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Assembly



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Contextualising Stop and Search in Northern Ireland

As an initial point of comparison, Northern Ireland possesses almost identical stop and search powers and Codes of Practice to those of England and Wales in terms of the Police and Crime Evidence (Northern Ireland) Order 1989 (PACE) and the Misuse of Drugs Act 1971 (MDA) (c.f. Dickson, 2013). In turn, the volume, proportionality and arrest rates related to stop and search are therefore legitimate points of analysis (Scotland is of course governed by yet another legal framework, rendering such comparisons slightly more difficult). However, while in England and Wales almost all (currently over 99%) stops/searches are conducted under 'normal', PACE-type powers, in Northern Ireland only 70% of stops are carried out under such everyday powers (Hargreaves *et al.*, 2017; PSNI, 2017b). The remaining 30% are conducted under the Terrorism Act 2000 and the Northern Ireland-only Justice and Security (Northern Ireland) Act 2007 (JSA). While the use of terrorist-related powers comprises a stark contrast with England and Wales (Hargreaves *et al.*, 2017), it is not the intention to meld the analysis of terrorist and 'normal' (PACE-type) stop and search powers into a single and potentially muddled profile.

Rather, this policy brief focuses deliberately upon 'ordinary' stop and search powers used by PSNI precisely because it is those powers which have (arguably) failed to come under the purview of the police (or public) oversight in the country. In stark contrast to the voluminous research dedicated to counter-terrorist powers utilised during the conflict and post-conflict periods of the jurisdiction (c.f. Hillyard, 1988; 1994; McGovern and Tobin, 2010; McVeigh, 1994; Seymour, 2017), it is precisely the absence of policy or academic attention directed at PACE-type stop and search which merits further investigation. This relative invisibility has, in a way both like and unlike the situation in Scotland before the ground-breaking research of Murray (2014b), persisted in the face of evidence of a recurrent problem with the use of stop and search in Northern Ireland. Not once has the power been referenced in the past decade of policing plans set forth by the Northern Ireland Policing Board (NIPB). But over the same period (2004/5 – 2015/16) use of stop and search in Northern Ireland increased by 74%, and it is now used here at a significantly higher rate than in England and Wales or Scotland (Bradford, 2017; Hargreaves, Husband and Linehan, 2017; PSNI, 2017b; Murray and Harkin, 2017).

Consideration of such 'ordinary' stop and search powers by PSNI can usefully start with the 'importation' of PACE into Northern Ireland. While the political, civil and cultural context in the country in 1989 bore little resemblance to that in England and Wales, the underpinning police organisational 'currency' of stop and search in terms of its efficacy has remained as a remarkable constant over the years (Bradford & Loader, 2016). The PSNI still adhere to the inherently 'deterrent' notion of PACE-type powers to stop and search citizens (in spite of its technically investigative basis), where the power is construed as a multi-purpose tool to respond to almost any 'street-level' criminogenic circumstance (Bradford, 2017). Further tying notions of stop and search to general purpose, PSNI also link the power to their indeterminate duties and police powers set out in section 32 of the Police (Northern Ireland) Act 2000 centred on protecting life and property; preserving order; and

preventing the commission of offences (PSNI, 2017a). Yet in spite of the virtually identical nature to these 'normal' stop and search powers, and the vast research and policy focus in England and Wales over three decades (Bradford, 2017), the situation in Northern Ireland remains conspicuous by virtue of an absence of attention.

The Use of Stop and Search

It is notable that the overall use of stop and search in England and Wales has dropped from a peak of 1.2m in 2010/11 to 303,845 per year up to 2016/17, with stop and search presently averaging 5 per 1000 population for England and Wales (Hargreaves *et al.*, 2017; Keeling, 2017). While underpinned by a differing legal regime, stop and search in Scotland has also reduced from a peak of 64 per 1000 in 2010 to approximately 9 per 1000 over the same period (c.f. Lennon and Murray, 2016; Police Scotland, 2017). Indeed, the question of 'how much' stop and search needs to be undertaken remains a moot point, especially in view of recent debates on violence in London (Aitkenhead, 2018). By contrast, PSNI's use of the power has remained (almost) entirely static over the past five years, at an average of approximately 31,000 stops per year. Including *both* PACE and terrorist related stops, for a population of 1.8m, this translates into a stop rate of 18 per 1000 of population per year. And stripping out the terror-related stops, PACE-type stops are happening at an annual rate of approximately 13 per 1000 – in other words, the rate of stop and search conducted under 'normal' (non-terror related) legislation in Northern Ireland is over twice the *total* rate for England and Wales; and 50% greater than Scotland.

This data underlines a longer-term picture, that PACE-type stop and search has seemingly become an increasing, and unquestioned 'policing fact' in Northern Ireland for nearly 30 years (Murray, 2017). Yet context to the use of identical PACE-type powers remains distinct from the ideological and political climates of England and Wales – generated by moral panics and ensuing discrimination (Hall *et al.*, 1978; McPherson, 1999), or Conservative/New Labour 'law and order' politics (Garland, 2001) – which provided a platform for the growth and expansion of such powers during the 80s, 90s and 00s (Bradford, 2015; 2017). The climate of 'normal' stop and search in Northern Ireland has instead marked by an *absence* of meaningful regulation, oversight and indeed much debate or political attention, at all (Topping, 2017).

Murray & Harkin (2017) have recently argued that 'cold' and 'hot' climates can allow the growth of police practices such as stop and search, on the one hand, or generate political attention that exerts downward pressure, on the other. It may be considered that the term 'cool' can be substituted with 'favourable' insofar it denotes a policing environment of low scrutiny or political interest around the issue of stop and search. It is on this account anomalous that the 'hyper-accountable' policing system in Northern Ireland – as a generally 'hot' policing climate – has allowed the levels of stop and search described above, to flourish (Topping, 2016).

Targeting the Power(s)

By far the most intractable problem with stop and search in England and Wales – and indeed with cognate practices such as stop and frisk in the United States – are of course ethnic disproportionalities in the experience of the power (Ariza 2014; Bradford 2017; Delsol and Shiner 2015; Weber and Bowling, 2008). This appears to be much less of an issue in Northern Ireland, possibly for the reason that the ethnic minority population in the country is very small in proportion – at 1.8% - compared to that of the dominant white population of 1.8m (NISRA, 2012); and the fact the correspondence between ethnic minority status, class and marginalization is complicated by the deeply embedded distinctions between the two main – Protestant and Catholic – communities (c.f. Shirlow and Murtagh, 2006). This does not mean, however, that the burden of stop and search falls equally across the Northern Irish population; nor is it to suggest that ethnic disproportionality to stop and search does not exist at all (although public figures are not available). However, the most recent dataset released from PSNI does suggest a picture of uneven and indeed disproportionate use of the power – particularly in relation to age and gender (FOI-2016-01181).

There exists in fact over a decade of research highlighting this issue in Northern Ireland, which has been largely 'unnoticed'. This body of research has demonstrated repeated, arbitrary and potentially illegal use of the stop and search against young males in socio-economically deprived areas of Northern Ireland (McVeigh, 1994; Hamilton *et al.*, 2003; NIPB/ICR, 2005; Roche, 2005; Nelson *et al.*, 2010; McAlister, Scraton & Haydon, 2011; Committee on the Administration of Justice, 2012; NIPB, 2013; The Detail TV, 2017). Children (under 18) comprised 17% of all PSNI stop/searches under PACE-type powers in 2016/17, and based on current population estimates young males aged 15-17 being stopped at a rate of approximately 82 per 1000 of population (PSNI, 2017b). With, for example, 40% of children in North Belfast claiming to have been stopped by PSNI 'for no reason', and 38% of children more generally in the country reporting 'disrespectful' behaviour when encountering the police, the current picture of stop and search would point to parallels with a pre-reform Scottish style of proactive policing focused on targeting a young, suspect population (NIPB / Institute for Conflict Research, 2005; Nelson *et al.*, 2010; Murray & Harkin, 2017). This situation remains particularly at odds with the much lauded 90% confidence in PSNI achieved through the Northern Ireland Policing Board (NIPB) Omnibus Survey for 2017 (NIPB, 2017).

This wider research over the past decade is also substantiated by the most recent, nationally representative 2018 Young Life and Times Survey (YLTS). Using a dedicated module related to the direct and indirect experiences of 16 year olds in regard to PSNI stop and search practice, at the time of writing, preliminary figures point to the fact on the one hand, 77% of 16 year olds understand that stop and search use against them must have a lawful basis (there must be a reason). Yet on the other hand, in 69% of stop and search experiences recalled by participants in the YLTS, no clear reason was given by the officer; in 88% of cases the officer did not provide their name or station; and in 90% of cases, no receipt or reference number was provided¹. Thus, a disconnect between the principles and the practice of stop and search would appear to exist.

It may be seen that PSNI's overall arrest rate for stop and search sits at just 6%, falling to 3% in some of districts, in stark contrast to the arrest rate of 17% for England and Wales (Hargreaves *et al.*, 2017). A frequent rebuttal to these arrest rates centres on the fact the 6% arrest rate encompasses *both* PACE-type and terrorist related powers. Setting aside the separate legal regime for terrorist stops under the Justice and Security (NI) Act 2007 which have an arrest rate of below 1%, it remains that 75% of all non-terror, 'everyday' stops are in fact conducted under the Misuse of Drugs Act 1971 specifically – which themselves have a 5.7% arrest rate (PSNI, 2017b). Furthermore, with all of PSNI's eleven policing districts defined by overall arrest rates below that of England and Wales (with three districts at 3%), it is evident that a 'gap' exists between the object and outcome of stop and searches, raising additional questions related to the application of 'reasonable suspicion', as the legal test to initiate use of the power.

It is further significant that approximately 33,000 children have now been subject to the power between 2010/11-2017/18. Yet in 2016/17, just 5.0% of such stops resulted in further action even where items are found (arrest, caution, community resolution or report to PPS – PSNI, 2016 FOI-2016-01181). While the location of stop and search by PSNI is not available finer granularity than district level, the evidence available over the years points to the fact it is predominantly located in urban, socio-economically deprived communities (Hamilton *et al.*, 2003; NIPB/ICR, 2005; Roche, 2005; Nelson *et al.*, 2010; McAlister, Scraton & Haydon, 2009; Committee on the Administration of Justice, 2012; The Detail TV, 2017).

The lack of substantive or coordinated age-related monitoring of PSNI's PACE-type stop and search powers is typified by the fact PSNI since 2011 have provided restricted quarterly stop and search statistics by age to the NIPB, yet the use of the power against young people has not been seen as problematic by the main statutory oversight and monitoring body (NIPB, 2013). And in response to the recent focus on use of stop and search against children, PSNI have clearly stated: 'We have process in place to ensure stop and search powers are used properly, legitimately and proportionately in preventing and detecting crime' (The Detail TV, 2017). The existence of regulatory oversight, however notional this in practice, is thus used to defend the way the power is used.

With the general evidence pointing to high levels of use, poor outcomes in terms of arrest rates, and the targeting of marginalised young males, stop and search thus represents a fundamentally embedded and 'unchanged' way of policing for PSNI over the past decade, where use of the power reflects the actuarial traits from which police in Scotland, England and Wales have, arguably, tried to extricate themselves in recent times (Murray, 2014a). This picture is bolstered by the growing body of empirical evidence that suggests the disruptive and/or deterrent effect of stop and search is, at best, marginal (McCandless *et al.* 2016; Penzer 1999; Smith *et al.* 2012; Rosenfeld and Fornango 2014). Stop and search can be a useful part of hotspots and other highly targeted interventions, but evidence for its *general* or widespread utility, and against entire crime types, remains markedly lacking (Tiratelli *et al.* 2018; Weisburd *et al.* 2015).

While a definitive answer to the question of whether stop and search is 'effective' has yet to be forthcoming, the tenuous nature of any evidence for its efficacy in 'fighting crime' suggests for PSNI, in an again familiar manner to other jurisdictions, that the power fulfils some *other* role or purpose. With strong evidence of disproportional use against young males and poor arrest rates, the logical inference is that factors *beyond* crime-fighting 'success' are driving the use of stop and search within the organisation (Bradford & Loader, 2016; Ward *et al.*, 2011).

If PSNI's use of the power at current rates has thus failed to gain visibility within what is regularly hailed as the 'global gold standard' of police accountability architecture; or is held against the United Nations Convention on the Rights of the Child inscribed into its own PACE Code of Practice A; the non-discrimination provisions in section 75 of the Northern Ireland Act 1998; and PSNI's current code of ethics which mandates that any discriminatory practice must be justified, it suggests that new policy approaches should be considered to guide its use; and new mechanisms put in place to monitor effectiveness.

The Effect of Stop and Search

¹ Full results from the Young Life and Times Survey are expected to be available by the end of May 2018 at: <http://www.ark.ac.uk/ylt/>

A key objective for policing in Northern Ireland over the past fifteen years of PSNI's existence has been the need to establish the legitimacy of, and public support for, the organisation – to build trust and cooperative relations across the sectarian divides – and particularly with communities previously distanced from the state policing apparatus (c.f. Ellison, 2007; Mulcahy, 2006; Topping, 2008a; 2008b; 2015). Yet a question seldom asked, relates to the potentially subtle, corrosive effect of stop and search – as an 'everyday' practice – upon that very community trust and legitimacy, and especially on the 94% for whom the practice results in no outcome. With stop and search having risen consistently over the past ten years, it is a moot point as to why those socio-economically deprived areas in Northern Ireland where stop and search is clustered *would not* exhibit traits of dissatisfaction and distrust in the police where the power is overused, as seen in England and Wales over nearly three decades (Campbell, 2017; McAra & McVie, 2005; Murray, 2016; Shiner & Delsol, 2015).

In turn, it is in these areas where young males may fuse the practical reality and experiences of stop and search with the history and politics of policing in the country, to develop and reinforce distinctively anti-police beliefs, ideologies and identities (McAlister, Scraton & Haydon, 2009). A 'ratchet effect' is thus created, whereby interactions have a greater propensity to be confrontational; while cooperation and information flows to police are reduced. Stop and search therefore becomes one of the few ways for police to engage with that population (Hardcourt, 2004). This argument is in part, substantiated through PSNI's internal Youth Justice Policy, which, while alluding to child-friendly approaches as part of the power, states that stop and search should be used as an 'opportunity' to build a relationship with children (PSNI, 2017c).

The potential negative effects of stop and search against young people are well documented in evidence (e.g. Bradford 2017; Flacks, 2017; Wiley & Esbenson, 2016). Yet Northern Ireland remains as a unique location when considering the iatrogenic effects of the power (Bowling & Marks, 2015). Evidence pointing to the fact that stop and search has the effect, on average, of undermining trust and legitimacy is rendered particularly salient in a context marked by long traditions of violent and non-violent self-help collectivism (Brewer, 2001; Topping & Byrne, 2012b; 2016). Individuals who invest less legitimacy in the police may be more likely to engage in self-help violence and 'street justice' (Black, 1998; Home Office Select Committee, 2007). And recent research from Northern Ireland has moreover, demonstrated that hostile and confrontational styles of policing, such as that associated with stop and search, can actually lead to violence *against* the PSNI (Byrne *et al.*, 2013).

Finally, with developmental psychology pointing to the normality among adolescents of characteristics such as defensiveness, aggressiveness and 'acting out', teenagers may be more vulnerable to police stops where they fail the police 'attitude test' (Flacks, 2017). Policing done to, rather than with children, as with stop and search, thus becomes an issue whereby this very intervention may serve to embed the behaviours it is intended to prevent. Particularly in regard to vulnerable sub-sections of children and young people, the potential wider harm of stop and search is brought into sharp refrain by the fact 20% of young people in Northern Ireland will suffer significant mental health problems by 18 (DHSSPS, 2015; Wilson, 2016)

The (In)visibility of Stop and Search Powers

As a relatively 'unseen' policing practice within the police oversight mechanisms in Northern Ireland, so too the issue of 'where' stop and searches are happening remains a key condition for the (in)visibility of the power. Politics and history aside, Northern Ireland remains similar in terms of patterns of poverty and social exclusion to England and Wales (Shirlow & Murtagh, 2006; Child Poverty Alliance, 2014). There are marked pockets of deprivation, distinct from surrounding areas, further identified by the ethno-religious segregation across the country (Wilson, 2016). With young people as symbolic of anxieties about street crime, deviance and anti-social behaviours (McAlister, 2011; McAra & McVie, 2005), the physical areas in which 'suspect' young people live, remain underpinned by range of factors such as low socio-economic status, truancy, use of public space for 'hanging out', previous police contact, lower educational attainment, unemployment, living in social housing and health problems – all linked to the increased statistical propensity of an individual being stopped by the police (Bradford, 2017; McAra & McVie, 2005; Murray, 2014a).

As the structural basis for the 'availability pool' of 'usual suspects', these geographic areas and communities may further be redefined as 'stop zones' – where most stop and searches *actually* happen (Bowling & Phillips, 2007). Conversely, young people living in more middle class areas are not subject to police attention to the same extent – in turn meaning that: 'those people who do not live in, or travel through a 'stop zone' are judged unavailable', or perhaps unsuitable, for stopping (Ibid: 947). While stop and search figures to postcode-level are not available to conclusively substantiate this picture in Northern Ireland, the wider evidence suggests, that to a significant extent, the invisibility of the power is fostered by this socio-economic division (Hamilton *et al.*, 2003; NIPB/ICR, 2005; Roche, 2005; Nelson *et al.*, 2010; McAlister, Scraton & Haydon, 2011; Committee on the Administration of Justice, 2012; NIPB, 2013; The Detail TV, 2017.

Set within this context, another factor related to the (in)visibility of stop and search centres on the issue that use of the power may not so much deviate from the law or civil liberties *per se*, but that those rights (and particularly young people) are potentially limited in the first place – especially where evidence shows young people often feel there is no option but to submit to stop and search practices where the powers are already used pervasively, and recourse to effective remedy is limited (Bradford, 2017; HMIC, 2013; Lennon & Murray, 2016; Murray, 2014a; Loader, 1996; Quinton, Tiratelli and Bradford, 2017).

What is Stop and Search being used for?

The evidence points to the fact that as elsewhere, stop and search in Northern Ireland is generally ineffective in controlling crime, is disproportionately directed at marginalised young males in society, and generates significant tension between police and, at the very least, those regularly singled out for this kind of police attention. As a basic policy issue, and in view of the evidence, a broad question raised relates what precisely is stop and search being used 'for' by PSNI?

In returning to the core of this policy brief, stop and search exists as the most common adversarial contact between the public and the police in Northern Ireland. On the one hand, the relative symmetry to the use of stop and search by PSNI set against the asymmetrical policing environments of the United Kingdom and the United States for example, may be viewed with tentative optimism insofar as this 'ingrained' way of 'doing policing' can be subject to constructive challenge where potentially problematic usage patterns are rendered visible, reassessing not just the question of 'how much', but questions of 'where' and under what conditions it is most effective.

On the other hand, that within one of the most overseen and human rights compliant policing jurisdictions in the western world (Topping, 2016), it should be a concern for the Department of Justice and Northern Ireland Policing Board that the basic power to stop and search, as espoused through PACE and the MDA, has the capacity to evade scrutiny; is seemingly immune to (the lack of) evidence of effectiveness; and remains blind to the damaging impact the power has on police-community relations – and especially so with young people (Bradford, 2017). As police 'behaviour' which can be modified, altering the trajectory of stop and search usage by PSNI, as witnessed elsewhere in the U.K over the past number of years (Travis, 2014), will require not just additional technical scrutiny, but perhaps more wholesale attitudinal change with regard to its use – to appreciate not just the limitations of the power itself, but potentially damaging effects to and upon wider police-community relations. As the collective evidence would suggest, PSNI, like so many other police services before them, continue to use stop and search extensively because the internal organisational, and externally accountability environments foster an unassuming belief, that the power simply 'works' (Bradford, 2017).

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