

scottish justice matters

POLICING

Reflections on developments and
changes to policing in Scotland



POLICING, PREVENTION AND THE RISE OF STOP AND SEARCH IN SCOTLAND

A SHORT HISTORY

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THE fact that Scotland has unusually high rates of stop and search is well-documented. In many ways, the numbers can be attributed to a unique set of organisational and regulatory factors; to the rigid, performance driven-style of policing adopted by Strathclyde Police force, and applied more widely in the post-reform period; and a lack of rules and restraining factors. It is clear, both from research (Murray, 2015) and the recent HMICS Audit report (2015) that stop and search is under-regulated, that there is little clarity as to what a stop and search is or how to count it, and that many searches lack reasonable suspicion. Digging deeper, it can also be argued that search practices in Scotland originate from a distinctive way of thinking about the policing role; to a preventative outlook premised on the use of police powers that now seems taken for granted, but, as this article aims to demonstrate, was not always thus.

Preventative police powers

Looking back to the early 1950s, parliamentary records show that the idea of a preventative police *power* was considered anathema by some parts of the legislature. The Prevention of Crime Act 1953 illustrates the point. Intended to deal with increasing rates of recorded violent crime, the Act provided a constable with pre-emptive powers of arrest on suspicion that a person was carrying an offensive weapon. Interestingly, the Act did not provide a power of search, and this was intentionally designed to prevent fishing for evidence. Conservative peer Lord Derwent explained:

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. (HL 14/4/1953 vol. 181 cc. 710).

Prevention was understood to result from the ability of the police to disrupt crime through pre-emptive arrest, as the Home Secretary put it, to 'to cope with the "cosh boy" before he has used his cosh', and from a general deterrent effect, 'the knowledge that the mere possession of an offensive weapon carries a liability to a substantial penalty' (HC 22/2/1953, vol. 511, c. 2325).

At first sight, the powers provided by the Act seem conservative, at least by contemporary standards. There were, after all, more than 114,000 stop searches for offensive weapons recorded in the first year of Police Scotland.

Yet in 1953, the preventative principle was viewed in some quarters as a radical departure from traditional legal values, notably by those on the political right, for whom the Bill represented 'a revolutionary doctrine' (Lord Saltoun, HL 14/4/1953 vol. 181, c. 701) which went 'against all our concepts of justice' (Baxter, Con. HC Deb 26/2/1953 vol. 511 c. 2354). As Conservative MP Ronald Bell stated:

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 (HC 26/2/1953 vol. 511 c. 2366).

These concerns were however, trumped by the overriding threat to order. The Modern Law Review stated that there was 'no use decrying this further encroachment on the liberty

of the subject' which was 'dictated' by the increase in violent crime (de Smith, 1953; 483-484). Likewise Conservative MP Ronald Bell concluded 'it is the criminal class that has forced it upon us' (HC 26/2/1953 vol. 511 col. 2354). To summarise, the Act was deemed a necessary, if somewhat 'un-British' approach to justice.

Expanding the policing role

The Prevention of Crime Act, 1953 signalled a shift in the ways in which the political classes conceptualised the preventative role of the police from an older Peelian model based on visibility, to a pre-emptive approach, using police powers, coupled with the slippery principle of reasonable suspicion. Whilst such powers were not unknown (for example, the Poaching Prevention Act 1862 conferred search powers, as did Scottish Burgh Police Acts), the significance of the 1953 Act lay in its relevance to routine policing.

This set a precedent for the expansion of pre-emptive powers in the 1960s premised on search, rather than arrest. Between 1964 and 1971, largely under Wilson's Labour administration, a range of search powers were conferred for drugs and firearms, variously with and without warrants, for premises and for people. By the late 1960s, the right to stop and search as an adjunct to specific offences appeared to be accepted by politicians of all shades: a legal construct that no longer went against established concepts of justice. As Conservative MP Joan Vickers stated in regard to the Dangerous Drugs Act 1967:

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 (HC Deb. 1/12/1967 vol. 755 c. 877).

Politics and police powers

In Scotland, the Criminal Justice (Scotland) Act 1980 conferred stop and search powers for offensive weapons. Passed by dint of an English Conservative majority, the Bill was contested by Labour, Liberal Democrat and SNP politicians. Concerns were voiced over civil liberties, police-community relations and use of the power 'for random and mass searching of young people' by way of deterrence (Baldwin and Kinsey, 1982; 183). As Labour MP Bruce Millan stated:

[If] 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 (HC 14/4/1980 vol. 982 c.834).

Similarly, SNP MP Donald Stewart commented, 'If Conservative Members think that this proposal will make for good relations with the police, they delude themselves' (ibid. col. 860).

A decade later, search powers for offensive weapons provided the legislative vehicle for the seminal high-volume

stop and search campaigns undertaken by Strathclyde Police. For example:

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. (Herald, 26/2/1993)

The Strathclyde campaigns extended the preventative remit further, introducing deterrence rationales, alongside detection, in effect, taking both detection and non-detection as successful outcomes (RHA, 2002; 22). In this way, the tactic was rendered unassailable, a commonsense solution to violent crime which could be legitimated irrespective of the outcome.

This powerful win-win outlook, which placed crime control over due process, prevailed for more than two decades in some parts of Scotland. As Chief Superintendent Niven Rennie explained, 'if you're truly successful in targeting your stopping and searching, you're going to have a lower success rate' (Holyrood Magazine, 2014). It is also shown forcefully in police statistics. Between 2005 and 2012/13, recorded searches rose 556%, from around 104,000 to 682,968. In the year prior to reform, the search rate in Scotland was seven times higher than England/Wales at 682,968 searches. Search rates began to fall in the post-reform period, by 6% in 2013/14, and more sharply in 2014/15, by 33%. Despite this fall, the search rate in 2014/15 remained over four times higher than England/Wales in the nearest comparable period, at 80 and 16 stop searches per 1,000 people respectively (Police Scotland, 2015).

This win-win orthodoxy is now subject to challenge, and further change seems imminent. Following an unprecedented degree of critical media and political attention, stop and search powers are currently under review by an independent advisory group, appointed by the Scottish Government. A fresh case will have to be made for police practice, and consideration given to the balance between crime control and due process. This short history shows how this balance has changed over time, and importantly, how different ways of thinking about the preventative role of the police can influence police practice.

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