

Policing During a Pandemic - for the Public Health or Against the Usual Suspects?

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Abstract

It is much remarked upon that the pandemic exposed underlying tensions and weaknesses in European societies. Police attention, in enforcing lockdowns and other restrictions on movement and assembly, has tended to be disproportionately focused upon minority communities. However, middle class white people have also been policed in ways they have perhaps not previously experienced. As a consequence, the pandemic has shed light on the use of police powers more generally. While police powers to stop citizens, to check their identity and to search or otherwise detain them have long been controversial in the US and in the UK, they have now become a focus of debate in Belgium, France, Germany and beyond. In a public health pandemic, the police largely continued to discipline the working class and minorities (despite the alarm raised by middle classes). Attention was not equally distributed and there is little to connect patterns of policing with, for instance, prevalence of the virus within local populations. Instead, policing continued to act as a disciplinary instrument in particularly problematic and unruly communities. This paper draws upon a review of policing of the pandemic undertaken by an EU COST Action (CA17102) on Police Stops. In the absence of clarity and transparency, the use of police powers can undermine legitimacy in particular communities and, this presents particular threats to the social health and security of all.

Keywords: police stops; pandemic; public health; legitimacy; transparency

Introduction

It is much remarked upon that the pandemic exposed underlying tensions and weaknesses in European societies. We have discovered that key workers, including nurses, cleaners and delivery drivers, are poorly paid and work long hours, often with insecure contracts. Deaths from the virus are most likely to occur among populations living in poverty and in poor housing (e.g. Marmot, 2020; EU Fundamental Rights Agency, 2020). Police attention, in enforcing lockdowns and other restrictions on movement and assembly, has tended to be disproportionately focused upon minority communities (Etienne, 2020; Amnesty International, 2020; The Guardian, 2020a). However, for the first time in many cases, middle class white people have also been policed in ways they have not previously experienced. Suddenly, we were all conscious of the police officer's gaze turned in our direction (The Guardian, 2020b). Consequently, the pandemic has shed light on the use of police powers more generally. While police powers to stop citizens, to check their identity and to search or otherwise detain them have long been controversial in the US and in the UK, they have now become a focus of debate in Belgium, France, Germany and beyond.

This paper draws upon a review of the policing of the pandemic lockdowns by an EU COST Action (CA17102) on Police Stops undertaken during the summer of 2020 as countries were slowly coming out of the first wave of the virus. The three conclusions drawn from this review echo those to be drawn from a more general review of police powers to stop citizens: 1) that those powers must be clear, not just to the police officers exercising them, but also to those subject to them (Beetham, 1991; Brown, 2020); 2) that their purpose and their effectiveness in achieving that purpose must both be subject to thorough democratic debate and to clear popular/political consent; 3) that their use must then also be open to independent scrutiny and relevant data made publicly available. In the absence of such clarity and transparency, the use of police powers can undermine legitimacy in particular communities and this presents particular threats to the social health and security of all.

Unfamiliar Tasks

In the majority of states, new measures were introduced to respond to the pandemic, though some states had existing powers that were applied to the specific circumstances (e.g. Croatia, Poland and Spain) and, in most cases, these included a role for the police. In some countries, the military were also involved (e.g. Spain and Hungary) and some tensions/controversies arose as a result. Restrictions during the first wave ranged from 'stay at home unless you have reason' (Spain, France and Belgium), to more 'light touch' restrictions for certain age groups (Turkey) or activities (e.g. religious festivals in Israel). In most countries, there was some confusion at the margins, about what qualified as a 'good reason' for example, or about what was legally required and what was advice (e.g. the permissible distance that could be travelled from home). Over time, rules within states began to change, generally becoming more relaxed, although in Poland they became tighter and were then relaxed. This added to confusion. Breaches were punished by fines in most instances, some severe (Moldova and Norway), others less so (UK and Hungary) but rising with each repeated offence. In some contexts, criminal proceedings might also result (Spain and Belgium). Data on the fines issued or other enforcement measures taken are extensive in Scotland, limited in some countries (England, Spain and Belgium) and non-existent in others.

Policing thus confronted an unusual challenge. Officers were asked to police activity that, under normal circumstances, would not attract their attention. Those who were outdoors might be breaching regulations or they might be a 'key worker' going to work. When in small groups, how were officers to know whether individuals were from the same family or not? What businesses were allowed to continue to operate? What shopping is essential and, as suggested by one senior officer in the UK (The Guardian, 2020c), should officers police the content of shopping bags? For many officers, the constantly changing landscape of what was and was not permissible became very difficult to follow and, after a while, it was easier not to enforce the rules.

The question of geographic variation emerges as an interesting point of comparison. Restrictions placed on people tended to be nationally applied but, in some cases, specific cities/towns were locked down for a period (Helsinki in Finland) or in response to a cluster of cases (e.g. Bulgaria, controversially applied to a 'Roma neighbourhood'). Movement between cities was policed in some countries (e.g. Croatia). Borders were closed in most cases and, in some, this was the key focus of the policing effort (Portugal). More commonly, there is evidence that rules were applied more harshly in some regions (eastern and south eastern Turkey) or communities (ultra-orthodox communities in Israel). Sometimes this was a deliberate decision of local authorities (some prefects in France) or of the police (variations across police forces in England), or reflected long-standing policing approaches (the banlieue in France, working class neighbourhoods in Madrid). The patterns in the geographical variations in policing practice that emerged during the pandemic began to resemble those that might be expected in 'normal' times.

Familiar Criticisms

That these patterns were familiar, echoing the long-standing disproportionate application of laws and issuing of penalties, reveals something more fundamental about policing. In a public health pandemic, the police largely continued to discipline the working class and minorities (despite the alarm raised by the middle classes in some countries). Attention was not equally distributed and there is little to connect patterns of policing with, for instance, the prevalence of the virus within local populations. Instead, policing continued to act as a disciplinary instrument in particularly problematic and unruly communities (Choongh, 1998; Foucault, 2004 & 2009). However, this is perhaps not surprising considering that, in the main, the regulation and practice of internal control measures and judicial remedies have not significantly changed. New remedies have not been introduced, and new internal control bodies have not been established (although Scotland is an exception here). As the accountability mechanisms for policing were not altered to account for the extraordinary circumstances facing policing, it would be remarkable if they had been able to correct pre-existing bias in the use of police enforcement powers. Indeed, the state of emergency, perhaps particularly in Eastern and Central European countries, has

only strengthened these tendencies. Thus, at an early stage, evidence emerged of the disproportionate use of powers against, in particular, minority communities (e.g. BBC, 2020; Liberty, 2020)

One new (or enhanced) addition to previous policing practice was the use of surveillance technologies, especially drones (e.g. in France, Spain, Belgium or UK) or mobile phone apps designed to monitor individuals' movements or compliance to the rules of mandatory quarantine (such an app has been introduced in Poland and in Norway). The benefits and dangers of introducing such an app were widely discussed in countries where it has not yet been introduced (e.g. Austria, Croatia) or its use was non-mandatory (Denmark). The issue of electronic surveillance is thus at the heart of public discussions concerning police powers during the pandemic, especially in Western Europe (Brown and Toh 2021, Degeling et al 2020).

However, it must be underlined that the use of police powers during the pandemic became a public issue only in some countries and only in some respects. It seems that an almost clear division might be drawn between west and east. In Western European countries, public discussion was mainly focused on individual freedom of movement and risks of electronic surveillance, as well as police misconduct (that was the case in Austria, UK, Belgium, Spain and France). In countries of Central and Eastern Europe, the discussion revolved around collective freedom of assembly (e.g. in Poland, Hungary). For Western European countries, there were criticisms of police abuse of powers by some media and NGOs (for instance in France and Spain). However, the policing of the pandemic did not become a political issue as such. For Central-Eastern European countries and especially in Poland and Hungary, citizens contested a lengthy ban on public assemblies issued by the governments while they continued to work on controversial legislative projects, such as the project for a complete ban on abortion in Poland and the partial health care (hospital) reform in Hungary.

It seems that, in most countries, international and national NGOs were active in such discussions, with some exceptions (e.g. Greece or France). The common thread of public discussion in countries across Europe is the legality of introduced restrictions and the competence of particular bodies to impose them. What is also worth noting is that politics had a strong influence on the manner of the policing the pandemic in some

countries. For example, a discussion on the potentially political character of certain restrictions was held in Slovakia with relation to Roma minorities. Here, an intensified testing had been held in Roma settlements which raised concerns about the risk of increasing the prejudice against this minority. In response, the government explained that such actions were not connected with the ethnicity itself but with the higher risk of spreading the COVID-19 due to the environmental conditions in such settlements.

Conclusion

Arguments for building and maintaining legitimacy in the eyes of the public is not a new topic in policing research and practice (e.g. Tyler, 2006; Bradford, 2017). These arguments hold true, perhaps even more so, in the context of a global public health crisis. Virus outbreaks can only be contained with the compliance of the public at large. Any measures which restrict movement and contact must carry legitimacy in the form of the fullest of public and democratic discussions. This is particularly important if any enforcement measures are to be entrusted to the police. Without that legitimacy, police officers and police forces are vulnerable to criticism and hostility (e.g. BBC, 2021). When it becomes apparent that a country's law enforcement officers are not policing based on the pattern of the new threat but by virtue of their previous, often biased, practice, this will make legitimacy more difficult to achieve. This could potentially undermine efforts to protect public health.

We must acknowledge, however, that to police public behaviour in the face of a constantly changing threat and with regularly changing rules is an extremely difficult task. Any rules that police officers are asked to enforce must be clear, easily interpreted by both citizens and the police and applied in a just and legitimate manner. In the UK, the '4 Es' approach suggested officers should Engage with those they police, Explain the restrictions, Encourage compliance and only Enforce

after exhausting the first three. This was identified as potential good practice for others to use. However, with time, officers have stated in recent research interviews that they have become reluctant to explain or encourage because, after more than a year, citizens must have some understanding of the restrictions. The successive waves of infection have further added to the challenge of policing laws initially introduced in some haste.

The use of police powers should also be subject to scrutiny and review. This is true in general terms but is especially important when basic freedoms are being curtailed in a crisis. Mechanisms could include internal governance, making police data publicly available, oversight by civil society organisations, judicial remedies, and external oversight bodies. Examples of good practice include Policing Authority in Ireland¹ and the Independent Advisory Group in Scotland². Data on usage of police powers, enforcement measures such as fines have an important role in understanding and scrutinising the use of police powers, and potential differential experiences.

The COVID-19 pandemic has highlighted the central role of European policing agencies in not only keeping their populations safe from crime, but also safe from the threat posed by a deadly virus. However, as most nations were completely unprepared for the scale of the task in responding to it, the result has been many rounds of flawed legislation and vague and changing guidance for both the public at large and the policing agencies. What the pandemic has also revealed is the depth and reach of often disproportionate policing practice, which in the vast majority of cases continue to operate with weak oversight and little public scrutiny. As we have demonstrated here, this situation may have arisen from a unique context, but the patterns revealed have a long history. What we would argue is that good policing practice in one context can have beneficial impacts on others if a move towards the routine use of clarity, transparency and accountability is adopted in all policing agencies in Europe.

1 For more information, see: <https://www.policingauthority.ie/en/about-us/detail/oversight-of-covid-19-policing>.

2 For more information, see: <https://www.spa.police.uk/strategy-performance/independent-advisory-group-coronavirus-powers/>.

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