Roundtable on Current Debates, Research Agendas and Strategies to Address Ethnic/Racial Profiling in the UK and USA

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Panel Six: Organisational Strategies for Change and Regulation

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The disproportionate use of police powers against black and minority ethnic populations is one of the major fault-lines in police-community relations in Britain and the USA. While various forms of regulation have been attempted the broad thrust of the approach has been rather different in the two jurisdictions. In the US regulation leans towards a conflict model where litigation is common and police forces are subject to legal redressthrough the courts. The British approachleans more towards a consensus model where litigation is rare and policy provides the primary channel through which regulation is conducted. Both models raise important questions about the ability of organisations to critically reflect on their own practice, to acknowledge their capacity for wrong-doing and to act on such acknowledgement. These issues are explored below, drawing on the British experience. The paper begins by outlining the main developments in the regulation of police stops and assessing what impact they have had. Consideration is then given to key barriers to change and to how these might be mitigated.

Regulating police stops

The formal regulation of police stops is a relatively recent developmentand one that has been inescapably tied to the politics of 'race'. Until the mid-1980sthe police had at their disposal various ad hoc legalpowers to search suspects based on various pieces of local and national legislation. In most instances police officers could use these powers where they had 'reasonable suspicion' that a person had committed an offence – a criterion that could be met on the basis of an officers' subjective suspicion, without any objective indicators suchas a witness description or crime report (Rowe 2004).Subsequent attempts to regulate police stops have often arisen in response to particular crises that demonstrate malpractice, prompting various commissions and inquiries which have made a series of recommendations regarding the regulation of police powers. Among the most influential inquiries were those led by LordsScarman and Macpherson into the Brixton 'riots' and matters arising from the death of Stephen Lawrence respectively. Although precipitated by very different events, both Inquiries were centrally concerned with the policing of black communities and both were publicly heralded as 'watersheds' or 'turning points' in Britain's relationship with 'race' (Neal, 2003: 56).

The Royal Commission on Criminal Procedure 1977

The impetus behind the introduction of formal regulations governing the use of police powers was provided by the wrongful conviction of three teenage boys on charges arising out of the murder of Maxwell Confaitin 1972 (Reiner, 2010). Evidence that the boys had falsely confessed to the charges having been maltreated while in police custody prompted the Royal Commission on Criminal Procedure, which was established in 1977. The Commission's core concern with balancing the rights of the suspect and the requirement to

tackle crime was reflected in its calls for a uniform stop and search power that would be exercised within strict safeguards. This recommendation was eventually enshrined in PACE, but only after one of the most serious outbreaks of public disorder in recent times.

The Scarman Report

A few months after the publication of the Royal Commission report in January 1981, concerns about the potential misuse of police powers were crystallised by a wave of urban unrest. Although disturbances occurred in numerous locations, it was the Brixton 'riots' that most captured the public imagination and seemed to epitomise the pervading sense of crisis. In the aftermath ofthese events, Lord Scarman was appointed to head a public inquiry into the causes of the disturbances and to make recommendations with the aim of preventing further disorder.

The Scarman report was heavily critical of the heavy-handed approach to policing in Brixton and highlighted the role of operation 'Swamp 81', which involved more than 120 officers patrolling the area with the instruction to stop and search anyone that looked 'suspicious'. Over four days, 943 people were stopped and 118were arrested, more than half of whom were black (Bowling and Philips, 2002). The whole operation was considered to have been a serious mistake by Scarman (1981: 45), who described the disturbances as 'essentially an outburst ofanger and resentment by young black people against the police' – a reaction he attributed to policing priorities and practices that lacked local support and impacted disproportionately on minority ethniccommunities. The Inquiry also pointed to the failure of formal liaison withlocal communities and reasserted the role of'consent', which it considered to be essential in securing legitimacyfor policing in a democratic society.

To secure consent and promote legitimacy the Scarman report's recommendationsincluded: increasing levels of police recruitment from minority ethnic communities; increasing consultation through the introduction of statutory liaison committees; introducing an independent review of complaints against the police; and tightening regulations against racially prejudiced behaviour by officers. Whilst accepting that stop and search was essential to confront street crime, Scarmancalled for safeguards to ensure that it was exercised with reasonable grounds for suspicion.

The Police and Criminal Evidence Act 1984

The Police and Criminal Evidence Act 1984 (PACE) established a regulatory framework governing the use of police powers that remains in place today. Reflecting the concerns of the Royal Commission and the Scarman report, this framework sought to institute the principle of balanced powers and safeguards, whilst recognising particular concerns about the over-policing of black communities. As well as granting a new national stop and search power, PACE introduced a series of safeguards governing the use of such powers. These safeguards are specified in a code of practice (Home Office, 2010), breaches of which constitute a disciplinary offence and are admissible as evidence in criminal or civil proceedings (Reiner, 2010).

Code Aof PACE outlines the principles governing the use of stop and search,emphasising that such powers must be used fairly, responsibly, withrespect and without unlawful discrimination. It also reminds officers thatthe Equality Act 2010 makes it unlawful for them todiscriminate on the grounds of the 'protected characteristics' including race and religion when using their powers. The code of practice is rooted in the notion of 'reasonable suspicion', which requires – in mostcases[1] – that police officers must have 'reasonable grounds' to suspectthat a person is in possession of stolen or prohibited articles beforeproceeding with a stop and search. What constitutes 'reasonable grounds' will depend on the circumstances, but there must be an objectivebasis for suspicion based on 'facts, information, and/or intelligence' (Home Office 2010: 2.2):

> Reasonable suspicion can never be supportedon the basis of personal factors. It must rely on intelligence or information about, orsome specific behaviour by, the person concerned. For example, unless the policehave a description of a suspect, a person's physical appearance (including any of the'protected characteristics' set out in the Equality Act 2010 (see paragraph 1.1), or thefact that the person is known to have a previous conviction, cannot be used alone orin combination with each other, or in combination with any other factor, as the reasonfor searching that person. Reasonable suspicion cannot be based on generalisationsor stereotypical images of certain groups or categories of people as more likely to beinvolved in criminal activity.

It is highly unusual for a legislative code of practice to provide suchguidance and offers 'a rare example of the law attempting to take intoaccount the social reality of policing on the streets' (Sanders and Young2000: 87).

[1] There are some exceptional powers that operate outside the requirement for reasonable suspicion such as Section 60 of the Criminal Justice and Public Order Act and the stop and search provisions within the Terrorism Act 2000.

As well as outlining the principles governing the use of stop andsearch, Code Alays down specific duties on officers at different levels of the police organisation regarding theapplication and monitoring of these powers. Before conducting a search, front-line officers must take ‘reasonable steps’ to inform the subjectof the search of the officers’ name and station; the legal power that is being exercised;the purpose of the search; and the grounds for it. Officers also have a general duty to make a record when they use the powers covered by the Code of practice unless there are ‘exceptional circumstances’ that make this wholly impractical. If not done at the time, a record shouldbe made as soon as practicable. Where a record is made at the time the subject of the search must be asked if they want a copy, and ifthey do, must immediately be given a copy of the record, a receipt explaining how they can obtain a copy of the full record oraccess to an electronic copy of the record. The record must always include a note of the person’s self-defined ethnic background;the data and time of the search;the object of the search; the grounds for suspicion; and the identity of the officer conducting the search.Supervising officers are required to monitor the use of stop and search powers and to consider whether there is any evidence that such powers are being exercised on thebasis of stereotyped images or inappropriate generalisations. To this end they must examine whether the records reveal any trends or patterns which give causefor concern, and if so take appropriate action to address this. Senior officers with area or force-wide responsibilities are also required to monitor the broaderuse of stop and search powers and, where necessary, take action at the relevant level.

In terms of mechanisms, the code of practice states that supervision and monitoring must be supported by the compilation of comprehensivestatistical records at force, area and local level. Paragraphs 5.3 and 5.4 specify (Home Office, 2010: 5.3-5.4):

> Any apparentlydisproportionate use of the powers by particular officers or groups of officers or inrelation to specific sections of the community should be identified and investigated.
>
> In order to promote public confidence in the use of the powers, forces in consultationwith police authorities must make arrangements for the records to be scrutinised byrepresentatives of the community, and to explain the use of the powers at a local level.

PACE has been billed as ‘the single most significant landmark in the modern development of police powers’ (Reiner, 2010: 212).By proving a statutory codification and rationalisation of police powers, alongside safeguards governing their use, PACE serves an enormously important symbolic and practical function. While critics insisted that the police would

exceed their new extended powers, just as they had previously, the evidence is rather more mixed. There are some areas, such as the handling of suspects, where much of what PACE calls for has become routine practice, though generally: ‘assimilation of the PACE rules into police culture and working practices has been uneven and incomplete. Much is ritualistic and presentational and affects little of substance’ (Reiner, 2010: 215). Various problems have been identified with the regulatory framework governing the use of stop and search. Reasonable suspicion remains a vague and elusive concept (Sanders and Young 2000), which is variously interpreted by officers and is often not met in practice (Bottomley et al. 1991; Quinton et al., 2000). Until 2005 ‘voluntary’ or ‘consent’ stops were permitted under PACE and were not subject to the requirements governing reasonable suspicion and recording, which meant that the safeguards could effectively be circumvented (Quinton and Olagundoye 2004). Unsurprisingly, perhaps, the new legislative framework did little to defuse concerns about the abuse of police powers: the use of stop and search increased dramatically (by more than nine times) between 1986 and 1996, while the arrest rate fell over from 17 per cent to 10 per cent (Wilkins and Addicott, 1999; cited by Lea, 2000), and statistics continued to show that black people were being disproportionately targeted in ways that were suggestive of stereotyping (Brown, 1997; Miller, 2010).

The Stephen Lawrence Inquiry

Despite the limitations of PACE it took another crisis before concerns about the abuse of police powers were translated into something more tangible. Four years after the unsolved murder of black teenager Stephen Lawrence, the newly installed Labour government established a public inquiry, headed by Lord William Macpherson, to examine matters arising from his death. The Inquiry famously concluded that the flawed investigation into the case had been marred ‘by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers’ (Macpherson, 1999: 46.1). This failure was said to be symptomatic of a broader problem of institutional racism, which was said to exist ‘both in the Metropolitan Police Service and in other Police Services and other institutions countrywide’ (1999: 6.39).

Although stop and search was not the focus of the Lawrence Inquiry it came to feature prominently in its deliberations and conclusions. The inquiry held a series of public meetings up and down the country and was struck by ‘inescapable evidence’ of a lack of trust between the police and minority ethnic communities, who‘clearly felt themselves to be discriminated against by the police and others’ (Macpherson, 1999: 45.6). If there was one area of complaint that was universal, the Inquiry reported, it was the use of stop and search.The Inquiry concluded that institutional racism was apparent in the disproportionate use of stop and search against black people (1999: 6:45):

> Whilst we acknowledge and recognise the complexity of this issue and in particular the other factors which can be prayed in aid to explain the disparities, such as demographic mix, school exclusions, unemployment, and recording procedures, there remains, in our judgment, a clear core conclusion of racist stereotyping.

By way of clarification, the Inquiry also expressed the hope and belief that 'the average police officer' and 'average member of the public' will accept that 'we do not suggest that all police officers are racist' and 'will both understand and accept the distinction we draw between overt individual racism and the pernicious and persistent institutional racism which we have described' (1999: 6.46).

The Lawrence Inquiry made 70 detailed recommendations,almost all of which have been implemented in some form, creating the 'most extensive programme of reform in the history of the relationship between the police and ethnic minority communities' (Bowling and Phillips, 2003: 546). Recommendations 61 proposed (Macpherson, 1999: 47.61):

> That the Home Secretary, in consultation with Police Services, should ensure that a record is made by police officers of all 'stops' and 'stops and searches' made under any legislative provision (not just the Police and Criminal Evidence Act). Non-statutory or so called 'voluntary' stops must also be recorded. The record to include the reason for the stop, the outcome, and the self-defined ethnic identity of the person stopped. A copy of the record shall be given to the person stopped.

The practical implications of this recommendation were two-fold. First, the call for non-statutory stops to be recorded came into effect in April 2003 when revisions to PACE abolished the right of the police to carry out 'voluntary' or 'consensual' stop and searches.. This represented a form of rule tightening, which sought to close a loophole that was widely used by officers to sidestep existing regulations (see Sanders and Young, 2006). Second, the call for all stops to be recorded meant, in effect, extending existing regulations governing the use of stop and search to situations where officers ask members of the public to account for themselves (i.e. their actions, behaviour, presence or possession of anything). This proposal was subject to a phased implementation, with all forces being required to record stop and account as of April 1 2005.

Although the Lawrence Inquiry was more forthright than the Scarman report in some important respects, its position on stop and search was similar.Where Scarman found that the direction and policies of the police were not racist, Macpherson pointed to institutional racism and, where Scarman was hesitant on matters of accountability, Macpherson was strident (Bowling and Phillips, 2002). On stop and search, however, Macpherson followed Scarman's lead, accepting that such a power is necessary and posing the issue as one

ofdisproportionality rather than as one of an inherently problematic tactic (Lea, 2000). The issue for Macpherson, as it was for Scarman, is to regulate stop and search in such a way as to prevent racist stereotyping by officers. What this meant in practice was simply calling for a tightening up of the procedures introduced by PACE.

The impact of the Lawrence inquiry has been predictably mixed. Research commissioned by the Home Office found that the Inquiry had been an important lever for change, reporting substantial and positive changes in several areas including police responses to hate crime, the management of murder investigations, consultation with local communities; and the general excision of racist language from the police service (Foster et al., 2005). These positive developments were not uniformly evident across all forces, however, and it was noted that forces had tended to focus on those changes that were most obviously identifiable and achievable. The greatest continuing difficulty was said to exist in relation to understanding and designing responses to the problem of 'institutional racism': 'As a result', the authors concluded that 'despite the intentions of police forces and their staff, certain groups still receive an inappropriate or inadequate service because of their culture or ethnic origin' (Foster et al., 2005: ix). Considerable anger was reported among officers, who felt that the inquiry had been unfair and that the failings that had been identified were rooted in incompetence rather than racist practices. One of the most significant impacts of the Inquiry was said to be that police officers feltunder greater and more intense scrutiny, giving rise to a heightened sense of anxiety about dealing with black and minority ethnic communities and a perception that it had become more difficult to break the rulesaround stop and search. This translated into widespread sense of a loss of confidence among officers about their use of stop and search, with officers describing a climate in which 'people were too afraid' to use these powers for fear of being accused of racism.

A similarly mixed set of findings were reported by two reports marking the 10-year anniversary of the publication of the Lawrence Inquiry. The *Runneymede Trust*found some indications of positive change, most notably in the response of the Crown Prosecution Service to racially motivated crime, but also identified many ways in which the relationship between police and black and minority ethnic groups had not changed significantly (Rollock, 2009). This sense of continuity was said to be evident in the on-going over-representationof black people among those stopped and searched. A study of police and racism by The Equality and Human Rights Commissionfound evidence of good progress in employment for ethnic minorities, but reported no long-term decline in the disproportionate impact of stop and search on black people (Bennetto, 2009).

Publication of the Lawrence Inquiry report was followed by a temporary dip in stop and search activity, but rates of use have since recovered to their previous level (Miller, 2010). Although the arrest rates was notably higher during the period of reduced overall stop and

search activity, it has since fallen to 9 per cent, indicating that the Lawrence Inquiry reforms failed to improve the productivity of searches (Miller, 2010; see also Povey, 2011). As to the extent to which people from black and minority ethnic groups appear to be being targeted (Miller, 201: 968):

> The blunt reality, more than a decade after Macpherson and several years after the reforms were implemented, is that aggregate-measured levels of disproportionality for grounds-based searches have not improved. Moreover compared to the later 1990s, the situation has become worse for black and Asian people. The relative chances of people in these groups being searched, compared to whites have apparently increased.

Barriers to change

The limited impact of the Lawrence Inquiry recommendations on stop and search practices should not come as a great surprise given what we know about police reform. In addition to substantial structural barriers there has been a lack of organisational, and more recently, political will to achieve change.

Structural inequality

Reiner (2010) argues that reform strategies invariably lack a fundamental sociological analysis and systematically fail to confront the nature of policing. The police, he notes, are inherently a 'dirty work' occupation, which routinely involves handling disorder or crime and other inherently contentious situations. Under these circumstances, it is only in the most exceptional circumstances that the police will be regarded as anything other than a regrettable necessity.There are, moreover, aspects of the day-to-day work of the police institutionthat generate and sustain an occupational culture supportive of racism (Lea, 2000). The legitimation of stop and search as a means of policing of dangerous populations means that predominantly white officers routinely meet members of black communities in confrontational situations, while rarely doing so outside of law-enforcement situations, which makes them particularly susceptible to stereotyping. As 'a form of generalised policing of whole communities and groups', therefore, stop and search is 'a major factor in generating police racism' (Lea: 2000: 231). The failure to address these structural dimensions has had far reaching implications for attempts at reform (Reiner, 2010: 251):

> With the 20:20 vision of thirty years' more experience…it is clear that the Scarman Report failed to end racial discrimination in policing. This was not because of its own failings, however, but because of the lack of political commitment to achieve

> the transformation of black people's social and economic circumstances, as well as the reforms of police organization and policy that it called for. In the continuing absence of a fundamental attack on economic and social disadvantage experienced by black and other ethnic minority people the widespread anger and sorrow produced by the Lawrence tragedy is likely to prove equally unsuccessful in achieving a real breakthrough in the vexed relationship between black people and the police and criminal justice system.

Organisational resistance and the psychology of denial

Alongside structural impediments we can add organisationalbarriers. The British police are famously reform resistant, having been uniquely able to 'undermine, frustrate, withstand, invert and deny' externally imposed change agendas (Savage, 2003: 171). Added to this, police reactions to the Lawrence inquiry revealed a deeply divided organisation. While several senior officers publicly accepted the charge of institutional racism such statements were sharply at odds with the dominant mood among the rank-and-file (Rowe, 2004). Protests by white officers that the finding of 'institutional racism' was an affront to their professionalism and claims of 'reverse racism' formed part of a broader backlash against the inquiry that was given considerable support by right-wing news media and politicians (McLaughlin, 2007). Among others, William Hague, then leader of the Conservative party, claimed the inquiry report had led to a collapse in police morale and helped to brand every policeman a racist (*The Independent*, December 14 2000).

The conflation of individual and institutional racism has been partly attributed to conceptual ambiguities that are said to have been exacerbated by the Lawrence Inquiry report (Souhami, 2007). As the single most powerful message officers received from the Inquiry, the label of 'institutional racism' was widely taken to signify a widespread problem of individual racism, giving rise to considerable anger and acting as a possible barrier to change: 'Despite the avowed intention of the Lawrence Inquiry…the extraordinary resonance of the word *racism within* the term *institutional racism* was sufficient to deflect considerable police service attention away from the complex problem of indirect corporate discrimination' (Foster et al, 2005: 97). While certain media coverage, together with the reaction of some key stakeholders, encouraged this (mis)reading, the Inquiry's own definition was also implicated. In particular, the claim that institutional racism can be seen or detected in 'processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping' (Macpherson, 1999: 6.34) was considered to be more suggestive of individual than institutional racism, creating the potential for confusion.

Picking up these threads Shiner (2010) examined police reactions to Recommendation 61 from the Lawrence Inquirythrough the lens of organisational psychology. From this

perspective it is argued that social institutions arise through the efforts of human beings to satisfy their needs, but then become external realities comparatively independent of individuals that nevertheless affect the structure of the individual (MenziesLyth, 1989).Freudian psychoanalysis has heavily influenced the literature on organisational life, reflecting an apparent affinity between the resistance experienced by those initiating organisational change and that experienced by a psychotherapist while working with a client (Bovey and Hede, 2001). As one of the pioneers of the field, the Tavistock Institute developed the notion of social systems as defence against unconscious anxiety, shedding light on the way in which organisational structures and cultures protect their members from distress by facilitating defence mechanisms (Menzies, 1959). Organisations, like individuals, use psychological defence mechanisms to protect themselves from anxiety and the self-esteem of organisations is regulated by ego-defences, which protect the moral integrity of the organisational personality (Brown and Starkey, 2000; Feldman, 2003). Crucially, organisations, like individuals, need to 'dose' the pain they experience in order to survive from a blow and do so by employing psychological defence mechanisms (Ketola, 2006).

Drawing on this framework, Shiner (2010) reported that police personnel felt little ownership of the recording requirement, which was generally considered part of an 'attack' on police service spearheaded by allegations of institutional racism. This 'attack' was said to have been experienced as a form of collective trauma, giving rise to considerable anger as well as a sense of loss and disorientation. The predominant police response was a protective one based on well-known defence mechanisms and closely analogous conscious processes, including denial, intellectualisation, regression and displacement. Disproportionality was routinely explained in ways that did not implicate the police, being widely attributed to high levels of black criminality, the nature of the available populationand/or selective form-filling by officers (to protect themselves against malevolent allegations of racism). The police were also portrayed as the real victims in all this, caught in a system obsessed with political correctness that prevented them from getting on with the 'real job' of fighting crime. Obviously contradictory claims that had little regard for issues of evidence or consistency were buttressed by carefully constructed criticisms of the Lawrence inquiry. As such, unconscious and conscious defences seemed to be working in tandem, with the common aim of protecting the reputation of the police service.

Through a combination of conscious action and unconscious acting out, these psychic defences translated into various forms of resistance based on formal adherence, absorption, adaptation and subversion, which served to distance implementation of the new recording requirement from the intended purpose of promoting accountability (Shiner, 2010). The recording of stops was not sold to officers as a way of improving monitoring and accountability but as an additional source of intelligence, effectively rebranding the

whole exercise in a way that diverted attention away from the broader reform agenda. What this often meant for monitoring, scrutiny and community engagement was an emphasis on damage limitation. Oversight of front-line officers was generally treated as an internal police matter, so that, outside of the complaints procedure, there was little room for external agents to call individual officers to account for specific incidents (Shiner, 2006). External scrutiny typically involved corporate modes of accountability based on statistical information and passive forms of community engagement, such as consultation and awareness raising, which were geared towards demonstrating there was not a problem.

The politics of denial

Since the requirement to record stop and account came into force, the political climate has turned decisively against the Lawrence Inquiry reform agenda and the emphasis on accountability. The tenth anniversary of the publication of the Lawrence Inquiry report was used to launch what appeared to be a coordinated attempt to bring matters to a close. Trevor Phillips, chair of the Equality and Human Rights Commission, wrote in the *Daily Mail* newspaper that the accusation of institutional racism against the police is no longer valid (January 19 2009); a few weeks later Jack Straw, Secretary of State for Justice, told the BBC's *Politics Show* the inquiry's conclusion that the Metropolitan Police Service was a fundamentally racist institution is no longer true (*The Guardian*, February 23 2009); and the following day, at a conference marking the anniversary of the report, Sir Paul Stephenson, Commissioner of the Metropolitan Police, claimed the force was no longer institutionally racist, saying it had made so much progress that the label was no longer useful (*The Guardian*, February 24 2009).

The regulatory requirements governing the use of police stops have since been pared back. In March 2011, the government revised the PACE Code of Practice, removing the requirement that stop and account be recorded and reducing the amount of information required in relation to stop and search (StopWatch, 2011).The inclusion of stop and account in the regulatory framework and its subsequent removal are illustrative of a broader trend, which has seen due process being overwhelmed by crime control values (Reiner, 2010). Lip-service is still paid to the importance of balance, but priority has been given to rebalancing in favour of victims and improving police efficiency, with the result that safeguards have come to be seen as a hindrance rather than anecessary protection. The requirement to record stop and account fits the broader trend because 'an attempt to regulate a *sub rosa*procedure has culminated in a de facto recognition of a power never actually granted by legislation or case law, with reporting requirements that have been minimized to cut bureaucratic impediments to crime control' (Reiner, 2010: 220).Whilst reducing the possibilities for local accountability, the government's stance on oversight and

scrutiny seems to be one of damage limitation. According to Nick Herbert, the Minister for Policing and Criminal Justice (Hansard, December 1 2010: 298WH)[2]:

> …the 'Next Steps' process developed by the National Policing Improvement Agency… helps the police to understand the way in which they use stop and search and how the population of an area and the apparent levels of disproportionality might in some circumstances not present a true picture. The early feedback on 'Next Steps' is positive, and we hope to be able to expand it to other areas shortly.

That such arguments are still being used shows how little has been achieved and how far there is to go. As reported by the Lawrence Inquiry, the complex arguments used to justify disparities are not believed by people from minority ethnic communities and, in the absence of vigorous attempts to address discrimination, simply serveto exacerbate the climate of distrust (Macpherson 1999). The more things change, the more, it seems, they stay the same.

Promoting organisational change

The regulation of police stops represents difficult terrain, which turns on an unavoidable central paradox: the police cannot be relied upon to ensure robust regulation themselves, yet are likely to resist and subvert external efforts to this end. Initiatives to regulate police stops have been tightly bound up with the politics of 'race', particularlythe problem of disproportionality, and have been driven forward as a result of particular crises. This is a source of considerable anger and resentment among police personnel who have generally responded to what they perceive as an 'attack' on their collective integrity by drawing on defence mechanisms aimed at protecting the reputation of the service. Defensive explanations of disproportionality are routinely rehearsed that do not implicate police wrong doing and, by extension, do not require a response – the emphasis on available populations and black criminality provide what is, in effect, a rationale for inaction. The recording agenda is also seen as hindrance to real police work and is at odds with the perceived priorities of the service and with officers' primary identity as crime fighters.

Regulation thus presents obvious challenges. The complaints procedure is of limited utility because stops occur away from the police station, often in the absence of independent witnesses, with the result that very few complaints are upheld (Gleeson and Grace, 2009); attempts at 'rule tightening' provide no guarantees of adherence in the face of incompetence or prejudice (Lea, 2000); and external controls may be counterproductive

[2] www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101201/halltext/101201h0001.htm#10120146000001 (accessed July 14 2011).

if they foster indifference or resistance within the police organisation and weaken internal monitoring systems (Reiner, 2010; Stenning, 1995). This has led to the conclusion that changing police culture provides the best means of reform (Chan, 1997). Starting from the assumption that contact between the police and ethnic minorities outside law-enforcement situations is the key problem, attempts to change police culture have led to an emphasis on increasing recruitment of minority ethnic officers, race awareness training for white officers and various 'meet the community' initiatives. While such strategies have a considerable history dating back to Scarman they have apparently achieved little (Lea, 2000).

How then might police culture be changed? Structural and political constraints are likely to limit what can realistically be achieved, but there are, nonetheless, various ways in which organisational and psychological obstacles can be addressed. What follows begins by assessing the role of internal and external scrutiny before going on to consider more strategic issues relating to change management.

Performance management

While the discretion involved in front-line policing makes effective supervision difficult, stop records can be used to promote various forms of accountability beyond that immediately provided to the person who has been stopped. Stop forms should be used as a focus for internal supervisionand as a basis for identifying officers or teams who appear to stop unusually high numbers of people from minority groups (Miller et al. 2000; Quinton and Olagundoye 2004). During the implantation of Recommendation 61 some forces were developing a performance management approach, which links stops to arrest rates on the basis that a consistently high level of disproportionality is a particular cause for concern where it is accompanied by a consistently low arrest rate (Shiner 2006).Examples of performance management approaches include:

- In 2005 Staffordshire Police implemented the Practice Oriented Package (POP), an initiative produced by the Government's Office for Criminal Justice Reform setting out best practice in stop and search (EHRC, 2010). Every stop and search form was scrutinised to identify why the powers were being used, who was usingthem, and against whom, ensuring that a process in place to identify if individual officers were using stop and search inappropriately. The disproportionate focus of stop and search on black people across Staffordshire dropped from 4.4 in 2003/04 to 2.9 in 2006/07, at the same time as crime rates fell. As other priorities have emerged the focus on stop and search has declined and the figures have started to increase.

- In April 2007, Hertfordshire police introduced new stop forms, which supervising officers were required to check at the end of every shift and scan onto the force database, generating a statistical picture of the use of stops by individual officers and teams (Open Justice Society Initiative, 2011). The force also developed a computer program to identify whether officers were stopping a statistically disproportionate number of people from black and minority ethnic groups, allowing for the population composition of each local beat area, the time that officers work in each area and controlling for chance. The programme created 'probability bands' and identified officers who stopped people from minority groups beyond a specific ratio.Initially, some 25 officers were identified as being above the specified ratio. The diversity unit spoke to all of these officers and identified problems with their understanding of 'reasonable grounds' for making stops, and with certain operations that had legitimate objective but were producing disproportionate results. The rate of statistically significant disproportionality dropped among the officers who were identified and interviewed, and across the force as a whole. The data enabled routine conversations by supervisors with officers, and officers were aware that their stops were being scrutinised and that any disproportionality had to be justified. This initiative has since been discontinued.

- Operation Pennant was introduced in October 2006 by the Metropolitan Police Service (MPS), with the aim of increasing accountability, ensuring that stop and search was being used effectively to target crime, improving perceptions of fairness and increasing community confidence. Police performance was measured across all 32 boroughs and a ranking system was developed based on six weighted performance indicators, including the volume of searches and the disproportionality ratios, overall arrest rates and 'housekeeping' factors such as prompt recording of data. The five most problematic boroughs were then asked to formulate and execute an action plan detailing how they intended to address their performance issues.While the figures pointed to substantial improvements in the 'housekeeping' factors, they were less conclusive in terms of reducing disproportionality, with only a marginal decrease across the force as a whole. Following a review, Operation Pennant has been scaled back and focuses on more straightforward data monitoring. Local commanders are no longer required to draw up action plans.

Community Consultation

As a statutory requirement under PACE, local consultative committees provide a potentially important source of external scrutiny. For Lea (2000) the key regulatory problem is the lack of power within black and minority ethnic communities, which requires far-reaching structural changes in operational policing and the constitutional relationship of

police forces with various minority ethnic communities. If there was a developed system of police accountability in which elected representatives had the power to determine the general strategies and priorities of policing, he argues, black and minority ethnic groups could contribute to the setting of police goals and thereby be taken seriously as a constituency by police. Established systems of accountability fall a long way short of this model, though the introduction of elected police commissioners may promote direct accountability, albeit in ways that are subject to populist pressure. Since the 1980s there has been a clear trend towards increased centralisation as repeated governments have taken on a greater role in directing policing, with the result that the influence of police authorities has become progressively more limited and the potential for local influence has waned(Jones, 2003; Reiner 2010).The form of accountability that the police are expected to provide to external bodies is 'explanatory and co-operative' rather than 'subordinate and obedient' (Marshall 1978), moreover, which means thatchief constables are required to give account for their decisions but are under no legal requirement to take account of any critical response (Reiner, 2010). Finally, local consultative committees are generally run by the police and therefore lack independence. While noting that there have been some successes, Lea (2000: 225) argues that most groups are largely 'talking shops', which have little impact on relations between police and minority communities:

> What had been ignored was the issue of power. Police were willing to listen to those who agreed with them and would act as their supporters. But otherwise there was little incentive to listen to the demands or grievance of those not perceived to be politically powerful at either a local or a national level.

This critique remains a powerful one, particularly as the damage limitation approach to community consultation remains widespread (Shiner, 2006). Some forces have moved beyond standard modes of corporate accountability based on statistical indicators, however, providing community members with opportunities to engage in more meaningful forms of scrutiny. West Yorkshire Police and Suffolk Police, for example, have both developed community panels that directly examine individual stop forms (Open Justice Society Initiative, 2011):

- West Yorkshire Police Scrutiny Panels focus on hate incidents and stop and search, meeting on a monthly basis in each district. Panels consist of between 8 and 20 members from other public agencies and local communities, with police representation including at least one officer of inspector level.

  Each panel meeting examines at least ten stop and stop and search forms, five of which are specifically selected to cover stop searches of people from black and minority ethnic groups. Forms are randomly selected by community members in

advance of the meeting and all personal information is removed. The officers who conducted the stops supply a photocopy of their pocket book or supplemental report to provide fuller information about the circumstances of each stop to the panel. Panel members examine the data, ask questions, determine whether the forms have been completed correctly, and whether the grounds for the stop were adequate.

Independent evaluation reported that panel members view the scrutiny panels as providing accountability and transparency, making stop and search equitable, and promoting confidence in stop and search (Adamson and Cole, 2007).The evaluation also reported improvements in the quality of recording and the supervision of that recording.

- Suffolk Constabulary formed a stop and search reference panel in 2008 following research conducted by the Ipswich and Suffolk Council for Racial Equality (ISCRE) highlighting the extent of disproportionality across the force area (ISCRE, 2008). The panel is organised by the Equality Council and funded by the police. Monthly meetings are held in the evening at different locations around the county and are well attended with a diverse community membership. The meetings examine all stopsearch forms pertaining to people from black and minority ethnic communities. Forms are reviewed in advance of each meeting by the Equality Council and a number are brought forward to the police for discussion at the meeting. Police representatives provide information on the stops, which are then discussed, providing a real opportunity for community members to hold officers to account.

  Where officer completion of stop forms is done well, this is noted and positive feedback provided to the individual officer. Where forms are poorly completed and the grounds for the stop are questionable, follow-up action ranges from words of advice to management action. Some officers and sergeants have been encouraged to attend the meeting in order to properly understand the impact of their actions.

  The panel also discusses stop search complaints brought to their attention via third party reporting; monitors the impact of the use of stop and search in the community; and contributes to the forces' stop-and-search policy, procedures and training.

Combating resistance

If meaningful change is to be achieved, initiatives aimed at reform should anticipate resistance and build in responses to it. This may mean finding ways of working with or around defence mechanismsas well as rewarding good practice.A regulatory system can

incentivise compliance by employing carrots as well as sticks, rewarding the kinds of behaviour it wants to encourage, while imposing sanctions for the kinds of behaviour it is seeking to eradicate. The inclusion of rewards should help to challenge the idea that regulation is part of an attack on the police and may help to build intrinsic support for the process(Shiner, 2006; Delsol and Shiner, 2006).

As an example of how to work with defence mechanisms, the *Critical Encounters*project provides a useful template. This youth- police engagement project was developed by the youth arts organization Second Wave in Southeast London in 2005 (Baugh, 2011). The project seeks to improve relationships between local young people and the police by bringing both together in a safe and creative workshop setting to build mutual trust and respect, share experiences, and learn from one another. Through an ongoing round of workshops, *Critical Encounters*explores the dynamics of stop and search, with the aim of challenging the stereotypes and preconceptions of both young people and police officers about what it means to be a part of the other group. The legacy of mistrust requires a gradual process of trust building and considerable investment in maintaining positive group relationships. Since 2005, more than 275 police officers and almost 600 young people have participated in workshops, symposiums, and community activities. Independent evaluation found that the Critical Encounters project breaks down the damaging stereotypes on both sides and has profound effects on participants(Baugh, 2011). Interviews with participants and survey data demonstrate clear shifts in how both the police and young people perceive each other as well as improvements in trust and confidence on both sides. The police officers that have participated in the project note improvements in judgment and decision-making around stop and search and their confidence in dealing with young people. Young people, empowered by the process, have gone on to play a role in local and national police decision-making structures.

Organisational change will almost inevitably activate defence mechanismsamong those affected because it is an anxiety inducing process (Bovey and Hede, 2001). The way change is packaged and marketed can heighten or soothe anxieties, making compliance more or less likely. By explicitly linking the regulation of police stops to institutional racism, the Lawrence Inquiry triggered a predictably defensive reaction, which distanced the proposed reforms from their intended purpose. As a general proposition we might suppose that attempts at reform are most likely to succeed when they coincide with an organisation’s priorities and appeal to its self-interest. While the finding of institutional racism was a source of widespread anger and resentment within the police service, the general principles underlying the recording of stops were much more widely endorsed. There was, for example, widespread support among police personnel for increased accountability, providing it is not bought at the cost of significantly increased bureaucracy, and those involved in implementing the new recording requirement felt it would have a

positive impact in terms of providing people who were stopped with credible reasons for the stop, increasing accountability and promoting fairness (Shiner, 2006). An explicit focus on the underlying principles is evident in an initiative introduced by Hertfordshire Police in 2007, which attempted to measure the quality of police-initiated encounters (Open Society Justice Initiative, 2011). At the end of a stop search officers were required to ask the person stopped if they understood the reason why they were stopped and whether they had been treated professionally, respectfully and with dignity. The inclusion of these questions on the stop form aims to promote professionalism, reinforces the service-orientation of policing and provides supervisors with further information about the conduct of front-line officers.

An operational case can also be made for regulation, which appeals to the priorities and self-interests of the police organisation. As one practical example, West Yorkshire Police have used stop records to assess whether officers' activity is targeted in the right places at the right times (Open Society Justice Initiative, 2011). A pioneering development, piloting the use of Blackberry® smart phones to record stop and search, automatically generates the GPS location and time of the stop. This information enables more accurate analysis of the location of stop search activity, including cross-referencing with maps of local crime patternswhich indicates whether stop and search is being deployed appropriately.

More broadly, organisational self-interest and underlying principles come together in the form of legitimacy and procedural justice. The notion of legitimacyconcerns the extent to which members of thepublic believe that thepolice, the courts, the prisonsand the legal system areentitled to make decisions that they should comply with (Tyler, 2006). To see the police as legitimate is to feel personallyobliged to obey officers even if one disagrees withthe specifics of the order and there is strong evidence that legitimacyis linked to the fairness of theprocedures through whichauthority is exercised (Tyler and Huo, 2002; Hough et al, 2010). Fairness encourages the idea that citizens and the police are 'on the same side' (Tyler, 2006), while unfair treatment communicates division, social denigration,and exclusion, fostering an 'us and them' dynamic that saps trust and undermines legitimacy (Jackson and Sunshine, 2007; see Sharp and Atherton, 2007).Securing cooperation and compliance through a strong sense of legitimacy is not only ethically desirable, but is also more cost effective, and ultimately moredurable than that secured through force (Jackson and Bradford, 2010: 247; see also Hough et al, 2010):

> If people perceive the police to be procedurally fairand if they trust their motives in behaving the waythat they do, all current evidence suggest they arenot only more likely to actively cooperate by reportingcrime, cooperating in investigations, providingwitness evidence, even intervening in situations oflow-level deviance and incivility. They are also morelikely to defer to officer's instructions and obey thelaws

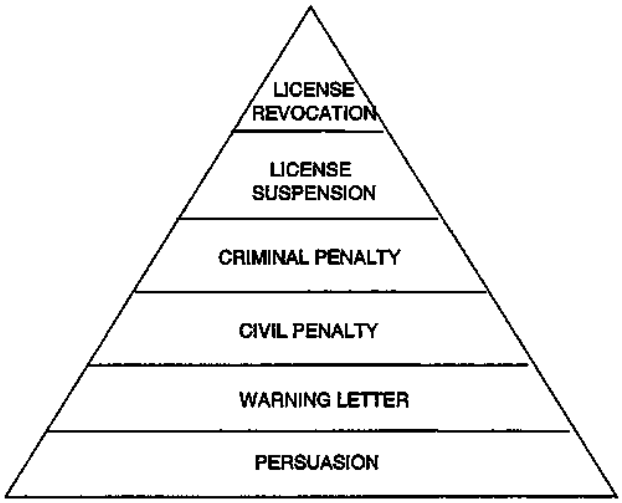
> that the police in many ways still embody. Inthe long run, the fight against crime might be moreefficiently, more cost-effectively, and certainly moreethically served by treating the public with fairness,dignity, and respect than by instigating another‘crack-down’ on crime.

Procedural justice then, coincides with the organisational priorities and self-interest of the police service, providing a basis on which support for greater regulation might be built. Appeals to procedural justice are more likely to motivate compliance than denunciations of racism,whilst also providing a framework for addressing disproportionality. Linking recording to accountability, fairness and police legitimacy rather than to a particular section of the community also has the added advantage of emphasising to officers the wider purpose of regulation and the motivating principles (Delsol and Shiner, 2006). Illustrating this approach, the Race Equality Action Groupwithin the National Offender Management Service is piloting a structured communication programme, which promotes professionalism and consistency among prion staff with a view to reducing risks of assault, stress and conflict (Taylor, 2010). Although ‘race’ is not explicitly addressed as part of the implementation process, the key aim is to reduce disproportionate outcomes among prisoners.

Establishing an overarching regulatory framework

As well as providing a rationale for regulation, the principle of procedural fairness should be built into the regulatory framework governing police stops. Braithwaite’s (2002) model of responsive regulation has much to offer in this regard. Originally developed as a way of dealing with corporate wrongdoing, responsive regulation rests on the basic idea that regulatory authorities should be responsive to the conduct of those they seek to regulate in deciding whether a more or less interventionist response is required. In particular regulators should take account of how effectively citizens or corporations are regulating themselves before deciding whether to escalate intervention. The potential for escalation is built into the structure of responsive regulation by integrating a range of different types of response to wrongdoing, starting with persuasionbefore moving onto deterrence and punishment as proves necessary. Consistent punishment and consistent persuasion are, according to Braithwaite (2002: 29) both ‘foolish strategies’ because neither works all the time and each of them works some of the time. The hard question then is when to persuade and when to punish.

Figure 1 An Example of a (Corporate) Regulatory Pyramid



Source: Ayres and Braithwaite, 1992

The most distinctive aspect of responsive regulation is the regulatory pyramid, which attempts to solve the puzzle of when to punish and when to persuade (see Figure 1). At the base of the pyramid is the most restorative dialogue-based approach, where the emphasis is on persuasion and motivating rule-breakers (in this case police-officers who have misused their powers) to make amends to those they have harmed. As well as being more ethical, the presumption of persuasion is said to be more effective as there 'seem to be good empirical grounds for optimism that restorative justice can "work" in restoring victims, offenders, and communities' (Braithwaite, 2002: 69; see also Roche, 2003; Shapland et. al., 2008). The presumption is that we should always start at the base of the pyramid and only escalate to more demanding or punitive approaches when dialogue fails. These more demanding or punitive approaches might, eventually, include disciplinary action such as verbal warnings, written warnings, suspension and possible dismissal. Once compliance is forthcoming, the process of escalation is put into reverse as we move back down the pyramid. The particular strength of the regulatory pyramid is two-fold. On the one hand, restorative justice is said to work best with a spectre of punishment threatening in the background, focusing the mind of the rule-breaker and incentivising compliance earlier rather than later – something that Braithwaite refers to as 'the active deterrence of escalation' (2002: 42) or 'trust in the shadow of the axe' (2002: 36). Conversely, engaging in persuasion before moving on to more demanding and potentially punitive sanctions means that coercion is likely to be seen as more legitimate and procedurally fair if it has to be used, which increases the prospects of compliance.

There are good reasons for supposing that responsive regulation may be usefully applied to police stops. For one thing such an approach ensures normative consistency: if

procedural justice is to be demanded from police officers then it should also be extended to them. By integrating persuasion, deterrence and punishment, moreover, responsive regulation combines the strengths of consensus and conflict approaches to regulation, with each compensating for the weaknesses of the other.Thames Valley Police has made some moves towards incorporating restorative principles into the process by which police complaints are dealt with in the belief that it might provide a constructive solution to conflict between police and the public as well as between police officers and their colleagues or employers (Hoyle and Young, 2003). One of the particular strengths of restorative justice is that it confronts rule-breakers with the harms they have caused in ways that are difficult to neutralise because commonly used defence mechanisms, such as denial, are difficult to sustain in light of direct testimony from the victim (Braithwaite, 2002; Maruna and Copes, 2004). As well as neutralising commonly used defences, restorative processes seek to promote the internalisation of restorative values among participants, thereby providing a mechanism for cultural change. By giving victims a voice, to ask questions and confront rule-breakers with the harms they have caused, restorative justice also has the potential to redress power imbalances.

With adaptations, responsive regulation can be applied not only to front-line officers, but also to supervisors and senior officers. In this way a coherent and consistent approach can be developed which seeks to build compliance at both an individual and corporate level.

Conclusion

Britain’s consensus approach to the regulation of police stops has failed to provide adequate safeguards and should be overhauled. The introduction of PACE was followed by a massive increase in the use of stop and search alongside a sharp decline in arrest rates and persistently high levels of disproportionality. Despite these trends, few complaints are made, the vast majority of which are not substantiated due, in no small part, to difficulties of corroboration. The police feel little ownership of the regulation agenda and are frequently hostile to it, while police authorities have been marginalised and local consultative committees are controlled by the police. When the failings of the system have become too obvious to ignore what has been proposed is, in effect, more of the same. The limited attempts that have been made at reform havebeen successfully resisted and subverted by the police, moreover, with the result that evidence of good or promising practicehas developed in a patchy and sporadic fashion. In short, the current regulatory system lacks legitimacy and is not fit for purpose.

This paper has begun to sketch out an alternative approach based on procedural justice and responsive regulation. Such an approach has the advantage of combining the strengths of consensus and conflict models, with each compensating for the weaknesss of

the other. While the focus on consensus means seeking to build support by appealing to the organisational priorities and self-image of the police service, the focus on conflict ensures there is an enforcement mechanism.

The immediate prospects for reform are not good. While the Lawrence Inquiry ensured that police regulation remained part of the political agenda throughout New Labour's period in office, concerted efforts have been made to bring such matters to a close even though the underlying issues remain largely unchanged. The regulatory requirements governing the use of police stops have been pared back, undoing much of what was put in place following the Lawrence Inquiry. In effect, therefore, the police, assisted by conservative politicians and sections of the mass media, have mounted a successful rear-guard action against an unwelcome reform. This may well prove to be a pyric victory, however, as it risks further damaging the legitimacy of the police and polarising opinion. With few other options, conflict approaches based on litigation become more likely.

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