

The Policing of Transnational Protest

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Chapter 5

Aspects of the ‘New Penology’ in the Police Response to Major Political Protests in the United States, 1999–2000

John Noakes and Patrick F. Gillham

Introduction

Tens of thousands of protesters greeted delegates to the 1999 World Trade Organization (WTO) Ministerial Conference in Seattle. Protesters staged demonstrations throughout the four-day conference, but won what has come to be known as the ‘Battle in Seattle’ on the first day of the WTO meetings when they blockaded downtown streets for several hours, forcing the cancellation of the opening day’s trade talks. Police and protesters clashed repeatedly during the four-day conference, particularly on the opening day when Seattle police made extensive use of less-lethal weapons to disperse the protesters – a process that took the better part of the day. Among the largest direct action protests in the US since the Vietnam War, the WTO demonstrations were the first of several mass demonstrations in US cities over the next several months, each featuring street clashes between police and protesters (Gillham 2003; Thomas 2000; Cockburn et al. 2001).

The WTO protesters’ opening-day victory, the scale and intensity of the clashes between demonstrators and the Seattle police and the subsequent political activism inspired by the WTO protests have made *Seattle* a rich signifier for both activists and police. For political activists, it became an aspiration – a new standard for effective protests against which demonstrators measured their subsequent efforts (cf. Neale 2002; Kahn 2000). In the ‘years of global justice protests’ that followed the WTO protests, mass demonstrations were staged in numerous Canadian (Ottawa, Quebec City), European (Gothenburg, Prague, Davos and Genoa), and US cities (Washington, DC). In the US, political activists representing a wide range of national and international causes staged protests at the US national party conventions in Philadelphia and Los Angeles. Emboldened by *Seattle*, a subset of demonstrators in each city insisted on their right to disrupt these events, leading to repeated clashes between police and protesters.

Police interpret *Seattle* in terms as dramatic as those of protesters, including, as one high-ranking police official in Philadelphia put it, as ‘parallel to Pearl Harbor

to some degree' (Fisher 2001). More generally, police in the US characterized the WTO demonstrations as 'the start of a new genre of protests' with which they had little experience (Gainer 2001; see also Seattle Police Department 2000). For police, therefore, *Seattle* became a symbol of the worst-case scenario, the kind of situation for which they needed to retrain and retool so that it did not occur in their jurisdiction (Fisher 2001; Gainer 2001; Czech News Agency 2000). In the year following the WTO demonstrations, US police forces spent millions of dollars on new riot gear and sent representatives to seminars sponsored by the National Association of the Chiefs of Police and the US Department of Justice designed to 'provide public safety agencies with [the] skills, knowledge, strategies, and tactics necessary' to control a new breed of protester (Beasley, Graham, and Holmberg 2000; Burgess 2000; Montgomery and Santana 2000).

To better understand the strategic and tactical chess match between this new breed of protesters and police, we examine police strategies and tactics utilized during recent major contentious events in three US cities: the WTO in Seattle; the April 2000 IMF/World Bank meetings in Washington, DC; and the August 2000 Republican National Convention in Philadelphia. Our analyses are based on a careful reconstruction of the police response to protesters at these three events. Gillham (2003; 2000; 1999; Gillham and Marx 2000) observed the WTO and the IMF/WB protests and interviewed activists involved in both protests. Noakes (2001a, 2001b) interviewed high-ranking police officials in Washington and Philadelphia after the respective protest events in those cities. This primary source information was supplemented by extensive reviews of the newspaper coverage of each protest and a review of many of the official and activist documents produced in the aftermath of the clashes between the police and protesters.¹

1 Newspaper accounts of social movements have been both a frequent source of data for social movement scholars (cf. McAdam 1982; Kreisi et al., 1995; Jenkins and Perrow 1977) and the subject of critical sociological inquiry (Ashley and Olsen 1998; Gitlin 1980; McLeod and Hertog 1998). Critiques of the use of newspaper accounts as a source of data have raised important questions about the validity of such a methodology (McCarthy, McPhail and Smith 1996; Oliver and Myers 1999). While we agree that newspapers are not 'passive channels of communication' (Oliver and Myers 1999: 39), for several reasons this is not a debilitating problem in this study.

First, we are using newspaper accounts to construct case studies, not to sample instances over a selected period of time. Because each of our protests received extensive press coverage, the question of media access is eliminated (Noakes and Wilkins 2002). Moreover, we have confirmed and supplemented the data obtained from newspaper accounts with information from other sources, including first-hand observations, official reports and interviews (Burgess et al. 2000; Seattle Police Department 2000; Gainer 2001; Sund 2001; Fisher 2001; Richman 2001). Second, many of the biases reflected in media coverage of social movements do not pose a serious problem for our analysis. Reporters' tendency to rely on official sources for information, for example, aids our research. Given the ease and frequency with which city and police officials are quoted in newspaper accounts of the police planning and response to the protests, a substantial record of official versions of events is available. Moreover, to the extent that police have an interest in sanitizing their actions, we obtain a conservative record of their

Policing philosophies and policing of protests

For most of the twentieth century, police in the US held an extremely negative view of protesters and exhibited little tolerance of the community disruption caused by political demonstrations. Police often over-enforced the law as a means of harassing protesters and rarely communicated with protesters prior to demonstrations. The primary, and often only, tactic employed to control protest was the use of force, escalating in severity until the demonstrations ceased (Schweingruber 2000; della Porta and Reiter 1998a). McPhail, Schweingruber and McCarthy (1998) have labelled such tactics the *escalated force* style of policing protests. By the end of the 1960s protest cycle, however, this approach was causing considerable problems for police, both *on* and *off* the job (P.A.J. Waddington 1998).

On the job, police began to question the effectiveness of escalated force tactics. Arrests and other uses of force by police during demonstrations often became the focal point of protester frustrations, escalating the risk for police and increasing the extent of community disruption caused by the protests (P.A.J. Waddington 1998; Barkan 1984). Off the job, after a decade of street clashes between police and civil rights, anti-war and other political dissenters, questions were raised about the integrity and legality of the escalated force style of policing protest from a variety of quarters. Several public commissions appointed to examine the causes and consequences of violence in American society, for example, criticized the repressive nature of the police response to political dissent. Moreover, in the US courts several legal decisions on public forum law extended the right to protest and placed limitations on state's ability to restrict these rights (Schweingruber 2000; O'Neill 1999; McPhail, Schweingruber and McCarthy 1998; Kerner 1968).

With the delegitimization of escalated force, new strategies for policing protest were needed. Decisions about how to police demonstrations are mediated by *police knowledge*, or how police 'construct external reality, collectively and individually' (della Porta 1998). This construction of reality by police shapes their role in the maintenance of social control. Most discussions of the role of police knowledge focus on the police perception and diagnosis of protesters, their tactics, and their motives. But Winter (1998a, 188) also documents how *policing philosophies*, or the 'conceptual principles and guidelines underlying police operations' shape the response of police to political protests. Winter illustrates this point in his analysis of the Federal Republic of Germany between 1960 and 1990 by contrasting regions with *Staatspolizei* philosophies, which understand the primary function of policing as serving the state and protecting it from opponents, with those with *Bürgerpolizei* philosophies, which understand the primary function of the police as serving citizens. In areas of Germany in which the former predominated, political protests

actions from the newspaper accounts and our own interviews. Given that we are interested in documenting changes in police activities, the likelihood that our account underestimates the use of new, more forceful tactics by police gives us greater confidence that the changes we document are, in fact, real.

were perceived of primarily as threats to the state, and an escalated force style of policing protest was employed to discourage demonstrations. Protests fared much better in areas in which the latter philosophy dominated.

The crisis in policing protest in the US at the end of the 1960s protest cycle came at what sociologists of punishment and social control now recognize as the tail end of the penal modernist period of criminal justice (Garland 2001). Penal modernism, a *Bürgerpolizei* philosophy that understands the police as ‘an agent of reform as well as repression’ (Garland 2001, 39), has its roots in the late nineteenth century but became the paradigmatic philosophy of criminal justice in the US after World War II. Its basic axiom is that criminal justice practices should encourage the understanding, rehabilitation and reintegration of offenders rather than seeking to merely punish them. Informed by psychological and sociological concepts that focused attention on the relationship between the individual and society such as relative deprivation, anomie, labelling, and subcultural norms, penal modernist criminal justice policies tended toward correctionalism (Garland 1985; Messinger 1968; President’s Commission 1967).

The criminal justice system, of course, remained the legitimate purveyor of punishment. But, ideally, each offender was to be treated as an individual and each case decided on its own merits, with penal measures tailored to match the level of risk posed by offenders. Severe punishment remained an option, but those who were determined by penal institutions to pose little risk – because of their background, the extent to which they were embedded in society, or the extenuating circumstances of their offence – would be treated less harshly. The criminal justice system, thus, was a part of the welfare state. If delinquency was the result of inadequate socialization, substandard education or a lack of job opportunities, then flexibility in sentencing, the provision of social services and an extensive parole system were just and effective responses to crime (Garland 2001).

Penal modernism experienced its own crisis in the 1970s. Critics from a range of political positions questioned the criminal justice system’s capacity to meet its correctionalist goals (cf. Wilson 1975; American Friends Services 1971). With belief in the possibilities of rehabilitating criminals declining and fear of crime increasing, the influence of penal modernism on criminal justice policy declined. In its place a new paradigm emerged stressing control, not understanding, of criminals and focusing on their incapacitation, not their rehabilitation. Reforms to the US criminal justice system over the last three decades have made punishment more punitive by eliminating indeterminate sentencing, establishing three-strikes-and-you’re-out laws, and de-emphasizing correctional measures such as probation and parole (Simon 1993; von Hirsch 1993).

But the crisis in policing protests initiated by the delegitimization of escalated force tactics occurred before the end of the penal modernist period when the ‘habitus ... [the] working ideologies, [and the] trained responses and decisions’ of police officials and criminal justice policy makers were still firmly rooted in the penal modernist worldview (Garland 2001, 38). Penal modernist ideology infused criminal justice institutions in an uneven and historically eclectic way. Given the timing of

Table 5.1 Comparison of three styles of policing protest

<i>Characteristic</i>	<i>Escalated force (pre-1970s)</i>	<i>Negotiated management (1970–1990s)</i>	<i>Strategic incapacitation (current)</i>
<i>First Amendment rights</i>	Denied to all	Stated top priority	Low priority (denied to transgressive protesters)
<i>Toleration of community disruption</i>	Low	High	Moderate (more likely to be tolerated for contained than transgressive protesters)
<i>Communication</i>	Low	High	High with contained; selective with transgressive
<i>Use of arrests</i>	Frequent	Last resort	Strategic; no longer last resort (used to incapacitate transgressive protesters)
<i>Use of force</i>	High	Last resort	Strategic; no longer last resort; expanded by use of less-lethal weaponry (used to incapacitate transgressive protesters)

Adapted from McPhail, Schweingruber and McCarthy 1998.

the crisis in escalated force, the policing of protest may have been the last facet of the criminal justice system to adopt penal modernist practices and principles. The escalated force style of policing of protest, which enjoyed pre-eminence into the late 1960s, violated nearly every key aspect of penal modernism. Police rarely considered the particular characteristics of protest groups or their causes. Moreover, they took a distinctly *Staatspolizei* approach to public order, tolerating little in the way of community disruption and ignoring protesters' political rights.

The key aspects of the *negotiated management* style of policing protest that emerged from the crisis of the escalated force style of policing protest, however, are clearly influenced by penal modernist philosophy (see Table 5.1). In direct contrast to escalated force, proponents of negotiated management counsel increased tolerance of minor community disruptions and the protection of the rights of protesters in an effort to minimize the disorder caused by both the demonstrations and the police effort to contain them (della Porta 1998; Waddington 1994). Moreover, they recommend that police officials negotiate the boundaries of acceptable protest with social movement group leaders prior to (and, if necessary, during) demonstrations, a process that, in the US, often began with the application for a permit to march or rally in public areas. It is during the permit process that the 'lofty principles' of negotiated management are reconciled with the 'practical bureaucratic guidelines for managing protests' (McPhail, Schweingruber and McCarthy 1998).

Several principles of penal modernism are reflected in negotiated management strategies and tactics. The emphasis on negotiating agreements with social movement organizers prior to demonstrations, for example, individualized social movement organizations and offered each an opportunity to demonstrate its

commitment to cooperation and order. Moreover, police sought cooperation from protesters by offering to facilitate demonstrations and casting protesters as citizens seeking to exercise a constitutional right, not as opponents of the state. During the 1980s and 1990s in the US the deployment of negotiated management tactics and strategies resulted in a decline in clashes between police and protesters (McPhail, Schweingruber and McCarthy 1998). In fact, for many police agencies the need to use force to control a political protest had become a sign of police failure (Fisher 2001; Sund 2001; della Porta 1998).

Underneath this general trend toward softer, more cooperative police responses to protests, of course, there is a great deal of variation in how police respond to individual political demonstrations. The policing of protest, like all policing, remains selective, and there are numerous examples of protest policing in the last 30 or so years in which the police used extensive force to coerce demonstrators (McCarthy and McPhail 2005). In the US, for example, groups such as EarthFirst! and ACT-UP – both of which resisted cooperation with authorities – clashed repeatedly with police (Kaufman 2002). Given the range of police responses, sociologists often ask not whether the police response to political protests is harsh or tolerant, but under what circumstances police respond harshly (or softly) and why.

It is here that the second component of police knowledge – diagnoses of protesters, their goals and their tactics – becomes most clearly relevant. ‘Shifts between tolerance and repression,’ P.A.J. Waddington (1998, 131) argues, ‘reflect the institutionalized standing of protesters.’ In short, police distinguish between ‘good’ and ‘bad’ protesters. ‘Good’ protesters are those seen as ordinary, decent people protesting for a concrete goal that benefits themselves, particularly working men and women who have lost their jobs through no fault of their own (Waddington 1999b, 1998; della Porta 1998; Fillieule and Jobard 1998; Jaime-Jimenez and Reinares 1998). Police are more tolerant of minor lawbreaking and use softer tactics when confronting ‘good’ protesters, who, for their part, tend to engage in predictable demonstrations (Tilly 2000; P.A.J. Waddington 1999). Police are much less tolerant of demonstrations staged by ‘bad’ protesters, whether they are permitted protests or not. ‘Bad’ protesters include professional or political protesters, those seen as pursuing abstract goals or ones that will primarily benefit others, those who do not cooperate with police, and young protesters, who are characterized as ill-informed and easily manipulated by others (P.A.J. Waddington 1999; Fillieule and Jobard 1998; Jaime-Jimenez and Reinares 1998).

Police are also more likely to use force during protests that target international events or events involving political dignitaries. Demonstrations at such events carry extra risk for police, who face significant pressure to control such protests from state officials (della Porta and Reiter 1998a; P.A.J. Waddington 1998). The British police, therefore, forcibly resist protests near royal castles or 10 Downing Street (P.A.J. Waddington 1998). Ericson and Doyle (1999, 589) argue that the policing of international events ‘may be affected by powerful extra-national influences’, such as pressure from the governments of visiting dignitaries, thus leading to a harsher police response to protesters than normal in the host nation. Several social movement

scholars also suggest that police are more likely to respond with force when facing the tactical innovations that often accompany new protest cycles (Tarrow 1998; Wisler and Kreisi 1998; McAdam 1983).

The introduction of new tactics, by definition, shifts the demonstrations from *contained* to *transgressive* contention and raises police concerns that they will lose control of the situation. Tilly (2000) categorizes protests that are staged by political actors well known to the police and who employ familiar tactics as *contained*; conversely political actors unfamiliar to the police and employing innovative tactics are categorized as *transgressive*. Good protesters are more likely to come from the community in which the demonstration is staged, thus increasing the likelihood that they are known to the police. They also are more likely to follow agreed upon cultural scripts (for example, picketing or marching along politically symbolic routes). Bad protesters are more likely to be from outside the community in which the demonstration is held and, therefore, more likely to be unknown to police (though 'professional' protesters often become well known to police, particularly with increases in electronic surveillance). They are also more likely to engage in innovative tactics (McAdam 1983).

The prevalence of transgressive protesters in recent mass demonstrations initiated a new crisis for those charged with the policing of protest in the US. While not as systemic as the delegitimization of escalated force, it raised essential questions about the limits of negotiated management. As long as most protesters cooperated with police and engaged in contained protests, negotiated management remained effective. But the extent to which recent protesters rejected the principles of contained protest compromised the effectiveness of negotiated management strategies. For police officials, the size, diversity and shapelessness of transgressive demonstrations made policing them more difficult. Moreover, police believed, transgressive protesters have begun to exploit certain aspects of the negotiated management style. As one of the primary street negotiators for the Washington police during the IMF protests complained:

we would meet with [protest groups] at different times [during the protests], and frankly, while we were meeting trying to work out issues, other sub groups went about their anarchy ... So, on some days, it felt like [the contained groups] were tying me and my commanders up for three hours while [the transgressive groups] were out running amuck. (Gainer 2001)

Transgressive protesters not only refused to reveal many of their plans ahead of time, but their non-hierarchical, consensus-based decision-making process did not provide a 'good command and control over policy vis-a-vis what (the police) needed to have a negotiated settlement of each issue' (Gainer 2001).

The presence of a significant number of transgressive protesters at several recent major protest events in the US forced police to rethink their approach to policing protest. Because transgressive protesters would not negotiate their tactics and plans ahead of time, police had to manage greater uncertainty. Moreover, demonstrators also engaged in direct action protests aimed at disrupting the events police were

assigned to protect. Unable to rely on pre-negotiated agreements with protesters and facing high-risk demonstrators, police expanded their strategic repertoire to include tactics not characteristic of negotiated management. But police did not simply return to the escalated force tactics of the past. In the same way that public order police in the early 1970s drew heavily on penal modernism when they needed new strategies and tactics to replace discredited escalated force tactics, when police were confronted by the limits of negotiated management they drew on the new penology, the paradigmatic criminological *episteme* of the late twentieth century.²

The new penology reconceived crime as a systematic phenomenon and elevated victims to a universal status (Feeley and Simon 1992; Garland 2001). Consequently, social control practitioners began to concern themselves less with why crime occurred and more with protecting citizens and corporations from criminal acts. To do so, they devoted considerable energy to developing new means of identifying and controlling groups that posed a risk to social order, managing the risk they posed, and improving the efficiency of penal systems. This new approach is summarized succinctly in Wilson's (1975, 153–4) claim that 'for crime reduction purposes, the most rational way to use the incapacitative powers of our prisons would be to do so selectively ... longer sentences would be given to those who, when free, commit the most crimes.'

A distinct set of practices and policies have emerged to achieve these new penal ends. Resources, for example, have been aggressively diverted from low-risk to high-risk targets and deviant activities reclassified based on the new goals of the criminal justice system. Illegal drug use, therefore, is no longer viewed 'as an individual problem that can be remedied; rather it is interpreted as a factor used to classify the offender into a risk group' (Welch 1996). Similarly, three-strikes laws are 'based on a concern for managing aggregates of "dangerous" people' (Shichor 1997). In contrast to the penal modernist era, criminal justice officials seek to 'reduce the effects of crime not by altering either offender or social context, but rather by rearranging the distribution of offenders in society' (Feeley and Simon 1992, 458). Much greater emphasis is placed on preventing deviance from occurring, by minimizing the exposure of those defined as potential risks to criminal situations or, if this is impossible, by incapacitating them (Auerhahn 1999).

The rise of the new penology has influenced the policing of protest in several ways. During the 1990s, for example, police in the US had begun to incorporate the use of less-lethal weapons into their public order repertoire. This increases the capacity of police to incapacitate demonstrators during demonstrations without raising the risk of delegitimization associated with escalated force. As we will see below, the police adopted several strategies rooted in a new penological approach to social control during recent mass protest in the US. Before detailing these new strategies and tactics, however, it is necessary briefly to describe the protest events that constitute our three cases.

2 As is common in studies of social control, we refer to the entire criminal justice apparatus when we use 'penology', not simply the penal system (cf. Feeley and Simon 1992).

The return of mass protests in the US

In the remainder of this chapter we review the protest events in Seattle, Washington, DC, and Philadelphia and the police response to them. We will focus on the relative distribution of contained and transgressive protesters in each event. Contained protesters participate in protest events sponsored by well-known groups who have 'a stake in the orderliness of the political event' and, therefore, cooperate with police prior to and during demonstrations and employ familiar and officially approved tactics (McPhail, Schweingruber and McCarthy 1998). In contrast, transgressive protesters do not fully cooperate with police and often employ tactics that raise the level of uncertainty for police.

Before turning to the specific cases, we must distinguish between the two types of transgressive protester in our cases. Most transgressive protesters were organized under temporary umbrella coalitions set up to facilitate nonviolent direct action protests, such as the Direct Action Network (DAN) in Seattle and the Mobilization for Global Justice (MGJ) in Washington, DC. Though often anarchist in philosophy, these groups were committed to nonviolent direct action and disapproved of the purposeful destruction of property during demonstrations, which they saw as senseless and counterproductive in part because it garnered disproportionate media coverage – all of it negative (Fears 2000; Finnegan 2000; Jaffe 2000). A much smaller group of transgressive protesters did not renounce violence as a means of self-defence and destroyed property during demonstrations as a purposeful act of protest. The most prominent of these groups is commonly referred to as the black bloc.³ Dressed in black clothing and wearing black bandannas or masks to cover their faces, black bloc members spurned negotiations with police as a matter of principle. Unless specifically noted, when we refer to transgressive protesters we are referring to the former, those committed to nonviolent direct action and opposed to the destruction of property during protests.

Seattle

In Seattle, protest organizers began educating and training activists weeks before the WTO Ministerial Conference, bringing together union, student, environmental and religious groups for numerous workshops, teach-ins and rallies. On the day before the official opening of the conference, several contained marches and rallies took place in Seattle, including a rally coordinated by the national and local offices of mainstream environmental groups promoting 'clean, green, and fair' trade, a 14,000-person march organized by a local affiliate of the religious-based Jubilee USA Campaign calling for the cancellation of international debt, and a late night rally and

3 Proponents of black bloc claim they are a 'tactic', not an organization (Info Shop 2004). For the purpose of this chapter, we, nevertheless, consider them a group in the sociological sense.

concert organized by People for Fair Trade, a campaign of Public Citizen (Gillham 2003; Smith 2001; Thomas 2000).

Early in the morning of 30 November 1999, the opening day of the WTO meetings, transgressive global justice activists affiliated with the Direct Action Network (DAN), organized in small affinity groups, chained themselves to one another and sat cross-legged in major downtown intersections and outside the hotels housing WTO delegates. Over the course of the morning they were joined by thousands of additional protesters and bystanders who occupied the public space surrounding the convention centre, small bands of black bloc protesters who vandalized corporate buildings in the downtown area, and the spillover from a legally permitted march sponsored by the AFL–CIO and the Sierra Club, which brought 30,000 more protesters into the downtown area. The direct action protests of DAN activists had brought rush-hour traffic to a standstill and, with additional protesters clogging the sidewalks, most WTO delegates were unable to reach the meeting site. Despite police orders to disperse, protesters held the blockades throughout the morning and continued to occupy the downtown streets even after police fired pepper spray, tear gas, concussion grenades and rubber bullets at the demonstrators, forcing the WTO to cancel its opening day schedule (Cockburn et al. 2001; Gillham and Marx 2000).

By the next morning, however, police had succeeded in retaking control of the streets, declared the downtown a ‘no-protest zone’, established a curfew, and along with the Governor of Washington, called in National Guard troops to assist overwhelmed police. These official actions did little to dissuade thousands of defiant and outraged protesters who returned to the streets over the next several days to protest at the police’s tactics and attempt to disrupt the WTO meetings further. By the end of the week 500 protesters had been arrested, retailers had lost millions of dollars in sales and property damage, and the WTO meetings collapsed without any significant trade agreements being reached (Gillham 2003; Gillham and Marx 2000; Smith 2001).

Washington, DC

Inspired by the success of the ‘Battle in Seattle’, national activist organizations focused their attention on making the April 2000 joint meetings of the International Monetary Fund (IMF) and World Bank (WB) in Washington, DC the first major post-Seattle protest event (Gillham 2003; Burgess 2000). Annual demonstrations had been staged against the WB and IMF for several years, but they were generally small and primarily involved local church-based groups and DC-based national organizations like 50 Years is Enough. Known as the Mobilization for Global Justice (MGJ), the protests during the WB and IMF’s annual spring meeting were structured similarly to the WTO protests in Seattle, with protest organizers negotiating permits for an MGJ rally at the Ellipse on the National Mall while some MGJ-affiliated affinity groups and the local Anti-Capitalist Convergence (ACC) trained for direct action protests aimed at stopping the WB and IMF delegates from attending the meetings (Gillham 2003).

On Sunday, 15 April, upwards of 20,000 protesters, many organized into affinity groups of transgressive protesters, unsuccessfully attempted to establish blockades around the World Bank building. On the advice of the Washington DC Metropolitan Police Department (MPDC), many delegates had arrived at the WB before dawn on chartered buses, foiling the demonstrators' efforts. Late in the afternoon, these transgressive protesters abandoned the intersection blockades and participated in several snake marches throughout the downtown area. These marches, which disrupted traffic and led to several clashes with police, eventually ended at the MGJ permitted rally on the Ellipse, where the transgressive protesters joined approximately 20,000 contained demonstrators (Dvorak and Ruane 2000; Fears 2000).

Demonstrations the following day were smaller, but still included a few thousand protesters. The day was characterized by sporadic clashes between police and transgressive protesters. It ended symbolically in the afternoon at a police barricade outside the World Bank building where a small group of activists successfully negotiated with police officials for the peaceful, choreographed arrest of approximately 400 protesters (Montgomery 2000a). In all, MPDC arrested 1,300 protesters and claimed a victory because the protests had been allowed to occur but had not unduly disrupted the IMF/World Bank meetings (Gainer 2001).

Philadelphia

Less than four months after the MGJ protests, a large contingent of global justice activists joined protesters advocating a variety of causes at the 2000 Republican National Convention (RNC) in Philadelphia. As in the two earlier protests, numerous national and local groups negotiated agreements with the Philadelphia Police Department (PPD) (Fisher 2001). In this case, a permitted rally in downtown Philadelphia drew several thousand participants on the eve of the RNC. But, as in Seattle and Washington, DC, transgressive protesters organized in affinity groups attempted to disrupt morning rush-hour traffic in downtown Philadelphia on Monday, 31 July, the opening day of the RNC. Several members of a group demonstrating in opposition to the United States Army School of the Americas, for example, blocked a major intersection in downtown Philadelphia. Around midday a local welfare rights group, led by 80 children and 20 people in wheelchairs, staged a four-mile march from City Hall to within a block of the sports arena in which the RNC was scheduled to begin that evening, despite having not obtained a permit to do so.

The most intense period of demonstrations, however, occurred on Tuesday afternoon when demonstrators, organized in clusters ranging in size from a couple of dozen protesters to upwards of 300, staged a series of surprise blockades. The scene was chaotic: as more than 100 protesters dressed as clowns and millionaires chained themselves together and sat down in the middle of an entrance ramp to the major crosstown expressway; other groups attempted to blockade the downtown hotels used by delegates or participated in one of several snake walks through downtown traffic, rocking cars, spray painting buildings, and setting fire to dumpsters. The demonstrations succeeded at bringing downtown traffic to a stop during the evening

rush hour, but with the convention being held in a sports arena several miles from the downtown area they had little effect on the RNC. By the RNC's end, 400 demonstrators had been arrested (Couloumbis, Pangritis and Marshall 2000; Curet and Kennedy 2000; Marantz 2000; Newton 2000).

The police response to mass protests in the US

The police response to mass demonstrations in Seattle, Washington, DC, and Philadelphia was multifaceted. Whenever and wherever possible, police in these three cities negotiated agreements with both national and local contained protest groups, designating protest routes and setting demonstration guidelines (Fisher 2001; Gainer 2001; Seattle Police Department 2000). Impromptu street negotiations with large groups of transgressive protesters also resolved several tense situations in a mutually agreeable fashion (Montgomery 2000a; Postman, Rahner and Sorenson 1999). Moreover, police in each city often under-enforced the law in order to minimize the disruption to public order caused by permitted marches and, on a few occasions, facilitated unpermitted marches by familiar and usually trustworthy groups (Fisher 2001; Gillham and Marx 2000; Newton 2000).

When negotiated agreements between police and protesters could not be reached, however, police in each city used new tactics to break up the demonstrations and disrupt protesters' planning. These new tactics included: (a) restricting the access of both contained and transgressive protesters to large areas of public space adjacent to the primary event venues or in symbolic spaces where direct action protests could draw considerable attention or cause significant disruption; (b) aggressively enforcing laws and regulations in an effort to disrupt the preparations of transgressive protesters; (c) employing various means of force, including arrests and less-lethal weapons strategically to rearrange or incapacitate transgressive demonstrators; and (d) utilizing intensive prior and real-time surveillance in an effort to neutralize the uncertainty generated by transgressive protesters. We see evidence that these techniques became part of the strategy of the Seattle police after the WTO protesters succeeded in shutting down the opening day of meetings. In Washington, DC and Philadelphia such tactics and strategies are evident throughout the protest events. We turn now to a more detailed discussion of each tactic. Space limitations will not permit an exhaustive review of how police departments in each city responded to their respective protest event. Instead, we have chosen to illustrate each tactic with representative examples.

No-protest zones

It took Seattle police until nearly midnight to clear the streets of protesters after the first day of the WTO protests. Police then began enforcing an expanded no-protest zone around the WTO meeting venue, pushing demonstrations far enough away that they no longer could easily interfere with the delegates' movements. Having learned

from the Seattle experience, police in Washington, DC and Philadelphia announced extensive restrictions to protester access to public space in their respective cities. Most notably, oversized no-protest zones were announced well in advance of events and without prior negotiations with contained groups. In addition to restricting access to a large area surrounding the site of the RNC, Philadelphia city officials also granted the Republican Party first rights to all public spaces in the city during the convention, effectively pre-empting legal protests in public parks and symbolic sites, such as the Liberty Bell or Independence Mall. Protest organizations went to court to reduce the size of the no-protest zone in Philadelphia, but they never gained access to the area near the site of the RNC (Levy 2000).

Over-enforcement of the law

Washington, DC and Philadelphia police vigorously enforced city regulations to disrupt the preparations of transgressive protesters. The MPDC, in conjunction with city fire inspectors, raided and closed a convergence centre established by the MGJ as a temporary housing and meeting places for nonviolent, transgressive global justice demonstrators (Drake and Mizejewski 2000). Similarly, the Philadelphia Police Department (PPD) also teamed with city fire code inspectors to raid and close a building used by transgressive global justice protesters as a puppet factory and convergence centre (Slobodzian 2001). All 75 occupants of the building were arrested during the raid, which was timed to prevent a non-permitted demonstration planned for that afternoon from occurring. Police also seized several large puppets and other props built for use in the demonstration. Police had learned about the planned demonstration and the props being made from undercover state troopers, who had infiltrated the site by masquerading as union carpenters opposed to globalization (Fisher 2001; Betz 2000).

Strategic use of force

The most significant deviations from the negotiated management tactics, however, involved the frequent and *strategic* use of force. Under the negotiated management style of policing protest, force is to be used only as a last resort to control protesters who will not cooperate with police. There is considerable evidence from these cases, however, that the use of force, both in terms of arrests and the employment of weapons, was used not as a last resort, but rather strategically to temporarily incapacitate and rearrange protesters. In Washington, DC, for example, the MPDC arrested everyone on a single block (over 600 people) for marching without a permit on the night before the IMF meetings began, despite having allowed unpermitted marches on several previous days (Drake and Mizejewski 2000). Many who intended to protest the next day were not released for 23 hours – one hour short of the statutory deadline for charges to be filed and well after most of the first day's demonstrations had concluded (Drake and Mizejewski 2000).

In addition to the arrest of the occupants of the convergence center noted above, the Philadelphia Police Department used arrests strategically in another way. When confronted by demonstrations by groups without permits they selectively arrested protesters from groups unfamiliar to the police (such as those opposing the School of the Americas) while letting protesters with which whom they had long-standing relationships (such as the Kensington Welfare Rights Union) demonstrate.

The use of less-lethal weapons by police in Seattle and Washington, DC is also noteworthy (see Dvorak and Ruane 2000; Fears 2000; Keary and Williams 2000; Beveridge 1999; *News Tribune* 1999; Postman, Broom and King 1999). Less-lethal weapons 'use some controlled force to interact with some aspect of the human body to temporarily affect it' (Kenny 2000). A wide variety of these weapons have been developed for military use, from acoustic bullets to robotic land probes (Duncan 1998; Lewer 1995; Starr 1993). Similar weapons have been used to quell civil disturbances in parts of Europe and elsewhere for a number of years (Mettress and Mettress 1987).⁴

Seattle police employed a wide range of less-lethal weapons including pepper spray, rubber bullets, tear gas and concussion grenades as soon as they realized they had lost control of the downtown area to WTO protesters. Though global justice demonstrators in Seattle held their ground for most of the first day, the SPD's assault eventually succeeded in dispersing the protesters and chasing them outside the downtown area. Police officials then established a much broader no-protest zone and enforced a curfew. While protesters challenged both the geographic and temporal restrictions on demonstrations, the SPD succeeded in moving the conflicts outside the downtown area, thus allowing the WTO to proceed with its scheduled meetings. Having established a broad 'red zone' prior to the IMF/WB protests, police in Washington, DC used pepper spray to keep demonstrators from breaching barricades and to disperse protesters when police found themselves outnumbered (Drake and Miszejewski 2000; Montgomery 2000a).

Use of Surveillance

The best example of the use of surveillance information to incapacitate demonstrators strategically was in Philadelphia, where police targeted three alleged 'ringleaders' for pre-emptive arrest based on intelligence information it had obtained on local and national activists (Fisher 2001). Each of the three was charged with conspiracy to commit crimes, though police testified in court that they had ignored those who

4 By the early 1990s, all police forces in major US cities equipped their police officers with at least one authorized less-lethal weapon (Crime Control Digest 1992a). While it took some time for less-lethal weapons to become a regular part of the arsenal used by US police during protests, today's well-armed police officers face demonstrators with rubber bullets, pepper spray, beanbag launchers, paint-ball guns and concussion grenades (Alexander and Klare 1995-6). The most frequently used less-lethal weapons are pepper spray and rubber bullets.

actually committed the crimes that resulted in those charges (Harris and McCoy 2001, 2000; Commonwealth vs. Kathleen Sorenson 2000). Prosecutors requested and received extremely high bail (\$1 million in two of the cases, \$500,000 in the other) by citing information in defendants' intelligence files as evidence that they 'facilitate[d] the more radical elements to accomplish their objective of violence and mayhem' (quoted in Kinney and Coulombis 2000; see also Commonwealth vs. Sorenson 2000; Harris 2000a; Harris and McCoy 2000; Kinney 2000). Unable to raise these extremely high bails, the alleged ringleaders remained in jail until after the RNC had concluded, at which point judges reduced their respective bails to \$100,000.

Discussion

The police use of force against transgressive protesters was, in many ways, predictable because police would, by definition, diagnose transgressive demonstrators as 'bad' protesters. In each city, professional organizers from groups such as the Ruckus Society, Public Citizen, and the Rainforest Action Network helped train activists – many young and, in the eyes of the police, easily manipulated – and coordinated demonstrations. Moreover, abstract goals such as 'global justice' would primarily benefit those in less-developed countries, making the police suspicious of the motives of those in the streets of US cities. In addition, the targets chosen by the protesters in these three cases included events of international and national importance, featuring diplomats, trade representatives and political leaders. Finally, transgressive protesters did not fully cooperate with police, employing innovative tactics and refusing to negotiate away their right to disrupt the events they targeted.

If the use of force by police was predictable, the same could not be said about either its form or function. The social scientists who documented the shift to negotiated management never claimed that the use of force by police had been eliminated altogether, but they did claim that it had been relegated to a tactic of last resort to be used primarily against uncooperative protesters (della Porta and Reiter 1998a; McPhail, Schweingruber and McCarthy 1998). Otherwise, within the policing protest literature, the police use of force was a largely un-theorized activity. As a result, the only logical conclusion was that the use of force by police could be situated on a continuum between its employment under the escalated force and negotiated management styles. As such, the contemporary use of force by police during protests was portrayed as a temporary and situational return to escalated force tactics. But the use of force during recent global justice protests does not sit comfortably on the continuum between escalated force and negotiated management. Important aspects of the strategies and tactics of police in these three cases are rooted in neither the escalated force nor the negotiated management style of policing protests.

Instead, we argue, they reflect a third response to political protests, which we refer to as the *strategic incapacitation* style of policing protests. Strategic incapacitation

is a variation on the selective incapacitation philosophy of social control, which is distinguished by two of its facets: First, the utilitarian focus on preventing deviance rather than avenging the offence, rehabilitating the offender or deterring others from committing the same act; and second, its selective focus on those deemed most dangerous (Miethe and Lu 2005; Auerhahn 1999). From the selective incapacitation perspective, for example, incarceration is a means of preventing the offender from committing a criminal act again. It is not rehabilitative and need not be a means of revenging the offence. If the sentence is harsh, as it is in many states with three-strikes provisions, the length of sentence is intended not as a means of retribution but rather as a reflection of the perceived dangerousness of the offender (Shichor 1997).

The *strategic* incapacitation style of policing protest is also selective but recognizes the dynamic nature of relations between police and protesters and the contingent nature of who and what is dangerous. Dangerousness may attach itself to particular protesters, protesters using specific tactics, or protesters in a particular place at a particular time. Moreover, dangerousness is only relevant when political demonstrations are about to occur or are occurring. Therefore, the targeting of transgressive protesters and, in particular, their leaders, in an effort to prevent or severely restrain demonstrations without necessarily causing permanent harm or engaging in extensive punishment of the protesters is one of the central tenets of strategic incapacitation (Noakes, Klocke and Gillham 2005). But contained protesters, like those on the streets of Seattle after DAN had succeeded in closing down the downtown area, may find themselves the target of such tactics, as well.

In the remainder of this chapter, we elaborate on three central aspects of strategic incapacitation: risk assessment, temporary incapacitation and the rearrangement of offenders. One long-term police strategy to decrease uncertainty is surveillance. ‘Information work’ plays a key role in strategic incapacitation strategies. During the escalated force era, for example, it was used as a means of gathering information that could be used to delegitimize or expose groups’ efforts to force social change (cf. O’Reilly 1989; Powers 1987). During the negotiated management era, the primary use of information work was to allow police to maintain public order while under-enforcing the law (della Porta 1998; della Porta and Reiter 1998a; McPhail, Schweingruber and McCarthy 1998). Della Porta (1998), for example, details how the Italian police use new technologies to let troublemakers know they are being watched, anticipate where trouble will occur, and record protest events so that police can arrest those who commit violence after the protest has ended, when doing so is less likely to spur continued additional unrest.

Although police continue to use new technologies to these ends, information work has taken on an additional function in this new era. Intelligence information circulating among the FBI and police departments in each city provided authorities with information on:

who might be consistent rabble-rousers, the course of funding for the groups, and then, the discussion of their tactics ... how they communicated, how they moved about the city,

how they took over intersections, who was likely to be behind that. What they did with puppets, and all the techniques they used. (Gainer 2001)

The extent of this information work allowed police to assess risk and identify individuals and groups who were later subjected to various strategic incapacitation tactics, a practice referred to by one observer as 'political profiling' (quoted in Scher 2001).

Police also seek to rearrange and incapacitate protesters for as long as possible without incurring the costs associated with punishing the offenders. By rearranging we mean creating obstacles to participation in demonstrations. This can be done by arresting protesters or by use of physical barriers to control protesters' actions. So, for example, large no-protest zones demarcated by fences, mobile barriers and police in riot gear work to rearrange protesters. Incapacitation is also achieved when force is used to disable protesters temporarily or otherwise make it impossible for them to participate in demonstrations. The most obvious example of incapacitation occurs when police use less-lethal weapons against demonstrators.

Arrests intended to keep protesters out of demonstrations have aspects of both incapacitation and rearrangement. For example, the mass arrest in Washington, DC temporarily immobilized several hundred protesters on the eve of the WB/IMF demonstrations. Similarly, the arrest of 75 protesters at a Philadelphia convergence site was timed to disrupt direct action protests planned for the following day – the date and time of which police had learned from an undercover officer who had infiltrated a protester convergence site (McCoy and Harris 2000a, 2000b). We contend that these arrests were intended to incapacitate rather than punish demonstrators because only rarely did these arrests result in prosecutions or, when the accused did end up in court, in convictions. Those arrested on the eve of the IMF/WB meetings, for example, were all released within 24 hours, after payment of only a \$50 collateral bond, which nearly all of them subsequently forfeited without penalty (Drake and Mizejewski 2000; Wagner 2000). After the IMF meetings had ended, another 150 protesters were released after prosecutors agreed to reduce each charge to jaywalking, which carries a \$5 fine (Montgomery 2000b). Similarly, charges brought against numerous direct action protesters were dropped or dismissed when Philadelphia prosecutors were unable to connect specific people to specific crimes. In the end, the 400 arrests in Philadelphia yielded only 24 misdemeanour convictions (Harris 2000b; Harris and McCoy 2001).

Though police officials are quick to remind observers that the failure of the courts to convict defendants 'is never dispositive on whether we had a right to arrest them in the first place' (Whitman 2001), in many cases it appears as if the police made little effort to punish those arrested, ignoring such basic police procedures as establishing a clear chain of evidence (Drake and Mizejewski 2000; Montgomery 2000b; Wagner 2000). As one exasperated Philadelphia municipal court judge instructed the district attorney's office: 'You're going to have to have somebody come in here and testify that somebody did something wrong' (quoted in Harris 2000b).

Less-lethal weapons also function to temporarily incapacitate protesters without risking the dangers of traditional firearms. The most frequently used less-lethal weapons are pepper spray and rubber bullets. Pepper spray includes a highly concentrated resin derived from cayenne that temporarily disables a target by causing intense pain, irritation of the eyes, swelling of the throat, temporary paralysis of the larynx, and loss of vision and balance (Jett 1997; Cook et al. 1994/95). But the most serious effects of pepper spray last only about an hour, after which nearly all people make a full and speedy recovery (Zollman, Bragg and Harrison 2000; Jett 1997). Rubber bullets are 'cylindrical projectiles resembling chunks of sausage, fired from a .37 millimeter gas gun' (*Crime Control Digest* 1992b, 5). When fired at the ground, the rubber chunks ricochet into crowds, striking protesters in the shins and thighs and leaving a painful welt (*Crime Control Digest* 1992b; Metress and Metress 1987). Fatal injuries can occur when projectiles strike people in the head (Wedge 2004), but if used as designed they should not cause the death of a victim.

At first glance it may appear that the use of less-lethal weapons is consistent with the move toward softer means of policing. There were, for example, no reports of serious injuries as a result of the use of less-lethal weapons in Seattle or Washington, DC. If, however, less-lethal weapons are used more readily than more lethal means of force would be or if, when police decide on their response to a demonstration, they use less-lethal weapons where once they would have arrested protesters, negotiated mutually agreeable solutions or allowed the protesters to demonstrate unimpeded, then the use of less-lethal weaponry represents an increase in the use of force by police in response to protests. But this is not a return to escalated force tactics. The use of force is not an end in itself, nor is it indiscriminate. Instead, rearranging and incapacitating protesters allows the police to control and defuse protests without risking the delegitimization crisis faced at the end of the escalated force era.

The differences between the 'new penology' and penal modernism are reflected in the new strategies and tactics adopted by police to respond to the new breed of protesters. Paraphrasing Feeley and Simon's (1992, 458) analysis of changes in the dominant philosophy of crime and punishment over the past 30 or so years, we argue that the new approach to policing transgressive protesters encourages police 'to reduce the effects of [protests] not by altering either [the protesters] or the social context, but by rearranging the distribution of [protesters]'. There were, of course, differences in the police response in our three cases. During the April 2000 IMF/World Bank protests in Washington, for example, DC police arrested more protesters than their counterparts in the other two cities combined. Moreover, the Philadelphia police were the only force not to adorn its officers in riot gear and employ less-lethal weapons. Our argument is not that the police response in each city was identical, but rather that when the negotiated management style of policing protest faced a crisis posed by an increase in transgressive protesters in the late 1990s, various police departments drew from a common police philosophy to help construct innovative approaches to controlling demonstrations.

Conclusion

In the months following the WTO demonstrations in Seattle, mass demonstrations were staged in several US cities, coinciding with major national or international events. Protesters in Washington, DC and Philadelphia, inspired by the success of the WTO demonstrations, tried to replicate the tactical innovations introduced by protesters in Seattle by, among other things, deploying loosely coordinated affinity groups to disrupt the targeted event. At the same time the success of the WTO protests also led police to re-examine their approach to policing protests. The negotiated management strategies that police relied on to control protesters were rooted in penal modernism, the dominant police philosophy of post-World War II America. But the influence of penal modernism on the criminal justice system had faded in recent years and a new policing philosophy, referred to in the sociological literature simply as the 'new penology', emerged to take its place as the paradigmatic philosophy of social control.

Faced with a crisis in policing protests following Seattle, police had to devise new strategies for controlling political demonstrations. The tactics they developed are deeply rooted in the new penology. As a result, the policing of protests in the US now has a dual quality. To the extent that protesters are willing to negotiate the scale and scope of their demonstrations with police, and demonstrations are contained, police continue to adopt a *Bürgerpolizei* approach, operating primarily as promoters of the political rights of citizens, facilitating the right to protest and protecting First Amendment rights. But the presence of uncooperative protesters or acts of transgressive contention leads police to adopt a *Staatspolizei* strategy of control in an effort to reduce uncertainty and maintain order. Transgressive protesters, for example, are more likely to be arrested in an effort by police to incapacitate them for as long as possible. That arrested protesters on our three cases were rarely prosecuted, and when prosecuted rarely faced a concerted effort by police to convict them, suggests that the primary purpose of the arrests was to rearrange or incapacitate transgressive protesters, not to punish them. In addition, transgressive protesters found their access to public space constricted, their preparations for demonstrations disrupted by overzealous and targeted enforcement of laws and regulations, their leaders targeted for their pre-emptive detention, and their demonstrations subject to less-lethal weapons fire. These new police tactics, developed to control transgressive protesters, are consistent with neither the escalated force nor the negotiated management approach to policing protests. Instead, they form the basis of a third approach, which focuses on the strategic incapacitation of protesters.

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