Doing the Right Thing for the Right Reason? A Critical Discussion of Procedural Justice Principles and Their Link to the Legitimacy of the State Police

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Doing the right thing for the right reason has become somewhat of a mantra for some in the police community: the Chief Constable of Greater Manchester Police used it as a heading for his blog in 2011. This simple phrase represents a significant shift in policing practice from the days of the Home Office dictating a detection-driven target culture (up to around 2010). It resulted in returning some discretion back to front line policing and links in with the concerns of procedural justice, and its alleged promise to improve levels of public confidence and police legitimacy. It also implies that the outcomes of decisions and the processes of making decisions

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should be based on ethical or normative considerations, not instrumental ones. This paper will trace recent developments in policing practice and link them to the concerns of procedural justice; and with that critically review whether the explicit or implicit expectation that procedural justice processes will increase public confidence in policing, and whether the state police’s legitimacy endangers the longevity and normative principle of the concept.

It is commonly assumed that police legitimacy and trust in policing are important to a democratic society, not only theoretically, but also practically. Policing by consent depends on the confidence and the backing of the public. This in turn will result in citizens abiding by the law ‘most of the time’ as well as their active participation in the criminal justice process by reporting crime, serving as witnesses in court, magistrates, referral panel members, and in other
voluntary roles. Some commentators expressed concerns that public confidence in the criminal justice system is too low, and that this constitutes a threat to police legitimacy as well as the day-to-day running of the criminal justice system – an indication of rating trends of the police since 1982 is included in Figure 1 below. While it is impossible to assess whether confidence in the police was as high as suggested by some in the mythical ‘golden age’ of policing up until the 1950s, the British Crime Survey has provided some evidence that satisfaction with the police has fallen since the 1980s alongside a rapid increase in crime up until

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3 Assessments of long-term trends are complicated by changes in question wording in 2003/4 and removal of preceding questions in 2011/12.

4 See, for example, analysis by M Hough, ‘Policing London, 20 Years on’ in A Henry and DJ Smith (eds), *Transformations of Policing* (Ashgate 2007).
the mid-1990s. However, since the question measuring confidence in the local police was changed in 2003 to 2004, rates of confidence have steadily increased. According to the latest set of figures, in 2011 to 2012, 62% of respondents to the Crime in England and Wales Survey felt that their local police were doing a good or excellent job.\footnote{ONS, \textit{Focus on Public Perceptions of Policing, Findings from the 2011/12 Crime Survey for England and Wales} (Crown 2012) at p2.}

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The assumption that falling levels of confidence constitutes a threat to the legitimacy of the state police is...
derived from an understanding of legitimacy as being based primarily on citizens’ belief that power relations are legitimate.\(^6\) This understanding of legitimacy as ‘perceived’ legitimacy has been challenged by Beetham, who suggests it is a simplistic and incomplete understanding of legitimacy.\(^7\) Beetham\(^8\) contends that legitimacy is multi-dimensional and consists of three levels: power relations are set up in adherence to existing laws; the laws themselves are justified by reference to the values and beliefs shared by those in positions of dominance as well as subordinates; and that there is evidence of consent through actions by subordinates, i.e. those subject to the exercise of power. Consent is seen as a distinctly modern component of legitimacy of power relations.\(^9\) Thus, following Beetham’s arguments, the assertion that ‘any democratic system of law needs the

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\(^7\) D Beetham, *The legitimation of power* (Macmillan 1991), at pp7-12.

\(^8\) ibid, p16.

\(^9\) ibid, p18.
consent of those whom it polices\textsuperscript{10} may be an ideal, but in itself is not a sufficient condition for the legitimacy of existing power relations.

So, on one hand, the concern with public opinion of the criminal justice system and the police in particular is linked to questions of the legitimacy of the state police\textsuperscript{11}. On the other hand, the concern with public opinion is pragmatic in nature, centring on the criminal justice system’s ability to function. The police are dependent on the support of the public in order to police effectively, not least because some 80 per cent of law-breaking is brought to the police’s attention by members of the public.\textsuperscript{12} Moreover, members of the public serve as witnesses in court, magistrates, referral panel

\textsuperscript{11} The term ‘state police’ is used here to distinguish the state funded local police services from private police organisations and structures.
\textsuperscript{12} M Maguire, 'Crime statistics: the "data explosion" and its implications' in M Maguire, R Morgan & R Reiner (eds), \textit{The Oxford Handbook of Criminology} (Oxford University Press 2002) (pp. 322-375), at p335.
members, and in other voluntary roles, thus ensuring the smooth running of the criminal justice system. There is little research linking levels of expressed confidence to levels of public engagement, including volunteering, with the police or the wider criminal justice system.

The concept of procedural justice

Crime and crime control have become highly politicised subjects in England and Wales since the 1970s, and the introduction of publicly elected Police and Crime Commissioners in 2012 may be regarded as the height of this process of politicization. The use of the police for political purposes has haunted the ‘institution’ since its modern incarnation slowly emerged after the 1829 reforms. These concerns mingled with scandals involving the abuse of police powers have greatly influenced the legal, policy, and political framework in

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which the state police operates today. In particular, many elements have influenced governmental strategy about state police accountability and governance. They include corruption scandals in the 1960-70s, the handling of industrial disputes in earlier parts of the 20\textsuperscript{th} century as well as the miners’ strike in 1984, the on-going allegations of police discrimination and racism, and the recent allegations of collusion between the police and the press. The early years of the 21\textsuperscript{st} century were dominated by an obsession with performance management in the public sector, including the state police and this influenced frontline police activity directly.\textsuperscript{14} Policing practices were dominated by the Home Office which dictated a detection-driven target culture for all police services in England and Wales. Only recently, after the election of the Coalition Government in 2010, were central Home Office targets relaxed and senior police

\textsuperscript{14} For a discussion of police performance management regimes, see MY Feilzer, ‘Not fit for purpose! The (ab-)use of the British Crime Survey as a performance measure for individual police forces’ (2009) 3(2) Policing: A Journal of Policy and Practice 200-211.
officers felt able to return some discretion back to frontline police officers. However, the return of discretion to individual police officers was tied to rules and decision-making processes and, in some instances, linked in with the notion of procedural justice in policing.

The literature on the subject of procedural justice has grown exponentially over the last few years, and is dominated by voices that hail its advent as the panacea to improving public confidence in policing and police legitimacy. Procedural justice derives from the US literature on police legitimacy, but has its basis in analyses of organisational power and perceived legitimacy following Weberian lines of thought. Procedural justice is linked to compliance theories, built on the assumption that those who perceive the police as a

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legitimate authority will feel a moral obligation to obey their instructions voluntarily as well as actively support the police in community policing activity or crime prevention.\textsuperscript{16} Where police activity is regarded as an abuse of power or as illegitimate due to activities such as discriminatory practices, cooperation may wane and conflict may ensue. In this context, procedural justice relates to frontline policing based on impartiality and fairness,\textsuperscript{17} the focus being on a ‘fair and respectful’ process in contrast to outcome-focussed policing strategies.\textsuperscript{18} The effect of procedural justice on public evaluations of policing has been empirically tested in a


\textsuperscript{18} Hough (n16) 182; T Tyler, ‘Legitimacy and compliance: the virtues of self-regulation’ in A Crawford and A Hucklesby (eds), \textit{Legitimacy and Compliance in Criminal Justice} (Routledge 2013) at p12.
number of English-speaking countries, in Australia,\textsuperscript{19} the US\textsuperscript{20} and in North East England, providing ‘evidence of a connection between police fairness and public confidence in policing’\textsuperscript{21}.

The discussion above suggests that procedural justice is focused on and linked to achieving practical outcomes, such as public cooperation, public confidence, and increasing police legitimacy. As Mike Hough\textsuperscript{22} points out, procedural justice holds the promise to resolve some tensions between those concerned with the state’s use of force and those concerned with the control of crime, namely that ‘fair, respectful and legal behaviour on the part of justice officials is not only ethically desirable but is a prerequisite for effective


\textsuperscript{20} Tyler (n18).


\textsuperscript{22} Hough (n16) 337.
justice’. Hough\textsuperscript{23} distinguishes between two types of legitimacy – legitimacy that is based on objective criteria such as democratic norms and the observance of human rights – and perceived legitimacy in the eyes of the public. His emphasis is on the role of procedural justice in influencing perceived legitimacy. That emphasis runs the danger of divorcing ‘people’s beliefs about legitimacy from their grounds or reasons for holding them’, which lie in the actual characteristics of a regime.\textsuperscript{24} Without tying beliefs of legitimacy or perceived legitimacy to characteristics of the regime, you may hollow out perceived legitimacy into a measurement of legitimation ‘generated by the powerful themselves’.\textsuperscript{25} In other words, analyses may be restricted to measuring the effectiveness of state propaganda on public beliefs, ‘rather than an analysis of the factors

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\textsuperscript{23} ibid, 336.
\textsuperscript{24} Beetham (n7) 10.
\textsuperscript{25} ibid, 19.
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which give people sufficient grounds or reasons for holding them'.

Beetham suggests that expressed consent through action rather than perceived legitimacy should be one dimension of legitimacy. Of course, expressed consent will relate to some extent to perceptions of legitimacy. However, tying procedural justice closely to the aim of increasing perceived legitimacy risks the concept falling hostage to fortune. Were such perceived legitimacy not to materialize, e.g. confidence levels drop, procedural justice may be replaced by a new approach, promising increases in confidence. Therefore, it is essential to defend procedural justice as a normative concern crucial to the legitimate use of police force. In other words, that the police follow the legal norms and procedures stipulating equality of treatment and human rights is an element for legitimacy, a characteristic of the ‘regime’ that should give the public a reason for

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26 ibid, 10.
27 ibid, 20.
believing in the legitimacy of the state police. The state’s power to use force on its citizens needs to be applied in a fair and just manner as outlined by the legal framework in place in England and Wales – it is not a process that can be chosen on the basis of achieving certain desired outcomes. This is true for procedural as well as distributive justice; there is no denying that perceived legitimacy may be important in influencing compliance with police power, but there are a number of significant problems with reducing legitimacy to a perceptual issue.

One significant concern is the measurement of perceived legitimacy; the other relates to the question of conflict between the ‘objective’ measures of legitimacy such as adherence to human rights and perceived legitimacy. What if the perceived legitimacy by a majority of citizens is high, but there is clear evidence of disregard of human rights of a minority? Moreover, is it really possible to divorce the outcome of an interaction entirely from the process and the ‘perceived’ quality of
treatment leading up to the outcome? Finally, Tyler makes a distinction between favourable and unfavourable outcomes, but there is no discussion of the basis by which favourable or unfavourable outcomes are defined.

**Implementing procedural justice in policing**

How have the principles of procedural justice been implemented in policing in England and Wales? In 2008, the government-commissioned Flanagan report made 33 recommendations to improve policing. A number of the recommendations responded to the perceived need to counteract a ‘detection’ culture developed under New Labour’s performance management regime, which the then Labour Government admitted had resulted in

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28 Tyler (n18) 12.
‘perverse effects’.\textsuperscript{29} One recommendation, Recommendation 21, was specifically related to addressing ‘the lack of proportionate response in the service and to create a community focused performance regime for local crime’.\textsuperscript{30} As a result, a number of police forces trialled new forms of returning more discretion to the front line, described as ‘discretion with rules’,\textsuperscript{31} and by 2011, 12 police forces in England and Wales had adopted a variety of value-based decision making models\textsuperscript{32} and ACPO (The Association of Chief Police Officers) approved an ‘ethical national decision model’ in 2012\textsuperscript{33} (see Figure 2 below). The national decision making model could be regarded as an example of

\textsuperscript{32} A Lee, \textit{The importance of ethics for policing} (2010) Transcript of Presentation, at p7.
\textsuperscript{33} ACPO 2012. National Decision Model.
procedural justice: all decisions are made on the basis of clear procedures, and the six key elements are based on ACPO’s Statement of Mission and Values, thus encouraging consistency across police forces and fairness.
Figure 2: The ‘ethical national decision model’

Source: ACPO, 2012, 2
The underlying premise for the national decision making model is that the police in contemporary society are guided by multiple, interrelated goals that can sometimes be in conflict with each other such as reduction in crime, protection of the public, reducing fear of crime, and increasing public confidence in policing, to name just a few. Police officers in many frontline operational policing scenarios are faced with situations where they have to choose, not between an objectively wrong or a right decision, but rather different ‘right’ decisions dependent on the choice of one of the different purposes of policing and value bases of the criminal process.\(^{34}\) Thus, the same scenario could lead to two different, but equally justifiable, decisions, one based on crime control to bring an offender to justice for a crime committed; compared to one based on the notion that crime control can sometimes be oppressive and that the use of coercive powers should be avoided in those circumstances.

\(^{34}\) A Sanders, R Young & M Burton, *Criminal Justice* (4\(^{th}\) ed, Oxford University Press 2010), at p21.
allowing for compassion and giving people a second chance to avoid criminalisation where it serves no public interest. Police officers are required to reflect on multiple, value-based perspectives in order to reduce legitimate value conflicts or ambiguous situations.35

The debate about which purpose or model of policing is more important is not a new discussion, and attempts to produce a comprehensive model for criminal justice which helps resolve the tensions between the different purposes goes back to Herbert Packer’s models of the criminal process in 1968. Various models have been proposed for the criminal process, from the human rights model to the enhancement of freedom model.36 The enhancement of freedom model may help with difficult police decisions and value conflicts as it asks

36 Sanders, Young & Burton (n34) 21-59.
the question of what action is ‘most likely to enhance freedom’ – arresting and prosecuting an 80 year-old man for stealing a packet of crumpets worth 50 pence or returning the stolen goods and taking no further police action? The model does come with other problems, but may be an interesting alternative to the discussion of procedural or instrumental models.\textsuperscript{37}

So, how do such theoretical models work in practice? In 2010 to 2011, the author (with a colleague) undertook some research which looked at the impact of value-based decision making (VBDM) on frontline police staff\textsuperscript{38}. We found that there were a number of theoretical problems with the concept of VBDM, some of which are transferable to the national decision model. Organisational values are subject to change, for example, ACPO’s Statement of Mission and Values undergoes changes; and are often too vague to be useful guides for

\textsuperscript{37} For an in-depth discussion of the freedom model, see Sanders, Young & Burton (n34) 21-59.
\textsuperscript{38} Feilzer & Trew (n31).
decision making. Below, I have included ACPO’s 2011 Statement of Mission and Values for illustration of this point:

The mission of the police is to make communities safer by upholding the law fairly and firmly; preventing crime and antisocial behaviour; keeping the peace; protecting and reassuring communities; investigating crime and bringing offenders to justice.

We will act with integrity, compassion, courtesy and patience, showing neither fear nor favour in what we do. We will be sensitive to the needs and dignity of victims and demonstrate respect for the human rights of all.

We will use discretion, professional judgement and common sense to guide us and will be accountable for our decisions and actions. We
will respond to well-founded criticism with a willingness to learn and change.

We will work with communities and partners, listening to their views, building their trust and confidence, making every effort to understand and meet their needs.

We will not be distracted from our mission through fear of being criticised. In identifying and managing risk, we will seek to achieve successful outcomes and to reduce the risk of harm to individuals and communities.

In the face of violence we will be professional, calm and restrained and will apply only that force which is necessary to accomplish our lawful duty.

Our commitment is to deliver a service that we and those we serve can be proud of and which keeps our communities safe.
The link of decision making to organisational values assumes that all staff are fully committed to the organisation’s proclaimed values. Cultural staff surveys undertaken by many police forces these days show that there are staff who hold negative views of the organisation and may dismiss organisational values for that reason; there is also evidence that a significant proportion of staff (e.g. 29% in North Wales Police) subscribe to a crime control model stipulating that ‘all laws should be enforced at all times – otherwise people lose respect for the law’. Not to mention the claims of the persistence of a homophobic, racist and sexist police culture which may influence some individual police staff’s behaviour and be in conflict with ACPO’s proclaimed values.\textsuperscript{39}

In addition to personal and cultural factors, there is a fundamental clash between the generally outcome-
focused nature of policing – responding to an incident, noting whether a crime has been committed or reported, detecting a crime, etc., and the process focused nature of decision models. In the research mentioned, we found that police staff struggled with understanding the process-based model and simply changed the nature of the model into an outcome-focused one, i.e. it is justifiable not to take action if a crime is trivial, the offender is a first time offender, and the crime does not form part of a pattern, etc.\textsuperscript{40} So, whilst there have been attempts to operationalize procedural justice principles into frontline policing practice, it has proven difficult to convert a process-driven system into a meaningful tool for decision making in outcome obsessed practice.

In this context, it is worth returning to the question raised above, namely whether it is possible to look at process and outcome separately. On a pure procedural justice model, the outcome of the decision

\textsuperscript{40} Feilzer & Trew (n31) 26-28.
made following the correct procedures is irrelevant; ‘justice is manifested in the procedure itself’.

However, in reality outcomes are extremely important. In 2010, the Equality and Human Rights Commission initiated legal compliance cases under the race equality duty established by the Equality Act 2010 against two police forces in England following their 2010 report ‘Stop and Think’, which assessed disproportionalities in police stop and search practices. The initial report looked at the evidence establishing persistent and long-standing disproportionalities in the use of stop and search powers against different ethnic groups, with black people being six times and Asians twice as likely to be stopped and searched by the police as white people. These figures

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42 EHRC (2013). Stop and Think Again.
have not changed significantly over time,\textsuperscript{44} despite numerous attempts at addressing them. Police forces were asked to report on their stop and search practices, whether differences existed between different ethnic groups and how police forces justified such differences. As a result, the EHRC felt that in two forces stop and search practices were ‘unlawful and discriminatory,\textsuperscript{45} and this assessment has since been embraced by a recent HMIC report on Stop and Search,\textsuperscript{46} who described the use of stop and search as a threat to the legitimacy of the police, and subsequently by the Home Secretary who announced a public consultation on police stop and search powers and called on the police ‘to get stop and search right’.\textsuperscript{47} So, regardless of how stop and search practices are perceived by the public, it seems very clear

\textsuperscript{44} The EHRC (2010, 13) report states that the figures have remained fairly stable since 1995.
\textsuperscript{45} EHRC, 2013, 4.
\textsuperscript{46} HMIC, \textit{Stop and Search Powers: Are the police using them effectively and fairly?} (London: HMIC 2013) at p 3.
\textsuperscript{47} BBC (2013). 'Get stop and search right' says Home Secretary Theresa May’
that they do not conform to the legal requirements set out by Police and Criminal Evidence Act 1984 and the Equality Act 2010, and therefore constitute an example of police breach of rules and illegitimacy.\textsuperscript{48}

This issue is raised here as it points to the fundamental importance that policing processes \textit{and} outcomes follow the normative legal framework established by national legislation. It also highlights that, clearly, outcome matters: even if all stop and searches were carried out in a procedurally fair manner and thus, those involved perceived them as legitimate, assessing outcomes against objective measures such as discriminatory practice may lead to questions about illegitimate practice. It must be a basic premise of a democratic system founded on human rights principles to commit itself to treating its citizens fairly and equally, whether or not its citizens perceive this as a problem or not.

\textsuperscript{48} Beetham (n7) 20.
Public consent and co-operation

The reasons for police desire to engage with different communities in England and Wales are manifold. As mentioned above the police are dependent on cooperation and support from the public in terms of their day-to-day activities. This may be a particular problem for certain types of crimes and communities in England and Wales. For example, in Muslim communities, under-reporting of a variety of crimes, including racially or religiously motivated crime is a significant problem.49 Additionally, effective engagement with communities, in particular, young people is increasingly seen as a vital tool to prevent and detect crime. It is often argued that the police need the confidence of all community members to be able to offer effective police protection. Community policing in this sense aims to serve two purposes, the protection of the local community against

49 G Mythen, A Walklate and F Khan, ‘’I’m a Muslim but I am not a terrorist’: Victimisation, risky identities and the performance of safety’ (2009) 49(6) British Journal of Criminology 736-754.
crime, and intelligence gathering for the purposes of crime prevention and crime detection.

In the context of procedural justice, it should be noted that the effectiveness of any attempts to change the perceived legitimacy of the state police will depend on someone’s status in society; and again, this is related to Beetham’s argument that perceived legitimacy needs to be related to reasons for holding a belief in legitimacy.\textsuperscript{50} Marginalized communities such as the poor and the homeless are among those who come into frequent contact with the police, often involuntary or adversarial contact, and whose views of the state police may differ significantly from those of the majority.\textsuperscript{51} Additionally, police engagement with ethnic minorities and particularly, Muslim communities, may be affected by

\textsuperscript{50} Beetham (n7) 10.
\textsuperscript{51} For evidence of the impact of ethnicity on perception of ‘injustice’ in public-police interactions, see RS Engel, ‘Citizen’s perceptions of distributive and procedural injustice during traffic stops with police’ (2005) 42(4) \textit{Journal of Research in Crime and Delinquency} 445-480, at p 470.
adversarial, order maintenance police practices, stop and search. It may also be affected due to other factors, for example, the counter-terrorism agenda and the rendering of a whole community as suspect. Mutual suspicion and fear affects relations between the police and some community members such as working class and minority ethnic young men, Muslim community members, the homeless, etc.\(^{52}\)

In order to protect a particular community from crime and gather intelligence, it is necessary to engage all members of that community. As a result of recognising the lack of engagement with some members of the community, community policing has been widely endorsed and implemented in police forces across

England and Wales. The policing strategy is proactive and based on policing by consent, which ‘implies community confidence that the police are acting with and for citizens’. The concept has been described ‘close to meaningless’, and was found to struggle with engaging the disaffected members of the community for whom it was designed. One of the conditions for effective community policing is two-way communication, in particular, communication with members of the community who may be politically disaffected and socially disadvantaged, and who may not have easy access to means of communicating with ‘authorities’ more generally.

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54 ibid, 373.
Principles of community policing have found their way into unusual territory, which highlights the difference between perceived legitimacy, actual consent and co-operation on the ground. Counter-terrorism was traditionally led by ‘high policing’ agencies, Secret Service, central counter-terrorism units based in London, etc; whereas day-to-day policing and community protection was carried out by ‘low policing’ agencies; i.e. community beat teams.\(^56\) However, in recent years the boundaries between these policing strategies have become blurred. In 2008, the Metropolitan Police’s Special Branch set up the Muslim Contact Unit which imported some of the values of community policing into the counter-terrorism context,\(^57\) based on the shared commitment by Muslim groups and the police to prevent violence and terrorism through partnership, negotiation,


and communication. Subsequently, the Government’s counter-terrorism strategy, Prevent, has taken this counter-terrorism strategy, which hinges on effective community engagement, from London to all police forces in England and Wales.

The notion of working with the community to protect them rather than stigmatise them as a ‘suspect’ community would clearly be welcomed under a procedural justice framework. However, it ran into some problems. The close collaboration between Muslim groups and the police is regarded with suspicion, both by Muslim community members and mainstream politicians and the media. The Muslim community has been ‘othered’ in mainstream media, political and public

60 See K Khan, Preventing Violent Extremism (PVE) & Prevent: A response from the Muslim community (An-Nisa Society 2009).
61 Lambert (n58).
discourse since long before the terror attacks in New York and London.\textsuperscript{62} This ‘othering’, which is also evident in other European countries – notably in France with the ban on wearing the veil implemented in 2010 – has progressed to an extent that it makes the implementation of more progressive police tactics a very difficult undertaking.\textsuperscript{63}

This provides an indication of the context in which the legitimacy of the state police is constructed and how reasons for believing in the legitimacy of the state police may differ for different communities or community members. This discussion is important as it points to the limitations of attempting to change police practices in isolation from the ‘socially unjust contexts

\textsuperscript{62} See Mythen et al (n49) 740; S Gilliat-Ray, \textit{Muslims in Britain} (Cambridge University Press 2010).
\textsuperscript{63} For a discussion of the difficulties of implemented counter-terrorism strategies in a climate of distrust in Sweden, see Peterson (n52).
within which the police work’. Assessments of fairness of police interactions are subjective and to a large extent dependent on individual’s expectations of police behaviour – Hough’s scenarios of the interaction of police officers and minority ethnic young people illustrate this perfectly. Interactions between police and public are also embedded in social and cultural contexts, which will mediate how police actions are interpreted.

Measuring perceived legitimacy

The preceding sections have set out that it is important to consider the reasons for the public’s belief in the legitimacy of the state police and how reasons for questioning legitimacy may be more apparent to some community members than others. In this section, I will

65 Hough, 2013.
briefly discuss the problem of measuring perceived legitimacy or public confidence in the police as a shortcut for legitimacy.

Extensive research has been devoted to improving public opinion measures and academic discussions about the role of public opinion and the empirical nature of public opinion go back a long time. Public opinion as a concept is used in the political sphere – as communication to those in power – as well as in social psychology – as communication to others within a group.66 In the main, public opinion is measured using survey research and in Britain this has been the case since the British Institute of Public Opinion (Gallup) was founded in 1937. The limitations of survey research are

well rehearsed, and while it is acknowledged that “sample surveys are indeed crude and reductionist”, they are still the preferred tool of politicians and policy-makers to assess public views. One aspect of public opinion surveys, which is particularly relevant in the context of perceived legitimacy, is the danger of surveys and survey questions being used as a ‘means of manipulating public attitudes’.

This relates to the criticism by Beetham, that focussing on perceived legitimacy alone leads to an inability to distinguish between effective legitimation practices by the powerful through propaganda and good marketing, and active consent by citizens.

Survey research in relation to public confidence in the police illustrates the problem set out above; measures of public confidence have been scrutinised and

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67 Hough (n16) 338.
68 Roberts et al (n66).
69 Beetham (n7).
found wanting in terms of their validity and reliability.\footnote{J Ditton and S Farrall, ‘The British Crime Survey and Fear of Crime’ in M Hough and M Maxfield (eds), Surveying Crime in the 21st Century (Willan 2007), at p. 225; Feilzer (n14).}

Some argue that levels of diffuse\footnote{NE Haas, JW de Keijser, and GJN Bruinsma, ‘Public support for vigilantism, confidence in police and police responsiveness’ (2013) Policing and Society.} or general confidence in the police express perceptions of the moral and social cohesion of society, rather than reflections on the operational efficiency and effectiveness of the police or satisfaction with the fairness of processes or outcomes.\footnote{E Girling, I Loader and R Sparks, Crime and Social Change in Middle England: Questions of Order in an English Town (Routledge 2000); Jackson & Sunshine (n21); J Silvey, ‘The criminal law and public opinion’ [1961] Criminal Law Review, 349-358.}

In other words, levels of confidence are expressive and ‘symbolic of day-to-day concerns about neighbourhood cohesion and collective efficacy’.\footnote{S Farrall, J Jackson and E Gray, Social Order and the Fear of Crime in Contemporary Times (Oxford University Press 2009), at p. 198.} In line with this, recent research exploring facets of public confidence confirmed a strong link with respondents’ basic beliefs about the nature and causes of criminality. The factors
considered included objects of confidence (outcomes, actions and attributes of the criminal justice system), conditions of confidence (person characteristics, knowledge of the criminal justice system), and the impact of confidence on behaviour (willingness to engage). The research also questioned the assumed link between measures of public confidence and public willingness to engage with the police. Turner et al. suggest that people’s willingness to engage is based on habits, a feeling of moral duty and an assessment of costs and benefits of engaging. Thus a key question about the relationship between public-police interaction, in particular the effect of procedural justice on willingness to engage, remains.

A number of research studies have shown that survey responses are not provided in the abstract, but that they are always situated in time, place, and in

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75 Ibid, 58-59.
relation to people. They are recounted as stories. Such findings not only point to a fundamental problem of survey research aiming to detach answers from the individual and concrete context in which they are given in order to categorise and generalise, but also pertinently to the measurements at the heart of the procedural justice model. Questions are asked in relation to whether respondents are more likely to respond positively if they are treated fairly, and of course, respondents will be strongly inclined to respond positively. There are clear dangers in asking people what they say they do, rather than observing what they do in practice. Few people would answer honestly and say that they would also comply if they were treated unfairly just in order to get


77 Murphy, et al (n16).
out of an undesirable situation, choosing the path of least resistance.

Conclusions

The discussion of procedural justice in policing should be welcomed; it constitutes a vital contribution to the debate around public confidence in the police, but also revives the discussion about how the legitimacy of the state police is understood and constructed in contemporary society. Perceived legitimacy of the police is probably important; however, assessing perceived legitimacy on the basis of existing methodological tools is difficult. The extent to which policing outcomes are legally valid78 - in other words, the extent to which the police complies with the laws protecting citizens from police abuse, particularly those in marginalised positions – is possibly more important as an indication of

78 Beetham (n7) 20.
legitimacy and more easily measurable. Additionally, it seems rather artificial to distinguish in absolute terms between the impact of process and outcome on the reception of police-public interaction. Elevating one over the other may result in only partial explanatory models.

The amount of work on procedural justice and legitimacy of the state police makes an assessment of current levels of knowledge a difficult undertaking. However, it seems to me that many discussions about procedural justice are conceptually muddled in the sense that they are read to include other assumptions which are not necessary elements of procedural justice models. Current debates run a danger of conflating separate ideas under a procedural justice umbrella. There appears to be an assumption, for example, that order maintenance policing and crime control policing goes contrary to procedural justice principles.

It may be worth exploring research that links reasons for legitimacy with evidence of action signifying
consent and co-operation by the public; in other words, it may be worthwhile conducting research measuring what citizens do rather than what they say they do. There are a number of examples that may illustrate that changes in policing have affected legitimacy of the state police in certain aspects of their work. Greater reporting rates for rape incidents would be such an example. Have changes in policing practices in relation to rape victims resulted in a narrowing of the gap between rapes measured by the Crime Survey for England and Wales and those reported to the police? Similarly, but potentially more difficult to assess, do changes to police stop and search practice following a procedural justice model impact on rates of charges with assaults on police officers or charges of public order against those subjected to stop and search?

The fairness and quality of police public interactions should not be tied to instrumental concerns of increasing perceived legitimacy or increasing compliance. The state police must be principled, fair,
and proportionate in policing practices. This is a fundamental principle of a democratic state based on human rights principles, and thus of a legitimate state police force. In the context of policing, it is important to do the right thing for the right reason.