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Local governance in the new Police Scotland

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Local governance in the new Police Scotland: renegotiating power, recognition and responsiveness

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A marked, but by no means universal, trend in Europe over the last decade or so has been the centralisation or amalgamation of regional police organisations into larger or single units. Scotland is a case in point, its eight regional services becoming one Police Scotland in April 2013. Although the reform process was relatively consensual the new organisation has been the subject of numerous controversies, some of which reflect an actual or perceived loss of the local in Scottish policing. Drawing on a qualitative study of the emerging local governance arrangements we explore the negotiated character of large scale organisational reform, demonstrating that it is best understood as a process not an event. We also argue that appeals to localism are not mere expressions of sentiment and resistance to change. They reflect the particular historical development of policing and public service delivery in Scotland at the level of municipal government, but also strong convictions that policing should be subject to democratic deliberation and should recognise and be responsive to those subject to it, what we argue here are necessary functions of police governance in general.

Keywords

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Introduction

The most significant reform of public policing in Scotland for a generation provides
the background to this article. On 1 April 2013 Police Scotland commenced
operations. This new 'single' police organisation amalgamated eight regional
police services in operation since the 1970s, and incorporated functions previously
undertaken by the national-level Scottish Crime and Drug Enforcement Agency
and Scottish Police Services Authority. Movement towards more central
coordination and strategic direction of policing had been apparent for some years
through regimes of inspection, auditing and target-setting (Donnelly and Scott,
2002; Walker, 2000) which are also well-documented in England and Wales
(Reiner, 2010: 227-237; Jones, 2008: 703-706). Even so, structurally reorganising
policing into a single unit marked a bold extension of what had so far been an
incremental process. It nonetheless placed Scotland firmly in the company of
similarly minded European neighbours moving in a similar direction over a similar
time period driven by similar concerns about efficiencies, coordination and
consolidation (Fyfe et al., 2013) while its closest neighbour explored a different
direction (Fyfe and Henry, 2012; Lister and Jones, this volume).

It would be a gross understatement to suggest that the first five years of Police

Scotland have not passed without incident. Rather, public, political and academic

interest in, and scrutiny of, policing in Scotland has become more intense than at

any point in recent memory (Murray and Harkin, 2017), prompted by a series of

controversies and problems involving senior officials, as well as specific functions,

strategies and policies of the new service. A number of these controversies

included expressions of concern about the 'loss of the local' in policing (see also:

SIPR, What Works Scotland and ScotCen, 2017). This sense of 'loss of the local'

was our starting point in two ways. On the one hand it created an opportunity to

revisit questions about the virtues of, and necessary balance between, central and

local dimensions of police governance (Lustgarten, 1986: 177-178) and to use this

as a lens to critically appraise the design and implementation of a single national

force in Scotland. On the other hand, mindful of Nelken's invitation to challenge

taken for granted 'cultural assumptions' and 'universal truths' (2017: 417), we

sought to subject these appeals to the 'local' to scrutiny. Were appeals to the local

in Scotland mere sentiment or resistance to change, or did they articulate

something fundamental about the new arrangements, something flawed in the

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design or implementation which spoke to what the function of local governance in policing is within this context, and potentially beyond it?

Drawing on a small but in-depth study of the emergent new local arrangements, and on theoretical resources that disentangle the democratic claims and governance mechanisms of police institutions (Jones et al., 1996; Kuper, 2004; Loader and Walker, 2007; Lustgarten, 1986) we develop two arguments. Firstly, we demonstrate that organisational police reform of this scale is not an event but a negotiated and incremental process through which formal designs in legislation are adapted and made to work in practice. This needs to be better understood in future police reform. Secondly, we argue that appeals to localism in the early years of Police Scotland were not reactionary sentiment against change. Rather they articulated failures of the new system of policing to provide recognition of, and responsiveness to, public interests or to provide a meaningful check and balance against policing discourse being (and/or being perceived to be) monopolised by the powerful voices of the police and central government. Recognition, responsiveness and distribution of power are necessary and fundamental features of police governance that are given some of their specific expression through local government and public service delivery institutions in Scotland. Clearly these

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necessary features of police governance can be given expression through other local, central, or even international institutional arrangements in other jurisdictions as is evident from other contributions to this special issue.

A short history of police organisation and governance in Scotland: from the regional to Police Scotland

Public policing developed early in Scotland and certainly before the more celebrated birth of the Metropolitan police in 1829 in England (Carson, 1984; Walker, 2000). Walker observes this early development of policing in Scotland might account for the fairly broad understanding of 'policing', incorporating ideas of public health and welfare (2000: 152-153). As we'll see, these have been explicitly acknowledged again in the 2012 reform. Police forces in Aberdeen (1795), Glasgow (1800) and Edinburgh (1805), established by and accountable to local city administrations, led the way, but were quickly followed by police forces being established around the country by burgh and county administrations (Walker, 2000: 152). However, it was the Police (Scotland) Act 1857 that required all local administrations to establish police capacity. This Act reflected central government belief in the necessity of such a resource and so arguably marked the beginning of

the centralising tendencies that would animate much of the subsequent history of policing in Scotland (see: Davidson et al., 2016: 89). Indeed, pressures for force amalgamations to enhance efficiencies and improve service took effect almost immediately. Davidson et al. document the process whereby 89 police forces had become 64 by 1899, 48 by 1939, and settled at eight in 1975, a position that would remain stable until the 2012 reform[i]. The remainder of this section provides a brief sketch of these eight regional forces and their governance, setting out some of the problems with this configuration and the subsequent political process through which Police Scotland emerged as the solution.

The most important point to note thus far is that Scottish police forces were, right from the beginning, 'closely tied to the elected structures of local government' (Donnelly and Scott, 2002: 4) and this meant that they would develop a 'role in the new corporate management approach to local services' (2002:5). This remains an important if oft-overlooked facet of police governance to this day. For now, the changing structures of local government, and their fit, or lack thereof, with changing structures of policing must underpin any sketch of the post-1975 period. It is too complex a story to fully do justice here (see: Donnelly and Scott, 2002: 5-6; Walker, 2000: 151-170), but there are two moments of particular note. The Local

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Government (Scotland) Act 1973 scrapped the old and complex burgh and county

council model, rationalising them into nine regional and 53 district councils, each

with distinct fields of competence, the regional being the most relevant here with

responsibilities for funding education, social work, police and fire services. Upon

implementation in 1975 the link between local government and police was

imperfect. Six of the eight regional police forces coincided directly with regional

councils but Lothian and Borders (including the city of Edinburgh) and Northern

Constabulary (covering the highlands of Scotland and many outlying islands)

served 'joint' Police Boards covering more than one regional council. In the 1990s

local government was reformed again. The two-tier model was replaced with a

single-tier model under the Local Government (Scotland) Act 1994, implemented in

1996. Under this model 32 local authorities were established. The issue for the

unchanged structure of eight regional police forces was that now a direct link

between a police force and the relevant local government body was the exception

rather than the norm. Six of the eight police forces now served joint Police Boards

made up of representatives of multiple local authorities (12 in the case of

Strathclyde Police). Therefore, direct links between police and local authorities

were, in the main, severed, the local authority representation within Police Boards

being split across different local authorities which could well be led by different

political parties. Further, some of the local authority participation came through

Local Authority Officers (LAOs), employed officials working for the local authority,

delegated to attend police authority meetings, rather than through democratically

elected councillors themselves (see: McFadden and Lazarowicz, 1999, cited in

Donnelly and Scott, 2002: 5). Although later reviews showed that council officers

tended to be there to provide technical support and competence, and did not have

elected members' voting rights (Laing and Fossey, 2011: 5), there was

nonetheless a growing perception of a democratic deficit in local Police Boards,

bolstered by declining turnouts in local elections.

The Police Boards formed part of a tripartite structure that characterised police

governance throughout the UK since the 1960s (Donnelly and Scott, 2002; Walker,

2000; Jones, 2008). The tripartite framework gives expression to the democratic

principle of the distribution of power (Jones et al., 1996: 188) by separating out

authority and responsibility for policing across central government (represented by

the Scottish Secretary at Westminster prior to devolution in 1999, and the Cabinet

Secretary for Justice at Holyrood thereafter), local government (through the Police

Boards) and the police (through the office of Chief Constable and/or delegated

representatives). The problems with the framework are well-rehearsed in the

English context where it was consistently demonstrated that where there was

disagreement, the will of the police and central government prevailed over the local

(Reiner, 2010: 228-229). Similar conclusions were reached in Scotland. Despite

local Police Boards having important powers relating, for example, to the formal

appointment and dismissal of chief officers, as well as responsibilities to maintain

an efficient and effective police service through formally contributing 49% of the

police budget, there was little evidence of them actively using their powers, and a

growing body of commentary showed they were failing to offer meaningful

challenge to the police (Donnelly and Scott, 2002; Laing and Fossey, 2011;

Walker, 2000). Some claimed that the Boards were too deferential to Chief

Constables (Scott and Wilkie, 2001), in part because they actually lacked the

necessary expertise in policing, crime patterns, finance and other relevant

organisational matters to competently hold the police to account (Laing and

Fossey, 2011: 5-6; Malik, 2018), resulting in a process of governance understood

to be 'passive' (Audit Scotland and HMICS, 2012: 6). Indicative of the direction of

future reform, one influential HM Inspector of Constabulary observed that there

was a 'disconnect' between local governance and national issues requiring coordination (HMICS, 2009: 38).

Perceived inadequacies with local governance and democratic representation through Police Boards *preceded* Police Scotland but were not the sole 'drivers' of reform. If anything, longstanding concerns about the 'lopsided' structure of Scottish policing which seemed to lack rhyme or reason[ii], growing concerns about national and international issues requiring better coordination of policing (HMICS, 2009), and the 2008 financial crash and the ensuing call for public sector austerity (Scottish Policing Board, 2010; Christie Commission, 2011; Fyfe and Henry, 2012) were of greater import. It was really following the *Independent Review of Policing in Scotland* (HMICS, 2009) that momentum began to gather, although this review did not explicitly endorse a single service. The Scottish Policing Board was established by the Scottish Government later in 2009 and it further established a Sustainable Policing Sub-Group to review options, which included the status quo, further regionalisation, and the single service option. Even as late as 2011 a move towards a single service was not inevitable, despite relative political consensus that some reform was necessary. The Scottish National Party (SNP), in government at the time, committed to reform and enhanced accountability to communities, but not

to a single service in their 2011 election manifesto. Both the Scottish Labour and

Conservative parties did commit to a single police service but with strong, albeit

distinct, emphases on how local policing would be developed as a balance.

Labour favoured community policing teams and the Conservatives a variant of the

elected police commissioner model later enacted south of the border (see Lister

and Jones, this volume). Only the Scottish Liberal Democrats, of the four main

parties, rejected the single model. Following the re-election of the SNP, two public

consultations on police reform were run, neither producing a definitive result in

favour of centralisation. Perhaps emboldened by the Christie Commission's (2011)

wider recommendations for public service delivery reform in this direction, opinion

in the Scottish Government turned around and a single service became the

objective (for the definitive account of this process, see: Malik, 2018). Police

Scotland therefore emerged as a solution to a complex web of issues including:

public sector service delivery; public expenditure cuts; national and local police

accountability; and a perceived lack of expertise, competence and democratic

representation within local police governance arrangements.

Police Scotland: the solution and the (local) problem

The Police and Fire Reform (Scotland) Act 2012 was passed by the Scottish

Parliament in June 2012 and signed into law with Royal Assent in August of the

same year. Although the focus of this article is local policing, three features of the

new 'Police Service for Scotland' (as it is known in the Act, Police Scotland being

its corporate identity) are worth noting as necessary background to what follows:

tripartism for the new Police Scotland formally moved to the centre, power and

responsibility now being distributed between the Chief Constable, the Cabinet

Secretary for Justice, and a new independent body, the Scottish Police Authority

(SPA) (see: Malik, 2018); much of the wider architecture of central governance,

auditing and inspection, primarily through the offices of the Auditor General, Audit

Scotland and HM Inspectorate of Constabulary, remained largely unchanged; and,

s32 of the Act took the opportunity to assert new principles for Scottish policing, its

main purpose being stated as 'to improve the safety and well-being of persons,

localities and communities', to be advanced through 'working in collaboration with

others', being 'engaged with local communities', and working 'to prevent crime,

harm and disorder'. In the legislation at least, ideas associated with the local

governance of crime (e.g. Crawford, 1997) – partnership, engagement, community,

prevention – were given explicit expression.

The new relationship between policing and local government was set out in chapter

7 of the 2012 Act. Following a very general provision (s45.1) that the Chief

Constable 'must ensure that there are adequate arrangements in place for the

policing of each local authority area', the key provisions are those that set out

replacements for the old Police Boards (ss46 and 48) and those that confirm police

community planning responsibilities (s47). On both issues the Act is quite

permissive and open. S45 establishes a direct link between Police Scotland and

each of the 32 local authorities through the new role of the Local Area Commander

(LAC), a 'constable' designated as such by the Chief Constable, who may act in

this capacity for multiple local authorities (s45). This role is the primary conduit

between the local authority and the police. There is no mention of an equivalent to

a Police Board in the Act itself, the relationship is formally between the designated

LAC and the 'local authority'. However, in practice, local authorities work through

committee structures and quickly had to work out where local authority-police

business under chapter 7 of the Act would be located (see: HMICS and HMFSIS

2013). This will be detailed more fully in the next section. In terms of the statutory

roles of the LAC and the local authority they are very much couched in

'consultative' terms. The local authority may 'monitor' and 'provide feedback' to the

police on local matters of policing (s46) and, specifically, on the local police plan (s47). The local police plan is ultimately the responsibility of the LAC who must 'have regard' to the centrally set strategic policing plan (s34) as well as other interested bodies. It is supposed to set out 'priorities' tailored to the specific local authority area, means of achieving these priorities, and reasonable processes of monitoring progress (s48). The plan requires the 'approval' of the local authority but the Act is silent on what follows if approval is not forthcoming. Importantly, the Act does require the local policing plan and its priorities to 'contribute to the delivery of' local service delivery objectives agreed in community planning (s48.2e). Given this new, weaker local relationship based on 'consultation' rather than 'powers' over senior appointments and funding which moved to the SPA at the centre, s48.2e is an important reminder of the strong historical link in Scotland between police and local public service delivery (a link that is not only about governance and accountability). S47 confirms that the police remain part of community planning arrangements in each local authority. Community planning was established through the Local Government (Scotland) Act 2003 and is the statutory basis for strategic level collaborative partnership working at the local level (nonetheless taking heed of national priorities), requiring service delivery (this can

involve police, social work, education, health, transport, planning and many other

areas) to be joined-up through agreed outcomes across partners (Henry, 2009:

100-101). Despite real challenges associated with Community Planning in practice

(Sinclair, 2008) the 2012 Act reaffirms that the police are a lead partner in it and

thus situated (formally at least) within a horizontal network of local government

institutions sharing duties and responsibilities (Kuper, 2004: 103-106). This

shaped some local authority decisions about where the narrower consultative

functions would be located in the committee structure. It is also an important

institutional feature of the democratic governance of Police Scotland that is easily

overlooked.

While the relevant sections of the 2012 Act set out the envisaged 'solutions' to

earlier problems of local democratic governance, new 'problems' were quick to

emerge. It is important to reiterate that many of the early and ongoing

controversies attaching themselves to Police Scotland were more to do with central

governance (Malik, 2017a) or tactics, such as stop and search, whose use actually

preceded the reform (Murray and Harkin, 2017). There was general disquiet about

the 'enforcement' focused operating philosophy of the first Chief Constable. It

didn't sit comfortably with the newly minted policing principles, or with the

reaffirmed statutory commitments to partnership and local service delivery. Nor did

it sit comfortably with the historical community policing orientation of many of the

eight legacy police services and fed into a series of wider concerns which

cumulatively had the effect of implying that implementation of the 2012 Act was

very much top down affair. Specifically local concerns emerged around a

constellation of issues: perceptions of increased use of stop and search in some

localities; the closing of local police counters and curtailment of police-run traffic

warden schemes; routine arming of rural patrol officers in the former Northern

Constabulary; and, moving from a 'tolerance' to an 'enforcement' approach

towards the sex industry in Edinburgh. Whether these issues, or perceptions of

them, were either accurate or reasonable is not the question here. What matters is

that they raised questions about Police Scotland's responsiveness to local needs

and local preferences, about tensions between central policy and local priorities,

and about whether basic statutory duties to consult local authorities were

happening or were adequate. These specific concerns about local police

responsiveness prompted our small empirical study to explore how the chapter 7

provisions outlined above were working in practice, and were later also reiterated

in the official government evaluation of the Police and Fire Reform Act (see: SIPR et al., 2017).

The research: local scrutiny committees mapped and in action

A detailed account of the *Partners in Scrutiny* project; its design, methods, and findings, has been published elsewhere (XXXX). The objective here is not to duplicate that report but to draw from the experience of conducting the project during a period when the reform of Police Scotland was still settling, and to reflect more broadly about what the main findings tell us about local police governance. Readers should go directly to that report for a full account of the methods employed, and for a richer selection of data gathered. Here we briefly discuss the two-stage research approach, and where helpful, draw on illustrative quotations or links back to the original data.

By late summer 2015, when we were laying the groundwork for the research, it was already clear that the 2012 Act had provided only a bare bones design for new arrangements. There had already been a considerable amount of 'filling in the gaps', or negotiated practice, by practitioners and stakeholders (HMICS and HMFSIS, 2013; Scottish Government et al., 2013) seeking to think through and

guide how the new arrangements would actually work. This included the

development of a shared terminology that was not in the statute but which the

project adopted as shorthand: 'Local Scrutiny Committees' (LSCs). LSCs were the

new chapter 7 points of interaction between the police, local government and

(depending on how they were configured) other interested partners. In effect, they

were the new Police Boards. It quickly became apparent that the term masked

divergent practice (below), but it did serve to articulate what the new local authority

function was.

The first stage of the research, a 'mapping' of how chapter 7 had been

implemented around the country, drew upon this early 'filling in the gaps' work of

Her Majesty's Inspectorate of Constabulary, the Improvement Service, and the

Scottish Government (see: HMICS and HMFSIS, 2013; Scottish Government et al.,

2013) updating it through two processes. Firstly, targeted interviews were carried

out with selected stakeholders that had an overview perspective on the reform

process (Scottish Government, the Convention of Scottish Local Authorities

[CoSLA] and the Improvement Service). Secondly, the project team established an

Advisory Board that had the necessary experience to actively contribute to the

mapping exercise.[iii] These exercises showed that the 'local scrutiny' function was

being implemented differently across the 32 local authorities, dependent on historical variation in the organisation of council business. A four-fold typology, that roughly captured where 'local scrutiny' was located, emerged, with the function exercised within:

- Dedicated 'blue lights services' committees in which police, fire and ambulance services were dealt with together;
- Community safety committees, which were sub-committees of community planning partnership working, thus linking consultation responsibilities on local police plans directly with s47 joined-up service delivery commitments;
- Full council committees; or
- Audit/performance or 'other' committees.

In theory, there were potential pros and cons of each. Dedicated blue lights committees offered specialist focus on emergency services. Full council committees would lose that specialist focus, but gained the full transparency of open council business, and the greatest presence of elected councillors. Community safety and community planning nested police scrutiny within the key public service delivery committee, thus linking matters of policing directly with partners whose business might overlap (social work, education, health, etc.). As

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will be noted later, these committees are also explicitly 'community-facing' and thus give various types of 'representation' to community voices that can be lacking in more bureaucratic committees. Auditing/performance might gain in terms of expertise in performance regimes and accounting, but lose in terms of joined-up working and police-specific expertise. There was no 'right' answer and throughout the period of the fieldwork local authorities were reviewing and sometimes changing where they located police scrutiny. The most common location, and also the direction of travel where arrangements were being changed, was (but only just) the second option: community safety/community planning committees. Thirteen LSCs were, at the outset of the project, located here, another moving to this model during the period of the fieldwork. Several of the audit/'other' LSCs (four that we could discern) were actually quite close to this model in that they consistently involved other partner agencies and agendas thus reflecting a horizontally joined-up model which is relevant to the analysis that follows in later sections.

In the second stage of the project interviews were conducted with police, local authority, elected and third sector participants in three LSCs. Interviews were, where possible, supplemented with, and cross-checked against, documents, including policing plans, LSC minutes and police data as provided to the LSCs.

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The mapping exercise informed our selection process, which could only claim to offer a sample that was 'illustrative' of emerging practice rather than fully 'representative'[iv], however, the findings were later disseminated to representatives from all 32 LSCs and were corroborated as being consistent with wider experience[v]. Stage two was designed to allow participants to speak openly about their experience of the reform, and in support of this we committed to maintaining anonymity of individuals and the areas they work in. Across both the police and local authorities there appeared to be a professional ethos to make things work, and evidence of specific negotiated practices through which problems were creatively worked around. This negotiated practice was filling in the blanks in the legislation, was ongoing when the study had to conclude, and illustrative of the processual, iterative nature of reform in practice. The problems that had to be negotiated, and in particular the ones that were resistant to negotiation, were also illustrative of recognised tensions between central and local administration, and values of local governance and democratic policing. They draw attention to real problems and omissions in the Act, and to failures in the early years of implementation. The negotiated practice of governance is documented in the next section. The one that follows develops this account by exploring how many of the

issues described talk to essential requirements of democratic governance and

deliberation, including recognition, responsiveness and the distribution of power.

Structural disconnects and governance as negotiated practice

'Structural disconnect' was a term gleaned from LSC participants which also had

currency with government stakeholders and members of the Advisory Board. It

referred to a general idea that, whether through the design of the new

arrangements or their implementation, there were information flow and

communication gaps or blocks that created tension in the system. This section

outlines three instances of structural disconnect found in the project and

documents how they were often creatively negotiated through the practice of those

'doing governance'.

The first 'structural disconnect' was between LSCs and the SPA. At its heart it was

a realistic acknowledgement that power had shifted to the centre, away from local

authorities.

> "Most of the power around scrutiny is concentrated at the national level and
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> in a sense what we have in the local scrutiny area is the opportunity to ask
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> questions of what is happening nationally. What we don't have is the

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genuine ability to get answers at our local scrutiny committees….The Local

Area Commanders may agree with us but they are not capable of changing

the policy of Police Scotland. So within that context there is a limit to what

we can do" (LSC Convenor).

Under the 2012 Act it is the SPA that has powers to hold the Chief Constable to

account, maintain the police (finance), and appoint and dismiss senior ranks.

Local authority members of LSCs understood this and accepted that their role in

chapter 7 was one of monitoring and being consulted by the police in the

production of tailored local policing priorities. What concerned them was the

absence of a formal mechanism for them to 'escalate' issues on which there was

disagreement, or on which they felt there had not been satisfactory consultation.

The counter-closures, loss of traffic warden schemes, and concerns about stop

and search practice, were understood to be examples of where central (as defined

by the police) policy decisions had been taken which had clear locally-felt

ramifications but local voices had not been recognised in the process. For

example, on the issue of firearms officers, affected LSCs were most concerned

about the lack of deliberation, and the sense this gave that 'operational matters'

were not their concern, despite the changes in practice within their communities:

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"[T]he standing firearms authority…that annoyed members because it was a change in practice that had never been heralded as a change – it just happened. And it just happened when people noticed that police officers on the beat were armed and that was alarming. When it was raised as a change in (police) policy we were told it's not a change in policy, it's an operational matter, it is for the police to decide, and that really angered some of our members". (Local Authority Officer [LAO]).

LACs from Police Scotland were sympathetic to this issue but themselves did not necessarily command either the hierarchy or the lines of communication to feed these concerns upwards within the organisation (another 'structural disconnect' that will be returned to). The informal workaround that occurred during the life of the project was that SPA board members sat in on LSC meetings. The idea was that they could advise the LSCs on matters that were happening centrally and also that they could formally 'escalate' dissatisfaction with decisions that affected their communities. This negotiated practice sought to give LSCs recourse to the accountability body with formal power in the new arrangements, to ensure that local interests were heard and recognised and could not simply be ignored. The

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workaround was valued by local authority and police members even as its

informality was noted with regret.

> "Whilst SPA's initiatives are welcomed, the outcome from those meetings
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> are not long lasting and do not have an impact on local practices. If the SPA
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> board members held more face to face meetings with local representatives
>
> they would be more in tune with the local needs as members felt having one
>
> representative was not enough to raise local concerns at the national level"
>
> (LSC Member)

Following the publication of the *Partners in Scrutiny* report which included a

recommendation to formalise the 'connection' between LSCs and the SPA, the

SPA itself later acknowledged the issue in its own governance report (Flanagan,

2016) but it took CoSLA to act on it. CoSLA established a forum of LSC members

that included representation from all 32 local authorities. As previously noted,

findings from Partners in Scrutiny were reported to the inaugural meeting of this

forum and were largely in line with the mood of the room. It is through having

Board members attend this forum that the SPA now seeks to close the structural

disconnect between LSCs and the SPA. It is a promising negotiated practice

reflecting CoSLA and LSC interests in having voice in the new arrangements, but

its working has not yet been evaluated.

The second 'structural disconnect' was between LSCs and the communities they

served. Ultimately, this structural disconnect expressed wider scepticism about

local democracy in Scotland. The question here was, did LSCs adequately

'represent' communities? Did they really know how their constituents felt about

policing? And did they communicate back to communities the LSC's work on their

behalf? Questions about representation related to the presence and involvement

of elected members, but also their mandate due to declining turnouts in local

elections. The other questions related to information flows between local

authorities and citizens and ongoing debates about what kinds of local and place-

based representation, and opportunities for active participation, might enhance

local democracy in Scotland (for example, see: Raco and Flint, 2001). Full

answers to these important questions were beyond the scope of this limited project

but, again, the negotiated practice of LSC participants demonstrated sensitivity to

and acknowledgement of them. Perhaps more a fortuitous result of the design of

the 2012 Act (although stakeholders suggested it had been intentional) than

negotiated practice, the first point to note is that the shift from joint Police Boards to

direct police-local authority LSCs led to an increasing number of elected members becoming actively involved in local police governance. In the early days of Police Scotland the police themselves also sought to offer deeper and more direct local input than was required by the Act by generating 'ward' level plans – wards are small geographical units to which individual councillors are elected – that would engage all elected councillors, although this burdensome process was soon curtailed. Negotiated practice was most pronounced in relation to the decisions on where to locate LSCs in council business discussed previously. It needs again to be emphasised that the project could not study all of the 32 LSCs and there are undoubtedly complex reasons and histories for many of these choices, but the active preference of community safety and community planning committees in two of our sites was important. Community safety and community planning are partnerships (the former generally a sub group of the latter) that have to involve a diverse group of local service providers, as noted previously. They also tend to involve community groups (young people, LGBT+, minority interests) and relevant voluntary sector organisations within the sector (e.g. Victim Support Scotland were active in one of the sites). In common parlance in the field, these partnerships tend to be the most 'community-facing'. Therefore, within this structure both the local

authority and the police are most likely to be working alongside a range of other

institutions and agencies that reflect distinct fields of expertise and interest,

including some quite specific community interests.

> "It is important every board should have third sector on the scrutiny board.
>
> The more people involved in scrutiny, the better. Every organisation like the
>
> council will have pre conceived ideas as to what they think the police should
>
> do, the third sector will have their own ideas, and with the involvement of the
>
> third sector we are getting more rounded scrutiny. We are not just trying to
>
> appease or to keep councillors happy, there is a broad spectrum, so scrutiny
>
> is healthy and we are looking at the broader picture." (LAC).

Local authorities, the police and third sector agencies themselves (sometimes

working together) also all use community surveys and, increasingly, a range of

other methods to try to engage the public about local service delivery:

> "Public consultation is done in as many ways as possible for example we
>
> will do it by leaflet, by email, by online surveys, organising events, going out
>
> to public events. In one of our areas there was an international event, we
>
> decided to consult the public there so we put up a table and the police went

along with us and they also put up a table and put a questionnaire on."

(Third Sector Representative)

These approaches are used in various committees but are explicitly promoted in community safety and Community Planning where 'community' interests are more pronounced than in, for example, a more technically focused audit committee. In short, the connection between local councillors and communities remains an issue in Scotland, but 'representation' is not exclusively about the ballot-box in local elections. However instinctively or imperfectly, many LSC practitioners are thinking about committee structures and practices that are responsive to communities and which make connections horizontally across service providers.

The third set of 'structural disconnects' were those within the new Police Scotland itself. It was noted earlier that a LAC could be put in a difficult position where central policy caused local concern but, either because of rank or function, they had no direct means of escalating the matter internally. This raised questions about how responsive a LAC could be to local interests, and whether they had the rank and capacity to make things happen on behalf of the LSC. This was an ongoing issue throughout the project but significant negotiated practices on the part of the police had engendered goodwill. From the outset Police Scotland had

gone beyond the 2012 Act's s45 requirement that a generic 'constable' be

designated as a LAC. At a minimum officers identified in our study were of the

rank of Inspector, itself denoting a certain status to the committee, and certain

expectations about experience and capacity of the incumbent, although for

councillors and officials with experience of the old Boards it was nonetheless a

serious demotion given that the police were formally represented by the Chief

Constable of the relevant regional service. However, even officers of this rank had

encountered difficulties in escalating matters, and so by the time of our fieldwork in

late 2015/early 2016 LACs were generally supported by their Divisional

Commanders who held the rank of Chief Superintendent. This is indicative of a

wider point about the gap between the statute and the reality of Police Scotland as

a 'single' organisation. Police Scotland retained an internal structure that includes

13 Divisions that are also now coordinated under three Regions – East, West and

North – each headed by an Assistant Chief Constable. Routine involvement of

Divisional Commanders in LSCs was very favourably received by local authority

members. Symbolically it represented the importance that Police Scotland were

seen to give local matters. Practically, a Chief Superintendent has greater clout to

make decisions and feed matters up into the Division. One example of an effective

intervention from a Divisional Commander was where an LSC complained that the

pro-forma quantitative reports provided by Police Scotland were unhelpful and

lacked qualitative detail on issues of noted interest to the community. The

Divisional Commander agreed and from that point on data and reporting was

provided to the LSC in the manner that it had requested. The result of this was

that across the sites studied, the police had consistently moved away from

providing basic pro-forma reports and have gathered information from multiple

sources to provide richer and more balanced accounts of local issues that had

credibility with partners and elected members in LCSs by the time that more formal

police plans had to be agreed.

> "When the first police plan was presented it was drawn from a partnership
>
> assessment of risk so it wasn't done in isolation from what the partners
>
> thought and included in that risk assessment was feedback that we have
>
> from the public on their community safety priorities and that's gathered
>
> quantitatively through our citizen's panel and local face to face meetings. So
>
> … the police were good in synthesizing all that information and saying this is
>
> what the priorities look like … 'this is the take on it from our local area'."
>
> (LAO)

However, even Divisional Commanders experienced frustrations where specialist functions or Operational Support services with a national remit (e.g. organised crime, counter terrorism, air support) were the source of local complaint.

> "We have lost the boundaries of the previous forces with Police Scotland but we have created new boundaries with the specialist forces that we never had before." (DC)

Representatives of these services were not connected to the LSCs in the formal lines of communication. At the time of the project it was hoped that the move towards greater autonomy of the three regions which was gaining momentum would further open lines of communication from LSCs up to senior strategic-level ranks, facilitating policing that could be more adaptable and responsive to local interests.   In short, Police Scotland was never 'single' in terms of being completely top down from one Chief Constable. Underneath there were layers of organisation – regional, divisional and specialist – and the links and connections between them had been, and were still being, actively negotiated as the organisation developed.

Distributed power, recognition and responsiveness: essential functions of governance

Many of the issues which had caused public displeasure with the new Police Scotland, alongside a generally perceived tension between central and local interests (partly rooted in structural disconnects in the new governance arrangements) intuitively express real, fundamental problems with the design and implementation of Police Scotland. Negotiated practice has constructively responded to some of them, but is on its own insufficient. Explicit articulation of them as principled convictions around the distribution of power, recognition and responsiveness is a necessary stage in better understanding appeals to the 'local' in police governance, revealing what is at stake, and providing a vocabulary through which the developing landscape of police governance in and beyond Scotland should be more critically monitored. It is the aim of this section to begin the work of recasting the intuitions of LSCs as important issues of principle in police governance.

It should be stated from the outset that in no way does this discussion seek to privilege 'local' over 'central' police organisation or governance. Each have 'virtues' (Walker, 2000: 28-31; Lustgarten, 1986: 177-178). In contemporary parlance the virtues of central organisation are coordination, efficiencies, standards, and equality of service **[possible x-ref to Finland paper in SI]**,

whereas the virtue of the local is recognition of and responsiveness to local

preferences through engagement and tailoring of services to particular (and

diverse) communities. Both 'virtues' were extoled in debates preceding reform.

Our point here is to reiterate the importance of the *balance* between central and

local, and to argue that it has yet to be reached in Scotland.

> [I]mportant values are safeguarded by both localism and centralism. Each
>
> has its virtues, but the main responsibility for policy and administration
>
> should remain close to the persons using the service; the national function
>
> consists of standard-setting, equalisation and protection of minorities.
>
> Moreover, it is dangerous to concentrate all power over a particular service
>
> at any one level of government. *Permanent, institutionalised tension*
>
> between different levels of the political process is as firm a guarantee
>
> against abuse of power as democracy can devise. (Lustgarten, 1986: 178,
>
> emphasis added)

The idea that no single body should exercise unfettered power over the police is

not new and lies at the heart of tripartism in the UK (Jones et al., 1996; Walker,

2000; Reiner, 2010).   When power is distributed amongst multiple parties they

necessarily act as a check on one another's exercise of it, particularly where they

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occupy distinct roles and/or represent particular interests to be protected. Given

that the powers wielded by the police make them central to the 'repressive

complex' (Jones et al., 1996: 189) the distribution of power is especially important

in this context, although it is a principle of democratic administration more broadly.

The 2012 Act, and surrounding debate, were attentive to this issue despite formally

relocating powers to the centre. LSC's calls for an 'escalation' route to the SPA in

situations where there was disagreement, inadequate consultation, or 'structural

disconnect' within the local level scrutiny functions reflected their acknowledgment

of their post-reform status. They now lacked decisive formal powers (including

dismissal of senior officers, or withholding of budgets), and so needed to 'escalate'

to the independent body that held that authority. One problem was that the

distribution of power at the centre was found to be wanting. The SPA was a

completely new institutional player in the governance landscape. With little time to

consolidate it quickly became enmeshed in clashes with the Chief Constable over

financial responsibilities and roles, and on various controversies surrounding Police

Scotland's tactics (e.g. stop and search). Invariably it came out badly (see: Malik,

2017a). Its autonomy from Scottish Ministers was also questioned (Malik, 2017b).

Thus, the whole problem of 'local' governance needs to be seen in a context in

which a fully functioning 'permanent, institutionalised tension between different levels of political process' (Lustgarten, 1986: 178) was not evident *anywhere* in the system. Escalation routes may come to provide an adequate solution to the reorganisation of the formal distribution of power in favour of the centre (the virtues of which we do not question here), but they can only do so if those central arrangements are credible.

A second interrelated problem with the new position of LSCs was one of recognition and responsiveness. Recognition acknowledges the symbolic dimension of public policing. Whether in individual police-public contacts (Bradford, 2014) or through engagement and participation with local democratic institutions (Loader and Walker, 2007: 220-223) public-police interactions are communicative and can be important signifiers of how individuals or groups are 'recognised' as citizens or bearers of rights that have to be responded to appropriately. Procedural justice literature shows that interactions perceived as demonstrably unfair undermine citizens' sense of status, with potentially disastrous consequences for the legitimacy of the police within that group (Bradford, 2014). In the present context the shift of formal statutory powers to the centre signified the lowering of the status of local arrangements. LSCs were no longer committees

that 'took decisions' and this has importance to the status of such committees

within local government. As committees had no formal censure against the police

(apart from the potential of reputational damage flowing from a refusal to 'approve'

a local police plan), this affected the importance attached to them within Police

Scotland. Significantly, at the outset, less senior Inspectors now held local

governance responsibilities in place of a Chief Constable. In short, the loss of

formal powers was felt by some as a devaluation of the importance of recognising

local interests.

Much of the negotiated practice was an implicit response to this. Bringing

Divisional Commanders into the process of local scrutiny was an important

symbolic act by Police Scotland that gave recognition to LSCs, and the local

interests they represented. Similarly, the increased involvement of elected

councillors, and the tendency to institutionally link scrutiny functions with harder

edged service delivery functions of community planning might be understood in the

same way, as of course can the willingness of SPA board members to take upon

themselves the role of 'escalation' route. In any case, a related issue to stress

here is that giving recognition to local interests is not to make an argument that

uncritically favours local 'direction'. To give recognition to locally elected

representatives is not necessarily to do as they ask. What they ask might be

illegal, oppressive to other groups of citizens, or otherwise inconsistent with other

police commitments (to law, equality, human rights etc.) (Jones et al., 1996: 191).

For Loader and Walker, what is important is that the police give reasons for what

they do or do not do, that there is deliberation about policing priorities, strategies

and resources (2007: 227-231). It was a strong perception that such deliberation

was not taking place, in part because of gaps in communication resulting from

structural disconnects between central and local managers in Police Scotland,

rather than complete disagreement with all central decisions taken, that lay at the

heart of much of the disquiet in LSCs. For example, LSC 'annoyance' regarding the

more routine appearance of armed officers was more down to Police Scotland's

designation of it as an 'operational matter' not requiring local deliberation than it

was necessarily down to the decision itself (see above). Negotiated practice

around providing LSCs with information requested, involving more senior police

officials to reach up into the hierarchy, and potential developments in the autonomy

of the emergent regions, again testify to practitioners' intuitive grasp of the

democratic need to give recognition through reason giving.

While giving of reasons is one way of responding to local preferences,

responsiveness to preferences, and means of accessing or being exposed to them,

is a wider issue (Jones et al., 1996: 191), of which the negotiated practice of LSCs

again demonstrated an intuitive feel. Kuper distinguishes between vertical and

horizontal responsiveness (2004:103-104). Vertical responsiveness relates to the

relationship of institutions and elected representatives to the citizens that they have

a mandate to serve. The vertical responsiveness of LSCs was questioned in light

of general concerns about the state of local electoral democracy in Scotland.

However, vertical responsiveness is not only achieved through electoral mandate

(Jones et al., 1996: 191). Public voice can be heard through an increasingly

diverse set of mechanisms including surveys, citizen juries, and consultation

exercises (Loader and Walker, 2007: 222). There are some encouraging

developments along these lines in Scotland (Bland 2017; Roca and Flint, 2001) but

such innovations, other than routine use of public survey data, are not mainstream

as yet. Where the LSCs sought to enhance their vertical responsiveness was

where they sought location in community safety. Beyond drawing upon survey

data these committees can and do include representative community groups (often

representing hard to reach voices of young people, the LGBT community or ethnic

minorities – precisely the groups whose rights risk being threatened if recognition

of mainstream public sentiment is not checked) and voluntary sector service

providers. It might be the case that other committee structures also provide some

additional vertical responsiveness of these kinds. That is a question for future

studies of Scottish local government, but for the moment it can be observed that

LSC members were intuitively aware of vertical responsiveness and it was often

the case that community safety, through its active involvement of citizen

representation, offered some dimension of it.

The location of community safety within community planning brings the discussion

onto horizontal responsiveness. The 2012 Act reaffirms Police Scotland's

responsibilities to participate in the community planning local service delivery

partnership (s47). Where police scrutiny occurs here it is not only conducted in

conjunction with local authority officials, but also with other local service delivery

partners (social work, education, health etc.) alongside the community

representatives noted above. This offers a modicum of what Kuper terms

horizontal responsiveness across different professional institutions:

> (A) relationship between authorities that check and balance one another in
>
> part because (despite some divergent ends and means) they need to

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> compromise or find consensus in order to fulfil their functions, and so will be
>
> receptive to one another's claims and counterclaims. (2004: 103)

Horizontal responsiveness almost, but does not quite return us to the opening

preoccupation of this section. It is not a distribution of power in the formal legal

sense but it does offer institutional check and balance at the local level.

Community planning as a statutorily mandated partnership committee has real

potential for institutionalising a horizontal responsiveness in public service delivery

that, as was demonstrated earlier, has a strong historical legacy in Scotland. It is

therefore unsurprising that as local arrangements were being renegotiated during

the study, this was the direction of travel.

Conclusions

Far from being an event which took place on 1 April 2013 the reform of policing in

Scotland remains an ongoing and sometimes contested process. The

considerable scope within the enabling legislation for discretion regarding

implementation was probably a necessity given the complexity of amalgamating

eight regional police services and two national agencies into a single organisation,

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but this requires the emergent practices negotiated around the Act to be

scrutinised carefully.

This article has given focus to local governance arrangements, which run the risk

of being forgotten in the midst of a process characterised as centralisation. Police

Scotland is a single organisation, but questions of local governance and local

policing were part of the debate that heralded it and of the enabling legislation

itself, and a balance between its central and local orientations remains a work in

progress and a matter of negotiated practice. Illustrations drawn from our small-

scale study of the new local governance arrangements revealed how practitioners

filled in the gaps to work around structural disconnects that impeded information

and communication flows. These had contributed to a series of controversies with

the new system where it appeared that local preferences and interests had been

ignored or unheeded. We then demonstrated that these appeals to the local were

not mere expressions of sentiment or resistance to change, rather they reflected an

intuitive feel for what was vaguely framed in or absent from the bare bones of the

legislation. In particular, the negotiated practice of those making the new

governance arrangements work showed a grasp of key tenets of democratic police

governance: that power over policing must be shared across different institutions

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and/or levels of government; that police organisations should recognise and be responsive to those subject to them; and, that flowing from these necessary requirements, policing and the policy of the police need to be subjected to meaningful deliberation. In Scotland these ideas continue to find some, but by no means all, of their expression in local governance arrangements on account of the strong historical legacy of Scottish policing being institutionally situated within local public service delivery. They are, however, core dimensions of democratic police governance as a whole, and are not of purely 'local' import either in Scotland, or elsewhere. Indeed, other contributions to this issue clearly illustrate that particular histories of police and government do much to determine the institutional forms that democratic police governance takes.

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[i] These figures are a selected snapshot out of a more gradual process of amalgamation.   See Table 1 in Davidson et al. for the full picture (2016: 90).

[ii] The eight police forces varied significantly in size and in terms of populations covered. Strathclyde was one of the largest police services in the UK with, in 2005, a strength of 7,430 sworn officers. This compared with Dumfries and Galloway, one of the smallest UK police services with a strength of 489 sworn officers. See: Donnelly and Scott, 2005: 12-13.

[iii] The Advisory Board included SPA Board members, elected councillors with experience of police scrutiny, Police Scotland officers, HMICS, and an independent academic (see: XXXX: 4)

[iv] A full discussion of case selection is found at (XXXX: 7), but cases were selected to cover all three Regional Command Areas, to include one predominantly rural, one predominantly urban, and one mixed setting, and to represent different locations for the LSC, two in Community Safety Committees, and one in a dedicated Blue Light committee.

[v] This was a 'learning event' organised by CoSLA for elected members and council officers working in LSCs in September 2016. This has become an ongoing forum and the mechanism through which SPA Board members engage with LSCs and the issues that they wish to 'escalate'. No evaluation of this forum has yet been conducted.