

The problem is not police training, police diversity, or police methods. The problem is the dramatic and unprecedented expansion and intensity of policing in the last forty years, a fundamental shift in the role of police in society. The problem is policing itself.

Alex S. Vitale

The End of Policing

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Political Policing

The police have always been political. The roots of political policing lie deep in the desire of kings and queens to maintain power in the face of the shifting allegiances and interests of nobles and foreign powers. Today, states portray their police forces as value-neutral protectors of public safety, but in reality, states continue to monitor and disrupt all kinds of political activity through surveillance, infiltration, criminal entrapment, and repressing protest. The continued existence of these practices poses a major threat to any effort to change the basic role of the police and, more broadly, to achieve the goals of racial and economic justice.

In a dictatorship, it is easy to see that the police are a threat to democracy and the forces of civil society, fulfilling a primarily political function; crime control is always secondary. Repressive regimes in the postcolonial countries of Africa and Latin America rely on uniformed and secret police to harass, intimidate, and murder their political opponents. So-called civilian police in places like El Salvador¹ and Guatemala² are riven with a history of torture and extrajudicial killings. Dictatorships in Brazil and Argentina “disappeared” tens of thousands of labor leaders, artists, and political opponents in the 1970s.³ Today, even semidemocratic regimes still rely on the police for primarily political functions. Nigerian police, for example, are notoriously ineffective at crime control. Most units are poorly paid and trained and frequently rely on torture, extortion, and unlawful detentions.⁴ But in semi-democratic Nigeria, political intelligence and riot control units tend to be the most desirable and prestigious assignments and are regularly implicated in the suppression of social movements and opposition political groups as well as vote-rigging and voter suppression.

India, while more democratic, has a police force primarily concerned with political management. After independence from Britain, it retained colonial forms of policing, with their emphasis on political surveillance and riot control to suppress industrial actions, ethnic conflicts, peasant uprisings, and guerilla movements such as the Naxalites. Efforts to deal with crime and everyday public safety have been consistently sidetracked in favor of beefing up intelligence-gathering and developing more sophisticated systems of suppressing political activity. The only units to receive extensive training and resources are intelligence and riot control divisions.⁵ Corruption and low wages for regular units remain endemic. Rural police are usually under the control of local agricultural elites, who rely on them to maintain control over the vast rural poor, especially the lowest “scheduled” castes and ethnic minorities. Police are routinely implicated in atrocities against such groups. Everyday policing is characterized by the release of politically connected or rich suspects and the torture and imprisonment of those unable to secure their release through bribes. Police are specifically authorized to spy on opposition political parties and do so with great thoroughness. Organizations must receive prior approval from the police for demonstrations and even meetings and conferences that might draw international participation.⁶

The origins of this kind of policing run deep in the colonial centers that bred it. We can see this clearly in the context of the transition from autocratic to more modern liberal policing in the nineteenth century. The imperial powers of Europe each had secret police that spied on, interrogated, imprisoned, and at times tortured political opponents and infiltrated and subverted the movements of workers, ethnic minorities, and even liberal reformers. France has had several forms of policing going back to the Middle Ages.⁷ As the size and complexity of Paris increased, it was necessary for the *ancien regime* to extend and professionalize its mechanisms of social control. In 1666, Louis XIV created a Lieutenant of Police whose chief duties were to provide intelligence to the crown and maintain public order, including suppressing riots and political movements, but this organization failed to predict or prevent the uprisings that led to the French Revolution.

After the revolution, the new Ministry of Police became more civilian, but no less political. Despite a rhetorical emphasis on enforcing the law, the police became a tool of whichever faction was in power, focusing

primarily on *la haute police*, or the high policing of politics. Under Napoleon, the police were further professionalized and integrated more clearly into a modern legal system capable of providing daily intelligence reports of conditions across the country, which were forwarded to him during his foreign military adventures. The military Gendarmerie policed the countryside, while municipal police were responsible for the cities. At the center was a massive intelligence operation, the Directory, engaged in political intrigue, surveillance, and censorship. Today both the rural gendarmerie and national police play a central role in domestic intelligence gathering, giving rise to the saying that “French citizens are free to do as they choose—under police supervision.”⁸

However, policing in liberal democratic settings has been no less political. The British police, whose origins are discussed in detail in [chapter 2](#), regularly engage in surveillance and subversion of domestic political movements. During the 1960s and 1970s, they infiltrated labor unions, universities, and peace organizations, pressured members for information about subversives and foreign agents, and raided them to seek political information. In 2011, during the Occupy Wall Street movement, police in the City of Westminster circulated a notice to local businesses and individuals asking them to report any signs of the presence of “anarchists” to the police counterterrorism desk immediately—side by side with notices about Al-Qaeda.⁹ In the absence of any evidence or even allegation of criminal activity, the police routinely collect information on political activists whose philosophy runs counter to existing political arrangements.

The 2011 incident was tied to Project Griffin, which was designed to “advise and familiarize managers, security officers, and employees of large public and private-sector organizations across the capital on security, counter terrorism, and crime prevention issues.”¹⁰ These projects involve a disturbing trend in which local police are asked to provide security updates for the private sector about the threat of demonstrations—essentially political threat assessment. Such briefings tend to report past criminal and terrorist activity, vague assessments of broad international trends or micro-reporting of loose bits of unconnected and distant tidbits, such as a suspected terrorist in Pakistan being found with a map of the London subway on his laptop.

Police infiltrators in the United Kingdom have targeted peace, animal rights, environmental, and anarchist groups, and undercover detectives have had sexual relationships with women in these movements. There are some estimates that more than a hundred women have been victimized.¹¹ In at least one case the relationship produced a child, resulting in a settlement of close to \$1 million.¹² That agent, Bob Lambert, was implicated in planting and setting off explosive devices in department stores selling fur coats, in order to deepen his acceptance into the extremist wing of the animal-rights movement and justify continued police infiltration and disruption—the very definition of an agent provocateur.¹³

Political Policing at Home

Despite our concerns about political liberty, the US police have a long history of similarly abusive practices. The myth of policing in a liberal democracy is that the police exist to prevent political activity that crosses the line into criminal activity, such as property destruction and violence. But they have always focused on detecting and disrupting movements that threaten the economic and political status quo, regardless of the presence of criminality. While on a few occasions this has included actions against the far right, it has overwhelmingly focused on the left, especially those movements tied to workers and racial minorities and those challenging American foreign policy. More recently, focus has shifted to surveillance of Muslims as part of the War on Terror.

In 1908 the Justice Department created the Bureau of Investigation (BOI), which was headed by J. Edgar Hoover in 1924. Hoover turned the BOI and later the FBI, created in 1935, into a massive domestic intelligence-gathering operation with files on millions of Americans including politicians, political activists, and celebrities. The rise of modern federal intelligence gathering was driven initially by concerns over anarchists and “reds,” who were implicated in waves of strikes, bombings, and assassinations in the early part of the century, from the assassination of President McKinley in 1901 to the bombings of the Los Angeles Times in 1910 and Wall Street in 1920, leading to a wave of

reprisals targeting anyone with anarchist affiliations, Wobblies, and in many cases Italian labor activists of any political stripe.¹⁴

In the wake of the Russian Revolution, a massive wave of “red scare” gripped the country. Revolutionary groups did exist across the US, but their influence was largely ideological rather than organizational. They produced numerous newspapers and leaflets, but had little connection to actual unions. This did not prevent the Justice Department from collecting files on them. Hoover’s BOI claimed to have a card catalog with over 200,000 entries of suspected “reds.” Following a wave of suspicious bombings in 1919, surveillance turned to subversion, despite the fact that Hoover’s own records made clear that none of these organizations was involved in orchestrating violence, or were in any position to stage an armed insurrection. The two “most dangerous” anarchist groups surveilled had a total membership of 37.¹⁵

Attorney General A. Mitchell Palmer launched a major national campaign to disrupt any movements sympathetic to socialism, communism, or anarchism in 1919. He relied on new, more restrictive immigration laws that allowed for the deportation of anyone espousing the violent overthrow of the US government. He argued that anyone who was a member of an organization that supported the Soviet Revolution was making such an espousal, even when the group formally adhered to a strategy of nonviolent political change.

These became known as the Palmer Raids, which began with the rounding up and deportation of a few hundred left writers and activists, including Emma Goldman in 1919, even though she was a naturalized American citizen. In January 1920 Palmer, working with local police, undertook a massive campaign of arrests, interrogation, false imprisonment, and deportation. Thousands were arrested including large numbers of US citizens. Journalists were specially targeted, files seized, and papers closed down. Many were held for weeks in basements and building hallways with no access to bathrooms, food, or lawyers. Many others were beaten or tortured, and in one instance a prisoner “jumped” out of a window and died.¹⁶ Buffalo’s police chief was quoted as saying, “It’s too bad we can’t line them up against a wall and shoot them.”¹⁷ The Massachusetts secretary of state said, “If I had my way I would take them

out in the yard every morning and shoot them, and the next day would have a trial to see whether they were guilty.”¹⁸

In the end, the raids were found to be utterly illegal, but not before hundreds were deported, organizations disrupted, and lives destroyed. While the avowed focus was on preventing armed revolution, the real target was the disruption of the burgeoning labor movement. In addition, Palmer singled out groups that supported equal rights for African Americans for public attack, such as the Communist Party, which, to his horror told “Negros” that they had the right to strike.¹⁹

In the wake of the abuses of the Palmer Raids, the FBI was initially somewhat constrained in its political activities—focusing primarily on intelligence gathering. American concerns about an over-powerful state meant that there was some limited oversight of their activities by Congress, which placed some checks on their most egregious practices. They continued, however, to play a role in identifying and intimidating “known communists” during the McCarthy period. In the 1960s, the FBI’s Counter Intelligence Program, or COINTELPRO, is now known to have kept files on millions of lawful activists and engaged in the active disruption of movement organizations through false letters, infiltrators, and the use of agents provocateurs.²⁰ Notable figures like Martin Luther King had their phones tapped. FBI agents often attended meetings either covertly or overtly to take notes for intelligence files and used their conspicuous presence as a form of intimidation. They planted informants within organizations to collect information, but also to sow dissension, make false allegations against people, and at times, suggest violent courses of action to entrap and discredit organizations and their leaders.

Unfortunately, there were few checks on the activities of local police. Frank Donner in his exhaustive history of local “Red Squads” shows how America’s large police forces dedicated significant resources to political policing, and that this policing was closely tied to far right politics, private business interests, and corruption.²¹

As immigration and industrialization transformed the economic and social landscape in the late nineteenth and early twentieth centuries, local police were increasingly involved in suppressing workers’ movements. Up until the 1930s there was no real right to form a union or strike in the US. Union activists were routinely fired, driven out of town, and sometimes

killed by either company agents or police. Strikes were put down through threats, the use of scabs, and when necessary, violence. Early in this period, much of this work was done by private security companies such as the Pinkertons, who were implicated in numerous beatings, shootings, and infiltrations of unions including the Homestead strike of 1892, in which guards and workers squared off in a gun battle that killed several on both sides, prompting the calling out of the local militia who crushed the strikers and their union. By the 1930s the Pinkerton agency had over 1,300 spies embedded in various unions in an effort to disrupt their activities on behalf of employers.

In most places, local police played a major role in suppressing strikes. Often this was done through a process of political corruption in which police were beholden to local elected officials who did much of the hiring and firing of police, especially at the top ranks. In many places in the nineteenth and early twentieth centuries, police were directly appointed by local politicians on the basis of political services and substantial bribes. These local officials were often beholden to large employers through bribery and political favors. When these employers were faced with labor unrest, they need only call on local police to suppress the strike, break up meetings, and intimidate and brutalize alleged “ring leaders.”

As labor unrest and violence grew near the turn of the century, special squads were formed in most major cities. Much of the initial focus was on alleged anarchists, who were believed to play the most militant role in labor strife and were associated with numerous bombings and assassinations. Police began keeping large systems of files on suspected anarchists and other labor radicals. The Wobblies of the International Workers of the World (IWW) were among the most frequent targets of surveillance and harassment. Meetings were disrupted and suspected anarchists were often arrested, sometimes on trumped up charges, as in the case of Sacco and Vanzetti, who were executed in 1927.

In the aftermath of the Bolshevik Revolution, attention turned to “reds,” as communist agents and sympathizers became the primary obsession of employers, political leaders, and police hoping to find a way to suppress the growing labor movement. Red Squads flourished after World War I. They generally operated in secret and in close collusion with local employers and Hoover’s BOI. In many cases, detectives who helped to break up strikes were given large unreported cash bonuses from

employers, just one of the many forms of corruption to emerge from this system of secretive political policing. Employers also often provided cash to pay for informants and infiltrators. This system blurred the line between public and private interests and undermined the core ideals of an independent police under the control of elected civilian governments.

Throughout the 1940s and 50s, Red Squads played an important role in the blacklisting of anyone suspected of ties to communism. While the FBI played a role in this process, it was largely supplanted by local police, who increasingly shared information with each other and provided information directly to congressional committees working to expose communists inside government and the labor movement. In 1956, a new independent agency, the Law Enforcement Intelligence Unit, was created to share files among police agencies concerning organized crime and political activity. Though funded in part by federal grants, they maintained that they were a private entity and thus not subject to any kind of government oversight or accountability. This agency still exists.²²

A major source of data for Red Squads were volunteers, usually tied to ultra-nationalist groups like the American Protective League, American Legion, and Catholic activists driven by Cardinal Spellman's anti-communist crusades. These groups were sometimes given resources to expand their efforts, were often used as muscle to shut down meetings and beat and intimidate suspected communists, and were even given access to the files collected by police. The dissemination of this information was often crucial to the blacklisting process as these activists shared the information with local employers.

By the 1960s, the focus shifted to the civil rights movement, peace activists, and radical students. Red Squads again developed massive systems of files to keep track of the growing movements. While the vast majority of participants in these movements were nonviolent, police used the fact that people were arrested and that violence occurred in connection with these movements to justify surveillance and eventually active subversion; this despite the fact that the arrests and violence were often the result of discriminatory police action, rather than actual criminal wrongdoing.

While the federal Counterintelligence Program (COINTELPRO) worked to subvert the civil rights movement, it was police in Los Angeles, Chicago, New Orleans and other cities who staged raids of Black Panther

chapters, killing and imprisoning many of its local and national leaders. It was local police who violently suppressed anti-Vietnam War demonstrations in Chicago, New York, and Washington and beat and imprisoned civil rights activists in Birmingham, Selma, and Montgomery, Alabama.

In 1971 a group of activists broke into an FBI office in Media, Pennsylvania, and uncovered COINTELPRO, including documents showing attempts to get Martin Luther King to commit suicide through sexual extortion.²³ Through a series of high-profile congressional hearings, local investigations, as well as numerous lawsuits that followed, the public began to learn more about the secret networks of police spies. Some departments were forced to hand over files; others destroyed or attempted to hide them.²⁴ As recently as 2016, the NYPD claimed to have lost a room full of documents ordered preserved by the court about its spying operations in the 1960s and 1970s.²⁵ Through a series of court orders, local laws, and federal intervention, many Red Squads were shut down and others were given much tighter constraints on their actions. Court settlements resulted in restrictions and oversight. Intelligence units were required to restrict their activities to cases where there was actual evidence of criminal activity being planned or committed, with approval required to undertake undercover work or hire informants. In some cases, independent auditors were empowered to review files. Photographing and videotaping people involved in lawful protest activity or participating in political gatherings were restricted.

These reforms, while important in exposing and limiting the extent of political policing, were temporary and incomplete. Part of the problem is that any criminal activity is sufficient to trigger an investigation. Since civil disobedience actions have become a mainstay of social movement activity, almost all social movements participate in some form of technically illegal activity. Intelligence units continue to view monitoring political activity as part of their mandate.

Since 9/11, however, police have rehabilitated their intelligence-gathering infrastructure under the cover of terrorism prevention. In New York, the NYPD went to court to try to water down its consent decree, the *Handschu* agreement that placed significant restrictions on surveillance practices; the court allowed it to resume photographing demonstrators,

even though there is almost no conceivable connection between protest and terrorism. They were also allowed to use informants and undercover agents with little to no oversight. NYPD agents collected broad intelligence against activists protesting the Republican National Convention in New York in 2004, including organizers, independent journalists, and well-known organizations with no history of violence. Those who were arrested were subjected to interrogation about their political beliefs, organizational affiliations, and social networks. After the New York Civil Liberties Union exposed the practice, the NYPD voluntarily agreed to stop it.²⁶ However, in 2015, activists arrested as part of the Black Lives Matter movement reported similar standardized political interrogations.²⁷

In 2010, the ACLU found hundreds of incidents of police spying on legal political and protest activity in thirty-three states since 2001.²⁸ In 2003, Oakland police infiltrated an anti-police-brutality organization and played an active role in planning and coordinating events, including the route of a march. This represents a fundamental conflict of interest and abuse of police power and crosses the line from passive observation into active manipulation. The impropriety is compounded by the fact that the target of these demonstrations was the police themselves.

Joint Terrorism Task Forces and Fusion Centers

One of the major formations of political policing is Joint Terrorism Task Forces (JTTF). Created in the 1980s, these units combine federal and local law enforcement to look for terrorist threats. Since such threats are rare, they appear to have shifted their role to monitoring political activity. JTTFs function with no public oversight, especially at the local level, which has caused at least two major cities, Portland, Oregon and San Francisco, to pull out. After 9/11, Congress eliminated many restrictions on political spying. While there is some history of political violence from fringe elements of the environmental and animal-rights movement, the scope of surveillance seems sweeping and indiscriminate—though the true scope is unknown, since we must rely on rare legal actions or leaks to find out about it.

In 2002, it was learned that the Denver Intelligence unit had a binder with a “JTTF Active Case List” that included information about the American Friends Service Committee, the Colorado Campaign for Middle East Peace, Denver Justice and Peace Committee, and the Rocky Mountain Independent Media Center.²⁹ In 2003, the *Wall Street Journal* reported that the Denver JTTF added “anarchists” and other “political extremists” to the FBI’s Violent Gangs and Terrorist Organization Files.³⁰ In 2008, the ACLU uncovered that the Maryland state police had spied on local death penalty and peace activists for years, classifying fifty-three individuals and twenty organizations as terrorists. The list was circulated to the local JTTF and surrounding local and federal law enforcement agencies. Nothing in any of the surveillance files indicated any illegal activity.³¹

On September 24, 2010, as part of a JTTF investigation, FBI agents raided the homes of several people active in opposing US policies in Palestine and Colombia and who had participated in planning demonstrations at the Republican National Convention in Saint Paul, Minnesota, in 2008. The search warrants focused on obtaining information from computers and other sources of alleged “facilitation of other individuals in the United States to travel to Colombia, Palestine, and any other foreign location in support of foreign terrorist organizations including the FARC and Hezbollah.”³² Twenty-three people were subpoenaed to testify before a grand jury, but all refused. No criminal charges or specific accusations of criminal activity have emerged, leading to claims that the raids were politically motivated.³³

Despite having evidence that turned out to be linked to actual violent attacks, JTTFs have played a limited role in preventing attacks or prosecuting terrorists. In the year before Major Nidal Malik Hasan shot thirteen people to death in Fort Hood, Texas, the JTTF was aware of his extremist views and ties to Pakistan but took no action against him.

Another post-9/11 form of political policing is fusion centers, created to help federal agencies share information about potential terrorist threats (the focus has shifted to cover “all hazards/all crimes” and to include state and local partners, private-sector interests, and the military).³⁴ As with JTTFs, there are no clear lines of accountability³⁵ and according to a US Senate Report, little indication that they have prevented any terrorist activities.³⁶ They have, however, been at the center of both conflating

political activism with terrorism and in coordinating intelligence on nonviolent political movements. In 2008 the ACLU of Massachusetts obtained a fusion center document on standard operating procedures that authorized surveillance and intelligence gathering of public meetings absent any connection to criminal behavior. Even a single, anonymous speech act or social media post advocating illegal activity (including civil disobedience) could trigger a full investigation.³⁷

In 2009 and 2010, two fusion centers listed supporters of third-party candidates, including those backing libertarian Ron Paul, as potential threats, linking them to the militia movement.³⁸ The Pennsylvania Homeland Security office was found to be using paid consultants to monitor environmental, peace, and gay rights groups and then reporting the findings to local businesses, including the Hershey Company and oil and gas companies engaged in the politically fraught fracking business. Some of the reports compared these nonviolent political organizations to Al-Qaeda. The contract agency involved was also under contract to provide private security to many of the same companies.

Fusion centers have also been implicated in monitoring the Occupy movement and coordinating local efforts to end it. A report by the Center for Media and Democracy found that “Terrorism Liaison Officers” were monitoring and reporting on the activities of Occupy Phoenix, including attending meetings and demonstrations, infiltrating the organization, and following social-media activity. Major cities’ chiefs of police, the Police Executive Research Forum, and fusion centers across the country were actively gathering daily head counts. The documents also show that they had access to “Stingray” cell phone surveillance equipment, facial recognition, and massive data-mining software that could pose a huge threat to the privacy of political activists and their organizations. These intelligence agencies prepared regular reports for banks and other financial institutions targeted by the Occupy Wall Street movement. Because of the loose association between Anonymous and Occupy, their reports on hacking threats sometimes included Occupy social media activities, conflating illegal hacking with social media organizing.³⁹

The Partnership for Civil Justice Fund also uncovered, through litigation, evidence that the FBI treated Occupy as a “terrorist threat” even before it undertook its first action. While there is insufficient evidence to

support claims by Naomi Wolf and others that the federal government organized or coordinated the local efforts to shut down Occupy, it is clear that federal intelligence agencies, working with local law enforcement, were actively gathering and sharing information about the movement with each other and with financial institutions.⁴⁰ In the end, the decision to break up Occupy encampments in hundreds of cities was made by local political leaders and carried out by local police, though the timing and tools used to accomplish them may have grown out of federally-coordinated information sharing.

Entrapment

Police have fought the War on Terror nationally and locally through widespread surveillance, entrapment, and inflaming public fears, with little increase in public safety. Whistleblower Edward Snowden, with the help of journalist Glenn Greenwald, helped to expose the true extent of government spying, which violates constitutional principles and existing laws.⁴¹ Americans have come to understand that their telephone and electronic communications are not secure and that this is being done in collusion with major communications corporations. The government has yet to produce a single terrorism case from this surveillance.

In 2004, the NYPD arrested twenty-four-year-old Pakistani immigrant Shahawar Matin Siraj for plotting to bomb the Herald Square subway station in Manhattan. Lawyers say Siraj was entrapped by a paid police informant facing drug charges, who spent months hatching the plot and pushing the idea of a bombing. Siraj had “no explosives, no timetable for an attack, and little understanding about explosives.” According to Human Rights Watch, the NYPD’s own records showed that he was unstable and “extremely impressionable due to severe intellectual limitations.”⁴² When asked to participate in the plot, Siraj replied that he had to ask his mother first and never actually agreed to participate, according the NYPD’s own assessment. Nevertheless, he was convicted and sentenced to thirty years in prison.

In 2011, Rezwan Ferdaus was arrested by the FBI for participating in a plot to blow up the Pentagon and US Capitol. He was targeted by an FBI informant who infiltrated his local mosque, coaxed Ferdaus into the plot,

and supplied him with fake weapons, although it was clear he had a mental disability. As the plan unfolded, Ferdaus's condition deteriorated dramatically. He lost control of his bladder and began to suffer from seizures and extreme weight loss. Eventually his father had to quit his job to care for him. Despite this, Ferdaus was convicted of supplying material support to terrorism and was sentenced to seventeen years in prison. These cases were hailed as proof that police were winning the War on Terror.

The NYPD undertook a massive secret spying operation run by its "Demographics Unit," targeting Muslim and Arab communities throughout the city without any specific probable cause. Documents obtained by journalists Matt Apuzzo and Adam Goldman described undercover operatives dispatched to mosques, cafes, community centers, and college campuses to search for hints of extremist viewpoints and to learn the social, cultural, and political layout of these communities.⁴³ Comings and goings at places of worship, snippets of conversations in local bookstores, and the social activities of student clubs were regularly reported. On my own campus at Brooklyn College, an undercover officer posed as a recently converted Muslim and ingratiated herself with Muslim students and their clubs, attending weddings and social events, only to be discovered because of her involvement in an unrelated investigation. Leaked documents indicated that police informants traveled with these clubs and reported on their membership, activities, and guest speakers, despite the complete absence of any history or evidence of criminal activity. The program never generated a single lead related to terrorism. The New York Civil Liberties Union sued in 2013, alleging that the program violated people's right to free religious association and denied them equal protection under the law;⁴⁴ as recently as 2015, however, the NYPD continued to carry out surveillance of Muslims without proper authorization.⁴⁵

These practices are counterproductive and substantially undermine the credibility of police. Most real information about extremist violence is obtained by community members reporting on people they fear are up to no good. However, when whole communities feel discriminated against, abused, and mistrusted, they are less likely to come forward for fear that their role will be misunderstood or that well-meaning but mistaken tips will hurt the innocent rather than sparking an honest investigation. In the

words of the ACLU, this type of policing makes us both less safe and less free.

Crowd Control

Protest policing in the United States is generally organized around strategic philosophies of how to manage protest activity. In the 1960s and early 1970s, the police operated under a philosophy of “escalated force,” meeting militant protestors with overwhelming force.⁴⁶ In response, a new doctrine of “negotiated management” emerged that called for the protection of free speech rights, toleration of community disruption, ongoing communication between police and demonstrators, avoidance of arrests, and limiting the use of force to situations where violence is occurring.⁴⁷

Today, however, two major forms of protest policing predominate; both severely restrict the right to protest. The police in New York City and some other jurisdictions insist on “command and control” techniques, in which they micromanage all-important aspects of demonstrations in an attempt to eliminate any disorderly or illegal activity.⁴⁸ This approach sets clear and strict guidelines on acceptable behavior, based on very little negotiation with demonstration organizers. It is inflexible and frequently relies on high levels of confrontation and force in relation to even minor violations of the rules. This does not represent a return to escalated force because it attempts to avoid the use of force through planning and careful management of the protest. When this fails force is used, but only in the service of reestablishing control over the demonstration. This is a highly managed system, not characterized by uncoordinated uses of force or police riots as seen in the 1960s, in which police supervisors were seen chasing after their officers to try to keep them from beating protestors in the streets.

Another form of protest policing, the “Miami model,” emerged nationally in response to the disruptive protests at the World Trade Organization meetings in Seattle in 1999. It is named for the Miami Police Department’s handling of protests at the Free Trade Area of the Americas meetings in 2003. This style is characterized by the creation of no-protest zones, heavy use of less lethal weaponry, surveillance of protest

organizations, negative advance publicity about protest groups, preemptive arrests, preventative detentions, and extensive restrictions on protest timing and locations.⁴⁹ This set of tactics is reserved for groups that the police believe cannot be controlled through micromanagement, such as those who do not apply for permits and threaten direct action or civil disobedience not coordinated with the police. Such groups are arrested while lawfully gathering and held in detention for long periods while awaiting arraignment, often in poor conditions. They are also likely to be the subjects of extensive police surveillance and to be accused of planning violence. They are often met with high levels of force in the form of “less lethal” weaponry such as pepper spray, tear gas, and rubber bullets. The Miami model has also been driven in part by the broad militarization of civilian policing, as described in previous chapters.

Some argue that militarized riot control is merely prudent preparation—for example, in Ferguson, Missouri. Shouldn’t authorities take whatever steps they can to protect life and property? There are two major problems with this line of thinking. First, it is not at all clear that these measures advance public safety; second, the right to protest cannot be abridged because of the threat of illegal activity or even the commission of violence nearby. All this militarized posturing failed to prevent widespread looting and property destruction in Ferguson. Neither local police nor the National Guard could adequately protect local businesses. What they could do was attack protestors and the media with tear gas and smoke grenades. Law enforcement officers were distracted from the real threat: the few dispersed individuals and bands of people attacking local businesses and further inflaming tensions and undermining the credibility of local police. In addition, it is quite possible that the militarized response of police immediately after the shooting of Michael Brown, and their continued aggressive posturing, contributed to the outbreaks of violence and property destruction. People subjected to tear gas and baton charges often react by either fighting back or dispersing into small groups to engage in property destruction. Those watching on TV may be motivated to come out and defend those being attacked in a similar manner.

People have the right to protest despite the presence of violence or property destruction nearby. Even when there is isolated criminal conduct within a demonstration, police have an obligation to target those engaged in the illegal behavior without criminalizing or brutalizing the entire

demonstration, as long as its primary character remains peaceful. The First Amendment guarantees the right to protest and American criminal law requires the police to act on individualized suspicion. Collectively punishing protestors because they are protesting while others are setting fires is an abridgement of fundamental rights.

Alternatives

A more effective approach might try to do two things. First, political leaders, who bear ultimate responsibility for the outcomes in Ferguson, could have attempted a political solution to their problems. The governor could have initiated a real conversation about the economic, social, and political dynamics that have contributed to the profound alienation of African Americans in the Saint Louis area (if not more broadly). Openly rethinking the hodgepodge of poorly funded municipalities and schools, largely designed to facilitate white flight from Saint Louis, as well as the basic functions of the criminal justice system, could have gone a long way to restore public trust and divert attention from the specifics of Darren Wilson's case. Local politicians knew that a criminal indictment was highly unlikely but took no steps to reduce the rage they knew would result.

Second, local officials could also have attempted to dial back the police's posture toward protest as threatening and illegitimate. Protests are by their nature disruptive and disorderly. The attitude of police in Saint Louis County has been to treat that as a fundamental threat to the social order. There really is almost no legitimate reason to deploy armored vehicles and snipers to manage protests—even those where some violence has occurred. Officer protection is an issue, but so are police legitimacy and constitutional rights.

In response to the events in Ferguson, Representative Hank Johnson from Georgia introduced a House bill ending the 1033 weapons program. It was unsuccessful but may have contributed to President Obama's decision to reduce the program slightly. In 2016, however, the Obama administration announced that it was reconsidering even these limited reforms in the face of opposition from military hardware producers and local police.⁵⁰ President Trump is likely to expand these programs,

leaving it up to local jurisdictions to decide the extent of military equipment they want their police to have.

Groups like the Million Hoodies Movement for Justice and the ACLU continue to organize nationally against this militarized approach to policing. In 2016 a group of Los Angeles high school students forced the LA School District to return a variety of military equipment obtained under 1033, including MRAP grenade launchers and automatic weapons.⁵¹ These weapons programs should be abandoned and military equipment returned and destroyed. Even when the weapons are not used, they contribute to police viewing the public as a constant threat and conceiving of the world as divided between evildoers and the good guys. Human nature is profoundly more complicated than that, and a police force that lacks a nuanced understanding of this will invariably slide into intolerance, aggression, and violence.

However, getting rid of the weapons and returning to a negotiated-management style of protest policing is not without potential problems. Negotiated management is only useful when protest actions are orderly and organized. Police need cooperative partners to communicate with. This approach also presumes the legitimacy of a system that severely restricts the time, place, and manner of protest activity, in line with Supreme Court rulings that prioritize order over the right to assembly. Instead, we need to reduce the political conflicts that generate disruptive protest movements. American democracy has been continually undermined by concentrations of wealth and political power in the hands of a smaller and smaller group of wealthy donors and corporate interests; contentious protest activity will increase as long as there is the freedom for it to do so. When normal political channels are closed off, street politics become more common. This can be seen in the rise of the Tea Party, Occupy Wall Street, and Black Lives Matter, all of which expressed profound alienation from existing political arrangements and took to the streets as an alternative.

Decisions about the granting of permits and the plans for deploying police should be largely removed from police control. Police may share their views about traffic management and serious security risks, but decisions should be in the hands of elected leaders operating within legal frameworks that protect the right to dissent. This shift will not be without problems; some leaders will undoubtedly politicize the decision-making

process in ways that benefit some groups and not others. This will, however, make clearer the lines of accountability that today are often masked by a technocratic framework. Police make discretionary decisions about when, where, and how groups can protest based on their own threat assessments, which have always been clouded by political bias. That political influence is hidden behind the police bureaucracy.

Police have no legitimate role to play in monitoring, much less actively subverting social movements not actively engaged in violence and property destruction. Widespread surveillance, intelligence gathering, and the use of paid informants and undercover officers should be forbidden unless there is specific evidence of serious criminal activity; even then, investigations should be severely limited in scope and overseen by civilians. Without oversight, abuses always emerge. The temptation to cast a broad net and to interfere with movements that disrupt the social order is too great. If the threat of politically motivated violence is so large, why not involve outside monitors to ensure that police don't overstep their authority? Concerns about secrecy and professional expertise are specious at best; there is no reason to think that suitable guardians of the public interest can't be found. Judges confronted by the abuses of political policing should appoint such monitors on a permanent, not temporary, basis and give them full access to all records and personnel. Our basic democratic values demand nothing less.

The role of police in terrorism investigations must be similarly curtailed. As with the Palmer Raids, the threat has been at times severely overstated to encourage public support for broad-reaching police powers that are almost always used against nonviolent domestic political groups. The drive to get results has encouraged entrapment and guilt-by-association tactics that fly in the face of fair judicial process—something far too many judges have been willing to overlook.

We must also confront the role of US domestic and foreign policy in producing political violence. George W. Bush worked very hard to prevent any discussion of the US role in fomenting a terrorist backlash by labeling the terrorists as “evildoers.” The reality is that US foreign policy in the Middle East has played a major role in inspiring such movements and making us a prime target for their anger. We need to rethink our relationship to Gulf oil countries that practice despotic rule and provide ideological and financial support to terrorists. We must also rethink our

largely uncritical relationship with Israel, whose actions in the region have been incredibly destabilizing and whose behavior in Gaza and the West Bank have inspired widespread revulsion, some of which blows back on the United States in the form of both international and domestic terrorism.

The best way to avoid political violence is to enhance justice at home and abroad. Rather than embracing a neoconservative framework of retribution, control, and war, we should look to a human rights and social justice framework that seeks to ensure universal health care, education, housing, and food as well as equal access to the political process—goals we are far from achieving.

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Conclusion

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