

How can the police
secure public
legitimacy?



'All fixed, fast-frozen relations, with their train of ancient and venerable prejudices and opinions are swept away, all new forms ones become antiqued before they can ossify. All that is solid melts into air, all that is holy is profaned...'

'the police function depends critically on the authority that the police can command, rather than the force that they can deploy as a last resort'

(Hough, 2003; 146-7)

'There can be no effective symbol of a unitary order in a pluralistic and fragmented culture' (Reiner 1992; 779)

The dominant themes of postmodernity are instability and insecurity, the erosion of traditional social structures and the demise of grand explanatory narratives. Accounts of postmodernity have proliferated in recent decades, however for the task in hand, we can regard the label as shorthand for deep social change. It is important to map this change with some measure of precision. Postmodernity is an appealingly ambiguous narrative, a conceptual tool that is employed to frame a diverse range of accounts. Moreover, postmodernity suggests a definitive break from the modern, and therefore risks downplaying older themes. We should remain aware of continuity; enduring troubles that remain largely untouched by societal transformations. The ubiquitous introductory quote from Marx and Engels is startlingly apt and we should be alert to the retelling of older narratives in new idioms. The postmodern condition may describe a proliferation and splintering of narratives, however a cursory glance towards our parliament or

judiciary is probably suffice to remind ourselves that the distribution of political and social capital lies along familiar axes.

The task here is to assess whether, within the postmodern maelstrom, police legitimacy is irretrievable (assuming that it has radically diminished, which I also address). Conceptually, the legitimacy question hinges on the structure and agency dichotomy; whether the police are irreversibly tethered to societal conditions that diminish their prospects of securing legitimacy, or, might agency afford a means of engaging with the postmodern dilemma. Mapping the decline of the police, Reiner takes the former stance, arguing that '[w]e can postulate an equation predicting public consent to policing in which public acceptance is largely a function of the extent of social and cultural consensus' (1992; 772). If

plurality and diversity define postmodernity, hopes of achieving consent and legitimacy seem unlikely. Is legitimacy fundamentally outwith police control? We should be wary of ascribing puppet status to the police and here I want to make two points. First, to be mindful that trajectories of social change are underpinned by political will and decision-making. The vernacular of postmodernity, given its immense subject matter, is profuse with sweeping descriptives; Anthony Giddens's frequently cited 'riding a juggernaut' analogy comes to mind (1991; 28). Whilst not wishing to underestimate the weight nor momentum of societal change, we should be aware that its direction is, in some measure, subject to premeditated choice. A second related point is that if particular outcomes are undesirable, they may be addressed, although it is useful to keep in mind that piecemeal reform is unlikely to succeed if a problematic outcome is embedded in sizeable social transitions.

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The essay is structured into three parts. I begin with some observations on the conceptualization of legitimacy, followed by a short historical note on the longevity of the legitimacy problem. The second and third parts can be respectively summed as a diagnosis, and some suggestions for a remedy. The diagnosis consists of descriptive and explanatory analysis in order to unpack the central conundrum; whether police legitimacy is inextricably tied to broader social conditions. First I map the shifts and conditions that postmodern narratives describe; patterns of pluralism, differentiation and desubordination. I then overview concurrent policing policy and tactics deployed in response to the exigencies of postmodernity. At this point I raise Loader and Mulachy's (2003; 35) astute question as to why has support for the police remained so high, given the turbulence and scandals of recent decades?. By way of response, I first discuss Reiner's proposal that the hegemony of law and order both impedes and detracts from legitimacy (2010).

The latter part of the essay addresses the question in hand directly; how may legitimacy be secured in a disconnected and fragmented era? Can the police connect with a disparate public and attain support? Here I shift the analytical focus from the macro contours of postmodernity to the minutiae of interaction and police conduct. I begin with Wesley Skogan's (2006) theory of asymmetry which proposes that contact with the police is inversely correlated with levels of satisfaction, and negative contact has a stronger impact than positive. Skogan's research is a calming riposte to the thundering juggernaut of postmodernity. His conclusions, whilst downbeat, are not reliant upon diagnoses of anxious times and shifting structures.

Skogan's pessimism has been tempered by research informed by neo-Durkheimian themes that holds some prospect of hope for police legitimacy (Bradford et al, 2009; Jackson and Sunshine, 2006). Key findings emphasize police conduct and the importance of procedural fairness, in short, that the public hold fair treatment above outcome. I also readdress Loader and Mulachy's question from a symbolic perspective whereby fairness is held as a signifier of moral cohesion, and thus acts as part antidote to the ubiquitous insecurities of postmodern times. Thus ethical conduct may hold some capacity to increase legitimacy (Smith, 2007). Holding onto this broadly optimistic conclusion, I finally discuss some prerequisites for securing legitimacy premised on a conflation of equitable conduct, cultural inclusion and an overarching narrative of ethical professionalism (ibid; 302)

PART ONE. LEGITIMACY AND HISTORY

Conceptualizing Legitimacy

What is the purpose of police legitimacy? Sunshine and Tyler suggest that legitimacy is expressed in behavioural compliance with the criminal justice system (2003; 514). In short, it is a prerequisite of an effective criminal justice system. Whether or not we conclude that the police can secure legitimacy depends how we conceptualise the phenomena and the resultant breadth of explanatory factors. Tyler asserts that legitimacy is a 'psychological property of an authority, institution or social arrangement that leads those connected to it to believe that it is appropriate, proper and just'(2006; 375).. Here legitimacy is tied to expressive value orientations (moral and normative beliefs), alongside instrumental reasoning (police

efficiency, the equitable distribution of police resources). Legitimacy is further sustained by concerns such as trust and procedural justice which, unlike crime fighting, can be realized independently of broader social conditions. This is both, fortunate, given the nature of the crime problem and limited capacity of the police (Hough, 2007), and a cause for optimism. Importantly, the role of moral authority - if grasped and translated into policy - may afford the police some latitude in their endeavours to secure legitimacy.

Old Times

The legitimacy problem is not unique to current times. As Reiner describes, 'the British police were established in the face of massive opposition from a wide range of political interests and philosophies' (2010: 68). The historical construction of legitimation is a twofold account of societal conditions and policy response. Reiner details the socio-political context that facilitated legitimation, whereby 'the working class, the main structurally rooted source of opposition to the police, gradually, unevenly and incompletely came to be incorporated as citizens into the political, social and economic institutions of British society' (ibid; 77). Eight policies laid down by Peel, Rowan and Mayne explicitly addressed working class (and middle class) hostility, namely; a full-time professional force, organized according to bureaucratic hierarchy; adherence to the rule of law; a strategy of minimal force; non-partisanship; accountability to the law and the British people; a service role; prevention above detection and effective crime control (ibid; 71-77). I shortly overview some of the iconic events that have destabilized legitimacy in recent decades, and interestingly, each may be interpreted as a violation of Peel's

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principles. However, it is the former determinant of legitimacy holds particular explanatory significance, given that the raft of societal conditions that buttressed legitimacy have since eroded, thus raising the possibility that the current socio-economic configuration effectively precludes police legitimacy.

PART TWO. THE POSTMODERN CONDITION

'Increasing social divisions and declining deference equal a decline in the public standing of the police' (Reiner 1992; 772)

Postmodernity speaks of plurality, differentiation, transience and fluidity (Bauman, 2000; Young, 2007). Let us tie some of these somewhat elusive descriptives to the sizeable societal transitions that define the postmodern condition.

Differentiation, exclusion and desubordination: An overview

The key developments can be classified into the social, economic, political and cultural. First, established class formations have fragmented, as evidenced by the demise of the traditional working class, the expansion of the middle classes and the emergence of a marginalized 'underclass' shaped by long term structural unemployment. Changing class structures are tied to the redefinition of economic relationships; the shift from Fordism to post-Fordism, the erosion of stable labour markets, shifting global capital and the rise of insecure temporary markets and labour relations, including the demise of trade unionism. Politically, postmodernity is associated with the decline of interventionism, public ownership and the social-welfarist state.

Politics are characterized by neo-liberalism, plurality, competition and the private, including self-responsibility. Cultural descriptives of postmodernity include the dearth of ascribed identity. Self-identities are fluid, acquiescent to diverse social contexts and experience. The demise of ascribed class status may be extended to categories of age, gender and ethnicity.

Structural exclusion

There are enduring themes within the postmodern schema; the depressing familiarity of profound social inequality and deprivation. Moreover, as Reiner notes, 'conflicts between the socially marginal and the police are perennial' (1992: 7710. Nonetheless, within the last four decades, the lines of conflict have been redrawn. Relationships between the police and 'police property' (Cray, 1972; Lee, 1981) may have been hostile in previous decades, but were typically apolitical. As Reiner suggests, '[m]embership of the marginal strata is temporary (youths mature, the unemployed find jobs) and their internal social relationships are atomized, so a sense of group identity is hard to follow' (2010; 94). Such transitory relationships contrast markedly with the emergence of structured, conscious and politicized antagonism towards the police in post-1960s Britain. Socio-economic conditions, notably neo-liberal free market economic policy and the consequential embedding of long-term structural unemployment, are associated with a sizeable increase in marginalized groups alongside 'a heightening of their self-consciousness as targets of policing' (ibid; 770). Since the 1960s Britain has seen the emergence of youth cultures, industrial disputes, structural unemployment, and particularly 'the catastrophic deterioration of relations with the Black community' (ibid.). Systematic structural exclusion and the reversal of

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political incorporation is disastrous for the police if, as Reiner argues, past legitimation primarily hinged on the incorporation of the working class 'gradually, unevenly and incompletely' into political and social institutions (ibid; 77).

Desubordination

Structural instability and the demise of ascribed identity is associated with desubordination (Miliband, 1978), namely decreasing deference. Reiner describes the adverse effect of desubordination on respect for the police whereby the reconfiguration of relationships premised upon traditional frameworks of authority undermines the symbolic status of the police (1992; 771). In this equation the police are held as increasingly unrepresentative; as Reiner notes, '[t]here can be no effective symbol of a unitary order in a pluralistic and fragmented culture' (ibid; 779).

Desubordination is not confined to a marginalized Other. Reiner extends the desubordination trend to an influential and vocal sector of the middle classes (whose previous compliance is assumed), and the growth of middle class protest (ibid; 771). There is an interesting contrast between the sentiments of this liberal minded sector of Reiner's middle classes, and David Garland's latterly depiction of illiberal and punitive middle class attitudes (2000; 356). Garland correlates the development of an intolerant professional middle class with the advent of 'high crime society' that touches all areas of social life and closes the gap between the middle class and the experience of crime (ibid; 357). This bestows a benevolent liberalism upon previous generations, and a tendency to gloss over the punitive and illiberal sentiments that

informed earlier generations of the middle class. On this point, Jock Young describes the longevity of middle class vindictiveness, drawing the reader to Svend Ranulf's *Moral Indignation and Middle Class Psychology* (1938) which, over seventy years ago, sought to explain the desire to punish those who do not directly inflict harm (Young, 2007; 42). Both Reiner and Garland point to declining support for the police; be it politicized critique (Reiner) or the presumption of police ineptitude (Garland). However, these are broad-brush analyses and we might be wary of ascribing attitudinal change to a group that has undergone immense structural transformation over the last five decades. Put simply, we are not comparing like with like, and without a grounded empirical base, it is difficult to identify a distinctive middle class voice.

In sum, we can identify deep socio-economic transformations, a recast political discourse, differentiation, exclusion and desubordination as posing fundamental challenges to police legitimacy. I next consider the policing response to this adverse set of circumstances.

Policing the postmodern crisis; institutional and political responses

In this section I consider post-1960s policing, including responses to the assorted crises and challenges of postmodernity. I suggest that policing practice in this period has unsettled legitimacy further. Here it is useful to bear in mind Peel's original principles aimed at securing consent; I have emphasized violated principles in italics.

The conflation of postmodern conditions, politics and policy is not auspicious with regard to securing public consent. Plural and fragmented social

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relationships have undermined accountability, insofar as the police are no longer held as representative of the population. Ethnic diversity in Britain has increased, raising new concerns for representation (Smith 2007; 290); at the time of writing the leadership of Scotland Yard is exclusively white.

Legitimacy has been challenged by conflict between the police and their publics; the post 1960s political landscape is rife with politicized and antagonistic police relationships. A key development is the ascendancy of militarized policing since the 1980s. The deployment of riot gear, the extensive use of CS gas in Northern Ireland and its subsequent use on mainland Britain in the inner city riots of the early to mid 1980s, signified clear disregard for the principles of minimal force and policing by consent. The adversarial and heavy handed policing of political conflict, notably the miners' strike in the early 1970s and 1984/5, plus the poll tax riots in the late 1980s, profoundly damaged the principle of impartiality, alongside the highly publicized and partisan law and order ruminations of Chief Constables and representatives of the Police Federation in the 1970s and 1980s (Reiner, 1992; 767). Reiner documents the transition from preventative policing and the service role to a reactive crime-fighting force of 'crime busters' (Chibnall 1977; 71), aided by 'technology, specialization and managerial professionalism' (Reiner, 2010; 79). Given the infinite complexity of the crime problem and limited police capability, this reframing of the police function might be regarded as self-inflicted damage. Subsequent policy developments, namely the ascendancy of crime prevention, crime reduction, community policing and reassurance policing can be read as attempts to reverse this particular own goal, although the occupational appeal of sirens and lights is proving a difficult cultural obstacle to surmount. Bureaucratic

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principles, in particular the standardized, equal distribution of police services have not been realized (Bradford et al, 2009; 15).

Police conduct might be deemed unhelpful. Racial prejudice, harassment and discrimination have a substantial lineage within policing history. Key events include the discriminatory use of stop and search tactics (Lea and Young, 1984) and the failed investigation into the murder of Stephen Lawrence (Scarman, 1981). Police legitimacy has been further undermined by charges of corruption and violations of the rule of law (for example, the 'Maguire Seven', the 'Birmingham Six' and the 'Guildford Four'). To this litany, we might add highly publicized and lethal incompetency; the shooting of Harry Stanley and Jean Paul de Menezes.

David Smith (2007) details further challenges. Legitimacy has been impeded by a disproportionate response to the nebulous and much publicized threat of terrorism, whereby exceptional powers deployed in crises have become entrenched (ibid; 284). Policing beyond the state and the ascendancy of private sector policing has weakened the singular authority of the police (ibid; 287). Similarly, within the police organization, increased specialization and the rise of the extended 'police family' has weakened the symbolic appeal of a distinct iconic character with whom the public can connect. In short, the police are similarly subject to the differentiation process, whereby 'policing now reflects the processes of pluralism, disaggregation and fragmentation which have been seen as the hallmark of the postmodern' (Reiner 1992; 780). Amongst a plurality of providers, the organization of policing has been subject to increased centralization, with a concomitant raft

of managerial directives that preclude meaningful local decision making (Hughes and McLaughlin, 2003).

Outwith the police organization, the political context of policing has not been conducive to legitimacy. The exploitation of law and order as an electoral tool since the late 1970s in response to perceived police ineffectiveness has increased public fear and destabilized consent further (Smith, 2007; 295). The conflation of moral panic, youth and reactive law-making as applied to lager louts, rave culture, joyriding (Reiner 1992; 776) and anti-social behaviour has neither satiated media fuelled calls for control, nor engendered upcoming generations to the police mandate.

The undoing of legitimacy?

This is not an exhaustive litany of woes and transgressions, but it does touch on some of the iconic events and policy turns that have shaped public opinion and damaged legitimacy. At this juncture it is useful to consider , 'why-in the face of corruption scandals, miscarriages of justice, paramilitarization, falling crime detection rates, the decline of visible patrols, the Stephen Lawrence affair, and so on-does confidence in the police remain in certain quarters so high? (Loader and Mulachy, 2003; 35). I offer two readings of this question. The first explains a lack of dissent in terms of political discourse and the hegemony of law and order; here I discuss Reiner's ideas on post-legitimacy. The second reading constitutes the final part of the essay, in which I consider a need for policing that is driven by the insecurities of postmodernity. Within the context of this latter discussion, I discuss some proposals for securing legitimacy.

Post-legitimacy

By way of response to Loader and Mulachy's query, I want to consider Reiner's proposal that the police have moved beyond legitimation through the hegemony of a law and order agenda. The entrenchment of law and order strategies, following the election of New Labour in 1992 recast the policing mission and its objectives; from principled debate (due process, minimal force, policing by consent and a social democratic approach to the issue of crime) to 'a ferocious partisan competition about what works and who delivers best' (Reiner 2010; 110). As Reiner notes, Blair's ubiquitous soundbite 'tough on crime, tough on the causes of crime' appealed to all political shades, whilst in practice, prioritised a law and order agenda over social democratic concerns (ibid; 97). The ascendancy of a crime control agenda might offer some explanation as to what we could regard as a lack of sustained public uproar. Police wrongs may fuel a temporary public backlash, yet continued expressions of confidence suggests that a sense of principled injustice is short-lived. Do we retreat to a dominant narrative of law and order that invokes Jock Young's folk devils (2007) and their control? Is this a variant of Garland's 'institutional forgetting' (2000a; 7) whereby, to paraphrase Garland, we effortlessly slip back to the problems of controlling the 'other'. Moreover, this narrative is appealingly amenable to quantification; it is simple to grasp, we can calculate (criminals and crimes), evaluate and set performance directives. In this particular discourse, broader questions of equity and conduct are less salient; law and order deflects from legitimacy, and what is just is replaced by what works.

PART THREE. RESOLVING LEGITIMACY; DISCUSSION AND SOME PROPOSALS

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'the perception of unequal treatment is the single most important source of popular dissatisfaction with the American legal system' (Sarat, 1977: 434)

'The cultural category of 'the police' speaks to anxiety and hope, conflict and order, and the authority and social control that bind social life'. (Jackson and Sunshine, 2007; 219)

Part two one described a catalogue of policing crises tied to profound social change, including the erosion of fixed social structures and ascribed identities, the ascendancy of neo-liberalism and its attendant discourse of law and order. Assuming an inextricable relationship between social conditions and declining legitimacy, Reiner argues that the future success of the police is dependent upon the trajectories of political economy and culture; 'in particular whether the malign consequences of neo-liberal hegemony can be reversed and the long march of inclusive social democratic citizenship restored' (2010; 36). Given the improbability of this particular development, it is interesting to reconsider Loader and Mulachy's comments on the enduring expressions of confidence in the police. Might we surmise that public opinion is not entirely dependent upon the erratic turbulence of postmodernity? I have already raised Loader and Mulachy's query in relation to the hegemony of law and order. Here I want to unpack this question with reference to the symbolic function of policing and the desire for ontological security in uncertain times.

Whereas Reiner argues that public confidence has 'haemorrhaged' since the 1950s (1992; 763), Loader and Mulachy conversely suggest that the fractured conditions of postmodernity are precisely those 'under which some

citizens will cleave to the institution of policing as the symbolic representation of an order, security, discipline, and authority that otherwise seem so precarious' (2003; 34). This desire for the symbolic representation of order chimes with recent research, notably neo-Durkheimian analyses that have focused on the symbolic and expressive functions of policing (Jackson and Sunshine, 2007). This work moves away from postmodern postulation to empirical analysis; as Jackson and Sunshine argue, '[w]e need work that strives for causal explanations, that accounts for the phenomenon in action, that identifies the generative processes that underpin trust and confidence' (2007; 219).

As a starting point, I want to take Wesley Skogan's asymmetry thesis (2006) which analyses the difficulties in achieving consent through police-public contact. Skogan's research is not predicated on postmodern quandaries, rather he questions the ubiquitous policy supposition that support for the police pivots on effective performance and catching crooks. Conversely, Skogan identifies asymmetry in the impact of encounters with police, whereby the impact of positive encounters is statistically equivalent to zero, whilst negative encounters have a disproportionately damaging effect. In short, all personal contact with the police is correlated with lower public confidence, which presents policy makers with an impasse. As Skogan concludes, '[n]o matter what you do, it only counts when it goes against you' (2006; 119).

Waddington's (1999) observation that given that the policing role is necessarily located on the periphery of social order, that all contact with the police is unsettling and a threat to the self, casts some light on Skogan's

findings. The disquieting experience of contact with the police, which Bitner describes as a 'tainted profession' (1970), may in part explain Skogan's proposition that all police contact carries negative connotations. Plurality and differentiation may be problematic for policing, however, as Bitner's description reminds us, policing simply is inherently a conflict ridden activity premised upon oppositional values. Moreover, it has always been the case that there is 'someone being policed against, whose assent to policing is bound to be brittle' (Reiner, 2010; 69).

Bradford et al have subsequently argued that Skogan's pessimism is premised upon an overly simple definition of public confidence based upon a single conjunction of police effectiveness and community engagement (2009; 24). Whilst broadly concurring with Skogan's thesis, Bradford et al identify an empirically distinct strand of public confidence, namely procedural fairness, which positively impacts upon the perception of police, independent of outcome. That all contact with police is correlated with negative opinions of police effectiveness is perhaps suggestive of reasoned recognition of the difficulties inherent in policing, conflated with broader representations of a crime saturated society. However, the public hold process, being treated equitably and being taken seriously by the police, above outcome. This provides a more optimistic foothold for policy development and improved relationships between public and police (ibid.).

Furthermore, the salience of equitable conduct extends beyond what is right and proper. Jackson and Sunshine (2007) argue that trust and confidence (which may be read as dimensions of legitimacy) in the police are shaped by perceptions of community values and local moral cohesion. This is an

Durkheimian stance in which crime and disorder 'demarcate the respectable from the disrespectable, and... communicate the strength of social bonds and the regulation of values, morals and norms' (ibid; 216). Here the public look to the police 'to be representative of community values and moral cohesion and 'exercise their powers fairly' (ibid; 230). Fair conduct thus carries both substantive and symbolic weight. Smith further argues that fair treatment reduces fear and anxiety, which is clearly salient in an era characterized by insecurity and vulnerability (ibid; 299). The experience of equitable treatment is not the source of trust (which concurs with Skogan), rather, 'we trust the police because we want to believe, if possible, that we live in a society where most people trust the police because a society in which most people trust the police will be far more secure than any other' (2007; 299-300). As Smith describes, this is essentially a leap of faith (ibid.) that is made independently of contact and experience. Accordingly, 'positive images of the police are best communicated by grand narratives and symbolic gestures, rather than boosting activity on the ground' (ibid; 298).

This proposition neatly returns us to Loader and Mulachy's proposal that the need for a singular symbol of social order is increased by the fractured conditions of postmodernity, rather than rendered irrelevant (2003; 34). If as Smith suggests, people want to believe in the police as a means of achieving ontological security, it follows that whilst confidence may undulate, the police are unlikely to experience a critical lack of support. And this may begin to answer Loader and Mulachy's insightful question as to why support remains so high, given the litany of crises and incompetencies detailed in part two.

Policy implications

What are the implications of this argument? Smith suggests that contact with the police may not be the primary determinant of legitimacy, however police officers can, and have, undone trust through inequitable conduct; not completely and irredeemably, but it is clearly preferable to minimize damage.

Smith proposes that legitimacy should be reframed in the discourse of ethics, values and professional standards (2007; 302). For policy, an understanding of police working rules is imperative. Smith and Gray's (1983; 171) distinction between working, inhibitory and presentational rules identifies the space between policy and practice. Working rules guide conduct, in contrast to presentational rules which 'give an acceptable appearance to the way that police work is carried out' (ibid.), or hollow performance objectives (Smith, 2007; 302). If this gap is understood and translated into policy, an ethical policing framework might begin to redress broader societal division. This is partly a matter of cultural politics. Jock Young suggests that cultural injustice (being disrespected, rendered invisible or culturally subordinate) amplifies ontological insecurity and generates a hardening in order to 'combat their humiliation and exclusion from society' (2007; 35). Cultural inclusion conversely offers the prospect of repairing 'tense and conflict-ridden' relationships between the police and the 'young, the unemployed, the economically marginal and blacks' (Reiner 1992: 770).

If the police function is deemed part symbolic, it matters who the police are and who they represent. Reiner advises that 'the personnel of the police

must represent the more diverse and plural demographics of postmodern society' (ibid; 781). In short, the overwhelmingly white male police population must be tempered by the inclusion of women and ethnic minorities (ibid.). On the point of social division, we should note that the survey measures of support to which Loader and Mulachy refer are drawn from across the entire population. Yet legitimacy is disproportionately problematic in certain sectors, namely those marginal and excluded populations to whom policing is acutely relevant; those groups which endure disproportionate levels of victimization, alongside the contradictory burden of over-policing and under-policing. In short, symbolic analyses of the policing function should clearly map socio-economic variation in the expression of legitimacy in order to carry policy value.

Finally, policy premised on the 'consumerist ethos' is unlikely to secure consent. As Reiner describes, 'the police elite has turned to the language and