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## ***Coward punchers: shamed and deterred by ‘one punch’ laws?***

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### **ABSTRACT**

If the aim of the criminal justice system is to achieve and maintain crime reduction, then it is imperative that the objects of the law and punishments enforced by the legal system do not undermine this purpose. This critical essay will analyse Section 25A and Section 25B of the *Crimes Act 1900* (NSW), colloquially known as the ‘one punch’ legislation, through the foci of social control theory, reintegrative shaming theory, and labelling theory. The analysis considers the political and media discourse that accompanied the introduction of this legislation and how this may be understood through criminological theory. It has been more than ten years since the first ‘one punch’ laws were passed in Australia, led by Western Australia. While this essay focuses specifically on the New South Wales legislation, which was passed in 2014, the length of time since the introduction of these laws presents opportunities for a retrospective on whether enacting ‘one punch legislation’ is an effective alternative to utilising existing manslaughter laws.

**Keywords:** Crimes Act, One Punch, Manslaughter, Legislation

### **INTRODUCTION**

This critical essay considers Section 25A and Section 25B of the *Crimes Act 1900* (NSW), with respect to social control theory, reintegrative shaming theory, and labelling theory. Sections 25A and 25B of the *Crimes Act 1900* (NSW) are colloquially referred to as the ‘one punch’ legislation. First, this essay outlines Sections 25A and 25B of the *Crimes Act 1900* (NSW), and the historical context that led to the establishment of mandatory sentencing for ‘one punch’ assaults. The legislation is then analysed through the foci of social control theory, reintegrative shaming theory, and labelling theory. We conclude that the very public and rapid passing of the legislation, concomitant to the political and media discourse that occurred contextually, was as much a political and public statement as it was a legal one to create social control.

A major means by which the criminal justice system strives to achieve social control is through establishing and enforcing legislation. In the context of this essay, social control theory will be considered with the definition formulated by Akers (1973), as social conformity to the desired standard of behaviour through the formation of a punishment that reduces deviance and encourages conformity.

The enactment and implementation of any legislated criminal law may arguably be considered a form of social control by government. However, the combination of Section 25A and Section 25B of the *Crimes Act 1900* (NSW) is highly prescriptive in the type of offence it seeks to control by operation of Section 25A, and the removal of judicial discretion by

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mandatory sentencing indicates a definitive level of social control by the legislature under Section 25B.

## THE ‘ONE PUNCH’ LEGISLATION

There are two key sections within the *Crimes Act 1900* (NSW) relevant to mandatory sentencing for ‘one punch’ assaults: Section 25A and Section 25B. Section 25A creates the offence of assault causing death, and Section 25B relates specifically to assault causing death when the defendant is intoxicated, and dictates the mandatory minimum sentence for this offence. Section 25A of the *Crimes Act 1900* (NSW) defines the *actus reus* or physical element of assault causing death as the act of assaulting someone, without lawful exemption, by hitting the victim with an object or any body part, causing death, regardless of whether the death was caused directly by the assault or indirectly by subsequently hitting the ground or an object, and even if the death was not reasonably foreseeable.

The *mens rea* or mental fault element for assault causing death is intention to commit assault (Anderson, 2016). Intention may be defined as per Brennan J, *He Kaw Teh v R* (1985)157 CLR 523 who, at 211- 213 referred to intention as, “...a decision implies a desire or wish to do such an act or to bring about such a result...Intent, in another form, connotes knowledge.” While the onus of proof of intention rests with the prosecution, the scope of intention is determined by the court. When the defendant has a cognitive impairment, or was intoxicated but the intoxication was not self-induced, the Section 25A mental fault thresholds are not met. If intoxication was self-induced, there is a mandatory minimum penalty for this offence. The minimum sentence for assault causing death when the defendant is intoxicated (self-induced) is imprisonment for eight years, with no opportunity for parole for at least eight years, as per the *Crimes Act 1900* (NSW).

The ‘one punch’ legislation and mandatory minimum sentencing for assault causing death while intoxicated were introduced as a response to the cultural phenomenon of alcohol-induced violence that was brought to the public’s attention in 2014/2015 (Schreiber et al., 2016), particularly following the cases of *R v Loveridge* [2014] NSWCCA 120 and *R v McNeil* (No. 4) [2015] NSWSC 1198. In the case of *R v Loveridge*, the defendant randomly targeted alcohol-related assaults towards five victims. One of the victims, Thomas Kelly, was taken to hospital with life-threatening brain injuries, and was later taken off life support and pronounced deceased on 9 July 2012, two days after the incident. The defendant plead guilty to four counts of assault and one count of manslaughter and was originally given a sentence of seven years and two months imprisonment with a non-parole period of five years and two months. The Crown appealed against the Judge’s original sentence on several grounds. Notably, the Crown felt that his Honour’s sentence did not adequately reflect the importance of general deterrence in the sentencing of alcohol-related assaults. Moreover, the appeal echoed the Australian public’s response to the original sentence as too lenient (Flynn, Halsey & Lee, 2016). The appeal was successful, and the original sentence was substituted with a new sentence of 13 years and eight months imprisonment with a non-parole period of ten years and two months.

In a similar case, *R v McNeil* (No. 4) [2015] NSWSC 1198, the defendant Shaun McNeil randomly targeted a one-punch attack on Daniel Christie while McNeil was intoxicated, resulting in Christie hitting his head on the pavement and ultimately leading to fatal head injuries. Daniel Christie’s life support was turned off 11 days after the attack, on 11 January

2014. The defendant also assaulted Daniel Christie's brother Peter, and another young person, JF. As a result, McNeil was sentenced to ten years imprisonment with a non-parole period of seven years and six months. One-punch attacks such as these became noticeably frequent in Australian society (Schreiber et al., 2016) and received extensive media coverage (Flynn et al., 2016). As a result, the Australian public advocated for mandatory minimum sentencing to be introduced for this offence as a strategy of general deterrence (Flynn et al., 2016). Quilter notes that the "one punch" legislation was announced on 21 January 2014. Just over one week later, on 30 January 2014, without any known public consultation, the Premier read the relevant bill for the second time in parliament and the bills were passed by both houses without substantial amendment and a day after they were introduced. The *Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014* received Royal assent and commenced operation on 31 January 2014 (Quilter, 2014). This legislation coincided with the introduction of the 'lockout' restrictions limited to the Kings Cross and CBD precincts of Sydney. Statistical analysis from BOSCAR indicates that overall assaults declined in the 'lockout' target areas during the relevant periods of the lockout and rose in the 'non-lockout' Sydney Star Casino area by approximately two assaults per month during the same period (Menendez et al 2020).

Notwithstanding the public outrage generated by the incidence of 'one punch' attacks and the legislation created in response, it has been little utilised since being passed into law. One punch attacks in NSW where the victim survives are usually dealt with under the law of grievous bodily harm (*R v Jerome Saffey* [2019] NSWDC137) or may be dealt with under manslaughter or s.18(1) murder elements (*Grogan v R* [2016] NSW CCA168). The requirements of Section 25A and Section 25B are so specific that the factual scenario must fit precisely to be confident a charge may be accurately prosecuted.

## MANDATORY SENTENCING

Mandatory minimum sentencing is debatably a controversial strategy to be adopted by the Australian criminal justice system. While it appeals to the punitive 'tough on crime' position of the public (Frost, 2006) and may act as a general deterrent for alcohol-fuelled violence (Schreiber et al., 2016), mandatory minimum sentences do not allow for any judicial discretion to be applied in sentencing considerations (Cassel & Luna, 2011). As Gray (2017) points out, many countries have increased their adoption of mandatory sentencing to promote punishments that are 'tough on crime', align with the perspectives of the public, and reduce arbitrary sentencing by bypassing judicial discretion. However, such a strategy can actually encourage greater arbitrariness in sentencing by undermining the traditional judicial process of delivering a sentence that is proportional and based upon the unique circumstances of a case (Gray, 2017). Because of this 'one size fits all' approach, contextual factors are not considered in sentencing decisions, the sentence is not individualised to the defendant, and the sentence delivered may be disproportionate or inappropriate (Cassel & Luna, 2011). The NSW Supreme Court acknowledged this as early as 17 December 2014 before the new legislation passed in the decision of *R v Field* [2014] NSWSC 1797, "It is no longer appropriate for this Court to regard one punch or single punch cases of manslaughter as constituting a single class of offence since the objective seriousness of each case may vary widely. It is essential that the particular case under consideration is the focus". It may be argued that mandatory minimum sentencing for alcohol-fuelled assaults can be inappropriate in some circumstances, particularly due to its implications for reintegration and restorative justice. Due to the complex and controversial nature of adopting a mandatory sentencing strategy, and the discourse that surrounded it

contextually, it is important to assess the legislation and the milieu in which it was enacted through criminological perspectives.

## THEORETICAL APPROACHES

Braithwaite's theory of reintegrative shaming proposes that social control can be achieved by shaming the offence performed by a defendant (Braithwaite, 1989). An integral feature of reintegrative shaming is that while it exhibits social disapproval for the offence, it does not cast shame upon the defendant. Rather, the defendant is shown forgiveness by society such that they may be reintegrated into their community, in line with a restorative justice approach (Braithwaite, 1989). Braithwaite provides extensive support for his position that shame acts as a deterrent. He references a study conducted by Schwartz and Orleans (1967), which found support for the notion that social control is successful not because of the penalties of an offence, but rather the moral reasoning that underlies the punishment. He contends that this is the result of the importance placed on the opinion of others and maintaining one's positive reputation (Braithwaite, 1989 citing Schwartz & Orleans, 1967). Fitch et al. (2018) have conducted one of the few longitudinal studies on reintegrative shaming theory, albeit in the context of non-predatory offending, nationally in the US. They found, "Overall, peer shame acknowledgement at age 18–21 was a significant predictor of no non-predatory offending at ages 21–27" (p. 361). In the Canberra Reintegrative Shaming Experiments (RISE), Tyler, Sherman, Strang and Woods (2000) found that, "diversionary conferencing resulted in a significant decrease in the reoffending rates of violent offenders. Diversionary conferencing reduced reoffending by approximately 38 crimes per 100 offenders per year." The study noted that serious violent offences were excluded from the experiment (Youth.gov.au, unknown, p. 1). Braithwaite (1989) also notes that it is important to differentiate reintegrative shaming from stigmatisation or disintegrative shaming. The latter involves shaming the individual, and ultimately leads to the individual's ostracism from society.

Arguably, the establishment of and support for mandatory minimum sentencing for alcohol-induced assault causing death represents the Australian public's condemnation and criminal justice system shaming of 'one-punch' assaults. Thus, mandatory sentencing can act as a strong general and specific deterrent. But it can be equally contended that these laws being enacted alongside the political and public discourse that surrounded them contextually may have instead resulted in unproductive, disintegrative shaming. This may be symbolised by the change in the discourse of 'one-punch' assaults, as politicians and the media alike replaced the colloquially termed 'king hit' with 'coward's punch' to alter how these assaults were viewed by the public, aligning them with cowardice rather than dominance (Schreiber et al., 2016). This is exemplified in retired boxer Danny Green's online "Stop the Coward's Punch" campaign (Green, n.d.). When considered in isolation this may be viewed as a positive societal shift, but an issue arises when one considers the unintended negative consequences that can occur as a result of labelling the offender.

Labelling theory is a criminological theory that proposes that defendants who are labelled by their community have an increased likelihood of reoffending (Braithwaite, 1989). From the perspective of labelling theory, punishments that result in negative labels being ascribed to defendants will be counterproductive in achieving crime reduction. Being labelled as deviant has damaging implications for individuals, as they may take on the identity that the label represents, ultimately 'creating' deviance rather than abolishing it. Thus, the label

ultimately becomes a ‘self-fulfilling prophecy’, resulting in heightened recidivism among these defendants (Braithwaite, 1989). Labelling damages the reputation of individuals in their society and results in feelings of judgement, isolation, and separation from the community, damaging a defendant’s community connections, self-esteem, and regard for society (Braithwaite, 1989). More recent studies have established that in youth, labelling reduces the likelihood of self-evaluation (Kroska et al., 2017, p. 86). In this way, while punitive measures can have positive implications for general deterrence in the short-term, they may ultimately undermine social reintegration and restorative justice. Furthermore, when labelling occurs alongside a mandatory sentence that lacks consideration for individual circumstances such as age, the number of previous offences and likely response to rehabilitation, it has the potential to impede the ability of offenders to be positively reintegrated into their society. This is exacerbated by the challenges offenders already face when attempting to re-join their community after a period of imprisonment. As it is young men who are most likely to commit alcohol-fuelled assaults (Donnelly, 2018), greater consideration should be made as to how offenders will be able to re-engage with society after they have been punished for their offence.

It is important to consider the purpose of punishment. Reitan (1996) contests that the chief justification of punishment is its role in reintegrating defendants into their society. This is contextualised by reintegration theory. From a reintegrative perspective, it can be argued that the labelling that ensued following the extension of Section 25A to include Section 25B of the *Crimes Act 1900* (NSW), in conjunction with the political and public discourse surrounding the crimes, may have been counterproductive in reintegrating individuals into their society, and thus not adequate in achieving the key purpose of punishment. The labels ascribed to ‘coward’s punch’ defendants could have significant negative implications through encouraging social rejection and disintegration, which, as discussed by Braithwaite (1989), begets further crime. It is essential that general deterrence is achieved through the punishments that are introduced in Australian society, but it cannot be at the expense of restorative justice and specific deterrence.

## CONCLUSION

The mandatory sentencing laws and the renaming of the ‘one punch’ offence in the vernacular from ‘king hit’ to ‘coward punch’ may have had unintended negative consequences on the Australian criminal justice system’s reintegrative goals. Mandatory sentencing does not enable an individualised approach to justice, resulting in depersonalised outcomes that impede social reintegration. Given the specific elements of the s.25A offence and s.25B mandatory sentencing requirements, the NSW Director of Public Prosecutions would need to have a significant degree of confidence in the prospect of conviction to anchor a whole case solely on these sections. As only a small number of cases have been prosecuted on the facts under this very prescribed area of law, an argument may be made that the very public and rapid passing of the legislation has been as much a political and public statement as a legal one to create social control. This is echoed by the political and media discourse that occurred contextually, and when examined under labelling theory, concerns are raised as to whether the ‘coward punch’ label serves to reinforce a negative stereotype and disincentivise rehabilitation.

While it is challenging to assess the efficacy of the ‘one punch’ legislation as a general deterrent when it was introduced concurrently with the ‘lockout restrictions’ in the Kings Cross and CBD precincts of Sydney, further evaluation is needed to determine the true implications

of the mandatory sentencing and vernacular changes that occurred ten years ago. It is essential that Australia does not see another cultural increase in ‘one punch’ assaults, and it is also important that previous defendants are successfully rehabilitated and reintegrated into society to reduce the risk of recidivism.

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# **The Detection and Deterrence Value of Mass Thermal Screening during the COVID-19 Pandemic**

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## **ABSTRACT**

This article critiques the role of mass screening thermal imaging systems (MSTIS) during the COVID-19 pandemic, questioning whether such systems were sold for the purpose of restoring consumer and staff confidence at business premises rather than truly limiting the spread of the virus. It concludes that the value of MSTIS in detection and deterrence is flawed and could in fact contribute to wider contagion.

While the strengths and weaknesses of artificial intelligence is widely documented, no study before has understood its role from a security in depth perspective, specifically exploring how both detection and deterrence play mutual roles in health crises. In the case of the MSTIS, mixed messaging from government organisations and scientific studies meant that companies sold thousands of units and, to this day, are able to carry on selling such systems.

These assertions are based on a series of evidence obtained via meta-data analysis. The consequences of companies selling what have proved to be defective systems on the spread of the COVID-19 virus is impossible to measure. The article finds that that ‘slow and careful’ thermal screening is more effective in detection and deterrence, and their use should therefore be encouraged.

**Key words:** COVID-19, Thermal, Screening, Security.

## **INTRODUCTION**

In no time since 9/11 has the security and digital industries been more depended upon than during the COVID-19 pandemic. In over a year, various technology-led solutions have been deployed to enable governments to control the pandemic, including quarantine enforcement, contact tracing, social distancing, and symptom tracking (Kitchin, 2020, p.2). Personal devices were utilised for tracking and tracing the infected; exit and entry screening processes diffused from airports, seaports, to supermarkets and factories; autonomous systems were deployed to surveil people not complying with lockdown measures; and the rush to buy health monitoring systems like thermal scanners was much like the technological equivalent to toilet paper.

Indeed, many governments and businesses looked to the technology sectors to enable tracking, tracing, and detection of the virus. The ability of some companies from the security sector to reinvent themselves as providers in health screening, including biometric information, highlighted to the world of the adaptability, versatility, and acclimatisation of digital technologies for addressing global problems. One such example is the use of hand-held or mounted thermal cameras to screen movements of people in public places and workplaces (Nellis, 2020 in Kitchin, 2020). To enable deterrence and to remove operators from contagion risk, some governments bought thermal cameras mounted on drones to monitor as well as police the breaking of lockdown restrictions (Url, 2020 in Kitchin, 2020). Other governments

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equipped emergency managers with smart helmets which boasted scanning up to 200 peoples' body temperature a minute (Reuters, 2020 in Kitchin, 2020).

Whilst the effectiveness of such systems (especially in detection) demands serious scrutiny, this article specifically focuses on the proliferation of mass screening thermal imaging systems (MSTIS), a system which has largely been accused of being ineffective at detecting fevers – a symptom of COVID-19 – by a number of national and intergovernmental organisations. Despite this, MSTIS were widely adopted by many industries as a means to get business functions 'back to normal.' It has been argued that companies pushing MSTIS undercut genuine and more quality-assured systems, potentially contributing to a false sense of safety and thus ultimately putting people at risk.

There are four issues that we grapple with here with respect to the limitations of MSTIS; the first is the fact that the technical abilities of thermal cameras often do not meet the required specifications to effectively screen people 'on mass.' The second issue is that the procedural limitations with respect to screening large numbers of people at a given time, as well as the technical limitations explained before, means that the ineffectiveness of this form of health screening is magnified. Third, 'fever detection' has certain limitations for detecting the virus as many people are asymptomatic and temperature fluctuations can happen in many different environments. All the above issues have been highlighted by national bodies in the UK, USA, Europe, Australia and by the World Health Organisation (WHO), among many others. While the strengths and weaknesses of artificial intelligence is widely documented, MSTIS, however, are still openly marketed by some security companies to this day – over a year into the pandemic at the time of writing.

Even if the effectiveness of such technologies is limited, politicians, policy makers and citizens may consider the use of thermal screening as a supplementary tool to combat the spread of the virus (Kitchin, 2020). The rush to roll out such technologies is possibly necessary as 'force multipliers' as a supplementary part of a wider spectrum of measures. Indeed, in criminology and counterterrorism literature, the deterrence factor (fear of getting 'caught') can be equally if not more important than the security measures' ability to detect and enable response, especially if the technologies or procedures in question have weaknesses (Schneier, 2003). Since research has shown that people who experience symptoms are still willing to endanger others by not testing and self-quarantining (Technical Advisory Group, 2021), deterrence thus plays an extremely important role in health crises.

Expanded, as previously noted, the element of deterrence – including threats of fines, compulsory testing, and surveillance – played a role during the COVID-19 pandemic. However, while the element of deterrence has been documented in security literature and security crises, it has not been fully understood in the context of health crises. The deterrence value in health crises demand much more discussion than what current academia – mostly from security studies, not health science disciplines – give time and energy for. The article therefore asks: Even if ineffective, do thermal imaging systems provide a deterrence value that goes beyond its actual effectiveness? The article hereafter scrutinised both 'slow and careful' and rapid thermal screening.

The article first provides a brief history of thermal technology and the present market landscape. Drawing on Bruce Schneier's theory of 'security theatre,' it then explores the 'allure' and 'security spectacle' attached to modern digital technologies and how this resonates with the

development and distribution of MSTIS. In particular, it draws on how sensor fusion – the idea of combining different sensors to reduce uncertainty – appeals particularly to the ‘cost-benefit’ sales pitch, potentially overriding the needs for safety and security to the betterment of efficiency, productivity, and customer reassurance. It then draws on the concerns expressed by national and intergovernmental organisations, as well as previous scientific research, that has contested the viability of mass fever screening. It discusses the parallels of the importance of deterrence and detection in both security and health crises. Its overriding conclusion is that, at least from a ‘security’ trade-off perspective, MSTIS neither contribute substantially to detection and deterrence.

## BRIEF HISTORY OF THERMAL TECHNOLOGY

Infrared cameras detect the infrared energy emitted, transmitted or reflected via infrared spectroscopy frequencies at temperatures above zero and ‘converts the energy factor into a temperature reading or thermogram’ (Omega, 2021). The sensor array is constructed as a grid of pixels which react to the infrared wavelengths and then converts them into electronic signals. The processor picks up the signals and, using algorithms, converts them into colours expressing different temperature values (RS, 2021).

Thermal technology traces its roots back to the 1800s, but has subsequently been used in many civilian (1965 – present) and military applications (1920s – present) throughout the decades. It was the development of handheld units in the 1980s and 90s, however, that made thermal imaging systems far more versatile, user-friendly and did not require active cooling to work (RS, 2021). These were, however, expensive and only became ‘financially viable option for most civil uses until the early 2000s, which saw dramatic reductions in the production costs of uncooled arrays’ (Ibid). The lower costs led to an increase in popularity of thermal cameras in various sectors, including, but not limited to, emergency response, architecture analysis, medical diagnostics, environmental control, and many others (Marlowe Fire and Security, 2021). Thermal cameras were also becoming increasingly easier to use as smart sensors, microcircuitry and WiFi connectivity became more widely available (RS, 2021). This made thermal cameras more portable, less bulky, lighter, and thus making installation and use possible in a variety of different locations. Regardless of these technological advances, important considerations for effective use include elements such as field of view (including target size and distance), surface being measured (emissivity considerations), atmospheric and environmental effects, response time, signal processing and other elements (Omega, 2021).

Thermal imaging technology has proved particularly useful for health monitoring where body temperature fluctuations are a known symptom. As a non-contact temperature measurement device, it is arguably safer for operators to use than other temperature measurement devices that require physical contact. Indeed, its first widespread civilian use began in airports, seaports, and border crossings around the world in 2003, particularly in East Asia during the SARS epidemic (Nellis, 2020). Some governments resorted to using more advanced military-grade thermal imaging technologies than those commercially available during this time (Hochreutiner, 2020). Other crises like the EBOLA outbreak in West Africa in the early 2010s saw the continuation of this niche market.

## THE COVID 19 PANDEMIC AND THE IMPORTANCE OF PERFORMANCE

While the SARS and EBOLA outbreaks were almost exclusively confined to continental regions, the COVID-19 pandemic has hit almost everywhere on the globe. Consequentially, the demand for thermal-imaging equipment has grown exponentially, due mostly to increasing adoption at airports (Research and Markets, 2020). Leading specialist companies registered up to 700% increase in demand (Hall, 2020), and ‘non-traditional’ sectors, like restaurants, factories, railway stations, retailers, and various other businesses, desperate to get their businesses functioning during exceptionally low footfalls and social distancing challenges, have invested in thermal imaging cameras.

Despite their popularity, and despite their use during other crises, thermal cameras had not been approved as a medical device by some health sectors. Nevertheless, at the early stages of the COVID-19 pandemic, it was encouraged by national government bodies (for example the U.S.-based Centers for Disease Control and Prevention and the Food and Drug Administration) to use these devices where suitable, including in traditional and non-traditional sectors, many of which were ‘high-risk’ areas. Deemed better than self-reporting, other national bodies relaxed regulations on infrared cameras to widen access to the technology and allowed employers to screen workers and visitors with limited ethical barriers, such as right to privacy. Some independent organisations, like Big Brother Watch (2020), argued that this was an excuse to widen surveillance practices at workplaces.

However, the method of scanning and the quality of the equipment, was one important detail that companies and consumers must have to consider. Some advanced, if quite expensive, systems were better able to detect symptoms, such as those with high pixel rate. Thermal scanners were also more effective if the person being scanned was standing in front of the camera for period of time, with headwear off (hats, sunglasses etc (Food and Drug Administration (FDA, 2021)), and ideally having not just arrived from areas with contrasting temperatures. The most accurate temperature can be made by focusing on the eye ducts of the face whilst the person being scanned is standing still.

With notable advances in artificial intelligence (AI), some companies have sought to speed up this process. While AI has known advantages in certain systems and in different sectors, for thermal screening, it has been argued that using such systems for accurate mass screening would require >12 megapixels, ‘which does not exist today’ (Field, 2020). According the FDA, the most accurate way of measuring the tear duct requires a minimum of 3 X 3 pixels to 5 X 5 pixels, but this must be used in front of the person being scanned (FDA, 2021). The recommended distance is important, as moving the camera from 0.5 meter to 6.0 meter away from the subject will result in a temperature drop of about 2 degrees Celsius, which could lead to a greater than 50% uncertainty (Tarin, 2021). Without using the camera positioned the correct ways, as other sections of the head and face typically provide lower temperature readings (Ace, Honovich, and Rollet, 2020). Above all, there have been no previous large-scale independent clinical trials to assess the accuracy mass screening systems at different sites (Pike, 2020; European Commission, 2019; Mouchtouri et al, 2019; ECRI, 2020; Glaser, 2020; Simonite, 2020).

On top of false positives, false negatives are increased due to the fact that most people with COVID-19 are asymptomatic or only have mild symptoms that would not show any anomalies. Anomalies are also difficult to accurately detect in large groups of people (Hall, 2020). Other factors that contribute to the problem (false positives, false negatives) are issues

that might lower or elevate temperature. This includes physiological stress, sweating, not using a reference black body for calibration, using the wrong camera, and subject motion (Tarin, 2021). There is also a ‘very real risk of involuntary quarantines and/or harassment’ (Guariglia and Quintin, 2020; Big Brother Watch, 2020). In one study using thermal systems at airports, people flagged by systems were found to have mild illnesses, such as colds or the flu (Reader, 2020)

While the effectiveness of thermal cameras picking up elevated temperature using the ‘slow and careful’ approach has been widely documented (detection), the deterrence, overtness or ‘performative’ value (queuing, standing in front of camera and an operator) is also intuitively beneficial. On the contrary, the ‘performative’ value of MSTIS is arguably less effective since the subjects are not standing still in front of the cameras, and because the cameras are less intrusive, even covertly used by inattentive, unmanned, or out-of-sight operators from various distances.

Therefore, the question is, how could such a fallible fusion be justified during a global pandemic? To what extent does economics play in this unique exchange between demand and solution? To what extent does the promises of digitalism influence rational choices when the balance between the economy and business continuity collides with the general safety of citizens? While the trade-offs for businesses using such systems is obvious, these trade-offs are out of step with well-known security paradigms, that the risks and fallibilities of such measures must match with or be outweighed by the rewards (Scheier, 2003).

## THE COST-BENEFIT PITCH FOR MSTIS AND THE ‘REASSURANCE MECHANISM’

The cost-benefits of MSTIS during a pandemic of highly contagious virus from a business perspective are manifold even if the health screening benefits are superficial.

From a business perspective, the first point is the issue of efficiency, that handheld thermometers could be cheaper and work in certain locations, for example where there are streams of people arriving at one entrance (Harwell, 2020). The ‘rapid’ approach means people do not have to stop (Simonite, 2020). It was also argued that automating the work will reduce staff needs and can be done at any time of the day from multiple locations from a central command centre (Hochreutiner, 2020), with silent alarms and colour alarms when fever was detected (Marlowe Fire and Security, 2021).

Another promise of automation is reduced chances of human error by avoiding detection lapses resulting from inattention (Ibid). The speed of detection ‘means people have no reason to adapt their behaviour as they enter a facility’ (Sims, 2020). Other selling points for some mass screening systems was that they were ‘easy and quick to install’ (Sims, 2020), and that they could store data (or ‘evidence’) (Marlowe Fire and Security, 2021). Finally, due to heightened screening measures, airports and other businesses experienced issues with long queues. Queuing could be counterproductive for limiting the spread of the virus, but similarly detrimental for ordinary corporate functions. Other, product-specific claims, almost exclusively from sectors not traditionally involved in health screening technologies, and which are highly dubious based on previous and present research data, are expanded below.

Athena Security (specialises in gunshot detection) and Feevr (owned by X.Labs – weapons company that specialises in weapons detection) argued that their Fever detection systems ‘could help make the difference between a safe workplace and a dangerous outbreak’ (Glaser, 2020).

Dahua (from fire sector) reportedly claimed that its systems which are normally used for fire detection, electrical substations, and border crossings can detect fevers with ‘pinpoint accuracy’ (Ace, Honovich, and Rollet, 2020). Despite the distance between a person standing in front of a camera being very important for an accurate reading of temperature, drone company Draganfly fitted their drones with questionable thermal technology, and reportedly sold thousands of units (Gershgor, 2020).

Other companies not traditionally from health screening sectors promised different capabilities for mass screening. Three companies Zyter, Verizon, and Hope Wish Photoelectronics Technology Co stated that their cameras could detect ‘temperatures of up to six individuals from 20 feet away as they walk into a stadium’ (Biddle, 2021). Telecommunications company Vodafone UK argued that its newly launched Heat Detection Camera could accurately detect (within +/- 0.3 degrees) the temperatures of ‘100 people per minute’ (Hall, 2020). Security contractors Corps Security stated that their camera could scan up to 16 faces per second (Sims, 2020). Energy company Clearway argued that its mass screener could monitor the temperature of 30 individuals ‘where there was a constant flow of people’ (Clearway, 2020). Other companies, such as Arup Group, made no specific references to how many people could be scanned per second or minute with their systems, but claimed ‘precise’ forehead measurements ‘for individuals wearing any kinds of headgear’ (Chen, 2020).

The issue with MSTIS has not gone without debate during the global pandemic. As stated by one specialist: “What is the intended purpose of temperature scanning?” “Are you just deploying this gear for ‘feel good’ needs, or are you truly looking to measure and eliminate feverish people?” (Field, 2020). Some might question whether the feeling of public confidence and the economic gains override the safety of society – *the lesser of two evils*, i.e. that people will suffer harder and longer if businesses go bankrupt, so (dis)proportional risk is justified. But what if proportional risk is implemented deceptively? The feeling of reassurance on the consumer side may be erroneously over-trustful of companies, including airports, to ensure their own safety. A poll at the early stages of the pandemic in the United States found that 84 percent of respondents favoured mandatory health screenings to enter public places (The Harris Poll, 2020), which demonstrates that passengers believed that such measures were appropriate and proportionate. Indeed, in light of Schneier’s theory of ‘Security Theatre,’ the visible, scientific-looking demonstration that safety is taken seriously can be misleading for consumers but cost-effective – even reputation-enhancing – for companies using them (Schneier, 2003). “You can deploy and tell people that you are doing the right thing by measuring their temperature. They won’t know if it’s true or not, of course, but they may feel better about going to your facility” (Field, 2020).

Evidence suggests that this ‘reassurance mechanism’ works, and in indeed many businesses employed the ‘slow and careful’ approach to fever screening (involving queuing, being stopped and scanned, and sometimes filling a questionnaire) with advanced systems. But MSTIS do not provide this ‘theatre’ or ‘performance,’ as those being in some cases covertly scanned by unmanned systems are not making the same calculations about whether they will get ‘caught.’ Indeed, some companies selling ‘slow and careful’ systems pointed to the psychological deterrent (see for example: Forziati, 2021), but the author has not found the same benefits expressed by companies selling mass screening technologies.

Deterrence is important for those with known symptoms. A Technical Advisory Group for the Welsh government, for example, found that 21% of people in their study would get on a plane despite having coronavirus symptoms. Considering that there was evidence one infected person on a flight could transmit the disease to other passengers throughout the plane (Technical

Advisory Group, 2021), it is therefore very important for this sector use all means necessary to stem the spread.

Despite the reassurance it brings, and the deterrence factor, the principle issue with the widespread use of thermal cameras for the purpose of surveillance of the COVID-19 pandemic is that there have been no independent tests to verify their suitability (Ace, Honovich, and Rollet, 2020). Some argue that this ‘has allowed manufacturers to tout products meant for body/fire detection as a fever solution, or falsely claim pinpoint accuracy at long distances’ (Ibid). Thus, not only was the lack of verification and oversight exploited as a loophole; it is the versatility and malleability of a technology – thermal imaging in this case – that makes entrepreneurial practices more agile, rapid, and potentially exploitative.

## MIXED MESSAGING FROM GOVERNMENTAL ORGANISATIONS

Mixed messaging from various organisations has, however, exacerbated the issue. Before the pandemic, the WHO recommended airports to use health screening (if used appropriately), then they changed their mind (Hall, 2020; Field, 2020), cautioning that fever monitoring en masse was not scientifically possible with the available technologies of today. Nevertheless, there were further mixed messages (the ISO and FDA) from governmental and intergovernmental organisations, whilst other organisation expressed scepticism (European Aviation Safety Agency, and the UK Government) (Pike, 2020; Simonite, 2020).

The UK government stressed that those who sell thermal imagining systems which directly relate to COVID-19 diagnosis will be subject to enforcement action. ‘Products which the manufacturer claims are intended for screening for COVID-19, or fever-like symptoms, would be regarded as medical devices and regulated by the [Medicines and Healthcare products Regulatory Agency]’ (U.K. Government, 2020). The government’s Scientific Advisory Group for Emergencies also advised that there should be no requirement for temperature screening before passengers fly to enter, depart from, or fly within the country (Goodwin and Alvarez, 2020). Similarly, the European Aviation Safety Agency found that between 1% and 20% of passengers with a fever will be missed by thermal screening equipment (Ibid). The European Centre for Disease Prevention and Control also found that thermal scans of travellers, followed by additional screening including questions about symptoms like coughing and difficulty breathing, failed to identify up to 75% of those infected (Pressman, 2020).

The consequences of companies selling defective systems on the spread of the COVID-19 virus is impossible to measure. There is no data indicating which sectors bought what systems (‘slow and careful’ systems *or* mass screening systems), but generalist information points to airports (Goodwin and Alvarez, 2020) and places with high footfalls, many places – likely indoor places – where contagion is most likely.

## Discussion

The COVID-19 pandemic created many hybrid situations in which security paradigms fuse with health, safety, and economic considerations. Indeed, there have been numerous calls for interdisciplinarity in health sciences (Kivits, Ricci, and Minary, 2019), and whilst cyber security and critical theoretical studies (privacy, surveillance capitalism) have long marriages with health disciplines, other traditional ‘applied’ security perspectives approaches have not been considered in questions about such trade-offs.

There are odd parallels between the COVID-19 pandemic and the shocking terrorism events of September 11, 2001. A sudden crisis demanded rapid technological solutions at various ports, a crisis that put significant economic strain on certain sectors, and still inconveniences consumers to this day. Some solutions, such as computer-based systems, were overly complex or technologically flawed, but may have been effective as a deterrence if only used as a ‘security demonstration’ (Schneier, 2003). The successes and failures of temperature screening during the SARS epidemic could have drawn similar lines between ‘falling back on what you know’ (Ibid, p.111), or trying new complex systems without sufficient evidence about their effectiveness. Even with known flaws, the deterrence trade-off of MSTIS does not provide an equilibrium of safety.

There are many other issues with MSTIS that are not explored here. Indeed, deterrence is not the only issue with MSTIS; the issue of AI may actually make response to high temperature readings much more difficult and complex. Schneier writes that ‘[d]etection is useless without response’ (2003, 167). MSTIS monitoring numerous people is flawed if operators are overwhelmed. If a probability of 1 in 5 people with symptoms in a population of high infection rates are walking past cameras in their hundreds, how can there be an effective response? Schneier also argues that most security decisions are complicated and involve multiple players with their own subjective assessments of security. Most of these players have different agendas and power relationships which often have ‘nothing to do with security.’ ‘The question isn’t which system provides the optimal security trade-off – rather, it’s which system provides the optimal security trade-off for which players’ (2003, p. 33). With such logic, deconstructing the agendas of all parties involved in the process of temperature screening at businesses with high footfalls, we can conclude that profit, a (misguided) sense of moral duty, the staff, and the consumer, all have roles to play in these trade-offs. Hijacking a plane will have serious consequences for all involved, but given the asymptomatic issues with the COVID-19 virus, no one is responsible when a system fails in detection, deterrence, and response.

## CONCLUSIONS

Fundamentally, whilst the ambition to provide a cost-effective system to businesses struggling with the global pandemic might be well intentioned, operating in a world of ‘open societies’ where allowing some personal freedoms (in the West) demands technological solutions (Kitchin, 2020), from the evidence it seems that non-specialist companies are acting exploitatively by targeting industries, perhaps ignorant of specification requirements of thermal imaging systems, that are desperately looking for ways to save their business, and in turn, save jobs and livelihoods. Whilst their effectiveness has been vehemently contested by governmental organisations and industry leaders, MSTIS are still openly marketed today. The discussion here does not necessary add anything particularly substantive to ongoing criticisms of AI and big data. Indeed, it has consistently been argued that ‘voluminous streams of real-time data [...] are often noisy and messy, with gaps, errors, biases, and inconsistencies that prompt questions of veracity (accuracy and precision) and reliability (consistency over time)’ (Kitchin, 2014). But where deterrence and detection values are low, it leads us to question how mass screening thermal technologies contribute to ‘security theatre’ that supposedly works in other areas such as counter-crime and counterterrorism. The article finds that whilst more effective ‘slow and careful’ thermal screening could deter people who think they might have symptoms of COVID-19 from entering a business premises,



mass screening does not. This means that mass temperature checks are both ineffective in both detection and deterrence, ultimately contributing to the spread of infections and the relinquishing of responsibility.

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## Specific Legal Provision on Pre-Charge Detention for Further Offences: A Viewpoint of Police Enforcement in Malaysia

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### ABSTRACT

Investigative detention plays a significant role in the Malaysian criminal justice system. At this stage, a suspect is still presumed innocent until proven guilty. However, there are situations where a suspect is detained for a long period for having more than one police report lodged against the suspect (further offenses). Such detention is referred to as chain remand. The practice of chain remand represents a blatant abuse of power by the Royal Malaysian Police and it is an infringement of an individual's fundamental human rights both under the Federal Constitution of Malaysia and the Universal Declaration of Human Rights. This practice exploits the existing loopholes and abuses the remand proceedings in order to unlawfully detain a person under the veil of legality. Therefore, this article will highlight the experience of investigating officers who have handled chain remand cases. This study recommends the specific laws of chain remand be regulated to prevent police officers from continuing to be accused of abusing their power. The methodology of this study is based on semi-structured interviews with 18 investigating officers who have experience conducting chain remand cases in Malaysia. Besides the interview, the author also used the comparative-legal method to look at the application of law in countries other than Malaysia. The results of this study show that there are weaknesses and loopholes in the existing legislation when the existing legislation fails to curb the problem of chain remand. Nevertheless, legal weaknesses are not the only factors contributing to the problem of chain remand practice; there are other factors such as the non-existence of clear guidelines to manage the chain remand cases, the difficulty of obtaining good cooperation from the complainant who lodged the police report, the inadequacy of courses to assist the police in carrying out their duties more smoothly, and the role of the prosecutor and the courts to expedite the order process involving chain remand cases. Therefore, this study indicates the importance of the existing laws, specifically on chain remand, in addition to suggesting other improvements related to chain remand to solve this problem.

**Keywords:** Police, Legislation, Criminal Justice, Chain Remand, Investigation

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## INTRODUCTION

Investigation refers to the method of gathering information, for example when a buyer wants to buy a car, all the information regarding the car will be collected before the decision to buy or not to buy is given. This illustrates how an investigation is made to fold in all the necessary information before a suspect is charged in court. Therefore, the investigation process is essential, as when an investigator is wrong in their investigation proceedings, an innocent suspect can be convicted for a crime that he or she has not committed (Rossmo, 2009). Such a thing happened in The Schiedam Park Murder's case when the accused was not the perpetrator of the murder (Salet. R, 2017). Investigations in criminal cases also need a proper method to connect an offender who commits a crime through evidence admissible in a court of law (Kashem, 2017). The valuable viewpoints on the criminal investigation can be derived from the information hypothesis (Birmingham et al., 1971). According to the information hypothesis, the process of criminal investigation resembles a battle between police and suspect over crime-related information. In committing a crime, a suspect issued a "signal" or has left various data (fingerprints, eyewitness testimony, murder weapon, etc.). If the suspect can minimise the amount of information available to be collected by the police, or if the police cannot identify the data left behind, the suspect who commits crimes may not be arrested. Therefore, the suspect could win the battle. If the police can collect as many suspects' signals as possible, then the suspects who did the crimes will be identified and arrested. This perspective clearly emphasises how important a piece of information is in criminal investigations (Birmingham et al., 1971).

The main problem for police in conducting criminal investigations is that there is a large amount of potentially available information, but their authenticity is difficult to prove. The information obtained is often incomplete and inaccurate (UN, 2006). Further, to prove an accused guilty of the crimes committed, the evidence must be of quality, have fulfilled specific elements of crimes, and police must have followed all the necessary procedures. The police department is the main enforcement agency in Malaysia to conduct investigations and penalising the individual who commits deeds against the law. These two functions can be summarised into three categories, namely:

- (1) a finding of a criminal offense has been made,
- (2) the identification of the person/persons suspected of committing the crime, and
- (3) the collection of evidence sufficient to convict the accused in court (Emily Berg, 2008).

Police detention for investigation is permissible and classifies as a necessity for the maintenance of universal peace, and it is similar to Lord Denning's as follows (1980):

“It must be matched with social security, by which I mean peace and good order of the community in which we live. The freedom of a just man is worth little to him if he can be preyed upon by the murderer or the thief. Every society must have means to protect itself from marauders. It must have powers to arrest, search and imprison those who break its

laws. So long as those powers are properly exercised, they are safeguards of freedom. But powers may be abused, and if those powers are abused, there is no tyranny like them”.

Judge KC Vohrah agreed with Lord Denning, who stated that remand for investigation was an undeniable necessity. A remand for investigation was made for exemplary purposes and benefited justice (J. Gomez, 2003). Furthermore, investigations are difficult to conduct if remand for investigation is not continued within a certain period. According to Fred E. Inbau (1999), every extended detention for investigation refers to the difficulties of some cases, where there is no evidence or there is difficulty in obtaining proof, except by investigating suspects involved to obtain further information and assist the police in resolving the case under investigation.

Therefore, the police need sufficient time to help them gather all the solid evidence to charge a suspect. Nevertheless, this situation may be different when a suspect has many related cases. The investigation will be more difficult when a case has been outstanding for a long period and only then the suspect was successfully detected. This can happen in another situation when the suspect is connected to a syndicate or more than one offence. This led to the practice of chain remand. The practice of chain remand is said as a practice that violates the human rights of an individual. Individuals who are remanded in custody are perceived negatively by society when they are released, despite not being charged in court. There was even a case of a detainee being fired by his employer due to distrust, even though he was released with no charges imposed (Bottomley et al., 1991). Opportunities for promotion and career development are also affected even when a person is detained one and a half hours for example in the case of *Mejar Mohd Nazeri Haji Noor v. Sukjit Singh Shabee Singh & Yang Lain [2017] 1 LNS 620*. Being remanded often means losing the benefits of protective factors known to support resistance from crime, such as family relationships, work, and home life (Jacobson & Fair, 2016). A person’s detention also affects his or her family; this depends on various factors such as whether the suspect is the sole or main breadwinner of the family, the size of the family, and the ability of the family to earn a living without the suspect (King. M, 1973). The effect of remand is greater if it involves poor families, burdensome legal fees, and other consequences (Hairston C.F, 2003). In some cases, family members will have to sell any valuable property or make a loan which will pose more difficulty for them.

Several circumstances indicate that, a suspect can be detained for up to hundreds of days as it happened in the case of *Selvakumar Subramaniam v Penguasa Pusat Pemulihan Akhlak Simpang Renggam, Johor Darul Takzim & Ors* (2013) where in this case, the suspect was detained for 826 days including detention under preventive remand. The non-governmental report known as Voice of Malaysia Citizen (Suara Rakyat Malaysia) (SUARAM) has documented cases where there are individuals were detained for investigations for close to 90 days using such practices. The practice does not discriminate as it has also been applied against minors and youth which have also been detained for more than 60 days (Asyraf. F, 2021). In 2020, SUARAM stated that a recent example in which a group of 25 individuals was arrested on 26 September 2020 and all of them was initially remanded for 11 days. They were detained for investigation of a shootout that occurred at Banting (Zolkepli. F, 2020). However, they were re-arrested and were detained for an additional 4 days at

Serdang police station. Although a remand extension was rejected by the court on 10 October, the police did not comply with the order, and yet again, these individuals were re-arrested by Jinjang police station. The remand application was rejected on 11 October 2020; at which point they were re-arrested by Putrajaya police station with another rejected remand application on 12 October 2020. The family was kept in the dark after that, but the detainees were re-arrested and remanded under the Security Offences (Special Measures) Act 2012 (SOSMA), which allows another 28 days of detention. The family members of the detainees only discovered on 14 October that the 'missing' detainees were detained under SOSMA. After the SOSMA detention, some were re-arrested again for investigation under the Societies Act 1966 whereas others are detained under the Prevention of Crime Act 1959 (POCA).

Even, in 2007, there were efforts by the government to address the issue of chain remand by enforcing a new provision; subsections 117 (3) and (4) of the CPC. This provision requires the investigating officer to detail the total period of detention that the suspect has undergone in their investigating diary. Thus, the magistrate will strike the balance by given the appropriate remand period for the suspect after considering the whole previous detention facing by the suspect before. On the other hand, this provision still does not provide a restriction period and it also overlaps with other remand involving different legislation such as SOSMA and POCA that will further extend a period of detention. This denotes that there are weaknesses and loopholes in the existing legislation to address this problem of chain remand. It is unfair to blame the police alone as there is unclear legislation to provide good direction in performing their duties. These occasions show that there is a need for a more detailed study to be conducted on chain remand, especially on the existing legal context related to it to address the problems that arise.

In this article, the authors divided the method into two which are comparative legal method and interview method in collecting the data. In each of method, the authors will explain the data obtained. The analysis of the findings will be performed separately based on the method used by the authors. At the end of the article, the author will combine both findings to conclude the proposed improvements that focus on the law of chain remand in Malaysia's criminal justice system.

## COMPARATIVE LEGAL METHOD

This method of comparative legal research is used as one of the methods in this study. This method is used because the research topic is not strictly on international law or European law. The essence of comparative law is the act of comparing the law of one country to another country. Generally, comparative law has been employed as a discipline to understand foreign law and culture. It has also been used to better understand our own culture through the process of comparison to another culture (Eberle, 2011). By using this method, the authors aim to research these comparative aspects of police prolonged pre-charge detention especially on the limitation period of the detention and procedure aspect before focusing on the view of the investigative officer's perspective by using interview method regarding these practices.



## **The Position in Malaysia**

The law of remand for investigation in Malaysia is stipulated in section 117 of the Criminal Procedure Code 1935 (Act 593). Section 117 CPC clearly shows that if an investigation cannot be completed within 24 hours, then the extended detention (remand) will be implemented on the suspect with a warrant from the magistrate, who is the authority that permitted the remand application to be carried out. There is no definition concerning remand under section 117 of the Criminal Procedure Code in Malaysia. The word remand, according to Mohd and others, is defined as sending back to custody and being kept until the hearing is resumed or the trial is commencing (Mohd et al., 2017). Whereas, according to Dr. Hamid Sultan, remand is "custody pending investigation and trial". Meanwhile, Singh appropriately explains that remand is the process by which a judicial order authorises the continued detention of a person. The main features of remand are: an order of remand can be made only by a court, it should be made for a specific period, and though it may authorise detention by the police or by the jail authorities, the detention is at a responsibility of the court (Mohd et al., 2017).

According to "Black's Law Dictionary", remand also means sending back to custody and kept until the trial begins or is resumed. If referred to, the Dictionary of Dewan Bahasa and Pustaka (2020) defines remand as the action to detain a person for a certain period after obtaining a court order for investigation. Furthermore, remand is also considered as a person detained for a while after obtaining a court order for investigation. Remand for investigation also detaining a person who commits a crime or sending a person back into custody (jail or lock-up) for further investigation pending trial, which they are not allowed to bail but need to be remanded until their case is mentioned again in court. Therefore, the remand for investigation is the process of detaining a person for some time for the purpose of gathering enough evidence before a person is arrested. In other words, the detainee was arrested on suspicion of committing the crime, but he was innocent until proven guilty by the court. Based on the above interpretation, it can be concluded that a remand is a form of detention of a person suspected of committing a crime. Its main purpose is to conduct further investigations into persons suspected of committing criminal offences.

| Sentencing                                                                 | Period of Remand for first application | Period of Remand for the second application | <b>Total</b>        |
|----------------------------------------------------------------------------|----------------------------------------|---------------------------------------------|---------------------|
| The offence is punishable by no more than 14 years imprisonment            | > 4 days                               | > 3 days                                    | <b>&gt; 7 days</b>  |
| Offences that can be punished with death or imprisonment exceeded 14 years | > 7 days                               | > 7 days                                    | <b>&gt; 14 days</b> |

Table 1: The Remand Application Period Schedule under Section 117 (2) (a) and (b) CPC

*In the State of Maharashtra v Ramesh Taurani* (1997) case, it was held that the court must approve an application of remand for investigation before remanding the suspect. Thus, the investigating officer must provide a notice to the court encompassing all evidence found throughout the suspect's investigation progression before applying remand against the suspect. The Criminal Procedure Code (CPC) underwent significant amendments on 7 September 2007 (A1274). This amendment also considers the motion submitted by the Royal Commission's Report for the Improvement of Conduct and Management of the Royal Malaysia Police, issued in 2005. Significant amendments can be seen in sections 28 and 117 CPC. After this amendment, section 28A CPC was created by granting rights that are more specific to the accused, like to be represented by counsel during his detention. Moreover, the investigating or arresting officer needs to be informed of the suspect's grounds for arrest. The application of remand will depend on the type of offenses based on Table 1. Here, it can be determined that the strictness of section 117 is obvious and need to be applied before the amendment.

Legal practitioners remarked that after the section was amended, the phrase "arrest first, investigate later" could be removed (Rahim et al., 2018). Legal practitioners also argue that extended detention after the amendment is more realistic and controllable. The detention period for offences punishable by death or imprisonment for more than 14 years is different from the detention period for crimes of not exceeding 14 years. The amended provision is intended to obtain evidence from the detained party. The main factor in the amendment is to prevent detainees from being detained further without reasonable cause.

## **The Position in England and Wales**

The provisions of investigative detention in England and Wales are prescribed under the Police and Criminal Evidence Act 1984 (PACE) and Code C which contains the guidelines of practice for the detention, treatment, and questioning of persons by police officers. The detention of suspects by the police without charge was initially limited to up to 24 hours. This 24-hour detention period is allowed if there is insufficient evidence to charge a suspect of committing a crime. Nonetheless, the custody officials believe that the detention is necessary to obtain evidence by questioning a suspect. In England and Wales, section 40 PACE claims that each detention will be reviewed over time to time to determine if further detention is needed or otherwise. This review will be done by a police officer who is assigned to make the review, called a "Review Officer". Concerning this, there are times that have been set according to PACE that the review period will start at the first 6 hours after the arrest and the second review will be conducted at the period of 9 hours after the first review. The third inspection period of 9 hours for each detention is imposed on the suspect.

In the meantime, when the suspect is arrested on a felony charge, the 24 hours can be extended by 12 hours by a senior police officer. Next, after 36 hours, a suspect must be prosecuted or acquitted. If the police still need time to further detain the suspect, a warrant for further detention up to 36 hours and up to a total period of 96 hours needs to be issued by the magistrate. In England and Wales, further police detention involving the suspect for another offence in a different police station or location is similar to chain remand practice in Malaysia. Thus, for further detention involving the suspect for another offence in a different police station or location like what happened in chain remand practice in Malaysia, PACE highlights that the calculation of the suspect detention period can be calculated in two ways. First, the detention period will be extended from the previous detention at the station; for example, the suspect is detained at station A for 3 hours and then the suspect is taken to station B, then the next period at station B will be extended from the last suspect detention period at station A. Meanwhile, the second way shows the shorter period, which is by the time the suspect is brought to the next station, only then will the detention period run. If it is found that the suspect also has other offenses at the same station, a "reasonable time" will be given. According to section 41 of the PACE, "reasonable time" is defined as a phase when the suspect arrives at the station for the first time arrested or within 24 hours after the suspect is arrested whichever is earlier. Meanwhile, the PACE also omitted the investigation period if the investigation could not be carried out on the suspect if the suspect has been hospitalised. The authors summarise the remand period in England and Wales as in Table 2.

| <i>No.</i> | <i>Detailed</i>                                                           | <i>Duration</i>                                                               | <i>Provision</i>               |
|------------|---------------------------------------------------------------------------|-------------------------------------------------------------------------------|--------------------------------|
| 1          | Initial Detention                                                         | 24 hours                                                                      | Section 37 PACE 1984           |
| 2          | Further Detention (First) (police power)                                  | 12 hours                                                                      | Section 41 PACE                |
| 4          | Further Detention (First) Warrant from the Court                          | 36 hours                                                                      | Section 42 PACE                |
| 5          | Further Detention (Second) Warrant from the Court                         | 36 hours                                                                      | Section 43 PACE                |
| 6          | If the suspect is involved in further offences                            | Maximum period 96 hour                                                        |                                |
|            |                                                                           | Same period as mention above (will apply concurrently and not separately)     | Section 31 PACE                |
| 7          | Review Officer and Custody Officer (different from Investigating Officer) |                                                                               | Section 34 dan section 38 PACE |
| 8          | Review Period                                                             | i. 6 hours after the first arrest<br>ii. 9 hours<br>iii. 9 hours consequently | Section 40 PACE                |

Table 2 Investigative Detention Period in England and Wales

### **The Position in India**

Remand legislation in India is enshrined in section 167 of the Criminal Procedure Code of India (CrPC). Referring to the provisions of this section, the police should bring the suspect that has been arrested and detained before the nearest Magistrate for a further remand order if the investigation cannot be completed within 24 hours, but the police still have reason to believe that the suspect is involved in the offence. According to section 167 (2) of the CrPC, a remand period granted shall not exceed 15 days. However, remand laws in India have given some leeway to investigations that still cannot be completed within 15 days. Section 167 CrPC, has its similarities with section 117 CPC of Malaysia, which allocates 14 days, the total remand period, and including the 24 hours, that made the total of 15 days.

Section 167 (2) allows the court to extend remand detention to the suspect for up to 60 until 90 days based on the type of offence. If the 15-day remand granted expires, the magistrate may allow further remand but it will be granted under judicial custody, not the police. Remand for 90 days for offences involving the death penalty, life imprisonment, and imprisonment exceeding 10 years, while the maximum remand of 60 days involves offences punishable by less than 10 years imprisonment. However, under judicial custody, if the police require a suspect for the investigation, the police should apply to the court. The authors summarise the remand period of India in Table 3 as follows.

| No | Detailed                           | Duration                                                                                                | Provision                           |
|----|------------------------------------|---------------------------------------------------------------------------------------------------------|-------------------------------------|
| 1  | Initial Detention                  | 24 hours after arrest                                                                                   | Section 57 CrPC and Section 167 (1) |
| 2  | Extended Detention (court warrant) | 15 days (under police custody)                                                                          | Section 167 (2) CrPC                |
| 3  | Extended Detention (court warrant) | 60 days (for offences of sentence under 10 years)<br>Covers all the same cases<br><br>Judicial Custody  | Section 167 (2) (a) (i) CrPC        |
| 4  | Extended Detention (court warrant) | 90 days (for offences of imprisonment exceeding 10 years and the death penalty)<br><br>Judicial Custody | Section 167 (2) (a) (ii) CrPC       |

Table 3 Investigation Detention Period in India

In India, they do not use the term ‘chain remand’, but they focus on further detention other than the first arrest whether it involves the same nature of the case or not. The general principle of the investigative period of remand in India is not to exceed 15 days referring to a single police report. Yet in the case of *S. Harsimran Singh vs the State of Punjab* (1984), the court focused on the remand of the suspect which involves different types of offences and not the same offence when the suspect was remanded earlier. The court examines different police reports that can give space to the police in carrying out their duties, but the court that grants remand should evaluate properly in allowing remand. The court will be allowed further remand to be applied especially when it involved different cases and not the same nature of the case. This is undeniable that when it

involves the different types of the case, it is fair for the police to investigate something that is still new and not yet in the knowledge. Yet, it is not the basis for prolonged detention.

Several cases are stating that investigation can be conducted against a suspect even though the suspect is under judicial custody involving the same case. The case of *Central Bureau of Investigation vs Anupam J. Kulkarni* (1992), it is about the diamond robbery that happened in several locations, and the court stressed suspect will not be detained under police custody after 15 days expire. The remand period can only be extended for 60 or 90 under judicial custody. After the period of 60 and 90 days ends and the investigation is still not completed, the suspect shall be given bail. Based on the case of *Gian Singh and Others vs State (Delhi Administration)* (1981), the court specified that the suspect who has been remanded under judicial custody cannot be taken out and re-arrested under police custody even for a different case. While in *State (Delhi Administration) vs Dharam Pal and Others* (1980), the suspect who has been brought to remand under judicial custody can be taken to any place of detention except the place of police detention. However, in the case of *The State of Bombay vs Bhanji Munji and Another* (1955) has stated that if the investigation to be conducted is a more serious offence than before, the police can ask the suspect who is currently under judicial custody to be taken out and remand under police custody. For example, if the previous suspect is detained for a robbery case and a new police report connecting the suspect to a murder case, then the suspect can be remanded under police custody for investigation.

According to section 167 of the CrPC, the total period of 15 days indicates that this amount is the sum as a whole. This was also confirmed in the case of *State (Delhi Administration) v. Ravinder Kumar Bhatnagar* (1982), where the provision “for a period not exceeding 15 days in total” hereby clearly indicates the 15 days commencement when the suspect is brought before a Magistrate according to subsection (1) and police detention cannot be granted after the 15 days. The case of *State of Kerala v. Sadanadan* (1984), also interprets that the period of 15 days is the total remand given to the police to conduct an investigation. After that period ends and if the investigation is not yet completed or detention remand awaiting trial under section 309 CrPC, only then detention under court custody is allowed. The old CrPC provision made it possible for investigations to be carried out even involving the same case. Yet the new provision of section 167 (2) clearly states that the period shall be a total of fifteen days and custody rights further under the conditions of Section 167 (2) or Section 309 shall only be under the judiciary. The court in the case of *Chaganti Satyanarayana and others v. State of Andhra Pradesh* (1986), defines the scope of Section 167 (2) (a) (i) and (ii) and decides that the period of 15 days, 90 days, or 60 days specified therein is calculated from the date of remand of the accused and not from the date of his being arrested under Section 57. Police detention shall not exceed the period of 15 days and further remand must be to judicial detention.

## Analysis of Comparative Legal Data

Based on the above explanation, it can be summarised that the courts in India, are very careful to allow the suspect to be placed under police custody if it involves same offences at a time. However, investigations involving different types of offences sometimes are allowed by court. Although the extension period granted in India is seen as long, this period covers all the offences connected to the suspect. The police must gather all offences committed and investigate within the period. This also applies in chain cases in India, where the police should investigate the whole case without the need for an extension of the remand period. In other words, India limits the application of remand to a period of 60 to 90 days and under court custody. The authors are of the view that the application of the law in India is clear as they limit the remand period of investigation, which is specifically contrasting in Malaysia that gives room for court discretion in determining it as sections 117 (3) and (4) of the CPC only seeks to know the total remand period of the suspect and did not specifically restrict it. Still, the 60 or 90 day period in India for researchers is still too long, but interestingly the period is under the custody of the courts and not the police. This can prevent the suspect from being beaten or pressured to plead guilty to the crime being investigated. The remand application process in India as stated above can reach to the level of "prima facie" in trying to prove an offence at trial. All relevant evidence must be brought to court and a remand trial can be conducted with the permission of the court if any witness that must be present able to give evidence before remand is allowed. Although extended detention in India is seen as long (this is among the negative aspects), but India has taken appropriate steps to limit the use of remand periods. Proof of strict remand applications also makes the legislation in India better than in Malaysia.

Meanwhile, England and Wales also provide a time limit for detention for further offenses, where the time limit is given is only up to 24 hours referring to section 31 of the PACE. The author argues that this time is too limited which may make it difficult for the police to investigate. Interestingly, England and Wales manage to balance this period by providing a time deduction provision as provided under section 41 (7) Police and Evidence Act 1984. If the suspect is taken to hospital for medical treatment and no investigation can be carried out, then the period of detention is not included. Despite the short detention time for investigation in England and Wales, this provision is to exclude detention calculation on certain factors which are very beneficial to the police to carry out their duties competently. Furthermore, the law in England and Wales provided different officers rather than investigation officers alone to govern one suspect. As in England and Wales, they provide custody officers to control the issues of extended detention. The custody officer will determine whether the suspect will be further detained or not based on the investigation that had been carried out by the investigative officer, while review officer has been assigned to review the time of detention. Reviews of the detention of each person in police detention in connection with the investigation of an offence shall be carried out periodically in accordance with section 40 PACE.

In Malaysia, the deduction period is only on traveling time from the detention centre to the court during the detention period of the investigation. Nonetheless in Malaysia, there is no limit to the period of detention involving further offences. As discussed above, the period may be granted at the discretion of the magistrate who hears the application after examining and evaluating the investigation diary referring to section 117 (3) and (4) of the CPC. The author believed that the deduction period for certain factors needs to be considered as it is causing the delay to the police officer to complete their task accordingly.

## INTERVIEW METHOD

In total, 18 experienced investigation officers have been interviewed in this study (N=18). They are based in different geographical states in Malaysia. The author tried to get each investigating officer to represent each state. In Malaysia, there are 14 states, namely Perak, Perlis, Terengganu, Kelantan, Kedah, Johor, Melaka, Kuala Lumpur, Selangor, Sabah, Sarawak, Pahang, Labuan and Putrajaya. However, in the context of this study, the author could not interview four representatives of investigating officers from Labuan, Putrajaya, Pahang, and Kelantan due to unavoidable reasons. The purpose of interviewing different investigating officers by the state is to see if the concept and practice of applying chain remand are the same or different. A purposive sampling technique was used to target investigation officers who had handled chain remand cases. Interviews were arranged upon the interviewees' consent, and no interviewee has rejected the interview invitation. During the interview, the author used the Malay language to attain the casualty of the conversation that is normally utilised by the language in Malaysia.

The interviews were conducted between earlier 2020 and up to January 2021. The interview was led with every one of the informants in a location that is pleasing for the informant. The interview, as a rule, began with a comprehensive inquiry on the general setting of the informant's experience as an investigating officer and the cases they took care of. The interview guide incorporated an outline of themes of topics to be investigated – subtleties of the case (realities, proof) and questions identified with these subjects were raised during the interview regarding interviewee reactions. Semi-structured interviews benefit from sustaining effortlessness in interviewee answers and further advancing the ascent of new conversation topics. Besides, this opportunity empowers the interviewer to adjust follow-up inquiries to the interviewee's interview setting and answers previously given.

After transcription, the interviews were analysed and coded before categorising the code into the thematic group. The theme and code of the interviews were discovered and put into order (Paille' and Mucchielli, 2012) in the analytical tool. Out of 18 investigating officer interviews, 6 had more than 10 years' experience and 12 experiences less than 10 years' experience in this field. Table 4 gives their salient details. The author explained the objective of the study and the interviewees' rights before each interview. Verbal or written consent was obtained following the author's university's research ethics standard. The interview was conducted for about one and a half hours and was audio-recorded after the informant consented to it. While recording the interview, the



author also typed all the data. To protect the informant's identities, all of them will be referred to as PP1, PP2, PP3, etc.

| <i>No</i> | <i>Gender</i> | <i>Years of Experience</i> | <i>Department</i>                 | <i>Special law on chain remand</i> | <i>States</i>   |
|-----------|---------------|----------------------------|-----------------------------------|------------------------------------|-----------------|
| 1         | M             | 7 years                    | General Crimes                    | Agreed                             | Malacca         |
| 2         | M             | 5 years                    | General Crimes                    | Disagree                           | Malacca         |
| 3         | M             | 7 years                    | General Crimes                    | Agreed                             | Sabah           |
| 4         | F             | 10 years                   | General Crimes                    | Agreed                             | Malacca         |
| 5         | F             | 10 years                   | General Crimes                    | Agreed                             | Malacca         |
| 6         | F             | 10 years                   | Commercial Crimes                 | Agreed                             | Malacca         |
| 7         | F             | 10 years                   | Human Trafficking & Smuggling     | Agreed                             | Kuala Lumpur    |
| 8         | F             | 5 years                    | General Crimes                    | Agreed                             | Negeri Sembilan |
| 9         | F             | 5 years                    | General Crimes                    | Agreed                             | Perlis          |
| 10        | M             | 5 years                    | Narcotic                          | Disagreed                          | Selangor        |
| 11        | F             | 1 years 5 month            | Sexual Crimes                     | Agreed                             | Pahang          |
| 12        | F             | 13 years                   | General Crimes                    | Disagreed                          | Terengganu      |
| 13        | F             | 5 years                    | General Crimes                    | Agreed                             | Perak           |
| 14        | F             | 4 years                    | General Crimes                    | Agreed                             | Johor           |
| 15        | F             | 5 years                    | Commercial Crimes                 | No View                            | Sarawak         |
| 16        | M             | 14 years                   | General Crimes & Organized Crimes | Agreed                             | Kuala Lumpur    |
| 17        | F             | 7 years 4 month            | General Crimes                    | Agreed                             | Kedah           |
| 18        | M             | 4 years                    | General Crimes                    | Disagreed                          | Kuala Lumpur    |

Table 4: Summary of the Investigating Officers Detailed

## Analysis of Interview Data

The author using ATLAS.ti 9 as a tool to analyse the interview data. Analysis of the interviews revealed 13 out of 18 informants agreed that there is a need for special legislation governing chain remand (refer to Chart 1) based on their experience. For cross-tabulation analysis, the author divided the informant into two categories: those with experience of more than 10 years and those with less than 10 years' experience. As result, all the officers who have more than 10 years of experience wanted special law of chain remand, while half of the officers who possess less than 10 years of experience want specific law of chain remand to be implemented. This special law is seen to support investigative officers from continually being criticised for abusing their investigative remand powers. In contrast, the investigating officer was not given any proper direction or guidelines. At this juncture, the author summarises why most investigating officers require special chain remand laws based on Chart 3.

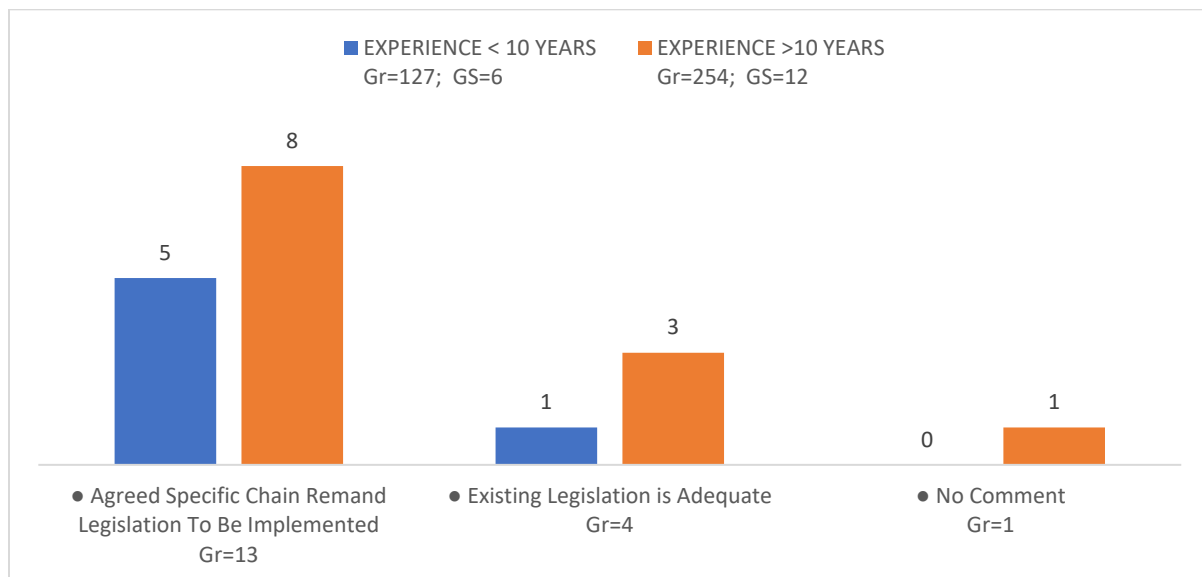


Chart 1: The Need to Establish a Special Law on Chained Remand (Investigating Officers)  
Based on Experience.

|                  | EXPERIENC...<br>12 254 | EXPERIENC...<br>6 127 | Totals    |  |
|------------------|------------------------|-----------------------|-----------|--|
| Agreed Sp... 13  | 8                      | 5                     | 13        |  |
| No Comm... 1     | 1                      |                       | 1         |  |
| Existing Le... 4 | 3                      | 1                     | 4         |  |
| <b>Totals</b>    | <b>12</b>              | <b>6</b>              | <b>18</b> |  |

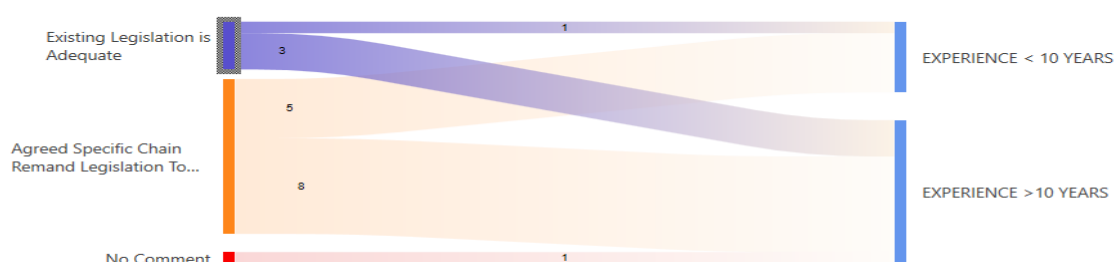


Chart 2: Cross-Tabulation Analysis of the Investigating Officer Experience Document Group with the Chained Remand Special Legal Code Group.

Based on Chart 3 (below), the theme has been divided into five and can be referred according to colour boxes - purple, green, blue, orange, and red. The higher reason why most of the investigating officers required special legislation is to ensure they will not be blamed for referring to a green colour box. The frequencies show 4 informants out of 13 informants stated the same theme. Another reason raised from the thematic analyses shows on 3 informants, who claimed them as been benefitted by the specific legislation as it provides better quality while conducting investigations (refer to purple colour box). A suggestion stipulated that the amendment needs to be satisfied for the investigation officer to carry out their task efficiently. Another 3 informants lay down that the specific law will reduce the complaint against the police officer for abusing their power (red colour box), while another 4 officers stated that the law will give direction (blue box colour) as well as safeguarding the rights of a suspect fairly, and clear the misunderstanding about the duties of the police officer (orange box colour). Other reasons invite exploration in chain remand cases that need improvement than the amendment. However, based on Chart 1, another 4 informants disagreed with the specific chain remand law that has been enforced due to certain reasons and another 1 officer has no view on this question.

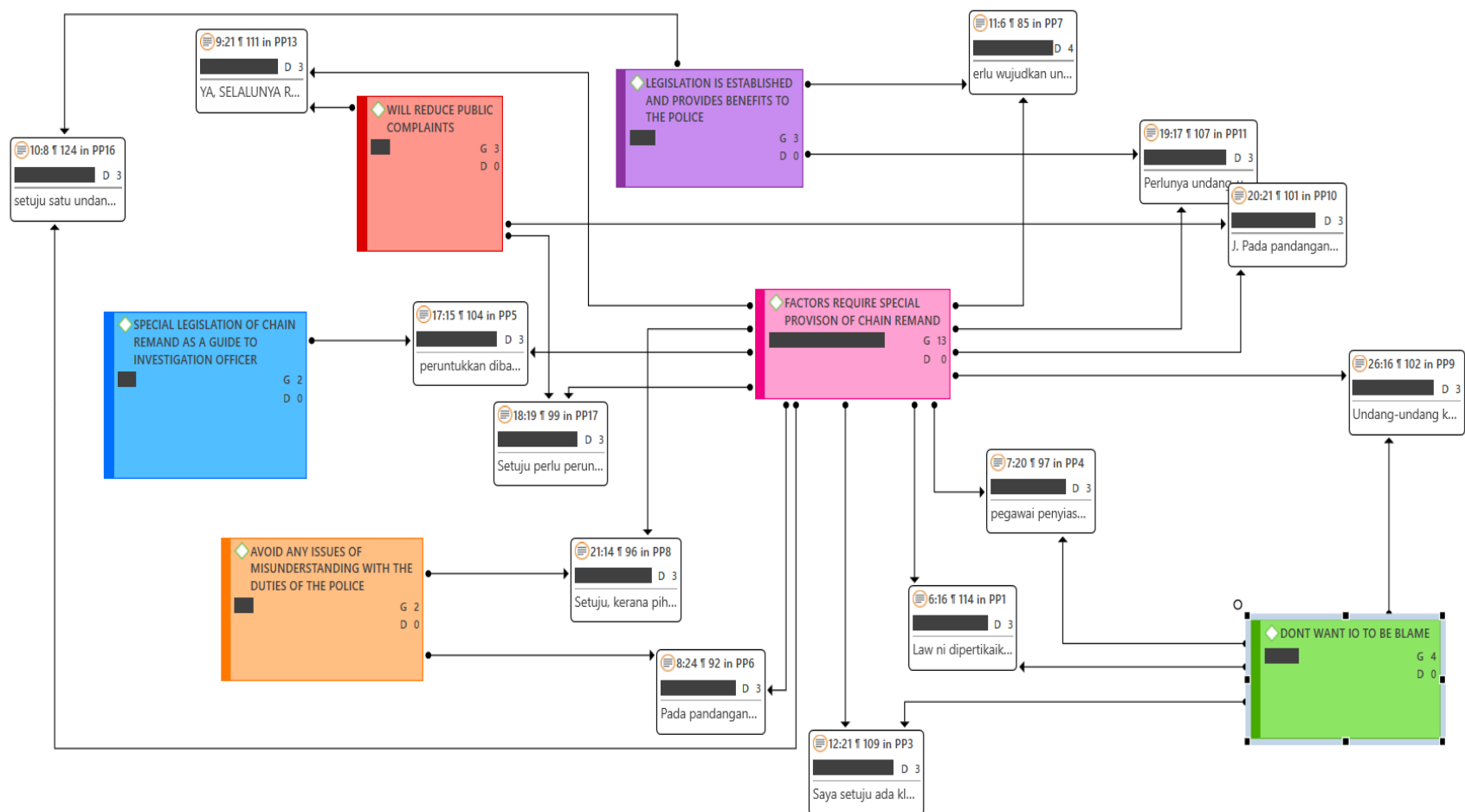


Chart 3: Theme Network Code Reasons Requires Special Law of Chain Remand

## DISCUSSION

This is the first study that examines the chain remand law and perceptions of police officers in Malaysia to the author's knowledge. This study provides valuable insights into understanding the needs of Malaysian police officers. The findings seem to stress a prerequisite to establishing a specific law on chain remand and other improvements involving chain remand. Based on the responses received, there were potential concerns about chain remand application. Almost all of the officers indicated the department issues as having no guidelines to assist the investigation officer on how the procedure for the application of chain remand. Although there is an Inspector General Standing Order (IGSO) regarding chain remand, where every case of chain remand needs to get the permission of the Officer in Charge of Police District (OCPD), it is not precise and vibrant in practice. The author summarises the suggestions for improvement from the informants other than the existence of a special chain remand law based on Chart 4.

From Chart 4 below, it can be summarised that this improvement proposal touches on four themes (as refer to pink colour box) which are enhancing police administration and policy, enacting guidelines of chain remand, organising periodically courses and training about chain remand, and soothing roles of the higher authority which involved in chain remand cases. Based on the first themes concerning the administration and policy of the police department, the themes can be divided into six codes. Among the codes raise is the failure of the complainant to cooperate throughout the investigation which also causes the delay to the investigation process. Therefore, there is a need to implement the penalty clause to ensure the complaints will give their cooperation to furnish all the information needed by the police. In Chicago usually, the police will end their investigations when the complainant failed to give cooperation to them (Hopkins, 2009). The complainant is an important witness who is responsible for proving the complaint. Without their proof, certainly, an investigation cannot be completed. Therefore, the complainant needs to cooperate as soon as possible in order to smooth the progression of an investigation. The practice in Chicago may be adopted by Malaysia by closing the cases of complainants who are not interested in pursuing their cases without reasonable cause if the suggestion of the penalty clause would not be possible.

Additional codes that emerged from the themes are about centralised lock-up, facilitating the remand place to apply for remand, especially in rural areas, the appointment of one investigating officer handling chain remand cases, and the enrichment of manpower resources. In other words, the improvement leads to the transformation of the police system itself. On the issues of manpower, Tengpongsthorn (2017) expressed that the issue of the lop-sidedness of work and life, particularly within the viewpoint of the lop-sidedness of manpower and workload, impacted the capability of the police officers. The qualitative investigation found that the figure concerning the lop-sidedness of manpower and the workload was a deterrent to the practicality of police work accomplishment (Hongton, 1996). The centralised lock-up and one investigation officer who handles chain remand cases can reduce the number of manpower indirectly as an option to solve the issues of shortage

of manpower. Therefore, investigations conducted will be faster and easier whether they involve chain remand cases or any other cases.

The second theme is about establishing the chain remand guidelines. Guidelines are a piece of information that suggests how something should be done. In Malaysia itself, the police department is one of the authorised bodies that have various guidelines distributed to assist members and their officers in carrying out their duties such as by the permanent order from the national police chief regarding the identification parade carried out during investigations. Even around the world, various guidelines are in place to help certain parties in carrying out their assigned tasks well based on existing legislation (Hamilton and Smykla, 2006; Powel et al, 2010; Stark, 1994). By establishing these chain remand guidelines, it can help to investigate officers to carry out their work. These guidelines should also be in line with existing legislation. Problems will arise if the guidelines that have been produced are not in line with the law. The relationship between law and public guidelines can be described as a 'hand in glove' (Kiyong, 2014). By referring to Harrington and Carter (2009), they portrayed regulatory law as the instrument that controls administrative power given to authoritative branches that "gives authenticity and specialist to state actions." It is imperative to note that there are four sets of laws that administer the behaviour: the directors, administrator, legislator, and constitution (Harrington, Carter, 2009). Clear rules and directions would strengthen the achievements of the police force. The police officers recommended that the vague rules and directions ought to be changed (Tengpongsthorn, 2017).

Thirdly, the theme refers to the role of the prosecutor and the court, and the reason behind the criminal justice system is to understand law and order, which is maybe the foremost important conditions for the sustainable change of social orders. For this reason, punishment must be given to the people who have damaged the law and extending the process of law. Moreover, the police are not only responsible to investigate, but they also keen in offering justice to the suspects, whereas prosecutors are answerable to check the investigation taken place by the police and to arrange the case for the charge, referring to the reasonable treatment of law. All in all, prosecutors are vested with the obligation of checking the police investigation in accordance with the law. Apart from their obligation to arrange criminal cases for indictment, prosecutors in each nation also play a few imperative parts in a criminal investigation despite the contrasts in fundamental lawful standards. In a few nations, prosecutors have an in general obligation over the investigation, whereas, in others, they have a restricted part in carrying out the investigation. Whereas prosecutors also can control police directed by law. Prosecutors may coordinate police investigative exercises and arrange them to seek after specific avenues of request, thus counting the investigation of conceivably exculpatory prove (Ed Cape et. al, 2007). The author believes that cooperation from the prosecutor to expedite any decision to prosecute or not to prosecute involving chain remand cases is a worthwhile endeavour. This is because only the prosecutor has the power to do the charge, and if this process can be accelerated by giving instructions for minutes of all remand cases chain at once, it simultaneously can speed up the process of detaining suspects either to continue to be detained or released.

Lastly, it is about the requirement to provide training and courses to investigating officers on the latest progress and issues raised in chain remand. Based on Skogan and colleagues (2015), their research shows that the huge training program involving about 9,000 police officers shows that all the officers who went for that training are getting higher scores on states of mind toward pointers of procedurally fair treatment in a quasi-experimental comparing to the non-attended group. Referring to Yuri (2018), she expressed the need for lawful understanding when she found the reason that leads to thousands of illegal detainments and arrests in Ohio, United States (2018). She also believed that training is one of the solutions to equip the police officers with the knowledge of the current legal position in dealing with their job specifications. When police officers do not get the constitutional imperatives on their activities, they cannot implement criminal laws lawfully (Yuri, 2018). Whereas, according to Wayne (2011), poor training also leads to a tense relationship between police officers and individuals of the societies where they serve.

The well-known maxim that “ignorance of the law is not an excuse” is regularly used against those charged with an infringement regarding statutes, which they claim to not have known. Police officers whose important work is to uphold the law should not be permitted to utilise this maxim to themselves. It is the obligation of the police officer to prepare themselves with the foundations of statutory laws they implemented to make sure they’re not abusing the power given to them. In the case of *United States v. Martin*, 411 F.3d 998, 1001 (8th Cir. 2005), courts have recognised that police officers at some of the time would get destitute lawful training, counting within the setting of choosing whether a police officer’s failure of law was sensible. All of this exposed the critical nature of preparing police officers appropriately to conduct their duty legitimately. The results of all these studies lift the recommendation that the soundness of training programs will give an impact on the states of mind of police officers. Moreover, in-depth legal training covering all angles of law, and they will manage to convey their abilities that lead to be a superior, leading to make more intelligent choices when associated with their assignment. These well-trained officers will be in a better position to maintain a tactical distance from or anticipate illegal or flawed conduct.

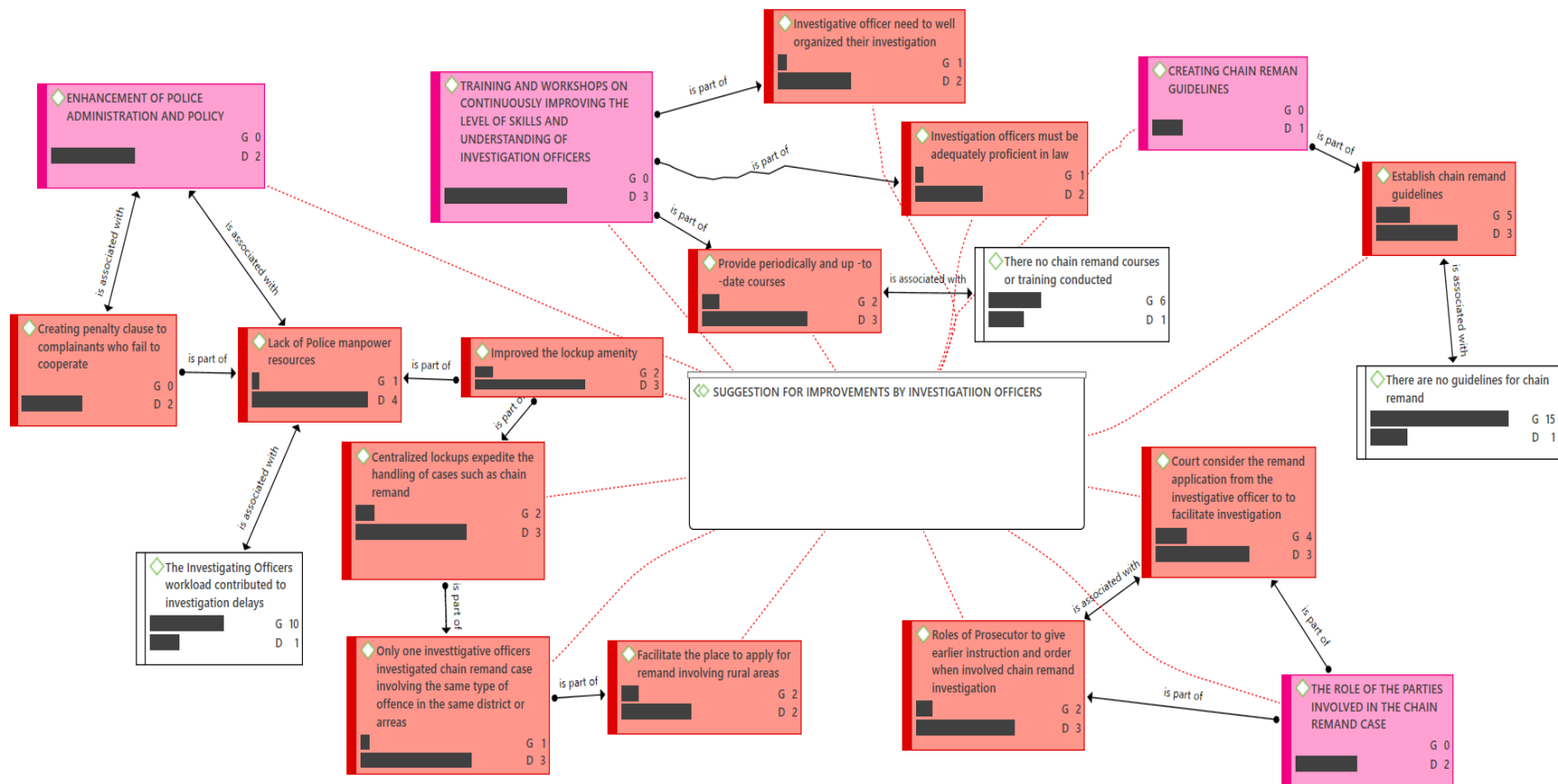


Chart 4: Recommendation and Improvement on the Perspective of Investigating Officers



## FINDINGS

Based on the discussion and analysis carried out, the weaknesses and loopholes in the existing legislation, especially the laws that were previously formulated in section 117 (3) and (4) CPC are exposed. This happens when the public at large condemns police for abusing their power as they apply a lengthy remand period on a suspect who has yet to be proven guilty. This chain remand practice is like a punishment that is carried out even though the evidence is still not sufficient to indict the suspect. A comparison of the laws between E&W and India, shows that Malaysia has no time limit regarding suspects who have more than one offence as happened in the case of chain remand. The provisions of 117 (3) and (4) CPC require the investigation police to include all remand periods in the investigative diary that the suspect has undergone and its return to the court's discretion in considering the remand application after the previous period of detention. Although the author did not agree with a long remand period in India and a limited remand period in E&W, however, the limited period of detention shows that these two countries have a better law system than Malaysia.

Therefore, the author suggests a specific law on chain remand should be focused on section 117 (3) CPC, in which the limitation period of the section needs to be stipulated clearly in the provision, if at any time during the detention period, the suspect according to the recommended provision, with reasons to believe that the suspect has committed a relevant offence ('other offence'), which is an offence other than the offence related to the first detention; and has reasons to believe that the continued detention of the suspect is necessary for the further investigation of the guilt of the other offence. The recommended provision also needs to be clearly explained further that detention is referred to (a) arrested for the same offences during the first arrest, or (b) arrested for different offences. Authors also suggest when the same offence or otherwise is investigated for more than one police report and the punishment not more than 14 years imprisonment, the detention shall not exceed seven days on the first application and seven days on the second application. While referring to the punishment of more than 14 years imprisonment or death sentence, then the detention should be 14 days on the first application, 7 days on the second application, and 7 days on the third application. In another words, the total period of remand for offences punishment not more than 14 years imprisonment is 14 days and for offences, punishment more than 14 years imprisonment or death sentence is 21 days. This 14 day period takes into account the previous provisions involving sentences exceeding 14 years imprisonment and the death penalty as per section 117 (2) (b) CPC. Under normal circumstances, this provision in accordance with the provisions of section 117 (2) (b) involves serious criminal cases and this period of 14 days should be sufficient for lighter cases involving chain remand cases. Whereas for a period of 21 days take into account the remand period in the investigation of preventive cases. The authors believe the proposed period is appropriate given the preventive cases also involve cases of more than one police report and all of the cases are grouped together for investigation.

What can be ascertained other than the specific legislation on chain remand is that all improvement proposals submitted should be considered in order to ensure that the issue of chain remand is

resolved. The authors believe that these periodical courses and training can benefit police officers for a better understanding of the law. Although the law states the power to decide for a warrant of remand is under the court's discretion, but all information about the investigation is gathered through the investigating officer. If they fail to channel accurate information, a reasonable decision is also difficult to be obtained. Consequently, an improvement that ensures a balance between the police and the public should be given fairly to improve the existing situation.

## CONCLUSION

This study provides preliminary insights into the attitudes of the police regarding the chain remand law in Malaysia. Findings highlight the importance of specific legislation on chain remand cases as able to assist police agencies to resolve a case. Besides, the comprehensive legislation also will not only minimise the criticism against them but also smooth the running of their work with clear and concise legislation. However as discussed above, the law is not the only issue since other elements also contribute to constraints on police enforcement. The investigation of chain remand cases conducted by police officers is not always guided by best practice procedures which may cause impediment in the progress of investigations, risk injustice for the people involved, and fuel the public's distrust of the police.

Therefore, this calls for an amendment of the current enactment strategies, preparing and execution of standardised rules in how investigation ought to be conducted. Collaborations and discourses between professionals and scholars should also be empowered, as this will offer superiority to the analysts in getting the desires of serving the police constrain and help in raising motivation of future research.

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# **A review of the police response to riots in France 2005, United Kingdom in 2011, Ferguson 2014, and Baltimore 2015**

*Garth den Heyer<sup>1</sup>*

## **ABSTRACT**

Since the late 1990s, there has been an increased proclivity to demonstrate or riot, with the number, size and frequency of violent protests increasing in the United States, the United Kingdom and most western democracies. The current police response to violent protest and riots is similar across the western world and usually involves authorities moving quickly to control the violence and attempting to restore order. A qualitative case study approach is used to examine the police response to riots that took place in France 2005, London 2011, Ferguson 2014 and Baltimore 2015. The analysis has been developed from a comprehensive review of the literature, including published and unpublished academic articles, mainstream media articles and government and institution research reports. The analysis of the police response to the riots described in the four case studies found that there were ten themes in the police response that were common to all four case studies and that influenced the effectiveness of their response.

**Keywords:** riots, police response to riots

## **INTRODUCTION**

There has been an increase in the number, size and frequency of violent protest activity across most western democracies in recent years. This follows a period of relative calm between the mid-1980s and the late 1990s. Since the late 1990s, however, a proclivity to demonstrate or riot has been on the rise (Body-Gendrot, 2013; Body-Gendrot, Hornqvist & Newburn, 2016). In addition to an increase in the inclination to protest, protestors have displayed an increase in their willingness to assault innocent bystanders and to perform deliberate violent acts of vandalism (Waddington, 2007). Technology and other modes of social media have also had an impact on the intentions of demonstrators and demonstrations (Baker, 2012).

The current response to violent protest and riots is similar across the western world and usually involves authorities moving quickly to control the violence and restoring order (Author, 2019; della Porta, Peterson & Reiter, 2006). The policing of public order, however, is not a well understood aspect of policing and is usually set apart from ‘normal’ policing (Stott & Drury, 2017; Waddington, 1991). In some jurisdictions, it is the role of specially dedicated squads (Waddington, 1991). However, whether it is performed by specialised officers or not, public order feels and looks like a different type of policing (della Porta 1998: Drury, Stott & Farsides, 2003; Eggert, et. al., 2018).

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This article reviews the response taken by the police to violent disorder or riots, rather than the response taken by the police to peaceful or negotiated protests. It is based on the examination of the police response to four different case study riots and does not include an examination of the post-riot investigations or prosecutions. The article examines and compares the police response to four riots in three different countries: the United States (Ferguson, Missouri and Baltimore, Maryland), the United Kingdom and France. These examples of riots were chosen for their uniqueness at the time that they occurred, their size, geographical spread and quickness of spreading and the number of people arrested. The following section examines some of the main controversies involved with policing riots. This discussion is followed by the approach used to examine and compare the four case study riots. The final sections include an analysis of the case studies and concluding comments.

## THE POLICING OF PUBLIC DISORDER AND RIOTS

The occurrence of riots poses a number of challenges to the police on an unparalleled scale, with an effective response often requiring the deployment of a large number of police officers, some of which may be from other jurisdictions (Baker, Bronitt, & Stenning, 2017), or may not be trained in riot response tactics. The primary objective of the police when responding to violent protest or a riot is to control or limit the violence and then suppress it (Earl & Soule, 2006). According to Eggert, et. al., (2018), the response actions formulated by the police and the decisions made during the response are predictable and patterned.

The difficulty for the police in responding to riots originates from the need for the police to balance the security of individuals and the community with their civil rights (Waddington, 2007). As result of the need to balance the rights of protestors, the complexity of the violence (Her Majesty's Inspectorate of Constabulary, 2009), and to ensure an effective police response, the police need to develop appropriate deployment plans and establish a command structure to manage and control the resources that are being deployed. The type of response implemented however, may bring to the forefront the legitimacy and impartiality of the police and the questioning of the effectiveness of their response (Jefferson, 1990; Waddington, 2007), especially if the riot is prolonged or becomes more violent.

The policing of violent disorder and riots is different from routine policing (Waddington, 2007) and as such, responding to violent protests and riots may conflict with the principles of Community Oriented Policing and the philosophy of being accountable to the community because the form of the police response is often viewed as a measure of the relationship between the police and the community (Baker, 2011; della Porta, 1998). The type of response implemented may bring to the forefront the legitimacy and impartiality of the police and the questioning of the effectiveness of their response (Jefferson, 1990; Waddington, 2007), especially if the riot is prolonged or becomes more violent.

The discussion of the police approach to violent disorder has been supported by a significant body of scientific evidence and theory within social science since the late 1980s and suggests that there is a very close relationship between the dynamics of crowd violence and public order policing (della Porta & Reiter, 1998; Hall & de Lint 2003; Jefferson, 1990; King & Waddington, 2004, 2005; Sheptycki, 2002; Waddington & King, 2005; Waddington, P., 1987, 1991, 1993, 1994). The strategies and tactics used by the police that is examined in this literature tends to concentrate on large events that could become violent and disruptive, rather

than on riots, which is the topic of this article. Furthermore, early literature focused on the interaction of the police and protestors. This however, had changed by the 1990s, when researchers were more interested in the social-psychological perspective of crowds (Davis & Dawson, 2015) leading to the development of the Social Identity Model (SIM) and the Elaborated Social Identity Model (Stott, et. al., 2007). The social identity models are based on the perceived actions of the police, especially when the actions are viewed as being unjustified or illegitimate. The theory proposes that as a result of people perceiving the police as being legitimate, they are more likely to have trust in the police and comply with their direction (Stott, et. al., 2012).

Another model that was developed from research into the cause of riots in the late 1980s, was the Flashpoints model (Waddington, Jones & Critcher, 1987). The model emphasised that a disorder should be examined within a wider context and that there needs to be two elements present for disorder to occur; precursor or pre-requisite conditions (the ‘tinder’), such as a shooting or death caused by the actions of the police, mixed with interpersonal interaction (the ‘spark’), such as the police using teargas to disperse protestors (Gorringe & Rosie, 2008).

A primary problem for the police is the development of their response and the deployment of their limited resources as the majority of protests are peaceful and are policed by what McPhail, Schweingruber and McCarthy (1998), described as ‘negotiated management’. This observation is supported by della Porta and Reiter (1998), who claimed that the police response to violent protests and riots is developed from their previous interactions with the protestors or similar groups. This information is then analysed with the context of their knowledge and experience (della Porta & Reiter, 1998), or, as described by Jaime-Jimenez and Reinares (1998), the police perception of the environment which is conditioned by the functions that they carry out and their experience with these functions. Although the overarching influence is political, the police decide how they will respond to the riot or violent disorder and what strategies and tactics they will use (Eggert, et. al., 2018). In other words, the response strategies and tactics used will depend on whether the crowd is perceived by the police to become violent. The form of response strategies and tactics, however, are usually shaped by the characteristics or appearance of the riot or violent civil disorder (Davenport 2000; Earl, Soule & McCarthy, 2003) and will determine whether non-lethal weapons, such as rubber bullets or teargas is used. In summary, the response developed and implemented by the police is not only based on a specific event or by the behaviour of protesters, as most of the previous studies have concluded, but instead, is based on a structured and analytical approach (Eggert, et. al., 2018).

## WHAT IS A RIOT?

This article is primarily about the response taken by the police to violent disorder or riots, rather than the response taken by the police to peaceful or negotiated protests (Braham, 2012). A riot is a form of civil disorder that usually including individuals or groups using violence to create a public disturbance, or to use violence against authority. Riots can also include such actions as vandalism against public and private property and arson. According to Moran and Waddington (2016):

*Riots are complex phenomena and their outbreak is inevitably symptomatic of deeper societal problems. These events may often appear to be ‘issueless’, or at least lacking a clearly discernible cause that would bring a welcome analytical coherence to the series of events in question (p.6).*



Riots are also characteristically “chaotic social phenomena and each occurrence represents the violent manifestation of a unique configuration of driving forces and influencing events” (Moran & Waddington, 2016, p. 171). Each occurrence of a riot may have some common features, such as a triggering event, but by its form and composition, each is unique (Moran & Waddington, 2016). This uniqueness occurs owing to the different outcomes arising from a mixture of distinct underlying and background factors that can vary considerably from riot to riot (Moran & Waddington, 2016).

## METHODOLOGY

A qualitative case study analysis approach is adopted in this article to examine the police response to the four riots that took place in France 2005, London 2011, Ferguson 2014 and Baltimore 2015. The approach to the four case studies is comparative and includes an interactive framework that incorporates a number of key variables. These variables examine how each riot began, how they developed and the response by the police. The use of these variables ensures that the analysis concentrates primarily on the actions of the police, rather than on the reasons for the riots, although this is discussed in the development of the case study. The case study approach is used to examine the four riots, drawing conclusions only about the response of the police to the riots. According to Yin (2014), multiple case studies are useful when studying a group of individual cases that involve a common phenomenon and enables a researcher to compare and contrast multiple cases using a conceptual framework (Stake, 2006; Yin, 2014).

The case studies have been developed from a comprehensive content analysis review of the literature, including published and unpublished academic articles, mainstream media articles and government and institutional research reports. Content analysis is used to determine the presence of certain words, themes or concepts within a text and is used for examining the meaning or relationships between these elements.

## THE CASE STUDIES

### **France 2005**

Riots involving the immigrant population and residents of economically and socially deprived urban areas have been occurring in France, especially in Paris and the city’s surrounding suburbs since the beginning of the 1980s (Jobard, 2009). The worst rioting since 1968 occurred in France in late October 2005. The rioting spread to more than 300 cities and towns across the country (Katz, 2008), following the deaths of two teenagers of North African and Malian descent, who were attempting to escape a police identity check.

The riots occurred over 21 nights, injuring 201 police officers and 26 fire fighters, with no official figures on the number of rioters injured. The main instigators of the riots according to Mohammed (2009) were members of youth gangs. More than 9,000 vehicles and 30,000 rubbish containers were burnt (Mucchielli, 2009). Government buildings and institutions were targeted, as was the public transport system. More than 140 buses were burnt and in addition, more than 20 places of worship were damaged (Mucchielli, 2009).

### *The police response*

An analysis of the 2005 riots in France revealed that the main problem in the riot was the continuing over-reactions of the police (Author, 2019). The strategy used by the French police to respond to the riots was based on a technique called space saturation. This technique involves deploying riot police in large numbers to project a threatening police presence, which makes it possible for the police to limit the size and the consequences of an incident and enables the police to take control and suppress the riots within a very short time frame (Mouhanna, 2009).

The large size of the national riot response capability enabled the police to deploy more than 11,000 officers on each night of the riots and allowed for a contingency of reserve forces (Mouhanna, 2009; Mucchielli, 2009). Although the police had the resources and the capability to respond to the riots, it appeared that they were slow in doing so. The slow response was for two reasons. The first was that the riots were occurring only in the banlieues, and the disorder initially only included the torching of vehicles. The second reason was because riots such as these usually only lasted for two or three nights, and the police thought these riots would not be any different.

At the end of the first week of rioting, the Minister of Interior implemented a more arrest-oriented form of policing (Jobard, 2009), enabling the police to change their response. Three strategies were implemented by the police as a part of their new response. The first strategy was to increase the number of riot officers and riot control units, which would enable the police to deploy larger numbers of officers (Roche & de Millard, 2009).

The second strategy adopted by the police was a change in riot control tactics. The new tactic gave the police more visibility, giving assurance to the public (Roche & de Millard, 2009). The strategy placed an emphasis on the pro-active policing of youths, especially youth gangs. The third strategy that the police adopted was to change the responsibility for the command and control of the deployed units and officers from the department level to the local level (Roche & de Millard, 2009). The change in the level of responsibility was adopted as there were too many riots to co-ordinate at the department level and the demand from the District Commissioners at the local level were more of a tactical nature rather than that of a strategic nature.

### **London 2011**

The events that triggered the 2011 riots were very similar to the triggers of the riots that occurred in the mid-1980s and again in the 1990s in Brixton and Tottenham in that the relationship between the police and the ethnic community was tense, owing to the police use of tactics, such as stop and search. The 2011 riots followed the death of a man shot dead by police on 4 August (BBC News, 2011c).

The December 2011 report of the August 2011 English riots, prepared by the House of Commons Home Affairs Select Committee, claimed that the riots were “unprecedented in the modern era” (cited in Moran & Waddington, 2016, p. 116). The riots occurred between 6 and 11 August 2011, and while they started in a London borough, they spread across a number of London boroughs and then on to several major towns and cities, such as Birmingham, Coventry, Leicester, Derby, Wolverhampton, Nottingham, West Bromwich, Bristol, Liverpool, Manchester, and Salford.

Five people died as a result of the rioting and at least 16 people were injured, with more than £200 million worth of damage to property (BBC News, 2011a). By 15 August, more than 3,000 arrests had been made across England and a further 1,100 people had been charged with various criminal offences relating to the riots (BBC News, 2011b). According to Harding (2012), as the riots unfolded, gangs took the opportunity to loot in the areas that lacked a police presence. Harding also claimed that the gangs “actively monitored police activity on an hourly basis”, which enabled them to take advantage of any emerging policing vacuum (2012, p. 202).

### *The Police Response*

The police response strategy comprised of two parts (King, 2013). The first part involved the response to the violence and property damage and the second part involved engaging with the community in an attempt to de-escalate the disorder (King, 2013). However, these tactics proved to be unsuccessful as the looting and violence were “too dynamic and fluid” to be contained by any conventional police response (King, 2013). As a result, the police changed their response from being “too static” and not effective, to tactics that were based on maximizing arrests and “re-establish[ing] the sense of deterrence” (Sims, 2011, p. 29). The police also established the use of mobile police units and the deployment of police dog patrols (House of Commons Home Affairs Committee, 2011a).

To ensure that the arrest-focused and mobile approach provided a deterrence and was able to be sustained, the police integrated additional operational strategies. The first was to meet the demand for more officers. To meet the demand for more police officers, requests were made to police forces across the country, including Scotland, via the Mutual Aid process (King, 2013). The second strategy was the use of social media to increase liaison with and to inform the community (Her Majesty’s Inspectorate of Constabulary, 2011; Sims, 2011, King, 2013).

The use of social media by the police was one strategy that was used to thwart the use of such media by rioters who had used the media in the past to facilitate social networking and to recruit rioters (Baker, 2012). According to Baker, (2012), the use of social media by both the police and rioters contributed to the form and effect of the riots, but it was not the initial cause of the disorder.

### **Ferguson 2014**

The fatal shooting of a young African American man by a white police officer in Ferguson, Missouri on 9th August 2014, sparked one of the worst riots ever seen in the greater St. Louis County area (The New York Times, 2014). A number of waves of protesting and rioting followed the shooting. The first wave, from 9 to 24 August 2014, was widespread and involved acts of vandalism and looting (The New York Times, 2014; Kienscherf, 2014). The second wave, from September 23 to September 29 centred on the call for the resignation of the Chief of the Ferguson Police. The third wave was a result of the police officer who shot the African American man not being indicted for the death. The last wave of protesting and rioting occurred on the one-year anniversary of the shooting.

The riots in Ferguson mainly included the vandalising and looting of local businesses, and confronting and throwing rocks and Molotov cocktails at the police. More than 300 people were arrested in the first wave of riots and more than 400 were arrested during the third wave

of riots (Coleman, 2014). One of the main challenges confronting the police was the widespread use of social media which was used to spread misinformation throughout the community and as a platform for organizing a large number of people to participate nightly in the civil disorder (Institute for Intergovernmental Research, 2015).

### *The Police Response*

Similar to the riots in France and the United Kingdom, the relationship of the police with the community was not strong prior to the riots and the riots would probably not have happened without police provocation (Bernish, 2015). Nor would they have continued if the police had used more appropriate strategies and responded with tactics that did not appear to be militarised (Institute for Intergovernmental Research, 2015). Ferguson residents also claimed that when the riots did occur, the police response was ineffective (Robertson, 2015).

According to the Institute for Intergovernmental Research (2015), more than 50 law enforcement agencies were involved in the police response to the riots in Ferguson. However, the police were at a disadvantage from the beginning of the protests (Reilly, 2015). The St. Louis County Police Department and the Ferguson Police Department, during the first two days of the riots, chose to deploy a high-policing response (Robertson, 2015), which was interpreted as mimicking the relationship between the white population and African Americans during the period of slavery. In essence, the initial response by the police gave the appearance that they believed that the incident would be short-lived and did not develop a longer-term response strategy (Robertson, 2015) or any form of communication with the community. This belief is further demonstrated by the over-reliance on standard public protest response tactics (Institute for Intergovernmental Research, 2015), such as the use of non-lethal weapons and tear-gas grenades, rather than implementing a more coordinated or strategic comprehensive community-oriented response.

### **Baltimore 2015**

Early on Sunday morning April 12, 2015, officers from the Baltimore Police Department arrested an offender at Gilmore Homes. The man was subsequently placed in a police van and arrived at the station sometime later, after making a number of stops along the way (Police Executive Research Forum, 2015). On arrival at the police station however, the man had sustained a number of injuries and from which he subsequently died.

The first demonstration in relation to the arrest and death of the man occurred on Saturday April 18, outside the Western District Police Station (Fenton, 2015). Although there were marches every evening from Sunday April 19 to Friday April 24, a second demonstration was held on Saturday April 25, which included a march from the Winchester neighbourhood where the man was arrested to the City Hall. After the demonstration concluded, a number of groups leaving the demonstration began to vandalise parked police vehicles and shops within the inner-city area. The disorder subsequently turned into a riot with shop windows being smashed and rioters fighting with people attending a baseball game at Oriole Park.

The civil unrest continued after a shopping mall was closed by the Baltimore Police, which was the catalyst for the second riot that occurred on the afternoon and evening of Monday April 27. The mall had been closed because the Baltimore Police had received information from a text that there was going to be a 'purge' on the mall that afternoon.

### *The Police Response*

In response to the violence, the Baltimore Police used its “Twitter feed to urge demonstrators to remain peaceful and blamed the problems on “isolated pockets of people from out of town causing disturbances downtown” (Stolberg & Babcock, 2015). The Baltimore Police deployed extra officers to the area, and as the rioters approached the downtown area on Saturday April 25, the police formed a skirmish line across the main street. As more officers arrived on the scene, the police were able to make arrests and eventually dispersed most of the crowd. However, these actions were not able to stop rioters smashing windows, vandalising buildings and setting fire to vehicles.

In the early afternoon of Monday April 27, officers from the Baltimore Police, together with Baltimore City School Police Officers observed crowds forming at Mondawmin Mall and action was taken to manage the crowd. As there was no transportation out of the mall area, the crowd could not disperse easily and as a result, the crowd began to increase in size and started to become violent. They threw rocks, bricks and other debris at officers who were equipped only with helmets and shields. By not using arrest teams, a stand-off developed between the crowd and the police, and break-away groups from the crowd descended on unattended police cars, vandalising and burning them (Marbella, 2015).

### DISCUSSION

In comparing the four case studies, the form and scale of the riots were very different. The size of the riots in England were significant, but they did not spread as widely as those in France, which spread to hundreds of towns and cities. The spread of the riots to other locations were not only because of solidarity with the catalyst event, but also because of the type of response to the initial riot by the police. The case studies of the riots in the United States were concentrated in the city or in the general vicinity of the police action which led to the death, although there were short-lived and smaller-sized riots and violence in a number of other cities across the country. What makes each of the case study riots different from previous riots is their perpetuation and spread, primarily because of policing actions, public reaction especially in the United Kingdom and the United States, and the political reaction in each country. There was also a difference in the reaction of the community in France. There was no community reaction to the riots and the political reaction in France was the opposite of that experienced in the United States and the United Kingdom.

The catalyst for all three of the riots were the actions of the police; police shootings in Ferguson and London, and police negligence in Baltimore. The shootings in Ferguson and London, however, were not the only factors that formed the catalysts for the riots; it was the actions by the police following the shootings. Beyond the actions of the police, the alienation that was experienced by the young people of minority communities and the profound suspicion of, and resentment towards the police were the principal features in the rioting that occurred in all of the locations (Newburn, 2014).

All of the riots included attacks on the police, looting and the destruction and vandalism of property. There were, however, differences in the form or tactical response that was adopted by the Ferguson and Baltimore police when compared to that adopted by the British police. The American approach appeared to be more militarised and included the use of “Tear gas,

stun grenades, rubber bullets, camouflage uniforms, armoured cars, assault rifles, shotguns and automatic weapons” (Newburn, 2014).

A further difference that was noted was the changes that were made as to who was the commander or the command or lead agency in both Ferguson and Baltimore. In Ferguson, the command agency changed to the State Police owing to a perceived weakness in the local police response, while in Baltimore, there were numerous internal changes to the Baltimore Police Commander, which led to confusion as to who was in charge (Gately & Stolberg, 2015; Police Executive Research Forum, 2015).

An analysis of the police response to the four case study riots found that there were ten themes in the police response that were common to all four case studies. All of the themes shaped the form of the riots and influenced the effectiveness of the police response and ranged from having an some to extensive influence. The ten themes and their level of presence in each of the riots is presented in Table 1.

**Table 1: Ten Common Themes Found in Case Studies –**

|                     | Catalyst – Police Actions | Use of Social Media | Lack of Trust in Police | Gang Involvement | Spread to Other Locations | People Travelled to Participate | Weaknesses in Police Response Plans | Weaknesses in Police Response Structures | Political Interference | Weaknesses in Police-Media Relationship |
|---------------------|---------------------------|---------------------|-------------------------|------------------|---------------------------|---------------------------------|-------------------------------------|------------------------------------------|------------------------|-----------------------------------------|
| France 2005         | Yes                       | Not identified      | Extensive               | Yes              | Yes                       | Yes                             | Yes                                 | Yes                                      | Yes                    | No                                      |
| United Kingdom 2011 | Yes                       | Extensive           | Some                    | Yes              | Yes                       | Yes                             | Extensive                           | Yes                                      | Yes                    | Yes                                     |
| Ferguson 2014       | Yes                       | Extensive           | Extensive               | Some             | Yes                       | Yes                             | Extensive                           | Yes                                      | Yes                    | Yes                                     |
| Baltimore 2015      | Yes                       | Yes                 | Extensive               | Yes              | Yes                       | Yes                             | Yes                                 | Yes                                      | Yes                    | Yes                                     |

The riots in all four case studies were the result of the deaths of citizens caused by the actions of the police and the widely held perception of the community that the police lacked legitimacy and were not to be trusted. Furthermore, the way in which the police managed and responded to the initial disorder was a principal factor in the subsequent spread of the rioting (Roche & de Maillard, 2009) in all four cases. However, the spread and level of the rioting was different

in each of the four countries (Newburn, 2016). From post-riot research, the rioters' anger with the police was primarily based on the police use of stop and search powers in London and France and the perceived racial profiling underpinning the use of such tactics (Newburn, 2016). In comparison, the rioters were angry in both Baltimore and Ferguson because of how the police treated African Americans (Institute for Intergovernmental Research, 2015). The rioters' anger with the police, according to Lewis, et. al., (2011), was more consistent in England than in the United States or France.

The main difference in the case study riots compared to previous riots was the use of social media by both the protestors and the police. The use of social media and technology ensured that protestors were well organised, and this led to the police being unable to gain control of the riots in all three countries during the first few days. However, the London riots were also notable for the use of closed-circuit television (CCTV) images of offenders in identifying offenders, investigation and prosecution, and in providing social media and news publicity (Evison, 2015). The rioters were also inventive; burning cars that were often used as barricades, the use of social media to identify false riot spots and to warn others of the police approach and the use of masks to hide the rioters' faces (Bujra & Pearce, 2009).

## CONCLUSION

The reason for, or the principle of rioting in each of the three countries lies in their habitual occurrence. Despite their apparent spontaneity, riots in each of the countries has been characterised by a high level of self-discipline and use of accepted rioter tactics: burning cars and rubbish bins, confronting the police and the throwing of bricks or stones, and sometimes Molotov cocktails, but usually no gunfire.

Two of the main themes identified in the case studies were the intertwined issues of the actions of the police and their relationship with the ethnic or minority community. The undisputed, immediate triggers for the riots in all four case studies was the actions of the police. Not only have the deaths of a member of the community been the starting point of the riots in each of the cases, but the mismanagement or weaknesses of the response taken by the police after the fatal incident appears to be the triggering event that led to the riot spreading to other cities. This means that in the four case studies, the police can be seen as a key player in the riot process (Jobard, King & Waddington, 2009). There are, however, a number of factors that influenced the actions of the police in all of the case studies: the weaknesses in the police response structure and political interference. As a result, the police are, on the one hand, seen as supporting the policies of the local and national governments, and on the other hand, as representing that polity (Jobard, et. al., 2009).

What must be realised is that the response by the police to a riot is not without paradoxes, challenges, risks, and trade-offs and any implemented strategy or tactic must be continually re-evaluated in the dynamic operational conditions (Marx, 1998). The public order capability of the police is part of a country's national infrastructure, which means that there must be a political interoperability policy to ensure cooperating police agencies are able respond to a riot in coordination (Her Majesty's Inspectorate of Constabulary, 2011).

For the police to continue to respond appropriately to the different forms of riots means that the use of the existing police tactics needs to be perfected and that there is a contingency of officers available to assistance should violence occur (Her Majesty's Inspectorate of

Constabulary, 2011). This must be balanced with learning lessons from previous riots and adopting tactics that have been amended to lessen the risk of violence occurring.

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# Police use of firearms in Germany: A review of practice

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## ABSTRACT

The police use of firearms in Germany has scarcely been researched empirically, which leads us to a remarkable research gap. It is questionable whether scientific findings from other countries can be transferred to Germany. Therefore, in a survey, findings were obtained about the situation, the person shot at and the shooter, aspects of the shooting (as well as target hits, ammunition impact, and the aftermath, also the subjective experience and recollection, which are not part of this article) of the use of firearms. Participants in the survey were police officers from the German state police who shot at a person between 2013 and 2017.

In this regard, situational backgrounds have been researched, which show that police use of lethal force against individuals does not occur in specific situations. Overall, police use of firearms can occur at any time of the day or night in which lighting conditions can vary. Overall, it can be stated that the situational aspects of firearm use vary. This means that training and further education of police officers must be optimised in this respect and offer a wide range of the above-mentioned aspects. Lastly, the majority of the persons shot were armed, mentally ill, or drug-impaired, which brings not only an important aspect toward research, but also further education and training of police officers.

**Keywords:** Use of firearms, use of lethal force, police-involved shooting, violent police encounters, police training

## INTRODUCTION

In contrast to other European countries, all German police officers are authorised to carry a firearm, not only to protect themselves but also the citizens. This is what police officers and citizens rely upon. The police use of firearms is one of the most intensive forms of exercising the state's monopoly on the use of force and represents the most serious intervention measure that a police officer can carry out. It is therefore considered to be of immense importance, and namely from:

- A legal perspective: A complex situation must be assessed in seconds and subsequently answered for.
- A societal perspective: Citizens endow the police with extensive powers of intervention and trust them to use them carefully, responsibly, and correctly. As a result, the public also has a right to both transparency and justification. If citizens suspect misconduct, it can have dramatic consequences, as recent protests and discussions following the death of George Floyd in the U.S. show (Campbell, January 15, 2021; Skoy, October 20, 2020).

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- A situational perspective: The situations in which police firearms use occurs should be examined. Here, for example, the sequence of events is to be analysed. From external circumstances such as the locations, times of day, and lighting conditions to the individuals shot.

In contrast to studies in the U.S., there is a remarkable research gap regarding police use of firearms in Germany (Kesic & Thomas, 2020). However, knowledge of these fatal events is also low internationally (Kesic & Thomas, 2020). Comparisons of the situation in Germany with that in other European countries or worldwide were made only sporadically (Timmer & Pronk, 2011; Osse & Cano, 2017). Although firearms operations in Germany are recorded statistically, there is no further scientific analysis and discussion. The likelihood of shots on target in different operational positions and at different distances are unknown. Therefore, important factors such as the immediate, short-term impact of gunshots can only be estimated, which leads us to the problem that many other facts are just guessed at or findings from other countries such as the U.S. are used. Another result of the lack of research in this field is, that it is uncertain or even highly questionable whether the transfer is sufficiently permissible (White, 2006).

## BACKGROUND

There is no consensus in the German literature regarding police use of firearms. On the one hand, legal papers discuss the situation of the potential use of a firearm from both the police officer's perspective as well as the citizen's perspective on an abstract level. While general legal papers on the use of firearms by the police, which discuss shooting on an abstract level, are sufficient (e.g. Ley & Burkart, 2001; Neuwirth, 2006), analysis of concrete or simulated shooting situations are rather rare (see Bäuerle, 2012; Lorei, Stiegler & Bäuerle, 2014). However, this difference is not marginal; rather, the inclusion of realistic facts only reveals the entire complexity of the matter. Thus, for self-defence to be legal (Section 32 of the German Criminal Code [StGB]; corresponding legal formulations can be found in the police laws), the law requires that there must be a "current attack". This means that an attack is imminent, is currently taking place, or is still ongoing. But what exactly does "imminent" mean in general and what is it like when there is a threat with a firearm? Do you have to recognise muzzle flash? Do you have to wait for a projectile to impact as well (maybe it is just an imitation firearm)? Or is the twitching of the weapon bearer enough from which one concludes that he or she will fire? Does the potential attacker have to have the firearm in his or her hand, does the barrel of the weapon have to point at an individual? Baller (2018) discusses this in legal terms for holding and threatening with a knife, which in no way can automatically justify the use of firearms. The same applies to the assessment of the "proportionality" of the use of firearms by a police officer. According to the law, this police measure is only justified if it is "proportionate". This means that it must be "suitable", "required" and "appropriate". It is "suitable" if the aim of the measure (e.g., saving lives) can be achieved with the use of firearms. Accordingly, it would not be suitable if the shot cannot prevent a perpetrator from killing a victim anyway. The use of firearms is "required" if no other measure is available that can also achieve the target and it is only possible with one shot. The use of firearms is "appropriate" if its intensity fits the purpose of the measure. A potentially fatal shot can therefore be proportionate to save another life, but not to force the return of stolen property. To decide on the "proportionality" of firearm use, one also needs to know the shooter's probability of being hit (cf. Lorei, Stiegler & Bäuerle, 2014).

Indeed, if a shooter is unlikely to hit as well, firearm use is not appropriate. It can be even less proportionate if it is not certain that the shooter will also hit the correct body region of the attacker and thus cause inappropriately severe damage. This also applies to the endangerment of others. That is if a shooter does not hit an attacker but an innocent bystander.

Regarding the tactical and situational side of the police use of lethal force, there is an even smaller scientific basis. Thus, there is no scientific reappraisal of the cases of police shootings in Germany. There is only a very simple and not very detailed statistical list, which is published annually by the Conference of Ministers of the Interior (see Table 1). From this, however, tactical and other aspects for the method of training and further education for police officers can hardly be read. Likewise, no problem areas are identified that could serve to optimise preparation for the use of firearms.

Ultimately, the overall level of research on the police use of firearms in Germany is unsatisfactory. A transfer of the analysis from other countries can only offer a very rough orientation, since completely different deployment concepts are practiced there (Noppe & Verhage, 2017). In Germany, for example, a police patrol unit always consists of at least two police officers, while in the U.S., for example, police officers also patrol individually. In some countries, all police officers carry a firearm, while in other countries only a part of the police force is equipped with firearms (Lorei & Balaneskovic, 2020b). Other equipment such as tasers, pepper spray, and batons also varies from country to country (Lorei & Balaneskovic, 2020b).

The risk of the situation in the countries discussed above does not appear to be identical either. For example, Osse and Cano (2017) find a high correlation between the rate of people killed by police use of firearms and the overall homicide rate in a country ( $r=.890$ ) or the homicide rate with firearms ( $r=.941$ ). However, murder rates vary in different countries. Parent (2006) also showed this in a comparison of the United States with Canada. Here, the U.S. showed high homicide rates, as well as a very high number of police use of lethal force. In contrast, both statistics are significantly lower in Canada.

Often, research on police use of firearms in other countries focus on other factors whose significance is not centred in Germany. For example, race and ethnicity play a major role in firearm use in the USA (Klahm & Tillyer, 2010). In Germany, their relevance in research of police use of lethal force has so far been minor. White (2006) summarises research findings on influences of cultural embeddedness, crime situation, and formal and informal characteristics of organisations and concludes that these significantly influence the use of lethal force. Accordingly, the transfer of research findings from other countries, e.g., U.S. research findings, appears to be critical and comparisons difficult.

### **Statistics on the firearms use by police against persons in Germany**

Official data (see Table 1) on the use of firearms in Germany are published by the Conference of Interior Ministers as a press release. They only provide a rough classification of the type of shot (warning shot, shot at property, shot against persons) as well as the consequences. This means that hardly any details such as hit rates, ammunition impact, situational aspects,



interaction dynamics, personal characteristics, etc., which would be necessary for a deeper understanding and training optimisation of police officers, can be noted.

|                             | Self-defence/help in an emergency<br>Risk to life and limb in other cases | Crime prevention | Thwarting flight in the event of suspicion of a crime | Thwarting flight in the case of prisoners | Prevention of violent escape of a prisoner | Firearm use against persons in a crowd out of which violent acts were committed |
|-----------------------------|---------------------------------------------------------------------------|------------------|-------------------------------------------------------|-------------------------------------------|--------------------------------------------|---------------------------------------------------------------------------------|
| Warning shots               | 29                                                                        | 3                | 12                                                    | 5                                         | 0                                          | 0                                                                               |
| Firearm use against items   | 7                                                                         | 0                | 12                                                    | 0                                         | 0                                          | 0                                                                               |
| Firearm use against persons | 54                                                                        | 2                | 0                                                     | 0                                         | 0                                          | 0                                                                               |
| Consequences:               |                                                                           |                  |                                                       |                                           |                                            |                                                                                 |
| Fatalities                  | 11                                                                        | 0                | 0                                                     | 0                                         | 0                                          | 0                                                                               |
| of which bystanders         | 0                                                                         | 0                | 0                                                     | 0                                         | 0                                          | 0                                                                               |
| Injured persons             | 32                                                                        | 2                | 0                                                     | 0                                         | 0                                          | 0                                                                               |
| of which bystanders         | 0                                                                         | 0                | 0                                                     | 0                                         | 0                                          | 0                                                                               |
| Inadmissible firearm use    |                                                                           |                  |                                                       |                                           |                                            |                                                                                 |
| Against items               | 7                                                                         |                  |                                                       |                                           |                                            |                                                                                 |
| Against persons             | 2                                                                         |                  |                                                       |                                           |                                            |                                                                                 |
|                             |                                                                           |                  |                                                       |                                           |                                            |                                                                                 |
| Consequences                |                                                                           |                  |                                                       |                                           |                                            |                                                                                 |
| Fatalities                  | 0                                                                         | 0                | 0                                                     | 0                                         | 0                                          | 0                                                                               |
| of which bystanders         | 0                                                                         | 0                | 0                                                     | 0                                         | 0                                          | 0                                                                               |
| Injured persons             | 2                                                                         | 0                | 0                                                     | 0                                         | 0                                          | 0                                                                               |
| of which bystanders         | 0                                                                         | 0                | 0                                                     | 0                                         | 0                                          | 0                                                                               |

Table 1: Cases of firearm use by the police for the year 2018 (Source: Press notice of the Conference of Interior Ministers).

In contrast, detailed reviews and analysis can be found for the USA, for example. The FBI publishes annual statistics and analysis of killed police officers (Federal Bureau of Investigation, no date), the New York Police Department makes its analysis of firearms use available online (See Bratton, 2014; New York City Police Department, 2019), New Jersey publishes a "use of force report" online (New Jersey state and municipal police departments, 2018).

## **Number of police firearm uses**

While the majority of police firearms use in Germany is to kill dangerous, sick, or injured animals (13,711 cases in 2018 in Germany), persons were shot between 40 and 75 times annually by the police between 2013 and 2018 in Germany (Press notice of the Conference of Interior Ministers 2014-2019; cf. Lorei, December 12, 2020). Yet the vast majority of these police uses of firearms take place in situations in which a threat to life or limb to oneself or others should be averted with the shot. Much less often people are shot at to stop their escape or rarely to prevent a crime. Not analysed are how many individual shots were fired in each operation. The New York City Police Department (2019), on the other hand, does disclose this, reporting that a total of 107 rounds were fired in 17 firearm uses. Yet in 23% of the cases, there was only one shot fired. The majority of 41% fired 2-5 rounds per incident. 6-10 or more than 10 projectiles were fired in 18% of the cases. Corresponding data is missing in Germany.

## **Consequences of the police use of firearms use against persons**

Between 2013 and 2018, between 8 and 14 people died each year from police firearms, one of them being an innocent bystander (Press notice of the Conference of Interior Ministers 2014-2019; cf. Lorei, December 12, 2020). In the same period, between 20 and 39 people were shot and injured by the police. The police officers also injured bystanders four times. In 8 to 14 cases per year, no one was hit. For comparison, White (2006) describes 271 firearm uses in Philadelphia between 1987 and 1992, where 14% ended fatally ( $n=38$ ), 35% ended with an injury to the person shot ( $n=94$ ), and 51% missed their target ( $n=139$ ). The New York City Police Department (2019) reports 5 fatalities (29.4%) and 10 injuries (58.8%) as a result of 17 firearm uses related to conflicts with citizens. In this regard, the number of police shootings in 2018 in New York City can be considered a historic low, as police officers shot people 23 times in the jurisdiction in 2017 and 37 times in 2016, a significantly higher number.

## **Aspects of the operation: situation – the shooter – person shot**

The information to be taken from the statistics of the Conference of Interior Ministers does not say much about the actual situation. Even less can be gleaned from the statistics about the characteristics of the shooters or those shot at. Since there is no other scientific analysis of the cases, the only thing left to do is to try to transfer findings from other operational situations. The research on violence against police officers in Germany (e.g., Ohlemacher, Rüger, Schacht & Feldkötter, 2003; Ellrich & Baier, 2014) should be considered first. These offer possible approaches to this. However, it is completely unclear whether and how the operational situations and processes are similar or different and therefore a transfer seems possible.

An essential aspect that seems transferable, could be the physical and mental state of the police officer's counterpart. Ellrich & Baier (2014) see an alcohol and drug influence as one of the most significant risk factors for violent assaults against police officers. According to their

findings, people in exceptional psychological situations are increasingly likely to initiate an attack. However, differentiation must be made according to clinical picture and symptoms (Nedopil, 2016). Diederichs (2016) cites that 9 of the 10 people shot by the police in 2015 in Germany were mentally ill or reported to be in a state of mental emergency. Baller (2018) reiterates that persons shot by police officers in previous years have often been mentally ill or in a state of mental distress. Thomas (2020) also highlights the problematic nature of individuals with mental illnesses around police contact.

## **Aims of this study**

The international and especially the German research situation on police firearm use appears to have a research gap and deserves more scientific attention (Kesic & Thomas, 2020). It is necessary to go beyond the consideration of individual factors (Kesic & Thomas, 2020). Aspects of the study presented here attempt to develop empirical findings for the first time in Germany. Initially, the focus is on the dynamics of the situation of police use of firearms. The aim is to find out how such situations develop and how escalation takes place. Since events are often reported to occur very quickly (Kesic & Thomas, 2020), it is also of particular interest how much time passes before the point of maximum escalation is reached. Of particular interest is to find out if there are situations that are associated with increased risk. Are there types of operations that are typical for gunfire, or do they occur in all types of operations? Are there days and times when shooting is more likely to occur? Under what lighting conditions do such events occur? The attackers are also of particular interest. Do findings from other countries confirm that it is primarily younger men who are shot by police (Kesic & Thomas, 2020)?

## **METHOD**

Neither the scarce official statistics nor files on incidents are suitable for analysing police use of firearms in Germany. Files that originate from investigations or court proceedings are difficult to access, and sometimes do not contain all the information that is of interest in the research here. Therefore, the empirical basis of this study was a survey of police officers of the state police forces of Germany who used a firearm against persons between 1 January 2013 and 31 December 2017. This excludes warning shots and firearm use against property (e.g., vehicles). According to the statistics of the Conference of Ministers of the Interior, this was a total of 265 cases in these 5 years (press releases of the Conference of Ministers of the Interior 2014-2019; c.f. Lorei, December 12, 2020). The period between 01.01.2013 and 31.12.2017 was chosen to ensure that all investigation and court proceedings were completed.

Since the shooters are not known and therefore cannot be contacted directly, the 16 Ministries of the Interior of the German states were first contacted postally and informed about the research project. Furthermore, this letter asked to forward a questionnaire to the police officers who had a firearm use against persons between 01.01.2013 and 31.12.2017. All Ministries of the Interior have information about the shooters, as each firearm incident is investigated, and a file is created there. Three Ministries of the Interior responded to this letter that they do not support the research project and refuse to forward the questionnaires. Therefore, it is unknown

how many shooters could not be reached because of the refusal, as this information cannot be read from the statistics.

Furthermore, the questionnaire, the content, and the aim of the study were explained, and the participants were assured of an anonymous evaluation and that no legal or tactical assessment would be made. First, demographic information about the person was collected. Then the shooters were asked to provide information on the reason for the intervention, the mission, and the forces deployed. Subsequently, various aspects were asked about the person shot. Details about the development of the situation and especially about the shooting were asked. Finally, the shooters were asked about various perceptual phenomena. The majority of the questions were closed questions with various multiple-choice answer options. Sometimes questions were also asked as open questions.

A total of 27 completed questionnaires were received as responses. Of these, 2 had to be excluded from the evaluation because one of them contained a warning shot and the other only the threat of the use of a firearm. Neither of these corresponded to the objective of this study. Thus, 25 firearm uses could be evaluated. This represents 9.4% of the 265 firearm uses during the period described above. Of the 25 cases submitted, 2 firearm uses were also in the context of operations by the “Spezialeinsatzkommando (SEK)”, a police tactical unit. Operations of the SEK differ considerably from police shootings in everyday operations. These police officers are trained differently and are more heavily armed. Also, they operate in larger teams. They are also more likely to use firearms in their operations from the outset. However, since the aim of the study was to focus on the use of firearms by police officers of the day-to-day duty, these two cases had to be removed from the analysis, as officers from the SEK have completely different conditions and processes in operations. One questionnaire was split into two cases because it included two distinguishable firearm usages. It contained a firearm use in self-defence to repel an attack and in the further course of the operation, another firearm use against a fleeing person.

Most of the participants in the 25 cases studied here (60.9%) were between 30 and 39 years old. A quarter of the 25 respondents were in their forties (40-49 years, 26.1%), while 2 shooters were up to 29 years old, and one was older than 50. The service experience was 11-15 years for 39.1%, and more than 20 years for a third (30.4%). One person had less service experience (0-5 years). 17.4% were already 6-10 years in service and two respondents had between 16 and 20 years of service. The majority of the shooters were male (82.6%) and 4 were female. A slight majority (43.5%) undertook training on the range three to four times per year prior to firearms use. Slightly fewer participants (39.1%) had 1-2 appointments for practice shooting. Only 2 people each undertook training on the range 5-6 times or more. As a result, half (56.5%) considered themselves to be relatively good shooters during the period before firearms use. One-third (34.8%) believed themselves to be moderately good shooters. Two individuals assumed they were very good shooters. Three police officers had a history of firearm use against people prior to the use described in the questionnaire.

## RESULTS

## On the operation situation

All respondents stated that their operation was unplanned and had arisen as a part of their normal daily duties. The reasons for the use of firearms were diverse, such as threats, suicide threats, suspected burglary, admission of a mentally ill person, rioters, dangerous interference with traffic, a person who appears helpless, a person suspected of a crime, persons whose behaviour is conspicuous, such as running around naked or screaming in the street, reports of violent crimes, domestic violence and use following the report of an alarm system. Overall, it appears that police use of firearms develops from everyday routine situations. No situation shows an accumulation that would lead to the assumption that the use of firearms would be significantly more likely in this type of situation.

In 6 out of 23 cases, the control centre informed the patrol that a person was handling a firearm prior to the operation. In 12 out of 23 cases, when the patrol was given the order to intervene, it was told that a person with a stabbing/cutting weapon was endangering himself/herself and/or others. In one case a dangerous object was the cause of the intervention. In most cases a particular risk from a weapon or dangerous object was already known before the police arrived at the scene. It must be considered here that firearms are not as widespread in Germany as they are in the U.S., for example. Karp (June 2018) concludes that there are around 120.5 firearms per 100 inhabitants in the USA, while this is said to be 19.6 firearms per 100 inhabitants in Germany. Accordingly, a report that a firearm is a cause for police intervention is an outstanding situation in Germany.

Four times police were called because of a person in an exceptional psychological situation. Thus, it was reported that the police were called because a person was threatening suicide or bystanders feared that a person might commit suicide. However, in addition to the suicide threat, other psychotic symptoms were also reported. The repeatedly reclaimed finding that mentally ill persons appear very frequently in the statistics of police firearm use seems to be confirmed here (Ellrich & Baier, 2014; Diederichs, 2016; Baller, 2018).

The control centre issued the orders to the police officers and provided additional information, e.g., about the perpetrator, the situation on the scene, etc. In the end, this information at the start of the operation was mostly (87.0%) correct. Only once were the information only partially correct or almost completely wrong. The shootings occurred throughout the entire week and over the entire day. No particular clustering at any particular time or day of the week was found. Rather, shootings seem possible on any day at any time. At the same time, police officers had already been on duty for an average of 6.11 hours (SD 3.72, n=23) at the time of firearm use.

In one-third of the cases (8 times = 34.8%), the location was a public street area. Just as often (8 times = 34.8%), the operation took place inside a building. In 17.4%, the mission took place in a less populated place (e.g., backyard). 8.7% of the operations took place in a highly-populated area (e.g., pedestrian zone). In most cases (60.9%), there were no cover options as protection available at the scene. If protection was mentioned (39.1%), then these were mainly vehicles (5 times) and once each, pillars, walls, and door frames. Immediately before the use of firearms, the majority of the personnel engaged within the scope of this operation was 2 to 4

people (65.2%). Most of the police officers present were men (77%). The majority of the forces on the scene were also uniformed.

The lighting conditions were mostly described as daylight (45.5%). For one-third (36.4%) it was rather dim (poorly lit rooms, twilight, dawn), for 18.2% dark (moonlight/streetlights only/weak glow from vehicle headlights/flashlight). Never were the lighting conditions reported as “gloomy – without any lighting” or “very bright”. So, it can be said that about half took place with good lighting conditions, but situations with very poor visibility also often escalate dramatically.

### **On the person shot**

One-third of the people shot at were in their twenties, thirties, or forties. All were male. Both age and gender are consistent with the results of analyses in Australia (Kesic & Thomas, 2020). Here, in 78.3% of the cases, the persons shot were determined to be known to the police, meaning that he or she had previously attracted attention and was registered in the police information system. These persons were known to the police mainly for violent crimes and drug abuse.

The person shot at was rarely unimpaired at the time of the operation. One-third was under the influence of alcohol (30.4%). One in five was on drugs (17.4%). Many of the individuals were considered mentally ill (39.1%). Again, this demonstrates the frequent occurrence of mentally ill individuals in dramatic escalations (Ellrich & Baier, 2014; Diederichs, 2016; Baller 2018). In 11 cases, the police officers involved were not aware of these psychological impairments. Only in 4 cases was the condition known and communicated to the officers before the operation (see 4.1).

Compared to the information reported at the time of the order (see 4.1), in 30.4% of the cases, the person shot at was carrying a firearm or it was close to them. The majority (56.5%) had a stabbing/cutting weapon in their hand or their area of influence. Once, the person shot had a slashing weapon, twice (8.7%) they had a dangerous object. It was never stated that the person shot later did not carry any dangerous objects or had these in their area of influence. Again, these results are similar to those from Australia (Kesic & Thomas, 2020).

## **DISCUSSION**

### **Restrictions**

The results of the study are based only on a small proportion of the total number of cases in the years 2013 to 2017, which is why there is no representativeness. It remains unclear to what extent the shooters participated selectively. It is conceivable that, above all, highly stressed, if not traumatized police officers would rather fail to participate in the survey. In fact, according to DSM-V (American Psychiatric Association, 2013), a continuous avoidance of stimuli associated with trauma is a diagnostic criterion of post-traumatic stress disorder in the way that stressful memories, thoughts, or feelings reminiscent of trauma are avoided. This would

probably prevent these people from participating in an interview. In addition, participation raises the question of whether possible symptoms affecting the recall affect the answers. In the case of post-traumatic stress disorder, there may be an inability to recall essential parts of the trauma (American Psychiatric Association, 2013). This would then lead to missing answers in such questions, or gaps in memories could unconsciously be filled by, for example, diagram-consistent knowledge or answered through confabulation.

In addition to this potential reason for non-participation, (self-) doubt may have prevented participation in the study. Thus, potential study participants would rather not have presented their case, as they were unsure for various reasons whether this could have negative consequences for them. This is not only legally possible but also for police tactics, psychological or ethical reasons. Even in this case of withholding the cases, it cannot be ruled out that they distort selectively, as they could represent a special variant of the use of firearms by the police.

Looking at the results of the survey and focusing on the consequences, one can assume that at least from this perspective, certain representativeness can be assumed. Thus, in the survey, cases are found, which contain all occurring consequences (no one injured, person shot was wounded, person shot is shot dead). The same can also be assumed with regard to the situation of danger. Here, unarmed, stabbing, and threatening persons appear, as well as a range of persons being shot: they are sometimes under the influence of alcohol and drugs, but are also sober or sometimes mentally ill. Here, too, there is a certain range. It cannot be said whether these characteristics are present in the sample considered here in the numerical ratio as in the population as a whole. Only a selective exclusion of certain features does not appear obvious. Rather, a distortion in terms of numbers can be assumed.

After all, there is a variety of aspects that can describe a spectrum of the phenomenon and also help to optimise education and training. Furthermore, given the meagre research situation on police firearm use in Germany as well as internationally (Kesic & Thomas, 2020), it seems helpful to have initial – albeit not very representative – results and insights. Especially because relevant research from other countries needs to be discussed in terms of transferability (White, 2006). For example, the transfer of scientific results on police firearm use in the United States is only possible with caution. Here, operational tactics, political, legal, and cultural aspects, as well as education and training, sometimes differ enormously (e.g., individual patrol, armament, self-image, tactics, organisational culture). However, these are all factors that play an important role in the phenomenon (White, 2006) and in which countries in the European Union also differ greatly (Lorei & Balaneskovic, 2020b). Thus, this study also provides starting points that can support and put into perspective the corresponding transfer.

## **Key Results**

### *Operation types*

From the outset, there is no type of operation in which there seems to be a particular likelihood of police use of firearms. However, it is increasing that information about armament and its use in the past by the acting police officer, appears to be accompanied by the use of a firearm in this particular situation, as is also shown internationally (Kesic & Thomas, 2020). Nevertheless, this is trivial since the use of firearms is primarily an option in such cases. This information is

also not a safe criterion for firing a shot, since a verbal solution as well as by warning to use a firearm, for example, is quite possible and is also regularly achieved (Lorei, 2012c; Lorei 2020). This is also reflected in the fact that many shooters initially gave the warning to use a firearm and thus wanted to avoid it. Thus, they aimed for a solution without the use of lethal force, but the response to the warning had then not (sufficiently) reduced the present threat. In the end, it can be concluded from the analysis that a police officer can probably not exclude the possibility that an incident will escalate and that the use of firearms will be necessary. However, if he or she knows that a weapon is present or that this has even already been used against another person, the police officer cannot rule out the use of firearms but must regard this as a possibility. Accordingly, in such operations, considerations must also be made as to which alternative forces (backup, negotiation team, special forces such as the SEK), strategies, and methods can help to end the operation without the use of firearms.

### *Shooters*

There is hardly any obvious pattern with respect to shooters; they spread over the entire age and experience range. Both men and women are represented and there is no influence of gender, age, or experience in the police force. This is in line with the international research situation (Klahm & Tillyer, 2010), in which these personal characteristics are also regarded as insignificant. Therefore, the analysis must conclude that any police officer may encounter a situation in which the use of a firearm may be possible or necessary.

### *Person shot*

It is noticeable that the persons shot were only men. This is in line with Klahm & Tillyer (2010) as well as Kesic & Thomas (2020), according to whom research shows that the use of violence is more likely in the case of male suspects. A massive accumulation in an age range is not found, but it is more likely to be younger men (Kesic & Thomas, 2020). It should be noted that in Germany, too, many of the persons shot were considered mentally ill and quite a few were impaired by the use of substances. This reflects the findings of Ellrich & Baier (2014) that alcohol and drug influence as well as mentally conspicuous persons, respectively persons in exceptional psychological situations, are significant for this area. This finding also corresponds - at least to some extent - to the findings of Diederich (2016) and Baller (2018) as well as international research findings (Fuller et al., December 2015; Rogers et al., December 2019; Thomas, 2020) that many of the persons shot by police officers in Germany in recent years were often mentally ill or acted conspicuously. Nevertheless, it is important to keep in mind that police officers arguably shot individuals, not because of their condition, but because they were performing actions – in or because of that condition, that posed a corresponding danger to those involved. Thus, police officers were responding much more to what a person was doing than “who they were,” as Durna (2011) notes. This is particularly evident in the arming and behaviour of the persons shot, as Durna (2011) shows for police use of firearms in the United States. The fact that the persons shot were predominantly already known by the police, i.e., they acted conspicuously, also goes in a similar direction.

### *Situation*



It cannot be said that certain days or times of the week are particularly prominent. Although there is a slight concentration on weekends and at night, there are incidents every day and at any time (and at any time of personal duty) that result in the use of firearms. The lighting conditions are described as heterogeneous. Sometimes they seem good because they are light; sometimes they are portrayed as dark and thus, as bad.

## CONCLUSION

The primary objective of this study was to gain a greater scientific understanding of the use of firearms by the police in Germany. Despite all limitations of this study, it must be stated that the results can serve to better describe and understand this rare, but serious event of police service. The results presented confirm and expand the empirically based knowledge of police firearm use, that has been available to this date, even internationally, to only a limited extent. The study presented here can serve as a basis for further research in this area and for improving the preparation of police officers for these dramatic situations.

Regarding the important findings presented here, training and education of police officers must be optimised. For example, as findings show, police use of firearms can take place at any time of the day. Therefore, shooting must be practiced in different lighting conditions and locations, as the analysis shows that all lighting conditions and different locations occur. Especially under the aspect of the danger of injuring bystanders (collateral hits), scenarios must be practiced in which the target of the shooting is not alone, but as in a busy location or in an operation as a result of domestic violence, other people and also the patrol partner must be considered when shooting.

Of course, it is not only shooting that should be practiced realistically. Police training should also continue to be held to practice skills and abilities to prevent the use of firearms. For example, in addition to general de-escalation (Engel et al., 2020), there is a need to practice dealing with the mentally ill. Here, drugs and alcohol as well as psychotic conditions make it very difficult for the police to always find peaceful solutions to conflicts so far (Fuller et al., December 2015; Rogers et al., December 2019). These aspects need to be intensively integrated into education and training, even if this cannot ensure that future firearm use can be avoided, it can help to make it less frequent or less fatal in its consequences. In this context, non-lethal operating resources should also be considered (Rappert, 2004).

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## Good Policing: Trust, Legitimacy and Authority

By Mike Hough

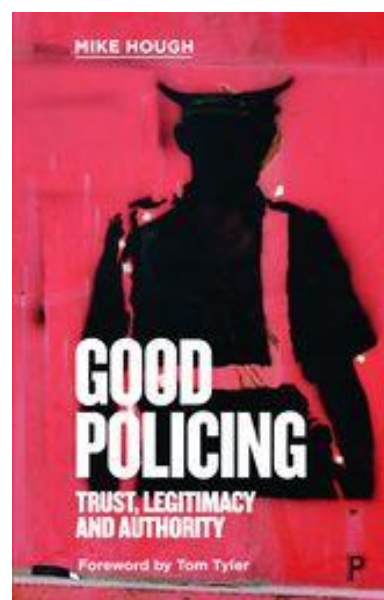
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Reviewed by Russell Dippy

Mike Hough's book delves into international research into policing, focussing on what he labels a 'procedural justice theory'. The book explores ideas of police legitimacy, trust, and compliance with the law. Hough takes readers along an exploratory path while providing commentary and discussion on each theory. He first provides an overview of the history of modern UK policing, with some international comparisons. He subsequently presents his 'procedural justice theory', comprising three claims; first, police authority is built on trust; second, trust underpins legitimacy; third, when legitimacy is conferred, compliance with the law and cooperation with officials occurs.



Having thus set the stage, Hough then examines the notions of 'authority' and 'legitimacy', which in turn provides context to his discussion of "good policing" as an approach based on "*striking the best possible balance between hard and soft policing, in ways that maximise police legitimacy*" (p. 28). This definition forms the basis of Hough's analysis within the rest of the book

Particularly relevant to the topic of 'good policing' is Chapter three, centred round the British context but also with insights from Europe, America and Australia. The resulting position supports legitimacy as central to effective policing and highlights the need to continually assess how policy and practice may affect legitimacy. Through some case studies, the chapter further explores the role of fairness in promoting the application of legitimacy. Fair treatment is characterised as one key instrument to ensure compliance, however the author further notes that inducements, rewards, and punishments, if applied, can work equally well to that end.

Hough further explores issues that can arise with policing minority groups, and the impacts these may have on police legitimacy and community's trust. He uses the term "visible ethnic minority groups" to refer to visual cues exposing these groups to labels and inconsistent police responses. The policing of 'visible ethnic minority groups' is explored against the background of the concept of "hard power traps", i.e., the use of coercion and the threat of coercive force (for example unnecessary aggression in interactions). Such 'traps' may further negatively impact community's trust in the police hence, in turn, police legitimacy.

Hough discusses ways to embed procedural justice within policing practices at the institutional level. Noting that culture change requires understanding of existing culture, he provides some commentary on police culture and the concept of fair outcomes versus fair processes within policing organisations. The discussion turns to training and the British move toward professionalism, with an agenda for police officers to undertake degree-level education prior to joining the force.

In later chapters, Hugh focuses on ethics and justice, specifically on how to implement these concepts within police agencies that attempt to adopt procedural justice theory. The use of 'low-visibility techniques of persuasion' by both police officers and institutions to achieve compliance is discussed. The author concludes that, whilst procedural justice theory, combined with low visibility techniques of persuasion, can support legal compliance, the implementation of the ethical and just framework paired with procedural justice theory should be the aim of all democratic policing agencies.

In the Postscript, Hough provides some thoughts about the application of the UK emergency powers enacted for the initial response to Covid-19. With reference to his account of procedural justice theory, Hough notes some variance in the initial lockdown compliance activities, where varying amounts of coercive power were applied to achieve lockdown outcomes. He notes this occurred for relatively short periods (at the time of his writing) and that the coercive activity may have arisen due to the speed of implementation of the legislation and inconsistency of the accompanying public information provided by government. Hence, the author points out that many of those policies, for example public movement restrictions, were loosely worded, hence the supporting guidelines led to confusion between police and the public as to what was allowed. This inconsistency and confusion led to a focus on enforcement rather than on building public understanding – thus affecting the trust and legitimacy at the basis of procedural justice theory. Similar conclusions may arise from a review of the Australian response to COVID, as analogous concerns have been raised about the role of police in a health-based emergency.

### **About the Reviewer**

Russell Dippy is a Doctor of Public Safety Student at Charles Sturt University. His studies are examining the Human Capacities of Emergency Managers in Australia.