

Should Forensic Science Services be Independent of Policing? A Critical Reflection

Abstract

The organisational arrangements that connect forensic science and police organisations vary across different countries. At an institutional and governance level, a key debate in the international context has been, and continues to be, the extent to which forensic services should, or should not, be located within police departments. This comment will adopt a historical and comparative perspective to critically identify, and address, the key issues in this debate. It concludes that both policing and forensic science need to move to adopt the characteristics of a profession in order to establish an improved basis for professional interaction that is based on shared core values.

Science and policing

[T]here is still a fundamental disconnect between science and policing. By “science” we mean the broad array of methods and technologies that police have confronted over the last half century. This includes advances in forensics, such as DNA testing, digital fingerprinting and other technologies meant to improve detection and identification. (Weisburd and Neyroud 2011:2)

Weisburd and Neyroud (2011:2) also include social science in their consideration of science and look beyond traditional policing practices to include scientific models of inquiry such as problem-oriented policing. They argue that the adoption of police innovation has tended not to have a strong relationship with science, that innovation is more a symbolic activity than real scientific activity, and that most police agencies do not see science as critical to their everyday operations.

Weisburd and Neyroud (2011) emphasise that the advancement of science in policing is essential if police are to retain public support and legitimacy and that, for this to be achieved, science must move from the outside to the centre of policing. They see the need for paradigm changes in education and training, leadership, the academic-police relationship, the development of practice, and investment in research (Weisburd and Neyroud 2011:16).

With respect to investment in research, they see the ‘old’ paradigm as being restricted to a limited national and local or individual commitment to evaluating specific initiatives. Under their ‘new’ paradigm, a committed percentage of police spending would be devoted to research, evaluation and the development of a science and research base framed within a national, and possibly international, strategy to build the knowledge base over the medium to long term.

The 2009 US National Academies of Science (NAS) report — *Strengthening Forensic Science in the United States: A Path Forward* — identified the knowledge base as an issue for forensic science, observing that ‘among the various facets of underresourcing, the committee is most concerned about the knowledge base’ and they further drew attention to the lamentable state of funding for forensic science research (NAS 2009:77).

The Silverman (2011:3) review of forensic research and development (R&D) in England and Wales also recognised the lack of a secure funding base for forensic science as an issue requiring action recommending that ‘consideration should be given to the establishment of forensic science as a strategic research priority for the Research Councils’.

However, the poor record for forensic science research will not be fixed by simply throwing more money at the problem, as the issue is more fundamental. A significant factor is the lack of a research culture in forensic science. I have discussed this previously in the context of the gap between forensic science being an industry and a profession (Robertson 2012).

Even if the reader has, by now, accepted there are issues with R&D in both forensic science and policing, what has this to do with the organisational home of forensic science? The NAS Report (NAS 2009:191 Recommendation 4) saw the police as part of the problem for forensic science and recommended ‘removing all public forensic laboratories and facilities from the administrative control of law enforcement agencies or prosecutors offices’.

However, Weisburd and Neyroud (2011) in their new paradigm for police proposed the exact opposite and argue that, for police science to succeed the way science has in other professions, it must move from the outside to the centre of policing and that this can only be achieved by police ‘owning’ police science. In putting forward this as the solution, they were not suggesting no role for academia. Indeed, they recognised the importance of academia in training police and police researchers. Drawing a comparison with medicine, where clinical professors are well integrated into medical science, they propose a similar relationship needs to develop between police researchers and police organisations linking police, police researchers and academics through a university hospital model (Weisburd and Neyroud 2011:15).

And so to the central question of this commentary: should forensic science or, more broadly forensic services, be independent of policing? Two different eminent groups have identified issues in common, which they see as a major weakness for forensic science; yet, one has proposed integrated forensic science as the solution, while the other recommends taking administrative control away from the police! Is either approach correct or is there a third way?

My observations are based on more than three decades in the forensic sciences as an academic in the United Kingdom (UK), a practitioner scientist, 20 years as the head of the forensic group with the Australian Federal Police (AFP) and, most recently, back in academia. I also approach the issue from a pragmatic viewpoint, believing that in the real world, real world options drive real improvements.

Ideals are terrific, but it is important to not confuse ideals with arguably a lesser, but acceptable, world that recognises standards and promotes pathways to improvement.

The scope of forensic services – Who owns forensic science?

Barclay and McCartney (2007) have framed forensic science as ‘the interpretation of results in the individual context of each case’ and argue that this places forensic scientists at the centre of an open process of criminal investigation. Of course, the late Stuart Kind had proposed this role for forensic science in the 1980s (Kind 1987).

However, forensic science has a broader role within the criminal justice system (CJS). Forensic science does not exist only to assist the police — although they are most often the primary client. Hence, part of the tension that exists for forensic science is its role in support of the investigative process (however, mechanical or more philosophically based this is!) and its broader CJS role. The first substantive section of the recently released UK Forensic Science Regulators Codes of Practice and Conduct (Forensic Science Regulator 2011:9) is the ‘code of conduct for forensic science practitioners’ and the first duty for practitioners is ‘to the court and to the administration of justice’.

The second duty for the practitioner is to ‘act with honesty, integrity, objectivity and impartiality, and declare at the earliest opportunity any personal, business and/or financial interest that could be perceived as a conflict of interest’ (Forensic Science Regulator 2011:9).

So, what should the forensic science ‘employee’ do when they are directed by the police what to do or collect when undertaking a crime scene examination or when they are constrained in the testing they can conduct in the laboratory because the ‘client’ is only willing to pay for certain tests? Lawless (2010), describes the evolution of the ‘marketisation’ of forensic science in England and Wales, and draws attention to the ‘points of tension’ regarding the professional and epistemic autonomy of forensic scientists.

The reality is that the ‘client’ has every right to determine what they wish to purchase, but in an era that will see even greater fiscal pressures, is the danger that justice will be sacrificed for efficiency and cost? It would be simplistic to draw a simple cause and effect relationship between cuts in services and poor justice outcomes, including wrongful convictions and missed convictions. However, it is well understood that when budgets are cut, the focus is on protecting core activity, in policing terms ‘operational’ activity, however defined. From personal experience, I know the pressures placed on support areas in times of cuts, and let us be clear, budget reductions are cuts whether the politically correct nomenclature calls them ‘efficiencies’ or ‘doing more with less’. In some previous periods of significant fiscal problems, policing has been protected to some extent from cuts and, arguably, where forensic services are in a police organisation, too may have been protected. This is not always the case, as often at least some forensic personnel are not sworn officers and ‘civilian’ areas have not received the same level of protection as ‘front-line’ police. In the current global financial situation, the gloves are off and nobody is exempt from cuts. UK Police are having a 20 per cent cut over four years. This has certainly been a driver for the closure of the government-owned Forensic Science Service (FSS). The first casualties are usually training and R&D. Once reduced, or lost, it is an uphill battle to win back such funds. Hence, in the current era of ‘fiscal restraint’, it is hard to see how the vision of Weisburd and Neyroud (2011:16) can be realistically achieved with its ‘committed percentage of police spending devoted to research’.

The importance of standards and accreditation

How can we ensure adequate safeguards for forensic services? Certainly, an important component is the formal adoption and implementation of codes of practice and conduct. The ‘market’ in England and Wales now comprises in-house police provided services (at least 50 per cent and growing) and commercial services — mainly laboratory and analytical services — with a number of large providers and many smaller providers. Formerly, the FSS had a close-to-monopoly hold of laboratory and analytical services. The FSS held appropriate accreditation against the relevant international standard, ISO 17025. While the surviving major commercial laboratories hold accreditation for core activities, many of the smaller providers do not. Neither is accreditation held by more than a handful of police forces in England and Wales for any of the forensic work they do. The Forensic Regulator in England and Wales has set a timeframe for laboratory activity to meet European Union mandated accreditation. This would see organisations having to meet these requirements by 2015. There is no specific mention of a timetable for police-provided services.

The situation in the United States is similar, in that while a majority of forensic laboratories now hold ISO 17025 accreditation, some do not, and, police largely do not. In Australia and New Zealand, almost all forensic providers (laboratory and police based) hold ISO 17025 accreditation.

It should be clearly understood, however, that while *some* degree of ‘protection’ is offered through the requirements of ISO 17025 and supplementary forensic requirements, to address issues of undue pressure or inappropriate influence on individual forensic scientists, it would be naive in the extreme to believe such pressures are not a practical day-to-day reality. As has been seen with the FSS in the UK, and to a lesser extent in New Zealand, it matters not whether the forensic group is part of the police service or not (Bedford 2011).

Organisational protocols, practices, a quality system and formal accreditation are all essential, all useful, but, in themselves, *not sufficient* to ensure the work done by forensic scientists is adequate or appropriate. Does it make any difference whether or not forensic science sits within a police structure or outside police? Public perceptions of so-called ‘independence’ aside, in my view this really is a second level consideration. If forensic services are provided inside a police organisation, the key condition is that the group needs high level senior to executive level leadership to be positioned to properly argue for and negotiate budget and other senior management issues. In my view, it is better if the leader is also a scientist, but, if this is not the case, then a very senior scientist is needed to ‘protect’ scientific integrity. For small policing agencies, this simply is not the reality.

Policing and forensic science — Consequences of not being professions

For an outsider reading the NAS Report, it would be easy to not realise that the majority of forensic services is owned and ‘homed’ by police. This includes almost all crime scene work and fingerprint identification. It is still the case in much of the world that these disciplines are staffed by sworn police officers with no university level education. As Weisburd and Neyroud (2011:15, 10) observe ‘[m]any police agencies still only require a high school degree for employment’ and ‘science is normally not central to police education and training’. I would suggest that the latter is a massive understatement! Weisburd and

Neyroud (2011:10) comment that ‘the limited progress of police to create accredited standards for education prior to joining the force and throughout the careers of police officers has reinforced the realities of policing as a blue collar job rather than a profession supported by a credible corpus of knowledge’.

Neyroud (2011) has reviewed police leadership and training in England and Wales and has proposed ‘moving away from in house delivered programmes ... to a new partnership with higher education, building towards the “teaching hospitals” for policing linking learning with practice’. The UK Government (Home Office 2011) has accepted the primary recommendation of the Neyroud Review and has announced a new police professional body will be set up in 2012.

It will be interesting to watch the further evolution (or revolution) of policing and forensic science in England and Wales under the influence of this new professional body, fiscal reality, the ‘market’ and the new regulators professional code.

Elsewhere I have discussed how well forensic science meets the criteria of being a profession and concluded that it falls short in many aspects (Robertson 2011). Perhaps if both policing and forensic science both met more ideally the tenets of a profession, there would be a sounder foundation for the meeting of these ‘industries’ based on professional respect and recognition. It seems to me that at least some of the current problems forensic science faces when it exists within a police organisation are the lack of shared professional values, and the quite different cultures and how this informs views of their role within the broader CJS. As Neyroud (2011) has argued, the police service needs to move from being a service that acts professionally to becoming a professional service. I would add, and so does forensic science! Would forensic science benefit from being associated with other allied professions? The problem is that forensic science is not a very comfortable fit for other potential parent ‘professions’, such as health or a justice department. Forensic science could sit independently outside of any parent organisation with some form of autonomous independent status. With a commercial spin, ESR in New Zealand (a government-owned crown research institute) is such a model, but crime scene, and other ‘police’ forensic sciences remain within the police. Although some limited crime scene support exists outside of police, such disciplines are still predominantly ‘owned’ by the police.

Establishing these disciplines outside of the police would present significant practical challenges and some legal issues, but would not be impossible if the perceived independence was truly seen as a critical issue.

Conclusion

There is no ideal organisational structure or ‘parent’ for the broad collection of disciplines that together are the forensic sciences. Even limiting forensic science to the traditional police and laboratory forensic sciences, there is no one ideal model and existing arrangements reflect historical evolution more than any other group of factors. Hence, there is no simple answer to the question of whether or not forensic science should be independent of policing. From a pragmatic view, it would be difficult, but not impossible, to ‘tease out’ crime scene from policing. Fingerprint examination may find it is somewhat easier to move to a non-police setting in the future. Laboratories can sit outside of policing, but the demise

of the FSS is a salutary warning that they are not immune from fiscal and government policy wherever they sit in the system.

The real issue is not independence, it is impartiality. It is possible to make organisational arrangements within policing to uphold and support such impartiality if that is a major concern. Arguably, it is easier to 'fight the fight' from within an organisation, rather than outside. Hence, philosophy aside, there are defensible practical reasons for maintaining forensic services within police organisations.

Regardless of organisational home, forensic groups need to demonstrate that they provide effective services in as efficient a manner as the system allows. Quality systems and accreditation have their limitations, but regardless they play an important role in supporting effective service provision. These standards need to be adopted by all service providers and it is remarkable that, after more than three decades, many organisations providing forensic services are still not accredited. The now rapid timetable being pursued in the UK does not reflect well on the past history and record of policing services in particular.

However, accreditation on its own is not sufficient and there is a need for forensic scientists, regardless of employer group, to fully develop as a profession. It is also remarkable that for a subject that has potentially such a profound impact on the individual and society that the 'state' has largely not seen the need to formally regulate the industry (Robertson 2011). In my view, state regulation is both inevitable and necessary, but successful regulation requires strong member professional bodies. An improved regulatory regime could fill in the gaps which currently exist and have the potential to sacrifice the effectiveness of forensic science on the altar of efficiency.

In conclusion, let's not waste energy worrying about employers, but rather invest our collective energy on developing the professions of forensic science and policing.

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