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*What Activists are Up Against: Protest Management in the United States*

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*Abstract*

This paper addresses the phenomenological interactions between activists and police officers at rallies, demonstrations, protests and in other forums of dissent. The argument is that the policing of dissent has changed very quickly and in remarkable ways in recent years, the social consequences and implications of which we have little idea. In section one, I address the function of political protests in contemporary societies. I then go on to address questions of police abuse of power and the changing nature of protest policing. In the third section, I look at the police armory and address the use of tear gas, pepper spray, rubber bullets and other devices at protest events. The fourth section attempts to explain police repression of political speech, while the conclusion reiterates the importance of protest events for democracies.

## **What Activists are Up Against: Protest Management in the United States**

In this essay, I offer a primer on what political activists are likely to come up against in their confrontations with police at demonstrations, rallies, marches, and in other forums of dissent. At the time of this writing (Spring 2004), there seems to be a relative lull in political protests in the United States, but it is a hiatus that comes on the heels (in the Fall of 2002 and the Spring of 2003) of some of the largest and well organized anti-war protests and police show of force since the Vietnam War. Whether the climate of protest and confrontational interactions with police in the United States will once again reach a fever pitch or will continue its low ebb is uncertain. Sooner or later, however, there will again be mass demonstrations to which police and security agents are called to manage, these events will be carefully managed by the state, and the behavior and actions of protestors will be monitored and recorded.

These are difficult times for activists in the US as protest is viewed either indifferently or negatively by much of the American public. As Edward Hoagland reminds us: “Dissent in its many gradations is disagreeable, [and it] doesn’t win popularity contests...Most of us don’t want to dispute with a more powerful constituency or to challenge an injustice that hasn’t injured us” (2003, 33, 35). The strange culture of contemporary America and the “belligerence, bemusement, defensiveness and demagoguery” (Younge 2003, 2) that passes for politics today are certainly forces with which activists must reckon. Obviously in times of war things get dicey. More foundationalist ideologies come to the fore and an “us” versus “them” mentality becomes prevalent. But one should remember that political activists in the US were already facing a great deal of political repression well before the September 11 attacks. For example, in 2000, activists at protest rallies faced “pre-emptive raids, restrictions, arrests and seizures,” as well as other forms of police brutality (Allen 2000, 1). When police actions go too far, one begins to

question how such policies are consistent with democratic processes. Because of the power that they wield, the actions of law enforcement officers must always be respectfully scrutinized. As Bessel and Emsley remind us, “the police officer is the only individual legally authorized to use...force in his day-to-day dealings with the population of the state,” (Bessel and Emsley 2000, 4). Partly because of this mandate, police officers play a crucial and influential role in controlling the movement and expression of dissent. How such control is exercised is the focus of this paper.

Keeping in mind Michael Walzer’s (2003, 4) comment that those critical of the practices of the state must take care not “to pretend that there really isn’t a serious enemy out there,” it seems clear that agents of law enforcement have more power today than at any other time in recent memory. In the tradition of scholarship that runs through the work of Max Weber, Louis Althusser, and Herbert Marcuse, it seems important that we too analyze just how power is operating in different realms of political struggle, and what this all means for the furtherance of democracy and civil society. My point of departure is similar to that of Gary Marx who, a half-decade ago noted that, “Western democracies...have come a long way in the institutionalization of a more tolerant and humane response to...forms of organized protest (Marx 1998, 253). The main point of this essay is to ask whether or not this claim can still be supported

Nader (2002) adequately captures aspects of what I am talking about in his description of the 2000 Republican National Convention in Philadelphia. As he puts it:

The area was like a military encampment without tanks. Security personnel, police cars and vans, high fences, multiple checkpoints, and trailers with security equipment were omnipresent...420 people were arrested, mostly on misdemeanor charges...Consolidated

mass trials brought forth widespread testimony of violations of civil liberties and discriminatory police actions. (Nader 2002, 2-3, 11).

My point in this paper is not, in the words of Attorney General John Ashcroft, to “scare peace loving people with phantoms of lost liberty” (St. Clair 2003, 4). I simply wish to point out some sociological observations that I see as important in the way state and quasi-state forces are managing dissent. The basic argument is that the policing of dissent has changed very quickly in remarkable ways in recent years, the social consequences and implications of which we have little idea. In the first part of this paper, I address the functions of political protest in contemporary societies. I then go on to discuss questions of police abuse of power and how the policing of protest has changed in recent years. In the third section, I look more specifically at the police armory and address police use of tear gas, pepper spray, rubber bullets and other technologies. The fourth section attempts to explain police repression of political speech, while the conclusion ties the various threads of the argument together and reiterates the importance of protest events for democracies.

### *PROTEST EVENTS AND THE MANAGEMENT OF DISSENT*

Protest events are key to democracies and for continued democratization, as recent events in China (Luk 2003) and the Republic of Georgia illustrate in vivid detail. For citizens of democracies, political protest represents the closest thing to direct action that these societies have to offer. For citizens of non-democracies protest events are a way to push their societies towards greater democracy. Recognizing, of course, that it is “presumptuous to make suppositions about the motives of those who [take] to the streets” (Yaqub 2003, 1), I think we can say without reservation that political protest signifies that a different order is still possible. As law professor

Kreimer (2001, 156) puts it, “Direct disruption of daily life forces a community to take notice; thus, civil disobedience and disruptive demonstrations have become a standard element of insurgent activity in America during the last half of the twentieth century.” Chang sums up the importance of dissent to American democracy in the following:

Since the Boston Tea Party, confrontational protest activities have played a vital role in the struggle for political and social justice in the United States. Our nation’s independence from Great Britain, the abolition of slavery, suffrage for women, the passage of federal civil rights legislation, and the withdrawal of American troops from Vietnam were won not by academic debate but by vibrant mass movements that challenged the status quo with passion and verve. (Chang 2002, 109)

To say the least, such views are usually not taken by law enforcement authorities, who make it clear that there are strict boundaries to democratic or insurgent impulses, and that they will on occasion “straightjacket political dissent” (Meyers 2000, 40).

At smaller protest events ignored by the media of large cities, such repression may be relatively benign, perhaps nonexistent. At larger gatherings where the stakes are higher, protest management becomes more of an issue, sometimes involving abusive tactics. For example, a recent *New York Times* article described a videotape compiled by the Independent Media Center that documented “police using pepper spray on penned-in people, backing horses into crowds, going after demonstrators with their nightsticks and forcing people back with metal barricades” (Dewan 2003, 3B). Similar forms of police abuse of authority were seen three years earlier, at the April 2000, WTO demonstration in Washington, DC. At that event,

[L]aw enforcement agents surveilled activists, infiltrated meetings disguised as participants, conducted a mass arrest of more than 600 nonviolent marchers and

bystanders, mistreated people in custody, confiscated First Amendment protected literature, violated a contract with protesters' lawyers, and used the fire department — thereby avoiding the need for a warrant — to search and then shut down the organizing headquarters.... Against departmental policy, police frequently failed to wear identifying badges, refused to give shield numbers, arrested peaceful protestors without a warning to disperse, and they may have interfered with the phone lines of lawyers handling arrests.

(Allen 2000, 2)

The threat that protestors take to the streets is completely symbolic, yet hugely important. Protest events are cultural productions that exemplify what is indispensable to living in a democratic society. As Lapham (2003, 35) puts it: “We can't know what we are about, or whether we're telling ourselves too many lies unless we can see and hear one another think out loud.” Poetry readings, drum circles, chants, music, speeches, puppetry, marches, the stand offs with police, the civil disobedience and the subsequent ritual arrest are all essentially just ways of transmitting information, of “thinking out loud.”

Elites, of course, have their own views of demonstrations. During the 2003 MLK protest in Washington, D.C. a quote was attributed to President Bush claiming that protesting “is a time-honored part of American tradition and it's a strength of our democracy” (Woodward 2003, 1). This upbeat assessment changed rather quickly, however, and the administration's attitude soon became dismissive and chiding. Following massive anti-war demonstrations in hundreds of cities around the globe, “President Bush compared the event[s] to an ad agency's hired focus group, the expression of nonserious and uninformed opinion” (Lapham 2003, 40). Yet when the right to demonstrate is curtailed, it leads a crisis of legitimacy as citizens no longer feel they are living in a free and democratic state. In the United States today, we seem to be perilously close

to law enforcement targeting people “based on political ideology rather than on suspicion of criminal activity” (Chang 2003, 36). Activists today are caught up in new webs of power. The violent effects of tear gas, the deep bruises from plastic bullets, and the tinnitus in the ears from concussion grenades, all indicate that the ‘body’ is still the main target of the police. But the aim is not to permanently maim, disfigure or kill. Rather, we are moving in the direction of a new antiseptic paradigm of protest management that allows the police to subdue dissenting bodies without actually touching them in any way. The following section spells out some of these ideas in greater detail.

### *POLICE POWER AND PROTEST*

The issue of police abuse of power generates a lot of emotions. As noted by *Americans for Effective Law Enforcement*, the “use of force and weapons by law enforcement officers is one of the most visible and controversial aspects of policing” (AELE 2001, 10). When politics and protest is added to the mix, the result becomes all the more flammable. On the one hand, stakeholders and commentators suggest that law enforcement should be given ample leeway in dealing with activists. On the other hand, legal analysts, academics and activists, suggest that the right to dissent, embodied in the First Amendment of the US Constitution is one of the key foundations upon which democracy rests. These critics also point out that the power of the police has increased enormously in recent years. Police today “have more of everything than they had ten years ago: more money and officers; a whole new tool belt, from more sophisticated computer crime-mapping to more lethal side arms; new theories of crime control” (*The Nation* [1999] 2001, 125). Whatever one’s particular political perspective, it is clear that “police

practices can make a substantial contribution to the fate of a demonstration” (Wisler and Tackenberg 2000, 121).

Protest gatherings are collections of masses of people and the close physical contact between people and the new ways of putting bodies in motion is a key element in the experience. Police and security forces also have their own methods of physical presencing, using a wide variety of different vehicles, technologies, and even animals. Their actions span many governmental agencies. In the case of the 2000 IMF/ World Bank protest in Washington, D.C, “armor-clad D.C. police, U.S. Marshals, National Guard Troops, and FBI, Secret Service and ATF agents, as well as neighboring law enforcement agencies that backed them up” (Allen 2000, 1) were all involved. Such an awesome law enforcement presence assures that the chances of activists overcoming or subduing law enforcement in a protest setting are absolutely nil. As Nader (2002, 12) comments: “There is an undeniable pathos associated with these rallies and demonstrations, and the power structures know that these ‘we protest and demand’ rallies are harmless venting of steam.”

In spite of occasional incidents that may indeed be beyond the control of the police, order will be maintained. Central to such maintenance is the controlling of protestors’ bodies. Boundaries are drawn up which delineate just where and how protest is to take place. The event is imagined and emerges in spatial terms, and the geography of the social environment (e.g. whether the demonstration goes down narrow versus wide streets or is limited to certain areas of a city) can have a big impact on its success as a political tactic. There is a social ecology to protest events, one noted by policemen and authors of riot control manuals.

As well as becoming targets of directed or incidental physical intimidation, protestors also undergo forms of psychological intimidation. It is not uncommon for law enforcement to

videotape protestors at rallies, as well as utilize other audio-visual and aerial surveillance equipment. This information is important “to identify agitators, to study tactics, and sometimes can be useful in public relations” (Applegate 1976, 410). Insurgents should know that they are being documented. The message conveyed by these tactics is that if you act out, you will be watched. Rather than being viewed as a concerned citizen interested in righting manufactured wrongs, the protestor is demeaned, transformed into a piece of data and instantly becomes an object of suspicion.

Another form of psychological intimidation is the appearance and behavior of the law enforcement agents. The importance of psychologically subduing opponents is repeatedly stressed by Applegate (1976, 304), who writes: “The better the appearance, the more psychological effect it will have on the mob.” He mentions the importance of “snappy” uniforms and gloves, the cognitive effects of tear gas, various “riot-control” formations that should dissuade the “mob,” and the “psychological impact caused by the weird appearance of the gas-mask wearing, grenade-throwing police elements” (Applegate 1976, 361-362).

Beyond such concerns, there are also racial and class questions that one should address. Are insurgents, protestors, activists, demonstrators, and agitators of lower class background and of minority racial or ethnic identity more at risk of being physically intimidated at protest events than say, Yale undergraduates? The same sociological factors (e.g. race, ethnicity, immigrant status, perceived class background) that are present in many cases of police brutality proper (see Nelson 2001), are also plausible candidates in explaining forms of more direct political repression. It seems clear that if you are a privileged member of society — i.e. white, middle to upper class — you will be more likely to be given more leeway in your forms of associations and types of public expression. If you are, say, a poor immigrant or a person of color, you may not

experience the same constitutional freedoms, nor would you be able to as easily absorb the costs of, say, a wrongful arrest or getting charged with failure to disperse.

### *THE POLICE ARMORY*

Although police officers and other security agents are still trained in direct bodily confrontations with activists (e.g. martial arts and wrestling techniques, as well as more primitive methods of arresting movement), they generally seem to keep their distance, at least at first. At large protests, horses are an effective way of doing just this. At the February 15, 2003 demonstrations in New York City, “there were horses that were turned around and backed into crowds, [and] there were horses on the sidewalk” (Dewan 2003, 3B). Employing these animals lets the police better control the movement of crowds. Another benefit of horses (as well as dogs), is that they seem to be relatively immune to the effects of tear gas (Applegate 1976), which I will be discussing in more detail below.

Activists need to realize the very real threats that they face when demonstrating at protest events. Take as example an unauthorized October 25, 2001 anti-war march on Senator Joseph Lieberman’s Hartford, Connecticut office: “Cops beat and pepper-sprayed a 61-year old asthmatic man, cracking two of his ribs. Four or five other demonstrators were hit with pepper spray, and two marchers were thwacked with batons. Police drove their cars diagonally into the crowd to force it off the rush hour streets and onto the sidewalk. And bicycle cops rammed their bike tires into the backs of marcher’s legs” (Hoffman 2001, 1). The general public should know what tactics police and security forces have at their disposal, from the new plastic handcuffs that more efficiently detain suspects, to denials of food and water and lack of access to legal counsel.

McPhail, et al. (1999, 52) note three basic changes in the “technologies of public order policing [that] changed dramatically between 1960 and 1995.” First, “communication technologies,” changed as two-way radios, cellular telephones, and other communicative devices became common. Second, there were changes in police defensive technologies, such as “helmets, Plexiglas face masks and body shields, and protective clothing.” A third change may be seen in the new offensive technologies that have been added to the police arsenal, for example, “batons, tear gas, rubber bullets, and specialized firearms” (McPhail, et al. 1999, 66). Law enforcement agencies in the United States have a huge armory at their disposal. Police and law enforcement authorities maintain that such technologies are indispensable to crowd control, and allow them to perform their jobs while only minimally hindering the rights of protestors and the general public. Critics, on the other hand, point out the parallels between these sort of technologies and the use of attack dogs and fire hoses on African Americans during the Civil Rights movement in the South (Meyers 2000), and they are unnerved by the social implications of these devices.

At the November 30, 1999 “Battle of Seattle” protest, the police employed pepper spray, tear gas, plastic bullets, and other heavy-handed tactics, injuring many (BBC News 2001). Similar testimonies can be found from protests in other countries (Dvorska 2002). Employing such “less-than-lethal” technologies accomplishes two main goals. The first is that the immediate action of the protestors is controlled or curtailed. A second function is that, while less-than-lethal, these weapons are nonetheless harmful and can prove to be a major deterrent to acting in a similar way again. In the case of pepper spray, the subject is immediately taken over with paroxysms of pain (burning skin, eyes, inability to breathe, etc.). These usually pass without having much detrimental effect over the long term, but the unpleasant memories are

bound to remain. In the following section, I would like to comment on three technologies that have become especially prevalent in the management of protest in the US and around the world: tear gas, pepper spray, and rubber bullets.

### *TEAR GAS*

“Tear gas” is usually deployed in the context of moving or incapacitating large populations of actors. Admittedly, the use of tear gas in the United States pales in comparison with how these chemical agents have been employed in countries such as “Chile, Panama, South Korea and the Gaza Strip” (Hu, et al., 1989, 1). Yet tear gas is still very much a part of the US police armory, even if it is used only occasionally, and the United States has its own examples of tear gas being used improperly. According to experts, tear gas is “easily generated and promptly effective.... When a dense cloud of tear gas strikes a victim, the latter involuntarily closes his eyes and endeavors to keep them closed in an effort to escape the irritation and discomfort. A feeling of helplessness and personal panic is created” (Applegate 1976, 327). According to the *Organization for the Prohibition of Chemical Weapons*, tear gas effects “the airways and sometimes also the skin, particularly in moist and warm places,” and “in situations of massive exposure... may also cause vomiting” (OPCW 2002, 2). Yet, it has also been found that “sensitivity to tear gas varies considerably between different individuals,” and factors such as “emotional state, motivation, physical activity, ambient temperature and humidity” (OPCW 2002, 2) can play a role in its effectiveness.

At the Summit of the Americas Protest at Quebec City in 2001, it was reported that both chloroacetophenone (CN) and chlorobenzylidene malonitrile (CS) gases were used. As one observer notes, “there are also long -term effects” from exposure to tear gas:

Respiratory difficulties, skin irritations, rise in blood pressure, disorientation, flu-like symptoms, fatigue, and tremors have all been reported as resulting from CS gas exposure. Other side effects found included irregularities in some women's menstrual cycles after the summit. Many women reported to have suddenly and unexpectedly started to menstruate during or after the protests, a sign that the gas could contain hormone disrupters. In vitro lab testing has shown CS gas to be clastogenic (disrupts chromosomes), and mutagenic (has ability to cause inherited genetic changes in chromosomes). (Van Drimmelen 2001, 2)

CS gas, “probably the most widely used gas internationally,” (OPCW 2002, 1) is much stronger than CN, and CR gas — dibenz (b, f)-1, 4- oxazepine — is even stronger still. The threshold concentration of CN gas on the eyes is roughly 75 times higher than that of CS, and its threshold concentration effects on the airways is about 13 times higher (OPCW 2002, 3). Other differences between these gases is that CN gas is “difficult to decompose under practical conditions, whereas CS can easily be inactivated by means of a water solution” (OPCW 2002, 1) – also known as the so-called “Seattle Solution,” a water based antidote to tear gas often carried by activists.

Some medical researchers have scrutinized the use of tear gas. For example, Hu, et al. (1989, 1), in an article in the *Journal of the American Medical Association* write that:

The use of tear gas in recent situations of civil unrest...demonstrates that exposure to the weapon is difficult to control and indiscriminate, and the weapon is often not used correctly. Severe traumatic injury from exploding tear gas bombs as well as lethal toxic injury have been documented. Moreover, available toxicological data are deficient as to

the potential of tear gas agents to cause long-term pulmonary, carcinogenic, and reproductive effects.

These doctors conclude by saying that “the pattern of use of the tear gas, as well as its toxicology, raises the question of whether its further use can be condoned under any conditions” (Hu, et al. 1989, 7).

### *PEPPER SPRAY*

Partly because of some of these concerns, police have turned to another form of tear gas — pepper spray — that is perhaps the most pervasive less-than-lethal technology in the police arsenal today. Pepper spray (oleoresin capsicum) has advantages over CS and CN gas, in that “it does not contaminate the patrol car or officer, it can work on dogs, [and] it seems to be more effective on individuals who are out of control” (Pliant 1994, 11). Pepper spray comes in many forms: small aerosol canisters, pellets, as well as pepper bombs.

According to the Department of Justice (Chan 2001, 1), the debilitating effects of “the pepper plant [have] been known for centuries,” especially in Japan and China. Although pepper spray was invented in 1969 (Wright 2001), the FBI did not approve it as safe until twenty years later. Interestingly, “the agent responsible for the evaluation was later convicted of taking a \$57,000 bribe from a pepper-spray manufacturing company” (Wright 2001, 10). Although pepper spray “is not regulated by the Food and Drug Administration, the EPA or the Consumer Product Safety Council” (Pliant 1994, 12), it is believed that “most law enforcement agencies in the United States have authorized its use” (Chan 2001, 1). Pepper spray works by irritating “the skin, eyes, and mucous membranes of the upper respiratory tract” (Chan 2001, 1). Law enforcement officials credit pepper spray “with decreasing injuries among officers and arrestees

by reducing the need for more severe force options” (Chan 2001, 1). Controversy around its use persists, however, as illustrated by an editorial in the *Seattle Times*:

Pepper spray holds a strange place on an officer’s continuum of force. It can be the safest way to subdue a violent suspect, but it is also an excruciatingly painful technique that rarely leaves marks. More than sixty people have died in police custody in the United States after exposure to pepper spray, according to Amnesty international. Most were attributed largely to other factors, like positional asphyxia from hog-tying. But pepper spray’s effects on respiration clearly can pose a serious health risk for people with asthma or other conditions. (*ST* 1998, 2)

In December 2001, the National Institute of Justice issued a research brief regarding “Pepper Spray’s Effects on a Suspect’s Ability to Breathe” (Chan 2001, 1). Noting that “a number of arrestees exposed to OC ... have died in custody,” a group of researchers set about to study the issue. Getting their data from the spraying of 34 volunteers from the San Diego Regional Public Training institute, this study found that pepper spray is a legitimate “use-of-force option to subdue and control dangerous, combative, or violent subjects in the field” (Chan 2001, 1). They found “no significant risk to subjects in terms of respiratory and pulmonary function” (Chan 2001, 6). Chan and his colleagues note, however, that there are many limitations to their study and that laboratory conditions will never match those of the field. Certainly, pepper spray is safer to CN or CS gas, but one wonders whether pepper spray may be over-employed or used in inappropriate situations because it seems relatively benign. It is also quite difficult to clearly estimate the true medical effects of pepper spray because, like tear gas (see Hu, et al. 1989) there is hardly any, if any, epidemiological inquiry at protest events where the gases are actually deployed.

Recently, authorities have been experimenting with pepper-ball guns that shoot marble sized ammunition filled with OC. The balls launch at “speeds that will reach 350 to 380 feet per second.” As noted in *Corrections Professional*, when used for “dispersing crowds, PepperBalls can be fired from as far as 100 feet away” (CP 2001, 1). In 2001, it was estimated that 350 public safety agencies in the US employed this technology.

### *RUBBER BULLETS AND BEANBAGS*

Another less-than-lethal technology at the disposal of the police involves “rubber” or “plastic” bullets. The terms betray their effectiveness and danger. In 1997 while in Ireland during a particularly contentious marching season, I remember seeing a photograph of a teenager who had been struck in the eye with one of these things – the sight was grisly and I wondered if he would ever see out of it again. As one observer puts it: “Those who have never seen [rubber bullets] think they are harmless, like throwing jelly. But they are several inches long, rock hard, and they come out of a gun at 160 miles per hour” (Norton-Taylor and Cowan 2001, 2). Harken (2002, 1) writes that the “baton round” or “anti-riot baton...was developed solely for use against unarmed civilians and not for use against ‘armed insurgents’ or ‘terrorists.’” “It is not an anti-insurgent or anti-terrorist weapon. It is an anti-civilian weapon,” he states. Plastic bullets are now commonplace at large scale demonstrations. During the 2001 Summit of the Americas protest in Quebec, the *Toronto Star* reported that the Royal Canadian Mounted Police used a total of 4,709 canisters of tear gas and 822 plastic bullets during the protest. At close range — roughly 120 feet or less — plastic bullets can do substantial damage to the body, resulting for example, in smashed bones, embeddings, maimings and disfigurements.

Another weapon used for crowd control is a device known as the “Flex Baton 12-gauge shotgun, which fires ... ‘socks,’ or ‘bean bags’ which are filled with lead pellets” (Ceja 2001, 1-2) and which can travel speeds of 280 feet per second. One Cincinnati police chief said they were “very effective” for what they were used for without causing major injuries. Another agreed, revealing that he instructs his officers “to either bounce them into the legs or [into the] chest area” (Prendergast and Clark 2001, 4). Medical reviews of the use of bean bag rounds are not as sanguine on the matter. A recent study of bean bag shootings by the Los Angeles Police Department, for example, indicates that the bean bags “can cause a variety of serious injuries, even death.” Researchers described “cases in which beanbags penetrated the eye, chest, abdomen and leg of subjects, and others in which spleens were ruptured and internal organs damaged” (DBNJ 2001, 1).

### *THE FUTURE OF POLICING TECHNOLOGIES*

There are other devices in development that might be used in controlling protest events in the future. This is a huge industry, and was so even before the September 11 attacks, when it was estimated that “the US government [would] spend more than \$23 million on non-lethal weapons research.” Significantly, in many cases, “no independent research is carried out before a weapon is deployed” (Wright 2001, 10). In November 2002, the *Associated Press* reported that the National Research Council, “an arm of the National Academy of Sciences, recommended that the Navy and Marine Corps actively pursue the “development of nonlethal weapons such as bad smelling chemicals to control crowds or psychological methods to calm them,” (Schmid 2002, 2, 1). Products that have already been studied “are the possible use of drugs such as Valium in a spray form to clam rioting crowds” (Schmid 2002, 2). Other products under

development by the US military include “liquid projectiles to microorganisms that gobble up highways and runways, making them unusable, sticky sprays that make floors and stairs a gummy mess and foul smelling fogs” (Schmid 2002, 2). Although the National Research Council expressed an interest in these technologies just in the context of “humanitarian and peacekeeping missions” (such as defending military bases), it is not inconceivable that they may have other uses. Indeed, the current and far-reaching overlap between military and civilian law enforcement suggests that these technologies could at some point also be used in the capacity of fighting so-called “domestic” threats to security. During the Vietnam War, we may remember, CS gas was used not just against demonstrators, but also against the Vietcong. One device in particular was known as the “Mighty Mite...a continuous spray device used in caves and tunnel systems” (Hu, et al. 1989, 4). Even more astounding is research underway at the Institute for National Security Studies at the United States Air Force. The descriptions of projects such as “acoustic bullets,” “curdler units,” as well as “invisible powders,” and the “projection of soldier images,” (Harpers 2003, 17-19) just to name a few, indicate that we are light years away from the days when the goon squads just barged into the union hall smashing heads. A new, highly structured and organized form of protest management seems to be well underway.

#### *DISCUSSION: COPS AND FREE SPEECH*

A discussion such as this begs the question of when police are just doing their jobs or “simply responding to nasty provocation” (Chapman 2003, 14) and when they are in fact stifling dissent. Protestors often act in illegal ways, goes the argument, and when they do police use of force is entirely appropriate. Schofield (1994, 3) writes that: “[T]he government may regulate a marcher’s use of the streets based on legitimate interests, such as: 1) Accommodating conflicting

demands by potential users for the same place; 2) protecting those who are not interested onlookers...from the adverse collateral effects of the speech, and 3) protecting public order.” In reality however, things are not so cut and dry. With the right interpretative scheme, the above schematic actually gives police a fair deal of discretion in determining legitimate political expression. As such, it is urged that “law enforcement decision makers should obtain competent legal review of any proposed restriction on expressive activity” and “receive legal training on the basic principles of first amendment law” (Schofield 2001, 10).

In some situations, police can simply choose not to act, thereby neutralizing activists by simply ignoring them. Firestone (2003, 13A) chronicles such tactics at a rally in Washington, DC:

One of the first to try [to get arrested] was Rabbi Arthur Waskow, 69, a writer and teacher from Philadelphia...But Rabbi Waskow could not make it over the barricade. A police officer pushed him back and then refused to arrest him. Other protestors had no better luck getting arrested....The police pushed them back to the curb. One officer shoved an elderly woman off her feet. She hit her head on the curb and was unconscious for several minutes before an ambulance took her to a hospital.

This example demonstrates the fact that police officers always have a certain amount of discretion at their disposal. Not all cops react to members of the public in the same way. Law enforcement is not a uniform, monolithic entity and some police officers may more willing than others to grant protestors leeway in expressing their freedom (Schmallegger 2003).

Criminologists such Walker (2001) have described “courtroom work groups” the differential cultures of which are used to explain variations in criminal prosecution. A similar kind of discretion can be found in the interaction between citizens and police officers.

Police discretion may be the result of a dynamic involving a number of factors including the perceived background of the dissenter, the background of the law enforcement officer(s), the culture of the law enforcement organization of which the officer is a member, the specifics of the situation (including, for example, whether or not the dissenter is displaying “contempt of cop”), and the threats of perceived harm to civilians, private property, law enforcement officials, or the protestors themselves. Such discretion may be kept to a minimum at larger protest events where law enforcement is organized in a more mechanistic fashion with a strict chain of command, but individual officers must always struggle to determine the criminality of certain forms of behavior and they should know the difference between real danger and symbolic expressions of disgust.

On a psychological level, it seems that cops may be “hard-wired” to overreact to certain situations. Schmallegger (2003, 226-227) suggests that it is possible to put together a “picture of the police personality” which can be described with the following words: “authoritarian, suspicious, insecure, honorable, cynical, hostile, loyal, secret, conservative, individualistic, efficient, prejudiced, [and] dogmatic.” More than half of these characteristics, it seems, would conflict with the aims of protestors, who (at least in the case of recent US history) are largely non-authoritarian, idealistic, passive, liberal, tolerant and open.

Many in law enforcement may also feel that they need to be “tough” when policing demonstrations because failing to do so could lead to further concessions down the road. Such an attitude is perpetuated in various para-military literatures. As one riot-control expert writes, “A widespread public disturbance which is not immediately suppressed but instead is permitted to grow becomes a threat to the effective functioning of legally organized government. . . . Public demonstrations frequently are the planned forerunners to mob violence” (Applegate 1976, 363, 386). By acting decisively and even a bit irrationally, the state can stage a symbolic event the

protestors can only dream of emulating. This is the interesting thing about instances of police use of excessive force: The premier exemplar of bureaucratic-legal authority behaves in a very irrational way. “I could see in their eyes all logic had done,” says Shahid Malik, a commissioner for the London-based Commission for Racial Equality, after he had been hit in the face by a riot policeman using his shield as a club (Chrisatis 2001, 1). Applegate mentions the feelings of “helplessness and personal panic” that infect someone who has been tear-gassed. The *OPCW* states that reactions to tear gas are “so strong that victims cannot behave rationally” (*OPCW* 2002, 2). Excessive (and irrational) use of force at protest rallies is a way for the state to reproduce its unquestionable authority. However brief, these instances of police brutality and absolute force are ceremonies of degradation and humiliation — the sheer dominance of one class over another.

On an even deeper level, police abuse of activists could also be explained in terms of what Kraska (1998) has described as the hyper-masculinity embodied in the militarization of American police forces. This militarization comes in a number of forms. First, many military personnel, after serving time, often find that working in law enforcement is a job for which they are well qualified and a good fit. Second, you also see a sort of culture of militarism within police departments, in the context of various “wars” against populations and crimes — which in some cases can become quite stylized and emotional. Whether or not such observations point to a new hyper-masculinist “style of policing,” to supplant or build upon the “watchman, service and legalistic” (Schmallegger 2003, 215) policing styles, is an open question and one that could be answered through empirical research. At present, however, I am inclined to trust the findings of Fitzsimmons ([1998] 2001, 78), who notes: “International research shows that across many cultures women police officers use force less frequently than their male counterparts, are less

authoritarian when interacting with citizens and lower-ranking officers, have better communication and negotiation skills, and are more likely than male officers to diffuse potentially violent situations.” To my knowledge, female law enforcement officers are rarely, if ever, dispatched to demonstration or protest duty (at least at events that occur on a relatively large scale), either in the U.S. or abroad.

Undoubtedly there are situations when police use of force is entirely justified, and there are certainly, too, instances of law enforcement trampling upon constitutional rights of citizens and non-citizens alike. A current trend seems to be for law enforcement authorities to overestimate the potential harm perpetrated by political protestors, and in so doing often act out against and harm protestors themselves. At the 2000 Democratic Convention in Los Angeles, police exaggerated the threats of activists in remarkable ways. As Palermo (2001, 1) writes, “when a few protestors threw objects at some officers in an isolated area, the police ordered the dispersal of more than 10,000 demonstrators.” Similar dynamics were perceived at the 2000 Republic Convention. As Nader observes: “The Philadelphia police prepared for thousands of arrests and detentions with so much manpower that the police outnumbered the demonstrators. ... They employed helicopters, motorcycles, patrol cars, full-body armor, sprays, tear-gas canisters, rubber bullets, plastic handcuffs, night-seeing cameras, and who knows what else that was not observable” (2002, 10). It is difficult to see how such a show of force is necessary in a land where the values of freedom and liberty are so strongly cherished.

For a more recent example, we may turn to the November 2003, Free Trade Area of the Americas protest in Miami. At that demonstration, 2,500 police officers managed 10,000 protestors. By comparison, when US President George Bush visited London a couple of days later, 5,200 British police officers and other agents managed to control the roughly 100,000

demonstrators who had turned out to protest Bush's visit. In Miami, police used tear gas, rubber bullets, concussion grenades and stun guns (Greenhouse 2003; Lush 2003). As Greenhouse (2003, 25A) notes, "Many demonstrators said the police were too aggressive, too numerous, and too intimidating...Some residents said that when they approached to ask a question, some officers began to draw their guns." Cries of police "overkill" were met by official police statements that this was precisely the intended effect. A Lieutenant and spokesman for the Miami Police Department said: "Everything that we're doing is falling into place like a well oiled machine...I believe we have been having success so far ...*because of the show of force*. People who have been around here for a few days see we are well trained and well manned" (Greenhouse 2003, 25A, emphasis added).

French sociologist François Dieu has classified three distinct types of violent force used by police officers. "*la violence instrumentale*, used by the police for tasks justified by their legitimate authority; *la violence dérivée*, a by-product of the former when individual policemen are carried away by panic or accident and strike out unjustifiably at those who just happen to get in the way, and *la violence déviante*, which is, by definition, inexcusable offending" (Bessel and Emsley 2000, 4). A civilized society would demand that the latter two forms of police violence be kept to an absolute minimum, and that communities are provided with institutional mechanisms to challenge police authority should any abuses occur. Other models which might provide insights to scholars and movement activists are offered by della Porta, who has documented five unique policing styles at protest events:

A model of cooperation, based on collaboration between the police force and demonstrators, and an inconspicuous police presence; a model of negotiation, based on a more active police presence with the objective of mediating between the demonstrators

and the ‘nondemonstrators;’ who are said to suffer the disruptive effects of protests; a model of ritualistic standoff, based on a more ‘aggressive’ police presence, but often at a distance; and a model of total control, based on massive presence and close involvement of the police forces; and a model of total control, based on a massive presence and close involvement of the police forces. (della Porta and Reiter 1999, 8)

Future research would do well to see how applicable these styles may be to protests and demonstrations in the United States. McPhail, et al. (1999, 50) suggest that the policing of protest events in the 1990s was much different than what it was in the 1960s. They argue that in the former period, the policing of protests could be described with an “escalated force” model, while in the latter period a model of “negotiated management” became prevalent. It would be interesting to see if the “negotiated management” model still holds up, or if negotiations have broken down and law enforcement in the post 9/11 era is more inclined towards unilateral, authoritarian action, possibly what della Porta means by a “model of total control.”

### *CONCLUSION*

So, where does all this leave us? As a way of mitigating police repression of activists, here are two relatively minor suggestions: First, law enforcement at all levels of policing and intelligence should become better aware and apprised of constitutional issues and the rights of activists. As stated in a report by the Industrial College of the Armed Forces: “A fundamental principle of a democracy is the right of citizens to dissent” (Schlotterbeck and Mansinne 1970, 37). This is a principle which many policemen in the United States do not seem to properly understand. Police brutality (Nelson 2000) is an irrational form of discipline and authority that directly contradicts the ethics of law enforcement officers (Schmallegger 2003).

A second suggestion is for protestors who feel that their rights have been aggrieved or assaulted to legally challenge the actions of the state or other security forces. After the 2000 Democratic National Convention in Los Angeles, the National Lawyer's Guild filed a lawsuit against the police claiming that the latter "has established policies to interfere with ... political marches and rallies." The policies, the suit claimed, were fourfold: "[T]o end or bar lawful demonstrations, to attack harmless protestors with nonlethal weapons, to prevent people from joining or leaving marches and rallies and to circle low-flying helicopters over demonstrations to silence political expression" (Palermo 2001, 1). More recently, after the 2003 FTAA protest in Miami, the United Steelworkers of America called on Congress to investigate whether authorities "had systematically intimidated marchers and other protestors" (Aguayo 2003, 18A). Calling for such investigations and filing such lawsuits may be costly, draining and time consuming, but they can be an effective way of reaching a broader public.

In general, it seems to me that although the threat of violence is always a possibility, governmental and security forces with all their training and intelligence should be able to ferret out truly violent or hazardous protestors from non-violent ones. In fact, bouncers in public drinking establishments and at rock and roll concerts do so all the time. In Philadelphia during the 2000 Republican National Convention, the police conducted a preemptive raid on a warehouse that protestors used for making puppets, signs and banners for the protest (Meyers 2000). It is difficult to see how such actions reduce crime or protect the public. For a tiny percentage of demonstration attendees, it is true, political protests provide the same sort of adrenaline rush offered by football hooliganism (see Buford 1991) – an aggressive form of masculinity which most would agree is not effective in promoting democracy. But my sense is

that most protest goers agree that such acts are harmful to their cause and distance themselves from such “Black Bloc” tactics.

This essay has addressed some dimensions to the policing of protest in contemporary societies. Most of my focus has been on the United States, and it would be interesting to look more thoroughly at cross-national trends and comparisons. It is common for national law enforcement agencies to assist their counterparts in other countries in managing large-scale protests, and it would be interesting to know more about these collaborations. Of course, focusing simply on how activists are treated by the police obviously does not adequately capture the full spectrum of political power and repression in contemporary America. In future work I hope to provide a more comprehensive analysis of what activists are up against by examining the management of dissent in a number of different institutional forums.

As far as the police are considered, we should remember that, beneath their shiny armor, they are human beings who have the ability to discern the ethical implications of their actions and change their performances. As Marx observed, “Not the gods, not nature, but only man himself can be this alien power over man” (Marx [1844] 2002, 40). Men and women of law enforcement can make decisions about how much of an alien power they exert over the communities and people they police. There are many laws on the books that are never enforced, and whether or not oppressive or authoritarian dictates will be carried out ultimately depends upon officers themselves and how particular legal codes mesh with localized sentiments. In this regard, police officers can serve as an important buffer between the abstract edicts of politicians and the freedoms of everyday citizens. More generally, I concur with the medical doctors, Hu, et al (1989, 8) who write: “Often, public order might be better served if riot police are not called immediately to duty. It is the hallmark of repressive regimes to equate the voicing of dissent

with disorder.” There are, as we have seen, models of political protest where the police do not play an antagonizing role vis-à-vis protestors, but rather cooperate with protestors in expressing their rights and grievances.

Finally, it should be remembered that protest events quite often fail when they are not poorly organized, which is why there need to be many of them to make much of an impact on the public imagination. After a recent anti-war protest in New York City, a spokesperson for the police noted, “Force was used by police as a last resort. Some of the frustration over access to the protest area may have been avoided had the organizers done a better job communicating that they moved the stage” (in Dewan 2003, 3B). In many cases, protests simply do not come together and contingencies rule the day. Overcoming contingencies and expanding social networks are key to any sustained protest movement, and these will sometimes involve “major tactical shifts” (Wisler and Tackenberg 2000, 121) in dealing with the police and otherwise.

Protest events will long be used to change the course of social, economic and political policies. As Zinn (2002, 11) notes, it is crucial for citizens to “understand the laws used to stifle their voices.” It is my hope that this work has made some moves in this direction.

## REFERENCES

- Aguayo, T. (2003), 'Questioning Police Tactics at Protest', *New York Times*, November 25.
- Americans for Effective Law Enforcement*. 'AELE Alert, No. 3', found at:  
<http://www.aele.org/alert.html>.
- Applegate, R. (1976), *Kill or Get Killed*. Boulder, Paladin Press.
- Allen, T. (2000), 'Breaking Law to Keep Order', *In These Times*, May 29.
- BBC News*. (2001), 'The Spirit of Seattle', May 1.
- Bessel, R. and Emsley C. (2000), 'Editor's Introduction', in *Patterns of Provocation*. New York, Berghahn.
- Buford, B. (1991), *Among the Thugs*. New York, Vintage.
- Ceja, J. (2001), 'Non-lethal weapons crucial to breaking up 4<sup>th</sup> Ave. riots', *Arizona Daily Wildcat*, April 19.
- Chan, T. (2001), 'Pepper Spray's Effects on a Suspect's Ability to Breathe', *National Institute of Justice Research*, December.
- Chang, N. (2002), *Silencing Political Dissent*. New York, Seven Stories Press.
- Chapman, D. (2003), 'Miami Vise', *Atlanta Journal-Constitution*, November 21.
- Chrisatis, A. (2001), 'CRE Man to Sue Police for Assault', *The Guardian*, June 27.
- Corrections Professional*. (2001), 'PepperBalls: Great Nonlethal Weapons', LRP Publications, V. 6, n. 15.
- Daytona Beach News-Journal*. (2001), 'Police fired bean bags can cause serious injury', October 12.
- della Porta, D. and Reiter H. (1998), 'The Policing of Protest in Western Democracies', in della Porta, D. and Reiter H. (eds), *Policing Protest*, Minneapolis, University of

Harrison

Minnesota Press.

Dewan, S. (2003), 'Protestors Say City Police Used Rough Tactics at Rally', *New York Times*, February 19.

Dvorska, A. (2002), 'The Months After', found at:

<http://www.nadir.org/nadir/initiativ/agp/s26/praga/months.htm>.

Firestone, D. (2003), 'Many Are Called to March, but Few are Chosen for Arrest', *New York Times*, January 20.

Fitzsimmons, T. ([1998] 2001), 'A Lack of Female Police Officers Causes Police Brutality', in Cothran, H. (ed.), *Police Brutality: Opposing Viewpoints*, San Diego, Greenhaven.

Greenhouse, S. (2003), 'Demonstration Turns Violent at Trade Talks in Miami,' *New York Times*. November 21.

*Harpers*. (2003), 'When Killing Just Won't Do', February.

Hoagland, E. (2003), 'The American Dissident', *Harpers*, August.

Hoffman, Hank. (2001), 'There's a Police Riot Going On', *In These Times*, December 10.

Hu, H., et al. (1989), 'Tear Gas', *Journal of the American Medical Association*, V. 262, August 4.

Kraska, Peter B. (1998), 'Enjoying Militarism,' in Ferrell J. and Hamm M. (eds.), *Ethnography at the Edge*, Boston, Northeastern University Press.

Kreimer, S. (2001), 'Technologies of Protest', *University of Pennsylvania Law Review*, V. 150, n. 1.

Lapham, L. (2003), 'Cause for Dissent', *Harpers*, V. 306, N. 1835.

Luk, H. (2003), 'Protesters in Hong Kong Mark China's National Day with Demands for Democracy', *Associated Press*.

- Lush, T. (2003), 'Miami Police Keep a Lid on Trade Protestors', *St. Petersburg Times*, November 21.
- Marx, G. (1998), 'Afterword', in della Porta, D. and Reiter H. (eds), *Policing Protest*, Minneapolis, University of Minnesota Press.
- Marx, Karl. ([1844] 2002), 'Economic and Philosophical Manuscripts of 1844', in Calhoun, C. et al. (eds.), *Classical Sociological Theory*, Malden, Blackwell.
- McPhail, C. et al. (1998), 'Policing Protest in the United States: 1960-1995', in della Porta, D. and Reiter H. (eds), *Policing Protest*, Minneapolis, University of Minnesota Press.
- Meyers, R. (2000), 'Symposium', *Insight on the News*, October 16.
- Nader, R. (2002), *Crashing the Party*. New York, St. Martin's.
- Nelson, J. (2000), *Police Brutality*. New York, Simon and Schuster.
- Norton-Taylor, R. and Cowan R. (2001), 'MoD Study Warns of Plastic Bullet Risk', *The Guardian*, April 7.
- Organization for the Prohibition of Chemical Weapons (OPCW)*, found at:  
<http://www.opcw.nl/chemhaz/hear.htm>.
- Palermo, B. (2001), 'Democratic Convention Protestors Sue Los Angeles Over Police Tactics', *The National Law Journal*, August 24.
- Pliant, L. (1994), 'Adding Less-than-Lethal Weapons to the Crime-Fighting Arsenal', *The Journal*, Fall, found at: [http:// www.zarc.com/english/non-lethal\\_weapons/ ltl-lois\\_pilant.html](http://www.zarc.com/english/non-lethal_weapons/ltl-lois_pilant.html)
- Prendergast, J. and Clark M. (2001), 'Top cops under review in beanbag shooting', *The Cincinnati Enquirer*.
- St. Clair, J. (2003), 'The Death of Dissent', *St. Petersburg Times*.

- Schmallegger, F. (2003), *Criminal Justice Today*. Upper Saddle River, Prentice-Hall.
- Schlotterbeck, W. and Massine A., Jr. (1970), *The Role of the Department of Defense in Civil Disturbances*, Washington, DC: Industrial College of the Armed Services.
- Schofield, D. (1994), 'Controlling Public Protest', *FBI Law Enforcement Bulletin*, V. 63, n. 11.
- Schmid, R. (2002), 'Navy, Marines Urged to Give Nonlethal Weapon Development Top Priority', *Associated Press*, November 4.
- Seattle Times*. (1998), 'Nothing to Sneeze At', November 3.
- The Nation*. ([1999] 2001), 'Civilian Oversight Reduces Police Brutality,' in Cothran, H. (ed.), *Police Brutality: Opposing Viewpoints*. San Diego, Greenhaven.
- Van Drimmelen, A. (2001), 'Chemical Warfare, Canada', found at:  
<http://www.education-action.net/gas.htm>.
- Walker, S. (2001), *Sense and Nonsense about Crime and Drugs, Fifth Edition*. Belmont, CA: Wadsworth.
- Walzer, M. (2003), 'The Right Way', *New York Review of Books*. March 13.
- Wisler, D. and Tackenberg M. (2000), 'The Role of the Police: Image or Reality?' in Bessell R. and Emsley C. (eds.), *Patterns of Provocation: Police and Public Disorder*, New York: Berghahn.
- Woodward, C. (2003), 'Pledge to 'stop this war' mobilizes tens of thousands at Capitol and Around the world', *Associated Press*, January 18.
- Wright, S. (2001), 'Killing Me Softly', *New Scientist*, August. 11.
- Yaqub, S. (2003), 'Faith and Reason', *The Independent*, November 26.
- Younge, G. (2003), 'Now Dissent is 'Immoral.'', *The Guardian*, June 2,

Harrison

Zinn, H. (2002), 'Foreword', in Chang N., *Silencing Political Dissent*, New York: Seven  
Stories.

Press.