From Demonstration to Riot-ization: Social Control in the Era of Trump

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What follows is a broad political analysis outlining the ways in which political repression has evolved and changed over the past several decades. I want to culminate with the January 20, 2017 Counter-Inaugural Day case, but I do not want that to be the focus here. Rather, it serves as a poignant example. I want to provide an overview focused on social control, as understood through the work of French theorist Michel Foucault, and analyze how these methods of control relate to social movement organizing in the contemporary period.

To be clear, this talk is not focused around Donald Trump, though I think a lot of this is exaggerated in the past year, in the time around the end of the Obama Presidency and the beginning of the Trump Presidency. In my wider work, I look at how counterterrorism, and specifically counterterrorism rhetoric, is used to criminalize certain social movements and manners of dissent. My research focuses on how the rhetoric of terrorism is applied unevenly from the left to the right, and within jihadist and nationalist movements. What I am examining here is something I noticed occurring within the past year, namely, the way the rhetoric of "riot" and "rioters" has been used discursively to criminalize certain aspects of protest. I want to borrow from Foucault the notion of a genealogical account—an evolutionary account—for examining this sort of protest.

I want you to know that I am not a trained sociologist. My postsecondary degrees are in Terrorism Studies and Conflict Analysis respectively. I have worked for the past three years teaching in sociology departments, and in doing so, I have managed to bring myself up to speed. I say that to note that in my self-training, I came across the inspiring work of the American sociologist C. Wright Mills. It's worth noting that in the context of dissent, Mills himself was once a target of FBI defamation and disinformation, but that story is for another day. In his discussion of his approach and the so-called "sociological imagination," Mills argued that the purpose of understanding the social world, the purpose of sociology, is to change society for the better. I think that is an important aspect to begin with. There is a recurrent notion amongst the social sciences of a desire to maintain objectivity, though folks such as

Mills, as well as myself and many others, have pushed back against this. I do not desire to be objective. I desire to be empirical. I desire to be accurate and transparent. I desire to present analyses that are based in facts and historical evidence, but my purpose in doing this is to create positive social change; to undermine systems of coercive power and open up the possibility for emancipatory politics and liberatory, prefigurative futures. I do not pretend to exist within some imagined, neutral middle ground, which I do not believe exists, and Mills would argue is actually not possible. I am reminded here by Richard Jackson's foundational work in critical terrorism studies, where he writes that those who report to be "objective" are simply those who assert and embody the hegemonic, dominant worldview, reminding us that the State is not a neutral power broker, but in fact embodies a distinct viewpoint and worldview which one can hardly find to be objective.

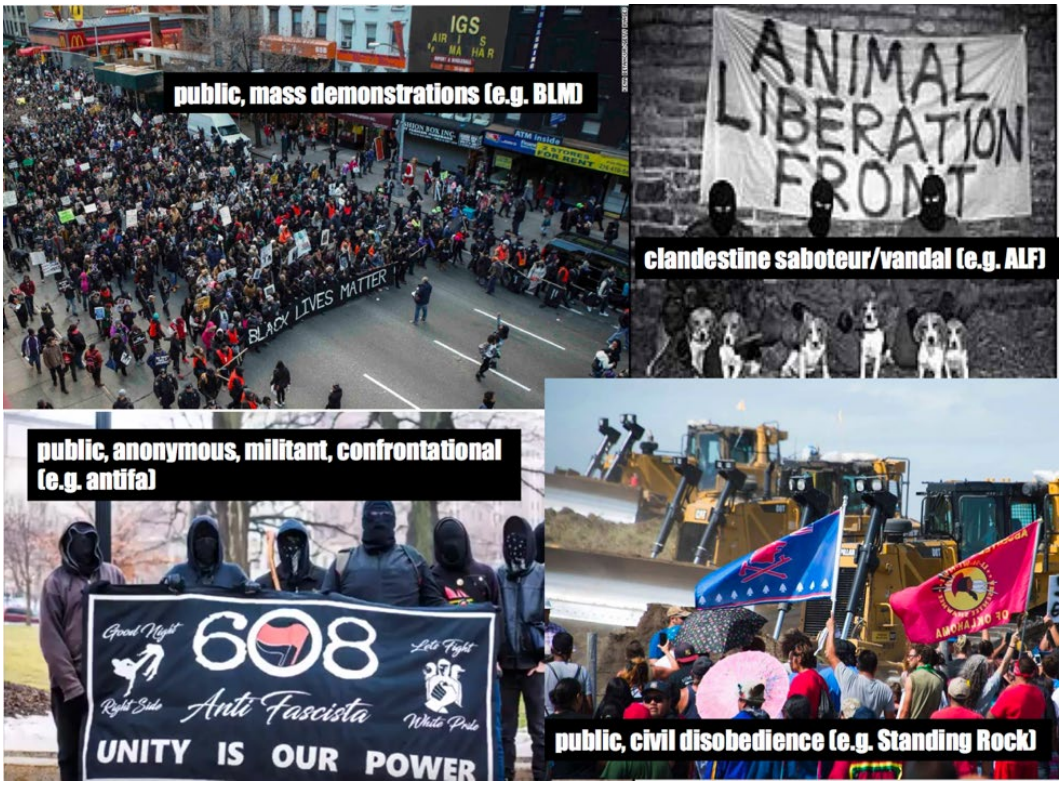


Figure 1: A Taxonomy of Social Movements. Source for this and all figures: https://www.academia.edu/38361267/From_Demonstration_to_Riot-ization_Social_Control_in_the_Era_of_Trump

Today, I am broadly focusing on four types of social movements that are the targets of contemporary criminalization. In the upper left-hand corner of Figure 1, you can see is a Black Lives Matter demonstration, but could just as easily be the Occupy Movement. These are public, broad-based mass movements—those that block traffic, take to the streets, and judge their success based on how many

people come out. These movements of mass represent huge numbers of participants drawn from a broad swath of society, and they are criminalized in a particular way.

The second taxonomic grouping, in the upper right-hand corner, includes clandestine networks, what we can call direct action movements. These are groups that operate underground and that damage property, typically through the use of vandalism or sabotage. These groups would likely measure success less according to the scale of participants, and more based around the material damage they cause by utilizing a strategy they term "economic sabotage." Because I spent my Master's thesis conducting quantitative research on these networks, I can say with confidence that in about 8% of cases they use arson and in about 2% they use tactics that present a risk to life, such as those involving explosive devices. It is worth noting that this movement, which has been operating globally since the early 1970s and most notably under the monikers of the Animal Liberation Front and Earth Liberation Front, has never injured or killed a person in this country. Looking at how these networks are criminalized shows us the pernicious use of the rhetoric of terrorism and how it can be used to chill dissent and marginalize radicalism. In the 1990s and early 2000s, the FBI consistently labeled the Animal Liberation Front and other "eco-terrorists" as the number one domestic terrorist threat, a claim which I have documented, investigated, and analyzed at length in a series of publicly available papers.

Those in the third grouping are public and mass-centric, like Black Lives Matter, but more tactical and strategically situated in the coordination of civil disobedience. In the resistance to the Dakota Access Pipeline on the lands of the Sioux Nation at Standing Rock, demonstrators established an occupation to disrupt something particular. It was not about getting the public to notice some manner of injustice, but rather to get in the way. This manner of protest has faced specifically-tailored legislative opposition in the past year as well.

Finally, in the lower left corner of Figure 1, you see a representation of a public demonstration carried out by anonymous individuals who may push the envelope of militant and confrontational measures. This is best exemplified by the anti-fascist movement (i.e. Antifa) that has caught the media's attention in 2017 but has been operating through pretty much the same means for nearly a century. This movement and tactical aesthetic especially has become subsumed by the rhetoric of the riot, and that is where my comments will end this evening.

I want to begin with Michel Foucault, who provides a bit of the theoretical background. Foucault argues in his famous book *Discipline and Punish: The Birth of the Prison* (trans. 1977), that there are two different forms of power: monarchical (or sovereign) power and disciplinary power. In pre-modern times—the seventeenth and eighteenth centuries mainly—the sovereign dominated through brutal displays of direct violence. The notion is that if you take a criminal and chop their head off in the middle of the square, people feel it; people embody that pain, embody that punishment. In doing so, potential

future rule breakers choose (in a sense) to not be beheaded, and act differently because they have already embodied the potential physical punishment the monarch could wield.

In a sense, social control in this manner is a combination of both rhetorical brutality—holding your opponent up and saying I am going to kill this person, this person is a terrorist, this person is a threat—as well as physical brutality. These strategies occur simultaneously, and at times one of them may present itself more plainly than at other times. Consider police violence, whether you recall COINTELPRO (an FBI program in the 1950s and 1960s where activists and revolutionaries were murdered by police) or whether you imagine what is more common now, the act of naming and shaming. In this case we are looking at people being called terrorists, or more recently, people being called rioters. In this manner, we will examine "terrorism" as a discursive label before moving on to look at "riot" in the same manner.

I want to underscore that political repression targeting leftist social movements is by no means new. To claim a novel period of repression is, I think, disingenuous. Starting around World War I, there were huge waves of criminalization of certain forms of protest and certain types of dissenters, including immigrants, Jews, leftists in general, and labor organizers, communists, and anarchists more specifically. Repression often focused on the ranks of the Industrial Workers of the World (IWW) and other groups that advocated for such radical ideas as the eight-hour work day, the five-day work week (otherwise known as "the weekend"), and an end to child labor, things that we now we accept as normal but at the time were somewhat radical. This period also saw violent repression of leftists who advocated for reproductive healthcare and voting rights for women, and who opposed the World Wars. These movements were heavily repressed by the state through arrests, attacks on demonstrations, deportations, and absurdist prosecutions of dissenters.

The Red Scare of 1919-1920 was quickly followed by a second Red Scare following World War II. This time, the McCarthy era, was when we start to hear the rhetoric of immigrant-based communities being defamed as communists. While some (if not many) were certainly communists, this rhetoric was used to name and shame far more than to provide an accurate description of one's political position. This is when we see people being blacklisted and, once again, deported.

Figure 2: A 1967 newspaper preceding the Mulford Act [left]
and a 1947 comic book for an anti-communist propaganda campaign [right].

Between 1952 and around 1972, an era which Matt Meyer, a scholar I really respect identifies as 'the era of the sixties', we have the counter intelligence program, COINTELPRO, run by the FBI, which I would argue culminated in the murder of numerous people, most notably Black Panthers Fred Hampton and Mark Clark. Here we have an interesting historical period, when, for instance, the Panthers begin to open carry firearms, and shortly after we saw the passing of the Mulford Act, which banned open carry in California. It is worth noting that this was carried through by then Governor Ronald Reagan, not typically regarded as an enemy of the Second Amendment.

In the 1990s, fast-forwarding about twenty years, we have the resurgent focus of the FBI on domestic terrorism, specifically on domestic terrorism coming from the left. Now it would take me a large tangent to explain why that is absurd but look at the history yourself. In the 1980s and 1990s there was a huge spike (according to the FBI's own statistics), in lethal attacks carried out by people we broadly identify as the right. Typically, these are anti-abortion extremists operating under the moniker of the Army of God, domestic militias as well as the rise of independent right wing anti-government folks, most notably people like Timothy McVeigh and Terry Nichols. According to data released by the DHS-managed START program run out of the University of Maryland, College Park, from 1990-2016, right-wing violence killed 272 individuals including 57 law enforcement officers, Islamist violence killed 130 individuals, including 7 law enforcement officers, and 18 members of the military, and leftists killed no one. This data excludes so-called outlier incidents, namely the Oklahoma City attacks and 9/11 in order to

not skew the data from these two incidents alone. During this time, when the right is killing people, we witness a shift, a rhetorical and discursive shift. It is during this time that state language ceases its focus on the enemy of the Cold War, of a now collapsed Soviet Empire, and instead focused on activists. This is a subtle and quiet shift. Then, soon after, an obvious shift occurs which again transposes such rhetorical labels from activist to terrorist. This occurs before 9/11, which is an important distinction. In this late 1990s language shift, social movement activists who were breaking the law and damaging property were suddenly called "terrorists," where as previously they were called something else—demonstrator, activist, protestor, etc. I want to kind of look at some elements of this linguistic and discursive evolution.

If you want to look at a specific juridical element, the 2006 Animal Enterprise Terrorism Act (AETA) really puts a fine point on it. The AETA is a re-writing of a 1992 law called the Animal Enterprise Protection Act, so you can see the cleverness of changing "protection" to "terrorism."[2] The AETA states that if you damage property and/or interfere with the commerce of an economic entity determined to be an "animal industry," then your action goes from being a crime prosecuted by the local jurisdiction to a federal act of terrorism. For example, if you were to set fire to a McDonald's restaurant because that particular franchise is owned by someone you dislike, that is prosecuted by the state of Pennsylvania as an act of arson. If you burn down the exact same McDonald's in the exact same state and write on the walls "Free the animals," under the AETA that is now an act of terrorism prosecuted by the federal government.

This is an important shift with distinct, observable consequences. For instance, individuals who have been prosecuted under the AETA have been given terrorist enhancements (i.e. additional sentencing) and have been held in prisons specifically designed to house terrorists, known as Communication Management Units or CMUs. At least three animal rights activists who have been prosecuted under the AETA have been jailed in these CMUs that are super max prisons that, not surprisingly, are designed to limit your communication. In this regard, the AETA exemplifies some of the asymmetric use of defamatory and chilling language.

The other part of this rhetorical and discursive shift is that in the early 2010s the FBI officially changed its mission statement, which again I would argue has important rhetorical consequences. While we do not know exactly when this happened, a document leaked in 2013 contained an internal FBI PowerPoint. Figure 3 shows that the FBI changed its mission, or primary function, from "law enforcement" to "national security." While those may not sound different, they actually are unique terms. "National security" recalls a notion of sovereignty, an idea intricately linked to that of "Homeland Security," which again is different from simply providing federal law enforcement. It is at this time that through the invigoration of Homeland Security that we see a doubling of FBI agents via the War in Terror.

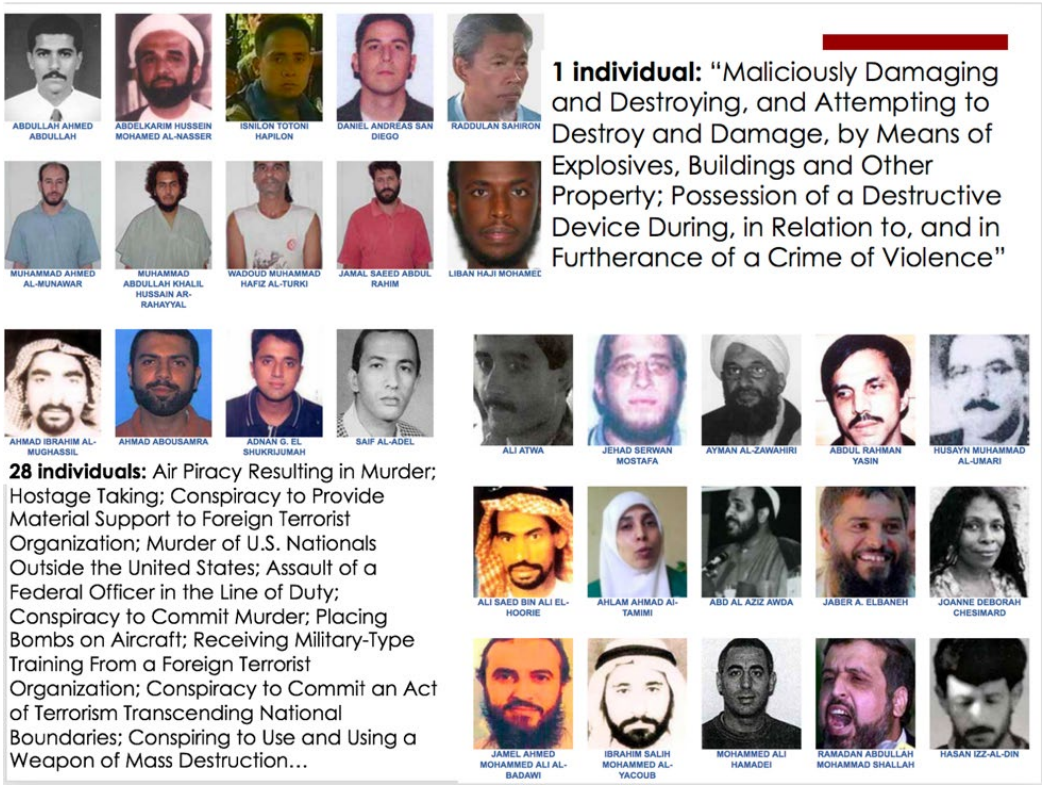


Figure 3: The FBI's Most Wanted Terrorists and select charges in 2017.

Figure 3 shows the Most Wanted Terrorist listing from the FBI in September 2017. I do not have time to go through each of these individuals, but if you look at them carefully you will notice two people who stand out. Towards the lower right is Joanne Chesimard, commonly known as Assata Shakur. She is one of only two individuals who are neither Arab, Asian, African, nor Muslim. In the upper left-hand corner is the other person, a man with a Latino name, Daniel Andreas San Diego. In the lower left-hand corner, I have provided some of the serious crimes the Muslim, Arab, African, and Asian men are charged with, and in the upper right-hand corner what San Diego is charged with. Even with what I would argue is a critical view on terrorism, I believe the crimes listed in the lower left-hand corner would qualify as terroristic. They are designed to terrorize: hijacking planes, murdering foreign nationals, using weapons of mass destruction, and so forth. When we look at Daniel Andreas San Diego, we see that he is charged with placing two small-yield explosive devices at a property at night. Now I am not arguing that placing explosive devices at buildings is something we should make legal. But what I am arguing is that placing a small pipe bomb at a corporate office at night—a device that creates a singed mark on a building's exterior wall yet presents very little risk to life—is fundamentally different from hijacking airplanes and from bombing embassies in Dar es Salaam and Nairobi, which killed over 220 people. San Diego's actions are fundamentally different in both a legal and a discursive sense, and to keep San Diego on the

list of Most Wanted Terrorists—the first American to be added to the list—is an odd yet intentional signaling move.

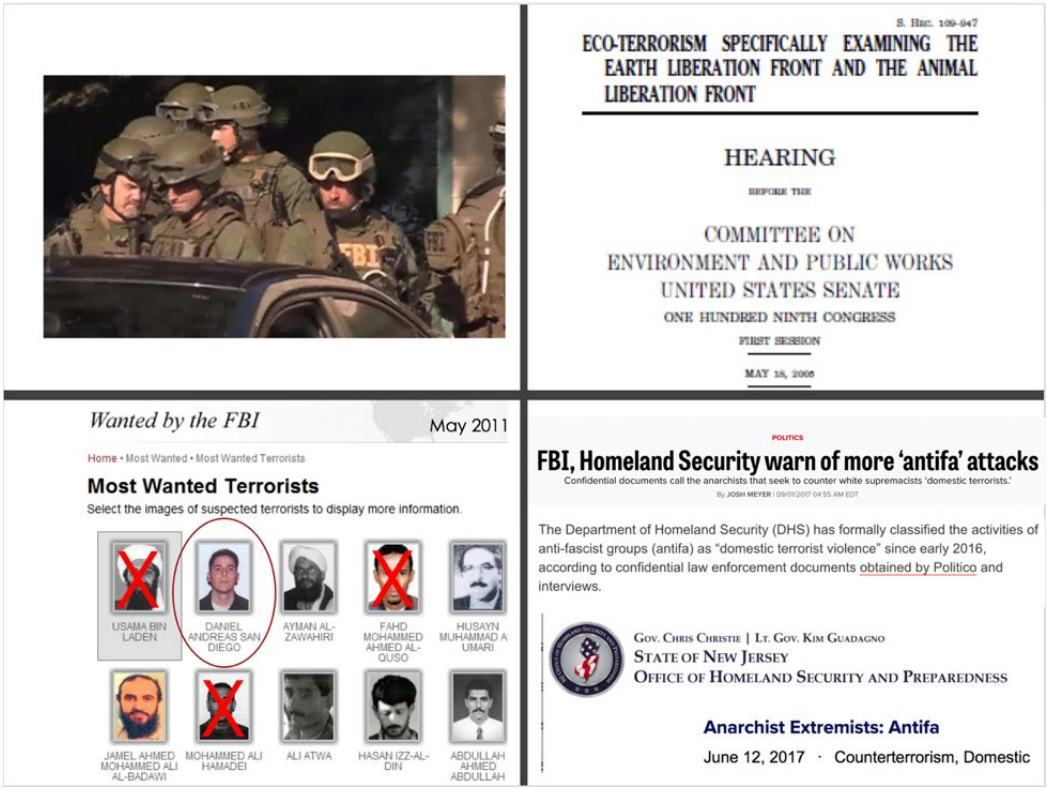


Figure 4: Examples of monarchial power used to police social movements.

In Figure 4, the lower left-hand corner shows a screenshot taken the night we learned of the death of Osama bin Laden in May 2011 (I have added the X's and circles). In this smaller list, the inclusion of San Diego is even more out of place. And it is worth noting that within this list of eight people, three of them have already been reportedly assassinated by the United States. To include an American citizen, convicted of a crime against property, on the same list as people who we are targeting with drone strikes is troubling to say the least. Also notice that San Diego is sandwiched between the current and former leaders of Al Qaeda. By putting someone like that amongst the most wanted terrorists, is to rhetorically equate their crimes.

We also had this kind of naming and shaming at the Congressional level. In the upper right-hand corner, you will see a Senate hearing where the Animal Liberation Front and the Earth Liberation Front were again defined as primary terrorist threats. It is rhetoric like this that I argue is insulting to actual victims of terrorism.

In the upper left-hand corner, you see how these FBI mechanisms are used in this monarchical power, this power of the sovereign, this obvious brutal power. We see expanding outward from simply naming and shaming the rapid increase in militarized policing, especially in arrest raids. In practice, when

so-called domestic terrorists are arrested in their homes, they are arrested through militarized means, through individuals outfitted akin to soldiers.

The images in the lower right-hand corner come from the summer of 2017. It was a reinvigorated time when people responded to the rapid rise in white supremacist violence and public displays by neo-Nazi and white nationalist organizations. Currently, there has been a refocused attention on anti-fascist movements. Again, this is not new. To cite a personal and local-ish example, I was involved in some anti-fascist organizing in York, Pennsylvania back in 2002. We organized to oppose a large meeting of the Aryan Nations, and we successfully pushed them out of town by using the same means we see today. During the so-called Battle of York, some people were arrested and many more were injured, but it was expected and contained. It did not result in mass felony indictments, as we saw after the counter-inaugural, or a series of grand juries, as we saw after the resistance to the Unite the Right rally in Charlottesville, Virginia. In 2017, we see these anti-fascists organizing and according to federal authorities—and I return your attention to the lower right-hand corner of Figure 4—these anti-fascists are being called terrorists, or at the very least being investigated within a counter-terrorism framework. The Department Homeland Security may be officially classifying anti-fascists within a domestic terrorist taxonomy. I believe that that is troubling and clearly demonstrates monarchical attempts at asserting discursive power.

We can also see how specific monikers and networks are named and shamed. In 2005, the FBI concluded Operation Backfire, what at the time was the largest domestic terrorism investigation in its history. There were over a dozen defendants arrested for a series of sabotages and arsons in the Pacific Northwest in the late 1990s and early 2000s. The defendants were labelled as terrorists and charged with acts of terrorism. They received additional sentences, called "terrorism adjustments," because of the political nature of their crimes. In their prosecution, 18 U.S.C. § 2332b(g) was used to define a "federal act of terrorism." This is key, so I will quote the definition verbatim: "a federal crime of terrorism means an offense that is calculated to influence or affect the conduct of government by intimidation or coercion." That is a very broad definition, especially because most if not all political protest is designed to influence or affect the conduct of government, and what one defines as coercive another may not.

What is "intimidation"? What is "coercion"? These are clearly subjective terms. Is having a picket outside of the circus intimidating or coercive? Well, to a lot of people attending the circus, probably. What about the annual anti-capitalist caroling parties in shopping malls? Is being confronted by a crew of color-coordinated anarchist carolers hell-bent on shaming your consumerism in front of your kids intimidating and/or coercive? Probably. Is occupying sacred lands at Standing Rock and blocking construction workers intimidating and coercive? Is it now a federal crime of terrorism to picket the circus? Is it a federal crime of terrorism to occupy contested lands? That to me is extremely troubling.

There is nothing here about lethal threats of violence, or grievous bodily harm, or terms like that. We can trace this kind of labelling all the way back to the late 1990s and into the early about 2010s, when the FBI backed away from and began to soften this rhetoric because it was so absurd.

Nevertheless, the FBI still helped to legitimate and maintain the ecoterrorist-as-terrorist-threat narrative. Remember, this was after 9/11, after the Oklahoma City bombing, after so many other acts of terrorism. This was after Clayton Lee Waagner, another Pennsylvania native, sent hundreds of fake anthrax letters to abortion providers. If you look at McVeigh's sentencing, or Waagner's sentencing, or any of these other cases, none of these people were charged with acts of terrorism, and that is a fundamentally perplexing factor.

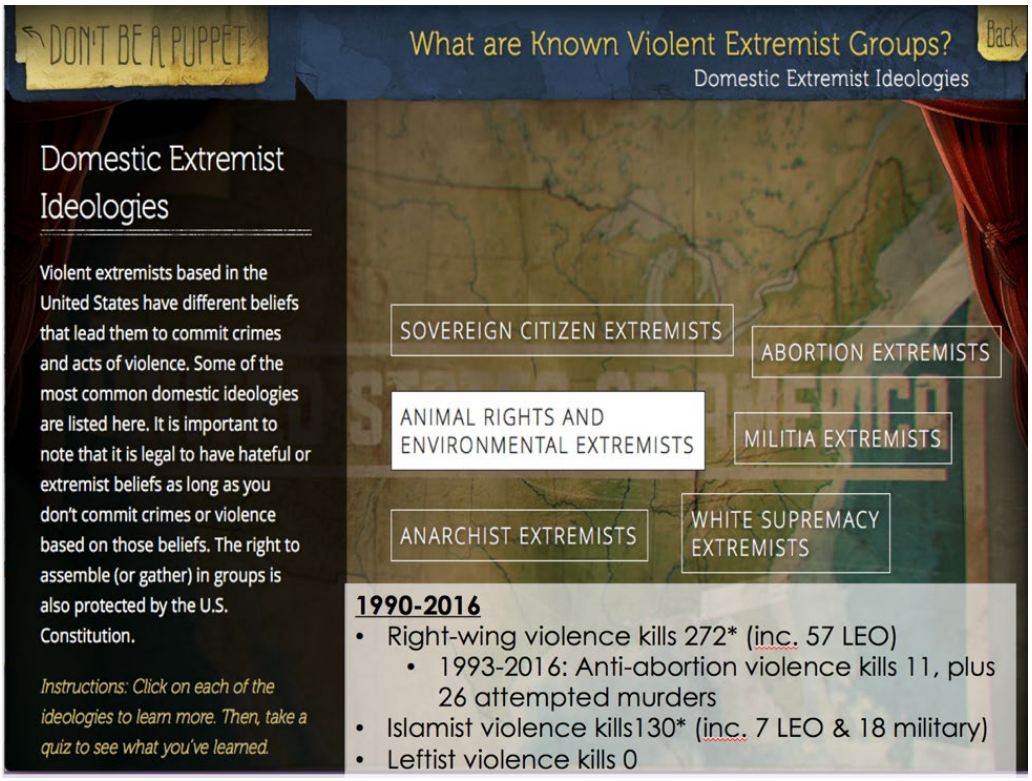


Figure 5: FBI categories of violent domestic extremism and START/DHS fatality numbers.

Figure 5 shows the part of the FBI's website focused on CVE—countering violent extremism. This is actually a CVE website designed for kids. It's called "Don't Be A Puppet" and there is a picture of a marionette. It is pretty ridiculous as a website, so for that reason it is worth checking out. At the bottom I have added the data I mentioned earlier from START, covering attacks in the US, 1990-2016. The site separates terrorism into two broad categories, both legally and again discursively. One is foreign terrorist organizations like Hamas, Hezbollah, Al-Qaeda, the Islamic State, the Revolutionary Armed Forces of Colombia, and those who engage in violent military tactics. The other category, shown here, focuses on domestic extremist ideologies. You might notice that "extremist" has been swapped for "terrorist" just in

the last couple years, partly because of criticism (not my criticism) from people like me. The FBI has created is a six-category taxonomy for what ideologies constitute domestic extremism. We can broadly split these into right and left binaries. What you can see from START is that after excluding so-called outliers (i.e. Oklahoma City and 9/11), these numbers are telling. To state the question bluntly, if leftist violence is not aimed at lethality, and is targeting symbolic property far more often, why are anarchist, animal rights, and environmentalist militants still two-sixths of the categories?

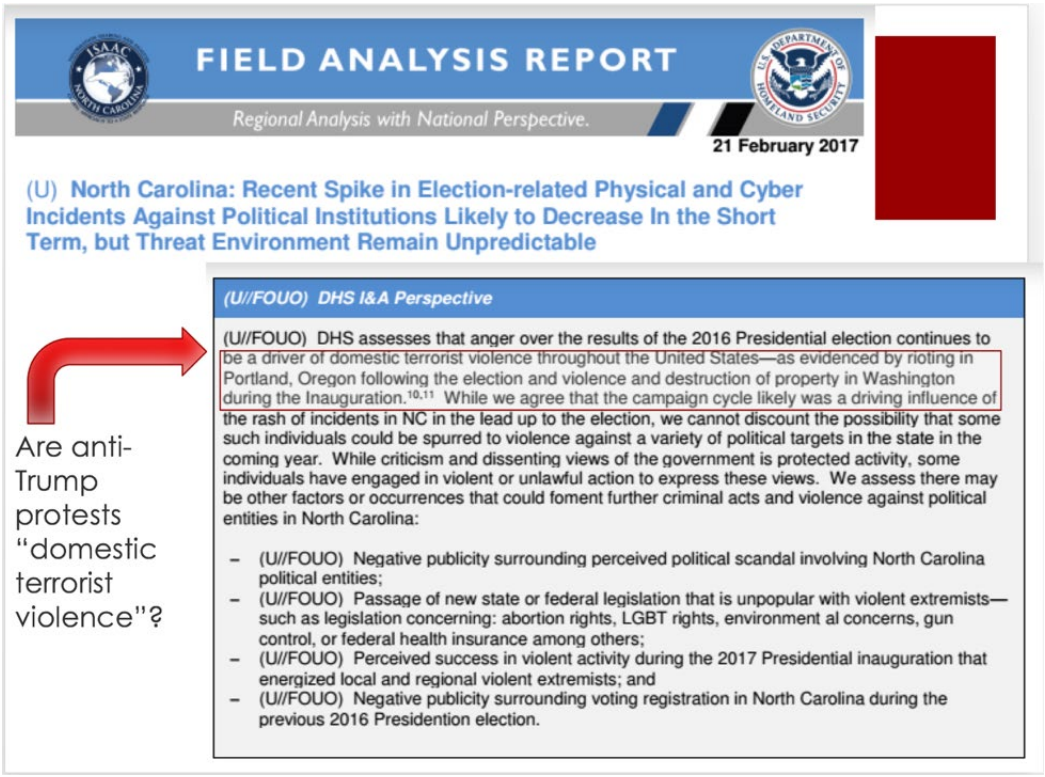


Figure 6: Department of Homeland Security report calling anti-Trump protests "domestic terrorist violence."

And we can also see that this is not historical but ongoing. Figure 6 shows a Department of Homeland Security Field Analysis Report from 21 February 2017. Take a second and think about the text in the box. Rioting and destruction of property in a public venue is not "domestic terrorist violence." It is fundamentally different. We can call it illegal, aggressive, militant protest, but it is not domestic terrorism, even if it involves destruction of property.

I want to return to Foucault and look at how he explains this shift in how social control occurs. Foucault asks us to interpret the kind of statecraft and to create a genealogical history of how the state functions. Foucault argues in *Discipline and Punish* that in the period of monarchical power citizens were publicly brutalized in the city square. You have the stocks—embarrassing but not so lethal—and people throwing eggs and rotten tomatoes at those who committed offenses. We had public whippings, most

notably associated with attempted escapes from slavery, and we had lynchings. Lynchings were different because they were arguably carried out external to state sovereignty and not officially orchestrated by the state. Nonetheless, these were public punishments, meant to say to people, "Do not do whatever crime you're intending because these things might happen to you."

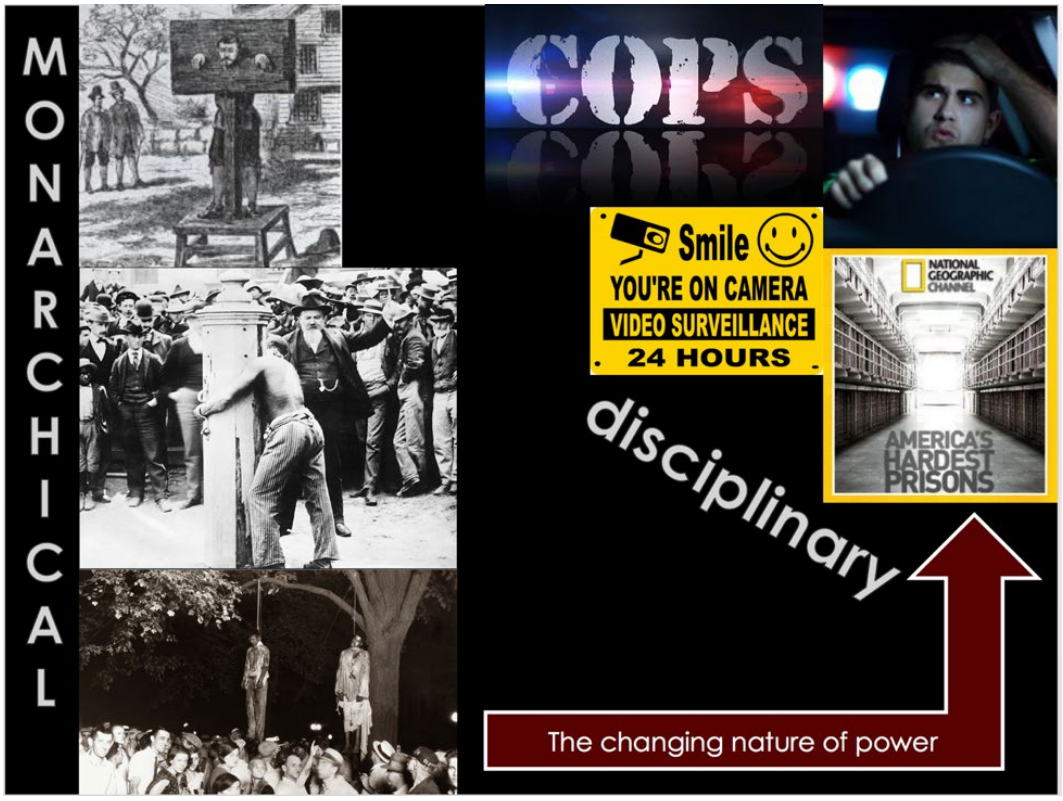


Figure 7: Foucault's monarchial and disciplinary power.

Foucault argues that at some point, it becomes more efficient, both economically and politically, for the state to not use such brutal methods because by using those methods, the state is seen as brutal. He argues that the nature of power changes to what he calls disciplinary power, the purpose of which is to create the notion of omnipresence—the notion that anything you do is observable by state authority. In doing so, you cease to act, or in other words, you self-police. One way we can think about this is the notion of those signs you see everywhere that say "Smile, you're on camera." There are a lot of psychology and security studies that say that such a sign is as effective as, if not more effective than, the data provided by an actual camera. This is why people put giant fake cameras in retail locations or fake ADT or alarm company lawn signs. The cameras do not have to record anything. The notion is if you see such a camera and presume that your actions are going to be recorded, you are less likely to commit a crime, thus creating a society that polices its own actions. This is further enforced through constant reminders of the physicality and brutality of prison, through the near-constant broadcasting of shows like

Cops. Any time you turn on Netflix a fair bit of the content is police- or prison-themed: *World's Toughest Gangs*, *Most Horrible Prisons, Women Killers*.

If this is still too abstract, allow me to offer another example. Imagine you're driving in a car. You are sober, you have a valid driver's license, you have insurance—all the things you need to drive legally—and all of a sudden you see red and blue lights flashing behind you. I would argue that almost everyone, if not everyone, has a visceral reaction to that. It causes you discomfort, physical discomfort. You feel a nervousness in your stomach and chest even if you are not violating the law. Foucault would say that such a response is evidence that we have internalized this notion of self-policing. In that moment, we have physically drawn the connection between the potential crime and the potential punishment, or the potential violence that can be enacted on the body. Foucault uses this self-policing notion to discuss Jeremy Bentham's famous Panopticon, a prison that encourages people to self-police.

In very brief terms, the theory says that you have a circular prison with a central guard tower, and from that tower one guard can see all of the cells by turning in a circle, because all the cells face towards the center. Once prisoners become accustomed to being able to be monitored 100% of the day, then what the prison can do is raise the shutters so that prisoners can now no longer see if someone is watching them at any given time. If this proves effective, once those shutters are raised there is no need for the prison to enact brutal violence, or even to have a prison guard, because once people presume they are being monitored, they self-police.

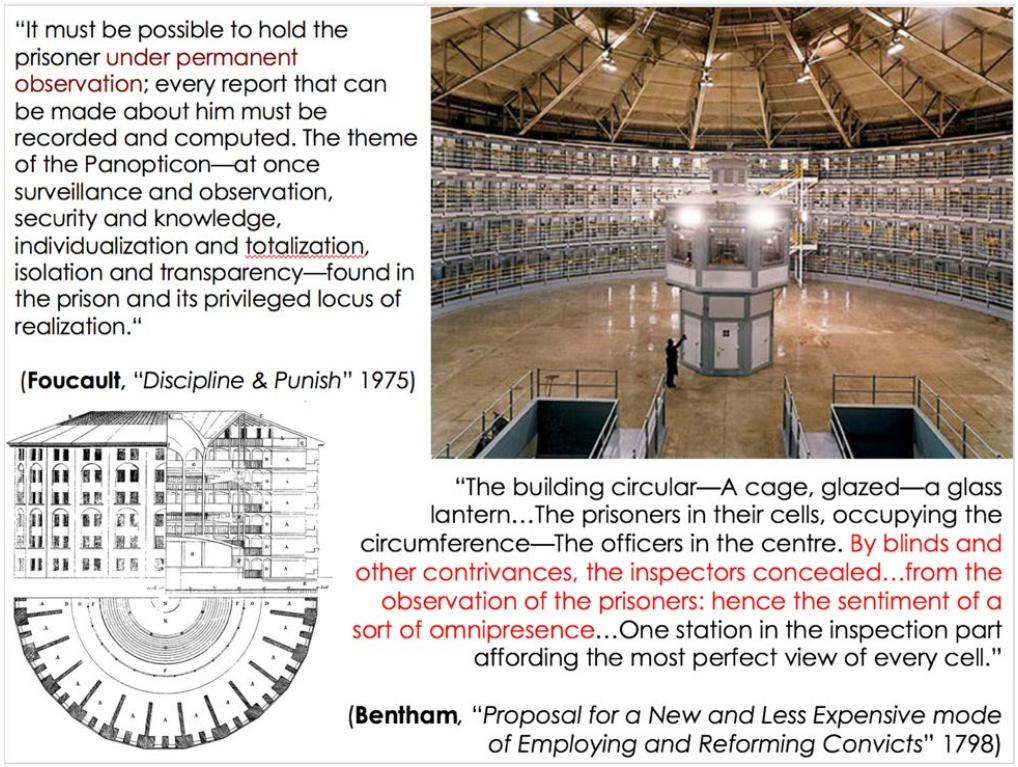


Figure 8: Foucault on the Panopticon and Bentham's design for such a prison.

To generalize this back to protest and social control, I argue that in the last half century we have shifted away from brutal monarchical power. The murder of Fred Hampton and Mark Clark, and the 1985 bombing of the MOVE organization not far from here are examples of monarchial power. These are not the kind of things that would be tolerated in 2017. If activists were murdered in their beds, and pictures of their bloody bodies shown in the media, that would elicit a certain reaction that I would argue would be somewhat destabilizing. The state seeks stability in its maintenance of social control.

Let's look at some ways in which disciplinary power is applied to contemporary social movements. One way is through federal grand juries. They are a very particular beast that have been increasingly used to target leftists, specifically political organizers and those linked to protests that involve the damaging or destruction of corporate property. To understand the notion of a grand jury, you need a brief background. In the U.S. judicial system, there is an assumption of innocence. The burden of proof is on the state. In criminal court, you enter the courtroom (theoretically) not guilty, and it is the state's responsibility to demonstrate your guilt beyond a reasonable doubt. This is how the justice system works in theory. A federal grand jury inverts this presumption. The idea behind a federal grand jury is that an individual will likely not provide information to the government to benefit an ongoing investigation. Therefore, in order to coerce cooperation, you are grand juried. The government brings you into a venue where you are denied certain rights, for instance the right to legal counsel as your lawyer is not present in the grand jury. Secondly, you are denied your Fifth Amendment protection, your right against self-incrimination, because, in a sense, the nature of a grand jury is precisely to demonstrate self-incrimination.

To provide an example, let's assume a person has broken the window of a Starbucks restaurant and I assume that someone in this room knows about it. The police bring you in and ask, "What do you know about this broken window at Starbucks?" If you say, "You know what, I do not know anything," or "I'm not going to tell you what I know," the grand jury can send you to prison for contempt of court. This is a method used to coerce people to provide information on friends and allies. It is a way to criminalize dissent, to sow confusion and distrust amongst networks, and to coerce information from activists. A grand jury was convened in North Carolina in early September 2017, and the person who was grand juried has refused to testify and will likely serve federal prison time. Grand juries have also been announced to investigate anti-fascist organizing around the Charlottesville march that resulted in the death of an antifa protestor. This is happening again and again, targeting activists and academics.

Another example of disciplinary power to quell dissent is the use of aggressive government surveillance by departments such as the National Security Agency (NSA), headquartered in Fort Meade, Maryland. We have strong evidence that illegal NSA wiretaps have been used in cases against so-called eco-terrorists under the Bush Administration, so much so that the government entered into plea bargains

with noncooperating defendants when it was compelled to deliver evidence of how certain wiretaps were conducted.

The other thing that we see, and this brings us closer to the January 20th case, is the use of conspiracy as a label and prosecutorial strategy. There is the 2012 case from Cleveland, Ohio, of five young men who were involved in the Occupy movement, accused of involvement in this somewhat ludicrous plot to blow up a bridge. There is a lot of complexity to it, with FBI informants providing materials, but what is notable is that in this scenario, and in many others, the individuals are said to be "conspiring," and the use of a conspiracy charge is very difficult to disprove.

One example of a federal grand jury that is particularly troubling for me, because of the nature of my research, is Rik Scarce. He was indicted by a federal grand jury in 1993 because, according to the government, when he was researching his book *Eco-Warriors: Understanding the Radical Environmental Movement,* he was exposed to knowledge of past criminal activities from his interviews and respondents. I have done research interviewing so-called eco-terrorists in Europe, and so I am in a very similar situation of being told things in confidentiality. Scarce refused to give information on his respondents. He cited both an ethical obligation established via the respondent agreement and processes approved by institutional review boards, as well as the American Sociological Association Code of Ethics. The government did not buy that, and he was sentenced to five months in federal prison. This is a respectable academic, not an activist in the sense of some masked punk throwing rocks. This is a credentialed person who served federal prison time, and I can go through about five more cases like this one but I will not for the sake of time.

Let's return to the events that led to the mass felony indictment on January 20, 2017. In the beginning of Trump's term, we have the introduction of nineteen state bills worthy of brief discussion. The fact that those laws were introduced in January and February means that they were developed in the last months of the Obama administration. This was not an issue with Trump, but with state legislatures. With the end of the Obama presidency, folks were not paying a whole lot of attention to what is going on at the state level.

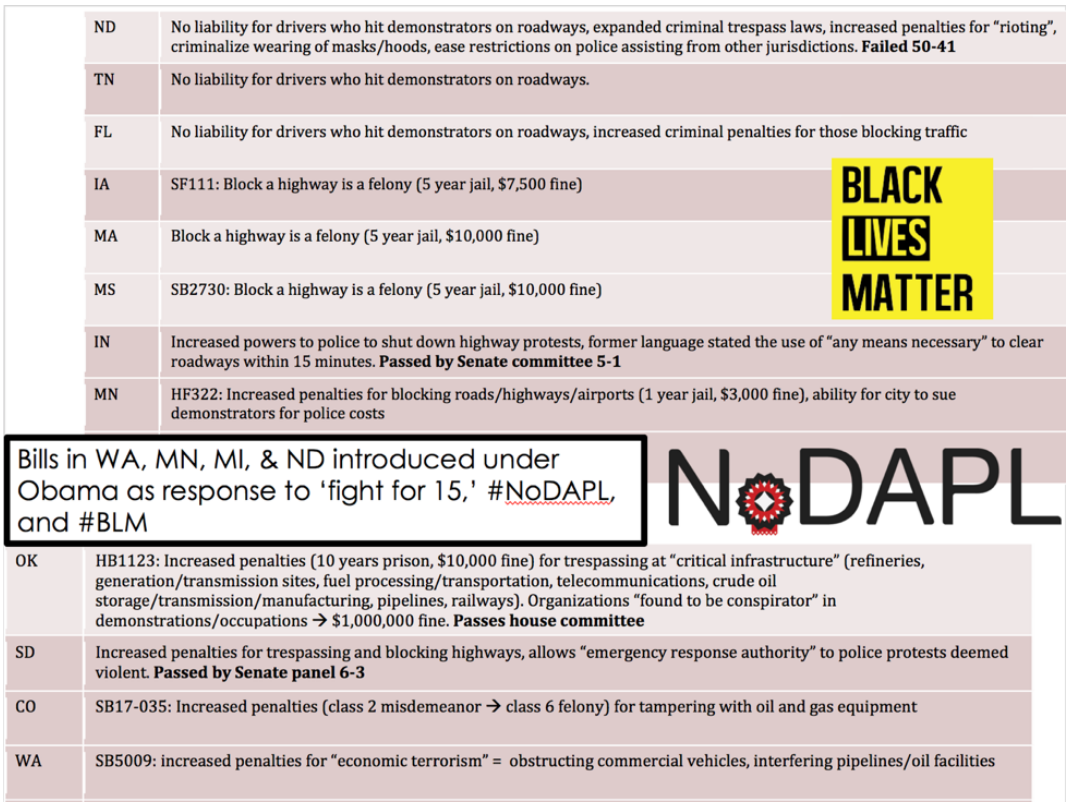


Figure 9: 2017 Anti-protest laws proposed, passed and defeated in Congress

Numerous states have actually made it non-criminal for someone to drive into crowds of protesters. We have seen that happen in Charlottesville, where Heather Heyer was killed, and in a few other similar examples. I cannot say for sure that there is a correlation between three states (Florida, North Dakota, and Tennessee) passing laws and people driving into protestors, but it is certainly plausible. We also have laws that seem specifically designed to criminalize Black Lives Matter, through felony prosecutions and laws specifically designed to criminalize the blocking of highways, based on where the laws were introduced and the timing of their release. A number of other laws explicitly target campaigns against the Keystone XL pipeline as well as the Dakota Access pipeline. These laws focus on trespassing, on damaging energy infrastructure, or on damaging other infrastructure related to oil, natural gas, and fracking. A law that explicitly makes it a felony for tampering with oil and gas equipment seems like a pretty obvious response to gains made by the #NoDAPL movement.

The use of the term "riot" has been a troubling occurrence in a lot of these new laws. It has emerged as a new form of naming and shaming, and it attempts to criminalize tactics and encourage self-policing.

AZ	SB1142: Adds rioting to list of racketeering (i.e. organized crime) offenses → Expands definition of **rioting** to include "damage to the property of another person", allows police to make preemptive arrests and seize assets of anyone arrested at or involved with planning demonstration where "violence" occurs. **Passed senate 17-13**
OR	Community colleges and public universities **obliged** to expel students convicted of participating in **riot**
VA	SB1055: Increased penalties (1 year jail, $3500 fine) for attending or refusing to leave illegal protest or **riot**. **Defeated 14-26**
MO	Illegal to wear masks, robe, or disguise during unlawful assembly or **riot**
GA	SB170: Increased penalties for blocking "any highway, street, sidewalk or other public passage." **Passed by senate**
NC	Illegal to "threaten, intimidate, or retaliate" state official
MI	Increased fines for "mass picketing", blocking businesses, residence or roadways. Increased power to courts to end demonstrations. Attendees of demonstration can be fined $1000/day, organizations can be fined $10,000/day. Allow employees of those "affected" by protests to sue demonstrators. **Passed Senate 57-50**

Figure 10: 2017 Anti-protest laws focused on "rioting."

In Arizona, Oregon, Virginia, and Missouri we have laws introduced that increased penalties for actions termed "rioting." These actions were defined somewhat broadly. In Arizona, "rioting" is damage to the property of another person, which is vague and does not necessitate large crowds of people. In Oregon, the state can compel universities to expel students who are charged with participating in riots. These legislative actions were designed to criminalize this sort of demonstration, its aesthetic, and an increasing trend wherein demonstrators conceal their identities.

This is the broad thesis at which my argument culminates. There has been what I've termed a riotization of dissent—a particular manner of criminalization based on the fear-inducing rhetoric of "the riot." While we once saw the state calling people "terrorists," "eco-terrorists," or "domestic extremists" in the early 2000s, in the present this has actually changed discursively and we see terminology that calls those whom oppose state power "rioters." This is effective because calling someone a rioter has a specific connotation—it evokes a certain image of illegality, irrationality, apolitical rage, and a lack of a socio-political critique. In offering this defamatory labeling, the state is arguing that there is something fundamentally different between a protestor and a rioter.

We see this used for the first time in July 2016. Despite the Black Lives Matter movement offering nearly 2000 demonstrations since 2012, the riotization rhetoric emerged that summer in Minneapolis-St. Paul. Around 300 demonstrators were responding to the death of Philando Castile and

were planning to block a road, and forty individuals were charged with "rioting." We see the rhetoric again in December 2016 at the conclusion of the Standing Rock demonstrations. A number of organizers were charged with "inciting a riot," and state legislatures passed laws designed to limit dissent and increase penalties for the crime of rioting. Finally, we see this rhetoric and legal strategy used most prominently in the inauguration arrests, the so-called J20 case. For the sake of transparency, I am currently an indicted defendant in this case, facing nine federal felonies including rioting, inciting a riot, and conspiracy to riot. Because of the ongoing nature of this case there are certain aspects that I cannot talk about.

However, to catch folks up, on January 20, 2017, during the inauguration of Donald Trump, police investigations state that between 500 and 700 demonstrators marched from Logan Circle, a park in the northwest, towards the inauguration ceremony. During that march, according to the indictment, a number of windows were broken: Starbucks, McDonald's, a bank, a British Petroleum gas station; in total, five businesses had their windows smashed. The demonstrators also sprayed graffiti and pulled items into the street to slow police advances. In total, according to police, around $150,000 worth of property was damaged, which historically is actually a very small amount of property destruction. Consider that the Ferguson uprising caused $4.6 million of damage, while in Baltimore the damage was and almost $13 million.

At the J20 demonstration, police viciously and indiscriminately attacked crowds, and then kettled the demonstrators. This means that the police formed a perimeter almost a block long and swept up everyone inside of that line. They arrested journalists. They arrested medics. They arrested lawyers. They arrested 230 people who they would call activists. Some of the reporters have had their charges dropped, but some have not. There are reporters with legitimate press credentials who are facing potential seventy-five-year felony sentences. This should concern people. I myself am facing a maximum of more than seventy years, which for a thirty-four-year-old person is a life sentence.

The arrest and indictment is now the largest protest-turned-mass-felony indictment in U.S. history. Two hundred and thirty individuals with nearly the exact same set of charges regardless of what occurred and what role they played. The case has also resulted in the largest digital search warrant in the U.S. history, which began as the query of 1.3 million IP addresses of people who visited a website.

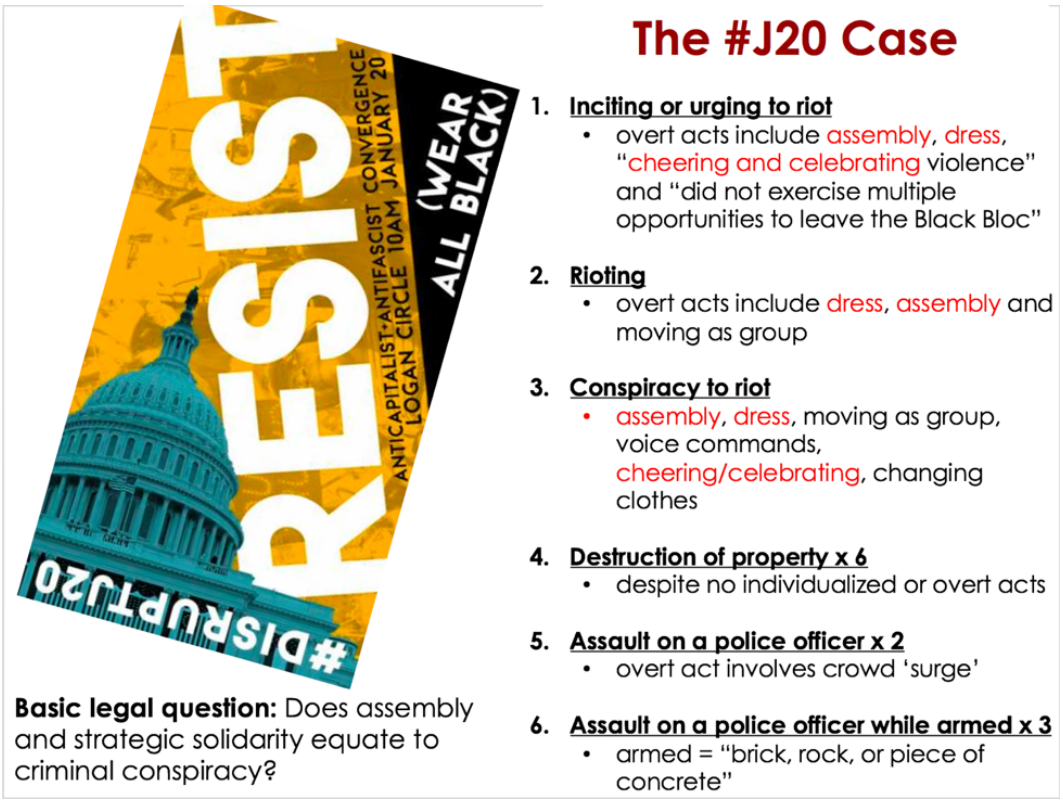


Figure 11: The charges against J20 defendants, alongside "overt acts."

The left side of Figure 11 shows the flyer distributed for the march. The basic legal question is, "Does assembly—people gathering in the same place and acting as a contiguous mass—constitute conspiracy?" Everyone who was arrested was charged with the crimes listed in Figure 11. To commit a crime you had to have done what is called an "overt act," what you actually did to embody that crime. For the first item, to be charged with inciting or urging to riot, the indictment claims that people met in the same place, dressed similarly—as the flyer says, wear all black—and were "cheering and celebrating violence." The indictment specifically says that proof of inciting to riot and criminal conspiracy was people chanting "Whose streets? Our streets." The second item again mentions similar dress and similar assembly. Same with the third item, conspiracy to riot. The overt act that the government is charging all these people with is that they arrived in the same place, marched as a group, and from within that group, crimes were committed. The government is claiming that while around a dozen individuals committed specific acts of criminality—for example breaking a window—the other two hundred people should have known better, and were thus conspiring to conceal the crimes of others because they did not abandon the march when property was targeted.

To play out that logic in this room, let's say for example that someone here has in their possession marijuana, or something of a criminal nature. Despite the fact that we all have assembled here,

we did so for a specific purpose. That purpose was the product of a desire to conceal said crime, right? Obviously not. The fact that we are assembling for a shared purpose in the same room does not imply that we are concealing and conspiring against the crimes of another. This is the legal question being tested here; if you go to a demonstration and a crime is committed, and you had a reasonable expectation that a crime would be committed, does that mean that you have conspired to commit that crime? I would argue no. The government is arguing yes.

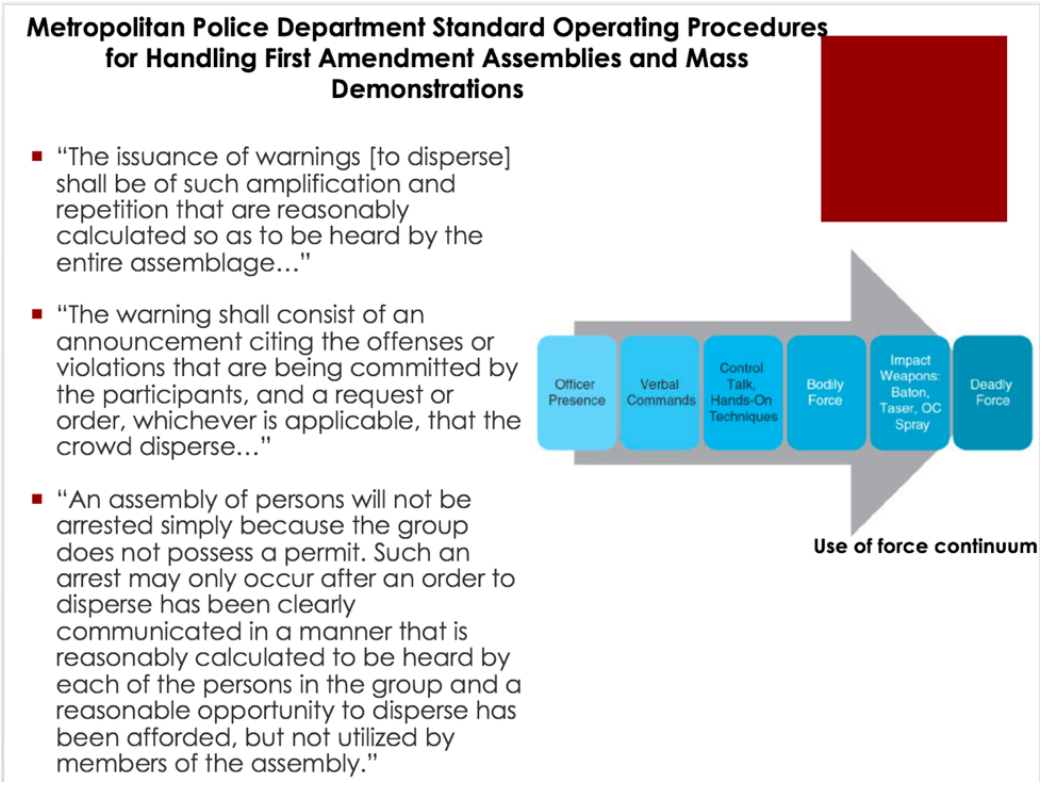


Figure 12: Metropolitan Police Department Standard Operating Procedures for Handling First Amendment Assemblies and Mass Demonstrations.

The Metropolitan Police Department of Washington, D.C. has a specific set of guidelines about how they deal with mass demonstrations, because it happens all the time. By the city's own acknowledgement, none of these guidelines were followed. Demonstrators were never told that the assembly was illegal, never asked to disperse, and never given any sort of verbal commands. The march was viciously and brutally attacked through very aggressive means, which led to a number of injuries. Do not take my word for it, but look at radical sources such as the *Washington Post* and *New York Times*, which have shared frightening videos of the police using extreme measures against the demonstrators, including children and elderly people. The videos taken around 12th and L street show police attacking unarmed demonstrators who are bravely putting themselves in between more-vulnerable individuals and violent cops. The video is heartbreaking, honestly: https://www.youtube.com/watch?v=FhSStrXjEfk

Figure 12 also shows a use-of-force continuum, and what we have in this demonstration is “officer presence” skipping right to “impact weapons,” to demonstrators being attacked.

Figure 13: The Metropolitan Police Department using “less than lethal” weapons against counter-inaugural crowds, 20 January 2017.

Figure 13 shows the use of pepper spray and tear gas into broad crowds. These people do not look like rioters to me, specifically all of the people with really nice cameras. The D.C. police threw over seventy stingball grenades, sometimes incorrectly called flashbangs, and you can see one exploding on the upper right. These small grenades cause a very loud sound and a very bright light, and disperse small pellets—the stingers. They are meant to confuse and destabilize people as things are blowing up around them. The police originally claimed that demonstrators were throwing explosives at them, but then had to roll that back when pictures like these came out.

With the J20 case, a number of things are pretty troubling. One is that many (if not all) of the people arrested had social media accounts subpoenaed and the U.S. Attorney’s Office put a gag order on Facebook. This means that when the U.S. Attorney told Facebook to deliver the records of all the demonstrators, Facebook was not allowed to tell the targets of the subpoenas. I do not know how, but I was one of the people who actually was told only days after my release from custody.

Superior Court of the District of Columbia

CRIMINAL DIVISION

SUBPOENA

UNITED STATES

vs. Case No. 2017CF2001147

[redacted]

To: RECORDS CUSTODIAN, FACEBOOK, INC.

[redacted]

YOU ARE HEREBY COMMANDED:

To appear before the Criminal Division Grand Jury 2ND FLOOR of the Superior Court of the District of Columbia, [redacted], on February 6, 2017, at 10:00 a.m. as a witness for the Grand Jury, and bring with you the following: See Attachment A.

WITNESS, the Honorable Chief Judge of the Superior Court of the District of Columbia, and the seal of said Court this 27 day of January, 2017.

[redacted] DISTRICT 7 (MPD)

Officer in Charge District

[redacted]

Attorney for Government

JAMES D. McGINLEY, J.D., LL.M., CIADR
CLERK OF THE COURT

Phone No. [redacted]

NOTICE

This subpoena requires that you appear, at the date and time indicated, to answer questions truthfully before a grand jury. The grand jury is located on the second floor of the Judiciary Center, [redacted]. At the same

Figure 14: Subpoena ordering the release of record by Facebook.

----- Original Message -----

From:
"Records" <records@records.facebook.com>

To:
michael@[redacted]

Sent:
Thu, 2 Feb 2017 08:17:17 -0800

Subject:
Your Facebook account

Hello,

We have received legal process from law enforcement seeking information about your Facebook account. The requesting agency may be reached at the contact information below. If we do not receive a copy of documentation that you have filed in court challenging this legal process within ten (10) days, we will respond to the requesting agency with information about the requested Facebook account. We may need to respond to this legal request within less than ten (10) days if we have a reasonable belief that we are legally required to do so. Please respond to this message with a copy of any documents you file with the court.

Agency contact information: U.S. Attorney's Office, Washington, District of Columbia 20007
Agency case number: 2017 CF2 001147
Court: Superior Court of the District of Columbia

Thank you,
Law Enforcement Response Team

Figure 15: Message sent by Facebook informing author of subpoena.

What is interesting in my particular case is that I do not use Facebook. I do have a Facebook account I use in order to manage a 501(c)(3) non-profit that I direct, but I have never posted to this account. It is associated with my phone number, however, so when my phone number was put through whatever database, "my" Facebook account was subpoenaed despite having literally no comments, no friends, and no posts.

The case presents other troubling invasions of privacy and violations of basic civil liberties. Every demonstrator arrested who was in possession of a cell phone had their phone seized, and since that time the government has been trying to hack them. We have issued motions to oppose these invasions of privacy, but we have been rejected time and again. Similar subpoenas I received from Apple are even more vague. When they speak of providing the government with "information regarding your Apple account," does this include my email? Does this include my photographs?

NOTE: THIS NOTICE IS BEING SENT FROM A NO-REPLY EMAIL ACCOUNT—ANY RESPONSE TO THIS EMAIL WILL NOT RECEIVE A RESPONSE

Dear Account Holder/Customer:

On 2017-01-27, Apple Inc. ("Apple") received a legal request from United States Attorney's Office requesting information regarding your Apple account.

The contact information in relation to the request:

Requesting Agency: United States Attorney's Office
Requesting Agency Location: Washington, DC
Requesting Agency Case Number: 2017CF2001147

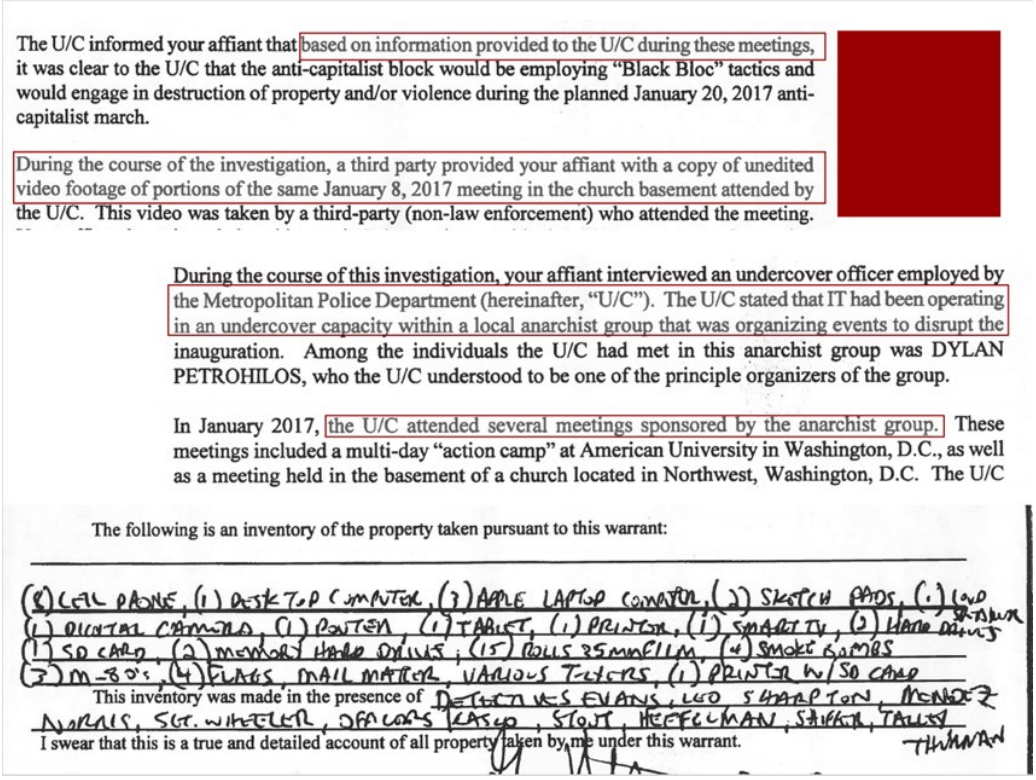
Pursuant to the applicable Terms of Service and Apple's Privacy Policy, http://www.apple.com/legal/privacy/en-ww/, and as required by U.S. law, Apple will be producing the requested data in a timely manner as required by the legal process.

Sincerely,

Apple Privacy & Law Enforcement Compliance
Apple Inc.

Figure 16: Message sent by Apple informing author of subpoena.

The police investigations are also predicated upon a heavy use of undercover police informants who attended gatherings and planning meetings. This culminated in a raid of a D.C. activist's home and the seizure of nearly everything with electronic storage, items related to political organizing, and even political artwork hung on the walls.



The U/C informed your affiant that based on information provided to the U/C during these meetings, it was clear to the U/C that the anti-capitalist block would be employing "Black Bloc" tactics and would engage in destruction of property and/or violence during the planned January 20, 2017 anti-capitalist march.

During the course of the investigation, a third party provided your affiant with a copy of unedited video footage of portions of the same January 8, 2017 meeting in the church basement attended by the U/C. This video was taken by a third-party (non-law enforcement) who attended the meeting.

During the course of this investigation, your affiant interviewed an undercover officer employed by the Metropolitan Police Department (hereinafter, "U/C"). The U/C stated that IT had been operating in an undercover capacity within a local anarchist group that was organizing events to disrupt the inauguration. Among the individuals the U/C had met in this anarchist group was DYLAN PETROHILOS, who the U/C understood to be one of the principle organizers of the group.

In January 2017, the U/C attended several meetings sponsored by the anarchist group. These meetings included a multi-day "action camp" at American University in Washington, D.C., as well as a meeting held in the basement of a church located in Northwest, Washington, D.C. The U/C

The following is an inventory of the property taken pursuant to this warrant:

(8) CELL PHONE, (1) DESK TOP COMPUTER, (3) APPLE LAPTOP COMPUTER, (2) SKETCH PADS, (1) LOT
(1) DIGITAL CAMERA, (1) CAMERA, (1) TABLET, (1) PRINTER, (1) SMARTTV, (2) HARD DRIVES
(1) SD CARD, (2) MEMORY HARD DRIVES; (15) ROLLS 35MM FILM, (4) SMOKE BOMBS
(3) M-80's, (4) FLAGS, MAIL MATTER, VARIOUS TICKETS, (1) PRINTER W/ SD CARD

This inventory was made in the presence of DETECTIVES EVANS, LEO SHARPTON, MENDEZ
MORRIS, SGT. WHEELER, OFFICERS CASEY, STOUT, HEFFELMAN, STARK, TALLEY

I swear that this is a true and detailed account of all property taken by me under this warrant.

Figure 17: Excerpts from home raid search warrant and list of materials seized.

I have argued here that the use of riot rhetoric represents a shift back to the era of the monarch. It is a shift back to the brutal, public disciplining of the body. It is a shift back to holding up people in public spaces and saying, "This is what will happen if you disobey." The obvious intended effect is to chill dissent, to discourage people from going to demonstrations, to discourage people from using certain methods of political protest. I argue, and the Supreme Court has argued, that chilling effects are just that: they are designed to chill speech. They are designed to chill First Amendment activities. Clandestine disciplinary acts are still occurring, and I believe we are now seeing a shift back towards some of these more brutal means.[3]

NOTES

1. This is an edited version of a public lecture delivered at Juniata College on 21 Sept. 2017. All statements regarding criminal cases and legal developments are accurate, to the best knowledge of the author, as of that date.

2. The AETA was written by the American Legislative Exchange Council. If that is a new group for you, they are well worth looking up because they brought us Stand Your Ground laws and Arizona's racist SB1070, which necessitates individual immigrants always carry identification. The Council is a

right-wing lobbying group that writes legislation and hands it to senators and representatives who they think will agree with it.

3. I believe in publishing work that is freely available, so at this website https://gmu.academia.edu/MichaelLoadenthal I have a collection of my work: journal articles, book chapters, presentations like this, all posted and available for free. I welcome questions, comments, and angry, indignant criticisms, so feel free to contact me via email at Loadenthal@protonmail.com and via Twitter @MLoadenthal.