

## Chapter 2

# Policing Protest in the United States: 1960–1995

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Students of collective action have given great attention to the sources, processes, and consequences of changing repertoires of collective action across space and time. One important focus of this scholarship has been the integral role of interaction between protesters and the police (e.g., Kritzer, 1977; McAdam, 1983; Tilly, 1978, 1995). The actions of each modify the environments of the other, creating intermittent opportunities and obstacles that result in ongoing reciprocal adjustments of each party's purposive efforts. As the agents of the state devise ways of blunting, blocking, or finessing the actions of the protesters, the latter devise variations and innovations in their collective actions to circumvent the control efforts of the former. Della Porta (1995) has advised that we cannot understand protest repertoires and their evolution without understanding the interaction between protesters and the police. Only recently, however, has focused attention been given to the actions of the police.

Our interest in this topic began during an investigation of selection and description bias in media accounts of demonstrations in Washington, D.C. (McCarthy, McPhail, and Smith, 1996). During this research, which used police permit records, we became familiar with the highly elaborate permitting system used by the three major Washington, D.C., police agencies (the National Park Service police, the U.S. Capitol Police, and the Metropolitan Police of the District of Columbia). This permitting system is one aspect of a public order management system (POMS), a term we use to describe the organizations charged with managing public disorder problems, their policies and programs, their individual and collective policing actions, and their enabling technologies. The POMS that was developed in Washington, D.C., has since been replicated, with some modifications, in many state capitals, large

cities, and university campuses across the United States. Significant components of this system recently have been adopted in South Africa and in Belarus and facsimiles are present within the protest policing systems of England, Germany, France, Switzerland, and Spain.

This essay presents an investigation of the development of the U.S. POMS between 1960 and 1995. First, we contrast U.S. policing practices in the 1960s, which were marked by “escalated force,” to those in the 1980s and 1990s, which have been characterized by “negotiated management.” Second, we offer a historical account of the development of the negotiated management style during the 1960s and 1970s, including the contributions of several federal agencies in diffusing elements of the current U.S. POMS. Finally, we suggest the theoretical implications of our empirical findings for investigating other public order management systems.

## Two Styles of Protest Policing

This section describes the phenomenon to be explained in this essay the striking differences between U.S. protest policing practices in the 1960s and those in the 1980s and 1990s. Although we have observed the policing of many U.S. demonstrations in each of the decades from the 1960s to the 1990s, we do not claim that those observations alone are representative. We have constructed a broader picture from an examination of social science scholarship on demonstrations and an extensive review of police literature that reports perspectives, policies, training programs, and problem-solving procedures developed by municipal, state, and federal policing agencies.<sup>1</sup> We do not know the extent to which what is reported in this literature describes what was actually done or how widely or consistently the policies and procedures described were practiced. However, we do believe there are some very general practices that characterize the policing of protest in the 1960s and that these practices contrast sharply with those used to police protest in the 1980s and 1990s. The policies and practices of the 1960s are characterized by *escalated force*, while those of the 1980s and 1990s are characterized by *negotiated management*.

Well-known demonstrations in which police used the escalated force approach include those in the Birmingham civil rights campaign (May 1963), the 1968 Chicago Democratic Convention, and the confrontation between student protesters and National Guard soldiers at Kent State University (May 1970).<sup>2</sup> During each of these demonstrations, police or soldiers used force in an attempt to disperse demonstrators, even demonstrators who were peace-

fully attempting to exercise their First Amendment rights—as the vast majority of them were.

Demonstrations in which police used negotiated management tactics are generally not as memorable as those previously mentioned because they are relatively uneventful. Under the negotiated management system, police negotiate with demonstrators before the demonstration so that demonstrators can exercise their First Amendment rights with minimal conflict with police. These demonstrations include thousands each year in Washington, D.C., such as the annual March for Life, the 1993 Lesbian, Gay, and Bisexual March, and the 1995 Million Man March. Even in demonstrations in which protesters break the law as a form of civil disobedience, such as the 1983 anti-MX missile demonstrations in Washington, nationwide antiapartheid demonstrations in 1985, and abortion clinic blockades, police following the negotiated management style use minimal force and may even make prearrest arrangements with demonstrators.<sup>3</sup>

### Five Dimensions of Protest Policing

We have identified five key characteristics of policing practices. We refer to these as dimensions of protest policing since each is a continuum along which can be placed the policing practices of any particular policy agency regarding any particular demonstration. These dimensions are (1) the extent of police concerns with the *First Amendment rights* of protesters, and police obligations to respect and protect those rights; (2) the extent of police *tolerance for community disruption*; (3) the nature of *communication* between police and demonstrators; (4) the *extent and manner of arrests* as a method of managing demonstrators; and (5) the *extent and manner of using force* in lieu of or in conjunction with arrests in order to control demonstrators. For each of the five dimensions, we will describe police practices under both styles of protest policing.

*1. First Amendment Rights* In the escalated force style of policing, First Amendment rights were either ignored or disregarded as mere “cover” for demonstrators. The right to protest was denied and permits were not issued.

Under the negotiated management style of policing, the protection of First Amendment rights is a primary goal of the police, equal in importance to protecting property or lives (Burden, 1992; Sardino, 1985). Even the most provocative speakers are permitted and protected as the courts have ruled that the threat of counterdemonstrator violence is not a legal reason for withholding a permit (*King Movement Coalition v. Chicago*, 1976).

2. *Tolerance for Community Disruption* Under the escalated force style of policing, only familiar and “comfortable” forms of political protest were tolerated, those police described as “peaceful rallies” and “polite picketing.” They showed no willingness to tolerate the disruption caused by civil rights (and subsequently antiwar) demonstrations, which involved unfamiliar forms of protest, disruptive tactics, violation of social norms, and often illegal (although usually peaceful) activities. Even disruption of normal traffic patterns was often seen as unacceptable and civil disobedience was equated with anarchy (Whitaker, 1964, 1966; LeGrande, 1967).

Under the negotiated management style, an “acceptable level of disruption” is seen by police as an inevitable by-product of demonstrator efforts to produce social change. Police do not try to prevent demonstrations, but attempt to limit the amount of disruption they cause. They recognize that large demonstrations almost invariably involve disruptions of traffic patterns and other normal routines in the community. Police attempt to steer demonstrations to times and places where disruption will be minimized, a restriction allowed by public forum law. Even civil disobedience, by definition illegal, is not usually problematic for police; they often cooperate with protesters when their civil disobedience is intentionally symbolic. The new police goals of protecting First Amendment rights while keeping disruption to acceptable levels required changes in protest policing tactics, which we take up in our examination of the final three dimensions.

3. *Communication* Communication between police and demonstrators was minimal under the escalated force style of policing. The principal exception was undercover police infiltration of demonstrator groups to secure information with which to thwart the demonstration efforts or to act as agents provocateurs in order to entrap demonstration members (Marx, 1974). Police did not confer, let alone negotiate, with demonstration organizers before or during the demonstration. This lack of communication often caused misunderstandings, which inconvenienced both demonstrators and police, and which could result in the use of force as police attempted to enforce their interpretation of demonstration requirements (Stark, 1972). Police did not cede any control of the demonstration to the demonstrators themselves.

Police using the negotiated management style believe that communication with demonstrators is necessary if the former are to successfully protect the First Amendment rights of the latter and keep disruption to an acceptable level (Kleinknecht and Mizell, 1982; Sandora and Petersen, 1980). Extensive interaction between demonstrators and police is part of the permit applica-

tion, negotiation, granting, and protection process. Applicants are informed of time, place, and manner restrictions and any conflicts over these restrictions are negotiated. Even civil disobedience arrests may be planned by police and demonstrators (Brothers, 1985; Sandora and Petersen, 1980). Police also help organizers prepare for demonstrations by consulting with them regarding transportation, restroom facilities, and first aid. Finally, demonstrators are required to have trained marshals who understand demonstrator goals and police responsibilities as well as the negotiated plans and procedures, and who can therefore knowledgeably "police" other demonstrators. Thus, the increased communication facilitates internal control of demonstrations by demonstration leaders instead of external control by police.

*4. Extent and Manner of Arrests* Under the escalated force style of policing, arrests quickly followed any violation of the law and sometimes occurred where no law had been broken. Arrests were forceful and were used strategically by police to target and remove "agitators." The main exception to the rule of immediate arrest was when police used physical punishment in lieu of arrests (Stark, 1972).

Under negotiated management policing (Chandler, 1986; Sardino, 1985), arrests are used only as a last resort and then are used selectively, only against those who violate the law. Participants in nonviolent civil disobedience are not arrested immediately, but are informed repeatedly that they are breaking the law (often by trespassing) and given every opportunity to desist (Brothers, 1985). Arrests deemed necessary are carried out in an orderly manner designed to avoid injuring the demonstrators and with proper documentation. In order to promote orderly arrests, efficient booking processes, and quick releases from jail, police attempt to negotiate arrests with demonstrators before the demonstration. Police provide prearrest forms and request estimates of how many arrestees there will be and whether they will actively or passively resist arrest.

*5. Extent and Manner of Using Force* As its name indicates, the escalated force style of protest policing was characterized by the use of force as a standard way of dealing with demonstrations. Police confronted demonstrators with a dramatic show of force and followed with a progressively escalated use of force if demonstrators failed to abide by police instructions to limit or stop their activities (e.g., Applegate, 1969; Momboisse, 1967).<sup>4</sup> Police used riot control techniques such as tear gas, batons, fire hoses, electric cattle prods, riot formations, and dogs. Police frequently used force in lieu of arrests.

Under the negotiated management style of protest policing, only the minimum necessary force is used to carry out duties such as protecting persons or property and arresting lawbreakers (Chandler, 1986; International Association of Chiefs of Police, 1992). Police attempt to avoid the need to use force by cordoning off the demonstration area, especially if counterdemonstrators are present, and through prior negotiations with demonstrators (Burden, 1992; Gruber, 1990).

## The Development of One Public Order Management System

The initial changes from the escalated force style of policing toward the negotiated management style were introduced during the wave of U.S. protests and riots in the 1960s and 1970s. During this period national and local agents of social control searched for solutions to these problems. Although there is no national police force in the United States, the federal government was instrumental in developing and disseminating new strategies to decentralized state and municipal police agencies. Several federal agencies, reacting to different aspects of the same problem, were involved in this process. First, three national commissions investigated aspects of the current cycle of protests and riots and issued findings and recommendations. Second, the Supreme Court and various federal district courts issued a series of opinions in legal cases arising from earlier municipal, state, and federal government efforts to restrict protest. Third, the National Park Service developed an elaborate permit system to accommodate protest in Washington, D.C. Fourth, the U.S. Army Military Police School created a national civil disorder training program for local police officials. After a brief review of the riots and demonstrations during the period, we describe each of the contributions made by the federal government.

## Riots and Demonstrations

Beginning with the Bedford-Stuyvesant and Harlem riots in New York City in 1963 and then the Los Angeles (Watts) riot in 1964, the United States was confronted with urban riots more or less every summer through 1968. These riots varied in intensity and duration as well as geographical location (e.g., Chicago, Illinois, in 1965; Omaha, Nebraska, in 1966, and Newark, New Jersey, Detroit, Michigan, and Milwaukee, Wisconsin, in 1967). In April 1968, Martin Luther King was assassinated. Immediately in the wake of the assassination there were 125 urban riots, the largest simultaneous period of urban rioting in the nation's history. One of the most severe riots occurred in Washington,

D.C. Massive vandalism, looting, and arson occurred less than one mile from the White House (Gilbert, 1968).

These urban riots were preceded by several years of repeated protest campaigns in the civil rights movement, including the 1963 March on Washington. The last large and sustained civil rights demonstrations in Washington—the Poor People’s Campaign in May and June of 1968—followed the Martin Luther King riots. During the mid-1960s, the Vietnam War gradually supplanted civil rights as the focal issue around which the majority of demonstrations were mobilized nationwide. Early demonstrations, such as a November 1967 demonstration (100,000 people) sponsored by Mobilization Against the War in Vietnam (hereafter, MOBE), were marked by confrontations with authorities and arrests. But during later demonstrations, relations between demonstrators and authorities were less contentious. These demonstrations include the January 1969 counterinaugural demonstrations, the November 1969 MOBE rally (500,000 people), the May 9, 1970, MOBE rally (100,000), and the April 1971 U.S. Capitol rally (500,000) sponsored by the People’s Coalition for Peace and Justice (PCPJ). The peak of antiwar demonstrations across the nation was in May of 1970 when, following the shooting deaths of four Kent (Ohio) State University students by National Guardsmen during an antiwar demonstration, protests against that tragedy and U.S. foreign policy erupted on more than 1,250 campuses.

### **Commissions of Inquiry and Their Recommendations**

Between 1967 and 1970, U.S. presidents appointed three national commissions to investigate riots and demonstrations. The National (Kerner) Commission on Civil Disorder was established in July 1967, in the wake of major riots in Newark, New Jersey, and Detroit, Michigan, and issued its report in March 1968. The National (Eisenhower) Commission on the Causes and Prevention of Violence was established in June 1968, following the post-King assassination riots, and issued an initial report in January 1969; a final report in November 1969 summarized several commission task force studies of protest (e.g., Graham and Gurr, 1969; Sahid, 1969; Skolnick, 1969b; Walker, 1968). The National (Scranton) Commission on Campus Unrest was established in May and reported in September 1970. As their titles indicate, these commissions focused on slightly different phenomena, which, nonetheless, share some common features bearing on the policing of demonstrations.

The Kerner Commission was primarily concerned with urban rioting and found that in half of the twenty-four riots investigated in detail, police actions

were pivotal in the initiation of the riots. The commission recognized that few communities had adequate numbers of police officers to deal with "major crowd control problems," thus necessitating that those existing officers be better trained and equipped. The Kerner Commission recommended that training for civil disorder prevention and control include all levels of personnel and be ongoing from the initial training of recruits to the regular review, repetition, and practice required for junior and senior police officers to function collectively and in collaboration with state and federal control agencies. The Kerner Commission further recommended that public officials establish fair and effective mechanisms for "the redress of grievances against police" and that they review and eliminate "abrasive policing practices." Finally, it criticized the use of deadly force, which too frequently incites further violence, and recommended instead the principle of using only the "minimum force necessary to effectively control the situation" (Kerner, 1968, 330).<sup>5</sup>

The Eisenhower Commission had a much broader charge than the Kerner Commission but devoted a great deal of attention to questions of policing demonstrations in democracies. First, the commission recognized that "group protest is as American as cherry pie," but that protest violence is the rare exception, not the rule. Second, protest is protected by the First Amendment; thus, the president, the attorney general, and the federal court systems must take whatever actions are necessary to protect against threatened or actual interference with First Amendment guarantees. Third, the "excessive use of force is an unwise tactic for handling disorder . . . [and] often has the effect of magnifying turmoil not diminishing it" (Eisenhower, 1969). Fourth, the respect for protest, the willingness to negotiate its time, place, and manner, and the granting of permits for protest are the best means of avoiding the necessity of policing, not to mention the use of unnecessary levels of force. The commission recommended that the policing of protest at the 1968 Chicago Democratic Convention should be taken as an example of how officials should not proceed; rather, it recommended the exemplary policies and practices that resulted in comparatively orderly and relatively nonviolent protest in Washington's January 1969 counterinaugural demonstrations, in Chicago's October 1969 Weatherbureau Days of Rage,<sup>6</sup> and in Washington's November 1969 massive antiwar rally. Fifth, the Eisenhower Commission's recommendations were much more mixed for dealing with civil disobedience as a form of protest. Seven members criticized this form as the first step toward social and political disaster in a democracy, citing contemporary India as a case in point; six other members defended civil disobedience with a variety of justifications.



The Scranton Commission was the last of the three major inquiries to make its report, but its conclusions and recommendations complemented those already noted. In the cover letter to the president, chairperson William Scranton wrote: "Campus unrest is a fact of life. It is not peculiar to America. It is not new and it will go on" (Scranton, 1970). Scranton further noted that campuses are places of intellectual restlessness, which can lead to protest, much (if not most) of which is neither disruptive nor violent; and, although violent protest should be met with firm and just responses, the use of deadly force is rarely required.

### **The Development of Public Forum and Protest Law<sup>7</sup>**

The use of escalated force to control and disperse demonstrations, the arrest of protesters, and the denial of demonstration permits produced a series of legal challenges. Many of the affected citizens believed that these actions were infringements of their constitutional rights to assemble, speak, and seek redress of their grievances and they sought relief through the courts. The amount of litigation around this issue escalated along with the wave of protests, importantly as a result of an aggressive campaign waged by the American Civil Liberties Union (ACLU), much of it in Washington. The Supreme Court decisions resulting from these cases created a substantial body of First Amendment decisions that came to be known as "public forum law."<sup>8</sup> Although these were certainly not the first significant court decisions on First Amendment guarantees, the 1960s, 1970s, and 1980s were the most concentrated period of such legal decisions in U.S. history.<sup>9</sup>

The public forum doctrine relies on a series of distinctions between categories of physical setting: the "traditional public forum," the "limited" or "designated public forum," the "nonpublic forum," and private property (Post, 1987). Traditional public forums include commons, public streets, parks, sidewalks, and other spaces that, "by long tradition or by government fiat," have come to be used for expressive activity in every community (An, 1991). First Amendment activity in these areas can only be limited by reasonable time, place, and manner restrictions, which cannot be based on the content of protesters' messages. When imposed, time, place, and manner restrictions must be narrowly drawn and unavoidable in the service of "compelling state interests" (Smolla, 1992, 208). Content-based restrictions are forbidden in public forums because they target the communicative impact of speech activity, restricting expression because of its subject matter, speaker identity, or viewpoint. Content-neutral restrictions are acceptable only if they aim at

the noncommunicative impact of speech and even if they incidentally limit speech. Such restrictions are justified only under the strictest scrutiny in the case of traditional public forums, but are more readily accepted in other categories of forums (Tribe, 1988, 789–90).

Limited public forums are those government properties previously closed to “expressive activity” but which, upon review of the evidence, were found not to threaten “compelling state interests.” These were then reclassified as “limited public forums” and include places such as airports, university meeting spaces, and municipal theaters. Speech restrictions in these places must be justified by the same standards that are required in traditional public forums.

A third category, the nonpublic forum, “includes governmental property that is not a public forum ‘by tradition or designation’—such as a post office or jail. Restriction on speech in nonpublic forums need only be reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view” (An, 1991, 63–66).

In addition to this central body of public forum law, between 1960 and 1995 the federal courts handed down a large number of decisions bearing on the content, time, place, and manner of protest in the public forum. First and foremost among these were decisions bearing on the sanctity of protest content, including *Brandenburg v. Ohio* (1969) and *Watts v. United States* (1969), which protect even the right to advocate violence if there is no call for immediate violent action. Furthermore, *Chicago v. Mosely* (1972) was but the first of several decisions to reiterate that the “First Amendment means that government has no right to restrict expression because of its message, its ideas, its subject matter, or its content,” regardless of how provocative and offensive those may be. These ranged from the protection of civil rights marchers from hostile onlookers (*King Movement Coalition v. Chicago*, 1976) to the protection of Nazis from counterdemonstrators (*Skokie v. National Socialist Party*, 1978) to the protection of the right to burn the U.S. flag (*United States v. Eichman*, 1990). Across this same time period, there were a number of very important court decisions limiting restrictions on the *time* (*Collins v. Chicago Park District*, 1972), the *place* (*Heffron v. International Society for Krishna Consciousness*, 1981; *Quaker Action Group v. Hickel*, 1969; *Quaker Action Group v. Morton*, 1975), and the *manner* of protest (*Blasecki v. Durham*, 1972; *Skokie v. National Socialist Party*, 1978).<sup>10</sup>

Tracing the extent and scope of court decisions affecting the rights of protesters between 1960 and 1995, it is obvious that the courts were important in shaping the dimensions of the shift between the two forms of protest policing,

setting the stage for, if not mandating, negotiated management. But these evolving constitutional principles had to be implemented in practical situations, and that is where the evolving protest permit system assumed central importance in turning those lofty principles into practical bureaucratic guidelines for managing protest.

### **The Development of a Protest Permit System**

Permits are essential components of a protest management system because they specify the time, place, and manner in which protest may take place under police protection of First Amendment guarantees. Permits typically, though not invariably, depend on protesters' prior notification of public officials of their intentions to demonstrate. This is ordinarily conveyed by means of a permit application form on which the applicant minimally is asked to (1) identify himself/herself and the group or organization seeking the permit, (2) the time and date proposed for the demonstration and the place (or places in the event of a march), (3) the manner or activities planned to constitute the demonstration, (4) the purpose of the demonstration, and (5) the number of people expected to participate. Officials may also ask applicants to provide more details about the schedule of activities, perhaps to list the speakers, as well as props or equipment required to carry out the demonstration, and in all likelihood the number (and perhaps training and experience) of marshals to coordinate and control the demonstration. Finally, officials may wish to know if the applicants expect or anticipate the possibility of counter-demonstrations and if so, the names of the organizations or individuals who might mount such opposition.

This information is important because it provides the basis on which preliminary discussions can take place between prospective protesters and the officials responsible for the jurisdictions in which the protest is proposed. This may provide the first opportunity for officials to discuss with applicants the full range of responsibilities that the police are sworn to uphold, including the protection of protesters' First Amendment rights as well as the persons and property of protest targets and bystanders. This creates a context for discussing the goals of both protesters and police and how each can make plans and preparations to realize their respective purposes within the framework of existing laws. Sometimes these discussions are few in number and brief in duration. In other instances, they may be repeated and extensive as protesters and police negotiate their differences.

At the beginning of the time period under consideration there was but a

mere semblance of the permit system now in place. The Federal Code in December 1959 required a mere one page in the Federal Register to detail the legal code covering parades and public meetings in the National Park Service (NPS) jurisdiction. Those regulations and guidelines were to undergo considerable revision over the next five years but no doubt were employed in negotiating permission to hold the 1963 March on Washington (Gentile, 1983).

Shortly after the first large antiwar demonstration in April 1965, a memorandum was issued by the Department of the Interior (June 1965) stating some demonstration guidelines. These guaranteed the protection of demonstrators' First Amendment rights in National Park Service jurisdictions while reserving restrictions over time, place, and manner. The guidelines further emphasized NPS representatives' contact, negotiation, and cooperation with applicants for demonstration permits and guaranteed their protection by the National Park Police. Permits were issued on a first-come, first-served basis. And although there was explicit emphasis on cooperation with leaders of groups seeking to demonstrate, these individuals were urged to apply sufficiently in advance of the proposed time of the demonstration to permit negotiation of mutually acceptable ground rules. Even so, neither failure to apply for a permit nor the absence of a permit were grounds for prosecution. In the same (1965) guidelines, NPS representatives were urged to develop cooperative relationships with other nearby local, state, and federal officials.<sup>11</sup>

Although this primitive permit system was in place, the outcome of negotiations involving the civil rights and antiwar demonstrations was more a function of who was negotiating between police agencies and demonstration organizers than it was of the permit system itself.<sup>12</sup> In the 1960s, the representative for the government agency or agencies was appointed (or at least endorsed) by the White House and therefore bargained in terms of the political preferences of the incumbent administration. The dramatic differences in the negotiations for the permits for Martin Luther King's 1963 March on Washington, with the support of the Kennedy administration, stand in marked contrast to the negotiations for the 1967 March on the Pentagon, with opposition from the Johnson administration, or the negotiations for the majority of antiwar demonstrations, with opposition from the Nixon administration.

Two large demonstrations—the January 1969 counterinaugural protests and the May 9, 1970, antiwar rally—resulted in government reports that significantly influenced the future permit system. An Eisenhower Commission staff report (Sahid, 1969) titled *Rights in Concord* describes in some detail the police agencies of the Park Service and the Metropolitan District of

Columbia and the negotiations for the January 1969 demonstration permits, with one negotiator representing all government agencies.

In June 1970, the Department of Justice published *Demonstration and Dissent in the Nation's Capitol*, which claimed to describe the cooperation and negotiation procedures that led to the successful May 9, 1970, demonstration, and further claimed that the same procedures had been used in the November 1969 antiwar demonstration. These claims are arguable at best. Demonstration organizers believed the orderly outcome of the May 9 demonstration was a function of government delay, happenstance, and the organizers' own ineptitude. The MOBE had planned a sit-down in front of the White House—a symbolic house arrest—but its plans were designed at the last moment and were poorly scripted and implemented.<sup>13</sup> What is more, the government did not in fact follow the policies and procedures set forth in the 1970 document. Nonetheless, subsequent policing practices were more likely consistent with that document, as the massive and orderly April 1971 antiwar rally illustrates. Moreover, those policies and procedures served as benchmark and guidelines for demonstration management in Washington for the next decade and beyond. They placed emphasis on First Amendment guarantees and on the importance of contact and communication between demonstrators and government negotiators with the objective of cooperation and negotiation of mutually agreeable protections of the interests, rights, and responsibilities of all parties.

The next benchmark in the development of the current system was the 1982 document *Demonstrating in the District of Columbia*, created by the ACLU's Capitol Area Chapter. There is more than a ten-year gap between this document and the 1970 statement by the Department of Justice. The earlier document is replete with descriptions of how the system should work; the later one details how the system did work in 1982. In between those two dates, we have already noted, were at least nine court decisions protecting First Amendment guarantees. Between 1982 and 1991, there were many more, all of which are brought together in the American Civil Liberties Union publication *The Right to Protest* (Gora et al., 1991). While the guidelines for demonstrations on U.S. government properties at the beginning of the time period under consideration required but one page in the 1959 Federal Register, the current (1993) guidelines require seven pages.

Today, instead of negotiators handpicked or endorsed by the White House to represent status quo interests, the negotiator is a civil servant from the National Park Service, the Metropolitan Police Department, and/or the U.S. Capitol Police. And although it would be naive to think that the status quo

interests of White House incumbents are never figured into the negotiations, we believe it is frequently the case today that the terms of the permit are more rigorously decided in terms of the corpus of public forum and First Amendment law that has accumulated since 1970.

### **The Development of New Policing Principles and Techniques: SEADOC**

After the U.S. urban riots of the summer of 1967, the Department of Justice directed the United States Army Military Police School (hereafter, USAMPS) at Fort Gordon, Georgia, to develop a civil disturbance orientation course (CDOC, hereafter SEADOC) for civilian police officials in the tradition of its long-standing training of U.S. Army personnel for riot control duties. This weeklong course was introduced in February 1968 and was offered fifty-six times before it was abruptly terminated in April 1969. We will refer to this course as SEADOC I. In May 1970, SEADOC reopened and was taught regularly at Fort Gordon until 1975, when the Military Police School was moved to Fort McClelland, Alabama. The course was continued there at least through 1978. We will refer to this course as SEADOC II.

Both versions of SEADOC clearly played a major role in diffusing protest policing practices. In an earlier paper (McCarthy, McPhail, and Crist, 1995), we estimated that as many as ten thousand police administrators, police officers, and other public officials may have gone through the SEADOC courses. This is consistent with Cherry's (1975, 55) characterization of SEADOC as "the best and most complete course available in civil disturbance planning" and his estimate that "thousands of [civilian] police executives" attended and garnered a wealth of detailed advice and checklists enabling them to develop a program in their local communities.

The emphasis in the SEADOC I instruction (1968–69) was on planning by and coordination among municipal, county, state, and federal officials and agencies for civil disturbance control operations (USAMPS, 1972a, 1972b, 1972c, 1972d).<sup>14</sup> SEADOC I was organized around four general and related phases of civil disturbance control planning and operations: (1) prevention, (2) preparation, (3) control, and (4) after-action. The control phase in SEADOC I instruction placed emphasis primarily on "shows of force" and controlled escalation of force in dispersing gatherings, protecting properties, and apprehending law violators.<sup>15</sup> This emphasis must be considered in the context of the primary forms of civil disorder—urban riots—which preceded and gave rise to the initial SEADOC program. It should be no surprise that the focus of SEADOC I was almost exclusively on riot control.

SEADOC II was redesigned in its orientation and emphasis, reflecting the recommendations of both the Kerner Commission (1968) and the Eisenhower Commission (1969). Both commissions had emphasized that the escalated force strategy for "riot control" was perhaps better suited to quelling labor conflicts of the 1930s, the racial riots of the 1940s, and the urban riots of the mid-1960s than it was to controlling the wider variety of forms of civil disorder that marked the late 1960s and early 1970s: "Many of the confrontations occurring across the United States today cannot be simply classed as 'riots.' Such widely varying situations as mass demonstrations, nonviolent protests and acts of political terrorism have necessitated extensive reevaluation of the basic concepts for controlling civil disturbances" (USAMPS, 1972c, 1).

One of the concepts introduced in SEADOC II was "confrontation management." This reflected a sensitivity to the Kerner and Eisenhower (and the later Scranton) commission reports' claims that traditional policing actions risked provoking more disorder rather than its resolution. "Confrontation management is a strategy concept . . . which seeks to counter the attempts of dissident organizations" to radicalize their ranks by provoking police to overreact (USAMPS, 1972a, 1).<sup>16</sup>

The new course continued "to stress inter-agency planning and coordination, but places new emphasis on civil disorder management concepts and principles" (USAMPS, 1972b, 1). Like its predecessor, SEADOC II was designed to address contemporary types of civil disorder. By 1970, these were antiwar protests, which often incorporated civil disobedience tactics in a variety of innovative ways. Thus, it comes as no surprise that SEADOC II offered a reconceptualization of civil disorder and of the kind of policing required to deal with these "new" phenomena.

First, SEADOC II lectures emphasized that civil disorders could take a variety of forms, ranging from mass demonstrations through civil disobedience and other forms of idealistic protest to rioting and terrorism. Second, SEADOC II lectures emphasized variations in the extent of disruption to the social and political status quo likely to result from those various forms of civil disorder. Such an analysis, therefore, justified variations in the form of confrontation management employed by police. Instead of following the older rule of the escalation of force to quell disorder, the newer formulation emphasized "a high degree of flexibility and selectivity in the response to a civil disturbance situation" (USAMPS, 1972b, 3). The result is the strategic concept of "confrontation management" and the complementary "tactical shift in field operations in accordance with the rule of minimum necessary force" (*ibid.*, 4). "The primary rule which governs the actions of federal forces in

assisting state and local authorities to restore law and order is that you must at all times use only the minimum force required to accomplish your mission. This paramount principle permeates all civil disturbance operations."

In addition to the principles taught by SEADOC II faculty to civilian police officials, in December 1970 the U.S. Army issued to all federal military personnel (and all National Guard personnel) revised "Special Orders," which they were to carry on their person while on duty in any civil disturbance operation (USAMPS, 1972d, 1-2). Noteworthy here are three of the orders: (1) "Use only the minimum amount of force required to accomplish your mission and, if necessary, to defend yourself"; (2) "You are not authorized to use firearms to prevent offenses which are not likely to cause death or serious bodily harm, nor endanger public health or safety"; (3) "When firing is necessary, shoot to wound, not to kill."

## Public Order Management Systems and Their Environments

The U.S. POMS was developed as police officials attempted to devise a set of practices for managing problems of public disorder within their political and legal environments. We suggest three sets of variables necessary for understanding the development of a POMS: (1) the POMS itself, that is, the organizations charged with managing public disorder problems, their policies and programs, their individual and collective policing actions, and their enabling technologies; (2) the public order environment, that is, the frequency, variety, and severity of public disorder that police organizations encounter; (3) the political and legal environment within which POMS are developed.

## Components of Public Order Management Systems

Public order management systems consist of (1) civilian and/or military police organizations, (2) the public order policies of these organizations, (3) these organizations' programs for recruiting and training personnel (civilian or military) to enact these policies, (4) the actual practices of these policing personnel, and (5) the technology and equipment used while carrying out these practices.

Police organizations vary considerably in size, resources, the way they are organized, and the ways they are connected to other organizations. Some nation-states have nationalized and centralized police forces (e.g., France and Japan); in others, police agencies are decentralized and responsible to municipal civilian authorities (e.g., the United States). Within these organizations, designated units (e.g., the Special Operations Division, Metropolitan



Police of the District of Columbia) and divisions (e.g., permit procedures) may specialize in public order management.

Police organizations also vary in their links to one another within metropolitan or regional areas (e.g., through mutual assistance pacts), to county and state police and fire agencies (e.g., through centralized communication and dispatcher systems), to federal police agencies (e.g., fingerprint and record search services of the Federal Bureau of Investigation), and through memberships in national and global professional police organizations (e.g., the International Association of Chiefs of Police and Interpol). These connections are increasingly both more accessible, rapid, and extensive (e.g., through the Internet and the World Wide Web and a variety of other satellite and telecommunications systems, which supplement more traditional means of contact and interaction such as professional association meetings, periodicals, workshops, and seminars). Several other important distinctions among police organizations are related to the public order environment and the political and legal environment in which they operate. These variations are taken up in subsequent sections.

As indicated earlier, significant changes in public order policing policies and practices in the United States took place between 1960 and 1995. The five dimensions of protest policing discussed earlier are an attempt to conceptualize the possible variation in these policies and practices. An important question that we do not address here is how the policies a police organization adopts and trains its officers to carry out may differ from their actual implementation in the field.

Protest policing recruitment and training may be highly specialized or may involve all personnel in a police agency. Increasingly in the United States, prospective police officers must meet both educational and physical criteria for admission to basic police-training academies. Many, but not all, police academies offer some basic training dealing with large public gatherings and various forms of civil disorder. After graduation from the academy and two or three years of routine police work, some officers may be recruited to, or may apply for specialized training in, public order policing. Thereafter, they may be assigned to special operations units (e.g., Washington, D.C.) or may have general policing responsibilities from which they can be readily summoned and rapidly mobilized to participate in civil disorder policing operations. Some police agencies have periodic refresher training in civil disorder policing throughout the calendar year and concentrated briefings and refresher training in advance of special assignments (e.g., papal visits, cham-

pionship games, massive political demonstrations, or projected announcement of court decisions in controversial legal proceedings).

Additionally, technologies of public order policing changed dramatically between 1960 and 1995. These include sophisticated communication technologies, defensive technologies (helmets, Plexiglas face masks and body shields, and protective clothing), and offensive technologies (batons, tear gas, rubber bullets, and specialized firearms).

### **The Public Order Environment**

Police organizations vary enormously in the frequency, variety, and severity of the public disorder they are called on to manage. This public order environment varies temporally and geographically. Major temporal variations may be significant in the creation of POMS as well as in their decline or fading into disuse. In the U.S. case, the wave of protests and riots in the 1960s and 1970s was critical in the development of the current POMS.

Geographic variation in the public order environment produces important differences in police organization. Police agencies in large metropolitan areas, particularly those with decision-making centers of international scope (e.g., the United Nations in New York City) or of national and international scope (e.g., legislative, judicial, and executive branches of the U.S. government in Washington), may develop special units and elaborate permit systems for managing public disorder. Other police agencies that face regular protest activity include those in state capitals and university campuses.

We have been concerned here primarily with political demonstrations, but there are also disturbances to public routines that stem from large and otherwise extraordinary religious gatherings (e.g., papal visits), sport gatherings (e.g., celebrations following championship games), and even prosaic gatherings on beaches and in the streets of resort communities and other recreation sites during collegiate spring holidays. Communities are likely to adopt and adapt POMS that address their routine public order problems. For instance, police in large metropolitan areas that host national and international sports championship tournaments or games develop, adopt or adapt programs for managing those events and subsequent celebrations that may become disorderly. Larger municipal police agencies (e.g., Washington, San Francisco) frequently develop their own manuals of procedures and tactics as part of their continuing training of officers for public order policing. In smaller cities where large protest demonstrations are rare, local police may consult with other agencies and/or make use of mutual assistance pacts when faced with

such a demonstration. However, these police may have standard practices for dealing with more common types of public gatherings, such as patriotic parades and ceremonies.

### Political and Legal Environment

Among the most important historical considerations for understanding the sources and processes of public order has been the autonomy of policing organizations and institutions from the political regime in which they function. There has been a steady decoupling of police from regime as a function of the post-World War II modernization of nation-states around the world (Bayley, 1985). In the United States, with the routinization of the permit system in Washington, the influence of incumbent presidential administrations in making demonstration management decisions has waned and the role has been taken over by police agencies. A related political consideration has been the relative mix of military and civilian policing of public order. In some nations, there is virtually no separation, or at best a minimal one, between military and paramilitary policing of public order. In the United States, there is a very sharp distinction enforced by the *posse comitatus* act, which prevents the military from policing civilian public order unless or until civilian authorities determine that they are no longer capable of maintaining order and formally request from the president of the United States the authorization of military assistance to their community. Civilian oversight and regulation of policing as well as military forces varies from nation to nation. These variations range from civilian review boards of police practices in the local community to civilian secretaries of defense in the national cabinet to whom military chiefs of staff are accountable. In the United States, three presidential commissions of inquiry, which included distinguished civilian and military police officials, were influential in the development of the current POMS.

It appears that some version of the basic right to public assembly is common to most democracies old and new, but the scope and details of these rights vary. In the United States, there is a constitutional guarantee—the First Amendment—to public assembly, speech, and petition for the redress of grievance; no equivalent guarantee exists in Great Britain. The details of public forum law are also unique to the United States. This right may or may not be counterbalanced by the legal obligation of prospective protesters to notify local authorities of their intention to demonstrate and the right of authorities to impose restrictions on the time, place, and manner of protest. In other nations, however, it may be illegal to protest publicly regarding some or all issues.

## Summary

In this essay, we have used the concept of public order management systems (POMS) to refer to those organizations charged with policing public disorder, and to their policies, programs, practices, and technologies for doing so. We first contrasted U.S. policing practices in the 1960s, which were marked by “escalated force,” to those in the 1980s and 1990s, which have been characterized by “negotiated management.” We described both of these styles and presented five dimensions of protest policing, which can be used to conceptualize these and other protest policing styles. Second, we offered a detailed historical account of the development of the negotiated management style during the 1960s and 1970s. This account emphasized the wave of demonstrations and riots during this period, the development of legal, political, and other social institutions in response to this problem, and the contributions of several federal agencies in creating and diffusing elements of the current U.S. Public Order Management System. Finally, we suggested the theoretical implications of our empirical findings for investigation of other public order management systems. The diffusion and adoption of the new style of protest policing is far from uniform across the United States.<sup>17</sup> It has become the increasingly likely practice of police organizations in large cities, at state capitols, and on major university campuses where protest and other large public gatherings are frequent occurrences. The extent to which it has been adopted and implemented in those locales is an intriguing empirical question that remains to be investigated, and one we hope to pursue in the not too distant future.

## Notes

1. Our review of the police literature included an examination of every issue of *The Police Chief* (1963–94) and the *FBI Law Enforcement Bulletin* (1964–94) during the entire period of our study for articles on the policing of crowds, demonstrations, and riots in the United States. We also were able to examine issues of *Law and Order* (1971–75, 1979–93), the *Police Journal* (1963–94), the *Police Yearbook* (1963–77, 1982–88), *Police Studies* (1978–93), and two unrelated journals called *Police* (1963–71 and 1987–92) for portions of the relevant time period. Articles from these and other periodicals were also obtained through searching indexes that cover these periodicals.

2. See Williams (1987), Branch (1988), and Morris (1993) for excellent detailed accounts of the Birmingham campaign; Walker (1968) for a comprehensive account of police-protester interaction at the 1968 Chicago Democratic Convention; and Michener (1971) and Adamek and Lewis (1973) for alternative accounts of the Kent State massacre.

3. See Brothers (1985), Ochs (1985), and Sardino (1985) for detailed accounts of police-protester interaction during the antiapartheid campaign on U.S. college campuses.

4. One of the possible consequences of these early training manuals and guidelines for policing demonstrations can be seen in the manner by which antiwar protests were handled at the 1968 Democratic National Convention in Chicago. These actions led a subsequent

commission of inquiry to coin the term "police riot" (Walker, 1968). Similar uses of police force in lieu of arrest and due process are described and analyzed in Stark's (1972) monograph *Police Riots*.

5. The Federal Bureau of Investigation states the same principle in its 1967 manual for the *Prevention and Control of Mobs and Riots*.

6. This campaign of demonstrations, observed and recorded by the first author, involved a number of planned, rehearsed, and effectively executed sequences of violence against property (and sometimes persons) by the Weatherbureau. Even though the police expected this, they nonetheless granted permits for the rallies and marches that preceded the violent actions and were remarkably restrained in their efforts to curtail the violence and arrest the perpetrators. By comparison with protest policing efforts the previous year during the Democratic National Convention, and the deliberately violent tactics of the Weatherbureau, police followed the principle of minimum necessary force in quelling the Days of Rage demonstrations in October 1969.

7. This section relies heavily on McCarthy, McPhail, and Smith (1994).

8. Snyder (1985) and Gora et al. (1991) each include different but useful summaries of the "public forum" doctrine.

9. Significant early court decisions on First Amendment guarantees include *Hague v. C.I.O.* (1939) and *Cox v. New Hampshire* (1941), both of which were landmark rulings on the public forum issues that were so frequently raised in the 1970s, 1980s, and 1990s.

10. Gora et al.'s (1991) excellent summary of First Amendment law provides details of further court decisions protecting the specific forms of protest by manner of assembly, parade, leafleting, picketing, signs, and posters.

11. Toward these goals, a weekend training seminar in "demonstration management" was offered in May 1965 for National Park Service administrators (Department of the Interior, 1965).

12. A very useful account of the planning, organization, mobilization, and permit negotiations for the 1963 March on Washington is presented in Gentile (1983). Local police agencies were not sympathetic, despite their own accounts to the contrary (see Covell, 1963). Absent the firm support of Attorney General Robert Kennedy for the demonstration, it is unlikely that negotiations would have gone as smoothly as they did.

13. Wells (1994, 445) notes that "The government contributed to the MOBE's failure. By granting the Ellipse, it moved the demonstration away from the front of the White House, where civil disobedience would have been easier. And by doing it at the last minute, it gave the MOBE scant time to devise a plan. And [principal MOBE organizer David] Dellinger called the government move 'a master stroke of public relations.'"

14. Our description of SEADOC is based on examination of the extensive course textbook used by students at Fort Gordon, Georgia, during the week of July 16–21, 1972. To date we have only been able to examine the text materials used in SEADOC II, but from discussions with USAMPS historians, we are confident that the structure of both courses was very similar, differing only in the orientation and emphasis discussed here.

15. We surmise this emphasis by our inspection of the Army Field Manual FM 90-15, which was in effect at the time of SEADOC I.

16. Provoked or not, police use of deadly force in quelling demonstrations appears to have had effects like those to which SEADOC II authorities referred. Adamek and Lewis (1973) surveyed Kent State University students shortly after the May 4, 1970, shooting by Ohio National Guardsmen. Kent students who witnessed the shootings had significantly more antigovernment attitudes than Kent students who were absent from campus the day those shootings occurred.

17. Elsewhere (McCarthy and McPhail, 1997), we examine the diffusion and adoption of innovations in a population of police organizations.