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Local governance in the new Police Scotland: renegotiating power, recognition and responsiveness

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Keywords:	police, governance, power, recognition, responsiveness, democracy
Abstract:	<p>A marked, but by no means universal, trend in Europe over the last decade or so has been the centralisation or amalgamation of regional police organisations into larger or single units. Scotland is a case in point, its eight regional services becoming one Police Scotland in April 2013. Although the reform process was relatively consensual the new organisation has been the subject of numerous controversies, some of which reflect an actual or perceived loss of the local in Scottish policing. Drawing on a qualitative study of the emerging local governance arrangements we explore the negotiated character of large scale organisational reform, demonstrating that it is best understood as a process not an event. We also argue that appeals to localism are not mere expressions of sentiment and resistance to change. They reflect the particular historical development of policing and public service delivery in Scotland at the level of municipal government, but also strong convictions that policing should be subject to democratic deliberation and should recognise and be responsive to those subject to it, what we argue here are necessary functions of police governance in general.</p>

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Abstract

A marked, but by no means universal, trend in Europe over the last decade or so has been the centralisation or amalgamation of regional police organisations into larger or single units. Scotland is a case in point, its eight regional services becoming one Police Scotland in April 2013. Although the reform process was relatively consensual the new organisation has been the subject of numerous controversies, some of which reflect an actual or perceived loss of the local in Scottish policing. Drawing on a qualitative study of the emerging local governance arrangements we explore the negotiated character of large scale organisational reform, demonstrating that it is best understood as a process not an event. We also argue that appeals to localism are not mere expressions of sentiment and resistance to change. They reflect the particular historical development of policing and public service delivery in Scotland at the level of municipal government, but also strong convictions that policing should be subject to democratic deliberation and should recognise and be responsive to those subject to it, what we argue here are necessary functions of police governance in general.

Keywords

Police, governance, power, recognition, responsiveness, democracy

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For Peer Review

Introduction

The most significant reform of public policing in Scotland for a generation provides the background to this article. On 1 April 2013 Police Scotland commenced operations. This new 'single' police organisation amalgamated eight regional police services in operation since the 1970s, and incorporated functions previously undertaken by the national-level Scottish Crime and Drug Enforcement Agency and Scottish Police Services Authority. Movement towards more central coordination and strategic direction of policing had been apparent for some years through regimes of inspection, auditing and target-setting (Donnelly and Scott, 2002; Walker, 2000) which are also well-documented in England and Wales (Reiner, 2010: 227-237; Jones, 2008: 703-706). Even so, structurally reorganising policing into a single unit marked a bold extension of what had so far been an incremental process. It nonetheless placed Scotland firmly in the company of similarly minded European neighbours moving in a similar direction over a similar time period driven by similar concerns about efficiencies, coordination and consolidation (Fyfe et al., 2013) while its closest neighbour explored a different direction (Fyfe and Henry, 2012; Lister and Jones, this volume).

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9 It would be a gross understatement to suggest that the first five years of Police
10 Scotland have not passed without incident. Rather, public, political and academic
11 interest in, and scrutiny of, policing in Scotland has become more intense than at
12 any point in recent memory (Murray and Harkin, 2017), prompted by a series of
13 controversies and problems involving senior officials, as well as specific functions,
14 strategies and policies of the new service. A number of these controversies
15 included expressions of concern about the 'loss of the local' in policing (see also:
16 SIPR, What Works Scotland and ScotCen, 2017). This sense of 'loss of the local'
17 was our starting point in two ways. On the one hand it created an opportunity to
18 revisit questions about the virtues of, and necessary balance between, central and
19 local dimensions of police governance (Lustgarten, 1986: 177-178) and to use this
20 as a lens to critically appraise the design and implementation of a single national
21 force in Scotland. On the other hand, mindful of Nelken's invitation to challenge
22 taken for granted 'cultural assumptions' and 'universal truths' (2017: 417), we
23 sought to subject these appeals to the 'local' to scrutiny. Were appeals to the local
24 in Scotland mere sentiment or resistance to change, or did they articulate
25 something fundamental about the new arrangements, something flawed in the
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9 design or implementation which spoke to what the function of local governance in
10 policing is within this context, and potentially beyond it?
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14 Drawing on a small but in-depth study of the emergent new local arrangements,
15 and on theoretical resources that disentangle the democratic claims and
16 governance mechanisms of police institutions (Jones et al., 1996; Kuper, 2004;
17 Loader and Walker, 2007; Lustgarten, 1986) we develop two arguments. Firstly,
18 we demonstrate that organisational police reform of this scale is not an event but a
19 negotiated and incremental process through which formal designs in legislation are
20 adapted and made to work in practice. This needs to be better understood in
21 future police reform. Secondly, we argue that appeals to localism in the early
22 years of Police Scotland were not reactionary sentiment against change. Rather
23 they articulated failures of the new system of policing to provide recognition of, and
24 responsiveness to, public interests or to provide a meaningful check and balance
25 against policing discourse being (and/or being perceived to be) monopolised by the
26 powerful voices of the police and central government. Recognition,
27 responsiveness and distribution of power are necessary and fundamental features
28 of police governance that are given some of their specific expression through local
29 government and public service delivery institutions in Scotland. Clearly these
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9 necessary features of police governance can be given expression through other
10 local, central, or even international institutional arrangements in other jurisdictions
11 as is evident from other contributions to this special issue.
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18 **A short history of police organisation and governance in Scotland: from the** 19 **regional to Police Scotland** 20 21

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23 Public policing developed early in Scotland and certainly before the more
24 celebrated birth of the Metropolitan police in 1829 in England (Carson, 1984;
25 Walker, 2000). Walker observes this early development of policing in Scotland
26 might account for the fairly broad understanding of 'policing', incorporating ideas of
27 public health and welfare (2000: 152-153). As we'll see, these have been explicitly
28 acknowledged again in the 2012 reform. Police forces in Aberdeen (1795),
29 Glasgow (1800) and Edinburgh (1805), established by and accountable to local city
30 administrations, led the way, but were quickly followed by police forces being
31 established around the country by burgh and county administrations (Walker, 2000:
32 152). However, it was the Police (Scotland) Act 1857 that required all local
33 administrations to establish police capacity. This Act reflected central government
34 belief in the necessity of such a resource and so arguably marked the beginning of
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9 the centralising tendencies that would animate much of the subsequent history of
10 policing in Scotland (see: Davidson et al., 2016: 89). Indeed, pressures for force
11 amalgamations to enhance efficiencies and improve service took effect almost
12 immediately. Davidson et al. document the process whereby 89 police forces had
13 become 64 by 1899, 48 by 1939, and settled at eight in 1975, a position that would
14 remain stable until the 2012 reform¹. The remainder of this section provides a brief
15 sketch of these eight regional forces and their governance, setting out some of the
16 problems with this configuration and the subsequent political process through
17 which Police Scotland emerged as the solution.
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30 The most important point to note thus far is that Scottish police forces were, right
31 from the beginning, 'closely tied to the elected structures of local government'
32 (Donnelly and Scott, 2002: 4) and this meant that they would develop a 'role in the
33 new corporate management approach to local services' (2002:5). This remains an
34 important if oft-overlooked facet of police governance to this day. For now, the
35 changing structures of local government, and their fit, or lack thereof, with changing
36 structures of policing must underpin any sketch of the post-1975 period. It is too
37 complex a story to fully do justice here (see: Donnelly and Scott, 2002: 5-6;
38 Walker, 2000: 151-170), but there are two moments of particular note. The Local
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9 Government (Scotland) Act 1973 scrapped the old and complex burgh and county
10 council model, rationalising them into nine regional and 53 district councils, each
11 with distinct fields of competence, the regional being the most relevant here with
12 responsibilities for funding education, social work, police and fire services. Upon
13 implementation in 1975 the link between local government and police was
14 imperfect. Six of the eight regional police forces coincided directly with regional
15 councils but Lothian and Borders (including the city of Edinburgh) and Northern
16 Constabulary (covering the highlands of Scotland and many outlying islands)
17 served 'joint' Police Boards covering more than one regional council. In the 1990s
18 local government was reformed again. The two-tier model was replaced with a
19 single-tier model under the Local Government (Scotland) Act 1994, implemented in
20 1996. Under this model 32 local authorities were established. The issue for the
21 unchanged structure of eight regional police forces was that now a direct link
22 between a police force and the relevant local government body was the exception
23 rather than the norm. Six of the eight police forces now served joint Police Boards
24 made up of representatives of multiple local authorities (12 in the case of
25 Strathclyde Police). Therefore, direct links between police and local authorities
26 were, in the main, severed, the local authority representation within Police Boards
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9 being split across different local authorities which could well be led by different
10 political parties. Further, some of the local authority participation came through
11 Local Authority Officers (LAOs), employed officials working for the local authority,
12 delegated to attend police authority meetings, rather than through democratically
13 elected councillors themselves (see: McFadden and Lazarowicz, 1999, cited in
14 Donnelly and Scott, 2002: 5). Although later reviews showed that council officers
15 tended to be there to provide technical support and competence, and did not have
16 elected members' voting rights (Laing and Fossey, 2011: 5), there was
17 nonetheless a growing perception of a democratic deficit in local Police Boards,
18 bolstered by declining turnouts in local elections.
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32 The Police Boards formed part of a tripartite structure that characterised police
33 governance throughout the UK since the 1960s (Donnelly and Scott, 2002; Walker,
34 2000; Jones, 2008). The tripartite framework gives expression to the democratic
35 principle of the distribution of power (Jones et al., 1996: 188) by separating out
36 authority and responsibility for policing across central government (represented by
37 the Scottish Secretary at Westminster prior to devolution in 1999, and the Cabinet
38 Secretary for Justice at Holyrood thereafter), local government (through the Police
39 Boards) and the police (through the office of Chief Constable and/or delegated
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9 representatives). The problems with the framework are well-rehearsed in the
10 English context where it was consistently demonstrated that where there was
11 disagreement, the will of the police and central government prevailed over the local
12 (Reiner, 2010: 228-229). Similar conclusions were reached in Scotland. Despite
13 local Police Boards having important powers relating, for example, to the formal
14 appointment and dismissal of chief officers, as well as responsibilities to maintain
15 an efficient and effective police service through formally contributing 49% of the
16 police budget, there was little evidence of them actively using their powers, and a
17 growing body of commentary showed they were failing to offer meaningful
18 challenge to the police (Donnelly and Scott, 2002; Laing and Fossey, 2011;
19 Walker, 2000). Some claimed that the Boards were too deferential to Chief
20 Constables (Scott and Wilkie, 2001), in part because they actually lacked the
21 necessary expertise in policing, crime patterns, finance and other relevant
22 organisational matters to competently hold the police to account (Laing and
23 Fossey, 2011: 5-6; Malik, 2018), resulting in a process of governance understood
24 to be 'passive' (Audit Scotland and HMICS, 2012: 6). Indicative of the direction of
25 future reform, one influential HM Inspector of Constabulary observed that there
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9 was a 'disconnect' between local governance and national issues requiring
10 coordination (HMICS, 2009: 38).
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14 Perceived inadequacies with local governance and democratic representation
15 through Police Boards *preceded* Police Scotland but were not the sole 'drivers' of
16 reform. If anything, longstanding concerns about the 'lopsided' structure of
17 Scottish policing which seemed to lack rhyme or reasonⁱⁱ, growing concerns about
18 national and international issues requiring better coordination of policing (HMICS,
19 2009), and the 2008 financial crash and the ensuing call for public sector austerity
20 (Scottish Policing Board, 2010; Christie Commission, 2011; Fyfe and Henry, 2012)
21 were of greater import. It was really following the *Independent Review of Policing*
22 *in Scotland* (HMICS, 2009) that momentum began to gather, although this review
23 did not explicitly endorse a single service. The Scottish Policing Board was
24 established by the Scottish Government later in 2009 and it further established a
25 Sustainable Policing Sub-Group to review options, which included the status quo,
26 further regionalisation, and the single service option. Even as late as 2011 a move
27 towards a single service was not inevitable, despite relative political consensus that
28 some reform was necessary. The Scottish National Party (SNP), in government at
29 the time, committed to reform and enhanced accountability to communities, but not
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9 to a single service in their 2011 election manifesto. Both the Scottish Labour and
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11 Conservative parties did commit to a single police service but with strong, albeit
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13 distinct, emphases on how local policing would be developed as a balance.
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15 Labour favoured community policing teams and the Conservatives a variant of the
16
17 elected police commissioner model later enacted south of the border (see Lister
18
19 and Jones, this volume). Only the Scottish Liberal Democrats, of the four main
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21 parties, rejected the single model. Following the re-election of the SNP, two public
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23 consultations on police reform were run, neither producing a definitive result in
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25 favour of centralisation. Perhaps emboldened by the Christie Commission's (2011)
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27 wider recommendations for public service delivery reform in this direction, opinion
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29 in the Scottish Government turned around and a single service became the
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31 objective (for the definitive account of this process, see: Malik, 2018). Police
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33 Scotland therefore emerged as a solution to a complex web of issues including:
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35 public sector service delivery; public expenditure cuts; national and local police
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37 accountability; and a perceived lack of expertise, competence and democratic
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39 representation within local police governance arrangements.
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47 **Police Scotland: the solution and the (local) problem**

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9 The Police and Fire Reform (Scotland) Act 2012 was passed by the Scottish
10 Parliament in June 2012 and signed into law with Royal Assent in August of the
11 same year. Although the focus of this article is local policing, three features of the
12 new 'Police Service for Scotland' (as it is known in the Act, Police Scotland being
13 its corporate identity) are worth noting as necessary background to what follows:
14 tripartism for the new Police Scotland formally moved to the centre, power and
15 responsibility now being distributed between the Chief Constable, the Cabinet
16 Secretary for Justice, and a new independent body, the Scottish Police Authority
17 (SPA) (see: Malik, 2018); much of the wider architecture of central governance,
18 auditing and inspection, primarily through the offices of the Auditor General, Audit
19 Scotland and HM Inspectorate of Constabulary, remained largely unchanged; and,
20 s32 of the Act took the opportunity to assert new principles for Scottish policing, its
21 main purpose being stated as 'to improve the safety and well-being of persons,
22 localities and communities', to be advanced through 'working in collaboration with
23 others', being 'engaged with local communities', and working 'to prevent crime,
24 harm and disorder'. In the legislation at least, ideas associated with the local
25 governance of crime (e.g. Crawford, 1997) – partnership, engagement, community,
26 prevention – were given explicit expression.
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9 The new relationship between policing and local government was set out in chapter
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11 7 of the 2012 Act. Following a very general provision (s45.1) that the Chief
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13 Constable 'must ensure that there are adequate arrangements in place for the
14
15 policing of each local authority area', the key provisions are those that set out
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17 replacements for the old Police Boards (ss46 and 48) and those that confirm police
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19 community planning responsibilities (s47). On both issues the Act is quite
20
21 permissive and open. S45 establishes a direct link between Police Scotland and
22
23 each of the 32 local authorities through the new role of the Local Area Commander
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25 (LAC), a 'constable' designated as such by the Chief Constable, who may act in
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27 this capacity for multiple local authorities (s45). This role is the primary conduit
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29 between the local authority and the police. There is no mention of an equivalent to
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31 a Police Board in the Act itself, the relationship is formally between the designated
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33 LAC and the 'local authority'. However, in practice, local authorities work through
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35 committee structures and quickly had to work out where local authority-police
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37 business under chapter 7 of the Act would be located (see: HMICS and HMFSIS
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39 2013). This will be detailed more fully in the next section. In terms of the statutory
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41 roles of the LAC and the local authority they are very much couched in
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43 'consultative' terms. The local authority may 'monitor' and 'provide feedback' to the
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9 police on local matters of policing (s46) and, specifically, on the local police plan
10 (s47). The local police plan is ultimately the responsibility of the LAC who must
11 'have regard' to the centrally set strategic policing plan (s34) as well as other
12 interested bodies. It is supposed to set out 'priorities' tailored to the specific local
13 authority area, means of achieving these priorities, and reasonable processes of
14 monitoring progress (s48). The plan requires the 'approval' of the local authority
15 but the Act is silent on what follows if approval is not forthcoming. Importantly, the
16 Act does require the local policing plan and its priorities to 'contribute to the
17 delivery of local service delivery objectives agreed in community planning
18 (s48.2e). Given this new, weaker local relationship based on 'consultation' rather
19 than 'powers' over senior appointments and funding which moved to the SPA at
20 the centre, s48.2e is an important reminder of the strong historical link in Scotland
21 between police and local public service delivery (a link that is not only about
22 governance and accountability). S47 confirms that the police remain part of
23 community planning arrangements in each local authority. Community planning
24 was established through the Local Government (Scotland) Act 2003 and is the
25 statutory basis for strategic level collaborative partnership working at the local level
26 (nonetheless taking heed of national priorities), requiring service delivery (this can
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9 involve police, social work, education, health, transport, planning and many other
10 areas) to be joined-up through agreed outcomes across partners (Henry, 2009:
11 100-101). Despite real challenges associated with Community Planning in practice
12 (Sinclair, 2008) the 2012 Act reaffirms that the police are a lead partner in it and
13 thus situated (formally at least) within a horizontal network of local government
14 institutions sharing duties and responsibilities (Kuper, 2004: 103-106). This
15 shaped some local authority decisions about where the narrower consultative
16 functions would be located in the committee structure. It is also an important
17 institutional feature of the democratic governance of Police Scotland that is easily
18 overlooked.
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33 While the relevant sections of the 2012 Act set out the envisaged 'solutions' to
34 earlier problems of local democratic governance, new 'problems' were quick to
35 emerge. It is important to reiterate that many of the early and ongoing
36 controversies attaching themselves to Police Scotland were more to do with central
37 governance (Malik, 2017a) or tactics, such as stop and search, whose use actually
38 preceded the reform (Murray and Harkin, 2017). There was general disquiet about
39 the 'enforcement' focused operating philosophy of the first Chief Constable. It
40 didn't sit comfortably with the newly minted policing principles, or with the
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9 reaffirmed statutory commitments to partnership and local service delivery. Nor did
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11 it sit comfortably with the historical community policing orientation of many of the
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13 eight legacy police services and fed into a series of wider concerns which
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15 cumulatively had the effect of implying that implementation of the 2012 Act was
16
17 very much top down affair. Specifically local concerns emerged around a
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19 constellation of issues: perceptions of increased use of stop and search in some
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21 localities; the closing of local police counters and curtailment of police-run traffic
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23 warden schemes; routine arming of rural patrol officers in the former Northern
24
25 Constabulary; and, moving from a 'tolerance' to an 'enforcement' approach
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27 towards the sex industry in Edinburgh. Whether these issues, or perceptions of
28
29 them, were either accurate or reasonable is not the question here. What matters is
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31 that they raised questions about Police Scotland's responsiveness to local needs
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33 and local preferences, about tensions between central policy and local priorities,
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35 and about whether basic statutory duties to consult local authorities were
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37 happening or were adequate. These specific concerns about local police
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39 responsiveness prompted our small empirical study to explore how the chapter 7
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41 provisions outlined above were working in practice, and were later also reiterated
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9 in the official government evaluation of the Police and Fire Reform Act (see: SIPR
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11 et al., 2017).
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14 **The research: local scrutiny committees mapped and in action**

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17 A detailed account of the *Partners in Scrutiny* project; its design, methods, and
18 findings, has been published elsewhere (XXXX). The objective here is not to
19 duplicate that report but to draw from the experience of conducting the project
20 during a period when the reform of Police Scotland was still settling, and to reflect
21 more broadly about what the main findings tell us about local police governance.
22
23 Readers should go directly to that report for a full account of the methods
24 employed, and for a richer selection of data gathered. Here we briefly discuss the
25 two-stage research approach, and where helpful, draw on illustrative quotations or
26 links back to the original data.
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39 By late summer 2015, when we were laying the groundwork for the research, it
40 was already clear that the 2012 Act had provided only a bare bones design for new
41 arrangements. There had already been a considerable amount of ‘filling in the
42 gaps’, or negotiated practice, by practitioners and stakeholders (HMICS and
43 HMFSIS, 2013; Scottish Government et al., 2013) seeking to think through and
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9 guide how the new arrangements would actually work. This included the
10 development of a shared terminology that was not in the statute but which the
11 project adopted as shorthand: 'Local Scrutiny Committees' (LSCs). LSCs were the
12 new chapter 7 points of interaction between the police, local government and
13 (depending on how they were configured) other interested partners. In effect, they
14 were the new Police Boards. It quickly became apparent that the term masked
15 divergent practice (below), but it did serve to articulate what the new local authority
16 function was.
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28 The first stage of the research, a 'mapping' of how chapter 7 had been
29 implemented around the country, drew upon this early 'filling in the gaps' work of
30 Her Majesty's Inspectorate of Constabulary, the Improvement Service, and the
31 Scottish Government (see: HMICS and HMFSIS, 2013; Scottish Government et al.,
32 2013) updating it through two processes. Firstly, targeted interviews were carried
33 out with selected stakeholders that had an overview perspective on the reform
34 process (Scottish Government, the Convention of Scottish Local Authorities
35 [CoSLA] and the Improvement Service). Secondly, the project team established an
36 Advisory Board that had the necessary experience to actively contribute to the
37 mapping exercise.ⁱⁱⁱ These exercises showed that the 'local scrutiny' function was
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9 being implemented differently across the 32 local authorities, dependent on
10 historical variation in the organisation of council business. A four-fold typology,
11 that roughly captured where 'local scrutiny' was located, emerged, with the function
12 exercised within:
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18 • Dedicated 'blue lights services' committees in which police, fire and
19 ambulance services were dealt with together;
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- 22 • Community safety committees, which were sub-committees of community
23 planning partnership working, thus linking consultation responsibilities on
24 local police plans directly with s47 joined-up service delivery commitments;
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- 27 • Full council committees; or
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- 29 • Audit/performance or 'other' committees.
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36 In theory, there were potential pros and cons of each. Dedicated blue lights
37 committees offered specialist focus on emergency services. Full council
38 committees would lose that specialist focus, but gained the full transparency of
39 open council business, and the greatest presence of elected councillors.
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41 Community safety and community planning nested police scrutiny within the key
42 public service delivery committee, thus linking matters of policing directly with
43 partners whose business might overlap (social work, education, health, etc.). As
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9 will be noted later, these committees are also explicitly 'community-facing' and thus
10 give various types of 'representation' to community voices that can be lacking in
11 more bureaucratic committees. Auditing/performance might gain in terms of
12 expertise in performance regimes and accounting, but lose in terms of joined-up
13 working and police-specific expertise. There was no 'right' answer and throughout
14 the period of the fieldwork local authorities were reviewing and sometimes
15 changing where they located police scrutiny. The most common location, and also
16 the direction of travel where arrangements were being changed, was (but only just)
17 the second option: community safety/community planning committees. Thirteen
18 LSCs were, at the outset of the project, located here, another moving to this model
19 during the period of the fieldwork. Several of the audit/'other' LSCs (four that we
20 could discern) were actually quite close to this model in that they consistently
21 involved other partner agencies and agendas thus reflecting a horizontally joined-
22 up model which is relevant to the analysis that follows in later sections.

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42 In the second stage of the project interviews were conducted with police, local
43 authority, elected and third sector participants in three LSCs. Interviews were,
44 where possible, supplemented with, and cross-checked against, documents,
45 including policing plans, LSC minutes and police data as provided to the LSCs.
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9 The mapping exercise informed our selection process, which could only claim to
10 offer a sample that was 'illustrative' of emerging practice rather than fully
11 'representative'^{iv}, however, the findings were later disseminated to representatives
12 from all 32 LSCs and were corroborated as being consistent with wider
13 experience^v. Stage two was designed to allow participants to speak openly about
14 their experience of the reform, and in support of this we committed to maintaining
15 anonymity of individuals and the areas they work in. Across both the police and
16 local authorities there appeared to be a professional ethos to make things work,
17 and evidence of specific negotiated practices through which problems were
18 creatively worked around. This negotiated practice was filling in the blanks in the
19 legislation, was ongoing when the study had to conclude, and illustrative of the
20 processual, iterative nature of reform in practice. The problems that had to be
21 negotiated, and in particular the ones that were resistant to negotiation, were also
22 illustrative of recognised tensions between central and local administration, and
23 values of local governance and democratic policing. They draw attention to real
24 problems and omissions in the Act, and to failures in the early years of
25 implementation. The negotiated practice of governance is documented in the next
26 section. The one that follows develops this account by exploring how many of the
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9 issues described talk to essential requirements of democratic governance and
10 deliberation, including recognition, responsiveness and the distribution of power.
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13 14 **Structural disconnects and governance as negotiated practice** 15

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17 'Structural disconnect' was a term gleaned from LSC participants which also had
18 currency with government stakeholders and members of the Advisory Board. It
19 referred to a general idea that, whether through the design of the new
20 arrangements or their implementation, there were information flow and
21 communication gaps or blocks that created tension in the system. This section
22 outlines three instances of structural disconnect found in the project and
23 documents how they were often creatively negotiated through the practice of those
24 'doing governance'.
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37 The first 'structural disconnect' was between LSCs and the SPA. At its heart it was
38 a realistic acknowledgement that power had shifted to the centre, away from local
39 authorities.
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44 "Most of the power around scrutiny is concentrated at the national level and
45 in a sense what we have in the local scrutiny area is the opportunity to ask
46 questions of what is happening nationally. What we don't have is the
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9 genuine ability to get answers at our local scrutiny committees....The Local
10 Area Commanders may agree with us but they are not capable of changing
11 the policy of Police Scotland. So within that context there is a limit to what
12 we can do” (LSC Convenor).
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19 Under the 2012 Act it is the SPA that has powers to hold the Chief Constable to
20 account, maintain the police (finance), and appoint and dismiss senior ranks.
21 Local authority members of LSCs understood this and accepted that their role in
22 chapter 7 was one of monitoring and being consulted by the police in the
23 production of tailored local policing priorities. What concerned them was the
24 absence of a formal mechanism for them to ‘escalate’ issues on which there was
25 disagreement, or on which they felt there had not been satisfactory consultation.
26 The counter-closures, loss of traffic warden schemes, and concerns about stop
27 and search practice, were understood to be examples of where central (as defined
28 by the police) policy decisions had been taken which had clear locally-felt
29 ramifications but local voices had not been recognised in the process. For
30 example, on the issue of firearms officers, affected LSCs were most concerned
31 about the lack of deliberation, and the sense this gave that ‘operational matters’
32 were not their concern, despite the changes in practice within their communities:
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9 “[T]he standing firearms authority...that annoyed members because it was a
10 change in practice that had never been heralded as a change – it just
11 happened. And it just happened when people noticed that police officers on
12 the beat were armed and that was alarming. When it was raised as a
13 change in (police) policy we were told it's not a change in policy, it's an
14 operational matter, it is for the police to decide, and that really angered
15 some of our members”. (Local Authority Officer [LAO]).
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26 LACs from Police Scotland were sympathetic to this issue but themselves did not
27 necessarily command either the hierarchy or the lines of communication to feed
28 these concerns upwards within the organisation (another ‘structural disconnect’
29 that will be returned to). The informal workaround that occurred during the life of
30 the project was that SPA board members sat in on LSC meetings. The idea was
31 that they could advise the LSCs on matters that were happening centrally and also
32 that they could formally ‘escalate’ dissatisfaction with decisions that affected their
33 communities. This negotiated practice sought to give LSCs recourse to the
34 accountability body with formal power in the new arrangements, to ensure that
35 local interests were heard and recognised and could not simply be ignored. The
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workaround was valued by local authority and police members even as its informality was noted with regret.

“Whilst SPA’s initiatives are welcomed, the outcome from those meetings are not long lasting and do not have an impact on local practices. If the SPA board members held more face to face meetings with local representatives they would be more in tune with the local needs as members felt having one representative was not enough to raise local concerns at the national level”
(LSC Member)

Following the publication of the *Partners in Scrutiny* report which included a recommendation to formalise the ‘connection’ between LSCs and the SPA, the SPA itself later acknowledged the issue in its own governance report (Flanagan, 2016) but it took CoSLA to act on it. CoSLA established a forum of LSC members that included representation from all 32 local authorities. As previously noted, findings from *Partners in Scrutiny* were reported to the inaugural meeting of this forum and were largely in line with the mood of the room. It is through having Board members attend this forum that the SPA now seeks to close the structural disconnect between LSCs and the SPA. It is a promising negotiated practice

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9 reflecting CoSLA and LSC interests in having voice in the new arrangements, but
10 its working has not yet been evaluated.
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14 The second 'structural disconnect' was between LSCs and the communities they
15 served. Ultimately, this structural disconnect expressed wider scepticism about
16 local democracy in Scotland. The question here was, did LSCs adequately
17 'represent' communities? Did they really know how their constituents felt about
18 policing? And did they communicate back to communities the LSC's work on their
19 behalf? Questions about representation related to the presence and involvement
20 of elected members, but also their mandate due to declining turnouts in local
21 elections. The other questions related to information flows between local
22 authorities and citizens and ongoing debates about what kinds of local and place-
23 based representation, and opportunities for active participation, might enhance
24 local democracy in Scotland (for example, see: Raco and Flint, 2001). Full
25 answers to these important questions were beyond the scope of this limited project
26 but, again, the negotiated practice of LSC participants demonstrated sensitivity to
27 and acknowledgement of them. Perhaps more a fortuitous result of the design of
28 the 2012 Act (although stakeholders suggested it had been intentional) than
29 negotiated practice, the first point to note is that the shift from joint Police Boards to
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9 direct police-local authority LSCs led to an increasing number of elected members
10 becoming actively involved in local police governance. In the early days of Police
11 Scotland the police themselves also sought to offer deeper and more direct local
12 input than was required by the Act by generating 'ward' level plans – wards are
13 small geographical units to which individual councillors are elected – that would
14 engage all elected councillors, although this burdensome process was soon
15 curtailed. Negotiated practice was most pronounced in relation to the decisions on
16 where to locate LSCs in council business discussed previously. It needs again to
17 be emphasised that the project could not study all of the 32 LSCs and there are
18 undoubtedly complex reasons and histories for many of these choices, but the
19 active preference of community safety and community planning committees in two
20 of our sites was important. Community safety and community planning are
21 partnerships (the former generally a sub group of the latter) that have to involve a
22 diverse group of local service providers, as noted previously. They also tend to
23 involve community groups (young people, LGBT+, minority interests) and relevant
24 voluntary sector organisations within the sector (e.g. Victim Support Scotland were
25 active in one of the sites). In common parlance in the field, these partnerships tend
26 to be the most 'community-facing'. Therefore, within this structure both the local
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9 authority and the police are most likely to be working alongside a range of other
10 institutions and agencies that reflect distinct fields of expertise and interest,
11 including some quite specific community interests.
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17 “It is important every board should have third sector on the scrutiny board.
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19 The more people involved in scrutiny, the better. Every organisation like the
20 council will have pre conceived ideas as to what they think the police should
21 do, the third sector will have their own ideas, and with the involvement of the
22 third sector we are getting more rounded scrutiny. We are not just trying to
23 appease or to keep councillors happy, there is a broad spectrum, so scrutiny
24 is healthy and we are looking at the broader picture.” (LAC).
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33 Local authorities, the police and third sector agencies themselves (sometimes
34 working together) also all use community surveys and, increasingly, a range of
35 other methods to try to engage the public about local service delivery:
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41 “Public consultation is done in as many ways as possible for example we
42 will do it by leaflet, by email, by online surveys, organising events, going out
43 to public events. In one of our areas there was an international event, we
44 decided to consult the public there so we put up a table and the police went
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9 along with us and they also put up a table and put a questionnaire on.”

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11 (Third Sector Representative)

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14 These approaches are used in various committees but are explicitly promoted in
15 community safety and Community Planning where ‘community’ interests are more
16 pronounced than in, for example, a more technically focused audit committee. In
17 short, the connection between local councillors and communities remains an issue
18 in Scotland, but ‘representation’ is not exclusively about the ballot-box in local
19 elections. However instinctively or imperfectly, many LSC practitioners are thinking
20 about committee structures and practices that are responsive to communities and
21 which make connections horizontally across service providers.
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33 The third set of ‘structural disconnects’ were those within the new Police Scotland
34 itself. It was noted earlier that a LAC could be put in a difficult position where
35 central policy caused local concern but, either because of rank or function, they
36 had no direct means of escalating the matter internally. This raised questions
37 about how responsive a LAC could be to local interests, and whether they had the
38 rank and capacity to make things happen on behalf of the LSC. This was an
39 ongoing issue throughout the project but significant negotiated practices on the
40 part of the police had engendered goodwill. From the outset Police Scotland had
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9 gone beyond the 2012 Act's s45 requirement that a generic 'constable' be
10 designated as a LAC. At a minimum officers identified in our study were of the
11 rank of Inspector, itself denoting a certain status to the committee, and certain
12 expectations about experience and capacity of the incumbent, although for
13 councillors and officials with experience of the old Boards it was nonetheless a
14 serious demotion given that the police were formally represented by the Chief
15 Constable of the relevant regional service. However, even officers of this rank had
16 encountered difficulties in escalating matters, and so by the time of our fieldwork in
17 late 2015/early 2016 LACs were generally supported by their Divisional
18 Commanders who held the rank of Chief Superintendent. This is indicative of a
19 wider point about the gap between the statute and the reality of Police Scotland as
20 a 'single' organisation. Police Scotland retained an internal structure that includes
21 13 Divisions that are also now coordinated under three Regions – East, West and
22 North – each headed by an Assistant Chief Constable. Routine involvement of
23 Divisional Commanders in LSCs was very favourably received by local authority
24 members. Symbolically it represented the importance that Police Scotland were
25 seen to give local matters. Practically, a Chief Superintendent has greater clout to
26 make decisions and feed matters up into the Division. One example of an effective
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9 intervention from a Divisional Commander was where an LSC complained that the
10 pro-forma quantitative reports provided by Police Scotland were unhelpful and
11 lacked qualitative detail on issues of noted interest to the community. The
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13 Divisional Commander agreed and from that point on data and reporting was
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15 provided to the LSC in the manner that it had requested. The result of this was
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17 that across the sites studied, the police had consistently moved away from
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19 providing basic pro-forma reports and have gathered information from multiple
20
21 sources to provide richer and more balanced accounts of local issues that had
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23 credibility with partners and elected members in LCSs by the time that more formal
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25 police plans had to be agreed.
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33 “When the first police plan was presented it was drawn from a partnership
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35 assessment of risk so it wasn’t done in isolation from what the partners
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37 thought and included in that risk assessment was feedback that we have
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39 from the public on their community safety priorities and that’s gathered
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41 quantitatively through our citizen’s panel and local face to face meetings. So
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43 ... the police were good in synthesizing all that information and saying this is
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45 what the priorities look like ... ‘this is the take on it from our local area’.”
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49 (LAO)
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9 However, even Divisional Commanders experienced frustrations where specialist
10 functions or Operational Support services with a national remit (e.g. organised
11 crime, counter terrorism, air support) were the source of local complaint.
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17 “We have lost the boundaries of the previous forces with Police Scotland but
18 we have created new boundaries with the specialist forces that we never
19 had before.” (DC)
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24 Representatives of these services were not connected to the LSCs in the formal
25 lines of communication. At the time of the project it was hoped that the move
26 towards greater autonomy of the three regions which was gaining momentum
27 would further open lines of communication from LSCs up to senior strategic-level
28 ranks, facilitating policing that could be more adaptable and responsive to local
29 interests. In short, Police Scotland was never ‘single’ in terms of being completely
30 top down from one Chief Constable. Underneath there were layers of organisation
31 – regional, divisional and specialist – and the links and connections between them
32 had been, and were still being, actively negotiated as the organisation developed.
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46 **Distributed power, recognition and responsiveness: essential functions of**
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9 Many of the issues which had caused public displeasure with the new Police
10 Scotland, alongside a generally perceived tension between central and local
11 interests (partly rooted in structural disconnects in the new governance
12 arrangements) intuitively express real, fundamental problems with the design and
13 implementation of Police Scotland. Negotiated practice has constructively
14 responded to some of them, but is on its own insufficient. Explicit articulation of
15 them as principled convictions around the distribution of power, recognition and
16 responsiveness is a necessary stage in better understanding appeals to the 'local'
17 in police governance, revealing what is at stake, and providing a vocabulary
18 through which the developing landscape of police governance in and beyond
19 Scotland should be more critically monitored. It is the aim of this section to begin
20 the work of recasting the intuitions of LSCs as important issues of principle in
21 police governance.
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40 It should be stated from the outset that in no way does this discussion seek to
41 privilege 'local' over 'central' police organisation or governance. Each have
42 'virtues' (Walker, 2000: 28-31; Lustgarten, 1986: 177-178). In contemporary
43 parlance the virtues of central organisation are coordination, efficiencies,
44 standards, and equality of service [possible x-ref to Finland paper in SI],
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9 whereas the virtue of the local is recognition of and responsiveness to local
10 preferences through engagement and tailoring of services to particular (and
11 diverse) communities. Both 'virtues' were extolled in debates preceding reform.
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13 Our point here is to reiterate the importance of the *balance* between central and
14 local, and to argue that it has yet to be reached in Scotland.
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21 [I]mportant values are safeguarded by both localism and centralism. Each
22 has its virtues, but the main responsibility for policy and administration
23 should remain close to the persons using the service; the national function
24 consists of standard-setting, equalisation and protection of minorities.
25 Moreover, it is dangerous to concentrate all power over a particular service
26 at any one level of government. *Permanent, institutionalised tension*
27 between different levels of the political process is as firm a guarantee
28 against abuse of power as democracy can devise. (Lustgarten, 1986: 178,
29 emphasis added)
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43 The idea that no single body should exercise unfettered power over the police is
44 not new and lies at the heart of tripartism in the UK (Jones et al., 1996; Walker,
45 2000; Reiner, 2010). When power is distributed amongst multiple parties they
46 necessarily act as a check on one another's exercise of it, particularly where they
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9 occupy distinct roles and/or represent particular interests to be protected. Given
10 that the powers wielded by the police make them central to the 'repressive
11 complex' (Jones et al., 1996: 189) the distribution of power is especially important
12 in this context, although it is a principle of democratic administration more broadly.
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19 The 2012 Act, and surrounding debate, were attentive to this issue despite formally
20 relocating powers to the centre. LSC's calls for an 'escalation' route to the SPA in
21 situations where there was disagreement, inadequate consultation, or 'structural
22 disconnect' within the local level scrutiny functions reflected their acknowledgment
23 of their post-reform status. They now lacked decisive formal powers (including
24 dismissal of senior officers, or withholding of budgets), and so needed to 'escalate'
25 to the independent body that held that authority. One problem was that the
26 distribution of power at the centre was found to be wanting. The SPA was a
27 completely new institutional player in the governance landscape. With little time to
28 consolidate it quickly became enmeshed in clashes with the Chief Constable over
29 financial responsibilities and roles, and on various controversies surrounding Police
30 Scotland's tactics (e.g. stop and search). Invariably it came out badly (see: Malik,
31 2017a). Its autonomy from Scottish Ministers was also questioned (Malik, 2017b).
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33 Thus, the whole problem of 'local' governance needs to be seen in a context in
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9 which a fully functioning 'permanent, institutionalised tension between different
10 levels of political process' (Lustgarten, 1986: 178) was not evident *anywhere* in the
11 system. Escalation routes may come to provide an adequate solution to the
12 reorganisation of the formal distribution of power in favour of the centre (the virtues
13 of which we do not question here), but they can only do so if those central
14 arrangements are credible.
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23 A second interrelated problem with the new position of LSCs was one of
24 recognition and responsiveness. Recognition acknowledges the symbolic
25 dimension of public policing. Whether in individual police-public contacts
26 (Bradford, 2014) or through engagement and participation with local democratic
27 institutions (Loader and Walker, 2007: 220-223) public-police interactions are
28 communicative and can be important signifiers of how individuals or groups are
29 'recognised' as citizens or bearers of rights that have to be responded to
30 appropriately. Procedural justice literature shows that interactions perceived as
31 demonstrably unfair undermine citizens' sense of status, with potentially disastrous
32 consequences for the legitimacy of the police within that group (Bradford, 2014). In
33 the present context the shift of formal statutory powers to the centre signified the
34 lowering of the status of local arrangements. LSCs were no longer committees
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9 that 'took decisions' and this has importance to the status of such committees
10 within local government. As committees had no formal censure against the police
11 (apart from the potential of reputational damage flowing from a refusal to 'approve'
12 a local police plan), this affected the importance attached to them within Police
13 Scotland. Significantly, at the outset, less senior Inspectors now held local
14 governance responsibilities in place of a Chief Constable. In short, the loss of
15 formal powers was felt by some as a devaluation of the importance of recognising
16 local interests.
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28 Much of the negotiated practice was an implicit response to this. Bringing
29 Divisional Commanders into the process of local scrutiny was an important
30 symbolic act by Police Scotland that gave recognition to LSCs, and the local
31 interests they represented. Similarly, the increased involvement of elected
32 councillors, and the tendency to institutionally link scrutiny functions with harder
33 edged service delivery functions of community planning might be understood in the
34 same way, as of course can the willingness of SPA board members to take upon
35 themselves the role of 'escalation' route. In any case, a related issue to stress
36 here is that giving recognition to local interests is not to make an argument that
37 uncritically favours local 'direction'. To give recognition to locally elected
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9 representatives is not necessarily to do as they ask. What they ask might be
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11 illegal, oppressive to other groups of citizens, or otherwise inconsistent with other
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13 police commitments (to law, equality, human rights etc.) (Jones et al., 1996: 191).
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15 For Loader and Walker, what is important is that the police give reasons for what
16
17 they do or do not do, that there is deliberation about policing priorities, strategies
18
19 and resources (2007: 227-231). It was a strong perception that such deliberation
20
21 was not taking place, in part because of gaps in communication resulting from
22
23 structural disconnects between central and local managers in Police Scotland,
24
25 rather than complete disagreement with all central decisions taken, that lay at the
26
27 heart of much of the disquiet in LSCs. For example, LSC 'annoyance' regarding the
28
29 more routine appearance of armed officers was more down to Police Scotland's
30
31 designation of it as an 'operational matter' not requiring local deliberation than it
32
33 was necessarily down to the decision itself (see above). Negotiated practice
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35 around providing LSCs with information requested, involving more senior police
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37 officials to reach up into the hierarchy, and potential developments in the autonomy
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39 of the emergent regions, again testify to practitioners' intuitive grasp of the
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41 democratic need to give recognition through reason giving.
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9 While giving of reasons is one way of responding to local preferences,
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11 responsiveness to preferences, and means of accessing or being exposed to them,
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13 is a wider issue (Jones et al., 1996: 191), of which the negotiated practice of LSCs
14
15 again demonstrated an intuitive feel. Kuper distinguishes between vertical and
16
17 horizontal responsiveness (2004:103-104). Vertical responsiveness relates to the
18
19 relationship of institutions and elected representatives to the citizens that they have
20
21 a mandate to serve. The vertical responsiveness of LSCs was questioned in light
22
23 of general concerns about the state of local electoral democracy in Scotland.
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25 However, vertical responsiveness is not only achieved through electoral mandate
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27 (Jones et al., 1996: 191). Public voice can be heard through an increasingly
28
29 diverse set of mechanisms including surveys, citizen juries, and consultation
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31 exercises (Loader and Walker, 2007: 222). There are some encouraging
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33 developments along these lines in Scotland (Bland 2017; Roca and Flint, 2001) but
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35 such innovations, other than routine use of public survey data, are not mainstream
36
37 as yet. Where the LSCs sought to enhance their vertical responsiveness was
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39 where they sought location in community safety. Beyond drawing upon survey
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41 data these committees can and do include representative community groups (often
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43 representing hard to reach voices of young people, the LGBT community or ethnic
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9 minorities – precisely the groups whose rights risk being threatened if recognition
10 of mainstream public sentiment is not checked) and voluntary sector service
11 providers. It might be the case that other committee structures also provide some
12 additional vertical responsiveness of these kinds. That is a question for future
13 studies of Scottish local government, but for the moment it can be observed that
14 LSC members were intuitively aware of vertical responsiveness and it was often
15 the case that community safety, through its active involvement of citizen
16 representation, offered some dimension of it.
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28 The location of community safety within community planning brings the discussion
29 onto horizontal responsiveness. The 2012 Act reaffirms Police Scotland's
30 responsibilities to participate in the community planning local service delivery
31 partnership (s47). Where police scrutiny occurs here it is not only conducted in
32 conjunction with local authority officials, but also with other local service delivery
33 partners (social work, education, health etc.) alongside the community
34 representatives noted above. This offers a modicum of what Kuper terms
35 horizontal responsiveness across different professional institutions:
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47 (A) relationship between authorities that check and balance one another in
48 part because (despite some divergent ends and means) they need to
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9 compromise or find consensus in order to fulfil their functions, and so will be
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11 receptive to one another's claims and counterclaims. (2004: 103)
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14 Horizontal responsiveness almost, but does not quite return us to the opening
15 preoccupation of this section. It is not a distribution of power in the formal legal
16 sense but it does offer institutional check and balance at the local level.
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19 Community planning as a statutorily mandated partnership committee has real
20 potential for institutionalising a horizontal responsiveness in public service delivery
21 that, as was demonstrated earlier, has a strong historical legacy in Scotland. It is
22 therefore unsurprising that as local arrangements were being renegotiated during
23 the study, this was the direction of travel.
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33 **Conclusions**

34 Far from being an event which took place on 1 April 2013 the reform of policing in
35 Scotland remains an ongoing and sometimes contested process. The
36 considerable scope within the enabling legislation for discretion regarding
37 implementation was probably a necessity given the complexity of amalgamating
38 eight regional police services and two national agencies into a single organisation,
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9 but this requires the emergent practices negotiated around the Act to be
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11 scrutinised carefully.
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14 This article has given focus to local governance arrangements, which run the risk
15 of being forgotten in the midst of a process characterised as centralisation. Police
16 Scotland is a single organisation, but questions of local governance and local
17 policing were part of the debate that heralded it and of the enabling legislation
18 itself, and a balance between its central and local orientations remains a work in
19 progress and a matter of negotiated practice. Illustrations drawn from our small-
20 scale study of the new local governance arrangements revealed how practitioners
21 filled in the gaps to work around structural disconnects that impeded information
22 and communication flows. These had contributed to a series of controversies with
23 the new system where it appeared that local preferences and interests had been
24 ignored or unheeded. We then demonstrated that these appeals to the local were
25 not mere expressions of sentiment or resistance to change, rather they reflected an
26 intuitive feel for what was vaguely framed in or absent from the bare bones of the
27 legislation. In particular, the negotiated practice of those making the new
28 governance arrangements work showed a grasp of key tenets of democratic police
29 governance: that power over policing must be shared across different institutions
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9 and/or levels of government; that police organisations should recognise and be
10 responsive to those subject to them; and, that flowing from these necessary
11 requirements, policing and the policy of the police need to be subjected to
12 meaningful deliberation. In Scotland these ideas continue to find some, but by no
13 means all, of their expression in local governance arrangements on account of the
14 strong historical legacy of Scottish policing being institutionally situated within local
15 public service delivery. They are, however, core dimensions of democratic police
16 governance as a whole, and are not of purely 'local' import either in Scotland, or
17 elsewhere. Indeed, other contributions to this issue clearly illustrate that particular
18 histories of police and government do much to determine the institutional forms
19 that democratic police governance takes.
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Funding

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ⁱ These figures are a selected snapshot out of a more gradual process of amalgamation. See Table 1 in Davidson et al. for the full picture (2016: 90).

ⁱⁱ The eight police forces varied significantly in size and in terms of populations covered. Strathclyde was one of the largest police services in the UK with, in 2005, a strength of 7,430 sworn officers. This compared with Dumfries and Galloway, one of the smallest UK police services with a strength of 489 sworn officers. See: Donnelly and Scott, 2005: 12-13.

ⁱⁱⁱ The Advisory Board included SPA Board members, elected councillors with experience of police scrutiny, Police Scotland officers, HMICS, and an independent academic (see: XXXX: 4)

^{iv} A full discussion of case selection is found at (XXXX: 7), but cases were selected to cover all three Regional Command Areas, to include one predominantly rural, one predominantly urban, and one mixed setting, and to represent different locations for the LSC, two in Community Safety Committees, and one in a dedicated Blue Light committee.

^v This was a 'learning event' organised by CoSLA for elected members and council officers working in LSCs in September 2016. This has become an ongoing forum and the mechanism through which SPA Board members engage with LSCs and the issues that they wish to 'escalate'. No evaluation of this forum has yet been conducted.