

Morewell than Orwell: Paramilitarization in the United States post-9/11

By Matthew Witt, Ph.D.*

Abstract

Adopting the concept of “legitimation crisis” as formulated by Jürgen Habermas (1975), this paper examines how the Occupy Wall Street movement of 2011-2012—short lived in popular media, but still alive—has challenged the core logic of the American administrative state and, by extension, signals increasingly prevalent and tectonic challenges to the organization and management of late capitalism in a post-9/11 world. This paper will examine, in particular, the extensive coordination of police reaction to key Occupy protest events, and how this reaction—militarized police response tactics—was in place as early as 1999 to quash any popular resistance keyed to the Iraq War or world trade policies favored by U.S. trade officials. The militarization of police is now indicative of an emerging ethos of systemic disturbances (analogous to the Solidarity Movement in Poland and similar resistances elsewhere among Soviet satellite states) with the potential to cascade rapidly into escalating and reciprocal state legitimation crises. This paper finds that the first wave of the Occupy movement of 2011-2012 and the state’s (media, police, political) reaction is a harbinger of increasing symbiosis between police militarization and state terrorism surveillance directed domestically.

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Introduction

This paper provides a canvass of the police reaction to the Occupy Wall Street movement of 2011-2012, discussing the meaning and context of the post-9/11 law enforcement approach that is hyper-vigilant about terrorist actions in the U.S. The paper is divided into seven sections. The first section documents findings from a recent Freedom of Information Act Request indicating the extent to which local, state and federal law enforcement, in close partnership with private financial institutions, coordinated the crackdown on Occupy protests across the United States. The second section presents a brief synopsis of anti-terror legislation beginning under President Clinton, progressing to President Obama, establishing how this legislation now targets American citizens. The third section provides an overview of Jürgen Habermas's (1975) formulation of the idea of state legitimation crisis and suggests that this concept is relevant to the Occupy movement. The fourth section explores how financial deregulation in the United States made possible the financial crisis of 2008, and how this legislative trend took shape. The fifth section details the early days of the Occupy movement and how the media shaped public perception of the protesters and their intentions. The sixth section documents the apparatus of militarized police tactics in the United States and the pretexts used to establish the basis for a total crackdown on dissident expression and protest. How this pertains to the "permanent terror state" is summarized in the concluding section.

Addressing “this type of criminal activity”

Although the Occupy Wall Street (OWS) movement has been broadly assumed to have stalled as the result of poor coordination, fractured messaging and limited resources, recently disclosed documentation indicates the extent to which law enforcement surveillance, infiltration and crackdown were major factors upending the first major, organized and vocal political dissent in the United States since the anti-war movement of the Vietnam era.

Heavily redacted documents obtained in December, 2012, by the Partnership for Civil Justice Fund, make clear that extensive coordination among and between law enforcement agencies and a consortium of corporate interests was directed at assuring swift surveillance of the Occupy Movement because “this type of criminal activity” allegedly posed a serious threat to public safety. Among pertinent findings from the documents released by FOIA action are the following:

- A report by the Domestic Security Alliance Council (DSAC)—described by the federal government as a “strategic partnership between the FBI, the Department of Homeland Security and the private sector”—discussing how Occupy protests at West Coast port installations constituted “criminal activity” warranting swift response. The DSAC report contains a “handling notice” indicating that the information it contains is “meant for use primarily within the corporate security community” and that “Such messages shall not be released in either written or oral form to the media, the general public or other personnel”.

- Naval Criminal Investigative Services (NCIS), a federal agency, reported to the DSAC on the port actions about coordination between OWS and port unions. At its internet homepage, the NCIS describes itself as “an elite worldwide federal law enforcement organization” whose “mission is to investigate and defeat criminal, terrorist, and foreign intelligence threats to the United States Navy and Marine Corps ashore, afloat and in cyberspace.” The NCIS also assists with the transport of Guantanamo prisoners.
- The Jacksonville, Florida FBI prepared a Domestic Terrorism briefing on the “spread of the Occupy Wall Street Movement” in October 2011. The intelligence meeting discussed Occupy venues identifying “Daytona, Gainesville and Ocala Resident Agency territories as portions [...] where some of the highest unemployment rates in Florida continue to exist.”
- The Federal Reserve district office in Richmond detailed personnel to surveil OWS planning, who worked with the FBI in Richmond to “pass on information regarding the movement known as occupy Wall Street.” There were repeated communications “to pass on updates of the events and decisions made during the small rallies and the following information received from the Capital Police Intelligence Unit through JTTF (Joint Terrorism Task Force).”
- Denver, CO FBI and its “Bank Fraud Working Group” met and were briefed on Occupy Wall Street in November 2011. Members of the Working Group include private financial institutions and local area law enforcement.

- Jackson, MS Joint Terrorism Task Force issued a “Counterterrorism Preparedness” alert. This heavily redacted document includes the description, “To document...the Occupy Wall Street Movement.”
- Similarly verified and documented actions in urban and metropolitan areas across the country, including Anchorage, Jacksonville, Tampa, Memphis, Milwaukee, and Birmingham.¹

The American Civil Liberties Union has joined the request for further documentation. The FBI has responded that the documentation it possesses must remain secret “in the interest of national defense or foreign policy” (Lye 2012). The documents make evident that the threat of port closures on the West Coast were of primary concern among the surveillance entities involved. Until further disclosures are obtained, this chronicle—fragmented by heavy redactions—indicates what is likely to be a far more intensive and extensive set of coordinated and secretive operations coordinating corporate America and police apparatuses. The extent to which corporate interest clearinghouses like the DSAC work in secret, close and sustained cooperation with a vast network of interlocking law enforcement directorates about which very little is publicly known, vetted or understood is evident from these documents.

The Terror Specter

On April 24, 1996, President Bill Clinton signed into law the Antiterrorism and Effective Death Penalty Act (AEDPA) with broad bi-partisan Congressional backing. Support for the law was two-pronged. On one side were the long-standing, law-and-order predilections of conservative elements about costly appeals processes in capital

cases. On the other hand there was the alarm keyed to the WTC bombing (allegedly by al Qaeda) of 1993 and the Oklahoma City bombing of 1995, alleged to have been motivated by anti-government, anti-gun control, survivalist ideology. Critics of AEDPA stressed the bill's dramatic incursions on habeas corpus provisions otherwise secure under the US Constitution. Following the 9/11 incident, Congress passed the USA PATRIOT Act (a backronym for Uniting (and) Strengthening America (by) Providing Appropriate Tools Required (to) Intercept (and) Obstruct Terrorism Act), which dramatically expanded government surveillance authority, pushing incursions into civil liberties still further, particularly as pertains to the "hunting" of so-called "lone wolf" terrorists. This legislation was followed by the Homeland Security Act of 2002, which established consolidation of previously independent intelligence and enforcement agencies into an omnibus super-department. The Military Commissions Act of 2006 responded to Supreme Court challenge of the USA PATRIOT Act, solidifying US authority to try terror suspects under military tribunals immune from civil liberties obligations. The National Defense Authorization Act (NDAA), signed by President Obama in 2012, extended provisions of the Military Commission Act to the adjudication of US citizens. Now for the first time in US history, and into the foreseeable future, US citizens alleged to be involved, or merely in contact with terrorist organizations or entities, can be detained indefinitely and denied habeas rights to petition for defense and other civil liberties specified by US Constitution. Nine states legislatures moved to pass laws restraining or adjusting authority provided by the NDAA.

This trove of legislation putatively keyed to legitimate and authenticated concerns about terrorism occurred on the heels of and concurrent with the piecemeal but steady

deregulation of US financial institutions, which began under President Jimmy Carter, then accelerated throughout the 1980s and 1990s. The linkage between concerns with terrorism and banking brinkmanship triggering financial collapse would not fully surface in the US political agenda until an obscure Canadian based magazine, *Adbusters*, issued its epochal summons, *Occupy Wall Street*. The symbolic and temporal linkage between the wilding of US based financial institutions (corrupt and fraudulent mortgage lending, toxic financial instruments) and “terrorism” took shape in the fall months of 2011, as police crackdowns on otherwise peaceful protests increasingly took on Orwellian dimensions.

Legitimation Crisis

Jürgen Habermas (1975) has suggested how state legitimacy for post-industrialized capitalist nations (like the United States) will disintegrate along a sequence of “steering crises” the state finds itself unable to head off. Since social systems are adaptive, the moment of crisis cannot be determined precisely. Instead, crisis must be inferred from the gathering of disturbance symptoms threatening to the fabric of social consensus necessary for substantiating the legitimacy of social institutions. The processes governing capitalist societies operate to a large extent as “autonomous systems” neutralizing the necessity for traditional authority imposed on societies from above, in some instances to such an extent that, as Habermas points out, “With political atomization of class rule, the socially dominant class must convince itself that it no longer rules” (Habermas 1975, 22). Habermas’s analysis is pertinent to the Occupy Wall Street phenomenon and the Global War on Terror for several reasons. Emerging from the work of critical theory established by the Frankfurt School (including

in particular Theodor Adorno, Max Horkheimer, Herbert Marcuse), Habermas established how the expansion of capitalist state power follows as a result of crises in capital accumulation and declining profit margins that authorize increasing involvement of administrators and technicians in social and economic institutions and policy formulation. Held (1980) synthesizes the sweep of Habermas's theory of legitimation crises:

[The expansion of the state] also leads, in conjunction with the fusion of science, technology and industry, to the emergence of a new form of ideology; ideology is no longer simply based on notions of [equitable] exchange but also on a technocratic justification of the social order. Practical issues underpinned by particular historical class interests, [sic] are defined as technical problems: *politics becomes the sphere for the technical elimination of dysfunctions and the avoidance of risks that threaten "the system"* [emphasis in italics added]. (Held 1980, p. 251)

Social class and elite authority as formulated by Marxist theory are not irrelevant to the integrative imperatives of capitalism; rather, they are sublimated within the system as its complexity increases, emerging only during periods when the process of capital accumulation is interrupted. Such interruptions pose system steering "problems" which, if not managed by extant systems of social integration, may be transformed into full legitimation crises emerging from "fundamental contradictions" cleaving the social order. The Great Depression of the 1930s represents a high water mark of capitalist legitimation crisis, the mitigation of which transformed the system logic of the era from laissez faire-capitalist to liberal-capitalist modes of organization and legitimacy.

Intervention by the state, believed to be anathema by prevailing conventions of the capitalist order, was assimilated into the system logic of capitalist accumulation. This assimilation of what had been taken to be anathema—as with the counter-cyclical logic of Keynesian economics—forestalled more fundamental threats to the social order of material accumulation through the legitimation of increasing coordination between state control and private property interest.

In this formulation, conflict between labor and capital formation can be kept latent so long as these interests do not perceive a deep contradiction emerging between their chances to legitimately satisfy their needs. Open conflict between otherwise latent class interests is likely to emerge when surplus capital is not reinvested into the accumulation and production process, either because of lack of incentives or lack of opportunity. At such moments, mere “economic crises” are transformed into “social crises”. As Habermas comments: “in unmasking the opposition of social classes, [social crisis] provides a practical critique of ideology of the market’s pretensions to be free of power” (Habermas 1975, p. 29). Habermas’s formulation of the legitimation crises endemic to industrial and post-industrial capitalism establishes an important theoretical foundation for more recent work keyed to the SCAD (state crimes against democracy) (deHaven-Smith 2006, 2010, 2013; Dixon, Spehr and Burke 2013; Hinson 2013; Griffin, 2011) and “deep state politics” (Scott 2010, 2008) rubrics, as well as related work by Wolin (2008), Witt and deHaven-Smith (2008), Wedel (2009), Thorne and Kouzmin (2010) and Griffin (2004).

Prologue for 2008

Central steering mechanisms imposed by the legitimation crisis of the 1930s entailed legislation like the Banking Act of 1933 (a.k.a Glass-Steagall Act) to uncouple commercial from investment banking, intended to secure the deposits of private creditors from being bundled by banks into unregulated investment schemes. This law was followed the next year by the Security and Exchange Act of 1934, which established sweeping reforms of the financial markets. These and companion legislative initiatives like formation of the Federal Deposit Insurance Corporation (FDIC) assured that the unaccountable speculation that had caused serial financial collapse in the United States, particularly after the Civil War as the economy became national in scope, would be headed off by semi-automated administrative mechanisms, as with the deposit minimums specified by the FDIC and licensing and audit procedures installed by the Securities and Exchange Commission.

With the deindustrialization of the U.S. economy beginning in the late 1960s, capital accumulation became increasingly uncoupled from its traditional base in manufacturing. By the late 1970s, inflationary and recessionary pressures signaled increasing instability of financial markets; and balance of trade indicators made it evident that government-acquired debt to offset diminished consumption would begin increasing steadily and into the foreseeable future. By 1980, the New Deal Congressional consensus fractured under the specter of radically diminished manufacturing capacity, leading to two decades of right wing political fanfare and legislative dismantling of New Deal provisions. What ensued was a cascade of

deregulatory legislation knocking out the pins of New Deal safeguards and flywheel mechanisms.

The Depository Institutions Deregulation and Monetary Control Act of 1980 gave the Federal Reserve greater control over non-member banks but weakened its decades old authority over regulating private savings account interest rates, effectively volatilizing this mainstay of private savings. Soon after, investment banks were traded publicly. Passage of the Tax Reform Act of 1986 removed many tax shelters provisions for real estate investments, assuring instability in real estate markets because holders of loss-generating properties sought to shed their risk, plummeting real estate values into the 1990s. Passage of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 targeted the Savings and Loan industry with dramatic deregulation, precipitating the largest bank bailout in U.S. history following the failure of thousands of thrifts across the country over the previous few years and into the 1990s. By 1999, passage of the Financial Services Modernization Act permitted, for the first time since before 1933, commercial banks, investment banks, securities firms, and insurance companies to consolidate. Representative John Dingell (D-MI) argued in the House of Representatives that the bill would result in banks becoming “too big to fail”, and he foresaw a time when they would require bailing out by the federal government (Dingell, 1999). This period saw the invention of increasingly exotic financial instruments, culminating with the credit default swap, the financial mechanism credited with precipitating the mortgage and financial collapse of 2008.

The Pretext of Orwellian Geographies

On February 2, 2011, the Canadian based magazine, *Adbusters*, featured an editorial by Kono Matsu, calling for a protest movement in North America like that in the Middle East. *Adbusters* responded with online editorial July 13th, calling for a “shift in revolutionary tactics” and coining a name and Twitter hash tag, #OccupyWallStreet. The editorial proclaimed that “A worldwide shift in revolutionary tactics is underway right now that bodes well for the future” (Adbusters 2011). The editorial pegged this new shift to Raimundo Viejo of Pompeu Fabra University (Barcelona), who captured the emerging organizing ontology of online social media: “The antiglobalization movement was the first step on the road. Back then our model was to attack the system like a pack of wolves. There was an alpha male, a wolf who led the pack, and those who followed. Now the model has evolved. Today we are one big swarm of people” (Adbusters 2011). On August 30, the “hacktivist” group Anonymous released a video statement online supporting the *Adbusters* call and encouraging people to join the proposed march in New York. On September 17, the rally began. Within weeks, Occupy Wall Street was mimicked in scores of cities nationwide and globally. By the new year, hundreds of cities across the globe attracted Occupy modeled protests.

Until violent police crackdowns in Oakland, Berkeley and Davis California, the media coverage of the movement was muted. Fox News initially responded with the scorn and condescension that would subsequently murmur in other media. Pundits denounced the Occupiers in a way reminiscent of the early treatment of the Vietnam War protestors: they were pampered college students with too much time on their hands. But unlike the Vietnam War protests, which had an explicit focus calling for the

end to that war, the Occupy presence seemed to pundits to be more elusive. The initial condescension then changed to an incredulous, interrogatory tone: *What is it that you want?* Responding, Occupy Wall Street's General Assembly released the following Manifesto onto the internet on September 30, read shortly after by Keith Olbermann, popular liberal figure on cable station *Current TV*:

As we gather together in solidarity to express a feeling of mass injustice, we must not lose sight of what brought us together. We write so that all people who feel wronged by the corporate forces of the world can know that we are your allies.

As one people, united, we acknowledge the reality: that the future of the human race requires the cooperation of its members; that our system must protect our rights, and upon corruption of that system, it is up to the individuals to protect their own rights, and those of their neighbors; that a democratic government derives its just power from the people, but corporations do not seek consent to extract wealth from the people and the Earth; and that no true democracy is attainable when the process is determined by economic power.

The statement continues with a litany of indictments of corporate conduct, prefaced with, "We come to you at a time when corporations, which place profit over people, self-interest over justice, and oppression over equality, run our governments. We have peaceably assembled here, as is our right, to let these facts be known." The statement closes with a pitched plea:

To the people of the world We, the New York City General Assembly occupying Wall Street in Liberty Square, urge you to assert your power.

Exercise your right to peaceably assemble; occupy public space; create a process to address the problems we face, and generate solutions accessible to everyone.

To all communities that take action and form groups in the spirit of direct democracy, we offer support, documentation, and all of the resources at our disposal.

Join us and make your voices heard!

Not since the Port Huron Statement of June 15, 1962, written by Tom Hayden and issued and endorsed by the Students for a Democratic Society, had any statement been pitched so broadly to an attentive audience in the U.S. Dissimilar to Port Huron, the Occupy Manifesto was issued very consciously to a global stage. Also unlike Port Huron, the Occupy Manifesto issued no explicit policy demands or requests.

Sympathetic observers and commentators commended this refusal to ape special interest politics-as-usual. On October 28, renowned Marxist geographer David Harvey posted at the *Verso* website:

The Party of Wall Street knows all too well that when profound political and economic questions are transformed into cultural issues they become unanswerable. It regularly calls up a huge range of captive expert opinion, for the

most part employed in the think tanks and universities they fund and splattered throughout the media they control, to create controversies out of all manner of issues that simply do not matter and to propose solutions to questions that do not exist. One minute they talk of nothing other than the austerity necessary for everyone else to cure the deficit, and the next they are proposing to reduce their own taxation no matter what impact this may have on the deficit. The one thing that can never be openly debated and discussed, [sic] is the true nature of the class war they have been so ceaselessly and ruthlessly waging. To depict something as “class war” is, in the current political climate and in their expert judgment, to place it beyond the pale of serious consideration, even to be branded a fool, if not seditious. (Harvey, 2011)

The epithet “class war” has been used repeatedly by right wing punditry in a reversal that fits with Habermas’s insight, cited above: “With political atomization of class rule, the socially dominant class must convince itself that it no longer rules” (Habermas 1975, p. 22). When class rule is (re)made visible—de-sublimated from public awareness, as with the Occupy movement—the symbolic order tilts like a tectonic plate, making visible the contours of political consciousness otherwise subterranean. Elite auxiliaries (media, police, administrative and political officials) realize they must redirect the emerging shift in symbolic order. Hence the repeated blame directed by Republican detractors at President Obama for instigating “class war” when, in the weeks following the initiation of the Occupy movement, Obama spoke in State of the Union address to the need for the wealthiest to pay higher tax rates. Meanwhile, the “class war” accusation was simultaneously re-directed at the Occupy movement by Fox

News commentators. First branded as obscure and abstruse—“What is it that you want?”—the Occupy movement, after garnering increasing legitimacy, was branded as “class war”. This shift in scorn from “vague” to, in David Harvey’s formulation, “seditious”, occurred with no major shift in the movement’s doctrine or tactic. The shift that occurred seems entirely to do with the realization by media elite that the movement’s legitimacy signaled a threatening de-sublimation of class awareness not publicly evident—not “signified” in a salient way—for many decades in the U.S.

Urban Militarism

On November 9, 2011, a militarized phalanx of sheriff, university and local police personnel assaulted gatherers at UC Berkeley’s Sproul Plaza, firing teargas and rubber bullet rounds, leaving an Iraq War veteran in critical condition and scores of others injured following a pattern of protest and reaction that would replay across scores of U.S. cities (Protest and Assembly Rights Project 2012).² Internet video uploads show police attacking protestors with batons, using blunt force trauma techniques directed at abdomens and other vulnerable torso areas. Footage also shows police attacking and striking protestors, unprovoked, from behind. Two weeks prior, the Oakland Police and state sheriffs attacked protestors with teargas, beanbag rounds, percussion grenades and, allegedly, rubber bullets, leaving a score of protestors with deep contusions and bloody head lesions.

Police tactics used in both instances originated with training and maneuvers on display at *Urban Shield 2011*, an annual SWAT team exposition hosted by Alameda County (CA) law enforcement—drawing international police agency personnel—

organized to promote and coordinate “mutual response” among and between law enforcement strike forces heavily militarized with weaponry and armored assault vehicles. The law enforcement magazine *Police* posted online, November 21, 2011, a synopsis account of the role *Urban Shield* played in the Oakland and Berkeley roundups: “After the evictions, protesters returned *en masse* [allegedly] to battle police by throwing rocks, bottles and paint. Police responded with chemical and less-lethal munitions. Ultimately, the Oakland mayor allowed the protesters to return to their tent city.” Adding an unabashedly militarized gloss to this event, the account describes this as “reminiscent of the Vietnam War where military tactics often played out as ‘take a hill, give it back’” (O’Brien 2011). The story closes by sizing up how “complex events” like the Occupy Movement require the “seamless cooperation” that Urban Shield can provide. “Such teamwork just may be the most significant, and valuable thing about Urban Shield. Given today’s continuing sour economy, it’s predictable that law enforcement is becoming increasingly reliant on mutual-aid response to handle the more complex events.”

This vague formulation for what constitutes a “complex event” is new syntax signifying a shift in the formulation of threats to social order. Police infiltration of protest groups is a tactic as old as empire. But post 9/11 reports of police infiltration and agent provocateur tactics indicate this ancient practice is being refurbished. A *New York Times* report from 2005 cites an instance of the NYPD staging a sham arrest at the Republican National Convention to authorize attacks on bystanders by riot gear equipped police (Dwyer 2005). The structure of such tactics indicates that the regional coordination that Urban Shield purports to address in fact extends well beyond that

region. Writer Max Blumenthal reports that the same company—Defense Technology of Casper, Wyoming— supplying the Israeli army with tactical weapons is a source of teargas rounds and related weaponry used by the Oakland Police (Blumenthal 2011). Drawing on the formulation by Allen Feldman (2004) of “securocratic warfare,” geographer Stephen Graham (2010) reasons:

Ideas of national citizenship, rather than necessarily being merely opposed to the outside and foreign, are now increasingly being remade against others deemed to be outside or beyond citizenship, whether they lie inside or beyond the actual geographical borders of nation states. This reconfiguration in the nature of borders is being fueled by what Allen Feldman calls “securocratic wars”—open-ended and de-territorialized wars (on drugs, crime, terror, illegal immigration, biological threats) organized around vague, all-encompassing notions of public safety rather than around territorial conquest. [...] Unknown and unknowable, these dangers –terrorism, demographic infiltration, “illegal” immigration, disease (SARS, bird flu, tuberculosis)—are understood to lurk within the interstices of urban and social life, blending invisibly with it. (Graham 2010, p. 91)

Shortly after the Oakland crackdown, the Police Executive Research Forum (PERF) disclosed, under pressure, that it had carried out conference calls with major city mayors and police chiefs prior to the Oakland assault on protestors. The PERF is an international non-governmental organization with ties to law enforcement and the U.S. Department of Homeland Security. PERF Executive Director Chuck Wexler has acknowledged PERF’s coordination of “conference-call strategy sessions” with big city police chiefs, but disavows claims that PERF is centralizing tactical responses to the

Occupy movement. An investigative report published in the San Francisco Chronicle finds that “PERF’s current and former directors read as a who’s who of police chiefs involved in crackdowns on anti-globalization and political convention protesters resulting in thousands of arrests, hundreds of injuries, and millions of dollars paid out in police brutality and wrongful arrest lawsuits” (Gaynor 2011).

The current chair of PERF’s board of directors is Philadelphia Police Commissioner Charles Ramsey, formerly the Washington, D.C. Metro Police Chief, responsible for coordinating police roundup of protestors against the World Bank and the International Monetary Fund offices. Ramsey ordered preemptive mass arrest of Iraq War protestors, action found in lawsuit to be unconstitutional.

Preceding Ramsey as PERF board chair was John Timoney, also Philadelphia Police Commissioner and former Miami Police Chief, responsible for the “Miami Model,” formulated after the police crackdown on the 2003 Free Trade Agreement of the Americas protest. Police response to that incident led to hundreds of injuries to protestors, and successful lawsuits against the Miami P.D. for abusive assault and violation of free speech. Prior to Miami, Timoney coordinated a crackdown against protestors of the 2000 Republican National Convention, similarly resulting in lawsuits, protester injuries and media response against police preemptive actions with constitutional implications (Gaynor 2001; Boycoff 2007, p. 263).

The Miami Model was also evident at the Port of Oakland protest of April 7, 2003, which scores of eyewitness accounts indicate was made violent by police agent provocateurs. The California Anti-Terrorism Information Center (CATIC) had warned the

Oakland Police Department the previous week that violent activity might take place.

This certification of “credible threat” by agency proclamation is, plausibly, intended to justify preemptive police actions even if doing so requires “throwing the first punch”.

Reporting on the Miami incident at the Free Trade Agreement of the Americas protest, author Jeremy Scahill wrote in 2003 for *CounterPunch*:

At one point during a standoff with police, it appeared as though a group of protestors had gotten into a brawl amongst themselves. But as others moved in to break up the melee, two of the guys pulled out electric tazers and shocked the protesters, before being liberated back behind police lines. These guys, clearly undercover agents, were dressed like any other protester. One had a sticker on his backpack that read: “FTAA No Way.” The IMC [IndyMedia Corporation] has since published pictures of people dressed like Black Bloc kids—ski masks and all—walking with uniformed police behind police lines. (Scahill 2003)

At least since the World Trade Organization protest in Seattle in 1999, a standard refrain of police personnel about riot control is “what to do with the anarchists.” Scores of reports like the one cited here suggest that some of the so-called “anarchists” are under-cover police provocateurs abiding by the ancient dictum: the best way to control a riot is to start one. Where the line for “clear and present danger” exists seems increasingly blurred by state apparatuses dedicated to preemptive violence against fictive threats posed by free speech expressions of dissent.

Suppression of dissent is not new in American law enforcement. Since the early-twentieth century and the passage by the Supreme Court in 1919 (*Schenk v. United*

States) of “clear and present danger” doctrine, constitutional rights have been subordinated to state authority to head off perceived threats pertaining to who is and who is not legitimately an enemy of the state. Now new is the extent to which Constitutional provisions, one hundred years ago still sacrosanct if sometimes brushed aside on a case by case basis, have been effaced and made no longer relevant by decree and legislative fiat. From the Anti-Terrorism and Effective Death Penalty Act preceding the 9/11 incident, to the PATRIOT Act, Military Commissions Act, and now the National Defense Authorization Act, American civil liberties are imperiled as at no time in U.S. history and into the foreseeable future. How the suppression of dissent is manifesting across “Orwellian geographies” of police preemptive tactic is becoming clearer, as with the Miami Model and derivative strategies described below.

Snatch squads. These are teams of undercover officers who swarm around a specific activist at public protest, isolate that person from the rest of the crowd, make a quick arrest on the spot, and move the person away swiftly for booking. Snatch squads were deployed for the World Economic Forum in New York in 2002, the Free Trade Area of the Americas protest in Miami in 2003, and anti-war protests in Washington, D.C. in April 2003. The effectiveness of snatch squads may explain the “flash mob” tactic adopted by the Occupy movement.

Pretextual searches. These are raids of organizing spaces, sometimes carried out by building inspectors under bogus pretexts of housing and fire code violations, with the intention to close down activist gathering, planning and mobilizing venues.

Public space sequestration. This entails harassment of protestors gathered on sidewalks “rented” for political events that attract protest. During the 2004 presidential campaign, Bush protestors were routinely scooped up by Secret Service and police for simply standing on sidewalks adjacent to Bush gathering events. Boycoff (2007) recounts one of these incidents:

In Cedar Rapids Iowa two 55-year-old teachers—Christine Nelson and Alice McCabe—showed up at a Bush campaign event sporting a Kerry-Edwards button and a paper sign that read, “No More War.” Three Secret Service agents, two county sheriff’s deputies, and members of the Iowa State Patrol swooped in and arrested the two, handcuffing them and hauling them off to jail where they were strip-searched. The government defended its actions, saying the Republican Party had rented the public park in which the two were protesting, and thus the sidewalk on which they stood was considered private property. (Boycoff 2007, p. 287; see also Boghosian 2004).

Reversals of force narrative. This is the practice by police of imputing motive to obstruct police action by protest individuals, thereby justifying detainment and/or arrest. A protester arriving at a Bush gathering to support then California governor Arnold Schwarzenegger in San Bernardino, California, exited his vehicle carrying two homemade signs that read “Shock & Awe = Maim & Murder” and “Indict Bush—Crimes Against Humanity.” As he exited his car and walked towards the protest gathering he was confronted by a police officer who, according to Frazier, “raced towards me screaming, ‘No, no, no, no. Get there, get there!’” The officer then confiscated Frazier’s signs and arrested him. The San Bernardino Police responded to the complaint filed by

Frazier by saying: “You’re being arrested for obstructing a police officer. Your sign could have been a weapon.” The police report reads: “During a Presidential visit, the listed defendant entered a restricted area and did not comply with officer’s request and demands. He was arrested for obstructing and delaying an officer” (Boycoff 2007, p. 288). In Los Angeles, activist Sergio Ballesteros was charged on January 12, 2012 with “lynching” as defined by California legal code section 405(a): “taking by means of a riot of any person from the lawful custody of any peace officer” where “riot” is defined as two or more people threatening violence or disturbing the peace. Ballesteros was responding, as he has stated, to the excessively aggressive treatment of a protester by police after the protester walked off the sidewalk into the street because there was no room to egress otherwise (Huus 2012).

Conclusion: Crises Made Opportunity

The twelfth major round of negotiations for the Trans-Pacific Partnership Agreement (TPPA) was carried out in Dallas summer of 2011. The TPPA is ostensibly an international trade and investment pact which, like pacts before it (NAFTA, GATT), is being negotiated beyond public purview among Pacific Rim countries hosted by the United States. Based on leaked documents, the pact is a charter of rights for corporations included in the process, such as Bank of America, Koch Industries, Citigroup, Pfizer, Cargill, ExxonMobil, Chevron, Monsanto, Verizon, Wal-Mart and a score of others. The initiatives targeted by TPPA include a trove of neoliberal agendas bundled into omnibus trade agreement, including the following:

- Relaxing of GMO labeling law; cut backs on mining regulation;

- Roll back of Tobacco regulation;
- Weakened control on foreign direct investment and capital flows;
- No restrictions on rights to move money in and out of host countries, including all profits, even at a time of financial crisis;
- Prior consultation by governments on any laws or policies that might affect their business and an explanation of what notice the government took of business views;
- Governments won't introduce laws, policies or practices that reduce the value of an investment without full compensation, even if there are sound public policy reasons;
- Rights to sue a host government before a secret international UN or World Bank tribunal for compensation if an investment business believes new laws, policies or decisions breach the protection of their property rights under the treaty.

Hundreds of corporate lobbyists have been granted special access to draft documents that watchdog groups have been barred from viewing.³ Meanwhile, ten years after the alleged attack by foreign terrorists on September 11, 2001, expenditures for the military and “homeland security” in the United States reached nearly 8 trillion dollars (Hellman 2011).

The logic of the state legitimization crisis limned forty years ago by Jürgen Habermas has been transformed. The *permanent terror and disaster capital state* now displaces the permanent “crisis of accumulation” state that Habermas formulated to

explain systemic dilemmas faced by advanced capitalist societies. Crises of legitimate authority—as with the Occupy movement—now occur like drumbeats whose rhythm quickens, forcing the authoritative channels of ersatz liberalism to adopt a new legitimation discourse that naturalizes the hyper-vigilance of state police authority.

This “political economy of fear and terror” is increasingly untethered from any empirical validation other than what force can legitimate and simultaneously propagate. Writing a few years before *Legitimation Crisis*, Murray Edelman (1971, pp. 165-166) discerned: “This general interest [state legitimation] is perceived as transcending the concrete interests of specific groups and so draws support even from some people who are hurt by it. Its lack of semantic precision enables it to condense for each person a set of empirically unobservable but emotionally compelling beliefs and meanings consonant with their perception of national interest.” Who “threw the first punch” at this or that protest gathering is made irrelevant under the auspices of the permanent terror state, where “cartographies in continuous flux” (cf. Boycoff 2007, p. 287) are delimited by police tactics to suborn public space and any register of dissent that further threatens an increasingly precarious legitimation narrative. How far the United States has succumbed to an official culture of secrecy and contempt for civil liberties, rule of law and forensic inquiry has been made vivid by the state reaction to the OWS movement. There is an urgent need for examination and analysis of this descent into civil liberties limbo under the presumptive threat of terrorism.

Notes

1. The FOIA document release can be found at the Partnership for Civil Justice fund website: <http://www.justiceonline.org/commentary/fbi-files-ows.html>.

2. The Protest and Assembly Rights Project plans release of subsequent reports this year focused on Boston, Charlotte and the San Francisco Bay area. Comparative data has been obtained from the following cities: Atlanta, Chicago, Dallas, Denver, Los Angeles, New Orleans, Philadelphia, Pittsburgh, Portland, Salt Lake City, and Washington, D.C. International comparative data was collected on several other countries, including Bahrain, Canada, Egypt, Indonesia, Nigeria, Russia, South Africa, Spain, and the United Kingdom.
3. Senator Ron Wyden (D-OR), Chairman of the Senate Subcommittee on Trade, Customs, and Global Competitiveness, with jurisdiction over the TTP, was denied access to the text of the bill over the two plus years of its development. As a result, Wyden has filed legislation demanding that he with his staff—who possesses high level security clearance for national security—have the right to review pertinent documents.

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