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Frédéric Ocqueteau

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The “High Policing” Privatization Hypothesis, and How to Explore It

FRÉDÉRIC OCQUETEAU

Résumés

L'article prend au pied de la lettre la remarque de Jean-Paul Brodeur en réplique au travail de deux chercheurs britanniques sur la privatisation de la « haute police » (ou police des renseignements). À partir de travaux empiriques menés en France, il discute des connaissances engendrées par le regard jeté sur la diversité des clientèles des agences de sécurité privée et des services internes de sûreté d'entreprises sensibles pouvant faire appel à leurs services. Il argumente sur le caractère délicat de l'hypothèse d'une privatisation de l'information détenue par les diverses agences de renseignements de l'État, attribut de souveraineté non véritablement entamé. La révolution qui convertirait le coût du renseignement public (militaire ou policier) protégeant les institutions en prix à payer au renseignement privé protégeant la sécurité de l'entreprise et celle de ses clients n'a pas véritablement commencé. On peut néanmoins en repérer quelques prémisses parmi les agences dites « d'intelligence économique », bien que la plupart de leurs contrats soient liés aux industries de l'armement contrôlées par les états-majors du ministère de la Défense.

The paper makes a literal interpretation of Jean-Paul Brodeur's response to the work of two British scholars on the privatization of « high policing » (or intelligence-led policing). Building on French empirical research, we discuss the body of knowledge created by exploring the diversity of both the customer base of private security agencies and the internal safety departments of sensitive corporations that may require their services. We discuss the delicate nature of the potential privatization of the information held by the various official intelligence agencies, an attribute of sovereignty not seriously undermined so far. The revolution has not yet been initiated that will convert the cost of public (military or policing) intelligence—which is meant to protect the institutions—into a price to be paid to private intelligence companies—whose goal is to protect the security of corporations and their customers. However, several forerunners can be detected in the so-called “economic intelligence” community, although they mainly contract with state-controlled arms industry actors directly managed by the ministry of Defense staff.

Entrées d'index

Index de mots-clés : privatisation, Jean-Paul Brodeur, espionnage industriel, haute police, marchés de la sécurité, polices de renseignements, secret, souveraineté nationale

Index by keyword : Jean-Paul Brodeur, industrial espionage, high policing, security markets, intelligence-led policing, privatization, secret, national sovereignty

Notes de la rédaction

Translation by François-Xavier Priour

Texte intégral

- 1 Jean-Paul Brodeur had revisited his seminal 1983 article on high and low policing (Brodeur, 1983) in a 2008 paper published for the 40th anniversary issue of *Criminologie* (Brodeur, 2008)¹, which he then used, after further rework, for chapters 7 and 8 of his *opus magnum* (Brodeur, 2010). There is reason to believe that he was durably impressed by O'Reilly and Ellison's (2006) idea, which he had started probing earnestly, since these scholars had themselves meant to test the heuristic relevance of his own famous 1983 argument². However debatable the historical grounding of the paper, Jean-Paul Brodeur should be given credit for having tried to reason less as a historian than as a political scientist concerned with the prospective field of “state protection” or “sovereignty policing” – in other words, within the policing spectrum of the domestic protection and defense of public institutions by “secret services/intelligence agencies“.
- 2 His 2008 argument included three key propositions: empirically, while he broadly agreed on the existence of such a thing as the private or privatized form of “high policing” suggested and described by his opponents, he considered that further research was needed to differentiate it from the field of “public high policing”, in order to leave behind the symmetrical or asymmetrical character of the struggling entities concerned, an issue that could not be entirely resolved by the hybridization of their respective agents. To him, policing approaches would differ not only as per the nature of the mandate of the policing (i.e. enforcement) organizations, but also—most importantly maybe—in terms of the differing profiles of their respective “customers”.
- 3 This issue of how to differentiate both sectors will be dealt with in the commentaries below through an inventory of the traditional “high policing” customer base, followed by a discussion of the issues at stake in researching the hypothesis of the gradual shift toward a *complex of policing-industrial activities* re-centered within the domestic order of States. Finally, I shall be laying the foundations of further research into the interdependencies among former army and police staff pursuing new careers as managers of the security departments of large international corporations.
- 4 What usually feeds the theme of the privatization of security services is the rather consensual idea that former army and police staff are responsible both for sparking the inception of a community of “security bosses” and for organizing and managing a new proletariat of the surveillance of people and goods. A recent book about the situation in Argentina (Valcarce, 2011, 77-165) clearly described the birth of such a community in that country via the *strategies of redeployment of former police and army staff who found in the security industry an economically more favorable space of professional activity than mere retirement from civil service*. At the same time, this author argues, a new proletariat of surveillance has emerged, shaped in part by these new security entrepreneurs who brought in their *management and technical skills*.
- 5 Still, the latter statement remains problematic insofar as nothing guarantees that the growth experienced by the private security industry during the return of democracy, in the aftermath of dictatorship, entirely rested on the “skills and know-how” of the redeployed. However, assuming even that this initial takeoff period has been over and stabilized for a while and that a second generation of redeployed

has taken over, an explanation still needs to be found—in “restored-rule-of-law” Argentina or elsewhere—to account for the fact that conquering new markets today means diversifying the offer of intelligence with a view to offset new, more destabilizing threats, beyond the classical duties of protecting against malicious, undesirable intrusions (Cusson, 2011). It appears difficult to do without giving a thought to those stakeholders who actually do implement safety operations inside companies possessing their own, large in-house security departments, even though these very companies do outsource many routine operations on service markets. This dimension singularly disrupts the issue of diagnosing the privatization of intelligence-led police and military services within companies. The entrepreneur—a former, redeployed intelligence agent who is himself seeking to conquer markets—remains scarce enough a figure, at least in France, to necessitate a discussion. We are convinced that, while an efflorescence of consulting companies can indeed be observed in this new market segment of the private security sector called *economic intelligence* (Hassid, 2010; Hass, 2011), it appears that former state intelligence agents mainly conquer armament industry markets—an activity that remains under the rather strict control of the various central departments of the ministry of Defense.

- 6 Indeed, this is exactly how and where it appears that the remark introduced by Jean-Paul Brodeur against his main opponents should be framed, and that is why, until further notice, we do refute that any process of *privatization* is actually taking place.

Diversification of the customer base as a factor of privatization: a theoretical issue

- 7 Precisely what is meant by such a concept as “customer based” differentiation? According to Jean-Paul Brodeur, the mandate of any “public high policing” force—since this is how we are supposed to call it these days nowadays—is indeed to defend the current political regime against potential subversion or destabilization, regardless of the legality and/or formality of the means used. The final “customer” remains the state, the public good, or institutions that are essential to the proper functioning of the State (*institutions régaliennes*), i.e. policing, judicial and penitentiary agencies. “Private high policing” might converge, in terms of its ends, with the goals of public high policing. What would, however, ultimately differentiate them would be the diversity of the customer base of the former, or at least the lack of a clearly identified end customer. The various customers of private high policing could in fact share certain objectives with the state (such as improved protection of their own territory against their opponents or enemies, either domestic or alien, only in a tighter perimeter) while still pursuing interests that would diverge from those of the nation-State. In that case, the group of organized “customers” likely to use the services of private high policing providers (i.e. commercial intelligence services) would not be restricted to government agencies, publicly-owned companies, or local government administrations wishing to protect their local heritage anymore, but would include, on other continents, weak or inefficient States undergoing a process of (re)construction and using the services of multinational security corporations—some would say mercenary organizations (Dupont *et al.*, 2007). Thus, the “customer base” may have become all the more diverse as today’s service offering has ceased to merely address the basic needs—i.e. protecting individuals, goods and means of production—of traditional private customers, such as companies in non vital industries or groups of individuals from the civil society wishing to protect their property. The protection industry has diversified its offer to address a promising

niche market, namely the fight against “industrial espionage”, following a surge in illegitimate and/or malicious intrusions inside hacking-vulnerable computer systems.

- 8 Jean-Paul Brodeur clearly perceived that the various modalities of the service offer would be instrumental in feeding the consistency of the hypothesis of a “privatization” of intelligence activities. He was, unfortunately, denied the time to further explore this key aspect. He did, however, display enough genius or intuition to raise awareness among scholars, and to invite them to work on a new preliminary clarification. This can be seen at the end of chapter 8 of *The Policing Web*, where he suggested that the best perspective to achieve this would be to explore the hypothesis of a *political-industrial complex* rising within the nation-state from the rubble of the *military-industrial complex* of old, instead of allowing ourselves to be constrained by the mere concept of privatization, considering the inception of civilian contractors involved in overseas peacekeeping operations, a massive phenomenon that can only be interpreted in terms of the challenges facing America's imperial power (Singer, 2003).

From the *military-industrial complex* to the *political-industrial complex*?

- 9 Everyone knows the metaphor invented during the Cold War era by Pres. Eisenhower to characterize the necessity of mutualizing the shared interests of the State and the military industry in a logic of external warmongering. The metaphor was largely theorized by C. Wright Mills (1956), in an attempt to point out the dependence of American economy and research on US Army supply contracts. Also well-known is the subsequent loss of popularity of the metaphor, especially in France, where it was totally abandoned following Sami Cohen's (1994) undermining efforts, which blew up the myth once and for all. Cohen had demonstrated the supremacy of political power over the so-called “military-industrial complex” by researching how it had been weakened by competing, rival fractions of the military organization, a process that civilian authorities always managed to turn to their advantage. This remained true even though, as Cohen later admitted, it was always clear that both army officials and the representatives of the arms industry—a powerful lobby— never renounced their persistent propensity to influence public policies, often successfully (Joana, 2007).
- 10 Why take such a roundabout way? The idea was to discuss the consistency of the assumption that a substitutive political-industrial complex was currently emerging in France and elsewhere. And since this is tribute time, I would like to use this opportunity to specify how such intuitions have helped me map out some of the orientations of my current research. I am convinced that this knowledge area will be growing to major status in the near future, at a time when everyone, everywhere, is trying to make use of the so-called “global security” super-structural doctrine (Ocquetaeu, 2006) to build a new theory of the protection of States as unified by a homogeneous outlook on the perils, vulnerabilities and threats that are allegedly assailing them in a combined effort, even though the enemies have not been clearly defined yet.
- 11 Bestowing some substance upon the “high policing” privatization hypothesis—given the trend toward the “macro securitization”³ of a world in which the globalization of flows, the digital revolution and the acceleration of time appear increasingly interconnected—will necessitate greater creativity in research, knowing how undermined these experimental grounds are. One goal, for instance, could be to better identify the consistency of manpower and knowledge flows in the safety/security sector, by studying how public high policing staff redeploy in the

management of large corporations, both state-owned and private. This being a work in progress with only two publications so far (Ocqueteau 2011b ; 2011c), I shall only present here the assumptions underlying this research, which is another way of fleshing out Brodeur’s objections to O’Reilly and Ellison.

12 Focusing initially on the attributes of internal safety departments in both national and international, state-owned and private corporations, I first noticed an *inter-institutional* governance issue based on the quest for improved protective efficiency and the need to intensify information exchanges in partnerships involving police and military authorities as well as civilian contractors. As soon as the corporate world gets involved, however, inter-institutional governance has two major implications: on the one hand, in-house safety officers and the management of security contractors, whose logic is definitely business-oriented, need to build trust-based relationships; and on the other hand, policing and military organizations need not so much to learn how to market some of their activities and know-how to new customers (Mulone, 2009) – which actually remains rather marginal – as to be able to capitalize on the consequences of a long-lasting crisis of public funding, which has resulted in a stagnation of staffing levels when the demand for multiform protection is actually exponential. From this point of view, this could be the emergence, among public (army and police) institutions, of embryonic forms of competition about nonmarket goods linked to the protection of the populations in this vast movement of neo-liberalization applied to public services (security audit markets, security management training engineering, public research markets...). Economists are only just starting to wonder whether what still pertains to a *public cost* today could ultimately be transformed into a *price* payable by a customer. For instance, could a well-informed commando get compensated for exfiltrating the kidnapped employees of a remote overseas branch of a large corporation, based on the classical model of the service charge collected by firefighters or policemen when they have to intervene in an emergency because of what turns out to be a false alarm (Jakubowski, 2011)?

13 Drawing the consequences of such a process as “high policing privatization” means properly organizing the redeployment of former civil servants in the private sector, either as civilian contractors or within the internal security departments of companies, to the best of the “interests” of a State that will not so easily accept being deprived of such an attribute of its sovereignty. Although the hypothesis of a massive redeployment of retired civil and/or military intelligence agents, when confirmed, should prompt various rearrangements in terms of contemporaneous security and optimization of knowledge flows, it doesn’t have to spark unconditional trust mechanisms between agents who still consider themselves as “competing”. Indeed, former high-ranking French intelligence officials turned managers of consulting companies are ill-equipped, from a management science point of view, to explore new markets by themselves, and have no qualms about criticizing the rigidity of the partitioning between “closed” and “open” intelligence, although they were quite easygoing about it when they belonged to the public service. This very constraint probably explains why they prefer to migrate toward the safety departments of large corporations contracting with the ministries of Defense or the Interior, rather than private agencies where their managerial skills would leave a lot more to be desired.

14 This is reminiscent of how Benoit Dupont (Dupont, 2007 ; Dupont *et alii*, 2007) established the diversity of the ties that bind today’s security universes: *third party policing*, which enables the State to coerce other actors into taking action in matters of security or protection of a given environment; the *delegation of authority* or “*discharge*”, i.e. the ability for States to transfer some of its functions to private or hybrid actors acting in its name; *security selling*, the most frequent figure in the business structure, to the point that a “commodification” of protective security, a product like any other nowadays, is being pointed out; or even *gifts*, which follow a similar logic (insurance companies sponsoring prevention and security...); and, last

but not least, *exchanges* in the form of formal or informal collaboration involving the sharing of information, knowledge, and human as well as material resources. According to R. Ericson and K. Haggerty (1997), other modalities of exchange of information between the police, insurance companies and social services indeed constitute the keystone of the security system in the “risk society”. Others have chosen to explore the domination systems used by the police in transactions with its partners; and others still have decided to examine attempts to overcome bureaucratic rigidity by observing how the machinery gets oiled by the relational portfolios or personal affinities of partners who identify each other by their shared *habitus* and concerns.

- 15 Questioning the profiles and career paths of safety managers in public-and private-sector companies in order to outline their actual power of influence seemed to me the best angle to approach the issue of intelligence “privatization” against the risks of industrial espionage. Or, in other words, to locate the emergence of “economic intelligence” as a new place where “high policing privatization” stakeholders assembled.

Exploring new avenues for research

- 16 While not all companies we have interviewed are part of the “military-industrial complex” (which could be epitomized by such a corporation as Thales), most do belong to a sector that has been officially decreed, in France, to be one of vital importance (*SAIV or Secteur d'Activité d'Importance Vitale*) in the aftermath of the great panic triggered by the wave of terrorist attacks in New York City, Madrid and London, and the alarming NRBC-E (Nuclear, Radiological, Bacteriological, Chemical, and Electronic) threats. This sector is required by the State—whose sovereignty could be indirectly undermined—to implement thorough measures of protection against any vulnerabilities deriving from such threats. This approach, focusing on large corporations whose vulnerabilities are now better calibrated by the State, is key. The basic assumption is that the sovereign State—acting simultaneously as a regulator, a strategist, and a customer (Ocqueteau, 2004)—is not “privatizing”, but merely accepting, under certain conditions, to negotiate intelligence with SAIV companies whose assets could be attacked, insofar as such attacks may indirectly undermine its own area of sovereignty. The initial phase of the survey has led me to suggest a plausible explanation to the massive redeployment of former army operational intelligence agents as in-house safety officers, a solution that could be interpreted as an honorable organizational compromise mitigating potential conflicts of interest between the government logic and the market logic in the production of general safety. Pending tangible results, I have been led to feed five lines of questioning which will hopefully make sense in other national contexts, especially in Canada and Québec:

- How interventionist and nosy can the state afford to be—with its recycled army and police staff – in managing the consequences of the securitization (both in-house and external) of a publicly-owned company undergoing a transformation of its capital structure⁴?
- How much useful information can a French multinational company mobilizing its own open watch and intelligence networks supply to the state, with the understanding that some protection will be offered in return in case of major, unmanageable events or crises such as the abduction of overseas staff by pirates, industrial espionage, cybercrime, attacks on the company’s reputation or brand, etc.?
- How much truth is there in the assertion that some weapon industry corporations consider their overseas markets to be so saturated that, with the

support of interested think tanks (Rigouste, 2011), they have started to prospect new customers by making up a potential, shared conceptual enemy (Conesa, 2011), such as the suburban terrorist or the Chinese hacker—that figurehead of the people’s liberation army? This, in order to better supply (“sell”) civilian authorities with military technologies that can be recycled to fit law enforcement forces and sensitive investigation agencies (Rigouste hypothesis, 2009)?

- How likely are such phenomena to prompt the inception of a new *industrial surveillance complex*, as described by the American Civil Liberties Union (ACLU, 2004)—a terminology that should maybe be preferred to *political-industrial complex*? This is obviously a key issue in the United States, where nearly 2000 companies employ an estimated 850,000 agents with top-secret security clearances (Priest, Arkin, 2010), assuming this “model” can be relied upon to anticipate the future European or French situation.
- What is the ultimate meaning of the bridge-building efforts between two cultures—the military and the civilian—that used to be considered as more or less competing from an operational point of view? Are such partitioning concepts as the external and the internal enemy—to be dealt with by the army and the police, respectively—still relevant for thinking the challenges of global security?

17 My provisional conclusions are the following: it is not the case that the massive redeployment of former army and police staff in the management of vital companies actually entails the privatization of high intelligence policing. While it is true that these agents have learned to manage the outsourcing of the protection of people and goods and to pilot security audits while expanding their customer base, their main task rather consists in being able to convince not just other departments in their respective companies, but also, most importantly, the most exposed management and staff members. This task, however—infusing collective trust in risk management operations—is hardly ever taken for granted or successful, even when lawmakers agree to support and recognize their efforts by providing them with an extra weapon, e.g. by criminalizing infringements on business confidentiality in the area of industrial assets protection⁵.

18 It is far from clear whether French government agencies (such as the newly created homeland intelligence agency, *Direction Centrale du Renseignement Intérieur-DCRI*)⁶ intend to cooperate so easily, granting private companies access to the closed intelligence they hold, unless they manage to unofficially exchange it for some useful information, regarding an actual threat, from the company’s wide customer base. The “sensitive information” circulation issue largely depends, in fact, on mechanisms pertaining to the level of trust/defiance among the many agents involved. The real winners in this game are the civil servants, since nobody else is actually able to turn this information into *operational intelligence*.

19 If the boss of a private intelligence agency offers his services to a company from the vital activity sector, he still remains hugely dependent on—if not totally captive of—strictly State-controlled markets, which is the main-case scenario in the arms industry. He can still manage to diversify and offer his services to a wider customer base, of course, but it will tell us less about his management and market negotiation skills than about his intimate knowledge of an environment that would occasionally enable him to cash in on “a good tip” sold to government agencies.

20 To summarize, it appears—at least in France—that if such a thing as a cycle of high policing privatization exists (by high policing, we mean information-gathering activities encompassing companies dealing with in economic intelligence or industrial espionage), it remains rather marginal from an economic point of view, even though some of the entrepreneurs involved have managed to build an overinflated reputation of influence for themselves on the sole basis of the specific

assets that enabled them to put together a diversified, prestigious customer base.

*

21 By leaving these questions—rather than these fragile certainties—wide open for future work, as so many challenges to be tackled by those stubborn scholars who persist in trying to decipher some kind of reality on such allegedly difficult grounds, I am sure that Jean-Paul Brodeur would have encouraged us to explore these avenues, if only to have the pleasure of discussing them. As a criminologist with a penchant for quick theorization, his own personal tropism never induced him to discourage a research project simply because it appeared condemned to rely on provisional verifications only—quite the contrary, in fact. It is in the spirit of this shared belief that I wanted to offer this contribution as a tribute and a token of friendship and deep respect for his approach.

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Notes

1 This article was republished in the tribute issue of the same journal, with an introductory note by F. Ocqueteau (Ocqueteau, 2011a, 225-226).

2 See René Lévy's clarification in the present issue (Lévy, 2012). For the purpose of this paper, we shall take the the high policing metaphor to mean: *a political police force, in the sense of a "homeland army" (armée de l'intérieur) [...] in charge of the State's safety, the conservation of the regime, and the defense of the government, all of which tasks encompass the sovereign's security as well as the surveillance of any plot, conspiracy, attack, and civil unrest, i.e. a tool of government.* (Berlière, Lévy, 2011, 261). Not being, unlike J.-P. Brodeur, a historian by trade myself, I shall refrain from voicing an opinion on whether this is indeed a *traditional role as ancient as civilization itself* (id., 261).

3 Macro-securitization is an international relations school of thought whose main proponents include O. Waever and B. Buzan. Here is how Buzan depicted macro-securitizations in the war against terrorism: *a securitization aimed at, and up to a point succeeding, in framing security issues, agendas and relationships on a system-wide basis* (quoted by Ceyhan, 2011, 411).

4 Here are two instances of publicly-owned company *privatization* that should dissipate any intellectual misunderstandings regarding the migration of intelligence activities, when replaced in their specific social and legal framework. Ex. 1: The French Agency for the Diffusion of Technological Information (ADIT), alleged leader of the “economic and strategic intelligence”, was created in 1992 with EPIC status (*établissement public à caractère industriel et commercial*, i.e. state-owned company of commercial and industrial nature). It became a limited liability company in 2003, with the French State as its only shareholder: more management flexibility, but still state-owned. In 2010, the State divested 66% of its equity, only retaining a 34% publicly-owned blocking minority. Ex. 2: The *Direction des Constructions Navales Systèmes et Services* (DNCS). In 1991, the state-owned *Direction des Constructions Navales*, a naval defence company, created a limited company to promote its commercial activities and improve the follow-up on its export contracts. In 2001, DCN itself

acquired the status of state-owned company. In 2007, it merged with the Thales group, a French aerospace and defence corporation delivering information systems and services for the aerospace, defence, transportation and security markets, thus becoming a “*société de droit privé à capitaux publics*”, i.e. a privately-owned company with institutional ownership. The French State remained the main shareholder with 65% of shares in DCNS, with Thales Naval France owning 35%.

5 A legislative bill introduced on Jan. 13, 2011 by French MP B. Carayon and still under discussion, suggested a new type of incrimination against “infringements on business confidentiality” to support the fight against industrial espionage in sensitive companies, modeled on the “secret défense” concept used to protect classified military information. We interpret this symbolic issue as a reinforcement of secrecy against all threats pertaining to sensitive business information, rather than as another avatar of “high policing privatization”. Art. 226-14-1 makes it an offence, for any unauthorized person, to appropriate, retain, reproduce or communicate to another unauthorized person any “protected economic information”, or even to attempt any of the above. Art. 226-14-2. defines “protected economic information” as information that is not generally understood as publicly available, and for whose protection its legitimate owner has implemented substantial, legal measures of secrecy. The owner of this information is any natural or legal person who legally exercises the right to own or access this information. See the website of the *Assemblée Nationale* (in French, accessed on 26 March, 2012).

6 There are six intelligence agencies in France, two of which report to the ministry of Interior (DCRI and SDIG), three to the ministry of Defense (DGSE, DPSD, and the Army’s DRM), one to the ministry of Economy and Finance (Tracfin), and one to the ministry of Budget (DNRED). A National Intelligence Coordinator position was created in 2008, reporting directly to the President of the Republic. On this topic, see Urvoas, Vadillo, 2011.

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Auteur

Frédéric Ocqueteau

Director of research at CNRS (CESDIP, UMR 8183, CNRS/UVSQ/M. of Justice). Contact: ocqueteau@cesdip.fr

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