract security companies from many countries of the world, and 13 civil society organizations (see [Chapter 26](#), this volume). In November 2010 ICoCA promulgated an international Code of Conduct for Private Security Providers (ICoC). Membership of the ICoCA is voluntary, but

includes a commitment to operate in accordance with this Code of Conduct. On its website ICoCA claims that as of September 2013, 708 companies had formally committed to operate in accordance with the Code of Conduct'.¹ Despite the involvement of the 13 civil society organizations,² however, ICoCA and its Code of Conduct cannot be regarded as a democratic governance regime.

Rethinking governance

Innovation with respect to the governance of contemporary forms of policing has been at the conceptual rather than the practical level and has involved, in particular, the emergence of new conceptions of governance and of democracy. As a consequence of this conceptual focus, while new avenues of thinking have been identified, these remain, at a practical level, possibilities that have yet to be clearly identified, articulated and advanced.

A significant theoretical innovation within the governance of security has been the development of a 'governance' perspective that has deliberately sought to move thinking beyond its hitherto state-centred conceptual anchors. It has done so, in part, by attempting to extend the understanding of peace and peace keeping beyond its historical close coupling with police.

An influential conceptual development has been a shift to the term 'security' as opposed to 'policing' and an associated introduction of the idea of governance, understood as intentionally shaping the flow of events, as a source of peace. At the same time scholars working within this governance perspective have sought to develop a conceptual framing that is inclusive of a wide spectrum of auspices and providers of security that recognizes the plural nature of security delivery and the complexities of democratic accountability that this presents. In summary this perspective has envisaged 'security governance' as encompassing a fundamentally polycentric, or 'nodal governance', terrain. A central feature of this perspective has been its refusal to accord analytic priority to any one auspice or provider of security governance. Instead, the perspective argues that the nature of nodes and their relationship to each other has (as noted above) varied considerably across time and space.

The consequences of nodal arrangements for democracy are twofold. On the one hand, the pluralization of governance serves to shift decision making with respect to service provision downwards. This broadens participation in governance. On the other hand, nodal arrangements have reduced democratic accountability as existing accountability mechanisms have traditionally been state focused (Holley and Shearing 2015). This challenge is being responded to through the emergence of more horizontal and circular forms of accountability (Braithwaite 2006). These developments, however, remain in their infancy.

One consequence of this focus on mapping terrains of security governance has been a recognition of an expanded domain of 'peace', and associated harms and risks, that the term security has been used to encompass. In her book *Security*, Zedner (2009) picked up on, and discussed, this conceptual widening. She canvassed the intellectual terrains that have mobilized the term 'security' – criminology, international relations and development – and explored the new meanings that are emerging with the use of phrases such as 'food security', 'water security' and 'energy security'. Each of these emerging usages has drawn attention to a widening of the domain of 'peace and security' that extends beyond the terrains that the term policing has traditionally encompassed as well as the existing institutions for the democratic governance of security provision.

A nodal perspective has done much to encourage an emerging body of rigorous empirical work, across a range of different social contexts, that has explored the shifting shape of security governance within an increasingly wide variety of contexts – for example, transnational and

domestic policing arrangements, the governance of security within cyberspace, and the security of flows of goods and services within ports and airports. An important consequence of this research has been that it has enabled the beginnings of innovative thinking at the normative level around questions of democracy and accountability to be applied in innovative ways to the governance of security.

An example of conceptual rethinking that could, but has not as yet, been drawn upon to respond to the challenges noted earlier is the work of political science scholars like John Dryzek (2010), who have been challenging established, means-focused, conceptions of democracy in favour of more ends-focused conceptions such as ‘participatory’ and ‘deliberative’ democracy. These emerging developments are enabling scholars to extend their thinking beyond models and institutions of representative democracy to ones that recognize other ways of creating more ‘inclusive institutions’ (Acemoglu and Robinson 2012) and accountable processes. Ayling *et al.* (2009), for example, explore the costs and risks, and potential safeguards, for governments as they seek to realize the ‘public interest’ within today’s plural policing context.

Conclusion

In this chapter we have explored the way in which developments within the governance of security have been shaping, and reshaping, established policing terrains – a reshaping that has made it increasingly difficult for established political institutions to ensure that policing remains democratically accountable. As these developments have unfolded they have brought with them significant challenges with respect to the established values of accountability and democracy, and how they are to be realized within these new emerging contexts. To date the steps that have been taken to respond to the challenges have, for the most part, sought to ‘exploit’ existing regulatory possibilities rather than develop new ones. While new conceptual possibilities are emerging, these ‘explorations’ (March 1991) remain inchoate. Thus, while these emerging conceptual reframings carry with them considerable promise, much work needs to be done to explore these possibilities at practical levels.

Research and thinking is required at both the descriptive and explanatory, as well as at normative levels. In particular, more research is required to understand the features of nodal governance both with respect to its sources of authority and the nodes involved in the provision of security governance services within different settings. Within this context an important topic requiring further attention is the way in which the boundaries of policing are shifting and the impact this is having on the evolution of state police (Sparrow 2014). Equally important is the challenge of developing new forms of democratic accountability that recognize that security governance is today profoundly polycentric (Ostrom 2010).

Notes

- 1 See www.icoca.ch/en/history.
- 2 These are listed at www.icoca.ch/en/membership?civil_society_organizations=csos&op=Search&view_type=map&form_id=_search_for_members_filter_form.

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