

Human Rights & Terrorism/ Summer School program, university of Siena

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Topics: Policing Divided Societies, Police-Minority relations, Protest Policing and the societal impact of policing terrorism

Session Topic	
<p>Session 1: Introduction: Democratic Policing in a changing world</p>	<p>Main Themes: Introduction; Policing multicultural societies; some core ideas in policing (policing and the good society, police discretion, the use of force);the Legitimacy Model</p> <p>Suggested Reading: Bayley, D. H. (2001). Democratizing the police abroad: what to do and how to do it. U.S. Dept. of Justice, Office of Justice Programs, NIJ. Manning, (2010). Democratic Policing in a Changing World. Boulder, CO: Paradigm Publishers. Tyler, T. R. (2004). Enhancing Police Legitimacy. <i>The ANNALS of the American Academy of Political and Social Science</i>, 593(1), 84 –99.</p>
<p>Session 2: Policing minorities</p>	<p>Main themes: Cycles of scandal and reform: an international perspective; Socio-psychological perspectives: implicit bias; socio-organizational perspectives: Over-policing & under-policing, Stop and search as an international case study, the CoP pilot study</p> <p>Suggested Reading: Bradford, B., & Loader, I. (2016). Police, crime and order: the case of stop and search. <i>B. Bradford, B. Jauregui, I. Loader & J. Steinberg (red.), The Sage handbook of global policing. Londen: Sage Publications</i>, 241-260 Giacomantonio, C., et al., 2016. <i>College of policing stop and search training experiment: process evaluation</i>. Ryton-on-Dunsmore: College of Policing. Available from: http://whatworks.college.police.uk/</p>
<p>Session 3: The policing of protests in democratic societies and in deeply divided societies</p>	<p>Main Themes: Protests; police riots; policing protests in the EU (the GODIAC project); 'policing of deeply divided societies' model in Ireland and Israel; the legacy of October 2000 in Israel</p> <p>Suggested Readings: Hasisi, B., & Weitzer, R. (2007). Police Relations with Arabs and Jews in Israel. <i>British Journal of Criminology</i>, 47(5), 728 –745 Litmanovitz, Y.D. and Montgomery, P., 2015. On the borders of legitimacy: procedural justice training in the Israeli Border Police. <i>European journal of policing studies</i>, 3 (2), 184–203.</p>

	Tysk, L., & Wessman, C. (2013). The GODIAC Project. http://www.polisen.se/en/Languages/The-Swedish-Police/International-cooperation/Cooperation-in-Europe/The-Godiac-Project/
Session 4: The Societal Impact of counter-terror policing	Long and short-term impact of counter-terror policing in Israel, UK and Australia; the relevance of procedurally just policing
	Suggested Reading: Cherney, A., & Murphy, K. (2013). Policing terrorism with procedural justice: The role of police legitimacy and law legitimacy. <i>Australian & New Zealand journal of criminology</i> , 46(3), 403-421. Jonathan-Zamir, T., Hasisi, B., & Margalioth, Y. (2016). Is It the What or the How? The Roles of High-Policing Tactics and Procedural Justice in Predicting Perceptions of Hostile Treatment: The Case of Security Checks at Ben-Gurion Airport, Israel. <i>Law & society review</i> , 50(3), 608-636.
Tying it together	The challenges ahead for police organizations and open societies; thoughts from participants



Democratizing the Police Abroad: What to Do and How to Do It

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Issues in 
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EXECUTIVE SUMMARY

This report sets forth the lessons that observers and participants have learned about the process of changing police organizations so as to support democracy. It is based on the study of three bodies of literature: studies of efforts to change police practices in the developed democracies, especially in the United States; accounts of the experience with foreign assistance to police abroad under both bilateral and multilateral auspices; and accounts of the actions of nongovernmental human rights organizations to rectify police abuses. More than 500 books, articles, reports, and documents were reviewed in this study. The bibliography attached to this report probably encompasses the largest number of materials on efforts to change police organizations ever collected.

Observations about the process of democratic police reform were deemed to be “lessons” if they were generally agreed on, were based on real-world experience, and pertained to the goal of democratic development. The reforms considered most important in developing a police force that supports democracy are creation of a responsive public-service orientation, adherence to the rule of law, protection of human rights, and transparency with respect to the activities of the agency and the people within it. The lessons are discussed in chapters 3 to 6, which are organized as follows:

- Generic reform in any police organization.
- Police reform abroad.
- Police reform in peacekeeping.
- Managing police reform abroad.

In each chapter the lessons are listed, along with corollaries implied by the lessons. Altogether there are 87 lessons and corollaries. Because the report is itself a roster of lessons, they are not summarized here. The report concludes with a discussion of the prospects for furthering the cause of democracy through police assistance and reform.

CHAPTER *1*

Introduction



The purpose of this report is to create a roster of what is known about how to reform police forces abroad so as to support the development of democracy. It is intended as a guide for people who are responsible for developing and implementing programs of democratic police reform. It distills the knowledge of other professionals in the field—people who, like themselves, arrive in a foreign county on a cold, foggy morning among people whose language they may not speak with instructions to create a democratic police force.

Determining when observations about the process of democratic reform become “lessons” is a matter of judgment in two ways: One must decide whether they are generally accepted by people in the field and whether they are based on substantive experience rather than speculation. I have tried to be conservative in my judgments about what is known about democratic reform, in particular by not putting forth my own ideas about smart reform unless they are shared by others. Readers should recognize, then, that the lessons presented here may be neither exhaustive nor beyond challenge. They are, I hope, a reasonable first cut at summarizing what is known about the process of police reform in aid of democracy.

It is also important to underscore that the lessons do not deal with reforms that are unrelated to the qualitative goal of making police more democratic. Developing the capacity of the police to reduce crime, control illegal drugs, or maintain public order are all worthwhile objectives, but they are not the focus of this report. As we shall see, however, they are not unrelated to democratic reform.

The need to provide practical advice to American reformers arises because assistance to foreign police has increased dramatically since the end of the Cold War. The United States had been badly burned by involvement with foreign police forces during the Cold War, so much so that section 660 of the Foreign Assistance Act of 1961 was amended in 1974 to prohibit U.S. agencies, including the military, from training or assisting foreign police. Exceptions were made for the Federal Bureau of Investigation (FBI) and Drug Enforcement Agency (DEA), when training and assistance was related to their law enforcement missions.¹ As a result of the amending of section 660, the Office of Public Safety of the U.S. Agency for International Development (AID), which had been responsible for training police overseas, was abolished. In the 1990s, however, reform of foreign police forces was widely recognized as necessary to support the expansion of democracy and to ensure a safe environment abroad for market economies. Accordingly, the United States progressively exempted more and more countries from the section 660 prohibition and expanded aid to criminal justice agencies abroad under the rubric of rule of law. It also

amended section 660 in 1996 to permit assistance to civilian police forces in countries emerging from armed conflict. The United States also joined with other countries and the United Nations (U.N.) in reforming and rebuilding foreign police forces in countries viewed as “transitional democracies” (Poland, El Salvador) or “failed states” (Bosnia, Haiti).

From 1994 to 1998, the United States spent almost \$1 billion on rule-of-law programs in 184 countries.² Half the assistance went to 15 countries, most of them in Latin America. Thirty-five U.S. Government agencies were involved, the largest being AID, which spent 48.2 percent of the total. In 1986, the U.S. Government created a new organization to provide specialized training to foreign police—the International Criminal Investigative Training and Assistance Program (ICITAP). ICITAP is a jerry-built agency—organizationally located in the U.S. Department of Justice (DOJ), funded by AID, and supervised by the U.S. Department of State—whose program has expanded beyond a small number of Caribbean and Central American countries to 63 countries worldwide, with an annual budget of about \$50 million.³ The United States is also sending police abroad to assist in training and monitoring foreign security operations, as in Haiti, Bosnia, Kosovo, and, most recently, East Timor. In 1996, an average of 154 police officers were deployed overseas each month. By 1997, the number had grown to 275; by the end of 1999, it had grown to more than 600. In fiscal year 2000, the U.S. Government spent \$75 million on international police deployments, with \$20 million more for direct support of the affected criminal justice systems.⁴

There has been a parallel growth in the number and nature of multinational interventions in policing as well, again reflecting the transformation of the international balance of power. Before the late 1980s, U.N. peacekeeping efforts focused almost entirely on interstate conflicts, such as those between Israel and Egypt or between Greece and Turkey. In 1988, for example, four of the U.N.’s five peacekeeping operations involved conflict between states. Since 1992, however, 9 of its 11 peacekeeping operations have been intrastate “complex humanitarian emergencies,” as in Angola, Bosnia, Cambodia, and Somalia.⁵ By February 2000, the U.N. had deployed 9,000 civilian police (CIVPOL) around the world.⁶ The mission of these police is no longer exclusively monitoring and training. In Kosovo and East Timor, they are now authorized to carry arms and enforce the law.

The recruitment and training of CIVPOL personnel has become a worldwide undertaking, with 34 nations currently participating in U.N. missions. By the summer of 1999, the International Association of Peacekeeping Training Centers had members

from 77 countries. The U.N.'s Institute for Training and Research gives a correspondence course for U.S. college credit called "U.N. Civilian Police: Restoring Order Following Hostilities" as part of its 11-course syllabus. Students from 93 countries are enrolled in this program.⁷

Recognizing that the genie of direct police assistance, especially in support of peacekeeping, was out of the bottle and would likely remain so, President Bill Clinton issued Presidential Decision Directive 71 (PDD-71) on February 24, 2000, to provide structure and focus to American participation. Specifically, he directed the Department of State to "take the lead" in forming interagency working groups to improve American capacity to deploy civilian police; improve American ability to train foreign police forces, emphasizing especially the protection of human rights; and "build partnerships with Justice and USAID so that the USG can establish judicial and penal systems during peace operations."⁸ PDD-71 specifically mentioned the need to coordinate the work of ICITAP, DOJ's Office of Prosecutorial Defense Assistance and Training (OPDAT), and AID's Center for Democracy and Governance and Office of Transition Initiatives.

In sum, during the 1990s, the U.S. Government gradually learned a major policy lesson: that security is important to the development of democracy and police are important to the character of that security. Assisting in the democratic reform of foreign police systems has become a front-burner issue in American foreign policy.

But there was a second precipitator of American involvement in policing abroad during the 1990s. The government became increasingly concerned about the rise in transnational crime, especially crime organized by international criminal groups. The main threats were trade in illegal drugs, terrorism, money laundering, and illegal immigration.⁹ In order to counter these external criminal threats, the U.S. Government expanded its efforts to enhance law enforcement capacity in foreign countries, creating an International Law Enforcement Academy (ILEA) in Budapest, run by the FBI, and another in Bangkok, run by the DEA. It also increased funding for the specialized training of foreign police personnel both in the United States and abroad.

Because the United States is now deeply involved in police training and assistance abroad with two explicit agendas—support for democracy and protection against international criminal activity—it is critically important to reflect on the tactics that have proven successful in creating and reforming police agencies. Unfortunately, "getting smart" is not easy. By and large, Americans sent abroad to help democratic

police learn on the job.¹⁰ They have nothing remotely resembling a manual about what works in reforming police organizations in aid of democracy. Although there are long lists of obstacles to police reform abroad, such as corruption, alienated publics, and enduring habits of repression, there is little shared knowledge about what to do about these problems.¹¹

In order to remedy, or begin to remedy, this situation, the National Institute of Justice gave me a grant to canvass systematically three bodies of literature about the process of reforming the police:

- Literature on police reform in developed English-speaking countries over the past 30 years.
- Accounts of the experience with foreign police assistance by agencies of the U.S. Government as well as the U.N.
- Accounts of the attempts by nongovernmental human rights organizations to moderate arbitrary and abusive police behavior abroad.

A team of graduate research assistants and I compiled a bibliography of more than 500 books, articles, reports, and documents dealing with the process of changing police behavior and policy, which we then culled for insights about managing “democratic” reform.¹² The bibliography is found at the end of this report. During the research, it became very clear that people working in each of the three domains—indigenous reform, foreign-assistance reform, and human rights protection—were largely unaware of the activities of the others. People engaged in reform abroad knew little about experience at home; people involved in organizational change at home knew little about the adaptations required to succeed abroad; and human rights activists knew a great deal about exposing police abuses but little about how to stop them.

The lessons in reforming police organizations are presented in four groups:

- (1) Generic lessons for changing any police organization (chapter 3).
- (2) Lessons for police reform abroad (chapter 4).
- (3) Special lessons for police reform in peacekeeping (chapter 5).
- (4) Lessons for American management of police reform abroad (chapter 6).

Generic lessons refer to what is known about changing any police organization regardless of the context. Lessons abroad pertain to reform efforts designed to change the character of an existing police force. Lessons for policing in peacekeeping apply to situations where the goal is to rebuild and reconstitute a police force that has ceased to exist. Lessons for management draw out the implications of what has been learned in the varied contexts for organizing, planning, and implementing foreign police assistance by the U.S. Government. The lessons are cumulative in the sense that each chapter's lessons apply in succeeding chapters. Within each chapter, lessons are presented in order of increasing specificity.

Because the purpose of this report is to summarize all that is known about democratic police reform, the lessons are presented very concisely; explanations are added only if required to facilitate understanding what is meant. Each of these lessons could be discussed at great length, for behind each lies a substantial body of literature reflecting extensive experience with police reform.

I have also been selective in citing references. Long lists of references would have been distracting to the reader and take up a great deal of space. More importantly, I did not want to create the impression that this roster of lessons represents a scientifically documented consensus in the field. The responsibility for designating the points on this list as "lessons" belongs entirely to me. Other people could read the same works and find different lessons or challenge those I have found. Some lessons are well documented; others, only slightly. The citations given should therefore be considered illustrative, not exhaustive. They are designed to help the reader explore the topic more fully, rather than as evidence that the "lesson" is unimpeachable.

Assuming that the list of lessons presented in this report represents a fair distillation of what has been learned, it bears out my expectation that there is a great deal of knowledge that can and should be used in framing an American foreign policy of democratic police reform. The report enumerates a total of 91 lessons, including corollaries. For purposes of this report, a corollary is a lesson implied by a more general point. There are 26 lessons about generic police reform, 27 about reform assistance abroad outside of peacekeeping, 20 about reform in peacekeeping, and 18 about the management of a foreign policy of police reform. In sum, there is more learning available to be used in making and implementing American efforts to democratize foreign police forces than people working either at home or abroad know about.

Notes

1. The President was authorized to allow assistance if it was “important to the national security interests of the United States” (section 614) and was given \$50 million to be used for classified reasons, presumably for intelligence activities that involved police.
2. General Accounting Office, *Foreign Assistance: Rule of Law Funding Worldwide for Fiscal Years 1993–98*, June 1999, Washington, DC: GAO/NSIAD–99–158. This figure seems too high, considering that there were only 184 country members of the U.N. during those years. As of August 2000, there are 188 members with the recent admission of Kiribati, Nauru, and Tonga. I shouldn’t think that the U.S. had rule-of-law programs in places like Cuba, Iran, Iraq, and North Korea.
3. ICITAP interview, May 2000.
4. U.S. Department of State, *White Paper: The Clinton Administration’s Policy on Strengthening Criminal Justice Agencies in Support of Peace Operations*, February 24, 2000.
5. Mayall, J., ed., *The New Interventionism: 1991–1994*, Cambridge: Cambridge University Press, 1996.
6. Miyet, B. (Manager, U.N. Department of Peacekeeping), “Opening Statement to the Special Committee on Peacekeeping Operations,” New York: United Nations, February 11, 2000.
7. United Nations Institute for Training and Research (UNITAR), “Self-Paced Correspondence Courses on Peacekeeping and Humanitarian Operations from UNITAR POCL,” New York: Dag Hammarskjold Centre, n.d.
8. U.S. Department of State, “Presidential Decision Directive 71, Strengthening Criminal Justice Systems in Support of Peace Operations and Other Complex Contingencies Sub-Interagency Working Groups,” February 24, 2000.
9. Carothers, T., *Aiding Democracy Abroad: The Learning Curve*, Washington, DC: Carnegie Endowment for International Peace, 1999; McFarlane J., “Transnational Crime as a Security Issue,” paper for the third meeting of the Working Group on Transnational Crime, Manila, Philippines, May 1998.

10. Barkan, J.D., "Can Established Democracies Nurture Democracy Abroad? Lessons from Africa," in *Democracy's Victory and Crisis*, ed. A. Hadenius, Cambridge: Cambridge University Press, 1997: 371–403.
11. Carothers, T., *Aiding Democracy Abroad: The Learning Curve*, (see note 9).
12. I am deeply grateful to Johnna Christian and Eamonn Cunningham, doctoral students at the School of Criminal Justice, State University of New York at Albany, for their painstaking assistance in collecting material for this research and for helping to cull from it the lessons reported here.

CHAPTER 2

The Norms of Democratic Policing



To undertake democratic reform through the police, it is essential to understand what police can do that might accomplish that end. What does a “democratic” police force look like? This chapter will answer that question by presenting four normative prescriptions for what the police can do to support democratic development.¹ These prescriptions do not define democracy. Rather, they are means to that end.

It should not be presumed that enacting these reforms will lead inevitably to political democracy. Police actions, however “democratic,” are not determinative of democratic growth. Indeed, the causal connection runs strongly in the other direction: Democratic government is more important for police reform than police reform is for democratic government. Police reform is a necessary, but not a sufficient, condition for democratic government. The police tail cannot wag the government dog.

Although the police cannot bring about political democracy through their own unaided efforts, they can contribute to democratic political development most directly by acting in accord with the following four norms. This is where the United States should begin in developing democratic police forces abroad.

1. Police must give top operational priority to servicing the needs of individual citizens and private groups.

Police are the most public manifestation of governmental authority. When they use that authority primarily to serve the interests of government, they belie the democratic promise of government for the people. The most dramatic contribution police can make to democracy is to become responsive to the needs of individual citizens. This is what the various emergency telephone systems, such as 911, have achieved in the developed democracies. Research shows that in Australia, Britain, Canada, Japan, and the United States, most of the work done by the police is instigated by individual members of the public rather than by orders issued by government. In the United States, any citizen with access to a telephone can summon a uniformed representative of the state who is imbued with the authority of law and equipped with instruments of force to attend to his or her particular need. Although chiefs of police in the United States complain about the burden of reacting to calls for service, especially those that do not involve serious criminal matters, the 911 system should be viewed as a major contribution to civilized government. It represents a transformation in the orientation of police that is still very rare among the world's police forces and that has occurred comparatively recently in the developed democracies.

A police force whose primary business is serving the disaggregate public supports democracy in two ways. First, it becomes accountable to the most diverse set of interests possible. Second, it enhances the legitimacy of government by demonstrating daily and practically that the authority of the state will be used in the interests of the people. In most countries today, this sort of responsive, service-oriented policing would be a radical—indeed, revolutionary—departure from traditional behavior. Creating such a force would do more for the legitimacy of government than any other social program, and its effects would be immediate.²

2. Police must be accountable to the law rather than to the government.

In a democracy, the actions of government are constrained by law, that is, by decisions made and publicized after due representative deliberation. Police actions in a democracy must therefore be governed by the rule of law rather than by directions given arbitrarily by particular regimes and their members. Democratic police do not make law; they apply it, and even then their judgments need to be validated by courts.

3. Police must protect human rights, especially those that are required for the sort of unfettered political activity that is the hallmark of democracy.

Democracy requires not only that the police, part of the executive arm of the state, be constrained by law but also that they make a special effort to safeguard activities that are essential to the exercise of democracy. These activities are freedom of speech, association, and movement; freedom from arbitrary arrest, detention, and exile; and impartiality in the administration of law.³ In other words, democracy requires not only the rule of law but law with a particular content. The problem is that the police are not responsible for the content of law; government is. Paradoxically, then, the obligations on the police to be accountable to the rule of law and to protect human rights may conflict, as, for example, when if the law requires them to act in an arbitrary and repressive way. On their own, the best that the police can do with respect to human rights is to “push the envelope” of normative behavior, to be better than government requires, so as to show what democracy means in practice and to encourage the public to press for it.

4. Police should be transparent in their activities.

Police activity must be open to observation and regularly reported to outsiders. This requirement applies to information about the behavior of individual officers as well

as to the operations of the institution as a whole, especially whether the police are achieving the results expected in a cost-efficient manner.

Police forces cannot achieve democracy on their own, but if they act according to these four norms, the chances that democracy will grow will substantially increase. These are the levers for bringing about democracy through police reform.

Notes

1. Marenin, O., "The Goal of Democracy in International Police Assistance Programs," *Policing* 21 (1) (1998): 159–77; United Nations High Commissioner for Human Rights, Centre for Human Rights, *International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police*, New York: United Nations, 1996; United Nations International Police Task Force (Bosnia-Herzegovina), *Commissioner's Guidance*, Sarajevo: United Nations International Police Task Force (Bosnia-Herzegovina), 1996.
2. Bayley, D.H., "Who are We Kidding? or Developing Democracy Through Police Reform," in *Policing in Emerging Democracies: Workshop Papers and Highlights*, Research Report, Washington, DC: U.S. Department of Justice, National Institute of Justice, 1997, NCJ 167024: 59–64; Goldsmith, A., "Democratization and Criminal Justice: Human Rights and Police Reform in Colombia," unpublished draft, March 1995.
3. Annan, K., "Stop Blaming Colonialism, U.N. Chief Tells Africa," *New York Times*, April 17, 1998: A3; Bayley, D.H., *Public Liberties in the New States*, Chicago: Rand McNally, 1963.

CHAPTER 3

Generic Lessons
for Changing
Police Organizations



The publication in 1967 of the report of the President's Commission on Law Enforcement and the Administration of Justice ushered in what has sometimes been called the "scientific age" of American policing. Since then, the effectiveness of the standard strategies of policing and the tactical behavior of police officers have been carefully evaluated.¹ The findings of this research and the development of a more ambitious, intellectual, and open-minded cadre of senior police executives have led to intense efforts to change the policies and practices of American policing. Undoubtedly the best known example of this has been the development of community-oriented policing. Similar reappraisals have taken place in Australia, Britain, Canada, the Netherlands, and a handful of other established democracies. As a result, there is now a wealth of experience with respect to the management of change in police forces. Unfortunately, the lessons from it have never been carefully collected and enumerated.² Police executives rarely write about their managerial techniques, and drawing lessons out of them face to face is like pulling teeth. They are much better talking about their goals and accomplishments than their managerial strategies. For this reason, most of the insights into the planned change of policing come from academic observers and are scattered through many studies.

Following are what I believe to be the 17 core lessons that have been learned about changing the standard operating practices of police forces in developed democratic countries.

1. Any reform program must be based on a clearly articulated understanding of the connections between the objectives to be achieved and the actions proposed.

Too often, reform programs are justified exclusively in terms of the desirability of their goals rather than their feasibility. Programs and money are thrown at problems without any specification as to how they will produce the desired result. To be successful, however, reform programs must be constructed on the basis of strong theories supported by real-world experience, and describe how they will achieve their intended goals. Such explanations need not be abstruse academic theories; they could be simply stories that plausibly link reform inputs to desired changes.³ But they must connect proposed changes with the particular objectives of reform. Policing is complex, and not all objectives can be achieved through the same programs.

2. Sustained and committed leadership by top management, especially the most senior executive, is required to produce any important organizational change.

This is probably the most frequently repeated lesson of reform management.⁴ It applies to any sort of reform effort, from administrative processes to operational strategies and tactical behavior. Significant reform cannot be brought about by stealth from below against the indifference or hostility of senior managers.

3. The key to changing any aspect of policing is management, that is, the way in which the members of a police organization are brought to do what policies call for.

Significant change does not occur through issuing orders or stating goals. Managers at all levels must create the conditions that encourage, facilitate, and oblige people to do what is desired. This commonly involves developing appropriate programs of recruitment, training, promotion, resource allocation, supervision, research and evaluation, reporting, and work routines. The grain of the organization must be made to work with reform rather than against it.⁵

Corollary: Organizational change does not occur through changing personnel; it requires changing the system and culture of an organization.

Police executives tend to manage by personality. When a problem arises, they assign a particular person to solve it. This may work well for crisis management, but not for bringing about institutional change.⁶

Corollary: Recruitment and training of new personnel are not sufficient to bring about reform. The benefits of both are lost if they are not reinforced by management systems.⁷

This lesson, too, is a staple of writing about change in police and other complex organizations.⁸ Police officers are notoriously skeptical about new programs, especially when each change in leadership brings a new “flavor of the month.” This skepticism reflects in part their experience with training as recruits, which is regarded almost universally as irrelevant to what they encounter on the job.

Corollary: Police are more likely to be convinced of the value of a new program by word-of-mouth from other police than by statistical evaluation of results.⁹

This observation has been made over and over again by people who have been involved in training police officers.

Corollary: Training designed to change behavior must be regularly reinforced through tangible rewards or costs.¹⁰

Personnel must be evaluated in terms of their performance with respect to the reform program, and performance should then be reflected in promotions, assignments, and pay increases.

4. Police behavior cannot be changed by formal reorganization within the police or by restructuring on a national basis.

Although this lesson is widely recognized, it is just as often ignored by reformers. Indeed, shuffling the boxes in the organizational chart is often the first, and sometimes the only, thing that managers do.¹¹ Yet changing the structure of organizations rarely affects operational behavior because it does not touch the “culture” of an organization, that is, what the workers themselves think is expected of them. Reform in policing must be managed, not structured, into existence.

The same is true with respect to efforts to restructure the police nationally throughout a country. Americans frequently recommend to foreigners that they decentralize their police operations, as the United States has done in a radical way.¹² But the structure of national police systems is very difficult to change.¹³ Furthermore, democracy is compatible with both centralized and decentralized police systems.¹⁴ Centralized systems may be service oriented, accountable to law, protective of human rights, and transparent, whereas decentralized systems may be none of these.

Organizational changes may be useful if they are used to signal the importance of new programs. By themselves, however, not only are they unlikely to produce democratic reform, but they will divert attention from the more important job of changing operational practices. As Petronius, the emperor Nero’s “arbiter elegantiae,” is credited with saying:

We trained very hard—but it seems that every time we were beginning to form up into teams we would be reorganized. I was to learn later in life that we tend to meet any new situation by reorganizing; and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency and demoralization.¹⁵

If democratic change is the objective of police reform, more attention should be given to the management of personnel than to the formal structure of either the police force or the police system of the country as a whole.

5. Material resources may support desired changes, but they are rarely essential and never sufficient to bring them about.

Democratic reform cannot be achieved by investing in the material basis of policing, whether in personnel or in equipment. Institutionalizing the four norms of democratic policing described in chapter 2 requires changing police behavior on the job. Infusions of resources may facilitate this process but will not bring it about. Stories abound about equipment being provided or salaries raised without producing any meaningful improvement in service responsiveness, accountability, human rights, or transparency.¹⁶ The best that can be said is that providing additional resources may improve the morale of police and thereby increase their willingness to accept changes. The theory implied by this statement is that resources do not increase democratic behavior unless morale rises and resistance to change diminishes. Obviously, many other things must also change for increased resources to produce these results.

It is important to distinguish the role of resources with respect to the goal of enhancing police capacity as opposed to the goal of changing police character. Additional resources may contribute directly to the former, but only in a roundabout way to the latter. In other words, resources are important to democratic reform only to the extent that they enhance law enforcement effectiveness. In particular, many people have observed, as we shall see in chapter 4, that democratic reform is unlikely to occur if it comes at the expense of effectiveness. If this is so, then resources may be more important to democratic reform than I have suggested.

6. Significant reform requires widespread acceptance across ranks and assignments in a police department.

Along with the importance of committed leadership, this is the most often repeated lesson of successful reform.¹⁷ To obtain this necessary “buy-in” by all members of a police force, successful reform generally involves the following sequential activities: “brainstorming” by senior managers and carefully chosen colleagues about operational problems, creation of task forces from all ranks to devise concrete plans, discussion of proposed plans in seminars in all units and among all managerial ranks, development of pilot projects to test feasibility in the field on the clear understanding

that the objective is to determine how to carry out the program and not whether to undertake it, and implementation of the new program throughout the department.¹⁸

The clear implication of this process is that achieving reform in police forces is time consuming and labor intensive. It is a cumulative activity that requires intelligence, commitment, and, ultimately, the involvement of everyone.

Corollary: Extensive and genuine consultation is the best way to obtain acceptance of new programs.

Police respond best when they believe that new programs incorporate their own insights and on-the-job knowledge. Programs of change should begin, therefore, by asking workers how they would solve a particular problem.¹⁹ Reform requires a bottom-up management style.

Corollary: In developing new programs, managers must enlist support even from officers not directly involved so that an “us versus them” mentality does not arise.

Corollary: Because the quality of supervision is critical to reform, people at each supervisory level must be retrained with respect to the substance of the new program and its implications for them.²⁰

Reform requires the acceptance of new responsibilities by all managers and supervisors. These new responsibilities are rarely welcomed. Most police managers prefer to audit and monitor rather than manage and facilitate.²¹ This is understandable, as following orders is less risky than taking responsibility for facilitative supervision and problem solving.

7. When pilot projects are undertaken, they must have committed leadership and personnel who are not continually pulled away for other purposes.

The importance of leadership in innovation, whether of a police force as a whole or of a pilot project, is a lesson repeatedly stressed by observers. What is less obvious is that because innovation represents a change in operational habits of an organization, there is a tendency to subordinate its needs to customary operations.²² People assigned to new programs are viewed as a reservoir to be drawn on when traditional activities become hard pressed. But innovation needs consistent implementation, more so than routine operations, precisely because its activities have not become institutionalized.

8. Police officers will not change their behavior unless they perceive it to be in their personal interest to do so.

Changes that increase work or are perceived to be troublesome will not be adopted. Change must work for the workers.²³

Corollary: Reform will not occur unless the criteria for evaluating individual performance encourage the sort of behavior that reform requires.²⁴

9. Reformers both inside and outside police organizations should be careful not to denigrate the motivation, knowledge, or skill of the people whose behavior they are trying to change.

Denigration can occur unintentionally if proponents of change imply that the people whose behavior they want to change are personally at fault. Sometimes this is true, as in the case of willful misuse of force. More often, however, they have been doing the best they can with what they have been given, both materially and organizationally.²⁵ Sensitivity in advocacy is the solution to this problem in the short run. In the long run, the problem can be minimized if police agencies develop an experimental mindset that allows for regular evaluation of the effectiveness of what is being done and a willingness to admit failure without blame.²⁶

10. Program evaluations that emphasize outputs rather than outcomes as a measure of success inhibit organizational creativity.

A distinction is made in writing about organizations between “output” (what is done) and “outcomes” (what is achieved). Patrolling, for example, is an output of the police, and it may or may not reduce crime, which is its desired outcome. In recent years, a great deal of attention has been given to developing “performance indicators” for the police. This movement has been especially strong in Britain.²⁷ Most performance indicators focus, unfortunately, on outputs rather than outcomes, with the result that police officers give more attention to reporting what they do rather than what they achieve. This causes them to become preoccupied with meeting norms of activity rather than adapting their activity to produce desired results, which in turn discourages innovation and reduces operational flexibility.

11. Reform requires that new programs be monitored so that midcourse changes can be made. At the same time, burdensome evaluation can discourage reform.²⁸

12. Change is more likely to occur when new resources are made available rather than when existing ones are redistributed.

Providing new resources reduces resistance to change by allowing new activities to be undertaken without penalizing existing ones.²⁹ In the case of community policing, for example—arguably the most important strategic reorientation of policing in the last generation—only Edmonton, Canada, and Singapore, among large police departments, implemented it, to my knowledge, without an infusion of new funds. Without new money, the odds are very long against reform that requires widespread accommodation to new practices.

13. If the incidence of crime and disorder is thought to be unacceptable or increasing, police reform will be inhibited.

When public security is at risk, reform is likely to be seen by both the public and the police as a distraction from the main purpose.³⁰ The tragic implication is that police reform is least likely to occur when it is most needed. Insecurity might, of course, breed desperation and thereby encourage reform, but the instability inherent in such situations makes reform problematic.

Corollary: To make changes in current strategies and tactics, police officers need to be shown that the new programs will achieve the goals of the institution as well as or better than the old programs.

Because police officers identify with the institution's goals—usually controlling crime and disorder—they will not change their behavior without evidence that doing so will improve, or at least not reduce, organizational effectiveness.³¹ This means that reformers need to convince rank-and-file members that change will not come at the expense of public order and crime control.

14. Increasing contacts between police personnel and respectable, noncriminal members of the public is an important way of encouraging the development of an accountable, service-oriented police organization.

Police tend to believe that the public regards them less well than it does. The primary reason for this belief is that the contacts police have with the public are skewed toward those who are disorderly, criminal, needy, or incompetent.³² In almost every neighborhood and in every society, there is a suppressed demand for responsive, sympathetic

policing.³³ One important way to convince police of this demand is to expand their contacts with the vast noncriminal, nontroublesome public. This can be done a variety of ways: by allowing civilians to use police facilities for meetings, civilianizing staff positions, rewarding officers for taking an active part in community activities, inviting civilians to observe police work, organizing joint training between police and civilians, and holding regular meetings with citizens at all jurisdictional levels.

15. Issuing clear statements of organizational policy accompanied by appropriate positive and negative sanctions is a powerful way to change the behavior of police officers, even in situations of high stress and urgency.³⁴

Police executives often argue that they have limited control over the behavior of their officers, such as the use of force, when officers are in situations of high stress and possible danger. Research has shown, however, that police executives are not as helpless as they think. Determined leadership coupled with skilled management can substantially reduce the shooting of civilians, the abuse of nondeadly force, and corruption. Police management can also standardize the handling of domestic violence and regulate the incidence of high-speed vehicle chases.³⁵ Police culture can act as a brake on change, but it is not the irresistible force often portrayed.

16. Reform is more likely to occur if police officials are connected to professional networks of progressive police leaders (regional, national, and international).

Police managers want to appear modern and progressive. Their desire to be well regarded by their peers can be used to encourage democratic reform.³⁶ Regular contact with professional networks, inviting comparison and providing opportunities for learning, is one way to do this. International professional associations, such as the International Association of Chiefs of Police and the International Association for Civilian Oversight of Law Enforcement, are especially important because their leaders are likely to come from more progressive police forces and more democratic countries.

17. Labor organizations within the police must be included in the development and planning of any reform program.

In the United States, police unions can make or break reform. Police executives complain continually that the unions have become so powerful that managers have lost control of their departments.³⁷ Frustrating though it may be to reformers, their

efforts are more likely to be successful if unions are included in planning from the beginning rather than being ignored. Unions are part of modern policing and their help must be solicited if reform is to succeed.

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CHAPTER 4

Lessons for Police Reform Abroad



This chapter deals with the knowledge people have gleaned from efforts to reform police systems abroad. The assumption behind these lessons is that the assistance is intended to create police forces that function more democratically. Enhancing the capability of the local police for crime control and law enforcement, which is often also an American objective, is not the concern here. The context of these efforts is countries with functioning governments but with police forces whose character is not supportive of democracy. The next chapter will examine a more restrictive arena of foreign police reform, namely, the rebuilding of police forces in countries where government has ceased to exist altogether due to political strife, ethnic violence, and economic collapse.

1. Foreign assistance cannot produce democratic reform against the opposition of the host government.

The success of foreign assistance in promoting democratic policing is directly proportional to the country's enthusiasm for it. It is not that government approval of reform is a sufficient condition for success. Reform is tricky even with wholehearted political support, as we have seen in the United States. But if government is opposed to reform, reform has no chance of success at all. Any institutional changes, whether of policy, training, or supervision, can be undermined by a determined regime.¹ As the Carnegie Commission on the Prevention of Deadly Conflict has said, "Foreign donors must look for, or find, ways to use leverage to generate this political commitment, or assistance may be consumed eagerly, but with little impact."² It therefore follows that foreign assistance programs designed to achieve reform must be built on foreign "demand" rather than on donor "supply." Demand is the best guarantor of the sustainability of any assistance initiative.³

Some have concluded from this axiom that the United States should never assist foreign police forces in countries that do not have committed democratic governments, especially if the objective of assistance is democratic reform.⁴ Margaret Popkin, for example, suggests a triage approach: substantial support to democratic countries, none at all to nondemocratic countries, and selective assistance to countries where it might reinforce democratic development.⁵ The United States has only occasionally followed this stricture. ICITAP withdrew from Liberia for several months in 1997 when President Charles Taylor appointed his cousin, a man known for horrendous human rights abuses, as chief of the country's police. It also held off training the police in Panama for several months in 1990 when the military refused to relinquish control. On the other hand, Thomas Carothers argues that there may be a role for assistance even when the political climate is oppressive. Specifically, he suggests that

in addition to facilitating willing change, foreign assistance can discourage backsliding when reform is stalled and give voice to reform in the face of repression.⁶

Although observers disagree about the precise application of this lesson, they accept the premise that programs must be crafted to fit different political circumstances. Institutional policies and practices are not interchangeable parts.⁷ At the same time, the United States must be very cautious about assisting countries with undemocratic governments, not only because it may be investing unrealistically but also because assistance of any sort may enhance the capacity for repression as well as connoting approval for the regime.⁸

2. All police reform is political in the sense that it affects the position and interests of different groups of people both inside and outside the police.

In giving assistance to foreign police, the United States must be alert to the effects of such assistance on the distribution of power and influence. Assistance serves some interests more than others, strengthens the ability to do one thing rather than another, and encourages some people and discourages others. All foreign assistance to police must be examined for these effects, especially for its impact on democratic possibilities.⁹ It follows that reform should not be soft-pedaled simply because it may be “political,” (i.e., controversial). The question is not whether assistance is political—it all is—but what its likely consequences are for American objectives.

3. The norms of democratic policing may be achieved by different institutional mechanisms in different countries.

Democratic reform abroad cannot be achieved through the mechanistic importation of practices that work in the United States. As Carothers says:

Unconsciously or consciously, many Americans confuse the forms of democracy with the concept of democracy. There is an unfortunate combination of hubristic belief that America’s political ways are the most democratic in the world and lack of knowledge about political life in other democratic countries.¹⁰

Institutions and practices that support democracy in one country may not do so in another. For example, community policing may produce a constructive partnership between police and the public in the United States, but in authoritarian countries it can be used for co-optation and top-down regimentation. Similarly, mobilizing neighborhoods to share policing responsibilities with the police, which has become

popular in established democracies, can be very dangerous in countries polarized by race, language, religion, and ethnicity.¹¹

Corollary: Foreign experts tend to recommend what they are familiar with at home regardless of its local applicability.

Americans often assume that whatever police do in the United States is democratic.¹² For example, American occupation authorities in Germany and Japan after World War II decentralized the police, authorizing cities and major towns to create their own police forces. As soon as the occupations ended, both countries undid the decentralization—Germans making the police accountable to the states (Länder); Japanese, to the national government.¹³

4. To produce democratic reform abroad, programs of police foreign assistance must be adapted to local conditions. This requires the collection and analysis of information about the traditions and practices of the police as well as about society in general.

Whatever the context of reform—domestic, foreign, peacekeeping—reform interventions need to be based on careful analysis of the appropriateness of desired objectives and the feasibility of implementation.¹⁴ In the views of many, American efforts have relied too heavily on “drop in” courses, “turnkey” programs, and “cookie cutter” projects designed without sufficient knowledge of local conditions. Strong foreign assistance requires investing in knowledge of local circumstances and in expert discussions about how those circumstances may affect implementation. This is not a simple requirement that can be met in a perfunctory way. When I asked a Bosnian chief of police what a foreigner ought to know to provide sensible advice about democratic reform, he replied succinctly, “Everything.”¹⁵

Corollary: Police reform cannot be left to police experts, but must involve area specialists, social scientists, and historians.¹⁶

Corollary: The most “developed” police are not necessarily the best models from which reforming police should learn. Foreign advisors must learn that sophisticated technologies, especially equipment, may not be the most appropriate technologies.

Corollary: Foreign police assistance programs need as much advance planning as military operations, clearly specifying objectives, implementation actions, resource requirements, and timetables.¹⁷

The implication for policymakers is that assistance should not be provided if analysis shows that the amount provided for reform is inadequate, the capacity to use it undeveloped, the institutional culture uncongenial, and the political climate hostile. If the analysis of possibilities does not have consequences for policy, it is an empty exercise.

5. No amount of external inducement or pressure can produce democratic reform against the hostility or indifference of the indigenous police. Unless a foreign police force is seriously committed to reform, it will not occur.

This lesson follows from the proposition in the preceding chapter that leadership from the top is essential for meaningful reform in any police force. It is important to remember as well that resistance to change is the rule rather than the exception in any organization.

Corollary: Foreign assistance programs are unlikely to contribute to reform unless they reinforce plans already developed abroad or are part of larger American efforts to change the institutional culture of the foreign organization.

So foreign assistance programs must invest time and money in persuading indigenous police leaders that reform is in their interest. The programs must obtain “buy-in,” which means active commitment, not just passive acquiescence.¹⁸

6. Foreign assistance personnel operating abroad must guard against condescension in their relations with local police. The fact that a country might profit from assistance does not mean that its practitioners are unsophisticated.

This point is similar to the lesson from American reform that proponents of new programs should not denigrate the contribution of people working under the old programs. In the case of foreign assistance, neediness is often mistakenly perceived as inferiority. The United States should not treat a foreign country “like a kid,” as one Ukrainian official complained at a Washington conference.

7. Democratic police reform requires the separation of police from the military.

The reasoning behind this principle is that the military’s mission is so different from that of the police that each contaminates the other. Democratic policing especially is

undermined by military involvement, because soldiers take orders from above rather than responding to the appeals of individual citizens; their use of force is much less restrained, and secrecy is a more ingrained mindset. Conversely, military officers in developed democracies recognized long ago that police duties were antithetical to their war-fighting mission. Policing requires mediation skills, the exercise of discretion in the use of authority, and a facilitative style of supervision. For these reasons, the U.S. Department of Defense strongly supports the creation of an American civilian police force that can be deployed overseas precisely because it will prevent the military services from performing law enforcement duties.¹⁹

8. The growth of violence, crime, and civil strife will subordinate police reform to the enhancement of police capacity.

This lesson has been demonstrated repeatedly throughout the world. Failure to provide public security undermines the legitimacy of government and encourages further social disorder.²⁰ Unfortunately, countries negotiating transitions to democracy are likely to face the very conditions that make internal security uncertain: poverty, unemployment, civil unrest, ineffective institutions of criminal justice, vigilantism, and acute distrust between the public and the police. Therefore, the achievement of effective but humane public order is a priority condition for democratic development.

Yet order is not a sufficient guarantee for democracy. Police reformers face the dilemma that although enhancing the crime-control effectiveness of the police may be necessary to achieve democracy, it may also endanger it by reinforcing the power of repressive institutions. The development of law enforcement capacity is not a substitute for reform.

Corollary: Civil unrest, including high levels of crime, causes police and military functions to become intermingled, thereby retarding the separation of the military from the police.²¹

Especially when governments are threatened by insurrection or prolonged group violence, the functions of the police and military degrade toward one another. The military begin to operate domestically, and the police take on the characteristics of armies, such as patrolling in groups and employing heavy weapons. The police become more centralized, more closed, more suspicious of the public, less protective of human rights, and less willing to disband discredited units.²²

9. *The impulse to democratic reform may be weakened by the public's belief that reform will make it more vulnerable to crime and disorder.*

As with the police, so with the public: The desire for safety may trump the putative value of democratic reforms such as responsiveness, accountability, protection of human rights, and transparency. It is a mistake to think the public is more enlightened than the police. Being “tough on crime” is often exactly what the public wants, especially in the unsettled conditions of countries undergoing transitions from autocracy to democracy.²³ “Civil society,” which so much American assistance attempts to strengthen, may not be so civil.²⁴

Corollary: Programs of democratic reform should try to produce tangible results in terms of security and justice as soon as possible.

The public needs to be reassured that democratic policing is not weak policing.²⁵

10. *Nongovernmental organizations dedicated to protecting human rights must learn to work with, as well as against, the police.*

Human rights organizations are already learning that they have “an emerging dual role—in encouraging reform and condemning continued abuse.”²⁶ Unremitting criticism of the police can be counterproductive—distancing police from dissenting voices, making the police less willing to admit abuses, tainting reformers within the police as turncoats, and undermining the willingness of police officers to bring other officers to account.²⁷ The exposure of abuses does not automatically lead to reform. Police must be helped to assume responsibility for their own behavior. This requires outsiders to show police that adhering to democratic standards will make their lives easier, not more difficult.

11. *Creating effective disciplinary systems within the police should be a first-order priority in democratic reform.*

Preventing unlawful actions and the infringement of human rights is a core goal of democratic reform. People in democratizing countries desperately long for justice in the sense of humane, impartial enforcement of law.²⁸ But there is another reason for setting up effective internal disciplinary mechanisms. Research has shown that when the public cooperates with the police by reporting crime, identifying suspects, and mitigating the social conditions that lead to crime, the police become more effective in their public safety role.²⁹ The police themselves have a great deal to gain

by overcoming public hostility, which is so often the legacy of former repression. Instilling effective discipline within the police is a powerful means for improving their crime-control ability.³⁰

12. The concern of foreign advisors and donors with their own problems of international crime and law enforcement decreases their enthusiasm for democratic reform abroad.

The United States has two foreign police agendas: reform and security. Policymakers often think that they must choose between them. Crafting a police-development policy abroad involves facing the very same tension between the goals of controlling crime or protecting human rights encountered in domestic criminal justice policy.³¹ As a result, American programs sometimes pull in different directions, not necessarily in conflict but not always supporting one another. For example, programs of police assistance from the international community to South Africa shifted between 1994 and 1998 from encouraging greater involvement with the community to raising its law enforcement capability by creating street-crime enforcement units and improving their ability to gather intelligence.³²

Corollary: In general, foreign donors are more likely to support capacity building than democratic reform.

Not only does security tend to trump democracy, but capacity building promises tangible gains in the short run, as opposed to the more remote and hard-to-measure achievements of democratic reform. Capacity building is also easier to manage bureaucratically, which is not the same as saying that it is easier to accomplish.

Corollary: Established patterns of law enforcement cooperation between countries may impede democratic reform.

This occurs because American, and other, law enforcement agencies share crime-control objectives with their foreign counterparts. Over time they build working relationships with foreign colleagues, exchanging information, hunting and extraditing fugitives, protecting each other's citizens, and seizing and returning stolen property. An explicit purpose in creating the International Law Enforcement Academies in Budapest and Bangkok was to develop networks of friendly colleagues that will assist American law enforcement agencies in curtailing international crime. American law enforcement agents working abroad, even though they accept the importance of democratic reform, worry that pushing hard for unpopular changes may jeopardize their working relationships.

13. In order for police reform to be effective, whether for capacity building or democracy, it must be accompanied by reform throughout the criminal justice system.

This is probably the most frequently repeated lesson derived from the assistance experience in the 1990s.³³ As the President's Commission on Law Enforcement and the Administration of Justice underscored more than a generation ago, providing public safety with justice requires a system of interlocking agencies: police, prosecutors, defense lawyers, judges, prison guards, and parole officers.³⁴ Whether the purpose is democratic reform or increased crime-control effectiveness, reform cannot take place one subunit at a time. It requires coordinated effort across the board.

14. Technical assistance should not be the centerpiece of foreign assistance if democratic reform of policing is the objective.

None of the four attributes of democratic policing described in chapter 2—responsiveness, accountability, defense of human rights, and transparency—depend on technology. They require changes in attitudes, orientation, and behavior. This is not to say that each cannot be assisted by technology, but simply that technology is not a substitute for deeper cultural change within the police.

A lack of equipment may be a direct handicap to democratic reform when it contributes to a feeling of neglect on the part of police personnel, thereby making them less enthusiastic for unsettling changes.³⁵ Similarly, if providing effective security to the public is important for the fortunes of democratic reform, then a lack of equipment can be a handicap. Police in places like El Salvador, Haiti, and Bosnia lacked equipment as rudimentary as uniforms, radios, handcuffs, and even belts for trousers.

But investment in technology does not guarantee either an increase in law enforcement effectiveness or a willingness to embrace democratic reforms. Although it is easier to increase the technical capacity of police than to change their behavior, doing so makes little, if any, contribution to democratic policing.³⁶ It turns out that what is easiest to change—namely, technical capacity—is the least important; what is hardest to change—namely, institutional behavior—is the most important.

15. Foreigners assigned to produce change abroad must reside in country for substantial periods of time to provide programmatic continuity, expeditious advice, and informed midcourse corrections.

A “Marriott Brigade,” as short-term experts became known in Poland, will lack both local knowledge, which is essential to effective program planning, and local legitimacy, which is essential to enlisting local support.³⁷ Reliance on short-termers also raises the costs of assistance.

16. Institutional reform cannot be produced simply by increasing knowledge about policies and practices elsewhere.

The key to institutional reform is not cognitive knowledge but practice in new behavior within the home organization. Many reform programs begin, and often end, with courses that describe desired practices and their benefit. Sometimes foreign officers are brought to donor countries to see these practices for themselves. Both sorts of training are wasted if what is learned is not immediately incorporated into the home agency’s work routines.³⁸ Reform occurs only when knowledge is supported by facilitative management in every aspect of policing.

17. People engaged in police reform abroad, both public and private, should construct ways to share lessons learned and to coordinate activities.

Many institutions, public and private, foreign and domestic, provide training and assistance to foreign police. The U.S. General Accounting Office (GAO) reported that 34 federal agencies provided rule-of-law assistance between 1994 and 1998.³⁹ Larry Diamond constructed a “selected” list of 33 private U.S. institutions that were administering National Endowment for Democracy grants in the early 1990s, some of which targeted criminal justice and human rights.⁴⁰ So many foreign groups were trying to help South Africa develop and reform its criminal justice system that in 1997, the United Nations commissioned the University of Capetown’s Department of Criminology to compile a roster of them, along with the substance of their programs and the local agencies they were interacting with. The roster included more than 200 groups.⁴¹

Without coordination, programs work at cross-purposes, duplication occurs, priorities become confused, and local officials are distracted from their primary responsibilities. Furthermore, an opportunity is being missed to share insights into ways to improve the management of foreign assistance.

18. Crime control is as complex abroad as it is at home, and just as subject to oversimplification.

Assistance programs designed to help foreign countries prevent crime must incorporate the well-researched lessons collected over the past 30 years in the United States and other developed countries. Unfortunately, the usual nostrums show up abroad as at home: more police officers, SWAT teams, heavier patrolling, undercover street-crime units, stiffer prison sentences, capital punishment, asset forfeiture, liberal wiretapping, RICO (racketeer-influenced corrupt organization) statutes, mandatory drug testing, universal fingerprinting and DNA profiling, and so forth. Some of these will be useful in some places, none of them will be useful everywhere, and some of them will not be useful anywhere. Just as American law enforcement experts working abroad need to draw on the knowledge of foreign policy specialists, so people who have spent their lives in foreign policy need to draw on the expertise of the American criminal justice community when they design police assistance programs.

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CHAPTER 5

Special Lessons for
Police Reform
in Peacekeeping



This chapter deals with lessons that have been learned about providing effective, humane policing in association with international peacekeeping. Peacekeeping refers to intervention by the international community to stop conflict within countries and then to reestablish comity and basic government. A distinction can be made between peacemaking and peacekeeping: the former is intervention to stop conflict; the latter, intervention to preserve an existing but fragile cessation of conflict. Here, however, “peacekeeping” will refer to both: interventions in strife-torn countries where foreign agencies, national or international, both stop conflict and help to create conditions for a durable peace. In these conditions, the development of democratic policing faces special problems not found when reform is instigated locally (chapter 3) or when it is encouraged abroad through foreign assistance (chapter 4). At the same time, it should not be assumed that police development in peacekeeping is *sui generis*. Many of the lessons learned in other contexts apply here as well, especially those dealing with changing traditional patterns of organization and activity.

The lessons for democratic police development in peacekeeping are based on a smaller set of experiences than in either of the two previous chapters and should, accordingly, be considered more tentative than the others. In fact, as we have moved from generic police reform to foreign-assisted police reform and now to peacekeeping police reform, the range of experience that supports the enumerated lessons has contracted progressively.

1. In countries where effective government has ceased to exist, the division between military and police operations during peacekeeping will be blurred.

Peacekeepers may have to protect refugees, arrest war criminals, protect broadcasting facilities, support electoral processes, gather criminal intelligence, break up criminal gangs, and prevent interethnic intimidation. In such situations, a “security gap” will inevitably emerge unless the military is willing to serve as police until the international community provides a civilian alternative or competent local police are created.¹ This can be done through the military itself or through a strong international constabulary. U.S. Army Special Forces and Military Police provided this in Haiti in 1995.² The U.N.’s CIVPOL was authorized to do the same in Kosovo and East Timor in 1999 and was armed for the purpose.

The sort of peacekeeping that occurs in “complex emergencies,” where intervention begins with military action, has three stages—pacification, stabilization, and institutionalization.³ During the first phase, public security is provided by the international

military; in the second, it is provided either by an international police force or by an interim local police; and in the third, it is provided by a reconstituted local police.

Corollary: Because the military will have to act as police during transitions from military to civilian policing, it must organize and train accordingly.

This requires the development and standardization of policing doctrine for military contingents both among international donors and within the branches of each country's military. Observers of KFOR, the NATO force in Kosovo, for example, report major differences between the British and French armies and between the U.S. Army and the Marines.⁴

2. Peacekeeping missions must foresee the need for interim civilian policing and a new, durable, effective, and democratic indigenous police force.⁵

The operative word here is “foresee” rather than “provide.” Everyone agrees that peacekeeping interventions require a “theory of engagement” that specifies what the international community will and will not do.⁶ Decisions about the extent and form of intervention by the international community—from pacification through stabilization to normalization—need to be made explicitly before operations are begun.⁷ Some commentators go further and say that peacekeepers must also be prepared to provide an interim police presence, either by its military force or by an international civilian force. They argue that it is irresponsible, even immoral, to intervene militarily to stop conflict and then not to use that presence to protect the public after initial pacification.⁸ The failure of IFOR (the multinational Implementation Force charged with enforcing the 1995 Dayton Accords) and CIVPOL to prevent the forced evacuation of the Serb suburbs of Sarajevo in March 1996 is a case often cited.

But must military peacekeeping always assume responsibility for providing short- and long-run police protection? That is certainly preferable on moral grounds, but if the international community won't provide it, should peacekeeping not be undertaken at all? Is peacekeeping an all-or-nothing proposition? Perhaps it is better to do some good than to do none at all. The answers to these questions depend on circumstances—the presence or absence of a negotiated cease-fire, the capabilities of local police, the capacity of the international military, the presence of regional support for postconflict peacekeeping, the difficulties of providing logistical support to an international force, and the developmental potential of the country.⁹

Corollary: The major cause of military “mission creep” is failure to provide effective civilian policing after peacemaking.

If peacekeepers do not provide for policing, military commanders face the dilemma of either exceeding their rules of engagement or standing by as horrors are perpetrated. Furthermore, if their mandate is limited by both military rules of engagement and the announcement of an exit date, combatants will be encouraged to preserve their fighting capacity and continue clandestine violence.

Corollary: International civilian police forces must be authorized to carry arms and enforce the law at the discretion of country commanders.¹⁰

This lesson has been accepted by the United Nations for Kosovo and East Timor and by the United States for its own civilian police contingents under PDD-71.

Corollary: Military peacekeepers must provide logistical support to international CIVPOL units when they are unable to do so themselves.¹¹

3. For peacekeeping operations to create the conditions for a stable peace and effective institutions of local government, there should be unity of command between military and civil components.

There is universal agreement about this, even though the principle is far from consistently applied. It was learned in Haiti but forgotten in Bosnia. It appears to have been overlooked again in Kosovo, where NATO directs the military component (KFOR), the U.N. has authority for policing, and the Organization for Security and Cooperation in Europe (OSCE) is responsible for police training.

Corollary: Peacekeeping requires joint planning by military and civilian specialists, including the sharing of intelligence about conditions in the field pertaining to public security.¹²

To implement this, the U.N. and the United States need to create combined operational planning teams as well as combined field commands.¹³ This means appointing senior police officers to the U.N.’s Department of Peacekeeping Operations and to any U.S. Department of Defense peacekeeping operation.

4. Though the temptation will be great, it should not be assumed without analysis that democratic reform must be traded off against law enforcement effectiveness when rebuilding local police capacity.

When the military phase of peacekeeping ends, crime and disorder are likely to increase. The sources of lawlessness are many: returning refugees, demobilized soldiers, the prevalence of weapons, acute unemployment, social divisions aggravated by past conflict, inadequate communications, clandestine paramilitaries, corrupted agencies of criminal justice, and the lingering psychological effects of prolonged violence.¹⁴ In these circumstances, peacekeepers may feel compelled to use remnants of the discredited old police or demobilized soldiers untrained in policing, turn a blind eye to righteous but overzealous enforcement of law, encourage militant self-defense, and accede to arguments that reform will demoralize the existing police service.

Although this sort of compromise is understandable and occurs throughout the world whenever insecurity rises to unacceptable levels, research has shown that reform and effectiveness are not incompatible.¹⁵ Insistence on community responsiveness and adherence to the rule of law can be powerful crime-prevention strategies.¹⁶ International reformers must calculate carefully whether putative short-run gains in crime-control efficiency will outweigh the losses from continued alienation of local populations.

5. Despite pressing problems of crime and disorder, people with records of human rights abuses must be excluded from newly formed local police forces.

Not only may a new police force quickly become tainted by association with discredited personnel, but old behavior patterns may also be passed on to new and impressionable recruits. It is especially dangerous to “roll over” whole units into the new police, even if they possess unusual skills, such as intelligence gathering or criminal investigation.¹⁷ They bring with them a cohesiveness that hampers change.

There will be other pressures on recruiters besides the threat of crime. Discipline in any police forces requires skilled supervisors, especially in the middle ranks, but these are precisely the sort of people who will be in shortest supply. At the same time, government will be pressured to employ a host of demobilized combatants who will claim to have relevant organizational skills.

6. The United Nations Department of Peacekeeping (UNDPKO) should coordinate its work more closely with that of the nonmilitary U.N. agencies who are active in the field, such as the U.N. Development Program, the U.N. High Commissioner for Refugees, and the U.N. High Commissioner for Human Rights.¹⁸

7. United Nations member-states need to recruit and train CIVPOL personnel who will be available on a standby basis for rapid deployment in peacekeeping missions.¹⁹

8. If the function of international CIVPOL is, among others, to create effective, local, democratic police, its personnel must be recruited from countries experienced in democratic practices.

The plain fact is that not all countries that are willing to donate personnel to U.N.-sponsored peacekeeping missions are democratic.²⁰ Their police are not models of responsive, humane policing. This problem is acknowledged widely, but solving it is politically difficult. The U.N.'s desire for broad-based representation conflicts with the need for both competence and appropriate normative attitudes.²¹

Corollary: Except for selected specialists, the bulk of personnel deployed in any CIVPOL operation should be generalist police officers experienced in providing a full range of police services in response to public demands.²²

Corollary: Countries participating in multinational civilian police forces should harmonize their policing doctrine and training for such missions.²³

This raises a related issue: whether peacekeeping police should be deployed in country-units or in integrated contingents. The U.N. prefers the latter in order to demonstrate a coherent international presence, promote loyalty to the mission, and prevent special relationships developing between particular country-units and the local police. On the other hand, some experienced CIVPOL commanders, such as Ray Kelly, who directed the international police monitors in Haiti, prefer the former, arguing that country-units are more effective and that the skills of each country's police can be better matched to local needs.

9. Although the bulk of international CIVPOL forces should be generalists, some specialists will be needed with skills in such areas as criminal investigation, crowd control, information systems, forensic analysis, and election fraud.

In order to do this, the U.N. and the United States need to draft clear and detailed job descriptions for the required skills. Because foreign as well as American police forces vary considerably in the skill levels of their personnel, great care must be taken to ensure that people with exactly the right capabilities are recruited.

10. The behavior of international police personnel must be monitored closely, and misbehaving officers should be immediately relieved of duty and sent home.²⁴

The International Association of Police Training Centers recommends that all U.N. CIVPOL missions have an internal affairs investigation unit from the beginning, that the standard of evidence for wrongdoing be “preponderance of the evidence” rather than “beyond a reasonable doubt,” and that a record of misbehavior by participating countries be kept so that donors can be held responsible and, if necessary, dropped from the recruiting list.

11. The training of CIVPOL personnel should feature exploration of the legal and ethical choices that may be faced in the field, such as when laws should be enforced, weapons displayed, force used, human rights violations reported, fraternization allowed, and hospitality accepted.²⁵

Current training in law and ethics relies very much on the lecture method of instruction, with emphasis on written standards. Greater effort must be made to relate international standards to the ambiguous situations that CIVPOL personnel will encounter in the field. Role-playing, for example, would help to draw out the operational problems in applying standards to the real world. Trainers should also be sensitive to the cultural and professional differences between themselves and the people they train. Their audiences may be unprepared to recognize why particular practices are not acceptable.

12. The creation of effective, democratic local police forces under international auspices requires the collection of information about local criminal justice traditions, practices, and capabilities. International CIVPOL operations need to develop the sort of intelligence capacity considered standard in military operations.

This point is fundamental and has arisen in previous chapters.²⁶ Successful reform requires thinking through the connections between what is done and what is to be achieved, which, in turn, requires a profound understanding of local conditions.

13. A reformed local police force cannot be created by command. It requires the consent of politicians, the public, and the police.

This, too, is a lesson learned in other contexts, but it takes on additional urgency in peacekeeping. Peacekeeping involves the deployment of deterrent power. Because peacekeepers are the biggest gorilla on the block, they may confuse power with authority and be insensitive to local feelings of cultural pride and national autonomy.²⁷ But power will be unavailing if local participants, the ones who do the work on the ground, do not “buy in.” CIVPOL personnel must make a particular point of taking the time to listen, persuade, and demonstrate rather than insisting, ordering, and directing.

Conversely, CIVPOL personnel often understand very well that they are outsiders and that they are resented because they are needed. Not wanting to be perceived as neocolonialists, CIVPOL personnel may become too deferential and not press hard enough for important reforms.²⁸

Judgments about when to insist and when to defer cannot be made in the abstract. They require careful, informed discussion by CIVPOL administrators on the ground.

Notes

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CHAPTER 6

**Lessons for
American Management of
Police Reform Abroad**



Knowing what might be done to improve the likelihood of democratic reform is not the same as doing it. Knowledge must be incorporated into action, which requires changes in the way the United States manages its programs of foreign assistance and reform. This chapter describes the lessons that observers generally agree should be incorporated into the administration of the Government's programs of police reform abroad. Many of these lessons will need little explanation because they are implied by the discussion that has gone before.

1. As with any program of planned change, American foreign assistance to police development and reform abroad should be guided by clearly articulated and factually informed theory connecting it and desired outcomes.

It has become commonplace in writing about foreign assistance to say that the United States frequently undertakes programs because they are laudable rather than sensible. Desirability overshadows feasibility. Moreover, the United States relies on a few overworked reform tactics, such as drop-in courses and short visits by foreign nationals to the United States, without any evidence that they make a difference.

Corollary: The U.S. Government should develop the capacity to plan and implement institutional change in police policy and practice abroad.

The key word here is “institutional.” Programs that might contribute to the democratic reform of foreign police are scattered across many agencies. None of them has impressive in-house capability to do this job. The U.S. Department of State's expertise in this area is concentrated in International Narcotics and Law Enforcement (INL), whose mission is international crime-control and crime-prevention capacity-building, not reform. The U.S. Agency for International Development (AID), haunted by memories of the discredited Office of Public Safety, is beginning to explore the connections between democracy assistance and criminal justice, but cautiously. The U.S. Department of Justice's (DOJ's) assistance to police is led by law enforcement agencies—the FBI and the DEA. They have substantial foreign experience, but their mission is not democratic reform. ICITAP has the right mission, but it is an orphan dangling between State, AID, and DOJ, without the staff to do the planning required. The U.S. Department of Defense would rather not be involved, but is beginning to recognize that it will be.

Altogether, the U.S. Government administers programs for democratic police reform by sleight-of-hand. The fault is not the intelligence or motivation of the people

involved. The people in these agencies are smart and knowledgeable. The problem is the system—in particular, the bureaucratic assignment of missions.

2. Programs designed to contribute to the reform of foreign police forces must be based on a thorough understanding of host-country history and practices in policing.

Information about foreign police systems, and criminal justice more largely, is not readily available across agencies in Washington. Planning for assistance programs often lacks relevant intelligence.

Corollary: Because the design and implementation of reform programs requires hands-on knowledge of operational practices and traditions, the U.S. government should rely less on consultants sent abroad for short periods and more on people assigned to live in country for periods of a year or more.

Not only does this lower the costs of administration, but resident managers have greater standing with locals and can make more informed midcourse corrections.

3. Because police reform anywhere is a long-term proposition, American assistance programs should be planned and funded for multiyear periods.

Corollary: Assistance to foreign police undertaken during peacekeeping operations should not be tied to military exit timetables.

A compelling moral argument can also be made, as we saw in chapter 5, that the military should not withdraw at all until an effective police force has been built. This would suggest that military time schedules should be tied to civilian ones rather than vice versa.

4. In providing assistance to police forces abroad, a mechanism needs to be created within the U.S. government to assess the programmatic balance between law enforcement capacity building and democratic reform in particular countries.

PDD-71 suggested this sort of collaborative assessment in directing the U.S. Department of State to “build partnerships between Justice and USAID that enables the USG to help establish judicial and penal systems during peace operations that then become sustainable institutions.”¹ Such partnership is needed for programs of foreign police assistance generally, not just those associated with peace operations.

Corollary: All programs of assistance to foreign police should be reviewed for their likely effects on the trajectory of local political development.

Some mechanisms to this purpose are already in place: for example, the Law Enforcement Working Groups that meet monthly at the Department of State, country teams in embassies abroad that draft yearly mission performance plans, and the Interagency Working Group on Democracy under the leadership of the Assistant Secretary for Democracy, Human Rights, and Labor. Given the generality of concern about the ad hoc nature of U.S. planning for police assistance, however, something more would appear to be necessary.

5. The implementation of reform assistance to foreign police needs to be more carefully coordinated among agencies within the U.S. Government, not only to avoid working at cross-purposes, but to avoid duplication, simplify contact between host governments and the U.S. Government, and enhance oversight.²

Although there is universal agreement among observers about the importance of interagency coordination, there is sharp disagreement about how to do it, in particular, about whether responsibility should be located in a single agency or remain shared among several agencies.

6. The United States should coordinate its programs of democratic reform in particular countries with other donors, both public and private, during the planning as well as the implementation stage.

Designing programs in isolation from other international actors guarantees wasted effort and resources. It also confuses host governments about what should be done.

7. Programs of democratic police assistance must include measures for building support for reform among political leaders as well as society at large.

8. The U.S. military should not assume police responsibilities as part of peace-keeping operations except for short periods of time in transitional situations.

Corollary: Because the U.S. military will occasionally participate in civilian policing, it should standardize its training in this regard across the services.

9. The design and implementation of democratic police development programs should be done largely by police and civilians experienced with State and local policing in the United States.

The Federal Government is responsible for foreign policy and therefore for America's police assistance abroad, but it has limited police resources and expertise of its own to deploy in support of that policy. Federal agencies such as the FBI and the DEA are not full-service police forces responsive to calls for assistance from the public. They specialize in criminal investigation and selective law enforcement at the direction of Congress and the administration of the day. Although Federal personnel are as democratic in their normative orientation as State and local police officers, their mission equips them more for assisting the development of overseas law enforcement capacity than in the design and reform of civilian public-service policing. The challenge for the Federal Government, then, is to find ways to mobilize the immense fund of knowledge and experience residing in State and local police forces.

10. Programs of assistance to foreign police should be conducted in full public view and subject to systematic congressional oversight.

At the moment, assistance to foreign police is provided through a series of exemptions to section 660 of the Foreign Assistance Act. There is no "positive institutional mandate" with respect to police assistance.³ As a result, there is no coordinated congressional supervision.

Corollary: Foreign assistance to police should rarely be provided clandestinely, and then only under carefully monitored conditions.

11. The United States should develop a CIVPOL reserve that can be mobilized quickly for deployment abroad.

This has been called for by PDD-71, although the statutory basis for doing so has not been developed.⁴

12. Agencies involved in providing foreign assistance to police should develop the capacity to evaluate the success of every mission and draw from them lessons about improving performance. In particular, they should debrief participants returning from overseas assignments, including service in peacekeeping operations, for their insights.

The U.S. Department of Defense does this routinely. It is no less important for civilian police assistance programs designed to expand the possibilities for democracy around the world and to protect the United States from transnational crime.

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CHAPTER 7

Conclusion



This report has collected and summarized what has been learned about how police can be changed so as to support democracy, particularly through programs of assistance to police in other countries. Changing the police abroad to promote democracy is a four-step process: design of assistance programs, implementation overseas, incorporation by the foreign police, and impact on political democracy. This is a long row to hoe, and the chances of making a major contribution to the fortunes of democracy abroad through such programs are not great. Moreover, experience has repeatedly shown that assistance programs do not make foreign governmental institutions more democratic unless those countries are already engaged in democratic transitions. This is true for costly military interventions as well, even when they are followed by multilateral attempts to create new police institutions.¹

In his masterful account of American efforts to promote democracy in the 1990s, Thomas Carothers says that America's rule-of-law programs have been "difficult and disappointing."² Philip Heymann, a former Deputy U.S. Attorney General who has been instrumental in American criminal justice reform efforts abroad, thinks that the best that can be achieved is a "fairly robust dialogue" about the advantages of democratic practices.³ Rather than dramatic shifts to democracy, the United States may have to be content with creating "fragments of democracy" and reinforcing democratic "trajectories and increments."⁴

Overshadowing even these slender prospects is the proven possibility that assistance programs to foreign police can have negative effects on democratic development by strengthening the capacity for repression.⁵ In sum, the ability of the United States to assist democratic development through programs of police reform and assistance is very limited.

Prospects are brighter but by no means certain for programs designed to enhance the law enforcement effectiveness of foreign police. After reviewing many studies in the 1990s, Mary Hildebrand and Merilee Grindle conclude that "investments in capacity-building initiatives have not paid off in terms of improved effectiveness overall or higher levels of organizational performance."⁶ Although the introduction of equipment and managerial technologies often seems sensible, indeed fundamental, its contribution to the enhancement of local law enforcement effectiveness is not assured.

If the U.S. Government is going to achieve even modest success at either democratic reform or law enforcement capacity building, policymakers need to make the right

choices with respect to program objectives, the substance of assistance programs, and the way they are administered. Fortunately, there is a growing body of experience about these elements, most of it derived from programs of change within established democracies.

During the 1990s, a consensus developed internationally about the norms of democratic policing. Few people would disagree with accountability, protection of human rights, and transparency, and most would accept the importance of developing a service orientation. The elements of democratic police reform are no longer problematic. Uncertainty and confusion arise, however, with respect to the content and conduct of foreign police assistance. Despite a wealth of experience that grows daily, the insights of people involved in these processes have not been collected or analyzed.

What is needed is a new sort of evaluation to accompany programs of police assistance. It must go beyond auditing accounts or counting activities undertaken—such as the number of courses given, computers installed, fax machines connected, forensic kits distributed, or visitors invited to the United States—to explore whether what is done and how it is done produces the effects intended. To do this informatively, evaluation must not be done prematurely, before assistance programs have had time enough to make an impact. Institutional change takes time, which often frustrates the desire of donors for quick and demonstrable results. Furthermore, the requirements of evaluation must be foreseen from the beginning, so that baseline information can be collected along with a rich description of the implementation process.

Although informative evaluation cannot be quick, it need not be complex and costly. Assessments of the effects of assistance programs on police practices—their “outcomes”—can be made through qualitative observations by independent experts.⁷ It doesn't take long for experienced people to determine whether community policing programs are real, abuses of authority minimal, patrol officers responsive, the public cooperative, management open, operational decisions based on adequate information, and police activities open to public inspection. Appraisals of the process of implementation of assistance programs—their “outputs”—need to draw on the observations of both independent observers and involved practitioners. At the moment, the most underused of these are the practitioners themselves, both outside change-agents and the police officials with whom they have worked. The people who do assistance work, both at home and abroad, know a great deal about what works and what doesn't, but this knowledge isn't being captured. Their insights and observations can be collected through interviews designed to encourage participants to

reflect on what they did, what went right and wrong, and why. These interviews should be structured but open-ended. And they should be conducted orally; written surveys will not be responsive enough to situational variations.

The most important lesson for police reform anywhere is that human nature—meaning the interests of the people through whom reform will occur—must be taken into account. For reform efforts to succeed, human interests, which reflect particularistic attitudes and traditions, must be understood and then explicitly accommodated, utilized, redirected, or overridden. Reform cannot be done by remote control, by people who are not intimately familiar with the local human context. Reform is fundamentally a political undertaking.

This is also true with respect to improving the process whereby American police assistance is designed and implemented. Incorporating the lessons enumerated in this report will require changing the way American institutions provide foreign assistance. Raising the prospects of success in assisting foreign police forces to become more democratic requires clever management at home as well as abroad. Reform is a messy human business for both donors and recipients.

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About the National Institute of Justice

NIJ is the research and development agency of the U.S. Department of Justice and is the only Federal agency solely dedicated to researching crime control and justice issues. NIJ provides objective, independent, nonpartisan, evidence-based knowledge and tools to meet the challenges of crime and justice, particularly at the State and local levels. NIJ's principal authorities are derived from the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. §§ 3721–3722).

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Police, crime and order: the case of stop and search

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Abstract

In this chapter we revisit and extend discussion about the relation of the police to the key political concepts of ‘crime’ and ‘order’ using the case of the police power of stop and search/frisk. We select this power as a case study because its exercise is laden with implications for how we understand the overarching purpose of the police and seek to control and govern police work. Using evidence on the social and spatial distribution of stop and search from several jurisdictions, we contest two legitimating fictions about this power – that it is a tool of crime detection and that it can be subject to effective legal regulation. The evidence, we argue, suggests that stop and search is about control and the assertion of order and the effort to do this implicates not only ‘fighting crime’ but also regulating and disciplining populations based on who they are, not how they behave. Given this, we argue, stop and search is best understood as an aspect of *The Police Power* recently theorized by Markus Dubber (2005) – a potentially limitless, uncontrollable, extra-legal power to do what is necessary to monitor and control marginal populations. In conclusion, we spell out the regulatory implications of understanding stop and search in these terms.

Keywords: crime, police, marginality, order, stop and search.

Biographies

Ben Bradford is a departmental lecturer in criminology at the Centre for Criminology, University of Oxford. His research focuses primarily on issues of trust and legitimacy, cooperation and compliance as these apply to the police and wider criminal justice system, in terms both of the relationships between criminal justice agencies and the publics they serve, and the internal organization and practices of the agencies themselves. His work has a particular emphasis on procedural justice theory and the intersection of social-psychological and sociological explanatory paradigms. Ben has worked with the London Metropolitan Police, the College of Policing, Police Scotland and other police agencies on research projects concerned with improving police understanding of public opinions and priorities. He has also worked within the Open Society Foundation Justice Initiative on the problem of ethnic profiling in Europe.

Ian Loader is Professor of Criminology at the University of Oxford and Professorial Fellow of All Souls College, Oxford. Ian is the author of six books, the most recent of which *Public Criminology?* was published by Routledge in 2010 (with R. Sparks). He has also recently edited volumes on *Emotions, Crime and Justice* (with S. Karstedt and H. Strang, Hart 2011) and *The Penal Landscape* (with A. Dockley, Routledge 2013) and has published theoretical and empirical papers on policing, private security, public sensibilities towards crime, penal policy and culture, the politics of crime control, and the public roles of criminology. Ian is currently working on a project – termed ‘A Better

Politics of Crime’ - concerned with different dimensions of the relationship between crime control and democratic politics. The first strand of work on this project was brought together in *Public Criminology?* The next key stage will be a monograph with the working title of *Crime Control and Political Ideologies* which is in the early stages of preparation. The project also includes an edited volume on *Democratic Theory and Mass Incarceration* (with A. Dzur and R. Sparks, 2016 Oxford UP) and a book on *Justice and Penal Reform* that arises from his involvement with the Howard League’s symposium on ‘What is Justice?’ (edited with B. Goldson, S. Farrall and A. Dockley, 2016 Routledge).

Introduction: Why stop and search?

What is the social purpose of the police and how does and should this purpose relate to the ways in which police power is controlled and governed? How central to that purpose is the control and investigation of crime? Or are the police invested with a more omnibus function pertaining to the reproduction of social order – whether that be a ‘specific order’ protecting class and other sectional interests and/or a ‘general order’ from which all citizens of a polity benefit (Marenin 1982)? One view is that the primary activity of the police is crime – investigating offences and apprehending offenders. This is a conception of policing that saturates cultural representations of the police across the world – the stuff of crime dramas, detective novels and everyday storytelling. It also looms large in dominant governmental claims – made in interior ministries and by police chiefs – about the purpose of the police (e.g., Bratton 1998). It has in short the backing of a powerful, emotional resonant ‘common-sense’ – if the police are not in the business of catching criminals what an earth are they for (Loader 2013)? Yet this piece of doxa about policing sits uneasily with what we know about the social practice of policing. Across several decades and numerous jurisdictions, researchers have repeatedly found that ‘crime’ is not high on the list of troubles for which citizens call the police and that dealing with crime takes up only a small part of most officers working time (Brodeur 2010: ch. 5).

An alternative conception is that order, security and civil peace are the basic organizing concerns of the police. This view concedes that the police have a significant part to play as one among a range of social institutions that prevent crime. But it contends that dealing with crime forms only one aspect of a wider police mandate that is concerned

with the regulation of social conflicts and the management of order. In respect of these tasks, the police's unique resource is the capacity, if required, to wield non-negotiable coercive force in order to produce temporary, situational resolutions of conflict. It is for this reason that – in Bittner's (1990: 355) famous formulation – the police are called when 'something-is-happening-which-ought-not-to-be-happening-about-which-somebody-ought-to-do-something-NOW'. Given this, Bittner contends, there are few problems that cannot, in principle, become the subject of police intervention. On one view of this conception, the police have a vital civic role to play in sustaining conditions that enable people to pursue their life projects and in ensuring equal access to the basic good of social order. However, there are many societies across the world where the police are implicated in protecting the political order of a particular regime or in preserving social order that benefits sectional much more than general interests.

In this chapter we want to revisit – and extend - this discussion about the relation of the police to the key political concepts of 'crime' and 'order' using the case of the police power of stop and search (or frisk). The power to stop citizens, to check their identity, demand that they account for their movements/actions, and to search their possession is a ubiquitous capacity of police organizations around the world (Weber and Bowling 2012). Every day, across the globe, people are stopped by police: outside their homes, on the streets, in shopping centres, in their cars; these encounters can take place in almost any of the contexts within which police and public interact. All 'stops' result in verbal questioning, while a significant proportion result in an on-the-spot search of the individual or vehicle concerned.

In England & Wales – our main focus here – the police power of stop and search is legally mandated, wide-ranging, and backed, as are all police actions, by the ultimate threat of coercive force. Various forms of the power are enshrined in law, the most important of which is Section 1 of the Police and Criminal Evidence Act 1984 – otherwise known as PACE. PACE applies a ‘reasonable suspicion’ test, meaning police must have a justifiable reason for stopping someone with a view to searching them – but other pieces of legislation do not, notably Section 60 of the Criminal Justice and Public Order Act 1994, which allows officers to search a person without suspicion. Searches under these powers, although they occur in public spaces, can be relatively invasive; certainly, many are more than a quick pat down. Individuals stopped are required by police to stay for the duration of, and acquiesce to, any search that follows, and officers can use force to ensure they do so. In essence, people who are ‘stopped and searched’ are *detained* by the police, albeit usually for a very short period of time.

Despite, or perhaps because of, the extent of the power it grants to police, stop and search is one of the most commonly used formal police powers in England & Wales. Some 1 million people were stopped and searched under PACE and associated legislation in 2012/13, a figure roughly equal to the 1.1 million arrested over the same period (Home Office 2013). Once ‘stop and accounts’ that do not result in a search, of which there were 2.2 million in 2008/09 (Bridges 2015 – data on stop and accounts ceased to be collated centrally in 2011), as well as other traffic stops and an unknown number of less formal contacts are taken into account, the number of people stopped by police far exceeds the number of people arrested. This is perhaps hardly surprising, but what it means is that stop and search, and the wider category of ‘police-stops’, is one of

the more common ways in which citizens come into contact with police, and probably the most common form of contact that is both initiated by the police themselves and constrained, albeit often loosely, within a legal framework.

Stop and search is also one of the most contentious powers employed by the police in England & Wales; cognate practices in other national contexts, such as stop and frisk in the United States, are often equally as hotly debated. In addition to being a temporary deprivation of liberty, it is an incursion into individual privacy and an impediment to freedom of association. Its repeated use can have serious effects on the quality of life of those subjected to it. It is also a resonant case in point of the police being able to perform actions that would be illegal if conducted by citizens. There is a seemingly endless debate about the fairness, probity and usefulness of stop and search, that spills from the airwaves, pages of newspapers and blogosphere onto, on occasion, violent discord on the streets. Nothing seems to drive a wedge between police and community, or between supporters and critics of the police more generally, than perceptions of the inequity of stop and search, on the one hand, and stubborn, sometimes strident, defence of the practice on the other. Stop and search is, in sum, a power that stands in need of justification – a power, we argue, whose exercise is laden with implications for how we understand the overarching purpose of the police and how we might seek to control and govern police work.

The official rationale for stop and search locates it squarely within a crime control model of the police function. This conception of stop and search grounds the power in two legitimating claims. First, that it is a reactive, crime detection power – an

indispensable tool assisting the police in investigating crime. As Bowling and Phillips (2007: 938; emphasis in original) argue: ‘It is important to remember that the power to stop and search is an *investigative* power used for the purposes of crime detection or prevention in relation to an individual suspected of a specific offence at a specific time’. Second, that the power to stop can be subject to effective restraint and regulation using external legal and internal disciplinary frameworks. The grounds of ‘reasonable suspicion’ that typically constrain the power to stop serves to bind these two claims together. Reasonable suspicion signals that this power is to be targeted *only* at individuals about whom the police have ‘objective’ ‘facts, information or intelligence’ pertaining to their involvement in crime (PACE 1984, Code of Practice A). Here reasonable suspicion serves as a proactive constraint, limiting the power to crime detection uses. It also enables internal and external monitoring of the appropriateness of the power’s deployment. In this regard, reasonable suspicion (and the record officers have to make of the grounds for such suspicion) offers a framework for retrospective oversight – and the opportunity for redress if the power has been abused.

The question we want to ask in this chapter is whether these claims are fictions – necessary fictions, but fictions nonetheless. The *prima facie* reasons for posing this question are as follows: in respect of the first claim, the evidence (from across time and jurisdiction) is of repeated ethnic and other disproportionalities and endemically low ‘hit rates’ – suggesting that the power to search may be driven by some other factor than an evidence-based effort to investigate crime and apprehend individual suspects.¹ In respect of the second claim, is a commonplace to note the ease by which officers are able to circumvent the constraint of ‘reasonable suspicion’ on the ground – by

requesting permission to conduct a search (permission that is unlikely to be denied), or by ‘legalising’ a stop with a claim such as ‘I smelt drugs’ – and thereby evade effective management oversight or legal control.

In the light of these ‘facts-on-the-ground’ two puzzles emerge about the power to stop and search:

- Given its failings as a crime detection tool (persistently low rates of ‘successful’ stops) and the power’s consistently damaging impact on relations with minority communities why do the police cling so tenaciously to it and why have governments not moved to abolish it?
- Given what appears to be the endemic failure of law to subject this power to effective control why does stop and search seem perpetually to elude a variety of attempts to legally regulate it?

In what follows we set out to resolve these puzzles. Our resolution indicates that stop and search is intimately entangled with some deeper questions to do with the purpose and governance of policing – and productive of some surprising, indeed, troubling answers to those questions. At stake is a wider understanding of the nature of policing, what it is for, the criteria against which its success might be measured, and the processes that sustain, or undermine, police legitimacy in capitalist democracies.

The social reality of stop and search

There are two possible resolutions of the first puzzle: why do the police cling so tenaciously to the power to stop despite its evident failings as a crime detection tool?

The official resolution extends the crime control function of stop and search to include prevention and deterrence, rather than simply investigation. This rationale comes itself in two forms, each of which possesses a weakness that limits its capacity to solve the puzzle. One version holds that stop and search offers a specific deterrent against those actively minded to engage in illegal activity. The shortcoming here is again the endemically low ‘hit rates’: does such an inefficient practice really provide deterrent threat? A second version holds that stop and search exercises a general deterrent effect over the population. On this view, low ‘hit rates’ are no evidence of failure – even an ‘unsuccessful’ stop will have served a deterrent purpose. This view, however, is impossible to reconcile with the basic idea that legal stops have to be grounded in objective evidence against individuals. Given these difficulties, we suggest there is a second possible resolution of our puzzle – namely, that stop and search is not first and foremost a crime control tool but has a wider social purpose to do with the keeping of order, and the management – and indeed creation – of social marginality.

To arrive at this resolution we focus not on the official picture of stop and search (as recorded in England and Wales via the ‘police-recorded’ stop and search data), nor with the detailed legal framework and debate that surrounds the use of power, but rather with the empirical reality of stop and search ‘on the ground’ and in the lives of those subject to this form of police intervention. We begin with the case of England & Wales, then look, more generally, at evidence concerning the distribution of police ‘stop’ activity from a range of other jurisdictions. We are interested, particularly, in the social and spatial distribution of stop and search, and in gleaning from this an understanding of the uses to which the power is put. There are in this regard two important theoretical

accounts that might explain the distribution of stop and search activity. Both have been developed primarily in the United States, and both, in large part, are attempts to explain why so much police activity is concentrated on minority groups and on other disadvantaged and marginalised individuals and communities.

The first account is provided by *consensus theories* of police activity, which Renauer (2013) describes as structural functionalist in nature. Consensus theories assume a broad level of agreement on society's aims and objectives, and, specifically, on the need for police to direct activity toward dealing with issues of crime and disorder (which are themselves envisioned as unproblematic social categories). On this account, police will be drawn to areas with high levels of crime, primarily by the reports of residents, and, irrespective of their race, ethnicity or other characteristics, people living in these areas will therefore be more likely to experience tactics such as stop and search (Gaines 2006; Novak and Chamlin 2012). It is the fact that they tend to live in high crime areas, therefore, that explains why stop and search is disproportionality aimed at ethnic and other minority groups. This is of course the account of stop and search provided, at least in formal settings, by the police themselves, and consensus theories are broadly consistent with the common sense view of policing as crime detection/prevention outlined above. And indeed it does not, in a general sense, seem unreasonable to suggest that all else being equal police activity might well be concentrated in areas with higher levels of crime, or at least higher levels of 'street' or volume crime, and that this concentration will have an impact on people living in those areas.

The second theoretical account is provided by *conflict theory* (Chambliss and Seidman 1971; see Petrocelli et al. 2003 for a summary). Here, the suggestion is that the police, as a bureaucratic agency, will like all other such organizations tend to gravitate toward policies and practices that minimise strains and maximise rewards. Given that police agencies are dependent on extant political structures and processes for funding and legitimacy, there is an in-built incentive for them to engage in behaviours that minimise friction with the politically powerful while at the same time focussing on groups who (a) lack such power (police are motivated to take the path of least resistance when deciding who and what to police) and/or (b) pose a threat, whether social, economic or criminal, to the interests of those who do wield political influence. A key distinction between consensus and conflict theories is that while the former assume crime is concentrated in specific areas, the latter tend to assume that while offending is more evenly spread across different social groups and categories, police will often ignore or tolerate offending among the powerful and concomitantly concentrate on those with less status and influence. This idea has particular resonance when one thinks of the way drug use is policed in a country such as the UK, where white middle class users do indeed seem to be policed differently, and less, than their (often minority) working class counterparts (Release 2014).

According to conflict theory, then, police activity will be concentrated on poorer areas with (for example) large minority populations not because there is more crime in those areas but because it is *easier*, from an organizational perspective, to police those with low levels of social, political and economic capital. Additionally, the police gain rewards from those who do have such capital when they are seen to be policing people

and places that constitute a ‘threat’, and specific conflict theories such as group position (Bobo and Tuan 2006), social threat (Liska 1992) and similar approaches underline that it is minority populations, in particular, which are seen as ‘threatening’. Accounts of the motivation behind police activity that broadly complement conflict theory are also provided by Choongh (1997) and Waddington (1999), who stress that policing is in a central sense directed towards maintaining existing social categories and boundaries, and disciplining those who are perceived to be actual or potential transgressors of those boundaries. Importantly for what follows, however, these authors concentrate largely on individual-level factors – police deal with those *individuals* that officers have defined as out of place, less than respectful, problematic or ‘difficult’ in ways only loosely connected to where those people live.

Conflict and associated theories of police activity therefore resonate with (a) the notion that police activity is about maintaining a certain vision of social order, (b) that this order is predicated on maintaining existing social hierarchies, and thus (c) that people from marginalized and excluded groups will *by dint of their low social status* be the special objects of police attention. Moreover, unlike consensus theories they also complement, rather than contradict, claims that the reason why police activities such as stop and search are disproportionately directed at ethnic and racial minority groups is overt, covert or sub-conscious bias on the part of police officers (Glaser 2015). No account of stop and search in England and Wales – or, as we discuss below, in many other places besides – could be complete without recognition of evidence that at least some of the reason why this power is disproportionality directed at ethnic minority groups is the existence of various forms of bias, stereotyping and institutional racism

within police organizations (Bowling and Philips 2002; Correll et al. 2002; Glaser and Knowles 2008).

We have take the time to outline these theories of police activity because they neatly frame the empirical analysis that follows. Specifically, consensus and conflict theories suggest contrasting hypotheses in terms of the likely social and spatial distribution of police stop and search activity. According to the former, stops will be concentrated *in* high crime areas and *on* offenders, largely irrespective of other characteristics; whereas on the latter account stop/searches will be concentrated on disadvantaged and excluded individuals and neighbourhoods, largely irrespective of actual levels of offending.

Evidence from England & Wales

In this section we use data from the Crime Survey of England and Wales (CSEW)² to explore the social and spatial distribution of stop and search. Survey data from three years – 2008/09, 2009/10 and 2010/11 were combined into one dataset to boost the number in the sample who experienced police contact. Respondents were asked if they have been stopped on foot in or in a car by the police in the last 12 months – those who had been are then asked if this resulted in a search of either themselves or the vehicle they were travelling in.³ The CSEW data files available allow us to bring two important sets of variables to the analysis. First, we obtained a geocoded data file, meaning area level variables from the 2011 Census could be added to the survey data.⁴ Second, the CSEW contains a self-report module on drug use – this was merged into the main file, meaning we have a measure of self-reported offending (around half of all stops under PACE are made with drugs as the grounds for suspicion – Release 2014).⁵

Who, then, is more likely to be stopped and searched by police? Table 1 shows the distribution of stop/search experiences across a range of socio-demographic variables. The general pattern is hardly a surprise – younger people, men, those from ethnic minority groups, the unemployed and students, and single people were all more likely to have been stopped by police in the past year. Perhaps most notably, the proportions of people with black, Asian Muslim and mixed ethnic identities who reported being stopped and searched were substantially higher than the proportion of white people reporting such encounters – the CSEW data, like the police recorded data, suggest for example that black people are around six times more likely to be stopped than their white counterparts. Yet variation is equally stark elsewhere: people aged 16-18 were around eight times more likely to have been stopped and searched than those aged 35 and above; the unemployed were also eight times more like to have been stopped and searched than those in employment.

Table 1 near here

Naturally, these bivariate associations cannot probe the relative usefulness of consensus and conflict theories – since each and every association has a range of possible confounders – but they do demonstrate the empirical reality that, for whatever reason, people from minority groups and those socially marginal in other ways are more likely to be subject to this form of police power.

What people do, as well as who they are, may also predict their chances of ‘coming to the attention of the police’ (Miller 2000; Waddington et al. 2004). Table 2 shows the distribution of stops by what might be loosely termed routine activity variables. We find people who spend more time out of their homes, who visit pubs and clubs, who have been victims of crime and use drugs were all more likely to have been stopped and searched. Those living in rented accommodation were more likely to have been stop/searched than owner occupiers; and the stop and search rate was twice as high in London as in other parts of the country.

Table 2 near here

A number of individual level variables – both socio-demographic and behavioural – are therefore associated at a bivariate level with people’s chances of being stopped by police. Yet, consensus and many conflict theories are equally if not more interested in area level factors. By combining the CSEW data with census level measures aggregated at the LSOA level, we were able to add a set of low-level geographic indicators to the analysis.⁶

Accordingly, Table 3 shows results from a series of multi-level binary logistic regression models predicting the probability of having experienced a police stop in the previous year. These models contain only area level predictors – they take no account of an individual’s personal characteristics, but consider only the statistical effect of where people live on their chances of being stop/searched. When included individually (models 2 to 8) all the level 2 (LSOA) level variables tested were significant: people

living in areas with more young people, more black residents, more deprivation, higher levels of victimization and more disorder were more likely to have been stopped and searched.⁷ Perhaps surprisingly, people living in areas with fewer migrants (i.e. more people born in the UK) were *more* likely to have been stopped and searched.

Table 3 near here

When all the area-level variables were included together in model 9, however, only some retained significance. Holding constant all the variables in the model, those living in areas with more deprivation, higher levels of victimisation and more disorder were more likely to have been stopped and searched. The finding that stop and search is higher in areas with large UK-born populations also persists.⁸ The notable conclusion here is that the data appear to support both conflict and consensus theories, in that there is an independent association between stop activity and both levels of victimization, on the one hand, and deprivation, on the other.

Finally, Table 4 presents results from regression models that bring together individual and area level factors. Three models are shown. The first was estimated using the full sample to whom the ‘stop and search’ questions were fielded; the second used only those from the subsample of this group who responded to the self-report drug use module; while the third used the same group but this time includes the item on drug use in the previous year. This presentation allows comparison of identical models estimated on different groups of individuals, all respondents (model 1) and those who replied to the self-report module (model 2). A forward stepwise selection method was used to

generate Model 1. All the variables shown in Tables 1, 2 and 3 were tested, with only those that proved significant at the 5 per cent level retained in Model 1 – given this model, none of the omitted variables were significant when added.

The findings are striking. While many of the socio-demographic variables proved to be consistent ‘unique predictors’ of an individual’s chances of having been stopped this was true for very few of the routine activity or area level factors. Controlling for the other variables in the models men, younger people, those from black, mixed and Asian Muslim ethnic groups, the unemployed, those not in good health, and those not in the managerial/professional social classes were all more likely to have been stopped and searched. Of the behavioural variables only access to a car and recent drug use were significant. Recent victims of crime were also more likely to have been stopped/searched. Finally, of the area level factors, once individual characteristics were taken into account only whether the respondent lived in London retained significance at any conventional level.

These results again seem to support both consensus *and* conflict theories of police activity. Stop and search was directed towards those who used drugs – that is, at offenders. Yet, equally importantly, it was *also* directed towards those from marginal social categories – minority groups, young people, recent victims of crime, the unemployed, those not in good health – the ‘usual suspects’ of police (McAra and Mcvie 2005), who lack the social, political and economic capital to ‘fight back’ against their targeting and who, it might be argued, provide various forms of threat to those who do command such capital. The extent to which the data provide support to two

seemingly conflicting theories is intriguing. Notable also, of course, is that ethnic disproportionality is not ‘explained away’. Even taking account of a range of personal and behavioural characteristics, people from most minority groups (non-Muslim Asians were a significant exception) were still more likely to have been stopped and searched than their white counterparts. This analysis thus provides significant evidence for continued stereotyping by police and, perhaps, institutional racism.

Table 4 near here

Based on the analysis presented above we might conclude that while stop and search activity is not *unrelated* to crime, it is at least as importantly a tool used by the police to keep tabs on the usual suspects, to let people know who is in charge, and/or to exercise discipline over individuals and communities. If it *was* primarily related to crime, we would expect a stronger correlation between area level disorder and crime rates and stop/search, and for more of the behavioural variables – notably going to pubs and clubs – to be significant in the models. Moreover while this form of police activity is differentially distributed across physical space – stop and search rates are higher in areas with more crime, larger minority populations and more deprivation – it seems to be the characteristics of the people living in those areas that is the important factor. Once individual level variables were taken into account, most of the area level factors lost significance in the models. Stop and search is, in other words, a power used against particular types or groups of people in ways that do not closely relate to where they live nor, necessarily, to what they might do.

Evidence from other jurisdictions

If our contention that stop and search is emblematic of the wider practice and process of policing, and that both tend to be directed not towards crime so much as marginality, is to be believable this emerging picture of stop and search in England and Wales should find resonance in other contexts. If stop and search is systematically focused on types or categories of person then disproportionalities of the kind described above should be identifiable in the behaviour of police in other countries, at least those that are broadly similar to England and Wales socially, economically and politically. And, while outside the UK, US and a few other cases detailed research is limited, this does indeed appear to be the case (Bowling and Marks 2015; Weber and Bowling 2012). In fact it often seems that *wherever* police use powers similar to ‘stop and search’ these are directed primarily at disadvantaged, marginalised and ‘difficult’ individuals and groups.

However, before reviewing the evidence, we should note the uneven role that stop and search seems to play in structuring relations between police and minority and marginal groups across the world. Some variant of police stopping of such groups is pervasive across advanced capitalist democracies. It appears however to be a less common practice in the policing of post-colonies and across the global south. Policing research in these settings has reported analogous practices – for example, police check-points (e.g., Belur 2011). But enquiry and debate about the governance of marginality in the global south is not focused on stop and search, and it is not a primary police power or tactic. Explaining these differences is beyond the scope of this paper. It may be, however, that stop and search only comes to prominence in settings where order is already established and where the police enjoy ‘base-line’ legitimacy. Where order is precarious and police

authority contested (see, for example, Steinburg 2012), the practice of stop of search risks inviting too much occupational trouble - hence a preference for collective displays of force such as check-points (Marks 2011).

The relevant evidence therefore is focussed on advanced capitalist democracies. One interesting example comes from a jurisdiction that is similar in many ways to England and Wales, yet which has its own legal system, police service and, to an extent, set of social strains and fractures – Scotland. Recent research in Scotland has demonstrated widespread use of statutory and non-statutory powers to stop and search. There are several notable indicators of this pervasiveness: in 2010, the rate of stop and search per capita in Scotland was nearly four times higher than the comparable rate per capita in England and Wales’ (Murray 2014a: 3) – 64 searches per 1,000 of the population compared with 17 per 1,000 in England and Wales (Murray 2014b: 164). In 2012/13, Strathclyde Police – then Scotland’s largest force⁹— had a search rate of 276 per 1000 people, over four times higher than the stop and frisk rate for New York City Police in 2012 which stood at approximately 64 searches per 1000 (Murray 2014b: 170). What is notable in the Scottish context is the extent to which the power is directed towards young people (ibid: 177-188) and the fact that widespread use of stop and search was (a) occurring in a country with a very small ethnic minority population (4 per cent, according to the 2011 Census) and (b) without much apparent evidence of ethnic disproportionality.¹⁰ Rather, in Scotland, it seems stop and search is used primarily against those marginalised and excluded on the basis of a combination of age and social class. In 2010, for example, Strathclyde Police carried out 37,233 searches of 16-year-olds: a figure that only becomes notable when one realises that the resident population

of 16-year-olds in Strathclyde in 2010 was 26,476. It appears, moreover, that the police in Scotland do not understand themselves to be exercising a *power* to stop and search young people. Rather stop and search has become both a matter of explicit force *policy*, and part of an occupational commonsense about how the lives of young working class males in Scotland ought to be disciplined.

Another key group of examples comes from continental Europe. In many European countries police lack powers equivalent to stop and search in the UK, but rather rely on what is ostensibly a quite different power – the ID check – to produce results that look very similar to those described above, particularly in as much as significant evidence for ethnic disproportionality in the impact of police practice has been uncovered (Open Society Justice Initiative 2009). Research in Spain, for example, has shown that visible ethnic minorities and non-Spanish citizens are more likely to be stopped in the street than their ethnic majority, Spanish counterparts (Garcia-Anon et al. 2013). Despite the official ban on collating statistics on race and ethnicity, there is evidence in France police ID checks on Muslims, travellers and gypsies are disproportionate in nature (Duvall 2005). A study conducted at Paris Metro stations by the Open Society Justice Initiative (2009a) found that people from visible minorities were more likely to be stopped by police; but, notably, so also were young people wearing clothing identified with various youth subcultures (i.e. there were, again, *other* disproportionalities in the application of the police power to ‘stop’ people). Further examples of these sorts of findings can be identified in the Netherlands, Hungary and elsewhere (see Weber and Bowling 2012). Finally, the extent to which ID checks are used in many European contexts – and beyond – to police a particular marginal population, immigrants, is

striking (Mutsaers 2014; Open Society Justice Initiative 2009b; Weber 2011), and this form of ‘advanced marginality’ (Wacquant 2007) looks set to become increasingly the object of particular attention from police.

Finally, research in the United States has inevitably concentrated on issues of race, which seems to almost over-determine this type of police stop activity (Glaser 2015; Simon this volume). For example, a precinct level analysis of data from New York City (Geller and Fagan 2010) found that marijuana stops were concentrated in neighbourhoods with higher proportions of black residents in a way that could not be explained by other factors; indeed, proportion black was the *only* significant positive predictor of stops (and marijuana stops were negatively correlated with past crime rates and marijuana arrests). Similarly, Petrocelli et al. (2003) found that while only crime levels predicted the traffic stop rate in Richmond, VA, stops were more likely to result in searches in areas with more black residents (measures of poverty had no effect). There are many other examples, and, while we do not do so explicitly here, in the US – and elsewhere – stop and frisk has inevitably also to be interpreted in the light of wider structures of racial oppression.

Stop and search and the police power

What then does the evidence, taken from the England & Wales, and so far as we have it from other jurisdictions, tell us about the power of stop and search? What does the social and spatial distribution of this power have to say about wider questions of the purposes of policing and the relation of police to categories of crime and order? What *kind* of power is stop and search? The evidence, in our view, invites the following

conceptualisation: namely, that stop and search is not just about crime, nor simply about targeting ethnic minorities. Rather, it is about control and the assertion of order, and the effort to do this implicates not only ‘fighting crime’ but also regulating and disciplining marginal populations defined not simply by ethnicity but also by other key socio-demographic characteristics.

Accepting that stop and search has multiple, intersecting causes, justifications and outcomes, provides, it seems to us, an answer to the apparent conundrum that the CSEW data support both consensus and conflict theories, and for that matter the ideas of Choongh, Waddington and others. Seen from this perspective the stubbornly low hit rates that form a key and routine component of the debate around stop and search are of only limited relevance to a proper understanding of the practice, at least from a sociological perspective. People from socially marginal categories are more likely to be stopped and searched even controlling for their actual level of self-reported drug offending (nor did the crime levels in the areas in which they might live seem to be particularly important). Positioned thus, stop and search is less about crime control and more about controlling recalcitrant, ‘difficult’ or threatening populations; at its root, about doing what is deemed necessary to maintain the particular version of ‘order’ that such individuals threaten or transgress. Perhaps crucially, while the discussion here is framed in relatively abstract terms, not least because the models we present in the previous section show effects averaged out across the population as a whole and therefore cannot be taken to apply in any one particular case, this is in fact what police officers will often say in private. Any discussion of stop and search will quickly move away from its purported crime control potential to a much broader consideration of the

need of the police to assert order and send strong messages of control to those who the police consider a threat to that order.

Viewed like this stop and search starts to seem less like a police power in the legal or constitutional sense, and more like a police power in the terms analysed by Marcus Dubber (2005). Dubber describes the origin of the police power as both stemming from and comprising the effort of the state to maintain a diffuse notion of social order defined by a need to reproduce existing power relations and extant normative conceptions of propriety and right. His conception harks back to pre-19th century definitions, where ‘police’ was seen not only as a regulatory power that constrained citizens but also as directed toward promoting the ‘happiness’ of the population (Reiner 2010: 5). Dubber (2005: xii) himself quotes *Blackstone’s Commentaries on the Laws of England*:

By the public police and œconomy I mean the due regulation and domestic order of the kingdom: whereby the individuals of the state, like members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners: and to be decent, industrious, and inoffensive in their respective stations.

The power to police, and the range of objects and events over which this power can claim interest or influence, is therefore essentially undefinable. To police is to produce and reproduce both good order and ‘orderly people’, and to patrol not only the boundaries of what constitutes acceptable behaviour but also the social status (included/excluded) of the policed (Bradford et al. 2014; Waddington 1999). We should

note that what Dubber, and indeed Blackstone, mean by police is something broader than our use of the word here, which is confined to the uniformed, public police. The good ordering of the state was accomplished by a whole range of institutions and actors, from night-watchmen to tax inspectors – all were police (Harcourt 2011), and seen in this light the activity of policing is inherently caught up in the endless task of reasserting a particular version of social order that, at an ideological level, benefits both the state and the individual citizen. Yet the uniformed police are, if nothing else, professionals and specialists in this role.

Stop and search, and the wider category of ‘police stops’ (Bowling and Marks 2015), seem to us to be an important element in the exercise of this ‘undefinable’ power. Indeed, this may always have been the case, given the origin of the police organization in the office of the night-watchman and institutions such as the 17th century *prefecture de police* in Paris, which were concerned with regulating the entry into, exit from and flow of populations within the city, and with maintaining the sense and actuality of order conducive to ‘good governance’. The modes of policing implied and instantiated by stop and search – intercepting people, asking them to account for themselves, temporarily detaining them, searching them for illicit goods and substances – have been fundamental to the practice of policing from these earlier periods right up to the present day, and are deeply inscribed in institutional structure and organizational behaviour – part, if you like, of the DNA of policing. Seen in this light, stop and search becomes a multi-purpose tool that can be turned to almost any purpose: crime control, order maintenance or the simple assertion of power and authority. Street stops also, of course, actualize the power and authority of police (as do other practices such as arrest), making

visible and real the ability of the state to ‘order’ the lives of citizens, and to intervene in and re-constitute a particular social environment.

Yet despite diversity in both the contexts of its use and the ends toward stop and search is turned there are also regularities. To police in the sense outlined above is, precisely, to attempt to ‘make’ orderly people; to redirect behaviour, and to discipline both in the sense of punishing and of training. It follows that groups and individuals defined as disorderly are the special targets of policing, and thus of stop and search: the socially marginal, minority groups, and those who ‘don’t belong’. The historical resonance here is again strong. Policing, or in Dubber’s sense ‘police’, was directed against vagrants, the work-shy or itinerant, ‘scolds’ (women who stood up to men), misfits; those who threatened existing social hierarchies and proprieties in a way that was at once often relatively trivial and fundamentally disturbing. Trivial, because these were common social categories, and the activities being ‘policed’ were often mundane; threatening, because their very existence represented an unacceptable derogation from the existing social order (vagrants seemed unproductive, placeless and ‘lordless’, scolds undermined closely guarded gender roles, and so on). It is notable, then, that in the analysis presented above less ‘productive’ individuals (the unemployed, the ill, victims of crime) appear disproportionately affected by stop and search. Yet so too are young men (controlling for the types of things young men do), who may not be unproductive or marginal in the same sense but who might well be considered in need of disciplining. Stop and search has, in short, to be located in wider processes of governing social marginality and reproducing its categories (cf. Wacquant 2009; Fassin 2013).

Stop and search beyond law?

If we think of stop and search – and its connection to the broader social purpose of the police – in these terms, what are its implications for the control and governance of police work? What does stop and search tell us about the relationship of police practice to law and politics? And why, to return to the second puzzle we raised above, does stop and search seem perpetually to elude attempts to legally regulate it?

For many decades and across many jurisdictions the question of legitimacy has lay at the heart of the debate and discord that revolves around stop and search (Bowling and Philips 2007; Delsol and Shiner 2006; Jackson et al. 2013). A significant body of research supports the idea that such encounters are important moments in which the legitimacy of the police is tested, reproduced or diminished (Jackson et al. 2013; Tyler and Fagan 2008; Tyler et al. 2014). Stop and search thus raises normative questions of distributive fairness and accountability that throw into doubt the legitimacy of police power and the wider set of police practices it represents (proactive, police-led, coercive criminal justice interventions). When is the use of stop and search legitimate? Against which yardsticks should the number and distribution of stops be assessed? Who should decide whether there are too many (or indeed too few) and whether they are targeted correctly? Moreover when the exercise of a legal power ends short of arrest – as most stop and search encounters do – this raises particular issues of accountability, and this is especially true in the context of street policing, an inherently low visibility zone within which frontline practitioners are granted significant – some would argue excessive – discretion (Brodeur 2010).

In England & Wales, one outcome of these concerns is the requirement placed on police forces to record the stop/searches conducted by their officers – a form of administrative accountability that has produced records now stretching back nearly 20 years. These forms record the age, gender and ethnicity of those stopped and searched, the reason for the stop, and immediate outcomes. Yet, despite the existence of what by global standards is a highly unusual record of who is stopped, why and with what outcomes (see, also, Wortley and Uwusu-Bempah 2011, on Canada), establishing a set of generally agreed, objective, criteria against which the reality of stop and search practice can be judged has proved an elusive goal (although see Equality and Human Rights Commission 2010). In short, it remains unclear whether, first, current use of the power to stop and search is justified, and therefore legitimate (or indeed legal), and, second, what would constitute a justifiable level of use.

The empirical legitimacy of the police is, as a consequence of the perceived unfairness with which the power is used, also challenged by the use of stop and search. Survey research over many years (Smith and Gray 1985; Fitzgerald et al. 2002; Skogan 2006; Jackson et al. 2012), as well as qualitative and ethnographic work (e.g. Sharp and Atherton 2007), has shown that people who have been recently stopped and searched tend to trust the police less, grant less legitimacy, and are less willing to cooperate with officers in the future. This is thought to have important implications for the individuals concerned, and their communities, who suffer estrangement from the police and thus a diminished capacity for drawing on the resources police offer; and for the police themselves, whose job is made more difficult by the withdrawal of community support and assistance.

Much of the ensuing debate about closing the legitimation deficit faced by stop and search has centred on the prospect of subjecting this power more closely to legal control (see, generally, Dixon 1997). The strategy of legalism holds that stop and search can (and should) be made fairer and more effective by closing the discretionary space within which officers operate or by tightening the criteria that trigger the operation of stop powers, thereby making the practice more rule-bound and amenable to greater (internal and external) oversight and redress. The broader aspiration is to render stop and search compatible with a liberal state that governs through law. However, part of the point that Dubber makes in *The Police Power* is that modern democratic states do not only govern through law. They also manage through police via the aforementioned slippery, elusive power to regulate people and things so as to maximise the welfare of a community - to do what is necessary to produce and sustain (what is felt to be) good order. This, Dubber suggests, is a power that diverges radically from the conception of limited, rule-bound, constitutional government imagined and defended by liberal legalism (cf. Shklar 1964) – and one that disturbs and offends liberal sensibilities. The police power is, in Dubber’s view, *indefinable* (and thus radically discretionary), *ahuman* (in the treatment of subjects as things to be managed), *hierarchical* (in terms of the relation it posits between governor and governed), and *alegitimate* (answering to dictates of efficiency in ways that render any wider insistence on its legitimacy a category mistake). The police power is in these respects:

. . . by its nature free from principled constraint. Policing is an art, even a science. But it is not a matter of moral legitimacy. Moral questions are inappropriate because morality, in the modern sense, governs interactions among persons. . . Police, however, doesn’t deal with

persons, but with resources and threats. An object of police governance is either a resource for the welfare of the community or a threat to that welfare. The job of the policer is to classify everyone and everything properly, and to treat each according to its classification (Dubber 2005: 85).

It bears repeating that Dubber is not solely or even primarily concerned here with the functioning of the modern uniformed state police. His theory does, however, make sense of the data on how police forces use stop and search, as well as accounting for the repeated failures of efforts to subject stop and search to effective legal control - and thereby render it a power in the liberal legal sense of that term. Read in Dubber's terms stop and search forms part of the reserve power of government to do what is necessary to ensure good order and the welfare of the population as defined in a particular socio-historical context. As such it is governed principally by the imperatives of efficiency in this task, something that helps to explain why over many decades stop and search has refused to succumb to the demands of moral legitimacy and the strictures of law.

If this account is right, why does the idea of stop and search as a tool in the management of social marginality not feature in official justifications of the practice? One answer to this question is that it does, at least in the anaemic language of deterrence – though this is said to be a beneficial by-product of targeting people ‘known to the police’. This is also what some police officers will say in private – that they use stop and search to ‘keep control of the streets’ and to ‘remind the scrotes who’s in charge’. Outside the UK, it seems police and government might be ready to admit police stops are a way of controlling a particular form of marginality – immigrant status (e.g. Weber 2011). But for the most part this is a justification that dare not speak its name. Why?

The reason, we suggest, is that any public acknowledgement of this rationale would have to concede two things that (should) make citizens of a liberal democratic polity decidedly uncomfortable: firstly, that stop and search is routinely deployed in ways that are illegal and close to impossible to regulate via law; and secondly, that it has a purpose that is almost impossible to evaluate - absent field experiments that the police are deeply reluctant to let anyone undertake. This is why the crime control and legal fictions that surround and support stop and search are necessary – they form part of a legitimisation strategy which maintains that stop and search is in principle controllable, measurable and that the will exists to control it and assess its effects. These fictions ‘work’ not only because they are trumpeted by police chiefs and from interior ministries. They are also effective because the logic of these fictions has been accepted and championed by stop and search’s liberal critics who insist that stop and search can and should be transformed into a reactive, investigatory tool and that its application can, as such, be made less ethnically disproportionate and subject to law (e.g., Delsol and Shiner 2006: 243).

If we strip stop and search of these fictions, the social reality of this police power becomes much less palatable. In our view, the data on stop and search discloses a disturbing claim about social order in capitalist democracies: namely, that such order is made possible because the police are given potentially limitless, uncontrollable, and extra-legal powers to do what is necessary to monitor and control marginal populations, whoever they happen to be - blacks, Muslims, white working-class youth, Roma, migrants and so on. Seen in this light, stop and search is not, and is unlikely ever to

become, a power fenced-in by a narrow investigative purpose and effective legal oversight: it is one of liberal democracy's illiberal, undemocratic spaces.

If this analysis is right, then what follows? What regulatory paths are open to us? Let us conclude by highlighting, in broad brush strokes, four lines of possible flight. First, we need to stop hiding behind the fiction that stop and search (and the police purpose more widely) has principally to do with crime and find ways to facilitate open public discussion of stop and search understood as order-keeping and social management. In our view, this discussion of 'order' should be premised on the understanding that police need to shift away from policing 'disorderly people' towards policing disorderly behaviours. It was a particularly disturbing finding of our analysis that people seemed to be stopped and searched based on who they were, not the types of activity they might engage in.

Second, we should abandon law as the principal tool through which we seek to control the use of stop and search. We should be clear that this does not mean turning away from law entirely, still less simply accepting that stop and search is often practiced in ways that are illegal. Nor does it mean giving up on the idea that law can affect change and constrain police behaviour. The recent *Floyd* case in the US – a successful class action brought against New York City Police in 2014 alleging that NYPD engaged in racial profiling and suspicion-less stop and frisks in a manner which breached the fourth and fourteenth amendments of the US Constitution – demonstrated again that law can be a vehicle for making stop and search less unjust and racially-targeted.¹¹ It does, however, mean letting go first of the belief that stop and search can ever become a

police power in the narrow liberal-legal sense, and second of the associated strategy that privileges law as the site of control. This is a myth that we no longer need to live by.

Third, we could simply recommend the abolition. Under the conditions that currently obtain, however – the social marginality produced by capitalist democracies and police forces constituted in part to reproduce relations of domination in those democracies – we doubt that this is either a feasible or even a desirable approach. As many critics have pointed out, removing the power to stop and search will do little to prevent ‘informal’ stops while making it likely that ‘formal’ ones are replaced by greater numbers of more intrusive arrests. This is not to say, however, that we cannot imagine social and political arrangements, or broader settlements of the struggle for racial justice (Simon this volume), which result in the ‘demand’ for stop and search disappearing or being radically reduced.

Fourth, absent those conditions, we need a strategy which permits stop and search but which recognizes it as a necessary evil – a practice that discomforts and troubles members of democratic polities, and the use of which we should seek to minimize. This demands a regulatory approach situated not in law but in agonistic, democratic politics. The aim should be to surround stop and search with as much monitoring, exposure, argument and contestation as possible (outside but also inside police organizations – Bradford and Quinton 2014; Sklansky 2008) and to make practices of suspicion and scrutiny a condition of its continued use. This we take to be the central lesson to be drawn from the contrasting experience of stop and search in England & Wales and Scotland over recent decades. In the former, stop and search has been a site of

especially black political mobilisation and public contest - with some degree of success, for example the formal abolition of s.44 stops and the *de facto* abolition of s.60 stops (Bridges 2015; Delsol 2015). In the latter, by contrast, the practice of stop and search became pervasive in a context of elite indifference and public silence, a situation made possible because its targets – white, male working class youth – have no effective political voice (Murray 2014b). It is under such conditions that the intimate connection of the police to order, and the constitutive role of stop and search in police understandings of what ordering demands of them, is given the greatest freedom of expression.

Footnotes

1. See Smith and Gray (1985); Keith (1993); Bowling and Philips (2002); Medina-Ariza (2013).
2. See <http://www.ons.gov.uk/ons/guide-method/method-quality/specific/crime-statistics-methodology/guide-to-finding-crime-statistics/crime-survey-for-england-and-wales--csew-/index.html>.
3. The CSEW fields a complex modular design that means not all respondents are asked all questions. The full dataset used here contained 137,677 respondents – of these, 28,706 were asked about stop and search.
4. The Census data thus relate to the very end of the period covered by the survey data. On balance, though, we do not believe this will introduce significant bias into the analysis.
5. A total of 84,883 respondents completed the self-report module, which is fielded only to those aged under 60. Among those asked about stop and search, 18,024 completed the drug use questions.
6. LSOA stands for Lower Super Output Area. This is a Census based unit – there are over 30,000 LSOAs in England and Wales, each with a population of between 1,000 and 3,000 people. Because the CSEW uses a stratified sampling technique respondents are not spread evenly across the country but clustered within LSOAs; this makes multi-level modeling of the data a viable proposition. Within the full dataset used there were on average 6 respondents per LSOA (minimum 1, maximum 50); within the subsample asked questions about police stops there were on average around two respondents per LSOA.
7. The first four measures in shown were generated from Census data: three straight from standard Census output while the last, *deprivation*, was derived from factor analysis of key indicators of social deprivation at the LSOA level (percent unemployed, percent never worked, percent lone parent households, percent of households with no car, per cent living in social

rented accommodation). The remaining measures were calculated from the full geocoded CSEW dataset used (n=133,677) – *victimization* was the proportion of respondents per LSOA who reported victimization; *disorder* was the mean of an individual level factor score derived from five survey items referring to perceptions of low-level disorder; *drug use* was the proportion of respondents who reported any drug use in the previous year.

8. This seemingly odd finding seems to arise because areas in which there are fewer migrants are more rural. A significant proportion of the stop and search encounters recorded in the CSEW involved cars, and car use is more common in rural areas, resulting in a complex interaction between migrant population and area type. Within urban areas only, stop and search was *higher* in locales with more migrants.

9. Scotland's eight police forces were amalgamated into a single force – Police Scotland – in April 2013.

10. It is also striking that c) until recently the extensive use of stop and search occurred in the absence of almost any public controversy. This has changed largely as a result of the brave and indefatigable efforts of one Edinburgh University PhD student, Katherine Murray, upon whose research we rely here – see, <http://www.heraldscotland.com/politics/scottish-politics/how-the-single-force-and-the-scottish-government-tried-to-hamper-pioneeri.119017730>.

11. See <http://ccrjustice.org/floyd>.

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Table 1: Experience of stop and search: by socio-demographic characteristics, 2008/09-2010/11

Percentage stopped and searched at least once in the past year

	%	Unweighted n		%	Unweighted n
Age			Economic activity status		
16-18	8	770	Employed	1	15,695
19-21	5	703	Unemployed	8	853
22-24	4	919	Student	5	690
25-34	2	4,007	Looking after family	.	1,493
35-44	1	5,151	Long term sick	1	1,306
45-54	1	4,702	Retired	.	8,215
55-64	.	4,846			
65-74	.	3,971	Educational attainment		
75 plus	.	3,637	First degree or higher	1	6,955
			Below degree level	2	17,927
Gender			No qualifications	1	9,353
Female	.	15,802			
Male	2	12,904	Social class (NS-SeC)		
			Professional	1	9,517
Ethnicity			Intermediate/self-employed	1	8,772
Asian Muslim	6	401	Routine and semi-routine	2	8,096
Asian - other religion	1	581	Never worked/long term unemployed	4	1,015
Black African	5	296	Not classified	4	1,306
Black Caribbean	7	297			
Mixed (Black and White)	4	106	Relationship status		
Mixed (Other)	3	115	Single	4	3,308
White	1	26,517	Married/cohabiting	1	25,398
Other ethnic group	2	356			
			Health status		
Country of birth			Good/very good	1	21,575
UK	1	25,593	Fair	1	5,290
Other	1	3,067	Poor/very poor	1	1,788

Source: Crime Survey of England and Wales, 2008/09 to 2010/11

. indicates cell value <.05

Table 2: Experience of police foot stops: by routine activities, 2008/09-2010/11

Percentage stopped and searched at least once in the past year

	%	Unweighted n		%	Unweighted n
Housing tenure			Visits to pub/bars in last month		
Owner/occupier	1	19,760	None	1	14,709
Socially rented	2	4,662	1 to 3	1	7,920
Privately rented	3	4,284	4 to 8	2	4,499
			9 to 12	2	902
			More than 12	4	675
Hours out of home average weekday			Lives in Rural area?		
None	0	673	No	2	21,391
Less than 1 hour	1	1,342	Yes	1	7,315
1 to 3	1	6,506	Lives in London?		
3 to 5	1	4,912	No	1	26,180
5 to 7	2	2,890	Yes	2	2,526
7 hours or more	2	12,323	Access to a car/van?		
Visits to clubs in last month			No	2	6,000
None	1	26,056	Yes	1	22,706
At least 1	3	2,650	Drug use in last year?		
Victim of crime?			No	1	16,598
No	1	21,970	Yes	7	1,426
Yes	2	6,736			

Source: Crime Survey of England and Wales, 2008/09 to 2010/11

Table 3: Multi-level binary logistic regression models predicting the probability of having been stopped and searched in the past year

Odds ratios

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7	Model 8	Model 9
Year (ref. 2008/09)									
2009/10		1.05	1.05	1.05	1.06	1.06	1.06	1.1	1.08
2010/11		1.02	1.01	1.01	1.01	1.02	1.04	1.06	1.03
LSOA level variables									
% aged 15-29			1.03***						0.99
% born in UK (logged)				0.11***					0.34*
% Black (logged)					1.69***				1.19
Deprivation						1.51***			1.20*
Victimisation (CSEW estimate)							4.58***		2.18**
Disorder (CSEW estimate)								2.03***	1.35*
IICC	0.04	0.04	0.04	0.04	0.03	0.03	0.04	0.04	0.08
N	27150	27150	27150	27150	27150	27150	27150	27150	27150

Number of level 2 units = 14,787

* p<0.05, ** p<0.01, *** p<0.001

Table 4: Multi-level binary logistic regression models predicting probability of stop/search in last 12 months

Odds ratios

	Model 1	Model 2	Model 3
Survey year (ref: 2008/09)			
2009/10	1.09	1.06	1.11
2010/11	0.97	0.92	0.92
Area level factors			
Lives in London (ref: no)			
Yes	1.95**	2.09**	2.09**
Individual level factors			
Gender (ref: male)			
Female	0.20**	0.21**	0.23**
Age	0.87**	0.83**	0.84**
Age squared	1.00**	1.00**	1.00**
Ethnicity (ref: White)			
Asian Muslim	2.10**	2.63**	3.28**
Asian other religion	0.54	0.64	0.71
Black African	2.35*	2.57*	3.25**
Black Caribbean	3.95**	2.63*	2.68*
Mixed	1.81	2.08+	2.43*
Other	1.34	1.35	1.75
Victim of crime (ref: no)			
Yes	1.78**	1.66**	1.49**
Access to a car (ref: no)			
Yes	0.73*	0.63**	0.67*
Self-assessed health (ref: good)			
Fair	1.54*	1.53*	1.43+
Poor	2.05*	1.68	1.62
Economic activity status (ref: all others)			
Unemployed	2.01**	2.15**	2.00**
Social class (ref: Managerial/professional)			
Employees	1.82**	2.00**	1.83**
Routine/semi-routine	1.34+	1.43*	1.36+
Never worked/not classified	1.85*	1.64	1.79+
Self-reported drug use (ref: none in last year)			
Used drugs in last year			3.07**
ICC	0	0	0.08
N	28662	18006	18006

Number of level 2 units: Model 1 = 14,603; Models 2 and 3 = 11,243

* p<0.05, ** p<0.01, *** p<0.001

POLICE RELATIONS WITH ARABS AND JEWS IN ISRAEL

BADI HASISI and RONALD WEITZER*

Remarkably little research has been conducted on police relations with citizens in Israel compared with other societies that are deeply divided along ethnic lines. This paper examines the views of Arabs and Jews regarding several key aspects of policing in Israel. The findings indicate, first, that Arabs are consistently more critical of the police than Jews, and these ethnic differences persist net of the influence of other variables. Second, in addition to the role played by ethnicity in explaining public assessments of the police, a number of other variables influence such attitudes. The results are interpreted within the context of the divided society model of policing, which originated in research on other ethnically polarized societies.

Policing Ethnically Divided Societies

Ethnic minorities and the police have troubled relations in many societies (Antonopoulos 2003; Bowling and Phillips 2003), but, in *deeply divided societies*, such conflicts are especially deep-rooted. These societies are characterized by extreme polarization along ethnic lines, and policing is organized first and foremost ‘for the defense of a sectarian regime and the maintenance of a social order based on institutionalized inequality between dominant and subordinate communal groups’ (Weitzer 1995: 5). This model of policing has the following features: (1) police policies or practices are institutionally biased against members of the subordinate minority group; (2) over-representation of the dominant ethnic group within the police force, especially in the top ranks; (3) politicization of the police force and police repression of the regime’s opponents; (4) dual responsibility for ordinary crime control and internal security; (5) legal powers giving police great latitude in their control of the minority population, including the use of force; (6) an absence of effective mechanisms of accountability; and (7) conflicting orientations to the police among the subordinate group and dominant groups: on key issues of legitimacy, trust, confidence and support, the dominant group is a champion of the police and the subordinate group is largely estranged from the police (Weitzer 1995: 3–9; see also Brewer 1990; 1991). Some of these factors are present, in varying degrees, in many nations, but what distinguishes deeply divided societies is their *magnitude* and *combination*—constituting a distinctive policing model (Brewer 1990).

In divided societies, citizens’ relations with the police are shaped, in large part, by their allegiance to or alienation from the *state*—a factor that is less prominent in shaping perceptions of the police in more integrated societies, where the state enjoys diffuse legitimacy and is not an object of fundamental contention (Marenin 1985). In other words, it is not just what the police do, but also what police *represent* to people. In ethnically divided societies, the symbolic status of the police force, as pillars of state domination over ethnic

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minorities, is crucial. The general pattern is that the minority perceives state institutions as instruments of the dominant ethnic group and withholds legitimacy from the state, whereas the dominant group sees the minority population as posing a threat (either manifest or latent) to internal security or to the supremacy of the dominant group (Enloe 1980).

Of course, there is variation in the extent to which empirical cases fit the divided society model outlined above. First, the reality of the threat presented by the minority group varies from place to place. In some societies, the minority threat is diffuse and latent or intermittent. In other societies, threats to the dominant group are much more immediate and severe, and may involve frontal attacks on the state. But, in either case, the threat perceptions of the dominant group matter greatly, and the greater the perceived threat presented by the minority group, the greater the level of suspicion and conflict between the police and the minority.

Second, in divided societies, ethnic minorities experience significant residential segregation from the dominant ethnic group. They typically live in areas that are mainly populated by members of their own group and some distance from the dominant group, and this very isolation may function as a mechanism of informal control. That is, segregation reduces the mobility of the ethnic minority and insulates the dominant group from crimes committed by members of the subordinate group. Under these circumstances, crime is largely concentrated inside ethnic minority areas, where the police may or may not vigorously enforce the law. The latter—under-enforcement of the law and ‘benign neglect’ of highly segregated and isolated communities—has been documented in some societies (Liska and Chamlin 1984; Liska *et al.* 1985) and may exist in Israel as well (Mesch and Talmud 1998). Such patterns of segregation and policing may, in turn, influence citizen attitudes toward the police. Insofar as police are less likely to intervene in ethnic minority areas and are perceived as providing inadequate protection, this might lower residents’ overall opinion of the police. On the other hand, in societies in which the ethnic minority is hostile toward the police, a minimal police presence in minority communities may be greeted with relief. This was the case in many staunch Nationalist neighbourhoods in Northern Ireland (Mulcahy 2006: 76; Weitzer 1985, 1995).

Policing Arabs and Jews

This article examines policing within Israel proper, not in the occupied territories of Gaza and the West Bank (on the latter, see Milton-Edwards 1997). Comprising about 17 per cent of the population, Israeli Arabs are full citizens of Israel but are also politically marginalized and economically disadvantaged relative to Jews. Although there is an urban, middle-class sector, a large number of Arabs live in rural towns and villages and continue to abide by traditional forms of social organization. In fact, 90 per cent of Israeli Arabs live in small towns populated by Arabs exclusively; only eight cities are ethnically mixed, and they are extremely segregated residentially (Mesch and Talmud 1998). Such segregation is accepted by many Israelis: only a minority of Arabs (47 per cent) and Jews (22 per cent) stated in a survey that they were willing to live in a mixed neighbourhood (Smootha 1989: 137).

Policing in Israel largely conforms to the divided society model sketched above. There are some qualifications, however. First, there are political divisions within the dominant

group that are more significant than in some other divided societies. Israeli Jews identify with political parties that range from the far right to the far left, with implications for how they view state policy and practices. Among Jews, it is the ultra-orthodox who have the worst relations with the police, as documented in some surveys (State of Israel 1999; 2000; 2001; 2002), and there has been a history of violent clashes between the police and ultra-orthodox Jews over issues such as a gay parade, advertisements for swimwear, archaeological excavations and other breaches of religious norms (Brewer *et al.* 1988). Second, the police were somewhat less involved in the day-to-day control of the Arab minority compared with some other nations, such as Rhodesia, South Africa and Northern Ireland (Brewer 1994; Brogden and Shearing 1993; Frankel 1980; Mulcahy 2006; Weitzer 1990; 1995). In Israel, socio-economic marginalization and geographical segregation serve as powerful mechanisms of control over the Arab population (Lustick 1980). Furthermore, historically, agencies other than the police—such as the Israeli Defense Force and the General Security Service (GSS, similar to MI5 in Britain)—played a central role in controlling the Arab minority, with the police providing support in making arrests (Gilon 2000; Hofnung 1991).

These qualifications notwithstanding, the divided society model applies fairly well to Israel. The police harbour diffuse bias against Arabs (Cohen 1990; Lehman-Wilzig 1993; Or Commission 2003); are predominantly composed of Jews, with Arabs accounting for less than 3 per cent (not including Druze);¹ identify politically with the Jewish state and have been involved, to some extent, in repression of the regime's political opponents (Gamson and Yuchtman-Yaar 1977; Sprinzak 1999); enjoy extensive legal powers under the emergency laws (Hofnung 1991); lack adequate accountability (Herzog 2000); and are involved in 'dual policing' of ordinary crimes and internal security, though playing a subordinate role to other agencies in the security area (Brewer *et al.* 1988).

Strained relations between Arabs and the police have been a chronic problem. Such strains are evident in a variety of contexts (e.g. during the frequent police stops of individual Arabs, during periodic public order situations, etc.). Moreover, the police culture appears to cultivate and reinforce a host of stereotypes about Israeli Arabs—typifications that manifest themselves in discriminatory treatment. A recent commission of inquiry—the Or Commission—criticized such ethnic profiling:

It is important to assimilate, at every level of the police force, the importance of level-headed and moderate behavior in relations with the Arab sector. At the same time, it is important to uproot the phenomena of negative prejudice toward the Arab sector that have shown themselves among veteran and esteemed officers in the police force. The police force must impress upon its policemen the comprehension that the Arab public in its entirety is not their enemy and that it should not be treated as such. (Or Commission 2003: 768)²

In addition to chiding the police for stereotyping Arabs as disloyal citizens, the Or Commission expressed concern about erratic enforcement of the ordinary criminal law in Arab communities (the benign neglect phenomenon) and noted that many Arabs believe that the police are mainly interested in suppressing their political activities. The

¹ The Druze are distinct from Muslim and Christian Arabs in Israel in terms of their treatment by the state, which has historically regarded them as a privileged minority, separate from other Arabs. The Druze are drafted into the Israeli army, contrary to the other Arabs.

² Supreme Court Justice Theodore Or headed the commission.

commission described a ‘vicious cycle’ in which mutual distrust provokes altercations that, in turn, amplify Arabs’ alienation from the police, reinforce their belief that they are not full citizens of the country, and hinder police crime-control efforts in Arab communities due to distrust of the police (Or Commission 2003). Indeed, it seems that the very legitimacy of the police institution is limited; in one poll, only 53 per cent of Arabs felt that they should obey the police (compared with 85 per cent of Jews) (Cahanman and Tzemach 1991).

Chronic suspicion and frictions between the police and the Arab minority are periodically reinforced by major, controversial public-order incidents. The most recent and serious incident occurred in October 2000, after former Defence Minister Ariel Sharon paid a visit to the Temple Mount in Jerusalem. Sharon’s visit was viewed by Arabs as violating the sanctity of the Al-Aksa mosque there, and it sparked a wave of rioting lasting eight days. The police responded to the disorders with harsh countermeasures and, in the end, 13 Arabs were killed by the police. Surveys carried out between 2000 and 2002 (Rattner and Yagil 2002) allow us to track changes in perceptions before and after the October 2000 incidents. One-third of Arab respondents and 38 per cent of Jewish respondents agreed in a February 2000 poll that the police carry out their role in a fair manner, which dropped after the October clashes (in a January 2001 poll) to 21 per cent among Arabs but remained unchanged among Jews. One year later, in February 2002, Arabs’ views on police fairness had improved only slightly (26 per cent). Similarly, the number of Arabs who reported a great deal of trust in the police dropped by half between 2000 and 2001 (from 35 to 17 per cent) and increased only slightly in 2002 (20 per cent). Jew’s trust in the police also dropped between 2000 and 2001 (from 47 to 33 per cent) but their confidence fully rebounded by 2002 (49 per cent) (Rattner and Yagil 2002).³ A plausible explanation for the fluctuation in public opinion is the harsh police response to public disorder in October 2000. The impact of controversial policing incidents on citizen confidence in the police has been documented in other societies as well (Kaminski and Jefferis 1998; Weitzer 2002).

Surprisingly little research has been carried out on police–citizen relations in Israel. Occasional surveys have been conducted, but they are few and far between. The scarcity of such data can be regarded as a major deficiency—one that the present study was designed to help to remedy. The article examines recent survey data on Arab and Jewish attitudes regarding a variety of policing issues.

Methodology

Data for this study come from a March 2003 telephone survey of adult Arabs and Jews (over the age of 18) residing within the police force’s Northern District. The Northern District ranges from the Hadera Valley (Wadi Ara) to the Lebanese border. The majority (70 per cent) of the Israeli Arab population resides in this district, and they typically live in communities that are entirely Arab and isolated from the Jewish population.

The sample was drawn from locales with more than 1,000 residents. The sample included 250 Jewish and 444 Arab respondents (including Muslim, Christian and

³ Interestingly, a 2004 poll found that 43 per cent of Jews agreed with the Or Commission’s recommendation that the police officers who had killed Arab protesters during the October 2000 clashes should be identified and prosecuted and 52 per cent agreed that the police should change their policies toward Arabs (Smooha 2004: 121). The question was not asked of Arabs.

Bedouin Arabs).⁴ Cluster sampling was used to ensure that each group was adequately represented in the sample, and the overall response rate was 40 per cent. The interviews were conducted both in Arabic and Hebrew by Arab or Jewish interviewers matched to the respondent's background.

Dependent variable

In our study, four areas of citizens' attitudes toward the police were examined: overall satisfaction, police ethnic bias, police misconduct, and citizen receptivity to the police. *Overall Satisfaction* includes questions on trust in the police, general job performance and crime prevention (see Table 1). *Police Bias* measures opinions on equity of police treatment of Arabs and Jews, on the behaviour of Arab and Jewish police officers, and on the treatment of Arab police officers within the police organization (see Table 2). *Police Misconduct* was measured by questions about police use of excessive force and violation of citizen rights (Table 3), and *Citizen Receptivity* to the police was captured by several questions listed in Table 4.

Independent variables

Our independent variables include the standard demographic factors of age, gender and social class (measured by educational attainment). Most studies of police–citizen relations find that age is a significant predictor, with young people more likely than older age groups to hold negative views of the police (Brown and Benedict 2002). Gender and class, however, are less consistent predictors. In some studies, men are more likely than women to hold unfavourable opinions of the police, but, in other studies, gender is not a predictor. The same is true for social class: in some studies, it is not a predictor at all, whereas in studies in which it is significant, some find that lower class position is associated with more negative views of the police, while others find the opposite (Brown and Benedict 2002).

People who are fearful of crime may blame the police for the crime that they fear. This may affect citizens' overall opinion of the police as well as their attitudes toward more specific aspects of policing. *Fear of Crime* is measured here by the following question: 'To what extent are you afraid of becoming a victim of violent crime?'—on a scale of 1 (not afraid at all) to 5 (very afraid).

In a society as politicized as Israel, a person's political orientation might be expected to influence evaluations of the police. Our variable *Party Affiliation* is measured by the political party the respondent voted for in the election preceding the survey, in January 2003. Options included all political parties, which we then dichotomized for analysis: among Arabs we distinguished between those who voted for Arab parties (scored 1) and for Zionist/Jewish parties (scored 0); among Jews, we distinguished voting for left and centre parties (scored 1) versus right-wing and patriotic parties (scored 0).

Many Israeli Jews believe that Israeli Arabs have either a 'dual loyalty' to Israel and the Palestinian cause or identify completely with the latter (Smootha 1989; 2004). We expected that Arabs who have strong Palestinian identity would be more critical of the

⁴ Druze Arabs were excluded from the sample due to their privileged 'middleman minority' status and socio-political differences from other Israeli Arab sub-groups (see note 1, above).

police. Our variable *Palestinian Identity* was measured by asking Arab respondents about the degree to which they self-identify as a 'Palestinian Arab in Israel'.

As indicated above, highly controversial incidents involving the police may have an immediate and powerful effect on citizen opinions, particularly when the incident involves members of one's ethnic group. In Israel, it is possible that communities that experienced a violent conflict with the police in October 2000 would evaluate the police negatively. Arab respondents were asked whether their community had experienced such an incident (variable labeled *Police-Community Clash*). Approximately half of our Arab respondents reported that such a clash had occurred in their community (scored 1) and the other half reported no such incident (scored 0).

Analysis

We compared Arabs' and Jews' attitudes and preferences regarding four key dimensions of police-citizen relations—general satisfaction with the police, perceptions of ethnically biased policing, assessments of police misconduct and citizen receptivity to the police. Both bivariate and multivariate analyses were conducted. In the multivariate models, a linear regression analysis was performed for each of four indexes reflecting the main dependent variables. The *Overall Opinion* index combines four items: trust in the police, 'Police do a good job', feelings of safety around police officers and the perception of police crime-prevention efforts near the respondent's residence (Cronbach's $\alpha = 0.72$). The *Police Bias* scale includes four items: 'Police treat Israeli Arabs as a security threat'; 'Police treat Arab drivers more severely than Jewish drivers'; 'Arab police officers are discriminated against within the police force' and 'Arabs are prevented from joining the Israel Police because of their ethnic background' ($\alpha = 0.51$). The *Police Misconduct* index combines 'Police use excessive force during protest events' and 'Police violate citizen rights on many occasions' ($r = 0.25$) and the *Community Receptivity* scale combines willingness to report property crime and willingness to report a violent crime to the police ($r = 0.31$).

Findings

Overall satisfaction

Table 1 presents frequencies for several items related to overall satisfaction with the police and views regarding their job performance. On these general questions, which cover issues that are much less controversial than others, there are significant disparities between Jews and Arabs. The two most general questions tap trust in the police and overall job performance. Jews express a higher level of trust in the police than Arabs (60 and 42 per cent, respectively) and about half of Jews agreed that the police do a 'good job' compared with 36 per cent of Arabs. Jews were also more likely than Arabs to report feeling safe when they encounter police officers (53 and 45 per cent, respectively) and to approve of police crime-prevention efforts (42 and 32 per cent, respectively).

At the same time, it is noteworthy that substantial numbers of *both* Arabs and Jews hold negative views on these general policing issues. On none of the issues is the level of satisfaction extensive. Apart from the six out of ten Jews who express trust in the police, the other items register only modest approval ratings. In some other deeply divided societies, including Northern Ireland and South Africa, members of the dominant

TABLE 1 *Overall opinion of the police*

	Percentage agreeing Mean (standard deviation)	
	Arabs (N = 444)	Jews (N = 255)
Police do a good job***	36 3.09 (1.33)	47 3.36 (1.10)
Trust the police***	42 3.29 (1.33)	60 3.72 (1.10)
Safety around police officers*	45 3.10 (1.58)	53 3.38 (1.37)
Police work to prevent crime near your residence**	32 2.93 (1.35)	42 3.21 (1.19)

Percentage agreeing strongly or somewhat with statements. Asterisks denote significance levels from *t*-test: * < 0.05, ** < 0.01, *** < 0.001.

group were much more likely to be staunch champions of the police—an institution considered a bulwark against threats from the minority population. For Israeli Jews, mediocre opinion of the police arguably stems from the low status of the police in Israeli society (Brewer *et al.* 1988) and/or negative perceptions of police effectiveness (i.e. only a minority of Jews are confident in police crime-prevention efforts or think that the police are doing a good job overall).⁵ Furthermore, although Israel is a deeply divided society and internal security is a major concern among Jews, the role of the police in security remains secondary to other institutions. The Army and the General Security Services, which are more highly rated by the Jewish public than the police (Cahanman and Tzemach 1991), play the lead role in fighting terrorism, with the police usually limited to a supportive role. This means that the Israeli police get little of the 'security dividend' in terms of how they are regarded by the dominant group. Still, overall opinions of the police track, to some extent, changes in the security situation. For instance, Jews' trust in the police peaked in 2002, during a wave of attacks by Palestinian suicide bombers (59 attacks). Police officers were seen repeatedly in the media assisting the rescue teams. With the decrease in such attacks in the last three years, Jews' trust in the police seems to have ebbed.

Biased policing

In some nations, the overwhelmingly majority of the dominant ethnic group believes that the minority should be denied equal treatment by the authorities. This was the case in Rhodesia, Namibia and South Africa, to cite just a few examples (Weitzer 1990). In Israel, one survey reported that fully 84 per cent of Jews thought that the state should favour Jews, while only 16 per cent thought Jews and Arabs should be treated equally by the government (91 per cent of Arabs took the latter view) (Smootha 1989). The police and other state institutions may share the views of the dominant group regarding police treatment of the minority population. Research on racial and ethnic minorities in many countries documents the widespread view that the police treat them differently from

⁵ By way of contrast, the dominant group in Northern Ireland had a better overall view of the police than is true for Israeli Jews. For example, in a 1987 poll, four-fifths of Protestants in Northern Ireland felt that the police did a 'good job' (CHS 1989).

the dominant group, actively discriminate against them or hold animus toward them. These patterns are especially pronounced in deeply divided societies, but are also evident in less polarized, multi-ethnic nations such as Britain, Canada and the United States (Antonopoulos 2003; Bowling and Phillips 2003; Clancy *et al.* 2001; Rowe 2004; Weitzer and Tuch 2006).

It can be argued that the greater the degree of residential segregation between dominant and subordinate ethnic groups, the greater the likelihood of differential policing of areas populated by each group. Due to the high level of segregation of Arabs and Jews in Israel, including in the Northern District studied here, this may condition differential police practices in Jewish versus Arab areas and, insofar as this is the case, such disparities may be perceived as police bias and discrimination. Our data do not directly address this ecological dimension of biased policing, but an unpublished 2003 poll⁶ found that 75 per cent of Arabs believed that the police treat them worse than Jews (45 per cent of Jews agreed). In the present survey, six out of ten Arabs believe that police do not treat all citizens equally compared with just 31 per cent who think that police perform impartially.

Police stops of motorists is one site in which citizens might experience unequal treatment on the basis of race or ethnic background. The police routinely stop and search Arab drivers and their cars. Some Arabs view the stops themselves as discriminatory while others report having been verbally or physically abused during the encounter (Human Rights Association 2004; Mossawa Center 2002). In the present survey, about half of Arabs believe that when police officers stop motorists, they treat Arab drivers more severely than Jewish drivers (see Table 2).

Equal justice has long been a contentious issue in Northern Ireland. In 1990, 38 per cent of Catholics believed that the police treated Protestants and Catholics equally, while 55 per cent thought that the police treated Protestants better (NISAS 1990). Three-quarters of Protestants, however, thought that the police treated members of both groups equally. Subsequent to the 1998 political settlement, Catholics' views regarding equal treatment have improved. In a 2006 poll (NIPB 2006), 54 per cent of Catholics said that they were satisfied that the police treat members of the public equally (18 per cent of Catholics reported that they were dissatisfied with the police on this issue). Two-thirds of Protestants in 2006 said that they were satisfied with the police record in delivering equal justice in Northern Ireland.

In ethnically divided societies afflicted with armed insurgency, the subordinate ethnic group is often viewed as a security threat, and both the dominant group and state officials tend to typify the entire minority population in this way. In Israel, there is no doubt that many Jews view the Arab minority as a threat to the state. The sources of these perceptions include the larger, regional Arab–Israeli conflict as well as the real or perceived attitudes of the Arab minority itself (Smootha 2003; Smootha and Hanf 1992). Their Arab identity raises suspicion that they hold either dual loyalties (to Israel and to the Palestinian cause) or are fully sympathetic with Israel's enemies. In a recent survey, for instance, overwhelming majorities of Israeli Jews believed that Arabs' high birth rate endangers the state (67 per cent); that Arabs are intent on changing the state's Jewish

⁶ Poll conducted by the Center for the Study of Crime, Law and Society, University of Haifa. Arye Rattner provided the authors with this unpublished data.

TABLE 2 *Biased policing*

	Percentage agreeing Mean (standard deviation) Arabs (<i>N</i> = 444)
Police treat Israeli Arabs as security threat	43 3.10 (1.57)
Police treat Arab drivers more severely than Jewish drivers	47 3.15 (1.64)
Arab and Jewish police officers treat Arab citizens similarly	46 3.16 (1.65)
Arab police officers are discriminated against within police force	52 3.42 (1.47)
Arabs prevented from joining the police because of their ethnic background	31 2.64 (1.56)
Police treat all citizens equally	31 2.79 (1.35)

Percentage agreeing strongly or somewhat with statements.

character (72 per cent); that Arabs might assist enemies of the state (78 per cent); that Arabs might launch a popular revolt (72 per cent); fear Arabs because of their support of the Palestinian people (84 per cent); and that most Israeli Arabs would be more loyal to a Palestinian state than to Israel (66 per cent) (Smootha 2004).⁷ Israeli Arabs are aware that they are regarded as a threat by many Jews, yet Arabs are split on whether they believe that the police view them in this way. In the present survey, 43 per cent of the Arab population felt that the police regard Israeli Arabs as a security threat, while 39 per cent disagreed. Arab respondents who do feel that Arabs are regarded as a threat were more likely to report that their community had experienced a clash with the police in October 2000.

Although there are very few Arabs in Israel's police force, it is nevertheless important to consider whether citizens differentiate between Arab and Jewish officers. The data displayed in Table 2 show that the Arab population is split almost evenly on the question of whether Arab officers differ from Jewish officers in their treatment of the Arab population. In other words, a substantial number of Arabs believe that police officers behave similarly, regardless of their ethnic background. Regarding the reasons for Arab under-representation in the police force, almost one-third believed that Arabs have been blocked from entering the police force because of their ethnic background and a majority thought that Arabs fear that they would face institutional discrimination if they decided to enlist in the police force.

In Northern Ireland, a 1990 poll inquired about whether it would be better for the country if there were more Catholic police officers. One might expect to find broad approval of this reform, especially among Catholics, who have long complained about the gross under-representation of Catholics in the RUC (3–7 per cent). In fact, a majority of both Catholics (63 per cent) and Protestants (54 per cent) agreed with the idea that more Catholic officers would be an improvement. However, among the politically radical sections of the population, support for the idea was much lower—viewed favourably by only one-third of staunch Loyalists (supporters of the Democratic Unionist Party)

⁷ These figures are similar to those of an earlier poll by the same scholar (Smootha 1989), indicating that Jews' threat perceptions have remain fairly constant at a high level over two decades.

and less than one-quarter of staunch Republicans (supporters of Sinn Fein) (NISAS 1990). This suggests that an increase in minority representation in the police force is not necessarily seen as a positive change in deeply divided societies. Many members of the dominant ethnic group may be wary of greater representation of the minority within the police force, while many minority group members see the need for more fundamental reforms in addition to, or instead of, personnel changes (Mulcahy 2006; Weitzer 1993; 1995).

Police misconduct

Although the police engage, to a greater or lesser degree, in various types of misconduct in all societies (e.g. corruption, excessive force, unwarranted stops or arrests, verbal abuse of citizens), the power structure characteristic of deeply divided societies serves to concentrate misconduct toward subordinate racial and ethnic groups, while members of the dominant group are treated more favourably. This can approximate a *dual system of justice*. It is not surprising, therefore, that research uncovers rather stark differences in minority and dominant groups' beliefs regarding the degree to which the police abide by norms of impartiality, fairness and equality of treatment of citizens. Minority group members tend to be rather critical of the fidelity of the police to these principles of good policing, whereas dominant group members tend to downplay or deny that police practices vary depending on the ethnic or racial group in question.

Two survey items tapped perceptions of police misconduct—the use of excessive force during public protests and the more general violation of citizens' rights. Public protests occur frequently in Israel, and a 2004 survey found that a large percentage of the Israeli Arab population (27 per cent) had ever participated in a legal demonstration or protest event (Smootha 2004: 120). Such occasions sometimes include violent clashes between protesters and the police. Table 3 shows that while a majority of Arabs felt that the police used excessive force during public protests, only one-third of Jews subscribed to this view. The traumatic events of October 2000 may have contributed to the number of people, both Arabs and Jews, who feel that police overreact during protests, but we have no way of knowing with certainty whether the incident inflated these opinions. Police abuse of human rights is a standard grievance among minority ethnic groups. In Israel, four out of ten Arabs believe that police violate citizens' rights 'on many occasions' compared with three out of ten Jews. Group differences on both questions were statistically significant, although it is noteworthy that Arabs and Jews are not that far apart on the abuse-of-rights issue.

Citizen receptivity to police

In some divided societies, the minority population, or a segment of it, is so alienated from the police that they are opposed to having officers in their neighbourhoods or towns and are wary of contacting the police when a crime occurs. South Africa and Northern Ireland illustrated this dynamic prior to the political settlements in 1994 and 1998, respectively. In both the black townships in South Africa and hardcore Republican communities in Northern Ireland, the police were viewed as an occupying force rather than as protectors, and people who were observed talking to police officers were suspected of collaborating with the enemy, which could jeopardize their own safety (Brewer 1994; Brogden and Shearing 1993; Frankel 1980; Meduna 1993; Mulcahy 2006; Weitzer

TABLE 3 *Police misconduct*

	Percentage agreeing Mean (standard deviation)	
	Arabs (N = 444)	Jews (N = 255)
Police use excessive force during protest events**	53 3.46 (1.53)	34 2.98 (1.32)
Police violate citizen rights on many occasions*	40 3.08 (1.40)	30 2.87 (1.20)

Percentage agreeing strongly or somewhat with statement. Asterisks denote significance levels from *t*-test: * < 0.05, ** < 0.001.

1995). This fear extended even to the reporting of minor crimes (Ellison and Smyth 2000; Weitzer 1995).

Several of the survey questions tap citizen receptivity to the police (see Table 4). When asked whether the police should provide services to all communities, Arabs and Jews are equally likely to answer affirmatively (87 and 85 per cent, respectively). This is not surprising because it is fairly easy to endorse the general principle that all communities deserve police services. At the same time, 35 per cent of Arabs said that they believe that the police are 'not welcome' in *their* community. Thus, there is a tension between the widespread feeling that police should operate everywhere and the perception of more than a third of Arabs that their communities are not hospitable toward the police.

In Arab communities in which police are under-involved in crime control, informal social control may help to fill the vacuum. To a certain extent, Arab society is still governed by traditional modes of social organization, and deviant behaviour may be punished by family or clan members instead of formal authorities (Cohen 1990; Ginat 2000; Hasan 2002). The social and ecological isolation of many Arab towns and villages helps to reproduce traditional mechanisms of social control, though the balance between formal and informal crime control varies from place to place.

Police work depends largely on public cooperation but, in ethnically divided and politically polarized societies, the act of reporting offenders to the police may be seen as dangerous or otherwise problematic. In Israel, there is a disparity in Arabs' and Jews' inclination to use police services. Although a majority of both groups were prepared to report crimes to the police, Jews were more likely to express a willingness to do so (see Table 4). There are also differences in the visibility of their contacts with the police. Fully two-thirds of Arabs preferred to report crime at the police station and only a fifth would call the police to their homes. By contrast, a majority of Jews said that they would call the police to their homes. Another dimension of this dynamic is suggested by the question asking whether reporting criminals to the police is the same as 'informing on' them. (Informing on someone in Israel has a decidedly political meaning.) This view was endorsed by 29 per cent of Arabs compared with 16 per cent of Jews. The data do not reveal why people hold these preferences, but it is almost certain that the political situation in Israel, and specifically in Arab communities, contributes to Arabs' reluctance to summon police officers to their homes: they may not want neighbours to see them interacting with the police for the same reasons (e.g., personal safety) as their counterparts in other divided societies like South Africa and Northern Ireland.

TABLE 4 *Receptivity to the police*

	Percentage agreeing	
	Mean (standard deviation)	
	Arabs (<i>N</i> = 444)	Jews (<i>N</i> = 255)
There should be police services in every community	87 4.53 (1.11)	85 4.52 (0.98)
Police officers are not welcome in my community*	35 2.78 (1.59)	16 1.82 (1.38)
Reporting criminals to the police is the same as 'informing on' them*	29 2.52 (1.61)	16 1.87 (1.36)
Willingness to report property crime to police*	70 4.05 (1.38)	86 4.49 (1.08)
Willingness to report violent crime to police*	66 3.89 (1.45)	82 4.41 (1.07)
Call police to home to report crime*	21	55
Report crime at police station*	67	25

Percentage agreeing strongly or somewhat with statements. Asterisk denotes significance levels from *t*-test: * < 0.001.

Recall that our Arab sample includes Christians, Bedouins and (non-Bedouin) Muslims. This raises the question of whether Arab respondents differ by subgroup, namely whether one of them holds significantly different attitudes from the others. To answer this question, we disaggregated the Arab sample and found that the three subgroups differ little in their views on the policing issues covered in this study. Generally, Muslims are more critical of the police than the other two groups, although the differences are not usually statistically significant. Significant differences were found, however, on the question of whether the police treat all citizens equally: Muslims were the least likely of the three Arab groups to subscribe to this opinion. Our results are consistent with another study that found Muslim Arabs to be more critical of the Israeli police than other Arab groups (Zureik *et al.* 1993).

The data presented above point to ethnic differences on virtually every policing issue examined in this study, but two questions remain. First, do these differences persist net of the influence of other variables? Second, what other factors, in addition to ethnic background, predict perceptions of the police in Israel? The survey included questions regarding respondents' demographic attributes and other potentially relevant predictors.

Our multivariate results address these questions. First, ethnic differences persist, net of the other factors, in the three models that include both Arabs and Jews (these results not presented in a table). Compared with Jews, Arabs are more likely to hold negative overall views of the police, to believe that the police engage in misconduct and to be less than receptive to the police.

Second, some other variables are important predictors. Table 5 presents four explanatory models capturing the four substantive areas covered in the survey. In general, the models are more powerful in accounting for Arabs' attitudes toward the police than for Jews' attitudes, as indicated by the adjusted R^2 figures in the models.

Regarding specific variables, recall that social class was measured by educational attainment. For Jews, education has little effect, predicting only their receptivity to the police: the higher the education, the greater their receptivity. Among Arabs, by contrast, higher education is associated with a more negative general evaluation of the

TABLE 5 *Regression estimates for effects of predictors on perceptions of police*

	Arabs (β)	Jews (β)
<i>Overall opinion of the police</i>		
Age	-0.01 (-0.03)	0.01 (0.05)
Education	-0.37 (-0.27)***	-0.11 (-0.08)
Party affiliation	-3.23 (-0.34)***	-0.80 (0.20)*
Gender (1 = male)	-1.00 (0.11)*	-1.30 (0.17)*
Fear of crime	0.29 (0.12)*	-0.13 (-0.05)
Palestinian identity	-0.23 (0.08)	NA
Community-police clash (October 2000)	-0.16 (-0.02)	NA
R^2 (adjusted R^2)	0.27 (0.25)	0.09 (0.06)
N	250	152
<i>Biased policing</i>		
Age	0.02 (0.06)	NA
Education	0.24 (0.19)**	
Party affiliation	1.07 (0.11)	
Gender (1 = male)	0.14 (0.02)	
Fear of crime	-0.16 (-0.06)	
Palestinian identity	0.43 (0.16)*	
Community-police clash (October 2000)	1.10 (0.13)*	
R^2 (adjusted R^2)	0.14 (0.12)	
N	237	
<i>Police misconduct</i>		
Age	0.00 (0.02)	0.00 (0.03)
Education	0.15 (0.20)**	-0.11 (-0.16)
Party affiliation	0.50 (0.10)	-0.08 (0.04)
Gender (1 = male)	0.32 (0.07)	0.09 (0.20)
Fear of crime	-0.17 (-0.12)*	0.14 (0.09)
Palestinian identity	0.32 (0.21)**	NA
Community-police clash (October 2000)	0.22 (0.05)	NA
R^2 (adjusted R^2)	0.13 (0.11)	0.04 (0.02)
N	251	144
<i>Community receptivity to the police</i>		
Age	0.00 (0.04)	-0.01 (-0.10)
Education	-0.04 (-0.05)	0.15 (0.24)**
Party affiliation	0.35 (0.07)	0.24 (0.13)
Gender (1 = male)	-0.87 (0.18)**	-0.52 (0.15)*
Fear of crime	0.31 (0.21)**	0.04 (0.03)
Palestinian identity	-0.11 (-0.07)	NA
Community-police clash (October 2000)	-0.07 (-0.02)	NA
R^2 (adjusted R^2)	0.10 (0.08)	0.11 (0.08)
N	252	155

NA's differ from previous tables largely due to missing cases in response to the party affiliation question. Asterisks denote significance levels from t -test: * < 0.05, ** < 0.01, *** < 0.001.

police, the belief that police treat Arabs in a biased manner and the view that police misconduct is a problem. One reason why highly educated Arabs might be critical of the police has to do with the fact that they typically live not with middle-class Jews but with poor and working-class Arabs, and therefore experience the same kind of treatment from the police. Another reason may have to do with relative deprivation: middle-class Arabs, more so than their disadvantaged counterparts, may be acutely aware of police discrimination due to an expectation that their class position should protect them from

mistreatment. Perceived police bias may thus be heightened when it conflicts with class-based expectations. Such relative deprivation has been advanced as a possible explanation for the critical views documented in some studies of middle-class African-Americans (Hagan and Albonetti 1982; Weitzer and Tuch 1999; 2002).

Gender has some impact. Among Arabs, women tend to express more favourable views than men in their overall evaluation of the police and with respect to citizen receptiveness to the police. Similarly, Jewish women are more likely than their male counterparts to express overall satisfaction with the police.

Fear of crime may affect one's overall opinion of the police insofar as the police are evaluated for their performance in preventing or solving crimes (Brown and Benedict 2002). Our findings indicate that fear of violent victimization affects general views of the police among Arabs but not Jews. Among Arabs, the higher the fear, the more positive the overall assessment of the police.

Political party affiliation is a major determinant of public opinion toward the police in deeply divided societies, precisely because both the police institution and the state itself are objects of fundamental contention. In Northern Ireland, for instance, there have been long-standing internal cleavages along party lines within both the Catholic and Protestant populations (Weitzer 1995), though there remain substantial Catholic-Protestant differences as well (Ellison 2000). Similarly, in Israel, we found that political party affiliation influences public attitudes toward the police. Arabs who vote for Arab parties were less satisfied with the police overall than those who vote for Zionist/Jewish parties. Among Jews, those who support rightwing or nationalistic political parties held more positive general views of the police, whereas those who vote for left or centre parties were less satisfied. The latter parties historically have been more critical of state policy toward Israeli Arabs (Smootha 1989: 185–90), and our findings are consistent with another study that found that Jews who identified with left-wing parties were more likely than right-wing Jews to believe that the police are involved in corruption, brutality and other misconduct (Zureik *et al.* 1993).

We expected that Arabs with a strong Palestinian identity would be more critical of the police. This was confirmed in two models: Arab respondents who identify as a 'Palestinian Arab in Israel' were more inclined to perceive the existence of biased policing toward Arab citizens and more likely to believe that police misconduct is a serious problem in Israel. In other words, ethno-political identity among Arabs is most salient regarding the two most contentious policing issues in the survey.

Finally, police-community conflict during October 2000 had a significant effect on perceptions of biased policing. Arabs who reported that their community had experienced a violent clash with police officers were more inclined to believe that the police discriminate against Arab citizens more generally, net of other variables, compared with those whose communities had not experienced such a conflict. This finding is consistent with other studies that document the effects of highly controversial policing incidents on citizens' perceptions of the police (Kaminski and Jefferis 1998; Weitzer 2002).

Conclusion

Remarkably little research has been conducted on policing in Israel, and the present study is one of the few to examine relations between the police and Israeli Arabs and Jews. The findings document group differences: on almost every issue, Arabs view the

police more negatively than Jews, and these differences are almost always statistically significant. These findings are consistent with a large body of research on racial and ethnic group relations with the police throughout the world as well as the specific literature concerning deeply divided societies.

However, there is much more to the story than ethnic differences alone. Our findings point to three additional conclusions regarding police–ethnic relations in Israel. First, we find that Jews have lower confidence in the police than we might expect from the literature on deeply divided societies, in which dominant groups are typically enthusiastic supporters and defenders of the police. Israeli Jews appear to be more critical of the police than is true for their Protestant counterparts in Northern Ireland and white people in apartheid South Africa. Among the possible reasons for the more tepid orientation of Israeli Jews toward the police is the perception that the police are not particularly effective in performing their crime-control duties and the fact that they have only a limited role in the ‘prestige’ work of homeland security, where the military and security services enjoy primacy. In Northern Ireland and South Africa, by contrast, the police played a major role in counter-insurgency operations and internal security more generally—which arguably explains part of their esteem within the dominant Protestant and white populations in their respective countries (Brewer 1994; Brogden and Shearing 1993; Ellison and Smyth 2000; Mulcahy 2006; Weitzer 1990; 1995).

Second, Arabs are somewhat less critical of the police than their counterparts in the subordinate ethnic group in Northern Ireland and South Africa. While they are consistently more likely to harbour unfavourable views of the police than Jews, the gap between the two is narrower than the analogous gaps in Northern Ireland and South Africa. Part of the explanation may be the differential political orientations to the state among the subordinate groups in the three societies. The modal view among Northern Ireland’s Catholics was rejection of the state of Northern Ireland as well as its status within the United Kingdom—a fundamental delegitimation of the political order shared by moderate nationalists and radical republicans alike. In South Africa (as well as Rhodesia and Namibia), the black population was historically denied full citizenship rights and equal treatment under the law. It is not surprising, therefore, that large sections of the subordinate population in each of these societies condoned or actively supported political violence to overthrow the regime. Israeli Arabs, by contrast, have greater formal rights within Israel, on a par with those enjoyed by Jews. And the vast majority of Israeli Arabs associate themselves with the State of Israel: only 10 per cent reject the right of Israel to exist; just 9 per cent define their identity as non-Israeli Palestinian; and less than 2 per cent support the use of political violence (Smooha 2004: 131). In short, Israeli Arabs’ orientation to the state helps to explain why their perceptions of the police are somewhat less negative than what we would expect from the divided society model of police–minority relations, outlined at the beginning of the article. Having said this, it is important to reiterate that Arabs’ views of the police are consistently more unfavourable than is true for Jews. Arabs are far from enthusiastic fans of the Israel Police force.

Third, almost no studies of police–minority relations in deeply divided societies have been based on multivariate analyses, and most of the literature reports only bivariate comparisons of the attitudes of dominant and subordinate ethnic groups. Our multivariate findings show that, in addition to between-group differences, there are some important within-group variations as well. In one or more of the models—and especially

for Arabs—perceptions of the police are shaped by education, gender, fear of crime, party affiliation and/or socio-political identity. These findings suggest that there is more to the story than simple inter-ethnic polarization vis-à-vis the police—that is, that there are some important internal divisions within each group that shape assessments. Such intra-group differences have been well documented in more integrated, multi-ethnic societies such as the United States and the United Kingdom (Bowling and Phillips 2003; Brown and Benedict 2002) and the present study indicates that they can be important in deeply divided societies as well, in addition to fundamental ethnic cleavages in citizens' relations with the police.

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Policing terrorism with procedural justice: The role of police legitimacy and law legitimacy

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Abstract

Research shows that procedural justice influences public cooperation with the police. However, it cannot be assumed that factors that influence cooperation in general crime control also apply to people's willingness to cooperate in counter-terrorism. This proposition is tested among a sample of Arabic-speaking people in Australia. We explore whether procedural justice has an impact on reported willingness to cooperate in counterterrorism policing, and if this is mediated by law legitimacy and identity related factors. Our results show that perceptions about the legitimacy of the law and identification with Australian society matter a great deal when it comes to predicting cooperation in counter-terrorism. In contrast, perceptions of police legitimacy matter most for predicting cooperation in general crime control activities. Our discussion and results are linked to debates about how best to police terrorism.

Keywords

Arabic speaking communities, cooperation, counter-terrorism, law legitimacy, police legitimacy, procedural justice

Introduction

Since September 11th 2001 domestic policing in Western democracies has been transformed by the increasing involvement of local police in counter-terrorism. While concern has been raised about the implications of this trend for the resourcing of routine police work, scholars have argued that it also has a bearing on police effectiveness because of its impact on police–community relations (Lambert, 2011). Studies indicate that among Muslim and Middle Eastern communities in the United Kingdom, the United States

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and Australia, there is widespread resentment and anger towards counter-terrorism efforts because they are seen as arbitrarily and disproportionately targeting groups due to their Islamic faith or ethnic identity (Pickering et al., 2008; Poynting and Nobel, 2004; Spalek and Imtoul, 2007; Sun et al., 2011).

The problem is that counter-terrorism policing can undermine both support for police and generate opposition towards the laws the police enforce – which also has implications for the perceived legitimacy of counter-terrorism policing (Jonathan-Zamir and Weisburd, 2011; LaFree et al., 2009). Judgements of police legitimacy are essential to eliciting voluntary cooperation among community members (Murphy et al., 2008). Procedural justice has for some time been regarded as central to improving police legitimacy and public cooperation with police, with numerous studies supporting this observation (Mazerolle et al., 2010). Procedural justice refers to whether laws and policies are perceived as being implemented fairly by authorities. Further, perceptions that authorities enforcing those policies are treating citizens with respect and dignity are also important to perceived procedural justice. More recently, the pioneer of procedural justice research, Tom Tyler, has argued that procedural justice is relevant to the counter-terrorism context (Tyler, 2012). This is supported by three recent studies of US and UK Muslims (i.e. Huq et al., 2011a, 2011b; Tyler et al., 2010). However, it cannot be assumed that what influences cooperation in general crime control – the context from which most procedural justice research is drawn – is the same for cooperation in counter-terrorism policing. For instance, other factors, such as people's perceptions about the legitimacy of counter-terrorism laws or their level of identification with the country in which they reside, might also be important for predicting willingness to assist police in these matters (Cherney and Murphy, 2011; Hocking, 2004).

This paper aims to test whether the procedural justice model extends to the counter-terrorism context among a sample of Arabic-speaking people in Australia. Of particular interest is exploring whether procedural justice has an impact on reported willingness to cooperate in activities aimed at counter-terrorism policing. We aim to explore factors that may mediate this relationship, and whether these factors may differ when it comes to predicting cooperation in general crime control. This is important to understanding what influences cooperation with police in different crime control contexts.

This paper is organised as follows: firstly, background theory and research is canvassed to situate the study in relevant literature and to illustrate the link between counter-terrorism and our key concepts of interest. The survey instrument and sampling process are described. Results are then reported, focusing on people's cooperation in general crime control compared to counter-terrorism. The results are discussed, as well as the study's limitations, and we conclude by reflecting on the implications of our findings for counter-terrorism efforts.

Background theory and studies

Procedural justice, cooperation and counter-terrorism

The procedural justice model of policing challenges the argument that people simply make judgements about the police on the basis of their performance (i.e. ability to identify and apprehend law breakers). Rather, people are also concerned about the

basis of police decision-making and whether it is underpinned by a normative element based upon fair and respectful treatment. Procedural justice is seen as central to these normative judgements and is influenced by whether the police are neutral and transparent when applying legal rules; whether they explain their actions and seek input from community members before making decisions; and whether they treat people with dignity and respect. These dimensions are key predictors of peoples' acceptance of police decision-making and the laws they enforce, as well as for promoting cooperation with police (Tyler, 2011).

Studies have shown that if police use procedural justice it helps build police legitimacy, and is a more effective way of securing long-term compliance with legal authorities (Mazerolle et al., 2010). In actual fact when procedural justice is absent citizens are more likely to become defensive, which encourages non-compliance (Braithwaite, 2009; Tyler, 2011). The reason procedural justice matters so much is because it communicates the message that an individual is a respected member of society and deserves to be listened to. It is a mistake to assume, however, that procedural injustice against a single person only affects their judgements alone. Rather, the impact of experiencing or observing unfairness in decision-making translates to one's social group and can motivate groups to question the legitimacy and power of specific authorities (Braithwaite, 2009; Lind and Tyler, 1988). This can create defensiveness among social groups who react by withdrawing their consent and cooperation with legal authorities. In the specific context of policing this can have a significant impact on police effectiveness.

The procedural justice-based model of policing has important lessons for counter-terrorism policing. Firstly, it has been consistently argued that community cooperation is central to mitigating the risks of terrorism (DPMC, 2010: 67; Lambert, 2011; Pickering et al., 2008). In the counter-terrorism context, a procedural justice-based model of policing may have the potential to provide police with greater pay-offs (i.e. more accurate and timely intelligence) and can impose lower costs than coercive or intrusive forms of policing, because of its capacity to generate increased levels of community cooperation. Coercive and intrusive forms of policing can actually generate community backlash against counter-terrorism and may foster terrorist recruiting, hence undermining community support for efforts to combat terrorism, as has been illustrated in the period of the 'troubles' in Northern Ireland (LaFree et al., 2009). Given active and passive support for terrorism is influenced by the functioning of state institutions (Tessler and Robbins, 2007; Shapiro and Fair, 2009), how institutional authorities go about designing and implementing counter-terrorism laws and policies (i.e. whether they are designed and implemented in a procedurally just way) has a potential bearing on support for terrorism, and the willingness of groups to cooperate in counter-terrorism initiatives.

Limited evidence supports the link between procedural justice and cooperation in counter-terrorism. Research conducted by Tyler and his colleagues has found that among Muslims residing in the UK and US, procedural justice is a significant predictor of people's willingness to cooperate with the police in counter-terrorism initiatives (see Huq et al., 2011a, 2011b; Tyler et al., 2010). In these studies judgements of procedural justice were more significant than judgements about the perceived threat of terrorism, and willingness to cooperate was neither influenced by ideological or religious beliefs (i.e. attitudes on foreign policy issues such the use of military force in Afghanistan or

invasion of Iraq, or religious commitment). Importantly Tyler and colleagues found that procedural justice had a direct relationship with Muslims' willingness to assist in counter-terrorism efforts (Huq et al., 2011b).

Law legitimacy, cooperation and counter-terrorism

While research has demonstrated the effectiveness of procedural justice to policing practice, procedural justice research to date has largely neglected the role that 'law legitimacy' plays in determining attitudes and behaviours towards the police (Jackson et al., 2012; Murphy and Cherney, 2012; Murphy et al., 2009). Research has examined how people view the legitimacy of police, but not how they also view the legitimacy of laws that police enforce. Given the law is the medium through which the police act, understanding how perceptions about the law effects public attitudes and behaviours toward police is relevant to understanding why people may choose to cooperate with police. Scholars have consistently argued that the law is the medium through which a shared sense of community purpose is created, and any resistance to those laws can create a crisis of legitimacy for state institutions (Dixon, 1997; Sarat, 1993).

The few studies that do exist show that law legitimacy can moderate the impact of procedural justice on cooperation with police (see Jackson et al., 2012; Murphy and Cherney, 2012; Murphy et al., 2009). Huq et al.'s (2011a, 2011b) and Tyler et al.'s (2010) research on public cooperation in counter-terrorism policing among US and UK Muslims did not take into account the role of law legitimacy, which potentially overlooks a particularly relevant factor impacting on support for counter-terrorism. Key pieces of legislation have expanded the power of the police to detain terrorist suspects without trial, impose control orders, outlaw groups deemed a security threat and intercept and collect people's personal information (e.g. the UK Terrorism Act 2000; UK Counter-Terrorism Act 2008; the Australian Anti-Terrorism Act 2005; see Lynch and Williams, 2006). Scholars have argued that counter-terrorism laws have fundamentally changed public conceptions of civil liberties, given they require people to accept the expansion of police powers and potential intrusions in the name of pre-empting terrorism (McCulloch and Pickering, 2009; Pantazis and Pemberton, 2012). Hence, it is not surprising that the legitimacy of counter-terrorism laws have been called into question (see Hocking, 2004; Pantazis and Pemberton, 2012).

In the UK and Australia the scope of counter-terrorism laws has proven particularly controversial among some minority groups who identify as predominantly Muslim, such as Lebanese in Australia or Pakistani in the United Kingdom. In their eyes, terrorism laws can create a sense of injustice because they can be judged as arbitrarily expanding the power of authorities to conduct surveillance of 'suspect' communities (Pantazis and Pemberton, 2012; Pickering et al., 2008; Poynting et al., 2004; Spalek, 2011). Hence, for some minority groups the issue of law legitimacy can be particularly salient. This can be compounded by the fact that immigrants who are recent arrivals in Western countries often come from nations with very different legal traditions and customs. Individuals who come from cultures where the laws and police operate quite differently can have experiences or traditions that impact on their assessment of laws in the country in which they have settled. This can transcend generations, with some locally born Arabic-speaking groups in Australia, the US and Europe often experiencing conflict between the

perceived legitimacy and dictates of Western secular law and *Sharia*, the law of their Islamic faith (Kabir, 2005; Leiken, 2012).

Identity, cooperation and counter-terrorism

In addition to the relevance of procedural justice and 'law legitimacy' to predicting the willingness of groups to cooperate with police, research has highlighted that a sense of identification with the state or social group can have a bearing on procedural justice effects (Huo, 2003); with procedural justice being less effective for those who identify less strongly with a dominant social group and the authorities who represent them. The central argument is that the more individuals place emphasis on identification with their own sub-group and its customs and values, the less likely they are to identify with key social institutions in mainstream society and to see them as operating in their interest (Huo, 2003; Lind and Tyler, 1988). This can be particularly pronounced for minority groups whose ethnic or religious status can lead them to identify less strongly with the dominant culture in which they reside. Huq et al. (2011b) found that Muslims who had high levels of identification with British society were more likely to see the police as legitimate and hence cooperate with them in counter-terrorism.

The issues of identity and social connectedness have been raised in debates about the causes of terrorism and radicalisation (e.g. see Awan, 2008; Coolsaet, 2011; Sirseloudi, 2011). Our aim is not to enter these debates here, but rather to highlight that ethnic minority group identification potentially has a bearing on one's sense of obligation to institutional authorities, which can impact on a willingness of groups to cooperate with the police in specific contexts. In the present study we also aim to test whether identity has a bearing on one's willingness to cooperate with the police in efforts to combat terrorism.

Ethnic sample and methodology

In this study we report results from a survey of Arabic-speaking people living in Australia. Arabic-speaking groups in Australia, particularly those from Lebanese and Sudanese backgrounds, have experienced increased vilification and police attention as a result of terrorism and voice a lack of trust in the police (Hebbani and McNamara, 2010; Poynting and Nobel, 2004; Poynting et al., 2004). Since September 11th 2001 Arabic-speaking communities in Australia have also reported increasing levels of concern about the impact of the 'war on terror' on their sense of belonging and acceptance by mainstream Australian culture. This has been heightened by both media and political commentary relating to their ethnic and religious identity and its association with militant Islam or Middle Eastern terrorist groups, such as Hezbollah (Aly, 2007; Hebbani and McNamara, 2010; Kabir, 2005; Poynting and Nobel, 2004; Poynting et al., 2004). Hence, Arabic speaking groups provide an ideal sample by which to test the relationship between procedural justice and support for counter-terrorism efforts.

The data reported here was part of a broader project examining police and ethnic group cooperation. The project sampled people from three different ethnic minority groups living in Brisbane and Melbourne, Australia. The groups were Vietnamese-,

Indian- and Arabic-speaking groups. The quota for the study was 900 participants, with 300 respondents drawn from each ethnic group across Brisbane and Melbourne (for more detail see Murphy et al., 2012).

A survey administration company specializing in the sampling of culturally and linguistically diverse populations administered the survey. They utilised an ethnic surname-based approach to generate the sample. This involved generating a list of the most common surnames found within each ethnic group. For the Arabic-speaking community 99 of the most common surnames were used (e.g. Abbas, Al Hassen, Ahmad, Bahar, Habib, Hassain, Mohammad, Omar, Sharif). The Electronic White Pages telephone directory was then used to randomly select participants with these surnames ($N=1800$). This method has been used in other large-scale surveys to sample hard to reach groups (e.g. the International Crime Victimization Survey, see Challice and Johnson, 2005) and has been shown to generate representative samples (Himmelfarb et al., 1983). However, it does have its limitations. For example, it excludes households that have unlisted phone numbers, or females from a targeted ethnic group who may have married outside of that ethnic group and have subsequently changed their surname. It can also under-represent recent immigrants (Himmelfarb et al., 1983).

Participants were contacted at random from the final list of 1800 names to produce a quota of 300 respondents in total. Only fixed land-line numbers were used to contact potential participants and five attempts were made before use of the phone number was discontinued. For the Arabic-speaking group in Brisbane, 534 households were contacted and 151 interviews conducted in total (response rate 28%). In Melbourne, 506 households were contacted, with 151 interviews completed (response rate 29%). Data from these 302 respondents are drawn upon here.

The survey itself was administered in the participant's own language, at the participant's home or at a place of their choosing. Participants were 18 years or older and interviews were conducted between September and December 2010. The interviews were conducted face-to-face with pen and paper and were approximately 50–65 minutes in duration. Remuneration in the amount of a \$50 gift voucher was offered to all participants who completed an interview.

Questionnaire and scale construction

For the purposes of the present study, only survey questions relevant to procedural justice, police legitimacy, law legitimacy, distributive justice, willingness to cooperate with police in crime control, willingness to cooperate with police in counter terrorism, ethnic group identity, and Australian identity were analysed. The Appendix presents a list of the items used to measure these concepts.

Procedural justice

Procedural justice was operationalised here via Tyler's (2006) four concepts of voice, fairness, respect and neutrality. The six items used to construct the procedural justice scale were measured using a five-point Likert scale (e.g. 'Police treat people fairly': 1 = strongly disagree to 5 = strongly agree), with a higher score indicating greater perceptions of procedural justice ($M=3.61$, $SD=0.81$, Cronbach alpha = 0.89).

Perceptions of police legitimacy

Police legitimacy has usually been measured through people's trust and confidence in police and their beliefs that authorities should be obeyed (Tyler, 2011). The five questions used to assess participants' perceptions of police legitimacy in this study assessed feelings of trust and confidence in the police (e.g. 'I have confidence in the police in my community'; 1 = strongly disagree to 5 = strongly agree); a higher score on this scale reflects higher levels of perceived legitimacy ($M = 4.03$, $SD = 0.69$, Cronbach alpha = 0.85).

Perceived legitimacy of the law

Our law legitimacy scale was based on three items adopted from Murphy et al. (2009). It assessed citizens' overall sense of obligation to the law and whether they thought the law reflected community values (e.g. 'The law is usually consistent with the values of the people in my community about what is right and wrong': 1 = strongly disagree to 5 = strongly agree); higher scores reflect those who see laws as more legitimate ($M = 3.88$, $SD = 0.73$, Cronbach alpha = 0.60).

Distributive justice

We also include two items related to distributive justice. Distributive justice is typically categorised as an instrumental dimension of policing with its focus on police performance, and refers to judgements about the distribution of police services across communities (Murphy et al., 2008). It was included to ascertain whether poor or favourable judgements about the distribution of police services across groups influenced willingness to cooperate with the police. It included two items (e.g. 'Police sometimes give people from specific racial/ethnic backgrounds less help than they give others': 1 = strongly disagree to 5 = strongly agree; reversed scored) ($M = 3.03$, $SD = 1.00$, Cronbach alpha = 0.61).

Cooperation with the police in general crime control

The general cooperation scale was taken from Murphy et al. (2008) and included four items designed to measure respondents' willingness to help the police (e.g. 'If the situation arose how likely would you be to help police to find someone suspected of committing a crime by providing them with information'; 1 = very unlikely to 5 = very likely). Those scoring higher on this scale were more likely to indicate they would voluntarily cooperate with police in typical crime control activities ($M = 4.27$, $SD = 0.71$, Cronbach alpha = 0.81).

Counter-terrorism cooperation

Cooperation in activities related to counter-terrorism included three items adopted from the work of Tyler et al. (2010). We asked respondents about the likelihood that they would engage in cooperative actions with the police to tackle terrorism (e.g. 'How likely would you be to go to police if you saw terrorist-related activity going on in your community': 1 = very unlikely to 5 = very likely). Those scoring higher on this scale

were more likely to indicate they would assist police in anti-terror activities ($M = 4.17$, $SD = 0.85$, Cronbach alpha = 0.82).

Ethnic group identity and Australian identity

Two identity scales were constructed which were based on work undertaken in the social psychology field (Haslam, 2004). Questions relating to the degree to which respondents identified with Australian society or their own racial/ethnic group were assessed. The 'Australian identity' scale assesses identity at the super-ordinate level of society. Those scoring high on this four-item scale place a high priority on identifying as Australian (e.g. 'I see myself first and mainly as a member of the Australian community') ($M = 4.27$, $SD = 0.66$, Cronbach alpha = 0.81). An additional scale assessed the level of identification respondents made with their respective ethnic/racial subgroup, and the importance they placed on being seen as member of that group – we have termed this the 'ethnic identity' scale (e.g. 'Within Australia, I see myself first and mainly as a member of my racial/ethnic group?') ($M = 3.65$, $SD = 0.91$, Cronbach alpha = 0.78). Higher scores on this scale indicate that respondents identify strongly with their own ethnic group.

Control variables

A number of variables were utilised in the analysis to control for individual differences. These included the age of the respondent ($M = 38.94$; $SD = 13.06$), their education level (1 = post-graduate degree to 9 = no schooling; $M = 3.13$; $SD = 1.49$), and the number of years since they had migrated to Australia ($M = 12.21$; $SD = 11.91$).

Results

Sample demographics

For our Arabic-speaking respondents 54 per cent were male and 46 per cent female. Sixty-five per cent of the sample were married, 30 per cent were in full-time employment, while 21 per cent identified as being a student and 17 per cent were in part-time work. The remaining identified as being engaged in home duties, retired, on a pension, sick or disabled or a sole parent. Thirty-eight per cent had a university degree or post-graduate qualification, while 19 per cent had a trade or technical certificate or diploma and 11 per cent had only completed high school. Twenty-five per cent earned an income of less than AUD\$20,000, while 20 per cent earned an income of \$20,000–39,000, 11 per cent earned an income of \$40,000–59,000, while 5 per cent earned an income between \$60,000 and \$79,000, with the rest of the sample earning an income above \$80,000. Finally, 57 per cent of the sample identified as Muslim/Islamic, 18 per cent as Christian, 3 per cent Catholic and the remaining identified as Orthodox, Druse or Atheists.

Factor analysis

A principal components factor analysis using oblique rotation was conducted to test for the dimensionality of the items used in this study. The scree plots and eigenvalues (7.40,

3.51, 2.58, 1.83, 1.63, 1.38, 1.22, 0.86, 0.83) for this analysis suggested that seven factors should be extracted, with inspection of the pattern matrix (see Table 1) supporting the scales that are described in the measures section. There was no cross-loading of items across different factors, although it should be noted that the general crime cooperation items and the counter-terrorism cooperation items did load onto the same factor. This has occurred given the items were used to assess the public's willingness to cooperate with police. Given that the two cooperation scales were to be utilised in the analyses as dependent variables, we retained the items as two separate scales: general crime cooperation and counter-terrorism cooperation.

Table 1. Principal components analysis, using oblique rotation differentiating items to construct the variables of interest.

Item	Factor						
	1	2	3	4	5	6	7
Police legitimacy							
I trust police	.79						
I have confidence in police	.78						
Police do a good job	.69						
Police are accessible	.55						
Respect for police is important	.42						
Procedural justice							
Police treat people with dignity		-.80					
Police are polite		-.78					
Police listen to people		-.77					
Police respect people's rights		-.73					
Police make decisions on facts		-.71					
Police treat people fairly		-.67					
Ethnic identity							
I see myself first as ethnic group			.91				
Important to be seen as ethnic			.88				
Proud to be ethnic			.69				
Australian identity							
Proud to be Australian				-.82			
I see myself mainly as Australian				-.77			
Australia is important to me				-.75			
Important to be seen as Australian				-.71			
Law legitimacy							
My feelings about right agree with law					.84		
Law consistent with comm. values					.75		
People should do what law says					.54		

(continued)

Table 1. Continued

Item	Factor						
	1	2	3	4	5	6	7
Distributive justice							
Police provide less help to minorities						-.85	
Police provide better service to rich						-.83	
Cooperation with police							
Educate people about danger of terror							.80
Go to police if saw terror activity							.80
Work with police to fight terror							.79
Assist police if asked							.78
Report dangerous activities							.70
Help police find offenders							.67
Call police to report crime							.50
Eigenvalues	7.40	3.51	2.58	1.83	1.63	1.38	1.22
Explained variance (%)	25	12	9	6	5	5	4

Note: Only loadings >0.35 are displayed. Due to space constraints in Table 1, full wording of items can be found in the Appendix.

Descriptive statistics

Table 2 presents the means and standard deviations for the measures used in this study. Table 2 shows that, on average, respondents reported being willing to report crime and terrorism-related activities to police. The high mean score on the police legitimacy scale also indicates that respondents generally viewed police as legitimate. The mean score of the law legitimacy scale suggests that respondents are more likely to question the legitimacy of the laws they are being asked to obey. The high mean score of the Australian identity scale suggests that respondents on average identified strongly with Australia, while the scores on the procedural and distributive justice scales indicate that police could do better in these areas.

Table 2 also details the bivariate relationships between the measures. Procedural justice was positively related to views about police legitimacy, law legitimacy and willingness to report crime and cooperate with police in anti-terrorist activity. Interestingly, ethnic identity was not related to people's willingness to cooperate with police in either general crime control or counter-terrorism, while Australian identity was. That is, those identifying more strongly with Australia were more likely to indicate a willingness to report both general crime and terror-related issues to police. Interestingly, Australian identity mattered more when it came to a willingness to report terrorism-related issues compared to willingness to report general crime. Furthermore, police legitimacy appeared to matter more for cooperating with police in general crime control than for counter-terrorism, while law legitimacy mattered more for people's willingness to report terrorism related issues.

Table 2. Means, standard deviations and bivariate correlations for all measures.

Measure	No. of items	M (SD)	1	2	3	4	5	6	7	8	9	10	11
1. Procedural justice	6	3.61 (.81)	–										
2. Police legitimacy	5	4.03 (.69)	.59***	–									
3. Law legitimacy	3	3.88 (.73)	.17**	.33***	–								
4. Distributive justice	2	3.03 (1.00)	-.19***	-.13*	.05	–							
5. Crime coop.	4	4.27 (.71)	.19***	.40***	.29***	.05	–						
6. Terrorism coop.	3	4.17 (.85)	.23***	.37***	.31***	-.08	.63***	–					
7. Ethnic identity	3	3.65 (.91)	.20***	.11	.05	.13*	.06	.04	–				
8. Australian identity	4	4.27 (.66)	.27***	.37***	.33***	.03	.32***	.43***	.23***	–			
9. Age	1	38.94 (13.06)	.04	.06	.09	.11	.16**	.11	.07	.21***	–		
10. Education	1	3.13 (1.49)	.15**	.17*	.15*	-.16**	-.02	.03	.10	.07	.00	–	
11. Migrate	1	12.21 (11.91)	-.18**	-.07	.09	.22***	.06	.01	.01	.13*	.54***	-.09	–

Note: All scales measured on a 1 to 5 scale. Higher scores on scales indicate more positive evaluations/greater willingness to cooperate. * = $p < 0.05$; ** = $p < 0.01$; *** = $p < .001$.

Regression analyses

One aim of this study was to ascertain whether the factors responsible for predicting people's willingness to engage with police in counter-terrorism would be similar or different to the factors that have been shown to explain people's willingness to cooperate with police in general crime control activities.

In order to address this aim two separate regression analyses were conducted. As can be seen in Table 3, the first regression analysis entered control variables at Step 1, procedural justice and distributive justice at Step 2, law legitimacy at Step 3, police legitimacy at Step 4, and Australian and ethnic identity at Step 5 of the analysis as predictors of willingness to cooperate with police in general crime control. The second analysis used these same factors as predictors of willingness to engage with police in counter-terrorism (see Table 4).

Table 3 shows that the control variables added very little for predicting willingness to cooperate with police in general crime control. It can be seen at Step 3 that those who viewed police as being more procedurally fair and perceived the law to be more legitimate were more likely to indicate that they would cooperate with police. However, when perceptions of police legitimacy were considered at Step 4, procedural justice and law legitimacy discontinued having a significant relationship with cooperation. Instead, it was police legitimacy that remained the sole predictor of willingness to cooperate with police. Sobel tests confirmed these mediation effects ($z = 4.91$, $p < 0.001$ and $z = 3.61$, $p < 0.001$, respectively). Finally, identity did not appear to play a role in predicting people's willingness to cooperate with police in general crime control. Rather, police legitimacy continued to be the sole predictor of willingness to collaborate with police. In other words, Arabic-speaking people in Australia are more willing to collaborate with police in general crime control if they see police as legitimate.

Table 4 demonstrates the factors that are predictive of people's willingness to collaborate with police in counter-terrorism activities. It can be seen that different factors

Table 3. Predictors of cooperation with police in general crime control.

Predictor	Step 1 β	Step 2 β	Step 3 β	Step 4 β	Step 5 β
Age	.18*	.14	.12	.12	.11
Migration	-.04	.00	-.02	-.03	-.04
Education	-.01	-.02	-.05	-.08	-.09
Procedural justice		.24***	.21**	-.05	-.06
Distributive justice		.07	.06	.08	.07
Law legitimacy			.24***	.12	.11
Police legitimacy				.45***	.40***
Ethnic identity					.01
Australian identity					.12
R ²	.03	.08	.13	.24	.25
R ² change	.03	.06	.05	.11	.01
F change	1.87	6.61**	12.83***	30.56***	1.54
df	3, 218	2, 216	1, 215	1, 214	2, 212

* $p < 0.05$; ** $p < 0.001$; *** $p < 0.001$.

Table 4. Predictors of cooperation with police in counter-terrorism activities.

Predictor	Step 1 β	Step 2 β	Step 3 β	Step 4 β	Step 5 β
Age	.07	.05	.03	.03	-.01
Migration	-.02	.04	.01	-.00	-.03
Education	.04	.02	-.02	-.06	-.05
Procedural justice		.19**	.14*	-.09	-.09
Distributive justice		-.04	-.05	-.04	-.06
Law legitimacy			.30***	.20**	.15*
Police legitimacy				.40***	.26**
Ethnic identity					-.05
Australian identity					.36***
R ²	.01	.04	.13	.21	.31
R ² change	.01	.04	.08	.09	.09
F change	.40	4.29*	20.38***	23.42***	14.10***
df	3, 217	2, 215	1, 214	1, 213	2, 211

* $p < 0.05$; ** $p < 0.001$; *** $p < 0.001$.

explain willingness to cooperate in counter-terrorism, when compared to the factors predicting willingness to cooperate in general crime control. Similar to cooperation in general crime, it can be seen that both procedural justice and law legitimacy also predicted willingness to collaborate with police in counter-terrorism (see Step 3).

However, at Step 4 perceptions of police legitimacy mediated the effect of procedural justice on cooperation in counter-terrorism (a Sobel test confirmed this mediation effect, $z = 4.41$, $p < 0.001$). Perceptions about the legitimacy of the law continued to predict cooperation in counter-terrorism.

In the final step of the analysis, it was found that identity factors played a very important role in predicting Arabic-speaking people's willingness to cooperate with police in counter-terrorism. People's perceptions of police legitimacy and law legitimacy continued to be important predictors, but Australian identity became the main predictor of people's willingness to engage with police in counter-terrorism. Specifically, compared to cooperation in general crime control, those who identified more strongly with being Australian were much more likely to cooperate with police in counter-terrorism.

Discussion and conclusion

The aim of our study was to examine whether procedural justice would have a similar effect for promoting ethnic minority group cooperation in counter-terrorism policing, as it has for promoting cooperation with police in general crime control. Also of interest was how perceptions of police legitimacy, law legitimacy and identity influenced these effects. The results showed that for our Arabic-speaking group, willingness to cooperate with the police in typical crime control activities was predicted predominantly by judgements of police legitimacy. This reflects a standard finding from procedural justice research (Sunshine and Tyler, 2003). Identity factors had no effect on willingness to cooperate. Interestingly, perceptions of law legitimacy played little role in predicting collaboration in crime control when people's perceptions of police legitimacy were taken into account. When it came to cooperation in counter-terrorism policing, different results emerged. Police legitimacy again mediated the effect of procedural justice on cooperation in counter-terrorism, but perceptions about the legitimacy of the law continued to be one of the most important predictors of counter-terrorism cooperation. Also, group identity was extremely important, with respondents identifying strongly with Australia being more likely to work with police to tackle terrorism.

Taken together, these findings are important because they suggest that the key way in which authorities can engage Arabic-speaking people in counter-terrorism efforts is to ensure that: (1) the police act in ways that build their legitimacy; (2) social connection is fostered with Western society so that minority groups come to identify strongly with the ideals and values of the country in which they reside; and (3) counter-terrorism laws and policies are developed that are seen to be legitimate by the groups that are targeted by them. These strategies are quite different to those that are needed to promote cooperation with police in general crime control. The key to fostering cooperation in general crime control among Arabic-speaking groups is to improve perceptions of police legitimacy. We know from past research, and from the results presented in Table 2, that this can be achieved simply through treating citizens with procedural justice.

There are limitations with the current study. It would be important to know whether this study's findings translate to other groups such as those of Pakistani and Indonesian origin, who have also been targeted by counter-terrorism policing due to their Islamic faith and its association with Islamic-inspired terrorist acts, for example the Bali

bombings or the 7/7 London attacks. We did not compare outcomes across the two cities from which the Arabic speaking sample was drawn. It may be the case that attitudes towards the police and laws they enforce, and also a sense of identity with the dominant culture, vary across Brisbane and Melbourne. Such variations may reflect relative successes of government and community integration and assimilating strategies, including efforts by police in different jurisdictions to engage minority groups in cooperative crime control efforts.

Second, the survey only tapped a limited number of activities that people can potentially engage in to help police tackle terrorist threats. It was limited to three measures of counter-terrorism cooperation. Activities not assessed can also include providing information to the police about suspected terrorist-related activities, educating people about the dangers of terrorism and religious extremism, publicly repudiating terrorism, and alerting the police about the commission of terrorist acts. For some groups a willingness to cooperate with the police in the counter-terrorism context may vary according to the nature of the cooperative activity. It is possible that procedural justice may be more or less important in encouraging cooperation in counter-terrorism depending on the type of cooperative action that is desired or being encouraged, and the levels of perceived risks it presents to the individual. Future research should consider this issue, because understanding the circumstances under which groups are willing to assist the police is relevant to the design of counter-terrorism policies. It can help identify areas where greater levels of engagement and assistance may be necessary.

Another potential limitation is our measure of 'law legitimacy'. This was based on a global measure, underpinned by normative judgements relating to a sense of obligation to follow the law and whether the law reflects community values. While a statistically reliable measure, it does not capture more specific attitudes to counter-terrorism laws operating in a respondent's country. Hence, it might be useful for future studies to make a distinction between global and specific measures of law legitimacy.¹ Global measures relate to broad views about the law (i.e. what we have defined as feelings of obligation to obey the law or laws reflect community values), while specific measures relate to the legitimacy of particular laws (e.g. judgements about the fairness and scope of laws that allow police to detain terror suspects without trial, conduct surveillance of citizens, tap telephone conversations and outlaw groups deemed a terrorist threat). It may be the case that some communities report an obligation to obey the law, but reject specific laws related to counter-terrorism.

Our results while tentative do show there are potentially different factors that influence willingness to cooperate in counter-terrorism, compared to common crime control activities. It may be the case that for some minority groups, the factors influencing the perceived legitimacy of the police and the legal system are very different compared to majority groups (Brunson and Miller, 2006; Cherney and Murphy, 2011; Lambert, 2011; Murphy and Cherney, 2012; Weitzer, 2006). Law legitimacy may have greater salience for Arabic-speaking communities who have been portrayed and targeted, often unwittingly, as a potential threat due to the war on terror, with laws evoked in response. When coupled with political and media rhetoric relating to 'ethnic crime waves' and episodes of police racism (Poynting et al., 2004), lower confidence and trust in the police and the law will be inevitable. In such contexts identification with one's ethnic/cultural group can be more salient for Arabic-speaking communities, who see it as important to maintain their

traditions and faith in response to constant attacks that question their commitment to Australian values or legal rules. In such circumstances this could reduce their identification with the country in which they reside. One consequence is a withdrawal of consent to defer to legal authorities and hence they withhold cooperation.

The results provide insights into the design and implementation of counter-terrorism policies and laws. They show that police need to adopt a 'hearts and minds' policing approach to counter-terrorism (Lambert, 2011). This would emphasise displays of fairness, based on a willingness to engage in meaningful dialogue with relevant groups that sends a clear message they are respected by the police and will be listened to. For Muslims and other ethnic communities, such action can be particularly important, because while they may clearly reject the ideological justifications groups such as Al-Qaeda or its affiliates use to defend their activities, they can still resent and thus resist counter-terrorism policing. This is because counter-terrorism policing can be seen as being based on religious and racial stereotyping, rather than on actual risks that community members present a terrorist threat (Lambert, 2011; Pickering et al., 2008). This though is only part of the response because, as our results show, acting fairly, while important, can potentially have little effect if the laws underpinning police action are judged as illegitimate. Hence, effective counter-terrorism policing is not simply about ensuring the police act in ways that elicit community cooperation, thus improving their ability to pre-empt terrorism, but is also about whether the legal instruments the police use are seen as legitimate.

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Notes

1. This is similar to the distinction made in the policing literature relating to global and specific measures of trust in the police (see Hawdon, 2008).

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Appendix: Survey questions

Procedural justice

- Police treat people fairly
- Police treat people with dignity and respect
- Police are always polite when dealing with people
- Police listen to people before making decisions
- Police make decisions based on facts, not their personal biases/opinions
- Police respect people's rights when decisions are made

Distributive justice

- Police sometimes give people from specific racial/ethnic backgrounds less help than others
- Police provide a better service to the rich than to the average citizen

Police legitimacy

- Overall, I think that police do a good job in my community
- I trust police in my community
- I have confidence in the police in my community
- Police are accessible to people in my community
- Respect for police is an important value for people to have

Law legitimacy

- People should do what our laws tell them to do even if they disagree with them
- My own feelings about what is right and wrong generally agree with what the law says
- The law is usually consistent with the values of the people in my community

Cooperation with police – general crime control

If the situation arose, how likely would you be to:

- Call police to report a crime
- Help police find someone suspected of committing a crime by providing information
- Report dangerous or suspicious activities to police
- Willingly assist police if asked

Cooperation with police – counter-terrorism

How likely would you be to:

- Work with police to educate people in your community about the dangers of terrorism
- Encourage members of your community to cooperate with police efforts to fight terrorism

- Go to police if you saw terrorist activity going on in your community

Ethnic identity

- I see myself first and mainly as a member of my racial/ethnic group
- It is important for me to be seen by others to be a member of my racial/ethnic group
- I am proud to be a member of my racial/ethnic group

Australian identity

- I see myself first and mainly as a member of the Australian community
- It is important for me to be seen by others to be a member of the Australian community
- I am proud to be an Australian
- What Australia stands for is important to me