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Postprint / Postprint

Zeitschriftenartikel / journal article

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Empfohlene Zitierung / Suggested Citation:

Koemans, M. (2010). The war on street 'terror': why tackle anti-social behaviour? *Crime, Law and Social Change*, 53(5), 477-491. <https://doi.org/10.1007/s10611-010-9237-6>

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The war on street ‘terror’. Why tackle anti-social behaviour?

Monique Koemans

Published online: 30 March 2010
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Abstract This article examines the rationales of Dutch politicians for tackling the perceived pressing problem of ‘anti-social behaviour’ (ASB) and the question did they copy the British approach? The first part will describe in short the concept of policy transfer and the recent British fight against ASB. The focus will be on the introduction of the Anti-social Behaviour Order. The second part is an empirical study into the Dutch retreat from ‘condoning’ ASB, consisting of interviews with Dutch politicians focusing on their ideas for tackling ASB. Those are compared with the British’s rationales. This kind of comparative elite ethnography is not common in criminology, but this article aims at providing evidence of its benefits. By answering the research question an insight into the origins of policy in the sphere of criminal justice can be obtained.

Introduction

On September 14, 2008 the problem of anti-social behaviour (henceforth ASB) became front-page news in the Netherlands. In Gouda¹ several bus drivers refused to drive through a certain neighbourhood any longer, because of the ASB they encountered on their daily rounds. Especially young Moroccans were accused of terrorising the public transport routes. Their ASB in the form of yelling, spitting at other passengers and intimidating the bus drivers was no longer tolerated. The situation escalated when television journalists were threatened by the youngsters. A Dutch politician claimed the neighbourhood had turned into a ‘no-go area’.²

¹A small city of 70.845 inhabitants (www.gouda.nl)

²MP Mark Rutte in the Telegraaf (October 3, 2008).

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As a result an emergency debate in Dutch parliament on the problem of ASB was called. During the heated political discussion, nuisance in the public domain³ was labelled an ‘acute problem’ that pressed for ‘a quick and harsh response’. This *Gouda-debate* generated some remarkable media quotes; ‘ASO-terror damages public transport’, ‘Send the army’, ‘tough actions needed against street terror’, ‘tackle street terror today, not tomorrow’, and ‘anti-social behaviour wreaks serious havoc in many Dutch cities’.⁴ Although the perceived problem of ASB by Moroccan youth has been on the Dutch societal agenda for the last six to eight years, now (after recent incidents like Gouda) it appears more acute.

Of course ASB is hardly a new phenomenon [44, 50]. Twenty years ago nuisance in the public domain was a reality as well. But in those days, the byword was to condone (turning a blind eye) [11]. But nowadays ASB has become a major policy preoccupation and it is directly connected to the problems of young immigrants from Morocco [42]. For many Dutch politicians it is now self-evident that the government should act firm against ASB [29, 37, 45, 49].

In this article the Dutch retreat from ‘condoning’ ASB is examined by identifying the underlying principles offered by politicians for tackling this kind of behaviour. These Dutch rationales are compared to the British ones.

First stage of the empirical study consists of a content analysis of British and Dutch key government and parliamentary documents (debates, votes, reports).⁵ In order to produce a brief narrative of the process of policymaking, the focus will be on the development of the Anti-social Behaviour Order (henceforth ASBO). The ASBO as a case study is an easy choice because of its political attraction. Dutch politicians often cite this English measure and refer to the ASBO as a recipe for success [25]. It will be interesting to find out why the ASBO is so appealing for Dutch politicians.

The second stage consists of a series of interviews with key participants in the policy process.⁶ The actors involved are Dutch elected officials, Dutch spokesman of political parties and British and Dutch civil servants. The Dutch political landscape is quite diverse. In total eleven different political parties are represented in parliament. Interviews were conducted with the nine biggest. Furthermore four members of city councils of Amsterdam and Rotterdam and five high ranking policymakers were interviewed.⁷ The interviews resulted in rich first hand-accounts of the Dutch policy process and of the perceptions of key actors.⁸ Why is this kind of elite comparative ethnography useful for the study of policymaking in the sphere of criminal justice?

³ Both ‘anti-social behaviour’ and ‘nuisance in the public domain’ are contested concepts. Defining what is currently meant by them is not straightforward and is context-specific. In this article the concepts refer to persistent, un-acceptable non-criminal or minor criminal behaviour of young people in a public order context.

⁴ Debate on the 25th of September 2008, after incidents of anti-social behaviour in the city of Gouda lead to widespread public outcry (AD, Telegraaf, NRC).

⁵ Key documents are those papers that concern the tackling of ASB after the publication of the Dutch government paper *To a safer society* [35]. This document has been chosen as a point of departure because as also Pakes [37] argues, this appears the formal beginning of the tougher approach on ASB.

⁶ The research has been conducted from July till November 2008.

⁷ In general I was successful in gaining access to senior politicians and policy-makers. Nonetheless at their request, their quotes have been impersonalized.

⁸ In total $N=18$.

Policy in the making

There are different macro views on the international component of the origins of crime policies. Some scholars stress the differences in policy interventions between countries [33, 47]. A strong theme within this body of work is the focus upon the so-called American distinctiveness in the area of crime control [27]. One of the limitations of this approach is that some highly important globalising effects in policy making are overlooked.

On the other hand, there is a substantial body of academic work that stresses the similarities of criminal justice policies [14, 15, 17, 18, 24, 39]. These academic works argue that the spread of democratic institutions and parallel social and economic forces have shaped related public policies. They highlight the emergence of a common risk society or a culture of control. To illustrate, Garland [18] argues that crime policies in the UK and USA have become increasingly similar.

Indeed there is much in the Western cultures of control that appears to be in common. But again there are limitations to these studies.⁹ In general there is a tendency to overemphasize the trends that confirm this thesis and to downplay divergent developments.

The point of this article is not to deny a general trend of a culture of control or to suggest that differences between countries do not exist. This study does not focus on identifying macro developments. It aims at providing an additional perspective by means of exploring the *process* of policymaking on a meso-level.¹⁰

Policy represents the outcome of a complex set of processes. It is acknowledged that copying or (consciously) overlooking policies from abroad is part of this. But the significance of individual decisions and actions of political actors in this process is often underrated. That is why in this article their views will be studied.

The concept of *policy transfer* can be useful in this study because it concerns individual political decisions. Policy transfer is defined as a process by which knowledge of policies, administrative measures, institutions and ideas in one political system, are consciously used in the development of policies, administrative measures, institutions and ideas in another political system [12].

It is interesting to see whether policy transfer between the UK and the Netherlands has taken place or not. Thereby establishing a difference between *soft* transfer (including ideas, concepts, lessons and attitudes) and *hard* transfer (including actual policy instruments and legislation) [16].

Of course with this approach there are limitations as well. For example *over* emphasizing the degree of individual rationality in policymaking process. The respondents can be rationalising their choices after they were made, but during the process of policymaking they perhaps were less conscious of them.

Furthermore it is difficult to separate external influences from domestic policy developments and external examples can simply serve to confirm an already decided approach. Pollit [40] points out that labels are frequently borrowed (because of their legitimating power) but in actual action, policy can differ. And there is a tendency of

⁹ Most writers are aware of the problems of a broad perspective but aimed at understanding macro trends in penal policy [27].

¹⁰ In this article the meso-level concerns the role of political actors in the policy make-up of their countries crime policies.

exaggerated claims, assumed from similarities in policy rhetoric. Therefore it is important to look for evidence of *non-transfer* as well.

English measures and rationales in short

In 1998 the ASBO was introduced in England and Wales.¹¹ The then Prime minister, Tony Blair, stated that if traditional criminal law processes in cases of antisocial behaviour continued to abide, the rights of victims would be allowed to be routinely trampled upon and would leave courts fighting 21st century crime with 20th century methods. He claimed that the use of control orders was the best available means for protecting the public from ASB.¹²

ASBOs have a minimum duration of two years, can last indefinitely, and contain prohibitions considered necessary to prevent the repetition of a person's anti-social behaviour [4]. In the law, the conduct is defined as 'behaviour which caused or was likely to cause alarm, harassment, or distress to one or more persons not of the same household as him or herself' [23].

In most cases an acceptable behaviour contract (ABC) is issued first. It's a written agreement made between a person who has been involved in ASB and their local authority/landlord or police. ABCs are not legally binding and there does not have to be an ABC in place before an ASBO application is made [23]. Then when the agreement is breached in most cases it can be followed up with an ASBO [5].

The ASBO is a *civil* order. Restraints of certain behaviour are imposed by a civil court and breaching is a criminal offence [1]. It is a multi step prohibition, a civil order backed up by a criminal penalty [10].¹³ As Millie [34] pointed out, within a relatively short period of time, the ASBO became in regular usage and is now part of the common lexicon.

In the UK, the government is clear on the question why ASB should be tackled; "Anti-social behaviour ruins lives: It does not just make life unpleasant; it prevents the renewal of disadvantaged areas and creates an environment where more serious crime can take hold," as can be read in several governmental documents [22].

So much is said in one sentence. Jacobson [26] spotted three answers in this single sentence. They argued that this alone may suggest that there is 'room to take a critical view of the different rationales for tackling ASB'.¹⁴ Their study combined empirical research with a review of policy and research literature. They identified among others, the following rationales;

- *Quality of life*; ASB should be tackled because it is a serious problem that makes people miserable and fearful.
- *Broken windows rationale*; ASB should be tackled because if left unattended, it leads to serious crime.

¹¹ The crime and disorder act (1998) introduced ASBOs.

¹² <<http://www.pm.gov.uk/output/Page11769.asp>>.

¹³ The two-step prohibition structure can be placed in the tradition of the Statutory Nuisance Abatement Notice. It dates back into the 19th Century and would have been a familiar power to the local housing managers who invented the original proposal for the Community Safety Order [44].

¹⁴ Page 37

- *Regeneration rationale*; action on ASB should contribute to the social and economic regeneration of local areas.

These British findings formed the starting point of this study. By comparing the English rationales with the underlying reasons of Dutch politicians it will become clear whether policy transfer has taken place or not.

Dutch measures

Recently, as was described in the introduction, Dutch authorities have stepped up their focus of attention for the problem of ASB. Nuisance in the public domain is coupled with war rhetoric and addressed with strong measures. But not so long ago the Dutch were famous for crime policies with a strong 'social'-character [42]. This was combined with the earlier mentioned Dutch practice of condoning (*gedogen*) also defined as regulated tolerance [3, 7].

But this history of tolerance was one of the first in 21st century Europe to collide with the on-street realities of young Muslim immigrants [51]. In particular around the rise of the populist politician Pim Fortuyn in 2001 there was an increasingly critical public reaction towards this idea of regulated tolerance especially towards young Muslims [37]. The general view was that *gedogen* had gone too far and that authority has lost authority [41].

The Dutch government reacted with the publication of the paper *To a safer society* [35]. This document appears as also Pakes [37] argues, to be the formal beginning of the tougher approach on ASB. It was for the first time that ASB was directly linked to crime and feelings of unsafety. In brief, the government aimed at more police on the street, tougher enforcement of existing rules and where necessary introducing new measures [35].

Later on in October 2004, the Dutch Government was further pressurized to address the problems in the public domain. This heat developed due to a widely publicised case in which a couple had been 'forced out' of their house by harassment from a group of Moroccan youths [29]. In short, the couple no longer felt safe in the *Diamantbuurt* in Amsterdam because they were tormented and called all sorts of names by these youngsters [45, 49]. The group had ended up throwing stones through the couple's window, and the two moved out of the area. In a reaction several politicians called for tougher measures to tackle 'street terror'.¹⁵ The Minister for Justice considered adopting the ASBO, but after counter-advise from the chief prosecutor the Minister decided against it [5]. In stead the later discussed ABC-pilot in Rotterdam was introduced.

In 2007 after more incidents of ASB by young Moroccans,¹⁶ discussions in the Dutch parliament of addressing ASB were rekindled. In June of that year, two chairpersons representing local boroughs in Amsterdam¹⁷ suggested introducing the ASBO in the Netherlands. They stated that in the UK it was successful in reducing ASB in inner-city areas. "The ASBO helps in the fight against young people

¹⁵ 0405tkkvr381. Tweede Kamer, vergaderjaar 2004–2005 (vraag 381).

¹⁶ In Amsterdam neighbourhoods (*Slovervaart*) in Utrecht (*Kanaleneiland*) and the Hague (*Transvaal*).

¹⁷ Resp. *Slovervaart* and *de Baarsjes*.

terrorising the streets, before criminal law comes into the picture,” said local council chairman Arco Verburg.¹⁸ He referred to the new British laws ‘as the best way to respond to problems in the public domain’.¹⁹

In the last three years, there have been several pilots in Rotterdam, Utrecht and Amsterdam copying the ideas of the ASBO. For example the ABC-project in Rotterdam called, ‘knock off’²⁰. This pilot was based, just like the ASBO, on a multi step approach. The first is an intervention in the form of a contract, issued by a welfare officer or street warden (*stadsmarinier*) and signed on a voluntary basis by the problem maker. When the contract is breached, an order is issued by the mayor. As soon as this order is violated the culprit will be brought before a criminal court. This is in line with the already existing article 184 Sr (*penal code*) that prescribes ignoring an official order constitutes a criminal offence and may lead to a penal sanction. During one case in the pilot, a police court judge issued a fine, because a youngster breached a restraining order.²¹ The ASBO was a direct inspiration for this pilot, as can be read in the evaluation report.²² Some high ranking policymakers traveled to the UK and visited the Home Office to get information on the ASBO.

In addition to this pilot, the Dutch government is preparing to enact new administrative legislation that provides local authorities with more legal instruments (often called administrative sanctions) to react to and prevent ASB [30]. For instance there is a new law in the making; titled *severe anti-social behaviour* that in many ways is similar to the ASBO.²³ The proposed law²⁴ gives more power to local authorities. Mayors can issue restraining orders to people who have displayed anti-social behaviour without the interference of a judge and for a longer period of time than the current law allows.

This new law is designed so that the mayor can act quickly when he considers the ASB to be a serious problem. A precise definition of ASB is not given in the proposal, but it declares that the behaviour should be ‘persistent and grave’. Information on the case can come from partners in the judicial system, like the police, but also from administrative authorities, like social services and the local Department of Education. The restraining order can be issued for a year and must be revised every 3 months.²⁵ If the order is breached, it becomes a criminal act (on the basis of the already existing article 184 Sr) and the case can be brought before a criminal court.²⁶

Although the ASBOs are measures under *civil* law (with a local judge issuing the order) and the Dutch proposal is based within *administrative* law (mayor can issue order), the ideas behind it are very similar. Like the English counterpart this

¹⁸ <http://www.nicis.nl/nicis/dossiers/Zorgenwelzijn/Jeugdzorg/verrijkt dossier/Jongerenoverlast_1132.html> (accessed May 30, 2008).

¹⁹ As stated in the *Volkskrant* (June 13, 2007).

²⁰ Translated as “ff kappe”.

²¹ The evaluation rapport concluded that the effects of the Pilot could not be measured (Letter to parliament *Evaluatie Doe-Normaal pilot*, Ministerie van Justitie and Minister van BZK, (5554663/08)).

²² See notes in the Letter to parliament *Evaluatie Doe-Normaal pilot*, Ministry of Justice and the Home Office (5554663/08).

²³ Others are, the ‘minor nuisance at municipal level act’ (still in draft), and ‘the public prosecution service settlement act’ [11].

²⁴ Official title in Dutch; ‘Maatregelen bestrijding voetbalvandalisme en ernstige overlast (31 467).’

²⁵ Or one can be ordered to report at certain times.

²⁶ A prison sentence up to three months or a fine can be the end result.

proposed Dutch law is a multi-stage approach, containing of two different elements (contract *and* order). Furthermore, breaches of the orders constitute a criminal offence and may lead to penal sanctions (including prison sentences).

In the Netherlands, mayors have more power in this respect than their British counterparts. According to current law, they can also issue restraining orders, but with the new law they can prolong this period and couple it to 'a duty to report'. In addition, the public prosecutor has more authority as well.²⁷

So one can conclude by the measures taken that the English approach appears enormously attractive for Dutch politicians. Although this is not entirely a one-way traffic. In Britain the earlier discussed Dutch-style street wardens were copied [5]. But still the attraction is for the most part one-sided. Especially the ASBO is seductive. This is remarkable because British scholars regularly criticise the ASBO [19, 20]. For instance, it has been condemned for potentially criminalising more day-to-day behaviour (the so called net-widening effect) [1, 4, 8, 13, 24]. Furthermore because it has become a so-called *badge of honour*. Some teenagers are proud of their cool ASBOs [32].

Tonry [48] also criticised the ASBO sharply; 'by making ASB into a major social policy problem, and giving it sustained high visibility attention, Labour has made a small problem larger' ([48]:57).

Also outside the academic world, there is criticism [31]. For instance the European commissioner for Human rights expressed his great concern.²⁸ In Great Britain ASBOs can be imposed on children as young as ten. The European commissioner feared young children can be detained for breaching ASBOs and can incur a criminal record without actually having committed any recognisable offence [2, 10].

Another point of interest is the sharp decline in the use of ASBOs in England and Wales in 2006 [6]. There appears to be a growing disillusion, on a political and practitioners level, with the measure.

It will be interesting to figure out why these negative effects of the ASBO, academic criticism and recent developments appear not to be relevant for Dutch politicians and what the rationales are for the retreat from regulated tolerance.

Dutch political rationales

To get a picture of the underlying reasons for tackling ASB, members of parliament (MPs) and members of the city councils of Amsterdam and Rotterdam²⁹ were interviewed. They were questioned on the basis of a topic list.³⁰ Addressing issues like the definition of ASB, the enforcement of current and new measures and reasons

²⁷ For example; Restraining order, duty to report, contact injunction.

²⁸ Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4th–12th November 2004, The Office of the Commissioner for Human Rights, Council of Europe, 8 June 2005, pp. 34–37.

²⁹ The respondents represent various political parties, only when there are notable *political* differences between the statements is this mentioned.

³⁰ Topics on the list were; ASB definition, current measures, causes of ASB, reasons for tackling ASB, future, extent of ASB etc.

for tackling ASB. Subsequent to analysing the results, five rationalities for addressing the problem of ASB have been identified.

1. the assumed link between disorder and crime

The often cited idea by the respondents is that ASB should be tackled because left unattended it leads to crime. Many respondents state that if minor incidents of ASB are left untouched, disorder can provoke fear, and fear in itself helps to create the physical and social environment in which real crime can develop. 'When people observe that ASB is not addressed, people will feel afraid and withdraw from public spaces; "they will not intervene when they observe crime", as one MP stated.'

The idea of a cycle of ASB, fear and crime is often mentioned. The *Broken Window Theory* is mentioned as the theoretical idea behind this. One of the MPs directly referred to this theory; "The *Broken Window Theory* has proven that minor nuisances in the public domain should be addressed by the government to prevent things from getting worse".

Other respondents, upon being asked, say they are familiar with this theory but appear unaware that there is only a weak amount of evidence for this effect. They often state 'this idea is very logical'. So the *Broken Window Theory* has a very intuitive appeal. In general ASB is perceived as a seedbed of a persistent criminal career; "If politicians do not treat ASB seriously this will definitely lead to problems in the future".

Although some MPs state that the current arsenal of measures is enough to address the problems, the ASBO-approach of New Labour is often (85%) mentioned as the best way forward. One MP directly cited Labour's vision; 'tough on crime, tough on the causes of crime'. He claimed that; 'We can learn from Labour's ideas, because they have the same problems but on a larger scale. So if the ASBO works there it will definitely work here.' Four politicians underlined the idea of the ASBO but argued that it should be coupled with existing social policies addressing the roots of the problems.

2. economic reasons

The general idea among the respondents is that by tackling ASB, the cycles of economic and social decline in a neighbourhood can be reversed. Some MPs suggest that ASB threatens house prices and discourages investment. They argue that social disorganization and the associated lack of informal social control can lead to a spiral of neighbourhood decline. "Social cohesion is declining, that is a cause of the increasing problem of ASB."

It is not surprising that politicians mention this reason for tackling ASB. The economic theme is an important political issue for the current Dutch administration; they want to turn around the so called 'deprived Neighbourhoods' into 'better-to-do' areas.³¹ This urban renewal project is known as the *40 districts approach*.³² Over a thousand million Euro is invested to establish this turnaround.³³

³¹ Translated in Dutch as 'prachtwijken' or 'Vogelaar-wijken'.

³² Objectives of GSB Urban Policy Programs are • To improve objective and perceived security • To improve the quality of the built environment • To improve social cohesion within society as a whole • Bind middle and higher income groups to the cities • Enhance the economic performance of Dutch cities see <http://www.nicis.nl/kenniscentrum/binaries/nicis/bulk/publicaties/2008/10/engelstalige-factsheet-gsb3-en-krachtwijken.pdf>.

³³ *Kamerstukken II* 2007–2008, 28 684, nr. 130, te vinden op <www.minbzk.nl/onderwerpen/veiligheid/veilige-samenleving/nieuws-en/110943/kabinet-en-gemeenten>.

The ideas of collective efficacy and its close relative the concept of social capital are of importance here. "People must feel connected to their neighbourhood. Tackling ASB will help in restoring community feelings," as a respondent explained. The ASBO is mentioned in this context although several respondents explicitly state that new measures for addressing ASB should be coupled with a social approach as well.

The ideas of Robert Putman appear especially alluring for the Christen Democrats; they often emphasize the importance of social cohesion in relation to ASB. One MP cited from Putman's book *Bowling alone* [43]; "Social capital can help to mitigate the dangerous effects of socioeconomic disadvantage".

3. the idea of the quality of life

All respondents state that ASB is a serious problem that makes people miserable and fearful. Regardless of their political background the politicians say that ASB makes people feel unhappy and unsafe. Quotes like 'security is a necessity of life' and 'ASB can make people feel threatened' are mentioned more than once. So ASB has to be addressed because of the unhappiness it causes. "Even small incidents of ASB can spark a general feeling of insecurity. These incidents have signal value," as one respondent reacted.

Although this is generally a popular theme, some MPs question the feelings of unsafety, suggesting that maybe the *attention* for ASB is increasing and not so much the *actual problem* itself. And that the complaints of people are only evidence of an increasing intolerance of young people and minorities. This more sceptical idea is not restricted to one political party, but is mentioned by left wing as well as right wing MPs.

4. ASB is closely linked to the problem of minorities

The politicians generally emphasize that in inner city areas mostly young immigrants from Morocco are responsible for the nuisance in the public domain. It cannot be a big surprise that especially far right wing parties mentioned this problem, claiming that 'young Moroccans make the streets of big cities unliveable'. And that harsh measures like 'sending them back to Morocco' are the best solution.

However these ideas are not restricted to conservative politicians. All political parties link ASB in some way to the problem of minorities. A number of the MPs argue that because of low levels of social integration young Moroccans terrorise the streets. "Addressing their behaviour with strong measures like restraining orders, a curfew, or behavioural contracts could break the cycle of isolation and alienation of young immigrants," as one respondent suggested.

Also the respondent of one of the country's biggest left-wing party stated that politicians had for too long failed to acknowledge the problems of the integration process. "We focused too long only on welfare. Now is the time to introduce effective punishment for trouble-making young people."

Other politicians approached this subject in a more subtle way and raised the issue of enforcing morals. They state that concepts like responsibility, respect and tolerance and shared understanding of what kind of behaviour is and is not acceptable in Dutch society, should be promoted in general.

Among the different parties there is a universal belief that ASB is getting worse by the day. And that this kind of behaviour is starting at a younger age now, even 12-

miners. “Above all, young Moroccans are a large part of this younger group. We have to tackle their ASB with for example contracts coupled with orders, at an early age to prevent things from getting worse. They have to be told that this kind of behaviour is not accepted in the Netherlands,” as a member of the government party reasoned.

Legitimacy of the government

Broadly cited by politicians is the idea that ignoring the rising problem of ASB would undermine the credibility of the government. One MP described this idea as follows; “ASB must be addressed, otherwise people will ask; ‘Why is this kind of behaviour accepted? And if the police do not act, people will’”.

Different respondents refer to the ideas of Pim Fortuyn and claim that after his murder people lost their faith in the government.³⁴ That is why it is believed the government has to act firmly when confronted with problems in society. It is generally accepted among the respondents that ignoring the problem of ASB can eventually lead to vigilantism. So tackling ASB is deemed necessary in order to keep the confidence of the people.

Some MPs question the reasoning that Dutch citizens only want harsher measures to address ASB. They are familiar with the results from recent research that once people were asked what their biggest ASB concern was, 35% stated dog dirt.³⁵ But the MPs still thought that addressing ASB more firmly was a right route to follow. “No harm done when making the streets safer,” as one respondent reasoned. “From my own experience I know that stronger measures help,” reacted another.

Three politicians were familiar with a recent report on the effects of punishment. It concluded that there was no proof for the assumption that harsher measures will reduce levels of ASB [52]. These MPs stressed the importance of social policy. “The government cannot act on every form of nuisance in the public domain. We must not create the expectations that we will. It is more important that the root problems of the troublemakers, like truancy are addressed.”

However in the end almost all respondents said that they still believed it to be true that harsher measures will tackle ASB. “I just know that addressing ASB is necessary and that the government should act firmly. I do not need scientific arguments to back up these facts,” as a respondent ended his interview.

Discussing results

To sum up, the interviews confirm the earlier observation that the ASBO is extremely attractive for Dutch politicians. The same reasoning (measures are needed, ASB is increasing), the same ideas (quality of life, broken window, economic reasons) and the same solutions (behavioural contracts) are used in political arguments. In combination with the earlier described exchange of ideas (Dutch policymakers traveled to the UK to get information on the ASBO) and references to

³⁴ Thereafter a so-called revolt of the voters.

³⁵ Veiligheidsmonitor Rijk 2007.

the ASBO in policy documents, it can be concluded that undeniably a *soft* transfer of policy took place.

Also the intention for *hard* transfer appears apparent. Both the pilot in Rotterdam as well as the new law in the making (*severe anti-social behaviour*), refer to the example of the ASBO and the supposed success of the English approach. Although a milder version of the ASBO has been adopted (the ABC in the pilot), at least a form of hard policy transfer indeed did take place [5].

These results appear to confirm the idea of a *common* culture of control or risk society [14, 17, 18, 24, 39]. In short, indeed the two countries faced comparable problems that gave rise to similar (partly copied) solutions and politicians argued along the same lines (see rationales 1, 2, 3).

However these analyses can be misleading. As I stated earlier, in comparative research there is tendency of exaggerated claims, assumed from similarities in policy rhetoric. Therefore in order to get a complete picture, it is important to look for evidence of *non-transfer* as well. In the sense that dissimilarities in the policy rationales can be identified.³⁶

In contrast with the parallels, the empirical data also illustrate that Dutch society faces its own particular problems (see rationales 4 and 5). These own rationales can elucidate the Dutch retreat from the policy of turning a blind eye. All respondents coupled young Moroccans with the problems of ASB in inner city areas.

In Dutch inner cities there are troubled community relations with youngsters from minority groups. Especially the Moroccan youth groups are believed to behave in an anti-social manner. Ethnographic fieldwork in Amsterdam showed that this often concerns intimidating group behaviour. De Jong 2007 [28] who followed a group of Moroccan youngsters over several years stresses their harsh street culture. Being part of a so-called 'Moroccan' street culture stresses their identity and their position in society, which is in turn reinforced by media attention and political worries. In the UK ASB is less coupled with the immigration issue. Perhaps this is not so surprising considering the English class society. The social problems in British inner cities are of a different order. On the notorious housing estates unemployment, crime and ASB trouble all sections of the population; British and immigrants alike. As also Lippens [30] points out, the Dutch problems are not that severe as in the UK. Most Dutch politicians agreed that the British situation in British cities is worse. "But if the ASBO works even there, it certainly will here," as a city councilor argued.

Furthermore this comparative research shows that Dutch politicians stress 'legitimacy of the government' as a reason for tackling ASB. For the UK this appears a less acute problem. This difference is interesting because in their statements the respondents often use the ASBO as a legitimating power. The supposed success³⁷ of the ASBO operates as a useful myth that can work in the advantage of the politicians [37]. The fact that up until now there has been no objective evaluation report on the introduction of the ASBO available does not seem to influence the ideas of the Dutch policymakers. Parliament recently agreed to prolong the pilot in Rotterdam.³⁸

³⁶ Besides the most apparent that there are two different judicial systems.

³⁷ There is not yet prove of positive effects of the ASBO. Ipsos MORI a research company will publish an evaluation at the beginning of 2009.

³⁸ Vote on *motie Anker*, 11-11-2008 (Tcm118-175522).

It is often debated that after the ‘Pim-Fortuyn’ revolt there is tendency among Dutch politicians to swiftly pick up new trends and catchphrases from abroad [37, 42, 49]. Almost all the interviewees confirmed this idea of following trends in crime control. They feel that in order to keep (or restore) the faith of the people, **new** actions against crime and ASB are vital. This could be an explanation for the popularity of the ASBO as well. The British measure functions like a sort of policy umbrella that promises something new and effective. It furthermore legitimises the shift in Dutch policies from social to more repressive measures.

The ASBO is interpreted by the respondents the way they see fit. For instance some describe the ASBO as a preventive measure for ‘avoiding things getting worse’ or for ‘the problems of immigration’, others see it as a repressive measure for ‘teaching them a lesson’. It is remarkable to see that the ‘soft’ practices of a strong social policy in neighbourhoods is not completely abandoned. The more left-wing politicians attempt to combine the ASBO with more ‘social community work’, stressing that the ASBO can only work when social agencies work together to address the root problems as well.

Equally striking is that most politicians do not need real evidence for the effectiveness of the ASBO. The myth of its success is enough. An explanation for this line of reasoning can be the idea of precautionary logic. As also [46] points out, the zero tolerance approach of ASB appears to be inspired by a precautionary principle,³⁹ where the lack of scientific evidence is not an excuse of inaction. Also [39] advocates such a view, arguing that the precautionary principle has become a governmental rationality in many Dutch policy processes. It is a perfect way of doing politics because you do not have to prove anything. Just as [46] argues, the success of the ASBO is not influenced by scientific research but is more an instinctive response.⁴⁰

The data presented in this article indeed suggest that the ASBO has in essence an emotive appeal for Dutch politicians as well. But does this confirm the idea of the precautionary principle as a dominant governmental rationality? It could be, but is it not equally true that the policy processes were never really backed up by scientific evidence? Tony Blair himself reflected upon the use of scientific research. “You can argue about statistics until the cows come home and there is usually a very great credibility gap between whatever the statistics put out and whatever people actually think is happening, but the real point is not about statistics, it is about what people feel.”⁴¹

Also the interviewees confirmed the preference for action above thorough scientific research. In general they argued that tackling ASB both embodies a common-sense understanding and an appeal to popular sentiments. And that there was no time left for inaction. “Something has to be done to tackle street-terror,” as a MP stated. “And science is often inconclusive, so we cannot wait.”

³⁹ This is based on the precautionary principle used in environmental policies “Where there are threats of serious irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation (United Nations Conference on Environment and Development 1992: principle 15)”.

⁴⁰ Earlier Morris [36] also argued that scientific research is often not the bases for new policies.

⁴¹ Speech at a conference 10 February 2006, available at www.number10.gov.uk (last visited 15 December 2008).

Furthermore, the ASBO has simply a practical appeal. Some respondents claimed it basically fits the already existing set of instruments. For example if the proposed behavioural order is breached, it becomes a criminal act on the basis of the already existing article 184 Sr.

So the established policy transfer of the ASBO can be explained by many different factors. Ranking from the need for symbolic communication with the Dutch people after the populist revolt, being a convenient policy umbrella, to economic reasoning and problems with minorities. A *common* culture of control is just one of them.

Conclusion

This article empirically tested how much proximity in Dutch and UK policies towards ASB can be explained by intentional efforts to follow the UK Model. And after analyzing the results indeed it can be concluded that a form of policy transfer between the UK and the Netherlands occurred. But what does this mean? What is the relevance of the origins of policy ideas? Why should it matter if inspiration is drawn from another jurisdiction?

As concluded earlier, in criminology there is not much focus on the process of policymaking. This lack in policy research on a meso-level does sometimes lead to assumptions on a macro-level that are not empirically founded. For example in our era of globalisation it is often assumed that similar circumstances will almost inevitably lead to similar outcomes, and that similar policies have their roots in similar rationales.

But this article did not only look at the surface of apparent similarities, it also investigated potential for dissimilarities. By identifying elements of non transfer it illustrated that the human agency is an important element in explanations of contemporary crime control trends.

This research showed translation of policies is not so straightforward and that it is embedded in a cultural context. It demonstrated that policy-making is a messy result of intuitive appeal, traveling myths and unintended consequences. This approach of policymaking is also known as the policy of 'muddling through' [9, 21, 38].

Although politicians often call for evidence-based policies, in this article it becomes clear that research evidence is often not a base for policies. More often assumed positive effects from abroad, assumed feelings of citizens and assumed proven crime theories form the basis of the policy. Policy transfer appears to be more a form of gaining inspiration, rather than real lesson drawing. This makes the policy making process, unpredictable and not evidence based. This article identifies a form of hyper activity of the Dutch government in creating new measures to tackle ASB. The question is, is such a messy policymaking process a bad thing for society?

The research shows that pilots and laws have advanced in such a frenetic pace as to leave too little space for considered reflection. I would like to argue that more time is needed to reflect on the normative and social implications of legal reforms and their effectiveness in regulating behaviour. The evidence from the UK suggests that the ASBO may end up being counterproductive, alienating young people who feel unfairly treated and stigmatised by such measures. A hard policy transfer of the ASBO can have a boomerang-effect; alienating young Moroccans from Dutch society. This could and should not be the desired result of new Dutch crime policies.

References

1. Ashworth, A. (2004). Social control and 'anti-social behaviour': the subversion of human rights? *Law Quarterly Review*, 120, 263–291.
2. Bakalis, C. (2007). ASBOs, preventative orders and the European court of human rights *European rights L Rev* 427.
3. Brants, C. (2002). Criminologie en politiek. *Tijdschrift voor criminologie*, 4(1), 2–25.
4. Brown, A. (2004). Anti-social behaviour, crime control and social control. *The Howard journal*, 43(2), 203–211.
5. Burney, E. (2005). *Making people behave. Anti-social behaviour, politics and policy*. Uffculme: Willan Publishing.
6. Burney, E. (2009). *Making people behave. Anti-social behaviour, politics and policy* (2nd ed.). Uffculme: Willan Publishing.
7. Buruma, Y. (2007). Dutch tolerance: On drugs, prostitution, and euthanasia. In M. Tonry & C. Bijleveld (Eds.), *Crime and justice in the Netherlands*, vol. 35. Chicago: Chicago University Press.
8. Cobb, N. (2007). Governance through publicity: anti-social behaviour orders, young people and the problematization of the right to anonymity. *Journal of Law and Society*, 34(3), 342–373.
9. Colander, D. (2004). From muddling through to the economics of control: View of applied policy from J.N. Keynes to Abba Lerner. *Middlebury College Working Paper Series 0421*, Middlebury College, Department of Economics.
10. Crawford, A. (2008). Dispersal powers and the symbolic role of anti-social behaviour legislation. *The Modern Law Review*, 71(5), 753–784.
11. Devroe, E. (2008). The policy approach of nuisance problems in public space in Belgium and the Netherlands. In L. Cachet (Ed.), *Governance of security in the Netherlands and Belgium*. Den Haag: BJU Legal Publishers.
12. Dolowitz, D. (2003). A policy-makers guide to policymaking. *Political Quarterly*, 74(1), 101–120.
13. Donoghue, J. (2008). Anti-social behaviour orders (ASBOs) in Britain. Contextualizing risk and reflexive modernization. *Sociology*, 42(2), 337–355.
14. Ericson, R. (2007). *Crime in an insecure world*. Cambridge: Polity press.
15. Edwards, A., & Hughes, G. (2005). Comparing the governance of safety in Europe: a geo-historical approach. *Theoretical Criminology*, 9(3), 345–363.
16. Evans, M. (2004). *Policy transfer in global perspective*. Farnham: Ashgate.
17. Furedi, F. (2005). *Politics of fear: Beyond left and right*. London: Continuum.
18. Garland, D. (2001). *The culture of control: Crime and social order in contemporary society*. Chicago: University of Chicago Press.
19. Garret, P. (2006). Making 'anti-social behaviour': a fragment of the evolution of 'ASBO politics' in Britain. *British Journal of Social Work*, 2–18.
20. von Hirsch, A., & Simester, A. (2006). *Incivilities: Regulating offensive behaviour*. Oxford: Hart Publishing.
21. Hogwood, B. (2001). *Beyond muddling through—can analysis assist in designing policies that deliver? Appendix 1, modern policy making*. London: National Audit Office.
22. Home Office. (2004). *Defining and measuring anti-social behaviour*. Home office development and practice report.
23. Home Office. (2007). *A guide to anti-social behaviour tools and powers*.
24. Hudson, B. (2003). *Justice in the risk society: challenging and re-affirming justice in late modernity*. London: Sage.
25. Huisman, W., & Koemans, M. (2008). Administrative measures in crime control. *Erasmus Law Review*, 1(5), 121–145.
26. Jacobson, J. (Ed.) (2008). Why tackle anti-social behaviour? In: P. Squires (Ed.), *ASBO nation. The criminalisation of nuisance*. Bristol: The Policy Press.
27. Jones, T., & Newborn, T. (2007). *Policy transfer and criminal justice. Exploring US influence over British crime control policy*. Maidenhead: Open University Press.
28. Jong, de J. (2007). *Kapot moeilijk*. Dissertation; Rijksuniversiteit Groningen.
29. Koemans, M. (2008). Ten strijde tegen overlast. *Proces*, 6, 206–211.
30. Lippens, R. (2008). The end of the social: ASBOs in England and Wales. In L. Cachet (Ed.), *Governance of security in the Netherlands and Belgium*. Den Haag: BJU Legal Publishers.
31. MacDonald, S. (2003). The nature of the Anti-social behaviour order- R (McCann and others) v Crown Court at Manchester. *Modern Law Review*, 66(4), 630–639.

32. Matthews, R., & Easton, H. (2007). *Assessing the use and impact of anti-social behaviour orders*. Bristol: Policy Press.
33. Melossi, D. (2004). The cultural embeddedness of social control: reflections on the comparison of Italian and North-American cultures concerning punishment. In T. Newburn & R. Sparks (Eds.), *Criminal justice and political cultures*. Cullompton: Willan.
34. Millie, A. (2008). Anti-social behaviour, behavioural expectations and an urban aesthetic. *British Journal of Criminology*, 48, 379–394.
35. Ministerie van BZK and Justitie (2002) *Naar een veiliger samenleving*, last visited 20th November 2008 www.minbzk.nl.
36. Morris, J. (Ed.) (2000). *Rethinking risk and the precautionary principle*. Oxford: Butterworth–Heinemann.
37. Pakes, F. (2005). De Britse aanpak van antisociaal gedrag. *Tijdschrift voor Criminologie*, 47(3), 284–289.
38. Parsons, W. (2002). From muddling through to Muddling up. Evidence based policy-making and the modernisation of British government. *Public Policy and Administration*, 17(3), 43–60.
39. Pieterman, R. (2008). *De voorzorg cultuur: Streven naar veiligheid in een wereld vol risico en onzekerheid*. Den Haag: Boom Juridische Uitgevers.
40. Pollit, C. (2001). Convergence: the useful myth? *Public Administration*, 79(4), 933–947.
41. Punch, M. (2005). From 'anything goes' to 'zero tolerance': Policy transfer and policing in the Netherlands. Apeldoorn: Politie en Wetenschap.
42. Punch, M. (2005). Paradigm lost: the Dutch dilemma. *Australian and New Zealand Journal of Criminology*, 28(2), 268–281.
43. Putman, R. (2000). *Bowling alone*. New York: Simon and Schuster.
44. Ramsay, R. (2008). *Vulnerability, sovereignty and police power: A theory of the ASBO* (PhD thesis, University of London).
45. van Stokkom, B. (2007). Regulering van antisociaal gedrag. Aanpak van persistent overlastgevende jongeren in Engeland en Nederland. *Tijdschrift voor Veiligheid*, 6(3), 36–50.
46. Squires, P. (2008). *ASBO nation. The criminalisation of nuisance*. Bristol: The Policy Press.
47. Tonry, M. (1999). Symbol, substance and severity in western penal policies. *Punishment and Society*, 3(4), 517–536.
48. Tonry, M. (2004). *Thinking about crime*. New York: Oxford University Press.
49. Van Swaaningen, R. (2008). Sweeping the street: civil society and community safety in Rotterdam. In J. Shapland (Ed.), *Justice, community and civil society: A contested terrain across Europe* (pp. 87–106). Cullompton: Willan.
50. Van Wieringh, J. (1978). *Onrust is van alle tijden. Opstellen over criminaliteit in Nederland*. Amsterdam: Boom Meppel.
51. Vinocur, J. (2008). On Dutch left, a retreat from tolerance of old. *Herald Tribune*, December 30.
52. Wittebrood, K., et al. (2008). *Sociale veiligheid ontsleuteld: Veronderstelde en werkelijke effecten van veiligheidsbeleid*. Den Haag: Sociaal en Cultureel Planbureau.