

Fragmentation, Commodification and the Erosion of Social Accountability and Equity in Democratic South Africa

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Master of Philosophy (MPhil) (Criminal Justice) Dissertation

Research dissertation presented for the approval of Senate in fulfilment of part of the requirements for the Master of Philosophy in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of Master of Philosophy dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

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This material is based upon work supported by the National Research Foundation

For HM and Elisha Singh,
who never faltered in their support
and never failed in their humor

Acknowledgements

Writing this paper was extremely challenging and I could not have done without the help, dedication and advice of my supervisors, Julie Berg and Clifford Shearing. I would like to acknowledge their invaluable input, which was much needed throughout the research process.

Abstract

The fragmentation and commodification of security governance that has taken place in the last half of the twentieth century has had far-reaching implications for social control. The Hobbesian idea of the sovereign state has been continuously challenged in this time and is now, effectively, a distant memory. Grounded in the theories of Burris et al.¹ and Braithwaite,² the state is now just one 'node' in a security network and has had to give up its role as primary governance auspice and accept the role of regulator; a hallmark of the post-modern era in which we live. The 'nodal governance' framework forwarded by Burris et al.³ I find lacking in many respects; I therefore develop a hybrid model of governance based on the 'nodal governance' model, Baker's⁴ 'multi-choice policing' model and Wood's⁵ 'local capacity governance' which has specific significance for transitional states like South Africa. I argue that the fragmentation and commodification of security governance has led to the erosion of social accountability and equity in South Africa due to three aspects of the 'new' policing; first, the rise of private security governance in South Africa; second, the growth of illegitimate auspices of governance in South Africa; and third, the growth of community governance institutions in South Africa. With this in mind, I forward a normative framework by which security networks in South Africa can and should operate to ensure accountability and equity. This framework is built on seven pillars; (1) the acceptance of the plural nature of policing; (2) the acceptance that the state is but one node in a network of security; (3) the pursuance of governance from below; (4) the acceptance of the public police's role as regulators; (5) the need for incentives to achieve social responsibility; (6) the need for non-state regulatory bodies; and (7) the pursuance of a restorative justice ethos.

¹ Burris S, Drahos, P & Shearing C D 'Nodal Governance' (2005) 30 *Australian Journal of Legal Philosophy* 30-58.

² Braithwaite J 'The New Regulatory State and the Transformation of Criminology' (2000) 40 *British Journal of Criminology* 222-238

³ Burris et al, (note 1).

⁴ Baker B 'Living with Non-State Policing in South Africa: The Issues and Dilemmas' (2002a) 40(1) *Journal of Modern African Studies* 29-53.

⁵ Wood J 'Cultural Change and the Governance of Security' (2004) 14(1) *Policing & Society* 31-48.

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Chapter I

Introduction

In 1651 Thomas Hobbes argued that human beings were self-interested individuals, involved ceaselessly in struggle with one another and in a constant state of insecurity. This he termed the 'state of war'. The only relief to this 'state of war', he postulated, lay in a 'social contract' to institute a civil society and give up individual freedom to become equal political subjects under one sovereign power. On this sovereign power he wrote:

The finall Cause, End, or Designe of men (who naturally love Liberty, and Dominion over others,) in the introduction of that restraint upon themselves, (in which wee see them live in Common-wealths,) is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of Warre, which is necessarily consequent (as hath been shewn) to the naturall Passions of men, when there is no visible Power to keep them in awe, and tye them by feare of punishment to the performance of their Covenants, and observation of those Lawes of Nature...⁷

Hobbes, it seems, would not be pleased with the contemporary state of sovereignty.

* * *

Security is an essential part of social life. It helps in the creation of a peaceful society and helps dispel both rational and irrational fears and, in this way, helps keep society stable. Its governance, therefore, should be held as being of the utmost importance.

⁶ Any opinions, findings and conclusions or recommendations expressed in this material are those of the author and therefore the NRF does not accept any liability in regard thereto.

⁷ Hobbes T *Leviathan* (London: Andrew Crooke, 1651) at 85.

Until recently the governance of security had been, perhaps by default, jealously held in the hands of the sovereign state – a notion Hobbes would be extremely familiar with. Within the last half century, however, the governance of security has been displaced from its former home; the sovereign state has become less and less able to hold on to one of its main functions. This phenomenon has come to be identified by many names – fragmentation, pluralisation, dislocation, disintegration, decentralization, are among the most common. Each of these identifying factors carries with it a new, and often unclear, explanation of what is taking place in the realm of policing and security governance. What is clear is that we are in the midst of a revolution as far as policing goes; a revolution which, if left unchecked, could leave us with a dilemma of global proportions.

These phenomena of fragmentation, disintegration and decentralization; this “uneven patchwork of policing and security provision”⁸ has been slowly growing for the last thirty years and has, as a result, slowly been eating away at the sovereign state.

In the past 30 years the state’s monopoly on policing has been broken by the creation of a host of private and community-based agencies that prevent crime, deter criminality, catch law-breakers, investigate offences, and stop conflict.⁹

Recently, many authors have advocated a move away from the use of the term *the police* to the use of a more generic term; *policing*¹⁰, to describe without any doubt those activities undertaken by groups or individuals to ensure their own, or others’, security. This shift is essentially the embodiment of the fragmentation of security governance. In the first instance, the police have been wholly symbolic of the state since antiquity and hold a special place in the hearts and minds of many state citizens. Loader makes this point clear when he points out that

⁸ Loader I ‘Consumer Culture and the Commodification of Policing and Security’ (1999) 33(2) *Sociology* 373-92.

⁹ Bayley D H & Shearing C D ‘The Future of Policing’ (1996) 30(3) *Law & Society Review* 585 at 586.

¹⁰ See generally the work of Clifford Shearing, more specifically see Ian Loader (2000).

...the public police continue to be identified within prevailing English mentalities and sensibilities as the principal source of security and protection, and that despite attempts to ‘demystify’ them, the police retain among large swathes of the (law-abiding) public traces of a ‘sacred’ status as *symbols of law, order and nation*.¹¹

The police represent the sovereign state to a great degree; their meticulously presented uniforms indicative of a stable political unit. Secondly, instituting a generic term such as *policing* and putting it in place of *the police* effectively separates the policing function from the state; sending the clear message that it is acceptable to not look to the state for the provision of security governance in your business or residential neighbourhood. The sovereignty of the nation state, then, is effectively being eroded; its final foothold – the monopoly over the legitimate use of physical coercion¹² – is now being relinquished to a myriad of governance actors (even though it still remains the final regulator of these actors). Loader and Walker bring this issue to the fore when they note that “[i]ncreasingly, the state is becoming the final source and regulator of legitimate coercion administered by others.”¹³

This is a characteristic of the ‘regulatory state’ – a state as the regulator of a variety of services as opposed to the provider of these services. The governance practices of the regulatory state can be contrasted with those of its predecessor, the welfare state which was focused largely on state ownership of public services and the provision of these services.¹⁴

...the regulatory state governance form involves a complex set of changes in public management involving the separation of operational from regulatory activities in some policy areas (sometimes linked to privatization), a trend towards separating purchasers and providers of public services (through policies of contracting out and market testing) and towards separation of operational from

¹¹ Loader (note 8) at 387 [my emphasis]

¹² Loader I & Walker N ‘Policing as Public Good’ (2001) 5(1) *Theoretical Criminology* 9 at 12.

¹³ *Ibid* at 13 [mp emphasis].

¹⁴ Scott C ‘Regulation in the Age of Governance: The Rise of the Post-Regulatory State’ in Jordana, J & Levi-Faur (eds) *The Politics of Regulation* (Cheltenham: Edward Elgar, 2003) at 4.

policy tasks within government departments and the creation of executive agencies. Each of these policies shifts the emphasis of control, to a greater or lesser degree, from traditional bureaucratic mechanisms towards instruments of regulation. Government departments (or nominated agencies or self-regulatory bodies) *now regulate the provision of services* (setting down standards, monitoring for compliance and enforcing) through the instruments of statutory regulation and contract and their near relations self- and co-regulation and quasi-contract.¹⁵

This is a world inhabited by a variety of actors and organizations performing various services, policing and governance functions which were historically the responsibility of government. This has meant that the lines originally drawn between state, market and civil society have begun to blur. All these phenomena are part and parcel of the specific age in which we live – postmodernism – and the specific sensibility to which we subscribe – neo-liberalism. The postmodern world is one characterized by both globalizing and localizing trends which have effectively left the nation-state wanting in terms of being the key political unit of governance.¹⁶ It is also a world in which, of the three spheres of life mentioned above, the market dominates; “increasing amounts of social, cultural and political life have become commodified.”¹⁷

O’Malley and Palmer point to three key developments in the move to neo-liberalism. The first has to do with a focus on the commercial enterprise model by most institutions, state and non-state.¹⁸ This development has seen the privatization of previously state-owned institutions and the remodeling of remaining state-owned institutions.¹⁹ Second, as Russell Keat²⁰ notes, a move away from terms like ‘client’ ‘patient’ and ‘student’ to those of ‘consumer’ and ‘customer. Third,

¹⁵ *Ibid*

¹⁶ Newburn T ‘The Commodification of Policing: Security Networks in the Late Modern City’ (2001) 38(5-6) *Urban Studies* 829 at 829.

¹⁷ *Ibid*

¹⁸ O’Malley P & Palmer D ‘Post-Keynesian Policing’ (1996) 25(2) *Economy & Society* 137 at 141.

¹⁹ *Ibid*.

²⁰ Keat R ‘Introduction: Starship Britain of Universal Enterprise?’ in Keat, R & Abercrombie, N (eds) *Enterprise Culture* (London: Routledge, 1991) at 3.

...a vision of enterprising and responsible individuals and private organizations is developed and inculcated. This involves ‘rather loosely related set of characteristics such as initiative, energy, independence, boldness, self-reliance, a willingness to take risks and to accept responsibility for one’s actions, and so on’.²¹

The commodified nature of postmodern life has meant, perhaps obviously, that the relative positions of the wealthy and the impoverished have come more to the fore in terms of who has the means to purchase the services on offer.²² This has especially become problematic with the emergence of new security markets throughout the world, and the situation is exacerbated when these security markets begin to infiltrate weak, failing and transitional states. We live in a risk society; a society in which crime is generally accepted as a normal social fact²³ and the fear of crime guides how people view both the public police and those operating within a given security market. Some look to the former for protection, while others look to the latter. It is a contemporary truism that those who opt out (either by choice or not) of service provision by auspices of the security market are often left wanting in terms of protection and security as they have to rely solely on a frequently under-resourced public police force. The consequences of this tend to be ever more apparent and in need of attention in transitional states, such as South Africa.

In this paper I am primarily concerned with the consequences of pluralized security governance for South Africa, a relatively young democracy with a violent past. I deal with the political and economic dimensions of plural policing in this transitional state and how these relate to accountability, which ultimately affects and is intertwined with equity, democracy and human rights.²⁴ In particular, I am concerned with the

²¹ O’Malley & Palmer (note 18) at 142.

²² See, for a discussion on *governance deficits*, Shearing & Wood (2003b).

²³ Newburn (note 16) at 835.

²⁴ It is important to note that, while the main focus of this paper is accountability, equity, human rights, democracy and accountability are necessarily connected and cannot easily be disconnected and dealt with in isolation – this would be a pointless endeavor in my view.

commodification of security in South Africa and how this phenomenon has exacerbated the wealth disparity in the country. I also deal in no small measure with the related issues of private, common and public goods, as well as public or social versus contractual or financial accountability. My secondary concern stems from the following quotation; "...if diverse policing networks are to avoid 'compounding' extant inequalities, then institutional means have to be found of connecting such networks to the 'public' or 'common' good."²⁵ I forward a normative framework as to how security networks can and should function in South Africa. In order to do this, I first develop a hybrid framework based largely on the nodal governance model forwarded by Burris, Drahos and Shearing and based on Baker's multi-choice policing model as well as Wood's local capacity governance model. This hybrid framework, I believe, is more suited to the African context as it takes into account both the historical and (perhaps less important) the cultural factors which have shaped states on the continent.

This paper is written in four parts. In chapter two, *Aspects of the 'New' Policing*, I discuss issues related to the new shape of policing and security governance that has currently emerged. In particular I detail the outcome-generating system, the network society and nodal governance, offering a short critique of each. I argue that these three concepts are useful but that their usefulness is limited by their neglect of historical and cultural factors in society and governance. As a result of this, I conclude that these two concepts have little relevance to the African context and, following this, I forward a hybrid model of security governance based largely on Castells's network society and Burris, Drahos and Shearing's nodal governance model, but also based on Baker's multi-choice policing model and Wood's local capacity governance model. In chapter 3, *Aspects of Transitional States*, I outline briefly the key points on transitional states and give a brief overview of the South African situation, beginning with the rise and reign of apartheid and ending with post-apartheid South Africa.

Chapter 4, *Commodification, Fragmentation and Accountability*, is the main chapter in this paper. I pose a specific set of questions related to the pluralisation of policing in

²⁵ Loader I 'Plural Policing and Democratic Governance' (2000) 9(3) *Social & Legal Studies* 323 at 335.

South Africa and discuss how the fragmentation and commodification of security governance has affected social accountability and how this accountability is achieved. In the main I argue that, due to the rise of contractual accountability and its higher contemporary priority, the commodification and fragmentation of policing acts to exacerbate existing inequalities, specifically in transitional settings where the public police system is, at best, weak. I also argue that conceptions of the ‘public good’ are fundamentally altered due to the fragmentation and commodification of security provision and that this is eroding our society further. In chapter 5, the concluding chapter of this paper, I forward a new normative framework by which security networks in South Africa (and, indeed, other transitional states) can and *should* function; a framework by which social accountability of non-state auspices of governance is possible. I also briefly discuss what opinions I have come to with respect to the commodification and fragmentation of policing in South Africa.

Chapter II

Aspects of the 'New' Policing

"...government is no longer a unified set of state instrumentalities. The sovereign is not dead, but is just one source of power" (Braithwaite, 2000: 90).

The emergence of new forms of governance in the last thirty years has led to the rise of an oligopoly²⁶ of governance actors who act above, through, beyond and below the state.²⁷ Private police corporations, community governance actors and 'responsibilized'²⁸ citizens are both the products of and factors contributing to the postmodern age in which we live.

[A]s we approach the century's end, the provision of policing and security is in Britain and other late-modern societies becoming ever more fragmented and commodified...The protection of person and property is now less and less the exclusive province of the public police, and is increasingly being delivered by a plethora of public, commercial and voluntary bodies.²⁹

There is a growing body of literature which has attempted to understand these developments in security governance. Within this social scientific body of literature the fragmentation and commodification of policing has been understood in terms of the spread of 'mass private property' and changes in property law in the United States and other countries³⁰, the 'fiscal crisis of the state'³¹, "the unmet – and seemingly insatiable –

²⁶ An *oligopoly* (in contrast to a monopoly) is a specific economic term that refers to a situation where several sellers exist within a given market. This term is in stark contrast with *monopoly* which refers to a situation where only one seller exists within a market.

²⁷ Loader (note 25)

²⁸ Garland D 'The Limits of the Sovereign State' (1996) 36(4) *British Journal of Criminology* 445-471.

²⁹ Loader (note 8) at 374.

³⁰ Shearing C D & Stenning P 'From the Panopticon to Disney World: The Development of Discipline' in Doob, A & Greenspan, A (eds) *Perspectives in Criminal Law: Essays in Honour of John L.J. Edwards* (Ontario: Aurora, 1985)

³¹ Spitzer & Scull, 1977 cited in Loader (note 8) at 374.

demands of anxious citizens for police protection”³² and much wider changes in governance or postmodern society generally.³³

These and several other concepts are of the utmost importance to us in outlining the new shape of policing in this section and in developing a hybrid model of security governance. Particularly useful for our purposes is the idea that society should be conceived of as an *outcome generating system*³⁴ – a collectivity of people who perform actions which create either good or problematic outcomes. To make sense of the pluralisation of governance the concepts of *nodal governance*, *rule at a distance* and *governance deficits* are also useful. Bruce Baker’s *multi-choice policing* model and Jennifer Wood’s *local capacity governance* model are useful for conceptualizing governance at a transitional level. It is particularly important to recognize the commodified nature of contemporary security governance as well as the rise of an exclusive society in which economic, political and particularly social exclusion are not only viewed as normal but as fixes to crime problems which have their roots embedded in issues at a much deeper level. In the section that follows I propose a hybrid model of contemporary security governance based largely on Castells’ conceptions of the network society and the nodal governance approach forwarded by Burris, Drahos and Shearing, although my ideas will not be based solely on these models. My conception, I hope, will more adequately apply to the governance of security in South Africa and other transitional states.

*Outcome Generating Systems, Networks and Nodal
Conceptions of Governance: towards a hybrid model of
contemporary security governance*

Postmodernism has brought with it new forms of governance coupled with new conceptions of how governance is administered. Many academics, social scientists and

³² Loader (note 8) at 374

³³ *Ibid.*

³⁴ Burris et al. (note 1).

legal scholars have begun to provide explanations for these new developments in policing. Probably the most prominent (and the most useful for my purposes) is the *nodal governance* thesis forwarded by Clifford Shearing and his associates. In a thought-provoking paper, *Nodal Governance* Burris, Drahos and Shearing develop the model of the same name. Central to their thesis is Hayek's general reader *The Constitution of Liberty* in which he argues, in epistemological fashion, that human planning and organization has limits and that the markets cannot be forgotten as a means for bringing order to complex systems, among other things.³⁵ Hayek restates the importance of the ideals of individual liberty for the growth of Western civilization.³⁶ He is concerned, most importantly for us, with the nature of social order and how it relates to liberty.

We are concerned in this book with that condition of men in which coercion of some by others is reduced as much as possible in society. This state we shall describe throughout as a state of liberty or freedom.³⁷

Burris, Drahos and Shearing argue that governance is typically and inherently a complex issue and that governance in interaction is of even greater complexity.³⁸ Viewing governance as simply existing within the realm of the state is insufficient in terms of its contemporary pluralized nature.³⁹ Using Hayek's notions, the authors develop their argument that any collectivity (society at large, criminal gangs, voluntary organizations *et cetera*) can be conceived of as an 'outcome-generating system' ('OGS').⁴⁰

Take any group of people living in the same place or on some other basis identifying themselves as a group for at least some important purposes. We will refer to this as a 'collectivity'. The things these people do create outcomes over space and time. These outcomes are not necessarily the result of their intentional activities or of their activities alone. Outcomes are produced by the complex

³⁵ Hayek F A *The Constitution of Liberty* (London: Routledge, 1960).

³⁶ *Ibid.*

³⁷ *Ibid* at 11.

³⁸ Burris et al. (note 1) at 31.

³⁹ *Ibid.*

⁴⁰ *Ibid* at 33.

interaction of what people do, how they relate to one another, the institutions, technologies and mentalities they deploy, their biological equipment and conditions and stimuli from the larger physical and social environment in which they operate.⁴¹

The outcomes created by these systems can take the form of ‘goods’ (such as peace, happiness and economic efficiency) or ‘problems’ (such as famine, violence and depression). The identification of outcomes can be seen as objective but people often differ as to what should be considered as a ‘good’ or a ‘problem’. As such, the identification of outcomes is more usefully seen as a subjective process because it depends upon “our making causal connections between some subset or conceptualization of elements of an OGS and some set of outcomes”.⁴² Our subjective view of the products an OGS produces lead to biases in this respect. It is important to note that every single state of affairs in the world produces an innumerable range of effects. We, as human beings, consider only a limited number of these effects with the view to understanding that state of affairs. These biases not only lead to us attributing cause mistakenly, but also lead to us not recognizing important outcomes.⁴³

What is important are individuals’ abilities to understand the rules of cause and effect; to understand that every outcome is a product of what has come before and is a contributing factor to what must come in the future. This is a valuable adaptation which can be tacit or embedded in a collectivity’s way of being. However, because every outcome is a product of what has come before, processes continue over time instead of being static and our attempts to break apart causal chains are invariably biased, we will get it wrong. One of the things that determines the ratio of ‘goods’ to ‘problems’ is the ability of a collectivity to learn the workings of the OGS and how to manage them – to ‘get it right’.⁴⁴ Collectivities generally differ in their capacities and abilities to ‘get it right’; to manage the OGS and the outcomes it produces and every collectivity has to adapt to both

⁴¹ *Ibid* at 34.

⁴² *Ibid* at 35.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

a physical environment and a social environment, often overlapping with other collectivities and OGSs and often being subjected to a range of different influences. This leads to every collectivity facing tasks of regulation – producing more goods than problems and handling outcomes produced by external OGSs.⁴⁵

Hayek argues that the success of a collectivity depends largely on the extent to which people within the collectivity make adaptations as individuals and how these people collectively manage the OGS so as to maximize knowledges and capacities held throughout the collectivity.⁴⁶ Above all, these adaptations (which can take the form of rules, institutions, principles, habits *et cetera*), can be viewed as forms of regulation.

Some of these adaptations are created with the intention of governing while others evolve less conspicuously and may not be thought of as regulation but as tenets of religion or mere facts of life.⁴⁷

From the assumption that all collectivities can be seen as outcome-generating systems, the authors develop a model of nodal governance also based loosely on the work of Manuel Castells. Castells postulates that the age in which we are currently living, the Information Age, gives rise to a network society; “[t]he network society is the social structure characteristic of the Information age”.⁴⁸ He notes, in Marxist fashion, that human societies (social structures) are made from conflictive interactions between humans. Interactions based on relationships of production and consumption, relationships of power and relationships of experience. For Castells meaning is produced and constantly reproduced between the symbolic interaction of actors within a given social structure. In one way, his analysis of human societies lends itself to the assumption mentioned above – that collectivities can be viewed as outcome-generating systems – meanings (as with outcomes) are produced (or identified) subjectively by an

⁴⁵ *Ibid* at 36.

⁴⁶ Hayek F A *Law, Legislation and Liberty* (Chicago: University of Chicago Press, 1973).

⁴⁷ Burris et al. (note 1) at 36.

⁴⁸ Castells M ‘Materials for an Exploratory Theory of the Network Society’ (2000) 51(1) *British Journal of Sociology* 5 at 5.

individual or actor in the way that he or she *understands* the purpose of the action that created the meaning in the first instance.

Also, in a similar stance to Hayek, Castells stresses the importance of production and the market in human societies. The three bases of relationships in a social structure – production/consumption, experience and power - he describes as such:

Production is the action of humankind on matter (nature), to appropriate it and transform it for its benefit by obtaining a product, consuming (unevenly) part of it, and accumulating the surplus for investment, according to socially decided goals. Consumption is the appropriation of the product by humans for their individual benefit...Experience is the action of humans on themselves, determined by the interplay between their biological and cultural identities, and in relationship to their social and natural environment. It is constructed around the endless search for the fulfillment of human needs and desires...Power is the action of humans on other humans to impose their will on others, by the use, potential or actual, of symbolic or physical violence. Institutions of society are built to enforce power relationships existing in each historical period, including the controls, limits, and social contracts, achieved in the power struggles.⁴⁹

There is, however, a fourth layer embedded in Castells' explanation of social structures. A layer that interacts with and influences production and consumption, experience and power (as well as culture) – technology; taken by Castells to mean “the use of scientific knowledge to specify ways of doing things in a reproducible manner.”⁵⁰ Technology can fit in with every other layer of a social structure mentioned above; it is used as knowledge to obtain a given product (production/consumption), it is also decisive in the realm of power (for example, with respect to military technology) and in the sphere of human experience (for example, reproductive technology as a means for *framing* family relationships and, for instance, we are now seeing the rise of security technology which

⁴⁹ *Ibid* at 7.

⁵⁰ *Ibid* at 8.

would effectively frame relationships between society proper and the criminal Other).⁵¹ Technology and meaning, for Castells, are “fundamental ingredients of human action – an action that ultimately produces and modifies social structure.”⁵²

Castells proposes that we have entered a *new technological paradigm*, one in which micro-electronics-based information/communication technologies and genetic engineering technologies are fundamental characteristics. This paradigm, he argues, has given rise to the network society; a society in which knowledge and information are not particularly central in their role (because these two things were already central in all societies).⁵³ Instead, a new set of information technologies is held paramount.

I contend that they [the new information technologies] represent a greater change in the history of technology than the technologies associated with the Industrial Revolution, or with the previous Information Revolution (printing). Furthermore, we are only at the beginning of this technological revolution, as the Internet becomes a universal tool of interactive communication, as we shift from computer-centered technologies to networked-diffused technologies, as we make progress in nanotechnology (and thus in the diffusion capacity of information devices), and, even more importantly, as we unleash the biology revolution, making possible for the first time, the design and manipulation of living organisms.⁵⁴

Castells asserts that the rise of the network society transforms all spheres of life. Economically, we are seeing a new order; an economy which has become *informational* (the capacity to generate knowledge and process or manage information determines the productivity and competitiveness of all economic units), *global* (with the rise of new communications technologies, economic units can now compete on a global scale) and *networked* (economic units are becoming ‘internally de-centralized’ and externally

⁵¹ *Ibid* at 8-9.

⁵² *Ibid* at 9.

⁵³ *Ibid* at 9.

⁵⁴ *Ibid* at 10.

networked with other economic units).⁵⁵ In keeping with the new economic order, Castells argues that work and employment are “substantially transformed”; with more cognizance being given to *flexible work* (part-time and contractual employment, informal or semi-formal work agreements *et cetera*) and the ‘*feminization*’ of labor (which leads to the ‘flexible woman’s’ gradual replacement of the ‘organization man’).⁵⁶

Culturally, too, there are changes. We see culture being more and more organized around electronic media (such as the internet and cellular telephones). People are networked culturally in a way like never before; the mass media (television, satellite television, radio) can reach out to everyone or only a targeted few. In a way Castells is arguing that people are becoming more and more detached from one another, but at the same time becoming closer to one another.

Our symbolic environment is, by and large, structured by this flexible, inclusive hypertext, in which many people surf each day. The virtuality of this text is in fact a fundamental dimension of reality, providing the symbols and icons from which we think and thus exist.⁵⁷

Politically, the world is being influenced by culture (and, specifically, the new networked culture).

In almost all countries, media have become the space of politics. To an overwhelming extent people receive their information, on the basis of which they form their political opinion and structure their behavior.⁵⁸

Overall, it is safe to assume that the new network society outlined by Castells is transforming the way we interact, the meanings we create and our relationships with others.

⁵⁵ *Ibid* at 10-11.

⁵⁶ *Ibid* at 11.

⁵⁷ *Ibid* at 13.

⁵⁸ *Ibid* at 13.

More importantly for our needs here is the model of nodal governance forwarded by Burris, Drahos and Shearing which is based to some extent on the model of the network society discussed above. Networks are important in their analysis, most especially in the information age because “technology...has allowed networks to retain their adaptability and at the same time achieve superior levels of coordination and management of complexity”.⁵⁹ The authors introduce us to the idea that any site of governance can be thought of as a *node of governance*. Nodes, however, can only be conceived of with the disregard of a state-centered view of governance. It is clear that we have moved away from this view, as Shearing and Wood note, “[p]olicing has become increasingly an activity in which agencies and agents outside of the state are engaged.”⁶⁰

Nodes, Burris, Drahos and Shearing argue, are sites where the lines of a particular network intersect and are sites within an OGS where governance takes place.⁶¹ For the authors, nodes within an OGS are sites where knowledge, capacity and resources are mobilized to manage a particular course of events or a particular outcome. The authors assert that a node exhibits four particular characteristics:

- A way of thinking (**mentalities**) about the matters that the node has emerged to govern;
- A set of methods (**technologies**) for exerting influence over the course of events at issue;
- **Resources** to support the operation of the node and the exertion of influence; and
- A structure that enables the directed mobilization of resources, mentalities and technologies over time (**institutions**).⁶²

⁵⁹ Burris et al. (note 1) at 37.

⁶⁰ Shearing C D & Wood J ‘Nodal Governance, Democracy, and the New ‘Denizens’ (2003a) 30(3) *Journal of Law & Society* 400 at 403

⁶¹ Burris et al. (note 1) at 37.

⁶² *Ibid* at 37.

Nodes can take a variety of forms; from legislatures to community governance associations, from government institutions to non-governmental organizations *et cetera*. What the authors do stress is the fact that nodes are not virtual points where the lines of a network intersect; they are real even though they do not have a *particular* structure nor are they necessarily formed intentionally to manage an outcome. Nor are nodes necessarily legitimate in their functioning (that is, they do not necessarily function within the bounds of the law) (see Burris, quoted below). What is interesting is that a node can exist both within space and time and within either exclusively, even though it is not a virtual entity. Nodes can exist alone, or they can make up part of a larger assemblage of nodes. Even though it is noted in the literature that the nodes do not need to have a particular structure, some sort of structure is still required for a node to be useful. This point Burris makes vivid:

[A] node must have some institutional form. It need not be a formally constituted or legally recognized entity, but it must have sufficient stability and structure to enable the mobilization of resources, mentalities and technologies over time. A street gang can be a node, as can a police station or even a particular shift at a firehouse. A node like this may be primarily part of an integrated network, like a department in a firm; it may be linked to other nodes in multiple networks without having a primary network affiliation, like a small lobbying firm; or it may be what we call a ‘superstructural node,’ which brings together representatives of different nodal organizations ... to concentrate the members’ resources and technologies for a common purpose but without integrating the various networks – a trade association, for example.⁶³

Nodal governance fits quite neatly into our network society. One cannot forget, however, that even though the rise of the network society has fundamentally changed power relations, power is still essential to our social life and the governance of our social life. As such, nodes must inevitably be sites of power. Peter Drahos makes this point clearly:

⁶³ Burris S ‘Governance, Microgovernance and Health’ (2004) 77(2) *Temple Law Review* 335 at 341-2.

Nodal governance is a theory that focuses on the role of nodes in governance and especially in the way networks can be linked to create concentrations of power for the purposes of exercising governance. Nodes are either actors within a network or the organizational product of two or more networks which are tied together for a common purpose.⁶⁴

When nodes are the organizational product of two or more networks, they are referred to as *super-structural nodes*. These nodes, according to the literature, do not integrate networks like their counterparts.⁶⁵ Instead, the super-structural node brings together actors from different networks and nodal assemblages in order to concentrate resources towards the achievement of a common goal.⁶⁶ Examples of super-structural nodes would include, but not be limited to, South Africa's Business Against Crime (BAC) organization or, on a more global level, the International Police Force (Interpol). Super-structural nodes are viewed as the command centers of networked governance and they are important in society because

[t]ying together networks is one very important way in which nodes gain the capacity to govern a course of events. This tying together creates a node with increased resources at the same time as it creates a structure that enables the mobilization of those resources to produce action by other nodes in the network.⁶⁷

What is important to note at this point is the fact that all nodes are not created equal, they vary (sometimes greatly) in their accessibility, their efficiency, the other nodes they can influence and how that influence is exerted.⁶⁸ This is because technologies, mentalities and access to resources will differ across space and time and these differences will have a

⁶⁴ Drahos P 'Intellectual Property and Pharmaceutical Markets: A Nodal Governance Approach' (2004) 77(2) *Temple Law Review* 401 at 404.

⁶⁵ *Ibid* at 405.

⁶⁶ Burris et al. (note 1) at 38.

⁶⁷ *Ibid* at 38.

⁶⁸ *Ibid* at 39.

great impact on how particular nodes are constituted and managed.⁶⁹ Perhaps not unrelated to this is the assertion that nodes always relate to each other and exert their power over one another with the view to furthering their own interest.⁷⁰ Nodes can act in cooperation with one another (such as in the case of contractual agreements or sponsorship) but can also act in “benign neglect” of one another or in outright conflict with one another (such as in the case of state police organizations and criminal gangs.⁷¹ Whatever the case, it is important to note that nodal governance is useful for conceptualizing and understanding the new forms of governance which now abound around us. As Burris notes:

[Nodal governance is] intended to enrich network theory by focusing attention on and bringing more clarity to the internal characteristics of nodes and thus to the analysis of how power is actually created and exercised within a social system. While power is transmitted across networks, the actual points where knowledge and capacity are mobilized for transmission is the node.⁷²

It is also important to note that nodal governance is lacking in certain respects. This is possibly due to one of two (perhaps not unrelated) reasons. The first has to do with the particular model of society on which it is based, while the second has to do with the level of analysis on which it engages relevant issues. The biggest shortfall of the nodal governance approach when it comes to applying it to transitional states such as South Africa is, in my opinion, its general disregard for the historical and cultural factors on which a particular state or society is based. This is problematic for many nations in Africa generally (and South Africa specifically because of its undemocratic past under apartheid). The atrocities committed under apartheid and their impact on the post-

⁶⁹ *Ibid* at 39.

⁷⁰ Shearing C. D & Wood J ‘Security and Nodal Governance’ Seminar Presentation (Philadelphia: Temple University Beasley School of Law, 25 October 2006).

⁷¹ Shearing & Wood (note 60) at 405.

⁷² Burris (note 63) at 341.

apartheid state is evidenced in the work of many authors⁷³ but this will be dealt with in more detail below.

The shortfall in terms of nodal governance's neglect of historical and cultural aspects most likely has to do with the model of society on which nodal governance is based – Castells' theory of the network society. While Castells recognizes the ideals of production/consumption, experience (or knowledge), power and (not to any great extent) culture, he fails to recognize the histories of societies and how these histories set them apart from one another and, related to this, he fails to give any real weight to the cultural aspects of societies, mentioning them only in passing (in fact, culture is afforded little attention within many contemporary security governance frameworks⁷⁴). The vagueness of the nodal governance framework with regards specific historical and cultural factors influencing nodes and the intricate differences between (public and private) node is encapsulated in the following quote:

In a nodally governed world, states may have unique characteristics, but they occupy *no special analytic space*: they govern and are governed like other nodes. It follows, however, that non-government nodes do not occupy a space that is defined as different in relation to government. The public-private distinction is functionally unimportant, and normatively problematic.⁷⁵

The private-public distinction is also an important one when dealing with transitional states for the primary reason that public security governance agencies (such as the police) are often drastically under-resourced and consequently less able to deal with crime than private governance entities. In other words, private entities of governance often operate

⁷³ See Shaw & Shearing (1998); Newham, Masuku & Dlamini (2006); Hansson & Van Zyl Smit (1990) among others.

⁷⁴ Jennifer Wood (2004: 32) addresses this in a paper entitled *Cultural Change in the Governance of Security*; she notes the following:

While significant progress has been made in shifting from a state-centred to a plural or nodal conception of governance, scant attention has been paid to the question of how to analyze *culture(s)* and the prospects for *cultural transformation* within this new framework.

⁷⁵ Burris et al. (note 1) at 56.

at a higher capacity than public auspices of governance so the private-public distinction is useful to recognize even at purely a conceptual level. Bruce Baker⁷⁶ more adequately deals with the private-public divide (although, he too finds it not conceptually useful when concerned with Africa) and, more importantly the historical aspects of African societies in his two articles *Living with Non-State Policing in South Africa* and *Multi-choice Policing in Africa*. It is in the latter article that he forwards the multi-choice model of security governance. While the nodal governance model and the multi-choice models are not mutually exclusive, they both contribute greatly towards a hybridized model of security governance.

In Africa, the issues of pluralisation, fragmentation and commodification of policing become even more pertinent and in need of attention; the turbulent histories suffered by many African states (such as South Africa, Uganda, Zimbabwe and Zambia) means that the state of democracy on the continent is already relatively unstable.⁷⁷ Also, many states in Africa have had their fair share of non-state governance systems (whether authorized by law or not), which means that the ‘new’ policing further complicates matters. Commentaries on the effects of fragmented policing are in abundant supply; Baker⁷⁸ has been particularly instrumental in this respect. In his article on multi-choice policing Baker gives a basic overview of non-state policing on the continent.⁷⁹ He makes mention of the fact that traditional justice systems have been in place for a long time due to the relative incapacity of the public police to provide acceptable levels of security – “public policing in Africa not only fails to serve all equally...but neither is it free”.⁸⁰ The fragmented nature of policing in Africa is made vividly clear by Baker in his book *Taking the Law into Their Own Hands*. He distinguishes between policing as an *activity* rather than being confined to a police organization and makes it clear that policing in Africa is a complex and multi-faceted issue.⁸¹

⁷⁶ See Baker (2002a, 2004)

⁷⁷ South Africa is probably the youngest democracy, only being freed from their colonial past in 1994.

⁷⁸ See Baker (2002a, 2002b, 2004)

⁷⁹ Baker B ‘Multi-choice Policing in Africa: Is the Continent Following the South African Pattern?’ (2004) 35(2)*Society in Transition* 204-223.

⁸⁰ *Ibid* at 206. In the last part of this sentence, Baker is referring to the public police always demanding bribes for their services.

⁸¹ Baker B *Taking the Law into Their Own Hands* (England: Ashgate Publishing House, 2002b) at 1

Baker's multi-choice model of security governance addresses the fact that the African citizen is often overwhelmed by a barrage of security providers, some of which are public, but most of which are private. It is from this group of providers that the African citizen must choose. This has been referred to as 'institutional shopping' by others.⁸² Baker describes the multi-choice model as such:

As people in Africa move about their daily business, so they move from the sphere of one security agency to which they would naturally look for protection to another or are faced at times with a choice of agency, to be made in terms of personal experience, preference for mentality (surveillance or punishment), cost or communal status.⁸³

Even though Baker notes that the public/private divide is not useful in terms of plural policing in Africa,⁸⁴ he at least recognizes it as being problematic for the multi-choice policing model. His main selling point, however, has to do with the fact that Baker recognizes that African states possess their own (possibly violent) histories and that these histories *could* have changed the course of their development in terms of governance.⁸⁵

Africa outside of South Africa is still largely uncharted. Is it like South Africa, but 20 or more years behind because of its economic development; or is it charting its own course or courses *born out of its own history*?⁸⁶

While Baker's work is useful, a third player in the security governance field needs to be considered. Jennifer Wood, in her paper entitled *Cultural Change in the Governance of Security*, builds on the nodal governance model by arguing that not only do different governing nodes possess different capacities (ways of acting), knowledges (ways of

⁸² Bierschenk T & De Sardan J 'Powers in the Village: Rural Benin Between Democratisation and Decentralisation' (2003) 73(2) *Africa* 145-73.

⁸³ Baker (note 79) at 206.

⁸⁴ *Ibid* at 206.

⁸⁵ *Ibid* at 204.

⁸⁶ *Ibid* at 204.

thinking) and resources, they often take on the sensibilities of other nodes in order to further their progress in the security field.⁸⁷ In this way, she further acknowledges the plural nature of governance and develops a model of local governance “aimed at fostering a new culture of security promotion along with the institutional arrangements and processes required to support this culture.”⁸⁸ While largely focused on the public police and their resistance to changes in the security field due to their engrained culture, Wood’s work is an important contribution to this paper because it addresses the cultural sphere of security governance; a sphere not often addressed.

A hybrid of these three models would be ideal for states on the African continent. Because of their, often violent, histories and their rich cultural diversity (for example, South Africa has eleven official languages) African states sport a unique form of democratic governance; one that is possibly hybridized in itself. Built on the nodal governance framework, I would like to propose, as Burris, Drahos and Shearing do, that we see nodes in a governance network not as isolated entities, but as interactive and dynamic. But also to go further than this, I propose that we see nodes as *assimilating* one another’s qualities in order to govern more effectively. Also, nodes should be seen as the products of history and culture as well as the products of the outcomes they arose to govern. Outcome-generating systems should not be seen as basic and fundamental in their functioning, they should be recognized as human societies, innately complex with no predictable outcomes. In the same light, the network society should be seen not as flat and two-dimensional, but as three-dimensional, having links going both upwards and downwards to signify those actors (or nodes) governing outcomes *below* and *above* government as well as alongside and *through* government,⁸⁹ as well as to signify the complex and often incoherent state of African governance systems.⁹⁰ This hybrid model is more readily acceptable to me in terms of its holistic nature and its relevance to states in Africa and other transitional states in the world.

⁸⁷ Wood J ‘Cultural Change and the Governance of Security’ (2004) 14(1) *Policing & Society* 31 at 31.

⁸⁸ *Ibid* at 40.

⁸⁹ Loader (note 25) at 324.

⁹⁰ See Baker (2002a, 2004).

Indirect Rule, Commodification and Governance Deficits

Two important concepts have now come to the fore with the changes in security governance over the last thirty years; the first can be seen as a colonial throw-back in terms of managing and governing a particular society, while the second has to do with the negative outcomes of the new forms of governance taking place globally. I will deal with each in turn below.

Postmodern governance has become detached from the state. The modern state has adapted and learnt to selectively decentralize; that is, decentralize its peripheral functions while still retaining control of its core functions. We have seen this taking place not only in the realm of security governance but also in other spheres of government (for example, the privatization of previously government-owned services such as transport networks and medical services). Here we could use Osborne and Gaebler's nautical analogy of the state performing the *steering* functions of governance while leaving others to perform its *rowing* functions.⁹¹ Shearing and Wood put it this way:

Central to neo-liberal sensibilities has been the argument that the 'rowing' of governance is more effective and efficient if it takes place locally and if governmental services are provided through markets and market-like mechanisms. The reinvention of governance that has taken place under the guidance of this sensibility has promoted arrangements that enable the 'steering' of governance to remain within state agencies that are accountable to elected legislatures.⁹²

The decoupling of state's rowing and steering functions has led to the development of a security market which has commodified security to a great degree over recent decades. This commodification exercise has led to a number of problems for less well-off, less well-represented individuals and communities around the world; to borrow Castells' term

⁹¹ Osborne D & Gaebler T *Reinventing Government* (New York: Plume, 1993).

⁹² Shearing & Wood (note 60) at 411.

– a ‘fourth world’,⁹³ forgotten by the rest of the world and left without safety and security. Shearing and Wood’s paper *Governing Security for Common Goods* is useful in understanding these problems. They outline several key concepts which are of great value to this project. In their paper, they pose the following question: “...how do we govern security in ways that promote objectives and concerns of ‘communities’?”⁹⁴ And related to this:

...what kinds of *nodes* and *nodal arrangements* are required to promote and enhance *common* goods and *common* interests that are consistent with *public* interests?⁹⁵

The authors place the “public” and the “private” on two ends of a continuum (with public interests and private interests on their respective sides). *Common interests*, they argue, fall on neither side of this continuum, but somewhere in-between; “we are concerned with the question of how to enhance *common* interests that are neither purely “public nor purely “private”, but somewhere in the middle of a continuum”.⁹⁶ The middle of this continuum, according to the authors, is made up a variety of collectives that share common objectives and concerns;⁹⁷ community or common institutions of governance operating by means of community contracts within and across communal spaces.⁹⁸ Examples of contemporary community institutions would include Business Improvement Associations (Districts)⁹⁹ and gated communities¹⁰⁰.

⁹³ Castells M *End of Millennium* (Oxford: Blackwell, 1998)

⁹⁴ Shearing C D & Wood J ‘Governing Security for Common Goods’ (2003b) 31 *International Journal of the Sociology of Law* 205 at 206.

⁹⁵ *Ibid* at 206 [original emphasis].

⁹⁶ *Ibid* at 206.

⁹⁷ *Ibid* at 206.

⁹⁸ See Hermer J, Kempa M, Shearing C & Wood J ‘Policing in Canada in the 21st Century: Directions for Law Reform. Report to the Law Commission of Canada (Ottawa: Law Commission of Canada, 2002) and Kempa M, Stenning P & Wood J ‘Policing Communal Spaces: A Reconfiguration of the ‘Mass Private Property’ Hypothesis’ (2004) 44(4) *British Journal of Criminology* 562-581

⁹⁹ Murphy J ‘The Private Sector and Security: A Bit on Bids’ (1997) 9 *Security Journal* 11-13.

¹⁰⁰ Kennedy D J ‘Residential Associations as State Actors: Regulating the Impact of Gated Communities on Non-Members’ (1995) 105(3) *Yale Law Journal* 761-793.

Community governance institutions (such as corporate bodies, discussed below) have common interests which may or may not overlap with public interests and, in some cases, “community auspices of government might pursue objectives that are unambiguously in conflict with the pursuit of public goods”.¹⁰¹ A common feature of community governance (in the form of gated communities, university campuses and Business Improvement Associations) is the regulation of individuals through *community contracts* which might include requiring residents (temporary or permanent) to comply with set norms “that far exceed those established by the state”.¹⁰² By complying with these norms, individuals or residents receive common goods such as security provision. It is important to note that through the payment of fees and levies (which act as private taxes), residents living in these secluded, *exclusive societies*¹⁰³ buy or opt in to a market for common goods;¹⁰⁴ a market to which access is rested on a persons’ buying power rather than one’s social citizenship.¹⁰⁵ It is here that Jock Young’s words ring true:

The transition from modernity to late modernity can be seen as a movement from an *inclusive* to an *exclusive* society. That is from a society whose accent was on assimilation and incorporation to one that separates and excludes.¹⁰⁶

Academics have introduced a new notion to emphasize the exclusionary capacity of community governance which they have termed “club goods.”¹⁰⁷ A “club good” can be distinguished from a public good by its excludability; “if a shared good can be rendered *de facto* or *de jure* excludable it may be better described as a ‘club good’.”¹⁰⁸ The ‘need’

¹⁰¹ Shearing & Wood (note 94) at 209. See generally Hermer J & Mosher J (eds) *Disorderly People: Law and the Politics of Exclusion in Ontario* (Halifax: Fernwood Press, 2002).

¹⁰² *Ibid* at 209. See generally Kennedy (note 100).

¹⁰³ Young J *The Exclusive Society* (London: Sage, 1999).

¹⁰⁴ Webster C ‘Property Rights and the Public Realm: Gates, Green Belts, and Gemeinschaft’ (2002) 29 *Environment and Planning B: Planning and Design* 397-412.

¹⁰⁵ Shearing & Wood (note 60).

¹⁰⁶ Young (note 103) at 7.

¹⁰⁷ Crawford A & Lister S ‘Integrated Local Security Quilts of Frayed, Fragmented and Fragile Tangled Webs? The Patchwork Shape of Reassurance Policing in England Wales. Paper presented at In Search of Security: An International Conference on Policing and Security (Quebec: Law Commission of Canada, 2003).

¹⁰⁸ *Ibid* at 20.

for this excludability is brought about by the rising fear of crime¹⁰⁹ and (perhaps as a result) the rise in awareness of the criminal ‘Other’.¹¹⁰ From a normative point of view, the rise of community governments has led to the exacerbation of *governance deficits* which can be categorized into

[(a)] *deficits of self-direction* (inequalities in the determination of, and access, to common goods), [(b)] *deficits of community capital* (inequitable access to economic, social and other forms of capital to support community governance), and [(c)] *deficits of regulation* (the absence of capital to support community governance).¹¹¹

Individuals who enter into community contracts, we shall use the term “denizens”¹¹² to describe them because it is an all-encompassing term,¹¹³ have access to decision-making processes which have a direct bearing on common goods as well as the common goods themselves, access to economic, social and other forms of capital and access to the capital to support community governance. Governance deficits come about when certain auspices or actors play a more direct role in governance or have greater access to decision-making processes than others. It has been noted that access to these processes (or the common goods that arise from them) is not guaranteed by social citizenship but rather by one’s denizenship, a status which is ultimately the product of one’s buying power.¹¹⁴ Many authors have noted¹¹⁵ that only some actors and communities have the (financial) resources to participate in the markets for goods. These concepts can be

¹⁰⁹ Newburn (note 16).

¹¹⁰ Loader I ‘Policing, Securitization and Democratization in Europe’ (2002) 2(2) *Criminal Justice* 125 at 143; Shearing & Wood (note 94) at 220.

¹¹¹ Shearing & Wood (note 94) at 207 [original emphasis].

¹¹² Hammar T *Democracy and the Nation State, Aliens, Denizens and Citizens in a World of International Migration* (1990).

¹¹³ “Denizens” are, according to Shearing and Wood (2003a: 408), persons within the regulatory domain of a governmental node. Under this definition, residents of gated communities, patrons at an airport or bus station, and persons residing (temporarily or permanently) in a hotel or block of flats would all be regarded denizens. Denizenship refers to a particular affiliation to any sphere of governance. The term also holds underlying meanings associated with social capital and involves inclusions and exclusions that have their roots in various categories of otherness (Isin, 2000: 4).

¹¹⁴ Shearing & Wood (note 60).

¹¹⁵ Loader (note 8); Loader & Walker (note 12); Hope T ‘Inequality and the Clubbing of Private Security’ in Hope T & Sparks R (eds) *Crime, Risk and Insecurity* (London: Routledge, 2000); Newburn (note 16).

applied to the existence (or lack) of institutional arrangements for mobilizing local capacities and resources (deficits of self-direction), exclusions from common goods and common spaces (deficits of community capital) and contractual accountability (deficits of regulation). This leaves us with a dilemma; one that has to do with the commodification of security.

...as individuals are thrown back upon their own resources, the commodification of security effects a relocation of policing services in favour of the (already) advantaged at the expense of the disadvantaged...It serves, in particular, to harden divisions between those consumers who are well placed to become active risk managers and those (generally more 'at risk' groups) whose demands for safety the security market expresses relatively little interest in satisfying.

It is these widening cleavages in the distribution of policing benefits and burdens, in respect of a public good that plays an ... 'essential role in social cohesion'¹¹⁶

It is safe to assume that the pluralisation of governance is not always democratic in nature because the 'local rowing, state steering' arrangement promoted by neo-liberal sensibilities has not quite worked according to plan. In fact, many authors have commented on the fact that the fragmentation of governance provision has compounded inequalities.

The pluralisation of policing promises to increase safety and has already done so in some places. The problem is that pluralizing under market auspices at present does not improve security equally across society. *It favors institutions and individuals that are well-to-do.*¹¹⁷

What is more is that the evidence suggests that the growing wealth disparity between rich and poor is associated with a growing governance disparity.¹¹⁸ One of the main driving forces behind the fragmentation of policing has been the growth of the corporate

¹¹⁶ Loader (note 25) at 331.

¹¹⁷ Bayley & Shearing (note 9) at 593 [my emphasis].

¹¹⁸ Shearing & Wood (note 60) at 412.

sector;¹¹⁹ corporations have become “strong actors”;¹²⁰ “powerful auspices of security governance”,¹²¹ involved in *both* the rowing and the steering of governance and, as a result, have become what Macaulay has termed ‘private governments’.¹²² In this view corporations, economically (privately) motivated, can enforce governance in accordance with their own conceptions of order.¹²³

Shearing and Wood put the rise of corporations as auspices of governance down to the shift in property relations around the world.¹²⁴ “New” spaces, or privately owned communal spaces (such as leisure centres, shopping malls and Business Improvement Districts); ‘mass private property’¹²⁵ are becoming a common feature under the “new regulatory state”.¹²⁶ The emergence of corporations as auspices of governance is also made possible by a shift in property relations in North America and other parts of the world, which has meant that the “re-feudalization” of security governance is located within state law; particularly property and contract law.¹²⁷

Corporate entities possess the resources required to directly govern and to mobilize the resources necessary to implement these directions. Such resources include, but are not limited to the use of private security entities such as those hired by Business Improvement Associations¹²⁸ or residential communities.¹²⁹ In such cases these agents

¹¹⁹ Shearing C D (2005) ‘Paradigms for policing’ Centre for Violence and Reconciliation (CSVr) available online at: <http://www.csvr.org.za>, last accessed 06/02/2007.

¹²⁰ Braithwaite J & Drahos P (2000) *Global Business Regulation* (Cambridge: Cambridge University Press, 2000) at 2.

¹²¹ Shearing C D ‘Policing Our Future’ in Henry, A & Smith, D. J *Transformations of Policing* (Edinburgh: Ashgate, 2007) at 5.

¹²² Macaulay S ‘Private Governments’ in Lipson, L & Wheeler, S (eds) *Law and the Social Sciences* (New York: Russell Sage Foundation, 1986).

¹²³ Shearing (note 119)

¹²⁴ Shearing & Wood (note 94) at 208.

¹²⁵ Shearing C D & Stenning P ‘From the Panopticon to Disney World: The Development of Discipline’ in Doob, A & Greenspan, A (eds) *Perspectives in Criminal Law: Essays in Honour of John L.L.J. Edwards* (Ontario: Aurora, 1985).

¹²⁶ Braithwaite (note 2).

¹²⁷ Hermer J Kempa M Shearing C & Wood J ‘Policing in Canada in the 21st Century: Directions for Law Reform. Report to the Law Commission of Canada (Ottawa: Law Commission of Canada, 2002).

¹²⁸ Murphy (note 99); Greene J, Seamon T & Levy P ‘Merging Public and Private Security for Collective Benefit: Philadelphia’s Centre City District’ (1995) 14(2) *American Journal of Police* 3-20.

¹²⁹ Noaks L ‘Private Cops on the Block: A Review of the Role of Private Security in Residential Communities’ (2000) 10 *Policing & Society* 143-61.

do not operate as state agents with a rule-at-a-distance framework but rather work for non-state governing auspices to promote, in some cases, narrow private interests but more often common interests (such as the interests of a business community). Sometimes these common interests overlap with public interests. At other times, however, certain common interests (such as those of business) may not be compatible with other common interests (for example, those of the homeless), which could raise complex public interest (and possibly constitutional) arguments.¹³⁰

All of these issues present a particular set of problems for transitional states particularly, especially with respect to accountability. As Burris, Drahos and Shearing note, “nodal governance *permits the concentration of unaccountable power*, concentrations that can act through networks to globalize inequalities”.¹³¹ Moreover, the pluralisation of policing makes accountability (and therefore democracy, equity and a sound human rights base) difficult to achieve in some respects. Bayley & Shearing make this point clear when they note that democratic principles require that police (and policing in general) be accountable to the public so that they serve the interests of the public.¹³² However, “[t]he problem with this view is that the accountability provided by markets accrues to buyers of private security and not to all people who might be affected by it”.¹³³

The commodification of security has also allowed preference to be given to financial or contractual accountability¹³⁴ over social or public accountability. This is not merely happening at the non-state level either; the public police in a number of states (transitional states included) have begun to adopt a more managerial approach to policing making them more financially accountable.¹³⁵ Many authors have spoken about the effects of pluralisation on accountability. Braithwaite puts it this way:

¹³⁰ Shearing & Wood (note 94) at 209.

¹³¹ Burris et al. (note 1) at 58 [my emphasis].

¹³² Bayley & Shearing (note 9) at 596.

¹³³ *Ibid* at 596.

¹³⁴ Loader (note 8) at 375, 382.

¹³⁵ For a full discussion of this related to Britain see Loader 1999 ‘Consumer Culture and the Commodification of Policing and Security’ *Sociology* 33(2): 373-392.

The realities of the new regulatory state pose severe accountability problems. The power of the state police might be constrained by legal rights. In the world of the new regulatory state, when it wants to abuse these rights it might contract the work out to a private policing organization that is not subject to them, or suggest that private litigants do so.¹³⁶

This issue, however, will be dealt with in much greater detail in the chapters to follow. The fact of the matter is that the fragmentation of policing has made the public police more aware of their position; leading them to greater levels of ‘managerialism’, ‘consumerism’ and ‘promotionalism’.¹³⁷ The rise of consumerism in late-modernity has been the main driving force behind the commodification of security and the commodification of the public police. Mike Brogden uses the example of South Asia and puts it like this:

Citizens were to become consumers, with telephone numbers of officials to be contacted in case of complaints against the police displayed prominently at police stations. Visitors to the Police Commissioner’s Office were to be received by reception officials. Grievances would be addressed speedily. Station house officers had been directed to interact with the office-bearers of residents’ associations. Community problem-solving contracts would be enhanced.¹³⁸

¹³⁶ Braithwaite J ‘Accountability and Government under the New Regulatory State’ (1999) 58(1) *Australian Journal of Public Administration* 90 at 90.

¹³⁷ Newburn (note 16) at 837.

¹³⁸ Brogden M ‘Commentary: Community Policing: A Panacea From the West’ (2004) 103 *African Affairs* 634 at 646.

Chapter III

Aspects of Transitional States

“Due consideration should be given to transitional processes and hopefully it has now become clear for us all that the international community cannot afford – be it morally or financially – to allow countries to relapse into conflict. That is why post-conflict peacebuilding is so crucial. Peace must be made sustainable in the long term”
(Valle, 2003)¹³⁹

Contemporary interest in peace-building, peacekeeping, the maintenance of democracy and the governance of security in transitional states has been rife since the third wave of democracy.¹⁴⁰ Previously war-torn states like Northern Ireland and the Democratic Republic of Congo, and states recovering from violent and oppressive pasts like South Africa have all come into the limelight of late. A country in transition has been described as a society that shows substantial evidence of the modification of some or other distinguishable feature by which it had previously been identified.¹⁴¹ It has also been noted that a transitional state is one which has recently moved from an authoritarian form of governance to a democratic form of governance.¹⁴² Both of these definitions are suitable for our purposes here. It is important to recognize the distinction between *transitional* and *collapsed* or *failed* states as the two are often confused as being one and the same. Robin Luckham speaks about collapsed states as follows:

The terms ‘state failure’ and ‘state collapse’ are often used to characterise the state’s loss of its monopoly of public power and public coercion during conflicts.

¹³⁹ Valle H Statement to the United Nations Security Council, available at <http://www.un.int> (New York, May 2003) last accessed 06/02/2007.

¹⁴⁰ Huntington S P ‘Democracy’s third wave’ (1991) 2(2) *Journal of Democracy*..

¹⁴¹ Boskoff A ‘Postponement of Social Decision in Transitional Society’ (1953) 31(3) *Social Forces* 229 at 229.

¹⁴² Luckham R ‘Democratic Strategies for Security in Transition and Conflict’ in Cawthra, G & Luckham, R (eds) *Governing Insecurity* (London: Zed Books Ltd, 2003).

Both have to be used with a certain amount of care, since the problem is not always so much the state's loss of its coercive powers, as its abuse of them. 'State failure' is the more usual situation, and implies a normative conception of the states failure to meet its responsibilities towards its citizens.¹⁴³

Issues of security governance become even more pertinent and problematic when dealing with states in transition. In the first instance, it has been noted that crime levels tend to be higher in transitional settings for reasons I will not go into here (for example, Durkheim's anomie theory suggests that rapid social change has criminogenic effects).¹⁴⁴

It has often been said that crime in South Africa is related to the transition from authoritarian rule to democracy. Similar patterns appear to apply in other transitional societies such as those which have moved from military to civilian rule in Latin America, the former communist regimes of Eastern and Central Europe; as well as states in Africa, most clearly illustrated by Nigeria and Mozambique, which have moved from authoritarian forms of rule or civil war to fledgling democracies.¹⁴⁵

Secondly, the criminal justice machinery by which the authoritarian state used to function before its democratization is usually warped and obscure because of its use in the support of an oppressive government. This is usually, if not always, the criminal justice system that states in transition to democracy have to work with. To take Alvin Boskoff's classic view, "[transitional society]...is marked by a series of structural and psychological tensions which are products of an imperfectly revised social structure."¹⁴⁶ This problem faces all transitional states. The lack of democratic structures of governance and, related to this, the lack of social accountability makes states in transition unique. In a conference paper on the governance of security, David Jemibewon noted the following about the Nigerian transition:

¹⁴³ *Ibid* at 11.

¹⁴⁴ Durkheim E *Le suicide* (Paris: Alcan, 1897).

¹⁴⁵ Shaw M 'Crime, Police and Public in Transitional Societies' (2002) 49 *Transformation* 1 at 1.

¹⁴⁶ Boskoff (note 141) at 229.

Virtually every institution had to undergo a learning process, having been militarized previously and having no standard to fall back on due to the absence of a constitutional democratic culture and the lack of democratic institutional structures.¹⁴⁷

Third, and perhaps not unrelated, because of the (usually) violent and oppressive nature of past experiences, citizens of transitional states tend to harbor feelings of distrust and disdain for the institutions which govern them which makes it difficult for these institutions (especially the state's police force) to establish any kind of legitimacy within the state. Moreover, in situations where governance institutions are (or were) not viewed as legitimate by the citizens they govern, it becomes difficult for these institutions to enforce the rule of law without resorting to physical coercion.¹⁴⁸ It is also the case that this resort to physical violence further reinforces that institution's lack of legitimacy, making the situation a self-fulfilling prophecy.¹⁴⁹ It is a truism that weak states often cause global problems because of their inability to relate properly to the international system of governance.

In the modern world, the state – at least in theory – has to fulfil a dual function with regard to political order: first, the state shall organise and guarantee public order domestically within a defined territory; second, all states together constitute the international system and, thereby, the global order. Ineffective, weak, failing or failed states – which can be subsumed under the rubric of *fragile statehood* – tend to undermine both functions and cause problems at the national, regional and global level. In particular, for experts on development issues, it is common knowledge that many post-colonial (or post-Soviet) states are unable to provide basic public functions and services vis-à-vis their citizens and are incapable of

¹⁴⁷ Jemibewon D 'The Nigerian Experience' Crime and Policing in Transitional Societies. Conference Paper (Johannesburg, 30 August – 1 September 2000) at 29.

¹⁴⁸ Guelke A 'Crime, Justice and the Legacy of the Past' Crime and Policing in Transitional Societies. Conference Paper (Johannesburg, 30 August – 1 September 2000) at 61.

¹⁴⁹ *Ibid* at 61.

performing their duties and responsibilities as members of the international community.¹⁵⁰

Luckham notes two narratives of security governance in transitional states which may be useful for our purposes.¹⁵¹ The first is optimistic; it has to do with the advance of Western liberal democracy which started in South America and parts of Asia before the end of the Cold War and continued in the 1990s with the dissemination of state socialism in the USSR and Eastern Europe and the “wholesale dismantling of ‘developmental dictatorships’ or bureaucratic-authoritarian regimes’ in the South.”¹⁵² The narrative goes on to suggest that by the late 1980s free market economics was firmly in place as the developmental norm for international financial institutions (IFIs) and donor organizations. Political pluralism and good governance practices followed closely which cleared the path for market-orientated economic reforms in weak or failing states.¹⁵³ In the South and the East state democratization was driven by a demand for political freedoms and participation.¹⁵⁴

The second narrative is substantially less optimistic. It questions whether the dismantling of authoritarian regimes in the South and communist rule has brought about genuine democratic transitions or new forms of domination by the elite.

Rather than enjoying healthy political pluralism, many new democracies have been torn apart by ever more violent ‘new’ conflicts, often on the basis of ethnic or religious identities.

These political crises are partly attributed to the contradictions of the new orthodoxies of democracy and the market, and their failure to address

¹⁵⁰ Schneckener U ‘Fragile State-hood, Armed Non-state actors and Security Governance’ in Bryden A & Caparini M (eds) *Private Actors and Security Governance* (Geneva: LIT & DCAF, 2006) 23 at 23.

¹⁵¹ Luckham (note 142) at 5.

¹⁵² *Ibid* at 5.

¹⁵³ *Ibid* at 5.

¹⁵⁴ *Ibid* at 5.

international inequalities and rising world-wide poverty, arguably aggravated by economic stabilisation and adjustment policies imposed by IFIs and donors.¹⁵⁵

These new conflicts, Luckham argues, give rise to new insecurities in transitional nations.¹⁵⁶ Many transitional democracies go through rigorous transformations to stem the tide of new conflicts arising and to curb one or more of the three problems mentioned above (those of rising crime levels, outdated institutional machinery and public skepticism). These transformations, which may or may not be effective, wholly affect the capacity of state institutions of governance to deal with and effectively neutralise problems (such as high crime rates and prison over-crowding). I would like to borrow a useful term from Boskoff, if I may, to describe this capacity as the ability to make *social decisions*.¹⁵⁷ Boskoff describes social decision as the organized response of a social system to deal with social and material innovations (problems) and notes that social decision may take one of two forms:

(1) [T]he *problem-solving* variety, which involves a relatively conscious attempt to meet crises squarely and with minimum strain on the future operation of the social system; and (2) the *postponement of social decision*, or an inadequate degree of appropriate attention to innovations.¹⁵⁸

The latter form of these can be described as social indecision, which is rife in the transitional state because of its lack of institutional mechanisms to deal with problems promptly and effectively. In this way, social indecision can be seen as both the resultant of and contributing factor to the transitional situation facing a particular state. As a result social indecision acts as a vicious cycle being created by the transitional situation *and* acting to block effective institutional developments. Transitional or fragile states are in a truly unique position in that, to go back to my previous point of citizen skepticism of security mechanisms, the actors providing security are often the main source of injustice

¹⁵⁵ *Ibid* at 5.

¹⁵⁶ *Ibid* at 6.

¹⁵⁷ Boskoff (note 141).

¹⁵⁸ *Ibid* at 230.

and insecurity.¹⁵⁹ McLean and Scheye make this point clear – “Healthcare or education provider may not always offer a good service, but they rarely do direct harm. However, the means by which justice and security are delivered or withheld by providers is often a matter of life and death.”¹⁶⁰

What is interesting to note is that recent research suggests that 80-90% of the population in fragile states look to non-state actors for security provision.¹⁶¹ One needs to look no further than Baker¹⁶² for evidence of this. It is a truism that non-state policing networks are embedded in the histories and cultures of many fragile states (specifically in Africa). This legacy dates back to colonial times when ‘rule at a distance’ strategies were commonplace.

This phenomenon presents transitional states with both a unique set of problems and a unique set of opportunities. For one thing, the state would find it extremely difficult to establish its legitimacy and convince its citizens to leave what they have known for years and subscribe to state institutions of governance. Secondly, the preexistence of non-state governance actors means that accountability for what is done in the name of justice and security is either non-existent or very weakly enforced. It is here that the distinction between contractual or financial accountability and public or social accountability¹⁶³ becomes important. Third, and perhaps related to the previous point, is the issue of the “public good” (spoken about above) which may be jeopardized in favour of a more lucrative common or private good, or even a ‘club good.’¹⁶⁴ These points detail some of the problems related to the preexistence of non-state governance actors in transitional states. However, if these states found a way to enhance the capacity of these non-state entities, this may be highly useful in the fight against crime and other social problems. Julie Berg discusses these types of partnerships in South Africa and gives an example of this:

¹⁵⁹ McLean A & Scheye E ‘Enhancing the Delivery of Justice and Security in Fragile States (DAC Network on Conflict, Peace and Development Co-operation (CPDC) Fragile States Group (FSG), 2006) at 3.

¹⁶⁰ *Ibid* at 3.

¹⁶¹ *Ibid* at 4.

¹⁶² See Baker (2002, 2004).

¹⁶³ Loader (note 8).

¹⁶⁴ Crawford & Lister (note 107).

It seems to be the case that the private security companies submit to police authority and there seems to be an understanding that the SAPS 'runs the show'. One security industry representative described the relationship with the SAPS [South African Police Service] as a 'camaraderie'.¹⁶⁵

*The New South Africa: its violent and oppressive past and
post-'war' transition to democracy*

Before 1994, the nationalist driven National Party (NP) had held the reigns to South Africa for more than half a century. Needless to say policing the state prior to 1994 was a very different, and often violent, story. South Africa was a police state and the then South African Police (SAP) force were the most loyal agents of the oppressive government. The SAP "was a deeply racist organization that was at the forefront of enforcing apartheid's immoral and discriminatory laws."¹⁶⁶ The force under apartheid was characterized by an ideology of white male supremacy over their black counterparts.¹⁶⁷ The concept of apartheid was inextricably linked to the ability of the government to contain, oppress and separate black people from the rest of the minority white population.¹⁶⁸ It was the job of the SAP to maintain the apartness and the hate syndrome on which apartheid had thrived. Between the years of 1948 and 1994, a number

¹⁶⁵ Berg J 'Challenges to a Formal Private Security Industry-SAPS Partnership: Lessons from the Western Cape' (2004a) 35(1) *Society in Transition* 105 at 113.

¹⁶⁶ Newham G, Masuku T & Dlamini J (2006) 'Diversity and Transformation in the South African Police Service' Center for the Study of Violence and Reconciliation (CSV) available online at: <http://www.csvr.org.za>, last accessed 06/02/2007.

¹⁶⁷ *Ibid.*

¹⁶⁸ For instance, Stanley Uys (1965: 13) makes the point that:

The theory of apartheid is simple. It is that economic integration leads to political and social integration. Therefore if 12 million Africans in South Africa are allowed to become permanently economically integrated with 3,500,000 whites, they will legitimately demand further rights, which will lead to their political dominance in a racially mixed society. All this apartheid admits

Apartheid suggests, therefore, an alternative to integration, a segregated country in which each racial group will enjoy full rights in its own area.

of uprisings were quashed violently by the police force and, due to the absence of a Bill of Rights, gross incivilities were allowed and, indeed, accepted as normal. The SAP force was determined by the ideology of Afrikaner Nationalism which saw its heyday in the thirties and forties.

By the late-1980s, however, the apartheid war machine had been relatively dismantled. The un-banning of opposition political parties and the release of Nelson Mandela had effectively marked the end of oppressive governance in South Africa. However, the legacy of apartheid was still fresh in the minds of South Africans when the democratically elected government took over in 1994. The scars left by the oppressive regime still showed, and the ANC was cautious in the way it proceeded. A Bill of Rights which protected the most human basic rights was drawn up soon after democratization and the interim constitution of 1993 was finalized in 1996. Gareth Newham notes that:

With the abuses of apartheid era policing still fresh in the minds of many citizens, the architects of South Africa's new constitution were careful to ensure that the police could be held accountable through a number of civilian run structures and institutions.¹⁶⁹

The hard-edged policing strategies that reigned under apartheid were placed aside and in 1996 the National Crime Prevention Strategy (NCPS) was formulated. Its focus was proactive crime prevention rather than reactive crime control. The NCPS prioritized community involvement in crime prevention initiatives and promised to re-engineer the criminal justice system, making it more efficient. These sentiments were short-lived. In 2000, the NCPS was superseded by the National Crime Combating Strategy (NCCS) which focused, as the name suggests, on reactive crime combating. Later, the government would start a campaign entitled zero-tolerance against crime and which brought hard-edged policing practices back from the dead. The notion of zero-tolerance was not just a

¹⁶⁹ Newham G 'Strengthening Democratic Policing in South Africa Through Internal Systems for Officer Control' (2005) 36(2) *South African Review of Sociology* 160 at 160.

nice sounding notion, it was a political ideology, and it cast South Africa into a neo-apartheid – a segregation of alleged criminals from the general population.

The zero-tolerance approach to policing (or ZTP) is testament to the fact that the South African government, even after democratization, remained very politically and economically focused in their fight against crime.¹⁷⁰ This could be attributed to a number of reasons which are beyond the scope of this project. Suffice to say that the all-out *war-on-crime* ideology was fueled by the rise of the fear of crime, the growth in feelings of insecurity countrywide and the inability (or perceived inability) of the newly named South African Police Service (SAPS) to eradicate crime and offer security after 1994. In present times South Africa is much the same; the SAPS are wholly understaffed and under-trained, making them unable to deal with the rising crime rates.¹⁷¹ The public police are going through the same changes that police around the world are going through – the search for a new role in the world of fragmented governance.¹⁷² What they have settled on can only be described as a consumer-orientated role; where managerial practices are paramount and citizens become consumers of security.¹⁷³ They have become just one node in security provision, albeit the dominant one.

In sum, I have outlined above what I think are the key aspects of the governance of security in transitional or weak states. I noted that it was important to recognize the distinction between transitional states and failed or collapsed states, with the former being those states in the transition between autocratic or oppressive rule and democratic rule and the latter being those states which have lost their monopoly over public power and public coercion. The governance of security, I have argued, becomes more problematic and pertinent in the case of transitional states because of three main things. First, *crime levels* tend to rise in transition due to the rapid social change taking place.¹⁷⁴ Second, there is a *lack of legitimate institutions of governance* – governance institutions

¹⁷⁰ This is hardly surprising seeing as crime rates sky-rocketed after 1994.

¹⁷¹ Berg (note 165).

¹⁷² Bayley & Shearing (note 9).

¹⁷³ Berg J 'Private Policing in South Africa: The Cape Town City Improvement District – Pluralisation in Practice' (2004b) 35(2) *Society in Transition* 224-250.

¹⁷⁴ Boskoff (note 141).

are usually handed down from oppressive regimes and are unable to deal with new democratic demands. Third, *public skepticism* of these institutions tends to be high due to their past abuses under autocratic or oppressive regimes.

I have discussed two possible narratives of security governance forwarded by Luckham which I found to be particularly useful. The first has to do with the proliferation of Western liberal democracy after the Cold War and the dismantling of dictatorships and authoritarian regimes while the second narrative questions whether the dismantling of these dictatorships and regimes actually achieves *real* democracy and does not just plunge these nations into new conflicts. I have also discussed the work of Alvin Boskoff who introduced the useful concept of *social indecision* in transitional societies which can be seen as both a result of and a contributing factor to transition. I have noted that most citizens of transitional societies rely heavily on non-state actors of security provision which may have detrimental effects on state legitimacy, accountability and the achievement of the 'public good' but may also be useful in terms of policing partnerships and shared resources. In concluding this section, I have very briefly discussed the past and current state of the South African criminal justice system and the South African Police Service (SAPS).

Chapter IV

Fragmentation, Commodification and Transitional Dynamics: The South African Case

Nature hath made men so equall, in the faculties of body, and mind; as that though there bee found one man sometimes manifestly stronger in body, or of quicker mind then another; yet when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereon claim to himselfe any benefit, to which another may not pretend, as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others, that are in the same danger with himselfe (Hobbes, 1651: 87).¹⁷⁵

We begin this chapter, then, with the common belief that all are created equal and that this is something that should be guaranteed to everyone. New ways of governing security are, however, degrading this guarantee. In this section I am concerned with fragmentation and commodification of security governance in South Africa, a transitional state still recovering from an oppressive regime and a violent past. I am particularly concerned with the way in which the commodification and fragmentation of policing has eroded social accountability in South Africa and how this relates to issues of equity and democracy for all.

I start this section with a discussion of the current trends in the pluralisation of policing in South Africa and compare these to trends taking place abroad. I believe that this comparative perspective would be a useful tool in exploring how commodification and fragmentation affects accountability in South Africa. I then discuss how the pluralisation

¹⁷⁵ Hobbes (note 7) at 87.

of policing affects South African society arguing that it is often detrimental to accountability and, therefore, detrimental to equity and democracy. The purpose of this section, then, is two-fold – (1) to offer a comparative perspective of current trends in the pluralisation of policing in South Africa and abroad, and (2) to forward an argument that the commodification and fragmentation of policing is detrimental to social accountability (in view of contractual or fiscal accountability) and, therefore, detrimental to equity and democratic values.

*Current Trends in Commodification and Fragmentation:
South Africa, Africa, Europe and the United States in
Comparative Perspective*

In his paper, *Commentary: Community Policing: A Panacea from the West*, Mike Brogden argues that policing strategies are being exported from the West and implanted into Africa without due regard to the local capacities, cultures and knowledge already in place.¹⁷⁶ South Africa is well accustomed to this kind of ‘policy transfer’.¹⁷⁷ Elrena van Der Spuy notes that

...there is no single composite framework in terms of which South African policies regarding crime have been constructed over the past eight years. Crime control debates and practices draw freely from different sets of principles and a large pool of competing ideas. For example, in the case of young offenders we are implored to find ways of making peace between victims and offenders within the paradigm of restorative justice. In the case of sex offenders, however, many argue in favour of a much more punitive and segregative approach to “justice” for

¹⁷⁶ Borgden (note 138).

¹⁷⁷ Jones T & Newburn T ‘Comparative Criminal Justice Policy-Making in the United State and the United Kingdom’ (2005) 45 *British Journal of Criminology* 58-80; Nellis M ‘Law and Order: The Electronic Monitoring of Offenders’ in Dolowitz, D (ed) *Policy Transfer and British Social Policy* (Buckingham: Open University Press, 2000); Wolman H ‘Understanding Cross-National Policy Transfers: The Case of Britain and the United States’ (1992) 5(1) *Governance* 27-45.

those who prey off the flesh of women. In other quarters too we speak with forked tongues: calls for zero-tolerance and state-driven saturation policing coexist with calls for greater tolerance to others and selfhelp policing. We remain divided if not confused on matters such as the proper role of the state *vis-à-vis* the central business of crime control. We profess the necessity and desirability of partnerships only to reassert the sovereignty of the state to deliver safety and security.¹⁷⁸

This means that South Africa is literally a melting pot of differing (some compatible, others competing) crime control strategies and policies informed, probably in large part, by ideas from the West and the North and in constant interplay with the new trends towards the fragmentation and commodification of security governance. South Africa's past means that a unique 'patchwork' of policing and security provision (not unlike Europe;¹⁷⁹) has emerged with governance actors operating on both sides of the law (business corporations, volunteer groups, criminal gangs and vigilante groups¹⁸⁰ and community institutions). Below I will very briefly discuss three areas of security governance which I believe are central to the commodification and fragmentation drive – (1) changes in public police focus and culture, (2) the pervasion of private security and (3) the rise of other governance actors (such as community actors and criminal actors).

Public Police

Currently, there is a big drive in South Africa and in other parts of the world towards what I will call *good community-police relations*. This means that the public police, both in South Africa and elsewhere, are not so much a tough-on-crime force (one with the monopoly of legitimate physical coercion) as it is a consumer-orientated machine focused

¹⁷⁸ Van Der Spuy E 'Crime and its Discontent: Recent South African Responses and Policies' in *Crime and Policing in Transitional Societies*. Conference Summary (Johannesburg: University of Witwatersrand, 2001) 167 at 167.

¹⁷⁹ Loader (note 8).

¹⁸⁰ Jassat I *Peace Dealers: An Exploration into the Role of Gangs in Peacebuilding Processes on the Cape Flats since State Democratization* (BSocSc (Hons) Dissertation, University of Cape Town, 2005).

largely on service delivery to the citizen (who has become the consumer¹⁸¹). This ethos of managerialism has been spurred, in my view, in large part by the proliferation of private auspices of security provision and a belief in the need to compete with these auspices. The Hobbesian view of the nation-state has long been replaced and if this nation-state is to hope for any kind of legitimacy it needs to deliver better, and cheaper, services than the corporate entities which have replaced it.

Generally, Africa is following international patterns of fragmentation and commodification. First, the public police's introduction of managerialism, consumerism and promotionalism has been the hallmark of (post)modern policing in the Britain and the United States. Loader has, logically, put this down to the pervasion of consumer culture in recent times:

We inhabit a consumer culture. While disputes abound as to how best to explain and periodise it...few sociological commentators doubt that the practices, beliefs, values and passions associated with consumption lay a major role in structuring contemporary economic, social and cultural life...The recent fate of the English police...appears to exemplify well the hegemony of this consumption-dominated culture and society.¹⁸²

Other authors, too, have been alerted to these developments in public police culture in Britain. Newburn puts this down to two things; first the Metropolitan Police's 'Plus Programme' which aimed to re-present the police force as a service and second, the Conservative Government's Financial Management Initiative which took place in the early 1980s.¹⁸³ In South Africa the move to rename the South African Police (force) to the South African Police *Service* (SAPS)¹⁸⁴ was perhaps a double-edged sword meant both for renewed public trust in the police *and* meant as a drive towards managerialism. There was a big move by South African policy-makers to follow Britain in terms of

¹⁸¹ Brogden (note 138).

¹⁸² Loader (note 8) at 375.

¹⁸³ Newburn (note 16) at 832.

¹⁸⁴ Brogden M & Shearing C *Policing for a New South Africa* (London: Routledge, 1993).

implementing local financial management of the police force in order to improve its cost effectiveness and service delivery.¹⁸⁵

In South Africa, there was a deliberate attempt to replicate the English experience of implementing LFM. The English police force described by Collier (2001) was asked by the Department for International Development (DfID) to assist the South African Police Service (SAPS) in their implementation of LFM, working with the national pilot site of the SAPS in Bloemfontein, Free State.¹⁸⁶

In fact, the National Crime Prevention Strategy (NCPS) of 1996 (even though defunct now) was very much focused on service delivery and the public's perceptions of crime and the criminal justice system. Community policing initiatives have also been pervasive in Africa and overseas. In the United States community policing forwards concepts like problem-solving and partnerships between the police and the communities which they serve¹⁸⁷ and is seen as an effective tool for crime prevention.

In Africa these community developments have been tainted by difficulties in implementation and maintenance. Ruteere and Pommerolle note that community policing in Kenya may operate to reinforce undemocratic principles and oppressive structures in that society¹⁸⁸ and Brogden argues that community policing is a Western solution to local African problems, making it ill-attuned to deal with the unique crime risks presented in Africa.¹⁸⁹ In South Africa, one of the visions of the public police was to foster relationships between themselves and the community¹⁹⁰ and community policing as a model was built into the Interim constitution of 1993¹⁹¹, however, the initiative is impractical for South African purposes. One of the reasons for this is the fact that

¹⁸⁵ Collier P 'Policing in South Africa: Replication and Resistance to New Public Management Reforms' (2004) 6(1) *Public Management Review* 1-20.

¹⁸⁶ *Ibid* at 4.

¹⁸⁷ City Club of Portland 'Community Policing in Portland' (Portland, 2003).

¹⁸⁸ Ruteere M & Pommerolle M 'Democratizing Security or Decentralizing Repression? The Ambiguities of Community Policing in Kenya' (2003) 102 *African Affairs* 587 at 587.

¹⁸⁹ Brogden (note 138).

¹⁹⁰ Cawthra G *Policing South Africa* (Cape Town: Zed Books, 1993).

¹⁹¹ Interim Constitution of South Africa Act 200 of 1993 section 221(2).

Most communities do not have the institutional (organisational) capacity to effectively support community outreach projects. These communities have poorly developed infrastructural capacities, scarce resources and skills, inadequate infrastructural support, and are often isolated from national initiatives.¹⁹²

This has meant that, in contrast to Britain and the United States, the communities most in need of initiatives like these are left out of the loop in South Africa.

Private Security

The role of private policing auspices has become wholly pertinent to any debate about the commodification and fragmentation of policing. In Britain and the United States, the number of corporate auspices that provide security has been steadily growing; in 1994/95 there were a total of 8259 security provision businesses in Britain.¹⁹³ Also the introduction of new security technologies globally has meant that new niches for security provision have begun to spring up. These include new technologies like Closed Circuit Television (CCTV) which is big business in Britain and in South Africa.

The private security industry in South Africa is by and large equally booming. While the figures have fluctuated over the years, in 2005 there were over 4500 security provision businesses registered with the Security Industry Regulatory Authority (SIRA).¹⁹⁴ The big difference between South Africa and Europe and America in terms of private security is the relative lawlessness of some security actors.

The [private security] industry has been plagued with dubious practices, particularly by some of the small, sometimes unregistered, operators. These have tried to establish themselves by cutting costs through paying wages below the

¹⁹² Rakgoadi P S (1995) 'Community Policing and Governance' (Cape Town: Centre for the Study of Violence and Reconciliation (CSV)).

¹⁹³ Newburn (note 16) at 831.

¹⁹⁴ Berg J *The Accountability of South Africa's Private Security Industry* (South Africa: Open Society Foundation, 2006).

national minimum and skimping on firearms training. Stories of illegal activities and of the misuse of weapons are common.¹⁹⁵

I have no doubt that activities like these take place around the world but they seem altogether more pronounced in the African context. Perhaps this is because of the political instability of much of the African continent. In Africa more generally, the private security industry is similar in genealogy and growth (with a few exceptions). In Kenya, for example, the rise of private security firms began in the 1960s and exploded in the 1980s and 1990s. It is estimated that there were as many as 2000 private security firms operating in Kenya in 2005 and this number has continued to rise.¹⁹⁶ Further north, however, the growth of the private security has not been as consistent or as high; in Nigeria there were only an estimated 1500 private security firms in 2005, most of which were relatively small businesses, and in Sierra Leone there were only between 20 and 30 companies operating in the same year.¹⁹⁷ Perhaps these discrepancies are due to the fact that many security ‘companies’ operating in these areas are informally run, for example the Bakassi Boys in Nigeria.¹⁹⁸

Other Non-State Governance Actors

Non-state governance actors in Africa take a variety of forms. From ethnic/clan militias, religious police in Kenya¹⁹⁹ to volatile vigilante groups and criminal gangs in Cape Town²⁰⁰ to community governance institutions in Zambia, Zimbabwe and South Africa.²⁰¹ One can see big differences between South Africa and Western nations as far as these groups are concerned. For one thing some of the groups who operate on the

¹⁹⁵ Baker (note 4) at 38.

¹⁹⁶ Abrahamsen R & Williams M. C ‘Country Report: Kenya’ *The Globalisation of Private Security* (Aberystwyth: University of Wales, 2005a) at 6.

¹⁹⁷ Abrahamsen R & Williams M. C ‘Country Report: Nigeria’ *The Globalisation of Private Security* (Aberystwyth: University of Wales, 2005b) at 5; Abrahamsen, R & Williams M. C ‘Country Report: Sierra Leone’ *The Globalisation of Private Security* (Aberystwyth: University of Wales, 2005c) at 7.

¹⁹⁸ Baker (note 79) at 209.

¹⁹⁹ *Ibid.*

²⁰⁰ Jassat (note 180).

²⁰¹ Brogden (note 138).

other side of the law (such as criminal gangs and some vigilante groups) actually provide security services to those in their communities, albeit for private gain. What is more is that, in many South African communities, people actually trust these groups more than they trust the public police. Ian Loader would call this type of governance governance from *below*;²⁰² but it is a type of governance influenced largely by oppressive histories. Andre Standing gives an example of this:

The second social dimension to the Cape's criminal elite is related to their role in *regulating aspects of community life*. In this respect they bear resemblance to the classic Sicilian Mafioso, who functioned as a form of criminal governance in a region where the state was weak and ineffective.

In parts of the Cape Flats the prominence of non-state governance can be traced to the apartheid era. During this regime the government became preoccupied with issues of security threats and political rebellion while grossly underfunding 'non-white' areas. An irretrievable situation was created in which many areas became 'ungovernable', characterised by poverty and a deep-rooted animosity towards state institutions and representatives. As a reaction to this breach between state and certain communities, informal groups such as people's courts and street committees were established to sort out disputes and deal with crime.

It is in this context that the criminal *elite provides what one author has termed 'governance from below'*.²⁰³

There are many similarities in the nature of commodification and fragmentation of security governance between South Africa (and Africa in general) and Britain and the United States. There are, however, many differences due in largely to the oppressive history South Africa was subjected to before 1994.

²⁰² Loader (note 25).

²⁰³ Standing A (2003) 'The Social Contradictions of Organised Crime on the Cape Flats' *Institute for Security Studies (ISS)* available online at <http://www.iss.co.za>, last accessed 06/02/2007.

*Fragmentation, Commodification and Accountability: A
Practical Look at how the 'New' Policing is Eroding Social
Accountability and Equity in South African Society*

Philip Stenning, in a paper entitled *Powers and Accountability of Private Police*, argued that those who reach the conclusion that the public police are highly accountable while the private police are hardly accountable are wrong because they place too much faith in the effectiveness of public police accountability mechanisms and are not practical enough in their explorations of these mechanisms, and they understate the mechanisms available for the achievement of accountability of the private police.²⁰⁴ He forwards the following definition and explanation of accountability:

When we think of the accountability of the public police, as with other governmental agencies, we think of four broad modes of accountability – accountability through the political process ('political accountability'), accountability through the judicial system ('legal or judicial accountability'), accountability within the administrative systems of the state ('administrative accountability', which may be internal, within the organization itself, or external, through the wider administrative apparatus of the state), and some mechanisms through which the police are directly accountable to citizens, by-passing the political, legal and administrative institutions of the state ('direct public accountability'). Collectively, these various modes of accountability account for the overall 'public accountability' of the public police.²⁰⁵

While Stenning's definition of accountability is useful and provides a good basis for a definition of accountability, it is not sufficient for my purposes in this paper. I am concerned here with *social* accountability; that is, accountability of governance structures to society at large, and seeing as this paper is written to address a specific kind of accountability issue, namely, social accountability of *non-state* governance actors, I will

²⁰⁴ Stenning P 'Powers and Accountability of Private Police' (2000) 8 *European Journal on Criminal Policy and Research* 325 at 336-8.

²⁰⁵ *Ibid* at 336.

take as my starting point, in forming an operational definition of accountability, Jones' conference paper on accountability in the age of plural governance.²⁰⁶ Jones argues that, as far as public policing is concerned, four audiences of accountability can be identified; government, local communities, individual citizens and purchasers of policing (although, this last one, strictly, should not be considered in the South African context; see below).²⁰⁷ Following this, four types of accountability are identified; legal (rules and legal procedures), political (representative bodies), managerial (auditing bodies) and administrative (complaint systems).²⁰⁸ Two other types of accountability can be added to this set; accountability through the media and civil society²⁰⁹ and accountability through self-regulation.²¹⁰

I would like to propose that, in developing an operational definition of social accountability, we take only a select few of these elements into consideration, in conjunction to Stenning's definition. In the first instance, the 'purchasers of policing' cannot be seen as an audience of accountability in South Africa because, as far as my knowledge extends, the South African Police Service does not sell its services and we already know that non-state auspices of government (such as private security firms) are accountable to their customers. Second, self-regulated accountability cannot be included in this definition because, again, this is a business-orientated type of accountability, with the fear of losing business driving non-state auspices to perform professionally towards those who opt into the security market and not necessarily to those who are disadvantaged (although this could be the case in some instances); this type of accountability does not *necessarily* guarantee social accountability and equity. If we do

²⁰⁶ Jones T (2003) 'Accountability in the Era of Pluralized Policing' Paper Presented at Workshop S4: *In Search of Security: An International Conference on Policing and Security*, Canada.

²⁰⁷ *Ibid* at 4.

²⁰⁸ *Ibid* at 6.

²⁰⁹ Media representations of the industry may act to highlight issues within the private security industry; thus breaking the 'information deficit' in terms of expectations of the industry. Civil society, such as non-governmental organizations and research institutions could act to break this 'information deficit' (Berg, 2006: 20).

²¹⁰ Berg (note 194) at 10-11. There are a number of security associations in South Africa (such as locksmith associations) which enforce mechanisms of self-regulation through a form of peer pressure – for example, if a particular security company performs unprofessionally or destructively that company would give the industry a bad name and affect future business opportunities in the industry (Berg, 2006: 10-11).

this, we get a definition of social accountability that points towards the following audiences:

- Government (local and national);
- Non-state accountability auspices²¹¹
- Local communities and;
- Individual citizens;

Social accountability would also be made up of five (amended) types of accountability under this new definition:

- Legal and judicial;
- Political;
- Managerial;²¹²
- Administrative and;
- Civil.

However, the most central element of social accountability in this paper is civil accountability; that is, accountability through civil society at large (civilian oversight *et cetera*) because society at large is perhaps *most* affected by the activities of governance institutions. This definition of accountability is most applicable to a pluralised view of governance because it recognises that the state is but one player in a particular security network. This is evidenced by the fact that the state is an audience of governance (to which non-state actors can be accountable).

²¹¹ I added this particular audience in to represent auspices such as policing commissions *et cetera*. Non-state auspices of security governance need to be accountable not only to government but also to these types of non-state accountability mechanisms (see below for further discussion)

²¹² Managerial accountability must not be mistaken for fiscal accountability, which is accountability to the market (consumers). Managerial accountability is better understood as budgetary accountability; answering to auditing bodies for expenditure of funds.

The complexities of the new regulatory state²¹³ pose a serious set of problems for social accountability and equity in a pluralised, democratic society. A number of questions are raised when one considers the proliferation of security markets and the diverse set of security providers to choose from. How are market auspices of security provision held *socially* accountable? What oversight mechanisms are in place to this regard? With such a diverse range of security providers, how do we regulate security markets? How do we ensure that everyone is getting their ‘fair share’ of security? How do we ensure that democratic rights and liberties are not being violated in the interests of a private version of security? How does the ‘exclusiveness’ of today’s society relate to equity, and is there such a thing as equity in this case? Many of these questions have gone unanswered, and will remain so.

My purpose here is to argue that the commodification and fragmentation of security provision has eroded social accountability and, as a result, equity in South African society. Perhaps, when all is said and done, these questions will answer themselves. Below I argue that three aspects of fragmentation and commodification are leading to the erosion of social accountability and equity in South African society; first, the growth and development (the re-birth) of private security, second, the pre-existence and phenomenal growth of illegal auspices of governance and third, the rise of community governance institutions. While these three developments overlap to some extent, it is useful to keep them separate, even if just on a practical level.

We live in a world where many of the biggest economies are corporate entities.²¹⁴ As a result of this the ‘public good’ in all walks of life has taken a back seat to ‘private goods’, ‘common goods’ and ‘club goods’.²¹⁵ The fragmented nature of policing, and the proliferation of private auspices of policing, means that traditional democratic models and modes of achieving police accountability only take into account about half of the

²¹³ Braithwaite (note 2).

²¹⁴ Horsman M & Marshall A *After the Nation-State* (London: HarperCollinsPublishers, 1995).

²¹⁵ Crawford & Lister (note 107).

policing field.²¹⁶ These mechanisms of accountability, however, become more stretched in transitional states because of the legacies and weak infrastructure left behind by oppressive regimes. The relatively ungovernable nature of many auspices of security provision has scary implications for democracy and equity in these and other settings.

At present there seems to be a danger that we may end up with the worst of all possible worlds: increasingly large and centralized police services with ever-growing powers, alongside the anarchic emergence of unregulated self-help and private ‘police’ or ‘security’ services in the hands of sectional local interests.²¹⁷

In South Africa, the (already lacking) mechanisms of accountability struggle to regulate the public police (at any practical level, even though theoretically the public police are accountable²¹⁸) which means that they are a far cry from being able to regulate the multitude of (private and community) auspices of security governance. Debates relating to the control and regulation of the public police were raging after the fall of the apartheid regime. There was a general belief that South African policing should mimic Western patterns of policing.²¹⁹ The liberal-democratic form of policing to be followed by South Africa forwarded a two-fold approach – first, that policing should be constrained by the ‘rule of law’ (legal accountability) and, second, that the goals and strategies of policing should have the support of the people as a whole (social accountability).²²⁰ Now, however, South Africa has to contend with being a regulatory state;²²¹ one responsible for the regulation of a variety of institutional governance actors. The wholly lacking regulatory infrastructure to achieve this is just one of its many problems in this regard. The *large* variety of non-state governance actors active in South Africa is another, and the growth of exclusionary communities (such as gated communities or Business Improvement Districts) is yet another.

²¹⁶ Sheptycki J ‘Accountability Across the Policing Field: Towards a General Cartography of Accountability for Post-Modern Policing’ (2002) 12(4) *Policing & Society* 323-338.

²¹⁷ Morgan, 1994 cited in Bayley D. H & Shearing C. D *The New Structure of Policing: Description, Conceptualization and Research Agenda* (Washington: National Institute of Justice, 2001).

²¹⁸ Stenning (note 204).

²¹⁹ Brogden & Shearing (note 184) at 193.

²²⁰ *Ibid* at 93.

²²¹ Braithwaite (note 2).

South Africa faces the re-birth of private security auspices of governance. These thinly accountable policing actors far outweigh the public police (SAPS) in numbers and the industry has been growing at an alarming rate²²² making them even more pervasive as security providers and more attractive to consumers in the market for protection. The private security industry has been rapidly growing in South Africa since the late 1970s and boomed in the 1980s.²²³ This rapid growth has its roots entrenched in apartheid and can be attributed to two things; first, the withdrawal of the South African Police (SAP) from its normal duties in the late 1970s to a focus on political control and, second, the passing of the National Key Points Act in 1980²²⁴ which granted powers of arrest and search and seizure to those security personnel guarding strategic sites defined by the Act.²²⁵ The Act stipulated that the proprietors of these strategic sites (of which 413 were 'Key Points' and 800 were 'semi-Key Points'²²⁶) were responsible for their protection. The South African Defence Force (SADF) was responsible for many of these sites and influenced the private security firms guarding them to take on a more para-military guise in line with SADF standards.²²⁷ This created a market for private security firms in South Africa; as Berg notes:

The State, by requiring that Key Point proprietors provide security, inadvertently created a market for security since the private security companies began to view their function in society as one involving much greater responsibility.²²⁸

It has been estimated that the private security industry now outnumbers the SAPS by four to one in terms of personnel²²⁹ and, being much more competitive in terms of market

²²² Berg (note 165).

²²³ *Ibid* at 107; Grant E 'Private Policing' in Bennett, T. W, Devine, D. J, Hutchison, D. B, Leeman, I & Van Zyl Smit, D (eds) *Acta Juridica* (Cape Town: Juta, 1989) at 92; Irish J 'The Business of Private Policing in South Africa: Sentry Security and the Armed-response Sector' in Vera Institute of Justice. *The Public Accountability of Private Police: Lessons from New York, Johannesburg and Mexico City* (Vera Institute of Justice, 2000) 21 at 21.

²²⁴ Berg (note 165) at 107.

²²⁵ Grant (note 223) at 108.

²²⁶ *Ibid* at 108.

²²⁷ Berg (note 165) at 108; Mehta P 'Gray, ANC Representatives Debate on Divestment Issue' (1990) 110(24) *The Tech* 1-11.

²²⁸ Berg (note 165) at 108.

forces; private security companies tend to be more consumer-orientated and better equipped to deal with crime than the SAPS.²³⁰ It is clear that the rapid growth of the private security industry and its current state has made it, I contend, the *primary* provider of security while the South African state has to settle for the role of regulator.²³¹ Baker has also noticed this trend:

Non-state policing in its various forms is becoming institutionalized in *substantial* sectors of society as the normal channel of criminal justice. This is particularly true in two contexts: first, where the SAPS stand back, either to allow natural justice to take its course, as they did in the murder of a gangland leader in the Cape Flats, or in their failure to successfully prosecute criminals, as in the case of the security guard and ex-policeman who shot dead forty-one alleged burglars over a space of a few years.²³²

The drive by big business and well-off individuals to make use of private security services in South Africa has meant that social accountability of primary governance actors has taken a back seat to contractual accountability of these actors. It is a truism that private auspices of governance (like the ones seen to be proliferating South African society) answer only to those who opt to use their services. Therefore, those who opt out, either by choice or not, of security markets in South Africa are immediately disadvantaged because the actors who operate within and through security markets are not publicly accountable to them even though their crime prevention techniques may well affect the general public. Shearing and Wood alert us to the fact that the pursuit of common goods (instead of public goods) may be detrimental to the achievement of public goods.²³³ An example of this in South Africa are the City Improvement District (CID) initiatives run in, for instance, Johannesburg, Cape Town and other cities which were implemented to ensure economic growth and a security in certain business districts and

²²⁹ Schonteich M *Unshackling the Crime Fighters – Increasing Private Sector Involvement in the South African Criminal Justice System* (Johannesburg: SAIRR, 1999).

²³⁰ *Ibid.*

²³¹ Tshela B 'Barricaded in the Suburbs: Private Security via Road Closures' (2003) 6 *SA Crime Quarterly* 17-20.

²³² Baker (note 4) at 48 [my emphasis].

²³³ Shearing & Wood (note 94) at 209.

which employ private security firms in conjunction with the SAPS.²³⁴ The down side to these initiatives is encapsulated in the following statement by:

We can see that, if partly valid, the argument of the “lack of capacity” of the State to manage and regulate security on its territories, and the implied necessity of setting up partnerships with more capacitated or complementary stakeholders such as the communities and the private sector, can also be used for political purposes. In particular it has been instrumentalized to allow the municipalities to lead growth strategies (business-friendly and creating safety conditions in the zones of economic opportunity, even at the price of social segregation, fiscal fragmentation, and loss of political accountability)...²³⁵

Another point to note is the fact that the private security market in South Africa is probably much more attractive to those who can afford it than the public police for reasons of choice and contractual obligations and, perhaps most importantly, because of the lack of trust in the SAPS. The latter is hardly surprising seeing as the public police often display autocratic characteristics which are akin to those attributed to the SAP under apartheid. Many obvious displays of the use of excessive force by the police and their abuse of police powers have been recorded since 1994. Between the years 1997 and 2004 a number of deaths as a result of police action were recorded by the Independent Complaints Directorate (ICD) (over 4500, over a third of which were caused while the victims were in police custody).²³⁶ One particular example of police brutality comes to mind here. In November 2000, a number of ‘suspected illegal immigrants’ were attacked by police dogs after the dogs had been set on them by the North East Rand Dog unit in a “sadistic training exercise.”²³⁷

²³⁴ See generally, Berg (note 165).

²³⁵ Benit C, Didier S and Morange M ‘Communities, the private sector and the State: emerging forms of security governance in Cape Town and Johannesburg’ Conference Paper, Territory, enclosure and control: the ecology of urban fragmentation, (Pretoria: CSIR, 28 February-2 March 2005).

²³⁶ Bruce D ‘Interpreting the Body Counts: South African Statistics on Lethal Police Violence’ (2005) 36(2) *South African Review of Sociology* 141 at 144.

²³⁷ *Ibid* at 148.

These types of outbursts by the SAPS would act to reinforce distrust in the public police in South Africa and made it evermore difficult to achieve accountability seeing as many began outsourcing their security needs to private police. Loader talks about the public police in Britain being identified within the minds of citizens as the primary source of governance, security and protection from crime; as being the “symbols of law, order and nation.”²³⁸ As far as South Africa is concerned, there can be nothing further from the mind of the average citizen whether wealthy or impoverished. The abuses committed by the SAP under apartheid will not soon be forgotten and the zero-tolerance approach taken by the SAPS will strengthen these memories. This has made it almost impossible for the SAPS to establish any kind of legitimacy with the South African people. This acts to further reinforce the role of private security firms as primary governance actors.

It has been argued that non-state auspices of governance are accountable to faculties beyond the nation-state such as commercial laws and, going further, the criminal law.²³⁹ But, in South Africa, the board that is supposed to regulates the private security industry, Security Industry Regulatory Authority (SIRA) (which is regulated by the Private Security Industry Regulation Act 56 of 2001), for example, is either lacking in sufficient infrastructure to enforce its regulations or has been corrupted at the highest level; as Baker points out:

At a more mundane level, it is disturbing that the [private security] industry is so weakly supervised. The regulatory authority when it was known as the Security Officers Interim Board, revoked the accreditation of thirty training institutions and a handful of registered firms, but contraventions of the code of conduct by registered firms is widespread and the SAPS has done little to tackle the large number of unregistered security businesses operating outside the law.²⁴⁰

²³⁸ Loader (note 8) at 387.

²³⁹ Stenning (note 204).

²⁴⁰ Baker (note 4) at 38. These types of lapses in supervision are, however, now being addressed by new legislation in South Africa.

Stenning has been at the forefront of the private police accountability literature and notes several ways by which private police can be held accountable. These include *state regulation* (state regulatory boards *et cetera*), *industry self-regulation* (internal regulatory boards *et cetera*), *criminal liability* (regulatory legislation), *civil liability* (regulatory legislation), *labour/employment law* (labour legislation), *contractual liability* (contract legislation) and *accountability through the market* (fiscal accountability).²⁴¹ These forms of accountability are legitimate but difficult to achieve in a transitional state (due to institutional deficits, see example of SIRA above) or do not lead to social accountability of private auspices of governance (for example, contractual liability and accountability through the market only accrue accountability to those willing to enter the security market or enter a contractual agreement [which usually entails some sort of financial output]). The proliferation of private police and their rise as primary governance actors, then, has eroded social accountability over policing in South Africa to a great degree. South Africa's regulatory mechanisms (such as SIRA and the Private Security Industry Regulation Act) are not capable of providing public (and legal) accountability with respect to these firms and the contractual and financial obligations they uphold are limited to only a select few.

South Africa is a state built on an oppressive past; a past partly responsible for the multitude of governance actors now operating in the country. Many of these auspices of governance operate below the state and beyond the law and are a cause for concern when it comes to social accountability. One category of these illegal auspices is what Johnston calls autonomous citizen responses;²⁴² groups of people that act independently of the state and are often prepared to break the law to achieve their goals. They are more regularly called vigilantes. Daniel Nina states the following:

Vigilantism will adopt either a crime or a social order approach. In either case, it is linked directly to the use of physical force and intimidation at levels not normally used by the state. In the denial of the state as the guarantor of the social

²⁴¹ Stenning (note 204) at 338-45.

²⁴² Johnston L *Policing Britain: Risk, Security and Governance* (Harlow: Longman, 1999).

order, vigilantism will invoke an ‘imagined order’ that either existed in the past (in its decadent mode), or never existed but is desired (in its idealised mode)...Vigilantism appropriates state functions in a way that creates a parallel sovereign power that is unregulated.²⁴³

This appropriation of state functions fits neatly into the model developed in chapter two whereby nodes assimilate the functions and characteristics of other nodes so as to achieve their governance goals more effectively. In South Africa, these types of nodal arrangements are common. Vigilante groups also have their roots in apartheid and were often formed in the townships and had political agendas. Perhaps the largest vigilante group in the country is ‘Mapogo a mathamaga’²⁴⁴ which was formed in 1996 and operates in Gauteng and the Northern Province.²⁴⁵ The formation and use of these groups also stems from the perceived inability of the SAPS to perform their duties efficiently. According to Baker:

The crime control element [of vigilante groups in South Africa] is fuelled by frustration with respect to the SAPS’s inability, through lack of resources and training, to provide security, or, the fact that, in extreme cases, they actually collaborate with criminals.²⁴⁶

A second category of governance actors operating beyond the law is, of course, criminal gangs. Gangs have become a big problem in South Africa (specifically in the Western Cape) and date back to the early twentieth century. They operate much like business organizations²⁴⁷ and govern security in their areas much like vigilantes, albeit for private ends.

²⁴³ Nina D (2001) ‘*Dirty Harry is Back: Vigilantism in South Africa – the (re)emergence of “good” and “bad” community*’ *Institute for Security Studies (ISS)* available online at <http://www.iss.co.za>, last accessed 06/02/2007.

²⁴⁴ Which is also a registered private security company, for more information visit <http://www.mapogo.co.za>.

²⁴⁵ Baker (note 4) at 35.

²⁴⁶ *Ibid* at 35.

²⁴⁷ Jassat (note 180).

[G]angs have a central, and even unavoidable, role to play in both peace-keeping and peace-making on the Cape Flats. It is easy to exclude these social actors on an out-of-sight-out-of-mind basis but there is no quick-fix to gangs.²⁴⁸

So, we are left with these illegal and unregulated auspices of governance, borne from a specific set of circumstances unique to transitional states or, indeed, unique to South Africa. Any attempts at achieving accountability of these auspices would probably be in vain. They are concerned not with the public good but with private goods and common goods which makes them difficult to regulate in terms of anything but the criminal law which, to this date, has been ineffective. Prior to the ANC administration in the Western Cape, anti-gang strategies were highly criticised for being unstrategic and ineffective²⁴⁹ and even the more recent anti-gang legislation is a far cry from being able to hold gangs and gang members criminally accountable and liable.²⁵⁰ In fact, the SAPS have a long record of looking the other way or even assisting criminal gangs in their pursuits. One example of this is the police's provision of arms to the Khumalo gang in Kwa-Zulu Natal in the early 1990s.

Along with their ties to the IFP, the Khumalo gang had extensive police connections. The Murder and Robbery Squad in Benoni reportedly attended barbecues at different houses owned by gang members and supplied the names and car registration numbers of people they wanted killed to the Archbishop whose men would then carry out the murders. In return the police provided the gang with weapons and protected them from prosecution and their ANC enemies. Khumalo admitted before the TRC that he had round the clock protection from the Internal Stability Unit and other police for several months during 1992.²⁵¹

²⁴⁸ Jassat (note 180) at 28.

²⁴⁹ Standing A (2005) 'The threat of gangs and anti-gangs policy' *Institute for Security Studies (ISS)* available online at <http://www.iss.co.za>, last accessed 06/02/2007 1 at 3.

²⁵⁰ *Ibid.*

²⁵¹ Kynoch G 'Crime, Conflict and Politics in Transition-Era South Africa' (2005) 104(416) *African Affairs* 493-514.

It is a truism that these auspices of governance are self-interested and privately motivated ‘businesses’ and have influence over and are influenced by (perhaps more legitimate) nodes. They operate like the community governance institutions spoken about in chapter two; with the distinguishing factor of their criminality being the only difference. Their conceptions of a common good would be the pursuit of justice (which is warped in the case of vigilante groups) or the pursuit of some sort of material wealth (as is the case with criminal gangs). One could go as far as to say that the latter of these two groups promote narrow private interests²⁵² and are accountable only to themselves. Allow me to theorise, if you will, that these (illegitimate) nodes assimilate and are assimilated by more legitimate nodes (such as community institutions). This would effectively allow the pervasion of criminal intent into these legitimate nodes which would act to further harm the public good.

Moreover, the growing number of these institutions in areas of South Africa where the public police are perceived to be ineffective (or are truly ineffective) means that the communities in which they operate are either forced to accept their governance or accept their governance willingly.²⁵³ This leads to a growing number of areas in South Africa in which the more publicly accountable SAPS are less inclined to police (because, among other things, the gang members greatly outnumber police personnel in these areas²⁵⁴) meaning the greater erosion of social accountability which cannot be achieved with these illegitimate auspices of governance. This all reminds us of Marenin’s²⁵⁵ depiction of the ‘duality of police function.’²⁵⁶

State policing...is implicated in the protection of ‘specific order’ – the preservation of the present pattern of domination within the polity and the defence of the interests of those whom that pattern favours; while also being implicated in the protection of ‘general order’ – the preservation of basic standards of public tranquility in which all social groups have a stake. State policing, therefore, is

²⁵² Shearing & Wood (note 94) at 209.

²⁵³ Jassat (note 180).

²⁵⁴ *Ibid.*

²⁵⁵ Marenin O *On Nationality* (Oxford: Oxford University Press, 1982).

²⁵⁶ Loader & Walker (note 12) at 13.

simultaneously both partial and universal, interested and disinterested, divisive and inclusive – and the intersection of reason and violence at its heart both conditions and is recursively conditioned by the terms of the accommodation between the twin imperatives of specific and general order.²⁵⁷

This leads us nicely into a discussion of legitimate community governance institutions (chapter two). These, too, have been on the rise in South Africa and have come in various forms from Business Improvement Districts²⁵⁸ to gated communities. The latter of these forms have probably been the most prominent in the country since state democratization as the state has been unable to provide adequate security for a select few. Landman and Schönteich put it like this:

One of the consequences of the state's inability to protect the life and property of all its citizens—especially in developing countries—is the formation of private alternatives to crime prevention and control. Gated communities, or enclosed neighbourhoods, are one such popular alternative.²⁵⁹

One consequence of these community institutions is their exclusionary capacity and their ability to enforce 'club goods'.²⁶⁰ Another is, more obviously, their lack of social accountability. This new type of segregation has meant that these communities and institutions are able to impose their whims on their surrounds without being held publicly accountable for this, even if their whims are detrimental to society at large. Also, seeing as the public police do not normally bother with such communities because these communities are usually protected by private security firms, they become even more unregulated in terms of the public good. Business Improvement Districts (BIDs) are a good example of how these institutions are contrary to social accountability, at least on a theoretical level.

²⁵⁷ *Ibid* at 13.

²⁵⁸ Berg (note 173).

²⁵⁹ Landman K & Schönteich M 'Urban Fortresses: Gated Communities as a Reaction to Crime' (2002) 11(4) *African Security Review* 71 at 71.

²⁶⁰ Crawford & Lister (note 107).

The BID initiatives in Cape Town and Johannesburg are making certain areas ‘sites of unaccountable power’.²⁶¹ It has already been established in chapter two that some corporations have become ‘strong actors’²⁶² in governance because of their overwhelming ability to both row and steer governance functions (they have, in effect, become ‘private governments’.²⁶³ BIDs create ‘new’ spaces;²⁶⁴ they transform public spaces into quasi-public spaces and often employ private security firms to enforce their notions of what is in their best interest (more likely than not, this interest involves economic growth). Their accountability and obligations usually lie in contract law and the contracts they sign with the various businesses in their area of operation.²⁶⁵ One would think that this would at least provide legal accountability and guarantee that the public good is maintained, however, their contractual agreements usually do not bind them to ensuring that their activities are kept socially responsible and even though some institutions may contribute to the public good none are held accountable for not doing so.²⁶⁶

The erosion of social accountability in South Africa inevitably relates to issues of equity in a free society. The ‘re-feudalization’ of security governance²⁶⁷ raises complex public interest and (possibly) constitutional issues. Every South African has a specific set of fundamental rights guaranteed by the Constitution (Act 108 of 1996), one of which is equity. The wealth disparity in the country is well known but is being deepened and widened due to the fragmentation and commodification of security governance and the erosion of social accountability of non-state governance auspices. It has been noted that this growing wealth disparity is associated with the governance disparity between rich and poor.

²⁶¹ Burris et al (note 1).

²⁶² Braithwaite & Drahos (note 120) at 2.

²⁶³ Macaulay (note 122).

²⁶⁴ Nina D & Russell S ‘Policing “by any means necessary”’: Reflections on Privatisation, Human Rights and Police Issues – Considerations for Australia and South Africa’ (1997) 3(2) *Australian Journal of Human Rights* 157 at 163.

²⁶⁵ Berg (note 173).

²⁶⁶ For a full discussion as to how a BID is established in any given area in South Africa see Berg (2004: 229)

²⁶⁷ Shearing & Wood (note 94) at 209.

While it is difficult to obtain systematic data to support this claim, the evidence suggests that the growing ‘wealth’ disparity between the rich and the poor is associated with a growing ‘governance’ disparity. One feature of this disparity is the relative inability of those without purchasing power to participate in these new forms of political power. This is very obvious in the security sector, where those with purchasing power are able to extend and strengthen their ‘security quilt’ by engaging, directing, and tailoring service delivery. In addition, many state policing services now provide services on a user-friendly basis over and above their general services, wealthier persons and corporate entities can purchase these services in addition to the ones to which they are entitled to as ‘citizens.’²⁶⁸

This is reminiscent of the governance deficits spoken about earlier. What is disturbing is the fact that it is those who are already disadvantaged (economically, politically and socially) who bear the brunt of these new developments in policing and those who are already advantaged benefit from them.²⁶⁹ Citizens have become self-calculating, risk-monitoring consumers of the new security technology²⁷⁰ and it is only the rich who can claim to consume. The fact that many governance institutions proliferating South Africa are much more concerned with achieving private, common or club goods (including the public police) and that many have economic interests (such as private security firms)²⁷¹ is certainly cause for concern. What is much more concerning, however, is the fact that some non-state actors of governance are actually *creating* an underclass of citizens in South Africa²⁷² which can be interpreted as a deliberate attempt to exacerbate inequality. This is particularly striking when one looks at the number of gated communities in the country; communities most concerned with keeping ‘undesirables’ out.

Some interesting theories have been forwarded by various authors on these gated communities. One, in particular, stands out in my mind. Richard Ballard proposes that

²⁶⁸ Shearing & Wood (note 60) at 412. Although the public police do not sell extra services to citizens who are willing to pay for them, this quotation does offer an insight into what is going on in the pluralized world and acts to evidence the growing wealth disparity between rich and poor in South Africa.

²⁶⁹ Loader (note 25) at 331.

²⁷⁰ *Ibid* at 331.

²⁷¹ Baker (note 4) at 49.

²⁷² *Ibid* at 50.

gated communities in South Africa are the result of white South Africans wrestling with the contradiction between the identities to which they aspire – those of the ‘European’, ‘civilised’ and ‘modern’ – and those identities more closely associated with the region in which they settled – ‘uncivilised’, ‘backward’ and ‘third world’. In order to create environments in which the identities to which they aspire could flourish, systems of segregation were developed – gated communities.²⁷³ This fits nicely with my belief that we are, in South Africa, facing a new form of separateness similar to that form which was the basis of apartheid but with one important difference. Instead of this form of separateness being based on race, it is based on class which, for reasons I cannot understand, is more acceptable in today’s society. Perhaps this acceptance is due to the fact that it is a more indirect form of separateness, that is, instead of being actively enforced by the state it is passively supported through the state’s lack of concern in regulating exclusionary structures like gated communities or Business Improvement Districts (although efforts have been made in Johannesburg to regulate gated communities). These structures act to close off public space (as discussed above) and extenuate inequalities because

...instead of being concerned about individual civil rights or human rights, private security of the “new” public space is more concerned about how to create conditions which can assist in promoting the logic of capital accumulation and the avoidance of any interference with this process.²⁷⁴

The nature of our exclusive society²⁷⁵ is such that we segregate the criminal ‘Other’ without knowing who they are and this, basically, boils down to unequal treatment. Community Policing initiatives in South Africa and in Africa generally have been guilty of this kind of discrimination. Ruteere and Pommerolle’s work deals with community policing initiatives in Kenya and discuss the implications of these initiatives for Kenyan

²⁷³ Ballard R (2005) ‘Bunkers for the Psyche: How Gated Communities Have Allowed the Privatisation of Apartheid in Democratic South Africa’ *Dark Roast Occasional Paper Series 24* (Cape Town: Isandla Institute): 1-19.

²⁷⁴ Nina & Russell (note 264) at 163.

²⁷⁵ Young (note 103); Dixon B ‘Exclusive Societies: Towards a Critical Criminology of Post-apartheid South Africa’ (2001) 32(2) *Society in Transition* 205-227.

citizens.²⁷⁶ They note that wholesale exclusions take place in the communities in which these initiatives are being run with preferential access given to the economic and political elite.²⁷⁷ Similarly, in Uganda community policing was seen by the police as a means to instruct local communities and, as a result, these communities were not consulted with in regards to crime prevention.²⁷⁸ Closer to home, Bayley has noted a few things that are particularly relevant when it comes to community policing and equality in South Africa.²⁷⁹ He argues that community policing and private security both aim to respond to their clients with “prevention, mobilization, and the provision of substantive benefits.”²⁸⁰ Community policing may act to reinforce market dualisms in a particular setting by providing the rich (who have private security guards) with a “preventative, penetrating, consensual model”²⁸¹ while the poor are left with a “reactive, restrictive, procedural due-process one.”²⁸² Loader also recognizes the effect of commodification on existing boundaries (of rich and poor):

Consumption choices ‘express and generate culture’...mark and maintain social relationships create patterns of identification and discrimination. Consumer goods and services are, in short, ‘social markers’, such that: ‘in being offered, accepted or refused, they either reinforce or undermine existing boundaries.’²⁸³

In South Africa the over-reliance on non-state policing acts to greatly undermine the legitimacy of the SAPS.²⁸⁴ However, the absence of visible SAPS patrols in rural areas has added to this over-reliance and the erosion of their legitimacy. Pelser *et al.* interviewed 756 rural people across the country in 1998.²⁸⁵ Of those interviewed, 7%

²⁷⁶ Ruteere & Pommerolle (note 188).

²⁷⁷ *Ibid* at 601.

²⁷⁸ Brogden (note 138) at 644.

²⁷⁹ Bayley D H ‘Community Policing: A Report from the Devil’s Advocate’ in Greene, J. R., & Mastrofski, S. D (eds) *Community Policing: Rhetoric of Reality* (New York: Praeger, 1988).

²⁸⁰ Gordon D R ‘Democratic Consolidation and Community Policing: Conflicting Imperatives in South Africa’ (2001) 11 *Policing & Society* 121 at 136.

²⁸¹ *Ibid* at 136.

²⁸² *Ibid* at 136.

²⁸³ Loader (note 8) at 380.

²⁸⁴ Baker (note 4) at 48.

²⁸⁵ Pelser E, Louw A & Ntuli S (2000) ‘Poor Safety: crime and policing in South Africa’s rural areas’ *Institute for Strategic Studies (ISS)* available online at <http://www.iss.co.za>, last accessed 06/02/2007.

said that their communities made its own arrangements for protection, 80% said they thought this was effective, 35% believed that the SAPS could control crime in their area while the majority thought that it was doing a poor job; most rural respondents had limited access to the SAPS.²⁸⁶ As a final thought, it is quite worrying to note that lack of faith in the SAPS and reliance on non-state auspices of security governance could cause the SAPS to pull out of disadvantaged communities in large part, or completely, believing that the communities could ‘take care of themselves’. This might have the effect of causing disadvantaged people to necessarily enter the security market and exacerbate inequalities further.

²⁸⁶ *Ibid.*

Chapter V

Concluding Remarks: Towards a Normative Framework of Security Governance in South Africa

The government I have the honour to lead and I dare say the masses who elected us to serve in this role, are inspired by the single vision of creating a people-centred society.

Accordingly, the purpose that will drive this government shall be the expansion of the frontiers of human fulfilment, the continuous extension of the frontiers of... freedom.

The acid test of the legitimacy of the programmes we elaborate, the government institutions we create, the legislation we adopt must be whether they serve these objectives.

Our single most important challenge is therefore to help establish a social order in which the freedom of the individual will truly mean the freedom of the individual.

We must construct that people-centred society of freedom in such a manner that it guarantees the political and the human rights of all our citizens (Mandela, 1994).

The last half of the twentieth century has been characterised by the fragmentation and commodification of policing. This phenomenon has effectively ‘hollowed out the state’²⁸⁷ in most cases and has exacerbated inequalities and posed a number of challenges to social accountability of those who police. The activity of policing has been removed from the exclusive realm of the state and governance actors and auspices have begun to flood security markets all around the world. In transitional states (that is, states in the transition from autocratic rule to democratic rule) the issues of fragmentation and commodification become ever more acute and in need of attention. The transitional

²⁸⁷ Marks M & Shearing C ‘Introduction: Diversity in Policing: Multi-agency Frameworks and Strategies in South Africa’ (2004) 35(2) *Society in Transition* 197 at 197.

dynamics of these states (such as weak institutional arrangements and citizen skepticism in the state) makes them more susceptible to the effects of the ‘new’ policing.

The implications of commodification and fragmentation are far-reaching for both transitional and other states. Two primary implications immediately come to mind. In the first instance the phenomenon has caused the proliferation of policing actors and auspices that operate above and beyond government (such as Europol, Interpol et cetera). Debates as to the power of these institutions are of growing importance.²⁸⁸ These governance auspices can act to perpetuate xenophobia and ‘othering’ discourses.²⁸⁹ Second, the rapid growth and global proliferation of security markets means that access to policing and basic security, which were once fundamental human rights, have now become privilege; accessible only to those who are willing to opt into the security market and have the material wealth to do so. This has meant the erosion of basic human rights, accountability and equity in many instances.

*Towards a Normative Framework of Security Governance
in South Africa*

The situation as far as social accountability and equity in South Africa is concerned is dire. If changes at a very real level are not made soon South African policing may not be able to cope with the existing governance deficits and may perpetuate or worsen inequality in the country. I propose that the following normative framework for governance in South Africa is essential for making sure this does not happen. In developing a normative framework as to how the various governance nodes can and should operate, relate to each other and work to lessen inequality and achieve social accountability we should look to the hybrid model of nodal governance outlined in chapter two as it is useful for working within in terms of governance deficits, specifically

²⁸⁸ See Loader (note 110); Loader (note 25).

²⁸⁹ See Loader, 2002. Europe has been ‘securitized’ and ‘othering’ discourses are being forwarded by state agencies and Europol.

in the South African context. I take as my starting point Jones and Newburn's recommendation that policing networks should work to achieve public goods.²⁹⁰

Allow me to argue that this connection cannot take place unless social accountability of all governance actors in South Africa (and other transitional states) is achieved. Unfortunately, it is very difficult to achieve this on any real practical level any time soon. It would require a huge overhaul of criminal justice institutions and legislation in South Africa. I do, however, believe that it would be useful to discuss this on a theoretical level without rehashing in any great detail the need for institutional reform (which is something everyone knows is needed). Suffice to say that governance and regulatory institutions in South Africa (such as SIRA) need to function at a much higher level.

It is imperative that social accountability is no longer seen as 'accountability of the South African government' but as accountability within the new regulatory state framework.²⁹¹ The sovereignty and economic power of the state is now but a mere memory; some of the most powerful economies in the world are corporations²⁹² and therefore it has become redundant to conceive of the accountability of the state as being all-important. The state is but one node which governs and, possibly, is governed by other nodes. This is evidenced in the assimilatory capacity of nodes as South Africa, as with many other states, has succumbed to the call of managerialism, promotionalism and consumerism.

I am a very firm believer in what Loader has termed governance from *below*.²⁹³ I also believe the key to success in achieving social accountability and, therefore, stopping the tide of inequality lies in the role of the public police becoming a more active one. With these beliefs in mind I can note that individuals and auspices in South Africa need to stop looking at those nodes operating above and beyond government for security and realize

²⁹⁰ Jones T & Newburn T *Private Security and Public Policing* (Oxford: Clarendon, 1998) at 269-70; Loader (note 25) at 335 (cited above, p. 9); Loader I 'Thinking Normatively About Private Security' (1997) 24(3) *Journal of Law & Society* 377-94; Johnston (note 242); Walker N 'Decoupling Police and State' in Bort, E & Keat, R (eds) *The Boundaries of Understanding: Essays in Honour of Malcolm Anderson* (Edinburgh: International Social Sciences Institute (ISSI), 1999).

²⁹¹ Braithwaite (note 136).

²⁹² Horsman & Marshall (note 214).

²⁹³ Loader (note 250).

that their own protection lies in their local capacities and resources. This will ensure that deficits of community self-direction, and other deficits, are minimized.²⁹⁴ This will at least give local communities *some* control over their governance choices and *some* influence over the goods they receive. Gated communities are one example of how this is already taking place in South Africa. Nodal (institutional) arrangements have to be set up so that disadvantaged communities have these types of capacities, although, one big logistical problem with this is that of budgets.²⁹⁵

Further, the public police need to rise to their role as a regulatory node of the various governance actors in South Africa; that is, they need to be “responsive to non-legal normative orderings.”²⁹⁶ Here I share the sentiments of Loader and Walker when they note the following:

In the face of a proliferation of plural, fragmented policing bodies, the state (alone) possesses the knowledge, and experience required both to ‘steer’ the delivery of services among diverse policing forms, to coordinate the relationship of policing agencies to other governmental authorities, and to ensure that the increasingly complex institutional pattern of policing does not present a closed and self-corroborating bureaucratic system, opaque and unresponsive to its wider public environment.²⁹⁷

On the other side of the coin it is ultimately the public police who must be responsible for providing security for disadvantaged communities in South Africa (over and above those local community initiatives which can only provide a limited amount of protection); those communities that cannot opt into the security market and partake of its fruits. In other words, the SAPS need to be concerned with covering the governance deficits, or ‘picking up the slack’, in these communities. A sense of *social responsibility* needs to be injected

²⁹⁴ Shearing & Wood (note 94) at 212. Although, this deficit cannot be completely eradicated because there will always be those actors in a specific community who are more involved in governance than others (Loader, 1999; Loader & Walker, 2001; Crawford & Lister, 2003).

²⁹⁵ *Ibid* at 213.

²⁹⁶ Braithwaite J & Parker C ‘Regulation’ in Cane, P. & Tushnet, M. (eds) *Oxford Handbook of Legal studies*, (Oxford University Press, Oxford, 2003) 119 at 128.

²⁹⁷ Loader & Walker (note 12) at 27.

into the network of security providers, both state and non-state, in South Africa. It is a truism that governance nodes respond to incentives. In an OGS, these incentives can be seen as ‘goods’ that governing nodes want to achieve. I propose that more incentive is provided for being socially responsible as a node of governance. This will ensure that the ‘public good’ is, at least in part, achieved where it had previously taken a back seat to private or common goods (such as in the case of community governance institutions). It is the job of the state (the regulators) to provide such incentives. But the regulators must have a sense of social responsibility themselves so that they “[do not]...simply impose control, but...activate and draw upon the conscience and the talents of those they seek to regulate.”²⁹⁸ In other words, accountability mechanisms that cause regulated actors to work defensively to avoid blame should be circumvented; instead accountability mechanisms that cause regulate actors to act creatively and take responsibility for achieving public goods should be encouraged (Braithwaite, 1999: 91).²⁹⁹

In addition to the state as a regulatory institution, non-state regulatory institutions should be encouraged in South Africa. This would ensure civilian oversight of policing in the country and would provide a backup if the state institutions falter on their obligation to make sure that public goods are achieved. These non-state institutions could take the form of police commissions. Here, I stand with Loader (2000: 338-9):

...policing commissions clearly need to be given a statutory responsibility to take account of potential inequalities in the distribution of policing resources, and to seek where necessary to rectify them when making policy/network coordinating decisions...In respect of its functions, policing commissions would – at national, regional and local levels – be constituted with both a *general* obligation to coordinate and integrate policing and security services across their geographical area of responsibility, and the *specific* task of rendering accountable the discrete

²⁹⁸ Bachdach E & Kagan R *Going by the Book: The Problem of Regulatory Unreasonableness* (Philadelphia: Temple University Press, 1982) at 323.

²⁹⁹ Braithwaite (note 136) at 91

public, municipal, commercial and voluntary bodies who might provide – or want to provide – such services.³⁰⁰

Policing commissions in South Africa would function much like state institutions; inviting tenders from public, municipal, commercial or voluntary agencies who may offer their services or buying power to ensure equity is achieved. Policing commissions, however, may put added pressure on, and may mean added responsibility for, the already over-stretched public police in South Africa and other African countries.

I also believe that the ethos of restorative justice could also be useful when conceptualized within the hybrid nodal governance framework in South Africa. This has already become the norm with such initiatives as the Community Peace Project.³⁰¹ Baker refers to these as ‘dispute resolution forums’.³⁰² Restorative justice initiatives should function as community (or grassroots level) nodes to ensure bottom-up governance, which would ensure bottom-up accountability as citizens would not *have* to subscribe to traditional top-down mechanisms of accountability. Although top-down approaches cannot be discounted they do involve, as we have already discovered, entail lengthy and often fruitless procedures and institutional reform the likes of which South Africa cannot manage in a short space of time. Restorative justice would be particularly useful for South Africa because it would act to minimize the exclusionary potentials of community governance institutions.

Restorative justice appeals because it offers the possibility of taking crime seriously without ever-increasing repression and exclusion. Above all, it appeals because it offers the prospect of escaping the ‘zero-sum’, whereby what benefits victims must be painful for offenders (McEvoy, Mika & Hudson, 2002: 469).³⁰³

³⁰⁰ Loader (note 25) at 338-9.

³⁰¹ For more information on the Community Peace Project in South Africa visit <http://www.ideaswork.org>

³⁰² Baker (note 79) at 211.

³⁰³ McEvoy K, Mika H & Hudson B ‘Introduction: Practice, Performance and Prospects for Restorative Justice’ (2002) 42 *British Journal of Criminology* 469 at 469.

This escape from ‘zero-sum’ would, in my opinion, reduce levels of crime in disadvantaged areas (where restorative justice is most useful) by effectively dealing with petty offenders without penal sanction and, therefore, leading to a reduction in the numbers of ‘hardened criminals’ coming out of the penal system. A short example of this might make my point clearer. In the case of petty theft, the (petty) offender who is sent to prison would exit the penal system with more resentment for the state and better equipped to commit more serious offences (such as rape and murder) whereas the (petty) offender who, after going through the restorative justice process, is genuinely rueful for his offence would be much easier to reintegrate into society as a productive rather than a destructive citizen. I therefore propose that a framework with the following characteristics would be useful in achieving social accountability and, therefore, alleviating inequalities of governance:

- The general acceptance that the sovereignty of the state, if not dead, is extremely weak and the acceptance of the fragmented nature of security governance;
- Following this, the conception (or acceptance) of the state as but one node in a network of security and the acceptance that social accountability of the state alone (as opposed to other non-state nodes) is not useful;
- The pursuance of governance from *below* and the empowerment of disadvantaged communities as far as self-governance is concerned;
- The acceptance that the public police are no longer governance actors in many instances but are ‘regulators’ of security networks and their increased ability to deal with governance deficits and ‘pick up the slack’;
- The acceptance that incentives to increase social responsibility of non-state governing nodes (especially corporations) need to be implemented to ensure increased equity;
- The pursuance of non-state regulatory institutions (such as policing commissions);
- The pursuance of a restorative justice ethos which will ensure bottom-up accountability and lower crime rates in disadvantaged areas.

This framework, in conjunction with wider social and institutional transformations, should ensure that social accountability and equity are achieved to at least some extent in South Africa.

Light at the End of the Tunnel

Although the fragmentation and commodification pose a number of challenges to democratic, equitable and accountable rule, it is here to stay. The sooner we embrace pluralisation, the sooner we can begin to use it to achieve all the aspects of social life it has challenged. I believe that there is a bright light at the end of the tunnel for security governance both in South Africa and elsewhere. The pluralisation of policing has not brought with it only dire implications and mechanisms, it has also brought good. It has given citizens the ability to choose their security providers. This is particularly useful in states where the public police are inefficient in crime control. It has brought with it community mechanisms such as restorative justice and allowed, to some extent, bottom-up governance to take place. It has also stimulated economic growth and made traditional policing mechanisms aware of their service provision, or lack thereof. It is just my sincere hope that, in the near future, social accountability is achieved and *everyone* has *equal* access to safety and security.

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Author's Note

The research process is fraught with difficulties. The first inklings of a paper of this nature were deeply rooted in Zimbabwe in June 2006, and in Mike Brogden's (2004) work Commentary: Community Policing: A Panacea from the West? I remember waiting in a queue outside a petrol station (which are a common occurrence in Zimbabwe) and reading this enthralling essay about the pains of community policing in Africa. The development of this particular paper went through a number of staged and, sometimes without me knowing, a number of titles – 'Pluralisation, Commodification and Politics: An Exploration into the Political and Economic Dimensions of Community Policing', 'Fragmentation, Commodification and Politics: An Exploration into the Political and Economic Dimensions of Community Policing in South Africa', 'Fragmentation and Commodification: Exploring the Political and Economic Dimensions of Cape Town's Central City Improvement District (CCID)', 'Fragmentation, Commodification and Politics: Exploring the Political and Economic Dimensions of the 'New' Policing'. These were just a few of the many titles considered for this essay. At the end of October 2006, the completion of this project seemed a distant memory and panic began to set in. I would spend my days playing Microsoft Flight Simulator and reading large volumes of policing texts while the aeroplane flew itself on auto-pilot. In fact, it felt almost as if I was on auto-pilot myself; with one purpose – to soak in as much of the policing literature as I could. Throughout this time, my girlfriend and close friends were a collective tower of strength for me – putting up with my (sometimes violent) outbursts and considerably shorter temper. By the end of November I had read over thirty different articles (which was not really that many) and had decided that it was wholly impractical to go into the field and conduct research – I had decided on a theoretical approach to this project and was much happier for it. Still, however, time was against me and throughout December (even on Christmas day) I worked to complete this project. My work ethic was at a level it had never been before and, by the beginning of January and without consultation with my supervisors, I began to write the introductory chapters of this paper. The rest, as they sometimes say, is history. It was certainly an enjoyable, if extremely stressful, experience (especially seeing as Microsoft Flight Simulator had not failed me). People often say that if you really love doing something you would inevitably enjoy doing it, no matter how tedious. I think I have proved those people right here.