The Legal Arena of Social Control
Protest Policing Since Seattle

(A new framework for studying the social control of dissent)

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Abstract: This paper examines the legal arena of social control of protests since the 1999 WTO protest in Seattle, Washington. The authors argue that social control of dissent has changed significantly in recent years and outline a framework for its study. The paper then focuses on aspects of the legal arena (legislation, intelligence, policing, and prosecution) showing how legal mechanisms are deployed to control protest. The second part of the paper shows how activists respond to these control tactics.

Keywords: protest policing, alterglobalization, anti-globalization, social movements, social control, dissent

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Introduction

Before 9-11, activists in the alterglobalization[1] movement were laying siege to global governance[2] meetings around the world. These festive mobilizations, espousing "non-violent direct action", but taking different forms in countries with different traditions of political struggle, were exposing the undemocratic nature of global economic governance. After 9-11, fears of terrorism were used to justify loosening regulatory restrictions on law enforcement activity (Fernandez 2008).

Concerns about terrorism provided a convenient framework in which to increase repression of non-violent movements, not only for the alterglobalization movement but also for connected movements such as eco-defense and anti-war. In late 2005, the US media began to report that federal agencies were engaging in broad-based investigative activity targeted at avowedly pacifist peace organizations, composed of religious people, veterans, and elders, and those who oppose the Iraq war using lawful means (see Lichtblau 2005).

As scholars of these movements, we found ourselves increasingly aware of the complex dimensions of repression and of the creative resistance happening in the face of that repression. Yet, as we examined the literature on repression we recognized several limitations. First, we discovered that the literature on the policing of protest had simply not kept up with events since the emergence of the alterglobalization movement in 1998. Second, we recognized that the literature on the policing of social movements did not address the wider social control of dissent. Third, we realized that the protection of global economic governance meeting involved dimensions of state organization that have not been considered in earlier studies of state repression. Fourth, we recognized a new component of state repression, which is cross-border collaboration of tactics for protest policing.

In order to begin to address these shortcomings, this paper reviews previous literature on the relationship between the state and social movements and draws on extensive ethnographic data on the alterglobalization movement as the basis for outlining a new framework for studying the social control of dissent. It is important to note that the literature review here is limited to US & Europe. And while our ethnographic data reflects work in the U.S., México, and Canada, the primary focus of this work is the United States. The analysis also draws on seven years of ethnographic work**;**[3] independent media reports, activist discussions in several forums, and public texts such as activist videos.

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[1] 'Alterglobalization' includes the following: opposition to the international institutions such as the World Bank and WTO, anti-corporate campaigns associated with the anti-globalization movement, and movements which predate this movement but have become involved with it (radical environmental movements, Close the School of the Americas, and Latin American Solidarity movements). For discussion of this term, see Starr 2005.

[2] By 'global governance' we mean the political and economic elites who meet regularly as G8, WTO, EU, FTAA to undemocratically plan the global political economy.

[3] The authors collected data using participatory observation at the following protests: Seattle WTO 11/1999; D.C. IMF-World Bank 4/2000; Los Angeles DNC 8/2000; Cincinnati TABD 11/2000; Québec City FTAA 4/2001; D.C. IMF-WB-anti-war 9/2001; New York City WEF 2/2002; Calgary, Canada, G8 7/2002; Sacramento USDA/Biotech 6/2003; Cancún WTO 9/2003; Miami FTAA 11/2003; San Francisco The World Still Says No To War 3/2004; San Francisco Reclaim the Commons 6/2004; Ft. Lauderdale FTAA 6/2005; a number of post-911 anti-war actions in Colorado and Arizona, as well asTransform Columbus Day 2000, 2001, and 2002 in Denver. The participant-observers is from what we call a 'rank and file' affinity group perspective.

Seattle and the Aftermath

On n30 (30 November 1999), non-violent protesters in Seattle were able to successfully shut down the WTO meetings for a full day due to a combination of creative direct action, the presence of massive numbers of people in the streets, and police disorder (DeArmond 2001). Reeling from defeat, police agencies in other cities rapidly geared up to face anti-corporate and anti-globalization protests. Yet, this was not only a quantitative response. The National Lawyers Guild, drawing on 35 years of observation of First Amendment activity, concludes that post-Seattle protest policing manifests "a noticeable shift from reactive law enforcement to preemptive law enforcement" (2004: 19), thus pointing to a qualitative change.

Four years after the Seattle WTO protests and two years after September 11 attacks, the Seattle coalition of unions, anti-poverty groups, environmentalists, and students gathered to oppose the FTAA meetings in Miami. No less than 40 law enforcement agencies, 7 federal, organized to "limit" protest in order to "prevent violence" in what was described by Miami Mayor Manuel Diaz as "the model for homeland defense". In addition, the U.S. Congress provided $8 million to help with "security" in Miami; the money was provided as a line item in the Iraq war appropriations bill.

This "model" also included extensive public relations campaigns, including a PowerPoint presentation given by the police in press conferences and community briefings which sought to criminalize and marginalize activists in advance, as well as secure cooperation and support for turning downtown Miami into a police state for several days (Fernandez 2008). The public relations took the internal form of psyching up law enforcement personnel by weaving fabulous rumors involving exotic weapons composed of excrement, none of which were on record as having been used by this social movement. In addition, city officials threatened a local church that had agreed to host educational activities and house activists.

As part of a tactic that is now standard, Miami re-drew its geography in the face of a security state while hosting the FTAA meetings. For instance, it spent millions of dollars to rent an impressive fence to remake the geography of downtown. Nearby businesses were entreated to close for the week, residents were warned against violent visitors, streets were blocked so that registered guests were unable to access hotels, and public transportation routes were suspended.

Despite the non-appearance of any "terrorist", no breaches of the fence, no roadways having been blocked that were not preemptively closed by police, and no window breaking or other property crime, at 3:53 pm activists remaining in the streets after the end of a union-sponsored march were told by a police representative with a bullhorn that the demonstration could continue "until there is violence". Within seven minutes, a wall of police moved on the protest, firing rubber bullets and teargas and proceeded to "hunt"[4] protesters indiscriminately and violently for over 30 blocks from the actual meeting site, systematically driving protesters into the Overtown neighborhood, where residents had been encouraged by police to rob protesters with impunity.[5]

The police presumption was that anyone in the street or on the sidewalk in the downtown area of Miami was an activist and engaged in criminal activity. Justified on the grounds that the AFL-CIO refused to exclude non-members, law enforcement restricted entry to and egress from the permitted rally area, agreements for bus access were revoked, the march route was changed after it had begun, and union members and AFL retirees were brutally arrested. Other groups were also denied use of permits. Riot police and bomb squad personnel from several agencies (local, federal, ATF, and others unidentified) prevented Unitarian activists

[4] Miami Activist Defense (MAD), Press Release "Miami Mayor Diaz's 'Model for Homeland Defense' Equals Suspension of the Constitution and Brutality for FTAA Dissenters". November 26, 2003. archived at www.stopftaa.org/legal

[5] Testimony can be found in the Indymedia film *The Miami Model.* http://www.ftaaimc.org/miamimodel.

from attending an educational workshop at a Methodist church, eventually canceling their event outright. In addition, the criminalization of activists included the targeting and arrest of clearly marked safety personnel, such as medics, union marshals, and legal observers.

While there was no protester violence in Miami, the local media portrayed the protesters as "violent anarchists", a framing that became all too familiar. As an interviewee put it:

> "Since the hugely successful mass action in Seattle with WTO, routinely since then, large gatherings on a whole range of issues have been portrayed in the media as criminal, violent, disruptive. [They are portrayed as] people come from no home, coming out of the shadows, the alleys, to descend on this area and provoke violence and chaos.... creates the image of the Left as a criminal element of society."

Incessant (and illegal) searches of activists in the week prior to the day of action had only turned up gas masks (used to portray activists as "thugs" despite being legal in Miami) and one controlled substance, a prescription medication (leading some to argue that these were the most upstanding collection of citizens in the country).

Despite the lack of evidence and the City of Miami's eventual failure to secure a single conviction of an "FTAA-related" arrestee, police and jail operations were "vicious, unnecessary, and vindictive",[6] involving rubber bullets, plastic bullets, beanbags, a new weapon containing metal pellets which explode on contact and leave shrapnel in the body, tear gas, pepper spray, and tasers. Many of these weapons were used counter to the prescribed methods (to the extent those are even known), thereby voiding their status as "non-lethal weapons". The medics reported dozens of serious injuries including at least five head wounds caused by projectiles shot directly into the face (a contravention of non-lethal use).

Still in shock from Thursday, activists held a press conference and vigil outside the courthouse/jail on Friday. Police initially informed 200 activists that they could demonstrate in an adjacent parking lot but suddenly issued a 3-minute dispersal order. As people were trying to disperse, and to the amazement of courthouse staff, the 680 riot cops on the scene surrounded, pepper sprayed, and arrested about 70 people, including a retired Miami attorney, three legal observers in distinctive hats, as well as a lawyer acting as police liaison.

In custody, the arrestees (recall that none would be convicted of any crime) were processed slowly, paperwork was lost, access to counsel and phone calls was denied, public defenders were frustrated by constantly changing procedures in jails and courts, excessive bails were set (such as five thousand dollars for the misdemeanor "resisting arrest without violence"), and there were extreme delays in bond release (up to 12 hours). Arrestees charged with "unlawful assembly", "failure to disperse", and "resisting without violence", were held on average $1500 bail, denied food and water for 8-16 hours, and some were strip-searched (and several of the strip searches were done by or in front of the opposite gender). There were five cases of denial of medical care in custody, 30 cases of serious handcuff abuse (keeping people in handcuffs for thirteen hours with cuffs so tight that their hands turned purple), 4 cases of sexual assault, ten death threats, six other threats of bodily harm, ten reports of people beaten or pepper sprayed while cuffed or sprayed directly in the face, seven reports of detainees being held at gunpoint, one report of a person forced to sign a confession not written by the defendant, and threats of federal charges made to arrestees refusing to reveal their national origin, which is not a crime.

In the months after the FTAA meetings, activist legal workers volunteering with Miami Activist Defense assisted arrestees through the court process. Of 219 arrests, the city obtained only 4 convictions. 150 cases were dropped (nolle prosse). Lawyers affiliated with the National Lawyers Guild filed *Kilmon et. al. vs. City of Miami et. al.* which named as defendants the Miami

[6] Miami Activist Defense, Press Release, November 16, 2003.

officials along with the US Attorney General and the Secretary of the Department of Homeland Security. As a result, four individual victims of police violence received settlements ranging from $39,500 to $180,000. Forty plaintiffs citing civil rights violations in the Killmon case received a total of $518,500. Killmon himself received $225,000 for wrongful arrest and damaging conditions of detention. As of the end of 2007, there are 11 more outstanding cases, eight of which are in federal court, including one regarding treatment of the AFL-CIO retirees. However, these settlements do not include any judicial orders regarding policing and civil rights. And fewer than 100 of the thousands of activists whose rights were violated are represented in these suits.[7] In 2006, the Miami Civilian Investigative Panel issued a report criticizing police command structure, inadequate for constitutional activity and access to permitted events, unmarked officers, and incorrect use of weapons at the FTAA protests. The Report emphasized that despite taking legal action, they were unable to obtain the Police Department's "Operational Plan". Chief Timoney had been open about his intent to "limit protest" (Killmon et. al. 2004) in what activists dubbed "the Miami Model".

A General Framework for Studying the Social Control of Dissent

Donatella della Porta has gathered scholars for two important edited volumes on policing, the first just prior to the emergence of the alterglobalization movement (although after the emergence of the Autonomen in Europe) and the second somewhat after the emergence of the movement. The 1998 volume happily determined that negotiation had for the most part replaced escalated force in Western Europe and the US. This shift was accomplished by three tactics: "underenforcement of the law, the search to negotiate, and large-scale collection of information." (6) Their variables in explaining protest policing are: political opportunities (police institutions, state political context, and political culture) civil rights or law-and-order coalitions, and police knowledge (ideas and images about protesters).

Eight years later, della Porta et. al., ed. (2006), assert that policing of the alterglobalization movement involves "new strategies (that) challenge social scientists' approaches to protest policing." (3) Here, some contributors argue that policing strategy is new and others that alterglobalization policing used existing elements of "emergency" policing (33) as well as negotiation – its oddities connected more to variables of police knowledge (such as the failure to recognize alterglobalization as "a political subject" (27)) and disorganization within police institutions. But the 1998 expectations about information gathering are confirmed: "the massive use of intelligence" is "legitimized as an alternative to brutal intervention on the street." (5) Noakes & Gillham (2006) determine that neither "escalated force" nor "negotiation" fully capture what is going on. Instead, "rearrangement", detention, and disruption are used to accomplish "strategic incapacitation", particularly of protesters who are "transgressive" (refusing negotiaton and predictable forms of protest).

Most striking to us in this volume was Abby Peterson's (2006) description of Copenhagen police chief Kai Vittrup's strategy, which involves an offensive paramilitary plan designed to "maintain the initiative during the summit, determining the time and place for the anticipated events and controlling their development" (60) with a combination of the "tactic of exhaustion" (61) and negotiation under contrived and theatrical conditions. (62) Peterson notes that both in Denmark and Sweden police sought to "undermine the series of nonviolent civil disobedience actions." (63) We note that the mysterious Miami Model is, in fact, the Vittrup model.

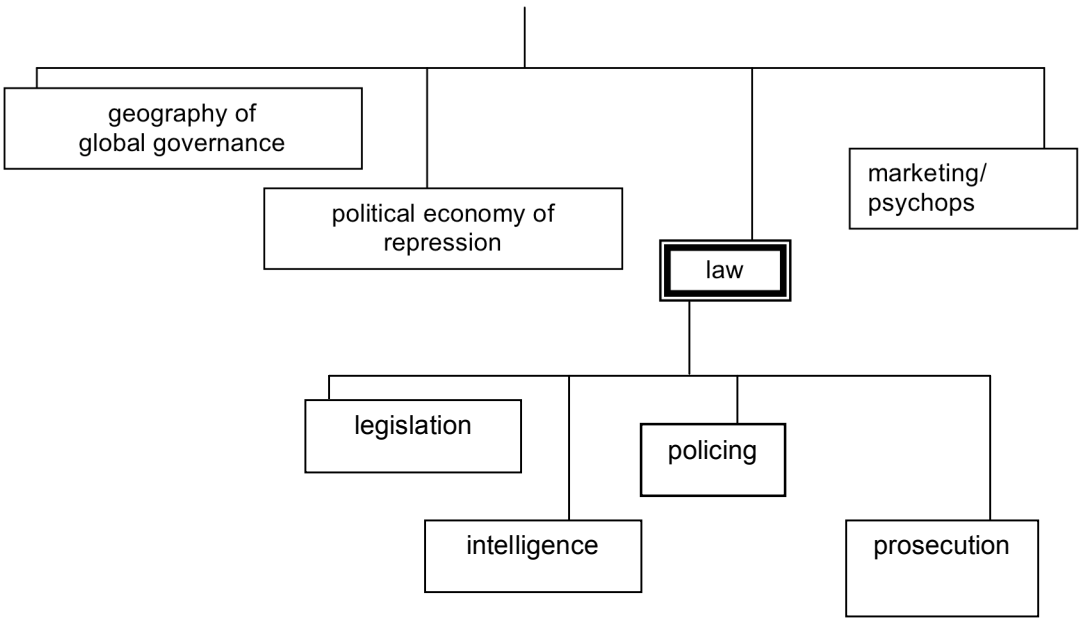
Other relevant literature includes the US National Lawyers Guild's claim that the negotiated model has shifted to a preemptive model focused on blocking access, intimidating activists, broad-scale (illegal) searches, raids, mass arrests, and the confiscation or incapacitation of protest resources (Boghosian 2004). Earl (2005) has pointed out that arrests may have been underestimated as less severe than police violence. McPhail, et. al. (2004) have

[7] This information was provided by litigator Robert W. Ross, counsel for Killmon, AFL-CIO, and others.

emphasized the "shrinking effective size" of public space for protest in the US. They acknowledge the problems with "channeling" of protected First Amendment activities through the restriction of access to and use of public space through permit requirements. They also emphasize the privatization of public life as it moves from the commons (parks and public space) to private property (malls and stadiums) and the creeping privatization of public space by Business Improvement Districts (also see Davis 1990).

We believe that a more comprehensive and updated approach to protest policing must take into account not only policing in the street, but an expanded conception of the legal arena (of which policing is only a part), as well as other important areas. Moreover, we believe that these arenas of social control act not only against activists standing in the streets, but against a broader group of dissenters, some of whom are effectively controlled while still in their living rooms. To understand how social control operates around a protest, we suggest four general arenas of social control. Depicted in the figure below, these arenas include: the *geography of global governance* (where does it occur, how is space divided and controlled); the *political economy of repression* (who pays); the *law* (legislation, intelligence, policing, and prosecution); and *psychops* (social marginalization of activists and the marketing/pr/media/construction of ideology). There are three important points about the arenas. They are not exclusive categories since they intersect in practice. They are sites of struggle for hegemony, meaning that each involves both repressive and resistive forces. And they are particularly important to the study of the globalization of the social control of dissent. Because of lack of space, this paper elaborates on only one of these arenas: the law. In a future manuscript, we plan to outline each of these arenas in greater depth.[8]

Figure 1: The social control of dissent



[8] Along with Christian Scholl, we are working on a project to articulate the other three areas in a book about social control in the Global North since Seattle.

The Law

The legal arena includes four mechanisms: legislation, intelligence, policing, and prosecution/litigation. When considering these, note that tactics implemented within these areas also overlap. After the four mechanisms, we discuss resistance.

Preemptive Legislation

The "negotiated" model has taken on an increasingly preemptive tone through the use of restrictive ordinances, often passed rapidly in anticipation of a specific protest event, but with far-reaching effects on local social movements. These ordinances have yet to be fully studied by sociologists.

In advance of protests, many cities have used legislative and bureaucratic mechanisms to preempt Constitutionally-protected political activity and speech. For instance, the Miami City Council defined two or more persons moving down the street as a "parade" and eight or more gathered outside a structure for more than 30 minutes as an "illegal assembly". Most commonly, these ordinances restrict protest materials (limiting the diameter and materials of sign sticks, which illegalizes most puppets as they require strong supports, lockdown equipment,[9] face coverings ("mask laws" prohibit face covering, even in the middle of winter)[10], and protection from police weapons, such as gas masks. Miami removed the ordinance (section 54-6.1) from the books promptly following the event (indeed the ordinance itself included a schedule to sunset on November 27, 6 days after the FTAA meetings ended), but in other cities restrictive ordinances do not expire after the event and can result in sharp new limitations on local protest activity long after the mass action is over.

A second category of preemptive legislation is the heralded resurrection of old laws, such as New York City's threat to charge masked protesters at the early February 2002 WEF protests under an 1845 law "originally adopted to thwart armed insurrections by Hudson Valley tenant farmers who dressed and painted themselves as Native Americans to attack law enforcement officers over rent issues". The law was intermittently resurrected to criminalize, in turn, queers (in 1965) , the KKK (in 2001), and alterglobalization protesters (in 2002) (RNC Not Welcome 2004).

A third category is the permitting process. Here the police collaborate with the city government bureaucracy in systematically restraining lawful protest by restricting use of public space for rallies and marches. In addition, permitting requirements force organizations to pay for insurance, portapotties, etc. and to take responsibility for behavior of people who join the protest. Often permits define "protest areas" (called "protest pits" by protesters). Often, these areas are surrounded by high fences on 3 sides. Behind the fences are heavily armed police. As part of the permit for a march and rally, citizens are herded into the protest pits and held there by heavy forces at the rear. Despite the protected status of these spaces, they are not "safe" for protesters. In Los Angeles during the DNC in 2000, police declared those in the protest pit to be an "illegal assembly", issued a 3-minute dispersal order, and fired both into the pit and onto those dispersing outside of the pit. This state "structuring of protest" (Piven & Cloward 1978) forces activists to choose between impotent permitted activities and inevitably confrontational unpermitted ones.

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[9] Lockdowns are a tactic of blockading in which people use some sort of locking mechanism (bike locks, handcuffs, chains and padlocks…) to attach themselves either to each other (so that they are immovably in the only path of what they are opposing) or to doorways, equipment, etc. (to prevent their use). Those locked-down are supported by an equally committed group which shields and cares for them since often those locked down are largely immobilized. Lock-downs use the vulnerability of the body to raise the stakes with the police, who can cause severe injury if they are not very careful. They also increase the cost and time for the state to eliminate the manifestation. Lockdowns maximize the impact of a few committed persons. The symbolic non-violet imagery of the lockdown is also a useful educational approach.

[10] Mask ordinance, Cincinnati OH for TABD November 2000.

A final form of preemptive legislation is the creation of "security perimeters". Working with law enforcement agencies, local city officials allow the perimeters, which come with massive metal walls that distort the geography of the city, sometimes dissecting neighborhoods and requiring residents to carry pass cards. Parts of the city become off limits to all but the anointed (approved media, police, etc.), including tourists. Hotels and businesses are forced to close. The erection and usually violent defense of these perimeters is a profound act of urban governance.

Each of the legislative strategies described above have a preemptive function, making the protest more difficult, less visible, and more expensive. In the end, these police tactics serve as pretext for police criminalization of lawful speech and assembly.

Intelligence

A great deal of protest policing takes the form of overt strategic surveillance (such as police standing outside protest headquarters, watching people enter and leave buildings, and video taping people). This type of surveillance intimidates legal individual and group activities. Police are also posted and drive past central locations, including sleeping and eating spaces, medical centers, educational events, art workshops, and meeting and organizing locations. Helicopters circle ominously. For example, vigilance was so heavy during the 2003 Biotech protest in Sacramento that protesters compiled a long list of different kinds of vehicles that drove by the "welcome center." It is the constancy of such surveillance that imparts (to activists and observers) criminalization of protest and intolerance of grey area activity, like civil disobedience.

Event policing is only one type of surveillance. Other distinct types include: database categories, long-term surveillance of individuals and organizations, federal surveillance, and international data-sharing.

Although surveillance of activists that do not meet the "criminal test" are not new and have clear precedent in the COINTELPRO era (Cunningham 2004), activists are now once again experiencing high levels of investigation. Adding to this trend, grand jury investigations have shaken communities of activists across the country in response to property crime, such as arson of SUVs, theatrical damage to merchandise in stores, and animal and forest protection activities involving no harm to human beings. At the same time, bizarre criminal categories are being created, including "criminal extremism" (a category in which we find pacifist organizations like the American Friends Service Committee), "ecoterrorism", and "animal enterprise terrorism".

In addition, groups are infiltrated which police can have no basis for suspecting of violence or property crime. One affinity group in Philadelphia for the RNC in 2000 found their van driver to be an infiltrator when he drove them into a police blockade where all on board were arrested (Pearson 2000). Infiltration has become so constant that activists now assume that most meetings are infiltrated. Rather than allowing this knowledge to hamper organizing, some activists recommend that it enhances the moral authority of the movement when it is known that the police, having been in the planning sessions, *know* that the actions are designed to be entirely pacific.

Under enhanced police powers and investigation (Omnibus, PATRIOT Act, etc.) internet activities have also come under increasing scrutiny through new surveillance technologies. Sherman Austin, for example, served a year in federal prison (and was threatened with a great deal more) for the links on his website (see http://www.freesherman.org/). Databasing has taken on vast proportions, enhanced by the technologies used in gang policing. A conference of the Law Enforcement Intelligence Unit (LEIU) in Seattle in 2003 attracted the attention of protesters seeking to expose its private (but federally funded) "network" nature, its data-collection on non-criminal activities (such as protest) and its low intelligence standards (Political Research Associates 2003).

Continuing this research, our forthcoming study on surveillance reveals that the psychologically intimidating and organizationally disruptive aspects of surveillance are as counterinsurgent as its direct role in gathering evidence for prosecution.

Policing

In addition to surveillance as policing, a wide range of protest policing tactics are used in seemingly erratic combinations. Individual activists and small groups are stopped, questioned, detained, and searched without probable cause. Activist spaces receive inordinately punctilious fire inspections. On various pretexts (including code violations discovered without the aid of the relevant regulatory agencies), police have frequently surrounded organizing spaces, cut off entry and egress, and arrested all those inside (even the puppets).

Only part of protest policing is physical control. Much of it works psychologically, serving to intimidate dissenters, distracting or diverting the mobilization from plans. Groups of police in militarized costume and posture, "patrol" the neighborhoods in which activists are meeting and organizing. In Sacramento, in 2003, large SUVs were mounted with runners, on which 3-8 riot-gear-clad cops would ride, circling the neighborhoods. Police will often choose the moment of a large meeting at Convergence to mass a large force nearby, causing disruptive fears of a possible raid that make it difficult to keep people in the meeting and focused on the agenda. For instance, in Sacramento the police set up a large spotlight across the street from the building in which the Spokescouncil was taking place. They trained the spotlight on the doorway, intimidating people from entering, and also shined it through the windows, transforming the environment from collaborative and creative to dangerous and unpredictable. Even when there is no action going on (but often when a meeting is underway) police drive around blaring their sirens, fomenting rumors of immanent police action. During the 2000 Democratic National Convention in Los Angeles, the activist legal team won a rare injunction against raids on the convergence center. Nevertheless, activists did not know this injunction would hold and the space was still vulnerable to rumours caused police massing and siren parades; security lockdowns were an ongoing disrumption to entry, egress, and meetings.

Once people have assembled, police use several strategies to disrupt activity. For example, they declare assemblies illegal, seemingly at will and even in locations and at times which have been pre-negotiated as permitted "protest areas". Protesters are often perplexed by the lack of any immediate pretext for voiding the negotiated agreement. Having declared an assembly illegal, police then threaten mass arrest and violence.

These mass arrests and violence may not allow sufficient time and space for dispersal, entangling protestors who did not hear or understand dispersal orders. For instance, during the 2004 Republican National Convention in New York City law enforcement used nets to indiscriminately capture and arrest hundreds of people, many of who were just engaging in a peaceful march (American Civil Liberties Union 2004a). Cops also use their bodies, shoulder-to-shoulder in riot gear, holding larger than standard nightsticks or bicycles as both fence and battering instruments. The mass surround-and-arrest tactic often results in the arrest of passersby, people coming out of work onto the sidewalk or journalists covering the protest. Mass arrests are often disorganized, infuriating observers and people trying to disperse, and often based on unprosecutable charges. However, the main purpose may not be to charge people with crimes, but to dissuade activists from acting. Detentions themselves can also serve to discourage activists from future dissent, since arrestees are often held in unusual and illegal conditions.

Often, protesters are deprived of legal rights to counsel, same-sex searches, phone calls, bathrooms, blankets, heat, beds, timely arraignment and release, and standard bonds. Detainee treatment is subject to demonstration of probable cause. Given the absence of any record of weapons possession or use by US alterglobalization activists, probable cause tests for suspicion of violence cannot be met; therefore much of this treatment is illegal. They are also

subject to cruel and unusual punishment, such as excessively tight handcuffs, beatings in custody, being held at gunpoint, sexual abuse, and death threats. Political arrestees are also often held in unusual spaces, which are unsafe, exposed, condemned, or otherwise inappropriate (See Starr, E. 2004).

Far more common than mass arrest is dispersal with weapons. The preponderance of violence which occurs at protests is perpetrated by police. Weapons used in police riot include striking weapons, chemical weapons, electric weapons, projectiles, and water cannons and concussion grenades. In contrast, there has not been a single case of weapons preparation or use by alterglobalization protesters in the U.S. and only a few molotovs in Canada. (Things are different in Europe.) On the few occasions when police have seized what they claimed was a weapon they have had to withdraw the charges.[11]

Purportedly "less lethal" police weapons are often used counter to the instructions, as has been revealed in the civil suits in Seattle and by the Miami CIP [2006]. A number of protest participants and observers have suffered severe head injuries from weapons whose less lethal status requires that they be shot below the waist or at the ground. As use of these weapons increases, their lethality is becoming more apparent. There have now been a number of deaths caused by tasers, plastic and rubber bullets shot at the head, and pepper spray used at close range. Police departments, community coalitions, and government officials are investigating these weapons.[12]

Recalling the psychological dimension of police action, a final type of police action is targeting. Some groups are followed by helicopter for days wherever they go and are frequently surrounded, questioned, harassed, and arrested. In addition, police target well-known organizers and people with easily-identified infrastructure functions (people doing communications, medics, folks supplying music or water, clever people with bullhorns who are helping to keep spirits up). These people are more likely to be "picked off" for arrest or shot at. "Snatch" arrests are sometimes arbitrary. (A tight phalanx will rush a crowd and extract one undistinguished person). In Philadelphia at the RNC in 2000, housing activist Camilo Viveiros, was subject to an extraordinary assault by Chief of Police Timoney who then charged Camilo with assault and other crimes carrying a total of a 30 year sentence. Despite the fact that Timoney couldn't even tell a straight story on the stand, the framing and fabrication of evidence against Camilo was not resolved until 2004. The arbitrariness of targeting instills terror. (Of course, such tactics also enrage and politicize both activists and observers.)

Prosecution

Very few activists charged at mass actions in the Post-Seattle era have been convicted. Many have been found not guilty, but many more have had their cases dropped, not prosecuted, or offered reduced charges. Unchanged since Balbus' 1973 study is the police privilege of using mass arrest as a method of repression without accountability to the courts to provide reasonable charges and evidence.

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[11] In this manner, North American activists are different from their European counterparts who do carry Molotov cocktails and similar weapons which can be used to start fires behind police lines. Weapons such as knives or guns are not carried by any first world protesters. But in Europe and Québec rocks and pavement stones are dug up and thrown at police, which could cause serious injury. This is a normal part of European protest, not unique to the anti-globalization movement. A protester states "I see our weapons as almost being tokenistic, symbolic—it illustrates the depth of our discontent…But come on—a stone against a helicopter, a stick against an armoured car—and they call us violent? To be honest, there is no comparison—they are the real butchers, they are the ones whose hands are covered in blood..." [Jazz, "the tracks of our tears" 80-99 in *On Fire:* 88. *On Fire: The battle of Genoa and the anti-capitalist movement.* 2001: One Off Press.

[12] For examples see the following: Boston: http://www.nolesslethal.org. Tasers: Robert Anglen and Dawn Gilbertson, "Taser safety claims draw state scrutiny *The Arizona Republic* Jan. 8, 2005. Chuck Carroll, "S.J. police respond to grand jury's Taser report" *San Jose Mercury News* Tue, Aug. 09, 2005.

Simultaneously, the severity of indictments against social justice activists is increasing. In 2001, repeat civil disobedients demonstrating to close the School of the Americas began received six-month sentences — shocking outcomes for symbolic pacific trespassing. Three elderly Dominican nuns received sentences from 30-41 months for a 2002 "symbolic disarmament" (involving their own blood and a household hammer) of a Minuteman missile in Colorado (Coffman 2003). Sentences against Jeff Luers (see http://www.freefreenow.org/) and other activists accused of arson of SUVs and other political property crime were longer than the sentences for rape (insulted, the feminist community in Oregon joined the campaign to free him). Charges against persons involved in effective high-profile direct action, such as banner hangs, are also increasing, despite peaceful nature of this activity.

Another category of lawsuits should also be mentioned here — criminal suits against *organizations* which seek to enjoin them from participating in various protest activities. The US government sued Greenpeace USA, holding the organization responsible for the civil disobedience of members who had already been tried and sentenced as individuals. This suit was challenged on the basis of selective prosecution and also violates the First Amendment (USA v. Greenpeace). Greenpeace was acquitted in 2004, as the prosecution failed to prove any violation the obsolete 1872 "sailor mongering" law in question, but the First Amendment issues were not addressed.

Agency and Resistance

When writing about control and repression, it is easy to lose site of the fact that activists have agency. To dispel this impression, this section describes several ways that activists resist legal control.

Activist intervention in the criminal arena takes the form of Activist Legal Teams. An introduction to action working groups is important in understanding these teams. Activist legal teams are part of the mass action framework popularized since the Seattle WTO protests. Major permitted marches are organized by unions, peace groups, and other major organizations. These groups negotiate with the police and often even provide their own internal policing, through a "marshall" system, which attempts to keep participants on the negotiated course. Meanwhile the direct action sector (who may participate in the permitted marches but often also mount other actions before and after the permitted marches) is organized through a sophisticated system, involving usually a headquarters ("the convergence", where trainings and nightly decision-making "spokescouncil" meetings take place, and where infrastructure is organized, sometimes including art and puppets), a housing assistance team, an independent media facility (Indymedia), a mainstream press public relations team, a team which provides non-violence and other trainings, medical, food, legal, and action scenario teams.

Activist legal teams are part of this structure, one of several action "working groups". These "working groups" are autonomously organized and are, in some ways, open and accountable the larger set of groups participating in the protest. The majority of members in these collectives are non-lawyers. NLG-affiliated lawyers do often participate. The legal team announces a "legal phone number" which the direct action activists have written on their arms in indelible ink, but those attending only the permitted events probably do not know about. The legal collective answers calls at this number 24 hours a day for the week surrounding the actions.

The legal team is responsible for providing legal support to *all* arrestees (including non-activist arrested passersby, journalists, and participants with all the different protest groups). "Legal support" during the action includes tracking arrestees, facilities, conditions for release, jail visits by lawyers, and negotiations with city officials regarding arrestees. After the action the legal team provides information regarding criminal prosecutions, lawyers for court appearances, and the creation of an evidence archive. These teams are also responsible for collecting

information on police harassment and brutality for the possible filing of injunctions and for post-action lawsuits against the agencies responsible. The legal collective is expected to have arrest statistics at the ready for press conferences and nightly reports to the activist spokescouncil. It is also relied upon for reliable information about necessary collective action organized out of the convergence center and spokescouncil, such as jail support for arrestees, logistical support for released arrestees (food, transportation, medical care, emotional support), and political pressure strategies to secure releases, dropping of charges, etc.

While these special teams work, rank-and-file activists distribute “Know Your Rights” information through stickers and trainings. Fliers, palm cards, and community workshops based on training materials provided by the National Lawyers Guild, the ACLU, and activist legal collectives enable activists to train themselves, community allies, and family and friends in their rights in cases of questioning, detention, and arrest. This educational work often has a solidarity component, using the outreach resources to also provide “Know Your Rights” information relevant to youth and immigrants.

Activists have also developed a grassroots culture and method of “watch-dogging” police behavior. Similar to the Black Panthers’ armed police-watching patrols and [unarmed] community CopWatch projects, activists learn to observe and document profiling, excessive use of force, and other police misconduct. Activists trained at mass actions take these skills home and keep an eye on local police harassment of youth, people of color, immigrants, etc. Armed with recording devices, knowledge of the law, and official markings, watchers patrol neighborhoods and political or social events known to receive discriminatory policing, observing police activity. Occasionally CopWatch teams make an effort to annoy or distract the police with some legal debate in such a way that the detainees may escape. (CopWatch teams are generally instructed only to intervene in this way if they have reason to believe the detainee is in severe danger of violence in custody or deportation.) More often observation chills police behavior. When this fails, their evidence is useful in police accountability campaigns and in court. The National Lawyers Guild runs the most organized legal observer program. Armed with distinctive bright green hats, NLG Observers are trained and deployed wherever they are welcome in the protest landscape, as well as being posted at key locations, such as Convergence and the Indymedia Center. They move in close to the action to identify and document arresting officers, violent officers, and commanders on scene. But they do not serve as negotiators or lawyers. A playful activist use of observation skills is identification and revelation of undercover police agents. Activists catch them on tape, confront them, and expel them.

In addition to Legal Observers, lawyers and legal workers familiar with relevant law sometimes serve as “street legal” during a protest. There are several types of street legal work. The first type is called a “police liaison”. This person needs no legal training. They serve as a communication device between protesters and the commander on scene. They do not negotiate, although they may communicate offers from one side to the other. By identifying and introducing themselves to the commander on duty early on in the action, they may be able to maintain access to that person once things heat up (and access to the police line is restricted). A second type of street legal is a lawyer who patrols hot areas informing officers and their commanders about illegal policing. This person generally travels with a legal observer with video camera and other equipment to document incidents. They can sometimes be effective in disrupting police action such as raids.

The third type of street legal is a liaison between the legal team and the top-ranking officials in charge of police operations. Again, this liaison has no authority to negotiate on behalf of activists. What they can do, since they have direct contact with command, is to get clear information on changing situations such as closure of formerly permitted protest areas, imposition of curfews, and other police actions. They can then communicate this information to activist media and organizing spaces. The police are not obligated to provide much information

to this person — for example they are unlikely to give accurate information on street tactics they plan to use (mass arrest, tear gas, etc.), but they often will provide information on what they have declared to be illegal and about the location of prisoners. It is notable that persons working all three types of street legal, including legal observers, were arrested in Miami.

Another form of agency is solidarity. Activists have developed sophisticated systems for jail solidarity, which includes a set of tactics which enable arrestees to disrupt the jail in order to: protect endangered arrestees, demand better conditions, and pressure for collective and/or minimal charges. When hundreds of people are in jail, these tactics can be quite significant. They include: refusing to be identifiable (this requires that people not carry any form of identification), refusing to assert US citizenship (in solidarity with non-citizens), non-cooperation with processing procedures, singing, chanting, dancing, stripping, going limp, clinging together, hunger strikes, etc. These tactics have been successful in meeting arrestee needs ranging from medicine, to return of isolated prisoners to the larger group, to collective reduction of charges. Often jail solidarity works in conjunction with lawyers from the legal team, and activists doing solidarity vigils outside the jail. The legal teams sometimes provide extensive training and strategy for jail solidarity. These tactics are also a culture of resistance passed directly among activists who training one another in the arrest van or in jail.

When jail solidarity has not been successful in reducing charges, or when jail solidarity was not feasible, court solidarity is another phase of activist collective action. Court solidarity includes tactics which may be disruptive, but which, more importantly, help arrestees strategize and keeps public discourse focused on the political content of activists' court appearances and trials. Court solidarity tactics include: mass appearances in court; signs or costumes drawing attention to the violations of free speech; petitions for combined charges, trials and sentences; demands for speedy trials or jury trials (if many people request full court proceedings, it pressures the District Attorney to dismiss all the charges so as not to bog up the court system and his staff); introduction of political content in the court proceedings; and press conferences and other media work drawing attention to the trials and sentences. Arrestee networks can develop strategy and share experiences to minimize convictions. The arrestee network after the 2000 RNC in Philadelphia was one of the strongest and most democratic of these.

The final form of activist agency in resisting state control is political litigation**.** Barkan (1980) summarizes the literature on proactive civil litigation by social movements, which is more extensive than that on political trials. The literature is split on the efficacy of this tactic in attempts to "regulate business behavior…prevent immoral behavior… effect desegregation… stop construction of nuclear power plants…[and] end the [Vietnam] war" (946-7). Even when successful, court orders regarding social justice concerns are not necessarily enforced. It might be wise to consider Bullard's 1990 study of environmental justice struggle. While neither litigation nor any other single tactic appeared to be effective, a combination of tactics including litigation was often successful in securing facility closure or reduction. Barkan acknowledges this in pointing out that legal victories which establish "claims of right" confer entitlement which strengthens struggle (948). As we will see, recent proactive litigation focuses on protecting activism and activists against a creeping affront on constitutional rights and unregulated forms of policing.

Barkan identified four lines of inquiry with regard to both defense and proactive litigation: "At what stage of social movements are they likely to [devote resources to] litigate?" "To what extent do various aspect of the legal system affect decisions by social movements to turn to the civil and criminal courts?" "What is the influence of the press on the frequency of civil disobedience and on decisions to conduct a political defense?" "What circumstances lead to decisions by government officials to use the courts as a means of social control?"

Protections of the First Amendment are not as numerous as its violations, but there are a variety of efforts underway. This brief overview is limited to those directly associated with the alterglobalization movement, although there are many other relevant and important activities, in

which many alterglobalization activists are involved, such as the more than 100 local resolutions suppressing local enforcement of the Patriot Act, challenges to surveillance, and lawsuits regarding 9-11 related detentions and war crimes.

After a protest's criminal cases are resolved, activist lawyers turn their attention to civil suits regarding excessive use of force, violations of first amendment rights, illegal searches, and other violations. In *Hickey v. The City of Seattle* (2000), Trial Lawyers for Public Justice won a settlement from the city for 155 protesters arrested outside of the no-protest zone with no probable cause, although they failed in their challenge to the no-protest zone itself.

The New York City Civil Liberties Union successfully pressured New York City to destroy the fingerprint records of people arrested during the 2004 RNC. The Partnership for Civil Justice is litigating against the City of New York for plaintiffs ANSWER and National Council of Arab Americans to protect access to Central Park. They argue that the city is essentially privatizing the park, increasingly restricting use for corporate events and denying mass demonstrations.

The Partnership for Civil Justice has had some successes in ongoing litigation in Washington DC regarding infiltration, long-term undercover spying, mass arrests, mass intelligence gathering operations on protesters, the use of Civil Disturbance Units, checkpoints, odious permission requirements for persons planning to protest the inauguration, and agents provocateurs. They have succeeded in gaining settlements to individuals as well as policy changes including no longer engaging in the "illegal practice of rounding up and arresting demonstrators for 'parading without a permit' without notice and opportunity to leave." The DC city council has adopted a bill prohibiting riot gear and encirclement of First Amendment protected assemblies without establishment of probable cause, requiring display of nameplates and badges, and mandating release of First Amendment assembly arrestees within 4 hours (DC Council 2004).

After an egregious attack on anti-war demonstrators in 2003, the ACLU of Northern California, the National Lawyers Guild, and a team of prominent civil rights attorneys, successfully pressured the Oakland Police Department to end the use of less lethal weapons against demonstrators in November 2004 (ACLU 2004c).

In 2002 the ACLU, joined by a popular movement, challenged the Denver police department and mayor to release files being kept on 3200 Colorado activists and 208 organizations, which were found to include the American Friends Service Committee, some nuns, and many activists whose only crime was participation in entirely lawful protest activity. The activists dubbed the files "spy files" and, once they were released by court order in 2003, organized people to go request their files. After this success, the ACLU on December 2, 2004 "launched a nationwide effort to expose and limit FBI spying on people and groups simply for speaking out or practicing their faith." The initial step of the campaign is Freedom of Information Act (FOIA) requests in 10 states and the District of Columbia intended to demonstrate that "FBI and local police —working through so-called Joint Terrorism Task Forces (JTTFs)– are spying on environmental, anti-war, political, and faith-based groups."

> The FOIAs filed seek two kinds of information: 1) the actual FBI files of groups and individuals targeted for their political views or their religion; 2) information about how the structure and policies of the JTTFs are encouraging rampant and unwarranted spying.(ACLU 2005d).

Savvy media work around revelation of infiltration of a group called Fresno Peace led California's Attorney General Bill Lockyer to mandate the state's law enforcement agencies to "follow the California State Constitution, which prevents them from infiltrating groups that are not under investigation for criminal activity." (Rhodes 2005).

Despite the successes in proactive political litigation there are thousands of citizens whose rights have been violated who remain unrepresented. After nearly six years, Seattle has

been challenged on only a few of the many illegalities perpetrated on n30 (1999). Fewer than 50 of the thousands of activists violated in Miami have been represented in suits against the state, and only a handful of the state's illegal actions have yet been challenged. The few progressive lawyers who work on these cases are clearly not able to get to everything. The result is that police, commanders, and cities can violate the law with relative impunity. They know that they will get away with *most* of the illegal activities they undertake.

Perhaps one of the most promising moments of activist resistance and agency is a case against Miami-Dade County. Three female activists charged with "failure to disperse" at the 2003 FTAA protests were stripped searched in jail. In preparing their lawsuit, they found that strip searches for non-violent women arrestees (prostitution, loitering, traffic offences, regulatory, and misdemeanors) were standard policy. The policy has been changed and a $6.25 million settlement is being distributed to women violated in the last five years (Schwartz & Daniel 2005).

This phase of activist action has a very different kind of social organization than the previous stages. The action itself is centralized, while resistance during the other phases is highly dispersed. The civil suits are strategized in isolation while all other phases involve diverse participation and constant communication. Finally, while radical democracy and egalitarianism are fiercely enforced in every other aspect and process of the movement, the civil suit process involves "trusting the experts", a concept that global justice activists abhor in every other moment of action (have great respect and gratitude for these lawyers). Litigation happens within much more limited networks, which fail to utilize activist resources such as volunteers (so important to the action and criminal phases), savvy activist media teams, and mass solidarity (such as court solidarity). Despite historical recognition that the success of social justice lawsuits is closely related to the persistence of social movement mobilization, political litigation teams often do not manage to publicize the news of the cases through activist networks, with the result that activists don't even know the general status of the cases. Activists are unable to collectively define procedural or substantive demands, so the lawyers act autonomously.

Conclusion

This paper expanded our understanding of the legal arena of social control and the ways that activists intervene in it. We note that some areas of repression indicate innovation during the post-Seattle era, while others seem to simply resurrect the FBI's COINTELPRO strategies. Although alarming, this repression is ill-constrained, as evidenced by the Miami citizens' Independent Review Panel who rapidly abandoned its investigation of the FTAA-related repressive operations. Political litigation is moving slowly and taking on only a tiny minority of Constitutional violations and police misconduct.

We conclude that the repression approach existing in the literature is inadequate. We recommend a broader analysis of the "social control of dissent"; one that includes the understanding of marketing strategies and the geography of global governance. We also point suggest that future work explore how policing, intelligence, and other strategies of social control serve as key functions of "psychological operations". Based on this recognition and on aspects of social control that go far beyond normal "policing", we argue that the framework outlined here provides a useful map for understanding the operations and implications of the social control of dissent.

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