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Jacques de Maillard, Megan O'neill

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Is it possible to reform police stops? Politicisation and police change in two European countries

Jacques de Maillard (University of Versailles-Saint-Quentin-en-Yvelines, CESDIP), demaillard@cesdip.fr ; 0033660081927

Cesdip,
Immeuble Edison,
43 Bd Vauban
78280 Guyancourt
France

Jacques de Maillard is Professor of Political Science at the University of Versailles-Saint-Quentin (University Paris-Saclay). He is the Director of the Cesdip (Centre for sociological research on penal institutions. His interests lie in the questions of local governance of security, the comparative study of policing in Western countries, Stop and search politics, and the pluralisation of policing.

Megan O'Neill (University of Dundee), m.oneill@dundee.ac.uk ; 00447752589366

the School of Humanities, Social Science and Law
University of Dundee, Nethergate, Dundee, DD1 4HN
Scotland UK

Megan O'Neill is a Professor of Criminology in the School of Humanities, Social Science and Law at the University of Dundee and an Associate Director of the Scottish Institute for Policing Research (SIPR). Her work focuses on aspects of police culture, stop and search, community policing, public sector pluralisation in policing and surveillance practices of the state.

Abstract

In several Western countries, police stops have become the object of political controversies on what the objectives and targets of police activities should be. By using the examples of two European countries (France and Scotland) where the issue has been highly politicised over the last fifteen years, we will conduct a comparative analysis to show how it has led to significant change in legislation, policy and police practice in Scotland and yet to a policy blockage in France. In both cases, police stops have been politicised through the combination of three interlinked axes: the production of critical scientific evidence, intense media coverage and forceful political

attention. Differing national traditions are not sufficient to explain the divergent outcomes. Drawing upon historical institutionalism, we will underline how institutions, understood as stable sets of formal and informal rules, favour certain policy developments rather than others. We will explore how each political context has shaped the balance of constraints and opportunities for reform and we will stress the importance of the respective dynamics of reforms. While both jurisdictions experienced 'hot' political climates, certain conditions needed to be met in order for significant reform to manifest.

Key words

Police stops, politicization of policing, police reform, historical institutionalism, comparative policing

8865 words

Introduction

Police officers have the ability to stop a person, prevent him or her from pursuing his or her passage and if necessary, proceed with a search of that person, his or her clothes and everything that person is carrying. The use of police stops therefore presents an important balance for policing in Western countries: on the one hand, police forces seek to be effective in the fight against crime and to assert their capacity to produce order, and on the other, police officers' actions must be based on a form of consent on the part of the public and respect of individual freedoms. In several Western countries, police stops have become the object of political controversies from opposing coalitions on what the objectives and targets of police activities should be. Understanding how police stops have become political issues and how the subsequent political debates have (or not) changed policies regarding stop and search is the objective of this article.

These issues resonate with some earlier work by Joanna Shapland, especially relations between criminal justice institutions and civil society as a "contested terrain" (Shapland, 2003). Some 35 years ago, she pointed out that the police and the public have contrasting perspectives on what the priorities of police work should be (Shapland and Vagg, 1988). As we will see in this paper, police stops illustrate perfectly such a divide as they have been the objects of recurrent controversies opposing different coalitions of actors with different views and conceptions of the role of the police in the regulation of societies.

By using the examples of two European countries (France and Scotland) where the issue has been highly politicised over the last fifteen years, we will show how it has led to significant change in legislation, policy and police practice in Scotland (however it will be qualified) and yet to a policy blockage in France (with the abandonment of the police stop record and no major initiatives in terms of police education or training). Analysing the reasons for these discrepancies will enable us to identify the conditions for effective policy change with regards to stop and search specifically (such as accountability structures, the role of the police unions, openness of the police to external scrutiny and research evidence, the role of reform entrepreneurs within the police, etc.), and to reflect more broadly on the future of relationships between police, governments and societies.

This article will first present the background context to the study and reform of police stops in Europe. We will then consider the mechanisms (or axes) of politization which France and Scotland had in common before exploring the different paths that the reform processes eventually followed. We will conclude with our reflections on the experiences of reforming police stops in France and Scotland and the wider lessons that can be drawn from these.

1. Police stops as teachable moments

Police stops, searches, questioning and arrests articulate the ability of state representatives to limit the liberties of people, thus representing a visible manifestation of the police legal monopoly of violence and intrusive nature of the state (Bowling and

Weber, 2011). They also constitute one of the most frequent types of interaction between state agents and citizens (and non-citizens) and have been a regular source of controversial relations between the police and communities. Police stops crystallise the competing demands on the police in unequal societies: to produce order and to police with consent; to fight crime and to respect the rights of those at the margins of our societies. There now exists a broad literature, that we would name “police stops from below”, on the effects of police stops (effectiveness, efficiency, procedural fairness, distributive fairness: Aston et al., 2021). As such, police stops are teachable moments, “generating and communicating information concerning the status of the parties involved, the relationship between them and their mutual positions within wider social structures and processes” (Bradford, 2017, p. 142; see Tyler et al., 2014). However, it is also important to understand how they are governed “from above”: how they are directed, regulated, monitored by police and political actors.

Despite variations, many European countries have entered a phase of 'hot climate' (Loader and Sparks, 2010; Murray and Harkin, 2017) with regards to policing issues, as stop and search has become the object of vivid public debates, media scrutiny, expert knowledge production, political controversy (see de Maillard et al., 2024): on the one hand, actors who emphasise their excessive use, lack of transparency and discriminatory biases; on the other, groups who defend the rights of police officers and the conduct of checks in the name of the effectiveness of police work in the fight against crime, terrorism or the protection of borders. Do these public controversies have effects on the policies of stop and search? Do they lead to changes in the legislation (the regulatory texts that frame police powers to stop and search people) and policies (police priorities, training and management orientations) that govern stop and search?

To address these questions, we focus on two Western countries where police stops have become a political issue with the mobilisation of NGOs and non-governmental bodies, the employment of scientific evidence, and the taking of political stances, despite different framings (the issue of ethnic minorities in France, children and young people in Scotland). But what is striking is that these similar mobilisations led to starkly different policy results: structural reform in Scotland, inertia in France. Thus, our endeavour in this paper is understand how the processes of politicization (Murray & Harkin, 2017) in both countries led to different policy outcomes. We will show here the ideological and political contexts in the two jurisdictions, and what, we will argue, were the key factors in the contrasting end points.

Comparing France and Scotland seems particularly heuristic as they belong to two different police traditions in terms of police and public relations: consensual (policing by consent) vs confrontational (crime control, and proactive). Social science research has however pointed that this divide is too simple, as these differences are also largely mythicised and national systems are not self-enclosed (see the discussion in de Maillard, 2022, p. 22-29). The fact that the Scottish police have been accused of overusing police stops to fight crime, by having an extensive conception of police powers (Murray, 2014, 2015), is significant: Police Scotland has not escaped the

recurrent criticisms against Western police forces of aggressive policing, particularly of a vulnerable population.

This comparative dimension leads us to a terminological and a methodological note. In relation to terminology, we will speak of police stops and ID (identity) checks collectively as ‘police stops’. In France the term ‘ID check’ is used, rather than ‘stop and search’, as police have the powers to oblige stopped individuals to present their identity papers (*vos papiers*) so that police officers can verify whether they are registered in any database of suspects or have prior convictions. In Scotland, police do not conduct ID checks, but rather are only permitted to stop a person for the purposes of a search if they have ‘reasonable’ grounds to suspect that person is in possession of prohibited items or evidence of a crime. Thus, the common factor here between our two jurisdictions is the act of ‘stopping’ a member of the public during their passage. We will therefore refer to ‘police stops’ throughout to refer to both tactics. In terms of our methodology, our analysis is structured around key factors that are common to both France and Scotland during their police stops reform journeys (to be explored in more detail below). We pooled the evidence available in each country from the relevant literature, official reports and publications from public and third sector organizations as well as media reports of significant events. While each of the authors has undertaken their own empirical research on police stops reform, our aim is here to give an overview of the changes in the regulation and of police stops in both countries. Through a consideration of the relevant literature and events during these processes and along these axes, we are able to compare the wider contexts, politics, ideologies and pressures present in both. We also acknowledge the ways in which the two jurisdictions differ, and account for these in our analysis. To begin, we will present the initial events that led to the politicization of police stops in France and Scotland before charting the different outcomes. We will conclude with an assessment of how the common axes manifest these divergent policy results.

2. Police stops as political issues: similar pressures for change

In this part, we will point to the similar processes of politicisation of police stops in the two countries. Stops have entered the political arena and have been discussed by political actors, in conjunction with various types of related actors and spaces (the media, expert forums, governmental and parliamentary forums). There have been differences in the ways stop and search issues have presented in the two countries. In France, the issue of ethnicity (“*contrôle au faciès*”: racial profiling) was central, although in Scotland, it has been more focused on the issue of age and the broad powers given to police officers at the time. Different coalitions have been at play too: in France, the role of NGOs have been a driving force, whereas in Scotland, institutional and political actors played a key role. But in both cases, police stops have been politicised through the combination of three interlinked axes: first, the production of critical scientific evidence (in France: Open Society Justice Initiative, 2009; in Scotland: Murray, 2014), second, intense media coverage and third, forceful political attention (parliament, policy platforms).

2.1. France: politicisation and the end of denial

Racial profiling has become a public and political issue under the rubric of *contrôle au faciès* in France. The expression has been in use since the 1980s, when descendants of immigrants started to protest against police conduct. Numerous NGOs have regularly denounced the biased controls and excessive violence towards minorities. It remained however at the margins of the public debate, but the situation changed during the 2000s, as scientific evidence, mobilization of NGOs and politicization of the issue coalesced.

In France, there is no administrative record of the overall number, distribution between officers and units, or the spatial and temporal distribution of stops. A major question has thus always been to prove the existence of biased stops. The Open Society Justice Initiative (OSJI) played an important advocacy role here. It funded a standardized observational study (see Open Society Justice Initiative, 2009; Jobard et al., 2012), which has since been considered a landmark of French studies on police discrimination. According to this study, conducted in major Paris transit hubs (see Jobard et al., 2012), ethnic minorities were vastly over-represented in police stops: all things being equal, the likelihood of being stopped was multiplied 3.2 to 9.1 (depending on the location) for black people and 3.6 to 14.5 for North Africans. Other surveys have equally indicated the over-representation of young males of ethnic minorities in police stops (mainly, Beauchemin et al., 2018; Jounin et al., 2015). In sum, one may conclude that race overlaps other risk factors, as “race can be said to be a predictive variable indeed, all other things being equal, it is certainly not the only relevant feature (...). Being a young male is strongly determining as well” (Jobard and de Maillard, 2020, p. 208). This study has been considered by the media and even by the Prefecture of Police spokesperson as “scientifically undisputable” (cited in Jobard and de Maillard, 2020, p. 213). After 2009, police chiefs and union leaders were relentlessly asked the same question: “everybody knows that police stops are discriminatory; what do you intend to do about it now?” (see Jobard and Lévy 2011).

In parallel, a group of NGOs supported by lawyers specialising in discrimination law and the Open Society Justice Initiative brought 13 cases of controls before civil courts. The originality of the approach lay in the fact that it was a civil claim rather than a criminal claim, which is much more common in the United States than in France. On 24 June 2015, the Paris Court of Appeal handed down 13 rulings in which, following the recommendations of the Human Rights Defender who had been called upon in these proceedings, it transformed the law on identity checks. Taking the view that identity checks fall within the scope of discrimination law, the court adjusted the rules for proving fault: it is no longer a matter of the claimant demonstrating the discriminatory intent of the State or the official, but of providing evidence giving rise to a presumption of discrimination, which obliges the administration to demonstrate before the judge that there is no discrimination. The decision of the Paris Court of Appeal, confirmed on 9 November 2016 by the Court of Cassation, marks a significant change in the history of discretionary administrative

control. Throughout this period, the Open Society Justice Initiative has been working to back up the judicial confrontation with a "legal capacity-building strategy", with the aim of helping French leaders from ethnic minorities to emerge and take up the cause. The "Stop le contrôle au faciès" collective was set up in 2011, with the support of the NGO Open Society Justice Initiative, whose methods included collecting testimonies, posting videos online and calling on rap and football stars. Little by little, the collective joined in the many mobilizations around police violence, discrimination and the cause of young people living in the French suburbs, with particularly notable political repercussions during the 2012 presidential campaign.

In connection with these NGOs campaigns, the issue of racial profiling came onto the political agenda. In 2012, the left-wing presidential candidate, François Hollande (who won the election), promised to fight racial profiling by drafting legislation for a procedure that would be mindful of civil rights (which was imagined as the creation of a mandatory monitoring scheme). However, once in power, the proposal was abandoned rather quickly (see below). The issue has, however, not disappeared from public debate: scandals (around "hot" police interventions), reports (by academics and/or NGOs) and other litigation cases have kept the question very much alive (Boutros, 2024). After several events during the year 2020 (racist insults towards a person of Maghrebin origin and the beating of a producer recorded by amateur videos), in an interview with the online media Brut, the French president admitted that *contrôles au faciès* were a reality in France by saying "[t]oday, when you have a skin color that is not white, you are much more controlled (...). They are identified as a problem factor and this is unacceptable"¹.

2.2. Scotland: The end of exceptionalism

Unlike in France, administrative data on police stops have been collected in Scotland since 2005 (Lennon and Murray, 2018). However, these data were stored separately by each legacy police force prior to the 2013 amalgamation, and with different levels of detail in those data between the forces. In addition, some of the datasets were not easily accessible to the public. In order to obtain the information she needed for her analysis, Murray (2014, 2015) used Freedom of Information (FOI) requests and compiled the data herself to obtain the national picture. What was revealed was not only the large volume of stops in Scotland (three times that of searches in England and Wales prior to amalgamation) but also the disproportionate focus on young people, and the significant reliance on non-statutory or 'consensual' searches for the majority of these (which do not require reasonable suspicion). Murray shared her findings with the Scottish Government and Police Scotland only for these to be treated as reputational threat rather than an opportunity for change (Murray, 2017). It was when Murray's

¹ Le Président Emmanuel Macron répond aux questions de Brut, 4 December 2020, <https://www.elysee.fr/emmanuel-macron/2020/12/04/le-president-emmanuel-macron-repond-aux-questions-de-brut>

research was publicised by the national media in 2014 did the process of reforming the practice commence.

As Murray indicates, the timing of her published research was significant (Murray, 2017). The Scottish National Party (SNP) had just been elected with a majority in the Scottish Parliament (in 2011) and had created the single national police service in 2013. This, plus other developments which will be explored more fully below, meant that the Scottish media, and the UK media more widely, had an acute interest in stories about the SNP and its policies (Murray and Harkin, 2017). Prior to 2014, the practice of police stops in Scotland was not a topic of political or media interest. There was very little oversight of the practice internally or oversight externally by police accountability bodies. Policing in Scotland in general received very little restriction during this time, which set the conditions for the rapid and deep expansion of stop and search, starting in the 1990s (Lennon and Murray, 2018). Once Murray's findings became publicised, policing in Scotland, and stops in particular, became headline news overnight and for a period of about 18 months. This launched a series of evaluations by a range of oversight bodies, academic researchers as well as NGOs. Senior police leaders in Police Scotland also saw themselves regularly invited to meetings of the Scottish Parliament Justice Committee's Sub-Committee on Policing to explain ongoing developments with the practice.

The groups which were most significant in the scrutiny of police stops in Scotland from 2014-2015, and which added to the media and political pressure, were the Scottish Police Authority (SPA), HM Inspectorate of Constabulary in Scotland (HMICS) and academic researchers. The SPA had commenced its own review of police stop powers just before Murray published her first report in January 2014. The SPA's report, published in May 2014, was highly critical of the practice and echoed many of Murray's findings, including the disproportionate use against children and young people. Key among these was that they could not detect a clear rationale for the use of the tactic, nor could they find any robust link with a reduction in violent crime. HMICS published the findings of its review of stop and search in March 2015. This was also highly critical, stating no confidence in police data, no discernible link between stop and search and a reduction in crime and arguing for a presumption of statutory search only. O'Neill et al (2015) conducted an evaluation of the Fife Pilot (a 'revised' approach to police stops developed by Police Scotland in an attempt to address the ongoing criticism). This, too, was damning in its findings and advocated for an end to non-statutory searches as well as a complete redevelopment of the data base. During this time, several NGOs expressed extreme concern about the use of police stops against children and young people in Scotland, including the Scottish Human Rights Commission, the Scottish Commissioner for Children and Young People, and the United Nations Human Rights Committee (Murray and Harkin, 2017). The Independent Advisory Group (IAG), appointed by the Scottish Government in early 2015, concluded that non-statutory searches should end, that there should be a Code of Practice for the tactic and that these should be enshrined in legislation. The Criminal Justice (Scotland) Act 2016 followed, and the Code of Practice came into effect in 2017.

3. Different policy results: Inertia vs radical changes

Despite these common pressures, our jurisdictions demonstrate contrasting subsequent reform trajectories. In France, the politicization of the issue did not lead to any meaningful policy changes. In Scotland, initial incremental changes from Police Scotland were followed by a crisis period that led to a more radical programme of policy changes with regard to police stops.

3.1. France: counter mobilization by unions and inertia

Two episodes are particularly significant in this situation of blockage, where external pressure did not impact internal policies and legislation regarding police stops.

In 2012, during the presidential campaign, the socialist candidate (who became president) took position in favour of a growing regulation of police stops. As mentioned above, François Hollande promised to fight racial profiling by pushing legislation for “a procedure [that would be] mindful of civil rights.” (quoted in Jobard and de Maillard, 2020, p. 213). On 1 June 2012, the prime minister announced that the minister of the interior was to spend the summer working on introducing the “*récépissé*,” i.e. a receipt issued to stopped individuals in order to avoid racial profiling, and minimize repeat stops. By mid-August, the minister announced that the measure would not be implemented, citing the riots that were taking place at the time in the city of Amiens. He declared, “Can you imagine police officers handing out receipts tonight in Amiens?” (14 August 2012, France 2 broadcast). The minister of the interior Manuel Valls, whose approval rating surpassed that of the prime minister, thus demonstrated how influential he was in the cabinet. Police unions voiced their discontent regarding the planned *récépissé* as early as June 2012. One proclaimed, “The public/police rift will not be bridged by making police officers feel the fault is theirs” (SGP trade union, 1 June 2012). They pledged to support the minister of the interior in return for the plan being dropped. Two minor compensation measures were introduced: the diffusion of body-worn cameras within the police (triggered by a decision of the police officer) and individual identification number for each police officer (Jobard and de Maillard, 2020, p. 214-215).

Another episode is telling of this relative inertia. In December 2020, after the French president criticized publicly *contrôles of faciès* (see above), police unions immediately expressed vocally their “anger” at being criticized by the president. After a few weeks of various meetings between officials and unions, the government launched the “*Beauvau de la sécurité*” (named after Place Beauvau where the ministry of interior is located), which has mainly consisted of rounds of negotiation between the police administration and the unions, with the regulation of police stops being kept out of the discussions.

To conclude our consideration of France, despite the continuing advocacy from NGOs, the Rights Defender and the sporadic political stances taken by political actors, police stops remain unreformed. No specific training for avoiding racial profiling has been established, no code of practice has been created, any specific recording of the

stop (the *récépissé*) has been kept off the agenda. Meanwhile, the police keep broad powers with regards to ID checks. In other words, the transactions between political and police actors led to a blockage.

3.2. Scotland: between moderate and radical reform, the power of a *stooshie*

The response of Police Scotland (and to some extent the Scottish Government) to the challenges around police stops can be seen in three main phases: initial incremental change, followed by an intense crisis period of reform, and then ending with another period of incremental change (O'Neill, 2024). The first phase (2014 to early 2015) saw a measured response from Police Scotland with initiatives which, while they did produce a degree of change, left the fundamental elements of police stops intact: disproportionate searches of young people and a reliance on non-statutory searches for the majority of the tactic's use. The changes which were implemented at this time were the creation of the National Stop Search Unit (NSSU) to monitor and improve practice internally, the commitment to end non-statutory searches of children aged 11 and under, the development of paper receipts for stops, the creation of external advisory groups and the implementation of the Fife Pilot (evaluated by O'Neill et al, 2015) which trialled new recording practices and aimed to improve community confidence and effectiveness (Lennon and Murray, 2018).

However, after a series of highly critical media reports in early 2015 and ongoing scrutiny by the Scottish Parliament and other groups, the incremental approach became untenable. Police Scotland moved to presumption of statutory search only by mid-2015, a significant reversal of its previous position. The NSSU compiled the recommendations from the various scrutiny reports (which eventually totalled 82) and developed an Action Plan to systematically address these (see the *Police Scotland: Stop and Search Improvement Plan 2015/2016*), which it enacted immediately. The Scottish Government, in a reversal of its previous supportive stance for Police Scotland, appointed the Independent Advisory Group (IAG) led by the human rights lawyer, John Scott QC, and which comprised of a range of independent advisors and researchers. When the IAG reported in September 2015, both Police Scotland and Scottish Government immediately accepted its recommendations in full. These included the complete ban on non-statutory searches and the implementation of a Stop and Search Code of Practice. These changes were ones that Police Scotland had previously argued against and had also taken extreme steps to protect the stop and search *status quo* (see discussion by Murray, 2017). To drop their defensive position in this way was radical and unprecedented change of direction.

After Police Scotland and the Scottish Government accepted the findings of the IAG, the pace of change once again slowed to a more incremental one (end of 2015 – 2016). However, this time there were significant scrutiny mechanisms in place and oversight bodies (internal and external) to which the NSSU and senior leaders now regularly reported. The slower pace was also in effect a requirement of the IAG who stipulated that there would be a review of progress after 12 months. This was a

departure from the previous immediate action often demanded from the media and political pressure of 2015. At this point, the reform of police stops in Scotland became far-reaching and significant in its impact. It included a detailed face-to-face (re)training package for all officers up to the rank of Inspector, ongoing and regular meaningful consultation with external partners including academic researchers, a redeveloped nation-wide data base and recording mechanisms (linked to a nation-wide rollout of the receipt books), 100% audit of all stop and search records by the NSSU, and a gradual end to the practice of non-statutory searches prior to the implementation of the Code of Practice in 2017. One example of the significance of the reform process can be seen in the dramatic reduction in the volume of stop and search being recorded. Searches went from a peak of around 400,000 in 2014 to about 30,000 by 2018 (Murray, 2015; Police Scotland, 2019). This reduced level of searching has continued (O’Neill, 2024). In addition, HMICS reviewed Police Scotland’s progress in reforming stop and search after its damning report of 2015 and found ‘substantial’ improvements. It concluded that all of its recommendations were now discharged (HMICS, 2017).

Table 1 below illustrates the divergent outcomes from the politicisation of police stops in France and Scotland from 2010 to 2020. As can be seen, the scope and depth of changes in Scotland far outstretch those of France, which remain largely unaltered. In the section to follow, we will consider why, with such similar and intense pressures to reform, so little happened in France while so much happened in Scotland.

Table1: Police stops Regulation, scrutiny and training (from 2010 to 2020)

	France	Scotland
Police powers to stop and search	Reasonable suspicion Suspicionless searches continue No code of practice	Reasonable suspicion Suspicionless searches end in 2017 Code of practice (after 2017)
Public scrutiny (mechanisms of accountability)	No <i>récépissé</i> No accountability bodies	Improvement in the recording of stops Publication of national statistics Paper receipts implemented nationally Regular updates to Statutory bodies (SPA and HMICS)
Policies (training, instructions)	No training	Training on the new code of practice for all officers up to Inspector

4. How to explain the different national trajectories of reform?

Here we seek to understand why the intense politization led to major changes in one jurisdiction but not in the other. An initial interpretation would be to point to the assumed divide between the Napoleonic vs Anglo-traditions. But as we will see this is

an insufficient explanation: traditions are moving pictures and they may even be employed as components of legitimating strategies (as we will see for the Scottish case). Race is another “usual suspect”: the fact that the target population differs in the two jurisdictions (visible minorities in France, young white working class in Scotland) could explain the contrasts in terms of dynamics of reforms. If this discrepancy contributes to the explanation, it remains insufficient as in both cases disempowered social groups were concerned. We thus need to understand other dimensions. We will consider a combination of structural variables (socio-economic context, shared ideas, institutional rules, political culture) and more intention-driven projects carried out by politicians, experts and professionals. We follow here a line of interpretation proposed by Jones and Newburn (2006) in their analysis of sentencing policies, as “being shaped by the strategic choices of political actors, mediated by the constraints of contrasting political institutions and cultures” (p. 792). Drawing upon historical institutionalism, we will underline how institutions, understood as stable sets of formal and informal rules, favour certain policy developments rather than others. We will also explore how each political context has shaped the balance of constraints and opportunities for reform. Finally, we will stress the importance of the respective dynamics of reforms, how they have molded the different trajectories.

4.1. National policing traditions?

Reading police scholarship, one may think of a usual suspect: France and Scotland are often thought of belonging to different police traditions, and the different reform trajectories would be a simple consequence of this cleavage. On the one hand the French police as the police of the state, on the other the Scottish police as the police of the people; on the one hand a confrontational approach to police and public relations, on the other a more consensual one based on policing by consent. If this dichotomy is not completely misleading, it does however convey a simplified – and erroneous – image of national realities.

It is true that in France, a rather coercive police style, mostly proactive and confrontational, is prevalent (Fassin, 2013; de Maillard and Zagrodzki, 2021). Despite variations between units, ID checks are considered a legitimate tool, as a way of controlling crime, asserting authority and collecting intelligence (de Maillard et al., 2018). It must also be noted that there is a very limited transparency in the French police system (and more generally in the administrative system): there are almost no data made public on the issue of police stops. The very large number of stops carried out is invisible within the police organization itself: superiors are not informed of them, and there is no administrative record of these acts. In Scotland, media, politicians, police elites and even academics have for long portrayed Scottish policing as consensual and characterised by a genuine concern for the wellbeing of the community (see Murray and Harkin, 2017). Despite this public image, the use of police stops massively increased between 1992 and 2013 (see below). As such, the Scottish policing strategy was emblematic of broader international trends valuing proactive confrontational policing. During the 90’s and 2000’s, despite a widespread use of police

stops, “senior officers successfully conveyed an image of stop and search in Scotland as qualitatively different to the English experience, carefully avoiding the harsh, non-discretionary overtones of zero-tolerance policing” (Murray and Harkin, 2017: 893).

In other words, relying only on national police traditions misses one point: why did Scottish policing, often presented as benign and benevolent, become more proactive and confrontational? It also overvalues stability at the expense of the variations within each national configuration. We therefore need to better understand how institutions, contexts and reform trajectories contributed to the differences observed.

4.2. Race as an element of framing

Our discussion so far has alluded to a major contrast in terms of political and policy framings. In Scotland, the politicisation of the disproportionality of police stops has been based on age although in France it was mainly based on race. In Scotland, the fact that the target population is part of the majority ethnic group could have eased reforms, as the majority population is worthier of particular political attention and harder to denigrate. By contrast, police stops in France have been targeted at marginalised communities more easily positioned by police and their social and political allies as deserving of being targeted. In other words, police stops in France tap into racial politics contrary to Scotland.

This argument holds some truth: for long, in France, les “*contrôles au faciès*” have remained at the margins of the political debate, only advocated by a rather limited group of far-left and civil liberties organisations. More recently, the terror attacks of 2015 and 2016 created favourable conditions for an extension of police powers - primarily directed at Muslim communities. However, this line of reasoning may have lost some of its explanatory power. The production of knowledge quantifying disparities in police stops, the political advocacy campaigns (especially at the beginning of the 2010’s), the successful litigation (which led France’s highest court to condemn the state for discriminatory stops) have contributed to firmly place the issue racial profiling on the political agenda (Boutros, 2024). Moreover, the policy framing has euphemized the racial dimension of it, in the name of a colour-blind imaginary. For instance, the police stop form proposed in 2012 did not contain any reference to the ethnic belonging of the individuals. By contrast, in Scotland, the portraying of working class young boys as a “dangerous class” has some resonance with the framing of descendants of migrants (most of them being French, sometimes for two generations) as a legitimate police clientele. In addition, that the target of police stops in Scotland was largely based in the majority white population is precisely why this disproportionality went unexamined (and thus unchallenged) for so long. Far from making the path to reform easier, the lack of an obvious racial bias in this policing practice meant that the situation in Scotland was ignored for decades due to the lack of resonance with trends in England and Wales (Murray and Harkin, 2017).

In other words, if racial politics should not be underplayed, it does not suffice to explain the reform efforts, which requires us to search for other political and institutional reasons.

4.3. Existing institutions as filters

Existing institutions impact on the policy changes introduced. As historical institutionalists have well noticed: “administrative institutions may structure dominant issues, discussions regarding the design of reforms, and may also ‘filter’ environmental pressures and external shocks” (Bezes and Parado, 2013, p. 26). Several dimensions are important in this regard: the first one relates to existing rules, and more concretely the existence of an official recording of police stops, the second one to existing and institutionalized arrangements.

While the police powers to conduct a stop do not differ strongly in the two countries, official recording differed significantly. In France, there is no administrative data on police stops and no procedure to record stops in any systematic manner. The vast majority of stops carried out are invisible even within the police: superiors are not systematically informed, and there is no official record of these acts. On the contrary, in Scotland, there exists a duty to record. This recording was the basis of Murray’s research, the focus of governance scrutiny and the foundation for the controversy in 2013-2014. In the subsequent phases, police Scotland had to answer recurrent criticisms about its need to improve the quality of recording. In other words, police data could be used to evidence the (over)use of police stops by Scottish police. This aspect is particularly important: in France, the absence of data has been regularly used as a way of undermining the issue, whereas in Scotland of official data could be mobilised against the police.

This is an important reminder: the existing institutions (i.e. official rules) may favour certain policy developments. But the impact of these institutions is broader, as “institutional arrangements unequally distribute resources among actors and can generate a status quo when veto players want to stop changes that may endanger their positions of power” (Bezes and Parado, 2013, p. 26). The case of the arrangements between the police administration, political actors and the unions is a crucial dimension. In France, police unions have played a central role in their ability to block reforms. In June 2020, after saying that police officers with “proven suspicions” (*suspicion avérée*) of racism would be severely punished, a minister of interior was forced to resign under pressure from the unions. In December 2020, the criticism by the French president of the overcontrol of minorities (see above) was followed by an immediate mobilisation of police unions which led to a round of negotiations between the ministry of interior and unions (the “*Beauvau de la sécurité*”) during which the issues of police stops disappeared from the political agenda. To explain this power of veto, we must first consider their weight in the police profession: police officers vote strongly in professional elections (80% in the last professional elections in 2022). The second reason is their relative unity on this issue: the union landscape is divided between multiple unions (depending on rank, profession and professional ideology,

see Jobard and de Maillard, 2015), but on these issues they defend common positions: protecting the operational autonomy of police officers. The last reason has to do with the unions' ability to communicate: given the limits imposed on institutional communication in a national, centralized organization, union representatives are often the ones who take the floor to comment on news stories and police actions, which gives them considerable media clout. In these conditions, they are capable of sending strong and direct messages to the government on what they consider (not) acceptable. One may add that political authorities have become fundamentally dependent upon the police (and hence upon police unions) in a context marked by numerous protests (labour law 2016; Gilets jaunes 2018-2020; pensions 2023) and terrorist attacks (especially in 2015-2016). In Scotland, there is no equivalent of this strength of corporatism which makes possible for unions to be a veto player preventing reforms that would limit the ordinary powers of police officers. The Police Federation (the equivalent of a police 'union' for 'rank and file' officers) is consulted in the process of introducing reforms to policy and practice, but does not hold the same influence over political actors as we see in France.

4.4. Critical juncture and political strategies

A second component to explain the differences relates to the different contexts, understood as the "relevant aspects of a setting (analytical, temporal, spatial or institutional) in which a set of initial conditions lead (probabilistically) to an outcome of a defined scope or meaning" (Falleti and Lynch, 2009, p. 1152). In France, political turnovers may have favoured policy changes but political actors have remained rather risk-averse. Whereas in Scotland, the creation of Police Scotland has reflected a more global transformation of the Scottish polity at the time.

In France, the intense periods (2012 and 2020) of politicisation of police stops have not led to changes in policies. Police stops are the subject of speeches and announcements of reforms, but the political, institutional and policy context remains relatively stable. Successive interior ministers, relaying police union demands, have rejected any reform, pointing out the additional bureaucratic work that a stop form would create. In 2016, a Socialist Minister of the Interior, when questioned in Parliament about racial profiling, said: "Police officers are on the front line in ensuring the safety of French citizens: to do so, they put their lives at risk and pay a heavy price... Given what police officers go through, I cannot allow anyone to believe that we should distrust the way in which legal principles are applied" (National Assembly, June 2016, quoted by Boutros, 2024). Again, the broad national context is important here: the terrorist attacks of 2015 and 2016 created favourable conditions for an extension of police officers' powers of control, or at least a protection of their discretion in the name of defending the nation. As Boutros writes, "in a context of normalisation of a security and militaristic discourse, government officials began to portray demands for facial checks as dangerous and thankless demands that increased the already high risks faced by the police" (2024, pp. 5-6).

The context in Scotland was quite different. The creation of Police Scotland introduced what could be called (in historical institutional terms) a “critical juncture”, “characterized by a situation in which the ‘structural’ (that is, economic, cultural, ideological, organizational) influences on political action are significantly relaxed for a relatively short period” (Capoccia and Keleman, 2007, p. 343). Scotland was undergoing a process of ‘nation building’ under the SNP, which gained a majority in the Scottish Parliament in 2011. This is reflected in reforms such as the merger of the eight regional police forces and the merger of the eight regional fire services in 2013 and the (failed) independence referendum in 2014. The Scottish Government was under intense scrutiny from the Scottish Parliament in this period. The Scottish Government defended Police Scotland’s approach to stop and search (it even gave its support to the practice in its 2011 manifesto and collaborated with Police Scotland and the SPA in the public response to Murray’s report in January 2014) until mid-2015 (Murray and Harkin 2017). Meanwhile, the Scottish Parliament (not Government) acted swiftly to hold the SNP to account for their policies in relation to policing by forming a Policing Sub-Group for the Justice Committee in March 2013 to monitor events and progress in policing in light of the Police and Fire Reform (Scotland) Act 2012. Media coverage was relentless, especially 2014-2015, regularly reporting on policing policy and operational errors.

4.5. Different reform trajectories

Another element relates to the reform trajectories in themselves. Trajectories of reforms may be analysed as a “series of reform sequences over the long term, with each one having an impact on its successors and a ‘transformative effect’ on the system of institutionalized public policies undergoing reform.” (Bezes and Palier, 2018, p. 1083-84). In other words, the sequencing of events is important. In France, the absence of any significant initiative led to an absence of administrative change, although in Scotland, the launch of the reform favored the involvement of internal champions carrying the reform within Police Scotland.

In France, the absence of initial steps has led to a situation of blocked exchanges within the police administration. As was evident, there was no intent to provide changes. One of interviewees in the central directorate of recruitment and training states: “as we didn’t see any general orientation, we chose not to move... especially on such a sensitive issue” (personal communication, January 2022). The internal configuration did not provide any incentive for any significant change. In other words, the absence of any political direction combined with the global reluctance for any regulation on police stops has led to situation of blockage. The absence of initial steps favours a situation in which taking an initiative is seen an unnecessary risk.

On the contrary, within Police Scotland, even during the initial period of incremental change discussed above, there were steps being taken to implement (albeit small-scale) reforms. The development of the ‘Fife Pilot’ and the creation of the NSSU are examples of these. This meant that when the external pressure reached its peak and the reform trajectory intensified, there were already internal systems and processes of

action and communication in operation, upon which further changes and actions could build. The NSSU is a good example here. In the early stages of the reform process, its voice and significance internally was less pronounced (O'Neill, 2024). However, as the process of reform gained pace, the resources allocated to it increased and the centrality of its role in reform became paramount. The NSSU leaders regularly advised and reported to not only the executive of Police Scotland, but also to representatives of Scottish Parliament, the SPA, HMICS and other organisations. Furthermore, the NSSU officers themselves became in effect internal entrepreneurs and champions of the reform process. For example, favoured by the wider organizational conditions, they embraced a more hybrid knowledge by regularly consulting with academic researchers to ensure an evidence-base for reform. In France the configuration was much polarized and divided to enable this kind of collaboration. The NSSU work also entailed travelling to and consulting with local divisions to 'sell' the reforms (and the need for them), sometimes at great cost in terms of their own reputations within the organisation and with great demands placed on their emotional and physical energy (O'Neill, 2024). This level of personal commitment to the reform process internally played a significant role in how events unfolded in Scotland but was absent in France.

5. Conclusion

As indicated at the beginning of this paper, police stops illustrate a "contested terrain" (Shapland, 2003), as they have been the objects of recurrent controversies related to the role of the police in the regulation of contemporary societies. We have considered two cases of intense politicization of police stops, but cases with starkly divergent outcomes. While both France and Scotland witnessed 'hot' political climates on the issue in the second decade of this century (in relation to ethnic profiling in France and disproportionate searches of young people in Scotland), reform is largely absent in France whereas it was far-reaching in Scotland, reversing a decade of standard practice. In conducting our comparative analysis we have focused on three primary axes on which this comparison can be made. These are the production of critical scientific evidence, intense media coverage and forceful political attention. As we have argued, national policing traditions are not a sufficient explanation for the divergent outcomes from these three common axes. Instead, drawing upon historical institutionalism, we considered how institutions favour certain policy developments rather than others, how each political context has shaped the balance of constraints and opportunities for reform and finally the importance of the respective dynamics of reforms.

Several points of conclusion appear. The first one concerns the link between reform and the politicization of the issue. In France, police stops remain an unresolved public issue: they are still polarizing. Police stops and related practices have remained immune from actual change. This has led to an overall increase in political tension around these issues.

Scotland may seem to provide a contrary example. To some extent, Scotland may be seen as emblematic of a window for reform. Reforms have been undertaken and meaningful changes have been introduced in terms of policies, guidance and

accountability mechanisms. However, it should be recalled that police stops remain a touchy and sensitive issue, which is difficult to politically handle. In other words, police stops may be reformed in effect, but this does not ensure that it will be kept off the public agenda. The imminent arrival of Body-Worn Cameras to Police Scotland may raise its profile once again (Police Scotland, 2022).

The second point concerns the effect of politicisation. Traditionally, hot climates are seen as inducing harsh and tough penal reforms. Murray and Harkin convincingly show that, in Scotland, it was a 'hot' climate that effectively challenged an 'unregulated and unfettered practice' (2017, p. 887), although the previous 'cold' climate kept interrogation of police practices to a minimum. Our research contributes to this debate by specifying the conditions of relevance: a hot political climate may favour reforms, but under certain conditions. External pressure alone does not lead necessarily to reforms: professional filters, administrative rules (administrative data, transparency) and political exchange between political actors and the unions are important parameters.

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