

# 1. POLICE STOPS: A COMPARATIVE PERSPECTIVE ON GOVERNANCE

**Authors:** Elizabeth Aston<sup>1</sup>, Mike Rowe<sup>2</sup>, János Fazekas<sup>3</sup>, Genevieve Lennon<sup>4</sup> and Sofie De Kimpe<sup>5</sup>

**Abstract:** This chapter introduces the question of governance, as it relates to police officers' use of their powers to stop members of the public, and mechanisms to ensure these practices are open to challenge, transparent and accountable. We highlight key definitional issues, gaps in the literature and outline the various legal frameworks at play across our European Police Stops COST Action network. The complexity of the governance of police stops is influenced by the legal system, the approach to policing, the political structure, and types of governance, including state and non-governmental control mechanisms. Given that the role of these factors varies across countries, we have adopted a thematic and comparative approach in this volume. Having outlined this approach and its limitations, we provide a brief outline of the topics covered by the chapters in this volume.

**Keywords:** police stops; governance; comparative; legal frameworks; accountability

## 1.1 Introduction

As we begin to finalise this collection, policing continues to be an almost daily news item in the US and Europe. At the heart of many controversial incidents is the police practice of stopping people as they go about their lives. For police officers, their actions are uncontroversial. Indeed, it is hard for them to think of policing without this authority. For many citizens, police stops are something they only encounter on the news. But for those most regularly subjected to police attention, being stopped is an exercise

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<sup>1</sup> Elizabeth Aston, Edinburgh Napier University, [L.Aston@napier.ac.uk](mailto:L.Aston@napier.ac.uk)

<sup>2</sup> Mike Rowe, University of Liverpool, [mikerowe@liverpool.ac.uk](mailto:mikerowe@liverpool.ac.uk)

<sup>3</sup> János Fazekas, Eötvös Loránd University, [fazekas.janos@ajk.elte.hu](mailto:fazekas.janos@ajk.elte.hu)

<sup>4</sup> Genevieve Lennon, University of Strathclyde, [genevieve.lennon@strath.ac.uk](mailto:genevieve.lennon@strath.ac.uk)

<sup>5</sup> Sofie De Kimpe, Vrije Universiteit Brussel, [sofie.de.kimpe@vub.be](mailto:sofie.de.kimpe@vub.be)

of power over them, an intrusion into their lives and, when followed by a search, a physical invasion of their bodies (Ross 2020). Waddington (1999) has suggested that interactions between the police and the public are defining moments, in which one's status as a subject is laid bare. Indeed, as Bowling and Marks (2015: 185) argue 'All discussions about police power should start and end with the issue of accountability, and the power to stop and search is no exception.' Such a police power, to stop those engaged in lawful activity, to check their identity or perhaps search them, appears both necessary and, at the same time, confrontational. Ensuring that police officers' use of this authority is appropriate, proportionate, accountable, transparent and open to challenge are the issues that, for the purposes of this volume, we treat as a question of governance. Before considering this question, we will clarify our purpose and meanings.

This volume emerges from the work of an EU Collaboration on Science and Technology (COST) Action on Police Stops (CA17102). We began work in 2018, continued through the pandemic and concluded in 2023. We brought together participants from 29 partner countries and explored the practice of police stops in each. We considered the ways in which police use their powers (O'Neill et al. 2022) and the ways in which their actions were experienced by those subjected to them (e.g. Saarikkomäkia et al. forthcoming; Schclarek Mulinari and Keskinen 2022; de Maillard 2023). We explored the social and political contexts in which police stops became the subject of controversy and of debate (de Maillard et al., 2023). In this collection, we consider the ways in which police stops are governed, held to account and subject to challenge.

In setting the scene for this volume, having started by highlighting the importance of the topic and the background to the development of the book, this introductory chapter now explores definitions of both police stops and governance and highlights gaps in the literature. Thereafter, we provide an outline of the various legal frameworks at play across Europe and explore how common legal norms provide a framework for legal oversight. The complexity of the governance of police stops is influenced by the legal system, the approach to policing, the political structure, types of governance, including state and non-governmental control mechanisms. Given that the role of these factors varies across countries, we have adopted a thematic and comparative approach in this volume. Following a consideration of various approaches to comparison and the associated dilemmas, our approach to comparison and its limitations are outlined. Finally, we provide a brief outline of the topics covered by the chapters in this volume.

## **1.2 Governance of Police Stops: definitions and literature**

One significant challenge to comparative research on police stops is that there is no one definition used across the jurisdictions (see further Chapter 2). But, to undertake a governance-focused comparative and thematic socio-legal analysis, we need a definition of police stops. As stated in our companion volume (de Mailliard et al. forthcoming) police stops involve:

‘Action taken by a police officer that interrupts the otherwise lawful passage of a citizen. They might be on foot, in a car, on public transport or otherwise in a public space. They are then subject to a search or an identity check.’

Therefore, when we use the term ‘police stops,’ we are referring to a set of police powers that are used to stop people in public or semi-public spaces to question them, conduct an ID check, or a search. We occasionally use the term ‘stop and search’ if there is a need to be specific about its use in a certain jurisdiction.

In public administration, questions of governance concern the ways in which decisions are made, authority is used and resources expended. It refers both to the ways those decisions are made and to the processes and mechanisms of accountability available to scrutinise those decisions. In Weberian terms (Weber 1947), rational legal authority is operationalised through systems of bureaucracy. Policy intentions, as communicated through law, are implemented in a strictly hierarchical model of government. Rules specify what all those in a public organisation are to do and are responsible for. As an ‘ideal type’, however, bureaucracy is generally recognised to be unrealisable. No laws or instructions can anticipate all possible scenarios, perhaps particularly in policing. More importantly, it would also be undesirable. Some flexibility, or discretion, is necessary to fit the laws to the specifics of a situation (Lipsky 2010). Nowhere is this need for discretion more clear than in policing. Robert Peel’s famous principles refer to the necessity of maintaining the consent and support of the public rather than simply enforcing the law. How are such delicate judgements to be made and assessed? In writing about the discretion exercised by what he famously called ‘street-level bureaucrats’, Lipsky (2010) referred throughout to examples from research on policing, and notably that by Wilson (1968). Holding street-level bureaucrats to account for the ways in which they use discretion is a notoriously problematic challenge in public administration (Brodkin 1997 and 2008; Rowe 1999; Sager et al. 2019; Sandfort 2000).

The inevitability of discretion is at the heart of concerns about governing police stops. No police officer can be mandated to stop or not to stop people in specific circumstances. They are required to use their own judgement, to assess a situation and a person’s conduct. They might also be expected to assess the context, including the presence of others, and the costs and benefits of taking action. Making such judgements accountable to superiors and to others is no simple task. If a bureaucratic approach is

unrealistic, other modes of governance also offer limited value (Newman 2001). Forms of oversight associated with the New Public Management (NPM), including systems of performance management and audit, have proliferated in policing as elsewhere (Day and Klein 1987). The unintended consequences arising from the use of indicators (Carter et al. 1992; Smith 1995) and of audit (Power 1994 and 1996) are very evident when employed in police organisations. The focus on measurable activities is perhaps particularly problematic if what is being performance managed is the use of police stops, typically leading to increased use of stops and increased disproportionality (Skogan 2022).

If there are problems associated with any single model of governance and accountability, whether bureaucratic or NPM, the tendency is to resolve any dilemmas by employing elements of different approaches. We can see this in the developments in the United Kingdom (UK), where governance of police stops is most clearly developed amongst European states. As we will explore further throughout this book, the use of law and codes of practice, and the recording of stops mimic bureaucratic systems of accountability. The controversial use of performance targets, at various times, reflected an NPM approach to thinking of governance. More recently, the use of community panels, or other forms of independent scrutiny and citizen oversight, to review police actions represents a form of what Newman (2001) might call partnership or network governance. In practice, elements of all three modes of governance are to be found alongside each other. This is why, for some police officers, conducting a stop and search in England and Wales is something they avoid because of all the attention that comes with that decision (Pearson and Rowe 2020).

Walsh and Conway (2011) emphasise the close relationship between governance and accountability in the context of policing. The definition of governance they adopt involves matters relating to management (strategy and prioritisation; policy development and implementation; deployment and resource allocation; maintenance of standards and internal discipline) and interactions with government and external bodies in the context of formal accountability processes. They use the term accountability to refer to processes which are used, by individuals or bodies inside or outside of the police, to hold police (individuals or organisations) answerable.

The Principles for Accountable Policing provide twelve principles to underpin accountable policing (Lennon et al. 2023). Taking these general principles and applying them to police stops, there should be universal accountability, meaning that all stops should be subject to oversight. This oversight should be pluralistic, combining ‘democratic processes, epistocratic bodies and consultative forums’, locally and nationally (ibid). These multiple forms of oversight should be interoperable and reinforce each other. While there is an important role for internal review and scrutiny within the police, the operation of police stops must also be held to account by bodies that function independent of the police, in terms of resources and

their ability to initiate investigations. These bodies should have sufficient powers, including being able to compel information from the police, to enforce their recommendations and to monitor police adherence thereto. The structures and functions of oversight bodies should be clearly set out in law. There should be clarity regarding the objectives of police stops and their conduct. This requires a commitment to robust evidence, independent evaluation, transparency and to being a learning organisation. This applies equally to oversight bodies as it does to the police.

When looking at governance comparatively, as Bevir (2010) illustrates, we cannot assume that certain legal frameworks, organisations or actors are involved. Indeed, as Henry and Aydin-Aitchison (2019) argue, there is increasingly a diversity of actors and institutions involved in governance, including non-state actors and, potentially, supranational institutions. We build on these accounts of local police governance in a selection of countries across Europe which illustrate ‘the messy, contested and sometimes contradictory nature of police governance and its politics’ (Henry and Aydin-Aitchison 2019: 514). These accounts highlight that systems that formally prioritise local (e.g., Lister and Jones 2019 on England and Wales) or central (e.g., Henry et al. 2019 on Scotland) modes of governance mask complex realities. For example, formally centralised systems of governance display differences in the reality of practice (e.g., Conway 2019 on Ireland) and complicated and contested working practices (e.g., Mouhanna 2019 on France). Accounts of governance in Finland emphasise universal values, such as the rule of law (Houtsonen and Houtari 2019). In Denmark, the focus is more on individual accountability through police complaints (Holmberg 2019). However, these accounts do not consistently focus on many other key areas of governance (e.g., the role of civil society or democratic accountability). Nor do they focus on police stops or provide information about police governance beyond the countries covered in northern and western Europe. In this volume, we will develop a comparative and thematic analysis focused on the governance of police stops across Europe.

Save a few select examples (e.g., Tóth and Kádár 2011) much of the police accountability literature across Europe does not focus explicitly on police stops. Whilst the police stops literature has, at times, highlighted the importance of governance and accountability (for example, Bowling and Marks 2015; Lennon and Murray 2016; Murray and Harkin 2017; Shiner 2015) there is usually a focus on specific jurisdictions (particularly the UK) or certain aspects of governance. Other facets of governance remain relatively underexplored in the academic literature in this context, for example civil society oversight, and the role of technology in the governance of police stops. Bowling and Marks (2015) particularly emphasise the centrality of accurate recording and reporting of stops to accountability. Overall, the police stops and police accountability literatures have not provided comprehensive coverage of a variety of

important facets of governance and their implications for police stops. This volume seeks to fill this gap by providing a socio-legal and comparative thematic analysis of the governance of police stops across Europe.

### **1.3 Approaches to comparison:**

#### *Legal frameworks and comparison*

Every European police force has legal powers to stop someone if, for example, the person is suspected of criminal activity. These powers obviously impact individual rights, including the right to a private life and freedom of movement, and, potentially, the prohibition on discrimination and rights to liberty, free speech and assembly. The high level of officer discretion carries with it the risk of arbitrary and discriminatory use such that police stops are often the subject of public controversy (de Maillard, Rowe and Verfaillie 2023).

One of the findings of the EUCOST POLSTOPS network has been that, despite the pervasiveness of the power across the continent, they appear profoundly heterogeneous, with differences evident in, for example, their legal structure, forms of accountability etc. This complicated landscape presents significant challenges to our comparative analysis across Europe. To address this problem and enable comparisons between different powers and different jurisdictions, in Chapter 2 we divide the regulatory framework of the stop powers into three characteristics. First, the legal structure: what the officer is legally empowered to do and for what ends. Second, discretion and accompanying legal safeguards, which are legal requirements or restrictions typically aimed at curbing discretion. Third, the general justification for the power: on what basis do politicians, police leadership, police officers and others justify the existence of these powers?

Since stop and search is a legal institution, regulated by statutory law instruments in most countries, it can be fruitful to compare the different legal approaches countries use. Comparisons of legal systems employ several different methods. One of the traditional approaches (Zweigert – Kötz 1996) focuses on the differences between families of law (Roman, German, common law, Nordic, far Eastern and religious) on the basis of, for example, historical background and the dominant ideology. This book does not follow this categorization entirely. Instead, we also apply the functional method which suggests that ‘rules and concepts may be different, but that most legal systems will eventually solve legal problems in a similar way’ (van Hoecke 2015: 9). Furthermore, the book applies the law-in-context method as well: we try to look at the way the legal

regulations work in practice, especially in judicial decisions (van Hoecke 2015: 16). Doing so, we sometimes focus on the historical origins of the present regulatory background (van Hoecke 2015: 18). Through these multiple methods, we explore how domestic and international law, specifically human rights and EU law, and regulations shape the practice of police stops, their limitations and where – and why – they have been effective in ensuring accountability. We also identify commonalities and divergences across the multiple jurisdictions examined.

Examining the different regulatory frameworks from these perspectives reveals commonalities across different powers and jurisdictions. In addition, it highlights those elements of the legal framework that are more likely to be effective in curbing infringements of rights and the extent to which they can control police actions. It can give a sense of what the drivers of police stops are likely to be and allows space for consideration of the broader socio-political contexts of police stops in different countries.

#### *A comparative criminological approach*

As de Maillard and Roché (2021) argue, comparative study of policing is underdeveloped, but beneficial, despite its practical and theoretical difficulties. Indeed, they contend that mechanisms of oversight are one of the main organisational features that should be considered in such comparative research. Bowling and Marks (2015) call for comparative research on police stops, using surveys and ethnographies in order to compare and contrast practices and regimes in different jurisdictions. Traditional comparative criminology has been criticised for focusing on the comparison of isolated self-contained cultures, most often nation states (Pakes, 2010). Pakes calls for a ‘globalised comparative criminology’ which is agile and focuses on the local, but does not lose sight of the global backdrop. Although we naturally focus on nation states, in a sense we have endeavored to take an approach to comparative enquiry which takes account of the globalisation narrative (terrorism, migration etc.), while being sensitive to the local impacts. We are also cognisant of supra-national nodes of governance and, for example, do explore the activity of civil society organisations which often operate across jurisdictions.

#### *Our approach*

COST provides funding for network and capacity building, rather than new empirical research. The Police Stops COST Action enabled us to bring together a network of scholars with interest and expertise on the topic of police stops, to share their research and come together to work collaboratively on common projects, including this volume. While this is not systematic comparative research of the sort called for by Nelken

(2017), we nevertheless bring together the most comprehensive analysis of the governance of police stops across Europe yet undertaken. Broadly speaking, this volume adopts an inter-disciplinary, socio-legal and comparative approach. We acknowledge the complexity of the governance of police stops, which is influenced by the legal system, the approach to policing, the political structure, types of governance, including state and non-governmental control mechanisms. Through the course of our work, we have certainly learned, as explained by Nelken (2017), that we cannot assume that facts about the way policing operates in one jurisdiction are ‘universal truths’ that can be applied to others. This makes comparative work simultaneously challenging and hugely beneficial.

We were eager to take a different approach to many comparative volumes, which often comprise separate chapters covering what is happening on a certain topic in each country. In making plans for this volume, we were keen to draw out learning on key topics relating to the governance of police stops. Therefore, we decided to adopt a thematic approach, with members of our COST working group from various jurisdictions co-authoring chapters on a number of key governance-related topics. During working group meetings, we developed and refined the list of key topics, mapping these to the interests and expertise of the group. They included legal frameworks, internal governance, external accountability, civil society oversight, judicial remedies, the role of data, and the use of technology in the governance of police stops. Members of our working group, and others involved in the COST Action more widely, were invited to be involved in writing these chapters together.

In writing these thematic comparative chapters, the authors applied theory, reviewed literature, legislation and case law, and drew on their own research, expertise and knowledge of police stops in their own jurisdictions and beyond. They also used information gathered by the COST Action participants, compiling information on the legal frameworks, practices and governance of police stops across the 29 participating countries. Authors approached other experts, where appropriate, to clarify information and we encouraged them to use a case study approach or vignettes to illustrate and bring to life how various topics of governance are operationalised in different jurisdictions.

The work presented various challenges, including: different understandings of police stops, policing, legislation and governance across jurisdictions; language barriers; and working together remotely during the COVID-19 pandemic. Given some of these challenges, particularly resourcing and other commitments exacerbated by the pandemic, we lost some collaborators along the way and we were unable to gain meaningful involvement in writing this volume from many of our 29 member countries. Nonetheless, the relationships and common understandings developed, and the sharing of information and knowledge



across jurisdictions while preparing the chapters, was much richer and more meaningful than likely would have been the case with country focused chapters. This volume has been a long time in the making, from the inception of the idea for the COST Action, through to the building of the network, and the work plan of the working group on governance, through to the writing and review phases.

## **1.4 Outline of the book**

The book examines the governance of police stops in nine chapters (including this introduction and a concluding chapter). Overall, it adopts an inter-disciplinary, socio-legal and comparative approach, though each chapter explores the complex topic of governance of police stops in different ways. However, there are common themes covered by several chapters, such as the significance of police discretion, the gaps between law in books and law in action, and the role of data and technology.

Chapter Two investigates the common features of the very heterogeneous legal regulations on police stops in three jurisdictions (England and Wales, Finland and France). The chapter identifies three key characteristics of the regulatory framework (the legal structure, discretion and legal safeguards, and the justification for the power), providing an analysis of commonalities and the differences in the legal powers and safeguards and how they affect oversight. The link between legal regulation and harmful impacts, such as the disproportionate or discriminatory application of police stops, is explored. The chapter concludes that while there are limits to the impact of legal frameworks, without accompanying political goodwill, training and the incorporation of human rights in policy-making, the law still has an important role to play.

Chapter Three explores approaches to governance internal to police organisations. The purpose of these systems is to ensure that policing policies and practices are in accordance with the law and subject to supervision and direction. This kind of scrutiny is very important because the majority of complaints against police measures like stop and search are dealt with internally within the police organization. The chapter covers various topics, including policy formation and implementation, deployment choices, and procedures intended to ensure that individual police officers act professionally in the discharge of their duties. The chapter concludes that no one element of internal governance is a ‘silver bullet’ but that a combination is necessary to improve oversight.

Chapter Four reviews the way in which independent external oversight bodies and parliaments tackle the governance of police stops. It discusses typical police stops situations that independent external bodies deal with, and the policy recommendations that they have published. Such bodies (e.g., complaints boards) have been established in many European

countries in order to ensure accountable and transparent policing, to increase the level of its legitimacy and to improve the human rights' standards of police stops.

Chapter Five investigates a specific form of police oversight: the practices carried out by individuals and more or less organised civil society groups in monitoring police stop and search measures. The chapter adopts a cross-national perspective in examining the impact of civil oversight arrangements, with a special focus on the increasing utilisation by the public of recording devices and social media to monitor police activities. In mapping this civil oversight landscape, the chapter explores whether and to what extent these burgeoning practices are altering police power on the ground by changing accountability patterns and increasingly consolidating the role played by non-state actors in informally regulating and ultimately governing stop and search and other police practices.

Chapter Six examines the legal remedies accessible to the individual, whose rights were allegedly violated during police stops. The topic is approached from international and national perspectives. In the first place the chapter focuses on EU law and the European Convention on Human Rights, which shape common minimum standards regarding remedies for unlawful stops. The chapter discusses and compares four European jurisdictions – Hungary, Italy, Poland, and England and Wales – regarding, in particular, the limitations on remedies, the extent of discretion, and the role of judicial review.

Chapter Seven considers some key aspects of data, transparency and accountability of police stops across the 29 EU member countries. What requirements exist across Europe in relation to the recording of police stops and public availability of data? What quality assurance mechanisms are in place in relation to data? The chapter considers various potential intended purposes and uses of data in relation to oversight, for example in relation to transparency, public confidence, effectiveness and equity. In addition, the chapter focuses on the role data play in exploring the distribution of this police power and the way data can be used to facilitate reflection, learning and improvement. Some good practices are highlighted in case studies and vignettes. The chapter also looks into concerns, challenges and unintended consequences regarding various aspects of the usage of data for oversight purposes.

Chapter Eight aims to provide a comprehensive comparative analysis of the state of the art and the possibilities and pitfalls of the use of police accountability technologies, focusing on the role of body worn cameras and mobile platforms. Using a case study approach, with a particular focus on Belgium, Germany, Croatia, Scotland, and England and Wales, the chapter explores current and emergent uses of police mobile and body

worn technologies in the governance of police stops and considers future possibilities and implications.

Chapter Nine reflects upon themes that emerge across the volume. It considers the logic and consequences of the significant heterogeneity of police stops resulting in largely similar negative impacts. To analyse and better understand the different processes, actors, practices and institutions behind governance, we draw attention to the three levels of governance – at the institutional (macro), organisational (meso) and professional (individual) levels. We conclude by calling for further comparative research that pays attention to the interactions and, at times, conflicts between these levels to provide tangible ways to move towards ‘good enough’ police stops (Bowling 2007).

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