

EXPLAIN HOW THE POLICE HAVE AND USE DISCRETION IN DEALING WITH SUSPECTED CRIME. ARE THERE WAYS IN WHICH THIS DISCRETION CAN BE CONTROLLED?

During the time of King Alfred parishes were required to take responsibility for their own policing. Every male over 12 was required to register and to be prepared to make himself available for police duties. These early policemen were known as “Tythingman” or “Headborough”, and are the early relatives to our modern day police. The tythingman was required to “*police*” his fellows and could be fined or have to pay compensation if he did not report a crime committed by one of his fellows. This can be seen as an early form of attempted control over police discretion the tythingman having the power and discretion to produce a criminal for trial or not. (English & English 1992). It can be seen at this early stage in the history of the police that the ability to control the police in their daily duties, although socially desirable, is not as easy as one would suppose. This also calls into question whether the police are on the streets as peace keepers or law enforcers. Lord Scarman commented in his 1981 report on the Brixton riots, that if peace keeping and law enforcement conflicted that the keeping of the peace should take priority (Reiner 1994).

When first suspecting a crime, and having a suspect, the police officer has the choice whether to take steps against the suspect or whether to pass it over. The criminal law is straight forward in this, that it requires under law, the officer to place before a court any evidence that is in connection with a crime. The officer has the choice, and therefore must use his discretion, as to whether he arrests the suspect or whether he invites the suspect to the police station for further questioning or to take no further action. If the suspect is arrested and taken to the station, after interrogation, the police have another decision to make, whether to charge the suspect with the offence or not, and if so what charge is to be given. Often more serious charges may be dropped in favour of lesser charges that may have more evidence or may attract a guilty plea (Williams 1988). It could be argued that the police are here using discretion in a way so as to keep the crime clear up figure at a reasonable level. It can be seen that discretion will be used at various levels, the arresting officer has used his discretion in whether to arrest or not, a more senior officer may make the decision whether to charge or not, and a yet more senior officer or a legal representative will make the decision whether or not to take the matter to court, this may be put into the hands of the CPS who will make any decisions as to any further action or if it is to receive No Further Action (NFA).

Professor Joseph Goldstein has noted that the police may not always consider it correct or prudent to charge a suspect in every case, this he called “Low visibility decisions”. He argues that police officers should not have so much control in this type of discretion (Williams 1988). It has also been suggested that discretion increases the further down the police hierarchy you go (Wilson 1968) as it is primarily on the streets that the beat constable is making the discretionary decisions.

A senior police officer, John Alderson, noted that to enforce the law in every possible situation was a “...barren and unimaginative approach...”. He also suggests that this could bring the police and the legal system into disrepute, and “... fails to exploit the potential of the law for soothing rather than irritating social maladies...” (Alderson 1979).

Alderson also suggests that in the case of minor offences, police should use discretion within the bounds of local tolerance levels. It can be seen that there are, in many instances, local variations as to certain misdemeanours and that tolerance levels, along with attitudes and values will vary from town to town or city to city. The police must recognise these regional differences, and must use their discretion accordingly. It has been recognised that although the police must exercise discretion in relation to local tolerance levels, and must also be aware of local differences, especially with regard to a multi- cultural society that contains a mix of ethnic backgrounds, as well as considering the demands and needs of different age groups, that the police must be aware of the different needs of a pluralist society, this calls into question the relationship between reactive and proactive policing (Williams 1988).

Perhaps the largest area of discussion in recent years around police discretion has been in relation to “Stop & Search” or SUS laws. It is on the streets with no supervision that the beat officer has the use of a large amount of unsupervised discretion. It is clear that the decision to stop someone on the street is not always guided strictly by legal criteria, but recent claims of disproportionate stops of black people is not confirmed by research (Junger 1990). This research shows that *all* people in poorer, particularly inner-city areas were more likely to suffer an increased probability of arrest (Smith *et al* 1984). Where black people are seen to be victimised by the police is in self report studies, see for example Huizinga & Elliott 1987. However, Sullivan (1987) suggests that different groups view police behaviour in different ways, and that black people feel more hostile towards the police, this may then lead to differing treatment once at the police station, but can be seen to be a reaction to the police and not a direct reaction by the police themselves. Smith (1983) reported in a study in London that; different cultures differ in their attitudes

towards stop and search. He reported that only 35% of blacks believed the police used SUS when one is acting suspiciously, compared to 58% for whites and 66% for Asians. This supports the study by Huizinga & Elliott (1987).

Cray (1972) identified those that he called "police property", these are groups that may carry little influence in society or may be unpopular. Reiner (1994) argues that a group or social category becomes police property when society leaves the social control of that group to the police. This can lead to the group being over policed and under protected. Reiner further suggests that studies of policing show that these police property groups are disproportionately young unemployed or casually employed men, mainly from discriminated against ethnic minorities.

Before PACE (Police & Criminal Evidence Act 1984) stop and search powers were very limited, the Metropolitan police force in London had some powers to stop and search, but in the rest of the country a police officer might have found himself subject to a charge of assault had he used this measure.

Prior to PACE the police had argued that stop and search was a very important part of crime detection, PACE section 1 introduced stop and search legally, if the police had a reasonable suspicion that the person or persons were carrying stolen goods or prohibited articles.

The codes of practice seek to ensure that police use these new powers with discretion, and do not stop and search on the grounds of ethnic origin, age, gender or type of clothing being worn. It can be seen that this is an attempt to bring some control over the police and to minimise the use of individual discretion by an officer. The officer must, according to the codes of practice, be able to show "reasonable suspicion", simply failing to answer questions does not constitute grounds for search, but, running away from the officer would. Even with this type of control over the police, they still have a fair amount of discretion, and are still able to abuse their position. The three most commonly used reasons for stop and search are; firstly, that the person has a previous conviction, secondly the preservation of order and police authority, and thirdly, general suspiciousness, being in the wrong place at the wrong time (Uglow 1995) Officers may rely on instinct or a "hunch" this can or may lead to prejudice or discrimination.

In 1990 there were 256,900 searches of these only 39,200 (15%) led to an arrest, (Uglow 1995) it could be argued that even with the controls put in place by PACE and the codes of practice, little has changed, and that the police still have and use discretion with little or no supervision.

Accountability has always presented a problem within the police force, it can be seen that the police are accountable to many people. Through the media the public pick up on problems or shortcomings within the police service. There are also the local police authorities, except London where the police commissioner is responsible directly to the home secretary, these Local Police Authorities (LPA's) appoint senior officers and to a certain extent are responsible for the smooth running of their county force. But, as mentioned above where the majority of police action and therefore discretion takes place, is on the streets, where no chief constable or LPA is present. It is therefore very difficult to monitor an individuals performance, let alone to view his level of discretion.

John Lea and Jock Young, in their book "What is to be done about law and order ?" (1984) state "The harassment of the public ... by the police has become a major political issue." It could be argued that statements such as this and that of Lord Scarman commenting on the 1981 Brixton riots "... aggression by young men who felt themselves hunted by a hostile police force.", do nothing to foster relations between the police and public, perhaps we should study the actual process of police operation and discretion rather than the sociology of it. !!

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