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Policing in cool and hot climates

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Policing in cool and hot climates: legitimacy, power and the rise and fall of mass stop and search in Scotland

Abstract

Prior to the amalgamation of Scotland's eight police forces into Police Scotland in 2013 by the Scottish National Party (SNP) government, Scottish policing enjoyed low political visibility. In Loader and Sparks's (2010) terms, policing resided in a 'cool' political climate. This paper argues these conditions hindered the critical interrogation of Scottish policing; allowing a policy of unregulated and unfettered stop and search to flourish unchallenged for two decades. We then show how this policy was swiftly dismantled in the 'heated' environment that followed centralisation, a move that gave rise to the unprecedented scrutiny of Scottish policing by media and political commentators. The analysis suggests that the legitimacy and reputation of the police may owe a debt to political environments that encourage either 'soft' or 'hard' analysis. Also, that more heated political environments, often disparaged by academics and criminal justice practitioners, can drive accountability and contribute to more progressive outcomes.

Introduction

> The term "stop and search" is one that, until very recently was alien to policing in Scotland. That is not to say police officers did not use search as part of their wider powers for the prevention and detection of crime as well as seeking to ensure the wellbeing of some of the most vulnerable members of our communities. They did and have done without controversy for decades.
> (Scottish Police Federation 2015: 1)

The use of stop and search in Scotland has generally avoided controversy. This situation changed in 2014 when research published by the Scottish Centre for Crime and Justice Research (Murray 2014) revealed that searches were being undertaken on an unprecedented scale (at a rate four times higher than England and Wales), that most searches were undertaken on a non-statutory basis, without legal authority, and fell disproportionately upon children and young people.

Despite initial efforts by Police Scotland and the Scottish Government to defend the policy and downplay the report, the findings led to extensive media and political attention, prompting criticism from the Scottish Human Rights Commission (Sunday Herald, 1/2/2015), the Scottish Commissioner for Children and Young People (CYPYS, 2014), and the United Nation Human Rights Committee (UNHRC, 2015; 5). A little over a year later, against a backdrop of sustained political and media criticism, the Scottish Government reversed its hitherto defensive position and appointed an Independent Advisory Group to address the regulation of stop and search (Scottish Government, 31/3/2015). As recommended by the group, in September 2015, the Justice Secretary (Scottish Government 3/9/2015) announced that non-statutory stop and search would be abolished and a statutory

Code of Practice established. Thereafter, the Scottish Government incorporated the full package of recommendations into the Criminal Justice (Scotland) Bill, which passed in December 2015.

The shifting status of stop and search, from low to high profile position (Scott, 2015; 17), coincided with an escalation in the critical scrutiny of Scottish policing following the amalgamation of Scotland's eight forces under the *Police and Fire Reform (Scotland) Act 2012 Act* in April 2013. In addition to stop and search, media and political commentary focused on an aggressive approach towards the sex-industry (Scott 2014), the use of armed police on routine duties (BBC 14/5/2014), the misuse of investigative powers in order to identify journalist's sources (Herald 2/8/2015), and power struggles between Executive actors (Herald, 20/6/2013).

Focusing on the case of stop and search, this paper examines how the historical amalgamation of Scotland's police forces in 2013 by the Scottish National Party (SNP) government gave rise to the intensive scrutiny of Scottish policing. Applying the terminology of Loader and Sparks (2010), we argue that Scottish policing historically benefitted from a 'cool' policy climate of low scrutiny and minimal political engagement. This we argue, was abruptly curtailed following reform which had the unintended consequence of 'heating up' policing discourse, leading to the critical interrogation of policies and practices that previously passed unnoticed.

The paper uses the social theory of Steven Lukes, as set out in *Power: A Radical View* (2005), to unpack the power dynamics that run throughout the narrative. Lukes' analytical framework serves to unpack the application of power and show how debate around key policy issues is variously shaped by who influences the terms of discussion, how the issue is viewed, and ultimately, whether or not public debate takes place. The framework sets out three 'dimensions' or applications of power. 'One-dimensional' power involves explicit contestation, namely, conspicuous, articulated conflicts and their outcomes (ibid: 16-19). 'Two-dimensional' power revolves around those who design arenas of conflict and exert influence over which issues are discussed, and which are not (ibid: 20-25). 'Third-dimensional' power is more subtle, whereby the powerful shape interests, preferences and agendas through manipulation, suppression and hegemonic ideological persuasion. The most successful application of power is where conflict over particular issues does not emerge into public or political discourse in the first place (Lukes 2005:27).

Applying this framework to stop and search, the narrative documents the efforts of elite actors, including Scottish political leaders and police chiefs, to downplay the contentiousness of stop and search, and minimise critical interrogation of police policy and practice. The overarching story is one of how a small group of elites formerly suppressed the critical discussion of policing issues. The analysis shows show how, prior to police reform in 2013, Scottish policing operated in a 'cool' climate (Loader and Sparks, 2010), whereby the police gained advantage from external environmental factors, including a lack of media scrutiny, weak governance, academic neglect and political indifference. These conditions, we argue,

benefitted police legitimacy, and set the stage for the unprecedented growth of mass stop and search from the early 1990s onwards. We then document how stop and search surfaced as a major controversy in the post-reform period, and show how, in the newly politicized landscape, attempts to control the policing temperature faltered, leading to the long overdue regulation of stop and search in Scotland.

Building on this narrative, the paper constructs two theoretical arguments. Firstly, we argue that the case of stop and search in Scotland demonstrates the importance of non-police factors in shaping wider police legitimacy. In this regard, we suggest that there are 'softer' and 'harder' environments in which police forces operate, and that these are often a function of wider political circumstances.

Secondly, we account for the post-reform controversy around stop and search, and the legal reform of policy and practice, in terms of the landmark decision by the SNP government to centralise Scotland's eight forces. Legal reform, we argue, did not result from the mass mobilisation of campaigns or grassroots movements, as per England and Wales (Whitfield, 2009), nor was it prompted by a fundamental change in police practice. Rather, the politicization and 'heating up' of Scottish policing precipitated legal reform, by inadvertently mobilising political and media critique.

The account is of theoretical interest insofar it challenges the argument put forward by various penal theorists that penal discussion is preferable within a 'cool' climate of restrained popular debate (see for example, Zimring, 2001; Pratt, 2007; Tonry, 2009). We argue that, in a policing context, at times the contrary may be true; that a 'cool' climate may diminish robust accountability. Certainly in the case of stop and search in Scotland, it is clear that a heated climate was required to effectively challenge unregulated and unfettered police practice (see also Bradford and Loader, 2015).

The analysis proceeds as follows. First, we show how, prior to reform, Scottish policing historically enjoyed a 'cool' climate. The analysis documents the ways in which police leaders, political elites, media and some academic observers represented Scottish policing as consensual and 'other to' the confrontational imagery principally associated with the Metropolitan police. We also contend that such imagery ought to have been challenged more. Next, we document the development of stop and search in Scotland, and how key actors downplayed the contentiousness of police powers and coercion, at least in discursive terms. This rhetorical complacency we suggest, provided the platform for the introduction of mass stop and search from the 1990s onwards. Finally, we show how Scottish policing rapidly 'heated up' following centralisation, and how these conditions helped to dismantle a policy that previously passed unchallenged. The paper concludes with a discussion on the ramifications for theoretical perspectives on police legitimacy, and the desirability of 'heated' debates around criminal justice policy.

The paper draws on a range of methods and data sources, including police stop and search statistics, interviews with police officers, analysis of government papers, policy literature,

media reports, records lodged in the National Archives of Scotland and Hansard records. The paper also draws on email correspondence from Police Scotland and the Scottish Government, accessed through Freedom of Information by the Investigations Editor of the Sunday Herald newspaper.

Scottish policing in a 'cool' climate
To draw on the metaphor established by Loader and Sparks (2010) which compares public and political discourse on criminal justice issues to temperature, until recently Scottish resided in a 'cool' climate. Specifically, policy-making remained within the hands of a small circle of professionals, largely insulated from the more volatile world of public sentiment. To draw a contrast, in more heated climates crime and punishment issues are debated and contested in public, with passionate, emotive political rhetoric, and active, often critical media coverage. For instance, discourse and policy decision-making around stop and search may be described as heated, that is politicised, marked by partisanship and controversy.

Prior to the establishment of Police Scotland in 2013, major criticism of the Scottish police did not cohere around a specific issue with fervent intensity, nor did major political parties stake their election hopes on policing issues. This cool climate is striking when compared to the heated politics of English policing and the 'babble of scandalous revelation, controversy, and competing agendas' which shaped policing from the sixties onwards (Reiner 2010: 78). Anti-police 'race riots' (Bowling *et al.* 2008), high-profile miscarriages of justice like the Birmingham Six or Guildford Four (Newburn 2008: 93) together with a steady stream of publicly embarrassing stories about sacked or resigning police chiefs, and more recently, the issue of unethical undercover policing (Lewis and Evans 2013) all marked out English policing as distinctly 'politicised' (Reiner 2010; 33). By comparison, Scotland has had a more sedate experience. Even the example of the miners' strikes in the 1980s, which is credited with damaging the long-term reputation of the police in parts of England (Waddington 1999: 80-83), did not prompt the same concerns over police accountability, despite parallel events occurring in Scotland (Walker 2000: 158-159).

To be sure, Scottish policing has faced moderate, periodic criticism. For example, the murder of Axmed Abuukar Sheekh in Edinburgh in 1989 resulted in protests against the police's initial refusal to recognise the murder as racially-motivated (Kelly 2000: 11). Nonetheless, there has not been a critical mass of political energy directed at the police in Scotland to investigate their faults in a way that is comparable to the Phillips Royal Commission (1981) or the Stephen Lawrence Inquiry (Macpherson, 1999). Nor has there been particular strategic benefit to being seen as a political ally of the police (Morrison, 2012). Unlike their English counterparts, Chief Constables did not take on the mantle of 'prominent commentators' on 'the state of the nation' (Loader and Mulcahy 2003: 226; Gordon 1980: 90-91). And, with the recent exceptions of stop and search and *Cadder v HM Advocate* [2010] UKSC 43 (which overturned the right of the police to detain and question a suspect without access to a lawyer), the use of police power has remained largely untroubled by demands pertaining to civil liberties and individual rights (Baldwin and Kinsey 1982; McBarnet 1983). Overall, the

energy around policing debates has been muted, the general interest restrained, and the climate 'cool'.

The idea that the Scottish police are less controversial is also evident in academic analysis. Donnelly and Scott (2010: 2) suggest that they carry a specific set of 'traditions and characteristics' that encourage more progressive and open-minded policing. Others suggest they are more community-involved (Banton 1974, cited in Monaghan 1997: 23); civic-minded (Dinsmor and Goldsmith 2010: 55); sensitive to diversity (Burnett and Harrigan 2010: 287); less inclined to punitive measures such as ASBO's (DTZ and Herriot-Watt, 2007); more inclined to smart 'adaptive' strategies over aggressive 'sovereign' ones (Fyfe and Henry, 2010); and that officers may ground in-the-field decisions on more tolerating "philosophies" (Gorringe and Rosie 2010). The ultimate effect is to suggest that the Scottish police provide a service of a more civilised calibre:

> Scottish policing has always had a close relationship with municipal authorities and the general public, and from that has developed a genuine concern for the public good and wellbeing of the community (Donnelly, 2008: 21).

Yet not all the evidence suggests that this benign reputation was necessarily merited. For instance, Gordon (1980) provides a critical history of Scottish policing which outlines the role of the police in suppressing and harassing political groups. There is also evidence of conflict between the police and working class communities (Duncan and McIvor 1992), and excessive contact, in particular with young people. Bartie and Jackson (2011: 99-100) illustrate how 'forms of harassment, if not physical intimidation… were viewed as an appropriate response to working-class male sub-cultures' in post-war Scotland. McAra and McVie (2005) show that, even when controlling for offending behaviour, officers tend to single out working-class boys disproportionately. Studies conducted in Edinburgh also provide evidence of regular corrosive and adversarial contact with young people (Anderson *et al.* 1994; Loader, 1996), whilst critics of the 'Hamilton Curfew' introduced in the late 1990s argue that the policy was stigmatising and liberty-infringing (Thomson 1998; Springham 1998; Waiton 2006).

This evidence suggests that Scottish policing did not necessarily *earn* a 'cool' climate, but instead, benefitted from it. In other words, the idea that Scottish policing is inherently of a more civilized calibre perhaps seems unconvincing. Nonetheless, it is curious that prior to centralization, policing issues mostly remained low-profile. The next section investigates this observation further and shows how key actors from the late sixties onwards, successfully supressed the development of public debate on policing issues, to the detriment of wider police accountability and scrutiny.

The suppressed politics of Scottish policing, 1967 to 1992
The Criminal Justice (Scotland) Act 1980 was key in shaping the development of mass stop and search in Scotland, and its introduction is worthy of closer inspection. From the fifties onward, the Prevention of Crime Act 1953 provided officers across the UK with a power of

arrest on suspicion that a person was carrying an offensive weapon without legal excuse or authority. However, the 1980 Act provided officers in Scotland with an additional power of search for offensive weapons, as well as a search power at the point of detention. The 1980 Act was significant in two key respects. First, the Act did not place a statutory duty on officers to record searches, or on police forces to publically report on stop and search activity, thus rendering the power unaccountable. Second, the Act provided the legislative platform for the seminal high-volume stop and search initiatives introduced by Strathclyde Police in the 1990s. Initially introduced to deal with increasing recorded violence and knife carrying, these set a precedent that, years later, would be replicated across Scotland.

The 1980 Act surfaced from a period in which key political actors had purposefully eschewed the politicisation of policing in Scotland. Towards the end of sixties, a private members bill lodged by the Scottish Conservatives attempted to 'heat up' the debate on police powers. Prompted by the 'new wave of Glasgow hooliganism' (Bartie 2010), the Bill sought to extend the Prevention of Crime Act 1953, and introduce stop and search powers for offensive weapons.[1] The debate was however, 'cooled off' by the liberal-orientated Scottish Office, which, by dint of its autonomous administrative position, sought to maintain 'Scottish' traditions and values within criminal justice, as decided by a relatively small network of policy-makers (McAra 2008). As MP David Steel commented at the time:

> There is a grave risk that as we increase the powers of the police in an arbitrary way we may threaten to destroy the happy relationship existing between the police and the public. (Steel, Lib. HC vol. 778 c. 1111, 24/2/1969)

In practice, such community-orientated, consensual discourse belied a range of frontline policing responses, from tough tactics (Bartie and Jackson 2011: 89), to the progressive Juvenile Liaison Schemes (ibid: 78-79). Nonetheless, the prevailing discourse sought to avoid the politicisation of policing or the "*sound and the fury*" of law and order politics, as Labour MP Donald Dewar put it (HC 26/3/1968 vol. 761 c. 1344). In this regard, Dewar argued that criminal justice issues were doomed for retrograde discussion if opened to wider political debate:

> Once this issue is handed over to party propaganda, over-simplification is inevitable. When the parties start outbidding each other, all sorts of possible useful but small reforms are suddenly elevated into panaceas, into quick and easy solutions, because this is necessary in terms of electoral appeal. Powers of search, birching, capital punishment… all these things suddenly become the vital key and the particular remedy which is peddled soon fills the horizon. (Dewar, Lab. HC 24/2/1969 vol. 788 c. 1112)

Dewar's view, which appeared to prevail broadly within the Scottish Office, suggests that political elites sought to keep the public spotlight off policing issues and pacify discussion around police search powers. Likewise, ministerial correspondence reveals a relaxed attitude towards the existing breadth of police powers. As one official noted:

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[1] 'The Prevention of Crime (Scotland) Bill', more widely known as the 'Offensive Weapons Bill'.

Police powers of search are ill-defined and it is probably better not to enter into a discussion of them… Any attempted definition of police powers of search could, we think, be embarrassing to the police. (NAS HH55/1503 8/11/1967 Telegram from London Scottish Office).

Several years later, a highly influential review of Scottish trial and pre-trial procedures by the *Thomson Committee on Criminal Justice Procedure* again downplayed the contentiousness of police powers. Prompted by Scottish Law Commission concerns that Scotland's criminal law procedures placed 'unnecessary obstacles in the way of ascertaining the truth' which allowed 'guilty persons to escape conviction' (cited in Baldwin and Kinsey 1980: 251), the committee sought to secure effective 'crime control' and minimise 'due process' obstacles (Packer, 1968) – whilst eliding the coercive and invasive aspects of policing. As McBarnett (1983: 39) observed, the committee found issue with the growing *awareness* of legal rights and due process amongst the public and viewed it as a barrier to police law enforcement:

As people become increasingly aware of their rights the present tacit co-operation which makes it possible for the police to function may not continue, and the police may find themselves in a position to do only what they are specifically authorised to do by law.
(Thomson Committee 1975; 11, 3.11, cited in McBarnet, 1983: 38-39)

In response, the committee proposed new "acceptable and highly necessary police procedures" (NAS AD99/3/18, Gordon, col. 1694 9/12/1971), including a broad power of search at detention that would "cover everything from drugs to stolen goods" (ibid. Gordon, col. 1732-1733). As the following exchange suggests, the committee's view that the police ought to be afforded more powers appeared to be accompanied by a casual attitude towards due process and the potential misuse of power:

Gordon: I think we all have to vest discretion in the police officer, and all we have to do is give some general description of the bounds of the discretion, a) so that he can be properly trained, and b) if a case does come to court the Judge can have some vague standard to apply.
Wilson: We will have to realize that mistakes will happen, because he is making a snap decision on the street. You can't train judgement.
Gordon: It is not the end of the world if he makes a mistake, otherwise you might well get the problem of the apathetic Police Officer. (ibid. col. 1742-1743)

The Chair also suggested that officers should be trusted to decide their own grounds for what counts as "reasonable suspicion", given that successful legal challenge was unlikely:

Chairman: Reasonable suspicion, it may be difficult enough in practice, but it at least makes it possible for the Court, as I imagine they would generally have to give the benefit of the doubt to the policemen for the case they have made. You can't really analyse the thing in a Court six months later whether they think there was at the time or should have been reasonable suspicion.
Gordon: We might perhaps consider adopting the same sort of approach as the Wootton Committee did, to indicate gently that length of hair is not in itself reasonable ground for suspicion.

> **Chairman**: I don't think we would indicate anything. (ibid. col. 1723-1234)

Published in 1975, the Thompson report eventually fed into the *Criminal Justice (Scotland) Act 1980*, which, despite Scottish opposition, passed with the support of the English Conservative majority (Baldwin and Kinsey 1982). Whilst disciplinary in tenor and orientated towards crime control (Packer 1968), the report was framed in dry legalistic terms: a technocratic matter of procedure rather than a contentious expansion of police power. As Baldwin and Kinsey (1982: 175) argue, the significance of the report lay:

> … not so much in the nature and content of its assumptions, but the manner in which it translated these assumptions exclusively into a matter of technical law, thereby removing the issue from the level of everyday political discourse.

Put simply, the expansion of the boundaries of police authority proceeded with minimal challenge. Looking back, the largely low profile expansion of police power can be located within the broader background of a 'cool' policy climate; a largely sedate discursive environment, in which elite actors successfully discouraged more probing scrutiny and downplayed contentiousness. These conditions we argue, also set the stage for the rapid expansion of stop and search in the 1990s, as detailed next.

The rise of mass stop and search, 1992 to 2013
The rise of stop and search in Scotland between 1992 and 2013 occurred, more or less, without political challenge or media critique. This part of the paper examines dominant discourse around stop and search, and shows how police leaders purposefully mobilized the media to support their strategic choices. More generally, the lack of contestation may be viewed as a product of the broader 'cool' climate on policing issues, which saw little heated discussion from any quarter or major grouping within Scottish society at the time.

Chronologically, the rise of mass stop and search in Scotland can be traced to a series of initiatives undertaken by Strathclyde Police in the 1990s. In 1992, prompted by an increase in recorded violence and a seemingly intractable culture of knife-carrying, Chief Constable Leslie Sharpe launched Operation Dove in the Paisley area, a ninety day operation in which around 30,000 searches were recorded. Taking precedence from Operation Dove, the following year Operation Blade was launched, a Strathclyde-wide crackdown on knife-carrying that included high-volume stop and search, a knife amnesty, public safety measures, and talks with secondary school pupils to address the 'apparently acceptable 'culture' of knife carrying (Strathclyde Police 1994: cited in Bleetman *et al.* 1997). The introduction of the 'Spotlight' operations by Chief Constable John Orr in 1996 saw a shift towards a longer-term enforcement strategy in Strathclyde. Spotlight spread the policing focus across an array of targets including offensive weapon carrying, vandalism, truancy, underage drinking, sporting events, street robberies and litter (Orr 1998: 113, 117). Described by Orr as 'community policing with the gloves off' (1998: 106), the initiative drew from Kelling and Wilson's *Broken Windows* thesis (1982) and zero-tolerance philosophies.

Press statements issued by the force stated that officers would deploy statutory powers of search for offensive weapons:

> On Monday police in Strathclyde will exercise their right to stop and search anyone they suspect might be carrying an offensive weapon, as part of a three-month enforcement campaign. Yesterday the briefing began of thousands of police officers to remind them of their legislative powers in relation to people carrying knives… Superintendent John Sharkey… rejected suggestions that people would be stopped and searched at random. (Herald, 26/2/1993)

In practice however, it seems most searches were conducted on a 'non-statutory' basis, that is, premised on verbal agreement, without reasonable suspicion or legal authority (Reid Howie, 2002) – a fact that appeared to pass more or less unnoticed. Doctoral research by Waiton (2006; 1) suggests the campaign cast a wide net over young people in Strathclyde:

> Following Strathclyde Police's Operation Spotlight initiative I discovered that every young person who attended the drop-in centre had been stopped and searched. A colleague giving a talk on children's rights at a nearby school found that all the teenagers in the class had been stopped and searched. And when he discussed this with the teacher of the class, he found that all the young people that went to her Sunday School had also been stopped and searched.'

Despite the high-volume approach, police practice in Strathclyde appeared to be tolerated with no sign of significant damage to police legitimacy, few complaints and little political or media challenge – in sharp contrast to the turbulent experiences of the Metropolitan police in London (Delsol and Shiner, 2006; 244). As one media commentator observed:

> During Operation Blade, Strathclyde Police stopped a massive 29,828 people in just three months, and found 638 cases of possession of an offensive weapon. That means that 98.2 per cent of those stopped were not doing anything wrong. It is interesting to compare that hit rate with other such mass stop-and-search regimes… The Metropolitan Police Special Patrol Group, which was heavily criticised by Lord Scarman's report into the disturbances, managed to find almost one in five people in possession of stolen property… – much more successful than Strathclyde's campaign. But why the discrepancy and no rioting on the streets of Glasgow in 1993? (The Scotsman 20/1/1997)

The same commentator noted Police chiefs were 'astute enough to court wide public support among local people and so get a form of mandate' (ibid.). In the words of Strathclyde police Chief John Orr (1998: 109), the media acted as 'active partners' in the promotion and communication of police strategies and tactics. Corgi Toys even produced a limited edition 'Operation Spotlight' car. To draw from Lukes (2005), powerful actors sought to frame issues via press statements and television campaigns that defined both the problem and the solution. Contemporaneous reportage tended to replicate dominant policing narratives, echoing arguments about efficacy and providing reassurance that searches were based on reasonable suspicion. Public support was further cultivated by representing volume stop and search as a triumph for police, regardless of the on-the-ground outcomes. In a remarkable

discursive victory, the force established that stop and search was successful when weapons were discovered *and* when searches turned up empty. As one retired police officer explained:

> The important part was to get the publicity for doing it because it was a deterrent thing – it wasn't an enforcement thing. So the thought was 'Right, let's release it off to the media... we're doing thousands of searches and we've only found 42 weapons! (Research interview, 2011 Strathclyde)

This win-win outlook signalled a fundamental and enduring shift, from the traditional application of stop and search as tool for targeted investigation and detection (Lustgarten, 2002), to a broadly applied policy:

> Knife-carrying in Glasgow city centre has reached historic new lows… Police carried out more than 2600 on-the-spot searches in the city centre last month. It led to a dramatic reduction in serious violent crime. A record low of 0.5% of the searches carried out had a "positive result" with arrests being made - and weapons confiscated. (Evening Times 6/1/2014)

Whilst more critical voices were evidenced over time, press reports referred to the campaigns as 'highly successful' (Herald, 9/12/1993; 27/5/1997), achieving 'spectacular results' (ibid.) and having a 'tremendous impact' (Herald, 6/8/1993). Media commentaries were particularly supportive in relation to Operation Blade, given that a short-term impact on recorded violent offending appeared discernible (Bleetman et al, 2010). In general, the media opted not to challenge or question the strategy.

Whilst it is difficult to reconcile the consensual imagery of Scottish policing with the appropriation of intrusive police powers as a policy tool, stop and search did not acquire the adversarial overtones associated with the Metropolitan Police. Rather, senior officers successfully conveyed an image of stop and search in Scotland as qualitatively different to the English experience, carefully avoiding the harsh, non-discretionary overtones of zero-tolerance policing (Murray 2015: 112). Leishman and Mason state:

> Throughout its duration, Strathclyde Police were constantly engaged in brokering news coverage and publicity that, on the one hand, promoted the potential of this type of initiative to cut crime dramatically as it apparently did in New York, while at the same time avoiding the use of the term 'zero tolerance' by emphasising instead the local community context and the principle of individual street level officers exercising discretion and compassion (2012; 30).

Stop and search was thus incorporated into the wider imagery of Scottish policing as less adversarial and rooted in a tradition of consent – that is, not so much a *power*, more part of a *policy* of community policing.

Moving beyond the Strathclyde campaigns, the use of stop and search remained remarkably low profile. Following the publication of the Macpherson Report on the murder of Stephen Lawrence, Scottish police chiefs and the Scottish Executive noted 'a lack of criticism to date'

(Murray, 2014a). Similarly, a small-scale study commissioned by the Scottish Executive observed:

> 'There is little evidence that the issue of stop and search is particularly high profile in Scotland although it is controversial in England and Wales, and there is some evidence that it is regarded by many in Scotland as an "English" issue.' (Reid Howie Associates 2002)

Between 2005 and 2012/13, the number of recorded searches in Scotland rose by around 552%, driven principally by Strathclyde police force, which following the appointment of Chief Constable Sir Stephen House in 2007, effectively rolled out a high volume approach on a permanent basis. By 2010, Scottish police forces represented three of the four highest users of stop and search in Britain, whilst the national search rate outstripped frisk rates in New York City (Murray 2015). Recorded search rates peaked in 2012/13, at which point the rate per capita in Scotland was seven times than England and Wales. Still, the tactic remained politically invisible (Scott; 2015; 17), and appeared to pass unchallenged:

> Stop and search was never in my years at HMIC Scotland raised as an issue. And that in itself is curious. Given the fact that it is still continually raised south of the Border. The Scottish Human Rights Commission didn't raise it, the Scottish Government didn't raise it. There was no clarion call from the media for it. The police services themselves, perhaps understandably because nobody's asking them, didn't raise it. So it was a non-issue. (Senior Officer, research interview, 2011, cited in Murray 2014)

The fact that stop and search remained a non-issue may be part attributed to the successful leveraging of influence by political and policing elites to downplay the contentiousness of police power, coupled with a lack of scrutiny. In Scotland, the dominant narrative, as replicated in the media, stated that there was no 'problem' with stop and search; consequently, there was no demand for a regulatory framework akin to PACE Code A. In the absence of clear legal rules, stop and search – mostly on a non-statutory basis, without legal authority – flourished unimpeded. Dire standards of accountability exacerbated the situation further, specifically a lack of published data and information on police practice. Ultimately, out-with those populations subjected to police contract, the tactic remained out of sight.

In theoretical terms, the discursive construction of police powers echoed Lukes' (2005: 29) second and third dimensions of power. From the late sixties onward, political elites leveraged influence to manage the agenda in a way that moved potential conflict away from the public stage, as per the move by the Scottish Office to downplay the bid to introduce a search power for offensive weapons (ibid.; 20-25). More generally, the analysis shows how political and policing elites rendered police powers uncontroversial and apolitical, as per the 'bureaucratic' interpretation of police power articulated by the Thomson Committee, which reduced the fundamental balance between crime control and due process (Packer, 1968) to 'a lawyers' Bill of little party political significance' (Baldwin and Kinsey, 1980; 257).
These conditions we argue, also enhanced police legitimacy in Scotland, over and above the actions of front-line officers. By dint of a 'soft', low-scrutiny environment, Scottish policing

effectively sidestepped probing discussion and avoided the inherently political nature of the policing role. Crucially, these conditions were also conducive to the introduction and expansion of mass stop and search. The rapid collapse of the policy following centralization demonstrates further the extent to which police legitimacy depended upon external factors; on the ability of political and policing elites to influence the policing narrative, and the way in which this faltered in the newly heated policing landscape.

A national scandal - stop and search in the post-reform era
The amalgamation of Scotland's eight police forces in 2013 precipitated an unexpected and unprecedented degree of media attention and political scrutiny. Points of criticism included the performance management regime introduced by Chief Constable Sir Stephen House, the concentration of power in the hands of the Chief Constable, the proximity of House to Ministers, the perceived inability of the Scottish Police Authority to hold the force to account (Murray 2015), as well as a raft of topical scandals, from armed policing to spying on journalists sources.

Within several months of reform, the press began to report the 'massive scale' of stop and search and related use of targets to drive performance (Herald, 21/8/2013; 1/1/2014). From early 2014 onward, the ability of police leaders and political elites to control public discourse around stop and search faltered. The turning point was the publication of a report by the Scottish Centre for Crime and Justice Research in January 2014 (Murray 2014) which revealed the scale of stop and search, the fact that most searches were undertaken out without legal authority, and fell disproportionately on young people. A closer look at the launch of the Murray report shows how political and policing elites made significant efforts to 'cool down' the unfolding controversy; to manage the broader ideological interpretation of stop and search by leveraging the second and third dimensions of power (Lukes 2005).

To recap, as Chief Constable of Strathclyde police force, Sir Stephen House had overseen an exponential increase in recorded searches from 2007 onward. Significantly, the SNP also laid down its support for volume stop and search in its 2011 general election manifesto:

> Our plans are based on proven police action that works. We have increased the use of stop and search – there were 250,000 in Strathclyde last year alone. More stop and search has meant fewer people carrying knives through fear of being caught. (Scottish National Party, 2011: 18)

In order to shore up policy support and protect vested policing and policing interests, a concerted effort was made to manage the potential fallout from the Murray report. Scottish Government correspondence shows that prior to publication, the Cabinet Secretary for Justice advised civil servants that the Scottish Government, Police Scotland and Scottish Police Authority should coordinate and 'get on the front foot in relation to this research and highlight the benefits of stop and search, particularly in relation to reduction of knife crime.' (Internal Scottish Government email, 7/1/2014).

Thereafter, an Assistant Chief Constable developed a sixteen-point plan of action. Internal correspondence shows that Police Scotland sought support from a range of stakeholders, including police-staff organisations, academics, Community Safety partners, schoolchildren and the family of a murder victim. Officers were tasked with drafting reasons why Scotland should not be compared with England and Wales, positive articles were placed in the press and a supportive statement requested from the Lord Advocate on the legality of non-statutory stop and search (Sunday Herald, 17/5/2015). Two days ahead of the publication of the Murray report, Police Scotland staged a national media event to promote the benefits of the tactic, headed by the Cabinet Secretary for Justice. As the Cabinet Secretary's briefing pack explained:

> The event will provide Police Scotland with an opportunity to proactively defend its position on its stop and search policy… Police Scotland will also use the event to reassure the public about the benefits of their current approach to stop and search, including the reasonable and proportionate way in which it is being conducted… The event takes place in advance of the publication, on Friday 17th January, of a research study authored by Kath Murray, University of Edinburgh, entitled 'Stop and Search in Scotland – An evaluation of police practice.' (Internal Scottish Government email 14/1/2014)

Following publication of the report, Police Scotland media lines suggested that the comparison between search rates in Scotland, and England and Wales was inappropriate and "dangerous":

> "It's apples and oranges, really… it's a totally different landscape down there and up here, totally different crime profiles. But the most important thing is we've got different legislation here. For example, we can quite ethically and quite legally search people for alcohol and we can do that consensually as well. It is totally different, so the figures will never match up and it's quite dangerous, actually, to try and compare them." (Senior Officer, Holyrood Magazine).

Despite a lack of robust analysis or evaluation, Ministers and police officials drew a correlation between falling levels of recorded violent crime and high rates of stop and search:

> Police Scotland and Scotland's justice secretary, Kenny MacAskill, robustly defended the strategy and said mass stop and search had helped produce record falls in violent crime and weapon carrying, particularly in the west of Scotland. MacAskill said "It's not rocket science, it's not happen-chance that there's a clear correlation… I don't accept that it's discriminatory. It's quite clear and self-evident that crime is disproportionately perpetrated by young people. (Guardian 17/1/2014)

Nonetheless, the report generated extensive media coverage, despite significant efforts to contain the findings. We suggest that this inability to downplay or sideline the findings at this point resulted principally from the reform process, which effectively intertwined the reputation of Police Scotland with the SNP government, thus motivating critical commentary from opposition MSPs and closer media scrutiny. Put another way, reform heated up

discussion around policing issues and raised the profile of strategic and tactical decision-making.

> "As members will be aware, we opposed the creation of the single force, because we feared that it was based upon deficient legislation, that savings claims were unproven and that it would lead to a one-size-fits-all approach to policing in our local communities. Many of our concerns have been justified. However, one issue that we did not anticipate was Police Scotland's zeal for stop and search."
> (McInnes [LD] SP Official Report 2/4/20174)

The critical momentum around stop and search intensified following publication of the Scottish Police Authority (SPA) *Scrutiny Review* report in May 2014. Like the Murray report, the Authority identified age-disproportionality, the extensive and uneven use of non-statutory stop and search, and a lack of clarity as to the purpose of the tactic. Signalling a further departure from the Police Scotland and Scottish Government narrative, the Authority (2014: 17) concluded they could find "no robust evidence to prove a causal relationship between the level of stop and search activity and violent crime or anti-social behaviour", nor could they 'establish the extent to which use of the tactic contributes to a reduction in violence'.

In the months that followed, a stream of press reports focused on the scale of stop and search, searching children, use of targets, recording practices, use of police resources, data accuracy, the watering down of critical findings by the SPA, and the loss of 20,000 stop and search records after 'someone pressed the wrong button' (BBC 19/2/2015).[2] Following the abolition of non-statutory stop and search on children aged eleven and under in June 2014, further controversy ensued when the BBC (4/2/2015) revealed that officers were still deploying the tactic, albeit in far fewer numbers. Increasingly, criticism focused on non-statutory stop and search, prompting calls to abolish the practice (SHRC, 2/2/2015). In March 2015, a critical report by HMICS stated that the Inspectorate had no confidence in Police Scotland data, and reiterated the SPA finding that there appeared to be no clear causal relation between stop search activity and crime reduction. The Inspectorate also recommended a presumption towards statutory stop and search, which Police Scotland now echoed, in a review of its own practices (2015).

Signalling a reversal of its earlier defensive position, in spring 2015 the Scottish Government announced the appointment of an Independent Advisory group to make recommendations to Ministers on the future of non-statutory stop and search, and develop a draft Code of Practice. Adding further weight to emergent due process narrative, in June 2015 the Scottish Human Rights Commission stated that non-statutory search was unlawful, thereby contradicting Police Scotland's stated position thus far (Herald 3/7/2015), and reported the single force to the United Nations Human Rights Committee (UNHRC). Thereafter, the UNHRC (2015) advised the Scottish Government that non-statutory stop and search should be repealed. In September 2015, the Scottish Government announced that it had accepted the Independent

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[2] Media reports were collated by CJScotland (an independent resource on criminal justice in Scotland) and can be accessed online at: http://www.cjscotland.co.uk/2015/02/police-stop-and-search-in-scotland/

Advisory Group recommendations in full: to abolish non-statutory stop and search, and establish a statutory Code of Practice (Scott, 2015).

Discussion: Police legitimacy and accountability in 'hot' climates

The rise and fall of mass stop and search policy in Scotland raise several conceptual points of interest. First, police legitimacy studies should pay more attention to political context. Numerous factors influence whether or not a specific police force faces soft or hard scrutiny. As such, forces earn either advantages or disadvantages through the nature and characteristics of their contextual environment. In Scotland, police legitimacy benefitted from the freedom afforded by lax scrutiny. In another context, Belur (2009, 2010) illustrates how police in Mumbai face little oversight or accountability for their violent actions for a range of reasons, including a lack of trust in the court system, a compliant media, fear of crime, religious and cultural beliefs, and the overwhelming distraction of deprivation (Belur 2009; 2010). These extrinsic matters impinge upon and shape the public's view of the legitimacy of police actions and subsequent demands for accountability.

Legitimacy is not always a product of what the police *do*, but influenced also by the strength of scrutiny from the surrounding environment. Police forces can face hostile or hospitable environments in terms of accountability that have ramifications for their broader reputation. The literature on police legitimacy thus far, has principally focused on more police-centric factors. For instance, the substantial procedural justice literature focuses on frontline police action as a major lever of legitimacy. In numerous key works, Tyler (1990, 2004, 2011) suggests that an important mechanism for the health of police legitimacy is that officers demonstrate 'fair' procedures in their encounters with the public. If officers provide explanations for decisions being made, allow people recourse to complaint, and treat the public with 'courtesy and respect' (Tyler 2011: 260) then the police will be rewarded with enhanced legitimacy (Sunshine and Tyler 2003). Similar determinants of police legitimacy include whether or the police behave according to rules, make efforts to court consent, and align their conduct with popular beliefs and values (Jackson *et al.* 2011: 272-273).

The point here is that procedural justice typically emphasises police behaviour as a major component of legitimacy. While this is not disputed, our analysis highlights factors beyond the police that influence their reputational standing. Multiple sociological analyses have also identified a range of extrinsic factors that shape police legitimacy. For instance, Hough (2007: 290-291) observes that the diversification of communities along ethnic, religious, political and class lines can make it difficult for the police to act as a coherent 'totem' of wider society. Jackson and Sunshine (2007) and Jackson and Bradford (2009) show that pro-police values are closely related to feelings about social cohesion and moral consensus. Relatedly, Loader and Mulcahy (2003: 11-12) suggest that a long-term effect of economic policy has been to entrench social divisions, facing-off the police against the most deprived in a relationship of 'antagonism, mutual suspicion, and recurring allegations of over-control and under-protection'. In general then, it is recognised that the police operate in social, political, legal and cultural contexts that harm or benefit their reputation.

What is worth adding to these analyses is the conceptual frame of 'hot' and 'cool' climates for both theoretical and normative purposes (Loader and Sparks 2010). It is our view that Scottish police benefitted from a cool climate, which kept interrogation and scrutiny to a minimum. As a result, volume stop and search policy prospered unchecked, with insufficient regard for individual rights or due process. In this respect, police legitimacy in Scotland owed a debt to its advantageous conditions.

Second, once a consideration of contextual factors is introduced, the inquiry opens up to account for the wider role that power and ideology can play to frame, forefront or diminish policing issues. Whether or not problems of policing enter into public discourse can be a function of power relations. To draw from Lukes (2005), the salient factor is not decision-making per se, rather, it is the use of political power to influence the overarching agenda. Viewed thus, police legitimacy also hinges on the capacity of influential actors to mobilise or divert scrutiny, and shape dominant narratives. There are also relations between branches of government, the police hierarchy and the media to consider when assessing the favourability of environments to the police's reputation. As the case of Scotland shows, these elements can form conscious, pro-active alliances, or simply share general values or perspectives that diminish dissent on an issue like stop and search. Yet as the post-centralization events demonstrate, such alliances should not be taken for granted. As Bachrach and Baratz observe, a person or group has power to the extent that they can 'creat[e] or reinforc[e] barriers to the public airing of policy conflicts' (1962: 949). In the case of Police Scotland, intense media and political scrutiny rapidly undercut this influence, and recast mass stop and search in negative terms.

Finally, in contrast to the field of penal politics, there may be benefits to a 'hot' policing climate. Criminologists and criminal justice practitioners tend to underline the negatives that emerge from the 'heating up' of discourse around penal politics. For instance, Zimring (2001: 165) credits large increases to the prison population of the United States to the politicisation of penal policy, and makes an explicit argument for the need to distance incarceration decisions from fiery political discussion. Tonry (2009: 390) suggests that nations where political systems are designed to be more combative and 'conflictual', as opposed to more reserved and 'consensual', encourages "rash" penal policy. Likewise, Pratt (2007) outlines how imprisonment has rapidly escalated off the back of rising public contempt for offenders. Yet in Scotland, a hotter climate was needed to challenge police practice and to prompt organisational change. Therefore, we suggest that police accountability may benefit from heated and agitated discussion – at the very least, it is often preferable to policing issues being sidelined and left to government administrators and the police hierarchy.

Of course, there may be problems to consider with 'hot' policing climates, as demonstrated by the introduction of Police and Crime Commissioners (PCCs) to England and Wales. PCCs explicitly aimed to agitate local discourse on police and crime issues, and break-up the "cosy consensus" (Reiner 2013: 169) that previously characterised relationships between Local Police Authorities and local police hierarchies. Home Secretary Theresa May (2012: 2)

played up the political ramifications of this move, calling it the "the most significant democratic reform of policing in our lifetime", signalling the coalition government's intent to raise the profile of policing as a political issue. In other words, PCCs explicitly aimed 'heat up' the debate. Yet some academic critics argue PCCs have failed to deliver on democratic policing and accountability. Lister and Rowe (2014: 11) suggest that commissioners are more likely to take instructions from central party headquarters than the local electorate, thereby diminishing the claim to localism. Moreover, the rate of engagement PCCs undertake with local communities is largely discretionary, thus weakening their consultative function (Lister credentials, suggesting PCCs most likely represent a narrow spectrum of interest (also, Lister and Rowe 2014: 14; Rogers 2013: 140-141). In this context then, there is scepticism about the value of 'heating up' policing debate. The politicisation of policing is deemed counter-productive to accountability and corrosive to a more democratic exercise of state power. Nonetheless, as we have shown, the same may be true of 'cooler' climes.

Conclusion

The case of stop and search in Scotland illustrates how a 'cool' political climate can facilitate the introduction and expansion of police power. For as long as Scottish policing was viewed as mundane and non-adversarial, scrutiny and interrogation faltered. Such conditions were reinforced by legal and political elites, who sought to downplay the need for public concern. In this way, police legitimacy prospered not due to inherently superior or exceptional policing; but as a consequence of a soft environment of low political visibility. Following reform in 2013, the environment swiftly hardened as the climate heated up, heralding an unprecedented degree of critical scrutiny and attention over police policy, which within a relatively short period, resulted in the demise of mass stop and search. Thus, we argue, in respect to police accountability, noisy and heated environments of active discussion and challenge may be more desirable than cool neglect.

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