

Policing the Vulnerable in Europe: Trends and Avenues

43d James Smart Memorial Lecture

SIPR Annual Conference 26 November 2015

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Introduction

Dear Excellencies, Dear Ladies and Gentlemen,

When I was asked to deliver the 43d James Smart Memorial Lecture by Professor Nick Fyfe, Director of the Scottish Institute for Policing Research, I was eager to accept the invitation. Years ago I spent some years here in Edinburgh when I worked on an international police cooperation project at Edinburgh University. It was the era of the poll tax demonstrations, the Lockerbie crash, health and safety issues around drug addiction and homelessness.

I owe Scotland a great deal as I made lots of friends, had an opportunity to build my academic career, and had a chance to polish my English whilst even developing a slight Scottish accent. Hence, many thanks to the organisers of this conference for inviting me.

Scottish people are very warm, enormously engaged and incredibly interactive. Despite being Dutch, I always experienced a warm welcome. During my years in Scotland, I witnessed a close-knit society which was simultaneously European and cosmopolitan. I still have fond memories of the dinners, the parties and the weekend outings.

Nearly twenty five years after I left Scotland to give my life a kick-start in my home country, it fills me with great pride and huge pleasure to deliver the James Smart Memorial Lecture.

The Lecture seeks to perpetuate the name of a distinguished Policeman, who became the first Chief Constable of the City of Glasgow. Today's lecture focuses on "Policing the Vulnerable in Europe", an on disentangling the concept of vulnerability in the context of a changing society and the shifting governance of policing.

Imagine an old Scottish lady who is in her nineties, having lived on her own since her husband died several years ago, willing to live on her own and capable of doing so, however, increasingly dependent on help and support from her environment. This old Scottish lady is my former mother-in-law. It is to her - Mary Scott - whom I wish to dedicate this lecture. As she has lived in Scotland during her whole life, she has been witness to the many changes in society and politics and to the provision of safety to Scottish citizens. She has always been a strong personality. Now that she has reached such a formidable age, she is vulnerable in her strength and strong in her vulnerability. May she be an inspiration to all of us.

During this lecture, I am going to take you through some different angles into the debate on Policing the Vulnerable. First, I would like to set the scene by shedding light onto the issue of vulnerability in Scotland. Then I would like to make some comparative notes by exploring a few trends and patterns on vulnerability in post-modern Europe. Relevant for policing is the position of the vulnerable in the criminal justice chain: we will jointly look at what the European Union has been undertaking to consolidate the procedural rights of the vulnerable. Living in the era of neo-liberalism, we will scan the impact of receding government on policing and protecting the vulnerable. I will close with some notes on remedies and instruments that have been developed by police organisations to police the vulnerable and then arrive at some concluding notes.

Setting the Scene: Vulnerability in Scotland

All societies are subject to change, and so is Scottish society. For a start, we face ageing populations. People get older, but are also more independent. Indeed, the Strategy for Justice in Scotland¹ regards people as being able to maintain their independence as they get older and able to access appropriate support when they need it.²

Second, populations are becoming rapidly more mobile. In the age of tourism, mobility between localities, regions and countries is higher than ever before. Several communities are transient communities in that they may not even have a fixed place to live.

Another important change we witness in many western societies is the rise of individual or single-person households.

These deep changes in society have considerable impact on the demand for justice and security. Who are the beneficiaries of justice and public services? Although from a state perspective individuals citizens should preferably be categorised in groups³, all individuals are unique. This brings up the question whether and to what extent the delivery of justice and security should be either homogenous and standardised across the jurisdiction or whether it should be tailor-made and differentiated.

The Strategy for Justice in Scotland⁴ emphasizes the need for strong, resilient and supportive communities, where people take responsibility for their own actions. The support of victims and witnesses is one of the priorities. Particularly relevant is that the document lays out the context for the justice system and, and that it underlines the importance of factors outside the system for the achievement of justice outcomes. The

¹ 2012, on p. 12; <http://www.gov.scot/Publications/2012/09/5924/downloads>; accessed 5 October 2015.

² See also p. 15 for an analysis.

³ "Seeing Like a State"

⁴ <http://www.gov.scot/Publications/2012/09/5924/downloads>; accessed 5 October 2015.

Strategy seeks to recognise the existence of significant inequalities in society. The delivery of a safer and more just society demands that inequalities are tackled directly. Work with young children and their families and in areas of multiple deprivation is regarded as pivotal. The Strategy for Justice thus co-depends on the efforts of people and organisations beyond the justice system.”⁵

The acknowledgement of social diversity and lack of heterogeneity has made it possible to reflect on the position of vulnerable citizens in our societies. Vulnerable citizens may be affected by several factors at the same time. Recent austerity measures and welfare reforms have had an impact on the delivery of services. Some services like policing have been subject to centralisation, while other services have been delegated to local authorities. It is too early to assess the effect this may have had on the responsiveness to people’s local needs. In some cases there may be a growing distance between police and population. Meanwhile, in this era of neo-liberalism, service-oriented community policing, which is predominantly locally embedded, may have been subject to gradual erosion.

Despite the fact that equity of justice is a basic right and entitlement to us all, justice, security and welfare can be subject to unequal distribution. If we define vulnerability as a specific collection of individuals and groups in our society, and if we decide to develop specific strategies and programmes to police the vulnerable, we may run the risk of justifying discriminate policing. When weighed against the principle of equity of justice, we should bear in mind the general norm that that:

“Social justice means equal rights for all, regardless of gender, race, class, ethnicity, citizenship, religion, age or sexual orientation. It implies equal rights for women and girls in workplaces, homes and public life. It implies economic justice – which means governments must take active steps to alleviate poverty and redress past injustices.”

⁵ Strategy for Justice in Scotland (2012), p. 9.

At the same time, societies harbour a tension between inclusion and exclusion. The recent economic crisis has hit many Europeans as it has given rise to wide unemployment across the board. Welfare systems have come under pressure as a consequence. The French economist Piketty tells us that we live in a society of haves and have-nots. He notes that:

“(P)ersistent inequalities in society (may) also have a crucial bearing on the justice system.”

Inequality leads to a number of negative social outcomes.⁶ Evidence has shown that economic inequality is a key driver of crime. Indicators of socio-economic deprivation at the individual level have been found to predict offending, and particularly youth offending. In the 5% most deprived areas of Scotland nearly one in a hundred adults is in prison at any one time.⁷ Hence, we are confronted with “pockets of poverty” in geographically clustered nodes. In addition, the Strategy document⁸ tells us that:

“The less well-off people are, the more likely they are to suffer from civil justice problems. Various other groups of people – the disabled, single parents, victims of crime and offenders – are also significantly more likely to suffer such problems than the national average.”

The 15 per cent most deprived local areas (datazones) in Scotland suffer from crime rates that are more than twice as high as the national average. 61 per cent of prisoners in Scotland have their previous residence in just 15 per cent of datazones. This reflects the poor performance of these areas on the underlying factors associated with crime. For example, school exclusion rates are twice the national average; the number of young people not in employment, education or training is around twice the national average as is the overall unemployment rate; and alcohol misuse is more than double the national

⁶ When we project this onto the situation in Scotland, over the period 1994/95 to 2010/11, the share of income received by the bottom 30 per cent of people in Scotland has remained at between 13 and 14 per cent. The share of income received by the top 30 per cent increased from 51 per cent in 1994/95 to 54 per cent in 2009/10 before falling to 51 per cent in 2010/11.

⁷ *Strategy for Justice in Scotland*, 2012, p. 17.

⁸ 2012, p. 26.

average. In terms of community safety, children from the most deprived communities are twice as likely to die from unintentional injury as those from the least deprived.

Hence,

“(J)ustice problems tend to coalesce around particular individuals and households, and those individuals and households tend to be concentrated in particular localities. Often the people experiencing the poorest justice and community safety outcomes will themselves be multiply deprived and will live in communities experiencing multiple deprivation.”⁹

Tackling spatial and socio-economic inequality is therefore essential to improving justice outcomes, both for the most affected communities themselves and for the rest of the country.

We should see this in conjunction with the shifts in crime governance. As crimes adopt a more fluid and transnational pattern, law enforcement strategies have become more interdisciplinary, international and virtual. In a hyper-connected world, local crimes often have an international dimension to them. Drugs consumption has a typical international connection. The drugs problem in Scotland remains significant as 40.000-60.000 children in Scotland are affected by drug use by their parents.¹⁰

Seen from a policing perspective, several issues come to the fore:

How to police crimes which have a clear local-global dimension?

What is the role of the police when it concerns complex situations, for instance a multiplication of factors such as unemployment, mental health problems and alcohol or drug abuse?

⁹ *Strategy for Justice in Scotland, 2012, on p. 34.*

¹⁰ *Strategy for Justice in Scotland, 2012, on p. 30.*

Vulnerability in Post-Modern Europe: Trends and Patterns

Let us broaden the horizon and analyse vulnerability from a European and comparative perspective. For those who have read Zygmunt Bauman¹¹, life and indeed also love have become far more “liquid” than before as individuals are continuously oscillating between consumerism and the search for security. Depending on how one seeks to frame the anxiety society in which risk and threat lurk around the corner all the time, our lives are to some extent even “perilous” in nature. The refugee crisis brings back a genuine sense of vulnerability of human beings, in an almost iconic style where we are confronted with the daily tragedy of refugees of war. The recent terrorist attacks in Paris have a spill-over effect and spread a feeling of fear throughout European communities.

We have also seen many other images of destitute human beings: as the economic crisis hammered on, significant numbers of employees in Europe lost their jobs which, as a consequence, affected their sense of security, their homes, their pride... In *Liquid Love*, Bauman presents us with an image that all security and vulnerability are temporary stages of being. This is nicely captured in the following review of his work:

“At best liquid modernity is a temporary shelter, an ‘island of homey and cosy tranquillity in a sea of turbulence and inhospitality. We are **all** boat people, refugees, with no place to call home.[] Risk and identity are individualised, so we are held responsible for our own success or failure.”¹²

Vulnerability is an intricate part of life. To focus the discussion on what vulnerability means to us we should perhaps use a more narrow definition of vulnerability, like the EU does, which associates people in a vulnerable position with

¹¹ Zygmunt Bauman, *Liquid Life*, Cambridge, Polity Press, 2006.

¹² From: *The Bible and the Business of Life*, Simon Carey Holt and Gordon R. Preece (eds.), on p. 197 (Chapter “Vocation in a Post-Vocational World”).

"Minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence."

An EU Directive defines a position of vulnerability as a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved."¹³

However, from a socio-economic perspective the following definition comes into view:

"Groups that experience a higher risk of poverty and social exclusion than the general population. Ethnic minorities, migrants, disabled people, the homeless, those struggling with substance abuse, isolated elderly people and children all often face difficulties that can lead to further social exclusion, such as low levels of education and unemployment or underemployment."¹⁴

Another, but related definition of vulnerable persons is that it concerns people who are long-term unemployed, and also others who are inactive but not registered as unemployed. It should include workers who are in some form of employment but are at a high risk of losing their jobs.

In sum, what we tend to define as "the vulnerable" is therefore a very heterogeneous group, whose members share the involuntary character of their present status (Atkinson, 2000)."¹⁵

The lesson to be learnt here is that there does not seem to be a universal or common definition of vulnerability, but, in relation to employment, the concept of vulnerable groups denotes the risk of marginalisation from the labour market as well as social exclusion.

¹³ Directive 2011/36/EU; <http://www.asylumlawdatabase.eu/en/keywords/vulnerable-person>; accessed 5 October 2015.

¹⁴ From: Social protection and Social inclusion Glossary. DG Employment, Social Affairs and Inclusion. http://ec.europa.eu/employment_social/spsi/vulnerable_groups_en.htm; accessed 5 October 2015.

¹⁵ From: Access to employment for vulnerable groups. European Foundation for the improvement of living and working conditions. Luxembourg: Office for Official Publications of the European Communities, 2002. <http://www.eurofound.europa.eu/pubdocs/2002/44/en/1/ef0244en.pdf>; accessed 5 October 2015.

The question we should ask ourselves however is: Are the vulnerable the exception or are they the rule? From a political economy perspective, vulnerability relates to the ability to cope and the entitlement to resources:

“the state of individuals, groups or communities in terms of their ability to cope with and adapt to any external stress placed on their livelihoods and well-being. It is determined by the availability of resources and, crucially, by the entitlement of individuals and groups to call on these resources.”

One is thus not supposed to be vulnerable when she or he has access to alternative means and resources. But we also learn that vulnerability is difficult to define, and therefore, the group of the vulnerable hard to delineate.¹⁶

Does social solidarity work in a Europe which accommodates such a heterogeneous group of people? The Europe 2020 agenda seeks to sharply reduce poverty and social exclusion and seeks to deliver actions across the board, including various actions that are undertaken by the European Platform, such as the Social Investment Package. The latter aims to guide EU countries in using their social budgets more efficiently and effectively to ensure adequate and sustainable social protection. It seeks to strengthen people’s current and future capacities, and improve their opportunities to participate in society and the labour market. Moreover, it focuses on integrated packages of benefits and services that help people throughout their lives and achieve lasting positive social outcomes.

Prevention rather than cure is stressed by reducing the need for benefits. That way, when people do need support, society can afford to help. The Europe 2020 agenda calls for investing in children and young people to increase their opportunities in life.¹⁷ This may sound very promising, but on the basis of research it may be concluded that European Union Member States have very different mechanisms for dealing with vulnerable people: some are strong, others are weak. Some EU Member States clearly show a lack of

¹⁶ Melissa Schaefer Morabito, “Policing Vulnerable Populations”, in Michael D. Reisig and Robert J. Kane (2014), *The Oxford Handbook on Police and Policing*, Oxford.

¹⁷ <http://ec.europa.eu/social/main.jsp?langId=en&catId=1044>; accessed 5 October 2015.

integration mechanisms. Hence, on the verge of repeating myself: one of the challenges for the EU Member States is that “the vulnerable” are a very heterogeneous group and that they tend to be treated in a very differentiated manner.

Vulnerability in the European Criminal Justice Space

Let us focus a bit more on the relationship between “the vulnerable” in the criminal justice area and the way in which Europe seeks to address their interests. How are the rights of all of us, and particularly those of the vulnerable, protected under EU legislation? EU legislation has consequences for the Member States as it needs to be transposed into national law.

The EU Fundamental Rights charter enshrines a number of fundamental rights which apply particularly in the criminal justice domain (Title IV), such as:

- the right to an effective remedy and to a fair trial (Article 47)
- the presumption of innocence and the right of defence (Article 48)
- principles of legality and proportionality of criminal offences and penalties (Article 49)
- the right not to be punished or tried twice in criminal proceedings for the same criminal offence (Article 50).¹⁸

Very relevant for the analysis of “Policing the Vulnerable” is the impact of the so-called Salduz case, which means that the procedural rights of the accused as well as those of victims have had to be extended to the right to information, the right to interpretation and the right to translation. Access to legal assistance in police custody has become highly significant since the decision of the European Court of Human Rights in the Salduz vs Turkey case (2008). In Salduz, the judge held that every suspect detained by the police must benefit from access to a lawyer before the first interrogation, unless there exist

¹⁸ Charter of Fundamental Rights, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>; accessed 5 October 2015.

compelling reasons to restrict this right. This ruling has prepared the ground for EU-legislation to protect the right of the accused or the suspect. Elements encompass the conditions of the right of timely access to a lawyer, the right to have a lawyer present during suspect interrogations, and the right to effective participation of a lawyer during the interrogation of the suspect. The right to effective legal advice is also included in the European Convention on Human Rights, but not in the Directive which flows from the Salduz case. For instance, this should lead to the right that the lawyer must as a minimum be able to intervene to protect his client's right to silence and to prevent unlawful or unfair behaviour of the police depriving the client of this right.

The Swedish Procedural Roads Map is the action plan of the Stockholm Programme in the area of procedural rights. It sets out measures which aim to foster protection of suspected and accused persons in criminal proceedings and facilitate the application of the principle of mutual recognition of judicial decisions. Except for extending the rights of vulnerable accused and suspected persons, measures include the right of access to a lawyer, legal aid reform, pre-trial detention, the right to information and the right to interpretation and translation. This culminated in the Commission Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings.¹⁹ The Recommendation defines vulnerable persons as people “who are not able to understand and to effectively participate in criminal proceedings due to age, their mental or physical condition or disabilities”.

Legislation in the context of protecting the vulnerable includes the following directives, namely:

- Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings
- Directive 2012/13/EU on the right to information in criminal proceedings

¹⁹ OJ 2013/C 378/02, 27 November 2013.

- Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty
- Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

How do these rights (which are derived from these Directives) work in practice? Do they really protect the rights of the vulnerable?

On the basis of an empirical comparative study, which was also undertaken in Scotland and The Netherlands, Ogorodova and Spronken²⁰ concluded that:

“ (...) guarantees, inter alia, the right of access to a lawyer to suspects of criminal offences from the outset of police custody and during police interrogation. However, **adoption of the relevant legislation is not sufficient to ensure that this right becomes effective in practice. A range of practical measures will have to be taken by the Member States’ authorities and the legal profession to effectuate the implementation of the right to custodial legal advice.**”

The researchers found that the treatment of vulnerable suspects in relation to the waiver of the right to a lawyer varies considerably in the four jurisdictions:

“In none of the jurisdictions they scrutinised are there any special procedures aimed at informing vulnerable suspects about their right in a way that is understandable to them, i.e. depending on the nature of their vulnerability and their age. Only in the Netherlands is there a provision, according to which certain categories of suspects (e.g. children under the age of 16) may waive their right to

²⁰ Anna Ogorodova and Taru Spronken, “Legal Advice in Police Custody: From Europe to a Local Police Station”, in *Erasmus Law Review* (ELR), 2014, No. 4, pp. 191-205, on p. 191. Published on-line: http://www.elevenjournals.com/tijdschrift/ELR/2014/4/ELR_2210-2671_2014_007_004_00; accessed 5 October 2015.

legal advice only after a prior consultation with a lawyer. Another safeguard meant to ensure that vulnerable suspects understand their rights is the institution of an ‘appropriate adult’ that exists in England and Wales and in Scotland (but not in France and the Netherlands). An appropriate adult is a parent, another relative or a social worker, whose role is, inter alia, to help vulnerable suspects to understand their rights, and to help them decide whether they wish to exercise them or not. An appropriate adult may consider inviting a lawyer to a vulnerable suspect if he believes it in the suspect’s best interest, even if the latter indicates that he does not want legal advice, but the suspect cannot be forced to see the lawyer if he refuses to do so.”²¹

Stunningly, the researchers also found that:

“Practices for informing vulnerable suspects about their right to legal advice, depending on the nature of their vulnerability and age, were lacking across all four jurisdictions. Police officers have readily recognised in interviews the challenges of informing vulnerable suspects about their rights and of accepting a waiver of the rights made by vulnerable suspects. **None of the officers, however, mentioned that they received any training on this matter.** In the Netherlands, for example, some interviewed officers told us that they developed their own approach to informing children about their rights, for instance, by using a more empathetic tone and simpler language (‘lawyer’ instead of ‘solicitor’) or involving parents in making a decision. However, despite the appreciation of the special needs of vulnerable suspects expressed in interviews, both in the Dutch and English sites we observed that the information about the right to legal advice was sometimes provided to such suspects in a perfunctory or hasty manner.”

²¹ Id, p. 196 – 197.

There were other findings, which according to the researchers justify the need for complex nationwide programmes for the transposition of the relevant Directive into national law, accompanied by organisational programmes and training measures. With regard to vulnerable persons, the researchers recommended that:

“Special procedures should be developed to inform vulnerable suspects about the right to legal advice, depending on the nature of their vulnerability and age. Other mechanisms to facilitate the provision of information to such suspects should be considered, such as the institution of an ‘appropriate adult’. In addition, consideration should be given to developing regulations according to which some categories of suspects, e.g. very young children or particularly vulnerable suspects, should not be able to waive their right to a lawyer.”²²

Children are in the spotlight of the EU when it concerns the protection of their rights. The European Parliament just released a report in which it was claimed that 1 in 4 children (26 million children) in Europe are at risk of poverty.

Under the UN Convention on the Rights of the Child, all children should be guaranteed the right to education, health care services, housing, leisure and a balanced diet.²³

Let us project children’s vulnerability onto criminal justice and policing: According to the Commission's estimates, more than 1 million children are involved in criminal proceedings in the EU each year (12% of the overall number). Furthermore, there are major disparities in the way in which children involved in criminal proceedings are treated in the various

²² Id, p. 204.

²³ Children are at greatest risk of poverty in Romania (51%), Bulgaria (45.2%) and Hungary (41.4%), whereas the percentage is much lower in countries such as Denmark (14.5%), Finland (15.6%), Sweden (16.7%). UK and Ireland are doing worse than the EU average of 27.7% with 31.3% and 33.9% (figure for 2013) respectively. Interestingly, the elderly faced a lower risk of poverty or social exclusion in 2013 than the overall population both at EU-28 level (18.3 % as opposed to 24.5 %) as well as in 20 out of the 28 EU Member States with available data (data for Ireland are from 2012).

Member States. EU research shows that, at present, children's rights are not being sufficiently protected at the various stages in criminal proceedings in the EU. Countless judgments against Member States have been handed down by the European Court of Human Rights.²⁴

The proposal for a directive on procedural safeguards for children suspected or accused in criminal proceedings came under the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings adopted by the Council on 30 November 2009, together with a number of other measures. Laying down common minimum standards guaranteeing sufficiently uniform enjoyment of the right to a fair trial at all stages in proceedings by persons under the age of 18 is in keeping with the objective of facilitating mutual recognition of sentences and judicial decisions in criminal matters and ensuring the smooth operation of the European area of justice. The proposed directive also forms part of the EU Agenda for the Rights of the Child and seeks to promote children's rights with reference to other instruments as well, including the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, given that those instruments do not have the binding force of EU legislation, as a result of which the safeguards they provide are not fully and uniformly applied in the Member States.

We should however be realistic about a pan-European approach, because the EU has limited competences in this field. And of course there are other vulnerable groups in Europe which are confronted with inequality in the distribution of safety and justice.

Policing the Vulnerable in the Era of Neoliberalism

Generally, governments need to find a balance between providing safety and security in the interest of a stable and peaceful society. At the same time citizens need to be protected

²⁴ See Draft Report European Parliament 2013/0408 (COD), 19 November 2014. PE541.593v01-00.
<http://www.eujusticia.net/index.php/proceduralrights/category/vulnerable-accused-and-suspected-persons-measure-e/official-documents5>;
accessed 5 October 2015.

against unlimited use of power of the state, for instance by the police. Recent trends indicate that the vertical relationship between governments and citizens is making way for horizontal security governance as alternative partners are now involved, such as private and commercial parties. Think of the co-operation with local authorities, such as housing, education, child care and social work.

This gradual retraction of governmental authorities has an impact on the interaction between police and societies as well.²⁵ The public police no longer has – if it ever had – the complete monopoly over the provision of safety to the citizens. Hence, we witness an era in which safety and security governance are becoming increasingly hybrid through the emergence of “grey policing”, “multi-lateral policing” or “extended policing families”.²⁶ In the age of neoliberalism, de-regulation has shifted the power relationships in many nation states.

Power has not only migrated upwards and side-wards, but also downwards, to the extent that cost-cutting governments demand that citizens take more action to guard themselves against risks. It is probably also “good bye” to Keynesian policing, which is a welfarist model linking police with communities via welfare service and protective roles, associated with relations of expertise which subordinated the public in a dependent client relation. Nowadays, the notion of community has altered in the sense that it is associated with a voluntary, cooperative and equal partner.²⁷ This shift in this triad relationship between government, police and society is not specific for European countries. Many governments have however thrived on the provision of economic and social security, and – particularly since 9/11 – on the provision of physical security against threats that range from terrorism to environmental disasters.

A key anchor point in understanding this gradual transition from vertical security governance to horizontal security governance is Garland’s classic and well-known notion

²⁵ Marc Schuilenburg and Ronald van Steden (2014), “Praktijken van selectieve uitsluiting. Over de bescherming door en tegen veiligheidsassemblages”, in *Cahiers Politiestudies*, jrg. 2014-1, nr. 30, pp. 51-62, on p. 51.

²⁶ Id. On p. 53.

²⁷ Pat O’Mally and Darren Palmer, “Post-Keynesian Policing”, in *Economy and Society*, Volume 25, Issue 2, pp. 137-155.

of responsabilisation. What are the conditions for making it work and what are its limits? The notion of state sovereignty, i.e. the monopoly of the state, has proved to be unsustainable. New and alternative modes of governing crime and disorder have emerged. Garland²⁸ describes the responsabilisation strategy as follows:

“This involves the central government seeking to act upon crime not in a direct fashion through state agencies (police, courts, prisons, social work, etc.) but instead by acting indirectly, seeking to activate action on the part of non-state agencies and organizations. (...) Its key phrases are terms such as 'partnership', 'inter-agency cooperation', 'the multi-agency approach', 'activating communities', creating 'active citizens', 'help for self-help'. Its primary concern is to devolve responsibility for crime prevention on to agencies, organizations and individuals which are quite outside the state and to persuade them to act appropriately.”

The bottom-line of the responsabilisation strategy is that “the state alone, is not, and cannot effectively be, responsible for preventing and controlling crime”.²⁹ The responsabilisation strategy does not simply mean that governments ditch their responsibility for delivering an essential public good, namely safety, but that they start to govern at a distance whilst retaining their core functions.

The responsabilisation strategy involves a number of new governmental techniques and methods whereby the state seeks to bring about action on the part of 'private' agencies and individuals—either by 'stimulating new forms of behaviour' or by 'stopping established habits'.³⁰ The first step is 'to identify people or organizations which have the competence to reduce criminal opportunities effectively, and ... to assess both whether those have a responsibility to do so and whether this responsibility can be enforced.'³¹” This largely

²⁸ David Garland, “The Limits of the Sovereign State. Strategies of Crime Control in Contemporary Society”, in *The British Journal of Criminology*, Vol. 36, No. 4, pp. 445-471, on p. 452.

²⁹ *Id.*, p. 453.

³⁰ Riley and Mayhew, 1980, p. 15.

³¹ Hough et al. 1980, on p. 16.

coincides with many crime prevention strategies that were adopted by several governments.

The question we should ask ourselves is: If the responsibilisation strategy has indeed become the dominant strategy, is it still the case that everyone can equally benefit from the provision of safety? Because, when we reflect on it more deeply, if the state delegates responsibility it may be under a different guise and safety may be provided in a fragmented fashion. As Garland says as well, the state is not good at acting at a distance, also because a lot of non-state agencies do not see crime control as their top priority. We should watch that “shifting the burden of social control on to individuals and organizations” leads to a failure as they “are often poorly equipped to carry out this task.”³² Related is the development of many institutions in the justice sector towards a more business-oriented, managerialist, performance-oriented approach which emphasizes effectiveness and efficiency. It presupposes collaborative work across the justice system, but also with actors outside the justice system, e.g. NGO’s and private actors. Working with the third sector involves community groups, voluntary organisations, charities, social enterprises, co-operatives and individual volunteers, and working with local government.

The underlying assumption is a very positive, optimistic view of society, namely that we live in participatory, inclusive societies. Here, we may face a significant problem as poor and vulnerable people may not be able to take recourse to a resourceful network to help them out when it comes to it. Citizens are called upon to be active, as we have recently seen in tackling the refugee crisis. But the concept of a participatory society may be a deceptive guise for sharp cuts in public budget spending, shifting the brunt of government care from a collective right to an individual privilege.³³ Access to services, such as housekeeping, can be crucial in people’s lives. The transition from a welfare state to a

³² Id, p. 466.

³³ Marc Schuilenburg, “Arme is vogelvrij in participatiesamenleving”, in ADVALVAS nr. 8, 4 December 2013, p. 8.

participatory society may not work out at all well for the vulnerable in our society, who have insufficient access to alternative coping mechanisms.

Policing Vulnerability: Remedies and Instruments

Police carry an important responsibility for dealing with the vulnerable as they are the gatekeepers of the criminal justice system. Several police forces now have a policy for protecting the interests of the vulnerable (e.g. Yorkshire, Lancashire, Bedfordshire and Merseyside) with specific protocols and reminders of rights and duties. For police, policing the vulnerable has implied specialised attention, the development of protocols in order to mediate the interactions between the front-line police officers and members of vulnerable communities.

Police officers are faced with several issues when it concerns “the vulnerable”, such as the request for additional support or referral to partner agencies (in this context, the police often act as “brokers” in their interaction with education, housing and health care); particular type of treatment for certain people because they may be at risk or produce a risk (e.g. because of drug abuse); the language and discourse that should be used in interacting with the vulnerable. Police officers are also confronted with the impact of legislation and protocols, professionalisation and specialisation. And of course, with already scarce resources it is the question whether the new EU rules on the protection of the rights of suspects and victims can be adequately implemented.

In their publication(s) on policing the vulnerable, Bertkowiak and Asquith³⁴ analyse vulnerability as pretty much ubiquitous in the practice of policing:

“it is rather unlikely that a person will come in contact with the police... without having been under duress in the lead-up to contact with the police. They could have

³⁴ Isabelle Bartkowiak-Théron & Nicole L. Asquith, “The Extraordinary Intricacies of Policing Vulnerability”, http://www.academia.edu/4193877/The_Extraordinary_Intricacies_of_Policing_Vulnerability; accessed 5 October 2015.

been under the influence of drugs or alcohol, suffering a mental health breakdown, or have been the focus of an attack of any form, or in shock of having observed an accident or a crime (the list is long here). Assuming *vulnerability should therefore be the norm* rather than the exception (Bartkowiak-Théron & Asquith, 2012a, 282).

They advocate a new policing model which is based on a strengths-based approach.

A sound and sustainable strategy on Policing the Vulnerable could rest on six pillars, namely empowerment, prevention, innovation, re-allocation, liaison and evidence-based performance. Please allow me to briefly expand on each of these pillars:

1. Towards Empowerment

Communities have to be empowered in order to recognise situations of vulnerability and act upon them. Paternalism should of course be avoided, and so must a silo-approach and stigmatisation.³⁵ Inclusion is the magic word here. The transformation may involve a move from punishment to reward. A viable alternative needs to be designed for the “politics of behaviour”.

Police officers need to be empowered by means of training to recognise signals of vulnerability and to determine their response strategy. Appropriate follow-up and continued support should be made available to the vulnerable. Strategic guidelines, training packages and interagency training are thus a prerequisite, and so are protocols on information sharing / management and on the safe management of vulnerable people who are detained by police or other agencies (training in skills and resilience).

In a similar fashion, during my visit to the New Delhi police last year October, I was informed about the senior citizen cell programme. After registration, the New Delhi police can provide services ranging from home visits to seniors to look into their physical security

³⁵ Bartkowiak-Théron, Isabelle & Nicole L. Asquith (2014), “Policing Diversity and Vulnerability in the Post-Macpherson area: Unintended consequences and missed opportunities”, in *Policing: A Journal of Policy and Practice*, Vol. 9, Issue 1, pp. 89-100.

and giving them a better sense of security and confidence; encouraging regular social interaction between citizens; and calling seniors on a regular basis; the provision of emergency assistance by means of specially designed senior cell phones.³⁶ In a more traditional style, the Delhi Police set up a women & children special police unit which can be approached and called 24/7.

2. Towards Prevention

The Scottish Strategy document speaks of a “decisive shift towards prevention”³⁷. This may involve addressing the root causes and facilitating early intervention. A certain amount of predictive policing may even be part of it. In the preventive policing sphere, we must watch out for the superimposed model, where vulnerable groups have become the target of non-negotiable and superimposed precautionary practices. Several police forces have already established a Vulnerable Persons Registry (VPR). Peterborough Police Service uses a digital form for reporting a vulnerable person, defined as “a person who due to a medical, mental health or physical condition may exhibit may exhibit patterns of behaviour that may pose a danger to themselves or others. The information can be used by police and other services to intervene in a crisis situation.”³⁸

It is estimated that over 20% of police time is spent responding to people with mental health problems. The police are often the first point of call for people in distress, crisis and emergency. In cases where a person has committed no offence and is principally in need of a medical intervention or the support of health and social care services, it is not likely to be in their interests to find themselves being dealt with by police officers. It is also not in the interests of the police or public, to have police officers taken away from their core front line duties unnecessarily.³⁹

³⁶ <http://www.delhipolice.nic.in/seniorcitizen/contact-us.htm>; accessed 28 October 2015.

³⁷ 2012, p. 12.

³⁸ <http://www.peterboroughpolice.com/report/a-vulnerable-person/>; accessed 28 October 2015.

³⁹ From Brochure Home Office.

An example of how police may cope with this group of vulnerable people is the Mental Health Intervention Team of the New South Wales Police in Australia, which is committed to working with partners and which has assured dedicated training of its officers to deal with mental health consumers:

“In 2013 the NSW Police Force responded to 42,800 mental health related incidents across the State. One in five persons within the community suffers from a mental health issue in any given year, and over half of us will experience a mental health issue at some stage during our lifetime. As a result, the number of mental health incidents the NSWPF are called upon to attend and resolve continues to grow exponentially each year.

The Mental Health Intervention Team remains committed to the task of better preparing our frontline officers to meet this challenge. The award winning four day MHIT training program is now into its sixth year of delivery and has resulted in to date 1450 officers becoming trained as specialists and assuming the role of prioritised first responders to mental health related incidents within their local area commands. Over 40 officers from other Policing jurisdictions and health professionals from across Australia and New Zealand have also undertaken the program.”

A package was designed to:

“(…) provide frontline Police officers with a practical skill set that will assist them with managing those persons within the community who are experiencing a mental health crisis event. The package seeks to educate Police with respect to identifying behaviours in the field indicative of mental illness, and provide them with tools such as communication strategies, risk assessment, de-escalation and crisis intervention techniques, and to gain an understanding of the current Mental Health Act 2007 and the accompanying Memorandum of Understanding between the NSW Police Force, Ambulance Service and Ministry of Health. The training also includes a

powerful lived experience component presented by a panel of mental health consumers and a carer/next of kin.”

Without wanting to advocate a straight policy transfer from the one jurisdiction to the other, something like this might well work in other systems. A pilot as to the effect of such a programme is however crucial.

3. Towards Innovation

Innovation offers potential solutions to complex issues. The Scottish Executive runs the programme Ecare and has encouraged the development of eCare products. Whilst preparing this lecture, I also came across a very interesting programme in the United States, called eCare TM for law enforcement, which is a telephone reassurance service, which is an online programme calling senior citizens at home to ensure that they are OK:

“The senior is instructed to acknowledge the call using the "Press 1" option on the phone keypad. If the call is not answered or the senior does not acknowledge the call, an alert sequence is initiated that calls or emails family or friends of the senior. The senior can also call our 800 number and check in using our I'M OK eCARE feature. If the senior has no one to check in on them, the calls and alerts can be sent to the eCARE management center which is typically the local police or sheriff's office. An alert is also posted online informing the center that the senior did not respond.”⁴⁰

Now, whilst this may be typically fitting for an American context, we can be inspired by these practices and learn from them. Similar services can be created for the disabled and for children who are home alone. Lanarkshire already established an eCare programme

⁴⁰ <http://www.callingcare.com/ecare.htm>; accessed on 28 October 2015.

for child protection⁴¹, which is strongly based on the principles of multi-lateral information sharing, dissemination of knowledge and the training of professionals. The question however is to what extent this surveillance-project allows interventions and decision-making. In the Netherlands, we are currently introducing some changes in a similar surveillance system for kids at risk.

4. Towards Reallocation

After the era of austerity, it is time to re-contemplate and reallocate public resources and redirect them to self-supportive communities. Moreover, instruments that work need to be operationalised. As local and regional governments are given an official responsibility over an increasing range of services and products, public resources must be allocated in a smart manner. Stakeholder involvement is a central concept in rethinking the allocation of resources for the benefit of safety.

5. Towards Liaison

Several police services have established liaison programmes with specific vulnerable communities, such as with the elderly. One finds many police liaison practices in the world, from the United States to India. This may be a human resource intensive model but may have its merits. Think for instance of the Halton Regional Police Force in Canada which has a seniors liaison programme, seeking to prevent abuse of the elderly (they have even

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<http://www.google.nl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&ved=0CGUQFjAJahUKEwB78WujOXIAhWLCWoKHW4MBs4&url=http%3A%2F%2Fssrg.org.uk%2Fwp-content%2Fuploads%2F2012%2F01%2F2004needs%2FLanarkshire.pdf&usq=AFQiCNFCP0Z2ak8F2CWbuHOJZLFbl8hWeQ>; accessed 28 October 2015.

established an Elder Service Advisory Committee!), mostly under the guise of Community Policing.⁴²

6. Towards Evidence-Based Policing

Are the models operationally adequate as they tend to be built on a politics of difference? Before all, we should search for evidence-based practices of policing the vulnerable. Programmes which are specifically targeted at the vulnerable should be made subject of regular evaluation and monitoring. How can it work? Let us try and find solutions across jurisdictions.

For instance, the Queensland Police Service (QPS) in Australia recognised that despite efforts a range of people who are vulnerable still encountered difficulties in accessing or receiving equitable or fair treatment during their contact with the QPS as a victim, witness or suspect.⁴³ Its commitment was to pursue the continuous improvement of police services provided to vulnerable people by reducing crime against vulnerable people, supporting vulnerable people to understand and participate in criminal justice processes, to treat vulnerable people with dignity, and to facilitate access by vulnerable people to appropriate services.

Every employee of the Queensland Police Service was held responsible and the efforts of organisational units was to be reviewed and monitored on a continuous basis. The pole records system and the police complaints system are capable of recording information regarding police dealings with vulnerable people. Moreover, and this consolidates the point about evidence-based police performance, QPS undertakes a range of surveys of its

⁴² See: <http://www.haltonpolice.ca/COMMUNITYPOLICING/SENIORS/Pages/default.aspx>; accessed 28 October 2015. New South Wales police in Australia have established a Disability Advisory Council Committee; http://www.police.nsw.gov.au/community_issues/disabilities; accessed 28 October 2015.

⁴³ Queensland Police Service Vulnerable Persons Policy, https://www.google.nl/search?hl=nl&q=policing+social+inequality&gws_rd=ssl#hl=nl&q=policing+the+vulnerable; accessed 28 October 2015.

clients, including victims of crime and people with a disability, their families and carers. Hence, surveys can be a very useful instrument to know what is at play and whether the instruments at hand ought to be modified.

Whist these six pillars for a successful strategy of policing the vulnerable may not form a comprehensive itinerary, I would suggest they may help to structure the conversation of how general strategies can be mapped onto police operational activities.

Future issues to contemplate

Policing the Vulnerable is a policy direction which synchronises well with some other reflections on policing more generally. The Commission report *Policing for a Better Britain* argues in favour of reclaiming the social purpose of the police, to listen to all, and to protect the vulnerable.⁴⁴

“Police resources must also track the distribution of crucial harm and to be used to protect the most disadvantaged and the vulnerable”.⁴⁵

The police demand is changing and generally, crime levels have been falling over the past years. The Commission argues that

“National trends also mask the fact that criminal victimisation continues to be suffered disproportionately by the poorest and most vulnerable in society and impact detrimentally on their lives.”⁴⁶

Community intelligence is useful in identifying people who are at risk and who are vulnerable. Hence, the Commission argues that:

“Serious and continued engagement with vulnerable groups is the use of the proactive measures that police forces can take to ensure that they are better informed about the victimisation risks faced by the communities they serve.”⁴⁷

A potentially problematic aspect of the “Policing the Vulnerable approach” is that it defines vulnerable people as “The Other”, in which vulnerability is conceived as the exception to the norm.

Do we use the same definition of vulnerability and do we apply the same terminology across the justice system and even beyond that? To what extent do we want to allow

⁴⁴ On p. 49 of the report.

⁴⁵ On p. 32 of the report.

⁴⁶ On p. 49 of the report.

⁴⁷ On p. 90 of the report.

differentiation? In my lecture the answer to the question “Who are the vulnerable” is: “We all are”.

All of us can be propelled into a situation of vulnerability from the one to the other moment through loss of our house, our job, our health, our memory, our sense of liberty and joy. Our physical, social and emotional security can be jeopardised by legions of potential events. It is against this backdrop that policing the vulnerable may not be framed as a specific form of policing, but as a generic model, framed upon the question what the needs are of all our citizens and how the police – in conjunction with its partners – can respond to them in an optimal manner.

How do we seek to equate vulnerability: with protection or with empowerment? First, safety and security should no longer be seen from the perspective of anxiety, crime and disorder, but from the perspective of care and connection. This requires a positive critique of society rather than one that thrives on negative perceptions. Such a perspective entails an emphasis on social inclusion and unifying forces, making use of a variety for formal and informal interventions. Positive criminology refers to the reservoir of social resilience and adaptation. It advocates approaches often labelled as restorative justice, desistance from crime, and recovery. This may however be a problematic assumption in a world which is increasingly marked by disengagement and individualisation. Hence, we need to contemplate the impact of the positive criminology paradigm on policing the vulnerable.

Furthermore, we should also ask ourselves the question whether – in this domain of policing people at risk - intelligence-led policing and community policing are commensurable. Is it useful, effective and legitimate to monitor conduct, mobility and financial transfers of specific groups of people on the basis of pre-defined risk indicators? Can we marry community policing with pro-active engagement with people at risk? To what extent should we explore and exploit innovation and e-care and yet be mindful of the wish of people to be left alone and to protect their privacy?? [Read: “The Circle”]

I will draw to a conclusion. The reconfiguration of police governance and the turn towards centralisation - both in Scotland as well as in the Netherlands – means that we need to reflect on whether the principles of participation, equity, responsiveness and ownership are sufficiently anchored in our post-modern societies to allow effective and legitimate policing of the vulnerable. In both jurisdictions, police legislation has attenuated the formal role for local authorities in the governance of the police⁴⁸. “Policing the vulnerable” might thus become too much of a top-down policing affair.

In the course of my lecture, I have identified some critical factors for effective and legitimate policing of the vulnerable, particularly local ownership, and the space that needs to be left for diversification and the definition of tailor-made solutions. Frictions between the central and the local level, as well as between standardisation and differentiation, do not serve the interest of vulnerable people in our society.

Vulnerability is an omnipresent state of being. With Zygmunt Bauman, we need to ask ourselves the question how the eroding public space can be turned into an inclusive, active and creative society which thrives on diversity and participation, as well as on care and connection. And how - once we turn old, fragile or vulnerable - we wish society to take care of us.

“Policing the vulnerable” is thus a mission which applies to all of us for the sake of an inclusive society.

Thank you very much for your attention and I wish you a successful conference!

⁴⁸ Fyfe, 2015.