



**20th BILETA Conference:  
Over-Commoditised; Over-Centralised;  
Over-Observed: the New Digital Legal  
World?**

*April, 2005, Queen's University of Belfast*

# **The privatisation of safety seen from an interdisciplinary perspective**

**Richard De Mulder and Pieter Kleve,**  
Erasmus University Rotterdam, Netherlands.

## **1. Introduction**

The discussion concerning the privatisation of safety, but also the privatisation of other tasks that have been traditionally carried out by the state authorities, has been marked by irrational arguments. Below, in the first section, a number of these arguments will be set out. In the second section, a more rational approach to the privatisation of social safety is proposed. In the third and final part of this paper an analysis is made of the academic disciplines that are involved with safety and a number of suggestions as to which disciplines would appear to be the most adequate ones to deal with this area are put forward.

## **2. Irrational arguments**

### **2.1 Public interest**

One popular argument is that privatisation would not be in accordance with the public interest. This argument is not simply confined to the issue of safety, but is put forward in various contexts where tasks which were once carried out by the authorities are going to be carried out by parties from the private sector. In the Netherlands, these arguments were voiced in the past with respect to the privatisation of public transport and energy, and have once again come to the fore in the discussion concerning Schiphol airport. The proponents of this line argue that the interest of the Netherlands as a whole and that of the Dutch economy must come before that of private shareholders.

For various reasons, this argument is not convincing. In the first place, what is meant by the term 'public interest'? Presumably, it refers to matters that are of importance to a large number of people. However, the transportation and delivery of products such as bread, milk, petrol and the telephone is also a matter of importance to a large number of people. Nonetheless, these daily necessities are all examples of products that are entrusted to the private sector.

It would seem that the relationship between 'public interest' and 'public good' is that people wish to profit from services but would rather not have to contribute to the costs of such services, so-called 'free-rider' behaviour. Although it may be remarked that it is in the interests of the private sector to counter free-rider behaviour, that there is a natural stimulus for that, the main thrust of this argument is in the financing of the activity rather than in the private or public character of the party carrying out the activity. It should also be noted that safety should not be seen as an activity that has always been the exclusive domain of the authorities: from a historical perspective, police organisations are a relatively modern institution.

### **2.2 The negative effect of the market operation**

A second argument against privatisation is frequently heard as well. The argument is that the pressure of the market and the importance of achieving profits could result in a lower quality of services and higher prices. This criticism has been voiced in the Netherlands with respect to the privatisation of

the Dutch railways. However, economic analysis provides little support for the argument that higher profits are achieved by reducing the quality of services. In the case of the Dutch railways, it would seem that this lack of quality in train transport is more a question of a lack of functioning of the market. There are many examples of services that have been taken over from the authorities by the private sector where an increase in efficiency without quality decreasing is most definitely discernable, such as the maintenance of public verges and other communal green areas.

It is not appropriate to generalise from specific instances of 'failed privatisation'. To argue, for example, that because not all has gone well with the privatisation of the Dutch railways that the privatisation of all forms of public transport must be prevented or that given the fiasco surrounding Enron that energy must remain within the public sector is not rational. Accounting manipulation is, after all, not the prerogative of the private sector.

### **2.3 Another new division**

It has been said that the privatisation of safety could create a new division within society, between those who can afford to pay for their security and those who cannot. This is the same argument that appears in discussions concerning care in the community and education. As with a number of the other arguments, this too has a certain political tint. In reality there are many divisions within society. This is also already the case with respect to the risks connected to safety. The owner of a jewellery shop is more prone to risk than the owner of a travel agency. The potential damage is also considerably higher. It would seem, therefore, only logical that the owner of the jewellery shop should invest more in safety measures than the owner of the travel agency.

From this point of view, the argument that social solidarity will deteriorate, for example because the rich will withdraw from public areas and live in protected enclosures, has another side to it. It is also questionable whether ordinary citizens will want to contribute to the costs connected to the protection of high risk individuals, or whether high risk individuals will be prepared to contribute to a general security policy which does not take extraordinary risks into account.

### **2.4 Control**

Another argument concerns the lack of transparency and democratic control. The fear has been expressed that if a significant section of the safety services go to the private sector, instead of democratic and legal control there will only be supervision by the businesses themselves. Against this argument, it should be pointed out that the operation of the market has a favourable effect on both transparency and democratic control. Companies that do satisfy a sufficient number of customers will face bankruptcy. The majority, or the market share, rules, but generally there is something for everyone. Furthermore, there are only too many examples of a lack of transparency and democratic control where the responsible organisation is a public authority.

However, when transparency and democratic control must play a role, then it is possible to realise a legal framework for this which would extend to parties in the private sector. This would be similar to the current situation where the production and delivery of bread and milk have to conform to certain requirements of health and hygiene, petrol stations cannot automatically be located in residential areas and telephones must fulfil requirements concerning the infrastructure. That in addition to these requirements, there would be supervision coming from an economic, business sector is all to the good.

### **2.5 Monopoly on the use of force**

Furthermore, we address the argument concerning the state's monopoly on the use of force. With respect to safety as well as to many other areas, a distinction can be made between supervision and the enforcement of law and order. The monopoly on the use of force is associated with law

enforcement, which would remain the province of the state, whereas supervision is an area that could be open to private participants. Although it would seem that this distinction is meant to create room to allow private activity in the area of safety, it is predominantly an argument to leave the state's enforcement function intact. This would be a pity, as if it is possible to achieve improvements in efficiency with respect to supervision, it is likely that similar results could be achieved with respect to the enhancement of safety.

The justification for the state's monopoly on the use of force is usually considered to be the prevention of citizens taking matters into their own hands and the acceptance of the state's power because this is subject to democratic control and there are checks in place. The use of force is to be understood in this context as the use of physical force, as other types of force, such as sanctions, may already be inflicted by parties in the private sector, for example a fine for late payment. Nonetheless, even the use of physical force by private parties is allowed in certain circumstances, for example in the case of self-defence or to stop a burglar. It would seem that the state recognises that there are limitations to its monopoly on the right to use force, its responsibility and supervision (as the right to self-defence is no different whether the person threatened is a private sector security guard or a policeman).

## **2.6 Public and private space**

A more strategic argument for leaving the provision of safety in the hands of the public authorities is based on a very different type of distinction, that between public and private space. The idea is that the protection of private space is a task that can be left to the private sector, but the protection of public space should remain the task of the public sector, the authorities. This argument too appears to be rather artificial. Private space should also be subject to democratic control and checks. Furthermore, that it is not so easy to define what is private and what is public is very evident in discussions concerning the distinction between private space and public space.

## **2.7 Public-private co-operation**

A similar blurring of definitions can be detected in discussions concerning 'public-private co-operation'. For some years now there has been a tendency not to emphasise or place the total responsibility for safety on the authorities, but to speak of a shared responsibility between citizens, businesses and the authorities. For example, the security of business premises could be left to security personnel from the private sector. After all, citizens are told that the capacity of the police is finite and they cannot be everywhere. Although it is somewhat cynical, it could be said there is no better argument for the privatisation of safety. Apparently, private security services can organise themselves so that they can be present at more than one location and they are able to recruit sufficient personnel. If the private sector can do this, then it is strange that the public sector cannot. Given that this is the case, however, it is hard to support a policy that sets out to restrict private initiative by only allowing private companies to function as the 'eyes and ears' of the public safety services.

The privatisation of safety would appear to be a sensitive subject. Contradictory signals are sent out to citizens: they are expected to share in the responsibility for their own safety, but it is frowned upon if they pay for their own protection. This is even more peculiar in the Netherlands given the announcement made recently by the Dutch government that police services may no longer be provided free of charge, for example where the policing involves a football match or other special event. Nor is this policy confined to the Netherlands. The cost of policing events has promoted other authorities to query the policy of free policing, for example a similar restriction on the policing of events has been suggested by the mayor of London.

## **2.8 Conclusion**

It seems obvious that hindering the privatisation of safety is an attempt to stop the tide coming in. Recent years have shown an enormous expansion in the private security industry and the whole sector has become considerably more professional. It should also be noted that private security companies are able to organise on an international level more easily than their public sector counterparts. This must be taken into account given the advantage it provides in countering international crime and terrorism.

### **3. A rational approach**

What can be perceived is that commercial enterprises are increasingly carrying out tasks usually associated with the police. Two Dutch researchers, Bruinsma and Loeber stated the following: “In the western world, the media are increasingly questioning the legitimacy of the criminal justice system. People are also taking the law into their own hands, not only in response to very serious criminal acts but also in the case of minor offences, such as shoplifting. Business corporations and the wealthy no longer depend on the government but hire private police and private investigation agencies. However, criminological research on the effects of privatisation is scarce.” [1] A Dutch professor, Hulsman, had already declared in his inaugural speech in 1969 that criminalisation was more directed to very serious crimes and very minor crimes because of the expense of private law enforcement, although the collective interest is not trivial.

The privatisation of safety had become commonplace in various situations. It ranges from the protection of factory premises, shops and homes to the protection of money transport and private persons, the use of private detectives and forensic accountants to consultations between organisation advisors and the police. What becomes apparent from the arguments dealt with above is that it is useful to segregate activities according to the options available for responsibility and democratic control. Furthermore, the financing of an activity can sometimes be seen as separate from its performance. Privatised safety can also be placed within a legal framework, with supplementary supervision if necessary. In the Netherlands, it has been suggested that there should be an independent, private safety authority similar to the Dutch Competition Law Authority and the Authority for Financial Markets. Due to the importance of this sort of supervisory organisation, such organisations could be deemed a ‘fourth power’, a supervisory power, in addition to the executive, judiciary and legislative powers that already exist: the ‘tetras politica’. [2]

Although segregating activities may be useful, there are two general factors which support the argument in favour of the privatisation of safety. These two factors are technology and organisation. These factors are also important with respect to ‘public interest’ and the enhancement of social safety. With respect to the privatisation of safety, the task of the authorities is not to act as the director, but rather to create the conditions and facilities for private safety.

#### **3.1 Safety and technology**

Generally speaking, the most important factor in determining the development of society is technology. Knowledge of technology is, therefore, vital in order to describe, explain, predict and influence social safety.

The influence of technology on safety is twofold. On the one hand, social safety is increasingly threatened by technology, in particular the use of weapon technology (chemical, biological and nuclear) and the use of computers and communication systems [3] is often said to be dangerously monopolized by state authorities and large corporations. On the other hand, technology can be deployed precisely to promote social safety. A whole range of technological applications to enhance safety is already available: security systems (such as camera supervision), the identification of both goods and persons (the tagging of products and people as well as tracking and tracing methods based on GMS or GPS or DNA), information processing (image processing, biometrics, sensor

fusion and data mining), communication and process support (group decision systems, virtual reality, coordination systems) and, finally in law enforcement and criminal investigation (shared reporting systems, camera supervision systems and the ‘information pistol’).

Having established that technology is important, given the number of technological applications and the speed with which innovations appear, it is also apparent that technology flourishes more in the business world than in the public sector. That this is the case is due in part to budgetary considerations, but also to the operation of the market and the capacity for innovation. Technology does not flourish in communistic countries. The industrial revolution took place due to entrepreneurs and the current information revolution only really developed once the Internet became commercial. From all this, the conclusion can be drawn that if technology is going to be used to advance safety, then it is best left to private organisations.

### **3.2 Safety is organisation**

Although safety experts may vary in the conclusions they reach, on one point there is a general consensus: there is a connection between safety and organisation. The discipline above all others that is concerned with organisation and management is business administration. It is therefore only sensible to involve business administration experts in the organisation of safety. Furthermore, business administration experts are open to the possibilities of modern technology and modern views with respect to organisation and the application of empirical science. However, just as technology does not flourish within authorities, neither do managers. The most important reasons for this are the culture, the organisational and salary structure.

From the perspective of technology and organisation, it is impossible to shut out privatisation. Does this mean that everything to do with safety should be privatised, from initiation to monitoring? Not at all. As pointed out above, it is far more useful to segregate activities into those which can best be carried out by the private sector and those that would be better carried out by the public sector. It is, however, certainly the case that safety would profit from more rational thinking. Lawyers too would be well advised to think of safety in more rational terms. If technology works, then it works and if it does not the law cannot put it right. The same goes for organisations.

## **4. An analysis of the disciplines**

In order to analyse the characteristics and differences between the disciplines, the method used is the analysis of the dimensions of concepts. It is beyond the scope of this article to give a detailed description of the methodology here, but put briefly the analysis often start with a tri-part division.

[4]

The tri-part division used by Weber for the legitimization of state power serves here as an example. ‘Authority’, according to a well-known sociological definition, is the acceptance of power. (‘Power’ is the ability to influence the behavioural alternatives of others). ‘Power’ is accepted by people if they consider it to be ‘legitimate’. Weber distinguishes three elements of authority:

- Charismatic
- Traditional
- Rational

Charismatic leaders or authority figures acquire their authority from ‘impulses’, from the emotions of those who ascribe authority to them. Traditional authority is power, either that of an individual or of a group of people, which is accepted because the ruler or the group to which the man in power belongs has ‘always had the power’. Authority can also be rational: it can be accepted because people consider the power to be useful. An analysis of this brief outline of the tri-part division allows the conclusion to be drawn that at least two different aspects (dimensions) can be distinguished,

namely:

- The level of consciousness (having thought about the acceptance of power)
- The level of flexibility (being prepared to accept another authority figure than the current one).

The legitimacy of power

	Not conscious	conscious
Not flexible	traditional	rational (?)
Flexible	charismatic	rational (?)

Weber also used a four-part division to explain statements on legitimacy: he returned to his categorisation of types and aspects of social activities. Social activities, according to Weber, can be determined as follows:

- |                  |                                     |
|------------------|-------------------------------------|
| • Goal-rational  | from 'contemplation', 'calculation' |
| • value-rational | from 'conviction', 'principle'      |
| • affective      | from 'impulse', 'emotion'           |
| • traditional    | 'durch eingelebte Gewohnheit'       |

This double dichotomy can, with a certain creativity, be applied to other situations. For example, political parties allow themselves to be distinguished according to their attitude towards the power of state organisations. In their political programmes, terms such as 'traditional', 'principle' and even 'pragmatic' often appear.

Having set out the methodology for analysing concepts, it will also be used for the analysis of disciplines that are relevant to issues of safety:

- lawyers
- business administration experts and economists (managers)
- technicians
- other disciplines?

An initial analysis of this collection reveals that rationality plays a role here too. In this respect, a revolution has taken place over the last ten to twenty years. We are referring here to the paradigm

[\[5\]](#)

(according to Kuhn) that can be used to study human behaviour, and to try to explain, predict and direct it.

Many social scientists base their research on a sociological model of man. This model states that people will behave in a way consistent with the norms of the group to which they belong. However, modern economists usually use a different model of man, the homo economicus or the REMP (the resourceful, evaluating, maximising person) [\[6\]](#). Processes are studied from the perspective of methodological individualism, in other words described, explained and predicted on the basis of the behaviour of individuals. The REMP is an individual who tries to maximise his own utility in all his decision-making. Ideologically, that may sound undesirable. However, in practice it is often the case that individuals see their own interests are served by taking others into account and by interacting with the outside world in a creative and anticipatory way. Negotiation is natural for the REMP.

In modern economics, and in its wake business administration, marketing, product management and finance, rational decision-making is dominant. Modern managers speak in terms of costs and profits, and of the probability of events occurring. Decisions are made based upon a knowledge of these variables from past experience and the expectations for the future. A business which does not

concern itself with costs, profits and risks will not survive for long. However, are managers not primarily influenced by their own interests? Of course this is the case, so the most important aspect of setting up and keeping a business running well is to make sure that the interests of the decision-makers run parallel with those of the owners. The way in which the achievements of managers are measured, the consequence these achievements have for the managers' remuneration and the form in which a bonus is given are crucial matters in determining the success of businesses and institutions.

When these modern managers are confronted with legal risks, they naturally call upon the expertise of lawyers. In this world of large-scale, international application of technology, the success of a policy and the way in which it is carried out can depend upon the ability to anticipate legal risks (the launch of the digital video disk, for example, was delayed for six months because of legal problems). Managers will not accept from lawyers answers such as 'it might not cause any problems' or 'we have a chance to win the trial' or 'most of the expected costs can be found in the tariffs laid down by the Law Society'. Not just managers, but ordinary consumers have become more critical of the legal process.

The technicians are also important. They have a considerable role to play because on the one hand technology threatens the safety of society, and on the other hand technology is a means to help guarantee social safety.

However, the only ones in this listing who are rational are the managers. Both the technicians and the lawyers are less rational as they are less concerned with utility. This is not meant in an entirely negative way, as rationality can often be connected to egoism. There is also a similarity between the technicians and the managers in that both apply modern, empirical science and technology based on mathematics in their work. This is reflected in the following diagram:

Disciplines important to safety

	Rational	Normative
Empirical and Quantitative	Managers	Technicians
Intuitive, Hermeneutic	?	Lawyers

As to which discipline should be entered into the empty space, if the analysis is correct, it should be a discipline that combines a intuitive hermeneutic approach with rationality. Members of the media, journalists and presenters, may constitute the missing factor. What can be said is that the media forms an important link in the chain of social safety.

The media, and the public, appears to be against privatisation. However, when such initiatives occur, such as the privatisation of prisons in the USA, then there seems to be general appreciation for the private services, which are considered to be better than the equivalent services in the public sector. This in itself is a sufficient reason to adopt a more flexible legal approach.

## 5. Conclusion

The most important factor that affects social development is technology. It is therefore essential that a knowledge of technology should underpin the study, explanation, prediction and the enhancement of social safety. This enhancement is primarily a matter of organisation. That is why the modern discipline of business administration is so vital to safety. Unlike law, criminology and sociology, the disciplines of technology and business administration offer convincing arguments for a substantial degree of privatisation of safety. A privatisation that would be rational, useful and acceptable.

## Literature

Bruinsma, G. and Loeber, R., "Challenges for criminological and criminal justice research", in: Gerben Bruinsma, Henk Elffers en Jan de Keijser (eds), *Punishment, Places and Perpetrators; Developments in criminology and criminal justice research*, Devon, 2004, p. 11

Duffey, R. and Saull, J.W., " Know the Risk: Learning from Errors and Accidents: Safety and Risk in Today's Technology", 2002.

Forst, B. and Manning, P.K. "The Privatization of Policing: Two Views (Controversies in Public Policy), 1999.

Jensen, M.C. and Meckling, W. H., "The Nature of Man", *Journal of Applied Corporate Finance* 1994–2, p. 4–19.

Johnston, L., "Private policing. Uniformity and diversity". In: Mawby, R.I. (ed.) "Policing across the world, Issues for the twenty-first century", 167-186, London, 1999.

Kuhn, T.S., "The structure of scientific revolutions", Chicago, 1970 (1962).

Mulder, R.V. De, "The Digital Revolution: From Trias to Tetras Politica". In: Snellen, I.Th.M. and Donk, W.B.H.J. van de, "Public Administration in an Information Age", 47-56, 1998.

E.R. Muller, R.F. Spaaij and A.G.W. Ruitenberg, *Trends in terrorisme*, Alphen aan den Rijn: Kluwer 2003.

Parker, D., "Privatisation and State Ownership", 1986.

Pastor, J. F. "The Privatization of Police in America: An Analysis and Case Study", 2003.

Schamis, H.E., "Re-forming the state: the politics of privatisation in Latin America and Europe", University of Michigan Press, 2002.

Weber, M., "Economy and Society. An Outline of Interpretive Sociology", 1968.

Young, J., "The exclusive society. Social exclusion, crime and difference in late modernity", 1999, London.

---

[1]

[2] Gerben Bruinsma en Rolf Loeber, 2004, p. 11

[3] R.V. De Mulder, 1998.

[4] E.R. Muller, R.Fj. Spaaij en A.G.W. Ruitenberg, 2003, p. 87 e.v.  
Weber, 1968.

[5]

T.S. Kuhn, 1968.

[6]