

Background Series

**A short
Introduction**

**Democratic
Governance of
Policing**

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Introduction

In the vocabulary of the international community, the expression « governance of police » is used essentially in a normative sense with the ultimate objective of deepening the democratic features of policing. It designates the sum of the organs and processes that ensure that agencies with policing powers are accountable at various levels: integrity of individual members (integrity), compliance with laws, policies, regulations and doctrines that regulate their activities (legality) and, finally, the type of services offered, their quality and their costs (performance).

While the metaphor of « layers of governance » is widely used in traditional discussions of the governance of the security sector, we believe it may be more accurate to speak of police governance as articulated around two main axes, one vertical and the other horizontal. The various actors who exercise oversight functions over the police are solidly positioned on these two axes.

The vertical axis

The vertical axis refers to the division of responsibilities between the executive authority and the police agencies as well as the mechanisms and bodies that guarantee that the oversight of the executive civilian authority is exercised while acknowledging the operational autonomy of the police

The horizontal axis

The horizontal axis refers to the responsibilities, bodies and mechanisms independent of the

executive authority that exercise powers of regulation, control, coordination and influence over the police. Besides traditional parliamentary and judiciary control, newly emerging independent bodies are entrusted with oversight and investigative powers on sensitive issues; autonomous decentralized administrative entities such as local municipalities are upgraded as partners in designing local public order strategies; finally, the public itself is considered to exercise a legitimate soft power of influence over policing

Democratic governance mobilizes institutions and mechanisms prescribed by international conventions, constitutions and national laws. To ensure that these institutions are functional—more than empty shells—they must also be adequately resourced. Independent oversight organs will fail if they are not financed and staffed adequately to fulfil their mission. It should be added that governance is also a state of mind. We will have the opportunity to observe in a later section that consultation with the public is a routine administrative practice in the UK that derives as much from a culture of government as it does from regulations.

This *Backgrounder* is limited to a presentation of key features of democratic governance in European political democracies. The sum of these features represent so-to-speak the *acquis communautaire* (or common standards) of civilian governance of police in the European Union. The topics discussed may therefore nurture the debate on required transformations of police governance systems in States aspiring to join the European Union and, more broadly, in states transitioning to the club of political democracies. The document focuses primarily on France and the UK without however being limited to them.

The vertical axis of governance

If the police are autonomous when it comes to implement their mission, the civilian administration has primary authority over 1) definition of policies and the regulative framework (regulation), 2) prescription of objectives (strategic planning), 3) performance control (control), and 4) sanction of poorly performing senior officers (management of senior human resources). Significant variations are displayed in Europe regarding the implementation modalities of these four core functions. With broad brushes, the UK can be categorized as a civilian authority-centred model, while France is more policing agencies-centred. The examples discussed in this *Backgrounder* shall elaborate.

The power of regulation

The executive authority is in charge of defining policies, missions, and the regulative framework within which police activities will take place. Because this civilian task is complex and requires expertise, states have reinforced vigorously their internal administrative capacity and, in recent years, collaborated more systematically with dedicated applied research centers. In France, the Institute of Higher Studies in Internal Security (*Institut des hautes études de sécurité intérieure* or IHESI) was established during the first presidential mandate of François Mitterrand with the explicit goal of developing a civilian research capacity to assist the government in its core function of regulating and reforming the police. The Institute, renamed recently National Institute of Higher Studies in Security and Justice (*Institut national des hautes études de sécurité et de justice*), has been attached administratively to the Prime Minister since 2009; its research division is

supervised by an autonomous academic council. In Great Britain, the National Performance Improvement Agency (NPIA) plays a somewhat similar role; however, the NPIA is larger, more powerful, and more operational than this is the case in France. But above all, the Agency is police-staffed and police-led. Without a civilian capacity of expertise, police enjoy often a disproportionate power of influence over policies and doctrines.

Besides the civil expertise, public opinion plays equally an increasing role in regulations. In Great Britain, the policy-making process regarding the police almost systematically includes public consultation practices. Public consultation in France is much less frequent and mainly confined to preventing delinquency. In Great Britain, all large police reforms, definition of police performance criteria, or police regulations involving politically and socially sensitive issues have become subject to board-based public consultations.

Audit

Per definition, internal control bodies or inspectorates are police-staffed and police-led; external control bodies are located administratively at the civilian administration level, are civilian-staffed and civilian-led. All inspection services of the police (with the exception of financial inspections) in Great Britain are regrouped within one single agency, external to police agencies, located within the Home Office and entirely and exclusively dedicated to police matters. Her Majesty's Inspectorate of Constabulary (HMIC), as this institution is called, is in charge of all administrative and organisational controls of police agencies in Great Britain; the agency is also tasked with issuing recommendations on police performance improvement. Police self-control is being simultaneously judge and party. External control is believed to increase public trust of the

effectiveness and objectivity of police compliance and performance controls.

One may add that Great Britain shows signs of considering a formal dissociation of the audit function from the executive power or, at least, to be willing to provide some degree of autonomy of the inspectorate within the Home Office. The Parliament organizes hearings of the future Head of HMIC. These hearings do not serve formally to confirm nominations, as this is the case for some higher functions in the United States. They are pre-employment consultations whereas the responsibility of the nomination remains firmly with the Minister of Interior. With the creation of the “Committee P”, Belgium went a step further by attributing the audit functions to the Belgian Parliament.

The relative autonomy enjoyed by the HMIC within the Home Affairs ministry is strengthened by an empowerment to consult the public directly. Having been assigned the strategic task to design new criteria by which the performance of the police will be evaluated in the future, HMIC submitted the draft set of criteria and indicators it had elaborated to a wide public consultation. This procedure is meant to enhance from below the legitimacy of strategic choices regarding police services. We will come back later to this notion of “influence” or “soft power” exercised increasingly by the public on policing choices across Europe.

The British case can be singled out as pioneering in the field of police governance in Europe. In France, the function of inspection is much less dissociated from the internal police organization. While an external inspection body (the *Inspection générale*) is situated at the administrative level and controlled by the Minister of Interior, most of inspections are performed by the internal inspectorates of the two main French police agencies – the National Police and the National Gendarmerie. The bulk of organizational, administrative and financial audits are performed

by internal services that are police-staff and police-led. The net result is a much narrower field of civilian control when compared to the British case. To compensate for the deficit, French authorities are encouraging so-called joint inspections involving collaboration between the external and the internal inspectorates.

Concluding this section, one may observe a general evolution of inspections in Europe. There is a tendency to reinforce the civilian organs of control over police agencies by conducting joint inspections, regrouping inspectorates in an external body controlled by the Minister or externalizing to the Parliament the function of control. The objective is always the same: to increase the public trust in the controlling function. Transparency is therefore becoming a master word. Inspection reports in Great Britain are made systematically accessible to the public with only few minor exceptions prescribed by the law. France remains a laggard in this respect. Only a small proportion of inspectorate reports of the *Inspection générale* are made public spontaneously despite the fact that the law authorizes the publication of administrative documents.

Strategic planning and control of performance

Information technology, new public management and political will promoting objectivity and fairness combine in the recent development and systematic use of performance management systems to steer, guide and control police agencies. The newest management instruments of public security use so-called key performance indicators that rely on strict scientific protocol for data collection and measurement. These instruments allow monitoring police performance of individual agencies according to a series of agreed indicators and objectives. Senior management of police are further evaluated annually by their ability to attain the goals set for the agency under their responsibility. The external

inspectorate HMIC, in Great Britain, is assigned the responsibility of assessing the performance of individual police agencies against objectives set by the Home Office and to issue recommendations for improvement of performance. Individual senior police officers are recommended for promotion or transfer by HMIC depending on the performance of the services they supervised.

The strategic management systems have an Anglo-Saxon connotation and are widely used in Great Britain, Canada or Australia for instance. In France, these systems remain under-developed. Rough indicators are presented yearly to the Parliament. Paris participates in a European cities project that uses standardized indicators to compare police performance in respective jurisdictions. At the national level, the French performance management system of policing uses a few modest indicators measuring criminality rates. It does not include measures of public satisfaction, value-for money and other indicators that have long been integrated in the sophisticated management systems of the police of the Anglo-Saxon world. In Europe, Great Britain has pioneered the systematic survey of public opinion regarding policing services, the fear of crime, or the police image in general. British police use indicators of public satisfaction to improve its services to communities.

The horizontal axis of the governance of the police

On the horizontal axis, the institutions of Parliament and Justice exercise oversight over police agencies through their respective mechanisms and classic powers of regulation, control and sanction. The originality comes from the rise and proliferation of new independent oversight authorities. Sometimes these bodies have their origin in international laws and their power can be considerable. By way of illustration, we may point to the independent commissions that investigate public complaints against the police and monitor the use of police firearms.

A second development is the rise of interagency collaboration and administrative coordination among a range of actors claiming a stake in the prevention of criminality.

Finally, public influence in relation to security policies is a form of “soft power” that is increasingly acknowledged, organized and regulated. Typically, National Boards of Policing and, at the local level, Local Safety Boards or Community Security Forums embody two of the newest dimensions of horizontal governance: namely multi-agency coordination and the inclusion of the public in the regulation of policing.

Independent oversight bodies

The past decade has witnessed a dramatic proliferation of independent oversight bodies over sensitive issues related to the exercise of police powers. Independent police complaints commissions, as they are known in Great Britain,

and data protection oversight bodies have thus gained prominence. The independence of these bodies is generally secured by a formal nomination procedure of their members involving approval by the national Parliament, terms of reference prescribed by primary law, and budgetary autonomy.

Acting upon prescriptive norms of the Council of Europe regarding the necessary independence of investigations against the police, European states are increasingly establishing independent bodies to deal formally with public complaints against the police. Former generations of this type of body had only supervisory powers over police investigations. Considered to be insufficient to generate public trust in their mechanisms, the newer generation obtains investigative powers and capacities in cases defined as serious by law. Northern Ireland went a step further when it established in 2001 a new independent body – the Police Ombudsman – entirely civilian-staffed and led and entrusted with the investigation of *all* complaints against the police irrespective of the gravity of the cases.

In March 2009, the Commissioner for Human Rights of the Council of Europe issued an Opinion on the matter. The Opinion recommends that states establish a dedicated independent body to deal with public complaints against the police and further suggests that states may consider setting up a similar mechanism at a prosecutor level. To nominate special prosecutors dealing exclusively with cases against the police might substantially improve the independence of prosecution given that police and prosecutors are routinely close collaborators in the fight against criminality.

To protect citizens from abusive use by police of personal data, states have set up similar independent oversight bodies in the past decade or so. Commissionaires of data protection bodies are formally nominated by the national Parliament. While administratively attached to a

ministry, these bodies are financed directly by appropriations from the Parliament.

It is the proliferation of private and public electronic warehouses containing personal data, the increased inter-state collaboration in data exchange for policing use as well as the legal requirements of international conventions (EUROPOL, Schengen, etc.) that have led national states to regulate the protection of private data and, consecutively, to set up independent oversight mechanisms. The Charter for Fundamental Rights acknowledges a right of protection of personal data, defines the rules intended to protect this right, and prescribes the establishment of an independent authority to control compliance with the rules.

The « soft power » of the public

Civilian governance is experiencing a deep mutation as it increasingly acknowledges the « soft power », or power of influence, of the public. Across the European continent, local security forums have proliferated in the wake of the general adoption of the community policing philosophy in the eighties. These forums, called *Local Security Councils* in France, have a legal obligation to consult the public when elaborating local security plans. These multi-year plans set priorities and programmes at a municipal level for the control of disorders and for preventing delinquency. As a rule, local civil society organizations are represented in these forums even though, in France, contrary to the regular praxis of Anglo-Saxon countries, they play a rather marginal role. Before more restrictive rules lowered their number, some 500 Local Councils of Security were up and running in France at the end of the nineties. A 2007 law limited their number. Today, Local Security Councils are mandatory only for municipalities exceeding 10'000 inhabitants or with a delinquency-prone neighbourhood that statutorily qualifies as *Critical Urban Zone*.

At the central level, public consultations are also organized across Europe on the cross-cutting issue of prevention of delinquency through intergovernmental bodies comprising senior civil servants, representatives of civil society and experts.

In Great Britain, public consultations have become so-to-speak second nature. Issuance of new regulations on sensitive topics is preceded almost systematically by consultations with the public. Assigned the task of defining a new set of police performance evaluation indicators, the British external audit board (HMIC) launched a public consultation procedure in 2010 before finalizing a draft. Consultation praxis involving experts and public monitors is establishing itself as a best practice in the state response to protest events or to activities by hooligans. The « soft power » of the public is directly influencing contemporary policing. Consultation practices derive from an informal political/administrative culture as well as from formal regulations that, in specific instances, make consultations mandatory.

Dialogue and coordination

Police governance increasingly features practices of dialogue and coordination with other stakeholders. The partnership approach in policing has been promoted by new ideologies and doctrines of policing; but it is equally the result of a new reality produced by decentralization.

By popularizing a collaborative approach to solve public security problems, the community policing doctrine generated new routine police practices of dialogue and partnership with other administrative agencies, civil society and the public. But there are other reasons explaining the establishment of formal platforms to institutionalize coordination with stakeholders. The administrative decentralization of the eighties in Western Europe induced unexpected but serious coordination

problems between administratively autonomous actors. As a consequence of decentralization, the representative of the government – the *Préfet* in France – lost its tutelage over municipalities who, with decentralization, started to control significant resources and the implementation of sectoral public policies relevant to the prevention of criminality. The administrative answer to this gap opened by decentralization has been the creation of Local Security Councils. These bodies, chaired today by the Mayor, are platforms of dialogue and coordination between administratively autonomous core security actors (the *Préfet*, the Mayor, and the Prosecutor) aiming at producing local agreements on public security and prevention of delinquency.

Taking into consideration that the prevention of delinquency is a cross-governmental issue and that public security and urban planning are interconnected, European states have established national cross-government committees to deal with the matter. These committees are tasked with coordination, priority-setting, and the drafting of national prevention plans. One of the committees, in France, is called the *Inter-Ministerial Committee on the Prevention of Delinquency*; it is chaired by the Prime Minister and manages a dedicated trust fund designed to support financially local prevention projects as long as they fit within the national priorities. This financial mechanism is administrated locally by the *Préfet* and allows the central state to generate coherence and homogeneity in the multitude of local prevention projects across the national territory.

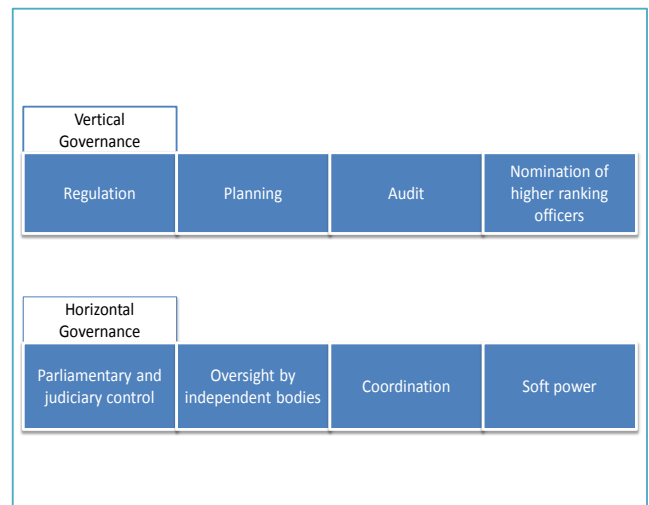
To conclude

This *backgrounder* presented a series of keys to illustrate recent developments of democratic governance of police and offered examples from political democracies of Western Europe. Subject to modernization, democratic governance has been evolving so-to-speak “upwards” and “laterally”. The gradual transfer of resources, capacities and competencies – often formerly controlled by the police – upwards to the civilian authority allows the latter to regulate, plan, control and sanction based on strict imperatives of objectivity and transparency without compromising the operational autonomy of the police. In addition, we have seen that some traditional functions of the executive authority, such as control and sanctions, have recently gained a substantial degree of autonomy within the Ministry of Interior itself. The exercise of the regulative powers of the executive authority is also accompanied – at least in the Anglo-Saxon world - by direct consultations with the public to gain more legitimacy.

The horizontal axis of governance has also been strengthened significantly in the past two decades. This in three distinct areas. Firstly, new dedicated independent oversight bodies have been proliferating (to handle public complaints against the police, personal data protection, etc.) and have seen their powers gradually enlarged to include investigation. Secondly, at the planning level, dialogue, coordination and partnership have been institutionalized through national committees (prevention of delinquency) and local security boards. The two engines behind this development have been the adoption of the community policing doctrine and the coordination gap opened by decentralization in the eighties.

Finally, the soft power of public influence has become a gradually accepted notion in public administration. Important regulations, police performance criteria, police reform strategic documents, and perhaps as this could become the case in Great Britain under the new conservative government, the nomination of local police chiefs themselves, all imply a consultation with the public directly.

Figure 1: The Two Axes of Democratic Governance



To conclude, a few words may bring this discussion of police governance in Europe into perspective. First of all, the pioneering role of Great Britain in matters of democratic governance of police should be acknowledged. Other European states – and we have discussed the case of France in more detail - might not have reached the high standards set by Great Britain. We could have multiplied the examples of « laggards ». In Switzerland, an old democracy, the adherence to the Schengen space has necessitated a substantial reinforcement of the independence of the national body overseeing personal data. Nor has Switzerland yet created an independent body to deal with public complaints against the police. One may perhaps add that some Swiss cantons - and not the smallest as the case of Zurich illustrates – have passed a police law only recently; in many parts of the Confederation, police powers were

exercised based on a “general clause” authorizing the use of force in cases and according to modalities prescribed by jurisprudence.

Secondly, the double evolution of democratic governance as discussed in this backgrounder is not an internal matter confined to political democracies in Europe; it has significant relevance for states in transition. The current debate in South Africa illustrates this point.

Pursuant to the White Paper on the police reform of 1998, two bills were presented to the South African Parliament and approved in 2011. The first proposed a Civilian Secretariat for Police Service with primary responsibilities over policy-making, strategic planning, auditing and monitoring as a way to separate the powers of determining policies (civilian) and their implementation (police services). The second bill envisions that the Independent Complaints Directorate (which currently deals with complaints against the police) be upgraded into an Independent Police Investigative Directorate (IPID). The new IPID head will be approved by the Parliament. Further, the Directorate will possess investigative powers, including the ability to look into serious crimes, and it will be financed by Parliamentary appropriations.

One may conclude with a cautious note. Development of civilian governance goes hand in hand with an administrative capacity that, in some cases, is beyond the reach of states in transition and under construction. Information-driven performance management systems are extraordinary instruments intended to guarantee objectivity of evaluations, empirical verifiability of performance, and quality of recommendations in matters of promotion of senior officers. However, these management systems mobilize sophisticated technologies that are simply beyond the reach of post-conflict states in reconstruction. The controversial issue of political bias influencing the nomination of senior police officers is more acute where such management systems

are non-existent. In such cases, other bodies or institutions such as the Police National Commissions known in Canada, Sri Lanka and many other states, can play an important role in increasing the social and political consensus over the nomination of senior police officers.

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We would like to thank Dr Anjie Rosga for the English editing of this backgrounder

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