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The Proactive Turn:

Stop and Search in Scotland

(A study in elite power)

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Declaration

I declare that this thesis is of my own composition, based on my own work, with acknowledgments of other sources, and has not been submitted for any other degree or professional qualification other than that for which it is presently submitted, which is for a PhD in the College of Humanities and Social Science at the University of Edinburgh.

The interpretations and conclusions presented in the thesis are entirely my own, and do not necessarily represent the views of, and should not be attributed to, the Scottish Government, the Scottish Centre for Crime and Justice Research or the Scottish Institute for Policing Research.

Katherine Murray
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Abstract

This study examines the development of police stop and **s**earch in Scotland from the post-war period onwards. The aim is to explain the remarkable scale of stop and search, the attendant lack of political or academic engagement prior to the formation of the single service in in April 2013, and to draw out the implications, both for policing and the public.

The thesis takes a top-down perspective which seeks to explain the policing direction in terms of elite outlooks and decision-making over time. It is argued that search rates in contemporary Scotland can be explained in terms of an incremental shift in the way that the tactic has been conceptualized by political and policing elites. Specifically, it is argued that the post-war construct of stop and search as a *reactive* mechanism premised on investigation, detection and the disruption of crime, has been displaced by a *proactive* model, premised on intensive, risk-based stop and search activity. It is argued that this shift has partly attenuated the link between stop searches and suspicious behaviour by introducing *non*-detection as a measure of successful deterrence, alongside the traditional aim of detection. In short, it is argued that stop and search has been remodelled as a tactic that can be legitimated irrespective of the outcome. The thesis will show how this shift has progressively weighted the balance between crime control and individual freedom in favour of the state, and weakened the rights of the individual, with minimal regard for procedural protection and human rights.

The thesis employs a wide range of data sources and methodologies to investigate the core argument, which is developed from three interrelated positions. First, taking a historical perspective, the thesis examines elite sensibilities and decision-making in relation to stop and search from the early 1950s, through to the early 2000s. Next, the thesis adopts an empirical position to investigate the use of stop and search between 2005 and 2010, and shows how search activity on the street reflected dominant outlooks higher up the ranks. Finally, the thesis adopts a normative perspective in order to assess the ethical implications of stop and search practice in Scotland, and to develop a series of informed recommendations for policy and practice.

Prologue

‘I am not concerned with police investigations after a crime has been reported, or with circumstances which suggest that the individual who has been stopped may be doing something illegal. My problem is this: no crime has been reported, no suspect has been described, there is no visible sign of an offense, there is nothing whatever to direct police attention to this particular individual. I am concerned with what is called preventive police work.’
(Reich, 1966; 1162)

“*They know the story, they know the script. The people we deal with, no problem.*”
(Sergeant, Lothian and Borders)

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Key definitions

This section sets out some of the key definitions and terminology used in the thesis. An additional list of abbreviations is provided in **appendix one**.

Stop and search

The power to stop and search in Scotland is legislated for across a range of statutes. Stop and search may also be carried out on a non-statutory basis (see below). The tactic is defined in 'working' rather than legal terms, as 'any encounter between a Police Officer and a member of the public, which results in that individual being searched for the purpose of obtaining evidence' (Scottish Police Training College, 2010a: 1, Police Scotland, 2013a: 3).

In practice, police stop and search data captures searches carried out on individuals on foot and in vehicles. A 'stop and search' does not refer to searches executed under warrant; searches of individuals who have been detained, arrested or are in custody; searches at sporting/entertainment events when search is a condition of entry; or searches of vehicles carried out for the purpose of vehicle examination or investigation of road traffic offences.

Non-statutory stop and search ('voluntary' or 'consensual' stop and search)

A non-statutory stop and search is premised on verbal consent and does not require reasonable suspicion. Scotland is the only jurisdiction in the UK which permits officers to stop and search on a non-statutory basis. Prior to the formation of the single service in April 2013, non-statutory stop searches were typically referred to as 'voluntary' and defined as follows:

> 'Any physical search undertaken by a police officer where the individual subjected to the search freely gives verbal consent.' (Scottish Police Training College, 2010b; 6).

Post-reform, non-statutory stop and search was rebadged as 'consensual' (for example, in training literature and press reports), and described as follows:

> 'A consensual search is appropriate where there is insufficient suspicion for a legislative search. This is a tactic used by the police during routine engagement with members of the public and should be conducted in a positive, amiable and professional manner. Where an officer wishes to conduct a consensual search on a person who is not acting suspiciously, nor is there any intelligence to suggest that the person is in possession of anything illegal, then this search is consensual and the officer must ask the subject if they can search them.'
> (Police Scotland, 2013a; 8)

More recently, the definition has been truncated, and at the time of writing is defined thus:

> 'A consensual search is one that is conducted by a Police Officer in the execution of their duty with the consent of the individual being searched. The search will be undertaken in line with their general police duties for the purpose of keeping people safe.'
> (Police Scotland, 2014b; 5)

Police reform and the legacy forces

On 1 April 2013, the *Police and Fire Reform (Scotland) Act 2012* brought together Scotland's eight police services into a single police force: the 'Police Service of Scotland', more commonly referred to as 'Police Scotland'. The fieldwork for this study was conducted prior to the merger (between 2010 and 2013) and for the most part relates to the eight 'legacy' forces. An overview of developments in relation to stop and search in the post-reform period is provided in chapter nine (section 9.3).

Central Belt and non-Central Belt legacy forces

The thesis makes an important distinction between policing approaches in the Central Belt legacy forces and the non-Central Belt legacy forces. This distinction will be discussed in detail in chapter five, however for advance reference, the four Central Belt legacy forces are Strathclyde, Lothian and Borders, Fife and Central; and the four non-Central Belt forces are Northern, Grampian, Tayside and Dumfries and Galloway.

Chapter 1. Introduction

1.1 Background

From the 1970s onwards, an extensive body of academic research has engaged with police use of stop and search powers in England and Wales, which remains one of the 'most contentious aspects of British policing' (Bowling and Phillips, 2007; 936). This sense of controversy can largely be attributed to the persistence of racial disproportionality in the patterning of stop searches (predominantly in relation to young black and Asian men), which has broadly set the contours of academic research[1] (Hall *et al.* 1978; Willis, 1983; Young, 1994; Quinton *et al.*, 2000; Bowling and Phillips, 2002; Rowe, 2004; Delsol, 2006; Delsol and Shiner, 2006; Bowling and Philips, 2007; Quinton, 2011; Parmar, 2011; Medina, 2013). As Delsol and Shiner observe, although the tactic is 'evident across diverse sections of society', it is also clear that 'the crisis of stop and search has been inescapably linked to "race"' (2006; 244).

Within these contours, the research agenda in England and Wales has approached the use of stop and search from a range of perspectives, engaging variously with socio-legalistic issues, policing cultures and police legitimacy. For example, research has highlighted the inadequacy of regulatory codes as a means of keeping discriminatory decision-making in check, in particular, the slipperiness of 'reasonable suspicion' (Young and Mooney, 1994; Brown, 1997; Quinton *et al.* 2000; Bowling and Phillips, 2002; Lustgarten, 2002; Sanders and Young, 2008; Quinton, 2011). Researchers have also engaged with the construct of institutional racism (Delsol, 2006; Pilkington, 2012), and with people's experiences and

[1] A small scale study of stop and search in North London which highlights the class-based character of stop and search is a notable exception to this rule (Young and Mooney, 1999).

perceptions of stop and search, with a view to assessing the impact on police-community relations and police legitimacy more broadly (Miller *et al,*, 2000; Sims and Myhill, 2001; NACRO, 2002; MPA, 2004; Bowling and Philips, 2007; LSE/Guardian, 2012; Open Society/Stopwatch, 2013; Sharp and Atherton, 2007). The interlocking of stop and search and race is likewise evident in the policy sphere. Both the Scarman Report (1981) and the Stephen Lawrence Inquiry (Macpherson, 1999) identified stop and search as a determinant of poor police-public race relations (Neal, 2003; 55), whilst the disproportionate and discriminatory use of stop and search powers has been subject to ongoing scrutiny by a range of third sector and human rights organizations such as the Runnymeade Trust (Rollock, 2009), Stopwatch (Open Society/Stopwatch, 2013), Liberty, the Equality and Human Rights Commission (2010, 2013) and the Police Foundation (2012). Taking overall stock of the research agenda in England and Wales, Reiner and Newburn observe that the use of stop and search 'has arguably generated more research than any other area' (2008; 360). It is not, however, a description that can be readily extended to Scottish policing.

1.1.1 Stop and search in Scotland: the missing agenda

At the time of writing, academic, policy and political engagement with stop and search in Scotland is in its infancy. Existing research is limited to a short overview of human rights considerations (Pennycook, 2010; 334-336), a small-scale study commissioned by the Scottish Executive following the publication of the Stephen Lawrence Inquiry (RHA, 2002), and more recently, a review of stop and search practice under the single service, undertaken by the Scottish Police Authority (2014).

This paucity of research to date may be attributed to two factors, briefly overviewed here, and discussed more fully in the main body of the thesis. First, it can be argued that *a lack of published data* on the use of stop and search has acted as a barrier, minimizing the scope for critical scrutiny and attention. Second, it can be argued that there is a lack of 'fit' between stop and search in Scotland, and the prevailing research agenda, insofar as there appears to be no evidence to suggest that stop searches fall disproportionately unequally on Black and Minority Ethnic (BME)

populations (RHA, 2002; HMICS, 2003; Audit Scotland/HMICS, 2011; 29; Police Scotland, 2013b, Police Scotland, 2014; 19). Whilst this observation should be viewed very cautiously, in practice, it means that the tactic has been viewed as an 'English' issue (RHA, 2002: ii, HMIC, 2003; 70) that lies outwith the Scottish policing agenda. It might also be added that Scotland lacks a strong tradition of critical independent research on policing, namely research informed by 'idealistic, normative and political issues about the public police'. Or more prosaically, the type that is 'not exactly welcomed with open arms' (Bradley and Nixon, 2009; 426).

Yet despite differences in the socio-demographic distribution of police searches in terms of ethnicity, the fact remains that stop and search powers *are* used extensively in Scotland. Police force data accessed at the outset of this project indicated that by 2010 the rate of stop and search in Scotland had reached a level almost four times higher than the comparable rate in England and Wales. This observation provides both the start point to the project and underpins the overarching research aim. That is, to *explain* the scale of stop and search and the attendant lack of political interest, and to draw out the implications, both for Scottish policing and the public. The next section discusses the approach taken.

1.2 Explaining stop and search in Scotland

How then might we explain the use of stop and search in Scotland without recourse to the familiar motifs of 'race, religion, ethnicity and legal status' (Bowling and Weber, 2011; 355)? It would be possible to reframe the debate, replacing ethnicity with socio-economic class, which acts as a key determinant of officer discretionary decision-making (McAra and McVie, 2005; also see Mooney *et al.* 2010). Or it could be argued that stop and search encounters demonstrate how policing falls upon marginalized social groups more broadly, for example, the ways in which certain populations are constructed as 'police property' (Skolnick, 1966; Lee, 1981; Brogden *et al*., 1988; Choongh, 1998; Reiner, 2010; 123).

Yet rather than rework existing arguments, it seemed more instructive to take a fresh approach: to step back and examine the nature of stop and search itself. To ask what stop and search is *for*, how it works, and what is it about this distinctive and emblematic power that is conducive to disproportionality, irrespective of the target. The salient point here (which will be drawn out in more detail shortly) is that the *construct* of stop and search per se is not particularly clear-cut: that we know little about the nature of the tactic *in itself*.

With this observation in mind, this thesis will investigate how stop and search has been *socially constructed*, over time. The thesis will also investigate how these ideas have been translated into policy: and in turn, the translation of policy into practice. Taking a top-down approach, the thesis will argue that the scale of stop and search in Scotland may be explained in terms of a distinctive *preventive* outlook premised on deterrence. Taking a historical perspective, it will be argued that that this outlook has evolved progressively over time as a result of elite decision-making: by those with the authority to define and regulate police powers of stop and search; and by those with the power to dictate how search powers should be used.

Stop and search as crime prevention

The next four sections begin to unpack the idea of stop and search as a 'preventative tool', drawing on literature from the wider field of crime prevention. This is not intended to provide an exhaustive review of crime prevention field literature. Rather the aims are first, to provide insights into the preventative qualities of stop and search, and second, to situate the tactic within a wider history of preventative thinking, and different ways of thinking about crime control over time.

The four sections progress from the general to the particular: from the broader qualities of preventative thinking, thought to the specifics of stop and search. To begin, section 1.2.1 examines different types of crime prevention. The analysis highlights the ambiguous nature of crime prevention and comments on the political appeal of prevention more broadly. Next, section 1.2.2 narrows the discussion to policing, and provides a historical overview of changing approaches to crime prevention, from the founding of the modern police onwards. Applying observations from these two sections, section 1.2.3 examines the varying ways in which stop and search can prevent crime, and identifies some of the underlying political and behavioural assumptions. Finally, section 1.2.4 makes an important overarching distinction between 'proactive' and 'reactive' stop and search. Taken together, these four sections provide the theoretical (and technical) backdrop to the core argument, which is introduced in section 1.3

1.2.1 Crime prevention: an overview

What can the field of crime prevention tell us about stop and search? To begin, it is important to note that the idea of crime prevention is exceptionally difficult to pin down. From midnight football (Harcourt, 2013; 255) to CCTV surveillance (Ditton and Short, 1999), through to dawn to dusk curfews for under 16 year olds (Atkinson, 2003), the preventative field encompasses a bewildering array of practices, ranging from the benign to the punitive. As Henry states, 'activities as diverse as incarceration, school education, target hardening, and housing policy can be, and have been, justified on the grounds that they 'prevent crime'' (2009; 42).

In order to impose clarity and structure on this messy field, researchers have sought to classify different types of intervention (Tonry and Farrington, 1995; 20). For example, Brantingham and Faust's (1976) highly influential three-fold typology distinguishes between primary, secondary and tertiary modes of crime prevention, which are understood as analogous to different stages of disease intervention, each targeted at different 'types' of audiences. Taking each in turn, primary prevention is aimed at the wider population and might for example; include legal rules, moral education or structural initiatives aimed at improving education. Narrowing the net, secondary strategies target 'at risk' populations, and might include early intervention, diversionary activities or improved street lighting in high-crime areas. Tertiary strategies target known offenders within the criminal justice system, and range from deterrent based sentencing, to initiatives aimed at rehabilitation (see also van Dijk and de Waard, 1991).

Preventative strategies can also be conceptualized as a series of overlapping and blurred genres, broadly classified as situational and/or environmental strategies designed to interfere or reduce people's abilities or opportunities to commit crime; developmental strategies which seek to prevent criminality developing; and social or community strategies which operate at a structural level, for example, educational, housing or health initiatives (Graham, 1990).

Three observations can be made here, each of which will be applied to stop and search within the main body of the thesis. First, it is clear that a range of practices can be located or shoehorned under the umbrella of crime prevention. Second, it can be argued that despite this sense of diversity, the field of crime prevention tends to be unified under the understanding that prevention is *constructive* (Gilling, 1997; 6). As Billis observes, 'the logic of 'preventative work' seems so clear-cut, so uncontroversial, that any criticism runs the risk of appearing short-sighted and reactionary' (1981; 368). In particular, it tends to be assumed that preventative measures are 'less damaging than traditional (retributive) justice approaches' (Hughes, 1998; 20). It thus follows that crime prevention is politically appealing, an electorate friendly tag that can attached to different practices, for different political aims. As Gilling states, the preventative label is one that is 'reserved for those practises that have had their causes championed within the political arena' (1997; 8). This observation is important, and suggests that in order to make sense of trends in crime prevention – to understand why certain practices are 'championed' at certain points in time and others are not, we need to look to the wider political landscape.

Third, it is important to note that crime prevention is beset by measurement problems. For example, robust evaluation may be clouded by initiatives which pertain to vague concepts such as 'social' or 'community' (Ekbolm and Pease, 1995). It is also difficult to capture the extent to which crime is (or is not) displaced to other areas, or to quantify the 'absence' of crime as a result of preventative initiatives. Yet paradoxically, it can also be argued that these uncertainties may enhance, rather than diminish, the appeal of crime prevention. For example, in the context of stop and search, it might be assumed that the tactic is working (as a deterrent) if recorded crime falls. Or it could be argued that stop and search should be used more intensively if recorded crime increases. Or policy-makers may be wary of retracting support for a tactic in the event that recorded crime *might* increase. A similar logic can be applied to police force strength, routine beat patrol or powers of dispersal. In other words, a lack of evidence in relation to cause and effect – the counterfactual 'what if' problem (Cummings, 2006) – can endow preventive measures with a 'win-

win' quality: a means of sustaining lower levels of recorded crime *or* reducing higher levels of recorded crime, either way, difficult to challenge.

In the next section, the discussion is narrowed to policing: to the ebb and flow of preventative thinking from the nineteenth century onwards. The overview is intended to provide historical context, and show how policies that are 'championed within the political arena' (Gilling 1997; 8) may be influenced by wider social and political processes.

1.2.2 Policing and crime prevention: an overview

From the inception of the Thames River Police in 1797 by Patrick Colquhoun, preventive principles lay at the heart of the early modern police movement. Preventative uniformed patrol, or the 'scarecrow function' (Reiner, 2010; 76) was viewed as the core role, a means of deterring prospective offenders through police visibility. Looking to wider trends in political philosophy and criminal justice, this outlook can be contextualized against the prevailing backdrop of Classicist and utilitarian thinking which advocated crime control premised on codified, proportionate punishment, and the logic of deterrence (Beccaria, 1764). As Gilling observes, 'the main players in the police reform movement – characters such as Bentham, Colquhoun, Peel and Chadwick – were all committed utilitarians…[f]or these people, policing formed a central part of a classical criminal justice system, because it was part of the matrix of deterrence' (1997; 109). More pragmatically, it might also be argued that uniformed patrol provided a means of defusing libertarian opposition and assuaging people's fears (Emsley, 1996), whilst extending the disciplinary arm of the state into working class communities (Rawlings 1999; 77; Gilling, 1997; 109).

Whilst it was envisaged that the remit of the new police would not extend to detection (Gilling, ibid.), some preventative powers were granted (Reiner, 2010; 72). For example, the 1824 Vagrancy Act provided officers with power to apprehend those suspected of 'loitering with intent', whilst the Metropolitan Police Act 1839 afforded officers in London a general power of search. However, these powers were intended to be limited. As Reiner notes, whilst 'the Commissioners believed such

powers were needed, they exerted strict disciplinary sanctions over abuse, and encouraged 'all respectable persons' to bring complaints to them' (2010; 72, citing Miller, 1999; 4-12, 55-66, 94).

The effectiveness of preventive patrol proved difficult to demonstrate, and by the mid-nineteenth century, the preventive task was part displaced by that of detection, which provided a visible measure of success (Emsley, 1983). The weakening of the preventative ideal within policing may also be understood in terms of the rise of criminological positivism in this era. Whereas the Classicist outlook had viewed the prospective offender as normal: capable of making a rational decision about the costs of offending and amenable to the logic of deterrence; positivism viewed offending as determined by external factors, be they physiological, psychological or social. The positivist agenda thus sought to deal with underlying sources of deviation, typically to rehabilitate, reform or socially intervene: to cure, rather than prevent.

The promise of reform and rehabilitation dominated criminal justice in the mid-twentieth century decades, underpinning what is described as a 'golden-age' of penal-welfarism (Garland, 2001). The persistence of deterrence principles, both within sentencing, and policing, which retained the 'Peelian' task of uniformed patrol at least into the early 1960s (Newburn, 2002a; 102), suggests that the balance between positivism and classicism was not entirely clear-cut. Nonetheless, it can be reasonably argued that a positivist leaning criminological agenda acted to limit the theoretical scope and application of deterrence theory. The following extract from parliamentary debate preceding the Criminal Justice Act 1948 nicely illustrates the clash between the two agendas, or the 'two horses' of classicism and positivism.

> *"I think the difficulty arises from the fact that we want to carry out two objects at the same time. In the first place, obviously, we want to try to reform the prisoner. We want to restore his self-respect, and we want to ensure that when he goes out again he can stand on his own feet as a useful, responsible member of society. On the other hand, we want so to arrange our affairs as to deter prospective criminals from embarking upon crime. Those two horses, the deterrent and the reformatory, are especially difficult to drive in double harness."* (Jowett, Lab. HL debate 27/4/1948, vol. 155 c. 391)

From the mid-1960s, against a backdrop of rapidly rising recorded crime (Garland, 2001; 90), crime prevention was accorded a more specialist, small-scale and peripheral role within policing (Weatheritt, 1986), a role disliked by officers that was understood as counter to core policing values, and subordinate to the larger task of detection, crime-fighting and law enforcement (Graef, 1989).

By the early 1970s, escalating crime rates had brought the apparent failings of the larger penal-welfarist settlement into sharp relief, in particular, that of rehabilitation (Martinson, 1974). The partial collapse of the positivist project prompted a surge in both asocial 'alternatives' to penal-welfarism premised on prevention (Henry, 2009; 21), and more punitive or disciplinary forms of crime control (O'Malley, 2001). Garland's (1996, 2000, 2001) influential account of this period traces the mutual ascendency of 'adaptive' and 'sovereign' responses to the 'crisis of penal modernism' (2001; 53), and provides important insights into the contradictory nature of crime prevention. Taking each response in turn, adaptive crime control refers to strategies which operate beyond the state. In this context, responsibility for crime control is outsourced to private and public agencies, individuals and communities, a process referred to as 'responsibilization'. A cluster of influential preventative strategies can be located within this strand of thinking, including situational crime prevention (Clarke, 1995; Clarke and Mayhew, 1980; Clarke, 1997), rational choice theory (Cornish and Cornish, 1986; Clarke and Felson, 1993; Clarke, 1997) and routine activities theory (Cohen and Felson, 1979; Felson, 1994; Felson, 1998). Resurrecting the Classicist behavioural agenda, these 'new criminologies of everyday life' (Garland, 2001; 127) or 'administrative criminologies' (Young, 1994) framed the offender 'as a rational and responsible decision-maker', a 'reasoning criminal' (Clarke and Cornish, 1986) capable of acting in his or her own interests. Crime was viewed as a normal social fact, a 'routine risk to be calculated' (ibid; 2001; 128), rather than 'a moral aberration which needs to be explained' (ibid; 451). The aim was thus to calibrate the risks of offending and to manipulate criminogenic situations accordingly: to alter people's routines and opportunities for offending (Garland 1996, 2001). In short, to 'change situations not souls' (Cusson's, quoted in Séve, 1997; 190).

Within the policing sector, adaptive crime control was articulated through various strategies premised on prevention and partnership. A raft of 'community' styled initiatives in the 1980s, including neighbourhood watch, directed patrol and community constables (Newburn, 2002a; 105) , were followed by the development of community safety and multi-agency partnerships in the 1990s, which would become the criminological hallmark of New Labour (Hughes, 1998), and an important plank in the post-devolution Scottish criminal justice settlement (Fyfe, 2010; 119).

At variance with the adaptive agenda, sovereign crime control refers to the assertion of state authority, typically disciplinarian or punitive strategies which invoke the populist rhetoric of 'law and order' and 'tough on crime' (Bratton, 1995; Bratton and Knobler, 1998; Orr, 1998; Innes, 1999; Garland, 2000: 350). Within policing, sovereign styled measures include anti-social behaviour orders, curfews, dispersal orders and the intensive use of stop and search, as deployed by Chief Commissioner William Bratton in New York City in the 1990s. Such strategies tend to be deployed under the rubric of 'zero-tolerance' or 'order maintenance' policing' (Lea, 1997; Fyfe, 2010) and carry the imprint of Kelling and Wilson's (1992) influential broken window hypothesis which proposes that minor infractions and offences (and the failure of communities to take responsibility for their environments) acts as a precursor for more serious crime and disorder.

Importantly, Garland's account illuminates the divergent rationales and sensibilities which underpin the field of criminal justice, and the ways in which authoritarian disciplinary measures can co-exist with policies which operate at one remove from the state. Such hybrid arrangements are not unusual, and demonstrate the complexities and contradictions in the ways that we think about crime and crime control. It is also an observation that can be usefully applied to stop and search: that beneath the generic mantle aim of crime prevention, stop and search *in itself* may be used in different ways and for different purposes. With this point in mind, the next section begins to unpack the dynamics of the tactic more fully, and pull out some of the conceptual and technical ambiguities which make stop and search amenable to different styles of policing.

1.2.3 Stop and search as crime prevention

To recap thus far, it has been argued first, that the field of crime prevention is difficult to pin-down and evaluated, second, that preventive initiatives carry political appeal, and third, that what 'counts' as crime prevention is subject to change over time.

This section applies the first point to stop and search, and shows how the tactic may also be understood as ambiguous and open to different policing approaches. This discussion is pivotal to the thesis and essentially provides the 'technical' backdrop to the core argument (which follows in part 1.3). The latter two points, in relation to the political appeal and changing nature of crime prevention respectively, will be applied to the development of stop and search in the main body of the thesis.

The mechanics of stop and search

Miller *et al.* (2000; 21) suggest that stop and search can prevent or reduce crime in several ways. First, searches can **disrupt** offenders who are planning to carry out crimes. For example, a violent offence may be prevented through the interception of an offensive weapon, or the act of possessing an unlawful offensive weapon can be disrupted. Second, searches can prevent crime through the **incarceration** of offenders, particularly prolific offenders (Jordan, 1998). In both contexts, prevention results from a *post-hoc* response to suspicious behaviour: from investigation, detection and establishing guilt. In other words, prevention stems from, and is justified by, unlawful behaviour (Harcourt, 2013; 256: Ashworth and Zedner, 2012; 542). As such, neither mechanism carries behavioural assumptions. Rather, prevention *begins* at the point when unlawful behaviour is established. In terms of Brantingham and Faust's (1976) three-fold typology, both disruption and deterrence can be classified as tertiary prevention.

Next, stop and search may act as a **deterrent**. The mechanics of deterrence are conventionally separated into two strands, general and individual (Cook, 1980). **General deterrence** acts at the wider societal level and may be classified as a type of

primary prevention (Brantingham and Faust, 1976). General deterrence typically operates at a symbolic, rather than an applied level, and includes legal codes and sanctions (Zimring and Hawking, 1973). For example, it can be argued that the *knowledge* that officers have the right to search for offensive weapons (and the attendant prospect of punishment) may act as a general deterrent.

Individual deterrence is targeted at known or high-risk offenders, for example, a known weapons carrier may be subject to repeat stop searches. Here, the prospective deterrent effect hinges on the principle of certainty (von Hirsch *et al.*, 1999), and the intensive use of police powers to increase the probability of being searched. Stop and search may also work as an 'individual' deterrent if used intensively across certain neighbourhoods and/or population profiles, for example, in the context of zero-tolerance policing. Used in these ways, stop and search can be classified as secondary prevention: as a visible means of proactively targeting 'at risk' populations.

In contrast to the post-hoc mechanics of disruption and/or incarceration, both general and individual deterrence are underpinned by Classicist behavioural principles (Nagin and Pogarsky, 2001; Paternoster, 2010). This is more pronounced in relation to the use of stop and search as an individual deterrent (or intensive stop and search), insofar as it is assumed that the prospective offender will make a rational calculation as to the probability of being searched, hence the frequency of searches is understood to act as a key variable. In this context the deterrent threat essentially works as 'a form of advertising' (Zimring and Hawkins, 1973; 142). This approach also goes hand in hand with utilitarian logic: the understanding that the correct course of action is that which results in the greater good (Hobbs, 1651; Beccaria, 1764; Bentham, 1789). Thus whilst certain sectors of the population may be repeatedly singled out for police attention, this can be justified on the grounds of overall crime prevention or reduction.

Drawing on Kelling and Wilson (1982), Miller *et al*. (ibid.) also suggest that stop and search may prevent crime through **order maintenance**, although in practice, this mechanism is likely to correspond with individual deterrence and the intensive use of search powers. Finally, stop searches may indirectly detect or prevent crime

by **intelligence gathering**, which might arguably be viewed as a more abstruse 'added value' factor, rather than a rationale in its own right (Fitzgerald, 1999).

Taking an overview, it can be argued that different mechanisms may act concurrently, for example, that stop and search powers can both prevent *and* detect crime (Lustgarten, 2002). The practical difficulty is that unless stop and search prevents crime via the mechanics of disruption and/or incarceration (which effectively makes detection and prevention synonymous), we find ourselves in the territory of prevention via deterrence: which is rather more complicated because detection and deterrence have opposite measures of success. Put simply, finding things and not finding things. And it is this conflict between detection and deterrence that raises a range of thorny questions as to what stop and search is actually intended to do, how the tactic is used, on what basis it is applied, and the preferred outcome.

1.2.4 Proactive and reactive policing

Pulling together the mechanisms outlined in the preceding discussion, an overarching distinction can be drawn between reactive stop and search premised on detection (which takes in disruption and incarceration), and proactive stop and search, premised on deterrence. The wider concept of reactive and proactive policing is well-known (Reiss, 1971), if not entirely clear-cut, given the extensive range of duties and activities that officers undertake as part of the contemporary policing role. Nonetheless, taking a broad overview, reactive policing can be defined as a mix of routine or 'random preventative patrol' (echoing the scarecrow function), responding to calls (Crank, 1998; 296) and providing 'a first line response to people in distress' (Reiner, 2011). By contrast, proactive policing refers to the police 'intervening in the lives of citizens on their own initiative' (Reiss, 1971; 64), for example, through 'intelligence' gathering and crime suppression strategies such as proactive traffic stops, hot-spot policing and zero-tolerance patrols (Crank, 1998; 296).

Applying this conceptual distinction to stop and search, reactive stop and search may be defined as a search in which an officer *responds* to suspicious behaviour (RHA, 2002; 26). The approach describes stop and search as traditionally set out in statute, that is, with reasonable suspicion and in relation to specified illegal

items. Stop searches in this context are 'legally founded on the principle that [officers] identify people suspected of having carried out a crime, or who are in the process of doing so'. In short, stop and search is intended to as a means of detection (Miller *et al.* 2000; 19). Whilst reactive searches may act as a trigger for other criminal justice processes, it nonetheless remains that any preventive effect (disruption, incarceration) hinges on the interception of unlawful items: on detection.

In contrast, proactive stop and search may be defined as the intensive use of stop and search in order to deter certain types of people from offending. In this context, targeted populations and areas are likely to be identified through 'intelligence' gathering activities and 'hotspot' analysis, rather than suspicious behaviour per se. Although proactive searches can intercept unlawful items, the probability of detection is logically lower, given the high volume of searches. Rather, the aim is to *communicate* the probability of being searched (the advertising function, Zimring and Hawkins, 1973) in order to secure a deterrent effect.

Building on this ideal-type framework, this thesis will propose that the direction of stop and search in Scotland has resulted from the modelling of police search powers as a proactive deterrent in some parts of the country. The core argument is set out next.

1.3 Core argument: The proactive turn

This thesis will argue that the post-war construct of stop and search as a *reactive* mechanism premised on investigation, detection and the disruption of crime or incarceration (Miller *et al.* 2000; 13), and to a lesser extent, general deterrence (ibid; Hart, 1968), has been partly displaced by a proactive model premised on intensive policing, targeted deterrence, and the presumption that people will refrain from offending if the probability of being searched is perceived to be high. It will be argued that this shift in thinking has partly attenuated the link between policing and suspicious behaviour, and introduced *non*-detection as a measure of successful deterrence, alongside detection. In short, it will be argued that stop and search has been modelled as a tactic which may be legitimated *irrespective of the outcome*. The thesis will show how this shift has progressively weighted the balance between crime control and individual freedom in favour of the state, and weakened the rights of the individual, with minimal regard for human rights and procedural protection.

The thesis place theoretical emphasis on the articulation of state power at an elite level, that is, on dominant ways of thinking about stop and search. In other words, to borrow from McBarnet, the analysis is directed towards 'those who make the law, and on those with the power to influence the ways in which legal rules are applied, rather than the officer on the street' (1983; 8). Like McBarnet, the thesis uses micro analysis to investigate people's actions and decisions: 'the *action*, the *intention*s of those at the top of the legal hierarchy' (ibid. emphasis in original). Put differently, the way in which stop and search is used on the streets, will be taken as evidence of decision-making higher up the ranks.

The core argument will be developed progressively throughout the thesis from three interrelated positions. Each position is examined in a separate part of the thesis and has a different focus. Part one takes a historical perspective and examines elite sensibilities and decision-making in relation to stop and search from the early 1950s through to the early 2000s. Part two adopts an empirical position and investigates the use of stop and search between 2005 and 2010, with a view to showing how search activity on the street reflected dominant outlooks higher up the

ranks. Taking the argument to its conclusion, the final part of the thesis adopts a normative position and examines the ethical implications of stop and search practice in Scotland. These three positions are incorporated into the research aims which are described next, followed by an overview of the methods used to address the aims. Thereafter, part 1.5 provides a short summary of the chapters in the thesis, and part 1.6 summarizes the original contribution to knowledge.

1.4 Research aims and methods

The overarching aim of the thesis is to explain the scale of stop and search and the absence of political interest (prior to police reform in April 2013), and to draw out the implications, both for Scottish policing and the public. This is underpinned by five supporting aims which break down this sizeable undertaking into a series of smaller discrete tasks. These aims are intended to demonstrate how, under the mantle of 'crime prevention', the direction of stop and search was facilitated by the actions and outlooks of political and policing elites. In short, the aims are intended to explain the evolving direction of stop and search in Scotland by illuminating the workings of state power.

The first aim is **to provide an explanatory account of the development of stop and search in Scotland**. This will be addressed in part one which examines the landscape of crime control from the 1950s onwards, the post-war expansion of stop and search powers at a UK level, and the distinctive policy trajectory in Scotland through to the early 2000s. The analysis will lead directly on to the second aim, which deals with contemporary police practice.

The second aim is **to explain the distribution of stop and search in Scotland between 2005 and 2010**. This will be addressed in part two, which unpacks the core argument, using statistical methods to investigate how the distribution of stop and search may be explained in terms of reactive and proactive policing approaches.

The next two aims are intended to put further flesh onto the core argument. With reference to legal rules and operational procedures, the third aim is **to show how the regulation of stop and search has facilitated different policing approaches**. The fourth aim is **to show how police force policies and party politics have influenced the use of stop and search**.

The final aim is **to unpack the normative implications of proactive stop and search**, with a view to setting out a series of policy recommendations as to how stop search powers might be used more fairly and democratically. This will be addressed in part three. The next section discusses the methodology used to address these aims.

1.4.1 Methods and data

Given the breath and scope of the research aims, it was decided that the project would benefit from a broad methodological base, using a range of qualitative and quantitative data sources and methods to investigate this under-researched area of Scottish policing. The research and fieldwork were carried out over a two year period between 2011 and 2013, with data analysis undertaken throughout this period. The project proceeded inductively, whereby new findings were incorporated into the line of enquiry as the project progressed (further details of the analytical approach are provided in section 1.4.8).

A short summary of the data sources and methods used is set out below. Note that the methods and data used in each chapter vary considerably. Thus, for ease of reference, a more detailed methodological discussion will be provided in each respective chapter. The exception to this is interview data, which are used more widely throughout the thesis. The use of interview data is therefore be discussed in detail in *this* chapter (sections 1.4.3 to 1.4.6), following the summary below.

1.4.2 Summary of data and methods

a) Statistical analysis of stop and search data, detailing approximately 1.5 million encounters carried out between 2005 and 2010. These data provide the empirical backbone to the project, and are used to test the model of proactive and reactive stop and search.

b) Analysis of 30 semi-structured interviews with serving and retired officers across a range of ranks. These data are used throughout the thesis, both to demonstrate different ways of thinking about stop and search powers at an elite level, and to evidence the ways that search powers are exercised on the street.

c) Documentary analysis of secondary historical sources, including Hansard parliamentary transcripts, Cabinet Papers and memorandums lodged in the National Archives, and documents lodged in the National Archives of Scotland. These data are used to capture *elite* ways of thinking about the preventative capacity of the police, and changing outlooks on police powers over time.

d) Documentary analysis of press reports accessed via the LexisNexis Library, identified by key word searches and date. These data are used to evidence the representation of stop and search in public, and the ways in which police Executives sought to portray the tactic.

e) Documentary analysis of police policy literature, including Police Authority literature, Local Authority community plans, internal police documentation (not protectively marked), and training guidelines. These data provide insights into both the use and representation of stop and search.

f) Observations of classroom training and a practical stop and search training session at the Scottish National Police College. This fieldwork involved observing a classroom session on the use of police search powers and a practical training session. In retrospect, the observation was carried out too early in the research project and would have benefitted from a more experienced and informed perspective. Nonetheless, the observations provided insights into what can be described as an 'unproblematic' approach to stop and search.

1.4.3 Interview data

Two fieldwork sites were initially selected for the project, legacy Lothian and Borders, and legacy Strathclyde, which taken together, accounted for around 90% of recorded searches in 2010. As the project progressed, a third research site, legacy Tayside, was added to examine policing approaches outwith the Central Belt area. The three forces were contacted in writing, detailing the background to the project, the proposed interview format, preferred ranks (constables and sergeants) and locations (deprived areas with high stop and search rates). An example of an interview request is provided in **appendix 2**.

Having secured permission for the project, officers at the rank of constable and sergeant were selected by the forces, which raised questions around 'cherry picking' and data reliability. Two checks were put in place to help counter this risk. First, at the outset of each interview, it was emphasised that the aim was to find out how stop and search actually worked 'on the streets'. This point appeared to be taken on board. For example, interviewees were candid when discussing under-reporting, and critical of certain management practices. Furthermore, most replies were highly consistent, with distinct patterns in the data emerging at an early stage.

The second check was intended to lessen my 'outsider' status as a researcher. Discussions with officers at the planning stage of the project suggested that the subject area was ill-defined, and came with a range of 'avoidance' clauses. For example, officers referred to practices that didn't count, or suggested that stop and search wasn't really relevant in Scotland. A form of 'insider information' (Delsol, 2006; 165) was therefore needed to make the interviews work, namely a knowledge of the relevant legislation, and an awareness of stop and search activity at the local level. This 'working' knowledge acted as a bridge between myself and interviewees. Being fluent with the relevant statutes and procedures gave officers a point of reference on which to build their responses, and lessened my status as an 'amateur' outsider. Whilst it is not possible to guarantee the reliability of the interview data, the officer's accounts seemed genuine, were consistent, and did not appear to represent 'outlier' opinion.

Senior officers (Assistant and Chief Constables) were contacted individually in writing, and were selected either on the relevance of their careers to the project, for example, having overseen key projects or witnessed significant institutional change, or with a view to providing wider insights into the Scottish policing landscape. Some senior ranking interviewees also facilitated contact with other relevant individuals, thereby snowballing the research process.

1.4.4 Interview Structure

The use of interview schedules varied according to rank, duties and service history. Interviews with senior officers were open-ended, conversational and in most cases, tailored to the respondent's individual careers. These interviews were conducted at an early stage in the project and were exploratory in character, for example, orientated towards the broader function of stop and search, and changes in practice over time. Importantly, most senior officers seemed unaware as to the extent to which stop and search was used. This observation was incorporated into the research, and provided early insights into the less 'visible' character of Scottish policing.

Interviews with constables and sergeants were conducted at a later stage and followed a more structured schedule. Interviewees were asked about the processes of searching people, adherence to rules and regulations, common triggers for suspicion, the use of non-statutory stop and search, institutional pressures (the use of numerical targets and key performance indicators) and officer's perceptions of 'Scottish' and 'English' policing approaches. Several interviewees had been seconded to the Metropolitan police, either during the 2011 riots or at the 2012 Olympics, and spoke from first-hand experience. In addition, a standardized narrative of the 'London' experience appeared to be in circulation, which several other officers referred to.

The interview schedule was modified over time, in order to follow up new findings, and to exclude questions that transpired to be dead-ends. An example of an interview schedule used for police constables is provided in **appendix 3**.

1.4.5 Transcription and data analysis

The level of transcription was intended to 'complement the level of analysis' (McEllan *et al.* 2003; 67). Interview data from senior officers were transcribed in full (with the exception of some minor conversational diversions), given the in-depth, albeit 'looser' quality of the data. Sensitive data – for example, insights unique to a particular time and place – are either excluded from the thesis, or presented in a redacted form. Interview data from sergeants and constables were transcribed by question, rather than as 'entire' narratives. Responses to each question were spliced from each interview narrative and grouped together in order to identify the key themes and patterns. An example of a spliced transcript is set out in **appendix 4**. Given the straightforward nature of the questions and responses, these data were analysed manually, rather than using qualitative data analysis software.

1.4.6 Interview ethics

Informed written consent was gained from all interviewees participating in the study. It should however, be acknowledged that senior officers could (and some did) refuse to be interviewed, whilst junior officers may have had little choice but to participate. Whilst all officers were given the option of refusal at the outset of the interview, it is possible that junior ranking officers would have felt that this was inappropriate or awkward. This type of ethical dilemma is difficult to avoid although it should be noted that the junior ranking officers appeared to be comfortable with the interview process, and gave thoughtful and frank accounts of a practice that played a significant role in their professional lives.

All interview data cited in the thesis were anonymized in order to preserve the respondent's confidentiality. Constables and sergeants are referred to by rank, legacy force, and years of service. Length of service is described in five year brackets in order to increase anonymity. Also, the (only) female sergeant is not identified by force. Interview data collected from officers above the rank of inspector do not state the legacy force, unless the geographic location is relevant to the discussion. In this instance, the legacy force will be stated, and the interviewee will

be referred to as a 'senior officer', without stating the rank. The full set of interviewees is shown in **table 1.1** below.

Table 1.1 Interviewees and correspondents

Rank	Retired or active	Gender	Years Service	Police force
Chief Constable 1	Retired	Male	30-35 years	Anonymous
Chief Constable 2	Retired	Male	30-35 years	Anonymous
Chief Constable 3	Retired	Male	30-35 years	Anonymous
Assistant Chief Constable 1	Retired	Male	30-35 years	Anonymous
Assistant Chief Constable 2	Active	Male	20-25 years	Anonymous
Area Commander 1	Active	Male	30-35 years	Anonymous
Inspector 1	Retired	Male	30-35 years	Lothian & Borders
Sergeant 1	Active	Male	15-20 years	Lothian & Borders
Sergeant 2	Active	Female	21-25 years	Anonymous
Sergeant 3 (not recorded)	Active	Male	21-25 years	Lothian & Borders
Sergeant 4	Active	Male	26-30 years	Lothian & Borders
Sergeant 5	Active	Male	21-25 years	Strathclyde
Sergeant 6	Active	Male	26-30 years	Strathclyde
Sergeant 7	Active	Male	15-20 years	Strathclyde
PC 1	Active	Female	6-10 years	Lothian & Borders
PC 2	Active	Male	0-5 years	Lothian & Borders
PC 3	Active	Male	6-10 years	Lothian & Borders
PC 4	Active	Female	0-5 years	Lothian & Borders
PC 5	Active	Female	6-10 years	Strathclyde
PC 6	Active	Male	6-10 years	Strathclyde
PC 7	Active	Male	6-10 years	Strathclyde
PC 8	Active	Male	0-5 years	Strathclyde
PC 9	Active	Female	6-10 years	Strathclyde
PC 10	Active	Male	0-5 years	Strathclyde
PC 11	Active	Male	0-5 years	Strathclyde
PC 12	Active	Male	21-25 years	Tayside
PC 13	Active	Female	0-5 years	Tayside
PC 14	Active	Male	0-5 years	Tayside
PC 15	Active	Male	0-5 years	Tayside
PC 16	Active	Male	15-20 years	Tayside

1.4.7 Analytical approach

The project was designed to provide an in-depth explanatory account of stop and search in Scotland, and to extend the existing research agenda, beyond both the conceptual boundaries of race and ethnicity, and the geographic boundaries of England and Wales. To be clear, the thesis is not intended to provide a formulaic or generalizable theory of stop and search, nor to advance a particular theoretical perspective. Rather the research draws on a diverse range of literature and perspectives to develop the core argument: to explain the development of stop and search in a specific jurisdiction and to identify factors and processes which may have relevance in other contexts. In this respect, the analysis can be located into the middle-range tradition (Merton, 1949): between the grand contours of 'broad generalisations', and the 'specification of empirical particulars' (Garland, 2001; vii).

The analytical approach is grounded or inductive, that is, exploratory and content-driven, rather than hypothesis-led. Influenced by symbolic interactionism, grounded theory was developed by Glaser and Strauss (1967) in response to deductive or theory-led research. Grounded methodologies aim to generate theory from data, working 'upwards' through the comparison of emergent themes and ideas: by identifying distinctive or recurring patterns within the data, developing provisional or working hypotheses, and making connections between different sources of evidence.

The decision to follow an inductive approach was prompted by practical rather than epistemological considerations. First, from the outset, the scale and socio-demographic distribution of stop and search in Scotland didn't appear to make sense in terms of existing explanatory frameworks, particularly those which hinged on race and ethnicity. Second, the paucity of relevant Scottish research precluded the possibility of building on existing findings (Dey, 1999). And third, the breadth of the project was difficult to reconcile with a hypothesis-driven approach. As such, it seemed more logical to move *up* the analytical ladder, first scoping out the topic, and thereafter piecing together a theoretical framework that could explain the development of stop and search in Scotland.

1.5 Summary of chapters

The thesis is structured in three parts, *Origins*, *The Proactive Turn* and *Social Justice*, which are presented as nine chapters.

Part one (*Origins*) takes a historical approach, and examines elite decision-making in relation to stop and search. Chapter two examines the development of preventative police powers in 1950s Britain, the expansion of stop and search powers in the 1960s and 1970s, and the way in which the idea of preventative police *powers* was converted from an outlier, into an 'accepted fact' (Bourdieu, 1987; 817).

Chapter three traces the development of stop and search in Scotland from circa 1967 to the early 2000s. The chapter examines the less volatile, apolitical direction of Scottish policing in the late 1960s; the quiet encroachment of law and order values via the Thomson Committee on Criminal Procedure in the 1970s; and the introduction of stop and search powers for offensive weapons under the 1979 Conservative administration. Against this backdrop, the chapter then investigates the introduction of the intensive stop and search 'campaign' by legacy Strathclyde in the early 1990s, which is understood to signal the onset of a targeted deterrent approach.

Chapter four examines the Stephen Lawrence Inquiry in Scotland, investigates prevailing outlooks on stop and search among political and policing elites, and identifies the ways in which decision-making in this period influenced the direction of stop and search thereafter.

Taken together, the three chapters show how the construct of stop and search was incrementally expanded over time, to incorporate very different policing aims and values. The analysis also provides the backdrop to the second part of the thesis which investigates proactive and reactive approaches to stop and search from 2005 onwards.

Part Two (*The Proactive Turn*) examines police stop and search practice between 2005 and 2010, using empirical data. Drawing on detailed stop and search records, chapter five investigates the distribution of searches, and argues that the systematic differences between the legacy forces may be explained in terms of reactive and proactive policing approaches. Chapters six investigates rules and regulations, and assesses the extent to which the regulatory framework, in particular, the provision of non-statutory stop and search, allowed a proactive approach to flourish unchecked. Chapter seven investigates police force policies and the wider political backdrop. The analysis examines how performance management techniques such as numerical targets, a lack of oversight by police boards and authorities, and a backdrop of party political support further facilitated the proactive approach. The analysis in part two demonstrates a significant shift in preventative outlooks and police practice: from the intermittent intensive 'campaign', as introduced by legacy Strathclyde; to the *routine* use of high volume stop and search in some parts of Scotland.

Part three (*Social Justice*) consists of two chapters which engage with the ethical implications of proactive stop and search. Chapter eight draws on the political philosophy of John Rawls (1999) and examines the ethical implications of the project, asking first, if stop and search works as a deterrent, and second, if deterrence is fair. Chapter nine revisits the research aims and shows how these were met. The chapter then examines stop and search in the post-reform era, and discusses how findings from this project influenced the policing direction. This is followed by a series of recommendations for policy and practice, and a commentary on the wider policy implications of the project. Finally, the thesis closes with a short personal commentary on the task of researching controversial topics.

1.6 Original Contribution

The original contribution of the thesis lies principally in its subject matter and methodology. In substantive terms, the thesis is the first academic investigation of stop and search in a Scottish context, and provides original insights into the ways in which stop and search disproportionality falls on children and young people.

The thesis employs a broad based methodology, based on an extensive range of methods and data sources, including statistical analysis, interviews and archive material, in order to present an original explanation of police stop and search practices. By dint of this complex approach, the thesis provides important historical and political insights into the nature of police practice, and extends the debate on stop and search in the UK in the following ways. First, the thesis re-directs the focus on stop and search beyond England and Wales. Second, the thesis extends the established academic and policy framework beyond race and ethnicity. And third, the thesis provides an understanding of stop and search practices premised on elite outlooks, and the articulation of state power over time.

Part One. Origins

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

The use of stop and search in contemporary Scotland is remarkable. By 2010, the rate of stop and search in Scotland was nearly four times the comparable rate in England and Wales, whilst the rate of stop and search in Glasgow had outstripped that in London and New York City almost fourfold. Yet stop and search was not on the policing or political agenda. Rather, it seems reasonable to suggest that most observers of Scottish policing at this time would have struggled to describe the tactic as either significant or contentious. As the senior officer cited above comments, stop and search was a "*non-issue*".

This part of the thesis will investigate the origins of this curious juxtaposition between the scale of stop and search, and the attendant lack of political engagement. Put simply, the question might be framed 'How did we get here?' Taken together, the three chapters will address the first research aim, that is, **to provide an explanatory account of the development of stop and search in Scotland**.

The analysis investigates events from the early 1950s, through to 2002. Chapter two examines political manoeuvring at Westminster in the post-war period, and the expansion of preventative police powers. In chapters three and four, the locus shifts to Scotland: to a series of interrelated political events and processes, which it is argued, would prove pivotal to the contemporary landscape of stop and search.

Given the chronological, and varied nature of the narrative, the main intellectual conclusions are presented in each respective chapter. Part one closes with a short historical summary of events which draws the strands of analysis together, and sets the scene for part two.

Chapter 2. Police powers in post-war Britain

2.1 Introduction

The use of stop and search is influenced by a range of factors, from the situational to the structural, from suspicious behaviours and the time of day, to policing initiatives and policies. Yet more prosaically, it can be argued that the modern ability of the police to stop and search people is dependent, either directly or by precedent, on a set of concrete legal rules constructed in the post-war decades. Whilst a hotchpotch of stop and search powers existed prior to the twentieth century, including section four of the Vagrancy Act 1824, the Prevention of Crimes Act 1871, and a range of local legislation, the 'modern' mainstream construct of stop and search (as an adjunct to specific offences and based on reasonable cause to suspect) was established in the sixties and early seventies.

How then, did these powers come about? At first glance, the post-war expansion of police powers can be read as a direct response to recorded crime levels, which increased gradually from 1935, and more dramatically after the Second World War (Smith, 2010; 27). Nonetheless, this was not the only feasible crime control response. For instance, the legislature *could* have placed greater emphasis on social causation and the known (or assumed) correlates of offending, or on different forms of punishment. In fact, it might be argued that the emphasis on police powers and the construction of new offences seems oddly misplaced in an era which otherwise appeared to give precedence to rehabilitative and welfarist forms of crime control (Garland, 2000, 2001; Loader, 2006).

This chapter will show how the post-war expansion of police powers represented an important shift in ways of thinking about policing as a form of preventative crime control: and a shift which would carry significant implications for the direction of stop and search in Scotland thereafter. The analysis is located at the UK level, and will identify ways of thinking about police powers that are relevant to both jurisdictions, before moving onto Scottish developments in chapter three.

2.1.1 Methods and data

The chapter uses documentary analysis to capture 'authoritative' or influential voices on policing, crime control and the limits of police powers in post-war Britain. The analysis draws on an extensive range of secondary data sources to construct the arguments, including Hansard transcripts, Cabinet records from the National Archives and press reports.

Hansard parliamentary records provide the main source of evidence, and are used to tap into the varying rationales that underpinned approaches to crime control. Two types of Hansard record were selected for analysis. First, parliamentary debates in relation to specific bills, and second, parliamentary records identified through keyword searches and by cross-referencing between texts. These documents were chosen as they captured a sense of contestation between actors as to the appropriate limits of police powers. For example, the data captured the disputes and spats that preceded legislation, as well as the bills that were rejected. As such, it was possible to pinpoint 'competition between interpreters' (Bourdieu, 1987; 818) and to identify the views that did not receive formal support. This 'backstage' data afforded rich insights into the sensibilities of the political classes and enabled a more nuanced reading of 'front-stage' legislation and policy. The texts were approached critically, rather than at face-value, with a view to drawing out the prevailing values and assumptions which underpinned 'authorized' interpretations of the police role. Care was also taken not to give undue weight to the 'loudest' voices, which were not necessarily the most representative.

Given the length and complexity of some of the Hansard records, each text was pasted into Word to enable search, key word and highlighter functions, and thereafter analysed manually. The records are cited using the standard volume/ column and date references, the speaker, and their party affiliation. **Appendix five** details the Hansard records referenced in the chapter and **appendix six** details the relevant National Archive papers.

2.1.2 Chapter structure

The chapter two is organized chronologically. Part 2.2 investigates dominant outlooks on crime control and policing amongst the legislature in 1950s Britain. The analysis examines parliamentary debate in relation to the Prevention of Crime Act 1953, and demonstrates how reactive and/or punitive rationales were displaced by seemingly more progressive ideas about preventative police powers. Building on this precedent, part 2.3 examines the incremental expansion of stop and search powers at the UK level in the 1960s and early 1970s. Part 2.4 draws the analysis together and concludes that against a backdrop of political consensus and economic stability, a deep-seated shift took place in the way that the political classes perceived the preventative role of officers in this era: a shift which would prove pivotal to the direction of stop and search in the decades to follow.

2.2 Police Powers in 1950s Britain: The Prevention of Crime Act 1953

How did the political classes perceive the policing role in post-war Britain? This part of the chapter unpacks dominant outlooks on policing with reference to legislative developments, beginning with the enactment of the Prevention of Crime Act 1953, and the assumptions that underpinned the Act. In brief, this Act enabled officers to arrest any person suspected of carrying an offensive weapon in public without lawful authority or reasonable excuse, on the basis of reasonable cause. Two overarching arguments will be presented. First, that the Act signalled an important, albeit reasonably subtle departure from the rhetoric of officers as 'citizens in uniforms' (RCPP, 1929) by providing a preventative *policing* solution to the post-war increase in recorded crime. Second, that the significance of the 1953 Act lay in the mainstream representation of police powers as a progressive means of crime control and a general deterrent, rather than an intrusive or disciplinarian measure. Looking ahead, it will be argued that this outlook, which understood police powers as a benign good, would persist amongst the legislature until the late 1960s, and facilitate the expansion of stop and search powers in the sixties and early seventies.

2.2.1 1950s Britain: crime control and the political climate

The prevailing political climate in post-war Britain was Conservative, the traditional variant, premised on paternalism, tradition and *noblesse oblige*. Following the revival of the political right in the late 1940s, Attlee's Labour Government was defeated in 1951 by a narrow swing to the right, marking the onset of a thirteen year Conservative administration. However, this did not mark a reversal or attack on the welfarist direction established by Labour in 1945 (Ryan, 2003; 13). Rather, post-war politics were marked by two-party consensus and a joint commitment to full employment, economic growth and a comparatively high level of state intervention (Miliband, 1978: 400). As Miliband observes 'the two front-benches might differ on broad and ultimate social goals (though this should not be exaggerated); but such differences as there might be usually found no greatly divisive expression in actual policy terms' (ibid.).

In terms of criminal justice policy, Garland (1996, 2000, 2001) and Loader (2006) both highlight a prevailing liberal, welfarist outlook in the post-war period, marked by an interest in the social causes of crime. For example, Garland describes a '*penal-welfarist* policy framework that combines the liberal legalism of due process and proportionate punishment with a correctionalist commitment to rehabilitation, welfare and criminological expertise' (2001; 27, emphasis in original). Retributive or populist opinion was characterized as 'as irrational or inappropriate – unworthy emotions that ought to be repressed', resulting in the near absence of punitive sentiments from official crime control discourse (2000; 352-353). Similarly, Loader (2006) observes that penal policy-making within this period was dominated by a relatively small and close-knit group of 'politicians, senior administrators, penal reformers and academic criminologists': the 'platonic guardians' who sought to expound 'civilized values', promote civil liberties and rehabilitation, employ expert knowledge, and manage more punitive public sentiments (ibid; 563).

Whilst touching on similar arguments, Ryan's (2003) reading of post-war penal policy and elite sensibilities provides a slightly more critical account, which suggests that the progressive tenor of the post-1945 welfare settlement did not readily translate into penal policy or practice. As Ryan dryly observes, 'the opportunities offered by the moment of social calm underwritten by the historic compromise between capital and labour to secure a reduction in the general level of penal repression were not over-exploited, to put it mildly' (2003: 40). For example, the 1948 Criminal Justice Act, whilst abolishing whipping as a judicial penalty and penal servitude/hard labour, also lowered the age at which offenders could be sent to Borstal, increased the maximum period of preventative detention, and retained corporal punishment in schools and prisons (ibid; 14). A lack of financial commitment to rehabilitation was also evident. By 1952 only one detention centre had been built, whilst 'attendance centres' aimed at rehabilitating young non-serious offenders were used inconsistently. As the Home Secretary summed, 'it has unfortunately not been possible, largely because of difficulties of capital investment, to do much about the provision of the new institutions for young offenders contemplated by the Act' (Home Secretary, Cabinet Memorandum, 4/11/1952,

CAB/129/56). In Scotland, progressive intentions were likewise thwarted by a lack of resources, particularly in relation to remand homes and approved schools (Bartie and Jackson, 2011; 94). In this respect, Bartie and Jackson suggest that 'the post-war 'welfarist' approach to youth justice did not 'fail' in the period 1945-71 in the sense that it was never fully delivered' (ibid; 95).

Taking an overview, whilst the twentieth century mid-decades tend to be portrayed as a progressive era in criminal justice, marked by an interest in rehabilitation (Radzinowicz, 1999), and dominated by a small metropolitan elite intent on expounding 'civilized' values (Ryan, 2003; Loader, 2006), the extent to which these values were translated into practice seems less clear.

Drawing on Hansard parliamentary records, the next section drills further into the post-war crime control settlement. The analysis examines prevailing attitudes and values among the legislature, with a view to showing how dominant ideas about the wider crime problem, would enable newer ideas about the preventative remit of the police to take hold.

2.2.2 Parliamentary sensibilities: crime, causation and the role of the police

How did the legislature view the post-war increase in crime? Beginning with the thorny question of causation, parliamentary transcripts highlight a range of ideas as to the perceived causes of crime, from appalling housing conditions, to desertion from the armed forces. Taking an overview, the dominant criminologies expressed in parliament appeared to suggest a conservative variant of control theory (Hirschi, 1969)[2], with an underlying Hobbesian understanding of human behaviour as inherently selfish, or in the case of juvenile offending, a '*natural instinct for adventure finding outlets in unfortunate ways*' (Chorley, Lab. HL 23/3/1950 vol. 166 col. 470). In particular, informal controls were perceived as being eroded by a decline in moral/Christian values, exposure to gangster films and poor parenting.

Yet despite considerable hand-wringing in political debate, the causes of crime were not understood as a matter for state interference in the early post-war years (Loader, 2005; 567). Cabinet papers preceding the 1959 white paper *Penal Practice in a Changing Society* express an explicit disinterest in causation, which was understood as overly complex and outwith the state remit:

> 'This Paper does not seek to deal with those deep-seated causes which, even were they fully understood, would be largely beyond the reach of Government action.'
> (Butler, 1952; 277, para. 1 CAB/129/95)

Whereas the causes and prevention of delinquency were deemed 'immense both in range and complexity' (ibid; para. 19), the Home Secretary asserted that the role of expert knowledge lay in treatment.

[2] Reiner observes a similar understanding of crime and crime control amongst Chief Constables (1991; 134)

> 'The difficulties are not so great with research into the use of the various forms of treatment and the measurement of their results, since this is concerned with matters that can be analysed more precisely. It is therefore on constructive work in this part of the field that special emphasis is being put.' (ibid.)

In terms of research and expert knowledge, some output emanated from both the Home Office Research Unit circa 1955 onwards, and the Department of Criminal Science at Cambridge University. However, a lack of commitment to academic criminology is suggested as late as 1958.

> "*The present position is that practically the whole of our penal methods and our treatment of delinquency are based on either tradition or guesswork. There is scarcely any precise knowledge… it is only in the last five years that the Home Office has considered it necessary to spend any money on serious research into the problems raised by the existence of crime*." (Benson, Lab, HC 7/5/1958 vol. 587 c. 1381).

With little purposeful engagement with causation, and a lack of structural investment in rehabilitation, police strength emerged as one of the key responses to the burgeoning crime problem. Police strength had seriously deteriorated across the two wars, and was exacerbated by recruitment difficulties. As such, police pay and conditions dominated the political agenda, with politicians of all shades concurring that crime could be controlled by increasing police strength and pay in order to attract a better standard of recruit and retain experienced staff.

The generic appeal of 'police strength' is important, insofar as the concept can be pulled in different directions. For example, police strength may be variously expressed in terms of officer numbers, hardware (tasers, batons etc.), or legal powers, including arrest and search. A further distinction can be drawn here between powers based on prima-facie evidence, and wider preventative powers such as arrest or search based on *suspicion* of illegal behaviour. It is the latter category that is relevant to the unfolding direction of stop and search, and will be examined next in relation to the Prevention of Crime Act 1953, which, it will be argued, represented an important shift in the way that the legislature viewed the policing role.

2.2.3 The Prevention of Crime Act, 1953

The Prevention of Crime Act 1953 was applicable across mainland Britain and intended as 'an attempt to grapple with the serious rise in crimes of personal violence', and to deal with the powerlessness of the police 'to apprehend a person found in suspicious circumstances' (Edwards, 1953; 482). **Figure 2.1** sets out data pertaining to violent crime between 1938 and 1951, and shows a sharp increase in recorded malicious wounding over the five year period.

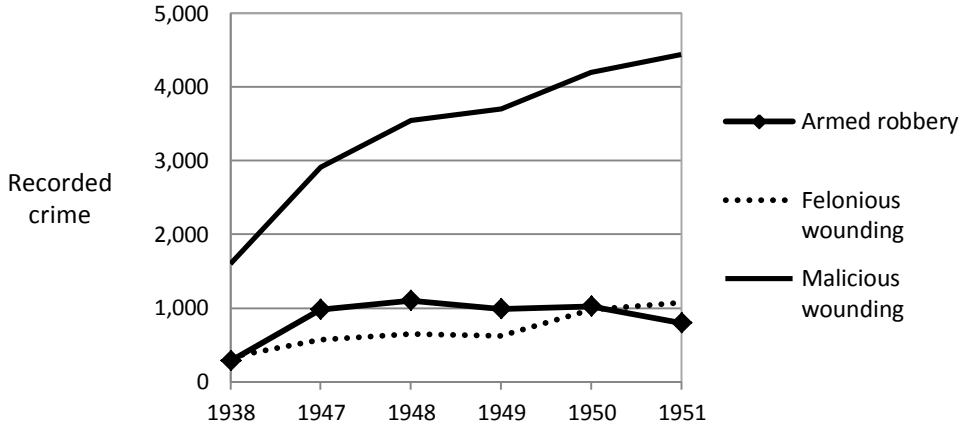

Figure 2.1 Recorded crimes of personal violence 1938-1951

Source: Modern Law Review, 1953 vol. 16 p. 482

Analysis of Hansard records suggests that in this context, 'prevention' was understood to stem from two mechanisms. First, the ability of the police to disrupt crime through pre-emptive arrest, or as the Home Secretary explained: to "*to cope with the "cosh boy" before he has used his cosh*" (Maxwell Fyfe, Con. HC, vol. 511, c. 2325). Second, from a general deterrent effect: "*the knowledge that the mere possession of an offensive weapon carries a liability to a substantial penalty*" (ibid.).

Whilst the premise of arrest without warrant may seem unremarkable by contemporary standards, it should be noted that arrest without warrant was not extended to all offences punishable by imprisonment until 1967. As such, the Bill was perceived as a radical departure from prima-facie legal principles by some parts of the legislature. Described as "*a revolutionary document*" in the Lords (Saltoun,

Scottish Peer, HL 14/4/1953 vol. 181, c. 701), the Bill appeared to elicit a sense of unease at the displacement of reactive law enforcement by a more preventative approach, as suggested below.

> "*Generally speaking, we punish for the crime and alternatively we punish an attempt to commit a crime. The Bill is an effort to go a little further than that and to get a criminal before he has started the attempt to commit the crime. The further we get away from the crime to events anterior to it, the more we begin to jostle the innocent citizen, because we are beginning now to go for something which is of an ambiguous character*."
> (Bell, Con. HC 26/2/1953 vol. 511 c. 2366)

Drilling further into the Bill, protection of the public was placed above that of the individual, thereby diluting the pre-twentieth century common law presumption that took the liberty of the individual as axiomatic. As Smith observes:

> 'The right to liberty, property and the presumption of innocence were at the core of the common law in 18th century England such that any interference had to have prior lawful justification.' (2002; 2).

The Act also gave statutory authority to the interpretation of 'reasonable cause to suspect' established in *Dumbell* v *Roberts* (1944, 1 All ER 326, LJ Scott) as a procedural safeguard for the citizen *and* as a legal basis for preventative police action. Importantly, this marked a departure from the pre-twentieth century model of reasonable suspicion as a protection for the constable.

> 'it was not the individual who was considered needful of protection, more the lowly public servant (the constable) who was doing the bidding of the magistrate, or working on her own initiative to enforce the law, if she was not to be found liable for the tort of false imprisonment' (ibid; 4).

As Smith observes, the interpretation of reasonable suspicion in *Dumbell* v *Roberts* did not represent a 'seismic' change. Rather it was 'presented in terms of the conflict between the public interests of securing the individual's right to liberty on the one hand, and the more general need to detect (and, one can safely assume, prevent) crime, on the other' (ibid.). Nonetheless, the modelling of reasonable suspicion as

protection for the *citizen* set a precedent which was appropriated as a key safeguard in the 1953 Act. The absence of search powers short of arrest was also viewed as a key safeguard, as detailed below.

> "*There is no power of search by the police: the police cannot search a person in the streets, nor can they say "turn out your pockets" and, when they find a large clasp knife in one of them, base a charge on that. The second safeguard, as has already been said, is that a police officer must have reasonable cause for believing that a person is carrying an offensive weapon*." (Derwent, Con. HL debate 14/4/1953 vol. 181 cc. 705-28)

Unusually, the burden of proof was placed on the suspect to prove lawful intention, which again, was understood as a departure from precedent. Writing in the Modern Law Review, de Smith observed that this clause 'is far from being the drastic and exceptional measure which the public were led to believe it to be' (1953; 483), detailing a range of existing statutes which placed the burden of proof on the suspect. It is however notable that outwith larceny, the examples cited pertained to customs and excise, forgery and stamp duty, rather than routine offences.

Despite the pre-emptive and net-widening nature of the proposed powers, the Bill was presented as a progressive and enlightened alternative to more punitive forms of retrospective criminal justice: to recap from chapter one, as 'less damaging than traditional (retributive) justice approaches' (Hughes, 1998; 20). The next section examines how the Act was presented, and shows how concurrent calls to reinstate the birch acted to frame the debate.

2.2.4 Framing the debate: prevention versus birch

The analysis in section 2.2.1 suggested that the mid-twentieth century crime control settlement was marked by a mismatch of welfarist and punitive sensibilities. This inconsistency was also evident in political responses to the Criminal Justice Act 1948, which to recap, had abolished whipping as a judicial penalty. Yet within a matter of five years, a Private Member's bill was proposed which sought to restore birching. The following Cabinet memorandum by the Home Secretary is indicative of the strength of feeling around corporal punishment.

> 'It is now suggested by the Lord Chief Justice and others, not merely that the courts should again be empowered to award corporal punishment for robbery with violence, but that they should be given power, which they have not possessed for nearly a century, to impose corporal punishment for other crimes of violence against the person.'
> (Maxwell-Fyffe, 4/11/1952, Cabinet Memorandum CAB/129/56 para.3)

Support for the 'Birching Bill' was evidenced both at the public and professional level (Ryan, 2003; 30). A UK Gallup poll indicated that 66% of the public supported the reintroduction of corporal punishment, whilst in Scotland, birching was deemed the only effective way to deal with 'tough' working class boys by some magistrates and sheriffs (Bartie and Jackson, 2011; 96). Hansard records document a telegram from Scottish Prison Officers to the MP for Ayr stating 'Scottish prison officers back your plea for return of corporal punishment for Scotland. Good luck' (HC debate, 13/2/1953 vol. 511 c. 791), whilst in a similar vein, the Magistrates Association campaigned under the banner 'Children of the nuclear age require robust punishment' (Ryan, 2003; 30).

Critically, the Birching Bill ran concurrently with the Prevention of Crime Bill, thereby setting the ideological frame of reference: retrograde corporal punishment versus modern preventative police powers, as suggested below.

"*I believe whipping, the stocks, the birch… are relics of barbarism. In the mid-20th century they are out of date. The difference between the stocks and the birch is mainly only one of the degree… I believe that the Home Secretary is taking constructive steps to deal with this problem. The publication yesterday of the Prevention of Crime Bill is a step in the right direction*." (Smith, Lab. HC 13/2/53 vol. 511 c. 771)

'Those who wish to see the birch restored are seizing on one means – which the evidence shows to be ineffective and retrograde – of achieving an urgently and universally desired end... Sir David Maxwell Fyfe will have the whole country behind him [if] he concentrates all his great energies and administrative capacity on the prevention of crime… Nothing would do more to revive public morale and to put a stop to demands for birching and other panic measures than the knowledge that, at last, crime was being tackled with determination.' (The Times, 14/2/1953)

Set against the Birching bill, the proposed extension of preventative police powers was constructed as a progressive alternative: a means of pre-empting crime, and as a general deterrent, as described below.

"*In present conditions, when there is so much anxiety about crimes of violence, it would not be right to overlook the deterrent effect on criminals which would be achieved if it were made an offence to he found in possession of an offensive weapon, without lawful reason…. "[The act] may not, of itself be effective in stopping a criminal who, of set purpose, addresses himself to a criminal enterprise… Again, there is the type of young ruffian who, often in a gang with others of the same kidney, sets out to terrorise other people in the neighbourhood. It is primarily against persons of this type that the Bill is directed. And it is the view of responsible and experienced police officers that the knowledge that the mere possession of an offensive weapon carries a liability to a substantial penalty will have a salutary effect.*"
(Maxwell-Fyfe, Con. HC 26/2/1953 vol. 511 c. 2323, c. 2325)

Whilst it was anticipated that the power would be used infrequently, some Labour peers expressed unease at the proposal to arrest without warrant, which was described as a 'drastic' extension of police powers.

> "*We want to strengthen the hands of the police with regard to thugs in any way we possibly can. On the other hand, none of us much likes – I assume I speak for the whole House here – the drastic powers which are here being given to the police and which may affect the life of the ordinary citizen in all sorts of ways.*"
> (Jowitt, Lab. HL 14/4/1953 vol. 181 c. 706)

The strongest challenge was articulated by the more Libertarian right, who argued that the preventative principle went "*against all our concepts of justice*" (Baxter, Con. 26/2/1953 vol. 511 c. 2354).

> "*I should have liked the other day to have restored corporal punishment, and I voted for it, but the House took the other view… This Bill today, which in some ways goes against all our concepts of justice – that is, by presuming guilt before it has been proved – offends us in many ways. But it is the criminal class that has forced it upon us, and I, for one, will vote for it.*" (Baxter, Con. HC 26/2/1953 vol. 511 col. 2352)

> "*If it is true that there is an increase in the violent element of crime, I would rather see the punishment made more severe and drastic, after what I consider to be a fair trial according to British methods, than I would go the other way about it and try to cure the situation by creating new crimes.*" (Higgs, Con. HC 26/2/1953 vol. 511 c. 2342)

A striking sense of mistrust towards the police was also articulated:

> "*One of the most unpleasant offences with which one has to deal is that of being a suspected person, an offence in which the police have very much the same sort of power as they are to have under the Bill. Time and again the police arrive. There are always two of them. They never compare notes, they have never written out their notebooks together, but they always read the same, curiously enough, comma to comma. They swear it on oath. They describe how the defendant looked into a number of cars and tried the handles of one or two, and, of course, he comes to be convicted, without really having committed any tangible offence at all*". (Crowder, Con. HC 26/2/1953 vol. 511 c. 2391)

Concerns around individual liberty were however, trumped by the overriding threat posed by the 'criminal classes', and despite some degree of libertarian bluster, it was concluded that "*a significant feature of this debate is that not one speech has been made against the principle of this Bill. It is clear, therefore, that the whole House*

supports it in principle" (West, Lab. HC 26/2/1953 vol. 511. c 2383). In a similar tone, the Modern Law Review noted that although the Act 'added to the sprawling instances in which a constable may arrest without warrant', there was 'no use decrying this further encroachment on the liberty of the subject' which was 'dictated' by the increase in crimes of personal violence (de Smith, 1953; 483-484). In sum, the Bill was read as either progressive; or a somewhat 'un-British' approach to justice but necessary evil; either way the proposal was supported.

2.2.5 The Prevention of Crime Act: summary

Drawing the strands of analysis together, it can be argued that social and political conditions in 1950s Britain, together with rising recorded crime rates, provided a receptive ideological environment in which to extend police powers. In additional to a consensus-based political settlement, it also seems likely that relatively high levels of police legitimacy in this period smoothed the expansion of police powers (Reiner, 2010).

Looking to the prevailing political culture, it can be argued that the liberal elitist project was partly diluted by the encroachment of crime control objectives. New powers conferred by the Prevention of Crime Act 1953 widened the net of social control, thereby weakening the previously vaunted 'liberty of the subject'. However, this shift was eclipsed by concurrent proposals to reinstate the birch: which framed the Act as a progressive, light-touch form of crime control. In this respect, the articulation of retributive sensibilities, albeit premised on individual freedom and punishment after the crime, facilitated the acceptance of an altogether more ambiguous and unbounded set of policing principles.

Taking an overview of the parliamentary field, it can be argued that ways of thinking about crime control were perhaps more fluid than previously assumed, that is, more amenable to ideas which ran counter to the prevailing welfarist outlook. Here, Bourdieuean concepts of *doxa*, *habitus*, and *field* can be usefully applied in order to illuminate the ways in which elite actors competed to define what the policing role *should* look like.

Briefly taking each concept in turn, *doxa* refers to taken for granted knowledge or 'truths' within organizations: axiomatic knowledge that is viewed as self-evident (Bourdieu, 1984; 471) or more simply, 'why things are the way they are' (Chan, 2004; 333). For example, the idea of officers as 'crime-fighters' may be understood as doxic knowledge (ibid; 334).

Habitus refers to the self-sustaining social norms which develop in response to structural conditions, described more prosaically by Chan as 'common sense' (ibid; 338) or a 'feel for the game' (Bourdieu, 1984; 114 [1979], and a means of coping with 'unforeseen and ever-changing situations' (Bourdieu 1977: 72). Habitus is adaptable, that is, capable of reacting to the social world in which it evolves, and stimulating change (Navarro, 2006; 16). New dispositions or outlooks can be generated by external conditions and challenges: for example, by increasing levels of recorded crime, or by shifting approaches to crime control in other jurisdictions.

Field refers to the social space or more enduring mesa-level structures and networks that are constituted by habitus. For example, the parliamentary setting may be read as a social field which generates and sustains its own habitus, including dispositions towards certain ways of thinking about crime control. Likewise, the policing and legal professions can be read as fields, each with their own distinctive habitus, both subject to conflict, contestation and challenge.

Applied to the narrative thus far, the analysis shows how actors within the parliamentary field adjusted their habitus to keep 'in the game' (Chan, 2004; 346), replacing taken for granted or doxic beliefs about the liberty of the individual, with values which gave precedence to crime control. Responding to external conditions, namely increasing levels of recorded crime and public anxiety, the habitus of crime control shifted, bringing previously marginal and piecemeal ideas about crime prevention centre-stage.

Whilst the more libertarian Right sought to espouse older, retrospective legal principles via the birching bill – to uphold the ideal of "a *fair trial according to British methods"* (Higgs, Con. HC 26/2/1953 vol. 511 c. 2342) – the explicitly retributive character of the proposal was deemed out of kilter with the prevailing liberal-welfarist habitus, and thus rejected. Thereafter actors from the libertarian

camp would support the 1953 Act, begrudgingly concluding that it is "*the criminal class that has forced it upon us*", (Baxter, Con. HC 26/2/1953 vol. 511 col. 2352).

In this respect, it can be argued that legislative developments in the 1950s signalled an important ideological shift in the way that the preventative role of the police was conceptualized: a shift from the Peelian ideal of police presence; to that of preventative *power*, premised on the slippery principle of reasonable suspicion. In sum, a shift which redefined what was 'right and proper' in relation to the policing remit (Manning, 1978; 18-19).

The next part of the chapter shows how this newly authorized outlook carried significant weight in the 1960s, which saw the systematic expansion of police stop search powers across the decade. Put in Bourdieuean terms, the preventative principle acquired the status of axiomatic or doxic knowledge. The analysis begins with a short overview of the political and social backdrop, followed by an account of the key statutory developments.

2.3 Policing and Crime Control in 1960s Britain

The Conservatives remained in power throughout the 1950s and early 1960s under Macmillan, and briefly Douglas-Home. The election of Harold Wilson in 1964 marked a shift to the Left, characterized by a series of radical social reforms – including the legalization of abortion, abolition of capital punishment in 1969, decriminalization of homosexuality in England and Wales, abolition of theatre censorship, and the enactment of the Race Relations Act 1968 – which together, '[made] up the 'emblematic' legislation of the sixties' (Sandbrook, 2006; 338).

This sense of social revolution chimed with progressive sentiments in the criminal justice field. Notably, the Criminal Justice Act 1961 enacted the principles laid out in the 1959 White Paper *Penal Practice in a Changing Society* and prescribed the tone for the decade, with a clear emphasis upon rehabilitation, treatment and after-care for offenders (Loader, 2006; 564). Yet as Sandbrook (2006) observes, beneath the clichéd gloss of sixties liberalism, Britain remained a deeply conservative society. For example, a commitment to liberalism within criminal justice was 'caricatured by its opponents as 'soft' on criminals' (Bartie and Jackson, 2011; 96), and countered by cross-generational support for the death penalty. And within the parliamentary field, the slippery ideal of preventative police power was entrenched further: by the expansion of stop and search powers, as detailed next.

2.3.1 Stop and search powers in 1960s Britain

Between 1964 and 1971, at least seven statutes conferring some form of search power based on reasonable suspicion were passed, mostly in relation to the unlawful possession of drugs and firearms. Statutes included the Drugs (Prevention of Misuse) Act 1964; Dangerous Drugs Act 1965; Firearms Act 1965, Protection of Birds Act 1967; Dangerous Drugs Act 1967; Firearms Act 1968 and the Misuse of Drugs Act, 1971. Whilst the Protection of Birds Act might be dismissed as trivial, it is worth noting that search powers for bird's eggs were referenced extensively in parliamentary debate over the next two decades, drawing on the hypothetical line that if it was acceptable to search for bird's eggs *ergo* it was acceptable to search for guns, drugs and offensive weapons[3].

By the late 1960s, the principle of stop and search – as an adjunct to specific offences, without warrant, and based on reasonable suspicion – was an accepted legal construct. Not invariably taken for granted (some challenges are evidenced), but nevertheless, an established way of thinking about crime control. In other words, in this period the idea of 'stop and search' as a preventative tool was converted: from a threat to liberty; to an 'accepted fact' (Bourdieu, 1987; 817).

[3] For example, see:
Taverne, Lab. HC 23/10/1967 vol. 751 c. 1382
Collins, Lab. HL 5/7/1967 vol. 284 c. 748
McArthur, Con. HC 26/3/1968 vol. 761 c. 1367
Monro, Con. HC 10/11/1976 vol. 919 c. 407
Murray, Con. HL 29/1/980 vol. 404 c. 809
Wheeler, Con. HC 25/3/1982 vol. 20 c. 1148
Elton, Con. HL 28/6/1983 vol. 443 c. 230
Wheeler, Con. HC 7/11/1983 vol. 48 c. 83
Knight, Con. HC 5/12/1985 vol. 88 c. 513

At first glance the expansion of search powers in the 1960s might be viewed as out of kilter with the prevailing political outlook. Recall here, that the *absence* of search powers was modelled as a procedural safeguard in the Prevention of Crime Act 1953. Yet it can be argued that the 1953 Act set a crucial precedent: a baseline which could be expanded on, given the unbounded nature of prevention. Moreover, social and political conditions remained conducive to the expansion of police powers. Specifically, increasing recorded crime rates (Smith, 1999), public concerns in relation to the social threat posed by 'youth' (Cohen, 1972) and a socially conservative backdrop provided parliamentarians with a receptive ideological setting in which to extend the policing remit.

Next, sections 2.3.1.1 to 2.3.1.7 document the expansion of police powers across the decade, using legislative debate to frame the discussion. The subject of the search (premises, people, drugs etc.) is marked in bold in order to highlight the sense of legislative creep.

2.3.1.1 Drugs (Prevention of Misuse) Act 1964

> "*I ask the House to give us new and stronger weapons in the Bill – weapons to save youths and girls from a habit which can become a vice… The police, if they are to check the misuse of these drugs, must be able to search clubs and cafés where they are known to be obtainable… so the Bill gives power for a Justice of the Peace to issue a search warrant to enable the police to search any premises on which it is suspected that an offence of unauthorised possession is being committed.*"
> (Brooke, Con. HC 30/4/1964 vol. 694 c. 603)

> "*The principle, it seems to me, is that the State has, in certain circumstances, a duty to prevent members of the public from doing things which at present they are free to do, but which public opinion regards as producing harmful social consequences to them either mentally or morally.*" (ibid. Fletcher, Lab. c. 607)

The Drugs (Prevention of Misuse) Act 1964 sough to deal with the unlawful possession of 'pep pills' (a form of **amphetamine** available on prescription). Amongst other provisions, the Act allowed a Justice of the Peace to issue a **search warrant** for the police to search **premises** suspected of holding unauthorized drugs. Enacted in the final months of the Conservative Administration, the Bill was described as a necessary response to an 'evil' that was 'manifestly growing' (Crooke, Con. HC 30/4/1964 vol. 694 c. 600), and received general approval from both sides in the House of Commons.

A few guarded remarks on the 'repressive' character of the Bill were made, although typically with the caveat of overall support. One Labour MP commented that assurances should be given to ensure that the legislation is not used "*merely as another of those sort of vagrancy charges when it is convenient for someone to be brought in for questioning in an effort to find out something else*" (ibid. Parkin, Lab. c. 639.) A further objection was raised on libertarian grounds with reference to the incremental creep of legislation, and the inclusion of a clause which would allow the Home Secretary to add additional substances to the Act at a later date (Bell, Con. 30/4/1964 vol. 694 c. 646). Such comments however, appeared to carry little political capital and were regarded as outwith the overall thrust of the debate.

More broadly, the *lack* of libertarian styled objections can be contrasted with those evidenced in relation to the Prevention of Crime Act, 1953, thus suggesting changing attitudes on the political Right towards law and order. Meanwhile, on the Left, the opposition spokesman remarked that "*I find myself on this occasion in the unusual but happy position of substantially agreeing with practically everything that the Home Secretary said*" (Fletcher, Lab. ibid. c. 605). Labour supported the Bill on the second reading, acknowledging that although it signalled "*a considerable extension of police powers by imposing penalties for possession and granting new powers of search*" and thus represented a "*substantial decrease of civil liberties*" (Robinson, Lab. 30/4/1964, vol. 694, c. 660), the Bill was nonetheless necessary.

2.3.1.2 Dangerous Drugs Act 1965

The Dangerous Drugs Act 1965 pertained to **opiates and cannabis**, and consolidated the Dangerous Drugs Act 1964, along with previous legislation. Section five made it an offence for an occupier to 'allow' premises to be used for smoking or dealing in cannabis. The Act sought to deter communal smoking and trafficking by placing the onus on managers and occupiers. A **search warrant** could be issued, valid for thirty days, which gave police power to search **premises and/or persons named**, and to seize any drugs, papers or substances as evidence. The Bill was introduced in the Lords and given Royal Assent remarkably quickly. The accompanying debates are not detailed on Hansard, although a sense of legislative creep is evident, both in the range of drugs subject to criminalization, and the extension of search powers to named persons.

2.3.1.3 Firearms Act 1965

> "*Clause 3(2) gives a constable the right of search. I am aware that there have been protests against this clause by those who fear that it will in some way infringe the liberty of the subject. We must put behind us any unduly sensitive notions about this risk. We are dealing with the problem of the increase of crimes of violence in which firearms are involved… We must allow the police this discretion, which I do not for one moment believe they will abuse. We must allow ourselves to be guided by their judgment. We must give them the right of search – they certainly need it at the moment*."
> (Bessell, Lib. HC 2/3/1965, vol. 707 c.1194)

Firearms legislation in the same year extended search powers further, and **set the precedent for stop and search of individuals at a UK level**. The Home Secretary, Frank Soskice, introduced the Bill, drawing on the style of deterrent-styled rhetoric that accompanied the Prevention of Crime Act 1953.

> "*Because this is essentially a preventive Bill – we are providing the police with greatly extended powers to help them to catch the criminal and hooligan before they have used their firearms. If we cannot turn people from a life of crime we hope to convince criminals of all sorts that they dare not take firearms out with them*."
> (Soskice, Lab. HC 2/3/1965, vol. 707 c. 1142).

> "*I think [the prospective offender] will be very considerably deterred if he knows that if he has a weapon with him and a police constable has grounds for suspecting that he is going to commit an offence, he can get ten years just for carrying the weapon*."
> (Collin, Lab. HL 25/5/1965 vol. 266 c. 817)

The preliminary Bill proposed powers to stop and search **vehicles** for **firearms** without warrant (excluding shotguns and airguns). These proposals were couched tentatively, described as 'special' and made conditional on both reasonable suspicion and the supervision of police powers. Powers to search 'ordinary' pedestrians were excluded, whilst police professionalism was understood as a safeguard.

"*Obviously, also, there is a personal liberty aspect of the power of police search. I can assure the House that I myself and the police authorities generally will be most careful in the way in which this power is exercised*."
(Soskice, Lab. HC 11/2/1965, vol. 263 c. 575)

"*It is sad that we have to come to give further powers to the police, but it is necessary, and of course we can trust our excellent police to use these powers most judiciously*."
(Lord Rea. ibid. c.299)

A supportive tenor was evident in both Houses, as suggested by a lack of objections and the inclusion of additional amendments which increased the scope of the Bill. Search powers without warrant were extended to **pedestrians** on grounds of reasonable suspicion, rendering the final bill "*an extremely tough measure"* (Sharples, Con. HC 12/5/1965 vol. 712 c. 658). Soskice acknowledged the ambiguity of 'reasonable suspicion' as a legal principle, noting that similar difficulties were faced in the Prevention of Crime Act 1953, whilst concluding that:

"*Leaving it to the good sense of the police and the courts to decide when the words were applicable… has worked well in practice and I believe that this more flexible approach will be accepted by the public at large*." (Soskice, Lab. HC 2/3/1965 vol. 707 c.115).

The Bill passed with cross-party consensus, taking only five months to gain Royal Assent. At this juncture, politicians were moving towards the abolition of the death penalty, and anticipating both a public backlash, together with an increase in the fear of crime. As such, the timing of the Bill was imperative. Asked as to the relationship between the Firearms and Abolition Bills, Soskice ambiguously replied "*I do not necessarily accept that there is a close connection between the two*". However, a concern to enlarge police powers *ahead* of the Abolition Bill is suggested below.

"*It is vitally important that every step should be taken that can be reasonably taken to prevent the increase in the use of firearms by criminals, to discourage them from taking them with them when they set out to commit any form of crime, and, particularly in view of the possible fears which the public will feel if the Murder (Abolition of Death Penalty) Bill becomes law, there is even greater need that this matter should receive the most careful attention of the Home Department*." (Bessell, Lib. HC 2/3/1965 vol. 707 c. 1196)

In this respect, emotive debate around the death penalty rendered the firearm proposals more low-ley and pragmatic (in some ways echoing the juxtaposition between the 1953 Prevention of Crime Bill and the Birching Bill), thereby facilitating the Bill's passage.

2.3.1.4 Dangerous Drugs Act 1967

The preliminary 1967 Bill concerned the supply of 'hard drugs', namely **heroin**. The initial Bill prohibited doctors, except under licence, from prescribing addicts with specified drugs. However, consideration was given to police powers in the latter stages of the Bill, when the Home Secretary was asked if powers of search for dangerous drugs were adequate, and, given that a search without warrant was permissible for firearms, whether the case could be made for search powers in relation to dangerous drugs. The Bill was subsequently extended from **hard drugs** to **soft drugs**, principally cannabis, and proposals to allow officers to stop and search **individuals and vehicles** were added. The stop and search amendment was acknowledged as contentious, but nonetheless imperative. Taking precedence from earlier legislation, 'reasonable grounds' were modelled as a procedural safeguard, whilst the amendment was rationalized with reference to Section 66 of the Metropolitan Police Act 1839 (which conferred search powers for stolen goods). Search powers for bird's eggs were also drawn upon by way of justification.

> "*In balancing the seriousness of the problem against the slight possible risk of misuse of police powers there can surely be no question about the decision we must take. Your Lordships may remember earlier in the Session agreeing that it was reasonable to provide similar police powers of search for the protection of eggs of rare wild birds from egg thieves. I am confident you will agree that we should provide the same police powers to protect the lives of human beings, mostly young ones, from the attacks of the drug traffickers*." (Collins, Lab. HL 5/7/1967 vol. 284 c.748)

> "*It is not a case where an officer can search without any reasonable grounds whatsoever. It is very similar to provisions which have been found satisfactory under the Firearms Act and also – I found this as a matter of surprise – in connection with the protection of rare birds. These provisions have not in the past given rise to complaint. Someone intending to use this power must be prepared to satisfy a court that he had reasonable grounds*."
> (Taverne, Lab. HC 23/10/1967 vol. 751 c.1382)

An underlying consensus between the parties seemed evident, as suggested in the following exchange between Taverne (Lab. Home Office Minister) and Channon (Con.).

> "*It is the job of the House above all to back up the police when we deal with criminal matters. If the police have asked for these additional powers, we cannot refuse them. But it is also our job to make sure that relations between the police and public do not worsen*."
> (Channon, Con. HC 23/10/1967 vol. 751 c. 1385)

> "*One must scrutinise with the greatest care any new power of search, and I would not go necessarily as far as the hon. Member in saying one must grant whatever power the police ask. One must consider very carefully whether, in fact, it is needed. For the reasons we have given and because the power already exists in London, we feel that it can be granted*."
> (Taverne, Lab, ibid.)

And despite some libertarian-styled protests from the Conservative Opposition, namely that the "*right of search without warrant excites deep feelings which go back a long way in our history*" (Quintin-Hogg, Con. ibid. c. 1383), the Conservatives concluded that the Amendment was appropriate, and the Bill was passed.

2.3.1.5 Liberties of the Subject: ways of thinking about police powers

Several months after the Dangerous Drugs Act 1967 gained royal assent, a lengthy parliamentary debate entitled 'Liberties of the Subject' expressed received ways of thinking about police powers. The debate was instigated by Conservative MP St John-Stevas, who tabled the following motion: "*This House condemns the ever increasing destruction of the liberties of the subject which has taken place under the present Government and calls for the immediate reversal of this tyrannical progress*" (HC 1/12/67 vol. 755 c. 808).

Hinging on the question of individual rights and freedoms, the debate raised various objections to the current 'tyrannical' climate, including comprehensive education, and the constitutional arrangements of the House of Lords. However, the debate hinged largely on police use of breathalysers, which were understood as an infringement of the right to individual freedom. By contrast, the expansion of police search powers across the decade was referenced once in the course of a five hour debate by Joan Vickers (Con. MP and member of the National Council for Civil Liberties):

> "*There was, regrettably, a late Amendment to the 1967 Act which gives police power to stop and search without warrant any person who is suspected of being in unlawful possession of drugs. I suggest that this is really a new threat to civil liberties. It has received very little attention in Parliament, or, I am surprised to find, in the Press. Its dangers are, in my opinion, immense, and it will not help relations between the police and the public. Young people, especially, are being subjected to indiscriminate searches.*"
> (Vickers, Con. HC 1/12/1967 vol. 755 c.877**)**

However, this critique did not fit' the dominant political outlook and Vickers' comments were overlooked. Rather, by this juncture, the principle of police intrusion prior to a crime appeared to be understood as an 'accepted fact'. The enactment of the Firearms Act 1968 is detailed next.

2.3.1.6 Firearms Act 1968

The 1968 Firearms Act was precipitated by the murder of three police officers in 1966 and extended the legislative scope of gun control to shotguns. The Bill was introduced in February 1968 by a relatively minor clause in the largely progressive Criminal Justice Bill 1967 which abolished corporal punishment in prisons and introduced suspended sentences. The objective was to regulate the licensing of shotguns, however the Act also conferred the power to search **premises** with a warrant, to stop and search **a person** suspected of possessing a firearm, and to search **vehicles**. With echoes of the Firearms Act 1965, Greenwood (1972; 83) argues that the Act can be read as a placatory move, both within the context of larger debates on the abolition of the death penalty, and widely felt public revulsion around the original murder case. The Bill was passed without challenge, following the now accepted model regarding the power to stop and detain for the purpose of search.

2.3.1.7 The Misuse of Drugs Act, 1971

By 1968, the right of officers to stop and search as an adjunct to specific offences appeared to be broadly accepted by politicians of all shades. As a measure of the ideological distance covered since the 1950s, recall that proposals to *arrest* without warrant in the 1953 Prevention of Crime Bill were variously described as "*drastic*", "*infringing on our valuable traditions*" and "*against all our concepts of justice*". Yet by the mid to late 1960s, more acquiescent attitudes towards police powers were evident, particularly from the political Left. Indeed the main body of legislative change in relation to stop and search took place under the home secretaryship of Roy Jenkins, who was commonly understood as a 'civil libertarian' (Gearty, 2007; 44).

However, by the end of the 1960s, the benign policing paradigm that had facilitated the enlargement of police powers in the 1950s and 1960s was beginning to falter. Just as support for the police had hinged on inclusive socio-economic arrangements in the early post-war years (Reiner, 2010; 70), increasing socio-economic instability, together with increasing rates of recorded crime acted to destabilize and politicize policing in this period (ibid; 79).

Within the parliamentary field, libertarian sensibilities in relation to the freedom of the individual were increasingly displaced by concerns around the 'permissive society' and moral decline, and following the return of the Conservatives to power in 1970, the Right and Left realigned along more partisan lines. Against this fractured backdrop, a greater sense of political contestation was evident in the debates that accompanied the 1971 Misuse of Drugs Act. The Bill was introduced in 1970 by James Callaghan as Labour Home Secretary, with the aim of 'consolidating existing drug law and giving future Home Secretaries more flexible powers to deal with evolving patterns' (Davis, 2006; 27). The initial Bill pertained to the medical profession and the unlawful provision of **prescription drugs**. However, **stop and search powers** were introduced as an amendment in the second reading. Parliamentary debate at this juncture was more openly ideological and articulated explicit concerns for police-community relationships, and due process, both of which had received minimal attention during the 1960s. In the extract below, Michael Foot comments on the sense of legislative creep evident in earlier legislation, deteriorating police-community relationships, and the criminalization of young people.

> "*Parliament had been led to assume that the purpose of the Dangerous Drugs Act 1967 was to deal with drugs such as heroin, but large-scale searches for cannabis are now made under Section 6 of this Act. This section was put in as a late amendment and accepted by an unwatchful House of Commons almost without discussion. It was improper that we should have allowed it to go through without real consideration… this is especially a question of a clash between the law and alleged young offenders. Such young offenders are particularly vulnerable. It is particularly difficult for them to defend themselves or to know what their rights are against improper police activity…*
>
> *I also want to guard against what is an even worse danger than drug taking – that is, a deepening antagonism between certain sections of young people and the police, or the erosion of confidence in the police… It can lead to innocent young people being put in prison, although they have done something which, according to their social outlook and that of most of their friends and associates, is not a crime*."
> (Foot, Lab. HC 25/3/1970 vol. 798 c. 1496, 1497).

In the Lords, Baroness Wootten (Lab.) put forward an amendment to remove the stop and search provision on the grounds that 'reasonable suspicion' was unacceptably ambiguous, the proposed right to 'detain' and search ill-defined, and the fundamental balance of power weighed too heavily in favour of the police (HL 11/2/1971 vol. 315). Similarly, Baroness Birkness (Lab.) commented:

> "*There is in my mind, and I think in the mind of those who are supporting this Amendment, no intention at all of trying to facilitate the use of drugs or of trying to hinder the police in the exercise of their duty; but on the question of the difficult balance between civil liberty and the powers of the police, I find that I have to come down on the side of the police having the powers to arrest but not to stop and search.*"
> (Birkness, Lab. HL 11/2/1971 vol. 315 c.258)

Baroness Serota (Lab.) recommended that a code of practice should be put in place: which would not be realised for an a further fourteen years in England and Wales, and at the time of writing, remains outstanding in Scotland.

> "*A further point which I press on the Government at this stage is to ensure that, with the passing of this Bill, the concern many of us have expressed in connection with the continuation of police "stop and search powers" should be met by the early publication of a code of practice which police forces throughout the country would follow.*"
> (Serota, Lab. HL 25/3/1971 vol. 316 c. 1021)

Parliamentary debate touched both on detection rates and preventative nature of stop and search. Critics deemed detection rates unacceptably low and suggested that in practice, 'reasonable suspicion' meant either singling out young people with inappropriately long hair, or searching young people en-masse when leaving dance halls. Conversely, supporters of the Bill argued that prevention would result from detection, and the disruption of crime, halting the spread of drug taking (Oakes, Lab. HC 25/3/70 vol. 798 c. 1504).

More generally, parliamentary discourse reflected the burgeoning politicization of policing; signalled on the one hand by concerns around due process, community-police relations and the balance of power between citizen and state; and

on the other hand, by calls to strengthen policing powers in the name of crime control. Nevertheless, political opinion was broadly weighed towards the Bill. As Baroness Serota observed, "*I find myself in support of the minority view"* (HL 11/2/1971 vol. 315 c. 255).

The passing of the Misuse of Drugs Act 1971 temporarily concluded the post-war enlargement at the UK level. Against an increasingly volatile and politicized backdrop, it was over a decade before parliament would move to expand search powers. Yet by the early 1970s, the right to stop and search no longer depended on arcane or local legislation. Rather, stop and search was embedded as a modern legal construct: a means of detecting and preventing crime, which would carry significant implications for policing on both sides of the border thereafter.

2.4 Summary: preventative sensibilities

Drawing on Hansard parliamentary records, this chapter has examined the political outlooks and sensibilities that underpinned the expansion of police powers in 1950s and 1960s Britain. Prompted by the post-war increase in recorded crime, it was argued that long-standing or doxic beliefs about the policing role changed in this period, to incorporate newer preventative ideologies.

Part 2.1 examined the Prevention of Crime Act 1953. The analysis showed how proposals to enlarge police powers of arrest on the basis of reasonable suspicion were regarded with deep ambivalence by some parts of the legislature: as an affront to individual liberty that ran counter to the deeply held principle of punishment after the crime. However, this sense of resistance was short-lived, as the political habitus responded to increasing levels of recorded crime: as MPs adjusted their outlook to keep 'in the game' (Chan, 2004; 346).

How did this shift take place? In the first instance, the Act was likely to be facilitated by a favourable political and socio-economic backdrop, together with high levels of public support for the police, generated variously by economic prosperity, full employment, a culture of deference toward authority (Loader and Mulcahy, 2003; 13), and more inclusive social arrangements (Reiner, 2010; 77). More directly, it can be argued that the Act was facilitated by its ideological positioning in relation to the concurrent Birching Bill. By dint of the crude blend of deterrence and retribution that underpinned the Birching Bill, the Prevention Bill was rendered a progressive alternative that could be aligned with the prevailing liberal elitist outlook. Building on the preventative precedent set by the 1953 Act, the modern construct of stop and search was embedded in parliamentary discourse in the 1960s: as an 'accepted' way of thinking about preventative crime control that drew minimal challenge in parliament.

From the early 1970s, the tone of debate changed, as the post-war political consensus faltered, economic prosperity ended, and recorded crime continued to rise. By 1971, proposals to increase powers of search for drugs were resisted in Parliament by a political Left attuned to an emergent civil liberties agenda, whilst the

Right increasingly elevated law and order concerns above the previously vaunted liberty of the subject. The use of stop and search was subject to sustained and robust criticism in the decades that followed. However, this was implicitly qualified by geography and policing context. For example, criticism did not extend to Scotland. In other words, the main body of critique hinged on practice rather than principle.

Several observations can be made here. First, in terms of elite sensibilities, some respects, the analysis departs from the 'well-trodden' emphasis on rehabilitation and reform in the mid-twentieth century decades (Loader, 2006; 561). Whilst acknowledging the prevailing liberal elitist disposition documented by Loader and Garland, the narrative also highlights a lack of political will (Ryan, 2003), as signalled by a lack of capital investment in rehabilitation, and the persistence of older, more retributive discourses. Building on this inconsistency, it was suggested that the criminal justice field might be understood in more dynamic and fluid terms, that is, capable of accommodating newer sensibilities and outlooks. Put in Bourdieuean terms, it was argued that doxic beliefs about individual liberty, retrospective justice and 'deservedness' (Asp, 2013) were contested in the mid-twentieth century decades, and gradually displaced by newer preventative rationales which accrued political capital by dint of their status as a progressive and more enlightened form of crime control. In this respect, the Prevention of Crime Act appeared to fit with the 'civilizing' values, or the habitus espoused by liberal elitism: despite the introduction of a principle which was theoretically 'unbounded' in its application (Harcourt, 2007; 31), and might be viewed with unease through a more critical lens.

In line with this observation, the analysis showed how the 'unbounded' model of preventive police power was indeed exploited from a legislative perspective, as signalled by the incremental expansion of search powers across the 1960s. This sense of slippage is important, and would persist in the decades that followed, as the construct of stop and search was expanded to incorporate far-reaching powers in relation to the prevention of violence and terrorism at a UK level. The newly acquired policing remit also increased the scope for police discretion based on the slippery principle of 'reasonable suspicion': and with it, the potential

for disproportionality, based on more generalized beliefs about suspect populations, or stereotypes.

Finally, and perhaps most importantly, the analysis suggests that it is important to examine subtle changes in criminal justice. Whilst noisy politics and bold policies rightly attract academic attention, it is arguably in the quieter periods, in times marked by political consensus and less vocal challenge, that more deep-seated and enduring transformations are likely to take place. Building on this observation, the next chapter investigates the development of stop and search in Scotland from the late 1960s through to the early 2000s, and shows how the discreet character of Scottish policing was conducive to a more proactive policing approach.

Chapter 3. Depoliticization: Scotland 1967-1999

> 'It is rare for political trends in modern advanced societies to be as dramatic as they have been in Scotland in the last half of the twentieth century. What above all marks them out has been the growing divergence between electoral behaviour in Scotland and England, and the emergence of an alternative political agenda north of the border.'
> (McCrone, 2001; 104)

> 'Political opposition to the police on matters of law and law reform has traditionally been weak and the pressure groups so vigorous in England have been absent in Scotland. What little debate there is in Scotland on policing takes place therefore within limits far more restrictively defined than in the rest of Britain.' (Gordon, 1982; 92)

3.1 Introduction

By the early 1970s, stop and search had become increasingly politicized. Moreover, the tactic would carry negative consequences for policing in England and Wales thereafter, from the Brixton riots, through to the urban unrest in 2011. Yet to be clear, this trend was not evenly felt across mainland Britain. Just as the politicization of stop and search, and of policing more widely intensified in England, Scottish policing appeared to take an opposite path, characterized by *depoliticization.*

In this chapter, the locus moves to Scotland. The aim is to explain the trajectory of stop and search in Scotland from the late 1960s, through to the 1990s. That is, to explain how stop and search came to be used intensively in some parts of the country, seemingly at odds with a more welfarist political outlook, and with negligible sense of public disquiet or contestation. The analysis is influenced by two key structuralist texts: Baldwin and Kinsey's *Police Powers and Politics* (1982) and McBarnet's *Conviction* (1983). Both texts relate directly to events discussed in the chapter, and engage with one of the key themes thus far, namely the way in which policing is structured by political and legal factors.

Two arguments will be advanced in the chapter. First, it will be argued that the *apolitical* character of Scottish policing provided an uncontested space in which

to quietly embed law and order values, and to develop more proactive policing methods.

Second, it will be argued that a key shift took place in relation to the preventative role of the police circa 1992 onwards. Specifically, it will be argued that stop and search was remodelled as an intensive *deterrent* in this period: a means of deterring prospective offenders by increasing the probability of being stopped and searched. This argument will be explored with reference to the introduction of the stop and search 'campaign' by legacy Strathclyde, which arguably prefigured the direction of stop and search in some parts of Scotland thereafter.

3.1.1 Method and data

The methodological approach is similar to the previous chapter. Documentary data sources are drawn on to investigate the development of stop and search from the late 1960s through to the mid-1990s. Texts include Hansard records and policing documents lodged in the National Archives of Scotland (NAS). Details of these records are provided in **appendices 7.1** and **7.2** respectively. Again, the data are intended to capture 'authoritative' or influential voices, including politicians, Scottish Office officials, legal professional and police executives. The chapter also uses media reports accessed via the LexisNexis Library, which are approached critically (given that much of the reportage appears to have been based on legacy Strathclyde press releases). Finally, the analysis draws on interview data to unpack the premise of Scottish policing as 'quieter', or less visible than its English counterpart, and to trace the development of a proactive stop and search policy in legacy Strathclyde.

3.1.2 Chapter structure

The chapter is organized in six parts. Part 3.2 provides a short overview of Scottish politics, and prevailing attitudes to crime control and policing. Part 3.3 develops the apolitical argument, which is set out as three separate subsections. Section 3.3.1 examines political responses to proposals to introduce stop and search powers for offensive weapons in the late 1960s; section 3.3.2 examines how the influential Thompson Committee on Criminal Procedure Justice framed the prevailing understanding of police powers; and section 3.3 examines the introduction of stop and search powers for offensive weapons under the Criminal Justice (Scotland) 1980 Act.

Building on the apolitical argument, part 3.4 examines the introduction of the stop and search campaign by legacy Strathclyde in the 1990s. Part 3.5 investigates public responses to the Strathclyde campaigns and argues that these were shored up by the less visible and less controversial standing of Scottish policing. Finally, part 3.6 draws the analysis together, comments on the emergent theoretical themes, and identifies the surfacing of a preventative agenda, as premised on Classicist principles, and operationalized in terms of actuarial or risk-based policing.

3.2 Scottish identity and the politics of crime control

This chapter picks up the narrative in the late 1960s, at a time of political divergence between Scotland and England. Whilst the joint experience of two world wars had subsumed Scottish political identity under an overarching sense of 'Britishness', as McCrone observes, the failure of the post-war settlement and end of economic boom facilitated the idea of Scotland as 'a separate unit of political and economic management' (2001; 118). Put differently, by the late 1960s, the idea of 'Scotland' had resurfaced, as a key political and policy signifier and 'a form of cultural reference in terms of which the political world could increasingly be interpreted' (ibid; 14, 120).

In political terms, the prevailing socio-economic direction was orientated towards a Keynesian mix of corporatism and free-market pluralism (Moore and Booth, 1989; 15). This outlook was set by the Scottish Office[4], described as a 'quasi-state' by McAra (2008; 493), and reproduced by close-knit policy communities (Moore and Booth, 1989). The reassertion of a Scottish national identity was likewise apparent in electoral terms, as voting behaviour diverged from English trends, broadly placing the Scottish electorate more to the Left of Centre than their English counterparts[5], arguably with a stronger sense of attachment to social democratic values and state institutions.

[4] The Scottish Office functioned as a UK Government department from 1855 to 1999, controlled by the Secretary of State for Scotland, and undertook a wide range of functions. Post devolution, the majority of Scottish Office functions were transferred to the Scottish Executive (which became the Scottish Government when the Scottish National Party came into minority power in 1997), with some functions retained by the current Scotland Office at Westminster.

[5] In the 1951 general election, Conservative and Labour held an equal number of seats in Scotland (49% and 48% share of the vote respectively). In 1966 Labour took 46 seats compared to 20 Conservative seats, with a respective 50% and 38% share of the vote (House of Commons, 2003; 13)

3.2.1 Crime control in Scotland

Crime control and penal policy was controlled by the Home and Health Department, which as McAra describes, 'under the tutelage of the Secretary of State for Scotland, enjoyed a high level of autonomy from the UK government at Westminster' (2008; 482). With echoes of Loader's 'platonic guardians' (2006), Home and Health was 'staffed by essentially 'progressive' civil servants', who together with decision-making elites outwith the Scottish Office, set the direction of Scottish criminal justice (Moore and Booth, 1989; McAra, 2001; 77: Keating, 2010), making the case for 'separate policies tailored to the distinctive conditions within Scotland' (ibid.)

In particular, a distinctive welfarist disposition was evident within youth justice, which 'set the Scottish juvenile justice system on a different trajectory from that in England and Wales' (McAra and McVie, 2010; 70). Ideological divergence between the two jurisdictions was signalled in the respective Kilbrandon Committee Report (1964) and Ingleby Report (1960) on juvenile offending (Mack, 1964). In contrast to the relatively unambitious proposals set out in the Ingleby report, the Kilbrandon, Report, together with the White Paper *Social Work and the Community*, set the tone for deep seated reform in Scotland (Brodie, 2008; 699). Building on the principles espoused by Kilbrandon, a legal precedent for progressive welfarist policy was established in the Social Work (Scotland) Act 1968 which replaced the probation service with a generic social work service, and introduced the Children's Panel and hearings system, placing young people's 'needs' and interests at the heart of decision-making.

Within policing, a less settled mix of sensibilities was evident, ranging from the welfarist to the punitive. On the one hand, the multi-agency Police Juvenile Liaison schemes pioneered in the Greenock policing area in the 1950s were endorsed by Lord Kilbrandon, who recommended their continuation in the interest of 'good police-community relationships', and to some extent, cast policing in a 'social work role' (Bartie and Jackson, 2011; 78-79).

On the other hand, hard hat policing tactics persisted. As Schaffer documents, only four out of the eight police forces supported the Juvenile Liaison schemes (1980; 30), whilst hostility from some officers towards young people remained a

challenge (ibid; 49). More broadly, the welfarist approach was deemed out of kilter with the law enforcement role by some critics (Bartie and Jackson, 2011; 89). The following HMICS memorandum refers to the appointment of the new Chief Constable to Dundee in 1968, and calls into question some of the rosier historical accounts of Scottish policing.

> 'When Mr Little took over the Dundee force the police policy was a tough one of strict law enforcement. He faced difficulty with his middle management when he first introduced policemen to carry out community involvement type work in problem areas such as Fintry but he persevered and has made very good progress.'
> (NAS HH55/1718, David Gray HMICS to Mr Elliott-Binns, Scottish Office, 25/7/1975)

Gordon (1980) likewise reveals a set of less progressive sensibilities in the 1970s. Demands by the Scottish Police Federation included a referendum on capital punishment, tougher penalties and increased police powers (ibid; 93), whilst HMICS criticized a lack of stop and search powers for offensive weapons and complained that the publication of a Scottish Consumer Council booklet was making people aware of their rights in relation to search and arrest.

> 'The police feel that too much attention is paid to those who stir up complaints against the police or otherwise make the job more difficult.'
> (Cmnd.7306, 35, HMSO 1978, cited in Gordon, 1980; 94)

Whilst the operational policing outlook might be described as an imprecise mix of disciplinary, punitive and welfarist sensibilities, in representational terms, a softer narrative was articulated by the Scottish Office and political centre-Left which sought to promote good police-community relationships, to curb demands for police powers: more broadly, to 'depoliticize' policing, as detailed next.

3.3 Scottish policing and depoliticization

Before proceeding with the 'apolitical' argument, it is important to distinguish between the idea of policing as political, and politicized policing. Policing is inherently political given that it is premised on the power of the state (Weber, 1919), backed by the use of force (Bittner, 1974; Klockars, 1985) and imposes 'laws that are the product of what is right and proper from the perspective of different politically powerful segments within the community' (Chan, 2004; 331). Nonetheless, policing is not invariably *politicized* in the sense of explicit partisanship, nor is policing necessarily subject to political controversy or attention (Reiner, 2010; 33). It is the latter idea of policing as apolitical or depoliticized that informs the analysis in the thesis: that is, policing which proceeds quietly in the background, as a 'socially invisible, undiscussed routine' (ibid.), with little complaint or contestation.

3.3.1 The Offensive Weapons Bill

Towards the end of 1967, Glasgow magistrates and the Chief Constables of Scotland Association met with Norman Buchan (Lab.), the joint Parliamentary Undersecretary to request additional 'relatively simple' powers of search for offensive weapons in Scotland. As Bartie details, at this juncture, a moral panic over 'the new wave of Glasgow Hooliganism' was underway, marked by Frankie Vaughan's visit to the Easterhouse Estate to oversee a knife amnesty for rival gang members (2010; 385)[6]. Lending support to the Glasgow magistrates and Chief Constables, a private members bill was presented by Scottish Conservative MP Alick Buchanan-Smith in

[6] A deadpan internal memo to Buchan the following day noted 'Under-secretary of State may care to see the attached account of the hoo-ha yesterday about Frankie Vaughan and the gangs.' (NAS HH55/1512 memorandum, 11/7/1968).

November 1967, which sought to introduce stop and search powers for offensive weapons via an amendment to the Prevention of Crime Act 1953.

The Scottish Office response to the Prevention of Crime (Scotland) Bill, informally known as the 'Offensive Weapons Bill', contrasted with the straightforward expansion of UK level stop and search powers at Westminster across the 1960s, as the Bill failed to reach a second reading, or to gain Scottish Office support.

> 'Scots Tory MPs protested angrily last night after the Government whips refused to permit a second reading for the Prevention of Crime (Scotland) Bill… The Bill will come up for 2nd reading again on Feb 2nd and it will be introduced "again and again" until the Government decide on an appropriate course of action, Mr Buchanan-Smith said last night.' (The Scotsman, 27/1/1968)

Buchanan-Smith complained that the Bill had the support of 'the public, the police, magistrates, chief constables, and Judges – but not of the Scottish Office' (Glasgow Herald, 15/12/67), and indignantly highlighted the precedent set by existing powers of search (including birds eggs).

> "*Such powers have been given in relation to many other offences, such as the carrying of firearms and drug-taking. The Metropolitan Police have had such powers for many years and only a year ago the House gave them in relation to the protection of birds. If it was thought necessary to give these powers in relation to these other offences, I cannot see the objection of the Secretary of State and the Under-Secretary to giving them in respect of carrying offensive weapons*."
> (Buchanan-Smith, Con. HC vol. 761, c. 1341, 26/3/1968)

More emotively, Esmond-Wright, the Conservative MP for Pollock observed that "*law and order in Scotland is gravely imperilled*". Buchanan-Smith described the attitude of Willie Ross (Lab.), the Secretary of State for Scotland as "*Canute-like*", remarking that "*many of us have gained the impression that the Government are more concerned about the welfare of the criminal than about the safety of the public*" (Buchan-Smith, Con. HC 26/3/1968 vol. 761 c. 1338).

By way of reply, Scottish Office officials referred to existing police powers of arrest for offensive weapons under the Prevention of Crime Act, 1953, which were deemed adequate to deal with the threat of weapon carrying (Buchan, Lab. HC vol. 760 c. 423 6/3/1968; NAS HH55/1249). The perceived threat to police-community relationships was also articulated by Scottish MPs and Scottish Office officials, as shown in below.

> "*I am suspicious of the pleas put forward for extending police powers. I am prepared on an objective view to say that that may be necessary and we may have to fall back on it, but I would accept that as a defeat and not in itself desirable. There is a grave risk that as we increase the powers of the police in an arbitrary way we may threaten to destroy the happy relationship existing between the police and the public*."
> (Steel, Lib. HC vol. 778 c. 1111 24/2/1969)

Similar concerns were expressed in more sensational terms in the Labour-leaning Daily Record, following an Easter holiday weekend marked by violence in Glasgow.

> **'BLOODY EASTER The Record looks at an Orgy of Violence**
>
> **THE ANSWER IS NOT TO FRISK US ALL**
>
> 'Shocking statistics. Something must be done to protect innocent men, women and children. But the answer is not for Scotland to pass the buck to the Government and say: 'All would be well if you'd only give our police wide powers to stop and search people for offensive weapons' THE ANSWER IS NOT TO FRISK US ALL! The police already have powers to take action against thugs armed with private arsenals of sharpened combs… They have had these powers for 15 years!... They are very wide powers. The police do not have to KNOW that the person has a weapon. They only have to have "reasonable cause to believe it"…. It is argued that if, under the present legislation, the police arrest and search an innocent person by mistake, they might be sued.
>
> Yet how often do we hear of people suing the police for wrongful arrest? THE RECORD SAYS TO THE POLICE Use the powers you already have before asking for more… THE RECORD SAYS If such cities as London, Liverpool, Manchester and Birmingham can tackle their crime wave without frisking their citizens for weapons, so should Glasgow. If Scottish Police are given wider power than the English police it will be Scots who lose civil rights and dignity. (Emphases in original, Daily Record, 16/4/1968)

Responding to representatives from the Glasgow Corporation (Council) who supported the Bill, a more low-key response was expressed by Buchan, as shown below.

> 'The carrying of offensive weapons must be held responsible for far more physical damage and suffering than either firearms or drugs. It is far more widespread. This latter consideration, which is *prima facie* a reason for having the power, is on a different level, an argument against its grant. Because firearms and drugs are comparatively rare, the police will have to have fairly good reason to suspect their existence before they exercise the power. But there will be some reason to suspect, in present circumstances, that almost any group of youngsters on a street corner in Castlemilk are carrying offensive weapons and to search them. There is thus a bigger risk of mistake and friction.'
> (NAS HH55/1503 Meeting between Buchan and Glasgow Corporation, 1968)

Similarly, a senior civil servant in the Home and Health Department commented:

> 'Powers to stop and search are much rarer than unlimited powers of arrest – which exist for all serious crime. It is for this reason that I assume they must be regarded as more serious infringements of liberty – though, of course, less drastic in their effect on the individual.'
> (NAS HH55/1503 Scottish Office Memorandum, D.J. Cowperthwaite, 9/1/1968)

Here, stop and search was understood as a more serious power than arrest because the *prospective* prevalence of searches was factored into the discussion *and* tied to the potential threat to police-community relations. In other words, the slippery, limitless nature of prevention was acknowledged. Nor was it taken for granted that 'reasonable suspicion' would necessarily act as a procedural safeguard.

More broadly, the rejection of the offensive weapons Bill fitted into a wider Scottish political narrative which sought to defuse and depoliticize the emergent 'law and order' agenda. In the parliamentary extracts below, Donald Dewar, the recently elected Labour MP for Aberdeen, derides attempts by the Scottish Conservatives to reinstate the death penalty as a means of shoring up political capital.

"*I beg to move that this House, noting the growing public anxiety about the maintenance of law and order, deplores the increasing and dangerous distortions which result from the increasing tendency to present the problems of lawlessness in political rather than social terms… In 1966 we had the embarrassment of watching the General Election being fought, particularly in the West of Scotland, primarily – almost solely – on the issue of law and order, the crime rate, and the return of capital punishment. It was a thoroughly unpleasant experience and one which I do not want to see repeated*."
(Dewar, Lab. HC 24/2/1969 vol. 778 c. 1108, 1111)

Indignant at the manipulation of crime rates and the fear of crime for electoral capital, Scottish Labour sought to defuse and depoliticize the offensive weapons Bill.

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

"*The basic trouble is that people like me, who might have been converted to the cause and might have agreed, ultimately, that there were reasonable alterations, are alienated by the sound and fury of the campaign and are finally forced to take up a position opposite to that which they might otherwise have adopted…. There is currently the same sort of campaign in the case of the Prevention of Crime Act, 1953, when we constantly have the feeling that we are being put in the dock. If we do not support this proposal we are condemned as complacent, soft-hearted, fuzzy-minded do-gooders and as friends of the criminal*."
(Dewar, Lab. HC 26/3/1968 vol. 761 c. 1344)

Nonetheless, public demands for stop and search powers did not abate. In 1974, various representations in favour of extending police powers were made to the Secretary of State for Scotland. These included the Scottish Council of Women's Citizens Associations, the Convention of Royal Burghs, the Provost of Dundee, Church groups, the National Union of Small Shopkeepers, various church ministers and local ward associations. Conversely, a single representation in favour of retaining existing limitations on police powers was made: entirely in verse[7]. Whilst it is difficult to assess the extent to which those supporting the Bill represented wider public opinion, the Scottish Office remained opposed.

Drawing the analysis together, by the end of the 1960s a number of broad-brush political processes appeared to be in play, as competing actors sought to articulate and impose different interpretations of the policing role. On the one hand, police powers were being used as a vehicle for electoral gain on the Right, most likely prompted by the swing away from Scottish Conservatives towards the Scottish National Party. On the other hand, proposals to increase search powers were rejected by the liberal-orientated Scottish Office, which placed greater emphasis on police-community relationships and the balance of liberties, whilst seeking to deprive the

[7] Dear Sir on behalf of what I read,
More power to the police is not in need
Remember all have weapons galore
From a housewife and children or more
Knitting needle, screw driver, knife, pin and needle
Have the police got time to stop and wheedle?
There are billions of weapons at hand
No matter where ye lookin' in the land
I believe if the police were like in the old days
Kids and crime would wicker away
It's a question to stop and search
But if it happens they will act like God on a perch
(Anon., Ayrshire, NAS HH55/1249)

Right of political capital. A sense of fit can also be identified between the prevailing Left of Centre outlook which sought to curb the limit of policing, and the welfarist approach to criminal justice epitomized by the Kilbrandon philosophy, which sought to avoid the criminalization of young people. In other words, the dominant political outlook on policing dovetailed with the wider habitus of Scottish criminal justice.

Yet looking ahead, a volte-face would take place. By the end of 1980, the Scottish police were equipped with powers of search at detention, and stop and search powers for offensive weapons, whilst by the early 1990s, stop and search was being used intensively within the Strathclyde region. The timing of these events is important, and cautiously suggests that developments within the policing field predated a more widely documented punitive turn in Scottish criminal justice from the mid to late-1990s onwards (McAra and McVie, 2010; 71-72). Put in Bourdieuean terms, it can be argued that the direction of stop and search foreshadowed the subsequent fracturing of the welfarist disposition or habitus, as differing interpretations of the policing role gradually, if unevenly, accrued political capital in some parts of Scotland.

The remainder of this chapter will show how seemingly disparate political events pertaining to police powers in the 1970s and 1980s facilitated the emergence of proactive stop and search policies in the 1990s. Next, section 3.3.2 investigates how the Thompson Committee on Criminal Procedure quietly presaging a more disciplinarian understanding of the policing role in the early to mid-1970s.

3.3.2 The Thomson Committee on Criminal Justice Procedure

In January 1970, with Labour in its final months of power, a Departmental Committee was set up by the Secretary of State for Scotland and the Lord Advocate to examine Scottish Criminal Procedure and police powers. The Committee was chaired by Lord Thomson and the terms of reference were as follows:

> "To examine trial and pre-trial procedures in Scotland (including appeal procedures) for the prosecution of persons accused of crimes and offences; and to report whether, having regard to the prevention of crime on the one hand and to the need for fairness to accused persons on the other, any changes in law or practice are required."
> (Cited in Carloway, 2011; 29, s.2.0.9)

This section investigates how the Thomson Committee influenced the discursive framework in relation to police powers, arguably defining the policing role as a matter of apolitical crime control. The work of the Thomson Committee is understood as important insofar as it strengthened the existing apolitical policing narrative (thereby enhancing the level of autonomy afforded to the police by dint of their uncontroversial standing), and critically, fed into the Criminal Justice 1980 (Scotland) Act which conferred stop and search powers for offensive weapons.

The analysis proceeds from earlier analyses of the Thompson Committee by Baldwin and Kinsey (1980, 1982) and McBarnet (1983), which argue that the Committee understood police powers as a matter of bureaucratic crime control, with scant regard for proper due process. This outlook will be investigated further using minutes lodged in the National Archives of Scotland which document evidence given to the Thomson Committee by Scottish Police Federation representatives (NAS AD99/3/18).

The view from the prosecution

The original impetus for the Thomson Committee, as Baldwin and Kinsey observe, came from the Law Commission whose concerns were orientated towards law and order: and to due process 'obstacles' within the criminal justice system (1980; 251).

> 'There is evidence ... of apprehension in members of the public as well as in the legal profession that among the reasons for the current increase in crime is the fact that our criminal procedure places unnecessary obstacles in the way of ascertaining the truth, with the effect of allowing guilty persons to escape conviction.'
> (Scottish Law Commission, Second Programme of Law Reform, Scot. Law Com. No. 8, cited in Baldwin and Kinsey, 1980; 251)

With a Committee membership that overwhelmingly represented the 'prosecution view'[8] (ibid; 175), the remit was presented as a simple matter of efficient crime control, against a backdrop of increasing crime: rather than a question of the fundamental balance between crime control and due process.

> 'Pressures extrinsic to the system of formal legality – the "horrifying rise in crime", the belief that too many "criminals" were being acquitted, "common sense" – gave sway to greater judicial support for the police and a belief that increased police powers would lead to a greater efficiency of the criminal justice system achieved at the expense of the rights of the individual. When the Thomson Committee was to be set up in 1970 such "common sense" was taken for granted and naturally informed the approach of the Committee.'
> (ibid; 254).

[8] The membership included two judges, one Sheriff, one Justice of the Peace, one professor of Criminal Law, one criminal lawyer, one QC, one Chief Constable, one Procurator Fiscal and the Chairman of the Scottish Police Federation.

The Committee outlook on policing was stated thus:

> 'We believe that the police at present are able to carry out their functions only because some persons whom they detain without warrant fail, through ignorance or fear of authority, to exercise their rights.... As people become increasingly aware of their rights the present tacit co-operation which makes it possible for the police to function may not continue, and the police may find themselves in a position to do only what they are specifically authorised to do by law.' (1975; 11, 3.11, cited in McBarnet, 1983; 38-39)

However, rather than tighten legal safeguards to ensure that policing operated within the confines of the law, the Committee arguably sought to legitimize irregular practice.

> "*I think the main purpose of it might be said to regularize what we understand to be in any event, acceptable and highly necessary police procedures… We have a feeling at the moment the police act without much real risk, I suppose, but certainly technically at risk with all sorts of actions against them*."
> (NAS AD99/3/18, Gordon, col. 1694 9/12/1971)

> "*…If you spell it out, say, for the Police, the powers of arrest – or the lack of powers of arrest – you may spell it out for the public as a whole, and our powers of arrest are extremely limited… But if we do have to spell out the present powers of arrest, and this is really what you are saying, it might not be to the advantage of justice, if I may use that too.*" (ibid. Waldman, col. 1710-1711)

In other words, people's *awareness* of their rights was understood as problematic (McBarnet, ibid.). 'Acceptable and highly necessary police procedures' appeared to refer to temporary detention (or 'helping the police with their enquires'), and searching people for unlawful items beyond those authorized by statute. By way of a solution, Professor Gordon suggested that a general power of search might accompany "*a form of temporary detention*".

> "*At the moment you have no right to search until the man is arrested, though we know that if you do search the Court will find some excuse for that. But again, strictly speaking you have no rights of search. If one had to regularize the form of temporary detention would you want that to be accompanied by some search rights?*" (ibid. Gordon, col. 1707).

A comprehensive power to *detain for the purpose of search* was suggested as a way of resolving the problem of 'helping police with their enquires', and overcoming existing limitations on the right to search.

> "*What has been suggested is that we would be solving this problem* [of limited search] *and getting rid of all the various local orders and all the rest of it, with the power to detain for the purpose of search […] persons who were reasonably suspected to be carrying unlawful articles or something of that kind, that would cover everything from drugs to stolen goods….*
>
> *The general power might replace the specific powers of the Protection of Wild Birds Act, the Drugs Act, the Burgh Police Acts and all the rest of it.*"
> (ibid. Gordon, col. 1732-1733)

In response, Wilson, the Scottish Police Federation representative cautioned against the potential abuse of such a wide power (ibid. col. 1733). However, Professor Gordon, taking a more pragmatic line, replied that without wider powers, officers would continue to abuse existing search powers for stolen goods which were already available in the major Scottish cities.

> "*The alternative is to give you no powers in general and give you some specific powers in specific situations. Then what you are going to do is to use your powers to search for stolen property to search for drugs and weapons and so on, which is unsatisfactory. If the country is happy when you find the drugs and weapons then it ought to give you a little power to find them.*" (ibid. Gordon, col. 1733-1734)

Likewise, Little suggested that the solution to the 'problem' of public awareness would be to extend the policing remit.

> "*As you said the public are being educated on their rights, and if they object to an action which is done in the public good and succeed then we fall down, the service fails. Would you not be better with a general law that would enable you to do this and no-one could deny your right?*" (ibid. Little, col. 1738)

Wilson replied the proposals were in fact, irrelevant to the wider public, given that police-work invariably pertained to a narrow section of the population.

"*We are talking about the public – the public aren't going to be involved. It is only the "neds" we are talking about."* (ibid. Wilson, col. 1738)

Chalmers cautioned that the wrong class of person might be searched on grounds of mistaken identity, (with the implication that 'neds' were a fair target).

"*What about the student who says, "Every Saturday night for the past two months I have been stopped in Glasgow streets by different policemen and searched and I am now going to the Civil Liberties Council Committee to explain?*"
(ibid. Chalmers, col. 1738-1739)

However, this was understood as a matter of personal responsibility.

Lord Dunpark: "*He should get his hair cut.*"
(ibid. col. 1739).

More broadly, Committee members seemed to express an uncritical faith in the police, coupled with a loose approach to due process, particularly in relation to the use of 'reasonable suspicion' and police discretion.

Chairman: "*Reasonable suspicion, it may be difficult enough in practice, but it at least makes it possible for the Court, as I imagine they would generally have to give the benefit of the doubt to the policemen for the case they have made. You can't really analyse the thing in a Court six months later whether they think there was at the time or should have been reasonable suspicion.*"
Gordon: "*We might perhaps consider adopting the same sort of approach as the Wootton Committee did, to indicate gently that length of hair is not in itself reasonable ground for suspicion.*"
Chairman: "I don't think we would indicate anything."
(ibid. col. 1723-1234)

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

Some challenges were expressed against what might be termed the Thomson outlook. For example, Chalmers voiced reservations that were more in keeping with the welfarist values espoused by the Scottish Office in the late 1960s.

> Mr Chalmers: "*Would there not be a continual harassment in the main?*
> Wilson: "*It is the ones we are trying to stop.*"
> Chalmers: "*Suppose they change their ways?*"
> Wilson: "*The 'ned'? That will be the day.*"
> Waldman: "*If it does we will have achieved our object.*"
> Munro: "*I would say then they would cease to be treated as a 'ned'.*"
> ….
> Chalmers: "*'Neds' do grow out of it, and I am just a bit scared when he has stopped or he is subjected to some harassment, and he says 'It is not worth my while trying to go straight'.*"
> Little: "*I think only a Missionary would support that*".
> (ibid. col. 1743-1744)

Nonetheless, taking an overview, the Committee minutes appear to support the disregard for civil liberties and procedural safeguards identified by Baldwin and Kinsey (1982) and McBarnet (1983): the understanding that people's *awareness* of their rights was inherently problematic, and that the solution was 'not to support this claiming of rights or to take further measures to ensure all suspects *do* know their rights *but to remove the rights*' (McBarnet, 1983; 39).

Baldwin and Kinsey argue that the significance of the Thomson report lay 'not so much in the nature and content of its assumptions, but the manner in which it

translated these assumptions exclusively into a matter of technical law, thereby removing the issue from the level of everyday political discourse' (1982; 175). Although deeply political in terms of its support for policing aims, Thomson was presented in dry legalistic terms which set the discursive framework thereafter, 'creat[ing] a momentum which proved politically unstoppable' (ibid; 262).

Crucially, the report fed into the Criminal Justice (Scotland) Act 1980, which conferred search powers for offensive weapons. This power would be pivotal to the development of stop and search in the decades thereafter, effectively providing the legislative basis for the seminal Strathclyde stop and search campaigns a decade later. Section 3.3.3 overviews the prevailing politics that underpinned the Act.

3.3.3 Criminal Justice (Scotland) Act, 1980

> 'In Scotland in 1978-80 legislation of immense social importance was considered by lawyers without reference to its social or policing context. It instituted powers that may gravely endanger police/public relations, that threaten liberties, that may make policing in Scotland more difficult and that may change our very methods of policing.' (Baldwin and Kinsey, 1982; 190)

Recommendations from the Thomson report fed first, into the 1978 Labour Criminal Justice Bill, which likewise characterized the proposals on police procedure as an apolitical technicality: 'a lawyers' Bill of little party political significance' (Baldwin and Kinsey, 1980; 257). The Labour Bill was jettisoned by the election of Thatcher in 1979, and replaced by a considerably stronger Conservative Bill, which unlike its predecessor, proposed new powers of stop and search for offensive weapons.

Echoing the law and order stance promoted in the Conservative electoral campaign (Gilling, 1997; 10), the tenor of the Criminal Justice (Scotland) Act, 1980 signalled a more punitive approach to crime control, based on the explicit reassertion of state authority (Garland, 1996). In contrast to the Labour Bill, the Conservatives cast their intentions within a law and order framework, thereby politicizing the debate (Walker, 1999; 102), and attracting a raft of extra-parliamentary challenge. As the Edinburgh Evening News observed, 'The war against crime is on' (5/5/1979).

> "*Who supports the Bill? All practising lawyers seem to oppose it. The Glasgow Bar Association has sent a detailed memorandum. The Law Society of Scotland opposes many aspects of the Bill. The Criminal Law department at Edinburgh University opposes it in today's Scotsman. Everybody opposes it except members of the Conservative Party who are bound and gagged by their Front Bench. Opposition has come from the STUC, the Scottish Council for Civil Liberties and many other groups. Even the Chief Constable of the Grampian region has expressed opposition. The only supporters are Lobby fodder*." (Foulkes, Lab. HC 14/4/1980 vol. 982 c. 905)

Parliamentary debate in relation to the Conservative Bill followed similar lines to those evidenced in the aborted Offensive Weapons Bill. On the one hand, Conservative MPs and Lords argued that the proposed powers represented a simple incremental increase on existing powers, drawing on the hoary bird eggs analogy.

> "*The police already have similar powers to stop and search in the street in respect of things like birds' eggs and drugs … If the preservation of rare birds is important, and I believe we all agree that it is, surely the preservation of life is equally so.*" (Murray, Con. HL 29/1/1980 vol. 404 c. 809)

On the other hand, Scottish Labour and Scottish National Party politicians reasserted long-standing concerns around police-community relationships, and made the case for civil liberties. Specific challenges focused on the proposal to legalize detention for up to six hours without immediate access to a solicitor, and the proposed power to stop and search for offensive weapons. MPs raised doubts as to whether search powers were likely to be effective, and raised questions around possible harassment. Concerns were also raised 'lest the power be used for random and mass searching of young people (which, to be an effective deterrent, it would have to be)' (Baldwin and Kinsey, 1982; 183).

> "*If the clause is accepted and the power is used to a significant extent, it will considerably prejudice relationships between the police and many young people, and that will spill over to the rest of the community and seriously damage relationships between the police and the public. Where the action is not justified, it is an invasion of privacy and an invasion of civil liberties*." (Milan, Lab. HC 14/4/1980 vol. 982 c.834)

> "*Why do the police come to the conclusion that a person might be carrying drugs? It may be that the police consider that a person's hair is too long... The police may take an interest in someone who is not wearing conventional clothes… If the power to stop and search is extended to cover offensive weapons, the same thing will happen… The clauses to which I have referred will destroy the relationship between the police and the community… There will be aggravation and alienation between the people and the police*." (Maxton, Lab. HC 14/4/1980 vol. 982 cc. 811-937)

> "*The Bill will move the barrier between civil liberties and police powers a little more in favour of the police, and the opportunity for irregularities may therefore be extended*." (Lyon, Lab. HC 14/4/1980 vol. 982 c. 837)

> "*The Bill involves a radical extension of police powers. It therefore creates a risk for civil liberty and good police-community relations. The House must examine carefully, and reject where necessary, clauses which jeopardise the rights of free men in a free society*." (Stewart, SNP. HC 14/4/1980 vol. 982 c. 858)

The Bill passed by a narrow margin, with English Conservative MPs overriding the Scottish Labour majority. The Act conferred a power of stop and search for offensive weapons *and* enabled a generic power of search at the point of detention, which was accompanied by 'woefully inadequate' procedural safeguards (Walker and Starmer, 1999; 329). Search at detention was not modelled as a 'search' power, despite Gordon's suggestion that detention and search could act as a proxy for all other stop and search powers. Rather, additional search privileges were layered onto an existing jumble of powers, rendering the entire structure increasingly opaque.

Two observations can be noted here. First, that the respective powers of detention and search conferred by the Act were wholly unaccountable. The use of detention per se was not made subject to scrutiny, and likewise, *no duty was placed on the police to account for the use of stop and search.*

Second, somewhat paradoxically, it can be argued that the rejection of law and order rhetoric in the late 1960s provided the space in which to discretely introduce more authoritarian values, indirectly allowing the Thomson Committee to translate potentially controversial police powers into legal technicalities. Again, this observation resonates with one of the key conclusions in chapter two: that 'quieter'

politics can enable more deep-seated transformations to take place, with less resistance. Put differently, however objectionable thunderous law and order politics might seem – the "sound and fury" which Dewar objected to – more strident politics do at least invite challenge.

The next part of the chapter examines the ramifications of the 1980 Act. The analysis argues that the statutory power to search for offensive weapons provided a crucial veneer of legitimacy for the campaigns introduced by legacy Strathclyde in the 1990s: a legal justification for searches that, in practice, were more likely to be undertaken on a non-statutory basis.

3.4 Policing Strathclyde: the stop and search 'campaign'

Whilst the Criminal Justice 1980 (Scotland) Act politicized the debate surrounding police powers, this was short-lived. In the decades that followed, officers would draw extensively on their powers of search without challenge or controversy, and it would be three decades before the UK Supreme Court overruled the lack of access to a solicitor at detention in *Cadder v HM Advocate* (2010, UKSC 43).

This part of the chapter picks up the narrative a decade later and investigates the introduction of the intensive stop and search 'campaign' in legacy Strathclyde. The analysis examines three high profile initiatives: Operation Dove (1992), Operation Blade (1993) and Operation Spotlight (1996) with a view to making an empirical link between the quieter policing sensibilities discussed so far, and the introduction of proactive stop and search.

3.4.1 Formalizing stop and search: Operations Dove, Blade and Spotlight

"*It was born out of effective informality. It's a nice way for something to grow.*"
(Senior officer, Strathclyde)

Throughout the 1990s, stop and search was progressively 'formalized' in Strathclyde, that is, analysed for strategic crime control purposes, linked to offending patterns and overseen by senior officers. This strategy ran counter to the older reactive and comparatively low-key approach, described in the interview extracts below.

"*Reflecting back [to the 1980s] stop and search was very much on a reactive basis, so it would be a question of an incident taking place, going to the scene or near the scene and then stopping someone and, a step at a time you know, so if it was fairly clear fairly early that this person had had nothing to do with what was going on then they'd be on their way… There was certainly not an attitude of blanket stop and search... Looking back on it, I would say that reasonable suspicion, reasonable cause – a targeted approach.*"
(Assistant Chief Constable 2)

"*As a cop, when I was working in an area, if I had a particular problem I would exercise the powers, or would ask if I could do a voluntary search – only if I had a particular problem. It was sparingly used, I would say*." *(Assistant Chief Constable 1)*

"*Stop and search was always based on a set of circumstances, cause shown, being suspicious… You couldn't – although many officers did – stop people on the street, chat to them, chat them into looking at what they had* [*a voluntary search*]*…. As years passed, voluntary had a very negative feeling to it – it was almost as if people had been tricked… but there wasn't a culture in the same way as England and Wales, of stopping people in the street, searching what they had. When the Dangerous Drugs Act came along, based on reasonable suspicion, you could do that sort of thing. But there wasn't that sense of wholesale stopping and searching. If you were a bobby walking the streets of a town or a city in the night, you didn't really have powers to stop and search them, and so therefore there wasn't a culture of it.*" (Chief Constable 2)

3.4.2 Operation Dove, 1992: the three month strategy

The use of stop and search as a proactive policing strategy in Scotland appears to date back to the early nineties. Under the direction of Chief Constable Leslie Sharp, stop and search was first used as a high profile tactic in Operation Dove, a ninety day operation launched in response to increasing knife crime in the Paisley area, in which around 30,000 stop searches were recorded.

At first glance, Dove may be read as a relatively modest, localized response to the increase in violent offending. Nonetheless, it can be argued that the operation set a precedent that influenced the use of stop and search in legacy Strathclyde thereafter. Importantly, the operation recognized the potential of using stop and search as a proactive campaign tactic, rather than a routine reactive tool. Moreover, with echoes of the Thomson Committee remit of 'getting the job done', Dove was understood as a straightforward operational matter, with scant regard for the underlying balance between police power and individual liberty. In contrast to ongoing protests around stop and search in England, civil liberties and the broader ethics of stop and search were barely touched upon in press reports. Rather, coverage focused on detection rates, and the politics of police manpower.

'Operation Dove puts the night hawks to flight

…Strathclyde Police's recent high-profile operations to make the streets unsafe for criminals have been a drain on manpower and raised fears of harassment, but public opinion appears to support the initiatives… [P]erhaps the starkest lesson to be learned from Dove is that, given proper manpower, Strathclyde Police can successfully tackle just about any level of localised lawlessness.'

(Herald, 20/11/1992)

'**Strathclyde bucks national trend and sees crime falling**

While Operation Dove was bringing order back to the night-time streets of Paisley, a clandestine team of detectives was undertaking Operation Hawk, targeting the area's drug dealers… "Like the high-profile Dove, the covert Operation Hawk has been a great success," he said… "I commend Operation Hawk to the public as an example of what the force can do when proper resources are applied to a problem. It can be said that Dove and Hawk have flown together and brought back order to the streets of Paisley."'

(Herald, 12/3/1993)

3.4.3 Operation Blade, 1993

Taking precedence from Operation Dove, the following year Operation Blade was launched: a Strathclyde-wide, three month crackdown on weapon carrying, described as the "*true ancestor*" of the proactive approach by one retired officer. Alongside intensive stop and search, Blade involved a knife amnesty, public safety measures (CCTV, metal detectors and improved street lighting), and talks with secondary school pupils. The objective was to bring about cultural change: 'not simply [a] reaction to a rise in particular crimes' but 'a fundamental means of addressing the apparently acceptable 'culture' particularly among young men who were increasingly carrying and using knives' (Strathclyde Police, 1994: cited in Bleetman *et al.*, 1997).

Legacy Strathclyde made extensive use of the media, advertising the campaign on Scottish Television and through press releases. Press reports reiterated the reassurances of senior officers that searches would not be carried out randomly, and stressed that searches would be legislative, using reasonable suspicion.

Monday is D-day for knife carriers

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

Police reassurance on knife searches

'…The first and essential point is that if you have nothing to hide then you have nothing to fear from this part of the campaign. No-one will be stopped at random. People will be stopped on a reasonable suspicion. This is a difficult area for the police but reasonable suspicion arises from the hour, the behaviour, and the place – the crime pattern analysis of the area.' (Herald, 3/3/1993)

In practice, the policing approach might be better described as a form of stratified sampling based on aggregate risk characteristics, or 'stereotypical suspicion' (Mooney and Young, 1999; 44), as suggested in the press report below.

Life at sharp end for the blade runners

Jim Watson, 26, runs the Larkfield Youth Action Project on a deprived scheme in Greenock where carrying blades is widespread... Watson is critical of the second stage of the campaign where police will exercise strenuously their stop and search powers. "Young people in this area don't have much to do. They hang about the streets. Their relationship with the police is already bad enough. They could lose what little respect they have left for them". Watson was himself stopped and searched last week on his way home. "I was the only person in the street wearing jeans." His concerns are echoed by Carol Ewart of the Scottish Council for Civil Liberties which will be monitoring the use of police powers in coming months… "My feeling is that the publicity surrounding the amnesty and the fear of attack is to allow the police to clear the decks they can go in, stop and search people, without the public outcry there might otherwise have been."
(The Scotsman, 3/3/1993)

3.4.4 Preventative logic

The original aim of *Operation Blade*, as reported in the media, was to detect knives and offensive weapons. However, in response to falling detection rates, the campaign was quickly remodelled in deterrent terms. In the following interview, a senior officer describes the point at which *non-detection* was introduced as a positive outcome.

> "*The penny probably didn't drop for us that if the ratio gets larger between searching and finding that's probably good. At first the things we felt good about was getting lots done and actually finding a significant amount. But I remember it was actually X who was quite enlightened… I remember having a chat with X one day, and it was probably festering there as a penny in my head, but it hadn't dropped – we were getting a bit disappointed about the low retrieval rate – and X says "No, that's good!*"
> (Senior officer, Strathclyde)

Taking non-detection as a positive outcome, increasing weight was placed on the deterrent value of stop and search, as well as detection.

> 'The general approach of the force [Strathclyde] in relation to these campaigns is to be very high profile, with a considerable amount of media coverage both before and after the campaign, and a focus on the deterrent value of searching, as well as the extent to which weapons are recovered.'
> (RHA, 2001; 22)

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

Crucially then, Blade redefined the measure of success: signalling a major shift from the post-war model of stop and search premised exclusively on detection. Put simply, the preventive effect of stop and search could now be demonstrated by *non-detection*.

3.4.5 Extending the strategy: Operation Spotlight

Despite the high profile nature of Operation Blade, the medium to long term impact was less clear. Bleetman *et al.* (1997) observed that fewer people were admitted for serious stabbings at Glasgow Royal Infirmary throughout its duration, and for a short time thereafter. However, the effect was not sustained, and within twelve months, emergency admissions for serious stabbings exceeded pre-Blade levels. The authors concluded that in order to effect longer-term cultural change, the campaign would be have to be repeated at regular intervals, in conjunction with an increased police presence and ongoing educational initiatives.

The limited impact of short-term intensive stop and search was taken on board by legacy Strathclyde managers, and subsequently underpinned the transition from the short-term 'campaign', to a more medium-term approach. As one senior officer commented, *"This was a tactic that worked… and then it was finished. And that was a mistake"*. This transition was evident in the 'Spotlight' operations which ran recurringly between 1996 and 2001.

Operation Spotlight was introduced under the direction of Chief Constable John Orr to target various 'quality of life' crimes. Conceived as a move away from the reactive short-term operation, Spotlight was based on a medium to long-term strategy which recurrently switched the policing focus between an array of targets (hence the spotlight moniker), including offensive weapon carrying, vandalism, truancy, underage drinking, sporting events, street robberies and litter (Orr, 1998; 113, 117).

In contrast to the preceding operations, which might be described as pragmatic responses, the Spotlight initiatives were explicitly ideological. Orr drew on Kelling and Wilson's *Broken Windows* thesis (1982), which posited that serious crime and the fear of crime stemmed from neighbourhood disorderliness, rather than poverty or other social correlates of crime. Likewise, Orr took the view that 'minor crime is often simply the breeding ground and nursery that spawns and nurtures more serious and violent crime' (1998; 114) and advocated a disciplinary response.

> 'In common with America, we had undergone a decade of attempting to *understand* and *explain* the behaviour of this loutish minority. 'Understanding' did nothing to stop the problem, and little to alleviate the misery experienced by the law abiding majority. Reflecting society, we had chosen to follow a path of defining deviancy down, and behaviour that had been unacceptable to previous generations, and dealt with by law enforcement, was neglected. The time was ripe for positive action.'
> (Orr; 1998; 112)

With echoes of the zero tolerance policing methods advocated by New York Police Commissioner William Bratton, Orr described Spotlight as 'community policing with the gloves off' (1998; 106). Likewise Green stated, 'There are differences between the approach of the NYPD and the new police tactics being pursued in Strathclyde, but there is also much common ground' (1998; vii).

Whilst Spotlight has been described variously as revanchist and vengeful (Atkinson, 2003; Macleod, 2002: cited in Fyfe, 2010; 184), in practice, the policing direction was arguably more nuanced, described in one press report as a blend of 'ground-breaking policing' and 'Dixon of Dock Green' (The Scotsman 18/9/1996). Around 43,000 stop searches were undertaken in a three month period (ibid; 119), however, in contrast to the turbulent experiences of the Metropolitan police, the intensive use of stop and search did not appear to be met by visible public challenge and seemingly generated few complaints – although one retired officer did joke that there wasn't a complaints department. The next part of the chapter discusses how public consent was cultivated through the style of policing, by engagement with the media, and arguably, through a distinctive 'Scottish' policing narrative.

3.5 Cultivating consent

'During Operation Blade, Strathclyde Police stopped a massive 29,828 people in just three months, and found 638 cases of possession of an offensive weapon. That means that 98.2 per cent of those stopped were not doing anything wrong. It is interesting to compare that hit rate with other such mass stop-and-search regimes: the last big one before 1993 being Swamp '81 in Brixton which sparked the riots there. The Metropolitan Police Special Patrol Group, which was heavily criticised by Lord Scarman's report into the disturbances, managed to find almost one in five people in possession of stolen property (the objective of Swamp '81) – much more successful than Strathclyde's campaign. But why the discrepancy and no rioting on the streets of Glasgow in 1993?'
(The Scotsman, 201/1/1997)

'The essence of Spotlight is high profile policing, and, where appropriate, high volume stop checks… The continued success of the Spotlight philosophy depends on the future support of the public... An indication of how the public would respond can be gained historically from Operation Blade and contemporarily from our experience in Q division. Operation Blade took place after an intensive public education phase which saw a range of public awareness initiatives, from school talks to press articles on police powers.

The force carried out over 29,000 stop searches in a climate of apparently undiluted public cooperation. This experience has continued in Q division where there is significant activity by civil liberty movements with young people. Generation, a civil liberties group, is active in raising awareness levels of police powers among young people, yet there is no evidence of any decrease in cooperation/consent in the Children and Young People's Safety Initiative.'
(Statement by Strathclyde Police to the Scottish Executive, NAS HH41/3505)

3.5.1 Policing styles

The overarching thrust of Operation Spotlight dovetailed with two contemporaneous trends in criminal justice. First, with the anglicized asocial preventative/situational agenda emanating from the Home Office (see chapter one, section 1.2.2), and second, with the rise of zero tolerance policing in other jurisdictions. Yet despite the disciplinarian tenor of the Strathclyde operations, the policing style did not necessarily chime with Bratton's intention to '[end] the smile-and-wave approach to crime fighting' (New York Times, 25/10/1992). Rather, Strathclyde executives were careful to avoid the harsh, non-discretionary overtones of zero-tolerance policing, as suggested in the interview extract below.

> "*I remember the Wilson and Kelling stuff, and Broken Windows, the zero tolerance ideas, all of that. I was an avid reader of all that kind of thing. So, you know, there were lots of those influences.*"
>
> KM: Were you conscious not to use the expression 'zero tolerance'?
>
> "*Yeah I think that's right. X really had the finger on the pulse [and] talked John Orr out of the Zero Tolerance thing… Because what are you really zero tolerant about? X introduced us to the debate in our heads and I just think we'd have just made a rod for our backs. And I don't think the police officers on the street would have related to it, because in truth, you still need a lot of discretion dealing with a lot of things.*"
>
> (Senior officer, Strathclyde)

Together with the rejection of zero tolerance rhetoric, an emphasis was placed on less adversarial interaction, as suggested in the interview extract below.

> KM: 'Were there any complaints in the early days about the number of searches?'
>
> "*Incredibly low level. I mean, there was these thousands of searches [and] there was a complaint or two. I think it was the way we did it. I suppose you had to be there, I mean, I remember eventually you were at the level where the young guy would say 'Oh, is this a Spotlight search?' It got as informal as that, 'Oh, I'm part of Spotlight', you know? It was extremely friendly an awful lot of it… It was quite a new kind of idea where you actually got the public in general behind you.*"
>
> (Senior officer, Strathclyde)

Importantly, this informal approach carried legal implications for the type of search powers used. Whilst statutory search powers for offensive weapons conferred by the 1980 Criminal Justice (Scotland) Act ostensibly provided the legal justification for the campaigns, searches were for the most part, non-statutory (RHA, 2002; 23), allowing officers to informally request 'a quick pat down' without reasonable suspicion. The careful phrasing in the following press report is likely to refer to non-statutory stop and search.

> 'Inspector Caroline Scott, of Strathclyde Police's Spotlight Initiative Group, strongly denies that officers would be anything but courteous, and stresses the consensual nature of the stop and searches as an indicator of widespread public support for the scheme.'
> (The Scotsman, 20/1/1997)

It is difficult to underestimate the significance of non-statutory stop and search in this context. First, it would be exceptionally difficult to legitimately carry out a proactive stop and search 'campaign' using legal powers based on reasonable suspicion. As such, it is likely that the volume of searches hinged on a non-statutory approach. Second, by dint of a non-statutory approach, a less adversarial style of policing was possible. In short, non-statutory stop and search provided a vehicle for searching people, without the confrontational and officious overtones of the police caution.

3.5.2 Media strategies: 'active partners'

> 'Strathclyde Police will now spend almost £150,000 on a new advertising campaign to tell television viewers that crime is falling and that their streets are safe. The force hopes that the campaign, featuring three television commercials and posters on 200 billboards, will highlight the success of the high-profile anti-crime Spotlight initiative and help reduce the public's fear of crime… The television adverts, believed to be the first commissioned by a British force, will be screened as figures suggest serious crime has fallen by 8.5 per cent since the Spotlight operation was launched.' (The Scotsman, 11/11/1997)

> "*At the end of the day one of the big tenets of Spotlight was, you've got to get the message out there, you've got to be really good at TV adverts*." (Senior officer, Strathclyde)

Public support was also cultivated by high profile publicity campaign. Whilst the relationship between the media and public attitudes towards the police is not well understood (Hohl, 2011; 10), the Strathclyde strategy was unusual insofar as the force actively exploited the media – described as 'active partners' by Orr (1998; 109) – successfully setting the agenda via a series of press statements which defined the problem *and* the solution. Contemporaneous reportage tended to replicate dominant policing narratives, converging around efficacy, simple quantitative based reporting and reassurances that searches would be based on reasonable suspicion.

Whilst more critical voices were evidenced over time, press reports referred to the campaigns as 'highly successful', achieving 'spectacular results' and described crime as 'dramatically reduced'. Taking an overview, media commentaries were particularly effusive in relation to Blade, given that a short term impact on recorded violent offending seemed discernible. Conversely, the longer-term nature of Spotlight coincided with more variable trends in offending, making it difficult to draw confident conclusions. Nonetheless, press coverage broadly highlighted the perceived effectiveness of the campaigns which were framed both in terms of detection and deterrence: in a mix of finding things, not finding things, raw frequencies and percentages. The following extracts from the Glasgow based Herald exemplify the prevailing tone.

Strathclyde crime figures continue fall

'Mr Sharp beat the big drum for his force when he publicised major falls in recorded crime… the direct result, he said, of the Operation Blade… Mr Sharp said: "The high-profile stop and search activities of Operation Blade have made a significant impact on all crime in general and offensive weapons in particular." Mr Sharp believes that the intensive police presence on the streets has forced criminals to think twice over a whole range of criminal activities.' (Herald, 3/6/1993)

Strathclyde bucks national trend and sees crime falling

'Crime in Strathclyde is bucking the national trend and falling, thanks to the visible success of high-profile police operations which have renewed public confidence. Detection rates are also up. That was the strong message yesterday from Chief Constable Leslie Sharp, reporting a 0.4% decrease in reported crime in 1992.' (Herald, 12/3/1993)

Operation Blade gets support

'The Government yesterday aligned itself strongly behind Strathclyde police's Operation Blade initiative, as Lord Fraser of Carmyllie, the Home Affairs Minister… generously acknowledged the role played by Operation Blade, not simply in cutting knife crime, but by cutting crime in many other areas as a spin-off from the high-profile policing involved.' (Herald, 29/5/1993)

Scottish crime figures fall by the smallest of margins

…'The chief inspector of constabulary in Scotland, Mr Colin Sampson… singles out Strathclyde Police's Operation Blade as "just the sort of high-profile policing initiative that we need to see more of in Scotland".' (Herald, 4/6/1993)

At the sharp end

'Turning to the partnership between the Strathclyde force and the police authority [Chief Constable Sharp] had only praise. He told the authority only last week – composed almost 100% of Labour councillors – that Strathclyde had become a "shining beacon in terms of law and order", an extravagant-sounding assertion which stands up not badly to closer examination.' (Herald, 6/12/1995)

Violent crime soars by 10.4%

'Knife-carrying offences rose by a staggering 30.4% across the force last year, although this probably reflects increased police efforts to stop and search young men on Glasgow's streets at night.' (Herald, 14/6/1996)

3.5.3 Police legitimacy

Looking to the less tangible aspects of policing, public responses to the Strathclyde campaigns might arguably be understood in terms of the broader Scottish policing settlement, which appeared to be subject to less critical scrutiny than its English counterpart. Reiner's (2010) influential work on the de-legitimation of the police from the 1960s onwards provides a useful handle on this observation, and a tool with which to unpack the apparent 'climate of apparently undiluted public cooperation' in Strathclyde (NAS HH41/3505). To explain, Reiner links 'haemorrhaging' levels of public confidence to a range of factors, including corruption scandals; partisanship; the excessive use of force; a shift from the service role to crime-fighting; an inability to control crime levels – and more broadly, to increasingly levels of social exclusion, which resulted in increasing antagonism towards the police: in particular, 'the catastrophic deterioration of relations with the black community' (2010, 78, 74).

Like England, Scottish policing was exposed to the damaging impact of increasing crime rates, poor clear up rates and policing styles which undermined the broader service role (Walker, 1999; 102). Similarly, relationships between the police and communities could be strained, with evidence of conflict between the police and working class communities, and police coercion (Duncan and McIvor, 1992; Gordon, 1980). However, the post-war decline in police legitimacy appeared to be felt unevenly across Britain. For example, Walker describes the decline in Scotland as 'less pronounced, more nuanced, and more amenable to stabilization or even reversal' (1999; 203).

In social terms, crime and policing did not take on the 'explicitly political dimensions' which were apparent in England, particularly in relation to ethnicity (Gordon, 1980; 90-92). Whilst social exclusion and disadvantage was deeply ingrained, structural inequality ran along different lines. Scottish policing was more likely to fall upon on the marginalized white working classes (Mooney *et al.* 2010; 34), whose political voice, as Kinsey suggests, remained unheard.

> 'Our social problems take different, perhaps less visible forms. Years of continuing deprivation and neglect have hardened Scottish tolerance to higher levels of violence in the homes and on the streets. There is no large immigrant Black population upon which and through which indignation is expressed. The problems are real nonetheless: steel shutters on the shop windows were a feature of the Scottish urban landscape long before they appeared in Brixton or Toxteth. The most significant difference however, is the comparative lack of political concern, if not complacency over civil liberties north of the Border.'
>
> (Richard Kinsey, Glasgow Herald, 2/8/1983)

The Scottish police were not subject to the damaging corruption and malpractice scandals that repeatedly arose in England policing. Nor did senior officers did not take on the mantle of 'prominent commentators' on 'the state of the nation' (Loader and Mulcahy, 2003; 226). Rather, as Gordon notes, Scottish Chief Constables remained distinctly muted compared to their English counterparts (1980; 90-91). It is also seems unlikely that the Scottish police represented 'a Tory-leaning partisan political lobby' (Reiner, 2010; 103), given the significantly lower levels of electoral support for Conservative policies[9].

Drilling further into the premise of police legitimacy, it can be argued that the legacy Strathclyde campaigns were shored by the wider rhetoric of Scottish policing. Whereas the police in England were steeped in the rhetoric of law and order, and increasingly cast as the repressive arm of the State (Reiner, 2010; 78-111), a more benign narrative appeared to prevail in Scotland, premised on a softer 'Scottish' way of policing (Gorringe and Rosie, 2010). Key motifs in the policing discourse included community, consent, a sense of egalitarianism and crucially, a tendency to define Scottish policing in opposition to its English counterpart (Gorringe and Rose,

[9] In the 1992 general election, the Conservatives secured 26% of the votes in Scotland, compared with a 46% share in England and Wales.

2010). This argument is examined more fully in chapter four (section 4.3.1), however, at this stage it is suffice to note the overall tenor of this distinctive 'Scottish' narrative, as suggested in the extracts below.

> 'The realisation of *local connections in policing with the community* is a reassertion of the traditional principle "that the police are the public and the public are the police". This has long been rooted in the ethos of policing in Scotland.'
> (HMICS, 2004: 103, emphasis in original).

> 'In social terms, Scottish policing appears to have always had a close affinity with the communities which it has policed, and police-public relations have been at the heart of policing here.' (Donnelly and Scott, 2010a; 458)

In cleaving to a distinctive national identity, Scottish policing arguably laid claim to a more consensual set of values, thereby avoiding some of the critical attributes attached to stop and search in England. As Gorringe and Rosie argue in the context of public order policing:

> It seems more likely that [policing] would be decoded in a… comforting way as that which is 'ours' and 'familiar'. Invoking the 'Scottish way of doing things' served to render potentially 'extraordinary policing'… as 'ordinary' and 'unthreatening.' (2010; 77)

Moreover, it can also be argued that the use of informal, non-statutory methods meant that the rhetoric of Scottish policing was, to some part, translated into practice.

> 'To paraphrase Anderson (1991), a convenient fiction need not be *fictional*. Indeed, the discursive construction of Scottishness has ramifications for how policing is conceived and conducted. Police officers, protesters, politicians and the press, thus, routinely hold the police to account by reference to the ideal of 'Scottish policing'. The cumulative effect is a process in which rhetorical articulations of Scottishness (the 'fiction') may be realised.' (ibid; 80).

Viewed through the wider interpretative lens of Scottish policing, the Strathclyde campaigns could thus be interpreted as non-adversarial, without racial connotations, and more or less 'unproblematic': in other words, as 'other' to stop and search in England.

3.6 Summary: out of sight, out of mind

This chapter has argued that an apolitical outlook on policing from the late 1960s onwards influenced the direction of stop and search in the decades that followed. Whereas policing in England was subject to increasing scrutiny and pressure, Scottish police Executives were provided with the ideological space in which to introduce practices that might have attracted resistance in more politicized environments. In other words, Scottish policing remained below the parapet: less visible and less subject to critical scrutiny, with its legitimacy more or less intact.

Five key observations may be made here. First, in Bourdieuean terms, the analysis suggests a shifting power struggle within the policing field. The analysis shows how the Scottish Left and Scottish Office managed to contain demands for further police powers in the late 1960s: to maintain police-community relationships, retain 'civilizing' values (Loader, 2006) and avoid "*the sound and the fury*" of law and order politics. Yet in allaying this sense of partisanship and turbulence, it can also be argued that Scottish elites precluded future debate in relation to the underlying tension between crime control and due process within policing. The depoliticization of the policing habitus was followed by the gradual, discrete reassertion of law and order values in the 1960s and 1970s by dint of the Conservative leaning Law Commission; the prosecution orientated Thomson Committee; and by the return of a Conservative administration in 1979 which introduced stop and search powers for offensive weapons.

Second, looking to the policing organization, the analysis point towards a resilient or doxic, 'law and order' understanding of the policing role (Chan, 2004; 333-334), which post-1979, flourished in the absence of government challenge. Against a background of public anxiety around violent offending, legacy Strathclyde drew on the powers conferred by the Criminal Justice (Scotland) Act 1980 to introduce the proactive stop and search campaign. However, the policing approach seemed more nuanced than the brusque zero-tolerance strategies adopted in other jurisdictions (Dennis, 1998; Greene, 1999; Innes, 1999). Rather, the campaigns were shored up by a less adversarial style of policing and the active mobilization of the

media. Buoyed by an apolitical 'softer' formal policing narrative premised on genial overtones of community and consent – on 'Dixon' rather than 'Darth Vader' (Reiner, 2010) – and sustained by a seemingly intact sense of policy legitimacy, the Strathclyde operations appeared to proceed with negligible resistance, setting a key precedent in relation to the decades to follow.

Third, in terms of wider penal shifts, proactive stop and search dovetailed with a renewed interest in deterrent based crime-prevention (Wilson, 1975; Van Den Haag, 1976) and the reassertion of the rational (and responsible) actor from the mid-1970s onwards. Likewise proactive stop and search drew on the behavioural assumption that people would judiciously weigh up the costs and benefits of offending, and sought to reduce the prospect of offending by altering the probability of detection. In this respect, the logic of proactive stop and search chimed with the 'new criminologies of everyday life' (Garland, 2001), with theories such as situational crime prevention (Clarke, 1995; Clarke and Mayhew, 1980; Brantingham and Brantingham, 1990; Clarke, 1997), rational choice theory (Clarke and Cornish, 1985; Clarke and Felson, 1993; Clarke, 1997; Felson, 2002), and routine activities theory (Cohen and Felson, 1979; Felson, 1994) which similarly engaged with people's routines and criminogenic situations. A link can also be drawn between the proactive project and the ascendency of actuarial crime control methods from the 1980s onwards: methods which sought to predict behaviour and manage future risks accordingly (Simon, 1988; Feeley and Simon, 1992, 1994; O'Malley, 1992, Harcourt, 2007). For example, actuarial-styled logic can be discerned in the pre-emptive targeting of high risk areas ('hotspots') and population profiles. Or put more prosaically, the familiar coupling of suspicious people and places (Law *et al.* 2010; 56).

Fourth, the analysis points towards a more punitive or disciplinarian strand, which is perhaps belied in some accounts. As Newburn observes, the transfer of policies such as zero-tolerance and order-maintenance policing requires at least *some* form of 'ideological proximity' (2002; 172), a shared world-view which allows governments to define their problems and solutions in similar terms. At a UK level, Newburn argues that the ascendency of the New Right, and the neo-liberal agenda

espoused by Thatcher and Reagan provided the ideological foothold for policy transfer in the field of crime control. At first glance, this proposition may seem difficult to reconcile with the Scottish direction, both in terms of the welfarist criminal justice settlement, and the wider political culture. For example, McCrone argues that Scottish political culture 'decisively rejected the crude reworking [of Adam Smith] by the New Right' and was 'deeply at odds with the tenets of Thatcherism and the Anglo-British state' (1992; 144-145). Nonetheless, the construct of zero-tolerance should not be understood as a formulaic single package, nor should 'Scotland' or 'Scottish policing' be overstated as a unit of analysis. Rather, it can be argued that the zero tolerance cliché was repackaged more discretely by legacy Strathclyde, or 'tartanized' (McAra, 2008), whereby disciplinarian tactics were filtered through the 'interpretative lens' of Scottish policing (Gorringe and Rosie, 2010) into a less threatening and less adversarial package. This observation runs counter to the proposition that the *rhetoric* of zero tolerance 'has been more conspicuous in the UK than the nuts and bolts of changed policing styles and strategies' (Newburn, 2002; 167). Rather, closer examination of the Strathclyde campaigns suggests that the 'nuts and bolts' of police practice changed substantively, by dint of the shift to proactive policing, whilst the rhetoric of zero tolerance was adapted to the existing policing habitus. Put differently, the *idea* of 'stop and search' was played down, whilst the actual *tactic* was used extensively.

Finally, the shift towards deterrence blurred the ways in which stop and search was evaluated. Whilst the post-war goal of detection remained in place, this was now supplemented by deterrent aims: by an absence of offending, as measured by *non-detection*. Crucially, with both models in play, stop and search was modelled as a win-win tactic, thereby lending immense political capital to the Strathclyde project.

Set against a more or less apolitical policing backdrop, stop and search was rendered a common-sense matter of crime control, supported by the media and shored up by the seemingly unassailable logic of prevention. In this respect, it can be argued that the proactive project stripped stop and search of its political and ethical

implications by dint of a simplistic appeal to 'common-sense'. Below, Harcourt discusses the seductive appeal of preventive or predictive strategies.

> '[They offer] the hope of avoiding the quagmire of partisan politics and by focusing our attention on narrow objectives that no one could possibly object to – reducing crime or juvenile delinquency, for instance. They ingeniously propose a 'common sense' approach: rather than get caught up in endless political debates, purportedly we simply agree on more basic, measurable objectives… The methodology is unimpeachable: only someone who would be willing to *waste* social resources – an irrational person – would object.' (2013; 270-271)

Next, chapter four drills further into the apolitical argument, and investigates policing and political responses to the Stephen Lawrence Inquiry in Scotland. The analysis shows how stop and search was understood as an 'English problem': and the ways in which this outlook effectively stripped the tactic of its moral and political implications.

Chapter 4. 'Other' to England: The Stephen Lawrence Inquiry in Scotland

4.1 Introduction

This chapter will examine Scottish policing and political responses to the Stephen Lawrence Inquiry between 1999 and 2002. The objectives are to unpack the dominant Scottish policing and political outlook on stop and search at the time of the Inquiry, and to show how this outlook shaped police accountability in relation to stop and search thereafter. Two arguments will be presented in the chapter. First, it will be argued that stop and search was framed as an 'English problem' which hinged on race and ethnicity, and was not applicable to Scottish policing, given the perceived absence of 'race' problems. Second, it will be argued that this 'unproblematic' outlook removed the impetus to introduce robust accountability mechanisms for stop and search, which in turn, curtailed political and academic engagement with the tactic thereafter. In keeping with the approach thus far, the analysis focuses on policing and political elites: on those with the political capital to influence shape the policing habitus, and to resist competing interpretations.

4.1.1 Methods and data

The chapter uses documentary evidence and interview data to develop the arguments. The main premise of stop and search as 'unproblematic' is unpacked with reference to the 'Stephen Lawrence Inquiry in Scotland', a consultation and review which addressed the seventy recommendations set out in the report by Lord Macpherson (1999), including those on stop and search. The analysis is largely based on documents lodged in the National Archives of Scotland, for example, minutes, memorandums and correspondence relating to the Inquiry. Details of the documents accessed are provided in **appendix 7.3.** The chapter also draws on interview data from two senior officers who served in Scotland at the time of the Inquiry. Interview data are also used to explore the 'unproblematic' character of stop and search, and the idea of Scottish policing as 'other to' England.

4.1.2 Chapter structure

The chapter is structured as follows. Part 4.2 overviews the history of stop and search in post-war England, with a view to setting up the 'counter-narrative' to the Scottish outlook on stop and search. This narrative is explored in part 4.3 which examines the tactic in terms of a distinctive 'Scottish' way of policing and a sense of policing as 'other to' England, signalled in part by the perceived absence of 'race'. Part 4.4 sets out the main body of empirical analysis and provides a detailed account of Scottish policing and political responses to the Stephen Lawrence Inquiry (1999). Drawing the findings together, part 4.5 discusses the implications for police accountability and the direction of stop and search thereafter.

4.2 Stop and search in post-war England

> 'Public concern about stop and search has formed part of a broader crisis of legitimacy facing a range of criminal justice agencies, particularly the police. Although evident across diverse sections of society, this crisis has been inextricably linked to "race".'
> (Delsol and Shiner, 2006; 244).

4.2.1 The Scarman Report and the Stephen Lawrence Inquiry

The history of stop and search in England is invariably associated with ethnicity, race and post-war immigration (Delsol and Shiner, 2006; Whitfield, 2006; Bridges, 2011). Formal concerns in relation to the disproportionate policing of BME communities in England emerged in the 1970s (Hall *et al.* 1978). For example, submissions to the Royal Commission on Criminal Procedure by the Institute of Race Relations in 1979 and 1987 drew attention to 'the mass stop and search of black people, to rude and hostile questioning accompanied by racial abuse, to coordinated police raids, the use of riot squads, and continuous surveillance directed against black communities' (Delsol and Shiner 2006; 224).

Tensions between BME communities and the police culminated in a period of urban unrest between 1980 and 1981, which included disturbances in Toxteth, Handsworth, Birmingham and Chapeltown. In Brixton, riots were ignited by 'Swamp 81', a four day saturation style stop and search operation carried out against an incendiary backdrop of deteriorating police-public relations, resentment towards the police, and socio-economic disadvantage.

The subsequent inquiry into the Brixton riots led by Lord Scarman (1981) drew attention to inner-city decline, racial disadvantage and the ways in which 'complex political, social and economic factors' had created a 'disposition towards violent protest'. In operational terms, Swamp was described as 'flawed', 'inflexible' and marked by a lack of community consultation (1981: 4.70, 4.71). Nonetheless, Scarman did not recommend that police search powers be curtailed, nor suggest that the police were institutionally racist. Rather, Scarman took a 'bad apples' line, arguing that '[r]acial prejudice does manifest itself occasionally in the behaviour of a few officers on the streets' (1981 para. 2.22).

Recommendations from the Scarman Report fed into the Police and Criminal Evidence Act 1984 (PACE), which set the legal framework for policing in England and Wales. Described as 'the most significant piece of legislation on policing in Britain (sic) passed in the post-World War II period' (Bridges, 2011; 2)[10], PACE introduced a national search power for stolen goods (replacing various local acts), and regulated existing powers under the Code of Practice A (1986), setting out the required standard for reasonable suspicion. The Act also required forces to report the total number of stop searches and arrest rates to the local police authority on an annual basis (1984 c. 60 1.5).

Whilst PACE attracted criticism in the decades that followed (Brown, 1997; Sanders and Young, 2008), particularly in relation to the sharp increase in stop searches as a result of the newly conferred powers, this was tempered with the recognition that the Act had tightened some of the weaker constraints placed on policing (Delsol, 2006; 47). As Newman observes, there was 'little doubt' that the Act had impacted 'on the behaviour of police officers, and on the culture of policing' (2008; 94). Moreover, policy-makers and researchers could assess the extent to which the rules and safeguards in PACE worked. In other words, the framework was open to scrutiny, setting out an accessible benchmark against which criticism could be levelled.

In 1999, stop and search was brought to the fore by the publication of Lord Macpherson's report on the murder of Stephen Lawrence. Whereas Scarman had been criticized for failing to 'grasp the mettle' in relation to stop and search and police accountability' (Bowling and Phillips, 2003; 5), Macpherson took a more

[10] The main body of PACE resulted from the (Phillips) Royal Commission on Criminal Procedure (1981), which was commissioned in 1978 in response to a series of high profile corruption cases including the Maxwell Confait Case, the Guildford Four, the Birmingham Six and the activities of the West Midlands Serious Crime Squad (Newburn, 2008; 93).

robust line, concluding that the police investigation following the murder 'was marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers' (1999, para. 46.1). The report set out seventy recommendations aimed at increasing police accountability and restoring confidence, described by Bowling and Philips as 'the most extensive programme of reform in the history of the relationship between the police and ethnic minority communities' (2002; 16).

The Macpherson report carried profound consequences for the policing organization (Foster *et al*. 2005), for example, Shiner argues that the impact was 'experienced within the police service as a form of collective trauma or as an attack on the organizational ego' (2010; 936). Taking an overview of Scarman and Macpherson, Neal argues Scarman and Macpherson 'framed the changing story of 'race relations' in the last quarter of the twentieth century' (Neal, 2003; 55), and secured stop and search on the policy and academic agenda thereafter, in effect, establishing the tactic as a key signifier of community police-relations (Delsol and Shiner, 2006).

Yet as suggested in chapter one, this sense of gravity did not extend north of the Border. Rather, it seems fair to suggest that most observers of Scottish policing might describe stop and search as politically irrelevant, or an 'English' practice (RHA, 2002; ii: HMICS, 2003; 70). This distinctive, and powerful, interpretation of stop and search as an unproblematic 'bread and butter' policing tool is investigated further in the next two parts of the chapter.

4.3 Stop and search in Scotland: the absence of 'race'

> 'With regard to those from minority ethnic groups, the kind of 'race relations' debates which have been so prominent in England since at least the late 1950s were, for a long time, largely absent north of the border. Most commonly, this was explained through reference to the small proportion of people from minority ethnic backgrounds in Scotland relative to England… and by the comforting myth that the Scots were an essentially welcoming, tolerant people, and that racism was therefore 'an English problem.'
> (Bond, 2006; 614)

> 'Whereas in England race has been central to conceptions of nationalism, race has arguably had less significance in Scotland whose constitutional status prior to devolution meant that nationalism was related to the English 'other' and independence.'
> (Croall and Frondigoun, 2010; 127)

> 'The English embody in many ways everything the Scots are not; a constant foil against which their own identity is reinforced and difference asserted.'
> (McIntosh *et al.* 2004; 53)

Whereas policing in England was deeply racialized from the 1960s onwards (Loader and Mulcahy, 2003; 137), Scottish policing and criminal justice appeared to be relatively untouched by race issues. Rather, as Croall and Frondigoun observe, criminalization hinged on 'inequalities of class and social exclusion' (2010; 117). At first glance, this observation might be explained in terms of raw demographics (see Bond, op cit.). Whilst post-war Scotland had experienced migration from the British Commonwealth countries and the newly independent colonies, immigration rates were significantly lower than England and Wales. Indeed, Scotland experienced the lowest rate of population growth in post-1900 Europe: between 1911 and 2001, the Scottish population increased by 8% from 4.8 million to 5.2 million (McCrone, 2001; 8), compared against a 45% increase in England and Wales (ONS, 2012).

A relatively stable population meant that incomers were unlikely to be deemed a significant threat to resources, including employment. For example, Miles and Dunlop (1986) observe a lack of 'open conflict following the arrival of Indian

and Pakistani migrants', although caution that this should not be read as synonymous with an absence of racism. Yet it seems unlikely that demographic composition alone, as marked by a comparatively small BME population (estimated at 4% in 2011, compared to 14% in England and Wales), could explain the apparent absence of 'race' within Scottish policing (ibid; 23). Rather, to draw on research on Scottish identity, it can be argued that the social construction of 'Scottishness' as 'other to England' neutered the political connotations of race (McCrone, 2001, McIntosh *et al.*, 2004, Abell *et al.* 2006): positioning the English as the 'other', rather than incoming populations (Miles and Dunlop, 1986). Moreover, the idea of racism *in itself* was deemed an 'English problem' (Miles and Dunlop, 1986; Bond, 2006; 614), which ran counter to key markers of Scottish identity: to civic mindedness, egalitarianism and tolerance (McCrone, 2001). The idea of the English 'other' is examined next.

4.3.1 Scottish policing and the English 'other'

> 'Like it or not, there is a national flavour to policing in Scotland.'
> (Donnelly and Scott, 2005; 260–61).

Applying theories of Scottish national identity to policing, Gorringe and Rosie (2010) argue that there is a distinctive ideal of 'Scottish' policing, which is likewise defined 'against an implicit other – England and/or the English' (ibid; 74). This sense of differentiation can be identified in routine understandings and representations of Scottish policing, in what Billig describes as 'banal nationalism' (Billig, 1995; cited in Gorringe and Rosie, 2010): for example, in the use of English policing as a comparative benchmark in the extracts below.

> 'Whereas south of the border the introduction of the 'new' police was an attempt to move away from the need to call out the military to maintain public order and to deal with crime and disorder… in Scotland the intention was the much broader one of acting for the public good and in the public interest.'
> (Donnelly and Scott, 2008; 183)

> 'Fortunately for Scotland, there was little if any disorder on the streets during the Brixton riots, which were mimicked in other cities. Scottish police forces ensured that any chance of similar occurrences in Scotland was greatly reduced by focusing attention on strengthening liaison with all young people in deprived communities in the major cities. The absence of areas of substantial ethnic populations in Scotland made the likelihood of copycat disorder remote and in fairness to policing at the time, there were no stop and search strategies comparable to those in operation in London.' (Burnett and Harrigan, 2010; 262).

> 'A report by the Commission for Racial Equality (CRE) found that Scotland's forces were ahead of their counterparts in England in dealing with race relations and commended the policies which ACPOS had put in place.'
> (Donnelly and Scott, 2010b; 123).

> 'The emergence of the police in Scotland differed in a number of respects from its Southern neighbour… The rationale behind the introduction of the early police forces in Scotland seems to have been at variance with the emergence of policing in England. There was 'a much broader concept of policing for the public good, the public interest, or public happiness as opposed to concern to the avert the ills to come of the maintenance of order'' (Dinsmoor and Goldsmith, 2010; 49).

Tapping into similar themes, in the interview extracts below officers describe how 'Scottish' policing differs from that in London. The accounts are based on short secondment periods, and highlight what is perceived as a distinctively 'Scottish' use of communication to smooth out encounters.

> "*[There's a cop in the station] who went down to London as part of the London riots… They went in with Scottish accents, 'Areet, how you doing?' And the reaction they got from the local Brixton area, which was majority black youths, was, "What you doing speaking to me – you're smiling, what's going on?" Shopkeepers gave them cases of beer as thanks. That didn't happen to other English officers*."
> (Sergeant 1, Lothian and Borders, 15-20 years)

"*Down in London it's definitely different, the whole interaction with people. I noticed the police don't interact with people as much as we do up here, and the same, they don't get it back. So if we're down there, and I've noticed if you go out and speak to people down there, it's as if they're shocked that you're actually speaking to them. There's definitely something different.*"
(PC 6, Male, Strathclyde, 6-10 years)

"*Just from my experience of being down at the Olympics, working with the Met cops, and at the G8 last year – they're very different. We were getting thanked down there by members of the public, by staff for being so friendly. And a lot of people… couldn't believe how friendly the* [Scottish] *police were, and how much the police spoke to them, you know?... They said, like the Met wouldn't even talk to you when they walked by you in the street, things like that, and we were kind of shocked… People couldn't believe how much people up here engage with the public.*"
(PC 7, Strathclyde, Male, 6-10 years)

"*I was down at the Olympics, and I think the reception we were getting was that Scottish police are a lot more relaxed, a lot more informal, a lot more easy to speak to, you know?... The feeling I got down there was that some of the English officers were a bit more uptight and a bit more unwilling to engage with the public. Whereas here it's all community based. It's all about speaking to people and we do all sort of things involving social work, you know… we speak to parents and kids and try and sort out their lives for them, we get very much involved in that side of things. I think, there's less of a barrier between the police and the public, you would just stop and speak to anyone and have a banter with them, whereas it seems that that isn't the case in England, from what I can gather.*"
(PC 15, Tayside, Male, 0-5 years)

In these extracts, 'Scottish policing' is defined by good communication skills, consent and positive community relations: and *against* English policing: in particular, against an imagery premised on the Metropolitan police. Drawing on the idea of differentiation and 'othering', the next part of the chapter investigates policing and political responses to the Stephen Lawrence Inquiry in Scotland, and how decisions taken (and not taken) in this period impacted on the direction of stop and search.

4.4 The Stephen Lawrence Inquiry in Scotland: "This isn't about us"

'Our group's next task is to present a report on our findings to our Chairman, Mr Brown and thereafter 'see what happens'. We have the uneasy feeling that this will not be the last of our involvement with Sir William Macpherson's musings and thoughts!'
(NAS HH41/3406 (590), 26/3/1999, Letter from Inspector on the ACPOS Cross-standing Committee Working Group on Stephen Lawrence to HMICS)

"*There was a sense in terms of talking to the forces, that 'this isn't about us, we don't have any ethnic minorities, we don't have the problems – we're all friends here.*"
(Senior officer, anonymized)

How seriously was the Stephen Lawrence Inquiry treated in the recently devolved Scotland? Williams and de Lima suggest that the Inquiry brought race issues to Scotland for the first time.

'There is little doubt that race has been seen as an issue for Westminster and the stance of both Scotland and Wales has largely been one of complacency. It was not until… the murders of Imran Khan and Surjit Singh Chhokar in 1998 challenged the 'no racism here' approach. [This] affront to national consciousness did not, however, produce a raft of policy directives from the Scottish Office, it took developments following the Stephen Lawrence Inquiry to bring the race issue to the borders.'
(2006; 499)

Likewise, Burnett and Harrigan suggest a sense of serious engagement with the Macpherson report on the murder of Stephen Lawrence.

'The need to react to the Macpherson report was not lost on Scotland or its police service. A working group representing the various standing committees of ACPOS, individual forces, the Scottish Executive and the police staff association was convened as soon as the report was published. It carried out a comprehensive review of the recommendations and from its work some key documents emerged.'
(2010; 264)

Yet in the context of stop and search, the policing and political response might be described as more subdued. Outwith the statutory duties of the Race Relations (Amendment) Act 2000, which required forces to record and monitor searches, no substantive changes in police practice took place. Rather, as one senior officer recounted, "*My recollection is that it never actually came to any newly hard directive conclusions, but there was a lot of airing of views within it*". In the interview extract below, a senior officer describes the broad tenor of the Scottish policing response to Macpherson.

> "*I don't think there was much of a response here. I think there was a sort of high level acknowledgement: "Yes, this is all very serious". But I think the subtext was: "This isn't about us. This is about London, or Manchester or Birmingham. But mainly London". And I think there was almost a smugness about that.*"

Is the observation fair? Next, sections 4.4.1 to 4.4.5 investigate how Scottish political and policing elites responded to the Macpherson recommendations on stop and search. In keeping with the Bourdieuean thrust thus far, the analysis is intended to show how key actors sought to define the stop and search agenda. Note that the findings and conclusions are specific to stop and search, and cannot be generalized to other areas of the Inquiry.

4.4.1 The ACPOS Review Group on Stephen Lawrence

Following the publication of the Macpherson report in February 1999, an ACPOS Cross-standing Committee Working Group was established to engage with the report in a Scottish context. At the first meeting in March 1999, a Working Sub-Group was appointed with the following remit.

> 'To examine in detail William Macpherson's report into the Stephen Lawrence Inquiry and prepare an audit of the current position within all Scottish forces in relation to the conclusions and recommendations of the report, taking cognisance of current accepted working practices. Therefore to make recommendations and identify any actions required for the appropriate ACPOS Standing Committee or other relevant body to pursue.'
> (NAS HH41/3406, 31/3/1999 (682), Letter from Chair of Working sub-group to HMICS)

Recommendations 61 to 63 of the Macpherson Report pertained directly to stop and search and are reproduced below.

Stephen Lawrence Inquiry: Recommendations 61 to 63

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

62. That these records should be monitored and analysed by Police Services and Police Authorities, and reviewed by HMIC on inspections.

63. That Police Authorities be given the duty to undertake publicity campaigns to ensure that the public is aware of "stop and search" provisions and the right to receive a record in all circumstances. (1999, chapter 47)

The incidence of stop and search at this time was unknown. Whilst officers recorded searches in their notebooks, these were not routinely aggregated[11]. However, the use of stop and search was understood to be unproblematic by the ACPOS Working Group, given a lack of evidence to suggest otherwise.

[11] Stop and search data were collated by legacy Strathclyde during campaigns such as Operation Spotlight, and occasionally referenced in the media.

> 'To say that there is 'no problem' in respect of stop and search in Scotland would be to ignore the complaints and issues which sometimes arise to the exercise of police powers in this respect. It does however seem safe to say there is currently no evidence of the exercise of these powers being influenced by an individual's ethnicity.'
> (NAS HH41/3406 (1672; 6) Position of ACPOS response to the recommendations of the Macpherson Report 27/9/1999)

The Working Group thus concluded that recommendation 61, which necessitated systematic recording, was unwarranted.

> 'To maintain details of each and every exercise of police power of search in Scotland would require the establishment of a considerable paper bureaucracy. This would be a justifiable and valuable exercise if it were demonstrated and argued that these powers were being regularly abused, and to the detriment of a particular section of society, as seems to be the case in some part of England and Wales. To date, however, there is nothing to suggest that this is the case in Scotland, and while the review group would caution against over-complacency, they are not convinced that there is a 'problem' which requires such action in Scotland.' (ibid.)

These conclusions were fed back to the ACPOS Standing Committee, which drew the following conclusion in relation to recording and monitoring stop searches:

> 'It is the Review Group's view that, in current circumstances, acceptance of this proposal in Scotland would require the creation of an additional bureaucracy and to little practical purpose. Nonetheless, it is recommended that ACPOS remains sensitive to public opinion regarding the exercise of police powers generally, and be ready to consider ways of allaying any public anxieties that may arise.'
> (NAS HH41/3406, Report of ACPOS Committee Sub-Group, April 1999)

Put differently, the regulation of stop and search was understood as 'virtually synonymous with "race" and disproportionality' (Delsol and Shiner, 2006; 258) – which was not viewed as problematic in Scotland. As such, regulation was deemed unnecessary. In short, the larger principle of police accountability was diluted from the outset.

4.4.2 The Stephen Lawrence Inquiry: Action Plan for Scotland

> 'You will be aware that the Home Office has already published an action plan for the implementation of the Lawrence Inquiry Report in England and Wales… Our Ministers have said publically that we will be considering the Lawrence Inquiry Report in a Scottish context and implementing the recommendations as far as they are relevant to our circumstances. We need therefore to consider to producing an action plan for Scotland in about the same level of detail as the Home Office plan.'
> (NAS HH41/3406 (240), Scottish Executive, 13/6/199)

In July 1999, the Scottish Executive published '*The Stephen Lawrence Inquiry: Action Plan for Scotland*', and opened the draft plan to consultation. Echoing the ACPOS Review Group, the Action Plan stated that recommendations 61 to 63 would 'require further consideration', given the complexity of implementing recording procedures. The full response is shown below.

> '**Stop and Search [Recommendations 61-63]**
>
> **Requires further consideration**
>
> The recommendations would take a large bureaucracy to implement, which would be justifiable if there was a problem which could be addressed through the recommendations. There has not been the same criticism in Scotland about the use of police powers against ethnic minorities as there has in parts of England. However, there is a need to guard against complacency. The results of the Pilot Projects proposed by the Home Secretary will therefore be taken into consideration in reaching a final conclusion. ACPOS will separately consider the implications of introducing such schemes for the Scottish Police Service.
>
> Lead responsibility: Scottish Executive'
> (Scottish Executive, 1999; 20)

Around twenty-eight organizations and individuals responded to the consultation, including UNISON, the Law Society of Scotland, the Scottish Human Rights Commission (SHRC) and several race-relations groups (NAS HH41/3406, 3/2/2000, Scottish Executive).

In relation to stop and search, the Scottish Travellers Consortium stated that 'travellers are harassed by police, especially through vehicle stops, which should be monitored'. The SHRC stated that a review of current practice was required, and all stops should be recorded, to include details of ethnicity, gender and age. UNISON stated a record should be made of all stop searches, which would allow the forces to determine if there was a problem in this area, whilst the Commission for Racial Equality recommended a short-term pilot study, noting that 'in the absence of effective monitoring data' it could not be accepted that 'there is not a similar problem in Scotland'. One of the most comprehensive responses was submitted by the Chhokar Family Justice Campaign (see section 4.4.3.1 for further details), which argued that research on stop and search was required.

> 'The action plan talks of guarding against complacency but at the same time states that there is no problem with 'stop and search' in Scotland. It also talks of resource implications. But, once again, will rely on the results of pilot projects proposed by the Home Sec for E&W. Surely the minister would support a study into the impact of stop and search equivalent powers in Scotland and their effect on ethnic minority communities. What does the minister base such assertions on? i.e. Where is the data to support the notion that there is no problem? The minister might not be aware of complaints but the experience of young ethnic minorities, for instance, in the Southside of Glasgow is the reverse. With regards to resource and bureaucracy implications, this can be regarded only as a smokescreen when Scotland has a small minority ethnic population in comparison to England and Wales.'
>
> (NAS HH41/3406, *Aamer Anwar, Chhokar Family Justice Campaign*, 30/9/1999)

Within the policing organization, the Scottish Police Federation echoed ACPOS' reservations, arguing that the recommendations would create a 'massive bureaucracy' and opposed the right to receive a copy of the search record (NAS HH41/3406). The Chief Constable of legacy Strathclyde also cautioned that data monitoring and analysis might impact adversely on proactive policing.

> 'Consideration of procedures or mechanisms for monitoring, analysing and storing this data will also have to be made if this procedure is deemed to be necessary in Scotland. Careful consideration is required to ensure bureaucracy does not discourage proactive policing which benefits the community as a whole.'
> (NAS HH41/3406 (767) 15/4/1999, CC John Orr, Strathclyde Police)

A more reserved response to the draft plan was articulated by HMICS, for example, the Chief Inspector observed that 'taken overall there is just an edge of negativity and a hint of it is "OK here"' (NAS HH41/3406 Letter to Scottish Executive 8/6/1999)[12]. Yet despite the reservations expressed thus far, the ACPOS outlook would eventually prevail, as detailed next.

4.4.3 The Stephen Lawrence Steering Group

Towards the end of 1999, a Steering Group was appointed to oversee and audit implementation of the Action Plan. The Steering Group was chaired by Jim Wallace, Labour Justice Minister and Deputy First Minister, and incorporated a range of policing and justice organizations, including the Scottish Police Federation, UNISON, the Commission for Racial Equality, plus members acting in an independent capacity.

Independent members were chosen by the Scottish Executive Police Division, in conjunction with the Commission for Racial Equality (CRE). However, the selection process was politicized from the outset by the intervention of the Lord

[12] Later correspondence between the Chief Inspector and the Scottish Executive highlighted a lack of accountability in relation to stop and search, noting '[t]his is a difficult one for Scotland but inspections show concern over current practice (not particularly from an ethnic dimension) and lack of records/accountability' (NAS HH41/3406, HMICS, 2/2/2000).

This conclusion was subsequently reiterated in the HMICS report *Without Prejudice*, which noted that monitoring procedures varied between forces and that there was 'insufficient information available to allow even general conclusions to be drawn' (2001; 39).

Advocate who moved to exclude Aamer Anwar[13], Scotland's leading anti-racism campaigner. Decision-making by the Lord Advocate (and the First Minister) in this period provides fascinating insights into the exercise of elite power, and shows how those in the highest level of authority sought to manage the agenda in relation to the Stephen Lawrence Inquiry. The next subsection recounts the events that led to Anwar's exclusion from the Steering Group. It will be argued that the Lord Advocate sought to limit criticism and downplay the suggestion of institutional racism within the Scottish criminal justice system by distancing the Stephen Lawrence Inquiry from the murder of Surjit Singh Chhokar in 1998 (a case widely dubbed as 'Scotland's Stephen Lawrence'[14]).

4.4.3.1 Aamar Anwar, the Chhokar trial and the Stephen Lawrence Inquiry

In November 1998, Surjit Singh Chhokar, a 32 year old Sikh, was stabbed to death in Lanarkshire. Three suspects were arrested and charged: Andrew Coulter, David Montgomery and Ronnie Coulter. However, for reasons which were not explained to the Chhokar family, the Crown only proceeded against Ronnie Coulter, resulting in a conviction for simple assault. The crown did not move for sentencing and the trial judge was forced to release Coulter without punishment. Lord McCluskey used his closing remarks to launch the following attack on the Crown.

[13] Documents in relation to these events are publically available in the National Archives of Scotland; however given the sensitivity of these data, I sought permission from Aamer Anwar to disclose his identity.

[14] For example, Neville Lawrence, the father of Stephen Lawrence publically stated that the way in which the Chhokar case was handled by the authorities had parallels with the treatment his own family had received (Guardian, 23/3/1999)

> "*A man was murdered in a public street by one or more persons who have been discussed during the course of this trial. For reasons I cannot begin to understand only one of these persons was placed in the dock. I will be taking steps to find out how the decision was reached. Unfortunately I know no more than you do about that particular background.*"
> (Lord McCluskey, cited in Campbell, SP Paper 425)

In response, the Lord Advocate publically rebuked Lord McCluskey and defended the Crown position.

> "*It is a matter of regret that a judge of such experience should make such public pronouncements in ignorance of the background to the case. Such uninformed and ill-advised remarks do not serve the interests of justice and fail to appreciate the respective roles of the Lord Advocate and the Judiciary. Prosecution decisions fall within the independent exercise of the discretion of the Lord Advocate, who is not accountable to the High Court of Justiciary, or any of its judges, for such decisions. From the preliminary report given to me I am satisfied that the action taken in this case was the most appropriate in the circumstances and the reasons for it are sound*."
> (Lord Hardie, cited in Campbell, SP Paper 425)

Following Coulter's acquittal in March 1999, the Chhokar Family Justice Campaign was set up by the family and campaigners, with Anwar as lead spokesperson. Amongst its aims, the Campaign sought an Inquiry into the trial, and implementation of the Stephen Lawrence recommendations as proposed by Lord Macpherson.

Andrew Coulter and Montgomery were charged with murder in July 1999, and brought to trial in November. Montgomery was acquitted and Andrew Coulter was convicted of assault. Thereafter, two private independent inquiries were launched. The first, led Dr Raj Jandoo, investigated liaisons between the police, the Crown Office, the Procurator Fiscal Service and the bereaved family. The report highlighted a range of failings, including a failure by the police to consider whether the crime was racially motivated, poor liaisons with the family and inadequate interpreter services. Whilst concluding that parallels between the Chhokar Case and that of Stephen Lawrence were misleading, Jandoo concluded that there was evidence of institutional racism within the organisation and procedures of Strathclyde Police and the Procurator Fiscal Service' (2001; 2.27-8, SP Paper 424).

The second, led by Sir Anthony Campbell, examined prosecution decision-making and concluded that the Crown was wrong to proceed against Ronnie Coulter alone

4.4.3.2 Membership of the Stephen Lawrence Steering Group

Setting the Stephen Lawrence Inquiry against this timeline, the Scottish Executive proposal to include a member from the Chhokar Family Justice Campaign on the Steering Group was made in June 1999. That is, following Ronnie Coulter's acquittal and prior to the trial of David Montgomery and Andrew Coulter. However, the proposal was opposed by the Lord Advocate who sought to distance the Chhokar case from that of Stephen Lawrence, as shown in the memorandum below.

> **Stephen Lawrence Inquiry – The Macpherson Report Action Plan for Scotland**
>
> 'The Lord Advocate strongly supports the proposal to establish a Steering Group chaired by the Deputy First Minister… The Lord Advocate is however concerned about the proposal in paragraph 12 of the minute that someone from the Chhokar Family Justice Campaign should be asked to join the Group. While the Lord Advocate agrees that the representatives of ethnic minorities, including individuals should be involved, a representative from this Campaign would not be appropriate. The Chhokar case is not similar to the Lawrence case, despite the best endeavours of activists and the media to suggest the contrary.'
>
> (NAS HH41/3406 (1141) Crown Office, 24/6/1999)

The Lord Advocate was supported by the First Minister, who shared the same reservations (NAS HH41/3406 (1207) DPS/First Minister, 6/7/1999). However, the move to exclude a representative from the Chhokar campaign was seen as politically damaging by the Scottish Executive, and in conjunction with CRE, the Executive proceeded to recommend ten independent members: headed by Anwar.

Memorandum: Stephen Lawrence Inquiry – Membership of Steering Group

[From, G Byrne, Scottish Executive Police Division, to PS/Deputy First Minister]

'….The Deputy First Minister will appreciate that it has been necessary to determine the list of independent members in partnership with the CRE. The list is the result of excessive discussion and reflects their proposals.

Both the First Minister and the Lord Advocate have previously expressed reservations about having a representative of the Chhokar Family Justice Campaign on the Steering Group, as this would give the incorrect impression that the Chhokar case was similar to the murder of Stephen Lawrence. Although Aamer Anwar is currently associated with the Chhokar case, he has wide experience as an anti-racism campaigner, including a civil action against Strathclyde Police when he was a student. Mr Anwar is the most prominent campaigner in this area in Scotland and the CRE support his membership. In our view, the credibility of the group would be damaged if Mr Anwar were not invited to join.'
(NAS HH41/3406 (1797) Scottish Executive, 22/10/199)

The Lord Advocate's candid response to the proposed membership is shown below.

[To: PS/Deputy First Minister]

'The Lord Advocate has seen Mr Byrne's submission of 22 October 1999 and wishes to record his opposition to the appointment of Mr Aamer Anwar to the Steering Group for as long as the Chhokar case is still current. Apart from giving the false impression of similarities with the Lawrence case, the Lord Advocate believes there is a real fear that Mr Anwar will attempt to abuse his membership of the Committee for his own ends. As you are aware, there have already been problems around publicity in the Chhokar case and the Lord Advocate is concerned that if Mr Anwar acts as anticipated, the trial may be prejudiced. The Lord Advocate suspects that this would be used by Mr Anwar and the campaign to criticise the Executive.'
(NAS HH41/3406 (1806) Crown Office, 25/10/99)

Expressed more discretely, a minute from the First Minister's office asked if Anwar had actually been informed that he was to be a member (NAS HH41/3406 (1965) 23/11/1999 APS/First Minister), whilst a minute from the Deputy First Minister's office enquired 'whether there are any other persons who can be invited instead of Mr Anwar' (HH41/3406 (1969) 24/11/1999, Deputy Minister for Justice).

Whilst the Lord Advocate had previously sought to distance the Chhokar and Lawrence cases, the argument was now put more forcefully. Here it was argued that publicity generated by Anwar might prejudice the imminent trial of Montgomery and Coulter. However, in practice, this risk seemed low. First, the Crown had obtained a Contempt of Court order prohibiting reporting until after the trial. Second, Anwar had campaigned extensively on behalf of the Chhokar family (without payment) and was thus unlikely to jeopardize the proceedings. Looking at both interventions by the Lord Advocate (recall the first was made *prior* to Coulter and Montgomery being charged), it might be argued that the primary motive was to limit or manage critical opinion in relation to the Chhokar case, which by this stage reflected badly on the Crown, the Scottish Executive and on the Lord Advocate personally, in particular, the misplaced rebuttal of Lord McCluskey.

In order to maintain the credibility of the Steering Group, whilst abiding by the Lord Advocate's objections, the Scottish Executive chose to wait for the trial of Montgomery and Coulter to finish before issuing invitations, thus allowing Anwar to join. However, the trial was adjourned, thereby forcing the Executive to either proceed without Anwar, or delay further:

> [From: G. Byrne, Police Division, Scottish Executive, to PS/Deputy First Minister]
>
> 'We assume that the Lord Advocate's previous advice, that Mr Anwar cannot be invited before the end of the Chhokar trial because of the risk of prejudice remains… The options then remain to wait to the end of the trial to send out the invitations, allowing Mr Anwar to be invited to join the Group, or to invite the other proposed members now and establish the Group without Mr Anwar… Both options have presentational difficulties… We can expect an increasing level of interest and possible criticism while the formation is delayed, particularly if progress cannot be made in other areas without the Group's contribution.
>
> If we proceed without Mr Anwar we may attract criticism that we have excluded a prominent campaigner in this area in Scotland, possibly because he had embarrassed the Executive over the Chhokar case. It was concern about public speculation linking a decision not to invite Mr Anwar to join the Group with the Chhokar case that led to our advice to delay issuing invitations until the timetable for the trial had been clearer.

> We have considered whether we could avoid criticism by openly linking his non-inclusion with his close involvement in the Chhokar case, pointing to the impending trial and the risk of prejudice. However, we have concluded that such a line, with its implication that he might have been invited but for the trial, might carry the same risk of prejudice as an actual invitation. It might also be seen to confirm the allegation that he had been excluded because he had embarrassed the Executive over the case.'
> (NAS HH41/3406 (2010) Scottish Executive, Police Division 1/12/1999)

Backed by the Lord Advocate (ibid. (2037) Crown Office 3/12/199) and the Deputy First Minister (ibid. (2025) PS/Deputy First Minister 3/12/199) the Executive proceeded to issue invitations immediately: in order to 'maximize the time between any publicity surrounding the non-inclusion of Mr Anwar and the new date for the trial'. The First Minister also expressed his personal reservations, in what might be read as a bid to manage critical or challenging opinion.

> 'The First Minister has met Mr Anwar at EOC functions and feels he is likely to prove very difficult. The First Minister considers that is would be sensible to proceed without him and some thought should be given as to whether he should join later.'
> (NAS HH41/3406 (2030) APS/First Minister, 8/12/1999)

Following the acquittal of Coulter and Montgomery in November 2000, at the seventh meeting it was decided that 'consideration should be given to Mr Anwar being asked to join the Steering Group' (ibid. Scottish Executive 11/12/2000). Fifteen meetings were held in total, and Anwar joined at the eleventh, in May 2001. In other words, Scotland's most prominent anti-racism campaigner joined the Steering Group long after the agenda was established: when the opportunity to exert influence or to effect change was likely to be minimal. With this observation in mind, the next section shows how the premise of 'institutional racism' was refuted at the first meeting: and how the Inquiry proceeded, without accepting this basic premise.

4.4.4 Institutional racism: "*we're all friends here*"

At the first Steering Group meeting in February 2000, the purpose of the Inquiry came into question, as the Scottish Police Federation and Association of Inspectors rebutted the suggestion of institutional racism within Scottish policing.

> 'The 'ACPOS Racial Diversity Strategy' was the subject of some debate which appeared to centre on the non-acceptance by the police that the service was 'institutionally racist'. The police vociferously defended their stance… It was suggested a great deal of support from minority ethnic communities could be forthcoming if the police publically accept this criticism. The matter was not however, however, resolved and the meeting continued with the different views remaining.'
> (NAS HH41/3406 Steering Group Meeting, confidential briefing note 7/2/2000)

> 'At the last meeting there was a dispute about the institutional racism of the Scottish Police Service. ACPOS accepted the accusation but it was rejected by the Association of Scottish Police Superintendents and the Scottish Police Federation. There was then a debate about whether the police service could even change if the organizations representing the overwhelming majority of its members would not accept the service is institutionally racist. The CRE has now said that a line should be drawn under this question… otherwise it will re-surface throughout the work of the Group... It seems unlikely that the two points of view expressed at the previous meeting can be reconciled. In particular, it is very hard to believe that the Federation will or can accept the accusation of institutional racism on behalf of their members.'
> (NAS HH41/3406 Scottish Executive, circulated minute, 14/3/2000)

The position of the Lord Advocate was also understood as ambiguous:

> 'At the time of the publication of the Lawrence Inquiry report, the then Lord Advocate [Hardie] accepted the recommendation for the Crown Officer and the Procurator Fiscal Service on the assumption that they did suffer from institutional racism. He argued that any other assumption would be complacent. He did not take a position on whether the Fiscal Service was *actually* racist or not.'
> (ibid. emphasis in original).

In response to this impasse, the Justice Minister was asked to take a 'similar approach for the Steering Group' to that taken by the Lord Advocate: with the understanding that 'such an assumption, without a public admission of "guilt" on the part of the police service, would give the Steering Group a foundation on which to proceed with implementing the action plan' (ibid.). In short, the purpose of the Steering Group was unclear from the start.

4.4.5 The Reid Howie Associates Review

Stop and search was raised at the first Steering Group meeting, at which point ACPOS proposed that 'a sharply focused independent survey' should be commissioned 'to ascertain the existence and extent of difficulties currently perceived or encountered' (NAS HH41/3406 Steering Group Meeting, confidential briefing note 7/2/2000).

In November 2000, the Executive issued a tender to research the use of stop and search among white and minority ethnic youth in Scotland, which was awarded to Reid Howie Associates (hereafter RHA), a small research consultancy. It was anticipated that the findings would shape the eventual outcome of the Inquiry in relation to stop and search. For example, HMICS stated that the findings were likely to determine the scope of recording requirements (NAS HH41/3406, 17/3/2000), whilst a Steering Group progress report stated that given the mixed views expressed thus far, the Executive would await results from RHA before taking any decisions.

At the penultimate meeting of the Steering Group in December 2001 (NAS HH41/3505 (24) Scottish Executive 11/12/2001), the RHA report was presented to members by the lead researcher, who described the project as a 'moderate piece of research to scope the issues conducted over an eight week period' which 'did not definitively cover disproportionality'. The research was based in the legacy Strathclyde, Lothian and Borders and Tayside forces, and examined 7,000 stops and 3,600 stop searches, of which 87% were non-statutory. The researcher concluded that there was no evidence to suggest that ethnic minorities were being targeted through stop and search, however there was some evidence to suggest that officers were failing to interact with BME citizens. There was also evidence that young people in

some areas saw the tactic as a part of everyday life, were adversely affected by search encounters, and felt alienated from the police. It was also noted that 'one to one contact was sometimes not very good', and that statutory powers were 'better understood and received by the public'. The researcher was asked whether conclusions could be safely drawn, given the limited scope of the research, to which he replied that he could not do so conclusively, given the given size and parameter of study, commenting nonetheless that people "*were prepared to give up certain rights in order to feel safer, as long as they were properly informed*."

The preliminary RHA findings were published in May 2001 and set out fourteen suggestions, which touched variously on improving racial awareness, recording practices, data publication, educating people on police powers and their rights, searching children, and the use of performance targets. The report also, rather delicately, questioned the legitimacy of non-statutory stop and search.

At the final meeting in January 2002 (NAS HH41/3505, Scottish Executive 28/1/2002), the Group was advised that the Executive had accepted the suggestion that ACPOS, the Scottish Executive Justice Department and CRE should convene a working group to consider partial implementation of recommendations 61 and 62 in relation to recording and data publication respectively (RHA, 2002; iv). This decision appeared to signal a departure from the hitherto conclusion that recording and monitoring would require an 'unwarranted bureaucracy'. In practice however, recording was rendered mandatory by the Race Relations (Amendment) Act, 2000[15], as shown below.

[15] The Race Relations Amendment Act 2000 was implemented in full in November 2002, as recommended by Lord Macpherson, and extended the original Act to all public authorities.

> ‘**General Order 34/04**
>
> In April 2001, the Race Relations (Amendment) Act 2000 came into force imposing a general duty on public authorities to promote racial equality… From 10 January 2005 officers who carry out a personal search whether voluntary or under legislation for drugs, stolen property, offensive-weapons, firearms and alcohol (not at designated sporting events) must enter the details in their police issue notebook. They must also ensure that details are recorded on the Stop and Search database available on the Force Intranet… The introduction of this procedure will allow the Force to further comply with the legal requirements of the Race Relations (Amendment) Act 2000.’

Recording for the purposes of monitoring ethnicity was put in place from 2005, although practice was patchy across the forces. For example, legacy Dumfries and Galloway only collated data on drug searches. Following the dissolution of the Steering Group, the Scottish Executive Justice Department took on responsibility for further research and implementation of the Action Plan (Scottish Executive, 2002; 56). However, no further initiatives were forthcoming. The legacy forces were not required to publish stop and search statistics, thereby precluding wider scrutiny and accountability. Copies of search records were not made available to those searched by the police, thereby curbing individual officer accountability, given that those who had been searched could neither document the encounter, nor substantiate repeat search encounters (Delsol and Shiner, 2006; 255). Nor were Scottish police authorities required to publicize public rights around stop and search. In sum, a gulf would develop between the two jurisdictions in terms of baseline accountability and the standard of information provided in England and Wales, and Scotland respectively.

4.5 Summary: if it ain't broke

This chapter has investigated how Scottish policing and political elites perceived stop and search in the context of the Stephen Lawrence Inquiry, and unpacked the implications for police accountability.

In Bourdieuean terms, the analysis showed how actors used their political capital to preserve the existing policing habitus. Elite policing responses favoured current institutional arrangements, advocating unencumbered and unsupervised forms of crime control, and the ability to stop and search without record-keeping or oversight. Whereas the Scottish Office had actively sought to curb the expansion of police powers in the late sixties (see chapter three), at this historical juncture the Scottish Executive Action Plan replicated (almost word for word) the ACPOS position on recommendations 61 to 63, thereby suggesting that the critical distance between two organizations had lessened, and in effect, giving greater weight to policing outlooks.

Whilst concerns around a lack of accountability, transparency and the 'toothlessness'[16] of the Inquiry were expressed by a range of actors, including Steering Group members and HMICS, the ACPOS outlook eventually held sway by dint of the dominant framework: by the 'built-in inertia' of habitus (Waquant, 2005; 319) and a sense that the recommendations would be indefinitely held 'for further consideration' (Scottish Executive, 1999: 20). Recall for example, the comments of the senior officer: "*My recollection is that it never actually came to any newly hard directive conclusions, but there was a lot of airing of views within it*".

In the case of Aamer Anwar, challenging opinion was excluded by the Lord Advocate and First Minister, who arguably sought to distance the Inquiry from the

[16] For example, 'Scots under fire for 'scratching surface' with anti-racism plans' (Guardian, 14/2/2001)

case of Surjit Singh Chhokar, or at least, to minimize critical opinion in relation to the Chhokar case, and thereby downplay evidence of institutional racism within the criminal justice system. This sense of defensiveness can also be understood in terms of the wider politics of devolution. As Kelly observes, the issue of racism 'hit Scotland's criminal justice system at the precise historical moment when Scotland [had] assumed greater control over its own affairs and proclaimed its commitment to social inclusion and equality' (2000 [online]).

Elite decision-making in relation to stop and search may also be viewed through the distinctive cultural lens of 'Scottish' policing, in terms of a habitus that defined itself against 'English' policing. Likewise, stop and search was defined *against* an anglicized narrative which equated the tactic with racism and disproportionality (Delsol and Shiner, 2006). In this respect, the English 'problem' of stop and search was perceived as antithetical to Scottish policing ideals about community, consent (Donnelly and Scott, 2008; 184; Gorringe and Rosie, 2010), and the belief that "*we're all friends here*". Recall for example, how the Inquiry was launched without an admission of institutional racism, either by the main police staff organizations, or the Lord Advocate.

In turn, the perceived absence of 'race' and racism within Scottish policing strengthened the understanding of stop and search as apolitical and unproblematic, rendering what was typically understood as a controversial police power, into something altogether more benign: a simple bread and butter policing tool. An understanding which enabled policing executives and politicians to bypass the Macpherson recommendations on stop and search: in effect, neutering calls to introduce regulation and accountability.

Unpacking the Scottish policing habitus further, it can also be argued that the prevailing outlook incorporated a more laissez-faire approach to regulation, which ran counter to the more rule-bound English system. In the interview extract below, a senior officer describes how Scottish policing gave precedence to informal negotiation, rather than 'systems and structure'.

> "*I don't think people think 'I am now exercising a power of stop and search'... as far as they would articulate it at all, I think they would think in terms of, 'I am now negotiating somebody who I have some interest in, and part of that process is, to satisfy my concerns that they might have a blade on them' – for example, 'Because I know that this area is subject to knife crime' or 'I am working under a directive to tackle knife crime'. Or whatever it might be. I don't think they think, 'I am now going to use this power to use a stop and search which starts here, ends there and ends up with this record.*" (ibid.)

Viewed thus, the construct of stop and search as a discrete tactic that could be measured and monitored seemed out of kilter with the prevailing policing disposition. Put differently, the construct of stop and search *in itself*, ran counter to the ideal of Scottish policing, which was understood as more fluid and informal.

Taking a more pragmatic overview, the analysis speaks to the difficulty of implementing reform as a matter of principle. As the Scottish Executive made clear, it was 'not formally required to respond to the Macpherson Report' (Scottish Parliament, EO/RR/91 11/10/1999). Moreover, Scottish policing appeared to be relatively untroubled by wider critical opinion. Recall for example, Kinsey's comments on the 'comparative lack of political concern, if not complacency over civil liberties' (Glasgow Herald, 2/8/1983). Thus without evidence of public challenge or a sense of political will from the Scottish Executive, the eventual loss of momentum, was perhaps a predictable, if unintentional, response to a 'problem' that was not deemed applicable in Scotland. Moreover, in passing over the opportunity to introduce robust accountability mechanism, political, academic and public debate would be precluded for over a decade.

Part One. Summary

Part one has sought to address the first research aim and **provide an explanatory account of the direction of stop and search in Scotland**. Drawing primarily on historical documentary data sources, the objective was to unpack different ways of thinking about crime control and the policing role, and dig beneath the veneer of more formal or official policy pronouncements. The analysis examined the ways in which police powers were variously curbed or facilitated by political administrations and police Executives. In this respect, the unfolding direction of stop and search was understood to result from the exercise of state power at an elite level. Put differently, the analysis understood the power to stop and search *in itself*, and the supporting ideologies which privileged crime control over due process and individual rights, to be problematic.

Taking a historical overview, the analysis documented a subtle, albeit important shift in the way that political elites perceived the preventative role of the police in the early post-war period. Signalling a departure from the Peelian model of preventative routine patrol, the analysis showed how the Prevention of Crime Act 1953 endorsed a pre-emptive approach, which enabled officers to "*get a criminal before he has started the attempt to commit the crime*": thereby setting a legal and ideological precedent which expedited the expansion of stop and search powers throughout the sixties.

By the early seventies, the use of stop and search was increasingly divisive in England and Wales, particularly in terms of race, whilst more broadly, the politics of policing, law and order played out in a rambunctious fashion. However, in Scotland policing appeared to proceed more calmly, as Left leaning politicians and senior civil servants sought to quell the ascendency of law and order values, and depoliticize the policing habitus. Yet crucially, it was argued that this quieter settlement provided a discreet ideological space in which to embed crime control values in the 1970s: which were subsequently given expression in the 1980 Criminal Justice (Scotland) Act.

The enactment of stop and search powers for offensive weapons in the 1980 Act provided the legislative foothold for the legacy Strathclyde stop and search campaigns in the 1990s. The analysis concluded that the use of intensive stop and search in this period signalled an important shift in preventative logic. Running counter to the post-war model of stop and search premised on detection, the Strathclyde campaigns introduced the logic of deterrence, and defined non-detection as a successful outcome. In this way, the tactic was rendered unassailable: a common-sense solution to violent crime which could be legitimated irrespective of the outcome. This 'unproblematic' outlook was subsequently endorsed by the Stephen Lawrence Inquiry in Scotland, as political and policing elites sought to portray the tactic as an 'English problem' that hinged on racial conflict and held little purchase in Scotland. Outwith the basic recording requirements imposed by the Race Relations (Amendment) Act 2000, the opportunity to introduce robust accountability mechanisms was passed over, and the extent to which the stop and search was used remained unknown.

Building on these key events and findings, the second part of the thesis investigates the next major transition in the development of stop and search: the shift from the short term 'campaign'; to the intensive use of stop and search as part of everyday policing.

Part Two. The Proactive Turn

This part of the thesis will examine police stop and search practice between 2005 and 2010. The analysis builds on the findings and conclusion in part one, albeit taking a different perspective, using empirical data to investigate the premise of the 'proactive turn'. The main body of analysis is organized as three chapters. Chapter five uses police force data to explore proactive and reactive approaches to stop and search. Chapters five and six examine a range of contributory factors which, it will be argued, facilitated the proactive direction. Chapter six examines the regulatory framework of stop and search, and in particular, focuses on the ability to search people without reasonable suspicion on a non-statutory basis. Chapter seven examines different police force policies or organizational approaches, and the wider party political backdrop.

Chapter 5. The distribution of stop and search, 2005-2010

'In the policing sector, there has been a shift of emphasis away from reactive strategies and '911' policing, towards more proactive community policing efforts, and, more recently, to the more intensive policing of disorder, incivilities and misdemeanours.'
(Garland, 2001; 169)

'[I]n proactive policing, officers are chronically suspicious and are forced to make snap decisions about the appropriateness of what people are doing. Having developed indicators of normality and abnormality, roughness and respectability, police officers tend to target the unusual and the disreputable. Following these cues may be routine police work, but the effect may be serious for minorities.'
(Chan, 2004; 336)

"*We have reactive policing and we have proactive policing. So if we go onto a proactive phase, we're actively seeking out, obviously crimes and offences, or trying to deter crimes and offences…. because it's better to prevent the crime from happening, as opposed to going and detecting, once a crime has been committed. So [we] put ourselves, as police officers, high visibility, in an area, to deter and prevent.*"
(Sergeant 5, Male, Strathclyde, 21-25 years)

5.1 Introduction

This chapter will address the second research aim, that is, **to explain the distribution of stop and search in Scotland between 2005 and 2010**. The data and analysis in this chapter provide the empirical backbone to the thesis, setting out what stop and search 'looks like' in contemporary Scotland, and developing in full the premise of proactive stop and search, or the proactive turn. The research approach differs from that taken thus far and is chiefly quantitative, using police force data to explore the argument. Before moving onto the main argument and methodology, this introductory section will discuss how the research aim emerged, starting with the preliminary data collection process, which is an important narrative in its own right.

To recap, it was argued in chapter four that stop and search was perceived as unproblematic by political and policing elites: an 'English' problem that did not warrant robust scrutiny. However, preliminary research at the outset of the project identified several data sources that questioned this interpretation. These included the RHA review commissioned as part of the Stephen Lawrence Inquiry which observed that 'there is anecdotal evidence that many young people, from both black and minority ethnic and white communities, appear alienated from the police, do not trust them, and feel that they are being harassed', noting also that stop searches fell on children as young as six (2002; 4). Analysis of data from three Scottish Crime Survey youth samples (1993, 1996, 2002) suggested that around 16% of fifteen year olds had been searched by police in the previous year, whilst in a small Edinburgh study, Anderson *et al*. reported a 13% stop and search rate amongst eleven to fifteen year olds, concluding that young people's adversarial contact with the police was 'far higher than comparable levels of contact for adults living in the same area' (1994; 130). Self-reported panel data from the Edinburgh Study of Youth Transitions and Crime (1998 sweep) also suggested that around 8% of twelve year olds respondents were searched by the police, rising to 18% by the age of fifteen years.

However, in order to scope out the research project, it was evident that more comprehensive and up-to-date data were required. Thus towards the end of 2010, I made a series of Freedom of Information requests to the eight legacy forces for

aggregate stop and search data. Note that the project was still to be fully pinned down at this point, hence the FOI route, rather than a formal research proposal[17].

The subsequent data returns were remarkable. The per capita rate of stop and search was exceptionally high for a small country with falling levels of recorded crime. Nearly half a million stop searches were recorded in 2010, which was almost four times higher than the comparable rate in England and Wales. However, there were sharp differences in the geographic distribution of stop searches between the legacy forces, over and above those which might be attributed to socio-demographic and offending variables. And there was absolutely no sign of policing, political or academic engagement with the issue. The overarching research aim, that is, to explain the scale of stop and search in Scotland, and the attendant lack of interest, thus stemmed from these preliminary findings.

The main argument is summarized next, followed by a detailed discussion of the methodology in section 5.1.2. A more detailed and technical exposition of the main argument is then provided in section 5.1.3, which is set out as a series of five hypotheses.

[17] The original remit of the PhD was to examine the impact of police-public encounters on public confidence in policing.

5.1.1 Main argument

Building on the deterrent model of stop and search introduced by legacy Strathclyde, it will be argued that the scale of stop and search in Scotland, together with geographic variation in the distribution of searches may be explained in terms of reactive and proactive policing approaches.

It will be argued that high search rates are indicative of a proactive approach, premised on deterrence. In this context, the aim is to pre-empt, rather than react to problematic behaviour: which results in a weaker relationship between actual offending and search levels. Rather, certain areas and types of people are likely to be targeted disproportionately, that is, over and above the risk of offending.

Conversely, it will be argued that lower search rates may be read as indicative of a reactive approach, premised on investigation and reasonable suspicion, or the post-war model. In this context, the aim is to ascertain guilt or innocence based on circumstantial evidence. Given the greater reliance on reasonable suspicion, reactive stop and search is more likely proportionate, that is, in line with offending patterns. The data and methods used to investigate this argument are detailed next.

5.1.2 Methods and data

The distinction between reactive and proactive stop and search will be investigated using detailed police force data. The analysis will also draw on interview data, policy literature and media reports in order to validate the findings.

At the outset of the project, stop and search data were requested from each legacy force. The original request specified aggregate data, broken down by simple categories, for example, the reason for the search and the outcome. Unexpectedly, one legacy force provided the data on a disaggregated basis which specified the year; reason for search; search power (statutory or non-statutory); outcome; and the age and gender of the person searched, on a case by case basis. **Table 5.1** sets out an example of disaggregated stop and search data.

Table 5.1 Example of disaggregated stop and search data

Case no.	Year	Reason for search	Search power	Outcome	Age	Gender
8	2005	Drugs	Statutory	Negative	12	Male
9	2010	Drugs	Statutory	Positive	12	Female
10	2009	Stolen Property	Voluntary	Positive	13	Male

These data were considerably more powerful than aggregate data, given that they could be used to explore associations between the variables. Taking this format as a template, I recontacted each force, and requested a detailed breakdown of the data provided thus far. The resulting data were collected into a series of SPSS datasets which documented over 1.5 million stop and search encounters carried out between 2005 and 2010. The data and their limitations, are discussed next.

5.1.2.1 Stop and search data: issues and limitations

As Bowling and Phillips observe, police stop and search records 'can be taken as a reasonably valid and reliable indicator of the extent of their use' (2007; 943). In other words, the data can provide insights into the character or nature of stop and search. Nonetheless, a number of important caveats should be noted. First, not all forces could supply the requested data. The key omissions are as follows.

a) Legacy Central provided aggregate data, broken down by reason for search, outcome and year. No data were provided on search power (statutory/non-statutory) or age.

b) Legacy Tayside provided data from 2007 onwards, rather than 2005.

c) Legacy Dumfries and Galloway provided aggregate data for drug searches only, between 2009 and 2010.

d) Legacy Fife provided data from 2009 onwards, rather than 2005, and up to 20% of searches were unclassified in some data categories.

Given the limited availability of the Fife and Dumfries and Galloway data, both legacy forces are excluded from the more detailed statistical analyses in the thesis. This omission is unlikely to distort the overall representation of stop and search activity, given that taken together, the two forces accounted for less than 1% of recorded searches in 2010 (Fife, n = 2,840, Dumfries and Galloway, n = 694). A full summary of the data provided by each legacy forces is provided in **appendix 8**. The following caveats should also be noted.

Trend data

Given that data were not available for all legacy forces in all years, trend analyses are limited to certain forces. There was also a marked improvement in data quality between 2005 and 2010, with fewer unknown or unclassified entries each year, which suggests that the trend analyses should be treated cautiously. All cross-sectional analyses in the study are based on **2010** stop and search records, which have the least number of unclassified entries.

Prevalence and incidence

Individual details are not recorded on stop and search data, which means that it is not possible to determine the extent to which individuals are subject to repeat stop searches. The key measure is therefore incidence.

Under-recording

The data should be read with the inevitable caveat of under-recording. Interview data suggest that under-recording varied from around 50% of searches in some areas, to 'very few' in others. For example, interview data suggest that levels of under-recording were lower in legacy Strathclyde, due to a target driven performance culture. Research in England and Wales likewise highlights geographic variation in recording, for example, Bland *et al.* suggest that only a minority of stop searches may be recorded in some areas (2000b; 30). Whilst systematic differences in recording rates between the two jurisdictions are possible (which could affect comparative analyses), this could not be ascertained within the project and remains unquantified.

Non-statutory stop and search

A key difficulty concerned the classification of non-statutory stop searches. To explain, for the purposes of recording, non-statutory searches are classified in exactly the same way as statutory searches, that is, in relation to drugs, weapons, stolen property, etc. In other words, *all* stop searches are classified according to the 'object' of the search, and *not* in terms of legislation (a short account of the recording process and recording form is provided in **appendix 9**).

However, non-statutory stop searches do not require a specific reason: which made the logic of using statutory based headings (drugs, alcohol etc.) to classify searches seem tenuous at best. This observation presented two specific problems. First, approximately seventy per cent of recorded searches over the six year period were non-statutory, potentially rendering the vast majority of searches unclassifiable, and thereby limiting the scope for analysis.

Second, the research required a comparative element in order to contextualize the scale of stop and search in Scotland. The obvious comparator was England and Wales, Scotland's nearest neighbour: however, the only way to draw a valid comparison was to limit the analysis to *comparable* search categories (drugs, weapons, stolen property and firearms. Yet this comparison also needed to reflect the magnitude of stop and search in Scotland: which was underpinned by non-statutory searches.

The problem of classification was resolved using interview data which suggested that statutory and non-statutory searches were likely to fall on similar types of people, for similar reasons. In short, officers didn't appear to make a sharp distinction between the two approaches. Whilst statutory searches required a higher standard of suspicion, in practice, both types of searches were likely to be informed by related ideas about 'suspiciousness' (Smith and Grey, 1983; Reiner, 2010; 121), for example, a non-statutory search on someone with a drug-user appearance was likely to be classified as a drug search. Given this loosely comparable sense of 'suspicion', the analysis in the chapter will group statutory *and* non-statutory searches together when analysing officer's reasons for searching people: for example, data describing drug searches will include both statutory *and* non-statutory searches for drugs.

Gender and ethnicity

The analysis does not examine ethnicity or gender. Preliminary analysis of ethnicity variables provided by legacy Lothian and Borders suggested that the data were marked by classification problems and likely to be unreliable. Whilst a range of data suggests that the use of stop and search is not disproportionate in terms of ethnicity (RHA, 2002; Audit Scotland/HMICS, 2011; 29; Police Scotland, 2013b, Police Scotland, 2014b; 19), these conclusions should be read very cautiously, and the area should be flagged up for future research.

The distribution of searches by gender shows that approximately 85% of recorded searches in 2010 were undertaken on males. This proportion is slightly higher than might be expected, compared to existing data on offending and gender.

For example, in the 2010/11 sweep of the Scottish Crime and Justice Survey, of those respondents who had experienced violent crime and could state the gender of the offender, 79% said that the offender was male, whilst in terms of overall offending, of those respondents who could state the gender of the offender, 74% said the offender was male (Scottish Government, 2011a; 43, 3.5.3). Data from the Edinburgh Study of Youth Transitions and Crime shows that of those aged 12 to 17 who reported being involved in violent behaviour and serious offending, 86% and 66% respectively were male (McAra and McVie, 2010; 67). These data suggest that the distribution of searches by gender is slightly biased towards males, although the discrepancy is not sizeable. In practice, searches are also likely to fall disproportionately on males due to police rules which prohibit male officers from searching females: given that only a quarter of officers are female (Scottish Government, 2011b; 93), it follows that opportunities for searching females are limited.

5.1.2.2 Statistical data analysis

The stop and search data were analysed using simple descriptive statistics in SPSS, for example, cross-tabulations and frequencies, and statistical tests (Chi-square, Cramér's V) in order to map out the distribution of searches, establish statistically significant relationships and to estimate the strength of association between variables. Multivariate logistic regression is used to investigate the factors associated with detection and to assess the respective contribution of each factor, when controlling for other variables.

Next, section 5.1.3 provides a more detailed account of the main argument and hypotheses.

5.1.3 The proactive hypothesis

The chapter will investigate the proposition that the distribution of stop searches may be explained by proactive and reactive policing approaches, via a series of smaller hypotheses. For brevity, the overarching argument will be referred to as the 'proactive hypothesis'. The individual hypotheses will be tested using five variables, which are theorized as indicators of proactive and reactive modes of stop and search, premised on deterrence and detection respectively. The analysis will also be triangulated, using interview data, policy literature and media reports.

5.1.3.1 Variables in the hypothesis

The variables in the hypothesis are as follows. First, the raw number of searches (*n*) and the per capita rate of stop and search (expressed as number of searches per 1,000 people). These data are used to describe the overall patterning of searches, variation between forces, and trends over time. Given that deterrence requires the threat of detection to be visible (Zimring and Hawkins, 1974), it will be hypothesized that proactive forces will have higher search rates, which are prone to increase over time, compared to reactive forces.

Second, the search power, either statutory or non-statutory. Recall here, the analysis of the legacy Strathclyde campaigns which suggested that non-statutory stop and search was likely to be pivotal in a deterrent context: a means of increasing the number of searches without recourse to reasonable suspicion (see **section 3.5.1**). In keeping with this observation, it will be hypothesized that proactive forces will have higher rates of non-statutory stop and search, compared to reactive forces.

Third, the age of the suspect. Given that deterrent based searches target 'suspect' populations rather than suspicious behaviour, it will be hypothesized that proactive stop searches fall disproportionately on younger age-groups, whose availability on the street is higher, and are considered at greater risk of offending. It is also likely that young people are more likely to acquiesce to non-statutory searches, and are less aware of their right to refuse than older age-groups. Conversely, it can be expected that reactive stop and search will loosely follow the

standard age-crime distribution (Hirschi and Gottfredson, 1983) given that searches are more likely to be anchored to offending, by dint of reasonable suspicion.

Fourth, the reasons for searching people. Proceeding from the proposition that proactive searches are more likely to target young people, it will be hypothesized that proactive searches are more likely to be carried out in relation to offensive weapons and alcohol, that is, in relation to offences associated with younger age-groups. Conversely, it will be hypothesized that reactive stop searches are more likely to focus on the unlawful possession of drugs, in part, due to the higher prevalence of drugs (compared to weapons). Reactive searches are also less likely to be undertaken for alcohol, given the lack of statutory powers outwith those pertaining to sporting events.

Finally, it will be hypothesized that proactive stop and search will result in lower detection rates than reactive stop and search, due to the lack of reasonable suspicion. This is the key variable, insofar as detection and non-detection may be read as indicators of reactive and proactive approaches respectively. To recap from the ideal-type model set out in chapter one, reactive stop and search logically aims to detect unlawful items, whereas proactive stop and search aims to deter offenders, and views non-detection as a successful outcome (see section 1.2.4). The objective is therefore to establish whether police practice is *systematically* structured toward detection or non-detection. Next, **tables 5.2 and 5.3** summarize the interrelationships between the key variables.

Table 5.2 Proactive stop and search: predicted distribution of key variables

Variable	Expected distribution	Explanation
1. Search rate	High search rates	Increases the probability of being searched and strengthen the deterrent effect
2. Search trends	Increasing search rates over time	Deterrence logic and a lack of reasonable suspicion suggests search rates are likely to increase over time
3. Search power	High rates of non-statutory stop and search	Allows officers to increase search rates without recourse to reasonable suspicion.
4. Age profile	Searches fall disproportionately on younger age groups	Deterrence targets stereotypical suspects: young people have greater availability on the street; are likely to engage in offending behaviour; and are more likely to acquiesce to non-statutory stop and search
5. Reason	High proportion of offensive weapons and alcohol searches	Stop searches target crimes associated with young people
6. Search outcome	Low detection rates	Due to limited use of reasonable suspicion, and a reliance on stereotypes

Table 5.3 Reactive stop and search: predicted distribution of key variables

Variable	Expected distribution	Explanation
1. Search rate	Lower search rates	Searches react to suspicious behaviour, resulting in low or inconsistent search rates
2. Search trends	Less clear-cut trends over time	More ambiguous or inconsistent search rates across time
3. Search power	Low rates of non-statutory stop and search.	Suspicion based searches are more likely to use statutory search powers
4. Age profile	Searches follow the standard age-distribution of offending.	Use of reasonable suspicion is more likely to anchor searches to patterns of offending
5. Reason	High proportion of drug searches.	Due to prevalence of drugs and reasonably clear grounds for suspicion. Less alcohol searches, due to lack of statutory search powers for alcohol. Less weapon searches, due to difficulty in establishing reasonable suspicion.
6. Search outcome	Higher detection rates	Due to greater use of reasonable suspicion

5.1.4 Modelling the data

This section applies the model of proactive and reactive stop and search, using police force data (2010) to identify reactive and proactive legacy forces. Note that the two smaller legacy forces (Fife, Dumfries and Galloway) are excluded from the analysis (see section 5.1.2.1). Also note that some key variables were not available for legacy Central (search powers and age statistics). However the legacy Central dataset is substantial (N = 13,079) and the available data categories provides some indication as to the policing approach taken. The results are set out in **table 5.4**.

Table 5.4 Proactive and reactive stop and search by legacy force, 2010

		PROACTIVE FORCES			REACTIVE FORCES		
Variable	***Indicator***	Strathclyde	Central	Lothian & Borders	Tayside	Northern	Grampian
Search rate	Rate per 1000 people	168	45	40	18	17	11
Search rate: 2008-2010	% change	↑ 75%	↑ 1753%	↑ 127%	↑65%	↑ 44%	↓ 48%
Search power	% Non-statutory	76%	unknown	64%	27%	10%	21%
Age	Mode	16	unknown	15	25	19	17
	Median	20	unknown	20	26	24	25
	Mean	24	unknown	24	27	26	26
Reason for search	% weapons	30%	51%	25%	7%	4%	3%
	% alcohol	27%	4%	25%	1%	3%	5%
Outcome	% detection	9%	8%	13%	13%	20%	25%
N		372,925	13,079	37,720	7,389	4,781	5,644

Source: Legacy police force data
Missing cases: Grampian: search power (*n* = 32, 0.6%); reason for search (*n* = 67, 1.2%), (*n* = 15, 0.3%)
Strathclyde: reason for search (*n* = 16, < 0%)

5.1.5 Proactive and reactive stop and search: analysis

Taking an overview, the results in **table 5.4** suggests that the three larger Central Belt legacy forces (Central, Lothian and Borders, Strathclyde) took a more proactive approach in 2010, whereas the three larger non-Central Belt legacy forces (Tayside, Grampian and Northern) took a more reactive approach. For example, search rates were higher in the proactive forces, the increase in searches over time was greater, the proportion of non-statutory searches was higher, the age profile of suspects was lower, a greater proportion of searches were for weapons and alcohol, and detection rates were lower.

However, the fit is not perfect and there are exceptions to this broad summary. Detection rates in legacy Lothian and Borders and legacy Tayside were identical, whilst the proportion of alcohol searches in legacy Central was in line with the more reactive legacy forces. The upward direction of searches in legacy Tayside and Northern also suggests a more proactive turn. For example, the percentage increase in searches in legacy Tayside between 2008 and 2010 was 65%, which is not far below the 75% increase in legacy Strathclyde. Also, there is only one year difference between the modal age in legacy Grampian (17 years) and that in legacy Strathclyde (16 years).

Nonetheless, some lack of fit should be expected, particularly given the level of abstraction in the model. Police-work is not rigid, and variation is inevitable. For example, national campaigns and initiatives may have increased search rates in otherwise reactive orientated legacy forces, whilst individual officers or teams within the same force may have subscribed to different policing approaches. It thus seems reasonable to suggest that a loose sense of fit is evident in relation to the proactive hypothesis: however, further investigation is required.

Before proceeding to the main body of testing and analysis, the next part of the chapter examines what might be viewed as the main counter-argument or hypothesis: that the distribution of stop and search can be explained in terms of the different policing demands placed on the respective forces. In order to unpack this argument, part 5.2 investigates whether the distribution of searches can be explained in terms of population, relative deprivation and offending variables.

5.2 Explaining variation: demographics, deptivation and recorded offending

Existing research suggests that the use of stop and search is conventionally associated with urban street policing, and tends to be directed towards populations whose availability on the street is higher, and are at a higher risk of offending, namely income deprived, teenage boys and young men. As Young and Mooney note, 'young working class men are the most frequent offenders and have the lifestyle (out at night and on foot) which makes them available for stop and search' (1999; 32).

In other words, the distribution of police searches is likely to be associated with that of socio-economic variables. It can also be hypothesized that there will be an association between population size and/or density, and the proportion of searches in each force, for example, a smaller force would be expected to account for a smaller proportion of searches overall, and with the distribution of known offending.

The analysis is structured as follows. Section 5.2.1 maps out the geography of Scottish policing; section 5.2.2 investigates whether the patterning of searches coincides with population variables; section 5.2.3 examines deprivation variables; and section 5.2.4 examines offending variables.

5.2.1 The geography of Scottish policing: terrotorial forces, 1975-2013

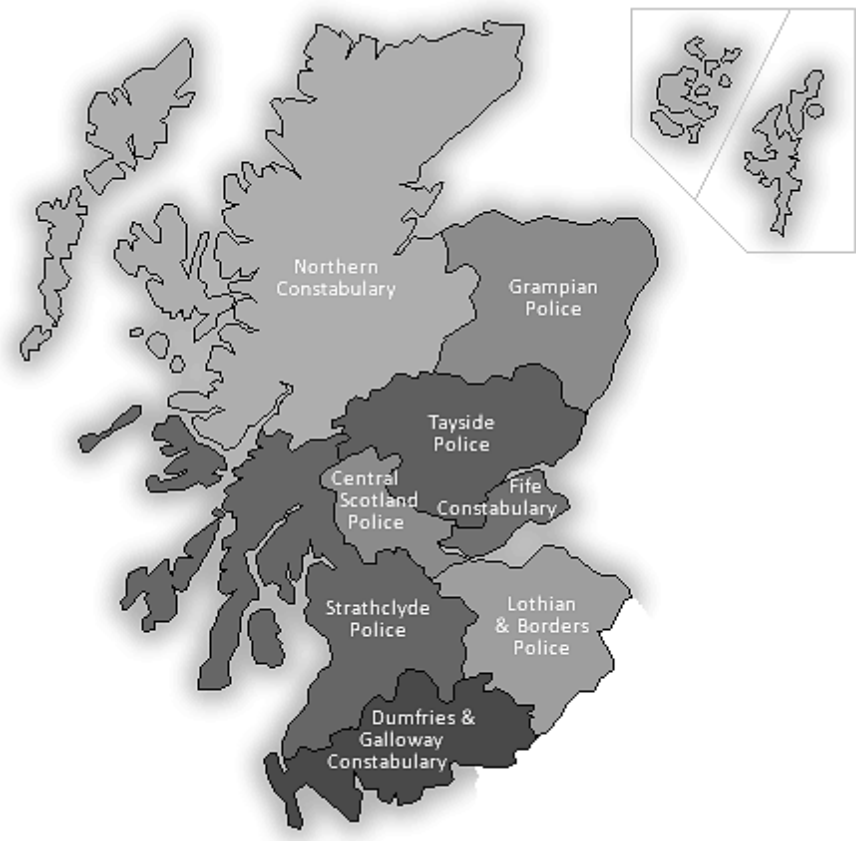

Figure 5.1 Map of legacy forces

Source: Scottish Government *Local police forces*
(online) http://www.scotland.gov.uk/Topics/Justice/public-safety/Police/local[accessed 17/10/2013]

The structure of Scottish policing, 1975-2013

The police force structure shown in **figure 5.1** was in place between 1975 and March 2013. The eight legacy forces varied significantly in terms of population, land size, and policing demands placed on each force. For example, legacy Strathclyde Police served a population of over 2.2 million people, whereas the population served by legacy Dumfries and Galloway Police was less than 150,000 people. The size of the geographical area covered by a force varied between 531 and 12,000 square miles, and the number of police officers in a force ranged from around 450 to nearly 8,000 (see **table 5.5**).

The eight legacy forces may be divided into Central Belt and non-Central Belt groups. The term 'Central Belt' refers to population density, and there is no set definition as to its contours. For example, the City of Dundee (part of Legacy Tayside) is included within some definitions, and not in others. For the purposes of this thesis, the eight legacy forces are grouped as follows.

Central Belt legacy forces: Strathclyde, Lothian and Borders, Central, Fife

Legacy Central, Lothian and Borders and Strathclyde tend to be equated with urban policing, given their prominent location in the Central Belt; however, all three forces also encompass extensive rural areas. Legacy Fife has the highest population density in Scotland, although this is primarily a function of its small land area. Fife does not contain any major cities and the population is dispersed across a series of large and smaller towns.

Non-Central Belt legacy forces: Dumfries & Galloway, Tayside, Grampian, Northern

Legacy Northern, and Dumfries and Galloway are predominantly rural forces with dispersed populations. Tayside and Grampian are semi-rural forces. Each is marked by large rural areas and high population density clusters in Dundee (Tayside) and Aberdeen (Grampian), which are the fourth and fifth largest cities in Scotland respectively.

5.2.2 Population and police force strength

Below, **table 5.5** compares population data, police force strength data and stop search data in the respective legacy forces.

Table 5.5 Population, police strength, % stop searches by legacy force, 2010

	Population			Police force strength		Stop search
Legacy force	Population	Density (per mile^2)	% of total	Number of officers	% of total officers	% per force
Northern	288,840	24	**6%**	773	**5%**	1%
Dumfries & Galloway	148,510	60	**3%**	457	**3%**	<1%
Tayside	399,550	138	**8%**	1,176	**7%**	2%
Grampian	544,980	162	**10%**	1,463	**9%**	1%
Central	291,760	286	**6%**	799	**5%**	3%
Lothian & Borders	939,020	376	**18%**	2,806	**17%**	9%
Strathclyde	2,217,880	413	**43%**	7,949	**48%**	84%
Fife	363,460	684	**7%**	1,043	**6%**	<1%
TOTAL	5,194,000		100%	16,466	100%	100%
				TOTAL	17,371	457,956

Sources: Population data: Scottish Government (2011) *A Consultation on the future of policing in Scotland* (online) http://www.scotland.gov.uk/Publications/2011/02/10120102/4 [accessed 18/6/2014]

Officer numbers as at 31 December 2010, Scottish Government *Police Officer Quarterly Strength Statistics Scotland* (online) http://www.scotland.gov.uk/ Publications/2011/02/28091832/2 [accessed 17/6/2012]

Stop and search data, Scottish legacy police forces

Table 5.5 shows that in most legacy forces, police strength was broadly aligned with population share (both are marked in bold). For example, legacy Tayside accounted for an 8% share of the Scottish population in 2010, and a 7% share of officers. Similarly, legacy Lothian and Borders accounted for an 18% share of the population, and a 17% share of officers. The exception is legacy Strathclyde, which accounted for a 43% share of the population and a 48% share of officers.

In terms of population variables, there was a disparity between the population share, and the respective share of searches in each legacy force. Strikingly, legacy Strathclyde accounted for 84% of recorded searches, compared to a 43% share of the

population. However, it is possible that this disparity can be explained in term of the policing demands placed on the force: as suggested by the top-heavy allocation of policing resources to the area. In other words, although the distribution of searches appears to be out of kilter with the population, other explanatory factors may be at play. Next, section 5.2.3 investigates whether the distribution of searches can be aligned with socio-economic variables.

5.2.3 Socio-economic deprivation

This section investigates the relationship between stop and search and deprivation by comparing the distribution of searches in each legacy force with Scottish Index of Multiple Deprivation (SIMD) data. The SIMD is one of the most commonly used statistical indicators of deprivation in Scotland, and can be used to map out both the distribution of overall deprivation in Scotland, and identify areas most adversely impacted by certain types of crime. The SIMD provides a multi-dimensional indicator of relative deprivation which measures deprivation in relation to seven domains (employment, income, health, education, geographic access, police recorded crime and housing). An overall measure of deprivation is constructed from the weighted sum of the seven domain scores. Deprivation scores are calculated at the 'data zone' level (which have a median population of 769), and are ranked from 'most deprived' (1), to 'least deprived' (6505). Deprivation is most commonly framed in terms of a 15% cut-off point (equivalent to 976 zones), which describes the 15% 'most deprived' areas or zones.

Table 5.6 shows SIMD statistics, using the 15% 'most deprived' measure. The data indicate where the most deprived data-zones are located across Scotland (national share), and the proportion of deprived data-zones in each legacy force (local share). For example, legacy Tayside accounted for 6.8% of the most deprived data zones in Scotland; whilst of those data-zones *within* legacy Tayside, 13.3% were classified as most deprived. The police force data breaks are calculated using Local Authority level data, given that that deprivation data were not reported at the police force level.

Table 5.6 National and local share of 15% most deprived data zones (2009): stop and search % (2010) by legacy force and Local Authority

		15% MOST DEPRIVED DATA-ZONES						
Legacy Force	Local Authority (number of zones)	No. of deprived zones	% of most deprived zones nationally within LA	% of most deprived zones nationally within force	% of zones within LA, in 15% most deprived	% of zones within force, in 15% most deprived	Searches *per force* (%)	Searches per 1000 people
Dumfries & Galloway	Dum. & Galloway (193)	11	1.1	1.1	5.7	5.7	0.2	5
Fife	Fife (453)	51	5.2	5.2	11.3	11.3	0.6	8
Grampian	Aberdeen City (267)	28	2.9	3.4	10.5	3.9	1.3	11
	Aberdeenshire (301)	4	0.4		1.3			
	Moray (116)	1	0.1		0.9			
Lothian & Borders	Edinburgh City (549)	60	6.1	9.3	10.9	8.1	8.5	40
	East Lothian (120)	3	0.3		2.5			
	Midlothian (112)	4	0.4		2.7			
	West Lothian (211)	19	1.9		6.2			
	Scottish Borders (130)	5	0.5		3.8			
Northern	Highland (292)	16	1.6	1.6	5.5	4.2	1.1	17
	Orkney Islands (27)	0	0		0			
	Shetland Islands (30)	0	0		0			
	Eilean Siar (36)	0	0		0			
Strathclyde	Argyll & Bute (122)	10	1.0	68.9	8.2	24.0	83.8	168
	East Ayrshire (154)	27	2.8		17.5			
	E. Dunbartonshire (127)	4	0.4		3.1			
	East Renfrewshire (120)	5	0.5		4.2			
	Glasgow City (694)	302	30.9		43.5			
	Inverclyde (110)	42	4.3		38.2			
	North Ayrshire (179)	43	4.4		24.0			
	North Lanarkshire (418)	89	9.1		21.3			
	Renfrewshire (214)	43	4.4		20.1			
	South Ayrshire (147)	18	1.8		12.2			
	South Lanarkshire (398)	58	5.9		14.6			
	W. Dunbartonshire (118)	31	3.2		26.3			
Tayside	Angus (142)	6	0.6	6.8	4.2	13.3	1.6	18
	Dundee City (179)	54	5.5		30.2			
	Perth & Kinross (175)	6	0.6		3.4			
Central	Stirling (110)	7	0.7	3.7	6.4	9.7	2.9	45
	Clackmannanshire (64)	12	1.2		18.8			
	Falkirk (197)	17	1.7		8.6			
TOTAL	6505	976	100%	100%	(15%)	(15%)	100%	

Sources: Scottish Index of Multiple Deprivation (2009) Scottish Government (pp. 13-14, tables 3.1 and 3.2) (online) http://www.scotland.gov.uk/Resource/Doc/933/0115249.pdf [accessed 9/12/2012]; Legacy police force data

Table 5.6 shows that in terms of the national share of overall deprivation, seven in ten (68.9%) of the 15% most deprived data-zones were located within the legacy Strathclyde area. Glasgow City accounted for nearly a third (30.9%) of Scotland's most deprived data-zones. However, the high proportion of deprived data zones in legacy Strathclyde result, in part, from land size and population density: recall that the SIMD is constructed in terms of population. In short, larger, more densely populated areas contain more data-zones and are therefore more likely to contain deprived data-zones.

Local share statistics provide a measure of deprivation *within* a specified area. This takes into account the relative proportion of deprived and non-deprived data-zones within each legacy force, and provides a more reliable comparative measure. In terms of local share, legacy Strathclyde also had the largest share of data-zones falling within the most deprived category (24%). However, the discrepancy between Strathclyde and the force with the next highest share of deprived data-zones (Tayside, 13.3%) was less pronounced.

Within the legacy Strathclyde area, Glasgow City and Inverclyde had the greatest share of most deprived data-zones (43.5% and 38.2% respectively), followed by Dundee City (30.2%), whose share of deprived data-zones was higher than the remaining Strathclyde Local Authorities. Whilst the combination of urbanization and deprivation might predict higher search rates in legacy Tayside, the rate of stop and search was comparatively low in relation to other legacy forces. In 2010, the rate of stop and search in legacy Tayside was 18 searches per 1000 people, compared with 40 searches per 1000 in legacy Lothian and Borders, 45 per 1000 in legacy Central, and 168 per 1000 in legacy Strathclyde. In other words, the legacy Tayside data does not neatly predict the patterning of searches. This finding is important and suggests that the relationship between stop and search and deprivation cannot adequately explain the patterning of search activity.

5.2.4 Recorded offending (Scottish Index of Multiple Deprivation)

The SIMD provides a separate crime indicator (SIMD crime) which is constructed from a subset of recorded crimes that are most likely to impact on the local neighbourhood (violent crime, sexual offences, domestic house breaking, vandalism, drug offences and minor assault). Given that the crime indicator focuses mainly (although not exclusively) on street crime, this measure provides a useful comparator against which to examine the patterning of stop searches. The indicator is also reported at the police force level, which enables direct comparison between forces.

Table 5.7 shows the national and local share of the 15% most deprived data-zones in the crime domain, together with stop and search data by legacy force. The data are ranked according to the *local* share of the 15% most deprived crime data-zones (the most reliable comparative measure between the legacy forces). The percentage of searches per legacy force is also ranked (shown in brackets).

Table 5.7 National and local share of 15% most deprived crime zones by legacy force

Legacy force	Zones per force *n* (%)	15% MOST DEPRIVED CRIME DATA ZONES			Searches per 1000 people	% searches per force (rank)
		No. data zones	% of all most deprived zones nationally, within force	% of zones within force, in top 15% most deprived		
Dumfries & Galloway	193 (3%)	21	2.2%	10.9%	5	<1% (1)
Northern	385 (6%)	42	4.3%	10.9%	17	1% (3)
Grampian	684 (11%)	82	8.4%	12.0%	11	1% (4)
Tayside	496 (8%)	60	6.1%	12.1%	18	2% (5)
Central	371 (6%)	52	5.3%	14.0%	45	3% (6)
Lothian & Borders	1,222 (17%)	168	17.2%	15.0%	40	9% (7)
Fife	453 (7%)	69	7.1%	15.2%	8	<1% (2)
Strathclyde	2,801 (43%)	482	49.4%	17.2%	168	84% (8)
SCOTLAND	6,505 (100%)	976	100%	(15.0%)		100.0%
					TOTAL	457,956

Source: Legacy Scottish Police forces; Scottish Government, 2009; 50 (online) http://www.scotland.gov.uk/Resource/Doc/933/0115249.pdf [accessed 9/12/2012]

Note: The SIMD denominator is based on resident populations, and does not account for movement in and out of areas (such as city centres). A disproportionate bias may also be introduced by under-reporting, which may vary by crime type and area (Scottish Government, 2009; 10).

Table 5.7 shows that in terms of national share, five legacy forces (Dumfries and Galloway, Northern, Central, Tayside, and Grampian) had a lower share of the 15% most deprived crime zones, compared to their respective share of data zones. For example, legacy Dumfries and Galloway had a 2.2% share of Scotland's most deprived crime zones, compared to an overall 3% share of Scotland's data-zones. The respective shares of most deprived crime zones and data-zones were almost identical in legacy Fife and Lothian and Borders. In contrast, legacy Strathclyde accounted for a higher share of deprived crime data-zones (49.4%), compared to the overall share of data-zones within the region (43%), which indicates a 'top-heavy' distribution of SIMD crime.

In terms of local share, legacy Strathclyde also had the greatest share of data-zones within the 15% most deprived crime data-zones (17.2%). However, these differences between the legacy forces were far less pronounced. For example, legacy Fife and Lothian and Borders had a 15.2% and 15% local share, respectively.

Taking an overview, although the distribution of 15% most deprived crime-zones is weighted towards legacy Strathclyde in both national and local terms, it is difficult to reconcile either measure with the 84% share of stop searches accounted for by the force. Put simply, there appears to be no clear link between the distribution of SIMD crime, and the distribution of searches in legacy Strathclyde.

5.2.5 Police recorded crime: drugs and offensive weapons

Drilling further into the patterning of recorded offending between the forces, **table 5.8** compares the distribution of stop searches for drugs and offensive weapons with recorded incidents of drug and weapon offences in the eight legacy forces. Whereas the SIMD crime indicator consisted of a range of offences, not all were relevant to the use of stop and search (for example, sexual offences and vandalism). It can however, be reasonably predicted that the distribution of drug and weapon offences across the legacy forces will be more closely aligned with the distribution of stop searches, given that officers possess powers of stop and search in relation to both.

The first column shows the proportion of searches for drugs and weapons within each legacy force, for example, drugs and weapons searches accounted for 93% of all recorded searches in legacy Northern in 2010. Note that in six legacy forces, the majority of stop searches pertained to drugs and weapons (over 60%), whilst in legacy Fife only 43% of all recorded stop searches pertained to drugs and weapons. This discrepancy is likely to be explained by the high proportion of unclassified stop searches, which accounted for 24% of all recorded searches in legacy Fife. The second column shows the share of searches for drugs and weapons recorded by each legacy force, as a percentage of the Scottish total. For example, legacy Lothian and Borders accounted for 8% of recorded weapons and drugs stop searches in 2010. The final column shows the share of drugs and weapons offences recorded by each legacy force, as a proportion of the total.

Table 5.8 Stop and search (%) drugs and weapon offences (%) by legacy force, 2010

	DRUGS[1] AND OFFENSIVE WEAPON[2] HANDLING		
Legacy Force	Stop searches for drugs and weapons as % of all searches	Stop searches for drugs & weapons as % of drugs & weapons total	Drug & weapon offences as % of Scottish total
Dumfries & Galloway[3]	-	<1%	3%
Fife	43%	<1%	4%
Grampian	86%	2%	8%
Northern	93%	1%	5%
Tayside	90%	2%	7%
Lothian & Borders	64%	8%	15%
Central	84%	4%	5%
Strathclyde	70%	84%	53%
Total	71%	100%	100%
N	314,873	314,873	40,630

Sources: Legacy police force data; Scottish Government (2011; 17, Table 1).

Notes:

[1] The classification 'drugs' refers to importation of drugs; production, manufacture or cultivation of drugs; possession and supply of controlled drugs and related money laundering offences (ibid; 37). Of these, unlawful possession of drugs accounted for 96% of all recorded drug offences. Possession of unlawful drugs accounted for 78% of all recorded drug offences, and possession of drugs with intent to supply accounted for 18% of all recorded drug offences (ibid; 30, Table 6a).

[2] 'Weapon offences' refers to possession of an offensive weapon; restriction of offensive weapons and having in a public place an article with a blade or point (ibid; 37).

[3] Legacy Dumfries and Galloway only provided summary data of stop searches for drugs.

Table 5.8 shows that legacy Strathclyde accounted for 53% of Scotland's recorded drug and weapons offences, compared to an 84% share of Scotland's stop searches for drugs and weapons. Conversely, legacy Lothian and Borders accounted for 15% of Scotland's drug and weapons offences, and only 8% of stop searches for drugs and weapons. Again, these discrepancies make it difficult to reconcile the distribution of stop searches for drugs and weapons across the legacy forces, with the actual distribution of recorded drug and weapon offences. In other words, taking a relative perspective, there appears to be no meaningful relationship between the patterning of searches, and the distribution of recorded offences that can be associated with the use of stop and search.

5.2.6 Summary

The analysis thus far has identified a discrepancy between the distribution of stop searches, and variables that might reasonably be expected to correlate with stop and search activity: population size, deprivation and recorded offending. This discrepancy was driven by legacy Strathclyde, which accounted for 84% of stop searches in Scotland in 2010. Whilst it was clear that Strathclyde contains some of the most deprived areas in Scotland in terms of overall relative deprivation, coupled with some of the most challenging areas in terms of crime, it was nonetheless difficult to justify the high levels of stop and search in the area in terms of these variables. To recap, legacy Strathclyde accounted a 43% share of the population; a 49% share of Scotland's 15% most deprived crime zones; and a 53% share of recorded offensive weapon handling and drug offences. Whilst these observations do not undercut the explanatory potential of socio-demographic and offending variables, the analysis does suggest that the distinctive patterning of searches was influenced by other factors.

With this conclusion in mind, the remainder of the chapter will explore the proactive and reactive model of stop and search in detail, and investigate whether variation in the distribution of stop searches in Scotland may be better explained in terms of policing approaches and aims. Parts 5.3 to 5.8 examine the five key variables, and test the individual hypotheses which underpin the overarching proactive hypothesis.

5.3 Incidence

The proactive hypothesis proposed that search rates per capita would be higher in proactive forces, due to the use of deterrence logic which requires the threat of detection to be visibly communicated. This part of the chapter tests this hypothesis by investigating differences in the incidence of stop and search between the legacy forces. The analysis begins by comparing search rates in Scotland with those in England and Wales, in order to put the scale of stop and search activity in perspective.

The incidence of stop and search in Scotland is substantially higher than the comparable incidence in England and Wales. **Table 5.9** shows the rate of recorded searches per 1000 people in both jurisdictions (2010). Due to legislative differences between the two jurisdictions, an exact 'like for like' comparison cannot be made across all types of stop searches. The table, therefore, sets out summary data in relation to drugs, firearms, offensive weapons and stolen property, which were applicable to approximately 74% and 75% of recorded searches in England/Wales and Scotland respectively.

Table 5.9 Stop and search per 1000 population, England & Wales, Scotland, 2010[1]
(Drugs, offensive weapons, firearms, stolen property[2, 3])

	Searches per 1000 population, 2010
England and Wales	17
Scotland	64

[1] Stop and search data in England and Wales are by financial year, whereas Scottish data are by calendar year.

[2] Scottish data include both statutory *and* non-statutory searches.

[3] Search powers for drugs and firearms derive from statutes applicable at the UK level. Search powers for offensive weapons and stolen property derive from separate statutes which apply to England/Wales and Scotland respectively.

Sources: Scottish Police Force data; Statistics calculated using 2010 population estimates, General Register Office; Home Office *Police Powers and Procedures Data Tables 2010/11*; Statistics calculated using 2010 mid-population estimates for England and Wales, ONS.

5.3.1 Scotland, England and Wales: comparative stop and search rates

In order to examine differences both between and within the two jurisdictions more closely, **table 5.10** ranks search rates in all territorial forces in mainland Britain. Scottish legacy forces are highlighted in bold.

Table 5.10 Stop and search per 1000 population in mainland forces, 2010
(Drugs, firearms, offensive weapons, stolen property)

Devon and Cornwall	1	Warwickshire	8	Thames Valley	15
Essex	3	South Wales	8	Lancashire	15
Nottinghamshire	3	Dorset	8	**Northern**	**16**
Cheshire	3	Derbyshire	8	Cumbria	18
Fife	**4**	Sussex	10	**Tayside**	**18**
Suffolk	4	**Grampian**	**10**	Northumbria	20
Durham	6	Avon and Somerset	10	Leicestershire	22
West Midlands	6	Gwent	10	Merseyside	25
Gloucestershire	6	Lincolnshire	10	Cleveland	30
Kent	6	Surrey	11	**Lothian and Borders**	**30**
Hertfordshire	6	Bedfordshire	11	**Central**	**39**
Wiltshire	6	Cambridgeshire	11	London Forces[1]	59
Humberside	7	Hampshire	12	**Strathclyde**	**123**
North Yorkshire	7	Northamptonshire	12		
North Wales	7	South Yorkshire	14		
West Mercia	8	Norfolk	14		
Staffordshire	8	Dyfed-Powys	14		
West Yorkshire	8	Greater Manchester	14		

[1] City of London and Metropolitan Police Forces.

Sources: (Scotland) Scottish Police Force data (excludes Dumfries and Galloway). Statistics calculated using 2010 population estimates, General Register Office.
(England and Wales) *Home Office Police Powers and Procedures Data Tables 2010/11*. Statistics calculated using 2010 mid-population estimates for England and Wales, ONS.

Table 5.10 shows that four of the eight forces were among the ten highest per capita users of stop and search in mainland Britain. The Central Belt forces (legacy Lothian and Borders, Central and Strathclyde) clustered as three of the four highest users of stop and search, whilst the stop and search rate in legacy Strathclyde was more than double that of the combined London forces. To put this statistic in context, the London forces have approximately four times the number of warranted officers, and

serve a population that is almost three times greater than the population of Strathclyde (Strathclyde Police Authority, 2012; 3).

Given that legacy Strathclyde accounted for 84% of stop searches in 2010, this clearly shaped the patterning of stop searches at a national level and underpinned the disparity between England and Wales, and Scotland, as shown in **table 5.9**. Nonetheless, the use of stop and search in Scotland should not be viewed as an exclusively 'Strathclyde' issue, given that legacy Central and Lothian and Borders were respectively the third and fourth highest users of stop and search in mainland Britain in 2010.

5.3.2 Scottish forces: All recorded searches

Tables 5.9 and **5.10** presented stop and search data that was comparable with England and Wales (based on drugs, firearms, offensive weapons, stolen property), and thus presented a partial picture of search activity in Scotland. The main omission was stop searches for alcohol, which accounted for around a quarter of recorded searches in 2010. **Table 5.11** shows how the inclusion of alcohol searches results in a substantial increase in search rates in four legacy forces, which are highlighted in bold.

Table 5.11 Stop and search per 1000 people, excluding/including alcohol searches

Legacy force	Searches per 1000 people	
	Excluding alcohol	*Including alcohol*
Fife	**4**	**8**
Grampian	10	11
Northern	16	17
Tayside	18	18
Lothian & Borders	**30**	**40**
Central	**39**	**45**
Strathclyde	**123**	**168**
Scotland	64	88

Source: Legacy police force data. Excludes legacy Dumfries and Galloway, given that the force only recorded stop searches for drugs.

Table 5.11 shows that the inclusion of alcohol searches resulted in an increase in search rates in the Central Belt legacy forces (Fife, Lothian and Borders, Central and Strathclyde), whereas search rates in the non-Central Belt legacy forces (Grampian, Northern and Tayside) were broadly unchanged. This disparity is important and was an early signal that the tactic was being used 'differently' in some legacy forces. For example, there was no obvious reason as to why the inclusion of alcohol searches should increase the search rate in legacy Lothian and Borders by a third, whilst search rates in legacy Tayside remained unchanged. This question was resolved using interview data, which suggested the disparity reflected a proactive emphasis on young people and alcohol within the Central Belt. For example, in the interview extract below, a senior officer comments on the legacy Strathclyde approach to policing alcohol.

> "*Because it's now part and parcel of what we expect our officers to do. On a… Friday and Saturday afternoon, as soon as they come on duty, the job of the community police officer is to go out and find the drink. The logic being, if you can get it before it goes down their throat, and the violence and the madness happens later. Take that out of the equation, and the whole level of violence is plateaued. So that is now part and parcel of a cop's job.*"

5.3.3 Summary

At the national level, it can be argued that the search rate in Scotland, compared with England and Wales, was higher than might be anticipated: particularly given the absence of political or policy interest circa 2010. Within Scotland, search rates were strikingly high in some legacy forces, notably legacy Strathclyde, which acted as the main driver of variation between the two jurisdictions, and to a lesser extent, in legacy Central and Lothian and Borders (the three largest Central Belt legacy forces). The data in **table 5.11** cast some light on this discrepancy, and identified a greater emphasis on searching for alcohol in the Central Belt legacy forces. Overall, the data suggested that stop and search was used 'differently' within the Central Belt area, both in terms of search rates per capita, and the policing focus: which might cautiously be read as indicative of a more proactive approach. This geographic divergence was also evident in longitudinal stop and search data, as discussed next.

5.4 Trends across time

The proactive hypothesis proposed that search rates were likely to increase over time, in part due to the lack of reasonable suspicion, which meant that searches were not anchored by offending behaviour; and in part, because the logic of deterrence, as premised on the certainty principle (von Hirsch *et al.*, 1999) dictates the more searches the better.

This section tests the hypothesis using stop and search trend data from 2005 and 2010. Two types of trend data will be presented. First, raw frequency data which show change over time in absolute terms, that is, the actual number of recorded searches. Second, stop and search per capita data, which provide a more balanced comparison between the legacy forces, taking into account population differences.

Ideally, the analysis would have presented indexed data, which show change over time in percentage terms and enables a relative comparison. However, this was not feasible given that indexed data requires a common starting point and three legacy forces (Tayside, Dumfries and Galloway, and Fife) were unable to provide data back to 2005. Relative change will therefore be discussed in the text, in section 5.4.1.

Below, **figure 5.2** shows stop and search trends from 2005 to 2010 in absolute terms.

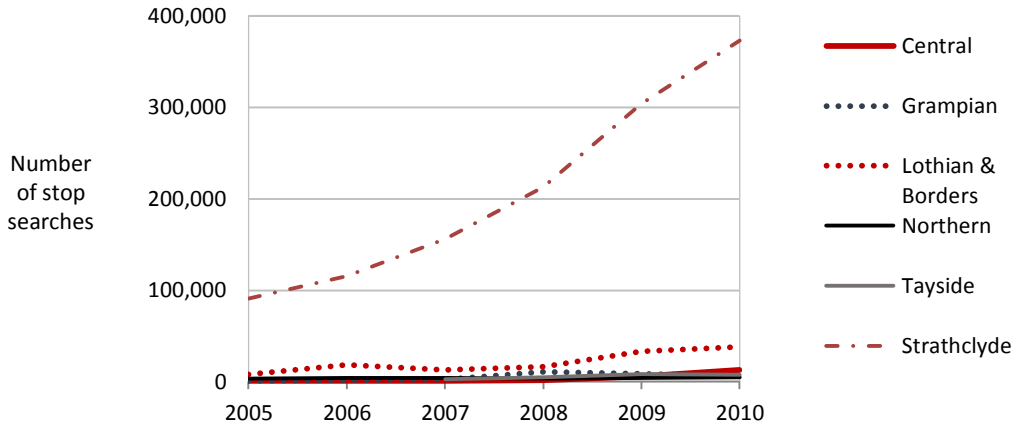

Figure 5.2 Stop and search trends, 6 legacy forces, 2005-2010

Figure 5.2 shows a large increase in the absolute number of stop searches in legacy Strathclyde between 2005 and 2010, which effectively dwarfed the data in the other legacy forces. The nearest neighbour to Strathclyde was legacy Lothian and Borders, which recorded over 37,000 searches in 2010. **Figure 5.3** shows stop and search trends in terms of search rates per capita, and provides a more balanced comparison between the legacy forces.

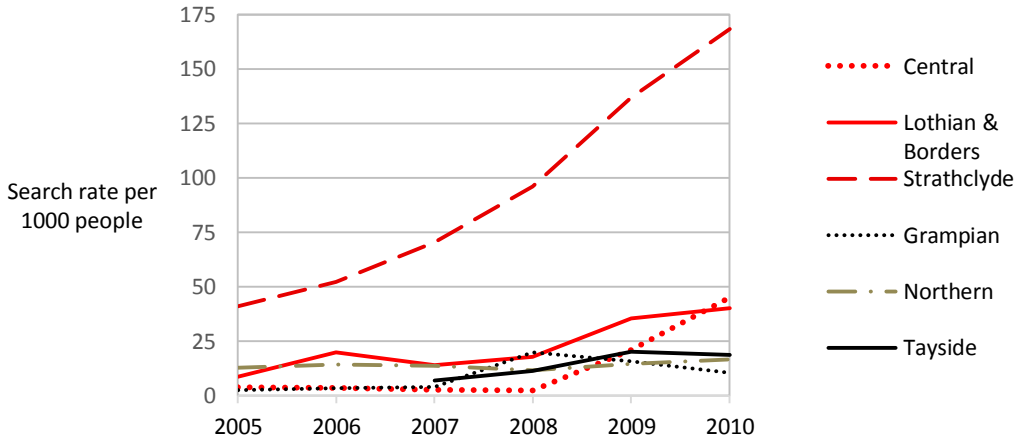

Figure 5.3 Stop and search trends (per 1,000 population), 6 legacy forces, 2005-2010

Source: Legacy Scottish Police Forces

The data in **figure 5.3** show an overall upward trend in the legacy Central belt forces (Strathclyde, Central, Lothian and Borders) between 2005 and 2010. Whilst the patterning of searches in the legacy non-Central belt forces was less consistent, overall search rates also increased between 2005 and 2010. The data also show that, even when taking population into account, the upward trend in legacy Strathclyde continued to dwarf the other legacy forces.

5.4.1 Stop and search trends: relative change

Analysis of relative trends shows that searches increased in all forces, across the 2005 to 2010 period. These trends are discussed below, with relative changes (i.e. the percentage change over time) highlighted in bold.

Legacy Strathclyde

Between 2005 and 2010, stop searches increased steadily by **312%**: from 90,588 to 372,926 searches. There was a slightly sharper upward trajectory from 2007 onwards, coinciding with the appointment of Sir Stephen House as Chief Constable.

The upward direction in legacy Strathclyde continued from 2010, through to the dissolution of the force in April 2013. The force recorded 612,110 searches in 2012/13 (Police Scotland, 2013b; 5): which represented a 576% increase from 2005. The 2012/13 statistic represented a search rate of 276 searches per 1000 people, compared to 168 searches per 1000 people in 2010. By insightful comparison, the stop and frisk rate in New York City in 2012 was approximately 64 searches per 1000 people[18].

[18] Source: 'Stop and Frisk' data 2012 (online) http://www.nyclu.org/content/stop-and-frisk-data. Calculation based on total searches in the five NYC boroughs (532,912) and NYC population (8,336,697) US Census bureau, (online) http://quickfacts.census.gov/qfd/states/36/3651000.html. Comparison based on all stop and search powers available to officers in each jurisdiction.

Legacy Lothian and Borders

Searches increased by **373%** in legacy Lothian and Borders between 2005 and 2010: from 7,980 to 37,720 searches. Searches dipped between 2006 and 2007, and rose thereafter, coinciding with the appointment of David Strang as Chief Constable.

Legacy Central

Searches in legacy Central fell slightly between 2005 and 2008, followed by a 1752% increase between 2008 and 2010. Across the entire period, searches rose by **1130%**: from 1,063 searches in 2005, to 13,079 searches in 2010. The sharp increase from 2008 onwards is attributed to an increase in weapon searches instigated by the ACPOS Violence Reduction Unit (correspondence, Central Police, 21/12/10).

Legacy Grampian

Overall, searches rose by **331%** between 2005 and 2010: from 1,310 to 5,644 searches. Searches rose sharply between 2005 and 2008, and subsequently dropped. Note however, that the Grampian data appeared to be of poor quality between 2005 and 2007 (at some points the data seem implausibly low) and as such, the percentage increase may be exaggerated.

Legacy Tayside

Legacy Tayside could not provide data before 2007, however searches increased by **173%** between 2007 and 2010: from 4,474 to 7,389 searches.

Legacy Northern

The most consistent trend was apparent in legacy Northern, which showed a **28%** increase between 2005 and 2010: from 3,722 to 4,781 searches.

5.4.2 Summary

Analysis of trend data shows that the rate of stop and search increased significantly in most legacy forces between 2005 and 2010, with the exception of legacy Northern. To summarize the relative trend data, stop searches in legacy Strathclyde, Lothian and Borders, and Central increased by 312%, 373% and 1131% respectively, between 2005 and 2010. In legacy Grampian and Northern searches increased by 331% and 28% respectively between 2005 and 2010. In legacy Tayside, searches rose by 173% between 2007 and 2010.

However, it is important to consider relative trends in conjunction with the actual number of searches carried out in each legacy force. For example, the 331% increase in legacy Grampian represented approximately 4,000 searches, whilst the 312% increase in Strathclyde represented 282,000 searches. The scale of this discrepancy suggests that is more useful to consider search levels in absolute terms, rather than relative terms. Expressed thus, the largest increases took place in legacy Strathclyde, Lothian and Borders and Central which accounted for approximately 423,000 searches in 2010, representing a fourfold increase from 2005.

The upward trend in stop searches between 2005 and 2010 corresponded with a contemporaneous reduction in violent crime in Scotland. This divergence is important and can be interpreted in two ways. On the one hand, it can be argued that the disparity raises concerns in relation to both the effectiveness and the legitimacy of the tactic. As Chainey and MacDonald state: 'it becomes much harder – at a strategic level – for the police to explain to the public that stop and search is effective and well targeted if its general pattern of use does not seem to correspond with crime.' (2012; 59). However, this statement presupposes that stop and search *should* correspond with crime, or at least, that there is some association between the two variables. In other words, the statement reflects the post-war reactive model of stop and search.

On the other hand, if the aim of stop and search is to deter, the divergence between the direction of stop searches and offending makes sense. In this context, stop and search is not *intended* to take the same direction as offending. Rather success is measured by widening the gap between offending levels and search levels.

Viewed thus, it can be argued that the fourfold increase in searches in the Central Belt legacy forces between 2005 and 2010 was underpinned by a proactive, deterrent based approach to stop and search. Conversely, the more inconsistent patterning of searches in the non-Central Belt legacy forces might be explained in terms of a more reactive approach, whereby officers respond to suspicious behaviour.

The next section investigates *how* officers search people on a proactive basis. In other words, how do officers lawfully stop and search people either without, or with minimal recourse to reasonable suspicion?

5.5 Police powers

The analysis of the early legacy Strathclyde stop and search 'campaigns' in chapter three suggested that non-statutory stop and search was pivotal to deterrent based policing: a means of increasing the number of searches, without recourse to reasonable suspicion. The analysis in this section tests the hypothesis that proactive forces have higher rates of non-statutory stop and search, compared to reactive forces. To explain further, non-statutory stop and search legitimately *allows* officers to use the tactic proactively: for example, to target particular areas and demographic groups, or to facilitate stop and search campaigns or 'crackdowns'. Non-statutory searches also allow officers to meet performance targets, and/or to improve their ranking if stop and search is set as a Key Performance Indicator. To paraphrase Cain (1973), searching people without reasonable suspicion is easy.

Non-statutory searches accounted for approximately 73% of recorded stop searches in 2010. However, this percentage varied significantly across the legacy forces. **Table 5.12** shows the percentage of non-statutory and statutory searches in five legacy forces (legacy Central did not provide a breakdown of searches by search power).

Table 5.12 Statutory and non-statutory stop searches (%) 5 legacy forces, 2010

	LEGACY FORCE				
	Northern	Grampian	Tayside	Lothian & Borders	Strathclyde
% Non-statutory	10%	21%	27%	64%	76%
% Statutory	90%	79%	73%	36%	24%
Total	100%	100%	100%	100%	100%
N	4,781	5,612	7,389	37,720	372,926

Missing cases = < 1%
χ^2 (4) = 28,709 p =***, Cramer's V = .259
*$p \leq .05$ **$p \leq .01$ ***$p \leq .001$ NS = non-significant

Source: Legacy Scottish Police Forces

Table 5.12 shows that the use of non-statutory stop and search was significantly higher in the two largest Central Belt forces, legacy Strathclyde and Lothian and Borders, at 76% and 64% respectively. The lowest rate of non-statutory stop and search was in legacy Northern, where only 10% of recorded searches were on a non-statutory basis. Below, **figure 5.4** shows the proportional use of non-statutory searches between 2005 and 2010. The two Central Belt forces are shown in red.

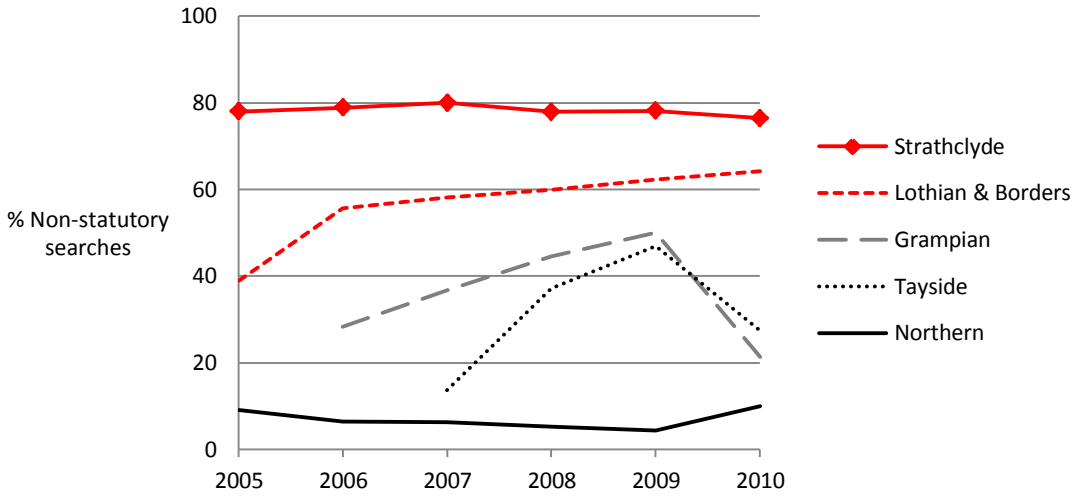

Figure 5.4 Non-statutory searches (%), 5 legacy forces, 2005-2010

Source: Legacy Scottish Police Forces

Figure 5.4 shows that the proportional use of non-statutory stop and search in legacy Strathclyde ranged from 76% to 80% between 2005 and 2010. This proportion was consistently higher than the other legacy forces shown and may be read as indicative of an established approach to stop and search.

In legacy Lothian and Borders, the proportion of non-statutory searches increased from 39% to 64% between 2005 and 2010, and underpinned the overall increase in search activity.

The omission of data for legacy Central means that the proactive hypothesis cannot be tested in relation to search powers. However, it seems plausible that the 1752% increase in search rates between 2008 and 2010 was underpinned by increasing use of non-statutory stop and search, most likely in a proactive campaign

context, rather than in response to offending levels. For example, recorded crime data show that recorded offensive weapon handling fell by 22% in legacy Central between 2008/9 and 2010/11.

Likewise, the coincidental spikes in legacy Grampian and Tayside in 2008 most likely resulted from specific campaign initiatives, rather than a longer-term change in policy direction. Campaigns in this period included a national campaign aimed at tackling alcohol related violence launched in March 2008, and a greater focus on weapon confiscations following the national roll-out of the Strathclyde Violence Reduction Unit in April 2006.

Interview data suggest that the sharp drop in the proportion of non-statutory searches in legacy Tayside between 2007 and 2010 (from 47% to 27%) was influenced by a managerial ethos which discouraged the use of non-statutory stop and search. Finally, the low proportional use of non-statutory stop and search in legacy Northern may be read as indicative of an established reactive approach. Informal comments by officers also suggest that non-statutory stop and search was not part of the policing culture in this force.

Taking an overview, the analysis shows that the use of non-statutory stop and search was higher in the Central Belt legacy forces than in the non-Central Belt legacy forces, which together with higher search rates, may reasonably be read as indicative of a proactive approach.

The next section investigates the relationship between stop and search and age, and tests the hypothesis that proactive stop searches are likely to fall disproportionately on younger age groups. The analysis also examines the relationship between search powers and age, and investigates whether the use of stop and search on younger age-groups is likely to be facilitated by non-statutory stop and search.

5.6 The age distribution of stop and search

Proceeding from the argument that deterrent-based stop and search is more likely to be targeted towards suspicious populations, rather than suspicious behaviour per se, it was hypothesized that proactive searches would fall disproportionately on younger age-groups: whose availability on the street was higher, and were at more risk of offending. It was also suggested that young people may be more likely to acquiesce to non-statutory searches, and be less aware of their right to refuse than older age-groups. Conversely, it was hypothesized that reactive stop and search would loosely follow the standard age-crime distribution, given that searches were more likely to be anchored to offending by reasonable suspicion.

This analysis in this section examines the distribution of searches by age, or the 'age-search' curve, and provides original and important insights into the way in which this tactic impacts on different age-groups.

5.6.1 Searching young people: survey data and police force data

As noted in the introduction, a range of existing Scottish research findings suggest that being stopped and searched by the police is not an uncommon experience among young people (Anderson *et al.* 1994; 130, Edinburgh Study of Youth Transitions and Crime [see McAra and Mcvie, 2005]). These findings are reinforced here by police stop and search records, which show that searches fall predominantly on young people in their mid-teens. **Figure 5.5** shows the frequency of stop searches by age in 2010 at a national level.

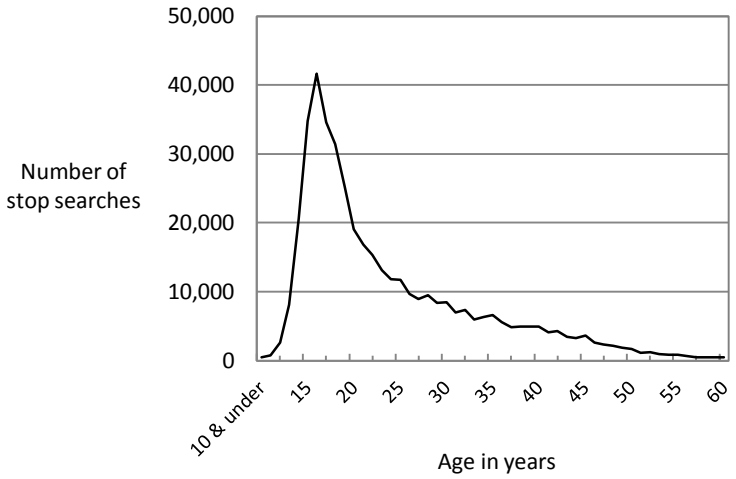

Figure 5.5 Stop and search by age, 2010

N = 428,922 (shows persons aged between 7 and 60 years)
(Full dataset by age = 431,119; missing cases = 181)
Source: Scottish legacy police forces (excludes legacy Dumfries and Galloway, and Central)

Figure 5.5 shows that recorded searches peaked at age sixteen, with a steep decline thereafter. The sharpest increase was between the ages of 12 and 14 years, which represented a 678% increase: from 2,600 to 20,500 searches. The age range of searches spanned from very young children, through to people in their eighties. Police records show searches carried out on four and five year olds, whilst 493 stop searches were recorded on children between the ages of six and ten years, of whom 74 were aged seven or under.

Looking at the data in **Figure 5.5**, the salient question is why are searches *so* heavily weighted towards young people? Or put differently, what is the policing rationale? With this question in mind, the remainder of this section investigates the age distribution of stop and search in terms of the proactive hypothesis. The analysis will investigate whether there are differences in the age distribution of searches between the Central Belt legacy forces, which have thus far, been identified with a more proactive approach; and the non-Central Belt legacy forces, which have been identified with a more reactive approach.

5.6.2 Stop and search and the age-curve of offending

At first glance, the age distribution of stop and search shown in **figure 5.5** might be explained with reference to the age trajectory of offending. Given that the age-crime curve is 'one of the least contended issues in criminology' (McVie, 2005; 1), or 'one of the brute facts of criminology' (Hirschi and Gottfredson, 1983; 552), it can be argued that searches are logically directed towards individuals in their mid to late teens, so what may look like disproportionate policing, is in fact justified by the underlying pattern of offending.

However, it is also arguable that the age trajectory of stop and search is considerably sharper than the established age-crime curve. **Figure 5.6** shows the distribution of stop and search by age, together with the age-curve for persons charged in Scotland, which is taken as a loose guide as to the anticipated age distribution of searches: or where we might expect searches to fall.

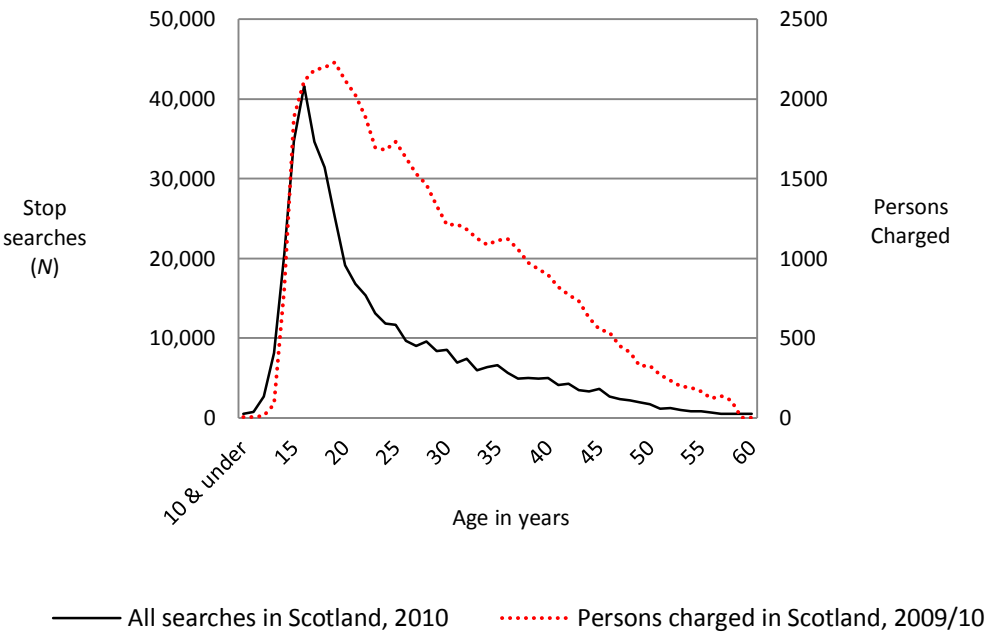

Figure 5.6 Stop and search by age, 2010; persons charged by age, 2009/10

Stop searches: N = 428,922, Persons charged: N = 47,492 (persons aged between 7 and 60 years)
Source: Scottish legacy police forces (excludes legacy Dumfries and Galloway, and Central); Scottish Government (unpublished data, requested for the thesis).

Notes: [1] Search data is by calendar year, whereas persons charged is by financial year.

Figure 5.6 shows a discrepancy between the age distribution of stop and search, and that of persons charged. The arc of recorded offending is characterized by a later peak at 19 years, an initially steep decline to the mid-twenties, and a more gradual decline thereafter. By contrast, recorded searches fall away much more sharply after the age of 16.

Nonetheless, this divergence could be explained in several ways. First, it is plausible that older offenders are more likely to be drawn into the criminal justice system and charged, whereas younger offenders may be afforded greater discretion, for example, given an informal warning (particularly in relation to alcohol offences). As such, the disparity between the two age-curves might be accounted for by differences in criminal procedure.

Second, aggregate age data collated from official sources is blunt, and invariably conceals considerable variation both in terms of prevalence and different types of offending (McVie, 2005; 11-12). For example, the persons charged data includes crime and offences which bear no relevance to the use of stop and search, and may also tap into an older age profile. It is also likely that the search data reflect the greater 'availability' of young people on the streets (MVA and Miller, 2000).

However, if the data are disaggregated by legacy forces, it is clear that young people were not *inevitably* the main focus of search activity. Building on the differences identified between Central Belt and non-Central Belt legacy forces identified thus far, **table 5.13** shows the distribution of searches by age-group in within these two groups.

Table 5.13 Stop search by age-group (%) Central Belt and non-Central Belt forces, 2010

Age group	Central Belt forces [A]	Non-Central Belt forces [B]
5-14 years	8%	3%
15-20 years	44%	28%
21-25 years	16%	22%
26-30 years	10%	19%
31-35 years	8%	13%
36 and over years	15%	16%
Total %	100%	100%
N	410,638	17,763

A Strathclyde, Lothian and Borders
B Grampian, Tayside, Northern
Missing cases = < 1%
$\chi 2 = 3,849$ (5) p =*** , Cramér's V = .095, p =***
* = p ≤ .05 ** = p ≤ .01 *** = p ≤ .001 NS = non-significant

Table 5.13 shows that in the Central Belt group, 8% of stop searches fell on those aged between five to fourteen years, and 44% on those aged fifteen to twenty years. Those aged twenty years and under therefore accounted for 52% of all recorded stop searches. In the non-Central Belt group, 3% of stop searches fell on those aged between five and fourteen, and 28% on those aged between fifteen and twenty years. Thus in contrast to the Central Belt group, less than a third of stop searches fell on those aged twenty years and under. The age distribution also decreased more steadily in the non-Central Belt group, from the 15 to 20 years age-group onwards; whereas stop searches in the Central Belt group dropped much more sharply, after the ages of 15 to 20 years.

Figures 5.7 and **5.8** graphically illustrate the age distribution of searches and persons charged in the Central Belt and non-Central Belt legacy forces, against the age-curve of persons charged. The data show how the age-spread of searches is more closely aligned with offending patterns in those forces which appear to use the tactic reactively and have higher proportional use of non-statutory stop and search.

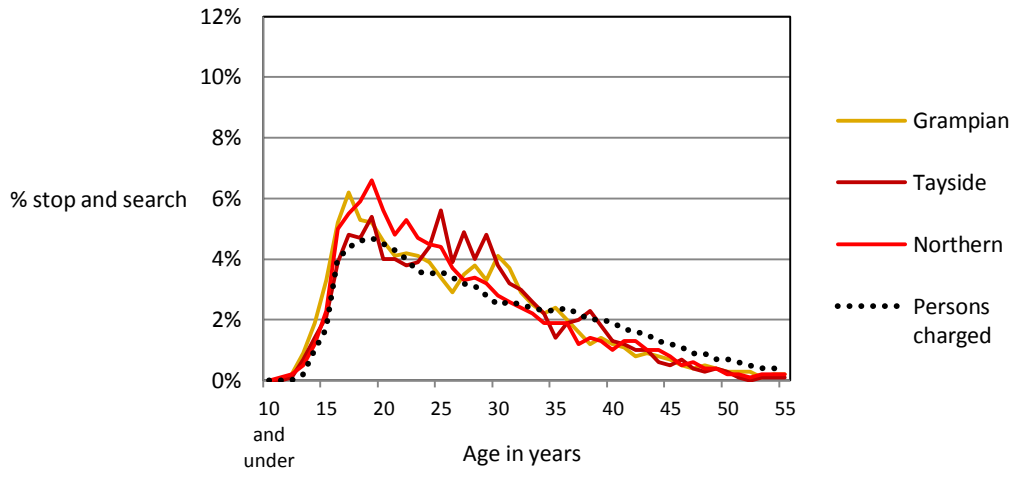

Figure 5.7 Stop and search/persons charged by age (%) non-Central Belt legacy forces, 2010

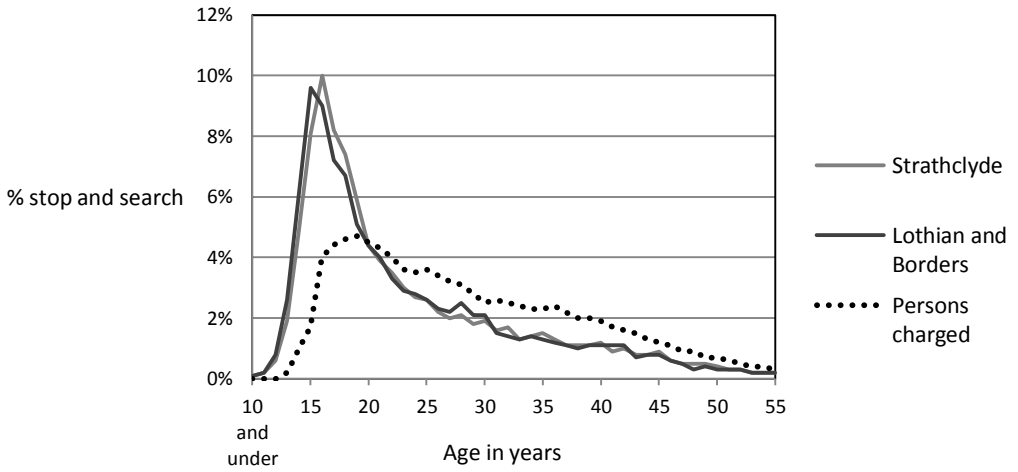

Figure 5.8 Stop and search/persons charged by age (%) Central Belt legacy forces, 2010

Source: Scottish Police Forces, Scottish Government (Justice Analytical Statistics)

Note: The persons charged age-data was provided at a Scotland-wide (rather than police force) level, and therefore can only provide a broad comparison with the stop and search age-trajectories.

Figures 5.7 and **5.8** indicate that stop searches were closely aligned with offending patterns by age (as indicated by persons charged) in the non-Central Belt legacy forces. Conversely, the gap between searches by age and persons charged by age in the larger Central Belt legacy forces suggests that young people were targeted over and above the risk of offending. The data also support McAra and McVie's argument that 'availability' in itself is unlikely to explain the distribution of adversarial policing (2005; 5): assuming for example, that the availability of young people in Aberdeen or Dundee is broadly similar to that in Glasgow or Edinburgh.

Importantly, the sharp variation in the age distribution of searches between the legacy forces shown in **figures 5.7** and **5.8** cannot be explained in terms of different population structures. **Table 5.14** sets out per capita stop and search rates for sixteen year olds, and shows that the number of searches by age, as a proportion of the local population by age, was significantly higher in the Central Belt legacy forces. Note that in legacy Strathclyde, the rate of stop and search per 1000 sixteen years olds, exceeded the resident population of sixteen year olds. This extraordinary statistic is important and highlights the extent to which some individuals are likely to be subject to repeat searches.

Table 5.14 Stop and search per 1000 sixteen year olds, 5 legacy forces, 2010

		No. of 16 year olds stop searched (2010)	Resident population of 16 year olds	Stop and search per 1000 population
Proactive forces	Strathclyde	37,233	26,476	1,406
	Lothian and Borders	3,386	10,375	326
Reactive Forces	Grampian	292	6,749	43
	Tayside	285	4,747	60
	Northern	237	3,789	63

Source: Legacy Scottish Police Forces; Scottish census data 2011 (online) http://www.scotlandscensus.gov.uk/en/censusresults/downloadablefiles.html

5.6.3 Age and non-statutory stop and search

"*Voluntary searches for me usually involves groups of young kids… It would be very difficult to look at a group of a dozen kids and find proper reasonable cause to search every single one of them for a specific offence, so you just ask them. And usually if one person's been [searched] then the rest of them are quite happy, and you can go for it.*"
(Sergeant 2, Anonymous, Female, 21-25 years)

The analysis of police powers in **table 5.12** showed that the use of non-statutory stop and search was higher in the legacy Central Belt forces: for example, 10% of stop searches in legacy Northern were classed as non-statutory, compared to 76% in legacy Strathclyde. Drilling further into these data, it is also evident that non-statutory searches were weighted towards younger age-groups. **Table 5.15** shows the percentage of non-statutory and statutory searches by age-group, and indicates a significant, albeit weak association between the variables.

Table 5.15 Search powers by age-group (%) 5 legacy forces, 2010

Age in years	Non-statutory	Statutory	Total	
10 and under	80%	20%	100%	487
11 to 15	82%	18%	100%	66,295
16 to 20	77%	23%	100%	150,964
21 to 25	70%	30%	100%	68,298
26 to 30	66%	35%	100%	44,843
31 to 35	65%	35%	100%	32,994
36 to 40	65%	35%	100%	25,196
41 to 45	67%	33%	100%	18,748
46 to 50	70%	30%	100%	10,715
51 to 60	73%	27%	100%	7,647
61 and over	74%	26%	100%	2,183
TOTAL	73%	27%	100%	428,370

Missing cases = < 1%
χ^2 = 7809 (10) p =***, Cramer's V = .135 p =***
* = $p \leq .05$ ** = $p \leq .01$ *** = $p \leq .001$ NS = non-significant
Source: Legacy Scottish Police Forces (Strathclyde, Lothian and Borders, Grampian, Tayside, Northern)

Table 5.15 shows that the likelihood of being searched on a non-statutory basis was highest in the two youngest age-groups: 10 years and under, and 11 to 15 years. Thereafter, the proportion of people searched on a non-statutory basis gradually fell, plateaued between the ages of 31 to 40 years, and rose gradually thereafter. In other words, the likelihood of being searched on a non-statutory basis was highest amongst the youngest and oldest members of the population. **Figure 5.9** shows the proportional age-spread of non-statutory stop and search, and illustrates the distinctive dip in the proportion of non-statutory stop searches, from the late twenties to early forties.

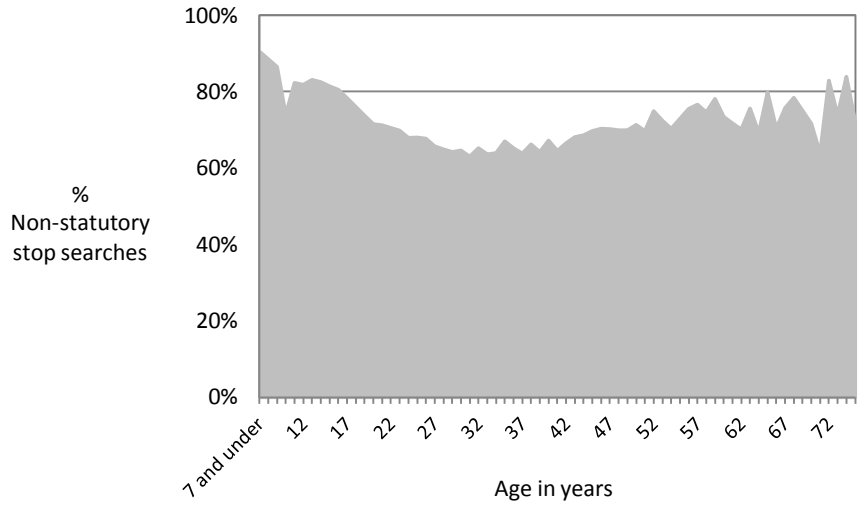

Figure 5.9 Non-statutory stop and search by age (%) 2010

Source: Source: Legacy Scottish Police Forces (legacy Strathclyde, Lothian and Borders, Grampian, Tayside, Northern)

This distribution suggests that the use of stop and search is likely to be more informal, and perhaps less adversarial, at the two ends of the age-spectrum. Two related arguments may be made here. On the one hand, it can be argued that the age-distribution acknowledges a sense of vulnerability, whereby populations with less social capital (in terms of age) are less likely to be searched on a formal statutory basis. For example, the following interview extracts suggest that non-statutory encounters allow officers to take a softer, less intimidating tone.

"*I just believe in being a wee bit decent with someone first, giving them the opportunity, I give them the courtesy first. And as I say, most of the time they're willing to be searched anyway, a very low percent will say no.*" (PC 11, Strathclyde, Male, 0-5 years)

"*Because it's less formal, you communicate well with people… Obviously if there's a reason to detain them, I wouldn't hesitate to explain to them. But if things are going ok and they're consenting to a voluntary search as well, yeah I think it probably is easier. The police in Strathclyde are known for the way we communicate with people, and I think it would be terrible if we lost that, so often the voluntary search is used as a tool. You're still maintaining that communication with people, but you're getting your job done at the same time.*" (PC 7, Strathclyde, Male, 6-10 years)

"*It's just a way to speak to people. I think as soon as you start reeling off legislation, you can put people on the back foot. Even if you do have a strong suspicion, your own safety as well comes into it, you're trying to keep people on a level as much as you can.*"
(PC 6, Strathclyde, Male, 6-10 years)

On the other hand, it can be argued that non-statutory searches tend to fall on those who are more likely to comply with the process. This point is important given that non-statutory searches carry less procedural protections than statutory searches, and that the 'informal' nature of the tactic can equally be read as an absence of due process. For example, non-statutory searches are premised on a loose and uncodified idea of consent, and officers are not obliged to inform people of their right to refuse. In this respect, it can be argued that the least regulated type of stop and search tends to be used on the most vulnerable age-groups. The ethical and legal implications of non-statutory stop and search will be discussed more fully in chapter six: however at this point, it is suffice to note that searching children and young people raises serious concerns, and that the ability of children aged 12 years and under to provide consent should not be taken for granted.

Taking an overview, it should be noted that relationship between search activity and age is not unique to Scotland. For example, Smith and Grey observe that young people in London were much more likely to be stopped than older people (1983; 73), whilst more recently, an All Party Parliamentary Group for Children (2014) inquiry into children and the police has highlighted the use of stop and search

on children in England and Wales. Nonetheless, the analysis in this chapter provides unique insights into the ways in which stop searches fall on young people, and *quantifies* the age-distribution. Looking at the discrepancy between search activity by age and persons charged by age in the Central Belt group (**figure 5.7**), it can be argued that young people were policed according to deterrence or actuarial principles, using high-volume stop and search to target 'at risk' age-groups. This observation is also suggested in the following interview extracts in which officers describe how searches tend to fall on those who expected to be searched, as a matter of routine.

> "*They've probably been searched in the past, and they're used to it happening. I would say they're just used to it, and they understand that's something that happens in that area because there is a high level of disorder and fighting*."
> (PC 5, Female, Strathclyde, 6-10 years)

> "*As soon as you start speaking to them [they'll say] 'Search me if you like'. So you take the opportunity when they offer it… if it's happened a couple of times in the same week in the same area they can maybe voice an opinion, but they usually just want to get it over and done with… I suppose with the younger crowd, it's maybe it's the area they're hanging about in, and the numbers they're with*."
> (PC 6, Male, Strathclyde, 6-10 years)

> "*Most of them, come to expect it and are expecting it on a Friday night, we're searching them all the time you know. Most of the time you know, we don't get too much of a negative reaction… A lot of times they expect it to be honest with you, you know, you walk up and they'll stand and empty their pockets in front of us, without us even saying anything at that point, you know.*" (PC 7, Strathclyde, Male, 6-10 years)

> "*You know, some of them see you coming and almost pre-empt things – 'Listen ah've no got anything on me the night.'*" (PC 1, Female, Lothian and Borders, 6-10 years)

Proceeding from the analysis of age, the next section investigates whether different reasons for searching people can be aligned with proactive and reactive policing approaches.

5.7 Reason for search

The preceding analysis of age showed that stop searches in the larger Central Belt legacy forces were more likely to impact disproportionately on young people, which was read as indicative of a proactive approach. Proceeding from this observation, it can also be hypothesized that proactive searches are more likely to be carried out in relation to offences associated with younger age-groups, that is, in relation to the unlawful possession of offensive weapons and alcohol (underage possession). In contrast, it can be hypothesized that reactive stop searches are more likely to focus on unlawful possession of drugs for two reasons. First, the higher prevalence of drugs, compared to weapons[19]. And second, the lack of statutory powers for alcohol. Reactive stop searches are also less likely to be undertaken for weapons given that reasonable suspicion is difficult to establish.

In order to test these hypotheses, the analysis will begin by mapping out the distribution of stop searches by reason at the national level. Thereafter, the analysis investigates the extent to which the reasons for searching people differ between the Central Belt and non-Central Belt legacy forces.

[19] In 2010/11, 34,347 drug offences were recorded, the majority of which related to unlawful possession, compared to 6,283 weapon offences (Recorded Crime in Scotland, Scottish Government 2010/11)

5.7.1 Reasons for stop and search: national overview

The vast majority of stop searches in Scotland are recorded under five 'primary reasons' or categories: drugs, offensive weapons, alcohol, stolen property and firearms. **Figure 5.10** illustrates the distribution of searches by category in 2010. Note that these data include both statutory and non-statutory searches.

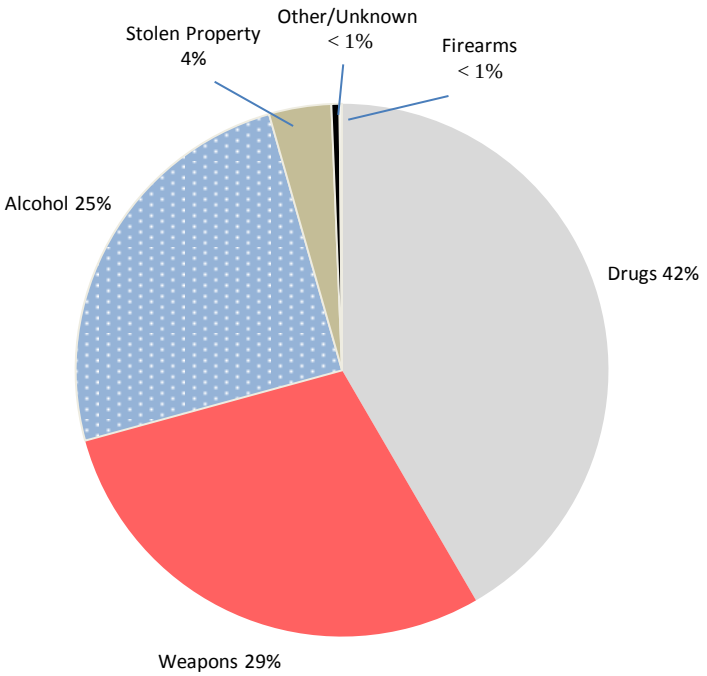

Figure 5.10 Stop and search by reason (%) 2010

Source: Scottish legacy police forces (all forces excluding Dumfries and Galloway)

Figure 5.10 shows that in 2010, 42% of recorded searches were for drugs, whilst offensive weapons and alcohol constituted 29% and 25% of searches respectively. Outwith these 'headline' categories, stolen property accounted for approximately 4% of searches, searches for firearms were virtually negligible at 0.2%, and 0.5% of searches were uncategorized. However, in line with the proactive hypothesis, the breakdown of these categories varied sharply by legacy force, particularly in relation to drugs, alcohol and weapons searches.

Figure 5.11 and **table 5.16** set out the percentage breakdown of searches by reasons for searching people in six legacy forces, grouped into Central Belt and non-Central Belt categories respectively.

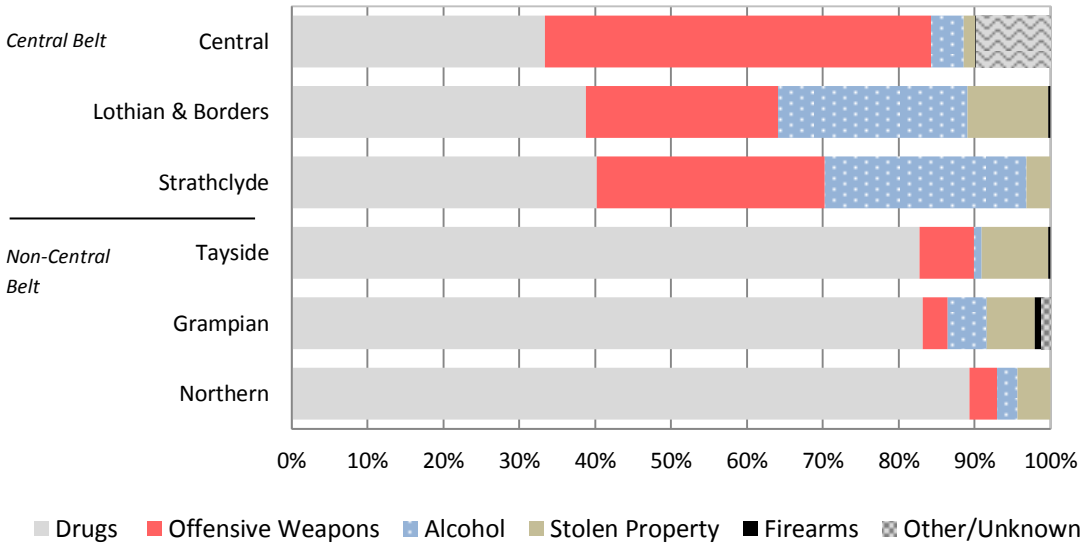

Figure 5.11 Stop and search by reason (%) 6 legacy forces, 2010

Table 5.16 Stop and search by reason (%) 6 legacy forces, 2010

	Non-Central Belt			Central Belt		
Reason for search	Northern	Grampian	Tayside	Strathclyde	Lothian & Borders	Central
Drugs	89%	83%	83%	40%	39%	33%
Offensive Weapons	4%	3%	7%	30%	25%	51%
Alcohol	3%	5%	1%	27%	25%	4%
Stolen Property	4%	6%	9%	3%	11%	2%
Firearms	>1%	1%	>1%	>1%	>1%	>1%
Other/Unknown	>1%	1%	0%	0%	0%	10
TOTAL %	100%	100%	100%	100%	100%	100%
N	4,781	5,577	7,389	372,910	37,720	13,079

Source: Scottish legacy police forces

Figure 5.11 and **Table 5.16** show a sharp division between the legacy forces in reasons for searching people. Whilst drugs accounted for the highest proportion of stop searches in five out of the six forces, these accounted for a far higher proportion of stop searches in the non-Central Belt legacy forces: from 83% in Tayside, to 89% in Northern. Conversely, in the Central Belt legacy forces, drug searches accounted for 33% of searches in legacy Central; 39% in legacy Lothian and Borders; and 40% in legacy Strathclyde. This disparity is also striking given that legacy Strathclyde had the highest per capita rate of drug offending out of the six forces in 2010/11[20].

In legacy Strathclyde, Lothian and Borders and Central, comparatively greater weight was placed on searches for weapons, which accounted for 30%, 25% and 51% of searches respectively. In legacy Strathclyde and Lothian and Borders, alcohol accounted for a further 27% and 25% of searches respectively.

In contrast, in legacy Northern, Grampian and Tayside weapons only accounted for 4%, 3% and 7% of searches respectively. Likewise, the proportion of alcohol searches was low: at 3%, 5% and 1% respectively.

These data suggest an overall, if not perfect, fit between variation in reasons for searching people and the proactive model. For example, the higher proportion of weapons and alcohol searches in the proactive legacy can be linked to a proactive emphasis on policing young people. However, the proportion of alcohol searches in legacy Central was lower than might be expected, although this was countered by an exceptionally high proportion of searches for offensive weapons (51%).

[20] In 2010/11, legacy Strathclyde recorded 81 drug offences per 10,000 people (*Recorded Crime in Scotland*, Scottish Government, 2011c).

5.7.2 Rationales for searching people: drugs, blades and booze

The higher proportion of drug searches in the non-Central Belt legacy forces arguably suggests a more reactive approach, underpinned by statute (Misuse of Drugs Act, 1973), which taps into the higher prevalence of drugs, the more visible nature of drugs misuse (dilated pupils, behaviour, speech etc.) and a familiar suspect population. In short, drug searches are straightforward. For example, in the interview extract below, the officer comments on the difficulty in establishing reasonable grounds for weapons, compared to drugs.

> "*We've got the anti-violence campaign on just now, and it's very much focused on knife crime and weapons and things like that. It is difficult because we get the pressure to go out and [search people] but you do still need your justifications for searching people… you can't just look at someone and think they're going to have a weapon on them unless it's really obvious. Drugs are much easier*." (PC 2, Lothian and Borders, Male, 0-5 years)

In contrast, the higher proportion of weapon searches in the Central Belt legacy forces may be read as indicative of a more proactive approach. Whilst the distribution of weapon searches partly coincided with the geography of knife crime in Scotland, which is largely concentrated in Glasgow and the Strathclyde area (Mooney *et al.* 2010; 28), the proportion of weapon searches in legacy Central and Lothian and Borders was relatively high, at 51% and 25% respectively, despite having per capita rates of recorded weapon handling offences that were on a par with legacy Northern and Tayside[21] (Scottish Government, 2011c).

[21] Rates of recorded weapon handling offences per 1000 people, 2010/11 (Scottish Government)

Strathclyde	16
Central	11
Lothian and Borders	10
Northern	10
Tayside	10
Grampian	8

As an enduring and emotive wicked problem, knife crime has fed into Scottish electoral politics from the 1960s onwards, and importantly, has been drawn upon to shore up mainstream political support for stop and search.

> "*Knife crime is down by 30 per cent since we came to office, though it is still too high with too many lives being taken and communities left devastated. But work is ongoing - last year almost a quarter of a million stop and searches were carried out in Strathclyde alone. Fewer people were carrying, but more were getting caught*."
> (Justice Minister, Kenny MacAskill, Address to Scottish National Party conference, 12/3/2011)

However, organizational demands, coupled with the difficulty of establishing reasonable grounds, typically translate into low detection rates, which at around two per cent (see **table 5.19**), make this the least effective search power in terms of detection. A further difficulty is the uneven geographical spread of knife crime, which tends to be limited to smaller geographical pockets, making detection highly unlikely in some areas.

Yet more than any other type of search, the effectiveness of weapon searches tends to be viewed through the lens of deterrence and non-detection: as the Justice Minister commented, "*Fewer people were carrying*" (op cit.). In other words, offensive weapons searches carry political weight irrespective of the outcome. Conversely, in the more reactive legacy forces, weapons were limited to circumstances in which reasonable suspicion could be ascertained and were fewer in number.

> "*We search for weapons – **if** there's been altercations, if there's been a fight or if someone says there's been a fight in this area or a disturbance in this area… For that sort of thing we would search people for weapons, or if we found them still in the area of where that's happened and could identify them as probably been involved.*"
> (PC 15, Male, Tayside, 0-5 years)

Figure 5.10 showed that alcohol accounted for around a quarter of recorded searches overall in 2010. However, the majority of these were located in legacy Strathclyde and Lothian and Borders. As a prevalent and destructive social problem, searches in legacy Strathclyde were purposefully directed towards alcohol, with a view to proactively tackling violent offending. Given that the police only have statutory powers for alcohol in relation to designated sporting events[22] (which are not usually recorded), alcohol searches appeared to reflect a 'blend' of powers: an ambiguous mix of non-statutory search and statutory confiscation, depending on the outcome[23]. As such, the overwhelming majority of alcohol searches were non-statutory: approximately 90% in 2010. This hazy arrangement appeared to be reflected in officer's more tenuous knowledge of their powers (also see Blake Stevenson, 2014).

> KM: "Do you have search powers for alcohol?"
> Sergeant 2: "*We do for underage*."
> KM: "What's the legislation?"
> Sergeant 2: "*I'd need to check the legislation to be honest. We do a lot of searches of minors for alcohol."*
> (Anonymous, Female, 21-25 years)

This legal ambiguity was coupled with an awareness that non-statutory search requests were less likely to be refused by children and younger teenagers. Also note that there is no duty on the officer to inform a person of their right to refuse a non-statutory search (see chapter 6, section 6.3.1 for a full discussion).

[22] Section 21 of the Criminal Law (Consolidation) (Scotland) Act 1995 sporting events

[23] Section 61 of the Crime and Punishment (Scotland) Act, 1997 allows officers to confiscate alcohol from under-18s or persons suspected of buying alcohol for underage drinkers. The Local Government (Scotland) Act, 1973 enables local authorities to introduce by-laws prohibiting alcohol in designated areas.

> "*If you get a group of kids, usually because of anti-social calls, you would take all their details and you would ask them if you could search them, see if they've got any alcohol on them… Kids don't say no, I don't think they're aware that they can*."
> (PC 2, Lothian and Borders, Male, 0-5 years)

A comparatively young target population, together with easily detectable drink containers, appeared to make alcohol searches a quick-win in a proactive context. Pragmatic considerations aside, alcohol searches also dovetailed with the logic of deterrence narrative: as a means of preventing other, more serious types of crime. As Area Commander 1 commented, "*To be blunt, it takes a right bad pill to put a blade between someone's ribs when they're sober. That's the logic, it's not sophisticated*". In this context, deterrence is achieved via detection: which makes *finding* alcohol the logical aim of both reactive and proactive stop and search.

The next part of the chapter examines detection in more detail. Drawing together the factors discussed thus far, the analysis examines whether stop searches are *systematically* structured towards non-detection or deterrence in some parts of Scotland

5.8 Detection and non-detection: stop and search outcomes

The final part of the data analysis investigates stop and search outcomes. The analysis is pivotal to the proactive argument and will test the hypothesis that proactive stop and search is systematically structured towards non-detection, that is, towards deterrence outcomes, rather than detection.

Building on the analyses thus far, it will be hypothesized that detection rates are likely to be lower in the more proactive Central Belt legacy forces due to the disproportionately higher use of non-statutory stop and search (without reasonable suspicion); a disproportionate focus on young people; and a greater focus on offensive weapons, which are less common than other types of search. It is however, anticipated that alcohol searches may act to increase the probability of detection, given the 'quick-win' nature of these searches, as discussed in the previous section.

Conversely, it will be hypothesized that reactive stop searches are more likely to result in detection, due to the greater use of statutory powers. As the Police Foundation note, if 'officers are required to execute searches based on fact, information and/or intelligence… [it can] be argued that a reasonable proportion of searches should therefore result in arrest or an out of court disposal' (2012; 5-6).

In order to investigate the hypotheses, the analysis will proceed as follows. First, sections 5.8.1 to 5.8.3 examine the individual relationships between detection and search powers, age, and reasons for searching people. Thereafter, section 5.8.4 draws the separate strands of analysis together, and present a multivariate logistic regression model which tests the relative effect of these factors on the probability of detection. The model will also test the effect of belonging to the proactive (Central Belt) and reactive (non-Central Belt) categories on the probability of detection.

5.8.1 Search powers and detection

This section examines the relationship between search powers and detection. Given the lack of reasonable suspicion inherent in non-statutory stop and search, it follows that the likelihood of detection is likely to be lower than in statutory search encounters. **Table 5.17** shows a significant variation in detection rates between the two powers.

Table 5.17 Detection by search powers (%) 5 legacy forces, 2010

Outcome	SEARCH POWER	
	Non-statutory	Statutory
Detection	6.5%	18.1%
Non-detection	93.5%	81.9%
Total %	100.0%	100.0%
N	312,775	115,638

Missing cases = < 1%
χ^2 = 12,834 (1) *p* =***, Phi = .173 ***
* = $p \leq .05$ ** = $p \leq .01$ *** = $p \leq .001$ NS = non-significant

Whilst it may seem extraordinary that the most frequently used type of search power is least likely to result in detection, in deterrence terms, the preferred outcome is non-detection. As one officer informally commented, the ideal detection rate is nil.

In practice, the use of non-statutory stop and search is likely to lower the probability of detection for two reasons. First, the self-evident lack of reasonable suspicion.

> "*Voluntary searches are only used if you don't have reasonable cause. Now if you don't have reasonable cause, the chances of actually finding something on people are [lower].*"
> (PC 3, Lothian and Borders, Male, 6-10 years)

Second, officers are more likely to carry out a non-statutory stop and search when they perceive the probability of detection to be low. To explain, should evidence gained in a non-statutory search result in criminal proceedings, the case could be rejected by the procurator fiscal or challenged in court. For example, it could be argued that an officer was fishing for evidence, or that informed consent was not

properly obtained (note that this observation does not apply to non-statutory searches for alcohol, which result in confiscation rather than criminal proceedings). In the interview extracts below, officers discuss some of the legal difficulties in relation to non-statutory stop and search.

> "*If at all I think I'm going to find something I'll go down the legislative route, purely because I know the grief I will get in the box as a witness for finding something under a voluntary search… I know that the first question the defence lawyer is going to ask me, or one of the main questions my lawyer is going to ask me, is 'What was your reasonable cause for searching my client? Why did you search him? Were you on a fishing trip?' as it's called, 'Or was there actually reason to search my client'?*"
> (PC 3, Lothian and Borders, Male, 6-10 years)

> "*If I have any reason to believe they're in possession of drugs [I would use a statutory search]. Because the way things are shaping up in courts nowadays, you definitely need to be using your statutory powers right from the off… In the last couple of years, fiscals are less likely to run with drugs being found just after a voluntary search. It's more likely to get challenged in court, you know…. Often the voluntary search is used as a tool. You're still maintaining that communication with people, but you're getting your job done at the same time. As I say, obviously, if I have any reason to believe they're in possession of drugs I would resort to statutory search.*" (PC 7, Strathclyde, Male, 6-10 years)

> "*Around the Criminal Justice (Scotland) 1980 Act… there became a view that there was something suspicious about voluntary. And that I know that there are some police officers who would never attempt to do anything voluntary – it would always have to be backed by legislation, because they felt that they would be severely criticised. And I mean the bottom line on this is that if you are dealing with a very serious crime and you adopt some procedures that may be subject to serious criticism in court, you might lose. The prosecution might not succeed because something is perceived to be unfair, and so I think voluntary had a tinge of impropriety about it, nothing that you could define. But I think that… certainly if you went to court and said my client was searched and the officers says it was done voluntarily, there would often be a challenge to that.*"
> (Chief Constable 3)

In short, there is a risk to an officer's reputation if a non-statutory stop and search results in detection followed by criminal proceedings.

5.8.2 Age and detection

To recap, the analysis in section 5.6.3 showed that young people were more likely to be searched on a non-statutory basis, which has a lower likelihood of detection. As such, it follows that the likelihood of detection is also likely to be associated with age. **Figure 5.12** maps the percentage of positive searches onto the 'age-search curve' and graphically illustrates the relationship.

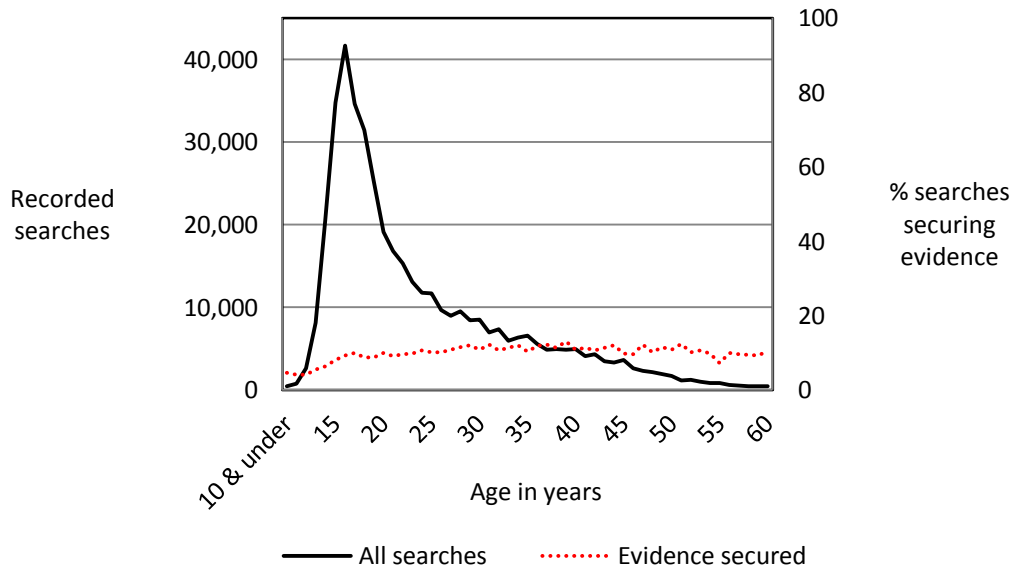

Figure 5.12 Stop and search by age (n) detection by age (%) 2010

Source: Scottish legacy police forces: Strathclyde, Lothian and Borders, Tayside, Grampian, Northern and Fife

Figure 5.12 shows that despite the sharp focus on searching young people in some parts of Scotland, age is a poor predictor of detection. The data highlight a huge discrepancy in the tendency of officers to target searches towards young people and the small likelihood of detection. Detection rates gradually increase until around 30 years, and plateau thereafter, until around 50 years. To be clear, this does not suggest that younger groups are less likely to offend; rather that the volume of searches directed at young people, or the way that policing is *structured*, acts to lower the probability of detection.

Drilling further into the data, there are significant differences in detection by age between proactive and reactive forces. **Table 5.18** shows the percentage of positive outcomes (detection) by age–group in the two groups of forces (2010).

Table 5.18 Detection by age-group (%) 5 legacy forces, 2010

	CENTRAL BELT		NON-CENTRAL BELT		
Age Group	Strathclyde	Lothian and Borders	Grampian	Tayside	Northern
0-14	5%	11%	28%	6%	13%
15-20	8%	16%	25%	12%	19%
21-25	9%	11%	23%	12%	20%
26-30	10%	12%	24%	14%	20%
31-35	11%	12%	26%	14%	22%
36 and over	11%	11%	27%	14%	23%
N	372,924	37,714	5,581	7,389	4,781
Significance	$\chi^2(5) = 1121$ *p*=*** Cramer's V = .055	$\chi^2(5) = 202$ *p* =*** Cramer's V = .073	NS	NS	NS

* = p ≤ .05 ** = p ≤ .01 *** = p ≤ .001 NS = non-significant

Table 5.18 shows that variation in detection across the six age-groups was statistically significant on a χ^2 analysis in the more proactive Central Belt forces. In legacy Strathclyde, detection rates increased steadily by age. However, in legacy Lothian and Borders, detection rates were highest in the 15 to 20 years age-group, which may suggest a more mixed style of policing that draws more evenly from both proactive and reactive approaches.

Conversely, the relationship between age-group and detection was non-significant in the non-Central Belt forces. Looking at these data more closely, in legacy Grampian the detection rate varied between 23% and 28% across the age-groups. In legacy Tayside, the distribution was reasonably even, outwith the 14 years and under age-group, whilst in legacy Northern, detection rates increased gradually over time. However, in all three forces, the patterning of detection and age-groups was *not* sufficiently systematic to suggest significant differences.

5.8.3 Reasons for search and detection

The analysis of reasons for searching people in part 5.6 showed that there were significant differences between the legacy forces. For example, the Central Belt legacy forces tended to focus on weapons and alcohol, whilst the non-Central Belt legacy forces focused primarily on drugs.

Unpacking these data further, detection rates also varied significantly according to the reason for the search. **Table 5.19** shows that detection rates ranged from 2% for offensive weapons, through to 23% for stolen property.

Table 5.19 Detection by reason for search (%) 2010

	Drugs	Offensive Weapons	Stolen Property	Alcohol	Firearms	Total
Positive	7%	2%	23%	20%	20%	41,366
Negative	93%	98%	77%	80%	80%	386,996
Total %	100%	100%	100%	100%	100%	100%
N	179,538	122,536	16,447	109,246	595	428,362

Missing cases = < 1%
χ^2 = 26860 (4) *p* =***, Cramer's V = .250 *p* =***
* = $p \leq .05$ ** = $p \leq .01$ *** = $p \leq .001$ NS = non-significant

Source: Scottish legacy police forces

Breaking these data down further, detection rates, by reason for search, also varied significantly across the legacy forces. **Table 5.20** remodels the data in terms of Central Belt and non-Central Belt legacy forces, and shows a sharp difference in detection rates between the two, across the five categories.

Table 5.20 Detection by reason for search (%) Central Belt and non-Central Belt legacy forces (%) 2010

		Drugs	Offensive Weapons	Stolen Property	Alcohol	Firearms	Total
Central Belt[A]	Positive	6%	2%	23%	20%	20%	9%
	Negative	94%	98%	77%	80%	80%	91%
	Total %	100%	100%	100%	100%	100%	100%
	N	164,485	121,642	15,242	108,747	514	410,630
Non-Central Belt[B]	Positive	18%	10%	15%	57%	21%	18%
	Negative	82%	90%	85%	43%	79%	82%
	Total %	100%	100%	100%	100%	100%	100%
	N	15,053	894	1,205	499	81	17,732

[A] Legacy Strathclyde, Lothian and Borders
Missing cases = < 1%
χ^2 = 28,368 (4) *p* =***, Cramer's V = .263

[B] Legacy Grampian, Tayside, Northern
Missing cases = < 1%
χ^2 = 556 (4) *p* =***, Cramer's V = .177

* = $p \leq .05$ ** = $p \leq .01$ *** = $p \leq .001$ NS = non-significant

Source: Scottish legacy police forces

The Cramer's V statistics in **table 5.20** suggests that the association between search categories and detection was stronger in the Central Belt group (.263) than in the non-Central Belt group (.177). In other words, the patterning was more pronounced in the Central Belt legacy forces.

The two most frequently used reasons for searching people in the Central Belt group (drugs, *n* = 164,485, offensive weapons, *n* = 121,642) resulted in lower detection rates than searches for drugs and weapons in the reactive group. For example: in the Central Belt group, 6% and 2% of drugs and weapons searches respectively resulted in detection; compared to 18% and 10% in the non-Central Belt group. This patterning was also evident in relation to alcohol: 20% of alcohol searches in the Central Belt group were positive; compared to 57% in the non-Central Belt group.

In terms of the lesser used types of searches, detection rates for firearms (the least used type of search) were consistent across the two groups. Detection rates for stolen property were higher in the Central Belt: 23% of searches resulted in detection, compared to 15% of stolen property searches in the non-Central Belt group. This was the only apparent anomaly in the data, and could stem from the age profile of stolen property searches, which followed a very similar pattern in both groups and were not disproportionately weighted towards young people.

Overall, differences in detection rates between the two groups may partly be explained by the type of search power used, given the association between search powers and detection. **Table 5.21** shows that all categories of search within the Central Belt group were more likely to be non-statutory, with the highest proportions evidenced in relation to alcohol (87%), and offensive weapons (78%).

Table 5.21 Reason for search by search power (%) Central Belt and non-Central Belt legacy forces, 2010

		Reason for search					
	Search Power	Drugs	Offensive Weapons	Stolen Property	Alcohol	Firearms	Total
Non-Central Belt[A]	Non-statutory	17%	34%	31%	69%	36%	21%
	N	15,049	893	1,200	498	80	17,720
Central Belt[B]	Non-statutory	68%	78%	55%	87%	62%	75%
	N	164,485	121,642	15,242	108,747	514	410,630

[A] Grampian, Tayside, Northern

[B] Strathclyde, Lothian and Borders

Source: Scottish legacy police forces

Building on these observations, it can be argued that the way in which searches were structured in the legacy Central Belt group was less likely to result in detection than in the non-Central Belt group. The analysis suggests that higher use of non-statutory stop and search, an emphasis on searching young people, and an emphasis on weapons and alcohol searches was more likely to result in non-detection. The next section will investigate the deterrence hypothesis further and assess the relative effect of these factors on the probability of non-detection.

5.8.4 Factors predicting non-detection: multivariate analysis

The analysis in this section uses binary logistic regression in order to estimate the effect of each factor (search power, age, reason for search) on non-detection, when controlling for other factors in the group. The model will also test the effect of being in the Central Belt group, compared to the non-Central Belt group.

Given that the proactive hypothesis hinges on deterrence, or the absence of offending, the data are modelled to show the odds that each factor (compared to its reference category) will predict *non-detection*, whilst controlling for other factors in the model. Odd ratios over 1 indicate that a factor is significantly associated with non-detection, whilst odds ratios below 1 indicate that a factor is significantly associated with detection (i.e. the reverse). The results are presented in **table 5.22**.

Table 5.22 Factors predicting non-detection, 2010

Logistic regression model with stop and search outcome as the dependent variable

Variables		Non-detection *Non-detection = 386,451* *Detection = 41,234*		
		Odds ratio	95% Confidence Interval	*p.* value
Search power	Non-statutory (reference = statutory)	3.6	3.1-4.1	.000
Age	Age 39 and over (reference group)			.000
	7 to 13 years	3.6	3.3-3.9	.000
	14 to 18 years	1.9	1.8-2.0	.000
	19 to 23 years	1.2	1.1-1.2	.000
	24 to 28 years	0.9	0.9-1.0	.016
	29 to 33 years	0.9	0.8-0.9	.000
	34 to 38 years	0.9	0.8-0.9	.000
Reason for search	Drugs (reference category)			
	Stolen property	1.0	0.8-1.2	.908
	Offensive weapons	1.4	1.1-1.7	.005
	Alcohol	0.0	0.0-0.1	.000
Geography	Central Belt (reference = non-Central Belt)	1.7	1.6-1.7	.000
Interactions	Central Belt x non-statutory	1.3	1.2-1.5	.000
	Central Belt x alcohol	2.7	2.2-3.4	.000
	Central Belt x offensive weapons	1.7	1.4-2.1	.002
	Central Belt x stolen property	0.2	0.2-0.3	.000
	Constant	3.7		.000

Nagelkerke R^2 = .229

Notes:
Dependent variable coding: detection = 0, non-detection = 1
Model excludes stop searches for firearms due to small base (*n* = 595, < 1%)
Central Belt forces = Legacy Strathclyde, Lothian and Borders (*n* = 410,106)
Non-Central Belt forces = Legacy Tayside, Grampian and Northern (*n* = 17,579)
Missing cases = < 1%

Source: Scottish legacy police forces

Results

The results in **table 5.22** show that when controlling for other factors in the model, the odds of detection varied according to whether a search is statutory or non-statutory: a non-statutory search increased the odds of non-detection by 3.6, compared to a statutory search. In other words, non-statutory searches were far less effective in terms of resulting in a positive outcome, compared to searches based on more reasoned decision making.

There is a significant relationship between likelihood of non-detection and age, with searches of young people being less likely to result in detection, compared to older suspects. Compared to those aged 39 or over, searches involving those aged 13 or under had 3.6 times greater odds of a search leading to non-detection; and searches of 14 to 23 year olds also had moderately greater odds of non-detection (1.9). Conversely, searches on those in the three older age-groups (spanning 24 to 38 years) were slightly more likely to result in detection, than those aged 39 or over.

The odds of detection also varied according to the reason for the search. Compared to searches for drugs, searches based on offensive weapons had 1.4 times greater odds of non-detection. Searches for alcohol were no more likely to result in non-detection, compared to searches for drugs. However, the inverse of this odds ratio (calculated as 1/p) shows that when compared to drugs, the odds of *detecting* alcohol was much greater (22.7 times).

The location of the search was also important in terms of detection. Searches carried out in the Central Belt proactive forces (legacy Strathclyde and Lothian and Borders) had 1.7 times greater odds of resulting in a non-detection, compared to searches carried out in one of the non-Central Belt reactive forces (legacy Tayside, Grampian or Northern).

In addition to the main effects detected in the model, there are further interaction effects. These effects show whether there is an incremental effect on the probability of non-detection, based on the two factors combining together: for example, if there is a moderating or exacerbating effect. These effects are interpreted with reference to the main effect.

First, there was a relationship between the force conducting the search and the search power whereby the odds of non-detection were greater for non-statutory searches that were conducted by the Central Belt legacy forces. In other words, the likelihood of a successful outcome from a non-statutory search was significantly lower amongst those forces which favoured proactively searching people without statutory grounds.

Further interaction effects were found between geographical location and the reasons for searching people. As noted previously, alcohol searches had no greater odds of non-detection than searches for drugs overall: however, when alcohol searches were undertaken by Central Belt legacy forces, the chances of non-detection increased significantly, compared to drug searches in the non-Central Belt legacy forces.

Likewise, the odds of non-detection for weapon searches was increased further within the Central Belt legacy forces, compared to drug searches in the non-Central Belt legacy forces. Conversely, the risk of non-detection for stolen property in the Central Belt legacy forces was lower, compared to drug searches in the non-Central Belt legacy forces (recall that stolen property detection rates were higher in the Central Belt, as shown in **table 5.20**).

In sum, the risk of a negative outcome was significantly enhanced within the Central Belt legacy forces, both in relation to the use of non-statutory stop and search, and in relation to alcohol and weapon searches. In other words, the analysis suggests that the proactive use of stop and search in the Central Belt legacy forces was *systematically* structured towards non-detection, or deterrence.

5.9 Summary: the proactive turn

This chapter has addressed the second research aim, that is, to explain the distribution of stop and search in Scotland between 2005 and 2010. In order to meet this aim, the chapter set out and tested the proactive hypothesis, which proposed that the distribution of stops and searches could be explained in terms of reactive and proactive approaches to stop and search.

Before proceeding with the main body of analysis, part 5.2 explored an alternative hypothesis which posited that the distribution of searches was explicable in terms of socio-demographic and offending variables. The analysis highlighted huge discrepancies between the distribution of stop searches among the legacy forces, the respective population share, and the distribution of deprivation and recorded crime (including drug and weapon offences). This disparity was primarily attributed to legacy Strathclyde which accounted for an 84% share of stop searches in Scotland: compared to a 43% share of the population, a 49% share of Scotland's 15% most deprived crime zones, and a 53% share of recorded offensive weapon handling and drug offences. Whilst the analysis did not discount the effect of socio-demographic and offending variables, it was suggested that reactive and proactive approaches to stop and search offered a potentially more powerful explanation.

The proactive hypothesis was investigated through a series of smaller hypotheses which examined search rates; trends over time; search powers; the age distribution of stop searches; reasons for searching people; and detection rates. The analysis suggested that a more proactive approach was evident in the Central Belt legacy forces (Strathclyde, Lothian and Borders) as indicated by higher search rates; increasing search rates over time; greater use of non-statutory stop and search; a greater emphasis on policing young people; and a focus on alcohol and weapons. It was also suggested that legacy Central appeared to fit the proactive model, although this finding was less robust due to the limited data available. Conversely, the analysis indicated that the three larger non-Central Belt legacy forces (Tayside, Grampian, Northern) appeared to adopt a more reactive approach, which made greater use of statutory powers, and seemed more proportionate to the probability of offending, in

terms of age. The final part of the analysis tested the extent to which these factors affected the probability of detection, and concluded that the use of stop and search in the two larger Central Belt legacy forces appeared to be systematically structured towards non-detection or deterrence.

The logic of deterrence was most pronounced within legacy Strathclyde, as suggested by the sheer volume of searches, and the sizeable increase in search activity between 2005 and 2010. Looking at the Central Belt group, deterrent logic also seemed evident in the analysis of stop and search by age, which showed a huge discrepancy between the age-distribution of searches and detection rates by age. This finding suggested that search activity was based on perceived risk, or actuarial terms, rather than suspicious behaviour.

Proceeding from these findings, it can be argued that the more proactive approach evidenced in the Central Belt signalled the logical extension of the seminal campaigns undertaken in the 1990s: a shift from episodic stop and search; to ongoing use of the tactic, as a matter of routine policing. This shift reinforced the ideological underpinnings of the legacy Strathclyde campaigns, dovetailing with a wider preventative agenda premised on situational controls and actuarial-styled pre-emptive targeting. In particular, the preventive discourse emanating from legacy Strathclyde circa 2007 onwards appeared to coalesce around the quasi-scientific language of hotspots, policing 'criminogenic situations' – and the underlying assumption that 'opportunity creates the thief' (Felson and Clarke, 1998). There is, for example, a striking overlap between the logic of the preventative sector described by Garland below.

> '[i]nstead of concentrating upon individual offenders, the preventative sector targets criminogenic situations that can be altered in ways that make them less vulnerable to criminal events… [i]t analyses flows of people, and the distribution of criminal events, identifying 'hot spots', 'hot products', and repeat victimization patterns and making them the focus for action… the preferred remedy is to put in place situational controls and channel conduct away from temptation, rather than to bring prosecutions and punish offenders.'
>
> (Garland, 2001; 171)

And the following description of stop and search 'profiling':

> 'Profiling of victims and offenders involved in knife crime, identification of hotspots and timing of offences has allowed police to be proactive and target potential offenders with effective patrolling and search strategies that have made some impact on violent crime committed in public spaces.' (Scottish Government, 2011d; 16)

In this context, the aim is change people's expectations and behaviour: to 'bring about marginal but effective changes in the norms, the routines, and the consciousness of everyone' (Garland, 1996; 454). The premise of conditioning suspect populations via routine intensive policing is captured more clearly in the interview extract below.

> "*The reason it's been so successful is the continuity… that we have made it part and parcel of what a cop's job is in my area, and indeed, in the division... it's just how we do our business: it's policing. And we've had this continuity, we've been using the same tactics for 4 years, which is why the Neds, or indeed anybody, they now expect this course of action from the police. It's now the norm. There is no friction, there is no dynamics involved. They just expect it as being the norm. And as a result, they don't carry weapons*." (Senior legacy Strathclyde officer)

Fusing normative and socio-legal concerns, Harcourt (2007, 2013) argues that proactive measures such as stop and search may be viewed as a form of 'punitive prevention'. The expression was originally coined by Lejins (1965) to describe efforts to prevent crime by making the threat of punishment more apparent, and captures the 'uncomfortable overlap of prevention and punishment' (Harcourt, 2013; 256) that underpins as stop and search: a reminder that the tactic is inherently intrusive, and backed by the prospect of coercive force.

Drawing attention to the shift away from post-hoc approaches to offending, towards a prospective or forward looking approach, Harcourt argues that the *absence* of offending or suspicious behaviour sits awkwardly with older conceptions of justice. Recall here, libertarian Right objections to the Prevention of Crime 1953 Act which was deemed "*against all our concepts of justice*" (Baxter, Con. 26/2/1953 vol. 511 c. 2354).

> 'From the more classic or formalist legal tradition, the finding of guilt for a criminal act conventionally served to justify punishment and assuage our moral and political conscience; and in the absence of a criminal act as predicate, it has generally been scientific expertise (such as a psychiatric diagnosis of mental illness…) or procedural protections… have satisfied our sense of justice. But where the predicate criminal act goes missing and the claim of expertise becomes more attenuated, our concerns are heightened about the dangers of punitive preventive measures.'
> (Harcourt, 2013; 256)

Viewed thus, it can be argued that in circumventing the regulatory boundaries provided by the post-war model, the capacity of the police to stop and search is rendered almost limitless. Harcourt's work also reminds us that *without* formal legal boundaries, preventative measures such as stop and search are predisposed to public and political pressure. As Lennon comments, '[t]he precautionary principle inspires a focus on worst-case scenarios and feeds into societal anxiety that grants greater significance to unknown threats than known ones' (2013; 14).

The next two chapters drill into the proactive turn further, with a view to identifying factors which facilitated, or contributed towards a more proactive way of policing. Chapter six examines the regulatory framework of stop and search in Scotland, and chapter seven investigates the policy and political backdrop.

Chapter 6. Rules, regulations and the proactive turn

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

(Geoffrey Finsberg) asked the Secretary of State for Scotland if he will detail the powers of search and entry held by the police under his jurisdiction:
Mr. Harry Ewing: “*The police have powers of search and entry under both common law and statute law. The powers available under common law cannot be succinctly defined, and no list is easily available of those contained in statute law. Many of the powers can be exercised only if certain conditions are fulfilled, and it would, of course, be for the courts to say whether or not they have been exceeded in a particular case*.”
(HC debate, 10/5/1976 vol. 911 c.83)

‘On what grounds can the police stop and search me?
There are several grounds that the police have to stop and search a person. Most of the grounds are too complex to list here.’
(*Ask the Scottish Police*, Police Scotland, PNLD, 2013c)

6.1 Introduction

This chapter will examine the legal and regulatory mechanics of stop and search and address the third research aim, that is, **to show how the regulation of stop and search has facilitated the proactive turn**.

The analysis investigates the substantive power to stop and search: the rules and regulations, which perhaps tend to be taken for granted in existing accounts, either relegated to the appendix or sketchily overviewed (McConville *et al.* 1991, Dixon, 1992; 516). As Kinsey notes, there is a tendency 'to ignore the efficacy of rules almost entirely… Put crudely, the police are typified as doing what they will; they will be supported by the judiciary who will connive at, or at least legitimate their activities, and legal controls are merely "symbolic" or "ideological"' (1992; 478, cited in Dixon, 1997; 21). Similarly Dixon observes that the law is 'often regarded as being, at best, marginally relevant and, at worst, a serious impediment to the business of policing' (1997; 9). To borrow from McBarnet, it is assumed that we know what the police are permitted to do, and that the principal difficulty lies in the *way* that they do it: in the ways that officers deviate from, or modify rules and regulations (1983; 3-5). Accordingly, the analytical lens tends to be directed at lower ranking officers. As Reiner observes, it is 'a commonplace of the now voluminous sociological literature on police operations and discretion that the rank-and-file officer is the primary determinant of policing where is really counts: on the streets' (2010; 116).

Yet the regulation of stop and search in Scotland, in itself, is far from straightforward (Blake Stevenson, 2014; 2). Unlike the accessible and codified directives set out in PACE Code of Practice A, the rules in Scotland are ambiguous and provide officers with greater autonomy than their counterparts in England and Wales. As such, it seems appropriate to treat the 'structure, substance and procedure of the law itself' (McBarnet, 1983; 4) as problematic: rather than 'a background assumption' or 'a vague standard from which the law-enforcers under study are assumed to deviate' (ibid; 1).

Proceeding from this position, this chapter will argue that the proactive turn has been facilitated by a loose regulatory framework, and weak accountability mechanisms. The analysis will highlight the flexibility of legal rules; the slipperiness of legal 'categories' in relation to stop and search; the ease with which officers may carry out searches; and a lack of procedural checks. Taken together, it will be argued that these factors have provided officers with a high degree of autonomy to undertake searches, with minimal institutional accountability. To be clear, the argument is *not* intended to suggest a straightforward relationship between rules and police practice in the legalist tradition (Dixon, 1997; 1). Rather, in keeping with the findings in chapter five, which demonstrated significant geographic variation in policing approaches, it will be argued that discretionary decision-making is likely to be contingent on 'the kind of policing, the kind of rules, and their socio-political context' (ibid; 267). Put differently, rules and regulations are understood to provide the raw materials for policing (McBarnet, 1992; 248): a resource which may be appropriated for different organizational aims.

6.1.1 Methods and data

The methodological approach in this chapter stemmed from the early research stages, and the frustrating task of trying to pin down police search powers. For example, police force data showed that a quarter of stop searches were in relation to alcohol; yet the only stop and search power available was in relation to possession of alcohol at sporting events, which were typically not recorded. Also, the most commonly used type of stop and search, that is, non-statutory, was barely referenced in legal or policing literature. As such, it seemed sensible to explore the possibility that the elusive character of the law in itself might act as a determinant of proactive stop and search. In this respect, the research experience was similar to that described by McBarnet:

> 'This study would never have taken the shape it has if I had been able, as an observer in courts unread in law at all, to get a precise answer from the lawyers I eagerly asked what the law of search, or arrest, or the right to silence, actually was.' (1983; 164)

Proceeding from an equally hazy start point, the analysis uses a range of data in order to construct a comprehensive account of how stop and search 'works' in terms of rules and regulations. These include legislation, operational directives, police training literature and interview data which captures how rule and regulations work in practice. Note that the chapter employs a broad definition of 'regulation', which encompasses legislation, accountability mechanisms, procedural safeguards, and police directives.

6.1.2 Chapter structure

The chapter is organized in three parts. Part 6.2 investigates how stop and search is constructed in Scotland, or 'what counts' as a stop and search, and ascertains where the limits of police accountability lie, both at an officer and an organizational level. Part 6.3 investigates the use of non-statutory stop and search in more detail. The analysis examines the underlying principle of consent, the way in which consent is translated in practice, and how this 'working' model can affect police discretion. Part 6.4 draws the analysis together, and identifies an affinity between the proactive turn, and the opaque and flexible framework of stop and search in Scotland.

6.2 Police accountability and the construction of stop and search

The legal framework of stop and search is piecemeal: described as 'embarrassing to the police' by the Scottish Office in the late 1960s (op cit., NAS HH55/1503), and more recently, as 'too complex' to explain on the *Ask the Scottish Police* website (Police Scotland, 2013c). Put differently, it is difficult to pinpoint what exactly constitutes a stop and search, and to ascertain where the limits of police accountability lie, or what the police are accountable *for*. Proceeding from this observation, the objectives in this part of the chapter are to make sense of police stop and search powers in Scotland: to pinpoint 'what counts' as a stop and search, and to demonstrate the flexibility of the law in relation to these powers.

6.2.1 Classes of stop and search in Scotland

Stop and search powers in Scotland may be classified into three broad categories: statutory powers with reasonable suspicion; statutory powers without reasonable suspicion; and non-statutory stop and search. This simple classificatory scheme does *not* include the right to search arrested persons under common law, nor searches carried out under common law as a matter of 'urgency', which as Stark and Leverick note, 'is one of the most frequently cited reasons for excusing an irregularity' (2010; 8). Also, the scheme does not include searches carried out at detention under Section 14 of the Criminal Procedure (Scotland) Act, 1995, although it will be argued there is considerable overlap between the two practices. The three broad classes of stop and search are described below.

6.2.1.1 Statutory stop and search powers with reasonable suspicion

Officers possess approximately ten statutory stop and search powers in relation to specified proscribed items, premised on reasonable suspicion. These powers reflect the post-war model, whereby the power to search is modelled as an investigative tool to allay or confirm an officer's suspicions short of arrest (Lustgarten, 2002). **Table 6.1** sets out the most commonly used statutes.

Table 6.1 Stop and search in Scotland: key statutes

Drugs	Section 23 (2), Misuse of Drugs Act, 1971
Offensive Weapons	Section 48 (1), Criminal Law (Consolidation) (Scotland) Act 1995
Bladed/pointed items	Section 50, Criminal Law (Consolidation) (Scotland) Act 1995
Firearms	Section 47, Firearms Act 1968
Sporting events (alcohol, sealed containers, bottles, fireworks, flares etc.)	Section 21, Criminal Law (Consolidation) (Scotland) Act 1995 sporting events
Stolen Property	Section 60 (1) Civic Government (Scotland) Act 1982 (stolen property)

In this context, officers are required to have robust grounds for suspicion, for example, having seen or heard suspicious behaviour. The extract below sets out current Police Scotland guidelines on reasonable suspicion, which appears to be drawn, in part, from the definition set out in PACE Code of Practice A (also shown). Note however, that the Scottish guidance is looser, shorter, and unlike PACE Code A, allows officers to base reasonable suspicion on appearance, subject to an officer's experience.

Reasonable suspicion: Scotland (full definition)

'Reasonable suspicion is suspicion that is backed by a reason capable of articulation and is something more than a hunch or a whim. This can't be supported on the basis of personal factors such as age, gender, race, stereotyping etc. The officer has to have intelligence or information supporting the reason for the search such as the person slurring their words or that the person is showing behaviour that is leading to the officer's suspicion. Experience may allow an officer to comment on a subject's appearance for example, a drug user's unkempt appearance, unsteady gait or subject's body language.'

(Police Scotland, 2013a; 6)

Reasonable suspicion: PACE Code of practice A (partial extract)

'Reasonable grounds for suspicion depend on the circumstances in each case. There must be an objective basis for that suspicion based on facts, information, and/or intelligence which are relevant to the likelihood of finding an article of a certain kind or, in the case of searches under section 43 of the Terrorism Act 2000, to the likelihood that the person is a terrorist. Reasonable suspicion can never be supported on the basis of personal factors. It must rely on intelligence or information about, or some specific behaviour by, the person concerned. For example, unless the police have a description of a suspect, a person's physical appearance (including any of the 'protected characteristics' set out in the Equality Act 2010 (see paragraph 1.1), or the fact that the person is known to have a previous conviction, cannot be used alone or in combination with each other, or in combination with any other factor, as the reason for searching that person. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.'

(PACE Code A: Exercise by police officers of statutory powers of stop and search, 2010; 6)

Existing research shows that reasonable suspicion is open to interpretation and is difficult to enforce. As such, a robust standard of suspicion may not always be present in the searches in which it is required (Bowling and Phillips, 2007: 938). However, officers in Scotland also have the option to stop and search *without* reasonable suspicion, which may in turn, lessen the likelihood of statutory searches being carried out improperly.

6.2.1.2 'Exceptional' statutory search powers without reasonable suspicion

Section 47a of the Terrorism Act and Section 60 of the Criminal Justice and Public Order Act 1994 do not require reasonable suspicion. The use of anti-terrorist stop and search powers in territorial policing is uncommon in Scotland (accounting for just 59 recorded searches in 2009/10) and is not examined as part of this research project.

Section 60 of the Criminal Justice and Public Order Act 1994 enables the police to search people and vehicles for weapons or dangerous instruments in anticipation of violence. These powers are exercisable for up to 24 hours and may be renewed for a further period. Actual violence is not required to implement an order, and officers may search people without any recourse to reasonable suspicion.

6.2.1.3 Non-statutory stop and search.

Officers can also stop and search people on a non-statutory basis, which is premised on verbal consent and does not require reasonable suspicion. As observed in chapter five, over seventy per cent of recorded stop searches in 2010 were non-statutory, although interview data indicated that non-statutory searches were less likely to be recorded than statutory searches (also see Blake Stevenson, 2014; 18-19), which suggests that the true proportion of non-statutory searches may be higher.

6.2.2 What 'counts' (and what doesn't count)

> 'To stop and search a person is an intrusive use of authority, which deprives a person of their liberty. It is a serious matter and must be undertaken only when it is the least intrusive option to achieve the purpose. Dignity must always be respected and *all actions must be fully accountable, reasoned and recorded.*'
> (Scottish Police Training College, 2010b; 7, my emphasis)

> 'All searches should be documented for: analysis purposes; preventing litigation against targeting any minority group; and maintaining an audit trail of duties carried out.
> This does not include…'
> (Fife Constabulary, *Standard Operating Procedures*, 2006; 3-4).

> 'The legal status of stop and search is quite complex (and not necessarily well understood) and there are, in fact, a range of situations in which a person can be searched which cannot be described as "stop and search."'
> (RHA, 2002; 10)

Whilst the previous classificatory scheme added some clarity, the lack of a fixed definition is a key difficulty for the non-police observer. For example, a search for offensive weapons may be counted as a stop and search in some circumstances (on routine street patrol) and not in others (at a parade or procession), whilst other types of street search may be excluded from stop and search data. If an encounter in which a person is stopped and searched is not necessarily defined as a 'stop and search', how do we identify what counts? Put differently, what do the statistics represent? This part of the chapter argues that stop and search may be better understood as a *construct*: as a negotiable process, rather than a concrete legal category.

Recording (or how to construct a stop and search)

A stop and search is constructed by a two stage process. First, the search encounter is detailed either in an officer's notebook or recorded electronically. At this stage, the recording process is tied to officer level accountability. For example, a complaint raised against an officer may be investigated using notebook records.

Second, the record is transferred to the force stop and search database, which in most legacy forces, involved manually inputting the search details, usually at the end of a shift (also Blake Stevenson, 2014; 17). Importantly, unless both stages are completed, a search is not counted in police statistical returns and the search will be unaccounted for at the organizational level. The remainder of this section investigates the stop searches that 'don't count', for example, searches are documented in an officer's notebook, but are not necessarily transferred to the force database, and searches that are not documented in notebooks nor on the database. The analysis also examines non-recording and the procedural factors which may discourage recording.

6.2.2.1 Search at detention

The Criminal Procedure (Scotland) Act, 1995 (which consolidated the Criminal Justice (Scotland) Act 1980) provides a generic power of search at the point of detention. The 1995 Act sets out the legal framework for policing in Scotland and enables an officer to detain and search an individual suspected of any offence punishable by imprisonment. To recap, this power can be traced back to the Thomson Committee on Criminal Procedure as discussed in chapter 3 (section 3.3.2).

Whilst searches at detention are not classed as stop searches, the power of detention and search set out in Section 14 is comparable to that conferred by statutes such as the Misuse of Drugs Act, 1971 and the Criminal Law (Consolidation) (Scotland) Act 1995. For example, it seems difficult to substantively differentiate between a search facilitated by detention (Section 14), and the act of detaining a person for the purpose of a statutory search: given that both are premised on suspicion and both necessitate detention. To extrapolate from Ewing and Dale-Risk,

the difference between the two 'is one that would test the most gifted sophist: either way the individual is being held by the police' (2004; 120).

Importantly, detention gives the police an extensive remit to search, short of arrest, which as McBarnet notes, allows officers to 'fish' for evidence: 'defining as arrestable offences behaviour as indeterminate as intent, loitering, or breach of the peace… gives the police wider powers of legal detention [which] may be used to establish evidence for a different suspected offence, which the policeman is really interested in but has no evidence on which to charge and therefore arrest' (1983; 41). Breach of the peace is the most relevant offences in this respect, characterized by Clive *et al.* as 'one of the most notoriously elastic offences in the common law' (2003; 164). Breach of the peace confers arrest for any act which *might* reasonably cause upset or distress (no evidence that an actual person has been upset or distressed is required to proceed with a charge). As Christie observes, breach of the peace 'has been allowed to extend itself to eccentric and trivial behaviour (which happens to be disapproved of by some persons – very often the police), rendering the legislation 'an almost limitless instrument of social control' (1990; 105). In the following interview, a retired Chief Constable comments on the discretionary breadth of breach of the peace.

> "[In] *Scotland the use of powers was much more informal at the constable level on the street because they were drawing on common law powers and good old breach of the peace, which had been long discarded in the South. And I'm not sure I've ever come to terms with the Scottish interpretation… because it seems to be elastic. Highly elastic*."

Despite the extensive remit to search provided by Section 14, searches carried out under detention cannot be quantified, because they are not 'counted' as stop searches, nor are detention statistics collated in their own right. In other words, an unknown number of searches are carried out each year, which do not substantively differ from stop searches carried out under statutory powers, and remain unaccounted for.

6.2.2.2 Sporting events

Recording is particularly ambiguous in relation to sporting events. Section 21 of the Criminal Law (Consolidation) (Scotland) Act 1995 confers the right of search if a supporter is suspected of being drunk, carrying alcohol, carrying a controlled container (for example, a drinks can or bottle), a weapon or fireworks. Supporters, supporter's buses and designated trains may be searched on the way to sporting premises, whilst stewards and police may search supporters on entry to premises. Whilst searches pertaining to sporting events are used 'on a numerical basis, arguably more often than any other single piece of legislation' (RHA, 2002; 111) they are unlikely to be recorded, nor is the standard of reasonable suspicion likely to be met: 'in reality, many of the searches undertaken by police in these circumstances would fail the test of reasonable suspicion (for example it would be untenable to suggest that possession of a handbag is in itself reasonable grounds for suspicion that an offence may be committed)' (ibid.). This obstacle can be circumvented through the use of non-statutory search as a condition of entry (ibid.), although in this context, the consensual element is removed.

6.2.2.3 Criminal Justice and Public Order Act 1994, Section 60

During interviews, some officers suggested that searches at larger football matches might be authorized under Section 60 of Criminal Justice and Public Order Act 1994. To recap, Section 60 enables the police to stop and search people and vehicles and search for weapons or dangerous instruments in anticipation of violence. Whilst the use of this power has been deeply contentious in England and Wales, the controversy has not extended to Scotland. Freedom of Information requests made to the three largest forces indicated that records were not kept of Section 60 authorizations, nor were Section 60 searches differentiated in police force data. As such, the extent to which this power is used remains unaccounted for.

6.2.2.4 Parades and processions

Standard Operating Procedures indicate that stop searches at parades and processions are not recorded if recording 'would reduce the ability of the police to provide the required level of security or detract from public safety' (Fife Constabulary, 2010; 4). The Orr *Review of Marches and Parades in Scotland* estimated that around 1,700 parades are policed in Scotland each year (2005; para 4.7). However, the actual number of stop searches carried out in this context is unknown and cannot be accounted for.

6.2.2.5 Non-recording

In addition to legitimate sources of non-recording, an unknown number of searches are excluded by dint of non-recording: that is, searches that *should* be recorded, but are not. Whilst existing research suggests that under-recording can be attributed to the low-visibility nature of street policing (Sanders and Young, 2008; 287), this section takes a slightly different tack by shifting the analytical focus to the procedures and policies that influence recording practices, or the more structural determinants of recording practice.

Looking at the two stages of recording, interview data suggest that most officers were likely to record searches in their notebooks. In part, this was a means of protection, for example, against complaints, described below as a form of 'back covering'. Notebook records were also auditable. For example, PNC checks[24] carried out whilst undertaking searches could be cross-referenced with notebook entries.

[24] Police National Computer. A PNC check would typically enquire if there is an outstanding warrant for a person.

"*Wherever I search somebody, every single one goes in my notebook. Always the notebook… And that's maybe a back-covering exercise for myself as well*."
(PC 1, Lothian and Borders, Female, 6-10 years)

"*Every one. Everything in your notebook… if you've searched them, you want to know who they are, so that goes down in your notebook. And you'll have spoken to them anyway, you'll have got their details – it's just a way of noting it. Two, we've got SID entries on intelligence gathering. So although my searching is the main topic, like I said earlier, I'm continually chatting to somebody to find other information*."
(PC 3, Lothian and Borders, Male, 6-10 years)

"*If you're searching someone on the street their details will go into a notebook, I would say, all the time.*" (PC 5, Strathclyde, Female, 6-10 years)

"*The majority I would say* [are recorded in notebooks]. *A very small percentage would actually be not recorded. As soon as we commit to recording something... this is an audited system.*" (Sergeant 5, Strathclyde, Male, 21-25 years)

"*Always: mine or my colleagues [notebook]*."
(PC 8, Strathclyde, Male, 0-5 years)

Sergeant 4: "*Just last week, I had 4 or 5 PNC audit logs sent to me from the PNC bureau… Officers had to come and show the searches in their notebook.*"
KM: So there are mechanisms to drive recording?"
Sergeant 4: "*Absolutely. That it's exactly. So I would have to say that very few are not recorded in the notebook. However sometimes, as I say, taking information from the notebook to the actual database, maybe a third is perhaps lost.*"
(Lothian and Borders, Male, 26-30 years)

However, several factors discouraged officers from transferring records to the database. First, database records were anonymized, and thus had no bearing on individual officer accountability.

"*If you've got* [a search] *in your notebook, no supervisor is going to be able to say, 'Why isn't that on the database?' because a), it's anonymous, and b) no-one is going to check that the database* [corresponds with your notebook]."
(PC 2, Lothian and Borders, Male, 0-5 years)

Second, the database tended to be understood as a performance management tool and productivity measure, rather than a tool for police accountability. For example, in interviews, respondents either described the function of the database in vague managerialist terms, or were unsure as to its purpose. Either way, there was little sense that the data were particularly important.

> KM: What is the data collected for?
> Sergeant 2: "*I'm sure it's for the stats, for the force objectives.*"
> (Anonymous, Female, 21-25 years)

> PC 3: *"The bosses are desperate for that database to be uploaded because I think actually there's a legal obligation for the force to record all stop and searches."*
> KM: "Do you know why?"
> PC 3: *"No."*
> (Lothian and Borders, Male, 6-10 years)

> KM: "Do the statistics get fed back to you?"
> Sergeant 4: "*Erm, yes. From the Divisional perspective, they would use that as a performance indicator of some kind.*"
> (Lothian and Borders, Male, 26-30 years)

Also, data transfer was understood as a low priority against more pressing demands:

> "*To be entirely honest, the problem with the logging on the database is that we have so much paperwork to do... I think it's just one of those things. Not deliberately, but you know, when we come back to the station and we've dealt with an incident, there's so many things that you have to do paperwork-wise that filling out the box on the intranet system to record it* [is the lowest priority]."
> (PC 1, Lothian and Borders, Female, 6-10 years)

However, recording practices appeared to vary between the legacy forces: which suggests that procedural factors were most likely interacting with organizational policies and pressures. In the extracts below, legacy Lothian and Borders officers discuss police practices in relation to data transfer.

KM: What percentage do you think are **not** recorded on the intranet?
Sergeant 1: "*Loads.*"
KM: 50%?
Sergeant 1: "*More.*"
KM: 60-70?
Sergeant 1: "*Yeah... The cops who go out on the street, I am not expecting to log every search. Because they would be in here all the time.*"
(Lothian and Borders, Male, 15-20 years)

"*I certainly think, among more experienced coppers, more than half get missed, to be honest. It's very much an attitude of 'it's irrelevant, it has no effect on me' type thing. Whereas putting it in your notebook – absolutely! If that person makes a complaint that it's an illegal search, or you did it in a situation that was embarrassing towards them and you should have done it differently... you've covered yourself.*"
(PC 2, Lothian and Borders, Male, 0-5 years)

In contrast, legacy Strathclyde officers placed greater weight on data transfer, due to the pressures of performance management and divisional targets.

KM: Do you think the level of transferring records to the intranet increased?
PC 6: *"I would think so, I've noticed here even more so there's a kind of pressure on you to get stop searches… I suppose they obviously must have statistics from different years and months, and its 'We're down on last year'."*
KM: What percentage of searches would you estimate are not recorded on the intranet?
PC 6: *It won't be that many now, I can only speak for round here anyway… but I can imagine that it'll be pretty much across the board now.*"
(Strathclyde, Male, 6-10 years)

KM: Do you think the level of transferring records to the intranet has increased?
PC 7*: "I think it's probably getting better. Within our unit the vast majority I'd say now… we're answerable to the territorial divisions that we serve, so just to make sure it's all done right, we always make sure they go on… say maybe 80%."*
(Strathclyde, Male, 6-10 years)

KM: What percentage of searches do you think are not transferred to the intranet?
PC 9*: "Probably quite a low percentage because they're so target driven now.*"
(Strathclyde, Female, 6-10 years)

To summarize thus far, it can be argued that a lack of clarity as to what is meant by stop and search, or when searches 'count', together with a lack of organizational accountability, has resulted in an imprecise and contingent model of stop and search. Recall for example, the searches that could not be adequately accounted for, if at all, such as those conducted under Section 60 of Criminal Justice and Public Order Act 1994, and searches at sporting events.

The observations also show how stop searches are constructed by substantive rules and procedures: by mechanisms which either facilitate or impede recording. For example, the process of cross-referencing PNC checks with notebook searches acted to increase notebook entries, ensuring that backs were covered, whilst less stringent standards of regulation in relation to the anonymized database reduced the impetus for data transfer.

It can also be further argued that a lack of clear-cut directives provided officers with a higher degree of discretion than might be available under a more tightly regulated system. Recall here the comments of Chief Constable 3 (chapter four, part 4.5) on the boundaries of stop and search, which were understood as negotiable and blurred, rather than delineated by regulations.

> "*I don't think people think 'I am now exercising a power of stop and search'… as far as they would articulate it at all, I think they would think in terms of, 'I am now negotiating somebody who I have some interest in…'. I don't think they think, 'I am now going to use this power to use a stop and search which starts here, ends there and ends up with this record.*"

The next section investigates this sense of ambiguity further, and examines what is arguably one of the most flexible policing tools available to officers in Scotland: the ability to stop and search on a non-statutory basis.

6.3 Flexible friends: non-statutory stop and search

> "*If it's a routine stop and it's just a bit of banter with the locals, it would be voluntary. Which is the vast majority of the time*."
> (Sergeant 6, Strathclyde, Male, 26-30 years)

> '[T]here is at the very least some disquiet among some officers about the concept of a consent or voluntary search, and a strong belief in some quarters that this has no place in Scottish policing, nor any basis in Scots law,' searches, both from a civil liberties and a legal standpoint.' (RHA, 2002 94).

The ability of officers in Scotland to stop and search on a non-statutory basis means that officers can search people without reasonable suspicion. In this context, the search is more likely to be based on low-level suspicion (also see Blake Stevenson, 2014; 24), as described in the interview extracts below.

> "*If you've got an inkling that someone's got something on them, but you don't really have your full justification, quite often then I would just ask, 'Can I search you?... Most people are quite happy for that.* " (PC 2, Lothian and Borders, Male, 0-5 years)

> "[*If] the person wasn't known to you… There was no intelligence… Circumstances of where they were and what they were doing was borderline (suspicious).*"
> (Sergeant 1, Lothian and Borders, Male, 15-20 years)

This exceptionally broad interpretation of the ability to search people derives from the ambiguous legal nature of non-statutory stop and search, which means that when a person *agrees* to be searched, the relationship between the police and the person being searched is effectively rendered 'private'.

> 'If 'consent' is obtained, the legal relationship between the actors is not that between a state official and a private citizen, but rather that between two private citizens.'
> (Dixon *et al*. 1990; 346, also see Mead, 2002)

Given the ambiguous nature of the relationship between state and citizen in this context, the protective role of the state is minimal and key safeguards are not in place. Reasonable suspicion is not required, officers are not restricted as to the items

they can search for, officers are not obliged to state the purpose of the search, nor are officers obliged to tell a person that they have the right to refuse the search. Officers can thus search people on the basis of generalized beliefs about 'types' of people and places. Officers may also legitimately 'fish' for evidence, given that the object of the search is not specified. In short, no restraints are placed on police discretion.

The next section argues that this regulatory flexibility is exacerbated by the underlying consent principle, which is neither codified, nor clearly defined within the policing organization.

6.3.1 Consenting to be searched?

This section will draws on existing literature in order to weigh up the extent to which non-statutory stop and search meet common standards of consent. To begin, the analysis sets out a short intellectual overview of the consent principle. Thereafter, these principles will be discussed in relation to police practice.

The Consent Principle

The consent principle is a core value within the liberal tradition of moral philosophy. Consent stems from the principle of autonomy and the right to self-determination, which in turn derives from the sense of 'natural rights' embedded within liberal Western philosophy. Consent may be broadly understood as 'self-rule that is free from both controlling interferences by others and from limitations such as inadequate understanding, that prevent meaningful choices' (Faden and Beauchamp, 1986; 7).

In practice, it is important to differentiate between informed consent, as premised on understanding and voluntariness; and 'effective consent', which describes the institutional or legal rules that govern consent (Beauchamp and Childress, 2001; 78) For example, a person might readily agree to a course of action in an institutional setting, without fully understanding the implications. In other words, 'effective consent', in itself, is incapable of guaranteeing informed consent. Rather, it is the premise of 'understanding' and genuine 'voluntariness' that carries greater weight.

Consent is widely understood to be underpinned by three core principles. First, a person must be fully informed, that is, provided with all the requisite information required to give consent. Second, a person must have the legal capacity, or competence, to give consent. Competence requires the ability to reason, to appreciate the significance of a decision, to communicate, and to differentiate between outcomes (Buchanan and Brock, 1989; 25). Thus, consent cannot be given 'when we are very young or very ill, mentally impaired, demented… frail or confused' (O'Neill, 2003; 4). Age is a key component of legal consent and may be conceptualized either chronologically or in terms of maturity. For example the principle of 'Gillick competence' describes when a child 'achieves a sufficient understanding and intelligence to enable him (or her) to understand fully what is proposed' (Grubb *et al.* 2010; 230, para. 4.57). Finally, a person must be able to give consent voluntarily, without coercion. The next section uses interview data and police force stop and search records to investigate the extent to which police practice meets these principles.

Securing consent: officer's accounts and police force data

To what extent is a person made fully aware of the relevant facts when consenting to a non-statutory stop and search? It is difficult to reconcile police practice with the first consent principle given that there is no duty on officers to explain the purpose of the search. Furthermore, case law states that there is no positive duty on the police to inform people of their right to refuse, given that the search is not carried out under a statutory power (*Brown v Glen 1998 SLT 115*). This case law ruling, understandably, tends to be used by officers to their advantage.

> KM: "You don't have to tell someone they have the right to refuse?"
> Sergeant 2: "*Yes. And as a result people will agree to do it, probably not realizing that they can refuse. But don't get me wrong, people that are savvy will say no*."
> (Anonymous, Female, 21-25 years)

> KM: "Do you tell people they have the right to refuse?"
> PC 9: "*No, but they're probably fully aware that they [can]. I'm sure their lawyers have told them.*" (Strathclyde, Female, 6-10 years)

KM: "Do you tell the person they have the right to refuse?"
"*It's voluntary, it's up to them*"
KM: "But do they know it's voluntary?"
"*…I say 'Do you mind if I give you a quick search?' So that way they can say yes or no. So if they say 'Yes', no bother, I'll carry on. If they say 'No, not really' – [I think] Hmm, why are you refusing? – 'Is there a reason why you're not letting me search you?'… 'No I just don't want you to'… 'Tell you what, just give me a wee minute, let's just check you out, see if you're wanted on warrant or anything… And then if his demeanour completely changes, then I might go formal.*"
(Sergeant 1, Lothian and Borders, Male, 15-20 years)

Second, the analysis of police stop and search data in chapter five (**table 5.15**) showed that capacity for understanding or competence was not taken into account. Rather, young people were significantly *more* likely to be searched on non-statutory grounds. This observation seems anomalous with other parts of the Scottish criminal justice system which take levels of maturity and responsibility into account. For example, children under the age of eight are considered to lack the legal capacity to commit an offence and may only be referred to the children's hearings system on non-offence grounds. Under Section 52 of the Criminal Justice and Licensing Act (Scotland) 2010, children between the ages of eight and twelve may be referred to the children's hearing system on offence grounds, but may not be prosecuted for any offence. Section 66 of the Data Protection Act 1998 also states that in Scotland, only children aged twelve years and over are deemed to be sufficiently mature enough to make decisions in relation to data sharing.

Despite a range of age-considerations in other parts of the criminal justice system, these were not extended to stop and search. Indeed, between 2005 and 2010, over four hundred non-statutory stop searches were undertaken on children aged *seven and under* in the legacy Strathclyde region (Murray, 2014b): thereby suggesting that the approach to searching children was deeply out of kilter with the longstanding welfarist approach towards children's justice in Scotland (Kilbrandon Report, 1964). **Table 6.2** compares the age distribution of non-statutory searches (2010), against key age markers in the Scottish criminal justice system.

Table 6.2 Non-statutory stop and search, by criminal justice system age markers, 2010

Age-group	No. of non-statutory stop searches	Age Markers
7 and under	67	Below the age of criminal responsibility
8 to 12	3,098	Not liable for prosecution. May be referred to Children's Hearing system on offence grounds.
13 to 15	52,002	May only be prosecuted under the instruction of the Lord Advocate in relation to serious offences.
Total	55,167	

Source: Legacy Scottish police forces

Third, it is unlikely that the principle of 'voluntary' consent can be met in the context of a non-statutory stop and search, given the power differential between the police and the policed. Rather, research suggests that, by default, a 'request' to search by a uniformed figure of authority, no matter how genuine, is likely to be interpreted as a command (Nadler and Trout, 2010).

> 'Even when warnings of the right to refuse were given drivers still consented. Almost everyone consents. People consent to police officers not because they make a free choice to grant consent but because that is how people respond to the authority of the police.' (Delsol, 2006; 116).

> 'Of course any individual has a right to approach any other individual-to ask him the time, to ask him how to find the Yale Divinity School, or to ask his opinion about foreign policy. But it is not quite the same when the police stop someone. There is authority in the approach of the police, and command in their tone. I can ignore the ordinary person, but can I ignore the police?'
> (Reich, 1966; 1162)

Deference to the police may also be exacerbated by the ways in which officers negotiate search encounters. For example, Dixon *et al.* characterize non-statutory searches as a form of 'bamboozling' that exploits the legal ambiguity of the situation.

> ‘As a sergeant put it: 'A lot of people are not quite certain that they have the right to say no. And then we, sort of, bamboozle them into allowing us to search.' Such 'bamboozling' is done by appealing to the willingness of the innocent to be searched, by threatening arrest, or by claiming the authority of fictional powers.’ (1990; 348)

This sense of ambiguity is captured in the interview extracts below, in which officers discuss how refusal to give consent may be used as grounds to move to a coercive statutory search.

> "*If they say ‘No, I don’t want you to search me, I’m on the street or in public, or my kids are over there, or I’ve got friends in the street, that’s embarrassing, I don’t want you to search me’ – If that’s all you’ve got, then I won’t search them, that’s fair enough. But yeah, I’d always ask them why, and if they don’t have an actual reason, and you start getting* [suspicious], *then that can lead to a legislative search*…
> … *I'll say to them, ‘Look you don't have to say yes’, But if they don't say yes, they're almost giving you reason to do a legislative search, if they're getting that agitated about the thought of getting a quick pat-down for alcohol.*"
> (PC 2, Lothian and Borders, Male, 0-5 years)

> "*If they didn’t, I would probably try and get their details, through communication again. If they refused details, I would probably be forced to go down Section 13*[25] *for obtaining their details as a possible suspect*."
> (PC 3, Lothian and Borders, Male, 6-10 years)

[25] Section 13 of the Criminal Procedure (Scotland) Act 1995 confers the power to obtain details from a suspect or a witness

"*Quite often when someone says no… their behaviour continues in such a manner that they're almost going to give you justification to search them* [using statutory powers]…. *If someone says no, that's not enough justification to then search them, but if you then quiz them on why they're saying no, certainly their behaviour in some circumstances would merit, eventually, a statutory search*."
(Sergeant 1, Lothian and Borders, Male, 15-20 years)

KM: What do you do if a person refuses?
Sergeant 5: "[I'd say] *'Ok, right, give us your details'… You would do your search on the PNC. If it comes back, this person is known to us, previous convictions for violence, dishonesty, carries weapons, drug user. Oh-ho... I've now got a reasonable suspicion to say, 'Well I asked you voluntarily, you said no, however, after doing checks'. So there are other tools at your disposal to use... A person tells me no, and then that's the trigger for me for me to then say, 'Why are they saying no?*"
(Strathclyde, Male, 21-25 years)

KM: If someone didn't want to cooperate, what would you do?
PC 8: *"It would raise my suspicions at the fact that they'd said no, because I would think that they were trying to hide something."* (Strathclyde, Male, 0-5 years)

PC 11*: "If say for a scenario like I'm in the town centre, I'll say 'Look, there's been a problem with drugs within the town centre, is it ok if I search you, have you got anything in your possession?' And at that point it'll either be a yes or a no. And if it's a no then you'll explain your powers to them, and 'You're going to be searched under Section 23 of the Misuse of Drugs Act'."*
KM: What would your grounds for suspicion be?
PC 11*: "Their demeanour… it's a hard one, because if someone refuses a search, then it raises my suspicions. Are they in the possession of a weapon or in the possession of drugs? And then I will just move straight to my statutory powers, and I will explain to them why I've moved to my statutory powers – because they've been defensive of not allowing me to search, and I would explain how it's giving me suspicion that they are in possession of something."* (Strathclyde, Male, 0-5 years)

"It's just run of the mill for us to ask, 'Do you mind if we search you?' It's easier, it's more comfortable, it's a bit of rapport building with the individual you know. We can always move to legislative search if they refuse and we think there's a problem there."
(Sergeant 6, Strathclyde, Male, 26-30 years)

To paraphrase McBarnet, it is difficult to see how someone can avoid being searched, if the police have a mind to do so (1983; 37). Yet in these accounts officers are not deviating from the law, nor are people necessarily denied their rights. Rather, people's rights are not made available in the first place. Nor is there a law to deviate from: only a set of ill-defined and vague rules which fail to engage with different standards of suspicion. On the one hand officers are instructed that they should not proceed to a statutory search if consent is refused; on the other hand, refusal is constructed as the object of suspicion. The difficulty here is not so much that the rule is made unenforceable by the low visibility nature of policing: rather that there is no clear cut-off point as to when the non-statutory encounter or negotiation actually ends. This point is illustrated more forcefully by current Police Scotland working guidelines on the use of non-statutory stop and search, which directs officers to use evidence secured in a non-statutory search, as the legal basis for proceeding to a non-statutory search. In other words, the legal process begins *after* the evidence has been found.

> 'Officers are called to a report of a group of males loitering outside a common close. There are no reports of criminality, however the reporter was concerned regarding noise. Officers attend and ascertain that they are all local males who are just hanging around having a chat, albeit none stay at this precise location. The males are all spoken to and their details are noted and checked via CHS (Criminal History System). The males are known to police on CHS, however nothing that would lead officers towards a legislative search either from CHS convictions or markers or from what they have ascertained engaging with the group. As part of that local interaction, all males are asked for their consent to be searched, which all agree to. All males were searched and one is found to possess a small piece of cannabis resin within his pocket. That specific male should be cautioned and informed that a full search will be conducted under section 23 of the Misuse Drugs Act 1971.'
>
> (Police Scotland, 2013a: 9)

6.3.2 Consenting to be search: summary

The analysis thus far suggests that use of non-statutory stop and search is unlikely to meet the minimum standards required to meet consent. First, no duty is placed on officers to inform people of their right to refuse. Second, age and the attendant capacity for understanding are not taken into account. Third, refusing a non-statutory search may be used as grounds to undertake a statutory search, thereby rendering a notionally consensual encounter coercive. As Mead comments, 'instead of *informed consent to* policing, the situation more resembles *ill-informed acquiescence*' (2002; 1, emphasis in original). Yet as noted, officers are not departing from formal rules. Rather, a lack of codification means that officers are provided with the legitimate ability to stop and search suspect populations with near impunity: with neither the limitations that consent requires, nor the protection that reasonable suspicion affords.

The flexibility associated with non-statutory stop and search appeared to be exacerbated by a reluctance to acknowledge or engage with the tactic within the police service. Indeed, one of the more surprising findings in the preliminary research stage was that senior officers didn't appear to have a handle on the extent to which the tactic was used. This apparent lack of awareness might plausibly be attributed to the conflation of non-statutory and statutory searches in police force data (for example, recall both statutory and non-statutory searches for drugs are classified as 'drug searches'). Also, as noted in chapter three, the two types of search tend to be conflated in rhetorical terms: under 'statutory' motifs such as 'police powers' and 'reasonable suspicion, as illustrated below.

> 'A spokesman for Lothian and Borders Police said the force had identified drugs and violence as two key issues that impacted upon the safety of people. He said: "To tackle them, *we continue to work within legislation to stop and search* those individuals who we have reasonable grounds to suspect to be carrying either drugs or offensive weapons."' (Edinburgh Evening News, 18/9/2009, my emphasis)

> 'We will continue to identify and carry out proactive interventions on violent individuals and those known to carry knives and offensive weapons, utilising fully *our powers* of stop and search.' (Strathclyde Police, 2012a; 3)

In this respect, to borrow from Baldwin, non-statutory stop and search 'gives the appearance of conformity to the rule of law but… offers limited and sometimes illusory opportunities of redress' (1989; 160). Put differently, whether intentional or otherwise, the use of non-statutory stop and search tends to be subsumed within a statutory discourse: a discourse which misappropriates a sense of police purpose, implies legal equivalence with statutory search powers, and in effect, renders the tactic invisible.

6.4 Summary

This chapter has addressed the third research aim, that is, to show how the regulation of stop and search has facilitated the proactive turn. Taking a top-down approach, the analysis sought to unpack how police searches were 'constructed', or how stop and search 'worked' in procedural terms, and to identify the restraints (and lack thereof), on the use of police discretion.

The key findings in the chapter are as follows. First, whilst it is commonly understood that there is *no general* police power facilitating the right to search, such is the breadth of individual powers, including the ability to search on a non-statutory basis, that it seems reasonable to conclude that the police *do* have general stop and search powers, albeit composed from a patchwork of constituent parts. As McBarnet observes, 'police powers of arrest and search are far more extensive than the rhetoric suggests' (1983; 36).

Second, the analysis demonstrates a lack of institutional accountability. This partly resulted from the incomplete nature of stop and search data. For example, only certain classes of search and in certain circumstances were defined as such, and therefore 'counted'. A lack of procedural checks and supervisory oversight also exacerbated non-recording, thereby impeding accountability further. Taking an overview of the recording process, accountability for stop and search was strongest at the officer level, when searches were recorded on the street. Thereafter, force level accountability appeared to be blurred or weak, whilst accountability at the national level was missing, given the absence of open access data.

Third, the analysis demonstrated how non-statutory stop and search failed to meet the basic standards required to secure consent, and was wholly unregulated, given the absence of codification and lack of procedural safeguards. As such, the capacity to stop and search people was rendered more or less unbounded.

Importantly, the analysis suggested that officers were likely to be working *within* the regulatory framework, rather than deviating from the law (McBarnet, 1982; 156). And in this respect, it can be argued that there is a clear affinity between the loose regulation of stop and search in Scotland, and the proactive turn. As Quinton observes, 'weaker forms of legal regulation' can foster 'a more permissive discretionary environment', enabling officers 'to conduct searches in large numbers and with very low levels of suspicion' (2011; 360).

However, the analysis does not suggest a straightforward relationship between rules and police practice. Taking into the account the sharp differences in search practices between the Central Belt and non-Central Belt legacy forces, it can be argued that what officers *do* with rules and regulations – the ways in which they are exercised – is likely to be contingent on organizational priorities and the mitigating effects of police force cultures (Dixon, 1997; 22, Grimshaw and Jefferson, 1987). Recall for example, how officers in legacy Strathclyde were under greater pressure to transfer searches to the stop and search database than officers in legacy Lothian and Borders. In this way, rules and regulations may be understood as 'a raw and adaptable material to work *with*… as something which might be used, manipulated, crafted to suit one's own interests' (McBarnet, 1992; 248). The salient question is therefore, to what extent did the respective legacy forces take advantage of the regulatory freedoms afforded to their officers? Chapter seven addresses this question and investigates how police force policies and party politics influenced the direction of stop and search.

Chapter 7. Keeping up with the KPIs: policy, politics and the proactive turn

7.1 Introduction

The previous chapter argued that against a weak regulatory background, officers were provided with the autonomy to undertake searches without recourse to reasonable suspicion, or other procedural protections. However, it was also clear that the ways in which officers chose to exercise their discretion varied across the legacy forces. As such, it seems reasonable to suggest that the variable use of stop and search might be tied to policy or cultural differences between the legacy forces: to institutional priorities and the ways in which senior officers task their officers (Dixon, 1997; 96), rather than cop-cultures or situational variables, With this observation in mind, this chapter will addresses the fourth research aim, that is, **to show how police force policies and wider party politics influenced the use of stop and search.**

Two arguments are presented in the chapter. First, it will be argued that a link can be made between proactive stop and search and performance management techniques such as numerical targets and Key Performance Indicators.

Second, taking a more ideological perspective – and building on the findings in part one – it will be argued that Scotland lacked a dominant narrative on stop and search: or a way of 'making sense' of police practice. Whereas the regulation of stop and search in England and Wales was unequivocally tied to race and ethnicity, no equivalent narrative was established in Scotland. Rather, as chapters three and four argued, stop and search was 'quieter' in political terms, and more or less 'socially invisible'. It will be argued that this backdrop provided an ideological vacuum in which crime control and performance narratives could flourish, with minimal resistance. The analysis will draw from a range of data sources to develop the arguments, including interview data, police policies, political manifestos and press reports.

7.1.1 Chapter structure

This chapter is structured in three main parts. Part 7.2 investigates the ways in which different performance management techniques influenced stop and search in three of the legacy forces (Strathclyde, Lothian and Borders, and Tayside), and the demands placed on officers. Part 7.3 examines the wider policing and political backdrop. The analysis looks at the centralized direction of Scottish policing in the post–devolution period, the seeming proximity of police Executives and Ministers, and how the incumbent Scottish National Party appeared to support the legacy Strathclyde approach. Part 7.3 summarizes the key observations, and discusses some of the unintended consequences of managerialism.

7.2 Performance Management and Scottish policing

In what way do different managerial approaches influence officer decision-making? In its broadest sense, performance management refers to the process of improving or maintaining performance, typically using measurement and monitoring techniques (HMICS, 2005; 4). Targets are intended to provide a measurable, sharp focus for practice, premised on the truism 'what gets measured gets done', whilst indicators or Key Performances Indicators (KPIs) are used to monitor activity, for example, crime rates or the number of searches. Over the last few decades, police performance in the UK has been variously tied to a range of objectives, targets, inputs and outcomes, including raw crime counts, detection rates, time taken to respond to emergency calls and varying measures of public satisfaction and confidence.

Whilst the ascendency of managerialism in England and Wales under the 1997 New Labour administration is widely documented (McLaughlin, 2007), the development of a performance culture within Scottish policing has received less attention. Prior to reform, the main vehicle for performance was the Scottish Policing Performance Framework (SPPF), which was introduced in 2007 at the behest of the Scottish government, and constructed collaboratively across a number of policing and governmental organizations. Yet the performance culture appeared to take a more diluted and more piecemeal form than its counterpart in England and Wales. For example, in the interview extract below, Chief Constable 3 describes performance management standards, circa 2003 onwards.

> "*Scotland has never embraced the indicator target culture in the same way – not so much embraced as imposed, by Central Government down South. The old Scottish Office never really had the will to impose it in the same way as the Home Office. The targets had never been as detailed as they were… So the performance culture I inherited was the five objectives agreed by the Police Authority which were reducing violent crime, reducing traffic… very broadly framed stuff.*"

The use of stop and was a matter of operational independence for Chief Constables, unimpeded by national oversight or direction, either by ACPOS or the Scottish Government and outwith the SPPF framework. ACPOS did not publish a stop and

search policy and data were not collated centrally. In short, the legacy forces were provided with the freedom to pursue their own policing direction. Next, parts 7.2.1 to 7.2.3 investigate police force approaches to stop and search in legacy Strathclyde, Lothian and Borders and Tayside respectively, with a view to identifying different policing outlooks and practices.

7.2.1 Legacy Strathclyde: performance driven policing

From 2007 through to the dissolution of the force in April 2013, legacy Strathclyde adopted a robust managerialist crime control regime, under the leadership of Chief Constable Sir Stephen House. In some respects, it can be argued that the strategic direction taken by House fitted into the existing organizational culture. As suggested in chapter three, Strathclyde had a history of robust 'crime-fighting', punctuated by periods of quasi zero-tolerance styled policing. Moreover, the upward trend in stop and search was cemented *prior* to House's tenure. The policing direction in legacy Strathclyde also converged with wider post-devolution trends in Scottish criminal justice: with an increasing emphasis on managerialism, and a more punitive focus, 'aimed at exclusion, dispersal and punishment' (McAra, 2008; 8-9).

Yet in terms of the strong emphasis placed on performance management and target setting, House may be understood as a policy entrepreneur within Scottish policing, namely, 'a political actor who promotes policy ideas… and seeks to initiate dynamic policy change' (Minstrom, 1997; 738-739). In the context of stop and search, an emphasis on the raw quantity of searches suggested an affinity with anglicized New Public Management techniques: and a departure from the less rigid policing approaches evidenced in other parts of Scotland. As one retired Chief Constable commented, Scottish policing was "*much more laissez-faire. As long as things weren't going very badly wrong in any particular direction, you weren't excised*".

The precise numerical stop and search targets set by the legacy force were most likely unique within Scottish policing. **Table 7.1** shows stop and search targets for 2009/10 and 2012/13. Note that the target set to 0.3 of a search in 2009/10 is duplicated from the original, and not a typographical error.

Table 7.1 Legacy Strathclyde: police force priorities and performance

Period	Target	Actual change	
2009/10	Increase the number of stop searches by 6% to 243,206.3	322,115	+ 32%
2012/13	Ensure 459,438 stop and searches are conducted	612,110	+ 33%

Source: Strathclyde Police Authority, 2012

Targets set by the Executive were filtered down to local Divisions, and also embedded in wider partnership arrangements. For example, the Lanarkshire *Alcohol and Drug Action Team Strategic Partnership Delivery Plan 2008-2011* targeted officers to increase searches by 6.5%, and to increase the number of detections for offensive weapon and knives by 5.4% and 7.7% respectively (2008; 26). In the interview extracts below, officers describe how targets operated.

"*At the beginning of every financial year, every April, the figures are collated for each division, performance wise… [If] they want an increase in searches, that is then subdivided among the shifts, and you can more or less work out, per head. For example, 10 stop searches per month is not unreasonable*… Ultimately, for the individual officer *at the end of the year they get their appraisal.* [Stop and search activity] *then goes towards the appraisal. Because it shows how they can engage with the community, it also shows their proactive sense as well.*" (Sergeant 5, Strathclyde, Male, 21-25 years)

PC 7: "*All our performance is measured. We've got an ethos here – if you want to appear to be professional, if they ask us to do something in the Division – then we do it, you know? So it's honed into us from our supervisors. So things like stop search, which is a thing that Divisions are really keen on, we make sure we get them on, so we don't get a phone-call, you know*?"

KM: What other measures are there?

PC 7: "*Tickets issued for anti-social behaviour, how many have you issued, how many searches, how many of those searches were positive – that's a big one just now.*"

KM: Are you judged on the number of positive searches, or the proportion?

PC 7: "*They still want the searches, but obviously, I think they want a higher percentage of positive ones, shows you're targeting the right people*."

KM: Are you given formal targets?

PC 7: "*No. It's just something to measure how much work you've done*."

(Strathclyde, Male, 6-10 years)

KM: Are the stop and search statistics fed back to you?
PC 9: "*No. It doesn't come to us. We just get told if we're doing a good job or a bad job*".
KM: Are you told if you need to increase searches?
PC 9: "*Yes… There's a set target* [per officer] *every month we've got to meet.*"
KM: How many?
PC 9: "*Twenty. Which is hard, because the majority out there are males. For females, they don't appreciate* [that we can't search males]."
(Strathclyde, Female, 6-10 years)

KM: "Does your manager comment on the number of searches you carry out?"
PC 8: "*Yeah, I think obviously if there's a problematic area, they'd try and encourage you to go down there and be proactive, and stop search people…*
…I think there is a sense that if you come back and you've put on 10 stop search forms, they'll think 'Oh you've been busy, you've proactively stop searched people.'"
(Strathclyde, Male, 0-5 years)

"*At the start of the financial year a target is set for the subdivision. And then we'll get kind of progress reports: we're on target, we're under target, we're over target… In recent months it's been targeted to single officers, but in general terms, it's driven towards [sub-divisional] targets. It's eighteen a month as our set target, and my opinion of a police officer who isn't meeting eighteen a month stop searches then they're not doing their job right. Because regardless of how many people there is, you don't have to look very far to find a Ned.*"
(PC 10, Strathclyde, Male, 0-5 years)

KM: Do you have targets for stop and search?
PC 11*:* "*I believe it's around eight a month per officer.*"
KM: Are you targeted with detection, or just the number of searches?
PC 11: "*Just the number of searches. Cos at the end of the day, you can't force getting a positive stop search.*"
(Strathclyde, Male, 0-5 years)

Searches were targeted in various ways, for example, as a set number of searches per officer, at a sub-divisional level, or in generic terms of police productivity: each underpinned by a strong emphasis on intensive stop and search activity. Detection targets were also set by the Executive, albeit at relatively undemanding levels,

ranging from 7.4% in 2009/10 (Strathclyde Police, 2010; 6) to 11.7% in 2012/13 (Strathclyde Police, 2012b; 3). More controversially, press reports suggested that stop and search activity was indirectly incorporated into pay structures, and that competency related bonuses might be withheld if performance indicator targets were not met.

> 'Speaking at the Scottish Police Federation conference in Aviemore yesterday, officers warned that a culture driven by performance indicators is leading to "inappropriate and bad disposals for the sake of generating statistics" and said they were being forced to chase figures rather than criminals… Andrea MacDonald, vice-chair of the Strathclyde Police Federation, revealed that senior officers said meeting targets should not be difficult in some of the "hunting grounds" within the force. She added that some payments had been withheld because staff had not met targets for anti-social behaviour fixed penalty notices, on-the-spot fines and stop searches.'
> (The Herald, 21/4/2010)

The force also coupled performance targets with a demographic target: 'males aged 15-26 as a result of intelligence led policing, particularly in relation to knives, drugs and alcohol' (Audit Scotland/HMICS, 2011; 38). In practice however, this claim is difficult to reconcile with the extensive use of non-statutory stop and search, low detection rates and generic targeting by age shown in chapter five. Whilst intelligence might identify geographic and generic population targets, within these broad contours, the policing approach could be characterized as blanket-style: premised on generalizations about suspicious types of people and places, rather than behaviour. As Manning observes, policing hot-spots 'categorically targets some areas regardless of the actions of people who live there at the time of the sweep, raid or crackdown. It is a hammer and everything looks like a nail in the targeted area' (2010; 173). Or as one interviewee more bluntly remarked, "*You don't have to look very far to find a Ned*".

Analysis of legacy Strathclyde local policing plans and literature shows that stop and search tended to be framed in terms of comparatively low detection targets, coupled with high numerical targets for the number of searches. In terms of policing aims, this distinctive combination suggests that deterrence took precedence over

detection. In other words, the quantity of searches was comparatively more important that detection. Deterrence logic is also evident in the policy extracts below, which set out a direct relationship between search activity and offending: typically expressed as a spurious measure of statistical correlation ('x% increase in stop and search led/contributed to an x% decrease in knife carrying').

> 'The number of serious assaults in East Ayrshire went from 202 in the year 2007/08 (April 2007 to March 2008) to 135 in 2008/09 (April 2008 to March 2009). The improvement has been partly attributed to an 80% increase in the number of people stopped and searched for weapons/drugs.'
> (Ayrshire Division [Strathclyde Police] 2009; 2)

> 'New operational tactics led to a 150% increase in police stop searches in violence hotspots. These factors [stop search and education/media campaigns] combined to result in a 15% drop in serious violent crime and a 23% drop in persons found in possession of offensive weapons.' (Inverclyde Alliance, 2010; 14)

> 'During the 6 months of intensive Safer South Lanarkshire initiative a total of 22,966 stop searches were carried out across South Lanarkshire for 10/11. This equates to: 127.6 searches per day or 5.3 searches per hour or one stop search being carried out just over every 10 minutes in South Lanarkshire. The activity and volume of searches helped contribute to the overall success of the crime statistics detailed above.'
> (Strathclyde Police, 2011; 10)

Taking an overview of these findings, it can be reasonably argued that search rates in legacy Strathclyde were driven by a strong performance management regime premised on numerical targets and quantitative indicators, and backed by the belief that high volume stop and search was actively driving down violent crime. These findings also help to explain the ongoing high proportional use of non-statutory stop and search. By sidestepping the requirement for reasonable suspicion, non-statutory stop and search allowed officers to proactively target discrete populations and areas, and to meet numerical targets. In other words, the tactic provided a means of reconciling the demand for proactivity with the unpredictable character of policing.

7.2.2 Legacy Lothian and Borders: mixed messages

Within legacy Lothian and Borders, a mixed and softer version of performance management seemed evident. The force did not formally articulate a stop and search policy or set targets, nor was search activity strategically analysed in terms of crime patterns and hot-spots. However, interview data indicate that a more managerialist approach was adopted within some parts of the legacy force, for example, in areas which received additional funding for officers from the City of Edinburgh council. Under this agreement, the force provided Edinburgh Council with a monthly Summary Report, which included stop and search statistics, as described in the interview extract below.

> "*The main thing with the KPIs is that some of our funding is from the council. They fund some of the wage bill in the Safer Neighbourhood Teams. So, as you would expect, if you're paying money you would like to know what the officers are doing, and the KPIs are used for that…For the Safer Neighbourhood Teams – which is the current buzz-phrase for community policing – it's one of our Key Performance Indicators. And it would be commented on, the number of searches you're doing. It would be a negative thing if you weren't doing stop searches*." (PC 3, Lothian and Borders, Male, 6-10 years)

Conversely the work of some response officers appeared to be less proscribed:

> "*It depends which department you work in. Because having previously worked in the Safer Neighbour Team, we used to have sort of, monthly returns, and you would say how many stop searches and things. When you're on response, you don't really have that, cos you're too busy doing too much other things. Our work day to day isn't dictated, whereas in the community they can say 'These are the areas that we're targeting', whereas in response, we respond to the calls that come in.*"
>
> (PC 1, Lothian and Borders, Female, 6-10 years)

Whilst the Executive did not set numerical targets, stop and search was treated as a KPI in some areas, which resulted in a sense of informal competition, or league tables between neighbouring stations or sections.

> "*There [are] informal stats that come out quarterly. There's five teams on your basic shift, and they'll get compared, like, Team 1 did x amount of searches in this quarter of the year. And your boss might say, 'Get out there and get a decent number [of searches] because I don't want to be bottom, I want to be top' type thing… The emphasis is on the number of searches. But you wouldn't be given a target… It's very much encouraged to go out and do it. But there's also an appreciation that you still have to have a reason to do it, you can't just go out and search people that you don't like*."
> (PC 2, Male, Lothian and Borders, 0-5 years)

However, in contrast to the sharply defined narratives around violence reduction that emanated from legacy Strathclyde, stop and search was understood as a more informal measure of proactivity and keeping busy. Searches were amenable to performance management insofar as they could be easily counted. In this respect, to borrow from McLuhan (1964), it could be argued that the *medium* was the message: whereby the process of searching people was converted into an end in itself, rather than a means to a clearly defined policing end.

> "*We have a monthly productivity table that comes out and each officer's collar number is there, and it will label everything they've done… SID* [Scottish Intelligence Database] *logs, stop searches, reports, whether they've got their reports signed or if they're overdue*."
> (Sergeant 4, Lothian and Borders, Male, 26-30 years)

This sense of flexible and informal policing did not, however, extend to legacy Tayside, where officers appeared to be more uncomfortable with the premise of proactive of stop and search, as discussed next.

7.2.3 The Tayside Quandary

In contrast to the previous two accounts, legacy Tayside officers expressed a sense of unease at the idea of proactive stop and search. In particular, officers appeared to be uncomfortable with the use of non-statutory stop and search, and the departure from legal authority that the tactic entailed. In this respect, the legacy Tayside accounts tapped into one of the fundamental ethical difficulties that lay at the heart of the proactive model: the reliance on stop and search without legal authority, in order to meet managerial demands premised on crime control.

To recap, the analysis of stop and search data in chapter five suggested a broadly reactive approach within legacy Tayside, as marked by higher use of statutory search (73%); fewer searches for weapons and alcohol (8%); an older age profile, peaking at 25 years; and an above average detection rate (13%). However, research interviews with officers took place more than two years after these data were collated, shortly before the reform of Scottish policing in April 2013 – and at this stage, greater weight was being given to proactive policing.

> "*I think definitely there's a lot of reactive searching. But they're trying, they're always trying to push you for the maximum amount of proactive searching as well. The only issues we have with that is that a lot of the time you're so busy dealing with other things*."
> (PC 14, Tayside, Male, 0-5 years)

> KM: Are stop and search statistics fed back to you?
> PC 15: "*Monthly yeah. We're constantly getting told the figures, you know. If it goes down, we get asked to do more, to try to bring it up again. It gets highlighted if there's a lack of searches*."
> …
> KM: What do you mean by a 'proactive search'?
> PC 15: "*It used to be called a negative search, not any more, it's called proactive search now*."
> KM: Do you know why it was changed?
> PC 15: "*I think it just sounds better and it sounds a bit bad when it said negative search*."
> KM: Do you know when it changed?
> PC 15: "*Oh that must have been less than a year, maybe a year* ago."
> (Tayside, Male, 0-5 years)

This comparatively recent emphasis on proactivity placed legacy Tayside officers in a quandary as to how search activity could be *legitimately* increased, given that non-statutory stop and search was discouraged by the force.

> "*Well they don't really like you to do voluntary searches and they tell you avoid them. I mean, I don't do voluntary searches unless I really have to. You usually do it under legislation one way or another*."
> (PC 14, Tayside, Male, 0-5 years)

> KM: Are there targets [for searches]?
> PC 15: "*There's not really targets. We've got four sections in Dundee, so they'll look at all the different sections and they'll do a graph… They'll say, 'Look, Section two has done much better on searches this month, Section four fell down on searches'… But [officers] don't go 'Oh we're going to try and find more people'. We just search the people who need to be searched. But they always tell you, 'Go and get more'. But you think, 'Well, no, I'm only going to search people who I'm legally obliged to search', you know? It's certainly a big topic of contention between everyone... People don't mind the fact that it's competitive. They just want an understanding that we're only going to search the people we have grounds to search and we don't want to try and push figures up when it's not a correct search or a legal search*."
> (Tayside, Male, 0-5 years)

The direction taken in legacy Tayside, like that in legacy Lothian and Borders, suggested a loosely formulated emphasis on productivity. However, in this context, the drive to promote stop and search was met with reluctance by officers more attuned to reactive policing.

By contrast, in legacy Strathclyde the policing approach was tightly formulated in terms of tackling violent crime, secured via a demanding performance management regime based on precise numerical indicators, and shored up by falling crime rates, which were read as a causal outcome. Looking back to the earlier legacy Strathclyde campaigns, it can be argued that existing ways of thinking about stop and search were effectively *formalized* in the mid-late 2000s, by dint of a performance framework which entrenched the 'crackdown' or campaign on a permanent basis.

In terms of wider policy transfer, a two-stage process transfer appeared to be in play, whereby managerialist techniques employed in England and Wales were appropriated by legacy Strathclyde, and thereafter taken on by some other forces, albeit unevenly. Thus, just as policing in England and Wales emerged from 'a wave of crude managerialism' as signalled by the abolition of performance targets in 2010 (Hough *et al.* 2010; 204), some parts of Scottish policing appeared to be moving in the opposite direction. This path was subsequently consolidated by the dissolution of the eight legacy forces, and the formation of the single service in April 2013, which transferred responsibility for policing from local to central government (see part 9.2). Part 7.3 discusses the politics of centralization in more detail, and shows how this process acted to facilitate the proactive direction.

7.3 Holyrood companions

In terms of institutional cultures, the analysis thus far has identified differences between the three legacy forces. Nonetheless, some sense of convergence was also evident, notably in relation to the idea of 'proactivity', which was forcefully driven in legacy Strathclyde, loosely embedded within legacy Lothian and Borders, and appropriated to a lesser extent in legacy Tayside, if uneasily. Policy convergence was likely to be was expedited by the shift of Scottish policing towards the political centre, as documented by Donnelly and Scott (2010c; 105): by increasing interaction between police Executives and politicians, and the ability of police Executives to 'articulate policy ideas onto government agendas' (Minstrom, 1997; 741).

In terms of the tenor of the evolving policing direction, to briefly recap from previous observations, the blend of discipline, actuarialism and deterrence underpinning the proactive direction, appeared to dovetail with a post-devolution disciplinarian turn in Scottish criminal justice, and the dilution of welfarist principles under the 1999 Scottish Labour administration (McAra, 2006; 127).

Whilst the election of a minority Scottish National Party government in 2007 signalled a partial shift away from the New Labour strategy, the party retained a disciplinarian emphasis on anti-social behaviour (Law *et al.* 2010; 58-59), evidenced as far back as 1997, by dint of a manifesto commitment to zero tolerance policies (which coincided with the Spotlight initiatives), and latterly in 2011, by a commitment to high volume stop and search premised on deterrence.

> '**Freedom from Crime**
>
> The SNP has supported initiatives that seek to reduce crime by means of a "zero tolerance" approach: we will encourage such initiatives throughout Scotland and support them with additional resources for Scotland's police forces. "Zero Tolerance" brings improvement to communities by focusing attention on community crimes such as vandalism, petty burglary and other such anti-social activities. By so doing it increases community confidence and pride. It is an ideal solution for every part of Scotland and particularly for urban areas.'
>
> (Scottish National Party Manifesto, 1997; 16),

'Effective action that is reducing knife crime

'We know that knife crime remains one of the gravest threats to public safety in Scotland and have acted to get knives off our streets. Knife crime has fallen by almost one third since the SNP came to power – that means more than 3000 fewer knife crimes a year. Our plans are based on proven police action that works. We have increased the use of stop and search – there were 250,000 in Strathclyde last year alone. *More stop and search has meant fewer people carrying knives through fear of being caught*.'
(Scottish National Party Manifesto, 2011; 18, my emphasis)

'**Knife carrying down 35 per cent**

My Officers have focused on targeting both known knife carriers, and hot spot areas where knife crime is prevalent. *Never before have Police Officers in Inverclyde carried out so many searches for weapons, yet at the same time found so few.* We will continue with this robust and firm style of Policing and continue to tackle all aspects of violence in Inverclyde.' (Scottish Government news release[26], 7/11/2010, my emphasis).

Looking to the wider governance of Scottish policing, it can be argued that a lack of robust scrutiny by police boards and authorities indirectly endorsed the proactive turn. Perceived as the weakest leg of the tripartite system (Donnelly, 2010; 82-83), an Accounts Commission/HMICS report observed that authority members in Strathclyde, Lothian and Borders and Tayside 'simply endorsed the force's vision and strategic direction for policing… playing a passive role in setting a vision for local policing' (2012; 10). Similarly, an Audit Commission report on Strathclyde Police Authority highlighted a failure to develop policing priorities, inconsistent scrutiny, and a failure to proactively seek the necessary information to hold the force to account (Audit Scotland/HMICS, 2011; 8).

[26] *Knife carrying down 35 per cent* (online)
http://www.scotland.gov.uk/News/Releases/2010/11/05144403 [accessed 12/8/2014].

With echoes of the findings from the legacy Strathclyde campaigns, it can also be argued that the policing direction was validated by a lack of political challenge, either from opposition parties or civil liberty organizations. For example, note that the turn of phrase employed in the preceding Scottish Government news release – that assertion that officers "*have never before carried out so many searches for weapons, yet at the same time found so few*" (op cit.), would be simply untenable in a more politicized context.

Absent robust scrutiny or challenge, stop and search was framed in terms of a bamboozling mix of finding and not finding things, falling and increasing crime: as a win-win tactic, irrespective of the outcome. The media extracts below nicely demonstrate the contradictory emphases on finding, and not finding, unlawful items.

'Surge in crime figures on way, warns police chief

Scotland's most senior police officer has admitted the next batch of crime figures are in danger of rising, threatening one of the Scottish Government's biggest achievements in bringing crime down to an almost four-decade low… There has also been a 2.5 per cent rise in 'group five' crimes: those 'driven by proactive policing', including possession of drugs and weapons. He said this was down to positive use of stop and search.'
(The Scotsman, 5/12/13)

'Knife crime

Figures showing that the number of people carrying offensive weapons such as knives is now at its lowest level in Scotland in a decade have been released. Justice Secretary Kenny MacAskill said that the figures demonstrate that the tactic of combining tough enforcement, through record numbers of stop and searches on Scotland's streets, backed by education, through initiatives such as the No Knives, Better Lives campaign, was beginning to pay off.' (Scottish Government news release, 26/9/10[27])

[27] 'Knife crime' news release 26/9/2010 (online)
http://www.scotland.gov.uk/News/Releases/2010/09/24150743 [accessed 12/8/2014]

In terms of police accountability, the tactic was framed exclusively in crime control terms, and reduced to simple numerical measures. This observation is important and taps into one of the most deep-seated difficulties in relation to managerialist driven policing, that is, a lack of consensus as to the role and responsibilities of the police (Collier, 2001; 35) or what the police should be accountable *for* (Neyroud and Beckley, 2001; 148-9). In this respect, police accountability can be viewed as a 'chameleon' concept, adaptable for different ideological purposes (Jones, 2008; 694): from keeping checks on the use of coercive power; to accounting for crime control. Looking to the narrative articulated by legacy Strathclyde and the Scottish Government, accountability for stop and search appeared to be 'ideologically cleansed' (Stone, 2007), that is, framed in managerialist terms which represented the tactic as an unproblematic indicator of crime-fighting and officer productivity: with negligible regard for proportionality or equity.

7.4 Summary

This chapter has addressed the fourth research aim and investigated how police force policies and party politics influenced the use of stop and search. The analysis proceeded logically from chapter six, which argued that the loose regulatory framework was compatible with either reactive or proactive policing, and that the different directions taken by the legacy forces were likely to be explained in terms of policies and organizational outlooks.

The analysis suggested that the appropriation of performance management techniques such as numerical targets and KPIs influenced stop and search practice, demonstrably within legacy Strathclyde, to some extent within legacy Lothian and Borders, and to a lesser extent within legacy Tayside. The analysis also suggested that the centralizing direction of Scottish policing, together with the closeness of policing executives and politicians post-devolution, provided a supportive environment in which to extend the proactive approach. In more abstract terms, it was argued that the continuing absence of a politicized narrative shored up the proactive direction, which remained unchallenged, for example, by opposition political parties, police authorities or civil liberty organizations.

Looking more closely at the encroachment of managerial principles in Scotland, the difficulties in applying these to policing, in particular the use of KPIs and targets, are well-rehearsed (Martin, 2003; Hough, 2007; Golding and Savage, 2008). In the first instance, it is questionable whether the unpredictable character of policing is amenable to managerialism and numerical targets (Waddington, cited in Golding and Savage, 2008; 726). This sense of mismatch was at the heart of the 'Tayside Quandary', which showed that officers were deeply uncomfortable at the prospect of taking a proactive approach, whilst relying on statutory or reactive policing methods.

Existing research also shows how centralized targets and directives can detract from less tangible aspects of the policing role by focusing on easily identifiable and quantifiable activities which deliver immediate results (McLaughlin, 2007; 184). As Inspector 5 remarked, "*stop and search is an easy thing to count*".

Similarly, Harkin notes that targets can 'dra[g] attention towards areas of quantitative focus such as response times, solvency, hours of foot patrol etc., at the expense of public service' (2011; 1). Target setting can also detract from more inclusive, less adversarial approaches by focusing on street level enforcement at the expense of more constructive, complex, inter-agency work, such as that undertaken by the Violence Reduction Unit in relation to gang violence in the Strathclyde region, as well as approaches that focus on education (Foster, 2014).

In practice, it can be difficult to control targets, given the low-visibility nature of policing. For example, targets set by legacy Strathclyde were repeatedly exceeded by a considerable margin, as noted in the following extract from an unpublished Strathclyde Police Authority report.

> 'Figures show that the number of stop and searches carried out each year is significantly above the targets set by the force executive, which acts as the principal policy making unit within the force. This suggests that an element of control has been lost centrally. This is perhaps due to the strong performance culture which now exists throughout the force, with divisions keen to evidence a high level of activity in this area.'
> (Strathclyde Police Authority, 2012; 4)

There is also a risk that searches may be carried out improperly to meet quotas, or to improve upon rank, if stop and search is used as a KPI. For example, officers may 'cut corners, bend the rules and twist the statistics to deliver their targets' (McLaughlin, 2007; 184). In particular, targets seem likely to encourage search activity that is premised on stereotype, rather than suspicious behaviour. Recall for example, and huge disparity in the age distribution of searches between proactive and reactive legacy forces, as shown in **figures 5.7** and **5.8**.

Finally, and perhaps most decisively, it is exceptionally difficult to *meaningfully* tie stop and search targets to the desired outcome (Bland and Read, 2000; 38). It is difficult to understate the significance of this observation given the recent conclusion of the Scottish Police Authority that there appears to be no evidence to suggest a causal link between stop and search rates in Scotland and the ongoing fall in violent crime (2014; 17) – which calls the rationale of the proactive project into question.

Part Two. Summary

The main argument presented in the thesis is that the post-war construct of stop and search as a *reactive* mechanism: that is, premised on investigation and detection; has been partly displaced by a proactive model, premised on intensive policing, deterrence, and the assumption that people will refrain from offending if the probability of being searched is perceived to be high. Importantly, it was argued that this shift partly severed the link with suspicious behaviour, by the introduction of *non*-detection as a measure of successful deterrence, alongside detection. As such, stop and search was rendered more or less unassailable: a tactic which could be vindicated irrespective of the outcome.

Whereas part one of the thesis examined the historical antecedents of the proactive turn, the elite and Executive decisions which enabled a more proactive approach to take hold, part two has examined police *practice*, using empirical data to investigate different approaches to stop and search. To recap, chapter five unpacked geographic variation in the distribution of stop searches. Looking at police stop and search records, it was argued that a more proactive, or deterrent based approach was associated with high search rates which increased over time (to strengthen the deterrent effect); high proportional use of non-statutory stop and search (enabling higher search rates); an emphasis on younger age-groups (premised on stereotypical suspect populations); a focus on weapons and alcohol (in line with the younger age-profile); and low detection rates (as a result of high-volume suspicionless searches).

Putting further flesh onto the argument, chapter six showed how the regulatory framework of stop and search facilitated a more proactive approach. For example, the analysis demonstrated how the vague and unsatisfactory standard of consent that underpinned non-statutory stop and search allowed officers to legitimately sidestep 'reasonable suspicion', and take a more proactive direction.

Chapter seven argued that the extent to which the legacy forces exploited this lax regulatory framework was influenced by Executive decision-making and organizational cultures. This argument was made most forcibly in relation to legacy

Strathclyde, where a strict management regime premised on numerical targets and productivity demonstrably shaped the use of stop and search on the streets.

The focus on Executive decision-making in chapter seven brought the narrative in the thesis full circle, drawing our attention again to the articulation of power by policing elites and political stakeholders: to dominant ways of thinking about stop and search and the preventative capacity of the police. In this respect, the exercise of discretionary decision-making was understood, in part, as evidence of decision-making higher up the rank: by those with the power to influence how legal rules are applied.

Several additional observations may be made here. First, echoing the findings in chapter three apropos the legacy Strathclyde campaigns, it can be argued that the proactive direction chimed with criminal justice developments that extended beyond Scotland. That is, with the surfacing of actuarial or risk-based methods based on aggregate population statistics (Feeley and Simon, 1994), and Classicist behavioural principles: the idea of the rational actor, amenable to conditioning through intensive low-key policing or 'constant surveillance' (Manning, 2010; 202-3). This approach was evidenced by the extensive use of suspicionless non-statutory stop and search in the Central Belt, and the huge discrepancy between the numbers of young people searched and detection rates (see **figure 5.12**). Officer's verbal accounts also echoed existing research on class-bias which shows how 'suspect populations' may be constructed according to 'working rules' which distinguish between the 'respectable' and 'unrespectable' (Skolnick, 1966; Lee, 1981; Smith and Grey, 1983; McAra and McVie, 2005). The interview extracts below nicely capture the combination of 'constant surveillance' (Manning, op cit.), and policing informed by stereotype: or the 'usual suspects' (McAra and McVie, 2005).

> "*Most of them, come to expect it and are expecting it on a Friday night, we're searching them all the time you know. Most of the time you know, we don't get too much of a negative reaction. Obviously the odd time, you get people who are disgruntled towards the police. Most of the time, the people that we deal with [co-operate]*."
> (PC 7, Strathclyde, Male, 6-10 years)

"[People are] *generally cooperative, because, this doesn't sound really good, but they've probably been searched in the past, and they're used to it happening. I would say they're just used to it, and they understand that's something that happens in that area because there is a high level of disorder and fighting*."
(PC 5, Strathclyde, Female, 6-10 years)

"*Very, very rarely would you get asked 'Why are you searching me?', because they know why I'm searching them, because of their lifestyle. And I would always tell them why I'm searching them, I tell them what the search is for… what Act and stuff. Most of them can tell you that because they're used to hearing it that many times*."
(PC 2, Lothian and Border, Male, 0-5 years)

Whilst the premise of suspect populations or 'police property' is well-established within criminology (Lee, 1981), the crucial observation here is that search activity proceeded differently according to the approach taken, be it reactive or proactive. In other words, suspect populations were targeted for police attention to a greater degree in some legacy forces, compared to others – arguably as a result of elite decision-making, rather than police discretion per se.

Second, the analysis highlighted the ongoing absence of a politicized narrative, and the attendant lack of political challenge. It was also argued in chapter five that 'expert' preventive discourses had displaced political debate. Here, the claim of expertise was drawn from the seemingly impregnable logic of anti-violence and crime analysis: by a hard scientific and bureaucratic rhetoric premised on hotspots, intelligence, crime analysts and performance management.

"'Some of the things we are doing are working, such as our policies around targeted stop and search against violent crime areas, violent criminals and carried out at the right times. Our strike rate – finding weapons – is fantastic because it is all scientifically based. Our analysts can tell us who to search and when and where"… Plans are advanced for Strathclyde's use of computer analysis to be spread nationwide. This is when backroom boffins look at the 'Recency Frequency Gravity' of offending in any area or individual or time to work out where police should mobilise their troops… Its top analysts are already crunching numbers from other parts of Scotland to pave the way for major crackdowns as the single force approaches.'
(Evening Times, Chief Constable Campbell Corrigan [Legacy Strathclyde] 12/11/12)

By giving precedence to crime control objectives and science, the underlying balance between crime control and due process/human rights was thus neutered.

> '[T]he modern punitive preventive approach is grounded on technical, scientific knowledge that privileges efficiency over most other political values and, in the process, tends to displace politics. The modern approach claims to be objective, apolitical, and neutral… But it inevitably reintroduces political values and choices into the analyses by privileging efficiency and bracketing other political values.' (Harcourt, 2013; 257)

Put differently, proactive stop and search was rendered exceptionally difficult to challenge, more so, given the emotive rhetoric that accompanies the hard science: the well-rehearsed utilitarian logic that if only one life is saved, the approach is justified.

Third, the analysis highlighted a distinction between the *power* to stop and search, and the appropriation of stop and search as a tool for *policy*. This was demonstrated most clearly in legacy Tayside, where officers were uncomfortable using inherently reactive statutory powers to pursue a proactive policy. This view is expressed more formally in the following extract from the RHA review on stop and search.

> 'There is no provision in Scots Law for Police to adopt a Stop and Search policy. All police stop and search **powers** are conferred by statutory legislation and are conditional on there being 'reasonable cause to suspect'.
> (RHA, 2002; 25 original emphasis)

This point takes us directly to the final observation, which engages with the fragile balance between crime control and due process that underpins the policing role. Looking to the principles that underpin the proactive turn, Packer's (1968) seminal model of values within the criminal justice system provides a useful theoretical handle. In brief, Packer distinguishes between *due process* and *crime control* values, which respectively prioritize acquittal of the innocent (at the risk of freeing the guilty), and conviction of the guilty (at the risk of convicting the innocent). The values are modelled at opposing ends of a continuum, with the understanding that

most systems draw from both, whilst tending to weigh more heavily in one direction or the other.

Applying this ideal type to the analysis in the thesis, reactive stop and search may be aligned with due process, insofar as the policing process is intended to ascertain culpability and minimize factual error. The approach is essentially negative: a means of placing limits on the exercise of police power (1968; 12). Packer uses the analogy of an obstacle course or hurdles that must be met in order to proceed. In the first instance, the capacity to stop and search is limited by statute and in relation to specific unlawful items. Second, there should be reasonable suspicion to a standard that is admissible in court. And third, suspects should be informed as to the reason for the search, and of that the fact they are being detained for the purpose of the search.

Conversely, proactive stop and search places greater weight on crime control at the expense of due process and procedural safeguards, casting a wide net over 'suspicious' neighbourhoods and types of people. As Packer states:

> 'The value system that underlies the Crime Control Model is based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal process. The failure of law enforcement to bring criminal conduct under tight control is viewed as leading to the breakdown of public order and thence to the disappearance of an important condition of human freedom.' (1968; 4)

Stop searches premised on crime control are more likely to be intensive or blanket-style, and based on an imprecise idea of 'consent', rather than reasonable suspicion. The process is analogous with an 'assembly line', the aim being to efficiently process as many prospective suspects as possible, irrespective of culpability. Recall for example, the Police Scotland guidelines which define a non-statutory stop and search as a search that is carried out '*on a person who is not acting suspiciously, nor is there any intelligence to suggest that the person is in possession of anything illegal*' (2013a; 8). In this respect, non-statutory stop and search may be viewed as unadulterated crime control, whereby procedural protection is legitimately absent, rather than subverted. Officers are not required to bend the rules, for example, to

'reinterpret' searches that failed to meet a legally sufficient standard (Dixon, 1997; 272). Rather, to overstate the point slightly, there are no rules.

Dixon suggests that due process and crime control may be better understood as 'intertwined', albeit with differing emphases, rather than a dichotomy between 'police powers and suspects' rights' (1997; 46). However, the presumption is that policing is undertaken within a statutory framework. Yet in the context of Scottish policing, officers may legitimately opt *either* for crime control with due process using statutory powers (the balance which PACE sought to secure); *or* crime control without due process and outwith the law, using a non-statutory approach. In other words, the two sets of values run separately, in parallel.

Applying Packer's model to the transition from reactive statutory stop and search, to an unbounded model of preventative crime control, it can be argued that the proactive turn represents a remodelling of state responsibilities apropos the balance between crime control and civil liberties. Borrowing from Günther (2013), it can be argued that the duty of the state to *limit* its coercive or punitive power by way of procedural protection (the post-war model) has been remodelled as a duty to protect the innocent law-abiding majority. Put more pragmatically, stop and search has been remodelled as a tactic that can be legitimated irrespective of the outcome, thereby weighting the balance between crime control and individual freedom in favour of the state.

Looking ahead, the proactive turn presents Scottish policing with a dilemma as to the direction of the single service. Should officers be encouraged to pursue the proactive, utilitarian line, in which a minority are intensively targeted for the greater good? Or should officers take a legalistic reactive approach which gives precedence to due process and more equitable forms of policing? By way of response, the final part of the thesis engages with the ethical implications of the proactive turn.

Part Three. Social Justice

> 'What we have done, by and large, is to allow the actuarial to displace early conceptions of justice and just punishment.' (Harcourt, 2007; 32)

Marking a departure from the historical and empirical arguments advanced thus far, the final part of the thesis takes a normative approach in order to address the fifth research aim: that is, **to unpack the ethical implications of proactive stop and search**. The analysis in part three is structured as two chapters. Chapter eight uses the political philosophy of John Rawls to make the case for policing premised on distributive or social justice, rather than utilitarian deterrence principles. Thereafter chapter nine draws the thesis to a conclusion. The chapter shows how the research aims were met, overviews developments in relation to stop and search post-reform, discusses the research impact, and sets out a series of recommendations for policy and practice.

Chapter 8. Deterrence

> 'When and to what extent does the morally good end warrant or justify an ethically, politically, or legally dangerous means for its achievement? (Klockars, 1980; 34)

8.1 Introduction

Taking a sweep of history, the thesis has identified key shifts in the ways that political and policing elites viewed the preventative capacity of the police from the post-war period onwards. These shifts were signalled by the incremental expansion of preventative powers: from the introduction of pre-emptive arrest in the 1950s; through to the intensive use of stop and search from the 1990s onwards.

Looking at contemporary policy and practice, it was observed that by 2010, the rate of stop and search in Scotland was almost four times higher than the comparable rates in England and Wales, and ran counter to the longer term downwards trend in recorded crime. This divergence was explained in terms of a proactive policing approach, underpinned by the logic of deterrence. It was argued that some forces had appropriated the tactic as a means of keeping crime in check via intensive search activity, rather than a reactive tool for detection. The main argument was supported by a range of research findings, including interview data, press reports. The argument was demonstrated most forcefully by analysis of police force data, which showed how proactive stop and search *systematically* resulted in lower detection rates than reactive stop and search.

Against this background, the aim in this chapter is to unpack the values that underpin proactive stop and search. Whilst it seems clear that proactive policing methods impact disproportionately on some sectors of the population, and as such, might be viewed as unfair in empirical terms, the chapter will address the conundrum identified by Klockars (op cit.). That is, to what extent do the ends justify the means? The analysis investigates two key claims associated with the proactive approach. First, that the dovetailing of intensive stop and search, low detection rates and falling levels of violent crime can be read as evidence of a deterrent effect. And second, that disproportionality or inconvenience can be defended on utilitarian grounds.

8.2 Does deterrence work?

> 'Officers were allowed to stop and search any person or vehicle in the city centre for 24 hours following an intelligence report warning of teenage gang violence… the officer in charge of policing the city centre, said: "It was a sign of the success of the operation that so few knives were found."' (Glasgow, Evening Times, 1/3/2004)

It was argued that deterrence logic was adopted in the early Strathclyde campaigns to justify a proactive approach to stop and search: a means of reconciling intensive policing, low detection rates and falling rates of recorded offending. However, the deterrent argument was not substantiated by robust research evidence. For example, no randomized control trials were undertaken to ascertain the effectiveness of the tactic, nor was systematic analysis undertaken to compare trends in Strathclyde with other forces or jurisdictions.

Whilst a lack of research evidence does not rule out a possible deterrent effect, the deterrence argument nonetheless seems difficult to maintain in light of the data that are available. First, it is difficult to separate offensive weapon handling trends in legacy Strathclyde from legacy forces which took a more low-key approach to stop and search. **Figures 8.1** and **8.2** show indexed trends in recorded offensive weapon handling from 1997 to 2012/13 in Central Belt and non-Central Belt forces respectively (excluding Dumfries and Galloway).

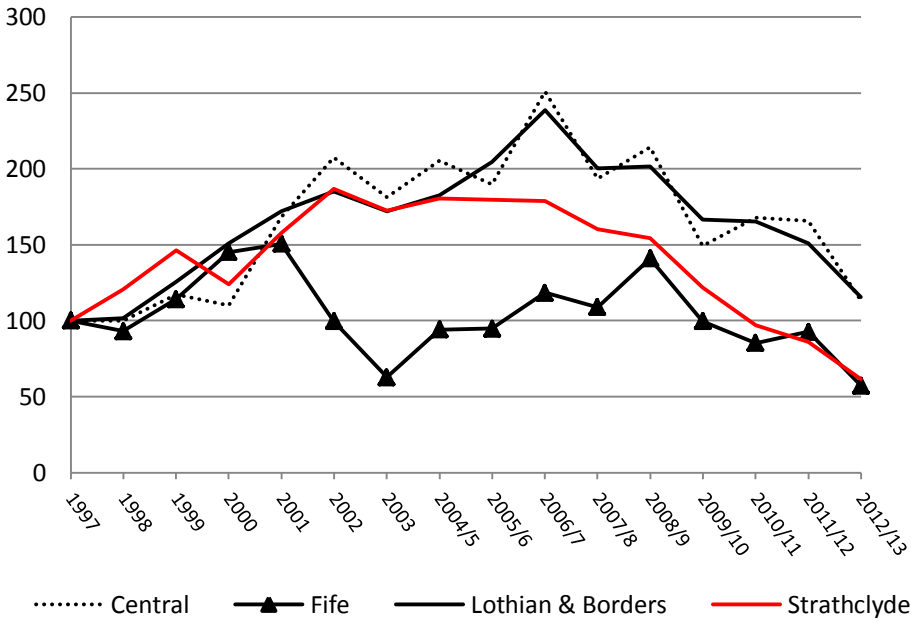

Figure 8.1 Indexed trends in recorded weapon handling, 1997-2012/13, Central Belt legacy forces

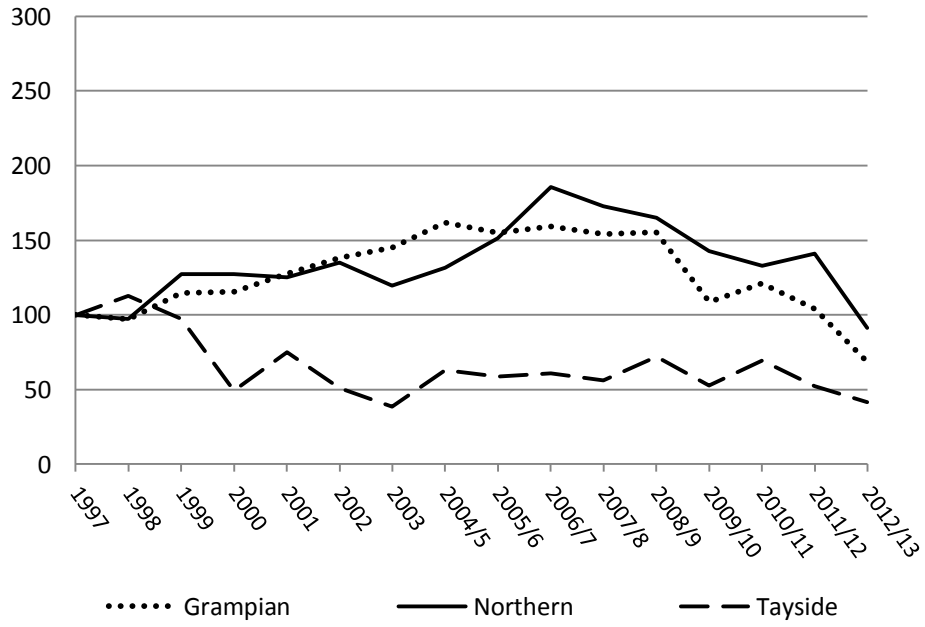

Figure 8.2 Indexed trends in recorded weapon handling, 1997-2012/13, non-Central Belt legacy forces

Source: Scottish Government: Recorded crime in Scotland

Figure 8.1 shows that recorded offensive weapon handling peaked in legacy Strathclyde in 2002 (several years before the respective peaks in legacy Lothian and Borders, and Central); dropped slightly to 2006/7; and decreased more sharply thereafter. In short, the decline predated the sharp increase in searches circa 2007 onwards (see chapter five, **figure 5.1**). **Figure 8.3** (below) is reproduced from the Scottish Police Authority review of stop and search and shows more clearly how the decline in non-sexual violent crime predated the increase in stop searches in legacy Strathclyde.

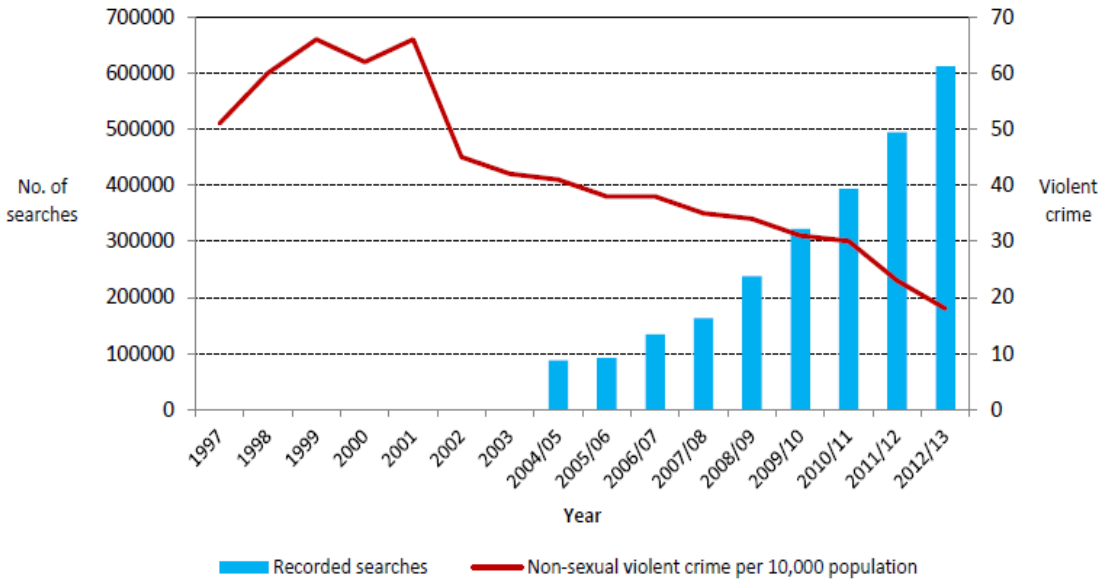

Figure 8.3 Stop searches by year, non-sexual violent offending by year, Strathclyde 1997-2012/13

Source: Strathclyde Police Authority, 2014; 18

The data in **figures 8.1 and 8.2** also show that the trajectory in recorded offensive weapon handling incidents in legacy Strathclyde from 2006/7 onwards was broadly consistent with the overall trends in legacy Lothian and Borders, Central, and importantly, with Northern and Grampian: both of which adopted a low-key approach to stop and search.

Figure 8.4 (below) is reproduced from the Scottish Police Authority review (2014; 18), and shows that trends in recorded non-sexual violent crime between 1997 and 2012/13 followed a similar trajectory in legacy Strathclyde and Grampian, despite different approaches to stop and search. More broadly, the Authority concluded that it could find no evidence to support a causal relationship between stop search levels, and levels of violent crime or anti-social behaviour (2014; 17).

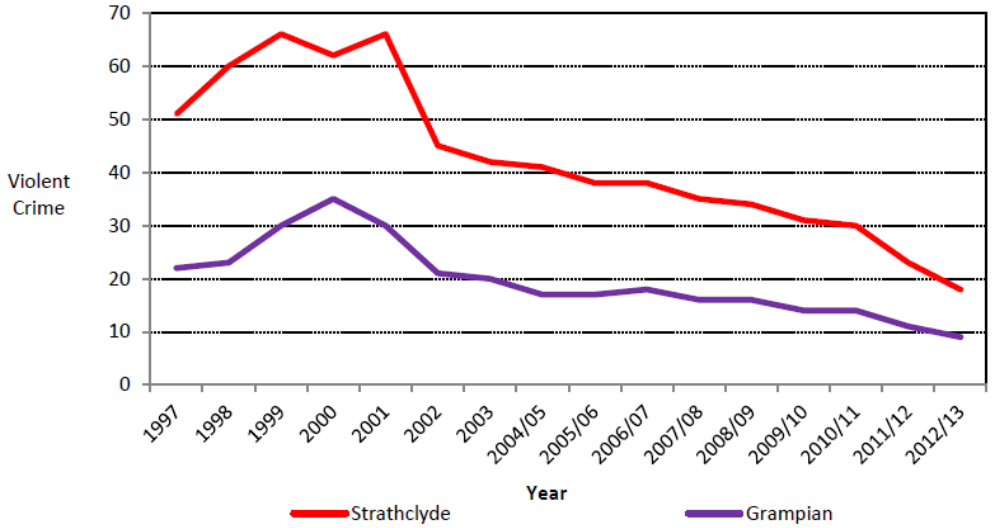

Figure 8.4 Recorded non-sexual violent crime per 10,000 people, Strathclyde, Grampian, 1997-2013

Looking beyond Scottish policing, a lack of clarity as to the effectiveness of deterrence is evident in the wider existing research base. A range of empirical evidence suggests that police presence carries a deterrent effect (Sampson, R. and Cohen, J., 1988; Marvell, T. and Mood, C., 1996; Levitt, S., 1997), although the methodological rigour of some studies has been questioned (Eck and Maguire, cited in Paternoster, 2010; 293). Conversely, other studies suggest that street patrol has little effect on crime, but may improve public perceptions of local crime and disorder (Kelling *et al.*, 1982; Trojanowicz and Baldwin, 1982 cited in Sherman, 2013; 28). More broadly, Paternoster concludes, 'clearly police presence deters crime, but it is probably very difficult to say with any precision how much it deters' (2010; 799).

Research on the deterrent effect of stop and search appears to be either inconclusive or contradictory. Citing Koper and Mayo-Wilson (2006), Sherman

states that 'there is highly consistent evidence that stop-and-question or stop-and-search causes reductions in weapons violence and homicide' (2013; 13). Conversely, Penzer's unpublished analyses of Metropolitan police data between 1993 and 1999 conclude that 'a relationship between total crime and the number of searches seems untenable' (Penzer, 1999a, 1999b, 1999, cited in Miller *et al*, 2000; vi), whilst Miller *et al.* observe that '[t]here is little solid evidence that searches have a deterrent effect on crime' (2000; vi). Fitzgerald's (1999) analysis of the Metropolitan's Police 'Operation Blunt' observed that between April and October 2010, among the 10 boroughs with the highest knife crime figures, the greatest fall in knife crime (-25%) coincided with the second fewest searches in the same sample of boroughs. Conversely, knife crime increased by 8.6% in Southwark, coinciding with the highest level of searches. More broadly, the EHRC has concluded that the use of stop and search reduces the number of disruptable[28] crimes by approximately 0.2% (2010; 6), whilst Tonry and Farrington conclude that the general deterrence effect of stop and search (aimed at the population as a whole) is likely to be modest at best, and is more or less impracticable to substantiate (1995; 6),

In a review of academic studies on police crack-downs, or targeted deterrence, Paternoster comments, 'some of these studies show that crime is reduced in a given area while the crack-down or enhanced police presence exists, but that crime quickly returns to its pre-intervention level soon after the program ends' (2010; 794). Similarly, Bland *et al.* suggest that deterrent effects are most likely to be temporary for the duration of an operation, although intensive search operations also risk displacing offending to other areas, or behaviour, or deterring crime in a limited area (2000a; 15, 36, also Bleetman *et al.* 1997). Bland *et al.* conclude thus:

[28] Crimes which may be disrupted by stop and search, for example, unlawful possession of drugs.

> 'To sum up, the evidence on deterrence is mixed, and not entirely clear. Generally speaking, changes in the level of stops and searches do not appear to affect the levels of crime. However, in particular instances where substantial drops have occurred in a climate of publicity, there have been increases in crime rates, and it is possible that these are related. They may, however, simply be coincidences.' (2000a; 35).

A lack of academic consensus on deterrence can be attributed to methodological difficulties, and disagreement as to the behavioural underpinnings of deterrence theory. In methodological terms, it is exceptionally difficult to isolate deterrent effects from other variables which might contribute to offending levels (for example, educational and employment opportunities, alcohol consumption or divisionary activities), and from wider trends in offending, as suggested by the parallel drop in non-sexual violent crime in legacy Strathclyde and Grampian (**figure 8.4**). It is also unclear if offending is displaced to other locations, or if other weapons are being used for violent offending. More assertively, Manning argues that deterrent studies typically apply causal reasoning after the event: '[r]esearch claiming to focus on deterrence provides no evidence that it works… it is *post hoc propter hoc* reasoning' (2010; 231). The second difficulty lies with the underlying Classicist behavioural agenda which casts the potential offender as a competent and rational decision-maker: a premise which seems particularly problematic given the young age-profile of stop and search in some parts of Scotland.

To reiterate, these difficulties do not preclude the possibility of a deterrent effect. Nonetheless, taking an overview of the available research, it seems fair to suggest that the deterrence question remains unresolved and might be argued in either direction. The next part of the chapter offers a means of resolving this impasse. Part 8.3 examines stop and search from a normative position and asks whether the use of stop and search as a deterrent is *fair*, in particular, whether high volume stop and search can be reconciled with the democratic ideal of equal citizenship. Rather than prolong the debate as to whether deterrence works, the question is reframed thus: if stop and search does work as a deterrent, is this necessarily a social good?

8.3 Is deterrence fair?

> 'Unlike the investigative justification, which limits stop and search to suspicious people and thus treats people as 'ends in themselves', the deterrent justification permits people to be stopped and searched without suspicion. Whether this is random or targeted, the implication is that many people will be subject to interference by the state irrespective of their involvement in crime. This seems unacceptable, especially when highly discretionary powers are used disproportionately against specific populations.'
> (Bowling and Weber, 2011; 483)

The case for deterrence argues that the restriction on freedom experienced by a minority of the population in, say, the course of a search for a knife, can be justified by the deterrent effect, as evidenced by non-detection, coupled with falling levels of violent crime. In this context, the reasoning is utilitarian, whereby the good of a minority is legitimately forfeited for the greater good. Put simply, the end justifies the means.

This part of the chapter examines the philosophical principles that shore up the deterrence argument in more detail, and asks if the approach is *fair*. The analysis gives weight to the distribution of searches, or distributive justice, rather than the quality of policing encounters, or procedural justice. The approach is intended to reflect the theoretical thrust of the thesis: namely the relationship between elite decision-making and the distribution of searches; rather than the quality of search encounters, which is a separate consideration, and as Miller observes, is incapable of assessing social justice.

> '[if] justice is a property of procedures rather than outcomes, then, although any specific agent (person or organization) may commit an injustice by violating just procedures in its treatment of other agents, there are no independent grounds for considering the final distribution of benefits unjust.' (1999; 94)

The analysis is informed by John Rawls *Theory of Justice* (1999), and by Peter Manning's *Democratic Policing in a Changing World* (2010) which systematically applies Rawlsian principles to policing. To begin, section 8.3.1 discusses how utilitarian logic may be applied to stop and search.

8.3.1 Utilitarianism

Utilitarianism is a consequentialist system of ethics which states that the moral worth of action is determined by its outcome or consequences. The core premise is that action should maximize the overall good for the greatest number of individuals: that 'society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction over all the individuals belonging to it' (Rawls, 1999; 20). The utility principle is universal: that is applicable to both individuals and institutions, and is judged quantitatively.

> '[i]f it can be shown that an action significantly contributes to the general good, then the act is good. Under this view, in situations where one must decide between a good for an individual and a good for society, then society should prevail – despite the wrong being done to the individual. The utility or good derived from that action outweighs the small amount of harm done. There is little concern for individual rights in utilitarianism.'
> (Peak *et al.* 1998; 22)

Utilitarianism has an intuitive, common-sense appeal, which is frequently invoked in relation to proactive stop and search. For example, intensive stop and search tends to be rationalized with reference to the likelihood that at least one life will be saved – together with the well-trodden line that 'if you've nothing to hide, you've nothing to fear', and the rhetoric of the law-abiding majority.

> 'Operation Blade is said to have been a great success… The one moan has been that people have been stopped and searched when the police did not have reasonable cause for suspicion that the person was carrying a knife… I would rather be stopped and searched 20 times a day than stabbed once. If it is thought to be an affront to the innocent, then I predict that if one of those who say so, was stabbed himself or his daughter was stabbed to death, he would soon see the idiocy of it.'
> (Nicholas Fairburn, Glasgow Herald, 31/5/1993)

> 'Targeted crackdowns on knife carrying, like Operation Rose, are an important part of policing in the city. Not only do they remove knives from our streets but they send out a message to wider society that this will not be tolerated. Police are working hard to reclaim the streets and make them safer for the law abiding majority in Glasgow. The stop and search initiatives, which may inconvenience some people, are however worth it if, like on Friday, even one knife which could be used to kill, is confiscated.'
> (Glasgow Evening Times, 26/4/2010)

> 'The fact the police are stopping and searching almost 70 people a day across Lothian and Borders is reassuring for the law-abiding majority.'
> (Edinburgh Evening News, 6/4/2011)

To extrapolate from Rawls, the difficulty is that social justice is compromised when the utility principle is applied at the aggregate societal level: for example, when a certain *sector* of the population is targeted to achieve a deterrent effect. Thus it may seem reasonable that a 'person quite properly acts, at least when others are not affected, to achieve his own greater good' at the *individual* level. However, when the utility principle is extended to the group or society, it follows that 'there is no reason in principle why the greater gains of some should not compensate for the lesser losses of others; or more importantly, why the violation of the liberty of a few might not be made right by the greater good shared by many' (Rawls, 1999; 23). In other words, despite its pragmatic appeal, the utility principle runs counter to the basic principle of equality before the law (Neyroud and Beckley, 2001; 44).

The salient question therefore, is whether greater value should be placed on aggregate social welfare, as expressed by utilitarianism; or on social justice and liberty. In the context of stop and search, the question runs thus: it is preferable to take an intensive approach, with the aim of deterring people for the greater good; or should searches be proportionate to the probability of offending? Rawls' *A Theory of Justice* (1999) (hereafter TJ) defence of social justice (termed 'justice as fairness') over utilitarianism, provides a useful conceptual framework with which to address this question. The core Rawlsian argument is overviewed next.

8.3.2 Rawls' Theory of Justice

Rawls' *Theory of Justice* engages with the major political and social institutions in liberal society whose actions carry important consequences for people's lives (TJ 47), and are obliged to act fairly. The analysis proceeds from the proposition that 'justice is the first virtue of social institutions', and sets out to formulate the fundamental principles of justice: to 'provide a way of assigning rights and duties in the basic institutions in society' and to 'define the appropriate distribution of the benefits and the burdens'.

Rawls theorizes a set of principles that would be deemed fair if people were unaware of their own status (*the veil of ignorance*), for example, if they were unaware of their age, gender, wealth, and their place in time and space (*the original position*) and thus unable to choose principles to their own advantage. From the original position, Rawls proposes two rational principles. First, the equality principle: that each person has the same indefeasible claim to equal basic liberties. Second, the difference principle: that social and economic inequalities are to be of greatest benefit to the least-advantaged members of society. In other words, Rawls argues without knowledge of their own social status, people would logically choose a system of justice that protects the disadvantaged. These rights, as conferred by equal citizenship, would not be 'subject to political bargaining or the calculus of social interests' (ibid; 4). Rather, from the original position, Rawls proposes that justice as fairness would be chosen over aggregate social welfare because people would not allow the advantages enjoyed by the majority to trump the disadvantages endured by a minority:

> 'it hardly seems likely that persons who view themselves as equals, entitled to press their claims on one another, would agree to a principle which may require lesser life prospects for some simply for the sake of a greater sum of advantages taken by others.' (TJ, 13).

In *Democratic Policing in a Changing World*, Peter Manning (2010) applies Rawlsian theory to policing, placing distributive justice and equality at the core of his argument. In keeping with Rawls, Manning proposes that policing 'should strive to minimize harm' and that 'any action, planned, stated, or enacted, should not

increase inequalities' (ibid; 65). More pragmatically, Manning asserts that policing should be 'equal in its application of coercion to populations defined spatially and temporally' (ibid; 66). Following the principle that policies should favour the least-advantaged members of society, Manning argues that policing should be 'largely reactive', that is according to need, whilst the use of police sanctions, 'even informal ones' should be neither systematically, nor proactively, directed towards certain populations or areas (ibid.).

How does a Rawlsian reading of stop and search fit with police practice in Scotland? Applying the argument to stop and search, it follows that search activity should likewise be reactive and based on robust suspicion. Stop searches should not be proactive, 'voluntary', excessively directed at certain sectors of the population, nor deployed as a 'crackdown'. If stop searches *are* systematically and proactively targeted at certain populations, the principle of equal citizenship and equality before the law cannot be sustained.

As such, it seems clear that proactive stop and search, and the unequal targeting of searches shown in chapter five, represents a lack of commitment to fair and equal procedure. It can also be argued that this inequity has been defended by a 'common sense' appeal to utilitarian logic which dismisses the 'inconvenience' experienced by a minority. Note also that utilitarian rhetoric tends to be articulated by those for whom the probability of being stopped and searched seems remote: by those least likely to be making sacrifices for the common good.

> "*The Under-Secretary has often said that it would be wrong, and infringe the individual's rights and freedom if he were to be stopped and searched. But if one is innocent I do not think that one would have any objection to being spoken to by a policeman, so long as it was not done in the full glare of publicity*."
> (Munro, Con. HC debate 5/4/68 vol. 762 c. 837)

> "*Who will complain if, instead of being arrested and taken to a police station where he will undergo slow, humiliating and inconvenient activities that follow from, for example, contacting parents, he is searched peripherally in the street, and then allowed to go on his way if he is not in possession of illegal articles? What has the ordinary, law-abiding person to fear from that*?" (Lawrence, Con. HC debate 15/5/1984 vol. 60 c. 205)

Yet the power dynamics of the proactive turn make it clear that people who are most likely to be stopped and searched by the police are not arbitrary citizens, rather searches fall disproportionately on teenage boys, most likely from disadvantaged backgrounds (Young and Mooney, 1999; Anderson *et al.* 1994, McAra and McVie, 2005; 28). And the corollary of these observations, is that proactive stop and search runs counter to the Rawlsian model of social justice: and is irreconcilable with a commitment to equal service and the principle of equal citizenship.

8.3.3 The utilitarian case against utilitarianism

Taking a different tack, it can be argued that the utilitarian defence fails to take into account the unanticipated consequences of proactive stop and search. Two arguments can be forwarded here, one in relation to police legitimacy and public support, the other economic.

First, it can be argued that the perceived benefits of proactive stop and search in terms of crime control fails to consider the impact on public support for, and trust in the police. An extensive body of research on procedural justice shows that people are more likely to support the police and comply with the law when policing is perceived to be legitimate. And crucially, that police legitimacy is more likely to be influenced by people's perceptions of police fairness, rather than results or outcomes (Tyler, 2006; Tyler and Fagan, 2006). For example, people are more likely to cooperate with, assist, or ask the police for help if they feel that that the police act in an even-handed and neutral manner (Sunshine and Tyler, 2003; Tyler 2005a; Tyler 2005b; Tyler and Huo, 2002; Hinds, 2007; Bradford and Jackson, 2010; Hough *et al*, 2010, Clayman and Skinns, 2012).

Whilst the quality of stop and search encounters is beyond the scope of this project, the distribution of searches carries important implications for police legitimacy. In particular, it seems reasonable to suggest that young people in some parts of Scotland may feel that they are unfairly targeted. As Risse and Zeckhauker observe, the resentment that arises from police targeting, 'depends not at all on why one is targeted, or on how society regards one's salient characteristics. All that matters is that one is not treated as an individual' (2004; 145).

The cost of proactive stop and search may also be expressed in economic terms: in terms of the resources deployed in searching people, which might be employed more constructively elsewhere. For example, an unpublished legacy Strathclyde Police Authority report estimated that '[s]ince 2004/05, stop and search activity has cost the force in the region of £39 million in real terms with negative searches accounting for approximately £35 million of this' (2012, 4; 2.2.1). More recently, using the same methodology , it has been estimated that stop and search in the first year of the single service alone cost over £14 million, and that negative searches accounted for over £10 million of this total[29] (Sunday Herald, 31/10/2014).

In sum, by extending the 'maximum good principle' beyond simple crime control, and the (unsubstantiated) relationship between search rates and recorded offending, it can be argued that the social and economic costs of proactive stop and search may outweigh its (hypothetical) benefits. In other words, that the utilitarian defence is likely to fail *in its own terms*.

[29] Calculation based on a fifteen minute search (including recording), undertaken by two officers.

8.4 Summary

This chapter has argued that the case for stop and search based on deterrence and utilitarian reasoning is weakened in the first instance by the intractable dilemma of proof. Put simply, there appears to be no robust evidence to substantiate a causal relationship between search activity and offending behaviour. Nonetheless, it was acknowledged that this observation did not rule out the possibility that a deterrence effect might exist. This impasse led to the hypothetical question: *if* a deterrent effect did exist, would this justify a proactive approach to stop and search? Drawing on Rawls' *A Theory of Justice* (1999) and the logic of the *original position*, it was argued that the utilitarian underpinning of deterrence was irreconcilable with the principle of equal citizenship and equality before the law. In effect, deterrent based stop and search resulted in certain populations being policed disproportionately, on a tenuous basis of 'greater good'. It was also argued that the assumed benefits of proactive stop and search failed to take into account the social costs, the risk to police-community relationships and police legitimacy; and the economic costs, that is, police resources which might be deployed more constructively elsewhere.

Nonetheless, it is not easy to challenge 'accepted doctrines' (Fahy, cited in Hales, 2014) and it is clear that deterrence rationales have persisted within Scottish policing: making it difficult to step back and consider whether stop and search might be viewed differently. For example, through a lens which reasserts the duty of the state in terms of procedural protection and social fairness. Part of this difficulty lies in the inference of a zero-sum game: the risk that if stop and search is not carried out on a large scale, offending and victimization will rise.

> "*One of the things I've noticed as a professional police officer, people are quite difficult to convince about the need to do anything. [They say] "Let's not stop search people for knives". Well that's a really nice liberal position to be in. But I can guarantee there's going to be deaths. I could put my hand on my heart. The [stop and search] stats – that'll go down to zero. And murders, serious assaults, maiming – everything will go way up*."
> (Assistant Chief Constable 1)

Yet under the direction of the Equality and Human Rights Commission, several forces in England and Wales have actively reduced both the overall and disproportionate use of stop and search, without prejudicing recorded crime levels (2013; 7). As a result, the Commission concluded that 'the overall usage of stop and search may be greatly reduced (for example halved) without slowing the general downward direction in recorded crime' (2013; 39). Likewise, rates of stop and frisk in New York City have fallen significantly, with no corresponding increase in violent crime.

> '"No question about it, violent crime will go up," Police Commissioner Raymond W. Kelly said in August 2013. But in fact, violent crime is down across the city in 2014.'
> (New York Times, 19/8/2014)

With these sanguine observations in mind, the final chapter will engage with alternative ways of looking at stop and search, outwith the lens of a zero-sum game. That is, with a more judicious and proportionate way of policing.

Chapter nine. Conclusion

> "*The biggest flaw is using the language 'stop and search' which came from the Metropolitan Police and has negative connotations. Different language would be better, for example, 'proactive searching'*"
> (Senior Officer, cited in Blake Stevenson review, 2014; 27)

The final chapter will draw the study together, and update the analysis to reflect events following police reform in April 2014. The chapter is structured in four main parts. Part 9.1 summarizes the core argument and shows how the five research aims were addressed. Part 9.2 provides an overview of events pertaining to stop and search in the first year of the single service. The narrative describes the expansion of proactive stop and search in the post-reform period, and how key findings from this project impacted on the policing direction. Thereafter, part 9.3 sets out a series of policy recommendations as to how stop search might be used more fairly in Scotland. In keeping with the Rawlsian approach thus far, these engage variously with the aims and effectiveness of stop and search, proportionality, police legitimacy and accountability. Part 9.4 comments on the wider policy implications of the project, and identifies two areas for future research. Finally, the thesis closes with a short personal commentary on the task of researching controversial subjects.

9.1 Revisisting the research aims

The overarching aim of the thesis was to explain the scale of stop and search and the attendant lack of political interest, and to draw out the implications, both for Scottish policing and the public. This was broken down into five, more manageable, smaller aims, which were addressed using different research methods (quantitative, qualitative, semi-ethnographic, archival), a wide range of data sources (stop and search statistics, interview data, historical records, media reports, policy literature) and different research perspectives (historical, empirical, normative). By dint of this complex methodological approach, the analysis sought to provide original insights into the development of stop and search in Scotland.

Taking a top-down theoretical perspective, the thesis investigated the complex role played by political and policing elites, and the ways in which political outlooks, legal rules and policies influenced police practice on the streets. This approach was chosen as a result of preliminary analysis of police force data accessed at the outset of the project which showed that stop and search practices varied significantly between the legacy forces, across a range of variables. Given the systematic nature of these variations, it seemed unlikely that either situational factors or factors pertaining to 'cop cultures' could wholly account for differences between the legacy forces. Rather the data suggested that more enduring and structural factors were at play.

The main hypothesis presented in the thesis was that of the 'proactive turn'. The hypothesis proposed that the post-war construct of stop and search as a *reactive* mechanism premised on investigation and detection (Miller *et al.* 2000; 13), and to a lesser extent, general deterrence (ibid; Hart, 1968), was partly displaced by a proactive model, premised on intensive policing and the logic of deterrence. It was argued that this shift in thinking had partly attenuated the link between policing and suspicious behaviour, thereby weighing the balance of power between state and citizen in favour of the state.

The argument was initially constructed with reference to the ambiguous and politically seductive nature of crime prevention more broadly. Applying these observations to stop and search, it was demonstrated first, that a lack of clarity as to the purpose and mechanics of stop and search had allowed the tactic to be pulled in different directions and used in different ways. Second, it was shown how preventative powers were constructed as a legitimate social good: from the introduction of preventative powers of arrest in the 1950s, through to the intensive use of stop and search in legacy Strathclyde, from the 1990s onwards.

Taking a broad historical sweep, the analysis highlighted the contingent, and at times, unanticipated consequences of elite decision-making, and how decisions taken (and not taken) in one era, reverberated in the decades that followed. Whilst the core argument of the 'proactive turn' is specific to events and processes within a particular jurisdiction and historical time-frame, it is nonetheless hoped that the thesis can provide broader insights into stop and search which might be usefully applied to other jurisdictions, for example, to the marked variation in the use of stop and search powers between forces in England and Wales, and the use of police search powers on children (recently highlighted by an All Parliamentary inquiry [APPG, 2014]). A more detailed summary of the five research aims and how these were addressed is presented next.

Research aim 1: to provide an explanatory account of the development of stop and search in Scotland.

The first research aim was addressed in part one which investigated different interpretations of the preventative police role. Drawing on documentary sources, chapter one showed how preventative *powers* were normalized or standardized in the post-war period, signalled first, by the introduction of pre-emptive powers of arrest, and thereafter, by the enactment of stop and search powers for drugs and firearms.

Looking to Scotland, the analysis demonstrated that Scottish policing followed a less politicized and socially visible path from the late sixties onwards, which acted as a barrier against some of the more volatile policing developments evidenced in England (Reiner, 2010; 78). Nonetheless, this quieter habitus did not preclude the assertion of crime control values in Scotland, which were respectively reinforced by the Law Commission, the prosecution leaning Thomson Committee on Criminal Justice (Baldwin and Kinsey, 1982; McBarnet, 1983), and the 1979 Conservative administration. The enactment of search powers for offensive weapons under the Criminal Justice (Scotland) 1980 Act provided an important link to the Strathclyde stop and search campaigns a decade later, effectively providing the necessary legislative foothold – although in practice, the campaigns appeared to proceed on a mostly non-statutory basis.

It was argued that the Strathclyde campaigns represented an important transition in preventative thinking. Against a backdrop of intensive search activity and low detection rates, stop and search was remodelled as a deterrent, whereby *non-detection* was understood as a positive outcome. Proceeding from the premise that both finding and not finding unlawful items represented positive outcomes, stop and search was portrayed as a policing panacea, a bread and butter tactic that could be legitimated irrespective of the outcome: and a tactic that would be appropriated to an extraordinary degree in the following decade.

Whilst stop and search was reluctantly pushed onto the policing agenda in 1999 via the Stephen Lawrence Inquiry in Scotland, the attendant debate appeared to be subdued and the issue was effectively jettisoned, following the putative

conclusion that stop and search was unproblematic in a 'race' context. By dint of this political inertia, the analysis showed how the existing accountability deficit was reinforced. In particular, a failure to publish stop and search data would preclude stop and search from the political agenda thereafter. Taking an overview of events from the late 1960s onwards, the analysis identified the quieter and more stable habitus of Scottish policing as a key explanatory factor: a means of enabling significant changes in policy direction to take place, with minimal scrutiny or oversight.

Reasearch aim 2: to explain the contemporary distribution of stop and search in Scotland between 2005 and 2010.

The second research aim was addressed in part two. Building on the precedent set by the early legacy Strathclyde campaigns, it was argued that the scale and distribution of stop and search could be explained by reactive and proactive policing approaches, premised on detection and deterrence respectively. Using statistical methods, the argument was tested through a set of hypotheses, which proposed that the use of stop and search in the legacy Central Belt forces was systematically structured towards non-detection (or deterrence), whilst search activity in the non-Central Belt was structured towards detection. It was shown that the higher proportional use of non-statutory stop and search in the Central Belt was inconsistent with detection aims. This key finding was supported with interview data which indicated that officers were more likely to use the tactic when the probability of detection was perceived to be low, in part, due to the risk of legal challenge.

Taking a broad overview, the analysis concluded that the proactive approach signalled an important shift from the older Strathclyde campaigns: a shift which saw stop and search deployed intensively, *as a matter of routine*. In more theoretical terms, it was argued that the distribution of stop searches on the streets evidenced the articulation of elite power, both directly, that is, higher up the policing ranks' and indirectly, by dint of political and policing decision-making in the preceding decades.

Building on these observations, the next two research aims sought to investigate further factors which had facilitated the proactive policing direction.

Research aim 3: to show how the regulation of stop and search facilitated different policing approaches.

The third research aim addressed the relationship between the proactive turn and the regulatory framework, and sought to identify restraints (and the lack thereof) on police discretion. The analysis demonstrated how the proactive approach was facilitated by an opaque and flexible regulatory framework which made it difficult to pinpoint what constituted a stop and search, or what 'counted'. It was also argued that although there is no *general* stop and search power in Scotland, such is the breadth of the policing remit that the police *do* have general stop and search powers, albeit composed from constituent parts.

The analysis of recording practices concluded that accountability for stop and search was weaker higher up the organizational scale, and that force level accountability was effectively absent, given the lack of open access data. It was also shown that the appropriation of non-statutory stop and search as an unregulated policing tool, that is, without procedural safeguards, legal authority or the backing of parliamentary process, provided a 'permissive discretionary environment' (Quinton, 2011; 360) which allowed officers to pursue a proactive style of policing.

Importantly, the analysis did not propose a straightforward relationship between rules and police practice. Rather, taking into the account systematic differences between the legacy forces, it was argued that police practice was contingent on the mitigating effects of organizational priorities and cultures (Dixon, 1997; 22, Grimshaw and Jefferson, 1987). In this respect, rules and regulations were understood as a 'raw and adaptable material to work *with*' (McBarnet, 1992; 248), rather than a straightforward determinant of police practice. This conclusion underpinned the next aim, which sought to unpack the ways in which the respective legacy forces took advantage of the regulatory framework.

Research aim 4: to show how police force policies and party politics have influenced the use of stop and search

The fourth research aim addressed the policies and politics that underpinned the proactive turn. Drawing on interview data and policy literature, the analysis showed how performance management techniques such as numerical targets and KPIs shaped the direction of stop and search, demonstrably within legacy Strathclyde, to some extent within legacy Lothian and Borders, and to a lesser extent within legacy Tayside. Importantly, the analysis highlighted the awkward juxtaposition of proactive policies and reactive policing methods in legacy Tayside, and how this placed officers in a difficult position in relation to the 'lawfulness' of proactive stop and search.

It was also argued that the centralizing direction of Scottish policing, signalled in part by the proximity of police Executives and politicians in the post-devolution period, had provided a supportive environment in which to extend the proactive approach. In more abstract terms, the analysis concluded that the absence of a *politicized* policing narrative had effectively shored up the proactive turn, which remained unchallenged by opposition political parties, police authorities or civil liberty organizations.

Reasearch aims 5: to unpack the normative implications of proactive stop and search.

The final aim sought to assess the proactive approach from a normative position. Applying Packer's model of crime control values to the shift from reactive to proactive stop and search, it was argued that the proactive turn represented the remodelling of state responsibilities apropos the balance between crime control and civil liberties. Borrowing from Günther (2013), it was argued that the proactive approach has remodelled the duty of the state to *limit* its coercive power by the provision of procedural protection (the post-war model), as a duty to protect the innocent law-abiding majority: thereby weighting the balance between crime control and individual freedom in favour of the state.

Proceeding from this observation, chapter eight used Rawlsian social justice theory (1999) to assess the fairness of proactive stop and search. It was argued that the proactive approach embodied utilitarian ideals which required a discrete minority to relinquish their rights in the name of a greater good, and failed to take account of the social (and economic) costs. In other words, proactive stop and search was understood to be incompatible with the ideals of social justice and equal citizenship.

Looking beyond the period of the fieldwork to the post-reform period, the proactive direction intensified under the single service. The next part of the chapter overviews events in relation to stop and search in the first year of the single force, through to August 2014. And in a reversal of the events documented thus far, the account shows how the *politicization* of Scottish policing cast a critical spotlight on policy and practices which had passed unnoticed for over two decades.

9.2 Stop and search in the post-reform era

> "I, do solemnly, sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, and that I will uphold fundamental human rights and accord equal respect to all people, according to law." (Police and Fire Reform (Scotland) Act 2012: Section 10)

On 1st April 2013, the eight legacy forces were merged into The Police Service of Scotland, and rebranded as 'Police Scotland'. Police reform appeared to consolidate the centralizing direction evidenced thus far, concentrating power for policing 'in the hands of the Chief Constable, Government Ministers and the Scottish Police Authority' (Fyfe, 2014; 10). Under the new tripartite arrangements, the proximity of the key actors was reinforced by a narrow recruitment process, in which the Chair and Board of the Authority were appointed by Government Ministers, whilst the Chief Constable was appointed by the Authority, with the approval of Government Ministers. In practice however, the evolving balance of power seemed to coalesce around the Chief Constable and Scottish Ministers, exacerbated in part by a seemingly weak Authority[30] and Parliament[31]. In particular, the Chief Constable emerged as an exceptionally powerful actor, whose policies appeared to be unvaryingly supported by the Cabinet Secretary for Justice.

[30] The Authority was arguably weakened in the first instance by a lengthy dispute with the Chief Constable in relation to the control of resources (Audit Scotland, 2013), and subsequently excluded from the decision to routinely arm a small number of officers.

[31] The Scottish Parliament is unicameral, with checks and balances provided by cross-party committees. In 2011, the Scottish National Party gained a 45% share of the vote, affording the Party a majority on all fourteen committees. This distribution sits uneasily with the principle that the effectiveness of committees is inverse to the concentration of party power (Campbell and Davidson, 1998; Arter, 2004; 39), and there has been disquiet about a lack of critical voice within the Parliament (Arter, 2002; Cairney, 2011).

9.2.1 Stop and search post-reform

Despite the commitment to equity and human rights set out in the new Reform Act (op cit.), early reports suggested that Police Scotland would look to roll-out a high-volume approach to stop and search on a national basis.

> **Chief Constable to outline approach to tackle violence**
>
> People who carry knives and put the safety of the public at risk are to be proactively targeted in a Scotland-wide effort to reduce violence, Chief Constable Steve House will announce tomorrow (Tues 23 April). Mr House will say he wants police officers to ensure the use of Stop and Search powers are used more effectively as a tactic to disrupt and deter those who use weapons…' (Police Scotland statement, 22/4/2014[32])

> '**Scotland's chief constable pledges to crackdown on gangs**
>
> **Stephen House has said children need to be shown that violence is not acceptable.**
>
> Scotland's first national chief constable yesterday pledged to roll out a stop-and-search crackdown to prevent gangs of thugs terrorising the streets. Stephen House said the results of the strategy, which saw half a million youths approached in the Strathclyde area last year, far outweighed any human rights concerns.'
>
> (Daily Record, 13/10/12)

This 'one size fits all' approach, colloquially known as 'Strathclydification', was accompanied by the tightening of centralized controls. In contrast to the loosely framed SPPF, an exacting national performance management regime set out ninety numerical targets and KPIs. Stop and search was set as a KPI (based on the number of searches), and a target was introduced for the proportion of positive searches, set at 15% (Police Scotland, 2013b; 9). A further KPI was set in relation to the number of offensive weapon detections, alongside numerical targets for robberies, serious

[32] Online: http://www.scotland.police.uk/whats-happening/news/2013/april/163403/ [accessed 29/7/2014]

and petty assaults, complaints regarding disorder and various motoring offences. Whilst the Police Scotland Executive reiterated that targets were not set for individual officers, press reports based on leaked emails and complaints to journalists suggested that that demands from the centre to increase the number of searches were converted into numerical targets, as the request filtered down the ranks (The Herald 21/8/2013, 18/11/2013, 1/1/2014)

Stop and search data from the first year of the single service are shown in **table 9.1**. The new policing divisions are organized to reflect the original geographical distribution of proactive and reactive legacy forces identified in the thesis.

Table 9.1 Stop and search in Scotland, by division (2013/14)

		No. of stop searches	% change from 2012/13	Stop searches per 1,000 population
Non-Central Belt	Aberdeen City	8,928	+39	39
	Aberdeenshire and Moray	3,575	+33	10
	Tayside	22,963	+131	56
	Highlands and Islands	5,533	-6	18
	Forth Valley	9,124	+23	30
	Dumfries and Galloway	3,107	+19,319	21
Central Belt	Edinburgh	29,152	+39	60
	Lothian and Scottish Borders	15,717	+8	33
	Fife	9,967	+473	27
	Greater Glasgow	247,065	-25	311
	Ayrshire	98,846	+5	266
	Lanarkshire	99,415	+3	152
	Argyll and W. Dumbartonshire	26,248	-19	182
	Renfrewshire and Inverclyde	61,059	-2	240
		640,699	-6.2	121

Source: Police Scotland, 2014a, 2014b

Table 9.1 shows that in the first year of the single service, compared to the previous year, the use of stop and search increased in all non-Central Belt divisions, with the exception of the Highlands and Islands. Aside from the huge percentage increase in Dumfries and Galloway (which partly reflects limited recording practices pre-reform), the largest increase was in Tayside. Per capita search rates were also comparatively high in the non-Central Belt divisions. In Tayside, the per capita rate (56 searches per 1000 people) was higher than that in the Metropolitan police in 2012/13[33] (44 searches per 1000 people). Per capita search rates in five out of the six Divisions also exceeded that recorded in Greater Manchester: 13 searches per 1000 people. In other words, search rates in smaller or less urbanized areas of Scotland outstripped those in some of the largest urban conurbations in the UK, in the nearest comparable time-period.

Within the Central Belt, search rates fell within Greater Glasgow, Argyll and West Dumbartonshire, and Renfrew and Inverclyde, compared to the previous year. The 25% decrease in Greater Glasgow (from 327,280 searches in 2012/13, to 247,065 in 2013/14) underpinned the 6.2% fall in searches at the national level. Nonetheless, the respective search rates per capita remained exceptionally high, far outstripping any other region within the UK in the nearest comparable time-period. The data also show an increase from 2010 at the national level: from 88 searches per 1,000 people in 2010 (**table 5.11**); to 121 searches per 1000 people in 2013/14.

Taking an overview, the data suggest the expansion of proactive stop and search in the non-Central Belt Divisions, the consolidation of proactive tactics in the east Central Belt Divisions (Fife, Edinburgh, Lothian and Scottish Borders), and the retention of proactive tactics in the ex-Strathclyde Divisions (Greater Glasgow,

[33] The nearest comparable time period at the time of writing. The comparison of search rates is based on *all* stop searches in the respective jurisdictions.
Source: Home Office, Police Powers and Procedures 2012/13.

Ayrshire, Lanarkshire, Argyll and West Dumbartonshire, Renfrewshire and Inverclyde). The ex-legacy Strathclyde Divisions also continued to dominate the overall distribution, accounting for 83% of stop searches, which is almost the same proportion as in 2010 (84%).

Within the first year of the single service, concerns around stop and search coincided with wider concerns around centralization, a lack of local input and accountability, enforcement-based policing methods, and a rigid style of performance management, resulting in a deeply politicized policing landscape. For example, press reports highlighted apparent power struggles between Executive actors, a seemingly 'tackety-boots' approach towards the sex-industry in localities previously policed with discretion (Donnelly, 2014 [online]), and the use of armed police on routine duties (e.g. Telegraph, 5/8/2014; Herald, 14/8/2014; Daily Record, 31/8/2104; Sunday Post, 28/9/2014). Stop and search was understood as indicative of the broader policing direction, and provided 'a focus for wider questions about how far the work of police officers is defined by performance targets rather than their own discretion; and the extent to which there is a national style of policing emerging which may not be appropriate to all of Scotland's varied communities' (Donnelly, ibid.).

Against this politicized background, the next two sections examine events that preceded and followed publication of key findings from this project in January 2014, and the wider research impact. Whilst the account is first-hand, it is not a personal commentary. Rather, in keeping with the top-down thrust of the thesis, the objective is to show how the stop and search agenda was pulled in different directions, as key actors sought to define the terms of the debate.

9.2.2 Research impact

Between November 2012 and December 2013, key findings from the PhD project were shared with a range of policing bodies and stakeholders, including legacy Strathclyde, the Scottish Government and Police Scotland. Given the politically sensitive nature of the project, one of the main objectives was to provide stakeholders with sufficient time to engage with the findings, and to advise that the key findings would be published at some stage.

The Scottish Police Authority

In summer 2013, the Scottish Police Authority began to engage with the research findings. Board members questioned the Chief Constable at a public meeting in June 2013[34], referring to a short 375 word summary of the PhD project published in the Scottish Institute of Policing Research 2012 Annual Report (see **appendix 10**). In response, the Chief Constable 'stated that he had read the independent report and had acknowledged the feedback and recommendations made within the report but advised that he did not share all of its' findings and conclusions' (Scottish Police Authority, 2013a; 6).

At the request of the Authority, Police Scotland Executives presented a 'deep-dive' paper on stop and search (Police Scotland, 2013b) at the next public Board meeting[35]. This was met variously with approval by some members and reservations by others. In particular, concerns were raised in relation to non-statutory stop and search, which Police Scotland Executives struggled to reconcile with the principle of intelligence-led policing, stating at one point, that the tactic was in fact based on reasonable grounds. In response to the concerns raised in the meeting, it

[34] Public Board Meeting 26/6/2013 (meeting ref. SPABM-260613)

[35] Public Board Meeting 21/8/2014 (meeting ref. SPABM-210813). On request, I provided advance comments on the Police Scotland paper to the SPA.

was confirmed that the Authority would appoint a Working Group to undertake a detailed scrutiny enquiry on stop and search. Shortly thereafter, an ambitious programme of work to be undertaken over a seven month period was proposed, as summarized below.

Scottish Police Authority Scrutiny Review: proposed remit

a) The extent and scale of the use of stop and search, including estimated costs.
b) The recording of stop and search activity and data.
c) The legality of stop and search, in particular non-statutory searches.
d) The effectiveness of stop and search in detecting prohibited items and reducing crime and anti-social behaviour.
e) The impact of stop and search on levels of trust, confidence and satisfaction in Police Scotland and whether a public mandate exists for the current policy.
f) The proportionality of stop and search, particular relating to young people.
g) The understanding of stop and search powers among members of the public, and in particular young people.

(Scottish Police Authority, October 2013)

Publishing the PhD findings

On 17 January 2014, key findings from the PhD project were published by the Scottish Centre for Crime and Justice Research (Murray, 2014, hereafter 'SCCJR report'). Prior to publication, embargoed copies of the SCCJR report were provided to selected stakeholders, including Police Scotland, the Scottish Government, HMICS, the Scottish Police Authority, the Scottish Human Rights Commission and the Children's Commissioner. However, neither Police Scotland nor the Scottish Government appeared to engage constructively with the findings. Rather, on 15 January, two days prior to publication[36], a Police Scotland press conference was held, headed by the Justice Secretary, to announce new stop and search figures and to promote the benefits of the tactic. The Media Call is reproduced below.

[36] Publication of the SCCJR report was originally scheduled for 15 January. However, this was delayed by two days at the request of the Scottish Government. A copy of the original dated press release is shown in **appendix 12**.

Police Scotland: stop and search media call

Wednesday 15th January
Fife Divisional HQ, Detriot Road Glenrothes

Members of the media are invited to send a reporter/photographer/film crew to the Fife Divisional Headquarter in Detroit Road, Glenrothes for a Police Scotland media call.

Assistant Chief Constable Wayne Mawson, Chief Superintendent Gary McEwen and Justice Secretary Kenny MacAskill will all be available for interview to discuss the Police Scotland stop and search figures, which are released on Wednesday 15th January.

In addition, xxx xxx [cited in original], the mother of a man, who was murdered in Lochgelly, will also speak with media along with Cllr Kenny Selbie, Chair of Fife's Safer Communities Committee.

A visual display of the various items seized under stop and search will be available to film/photograph and a group of local youths who support stop and search activity in their area will also be in attendance and are happy to provide media interviews.

Event Itinerary

1. Assistant Chief Constable Wayne Mawson welcomes media and provides overview of Police Scotland Performance re stop and search
2. Justice Minister Kenny MacAskill addresses media re stop and search
3. Chief Supt Garry McEwan discusses stop and search use and successes in Fife
4. Inspector Paxton (Community Inspector for Glenrothes) – Case study of the Glenwood Centre initiative and the stark reduction in violence in that area as a consequence of proactive stop and searches and community engagement
5. Wife of man murdered in Lochgelly gives her view of knife crime and the benefits of stop and search
6. Chair of Safer Communities Committee discusses stop and search as a tactic and the importance of the scrutiny function on behalf of Fife Communities
7. Interview and filming opportunities with all speakers

Viewed against the newly politicized backdrop of Scottish policing, the timing of the press call might reasonably be interpreted as a bid by Police Scotland and the Scottish Government to manage critical opinion: to reinforce the previously doxic outlook, which understood the tactic as an unproblematic tactic, and to define the policing agenda ahead of the SCCJR report. The timing was also commented upon in the media and by MSPs.

> 'Police Scotland knew a critical report on the tactic was imminent; they opted to pre-empt it. Justice Secretary Kenny MacAskill joined the single service at an event in Fife to welcome new national stop and search figures two days before the report, published by University of Edinburgh academic Kath Murray, entered the public domain. Given Murray's PhD project was funded by the Economic and Social Research Council (ESRC) together with the Scottish Government, the release date wasn't a secret. Indeed, asked by *Holyrood* if the two occurring in the space of 72 hours was purely a coincidence, assistant chief constable Wayne Mawson struggled to keep a straight face.
>
> It is not to say that Police Scotland's point of view on the tactic, which has been subject to sustained criticism since the single force came into being, is not valid. It is simply to say that the defensive display on show last month only helped to fuel claims that it is unwilling to listen to alternative ones.'
>
> (Holyrood magazine [online] 5/2/2014)

> 'Last night Labour's justice spokesman Graeme Pearson said Police Scotland and the Justice Secretary needed to answer key questions as a result of the research findings. He also questioned the timing of a press conference on Wednesday pointing out the benefits of stop search.'
>
> (Herald, 18/1/2014)

Thereafter, two critiques of the SCCJR report were put forward by Police Scotland and the Scottish Government. First, that the comparison with England and Wales was not valid[37]. Commenting directly on the report, a member of the Police Scotland Executive highlighted the difficulty in comparing the two jurisdictions.

> '"It's apples and oranges, really… I've worked both systems so I am quite unique like that and I can tell you it's a totally different landscape down there and up here, totally different crime profiles. But the most important thing is we've got different legislation here. For example, we can quite ethically and quite legally search people for alcohol and we can do that consensually as well. It is totally different, so the figures will never match up *and it's quite dangerous, actually, to try and compare them*."'
> (Holyrood Magazine [online][38], my emphasis)

Second, it was argued that the report was based on old data, and noted that the current number of stop searches had actually fallen from the previous year. Specifically, it was stated that Police Scotland recorded 519,213 searches in the first nine months of the single service, which represented a 0.2% drop on the same period in the previous year. However, this figure represented an increase on the number of searches reported in the SCCJR report as recorded over a twelve month period in 2010 (n = 445,263). Making a simple calculation, the average number of stop searches per month had increased by 56%: from 37,105 in 2010, to 57,690 in 2013/14.

[37] A request was made by the Scottish Government to remove this comparison from the SCCJR report press release on the grounds that recording standards were likely to be higher in Scotland, and a reliable comparison could not be drawn between the two jurisdictions.

[38] Holyrood Magazine, Policing by Consent (online)
http://www.holyrood.com/2014/02/policing-by-consent/ [accessed 29/7/2014]

> ‘A Scottish Government spokeswoman said: “Proportionate stop and search is one tactic amongst many police use to cut crime, taking a preventative approach to disrupt and deter criminal behaviour, stop crime in its tracks and save dealing with the consequences later. The [SCCJR] report is historic, covering the figures from 2005-2010. According to Police Scotland, figures for this year reflect a 0.2 per cent decrease in stop and searches.
> (Daily Record, 17/1/2014)

By dint of extensive media coverage, two competing interpretations of stop and search were now in the public domain. However, the seemingly defensive response by Police Scotland and the Scottish Government suggested a reluctance to engage with research evidence that ran counter to the dominant position. For example, no independent data analysis was undertaken by the Scottish Government to ascertain the veracity of the respective arguments. Rather, Ministers appeared to remain wedded to the Police Scotland position.

> ‘Police Scotland and Scotland's justice secretary, Kenny MacAskill, robustly defended the strategy and said mass stop and search had helped produce record falls in violent crime and weapon carrying, particularly in the west of Scotland. MacAskill said “It's not rocket science, it's not happen-chance that there's a clear correlation. It's about being proactive, about preventing crime happening in the first place [and] it's reasonable and proportionate. I don't accept that it's discriminatory. It's quite clear and self-evident that crime is disproportionately perpetrated by young people.”’
> (Guardian, 17/1/2014)

> “I am comfortable with the fact that seventy per cent of stop and searches were consensual under the regulations. I am comfortable that, as Police Scotland has indicated, many of the stop and searches achieved their required result – for example, finding potentially offensive weapons and addressing other aspects of behaviour. The thing that I am most satisfied with… is the sharp reduction in offensive-weapon carrying and in crimes against the person, including knife crime and other serious crime.”
> (First Minister Alex Salmond, Scottish National Party, SP Official Report 23/1/2014, col. 26968)

The publication of the Scottish Police Authority Scrutiny Review Report on stop and search in May 2014 furthered the debate. Initially ambitious in scope, the final review was more modest, consisting of a desktop data analysis and a series of interviews with sixty officers. Drawing on the proactive/reactive model set in out in the SCCJR report[39], the report highlighted similar concerns, including disproportionately in terms of age and geography, the extensive and uneven use of non-statutory stop and search, and a lack of clarity as to the purpose of the tactic.

The Authority was critiqued in some quarters for a mild set of recommendations (see **appendix 10**), a failure to seek independent expert opinion[40], and in particular, for a failure to tackle non-statutory stop and search. Crucially however, the Authority concluded that they could find 'no robust evidence to prove a causal relationship between the level of stop and search activity and violent crime or anti-social behaviour', nor could they 'establish the extent to which use of the tactic contributes to a reduction in violence' (2014; 17). As such, the report provided an authoritative challenge to the previously taken for granted relationship between search activity and offending: thereby weakening the Police Scotland outlook, and giving weight to the findings in the SCCJR report.

[39] References to the SCCJR report were heavily cut in the final version of the Scottish Police Authority report (Sunday Herald, 20/7/2014).

[40] The original proposal sought to take evidence from a number of independent expert witnesses, including the Scottish Human Rights Commission, the Equality and Human Rights Commission, the Children's Commission, Amnesty International, and several academics. However, these witnesses were not called upon (Sunday Herald, 28/9/2014).

9.2.3 The role of the media

Following the publication of the SCCJR and Scottish Police Authority reports, the use of stop and search was subject to an unprecedented level of media attention. Press reports focused variously on the scale to which the tactic was used, searching children, disproportionality, use of targets, recording practices, the accuracy of statistics and the lawfulness (or otherwise) of non-statutory stop and search, prompting editorial calls to abolish the tactic (Sunday Herald, 6/7/2014, 1/7/2014). Press reports also highlighted an apparent lack of accountability and debate within the new governance arrangements, the apparent weakness of the Scottish Police Authority, and an overall sense of democratic deficit. Critical media interest was intensified further by the refusal of Police Scotland to release stop and search data to journalists whilst the Authority review was underway, due to the risk of 'prejudicing of public affairs'[41]. The Police Scotland response to a Freedom of Information request for stop and search data by a journalist is shown in the extract below.

[41] Access to unrestricted data was problematic prior to the Scottish Police Authority review. For example, access to stop and search data requested through the Police Scotland Freedom of Information Unit was hindered.

Response to Freedom of Information request for stop and search data

I can confirm that Police Scotland holds the information that you have requested and the exemptions that I consider to be applicable are:

Section 30(c) – Prejudice to Effective Conduct of Public Affairs

Information is exempt information if its disclosure under this Act would prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs… At this juncture, I consider it appropriate to mention that a significant review of stop search procedures is currently being undertaken by the Scottish Police Authority and a report will be published in due course. It is, however, considered that premature public disclosure of the information requested would detrimentally impact on these sensitive deliberations which have yet to reach a conclusion…

…disclosure would not only be harmful in that it would interfere with the findings of their enquiry, but it is also *likely to lead to misleading conclusions being drawn by non-expert users on the current state of police stop search activity in Scotland.*

Consequently the Force declines to disclose the information requested *as it would prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs*'
(My emphases, reproduced with permission)

Media headlines in relation to stop and search between January and August 2014 are set out below, and provide a striking insight into the strength and tenor of the media coverage, and the attendant challenge to the Police Scotland outlook.

Stop and search in the media: 17 January 2014, to 31 August 2014

January

'Stop and search in Scotland: record figures need open debate' (Guardian, 17/1/2014)
'Police stop and search rates in Scotland four times higher than in England' (Guardian 17/1/2014)
'Warning police stop-searches could lead to public disorder' (Herald, 17/1/2014)
'Dangers in rise of stop-and-search' (Herald, 17/1/2014)
'Scottish police stop and search numbers double' (Scotsman, 17/1/2014)
'Stop and searches 'four times more common in Scotland'' (BBC, 17/1/2014)
'Scots 'four times more likely' to be stopped and searched by the police' (STV, 17/1/2014)
'Stop & search: Scots six times more likely to be stopped under controversial tactic than people south of the border, report reveals' (Daily Record, 17/1/2014)
'Concerns over search levels' (Evening News, 17/1/2014)
'Police questioned on search tactics' (Herald, 18/1/2014)
'Stop and search has doubled in Scotland' (Times, 18/1/2014)
'Scots stopped and searched six times more than English' (Daily Express, 18/1/2014)
'Stop and search four times more likely for Scots' (Scottish Daily Mail, 18/1/2014)
'Frisks a risk' (Scottish Sun, 18/1/2014)
'Cops stop 6 times more Scots' (Daily Star of Scotland, 18/1/2014)
'Scots 'six times more likely' to be stopped and searched by the police' (Scotsman, 18/1/2014)
'Answers needed on police searches' (Scotsman, 18/1/2014)
'Scots four times more likely to be frisked by police' (Daily Record, 18/1/2014)
'Stop and search review' (Evening News, 18/1/2014)
'Stop and search helps cut violent crime in Dundee' (Courier, 21/1/2014)
'Agenda: Stop and search on scale we have seen risks alienating young people' (Herald, 21/1/2014)
'Agenda: Stop and search an important tool in police efforts to keep people safe' (Herald, 22/1/2014)
'Top Dundee police officer defends stop and search' (Courier, 22/1/2014)
'Warning on police search tactics' (Herald, 24/1/2014)
'Stop and search 'risks alienating generation'' (Scotsman, 24/1/2014)
'Murdered Lochgelly man's mum backs police 'stop and search'' (Central Fife Times, 24/1/2014)
'Fears over 'disproportionate' use of child stop and search powers' (STV, 31/1/2014)
'Child stop and search condemned' (Herald, 31/1/2014)
'Child stop and search condemned' (Courier, 31/1/2014)

February

‘Calls for review over ‘disproportionate’ searches of children’ (Evening News, 1/2/2014)

‘Police frisking hundreds of children ‘to meet targets’’ (1/2/2014, Scotsman)

‘Concern over police searches of children’ (1/2/2014, Herald)

‘Policing by consent: Stop and search – and the numbers that lies behind it – attracts controversy’ (Holyrood Magazine, 5/2/2014)

‘Talking point: stop the search’ (Holyrood Magazine [online only], 5/2/2014)

‘Some stop and search incidents ‘made-up’’ (Sunday Herald, 23/2/2014)

March

‘Street cops under pressure over stop and search’ (Sunday Herald, 9/3/2014)

‘John Finnie MSP raises concerns over alleged Police Scotland stop and search targets’ Strathspey and Badenoch Herald, 21/3/2014)

‘Police chief admits to fake stop and search figures’ (Sunday Herald, 23/3/2014)

‘Stop and search powers 'must end'’ (The Courier, 23/3/2014)

‘Some police figures ‘made up’’ (Sunday Post, 23/3/2014)

‘Young people want to be stopped and searched, says Police Chief’ (STV 23/3/2014)

‘Sir Stephen: doubts over stop-searches’ (Herald 24/3/2014)

‘Some police stop-and-search figures ‘made up’’ (Scotsman, 24/3/2014)

‘Labour slam Police Scotland over fabricated figures as Daily Record reveal ONE stop and search can be recorded EIGHT times’ (Daily Record, 24/3/2014)

‘Call for Audit Scotland 'stop and search' investigation rejected’ (BBC, Democracy Live 25/3/2014)

‘MacAskill defends stop and search’ (Courier, 25/3/2014)

‘MacAskill: claims some stop and search results have been taken out of context’ (25/3/2014)

‘Rennie: stop and search powers must end’ (Herald, 29/3/2014)

‘Stop and search powers ‘must end’’ (Courier, 29/3/2014)

‘LibDem leader calls for end to stop and search abuse’ (Sunday Herald, 30/3/2014)

‘Police prevent scrutiny of disputed stop and search data’ (Sunday Herald, 30/3/2014)

‘Rennie wants new rules on stop-search’ (Herald, 31/3/2014)

‘High use of stop-and-search in Scotland to be challenged’ (Times, 31/3/2014)

April

‘Kenny MacAskill defends stop and search’ (Herald, 2/4/2014)

‘MacAskill defends stop and search’ (Sunday Post, 2/4/2014)

‘Justice Secretary defends stop and search after claims after claims police are contravening human rights’ (Daily Record, 2/4/2014)

‘Huge rise in use of stop and search’ (Courier, 4/4/2014)

‘MSP hits out at ‘voluntary’ stop and search’ (Fraserburgh Herald. 5/1/2014)

‘Stop and search crackdown on crime in Edinburgh’ (Herald, 7/5/2014)
‘Calls for better regulation of police stop and search powers’ (STV, 12/4/2014)
‘Children carrying cheap cider should be stopped and searched by police’ (Telegraph, 12/4/2014)
‘Police tackle their chief over ‘fake’ stop and search allegations’ (Herald, 14/4/2014)
‘Inquiry into use of stop and search planned’ (Holyrood Magazine, 28/4/2014)
‘Further delay to SPA review of stop and search’ (Holyrood Magazine, 28/4/2014)

May

‘Fake data loophole closed for searches’ (Herald, 5/5/2014)
‘Police overhaul discredited stop-and-search policy’ (Sunday Herald, 4/5/2014)
‘Police tackle their chief over fake stop and search allegations’ (Herald, 14/5/2014)
‘LibDem leader claims: armed police are stopping and searching Scots children’ (21/5/2014)
‘Labour slam Police Scotland over fabricated figures as Daily Record reveal ONE stop and search can be recorded EIGHT times’ (Daily Record, 24/5/2014)
‘Police watchdog to review stop and search policy’ (BBC, 30/5/2014)
‘Police Scotland stopped and searched thousands of children’ (BBC, 30/5/2014)
‘Police told to improve controversial stop-and-search rules in review’ (STV, 30/5/2014)
‘There is no obvious link between increased stop-and-searches and reduced violent crime in Scotland says watchdog’ (Daily Record, 30/5/2014)
‘Stop-and-search policy questioned’ (The Courier, 30/5/2014)
‘Review of Police Scotland's controversial stop and search policy set to be published’ (Daily Record, 30/5/2014)
‘Police Scotland stopped and searched more than 25,000 children under 15 last year in procedure described as a ‘shambles’’ (Daily Record, 30/5/2014)
‘Lack of evidence on policing tactics’ (Herald, 31/5/2014)
‘Watchdog report finds police under pressure over stop and search’ (Herald, 31/5/2014)
‘Chief says consent issue problematic’ (Herald, 31/5/2014)
‘Power hungry police must think again over stop and search procedure’ (Daily Record, 31/5/2014)
‘Police Scotland stopped and searched thousands of children’ (BBC, 31/5/2014)
‘Fall in violent crime not down to stop and search’ (Scotsman, 31/5/2014)
‘Impact of stop and search is questioned’ (Scottish Express, 31/5/2014)

June

‘Search rethink is overdue’ (Sunday Herald, 1/6/2014)

‘Children as young as six subjected to stop and search’ (Sunday Herald, 1/6/2014)

‘No evidence stop-and-search reduces violent crime’ (Press and Journal, 1/6/2014)

‘MSPs concerned at stop and search rise’ (Arbroath Herald, 3/6/2014)

‘Stop and search figures alarming’ (Scottish Daily Record, 6/6/2014)

‘Police in Dundee accused of ‘going over the top’ in use of stop and search’ (The Courier, 9/6/2014)

‘81,854 stop searches by Police Scotland in Lanarkshire’ (Scottish Daily Record, 12/6/2014)

‘Tory candidate questions police stop and search’ (Deeside Today, 13/6/2014)

‘Police carry out stop and search on babies’ (Sunday Herald, 15/6/2014)

‘Police Scotland agree to scrap stop and search operations on children (Herald, 19/4/2014)

‘Police scrap searches for under-12s’ (The Times, 19/6/2014)

‘Police Scotland to end stop and search on children’ (BBC, 19/6/2014)

‘Searches of non-Scots have risen by more than half under Police Scotland’ (Daily Record, 19/6/2014)

‘Searches ‘are a rights issue’’ (Cumbernauld News, 20/6/2014)

‘Police to curb stop and searches on children’ (Scotsman, 20/6/2014)

‘Revealed: how police stop and search policy misleads the public’ (Sunday Herald, 22/6/2014)

‘Up in arms: Police exaggerate weapons haul by 40% as controversial stop-and-search techniques come under fire’ (Daily Record, 23/6/2014)

‘Claims police weapons finds are misleading’ (Herald, 23/6/2014)

‘Stop and search thrown into question’ (The Scotsman, 24/6/2014)

‘Police Chiefs warn officers: step up stop and search’ (Sunday Herald, 29/6/2014)

July

‘Police admit stop and search has more than doubled’ (Scotsman, 4/7/2014)

‘Huge rise in stop and search ‘a real cause for concern’’ (Courier, 4/7/2014)

‘Large rise in Fife stop and search a ‘real cause for concern’ (Courier, 5/7/2014)

‘Police: our bosses bully us to boost stop and search figures’ (Sunday Herald, 6/7/2014)

‘The police force has to be properly policed’ (Sunday Herald, 6/7/2014)

‘Increase in Stop & Searches Continue’ (Kingdom FM, 17/7/2014)

‘Police Scotland’s stop-and-search rate nine times that of NYPD … but watchdog buried statistic’ (Sunday Herald, 20/7/14)

‘Scottish police carry out nine times more stop & searches than officers patrolling New York City’ (Daily Record, 21/7/2014)

‘Police Scotland frisk nine times as many people as NYPD’ (Herald, 21/7/2014)

‘Concern over use of stop and search on children in East Dumbartonshire’ (Milngavie and Bearsden Herald, 21/7/2014)

‘MSPs fears over stop and search figures’ (Arbroath Herald, 21/7/2014)

‘MSP concerned by ‘staggering’ rise in police use of stop-and-search in Angus’ (Courier 22/7/2014)

‘Stop and search numbers skyrocket’ (Galloway Gazette, 24/7/2014)

‘19,000% rise in D&G 'stop and search' figures’ (ITV Border, 24/7/2014)

‘Toxic culture puts public at risk, warns officers’ (The Scotsman, 27/7/2014)

‘Policing policies and open debate’ (Herald, 29/7/2014)

‘Police taking ‘a huge risk’: Expert says 300% rise in use of stop and search on kids in Dundee may cause more harm than good’ (Evening Telegraph, 30/7/2014)

‘Campaigners criticise rise in stop and search of children in Dundee’ (Courier, 30/7/2014)

August

‘Police stop and search figures soar in Angus’ (Brechin Advertiser, 1/8/2014)

‘Police just ignoring public’s concerns’ (Courier, 3/8/2014)

‘Fife pilots new stop and search to keep the trust of the police’ (Fife Today, 6/8/2014)

‘Police stop and searches treble in space of a year’ (Alloa Advertiser, 7/8/2014)

‘UN asked to monitor Scots law and order’ (Sunday Herald 10/14/2014)

‘Police chiefs recruit ethical advisors as criticism grows’ (Herald, 14/8/2014)

‘Role of an ethics panel in policing’ (Herald, 14/8/2014)

‘Senior officers in talks over ‘moral sounding board’ for Scots Police (STV, 15/8/2014)

‘Massive fall in number of controversial stop and search operations after admission figures were manipulated’ (Sunday Herald, 17/8/2014)

‘Warning over racial profiling in stop and search’ (Holyrood, 20/8/2014)

‘Stop and search in need of reforming’ (Herald, 27/8/2014)

‘Police Scotland spent 10m on ‘unlawful’ stop and search’ (Sunday Herald, 31/8/2014)

9.2.4 Utilitariansim verus distributive justice: contesting the political agenda

In a policy setting, key findings from the SCCJR report were drawn on by several public bodies, including the Children's Commissioner, the Scottish Alliance for Children's Rights, and the Scottish Human Rights Commission, in order to criticize the disproportionate use of stop and search, and the lack of regulation.

In a parliamentary context, MSPs of all shades, outwith the Scottish National Party, voiced a range of concerns highlighted by the research, both principled and pragmatic. With echoes of the debate around the Prevention of Crime Act 1953, the Scottish Conservatives put forward a critique premised on the balance of power between citizen and state.

> "*On the one hand, we all want the police to be effective law enforcers. On the other hand, we all want the fundamental right of the freedom of the individual to be respected and protected. There will always be a tension between those two objectives… However, in Scotland in 2014 there is one significant difference: a single police force, Police Scotland, closely liaising with Government but with no democratic facility for public transparency and accountability. That structure per se weighs the scales in favour of the police. That has to be counterbalanced by overt action from Police Scotland to compensate for its powerful status as a law enforcement monopoly. On such a sensitive issue as stop and search, without that counterbalance the cards are stacked against the public interest…*
>
> *…We know that the vast majority of stop and searches are carried out on a non-statutory basis, which requires verbal consent… If greater reliance is being placed on voluntary stop and search, as seems to be the case, I am a little uneasy. People do not readily want to fall foul of the police, and they may be apprehensive about refusing consent. Equally, if they considered that police interest was excessive or overzealous, they may be reluctant to complain, for exactly the same reason. The point is that, in a free society, there is a presumption of innocence – a presumption that we are going about our lawful business – unless the police have a reasonable suspicion of criminal activity or a reasonable cause to expect that an individual member of the public is in possession of some incriminating item. What is unacceptable is that a single police force, with no meaningful public accountability, can act in such a powerful but opaque and unaccountable manner*."
>
> (Goldie, Con. SP Official Report, 2/4/2014 col. 29713-29715)

More pragmatic concerns were raised by Scottish Labour, for example, in relation to recording practices and performance management. However, the main body of opposition was led by the Scottish Liberal Democrats, who announced their intentions to amend the Criminal Justice (Scotland) Bill in March 2014, thereby signalling serious democratic engagement with the issue. The Party sought to place stop and search on a statutory footing, to regulate procedure, improve recording and secure the annual publication of data. The following exchange is between Alison McInnes (Scottish Liberal Democrat Justice Spokesperson) and Chief Superintendent Garry McEwan at a Justice Sub-committee meeting, and illustrates the clash between utilitarian values (advocated by McEwan) and social justice values, which had eluded the stop and search agenda for over two decades.

Alison McInnes: [Intelligence-led stop and search] "*sounds good and makes us think that you are doing something sensible, but it seems to me that, if the approach was truly intelligence led, you would search only individuals on whom you felt that you had intelligence. You seem to search areas. You talk about searching hotspots, which means that anyone within the hotspot can be searched, so individuals' civil rights are not really protected; if they happen to be in what you consider to be a hotspot, they are fair game. Is that how it works?*"

Chief Superintendent McEwan: "*If stop and search is done properly, it supports civil liberties through creating a safer environment. Why does a member of the public not feel safe going to the local corner shop because a number of youths who are under the influence of alcohol are congregating there?... There are hotspots, and we are targeting individuals. We do not know everybody who is committing crime, but we know the areas where crime is being committed. We have to be intelligence-led and go to those areas and speak to the communities. If stop and search is the right thing to do, my officers should be doing it, and doing it professionally, ethically and proportionately*."

Alison McInnes: "*If you were doing it ethically, you would respect the principle that people have the right to free association, to go about their business and to privacy, and that those rights cannot be traded off. Everyone has those rights, whether they come from a socially deprived area, an area that is full of crime or a well-to-do area. You cannot trade that in the utilitarian way that you are talking about*."

Chief Superintendent McEwan: "*I do not think that we are trading it; I think that we are supporting the civil liberties of all. We should be targeting individuals who are responsible for antisocial behaviour, violence or serious sexual abuse, and we should be targeting the areas where they happen. Part of it is about preventing escalation. If we can address low-level antisocial behaviour in those areas, we can prevent serious sexual and other violence; we do that. It is not about the civil liberties of everybody. It is about balance – we need to protect the honest law-abiding citizens while targeting those who are responsible for such behaviour*."

Alison McInnes*: "… Article 14 of the European convention on human rights states that 'enjoyment of the rights and freedoms' is 'secured without discrimination', with a specific reference to 'social origin'. There is a temptation to say that stop and search is not a problem because you do not have complaints and you are not targeting a racial profile, but it is fairly clear that you are targeting a particular social group – young males from disadvantaged areas – and we are not hearing their voice about that. I ask you again ask you again about the enjoyment of rights and freedoms for everyone in society."*

(SP Official Report 19/6/2014 col. 458-459)

Conversely, the Scottish National Party retained what might be described as a paternalistic authoritarian outlook, which appeared to dovetail with the Police Scotland strategy of 'keeping people safe' by dint of enforcement methods (Fyfe, 2014; 10). Contrary to the findings in the SCCJR report, it was argued that the overall level of stop and search represented a proportionate policing response, and that the concerns raised thus far were not evidence-based.

> "*I believe that the searches are proportionate. We also see from the statistics that they are remarkably successful… I think that that shows that the searches have been based on intelligence and the clear skills and criteria that the police have developed; that they are being used appropriately; and that Scotland is a safer place because of our police officers' actions*." (MacAskill, SNP 25/3/2014, SP. Official Report col. 29296)

> "[Alison McInnes] *sets out a number of concerns about stop and search but brings little, if anything, in the way of evidence of problems to the Parliament. She talks about unfounded searches, children being stopped without reason and people's human rights being abused… I must tell the Parliament that I do not recognise much of that story at all… Between April and December, 4,27342 weapons searches yielded a positive result, which accounts for 5 per cent of all weapon searches; that nearly 37 per cent of searches targeted to detect firearms yielded a positive result, which is 261 positive results; that, since 2006-07, crimes of handling an offensive weapon have dropped by 60 per cent*." (MacAskill, SNP 2/4/2014, SP. Official Report col. 297699-29700)

[42] This statistic was overstated by 40%. Police Scotland later stated that the number of detections for offensive weapons represented the number of unlawful items detected during stop searches *for* offensive weapons, rather than offensive weapons per se, and therefore included drugs, stolen property etc. (Police Scotland, 2014c; 14).

Against an ongoing backdrop of critical political and media attention, described by one insider as "*a perfect storm*", a number of policy initiatives were announced by Police Scotland. In May 2014, a National Stop and Search unit was established 'to ensure a consistency of approach' and improve guidance for police officers[43]. The following month, the Executive announced that non-statutory searches on children aged eleven years and under were to be abolished with immediate effect, and that a pilot would be implemented to improve the deployment of searches, recording practices and community confidence in the tactic (SP Official Report 19/6/2014, col. 460). Also, for the first time in the history of Scottish policing, national data on use of stop and search was published: although significantly, this failed to disaggregate statutory and non-statutory searches. By way of engagement with wider opinion, an overarching Expert Reference Group was appointed (consisting of sixteen public bodies) in order to provide informed comment on policy development, and a Youth Reference Group appointed to advise on policy in relation to young people.

Still, the Police Scotland Executive appeared to remain openly committed to a proactive strategy, operationalized in 'forward looking' terms (Police Scotland, 2014b; 6). Specifically, the Chief Constable retained the view that the tactic had significantly impacted on recorded offending, thereby refuting the main conclusion of the Scottish Police Authority. For example, in the following statement from Police Scotland to the Scottish Parliament, stop and search detections are circuitously tied to reductions in non-sexual violent crime, serious assault, robbery, complaints regarding disorder, and anti-social behaviour in the same period.

[43] Police Scotland *National Stop and Search Unit Created*, 31/5/2014 (online) http://www.scotland.police.uk/whats-happening/news/2014/may/national-stop-and-search-unit-created (accessed 27/9/2014)

Justice Sub-Committee on Policing, Stop and Search,

Letter from Police Scotland to the Convener

'…In year one of Police Scotland, 123,551 stop searches resulted in a positive recovery of items including weapons, knives, drugs and alcohol. As a result, the application of stop and search has contributed significantly to reductions in violence, antisocial behaviour and disorder across Scotland. To provide some context, I would offer the following statistics:

Reduction in Group 1 (Violent Crime) of 9.9%
Reduction in the number of Serious Assaults by 10.3%
Reduction in the number of Robberies by 18.2%
Reduction in the number of complaints regarding disorder of 16.3%
Reduction in the number of incidents of publicly reported ASB of 13.8%

This has resulted in;
745 fewer victims of Violence
338 fewer victims of Serious Assault
333 fewer victims of Robbery
64,530 fewer incidents of Disorder
55,521 fewer incidents of ASB

I would therefore contend that Police Scotland's engagement in stop and search activity is a proportionate and efficient use of its time and resource…'
(Chief Constable Sir Stephen House, 15/7/2014[44])

By linking *detection* with offending trends, the statement suggested a partial shift from the deterrence model. Nonetheless, the claim continued to draw on the same retrospective or *post hoc ergo propter hoc* logic, and as such, failed to establish the extent to which, if at all, the number of detections had actually impacted on recorded offending.

[44] *Letter from Police Scotland to the Convener*, Justice Sub-Committee on Policing (online) http://www.scottish.parliament.uk/s4_JusticeSubCommitteeonPolicing/General%20Documents/20140626_CG_to_PS_stop_and_search.pdf [accessed 6/8/2014]

9.2.5 Post-reform summary

Applying insights from the thesis to the post-reform period, several observations can be made. First, it can be argued that the politicization of stop and search hinged on the wider policing landscape. That is, on the unprecedented degree of political visibility afforded to the single service by dint of the reform process, rather than a radical shift in policy per se. To be sure, search rates increased in the non-Central Belt Divisions and east Central Belt Divisions. Nonetheless the vast majority of searches (83%) remained in the old Strathclyde area and continued to underpin the exceptionally high overall search rate. Put differently, the evolving controversy was, in many ways, a much older story.

Reform also appeared to reconfigure relations between the media and police, as a perceptibly more critical press effectively propelled the policing organization, from a position of social invisibility, to one marked by controversy and competing agendas (recall the volume of headlines in section 9.2.3). Importantly, this newfound visibility illuminated the existing clash of cultures within Scottish policing, casting a spotlight on previously overlooked policing methods (which to be clear, were not uncommon prior to reform), and appeared to undermine the longstanding rhetoric of community and consent, or the 'Scottish' way of policing (Gorringe and Rosie, 2010).

With echoes of the symbiotic relationship between ACPOS and the Scottish Executive during the Stephen Lawrence Inquiry, the political response to the SCCJR report suggested a close proximity between the Chief Constable and Ministers, as key actors moved to defend the prevailing outlook or habitus, and preclude alternative interpretations. Some policy concessions were latterly made, following the Scottish Police Authority review. However, it was apparent that the core proactive strategy remained in place: shored up by the discretionary freedoms afforded by non-statutory stop and search, which the Authority had failed to tackle.

With this final observation in mind, the next part of the chapter sets out five recommendations which engage more directly with the stop and search problem in Scotland, and the larger issue of social justice.

9.3 Recommendations for policy and practice

> 'Perhaps this… sounds as if I have something against police officers – as if I do not appreciate the difficulties and dangers they face, the impossible demands upon them, and how well most of them perform their duty. But this is not my meaning. My meaning is that everyone, including the police, must live under rules. All organizations, and all officials, get out of hand if they do not have rules to guide them, if they do not do their work within limits.' (Reich 1966; 1171).

9.3.1 The aim of stop and search

The primary aim of stop and search should be clarified. Currently, it is unclear as to whether the aim is to detect or deter. The appropriate legal and regulatory framework should put in place to support the primary aim.

The thesis has argued that the aims of stop and search are not consistent across Scotland: that in some areas greater weight is placed on detection, whilst in others, precedence is given to deterrence. The analysis showed how the two different approaches impacted unequally on people who are searched by the police, and demonstrated that proactive searches aimed at deterring crime were likely to fall disproportionately on younger age-groups, whilst lacking key safeguards.

The first recommendation is therefore to clarify the aim of stop and search, and to ensure that the appropriate legal and regulatory framework is in place. If the stated aim of stop and search is to detect, it follows that officers should draw exclusively on existing statutory powers and curtail the use of non-statutory stop and search. This recommendation is also likely to increase the legitimacy of stop and search. For example, research shows that public support for stop and search is higher when searches are based on good reasons, which are explained, if individuals are not stopped either randomly or routinely, and if searches are appropriately targeted, rather than directed at those who the police feel are 'not right' (Stone and Pettigrew, 2000; 31). Whilst the difficulties attached to operationalizing reasonable suspicion are well documented (Baldwin and Kinsey 1982; Quinton *et al.* 2000, vi; Sanders and Young 2008; Waddington, 1999; 197), the analysis in chapter five clearly

demonstrates how stop and search is more proportionate when premised on statutory powers.

Conversely, if the stated aim is to deter, the statutory power to stop and search without reasonable suspicion should be sought in the Scottish Parliament, thereby legitimating the tactic. However, this move is likely to prove incompatible with the Human Rights Act 1998. For example, in *Gillan v. UK*[45], the European Court of Human Rights ruled that Section 44 of the Terrorism Act 2000 unlawfully infringed the right to privacy under Article 8 of the Convention, given that the discretionary breadth of the powers meant that police practice was not 'in accordance with the law' (see 9.3.2 for further details). In short, the legislative case for deterrence is likely to be untenable. The logical corollary of these observations is that non-statutory stop and search should be phased out, as recommended next.

[45] Gillan & Quinton v. the United Kingdom. Application No. 4158/05 (2010)

9.3.2 Non-statutory stop and search

The use of non-statutory stop and search raises concerns in relation to procedural protection, consent, proportionality and human rights. It is recommended that this practice is phased out. Going forward, the use of stop and search should be exclusively based on statutory powers, and premised on reasonable suspicion.

The ongoing use of non-statutory stop and search, and the extent to which the tactic is used, is arguably the most controversial aspect of stop and search practice in Scotland. The analysis in chapter six demonstrated that the protective role of the state is minimal in a non-statutory context and that key safeguards are not in place. Reasonable suspicion, otherwise intended to act as a 'key restraining feature' (Steiker, 2013; 195) is not required, officers are not restricted as to the items they can search for, nor are officers obliged to state the purpose of the search. Put simply, no limits are placed on police discretion.

The analysis also showed how non-statutory stop and search failed to comply with the minimum standard of consent. First, people were not given the necessary information in order to give consent, for example, people were unlikely to be informed of their right to refuse a search. Second, non-statutory searches were more likely to be carried out on younger age-groups whose competency to provide consent was questionable. Third, interview data suggested that a refusal to be searched could be treated as suspicious and taken as grounds for exercising statutory powers.

A report commissioned by the Scottish Police Authority suggested that the use of non-statutory stop and search might be by improved by training, for example, by ensuring that people know their rights to refuse (Blake Stevenson, 2014). Nonetheless, two key difficulties remain. First, the absence of a statutory framework is deeply unsettling. If we accept that the relationship between legal rules and policing is 'absolutely central to the idea of the democratic accountability of policing' (Jones, 2008; 712), the use of a search power that has not been conferred by a democratically elected parliament and is therefore not 'subordinate to the will of the people' (Mashall, 1978, cited in Bowling and Weber, 2012; 481) raises serious questions in relation to the legitimacy of stop and search. Put plainly, police powers of search should be conferred by a democratically elected parliament. This is one of

the key ways in which the police are held to account in advanced democratic societies and a keystone of policing by consent. Second, it remains that the power balance between the state and the subject is invariably weighted towards the state, that is, in favour of the (two) uniformed officers, whose authority is backed by coercive force: thereby rendering the consent principle untenable.

Non-statutory stop and search and the Human Rights Act 1998

> 'The power to stop and search constitutes a deprivation of liberty and as such should be compatible with Article 5 of the Human Rights Act: the right to liberty and security of person. The use of the power must also be compatible with Article 8, respect for privacy, and Article 14, non-discrimination. This means that use of the power must be *legal, proportionate, and non-discriminatory*.' (ECHR 2010; 16, my emphasis)

Non-statutory stop and search sits uneasily with human rights legislation and jurisprudence. In *Gillan vs UK* (op cit.), the court/ECtHR implied that Article 5 would be engaged due to the coercive nature of stop and search, however they declined to rule on the point. As such, the law in relation to the Article 5 remains ambiguous and open to interpretation in relation to the threshold between the restriction of movement and deprivation of liberty (Stone, 2012). Stop and search was however, held to engage with Article 8, which requires that any restriction on privacy by state authorities must be '*in accordance with law*'. In short, the ability to search people should have a clearly bounded and accessible legal basis. Mead (2002) argues that the lack of legal structure and clarity inherent in non-statutory encounters, together with the lack of duty to inform a person of their right to refuse, is unlikely to meet these standards and that a legal challenge could be raised on these grounds. The use of non-statutory stop and search may also potentially breach Article 14, given that younger age groups are disproportionately more likely to be searched using this power than older age-groups. Finally, it can be argued that the use of non-statutory stop and search on those aged seventeen and under may be inconsistent with Articles 2, 3 and 16 of the United Nations Convention on the Rights of the Child, in relation to non-discrimination, the best interests of the child, and privacy respectively.

9.3.3 Searching children and young people

The use of stop and search on children should be reviewed with a view to establishing a set of clear guidelines for practice. In 2010, 500 children aged 10 and under were stopped and searched by the police, suggesting that the current approach is out of kilter with the welfarist, and increasingly diversionary, approach to juvenile justice in Scotland.

This recommendation is based on the analysis of stop and search by age, which showed that proactive stop and search impacts disproportionately on younger age-groups. Also recall that searches were recorded on children below eight years olds, that is, below the age of criminal responsibility, and that young people were significantly more likely to be searched on a non-statutory basis, making the premise of consent untenable.

The use of stop and search on younger population raises concerns in relation to the negative consequences of police action. Labelling theory suggests that repeat adversarial contact with the police is likely to have a negative impact on self-identity, with detrimental consequences for behaviour (Matza, 1964; Lemert, 1970; Becker, 1997). Using longitudinal data from the Edinburgh Study of Youth Crime and Transitions, McAra and McVie (2005, 2012) provide empirical support for the key tenets of labelling theory, observing that 'once youngsters come under the purview of the police, they then become part of the permanent suspect population', which in turn, 'contributes to further and indeed more serious forms of contact' (2005; 26). A North American longitudinal study by Wiley *et al.* (2013) also lends support to these findings, concluding that 'police practices of engaging in high rates of stops, many of which are 'unproductive' or 'innocent,' may be counterproductive' (2013; 956). Drawing on these observations, it seems reasonable that being stopped and searched on a regular basis may act to reaffirm a sense of exclusion and marginalization: to exacerbate, rather than prevent offending behaviour. These findings also suggest that the recent move to abolish non-statutory stop and search on children aged eleven and under, although welcome, does not fully address the consequences of adversarial contact between young people and the police.

9.3.4 Police accountability

Open access data are required in order to make policing transparent, accountable, and to secure a public mandate on the use of stop and search. The use of non-statutory stop and search and all other types of search powers should be clearly distinguished within the data. In order to ensure robust data standards and to bring Scotland in line with England and Wales, it is recommended that Police Scotland, in conjunction with the Scottish Government, seek to secure accredited status for stop and search data with the UK National Statistics Authority.

The thesis has argued that accountability for stop and search in Scotland is weak, if not wholly absent in some respects. Chapter four showed how political decision-making at the time of the Stephen Lawrence Inquiry resulted in a failure to introduce robust accountability mechanisms. As a result, those who are searched by the police are not given a copy of the search record, nor are data on stop and search routinely published. Chapter six observed that basic counting procedures were flawed, resulting in the systematic exclusion of some types of search, and the inconsistent exclusion of others. More recently, poor recording practices have been highlighted in the media. For example, reports have suggested that recording has been over-inflated in some areas (due to managerial pressures), and that detection rates have been over-exaggerated (Sunday Herald 23/3/2014, 22/6/2014)

Taking an overview, accountability for stop and search appeared stronger at the officer level, and weaker at the organizational level. This finding runs counter to the principle that organizations should provide a higher standard of accountability, in line with their higher responsibilities (Manning, 2010; 68). It was also argued that that accountability for stop and search had been 'ideologically cleansed' (Stone, 2007). Rather than provide a check on the exercise of non-negotiable police power, accountability was framed in terms of a technocratic framework based on performance, crime levels and clear-up rates. Put bluntly, it can be argued that the current lack of transparency in Scottish policing represents a dereliction of the moral duty to provide an account of stewardship (Simey, in Neyroud and Beckley, 2001; 146).

9.3.5 Proportionality

Stop and search data should be consistently collected and analysed to assess whether police practice is proportionate to local patterns of offending, for example, in terms of the types of crime that are most likely to be carried out, and the demographic profile of offending. Particular consideration should be given to the age profile of stop and search.

Proportionality or fairness is fundamental to police legitimacy: conversely, 'disproportionality, almost by definition, damages people's sense that the police are neutral and have their best interests at heart' (Bradford, 2011; 2-3). Chapter eight observed that an extensive body of research premised on procedural justice theory shows that public support for and trust in the police is more likely to be underpinned by people's perceptions of police fairness, rather than results or outcomes (Sunshine and Tyler, 2003; Tyler, 2006; Tyler and Huo, 2002; Bradford and Jackson, 2010; Hough *et al*, 2010, Jackson *et al*. 2012). For example, research suggests that attitudes towards the police are influenced by officer conduct, whether officers are polite, considerate and respectful, and by exercise of power in itself (Bradford, 2011; 10). Applied to stop and search, this indicates that people's beliefs about police fairness are likely to hinge on both the quality *and* the quantity of search encounters which acts as an indicator of proportionality (also see Bowling and Phillips, 2007).

In practice, proportionality is difficult to operationalize. As Bowling and Phillips observe, '[t]he immediate problem encountered in attempting to establish the extent of disproportionality, if any, stems from deciding on the appropriate criterion against which to compare stop and search statistics' (2007; 944). Bowling and Phillips conclude that per capita search rates provide the most useful measure of proportionality in relation to ethnicity (ibid; 952). This approach was employed in chapter five to identify disproportionality between the legacy forces, for example, in relation to the population share and levels of recorded crime. Per capita rate comparisons were also made against other jurisdictions in order to provide a sense of perspective. Whilst this type of relative measure is typically blunt, it can provide overall insights into what stop and search 'looks like', and alert us to outliers. Chapter five also examined proportionality in terms of age, assessing the age-distribution of stop and search, against that of recorded crime. Again, the comparison

was blunt, given that the recorded crime data included all crimes and offences. Nonetheless, the method captured striking differences between the legacy forces in terms of age-distributions, which could be refined further with disaggregated offending data. Finally, the prevalence of stop and search remains a major gap in our knowledge. However, this cannot be addressed under the current regulatory framework, given that officers only have the power to take names and addresses in a statutory context. As such, large-scale survey research may provide the most useful vehicle, both in terms of prevalence, and other variables that are not captured by police data, including social class.

9.4 Concluding observations and policy implications

The thesis has argued that the use of stop and search in Scotland was (and remains) contingent on organizational politics and priorities; on elite outlooks and sensibilities; and the larger political landscape. The implications of this argument are important and suggest that in order to address the problem of stop and search we first need to focus critical attention on the fundamental nature of the tactic: on different ways of thinking about the police role, rather than the officer on the beat. The thesis has also extended the boundaries of the stop and search debate, re-directing our attention beyond England and Wales, and beyond frameworks centred on ethnicity. Specifically, the analysis examined the ways in which the tactic impacted in terms of age, and showed how searches discriminated against young people in some parts of Scotland. Yet to be clear, this substantive focus might equally be framed with a different subject, for example, in relation to social class. The policy implication remains the same: that the use of stop and search represents the complex articulation of state power, and the ways in which certain narratives take precedence at certain points in time, rather than disproportionate practice *per se*.

These conclusions were arrived at by dint of an original methodological approach, which sought to break new ground by weaving together an extensive range of evidence and materials. This broad-based approach provided a nuanced explanation of police policy and practice: first, by locating stop and search within a time-frame that spanned six decades: and second, by situating police practice within a political hierarchy that spanned from junior ranking officers, to Ministers of State.

Looking ahead, two areas can be highlighted for future research. First, in-depth research is needed to assess the impact of stop and search on relations between young people and the police, both in Scotland and elsewhere. Whilst the quality of stop and search encounters was beyond the scope of the project, existing research shows that some young people feel that they are unfairly singled out for excessive attention by officers (McAra and McVie, 2010). Second, further research might be undertaken to assess the effect of performance management on discretionary decision-making, with a view to investigating the impact on disproportionality.

Researching controversial subjects

On a closing personal note, the research experience has been variously fascinating, and at times, deeply uncomfortable. It is not easy producing research that challenges existing institutional arrangements and powerful figures of authority, and despite a stated desire to promote evidence-based practice in Scotland (Police Scotland, 2014e; 27), the findings were clearly unwelcome. As one policing insider echoed, "*you're not exactly popular at Police Scotland*" (which is one of the more gracious comments). I was taken aback by events surrounding the publication of the SCCJR report, in particular the involvement of the Cabinet Secretary for Justice. I was however, aware that the Police Scotland Executive outlook was not representative of the wider organization and that there was disquiet around stop and search across the ranks. Still, I watched the politicization of Scottish policing with unease, aware that the intense focus on stop and search was part of this process.

On the other hand, looking back to the quiet character of Scottish policing that had expedited the proactive turn, to the ineffectiveness of the Stephen Lawrence Inquiry in Scotland, and lack of accountability for stop and search thereafter, it was also clear that the politicization process had given rise to an unprecedented level of scrutiny, casting a spotlight on a longstanding and deeply problematic aspect of Scottish policing. Unlike the Stephen Lawrence Inquiry, which had played out discretely in Committee rooms and Executive offices, stop and search was now squarely in the public domain. As a result, parliamentary debate was underway, existing policies were subject to critique, and stop and search data were finally being published. In other words, after decades of political inertia, the "*sound and fury*" which Dewar vehemently objected to, had finally prompted a sense of political engagement.

Postscript

‘The good society must have its hiding places – its protected crannies for the soul. Under the pitiless eye of safety the soul will wither. If I choose to get in my car and drive somewhere, it seems to me that where I am coming from, and where I am going, are nobody's business; I know of no law that requires me to have either a purpose or a destination. If I choose to take an evening walk to see if Andromeda has come up on schedule, I think I am entitled to look for the distant light of Almach and Mirach without finding myself staring into the blinding beam of a police flashlight.’

(Reich, 1966; 1172)

97, 562 words

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Appendices

Appendix 1. Abbreviations used

ACPOS	Association of Chief Police Officers in Scotland
BME	Black and Minority Ethnic
HMICS	Her Majesty's Inspectorate of Constabulary in Scotland
RHA	Reid Howie Associates A research and evaluation consultancy based in Fife. In 2002, RHA Published 'Police Stop and Search among White and Minority Ethnic Young People in Scotland.
SCJS	Scottish Crime and Justice Survey A large scale, national social survey which asks people about their experiences and perceptions of crime. The survey samples adults aged 16 years and over, resident in private households
SPPF	Scottish Policing Performance Framework A set of national performance indicators formulated by ACPOS, the Scottish Government, HMICS, Audit Scotland, Scottish Police Services Authority, COSLA, the Scottish Police Authorities Convenor's Forum and the eight forces.

Appendix 2. Interview request to forces

March 14th 2012

Dear Sir/Madam,

My name is Kath Murray. I'm a PhD student at Edinburgh University studying stop and search practices in Scotland. The doctorate is funded by the Scottish Government and supervised by Professor Susan McVie and Professor Nick Fyfe. A précis of the project is detailed over.

As part of the research, I hope to undertake a series of interviews with officers and to examine policing attitudes towards the use of stop and search. For example, I'm interested in whether officers regard stop and search primarily as a deterrent, rather than a detection tool, and the type of factors that are likely to influence the decision to carry out a search.

With this aim in mind, I wanted to ask if it would be possible to arrange a series of 12 interviews with Strathclyde officers. Ideally, I would like to interview one Constable and one Sergeant from six beats with comparatively high stop and search rates. I would also like to arrange a meeting with a force lawyer or legal advisor to discuss legislative and regulatory details.

Policy relevant research findings from the entire project will be fed back to both the Scottish Government and Scottish police forces.

Your support in this project would be greatly appreciated: stop and search practice has received negligible academic attention in Scotland despite substantial use of the tactic, and I anticipate the research findings will be of real benefit to Scottish policing.

I look forward to hearing from you.

Yours sincerely,

Kath Murray

Appendix 3. Example of interview schedule for constable rank

1. Can you describe a recent stop search encounter?
    - What happened?
    - Who was involved?
    - What was the search for?
    - How did they react?
    - Did you find anything?

2. Can you tell me about the type of situations in which you're most likely to carry out a stop and search?
    - Describe type of people that you're most likely to search
    - Typical age-group
    - Behaviours
    - What type of places
    - Do you find yourself searching familiar faces, people known to the police?

3. What is the most common reaction when you search someone?
    - Do people sometimes get agitated? Rarely or frequently?
    - (Do you need to handcuffs very often?)

4. How long does a search take on average? (on the street/including recording)

5. Where do you most often search people – in a doorway, or down a side street, or more publically? Why (explain answer)

6. Do you tend to think of stop searches as a proactive (pre-emptive) policing tool or a reactive (responsive) tool?

7. I'd like to ask you about how you feel about searching people. First, can you describe how it felt as a probationer? And has that changed?

   (If yes) So you're comfortable searching people now? When do you think it changed? Does it still feel like an invasion of privacy?

(Procedures and recording)

8. Do you record your searches electronically or in a notebook?

9. What happens to the search record that you've completed?

10. How long does it take to transfer the record to the stop search database

11. What percentage of your searches do you think don't get recorded on the stop search database? (Emphasize anonymity)

12. What percentage of your searches do you think don't get recorded in your notebook?

13. Are you more likely to record some types of searches than others? Which ones?

14. Do you know what happens to the statistics on the database?

15. When your notebook is inspected, does your manager comment on the amount of searches you've carried out, for example, not enough or too many?

16. How are searches viewed by your manager? [prompt] do they show how busy you are, are they seen as something important that you should be doing a lot of, or as something that complement other police duties

17. Would you say that stop and search is viewed cautiously by your managers (because it touches on people's privacy) - or is it broadly encouraged?

(Campaigns)

18. Have you taken part in any campaigns or initiatives using searches, for example against knife crime?

    - How long did the initiative go on for?
    - Was it publicized or only known to the police?
    - How was it publicized?
    - Did you explain to people that you were carrying out searches as part of a campaign?
    - Do you tend to use statutory or voluntary searches if it's a campaign?
    - What type of reactions do you get from the public?

(Section 60 Criminal Justice and Public Order Act)

19. Can you recall carrying out searches under a section 60 order - used in anticipation of violence or if people may be carrying dangerous weapons.

    - What were the circumstances?
    - Is the power used frequently or infrequently?
    - How would you record section 60 searches – how would you classify them?

20. Do you have formal targets for stop searches?

21. Have you ever been given *informal* targets relating to stop searches? , for example, being asked to carry out searches to show that you're being proactive and busy (e.g. if the council fund officers, are searches reported back to the Council?)

(Non-statutory stop and search)

22. I'd like to ask you more about voluntary or consent searches. In what circumstances might you carry out a voluntary rather than a statutory search?

- In everyday policing, do you tend to use voluntary or statutory search powers more often?
    - What's the reason for this?
    - Have you been told that either type is preferable?
    - Do you think that either approach is preferable?
    - Why do you think this is?
    - How do you ask someone for their consent, do you have any standard phrases that you tend to use?
    - Have you been given guidance on asking for consent?
    - Do you tell people they have the right to refuse?
    - What happens if someone does not want to cooperate? Would there be a way for you to still search them? (Could this justify a statutory search, on grounds of suspicion?)

(Search records)

23. In England and Wales, a person who has been searched is entitled to a copy of a search record.

    - Have you ever been *asked* for a copy of a search record?
    - Do you think it would be a good idea or a bad idea?
    - Why?

(Purpose of searching people)

24. What % of searches do you think detect items? E.g. 0-10%, 10-20%, 20-30%, 40-50% or over 50%?

25. If you don't find something, are you disappointed? Is stop and search useful in other ways? What other ways - can you explain?

(Stop and search in perspective)

26. The rate of stop and search in Scotland is quite a bit higher than in England and Wales. For decades, there has been public concern/unrest about the use of stop and search in England and Wales, but not in in Scotland, even though there is actually it's used more here.

    I'm interested in why you think this might be? [Prompt] do you think that policing might be different in Scotland?

Appendix 4. Example of spliced transcript

LOTHIAN AND BORDERS SERGEANTS, PCs QUESTION: 'Where would you be more likely to carry out the actual search?'	
Sergeant 1	I take them to the side, yeah, somewhere that's not in the public view. And also somewhere where you've got a little more control… And also out of the public because, let's face it, do you want to be seen getting searched by the police? No. It's also a bit of street cred for youngsters and I'm not going to play that game with youngsters.
Sergeant 2	Common sense prevails [KM: To get them out of the public view?] If it's possible, and for our own safety.
PC 1	If I was stopping someone in a main street, if I was uptown for example, I wouldn't want to do it just then and there. I don't think that's fair. I would say, 'well look, we'll just go round the corner where it's a bit quieter'.
PC 2	If it's quiet I'll search them right where I've stopped them. If they're right inside of the park and there's children, or in the middle of the High Street, you just try and lose the embarrassment factor for the person, you're most likely to get them to be more cooperative… It just encourages good behaviour, it shows them a bit of respect. Most of them like that - they fully accept that you're going to search them, but want to be treated with a bit of respect at the same time.
PC 3	Trying to maintain folks dignity, depending on the circumstances, you know, we've got quite a lot of graveyards where we're searching folk. Doorways, really, we're taught to have someone's back to a wall [for safety] and police officers either side, kind of thing…. So doorways are pretty good.
PC 4	Usually we try and be a bit more discrete [KM: Do people appreciate that?] Yeah, definitely.

Appendix 5. Historical Hansard

Hansard debates from 1803 to 2005 can be accessed on the Historic Hansard website:
Hansard (online): http://www.parliament.uk/business/publications/hansard/commons/

5.1 Police powers in post-war Britain (Hansard)

Debate Title	House	Date	Reference
Crimes of Violence	Lords	21 March 1950	vol. 166 cc. 310-78
Crimes of Violence	Lords	23 March 1950	vol. 166 cc. 445-520
Police, Glasgow (Administration and Discipline)	Commons	21 November 1950	vol. 481 cc. 181-3181
Criminal Justice (Amendment) Bill/Birching Bill	Commons	13 February 1953	vol. 511 cc. 754-842
Prevention of Crime Bill (2nd reading)	Commons	26 February 1953	vol. 511 cc. 2323-411
Prevention of Crime Bill (3rd reading)	Commons	26 March 1953	vol. 513 cc. 874-9
Prevention of Crime Bill	Lords	14 April 1953	vol. 181 cc. 685-703
Drugs (Prevention of Misuse) Bill	Commons	30 April 1964	vol. 694 cc. 600-78
Drugs (Prevention of Misuse) Bill	Lords	7 July 1964	vol. 259 cc. 943-50
Dangerous Drugs Bill	Commons	14 April 1965	vol. 710 cc. 1623-5
Firearms Bill (2nd reading)	Commons	2 March 1965	vol. 707 cc. 1142-225
Firearms Legislation	Commons	11 February 1965	vol. 706 cc. 573-8
Firearms Legislation HL debate	Lords	11 February 1965	vol. 263 cc. 297-301
Firearms Legislation, Clause 10 (Interpretation)	Commons	12 May 1965	vol. 712 cc. 654-65
Dangerous Drugs Bill (2nd reading)	Lords	20 June 1967	vol. 283 cc. 1269-317
Dangerous Drugs Bill HL debate	Lords	5 July 1967	vol. 284 cc. 720-53
New Clause B (powers to search & obtain evidence)	Commons	23 October 1967	vol. 751 cc. 1379-86
Liberties of the Subject	Commons	1 December 1967	755 cc. 808-909
Police Powers and Procedures	Commons	21 July 1967	vol. 750 c. 342 w
Crimes of Violence (Police Powers)	Commons	23 January 1968	vol. 757 cc. 99-101 w
Offensive Weapons (Powers of Police)	Commons	06 March 1968	vol. 760 cc. 422-4
Crime, Scotland (Police Powers)	Common	26 March 1968	vol. 761 cc. 1330-77
Prevention of Crime (Scotland) Bill	Commons	5 April 1968	vol. 762 cc. 837-46
Police (Search Powers)	Commons	10 April 1968	vol. 762 cc. 1351-4
Police Powers of Search in Scotland	Lords	23 May 1968	vol. 292 c. 886 wa
Offensive Weapons	Common	22 May 1968	vol. 765 cc. 509-12
Violence in Contemporary Society	Lords	12 February 1969	vol. 299 cc. 422-570
Law and Order	Commons	24 February 1969	vol. 778 cc. 1108-60
Misuse of Drugs Bill (2nd reading)	Commons	25 March 1970	vol. 798 cc. 1446-560
Misuse of Drugs Bill	Lords	11 February 1971	vol. 315 cc. 249-62
Misuse of Drugs Bill (3rd reading)	Lords	25 March 1971	vol. 316 cc. 993-1021
Misuse of Drugs Act 1971	Commons	13 July 1977	vol. 935 cc. 567-75
Reading “Pop” festival and drug Searches by Police	Lords	14 July 1971	vol. 322 cc. 341-5
Crime (Prevention)	Commons	12 July 1977	vol. 935 cc. 228-350

5.2 Hansard: Criminal justice politics in Scotland

Debate Title	House	Date	Reference
Prevention of Crime (Scotland) Bill	Commons	5 April 1968	vol. 762 cc. 837-46
Police (Search Powers)	Commons	10 April 1968	vol. 762 cc. 1351-4
Police Powers of Search in Scotland	Lords	23 May 1968	vol. 292 c. 886 wa
Offensive Weapons	Common	22 May 1968	vol. 765 cc. 509-12
Criminal Justice (Scotland) Bill	Commons	14 April 1980	vol. 982 cc. 811-937
Criminal Justice (Scotland) Bill	Lords	29 January 1980	vol. 404 cc. 674-830

Appendix 6. National Archives: The Cabinet Papers, 1952-1968

File	Date	Title	Description
CAB/129/51	3/4/1952	Crimes of Violence	Note by the Prime Minister
CAB/129/56	4/11/1952	Corporal punishment as a penalty for Crimes of violence	Memorandum by Home Secretary
CAB/129/59	6/2/1953	Corporal punishment:	Memorandum by Home Secretary and the Secretary of State for Scotland
CAB/129/68	19/5/1954	Report of Royal Commission on Capital Punishment:	Memorandum by Secretary of State for Home Dept., Minister for Welsh Affairs & Secretary of State for Scotland
CAB/129/78	16/12/1955	Capital Punishment	Memorandum by Secretary of State for Home Dept. and Minister for Welsh Affairs
CAB/129/80	29/3/1956	Death penalty (abolition) Bill	Memorandum by Home Secretary, Minister for Welsh Affairs and Secretary of State for Scotland
CAB/129/95	12/12/1958	White Paper on Penal Reform	Memorandum by Secretary of State for Home Dept. and Lord Privy Seal

Cabinet Papers are available online at:
(online) http://www.nationalarchives.gov.uk/cabinetpapers/cabinet-gov/meetings-papers.htm

Appendix 7. National Archives of Scotland

7.1 Stop and search powers for offensive weapons, Scottish Office responses

File reference	Title	Description
NAS HH55/1249	Offensive weapons representations (1967-1974)	Offensive Weapons: Representations
NAS HH55/1503	Offensive weapons powers and penalties (1967-1968)	Proposals to amend Prevention of Crime Act, 1953, to extend police powers of search and arrest to combat increase in violent crime. Departmental considerations and general.
NAS HH55/1512	Prevention of Crime (Scotland) Bill (1968-1969)	Proposals to introduce legislation to extend police powers to search individuals for offensive weapons to combat increase in violent crime. General.

7.2 National Archives of Scotland: Thomson Committee on Criminal Procedure

File	Date	Description
NAS AD99/3/18	1971	Oral evidence: Scottish Police Federations

7.3 National Archives of Scotland: Stephen Lawrence files

File	File Title	Description
NAS HH41/3406	Macpherson Report of Stephen Lawrence Murder Enquiry 26/4/1999-4/3/2000	Response to recommendations of the Macpherson Report on the Stephen Lawrence murder enquiry; papers relating to the drafting of a Scottish Executive action plan for Scotland. Includes agendas, minutes and circulated papers from meetings of the Stephen Lawrence Inquiry Steering Group held on 7 February and 14 March 2000. Also copy of a report of the Committee Sub-group of the Association of Chief Police Officers in Scotland (ACPOS) Cross-Standing Committee Working Group on the Macpherson Report.
NAS HH41/3505	Macpherson Report on Stephen Lawrence Murder Inquiry 12/3/01-28/1/2002	Minutes, papers and correspondence concerning the Scottish Executive Stephen Lawrence Inquiry Steering Group and its report 'The Stephen Lawrence Enquiry - An Action Plan for Scotland'.
NAS HH41/3405	Macpherson Report on Stephen Lawrence Murder Enquiry 4/4/2000-21/9/2000	Response to recommendations of the Macpherson Report on the Stephen Lawrence murder enquiry: papers relating to the drafting of a Scottish Executive action plan for Scotland. Includes correspondence and reports regarding a thematic inspection of police race relations in Scotland. Also includes agendas, minutes and circulated papers from meetings of the Stephen Lawrence Inquiry Steering Group held on 14 March, 18 April, 12 June and 1 August 2000.

Appendix 8. Police force data: summary of key variables

Table A8.1 Police force data: summary of key variables

Data	Central	Dumfries & Galloway	Fife	Grampian	Lothian & Borders	Northern	Strathclyde	Tayside
Case or aggregate	Aggregate	Aggregate	Case	Case	Case	Case	Case	Case
Date range	2005-10	2009-10	2009-10	2005-10	2005-10	2005-10	2005-10	2007-10
Age & Gender	X	X	✓	✓	✓	✓	✓	✓
Ethnicity	X	X	X	X	✓	X	X	X
Smallest geography	Force	Force	Force	Area	Beat	Force	Subdivision	Force
Date/time	X	X	X	X	✓	X	X	X
Reason[1]	A D W S F	D	A D W S F	A D W P F	A D W S F	A D W P F	A D W S F	A D W S F
Search power[2]	X	X	✓	✓	✓	✓	✓	✓
Outcome	✓	✓	✓	✓	✓	✓	✓	✓
Total cases	45,629	1,333	5,773	30,280	127,237	24,164	1,324,846	22,629

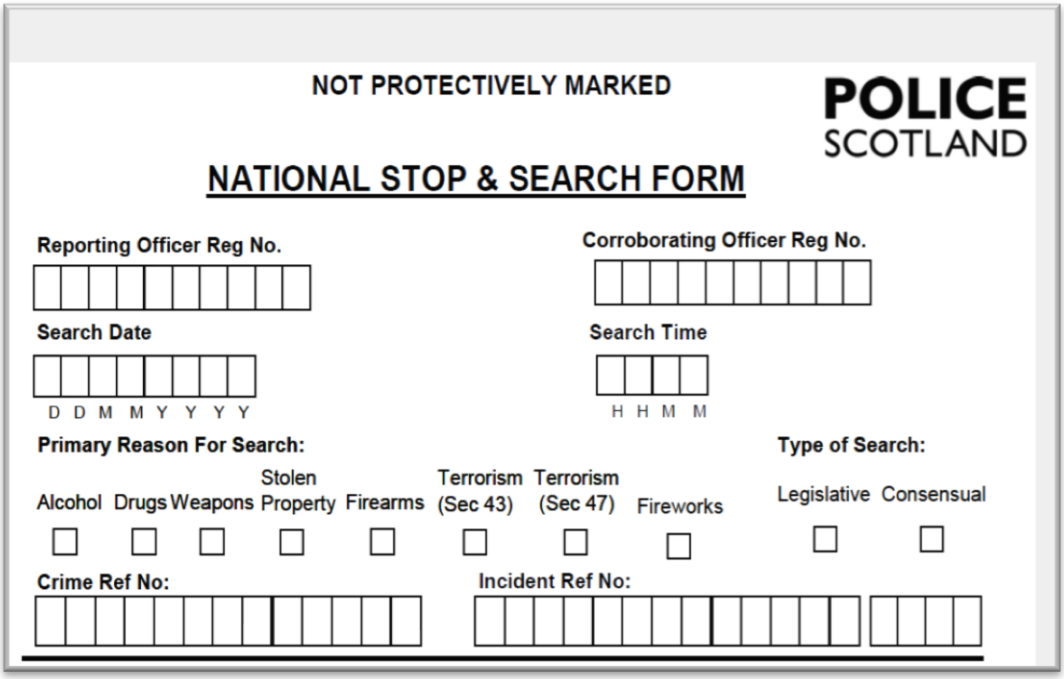
[1] A = Alcohol, D = Drugs, W = Offensive Weapons, S = Stolen Property, F = Firearms

[2] Statutory or non-statutory

Appendix 9. Recording stop searches

Both statutory and non-statutory searches were recorded using the same format. When an officer records either type of search, both the 'primary reason for search' (alcohol, drugs etc.) *and* the 'type of search' (legislative, consensual) must be completed. Non-statutory searches are thus allocated a 'primary reason', despite the lack of clear-cut purpose or suspicion.

Stop and search data entry (extract)



NOT PROTECTIVELY MARKED

POLICE SCOTLAND

NATIONAL STOP & SEARCH FORM

Reporting Officer Reg No.

Corroborating Officer Reg No.

Search Date

D D M M Y Y Y Y

Search Time

H H M M

Primary Reason For Search:

Alcohol | Drugs | Weapons | Stolen Property | Firearms | Terrorism (Sec 43) | Terrorism (Sec 47) | Fireworks

Type of Search:

Legislative | Consensual

Crime Ref No:

Incident Ref No:

Appendix 10. Scottish Police Authority recommendations on stop and search

1. Police Scotland should define the contexts within which stop and search is used as a preventive tactic; and as a means of detection. It should also define appropriate outcome measures as well as the rationale for any target/s set.

2. Police Scotland should review operational practice in relation to any perceived pressure on individual officers to reach a certain volume of searches.

3. Police Scotland should roll out analysis tools, such as the Geographic and Temporal Alignment Tool (GTAT), across Scotland to target search activity on "the right people, in the right place at the right time".

4. Police Scotland should ensure the consistent application of stop and search by reinforcing training for officers, ensuring that officer understanding is tested and that officer training is regularly assessed. Training should include dealing appropriately with children and young people and giving clarity about what constitutes consent with respect to non-statutory searches.

5. Police Scotland should ensure that its use of stop and search is proportionate across Scotland, focussed on successful outcomes, targeted at the right people, right place and right time. Care should be taken to ensure that:

- Particular communities and groups are not being disproportionately impacted by stop and search activity;
- Use of stop and search is proportionate to the risk of offending, crime rate and threat;
- Use of the tactic is regularly reviewed to ensure its application is still appropriate.

6. Police Scotland should ensure that the rationale for the search rate on young people is intelligence-led and that particular groups, such as young people, are not being subjected to excessive levels of searching.

7. Police Scotland should ensure that those to be searched on a non-statutory basis are aware of their right to decline.

8. Police Scotland should assess the best value implications and relative priority of the stop and search tactic against other policing activities.

9. Police Scotland should ensure the recorded details of individuals searched and information about those who do not consent to non-statutory search, are also captured in the stop and search database.

10. Police Scotland should provide the SPA with their rationale for the significant changes in the volume of stop and search activity across local authority areas in Scotland since police reform and their assessment of the impact this has had on outcomes.

11. The SPA should commission research, in conjunction with others, to establish the short and long term impact of stop and search on different groups and communities. In particular, this should cover the short and long term impact of stop and search activity on young people.

12. The SPA should publish comprehensive stop and search data on a regular basis.

Appendix 11. Research summary, SIPR Annual Report, 2013

Whilst stop and search is used extensively in some parts of Scotland, very little is known about the tactic. Neither ACPOS, HMICS, the Scottish Government nor the Crown collate search statistics, and as a result, it is difficult to assess what stop and search 'looks like', either comparatively between policing areas, or at the national level. Equally, it is difficult to determine whether search practices appear proportionate in relation to local offending levels and demographics. More broadly, stop and search has not been subject to an open policy debate. As one Assistant Chief Constable has remarked, stop and search is simply a "non-issue".

Against this background, the aim of this PhD is to deepen our understanding of stop and search in a Scottish context. The project examines the expansion of search powers in the post-war period; the current distribution of searches (who is searched, where, and on what grounds); the ways in which stop and search is regulated and accounted for; and the politics and policies that underpin search practices.

The project uses a mixed methodology, and includes quantitative analysis of police force data, interviews with officers across a range of ranks, and analysis of archived data, including parliamentary records, policy literature and media reports.

- Policing approaches to stop and search vary sharply across Scotland, resulting in significant variations in detection rates and the demographic profile of suspects.
- In particular, there are sharp variations in the use of non-statutory stop and search, and the extent to which policing areas rely on this informal style of searching people.
- Detection rates ranged from 5% to 25% in 2010. The use of non-statutory stop and search (which tends to be used on younger populations) is significantly associated with lower detection rates.
- Currently, there is no robust research evidence to suggest that stop and search has a deterrent effect. For example, it is difficult to isolate search activity from other policing initiatives and wider trends in offending.

This observation does not rule out the possibility that intensive stop and search may carry a deterrent effect. However, it should be noted that this style of policing tends to impact disproportionately on certain sectors of the population and may have an adverse effect on police-community relationships.

Appendix 12. SCCJR report press release

THE UNIVERSITY *of* EDINBURGH

News Release

Issued: 15 January 2014

Scots stop and search figures far exceed rest of Britain, report says

People in Scotland are nearly four times more likely to be stopped and searched by police than those living in England and Wales, a new report suggests.

A nationwide survey of police records reveals there were 64 searches per 1000 people in 2010 compared with only 17 searches per 1000 in England and Wales.

The research examined the records of Scotland's eight forces between 2005 and 2010 and showed that that most searches were carried out on a non-statutory basis, which means police do not need reasonable suspicion to stop an individual.

The study also concluded that there was huge variation between regions, and that searches tended to disproportionately impact on young people in some parts of Scotland.

The report is part of a doctoral research project at the University of Edinburgh. The research is based on police records that predate the merger of eight forces into Police Scotland in 2013.

Prior to the merger, Strathclyde was identified as the force most likely to use stop and search.

Despite having a 43 per cent share of Scotland's population and accounting for a 53 per cent share of Scotland's drug and weapons offences, Strathclyde Police carried out an 84 per cent share of stop searches.

Officers in Strathclyde carried out ten times more stop and searches (372,900) than the next nearest force, Lothian and Borders (37,700).

Figures for 2012 suggest that the rate of stop and search in Strathclyde (123 per 1000) was more than twice that of the Metropolitan Police (59 searches per 1000 population).

The research also showed that Central (39 searches per 1000) and Lothian and Borders (30 searches per 1000) were third and fourth highest for stop and search in Great Britain.

The report suggests that the effectiveness of stop and search is unclear. Detection rates ranged from less than 2% for offensive weapons to over 30% for stolen property. The deterrent effect of stop and search was unclear, given the difficulty in isolating the impact of searches on offending behaviour.

The report highlights the extensive use of non-statutory stop and search, which is premised on verbal consent rather than legislation. In 2010, nearly three-quarters of searches in Scotland were carried out on this basis.

Detection rates for non-statutory searches were around 7 per cent, compared with an 18 per cent detection rate for searches based on reasonable suspicion.

The report suggests that non-statutory stop and search was more likely to be used as a deterrent, although no direct association could be drawn between searches and falling levels of recorded offending.

The report recommends that non-statutory stop and search should be phased out, as there are concerns that searches are more likely to impact disproportionately on young people, and lack important safeguards.

The research indicated that young people aged between 15 and 20 years were nearly three times more likely to be searched than those in their early 20s.

In 2010 approximately 500 children aged 10 years and under were stopped and searched. Approximately 80 per cent of the searches carried out on under-10 year olds were non-statutory.

The report observes that effective policing relies on public trust and support, which is influenced by people's beliefs about police fairness. It is suggested that a disproportionate use of stop and search on young people in some parts of Scotland might undermine this necessary trust.

Report author Kath Murray, a doctoral researcher at the University of Edinburgh's School of Law, said: "Whilst it is concerning the use of stop and search has continued to increase under the single service, Police Scotland is now in an ideal position to make sure that stop and search is used fairly, consistently and on the basis of reasonable suspicion. Transparency and accountability are also essential to fair policing, which means that it's important to ensure that accurate and detailed data on stop and search is routinely published".

The author also welcomed Police Scotland's recent commitment to the Scottish Human Rights Commission's Scottish National Action Plan for Human Rights (SNAP). Kath Murray said "I am delighted that Police Scotland has made a commitment to engage with the use of stop and search as part of SNAP, which should result in stop and search being used in a way that is consistent with the legal framework".

"The research also shows that young people and children in some parts of Scotland tend to be singled out for stop and search. As such, it is encouraging to see Police Scotland have made a commitment to make sure that police practice is proportionate, and not based on profiling or stereotypes."

The report, 'Stop and search in Scotland: An evaluation of police practice' is based on findings from a doctoral project funded by the Economic and Social Research Council and the Scottish Government. The project is based in the School of Law at the University of Edinburgh. The report is published by the Scottish Centre for Crime and Justice Research (http://www.sccjr.ac.uk/).

For further information, please contact: