Towards a Transnational and Comparative Approach

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The power to stop people in public places, to question them and to search their person and belongings is common to policing worldwide. Drawing on the small, but growing, academic literature on ‘stop and search’ in a range of different geographical and institutional settings, this chapter examines the use of this power in theory and in practice. It explores the range of purposes for which stop and search is deployed, including the often vaguely defined general goals of security, crime prevention and counter-terrorism. Here it is contended that stop and search is the widest and least circumscribed coercive power of government. Although it is often socially invisible, stop and search is among the first and most frequent contacts between police and public and has far-reaching consequences. The chapter reflects on the problems of ensuring that police power is constrained by mechanisms of transparency, accountability and respect for human rights, and notes that this is particularly important as police power globalises. We argue that the way forward is to develop an agenda for transnational and comparative research to provide the basis for mechanisms to ensure that increasingly globally connected police power can be held to account.

Defining the power to ‘stop and search’

The command ‘Stop, police!’ asserts authority in any language. Issued in the street, at a roadblock or at a border, the official instruction to stop initiates a coercive and intrusive process that is available to law enforcement agencies around the world (Weber and Bowling, 2012). Markus Dubber (2005: xi) argues that ‘among the powers of government none is greater than the power to police and none less circumscribed’. We agree, and contend that, among the powers of the police, the capacity to stop
and search is perhaps the widest and least circumscribed of all. In most, if not all, jurisdictions, police officers have almost unfettered power to stop people in public places, question them and search personal items of clothing, bags or motor vehicles.

It is important to understand that when an agent of the state instructs a person to stop as they walk in the street, drive their car or pass through an airport, they are – in effect – using state-sanctioned coercive power to detain them. The person who is stopped is prevented from moving unless and until the officer allows them to do so. In all jurisdictions where evidence exists, a police instruction to stop is non-negotiable and is backed up by coercive power and punishment for non-compliance. In Hungary, failure to identify oneself to the police may result in custody or a fine (Tóth and Kádár, 2012). In India, those who refuse to stop can be fined or imprisoned for up to six months (Belur, 2012). In England, a person who fails to stop, or to stop a vehicle, when required to do so by a constable in the exercise of his powers under the Criminal Justice and Public Order Act 1994 commits a criminal offence punishable by a fine and/or one month’s imprisonment. Under Schedule 7 of the Terrorism Act 2000, anyone passing through a UK border who refuses to submit to a search or to answer questions commits an offence punishable by a fine or three months in prison.

Although detaining a person on the street for the purposes of questioning them, establishing identification or a search may not be the ‘paradigm case’ of detention (e.g. placing a person in a prison cell), we agree with the European Court of Human Rights’ (2010) opinion that it is a coercive act consistent with the notion of a detention. The detention may be for a very short period of time, for the purpose of checking identification or simply to ask some brief questions. It could lead to a longer period of detention for more in-depth questioning or for the purpose of a search, and may eventually lead to arrest. The power has a rather different quality when officers demand that civilians stop and account for themselves – to justify their presence in a place, to give their personal details, such as name and address, or to officially identify themselves. In this case they are intruding into the private life of the individual.

A physical search of a person’s clothing, belongings or vehicle is considerably more of an interference with a person’s privacy and liberty than a request to stop and identify or explain oneself. A search may be more or less physically intrusive; it may involve being scanned with a metal detector or entail a pat down or ‘frisk’ of outer clothing. It may involve more extensive searches of outer clothing and belongings, when