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When Repression is Not Enough: The Policing and Social Control of Occupy Oakland

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WHEN REPRESSION IS NOT ENOUGH:
THE POLICING AND SOCIAL CONTROL OF OCCUPY OAKLAND

A dissertation submitted in partial satisfaction
of the requirements for the degree of

DOCTOR OF PHILOSOPHY

in

SOCIOLOGY

by

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Abstract

Michael J. King

WHEN REPRESSION IS NOT ENOUGH:
THE POLICING AND SOCIAL CONTROL OF OCCUPY OAKLAND

Occupy Oakland was best known for its radical politics, disruptiveness, militancy and confrontations with police from the fall of 2011 until early 2012. As an active participant I experienced police repression and also witnessed the collapse of social control – most dramatically with the November 2, 2011 General Strike – that shut down the Port of Oakland and much of downtown and stemmed largely from police aggression and misconduct the previous week. After briefly establishing how social control broke down in Oakland, California in the fall of 2011, in Chapter 1, I trace the various techniques of policing and social control that demobilized the movement in the remainder of the dissertation. I examine the legal, political, and socio-cultural contexts that shaped the movement and its policing, examining the role of legitimacy and force in evaluating the forms of social control that help determine the effectiveness of specific police practices.

The dissertation draws mainly from hundreds of hours of participant observation and various primary documents (declassified local and federal police documents and reports, legal filings, public police planning documents, mainstream news coverage, and city press releases). Chapter 2 lays out much of the theoretical contribution of the dissertation, focusing primarily on the two major literatures on protest policing. Drawing from my research on Occupy Oakland, I argue that the two
main methods of modern protest policing in the Global North, defined by either police-protester cooperation or preemptive police aggression, are not only related (in contrast to much of the existing literature), they are mutually constituted.

The raid on Occupy Oakland’s second encampment in mid-November 2011 was one of many raids across the country. In Chapter 2, I take a wider lens to examine the policing of the national movement in this specific moment and the role of federal and non-governmental agencies in coordinating encampment raids in eighteen cities across the U.S. in a two-week period. I specifically focus on the use of health and security discourses that aided in the depoliticization of policing in this moment.

I examine the role of permits, the law, and police force in Chapter 4, utilizing a genealogical approach to understanding the law and police tactics in Oakland. A defining characteristic of Occupy Oakland was its rejection of negotiation with the city and police, including seeking protest permits. A permit was nevertheless taken out for after the second camp eviction in Oscar Grant Plaza. I illustrate how the police and city administrators use civil law as a mechanism to profile specific communities and control geographic space, comparing the laws and policing practices associated with gang injunctions and the permit in Oakland.

Chapter 5 examines the political discourses of movement criminalization which preceded and followed Occupy Oakland’s January 28, 2012 effort occupy the vacant Kaiser Convention Center. Illustrating the overall arch of the movement and the various efforts to control it, this chapter illustrates how the same set of police
tactics that created great public support for the movement and condemnation of the police four months earlier, had a very different meaning and impact on protest (de)mobilization in late-January 2012. I argue that the policing and political delegitimation of the movement in this moment marked a clear turning point towards the movement’s eventual collapse. I conclude that we must seek a more holistic approach to understanding the policing of protest that examines but goes beyond police tactics and strategies to the political, legal and socio-cultural contexts in which they are embedded. I argue that ultimately it is these factors of perceived legitimacy, public support, and active solidarity and participation that determine the effect of various forms of policing, and either foster social change or reinforce the existing social order.
Chapter 1

From the Conundrum of Social Control to

Sewing Back Together the Social Control Patchwork

“When the Smoke Cleared…:” Two Vignettes from Occupy Oakland

On the evening of October 25th, 2011 the Oakland police riot squad, including hundreds of mutual aid police from 17 other surrounding cities, pursued a coordinated strategy of controlling urban space in downtown Oakland. That night they successfully prevented Occupy Oakland from retaking the Plaza in front of City Hall where their encampment had stood until being evicted early that morning.1 That evening the riot squad used chemical gasses, rubber bullets, bean bag munitions, and concussion grenades.2 3000 people came out to support the movement the next day, and over 50,000 a week later.

Three months later, on January 28, 2012, members of Occupy Oakland attempted to occupy the long-vacant Kaiser Convention center and restore the social services and social center the movement had had with their two previous encampments. Police used tear gas, concussion grenades, and rubber bullets against a


crowd that included several children. The police also mass arrested over 300 people,\(^3\) prompting a lawsuit\(^4\) for unlawful arrest. These events sparked no mass support and were a clear turning point towards the movement’s decline.

Why does repression mobilize and expand the movement in one moment and demobilize it in another? Theories of the policing of social movements focus predominantly on police tactics, the tactics in both of these instances were quite similar, yet their impacts on protest mobilization were quite different. On October 26\(^{th}\) more people spontaneously came out to support the movement than had previously ever been at planned marches or at the camp at any point in time in the movement’s first two weeks of existence in Oakland. That night the General Assembly voted to have a General Strike on November 2, 2011, prioritizing shutting down the Port of Oakland, with estimated participation in that mass direct action exceeding 50,000 people.

The days weeks and months that followed January 28\(^{th}\) involved numerous attempts at regaining a momentum that the movement could not find. The same aggressive police tactics did not elicit that same mobilizing effect; the movement was instead demonize, criminalized, marginalized. What do these two instances, tactically similar in terms of repression but diametrically opposed in terms of strategic impact


\(^4\) Steven Angell, et al. V. City of Oakland, et al. United States District Court, Northern District of California (Case # C13-0190).
on mobilization, tell us about the nature of protest policing and the persistence of popular protest in the face of aggressive policing? What other facets of policing and social control, as well as their contexts in relation to movement tactics and popular support, need to be analyzed in trying to make sense of the potential for social movement persistence and growth, or the persistence of social control? These are the questions that animate this dissertation.

The Social Control of Social Movements

The two main mechanisms of protest movement social control, physical force and negotiated management, dramatically failed in Oakland in the fall of 2012. This dissertation provides both an explanation of why they failed but also how they were eventually successfully restored. Beyond the simple ebb and flow of movement activity, there was a clear and conscious, if not always centralized, set of efforts to reestablish social control and destabilize the movement. These efforts came from a range of actors – the police, the Mayor, the City Administrator, the mainstream press, pro-police groups, the Chamber of Commerce – sometime in a coordinated fashion, other times not. Occupy Oakland overcame negotiated management, and repression was seen as illegitimate, for a period of time, but these tools of social control were reconstituted relatively quickly. Looking at the fall of 2011 as a political opportunity initially seized and then closed, it is more illustrative to see that opportunity as an effect and not a cause, as a reality forged by the movement itself. On October 25th, hundreds of people withstood ongoing barrages of less-than-lethal weapons. It was the critical wounding of Marine veteran Scott Olsen that put a face on the police
violence of that night.\textsuperscript{5} That police violence, that opened up a significant political opportunity that simultaneously mobilized and expanded the movement while demobilizing aggressive street policing in the coming weeks, would not have happened if people had simply dispersed or been deterred by the waves of less-than-lethal weapons. As in any society, stability and social control are the norm, therefore studying how social control works illuminates not just repression of social movements, but the terrain upon which they operate and the most immediate struggles they must transform in order to succeed.

My epistemological approach is to see how repression works by examining how it failed, then tracing the various techniques utilized to refashion those same techniques of repression into functional tools of social control – techniques that ostracize militancy, neutralizing the movement’s capacity to be significantly disruptive, to drive or exacerbate wedges in the movement, and ultimately demobilize the movement. I have found that various political, social, legal, and ideological contexts in which both the policing of protest, and protest itself, are embedded, were key to making both negotiated management\textsuperscript{6} and strategic incapacitation\textsuperscript{7} effective in the months that followed. Furthermore, both the mass disruption of the fall and the reestablishment of order in the winter and spring showed a clear, mutually

\textsuperscript{6} Negotiated management entails negotiation and cooperation between protesters and police over the time, place, nature and tone of protest.
\textsuperscript{7} Strategic incapacitation involves quasi-military techniques to control space, utilize surveillance, target unruly demonstrators, and deploy less-than-lethal weapons against demonstrators.
constituted, relationship between negotiated management (even when rejected by demonstrators) and legitimated police aggression. The uncommon coupling of a modern American movement that refused to negotiate with police and city officials but retained (and gained) significant public legitimacy lends major insights into the potentials for disruptive protest. The various pillars of support that aided the reestablishment of negotiated management and physical repression illustrate both how broad processes of social control are, but also the overarching logics and numerous points of contention within this network of control.

The literatures on modern protest policing in the United States (and the Global North generally) focus on two primary, and at first glance divergent, social control strategies – strategic incapacitation and negotiated management – compared, integrated and analyzed at greater length in Chapter 2. Strategic incapacitation has been aided by increased police funding, training and coordination in the last forty years. It is a set of techniques aimed to intimidate protesters and disrupt protests through use of quasi-military techniques (Noakes and Gillham 2006, Gillham and Noakes 2007; Vitale 2007; Noakes, Klocke and Gillham 2005; Rafail 2010; Oliver 2007; King and Waddington, 2006). Seemingly paradoxically negotiated management has evolved in the last forty years as a form of cooperation between protesters and police in planning and orchestrating demonstrations, where march routes, tactics, timing and other factors are agreed upon by both protesters and police, making repression less necessary. Negotiated management and physical repression are discussed further below. My research in Occupy Oakland suggests that not only
are negotiated management and repression intimately related, they are socio-politically mutually constituted. Both sets of techniques are also dependent upon much broader social, political and cultural processes to create a terrain upon which they can be successful at maintaining social order, preconditions that were absent in Oakland in the fall of 2011.

**Occupy as a Tactic: General Obstacles to Repression**

The Occupy movement in the United States, and Occupy Oakland in particular, presented a series of new obstacles for police and city administrators in three distinct ways - tactically, organizationally, and in terms of public support. The tactic of occupying public space is not new. 8 But open, public encampments presented a series of problems the police and potential liabilities for cities. On the first day of the encampment in Oakland, police ceded that the camp could be used as a cover for petty criminal activities and that they would have to weigh the enforcement of the law with the need to maintain general order. 9 This approach falls within what Noakes and Gillham (2006: 101) define as the policing logic of negotiated management, tolerance for minor violations and disruption so as not to provoke more serious disorder from protesters or instigate disruption in the process of

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8 Earlier US movements that utilized occupation as a tactic are varied: the Flint Sit Down Strike of 1936-7; the Student Occupations at NYU in 1968; the American Indian Movement occupation of Alcatraz from 1969-71; and more recent student occupations at the New School in NYC, UC Berkeley and UC Santa Cruz.
9 Source: declassified email exchanges between city officials and OPD. Daniel Willis and Thomas Peele. “In Their Own Words: Occupy Oakland According to City Officials – Part 1.” Oakland Tribune. 2/25/12.
police repression. This policing approach was eventually deemed untenable in Oakland, given the widespread militancy and anti-police sentiment of the movement.

It was the legal liabilities the camps posed that would eventually get turned into rationales for a coordinated national raid on almost twenty encampments in late-November 2011. City officials, cited real, but largely exaggerated, health and public safety risks that the camps presented, including sickness, sanitation concerns, fire hazards, and various inter-personal crimes. The tactic of occupying urban space in city centers, drawing attention to inequalities and injustices through communal civil disobedience, garnered widespread support and was a tactic that spread all over the country in a matter of weeks, and a tactic for which the police and city officials had no immediate plan. The eventual solution, drew upon the same paternalistic logic and bureaucratic legalisms that define negotiated management, which have always been premised around reducing risk and disruption.

Unlike the Anti-Iraq War movement, where the primary tactic was mass marches, or the Alterglobalization movement, which featured more disruptive mass marches, blockades and actions, often aiming to obstruct major trade summit meetings, Occupy was entirely different. Where negotiated management largely defined the Anti-Iraq War movement, where marches were almost always permitted and orderly, orchestrated to mitigate the need for aggressive policing, the Alterglobalization movement was more decentralized and less likely to cooperate with police, featuring a wide array of militarized police repression (Noakes and Gillham 2006, 2007; Fernandez 2009; Starr, Fernandez and Scholl 2011; King and
Negotiated management and strategic incapacitation are the two main policing methods to control protest movements, despite the increase in the prevalence of militarized policing since 1999. Simple repression of the encampments ran the risk of being seen as unjustified, as it was in Oakland in late-October, particularly in light of the public support discussed below. In general, negotiated management was highly limited in many Occupy sites and basically non-existent in Oakland. This presented a conundrum for police for which there was no easy answer. When negotiated management proved impossible to establish in Oakland, the remaining option of police repression became a counter-productive strategy of social control. The mistakes that were made in attempts to repress the movement quickly turned into political opportunities that were successfully seized, compounding the problem of social control for police and city officials facing a popular and expanding movement.

A second key way in which the overall nature of the Occupy movement frustrated traditional methods of social control was its organizational and leadership structures and its decision-making process. The decentralized nature of the movement was a barrier to the establishment of negotiated management in many cities, Oakland in particular (Noakes and Gillham 2006). Negotiated management is contingent upon political organizations within the movement, or leaders (often self-appointed), negotiating the terms of protest with the police. Occupy, to an even greater extent than the Alterglobalization movement, which was itself largely decentralized, had no official leadership and was been basically a horizontal
movement. In Oakland, this was coupled with the movement being largely comprised of veterans of previous militant movements that were reciprocally hostile to the police. The lack of official leadership was not the only barrier to negotiated management.

A wholly decentralized movement is not impervious to negotiated management since city officials would simply need to find one grouping in an occupation willing to negotiate with police. The existence of General Assemblies as decision-making bodies and political centers, provided autonomous political structures through which major decisions about the movement needed to be made and a process through which legitimate decisions about movement activities (including potential decisions to cooperate with police, negotiate with city officials, take out permits, etc.) are made. This provided protection from small groups seeking to coopt the movement from within, or pursue strategies of negotiated management with police. In Oakland, city officials were barred from speaking at General Assemblies and police were not allowed within the encampment for any reason. The General Assembly as a counter-institution, is an organizational component of the movement that allows for decisions to have legitimacy and for movement decisions to be participatory and directly-democratic. It is also strategic in the sense that it mitigates the myriad limitations and short-comings of top-down models of organizing while

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guarding against a complete tyranny of structurelessness where there is no political center or accountability (Freeman 1989).

Consensus decision-making at General Assemblies, where decisions initially need ninety-percent or universal agreement in order to be approved, is typically a brake on any contentious decision getting approved. While this often serves to stifle decision-making on contentious issues and silence minority opinions, in the context of negotiated management the likelihood of achieving consensus in favor of cooperating and coordinating with the police is often extremely dim. In general, this structured horizontalism, the existence of a political center and collective decision-making institution created a structural constraint against cooptation and negotiated management while a consensus decision-making process thwarted any contentious proposal, including negotiating with police and city officials. To varying degrees, the lack of any official leadership, gave local police departments and city officials no one to negotiate with or hold responsible and the barriers presented by consensus decision-making processes served to self-institutionalize the movement, protecting it from cooptation – making negotiated management an impossibility in many cities such as Oakland.

A third major factor that frustrated the repression of Occupy was its immediate national visibility and widespread public support. After years of bipartisan neoliberalism producing the most significant economic crisis in generations, followed by multi-trillion dollar corporate bailouts and years of recession, the emergence of a largely populist movement resonating with the public around issues rarely addressed
by government leaders – the foreclosure crisis, budget cuts, bank bailouts and unaccountability, etc. – created a barrier to repression. Public opinion can be a structural constraint upon repression, bringing into question the legitimacy of police and the political order, if and when applied (Waddington 1998: 66-8). Social movements and the repression of social movements, like any political processes in society, are not simply based off of resources and official positions of power (whether financial, legal, or political), they are, to varying degrees questions of public legitimacy. In Oakland, as city officials were becoming aware of the substantial threat the encampment posed for social order, there was confusion and tension as to how to disrupt it without creating significant blowback, as repression might be perceived as an illegitimate attack on a social justice movement by the public, against a movement that was simply camping in front of city hall.11 Those fears, that Oakland’s Mayor Quan privately expressed to other city leaders,12 soon materialized, as police violence after the first encampment raid garnered massive public sympathy and forged a political opportunity for the movement, which the movement translated into mass action the following week – bringing out over 50,000 people to successfully shut down the Port of Oakland on November 2, 2011.

12 Ibid.
The Failure of Social Control and Repression in Oakland

For various reasons all of these contexts which shape the viability and efficacy of social control – whether negotiated management or police repression – were unfavorable to the police and city officials in Oakland. Negotiated management proved impossible to forge in an encampment that fashioned itself as an autonomous commune, self-styled after the Paris Commune, where anti-capitalist and anti-police sentiment were not only present, but widespread. Not only could police find no one to negotiate with, they were physically confronted and verbally abused when they would attempt to even go near the perimeter of the camp. Letters from City Hall were burned at General Assemblies. In terms of public opinion the police themselves had been the target of many recent major protest movements. Tactics used against antiwar protesters as well as general police abuse and misconduct, including the Oakland Riders scandal, had further tarnished a police department already well-known for political repression and abuse of subaltern communities. Physical repression of a progressive/radical populist movement, which was riding the momentum of democratization movements in the Arab world earlier that year, in what is arguably the most Left-leaning urban area in the United States, held with it the serious risk of blowback for the city.

Negotiated management has been fostered over the last four decades to preempt public outcry against police aggression, by making police aggression less necessary. It is erroneous to see police violence or aggressive police tactics (riot police, less-than-lethal weapons, mass arrests, etc.) as simply misconduct or as a result of poor training. As several theorists have noted these tactics have become widespread since the Seattle World Trade Organization protests in 1999 (Noakes and Gillham 2006, 2007; Fernandez 2009; Starr, Fernandez and Scholl 2011; King and Waddington 2006; Wood 2007; Vitale 2007; Noakes, Klocke and Gillham 2005).

Police generally use force when it is necessary to maintain order. The threats posed by the social movements of the 1960s, the repression necessary to maintain social order in that historical moment, and the resulting loss of legitimacy for the police and broader structures of political power, necessitated a different approach, an alternative to force that maintained order and police legitimacy – primarily negotiated management. When police in Oakland were incapable of getting the movement to abide by its wishes through persuasion, force was the only option left on the table. The fears expressed by Mayor Quan and others, that repression would create a martyr of the camp and the movement, engendering public support and ultimately proving counter-productive, turned out to be particularly astute.16

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16 Source: declassified email exchanges between city officials and OPD. Daniel Willis and Thomas Peele. “In Their Own Words: Occupy Oakland According to City Officials – Part 1.” Oakland Tribune. 2/25/12.
At 4 A.M. on the morning of October 25, 2011, several hundred riot police arrived to evict the Occupy Oakland encampment.\(^\text{17}\) Barricades were erected around the perimeter of the park, but with only a couple of hundred occupiers present at that hour, there were only enough occupiers to defend a small part of the park and the idea of defending it was abandoned.\(^\text{18}\) With the exception of those that stayed to commit passive civil disobedience, there were few arrests as the police cleared the park and tore up the camp, shredding tents, dismantling makeshift social centers and trampling belongings. A hundred occupiers marched throughout downtown for hours, but went home amidst the bustle of the morning commute and what the police hoped was a return to normalcy in downtown Oakland.

Later that day a few thousand came out to protest and march in opposition of the eviction, finding the park where the camp had stood cordoned by hundreds of riot police. As night fell and the number of demonstrators dwindled to about 1000, the police attacked the demonstrators with less-than-lethal weapons for several hours. As occupiers approached 14\(^{th}\) and Broadway (at the perimeter of Oscar Grant Plaza where the camp had stood) to meet the rows of riot police assembled from over a dozen Bay Area police forces, volleys of concussion grenades, tear gas, CS gas, and rubber bullets were fired at the soon retreating crowd. The police held their line, but demonstrators kept coming back, and were met with more aggression in the form of wave after wave of police projectiles and chemical weapons. This process went on


\(^{18}\) Ibid.
for several hours. During this process, Marine veteran Scott Olsen was hit with a tear gas canister from very close range, critically wounding him, and putting a bloodied human face on the now martyred movement. The police violence was immediate global news and quickly solidarity was expressed from other centers of the movement in Cairo, New York City, and elsewhere.

The following evening of the 26th brought over 3000 people to downtown Oakland, who reclaimed Oscar Grant Plaza as police were now ordered to desist. The encampment was re-erected that night as the movement’s largest ever General Assembly, voted in favor of a General Strike, that would grind downtown Oakland to a halt and shut down the Port Oakland on November 2nd. Police repression evicted the camp, but for a mere 36 hours. On the evening of October 26th, the encampment was back, a political opportunity had been created by the police and quickly seized by the movement, as the police were ordered to stand down – an order that would extend to two subsequent Port shutdowns. The bravery of the movement to face repression was turned into emboldened and legitimate mass action after the application of that repression on the evening of October 25th. I was one of several hundred who found themselves coughing up chemical weapons for days after that night, but those days also included taking back the plaza, voting for a General Strike,

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a beginning to plan actions that would take advantage of the political moment that the police created with their aggression. As Scott Olsen lay in his hospital bed, and many others nursed contusions from various police projectiles, the only political victim of the police violence on the night of October 25th were the forces of social control themselves, a reality made globally visible by over 50,000 people descending on, and shutting down, the Port of Oakland a week later.

Structure of the Text

The story this dissertation tells is quite divergent from the emphasis of this chapter. While Occupy Oakland started as a militant movement which successfully refused negotiated management and weathered repression in the short-term to orchestrate successful mass actions, social control reemerged, not simply through policing tactics, but broader sets of coordinated and uncoordinated efforts to divide, discredit and demobilize the movement. The following four chapters are devoted to these broader forces and the contexts which help shift repression from illegitimate to warranted. What these contexts and supportive structures are, how they coalesce with each other and with police tactics, and how these forces navigate the various social and political contradictions entailed in suppressing movements are questions I will answer in the remainder of the dissertation.

Chapter 2 traces the evolution of police street tactics from October 2011 until May 2012. While the literature on repression is correct to note the extent to which the new penology approach to protest repression routinely violates protesters’ rights,
and uses force (which is often determined to be legally unjustified) to maintain control of protest events, there is an underappreciation of the potential political, legal, and financial costs associated with these tactics. While lawsuits, public critiques of the police, and potential legal oversight over police tactics are known factors to police and city officials which do not have much measurable impact or deterrent effect on the application of repression, Oakland, in part because it has arguably led the way in flaunting repercussions for police misconduct, found itself in a different position. The Oakland Police Department has been under federal oversight for almost ten years due to brutality against anti-war demonstrators in 2003 and widespread police misconduct and scandals. In recent years they have been on the verge of becoming the first major police department to put under federal receivership. The need to maintain order after October 25th, without perpetuating another public outcry over police brutality, was a fine line that the OPD walked over the next eight months, as an independent commission was in the process of evaluating the dozens of instances of misconduct on October 25th alone, and the threat of federal control over the police force shifted from a potential to an immanent possibility. I trace the evolution of police crowd control tactics over this period, tactics which continued to fit squarely within the logic of strategic incapacitation. These tactics, despite constant challenges and lawsuits, were able to regain social control amidst substantial political, legal and financial constraints.

Chapter 3 examines the role of federal coordination in the 2nd encampment raid in Oakland, part of an 18-city sweep in mid-November. The Mayors of these 18-
cities were on conference calls with the Police Executive Research Forum (PERF), a think-tank specializing in policing protests, as well as joint calls with the Federal Bureau of Investigation and the Department of Homeland Security. Homeland Security denies that they were in command of local policing in all of the cities with encampments, and the exact nature of PERF/FBI/DHS advice is still a point of some contention and mystery. What is clear is that all 18 of these cities pursued an almost identical strategy for evicting their camps in mid-November. The whole world saw how disastrous the Oakland Police’s handling of the October 25th eviction turned out to be, there was clearly a universal concern among political leaders to not replicate that failure on a mass scale in their effort to destroy the movement’s camps. The November raids were successful at destroying the visibility and physical centers of the movement on a national scale, without significant blowback. Oakland’s camp was torn down, and never reemerged, the police controlled the space without having to revert to the mass deployment of less than lethal weapons. Aside from that difference, the goals of destroying the camp, and the tactical policing means used to achieve that end, were largely identical to the first raid. It was not the tactics of strategic incapacitation that explain the difference in the public’s response, but the supporting political and ideological processes that justified, normalized or rationalized those tactics. I argue that it was the incorporation of elements of negotiated management as a normative structure that helped to situate the police and their objectives as legitimate.
Chapter 4 provides a micro-level examination of the application of negotiated management and strategic pacification methods which draw from existing anti-gang techniques in the City of Oakland, to surveil, target and criminalize specific actors and control public space. Through a combination of physical repression and surveillance, enhanced by the passing of a permit for the Plaza after the 2\textsuperscript{nd} raid, as well as restraining orders against many occupiers restricting access to the Plaza. Activists with criminal records and those who continued to distribute food and maintain a presence in the Plaza were targeted by police in an effort to control urban space and targeted populations. The police drew upon civil and criminal law, and its interpellatory power\textsuperscript{22} (Althusser 2001: 117-120), refashioned from anti-gang initiatives, to both target specific individuals and geographic areas while further creating a public image of the movement as being inherently apolitical, dangerous and criminal – themes that would persist in the following months, shaping Occupy Oakland and the repression of it.

Chapter 5 details the last major direct action that Occupy Oakland attempted, the occupation of the vacant, publicly-owned Kaiser Convention Center (discussed at the beginning of this chapter). Using press releases, declassified police documents, primary documents from the San Francisco Chronicle and participant observation from interviews I did with various news reporters, I examine the relationship between political delegitimation and aggressive police.

\textsuperscript{22} Interpellation refers to the process through which state ideologies and definitions are materialized through the discrete practices of state subjects in relation to subaltern bodies.
A core aspect of policing and the repression of dissent is legitimacy, which is a socio-political process, not a tactical issue. The movement had mass support from one of the more progressive urban centers in the country. After the first raid thousands came out in support, not knowing if they would be subject to the same brutality they had seen via mainstream and new media after October 25th. The initial repression, instead of driving people fearfully back into their homes, drew out tens of thousands to take direct action. Where did those people go? The answer is hard to quantify, but a facet of social control in the context of social movements that gets underanalyzed is the role of ideological supports, the state and media as educators, and the construction of a common sense around the social control of movements that nonetheless resonates with the public. Despite standing against police brutality, foreclosures, and budget cuts, in a progressive city with a radical past plagued by these problems, how did the movement go from being a martyr in the eyes of the public to being defined as a social problem, all within three months – with a Progressive Mayor declaring the movement a criminal enterprise rather a social movement? How were both negotiated management and strategic incapacitation intertwined through political discourses and press coverage? What does this tell us about social control generally and the efficacy of police tactics specifically?

The Positionality of the Researcher and Methods

I came to this topic, after having already been involved in the movement for many weeks. It was the breakdown of social control in October and November that illuminated to me that there were lessons to be learned about how and why social
control tactics break down and also that the academic and movement literature could benefit from a broader view of social control, beyond simple police tactics. My role as an participant observer and ethnographer grew out of my already existing extensive involvement in Occupy Oakland as well writing as a series of popular analytic reports on Oakland and the broader Occupy movement. The impetus behind this dissertation is partly an effort to document a popular movement and the barriers it tried to overcome, and partly an effort to advance the analytic understanding of protest policing within the academy and social movements themselves. To that end, the overall emphasis of the text is geared towards better understanding repression and social control so that it may be overcome. While this could be argued to be partisan, I do not feel it differs from innumerable studies geared towards honing forces of social control, though its allegiances are squarely different. Each chapter derives data from numerous empirical sources, from ethnographic fieldwork and discussions with hundreds of participants, but also from internal police documents, declassified materials, and newspaper data.

My experiences at the vast majority of dozens of General Assemblies from October through January, and beyond, as well as conversations and relationships built during this period gives me a broad knowledge of what the core of the movement was in these months. I spent hours sitting in meetings, shivering outside in the park, in apartments, in bars, in basements. I facilitated meetings, made flyers, talked and organized with workers. I was a press liaison for the December 12th Port Shutdown, which brought me into contact with several journalists, getting a sense of some of the
assumptions and preoccupations driving their writings. All of this field experience largely serves as a backdrop throughout the dissertation. My focus is on the social control tactics used against the movement, and not a proper ethnography of the movement. However, from being very involved in the movement, I have knowledge of the significant moments of social control, including some, like the raids on the Occupy Oakland Vigil discussed in Chapter 4, that got little public attention. My fieldwork serves as a backdrop and context for the wealth of declassified city and police documents and communications as well as purposive uses of the mainstream press.

From a critical criminological standpoint that emphasizes power relations, my aim is to uncover how social control processes work, not to offer a crude condemnation of structural injustices or offer long polemics against the police. My goal is to uncover how and why repression succeeds, through meticulously examining an empirical reality that I also lived, sometimes sixty to eighty hours a week.

My interest, questions and theses were originally geared to help create change, later, in popular writing, to makes sense of the evolving tensions between police and protest tactics, and then as a social scientist mapping the broader trajectories of protest and strategies of control, how they sit in relation to history and the literature. I feel that a strength of my approach is that, because of my extensive involvement as an organizer in Occupy Oakland, my analysis is academically stronger. My initial hypotheses about police repression were predictive rather than descriptive, coming from my experiences in the movement planning actions, talking with other Occupiers
about when the raid would most likely take place and what it would look like, what
the police would do at the next march, seeing friends go through the legal system,
debating tactics, repression and history with newspaper reporters, calling a friend on
the East Coast in the middle of the night after the Plaza was retaken on October 26th,
asking for help starting an article to get published later that day, explaining to the
world how repression had failed in Oakland and the complex terrain the police would
now have to navigate to regain control. While my analysis was not always right, and
my writing often deliberately overly-optimistic and occasionally saucy, I feel that this
dissertation benefited from those extra layers of analysis from a different angle than
that of a “detached observer.” Coupled with the wide range of empirical data I feel
certain that the reader will find this work well grounded and insightful, if
admittedly critical of police repression.
Chapter 2

From Permits to Storm Troopers:

Repression, Social Control and the Governmentality of Protest

The sociology and criminology of protest policing is usually developed from observing protest movements failing to break from various techniques of social control. Ultimately, this study fits that same mold. However, I chose this dissertation topic after witnessing the breakdown of social control in Oakland in October and November of 2011. The academic literature, and the literature on political and protest repression more broadly, does not usually focus on the moments that movements “escape the panopticon,” or analyze the instances when police violence turns hundreds of protesters into tens of thousands of demonstrators. In the months that followed, as I participated and studied the movement, I saw how various techniques of social control were deployed rather quickly and what their effects were. The remainder of the dissertation traces how social control was regained, the techniques used, the logics and strategies that they were connected to, and how these forces eventually negated Occupy Oakland’s ability to be disruptive and effective on a large scale.

A major addition that I feel this study brings to the literature is providing socio-political context to the dominant methods of controlling social movements. Protest and repression do not exist in a vacuum, they are ultimately both driven by the need for popular support. With movements trying to pursue systemic changes, the
police are tasked to preserve the existing order. This obviously elicits conflicts between protesters trying to disrupt, and police trying to preserve, the social order. Starting from this very basic relationship, the question of popular legitimacy invariably comes into question – when there is conflict, who has support? As Weber outlined in 1918, the power of the police, and government more broadly, is rooted in the legitimate use of force, the creation and application of law, jurisdictional control over social space, etc. (Weber 1946: 77-80). But as Weber also noted, and Gramsci would explore in greater detail, the legitimacy of the state’s force is not immutable or permanent, though it is the norm. The repression of protest, as with any type of policing, is political – rooted in bureaucracies, legacies of governmentality, and discourses of legality, normalized in relationships and routines – but it is ultimately contingent upon public cooperation and support. In Oakland, this cooperation and support broke down after the police violence on October 25, 2011 – creating a political opportunity that the movement quickly capitalized on. Repression mobilized solidarity with the movement while simultaneously demobilizing repression during the two Port Shutdowns on November 2 and December 12. The political costs of maintaining order had overcome those of preserving any semblance of traditional order in downtown Oakland or on the Port.

**Reconstructing the Theory of Negotiated Management**

Analyses of contemporary protest policing in the Global North focus primarily, and at first glance, paradoxically, upon “strategic incapacitation” (Noakes
and Gillham 2006) and a model of protester police relations known as “negotiated management” (McPhail and McCarthy 2005). Strategic Incapacitation (SI) encompasses a wide range of aggressive police tactics designed to neutralize disruptive protesters through police control of geographical space, less-than-lethal weapons, preemptive arrest and surveillance (Noakes and Gillham 2006: 108-11). Negotiated management is a model of police-protester “cooperation,” where the logistics, terms, tactics, and tenor of protest are negotiated and agreed upon, usually resulting in a protest permit among other restrictions. These two theories of protest policing are understood as separate models, largely existing in separate eras, with strategic incapacitation emerging as the dominant model of protest policing after the 1999 World Trade Organization demonstrations in Seattle. The police talk about a new type of protesters emerging in this moment (Graeber 2007: 389; Noakes and Gillham 2006: 98) and the strategic incapacitation literature outlines, quite well, the “new type of protest policing” that has emerged as a response.

My experiences in Occupy Oakland illuminate two major omissions in the literature on protest policing. First, in contrast to almost all of the theoretical work analyzing negotiated management, it is squarely, and always has been, a form of repression.\(^23\) Permits, protester liability mandates, movement self-policing, sharing information with the police, etc. are all forms of social control even when there are not arrests or police aggression. Second, negotiated management is a form of repression even if it is rejected. Negotiated management has become a normative

\(^{23}\) Tilly defines repression as “obstacles by the state (or its agents) to individual and collective actions by challengers” (2005: 3).
expectation of protesters, a model that, if refused, becomes the socio-political grounds upon which the delegitimation and criminalization of movements (or movement sectors) is established, and effective strategic incapacitation is enacted. Not only is negotiated management a form of repression, it is intimately entwined with strategic incapacitation. Recognition of these relationships should help us establish a broader view of the policing and social control of protest, and help show how strategic incapacitation is legitimated in the existing political culture.

**Negotiated Management as Repression**

McPhail, Schweingruber and McCarthy (1998) have theorized negotiated management as a means to protect 1st Amendment rights and mitigate police violence through the normalization of protest permits and other formal and informal means of communication, coordination and mutual agreement between protest organizers and police (51). Negotiated management emerged from the crisis of the 1960s, where violence at protests was common and police were increasingly seen as illegitimate by the public because of the repression used against protesters. While noting the banalization of protest in some respects, McPhail, Schweingruber and McCarthy (1998) see negotiated management as a form of progress, away from the norms of police repression in the 1960s, a policing model that they have termed escalated force. Statistical evidence supports the thesis of a trend away from police violence from the 1960s through the 1990s. Soule and Davenport found that police aggression in the 1970s and 1980s was half the rate of the 1960s, but note that we should see
police repression as correlated to the threat posed by protesters. What is missed in these analyses is how negotiated management, itself, is a form of social control. The militarization of protest policing that has arisen in the last 40 years alongside negotiated management is not treated in these discussions. I examine this seeming contradiction of less common police aggression alongside the evolution of militarized policing in the era of negotiated management later in the next section.

Tilly defines repression in terms broader than simple physical aggression, as “obstacles by the state (or its agents) to individual and collective actions by challengers” (2005: 3). Marx (1998), and McPhail, Schweingruber and McCarthy (1998) themselves, note how negotiated management gives police influence over the nature, time, place and particulars of protest. These serve as a large set of obstacles to protest disruption, made all the more powerful by the extent to which they are incorporated through the segment of the movement that takes on the negotiating. The permit-holding, (police-sanctioned) leadership of the movement – those that have their name on the flyers, those who control the stage and microphone, those who lead the march, those who receive tax-deductible donations (so long as they have a permit), those who get to take out the next permit so long as there is no disruption at the protest prior (McCarthy and McPhail 1998: 94, 100-104) – agrees to these terms on behalf of the whole movement, internalizing repression by acting as adjunct “staff” for the police, while also legitimating, normalizing and making less visible the restrictions on free speech imposed by negotiated management.
Several authors have referred to negotiated management as a form of repression designed to neutralize threats before they emerge, maintaining order, while reserving violence and maintaining legitimacy for the police (King and Waddington 2006; Fernandez 2009; Starr, Fernandez and Scholl 2011). Theories of protest must take into account disruption and repression, as well as the question of legitimacy since they are foundational aspects of political protest as well as social control. It was the perceived illegitimacy of the police in the eyes of the public, combined with subsequent legal rulings calling for the reform of protest policing, that ushered in the era of negotiated management in the first place (McPhail, Schweingruber and McCarthy 1998: 63). While negotiated management is more complex than this, its use as a tool to neutralize disruption and to serve as an invisible form of repression that maintains police legitimacy is key to making sense of the modern social control of protest movements generally.

The almost universal absence of negotiated management in Occupy Oakland, and the subsequent physical repression of the movement by police following the first encampment eviction, led to a loss of control for the police – the resurrection of the camp and two shutdowns of the Port of Oakland in the next six weeks which featured minimal policing, in fear of the further counter-productiveness of police violence. The over-eagerness of the attempt to create social control after the first raid of Oakland’s encampment on October 25, 2011, created a crisis of legitimacy for the police and the failure of those social control efforts, which made subsequent control efforts far more difficult. The city’s loss of social control illuminates the nature of
modern social control, the continued importance of negotiated management and other mechanism of police legitimacy, alongside new methods of physical repression, as well as the various social forces and contexts which determine the efficacy of these two primary social control techniques.

Two Literatures on the Policing of Protest in Historical Context

McPhail and McCarthy see negotiated management as a model of police-protester coordination emerging out of the 1960s model of escalated force, where physical repression of protest was far more common and often indiscriminate than in the period from the 1970s through the 1990s. Soule and Davenport (2009: 4) found the level of aggressive policing in the 60s to be about twice the rate of the 70s and 80s. Negotiated management arose via various legal decisions, mostly in the 1970s, amidst the backdrop of numerous riot commissions, the Church Committee hearings, Watergate, and widespread disillusionment with the government. There was Pressure was put upon police forces, particularly in major cities, to uphold 1st Amendment rights to free speech and assembly while maintaining social order and limiting police aggressiveness (McPhail, Schweingruber and McCarthy 1998: 55-62).

Negotiated management emerged to attempt to resolve this tension, which had been heightened in the 1960s, between the need to maintain order and police/government legitimacy in the face of popular protest. It is characterized by

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24 While there are several potential problems with the data, such as underreporting of aggressive policing in later years as well as changes in the nature of protests (as Soule and Davenport note), or the social status of those protesting or various forms of oversight over police abuse, the basic shift in policing that McPhail and McCarthy outline is accurate.
situations in which “protest organizers give notice of their intent to demonstrate or obtain a permit to protest. In each case, an opportunity is created, if not required, for contact, interaction, and negotiation between police and protest organizers regarding the purpose, the time, place and manner of protest” (McPhail and McCarthy 2005: 5). The authors argue that this puts limitations on both police and protesters, marking negotiated management as an improvement and an evolution of democratic assembly, assuring freedom of speech and limiting police violence. The police are seen as markedly more tolerant and utilizing minimum force, the 1st Amendment is better protected, communication is more open and extensive, and arrests less frequent and more civil (McPhail and McCarthy 2005: 5). They note the banalization and institutionalization that has come to define most major protests, but conclude that the decrease in violence facilitated by police-protester cooperation outweighs the drawbacks, “as protest has been incorporated as a normal part of the political process” (McCarthy and McPhail 1998: 109). By incorporating protest as “a normal part of the political process” negotiated management has contained protesters’ ability to disrupt or fundamentally change that process. Permits grant more power to police, incorporating police into the nature of permitted protest, while also drawing permit holders into aspects of policing. Negotiated management is designed to make protest less disruptive, to decrease the threat posed, which invariably diminishes the need for brute force. Given that Piven and Cloward define social movements themselves as disruptive and defiant (1977: 4-5), it is probably more accurate to say that negotiated management has created a lower form of protest, highly controlled externally and
internally, stripped of its disruptive capacity, rather than arguing that it has created a higher standard of policing.

Fernandez (2009) and Starr, Fernandez and Scholl (2011) also draw attention to and make sense of the apparent contradictory forces of modern protest policing – that of negotiated management coexisting with the militarization of protest policing in the last decades. Parenti (1999), Kraska (2001), and Williams (2011) note how the insurrections of the 1960s prompted massive changes in policing generally, from crowd control to police technology, from police education and training to a plethora of new laws, from new social control techniques on the ground to federal-level coordination. In terms of the policing of protest, negotiated management and militarization of the police have their root in same social crisis, and seek the same social control ends. While having different logics, they are two sides of the same coin (Williams, 2011). The days of street fights between protesters and police armed simply with billy clubs have been replaced with modern protests that either resemble a Catholic Mass (most major anti-war rallies during the movement against the Iraq War) or Martial Law (the Miami FTAA protests) (see: Starr 2006). This should not be seen as an evolution of policing towards peacefulness, nor an evolution of protesting towards security and free speech. Negotiated management is not simply peaceful coordination, but a multi-layered form of social control. It is not an evolution away from police aggression: police aggression and negotiated management are two sides of the same coin.
Cycles of Police Violence, and the Quest for Legitimated Social Control

My experiences and research in Occupy Oakland demonstrated how negotiated management is much more than simple permits. Though there was one permit taken out during the course of the movement’s existence, which was effectively used as a tool of repression as discussed in Chapter 4. A facet of negotiated management not theorized in the literature arguably had more bearing in terms of the social control utilized against the movement. The literature sees negotiated management as both a model of policing and an era of protest policing that has been significantly waning since the Seattle World Trade Organization demonstrations in 1999 (Noakes and Gillham 2006, Gillham and Noakes 2007; McPhail and McCarthy 2005). In terms of permits, this is largely the case (Vitale 2007: 406), but that does not mean that the logic or normative expectation of protester cooperation has disappeared. This normative expectation of cooperation with police and city officials, whether it takes the form of permits or not, is an element of negotiated management not yet examined in the academic literature, but is a central aspect of my analysis in this dissertation.

The literatures on negotiated management and strategic incapacitation, taken collectively, create a historiography of evolving normative models of protest social control. The history of the social control of protest movements in the U.S. can be read, in a very generalized way as shifting from a 1960s moment of “escalated forced” in the 1960s, to “negotiated management” from the mid-1970s through 1990s, with the 1999 WTO demonstrations marking a second shift to “strategic
incapacitation.” (McCarthy and McPhail 1998; Gillham and Noakes 2007). McPhail, Schweingruber and McCarthy describe escalated force as:

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…. 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. (1998: 53)

McCarthy and McPhail note that the shift to negotiated management was driven by the legitimacy crisis brought on by everything from indiscriminant police force at events like the 1968 Democratic National Convention (1998: 86) to the FBI’s COINTELPRO (counter-intelligence program) of disrupting, discrediting and destroying radical movements using a range of illegal and sometimes murderous tactics. While this analysis is correct, it is also partial. It was not just the brutality of 1960s policing that produced the negotiated management model, it was the threat posed by various social movements, the extent to which the social order was challenged by both entrenched grassroots efforts and widespread rioting and social upheaval, and the degree of legitimacy and support these movements had both domestically and internationally. It was disorder and the threat of substantial social change that prompted both the illegal state violence of the 1960s as well as the legalistic incorporation of protest in the 1970s.

**Police Violence or Police Protection: The Paternalism of Social Control**

The argument that negotiated management constrains police violence, is problematized by Soule and Davenport (2009), and Waddington (1995), in that the
permit is an antecedent variable, to the true independent variable of level of protest
disruption. It is the level of disruption, the threat to social order, which determines the
aggressiveness of police tactics. The permit imposes layers of social control upon
social movements, making physical repression less necessary rather than constraining
it. This has much more to do with the nature of protesting than with the nature of
policing. Movements control themselves so that the police do not have to. However,
the threat of force is ever present, whether through the visible presence of
militarization (extensive riot suits and equipment, less than lethal weapons, tanks,
helicopters, surveillance cameras, assault rifles, etc.) or through periodic displays of
police violence or the imposition upon freedom of assembling bordering upon martial
law. Beyond being two sides of the same coin, there is a dialectical relationship
between physical repression and negotiated management, in that the lack of
negotiated management usually elicits police violence, while the threat of that police
violence elicits acceptance of negotiated management. The dynamic that emerges is a
paternalistic strategy of controlling social movements, akin to a protection-racket,
whereby demonstrators are offered protection from violence by the state, which is
simultaneously threatening the use of violence if the terms of protection are not
accepted (Tilly 1985; Peterson 1977; Young 2003).

Feminist theorists have shown how paternalistic political relationships are
internalized by and shape the political subject itself. Peterson’s discussion of state
power (though in a much different context) encapsulates the capacity of the state to
define political choices so that the subject is left with no two negative options – in
this case, force or negotiated management – which both serve to replicate the state’s power at the expense of the subject. Peterson (1977) points out that:

“The state needs to justify interference which is both deliberate and forceful, and does so usually in two basic ways: according to desert or paternalism. The individual may deserve to have his affairs interfered with (because he has forfeited a right); or though he may not deserve it, it may be in his own interest for the state to interfere.” (363)

Young (2003), posits this same relationship through the metaphor of the patriarchal household, where paternalistic protection demands submission, and the acceptance of inferior positions:

Central to the logic of masculinist protection is the subordinate relation of those in the protected position. In return for male protection, the woman concedes critical distance from decision-making autonomy.... The head of the household should decide what measures are necessary for the security of the people and property, and he gives the orders that they must follow if they and their relations are to remain safe. (4-5)

Peterson and Young make the implicit power dynamics between police and protest explicit, noting how the terms of their engagement are defined, in every instance by the state, and how these roles are inherently disempowering to social movement actors. The social control function of negotiated management stretches far beyond the permit as a discrete mechanism to proscribe tactics and the terms of protest. Whether a permit is signed or not, the modern relationships between police and protesters revolve around negotiated management. It has established itself as the common sense rubric through which protesters understand protest as a process and understand themselves as protesters.

Upon close examination, the threat of repression, the internalization of that threat by social movement actors, and its bearing upon their decision to accept or
forego permits, must be understood as a whole, rather than as a rational choice, a conflict between two evenly-matched sites of power, or a value-neutral peace. Thomas’ (2009) reading of Gramsci’s examination of coercion and consent conceptualizes the inherent mutual constitution of both (166). Instead of protesters having a real choice between coercion or consent – and rather than seeing coercion as a product of consent, or consent a product of coercion – both coercion and consent are part of the same whole, theoretically distinguishable, but practically interwoven. From the standpoint of negotiated management as social control, consent and coercion constitute a hegemonic praxis that establishes norms, in which disruptive challenges to the social order become alien to the process of protest itself. This distinction is key in my discussion of negotiated management as a normative structure in relation to Occupy Oakland.

The Logic of New Penology and the Techniques of Strategic Incapacitation

Noakes and Gillham (2006) have provided a useful framework to understand the “new repression” that emerged after the Seattle WTO protests of 1999, and the different facets of social control used to confront the “new breed of protester” that has emerged, one that increasingly refuses cooperation with police, organizes themselves in a decentralized and often leaderless fashion, and pursues disruptive direct action. Noakes and Gillham (2006), King and Waddington (2006) and Vitale (2007) all argue that protest policing over the last decade-plus has taken on the logic and many of the methods of zero-tolerance policing, including tighter (often, riot) police control over
geographic space, preemptive methods, heightened police aggression against criminalized targets, and an increased use of surveillance and intelligence gathering. This shift in the dominant model of policing, derived from broader policing changes under the rubric of “new penology” (Feeley and Simon 1992) is termed “strategic incapacitation” – the application of militarized policing to neutralize (potential) threats to public order.

Occupy Oakland fits the template of the “new breed of protester” quite well, while the policing of the movement resonates clearly with the methods of strategic incapacitation. However, as previously noted, physical repression alone was not successful in the early months of the movement, raising questions and lending insights into the nature of strategic incapacitation and social control more broadly. Before examining the repression of Occupy Oakland through the lens of new penology, outlining the examples of police efforts at strategic incapacitation, its failures and successes, it is important to briefly examine the evolution of protest policing in the last half-century. In doing so, I draw attention a general misreading of the negotiated management “moment,” that glosses over an important contradiction in the nature of repression that reemerged in Oakland in the Fall of 2012. Negotiated management was always imbued with a logic of new penology and was always a tactic of containment that was inherently repressive, put simply it was the preemption of disruption and control of protest space through negotiation, coercion and consent, rather than preemption through overt force. Seeing the overlap in the strategic goals of negotiated management and strategic incapacitation is
necessary to gain a full picture of police repression. When examined at the level of normative definitions of protest, protest behavior, and justified police force, the two decades in which negotiated management was dominant, laid the groundwork for the efficacy of strategic incapacitation. Strategic incapacitation is, itself, a more sophisticated and technological application of the escalated force approach, the dominant model of the 1960s that forged the crisis of legitimacy which ushered in negotiated management in the first place.

My reading of the history of police repression of protest from the 1960s onward, incorporating the era of escalated force and the subsequent emergence of negotiated management in the 1970s through the 1990s (as outlined by McPhail and McCarthy), as well as the post-1999 period of strategic incapacitation, illustrates a common objective in the policing of protest, and a persistent tension. The common objective is simply to maintain order and prevent or contain disruption, which, in the context of street demonstrations, is achieved through relatively indiscriminate force in the 1960s, through incorporation of police objectives within agreed terms of protest and the use of bureaucratic, legalistic and institutionalized methods of control under negotiated management in the 1970s, 80s and 90s, and increasingly through militarized and targeted policing in the current moment. In a very general sense, this can be seen as a cyclical return back towards a reliance on brute force, but one in which surveillance, advanced methods of controlling space, and preemptive policing against socially marginal actors allows for a much more targeted and effective use of
force. How does strategic incapacitation seek to avoid the contradictions that led to police/state delegitimation in the 1960s and 70s?

A factor in this evolution that requires more examination, which I draw greater attention to throughout the dissertation, is the role of legitimacy in the process of police repression. The legitimacy of police repression, or the lack thereof, in the eyes of the public was the driving force behind the shift to negotiated management as a means of social control. Negotiated management was and is, more than an immediate tactic of social control. It became, and still is (even when not pursued or accepted), a normative structure that seeks to define the very nature of dissent, legitimate certain methods and tactics of protest, as well as clearly demarcate identities for protesters, through which disruption of any kind has become criminal rather than dissent (King 2013b). The weakness of negotiated management from a policing standpoint was the reliance on its willing acceptance by protesters, an acceptance that became increasingly less likely after the Seattle protests in 1999. As police have increasingly used force to suppress dissent over the last several years, questions around the legitimacy of that force have largely been suppressed by a range of factors. The most immediate of these are the targeted and preemptive nature of this new mode of repression, as well as the normative understandings of what legitimate protest is, that were established in the previous three decades, of which negotiated management is but one part. As I discussed in Chapter 1, under certain circumstance the tension between police repression and police (and broader political) legitimacy can reemerge. While I examine how the four facets of strategic
incapacitation were deployed against Occupy Oakland, my starting point is their initial failure. In examining how they were eventually made effective, I draw attention to the various processes and institutions that serve as connective tissue between police repression and legitimacy.

New penology is an extension of the logic of zero tolerance policing, the use of new technology and intelligence to target and preempt marginal populations that pose an implicit or explicit threat to the social order. Many of the tools and strategies used against street protesters over the last decade and a half are derived from law enforcement techniques developed in the wars on drugs, gangs, terror and immigration. These techniques of generalized new penology in the broader field of policing, that find derived parallels in the strategic incapacitation model of protest policing, include new forms of surveillance and profiling (Marx 1988; Tirman 2004; Neocleous and Rigakos 2011), the normalization of preventative policing measures (as opposed to reactive criminal investigation) (Williams, 2006; Harcourt 2001), the control of physical space by police (Herbert 1997; Davis 1990), as well as aggressive, militarized policing (Davis 1990; Kraska 2001). Tactically, the police in Oakland deployed all of these measures before and after the critical juncture of police violence on October 25, 2011, yet these methods were counterproductive at first. While I feel the four tactics of strategic incapacitation\(^\text{25}\) serve as an accurate assessment of the tactical core of modern protest policing, attention to how they are situated in a broader strategy of legitimated social control allows us to see how and why they

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\(^{25}\) 1) Police control of physical space. 2) Preemptive and aggressive policing. 3) Targetted arrests and use of less than lethal weapons. 4) Surveillance.
work, as well as explain moments in which they do not – illuminating the broader social contexts which are the hinge that determines whether repression closes the door on social movements, or allows them to travel through it and make social change.

The preconditions for negotiated management were lacking in Oakland. While police and city officials originally pursued a strategy of passive containment, in keeping with the police goals of negotiated management, it quickly became clear that the camp was not interested in negotiating with them, prompting a contentious shift in thinking towards overt repression. The assumption about police repression within the literatures on both negotiated management and strategic incapacitation suggest that repression against protesters who do not cooperate with police and can be labeled “troublemakers” will be met with minimal sympathy from the broader public. In the raid of the camp on October 25, 2011, and the police force used that night, the techniques used were textbook strategic incapacitation. However, these techniques were not only ineffective, they were ultimately counterproductive, leading to the emergence of a second encampment and the almost complete negation of repression during two subsequent mass actions. The obvious question of “why?” is one I will answer over the course of the book. It is first important to see how strategic incapacitation was deployed in mid-October 2011.

While the tactic of occupation of public space through constant encampment took law enforcement somewhat by surprise, and though their initial efforts at negotiated management failed, the police had a developed plan to implement strategic incapacitation before and during the raid of the camp on October 25th. The objective
of the raid was clearly stated in OPD’s operation plan. The goal was to surround the
camp, announce immanent arrest, clear the camp, arresting anyone who had failed to
leave, and then secure and control the space, preventing “outside agitators” from
reentering the park. The police used military tactics, including less than lethal
weapons and a riot squad consisting of mutual aid forces from over a dozen Bay Area
cities, pursuing clear goals to transform the occupation of Oscar Grant Plaza into a
coordinated police occupation. A City of Oakland Emergency Operations Center
press release\textsuperscript{26} sought to criminalize the occupiers, emphasizing threats to law
enforcement and public order, though they came out quickly right before the raid.
Police also conducted extensive surveillance of the camp, including its security force,
numbers of people in the camp, sleeping patterns of the camp, potential weapons in
the camp, tactics (suspected to be) likely to be used by protesters in conflict with
police, movement communication via social networking, the internet, text and
telephone networks, movement contingency plans in the event of a police raid, as
well as physical surveillance.\textsuperscript{27} The police operations plan squarely encompassed all
four facets of strategic incapacitation – controlling space, using militarized
formations, techniques and weapons, targeting socially and politically marginal

\textsuperscript{26} Emergency Operations Center. “OPD Enforces ‘Notice of Violations and Demand to
Cease Violations’ in Frank Ogawa Plaza.” 10/25/11.
www2.oaklandnet.com/oakca/groups/ceda/documents/.../oak031901.pdf

\textsuperscript{27} Oakland Police Department Briefing. “Occupy Oakland – Frank Ogawa Plaza BFO1-
www2.oaklandnet.com/oakca/groups/police/documents/.../oak032638.pdf
Oakland Police Department Operations Plan. “Occupy Oakland – Phase 1 BFO1-XX”
Oakland Police Department Operations Plan. “Occupy Oakland – Phase 2 BFO1-XX”
protesters for arrest, and utilizing surveillance and intelligence. The camp was cleared on the morning of October 25th, but that night’s defense of the area by police, using a wide array of less-then-lethal weapons, in keeping with the logic strategic incapacitation, created public outcry and police withdrawal, fearful of protest escalation and loss of control. The application of strategic incapacitation directed as a means of social control led to the strategic incapacitation of social control itself.

What the theory of strategic incapacitation introduces, an aspect needs to be more fully examined, is the role of criminalization and more general demonization in legitimating modern protest repression tactics. I feel that the dissertation’s greatest contribution is in establishing and analyzing the relationship between criminalization/delegitimation and police force in regards to modern social movements. Strategic Incapacitation was applied in late October 2011, and failed miserably, not in a tactical sense but in a strategic one. Because the movement was not seen as criminal or illegitimate at that point the movement grew stronger and expanded. This exposes a major fault line in the policing of protest, that quasi-military tactics alone cannot contain popular movements. The dissertation outlines the various ways the political discourse and the law can redefine protest and policing to instill an effective combination of fear, division and criminalization. While these are forms of social control, and were effective in Oakland in late 2011 and early 2012, they should not be accepted as any more immutable than the police aggression just discussed. The police, city administrators and press made use of contradictions on the left and real racial tensions, while utilizing longstanding methods of
surveillance from outside of traditional protest policing (the focus of Chapter 4) and receiving strategic assistance from federal agencies (the focus of Chapter 3). Though the focus of this dissertation is the reemergence of social control and the demobilization of Occupy Oakland, it is my objective to illustrate deeper levels of social control, beyond permits and riots cops, so that movements struggling today can help chart a course to greater strategic disruption once the outer walls of social control have been breached and less tradition forms of repression are deployed.

Tools of Repression in Context

As I demonstrate throughout the dissertation, simply looking at police tactics and techniques of repression (i.e. surveillance, riots squads, less than lethal weapons, permits, etc.) glosses over the social contexts that produce and are produced by repression. As someone who has been active in major protest movements since the 1990s, and as a scholar, I feel that theories of social control need to cover more ground than describing what the protest repression tools are and where they came from. Why is police force seen as legitimate in some instances and not others? Beyond equipment and training, what relation does the war on drugs/crime have on the policing of protest? In the post-COINTELPRO era, what is the role and scope of federal agencies in the policing of protest? What is the role of the press, or other knowledge producers like city officials, in delegitimating movements, dividing movements, and/or criminalizing them? I feel that exploring these questions helps us see, not just what the new techniques of repression are, but how and why they work,
as well as providing a map of fault lines and contradictions that exist within these methods of social control.

For researchers trying to make sense of the policing of protest we need to build upon emerging theories like strategic incapacitation by situating them within the political contexts in which they are deployed, as well as broader forces of criminalization and delegitimation that make those police tactics politically operable. Participants in social movements also need to look beyond tactics (i.e. “nonviolence” versus “diversity of tactics” debates) and street policing towards defining what political success means for modern movements today in the short- to mid-run. If social control is not just about controlling physical space, but negating political space for social change, what are its weaknesses and contradictions and how can they be exploited?

Towards an Analysis of the Governmentality of Protest

In trying to get from “what social control is” to “how it works,” Foucault’s concept of governmentality is helpful in tracing techniques of repression and placing them within broader logics of social control (Foucault 1994: 201-222). My analysis sees police force and permitted acquiescence as two primary, but not exclusive repressive means to the social control end. The goal of government is to maintain the social order and not simply to repress. Despite important and measurable changes in the use of police force, impediments placed upon the rights of free speech, assembly and association, and the general predominance of neoliberal values and policies in the
Global North, the U.S. in particular, the object of protest policing and
governmentality is not to annihilate opposition, but to marginalize it, contain it, and
ultimately make productive use out of it, in the project of maintaining a certain social
order. Ultimately the means of repression (strategic incapacitation and negotiated
management) are not autonomous or disconnected, nor do they exhaust the techniques
of social control used against protest movements.
Public Health and Safety and the National November Raids: The Reclamation of Control over Urban Space

The second Occupy Oakland encampment was erected on the night the Plaza was retaken on October 26th – and lasted until November 14, 2011. Police and city officials were again not welcome or cooperated with, despite the fact that negotiated management had been explicitly demanded by the city: “We need to have direct communications between City staff and Occupy Oakland representatives” (October 27, 2011, City of Oakland Press Release). It was once again refused by Occupy Oakland. Internal camp security was much improved, addressing inter-personal conflict and sexual harassment far better than the first camp. Despite this fact, a young man working security for the camp was shot and killed by someone from outside the camp on November 10th. Locally this was used to justify the eviction of the camp, alongside a long list of complaints from the city ranging from damage done to the grass, contested claims about the financial effects on small businesses, and accusations by the mayor (later admitted to have been false) about a spike in crime, to the fear of fire hazards and communicable illnesses. Where health and safety concerns were raised in internal discussion among city leaders right before the first
raid in Oakland, they became extremely widespread in the press in the lead-up to the second raid, not just in Oakland, but nationally. The widespread frame of public health and safety concerns, and the terms used to discuss them, turned out to be more than coincidental.

The Natural Defenses of Occupy Wall Street’s Camps

The tactic of occupying public space in urban centers all over the country was unexpected, including many cities and towns not used to protests, let alone ongoing occupations of city squares. Quite often on the lawn of City Hall, these camps presented a number of obstacles and problems in terms of effective repression. In Chapter 1, I identified three primary obstacles to repression that the movement as a whole presented. After the disastrous attempt to repress Occupy Oakland, these obstacles were pronounced, as city officials and national and federal agencies devised a scheme to evict the camps with bureaucratic justifications that were both effective and depoliticized.

As we saw in the first week of Occupy Oakland and across the country, city officials did not know what to make of the encampments at first. The morning after the first encampment went up, Alber Lujan, the city’s community services

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29 1) The uncommon tactic of occupying public space, 2) the structured decentralization of the movement, and 3) the popularity of the movement, created various obstacles to social control.
coordinator, sent an e-mail message asking several City Hall administrators: “Do we have a position or statement regarding the encampment in the plaza? Are we in solidarity? Do they have a right to be there as long as they want? Are there any city ordinances that prohibit their actions?” Other questions in this email discussion included: Would the occupiers go home after the first night? The first week? Would they defer to the requests of city administrators? As the days went by, the question shifted to “aren’t they going to get tired and leave?” In the aftermath of October 25, 2011 in Oakland, as Oakland’s second encampment became more militant, and as the weeks wore on in encampments around the country, the question became, “how do we get rid of these encampments without creating counter-productive outcomes or greater disruption?”

As we saw in late October 2011 in Oakland, the repression of the camps was difficult for those in power. The camps themselves were an act of non-violent civil disobedience and democratic decision-making in a country riddled with economic crisis and political non-responsiveness to social crises (foreclosures, healthcare, unemployment, education, police violence, etc.). The camps were disruptive but not threatening, bringing together a wide swath of the Left – from anarchists and communists to progressives to centrist Democrats – under a populist banner of the 99% versus the 1%. The camps were also prefigurative. Oakland’s camp had a kitchen feeding hundreds of people three times a day, a library, a children’s village, a clinic, and open, democratic meetings. An October 2011 National Journal poll

showed that 59% of Americans completely agreed or mostly agreed with the Occupy protesters, despite the movement’s goals/demands being both fairly broad and generally vague. For supporters of the movement – even those that just saw it on the news or the Internet, or those who had reservations about certain aspects but still embraced it – the movement was a positive development and a reason for hope.

After Oakland’s camp was raided the first time, over 50,000 people (most of whom had never been to the camp while it was standing) came out to voice their opposition to repression and stand in solidarity with Occupy Oakland.

While some Occupy sites took out permits or otherwise engaged in tactics of negotiated management with police and city officials, for the most part the camps were not negotiated, presenting problems for forces of social control. Oakland, probably more than any other site, was defined by a hegemonic revolutionary, anti-capitalist politics and had a clear rejection of negotiated management (no permits, no negotiation with city officials, no police allowed in the camp, etc.). In general, the General Assembly as a functional decision-making structure / counter-institution guarded against co-optation – whether it be the wresting of control over the movement by organized vanguard groups, or individuals or groups acting on behalf or in the name of the camps or the local movement.

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33 In many cities such as Las Vegas, Seattle, and Detroit permits were taken out for their camps at one point in time.
On the national scale, the role of the General Assembly (GA) as an institution, with consensus decision-making as its process, was the primary guardian against negotiated management, because of the need for everyone, or an overwhelming majority of people, at the GA to agree upon a decision to take out a permit, police themselves, follow all police commands, etc. Despite being unwieldy as a decision-making process, and arguably generally undemocratic and dysfunctional as a political mechanism, consensus decision-making guarded against negotiated management, making life difficult for city officials who found it hard to find leverage within the movement, unlike so many mass movements in the last forty years. The institutionalization of protest had solidified itself alongside negotiated management in the 1970s through 1990s (McCarthy and McPhail 1998). After the World Trade Organization demonstrations (Seattle 1999) we saw the growth of decentralization and deinstitutionalization, while the anti-Iraq War Movement retained coalitional institutionalization and leadership and negotiated management to great degrees. The General Assemblies, however imperfect, were a democratic and decentralized institution that was resistant to negotiated management. The General Assembly also gave the local Occupy sites, particularly when the camps were alive, a clear sense of political cohesion. If there can be said to have been any clear institutionalized leadership in the movement it was the General Assemblies, bodies that had legitimacy within the movement that also protected against cooptation.

Repression as Safety, Safety as (Depoliticized) Repression

In an interview the day after the November raid in Oakland, Mayor Quan noted the importance media messaging had on how the policing was perceived, whether police tactics (and how they were understood) mobilized or demobilized people: “And then, unfortunately, at the demonstrations (on October 26th and November 2nd), it was clear that people were not clear on why the camp was closed. We’ve taken this time over the last two weeks to really talk to the community about the impact of the camp.” This concern with political messaging and legitimacy is central to this chapter, as not only Mayor Quan, but other mayors and federal agencies became acutely aware of the potential costs of taking the public’s acceptance of repressing Occupy for granted, and were part of a federally coordinated effort to manufacture consent around the raids. The objective went from evicting the camps to figuring out how to evict the camps without popular blowback. With assistance from the Department of Homeland Security (DHS) and the Police Executive Research Forum (PERF), Quan and 17 other mayors collaborated on a strategy to evict the Occupy encampments in a strategic and depoliticized fashion.

The national trope which emerged and the common sense it forged – that the cities respected and were committed to upholding the 1st Amendment right of free speech, but were left with no choice but to evict the camps because of health and safety concerns – was heard in city after city (Gramsci 1971: 330). In the two weeks from mid-late November there were raids on Occupy encampments in 18 cities; the mayors, chiefs of police and other prominent city officials in these cities all reiterated this basic, two-point message. Chuck Wexler, the Executive Director of PERF, admitted the coordination on Democracy Now! on November 17, 2011. The New York Times also reported that an anonymous source from the Justice Department reported that the FBI and Homeland Security had lent assistance to these 18 mayors on conference calls in the weeks prior.

Homeland Security's (DHS) refutation of these claims is itself peculiar, where they qualified that they did not give advice to US mayors, as a whole. A DHS spokesman told reporters at the Huffington Post that DHS "is not actively coordinating with local law enforcement agencies and/or city governments


concerning the evictions of Occupy encampments *writ large*” (emphasis mine). Freedom of Information Act documents from DHS included an email exchange between this same spokesman and his superior, where he is instructed that DHS has had "standard coordination calls and face-to-face meetings with our partners to ensure that the proper resources are available for operations such as street closures, etc.”40

Some of the mayors themselves have admitted that coordination took place on these calls. Mayor Quan has spoken of the conference calls many times, “I was on a conference call with big city mayors and of the 18 of us, we were having the same problem where the people who started the camps were no longer in control, and that they’ve become a big drain and have become very dangerous places.”41 The New York Times quoted Portland's Mayor Adams who said, “there had been two calls hosted by the organization 'to share information about the occupying encampments around the country.' He described the calls as check-ins to share information and advice on how various cities were handling the demonstrations.”42

Regardless of the presence or extent of formal command in coordination, this common message to the public – that these cities had no choice, and were forced to raid the camps due to their obligation to maintain health and safety – created very

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40 Ibid.


little public outcry or swell of support for the movement, as we had seen in Oakland less than a month before. The ability of public officials to convey messages in the mainstream press, usually completely unchallenged, is a major tool in defining common sense and legitimacy, which is also a tactical advantage in terms of repression and social control. Instead of relying solely on physical force and policing, these cities utilized their moral power as the voice of elected government, alongside their ability to frame the movement as a social problem more than a social movement, in a such a way that the raids were understood as inevitable, even among those inside the movement, while simultaneously portraying the encampments as dirty, dangerous, and uninviting homeless shelters. By situating the eviction of the camps, a major blow to the movement in each of these cities, in the context of “security,” legal liability and bureaucratic necessity, the repression was depoliticized. To the extent this was seen as repression, it was intelligible primarily as either an unfortunate necessity or an ultimate inevitability.

The strategy solidified on these conference calls was to construct this depoliticizing inevitability within the ideology of security. This catchall legitimation technique is inherently post-political, an unquestionable realm of state power. This is a carefully crafted ideological articulation, embedding the raids in a discourse not easily challenged (Hall 1981: 31). Stuart Hall, in his explanation of ideological fields of struggle, discusses the (re)inscription of subject positions and relations of power, and the naturalization of those relations, “Ideologies therefore work by the transformation of discourses (the disarticulation and rearticulation of ideological
elements) and the transformation (the fracturing and recomposition) of subjects-for-action” (ibid. 32). This did not take place before the first raid, this was the “failure to explain” that Mayor Quan spoke of. It was a mistake that was not made twice, as the highest levels of government lent their voice and insights to make sure that was the case.

Given the popularity of the movement, support for the tactic of occupying (camping), and the strengths of the movement in terms of institutionalized direct democracy guarding against co-optation (and legal liability), local governments were left in a difficult situation in terms of developing a successful eviction strategy. The conference calls helped to foster a widespread strategy of depoliticized safety and sanitation, a “common sense” constructed around the rationalized duties of city government. In relation to governmentality and the normalization of flexible tools of social control, specifically negotiated management, the objectives of that strategy are to neutralize disruption and to mitigate risk. In Chapters 4 and 5 I analyze how the rejection of negotiation management can lead to the marginalization and criminalization of those who refuse to police their own disruptive capacity. In the context of the November raids, we see a different normative application of negotiated management. Here, the mitigation of risk is primary, and the evictions are presented as inevitable and apolitical, as city housekeeping essential to the mitigation of potential epidemics and disasters. Here we have the projection of necessary grounds maintenance done with a sympathetic and heavy heart, instead of the widespread repression of a movement, cutting down beautiful, but poisonous, flowers because
someone planted them on city property and they are interfering with the natural flora and fauna.

The November raids played a significant role in stripping the national movement of visibility shortly thereafter. In the parlance of the news media, the camps were “the story,” without them Occupy was seen as a dead movement (Sobieraj 2011: 88; Gitlin 2003: 263). After developing their shared public relations strategy, Mayor Quan and seventeen other mayors all listed a range of potential liabilities which the camps posed to varying degrees – sanitation, food safety, the potential for the spread of illnesses, fire, etc. The logic of the public relations was to make the raids seem inevitable, the talking points would speak of the cities’ reluctance, that the raids would be done with a heavy heart and respect for protesters’ rights, but that they were essential to maintain public health and safety. As with most things in the social world presented as inevitabilities, the raids were not actually necessary or inevitable, as the persistence of camps after November in over sixty cities and towns demonstrates. In crafting the discursive strategy that was key to the success of the coordinated raids, there is a deliberate avoidance of frames of repression; the “respect for First Amendment rights” was reiterated constantly. The

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44 Camps persisted into December and beyond in cities such as Atlanta, Miami, Providence, Madison, Pittsburgh, San Jose, and Houston.

“but” that followed in this rhetoric served to both depoliticize the raids and center the “public safety and health” mantra. I establish, in the next section, that these were the talking points, that they were part of a coordinated strategy, and that they were designed to mitigate blowback from the ensuing repression of the camps. The final section of this chapter analyzes this strategy and why it was chosen. The ultimate objective of this chapter is to show, beyond the immediate political strategy, why this strategy was successful and what that success tells us about protest and the politics of repression, and specifically the relationship between discourse and the parameters of contemporary social control.

As Mayor Quan has admitted and as I have discussed, the November raids were more successful at framing the media analysis than Oakland’s first raid. Instead of a discussion as to whether the camps should be raided, it became more of a question of when or how. The raids, in city after city, were conducted in the middle of the night, with little media presence, with media actually instructed to stay away for their safety. As in a modern war zone, certain media outlets were allowed to be embedded with police during the raid, but had to agree to not use their cell phones during the events.\footnote{Simone Wilson. “Occupy L.A. Eviction: Is LAPD Restricting Coverage with Last-Minute ‘Pool Media’?” L.A. Weekly. 11/30/11. http://blogs.laweekly.com/informer/2011/11/occupy_la_eviction_lapd_pool_media.php} The policing was far less aggressive in the second raid, and in Oakland even the most militant folks in the movement were resigned to the raid before it happened. The discourse of public safety and health was key to mitigating public sympathy before and after the second round of raids. This was by design.
It is not my contention that health and safety are not a concern, nor that there were not significant problems in the camp. These concerns were, however, overblown and taken out of context. From my experience in Oakland, sexual harassment was an issue, and a committee was developed and was greatly successful at weeding it out and mitigating it. A young man was shot and killed at the camp perimeter in Oakland by people from outside of the movement. Four people were murdered on that same street corner alone in 2010. This does not diminish that young man’s life in any way. It is a social fact that Occupy did not make that corner violent, because it was already. Amidst all the claims used to attack Occupy Oakland and the other camps that were raided – the trope of health and safety was not only key, but I have seen scant few articles that interrogate its validity or make room for counter-arguments.

**National Talking Points**

In examining New York, Oakland, Portland, Philadelphia, Denver, and Los Angeles this trope of “health and safety” was evident and widespread. It was also coupled with the claim that the cities respected peoples’ 1st Amendment right to protest, but that those rights needed to be balanced with the cities’ obligation to provide health and safety. In city after city, mayor after mayor, this same exact message was conveyed over and over again. All of these quotes come from the days surrounding raids in these cities:
Mayor Quan in Oakland stated:

“The camp had become an unbearable drain on city resources, an economic threat to nearby businesses and a danger to public safety.”

In Philadelphia, Mayor Nutter said:

“I understand that they have things on their mind as Americans and wish to express their free speech. The things we're talking about, the activities that are going on, are not about free speech. They're public health and public safety concerns that have nothing to do with Wall Street and corporations.”

Denver’s City Attorney relayed the same message:

"Denver has worked diligently and done an excellent job of striking the appropriate balance between protecting individuals' First Amendment rights and ensuring the public's health and safety."

And New York’s Mayor Bloomberg echoed that he had defended [Occupy’s] right to protest, but that “health and safety conditions became intolerable.” Whether this came from the Police Executive Research Forum conference calls (which is a police strategy think tank) that took place with these same mayors, members of Homeland Security and possibly (but not confirmed) officials in the Federal Bureau of Investigation on October 11 and Nov. 4, is not known and does not really matter. What is clear is that these city officials all adopted the same language to legitimate the police raids in the eyes of the public, and that this was the dominant narrative in the media. The logic and nature of this argument is also instructive in illustrating the

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47 Ibid.
The intertwining roles of local and national government officials, police agencies, and the media in manufacturing a common sense that rationalizes attacks on social movements.

The trope of “public health and safety” that echoed across the country before and after the 18-city sweep of Occupy encampments was clearly coordinated. The same discursive strategies supported the same policing objective and tactics. The effects were similar as well. Despite the December 12th West Coast Port Shutdown, with solidarity actions in cities like New York, Houston, and Denver, the loss of the camps helped facilitate a decline in interest and growth in the movement nationally. While many in Oakland saw the loss of the camp as a momentary setback, with many being glad that the headaches of the camp were over, or that the time used maintaining the camps could be better spent on organizing projects, many commentators from Left to Right used the fall of the encampments to argue the death of the movement.49 Unlike the recent Tea Party movement, Occupy had a hard time keeping the media’s and public’s attention after the evictions; a pattern of progressive/radical movement erasure that is longstanding (Davenport 2010: 10-11; Sobieraj 2011: 18; Gitlin 2003: 271).

The evictions were squarely successful. There was no repeat of police violence great enough to spark popular blowback. In terms of legitimacy, the movement was passively smeared as dirty and irresponsible, but without an overtly politicized emphasis on demonization or criminalization, since the logic of “health

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and safety” was already legitimating the raids. The effort deployed bureaucratized governmentality situated in a depoliticized political discourse: to repress without being seen as repressive. The politics of how this process worked is important to understand when analyzing the general contexts in which protest and the policing of protest take place.

The core discursive elements of the public relations strategy were to assert good intentions and concerns with 1st Amendment rights, while placing the policing of the movement in terms of health, security, and the potential for, and unquestionable need to mitigate, a crisis. There was some variation from city to city, with some mayors (i.e. Mayor Villaraigosa in Los Angeles) emphasizing respect for protesters slightly more than others, and other officials embellishing the camps as immanent disasters (i.e. Mayor Bloomberg in New York), but the logic and terms of the discourse were universal. To better understand the relationship between politics and knowledge, and the techniques of policing they are entwined with, it is essential to map the logic of the political discourses and policies as well as their social and political contexts and effects.

**Governmentality, Gentrification and the Infantilized Rabble**

Foucault’s conceptualization of governmentality is helpful in understanding the political roots of the public relations campaign and how and why it was successful in simultaneously legitimating and depoliticizing policing. Building upon Althusser’s concepts of overdeterminaton and ideological state apparati (2001: 96; 1970:106),
Foucault’s outline of the concept shows how the power of modern government, the “art of government,” is increasingly situated around its ability to legitimately control, manage, and make productive three key aspects of the social world – the economy, the natural world and health, and socio-political relationships (Foucault 1994: 208-9). As Datta (2011) summarizes, “State governing is an exercise of power involving finding out about, intervening in, and shaping what people are doing by facilitating some actions and placing obstacles to others” (226).

The encampments were a constant political challenge to the city, a contestation over public space, not just in the sense of occupying public parks without a permit, but in Oakland and elsewhere (in a deeper, more prefigurative sense) an assertion of power over social space, not just in terms of physical control, but political legitimacy. Dhaliwal, speaking of the Indignados movement in Spain, which arose in May 2011, after Tahrir Square in Egypt and before the movement in the U.S., speaks to this process of contesting power in and through controlling social space:

The Indignados movement’s occupations of public space, then, are not simply a seizure and re-organization of physical space, conceived as an instrumental resource for the purposes of mobilization and publicity. They are also interventions in the very process of the production of social space. That is, they are attempts to produce an alternative form of public space to that which currently pervades society. (Dhaliwal 2012: 256)

Downtown Oakland is, and has been under an intensive process of gentrification for over a decade (Drummond-Cole and Bond-Graham 2012). This has brought with it more than a re-branding of the neighborhood, but a refashioning of the nature of public space towards consumption and leisure (Smith 1996: 52). Mike Davis describes the refashioning of urban centers in the context of capital flight and
gentrification, “The universal and ineluctable consequence of this crusade to secure the city is the destruction of accessible public space” (1990: 226). The fact that homeless people were a significant part of the second encampment in Oakland was both a rupture in the segregation of classed-bodies in terms of social norms and a political delegitimation of the City of Oakland which has been steadily cutting homeless services, while maintaining a public safety budget that monopolizes two-thirds of the city’s resources.50

It is fitting that the language and logic of the market – financial risk and liability, economic cost and budget deficits and the political imperatives which follow from them – would be a corner piece in the strategy to reclaim Oscar Grant Plaza. The economic governmentality of legal and financial liability (as well as city expenditures) runs through the health and safety trope.

The First Amendment vs. Profit: How Small Businesses Became “the 99%”

(Economic Governmentality)

The supposed cost to small businesses was another key theme in Oakland leading up to the November 14th raid. The Chamber of Commerce and city officials were eager to insistently point out that the occupation was an economic drain on the city and local businesses, citing figures from the Chamber of Commerce that were not

50 The only major police action on the day of the November 2nd General Strike was that evening when Occupy Oakland participants temporarily occupied a shuttered homeless services building around the corner from the camp. “‘Occupy Oakland’ Protesters, Police Standoff.” 11/3/11. ABC News. http://abclocal.go.com/kgo/story?section=news/local/east_bay&id=8415827
supported by any data. The Oakland Tribune quoted Paul Junge of the Chamber of Commerce, “We are seeing serious losses of business… People have lost 40 percent, 50 percent, 60 percent of their sales.” Mayor Quan would go on to add how this was costing jobs, amidst the city’s longstanding (and politically unaddressed) high unemployment: “This situation is costing us real jobs… We can't afford to lose a single job.” A primary function of government is to maintain a prosperous economy, framing Occupy as a threat to the health and safety of private profitability was a responsibility taken seriously and often couched in the language of Occupy hurting the 99%, by costing them jobs and resources.

This line of argument was not peculiar to Oakland. In Philadelphia, Mayor Nutter made a central issue of Occupy Philadelphia frustrating an urban redevelopment project with their presence. Two weeks before the raid in Philadelphia, Mayor Nutter, who repeatedly spoke on behalf of the 99%, and as being in clear and direct opposition to Occupy Philly itself, said, “Occupy Philly is now purposely standing in the way of nearly 1,000 jobs for Philadelphians in a time of high unemployment. They are blocking Philadelphians from taking care of their families.”

As cities like Oakland and Philadelphia slash public sector jobs, they

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52 ibid.
54 Weeks after the Quan’s condemnation of Occupy’s supposed effect on jobs in the city, the City of Oakland gave layoff notices to 2500 city workers. Jennifer Inez Ward. “Oakland Hands Out Layoff Notices to 2500 City Workers.” Oakland Local. 1/19/12. http://oaklandlocal.com/article/oakland-hands-out-layoff-notices-2500-city-
still maintain the role of protecting the profitability of private businesses from protest (however substantiated the financial cost were). Extended from these arguments about the health and security of small businesses, Oakland and other cities emphasized the cost of policing the movement falling on cash-strapped cities, as well as claims about spikes in crime associated with the encampments.

To avert from the politicization of police repression against the movement in Oakland, the city shifted the discourse about policing in the lead-up to the November raid. Nestled into the discourse about public health and safety were various claims about the costs of Occupy Oakland, pertaining to policing – financial costs as well as human costs, in terms of rising crime (and later, lack of police response to crime in other parts of the city). The Mayor argued in early November 2011 that Occupy Oakland had caused a spike in crime in the area where it was situated. While the claims about small-businesses were based on Chamber of Commerce speculation, the allegations about a spike in crime were known to the Mayor and OPD Chief Howard Jordan to be false. Local television station KTVU, upon receiving 1000 city emails in a public records request two months after the November raid took place, reports Jordan’s foreknowledge that the rising crime claims that Quan was making were in fact bogus:


When Jordan received an update that crime was actually down 19 percent in the last week of October, he wrote an email to one of Mayor Jean Quan's advisers. "Not sure how you want to share this good news," he wrote. "It may be counter to our statement that the Occupy movement is negatively impacting crime in Oakland."  

UC Berkeley Professor of Law, Jonathan Simon, responded to the raids, and the fear of crime that supported them:

But what is regrettable is the use by city leaders of the lame excuse that “crime” problems necessitated the end of the encampments. It may be that the Occupy Wall Street movement must generate new meaningful actions to build its momentum, but the claims that the encampments were generating unacceptable levels of crime is both false and reflexive.  

As Simon (2007) notes elsewhere, the political expediency of the fear of crime is a central facet of neoliberal governmentality. As we will see it was one of many nodes in the health and safety discourse used to turn the camps into a social crisis, through which depoliticized state actions become immutable (Agamben 2005: 16-9).

**Immunizing the Rabble Through Repression**

*(Environmental/Health Governmentality)*

The (distorted) threat of illness, epidemics and disease, coupled with the potential for violence or accidents, speaks to the governmentality of public health. The accentuation of the threat of accidents or illness, and the possibility that the city would be held legally and financially liable, was a sub-theme of the “health and public safety” trope. The Los Angeles Times ran an article on November 9, 2011,

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56 “Emails Between Oakland Officials Reveal Tensions During Occupy.” KTVU. 1/13/11.  
three weeks before the raid on their encampment, which spells out the argument about liability. It concluded by quoting Mayor Villaraigosa about health and safety.

Another quote, from a letter that the Department of Recreation and Parks General Manager Jon Mukri sent to the Mayor, states:

“The City's liability has increased not only due to potential of fallen tree branches, but also from trip and fall hazards created by tent ropes, holes, and broken sprinklers." Additionally, the city's open flame and smoking ordinances aren't being enforced at the site, Mukri wrote.58

Five days before the raid on Zucotti Park, the New York Times, included an article about an impending health disaster, quoting a doctor who has also recently served as an expert for Homeland Security on terrorism and air safety:

Dr. Philip M. Tierno Jr., the director of clinical microbiology and immunology at NYU Langone Medical Center, said the conditions could leave park-dwellers susceptible to respiratory viruses; norovirus, the so-called winter vomiting virus, which can lead to vomiting and diarrhea and which could quickly overwhelm the limited bathroom facilities in the area; and tuberculosis, which is more common in indigent populations and can be spread by coughing.59

This was part of a national laundry list of articulately described sanitation threats and safety concerns. There was widespread discussion of drugs and rats in Oakland;60 “evidence of excrement, urine and vomit were observed throughout the park” in San

Francisco, Zuccotti Park in New York was labeled “as an increasing health and fire safety hazard”, and inspectors found a clean kitchen but “dirty and stagnant wastewater in the Occupy Portland kitchen.” As part of the national strategy, city officials made the issue of health and safety “the story” in the press and threw everything, including the kitchen sink, at the Occupy movement, as city police forces around the country readied themselves to clear the camps.

The day after the raid on Zuccotti Park in New York City, the New York Civil Liberties Union condemned the eviction as not only unnecessary but a threat to health and safety in itself: “The eviction of protesters from Zuccotti Park was not about public health. Rousting hundreds of peaceful protesters from their tents in the dead of night amid a media blackout doesn’t promote public safety – it endangers it.” To critique this laundry list rationale is not to trivialize the real and potential health and safety threats posed by the camps, a young man was shot and killed in Oakland, women were sexually assaulted in Oakland and other cities, those in charge of camp tidying were not always members of the Martha Stewart fan club either. However, the existence of risk is endemic to any concentration of human bodies in one place.

The health and safety risk of the camps was more comparable to a sporting event or large concert, which do not receive this type of scrutiny. Instead of being seen as having similar threats to public health and safety as good old American baseball games, the camps were compared to refugee camps. It would be wrong to suggest that sporting events have not also come under the broadening gaze of anti-terror security, but they are not deemed untenable because they are profitable (Police Executive Research Forum 2011: 28). Whether the logic of health and safety is used to repress social movements or surveil public events, the process of using security, health and safety as depoliticized rationales to extend state power is an ever-intensifying process, and one that needs to be politicized in order to be effectively challenged.

**Paternal Care and the Depoliticization of Social Control**

*(Socio-political Governmentality)*

The socio-political dimensions of governmentality in the nationally-coordinated public relations campaign revolved mainly around the relational roles of

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65 Washington D.C.’s Department of Health Director said the following about the Occupy D.C. camp: “‘Going down to these camps, it’s no different than refugee camps,’ Akhter said. ‘People are living in very primitive conditions and they’re doing it by choice. They are very brave and thoughtful people, but my concern is that they should also take care of themselves. When the weather goes bad suddenly we’re watching a tragedy unfold in the middle of Washington, D.C.’”


66 The Oakland Coliseum has recently announced plans to install facial recognition cameras for major events.

government and citizens, and of police and protesters. The paternalistic logic of the raids, of keeping occupiers safe from themselves, of “destroying the village to save it,” of portraying repression as a public good, was primarily not through criminalizing and delegitimating protesters overtly (in this instance). Instead policing was justified through positing circumstantial threats, however well-rooted in probability, that the government has an *obligation* and not a *desire* to address, to a public that has become accustomed to being patronized and manipulated through fear (Simon 2007: 260-1; Curtis 2004).

The City of Oakland would invoke broad and vague civil nuisance laws (as would San Francisco) to justify the razing of the camp. The civil law language is also rooted in the use of parks as sites of leisure-consumption, to which the camp was allegedly serving as an unpermitted barrier. A notice posted in Oscar Grant Plaza and released to the press three days before the November 14\(^{th}\) raid reiterates the national talking points and situates the encampment as being in violation of criminal and civil law as a public nuisance:

> The City of Oakland and its police department support and protect the right of all individuals to engage in free speech and their right to assemble. However, this encampment is a violation of the law…. Your activities are injurious to health, obstruct the free use of property, interfering with the comfortable enjoyment of the Plaza, and unlawfully obstruct the free passage or use of a public park or square. (California Penal Code sections 370 and 647(e) and Civil Code 3479).

As I discussed in Chapter 2, in relation to negotiated management, this paternalism – the restriction of peoples’ rights under the auspices of protecting them –

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67 City of Oakland, City Administrator’s Office. “Notice of Violations and Demand to Cease Violations.” 11/11/11.
is a heavily gendered process. It is an inherently undemocratic tendency that has become more pronounced under neoliberalism, one which infantilizes citizen-subjects as part of longstanding processes which erode social rights while concomitantly using fear, manipulation, and simplistic Manichean frames to legitimate non-contested/contestable public policy. Lauren Berlant notes how, despite this tendency towards political paternalism/infantilism being an endemic tension of representative government, these roles and relations have taken on a heightened form in the neoliberal era. Berlant writes, “democracies can produce a special form of tyranny that makes citizens like children, infantilized, passive, and overdependent on the ‘immense and tutelatory power’ of the state” (1997: 27). This depoliticization, the withdrawal of democratic rights and process through the unquestionable expansion of state power, has become increasingly normalized. This depoliticization of state and policing activities has a symbiotic relationship with infantilized citizenship; government policy has become more autonomous and citizen participation and engagement more atomized, cynical and disempowered (Eliasoph 1998; Putnam 2000).

Modern policing is enmeshed in this process to a great extent, as police have become more politically insulated and their practices less subject to effective scrutiny. The November raids cannot be properly understood without appreciating the power of the logic of “broken windows” policing and the roles it ascribes to city

68 Police officers’ Bills’ of Rights (in states like California) and the persistent power of police unions shield officers from accountability and help police departments command a great share of city budgets.
officials, police and politically marginalized groups. “Broken windows” is rooted around preempting disorder through a mixture of civil ordinances and police practices designed to control space under the justification of protecting the common good from (criminal) nuisances (King 2013a; Harcourt 2001: 127-8). These prevalent policies, in conjunction with other tactics affiliated with the wars on drugs/gangs/crime, have come to inhabit a status of unquestioned necessity among a wide swath of the public. By employing this logic and language to the eviction of the camps, city officials articulated the evictions within a political discourse that erased the grounds for intelligible contestation.

From the fear of crime and ‘super-predators’ (Wacquant 2009: 243; Rios 2011: 176), to fears of disease (Szasz 2007: 3-4), to fears of terror (Parenti 2003: 199-200; Curtis 2004), to neo-nativist fears that immigrants will bring with them everything from car accidents and pollution, to healthcare fraud and drugs (Gerstyle 2004: 87) the dialectic of paternalism and infantilized fear is a driving force in the politics of policing in the United States. These relationships and roles are easily mobilized to justify a wide range of state policies that erode the civil and human rights of marginalized groups.

We see all three of these facets of governmentality – the economic, the natural/biological, and the socio-political – used to situate the November raids. This wide range of post-political justifications – from a cost of policing that is too much to bear and a projected economic hardship to small businesses, to the fear of infectious disease epidemics or propane explosions, to the fear of drugs, violence and
generalized disorder, the trope of “health and safety” was a sweeping utilization of articulation, a smorgasbord of fear and security, intended to resonate as broadly as possible in terms that were hard to contest.

**Disruption as Risk, Social Control as Security**

Jurisdictional power is presented as both omnipotent and naturalized, with policies articulated through discourses of crisis and security. As *Anti-Security* illustrates clearly, security has become an “unassailable” rationale and a “blockage on politics” (Neocleous and Rigakos 2011: 15). Rigakos points to the ways in which projects of pacification are presented and understood as a preservation of the common good, outside of the realm of politics or debate:

> Even from a critical or social democratic perspective: how can anyone be against *social* security, *job* security, *personal* security, or *health* security? How about our *children’s* security? How could anyone stand against *environmental* security?... The more security seems post-political, post-social, or even postmodern the more it escapes analytic scrutiny.... The ability for security to latch itself on to most aspects of human relations must therefore be recognized as an analytic and political blockage. (2011: 59-60)

Across the country, the repression of Occupy encampments was placed in this post-political protective bubble of “security” – a discursive ground made slippery by the littering of a long list of (potential) risks, liabilities, crises. The movement was criminalized to a very limited extent in this moment. Instead it was made a delinquent dependent, governmentalized, securitized. The political discourse made sure that the wholesale extinguishing of the camps’ “fire” was done through a
smothering (of a best-interested paternalistic love), rather than dramatically beaten into extinguishment with police batons.

By using a depoliticized logic of security, this coordinated effort to repress without being seen as repressive (i.e., to police without explicit criminalization) was successful at depriving the movement in Oakland (and elsewhere) of a physical base as well as a corner of visibility in the popular imagination and political discourse. In Oakland, the erasure of the camp physically and politically made the reinstatement of governmental control clear, though not unchallenged. It recalibrated social control more generally, specifically negotiated management and strategic incapacitation, to its normal functions. As Datta (2011) explains, “The concern with security in governmentality is not then the protection of the population, but is about ensuring the integrity of regulatory mechanisms” (229). The camps, the Oakland camps in particular, were a regulatory and policing nightmare, an autonomous space in the heart of the city, whose previous eviction had created a widespread breakdown in social control. The Oakland camps had rejected negotiated management but retained social legitimacy. As we have seen, negotiated management had been rejected and strategic incapacitation had proven unsuccessful and unstrategic. The legitimacy of the raids was imposed by depoliticizing them, making the raids an “unfortunate inevitability” – a common sense reinforced by the fact that they were taking place all over the country, reiterated by some of the most liberal Democrats in major elected office, all at the same time. This post-political maneuver would be enough in
Oakland to knock the movement off balance while the techniques of negotiated management and strategic incapacitation were readied for future use.

Occupy Oakland had established its own footing outside of the parameters of negotiated management and in militant defiance of strategic incapacitation. The eviction pulled the rug out from under Occupy Oakland. The movement then found itself standing on a terrain of social control where negotiated management and strategic incapacitation would be effectively brought to bear upon a movement that was quickly criminalized and attacked.
Chapter 4

Putting the Occupy Oakland Vigil to Sleep:

The Translation of Anti-Gang Techniques
and the Widening of the OPD’s State of Exception

Shortly after the eviction of the second, and last, Occupy Oakland encampment, the police undertook a conscious shift to more targeted and strategic repression of the movement, through fusing the discursive strategy of the 2nd raid (to couch repression in the language of protecting public health and safety) with the legal and policing methods applied in the city’s existing gang injunctions. When the second encampment eviction came there seemed to be much more widespread sentiment within the movement that – due to both the clear commitments of local and federal agencies, and the difficulties protecting and defending camps from repression – the days of encampments which stood for weeks were a thing of the past. In Oakland, however a group of several dozen occupiers were committed to maintaining a presence in Oscar Grant Plaza, many because they were homeless and had nowhere else to go. Different sometimes overlapping groups within Occupy Oakland – including the Tactical Action Committee, the Interfaith Tent, the Oakland Nomads, the Kitchen Committee, Occupy Legal, and the Vigil committee – adopted the tactic of a vigil as part of a strategy to maintain a constant presence in Oscar Grant Plaza
without formally “camping” – standing by their Constitutional right to protest in public space.

The concept of a vigil emerged as a way to maintain a constant presence in Oscar Grant Plaza, where the camp had stood, originally intending to maintain the community and social services that the camp provided (food, clinic, library, etc.) while not violating the city’s ordinance against sleeping. The vigil was intended to be unpermitted and to serve as a tactical innovation in the face of nationally coordinated efforts to eradicate Occupy camps. To situate this tactic in relation to the strategies of the state, it is accurate to say that the vigil tactic served to put pressure on the overt Constitutional tension within the state’s carefully chosen rationale of limiting the 1st Amendment Rights of some to protect the health and safety of many. If the vigil could maintain many core essences of the movement, of the camps specifically, without posing a threat to public health and safety, repression against that vigil could easily be seen as unjustified, similar to the failed repression attempt at the 1st encampment raid. One of the crafters of the vigil idea, Phil Horne, a member of Occupy Legal (an autonomous collective of legal aid supporters from San Francisco) describes the legal logic of the vigil tactic:

We wanted something that would set a minimum bar, so it was like as long as we do this, we can be there. So we said, let’s look at all the [legal] cases pertaining [to Constitutionally protected activities in public parks]… it was really the maximum, like what’s the maximum we can do safely, like rock solid, it’s definitely safe. So that if [the police] act on that [repress the protest assembly], then we get a restraining order, and then we get a precedent started, so we can build on that.69

As Noakes and Gillham (2006) have illustrated, freedom of assembly and speech are commonly limited or rescinded in the actual process of policing. Tactically and strategically, the OPD and city officials built from their success with the 2\textsuperscript{nd} encampment eviction on November 14\textsuperscript{th} in relation to their approach to the vigil. While still having their efforts restrained by the Mayor leading up to and during the West Coast Port Shutdown on December 12-13\textsuperscript{th} due to fear of a possible repeat of the police brutality on October 25\textsuperscript{th} and subsequent swell of support for the movement right before an already planned major action, the police drew from techniques long-honed in working class and poor communities in Oakland. The OPD, the District Attorney, the Mayor and other city officials combined the successful rhetorical trope of the federally coordinated raids with the micro-techniques of anti-gang policing. Through a combination of strategic incapacitation and negotiated management (a permit was taken out by Occupy Legal, independent of any discussion or agreement from Occupy Oakland), a series of coordinated police raids on those in the plaza were successful at not only controlling urban space, but harassing, intimidating, and detaining Occupiers, preoccupying the movement with jail support, while criminalizing the movement. The criminalization and broader strategic incapacitation which took place in late-December 2011 and early January 2012 was more targeted, small-scale and less visible than the tactically similar police action of October 25, 2011. The policing of the vigil helped set the stage for larger
scale, successful strategic incapacitation against the movement during Move-In Day on January 28, 2012.

The three major raids on Oscar Grant Plaza from December 20, 2011 to January 4, 2012 shared much in common with Oakland’s much-contested gang injunctions in both strategy and tactics, fitting well within Noakes’ and Gillham’s analysis of strategic incapacitation – the incorporation of a more generalized police logic of new penology and zero tolerance finding application in the repression of popular protest. Both the gang injunctions and the policing of the Plaza in December/January were primarily concerned with control over specifically defined geographic urban space through the targeting of people with criminal records, and the surveillance and policing of others in that space who are engaged in Constitutionally-protected activities that have been criminalized through the use of civil law.

**Staking Police Turf Outside of the Bounds of the Constitution: From Gang Injunctions to Occupy Oakland**

Noakes and Gillham (2006) situate strategic incapacitation within the broader new penology that has arisen with the post-70s policing and incarceration boom (Feeley and Simon 1992). These logics of governmentality (Foucault 1994), whether in relation to protest or crime, share an orientation of: managing inherent threats; “preempting” criminal behavior through increasing surveillance and profiling within certain populations; shifting policing tactics towards maintaining order by controlling populations in geographic space rather than investigating and solving crimes; and discursively justifying these measures (which are often accused of being
unconstitutional) through criminalization and a foreclosure upon alternatives (Noakes and Gillham, ibid.).

Gang injunctions and the police techniques used against Occupy Oakland both fit squarely within policing logics of new penology – in this instance, entwined with negotiated management (McPhail, Schweingruber and McCarthy 1998; King 2013b). These methods make use of criminalized bodies (people with criminal records) to profile and criminalize spaces and broader populations in order to establish social control. Through criminalizing targets and delegitimating their associates (the broader movement) the police posit themselves as a security force whose legitimacy is difficult to question within the dominant formations of knowledge in which they are hegemonic. This allows for the normalization of rescinding Constitutional rights through more generalized surveillance, profiling and harassment. Giorgio Agamben’s (2005) theorization of the “State of Exception” (discussed further at the end of this chapter) is helpful in understanding not just the immediate contexts in which these policies are created, but how, once this process of the justified rescinding of democratic rights is forged in one context through criminalization (i.e. with gang injunctions in Oakland), that process can be easily translated into different arenas of policing with its (extra-)legal techniques utilized in any context that can be defined as a threat to the social order or public security (the presence of members of Occupy Oakland in certain public spaces).

For almost 25 years gang injunctions have been an increasingly used instrument of policing in California. They are a civil, rather than a criminal,
injunction, against groups of individuals suspected of being gang members. Those named in an injunction are allowed limited association with others, are prohibited from wearing colors associated with gangs, and not allowed to be out past 10 p.m., among other requirements. Gang injunctions originated in Los Angeles in 1987, and have spread throughout the country, though still largely concentrated in the West, and California in particular. For the police, they are promoted as a somewhat flexible tool for combating gang activity, which is seen as a major, if not predominant, source of criminal activity.

Because gang injunctions are civil rather than criminal policies, there is a lower burden of proof for the State to prove gang membership, and those named in the injunction have no right to a pre-injunction hearing or to a public defender (Werdegar 198: 435). The original injunctions in L.A. only applied to activities that were already deemed crimes, such as burglary or writing graffiti, but were quickly broadened to include curfews, dress codes, restrictions on association (Werdegar 1998: 416). The specific profiling of specific individuals with criminal records, in particular places, the use of civil law to restrict free assembly and expression in demarcated areas, and the use of these tactics to profile associates and broader populations in an effort to establish police control of urban space, are characteristics common to both the gang injunctions and the vigil raids and stay away orders used against Occupy Oakland that began in late-November 2011.
Oakland introduced its first of two gang injunctions in the summer of 2010 in North Oakland, with a preliminary approval for a second injunction in the Fruitvale neighborhood the following summer. The injunctions sparked great community outrage primarily around issues of racial profiling, the coincidence of injunctions and gentrification, erosions of civil liberties of those named to the injunction as well as the cost to a small, cash-strapped city (Critical Resistance 2011: 3-6). The injunctions are a product of the new penology approach to policing; the Oakland police’s own publications argue that the injunctions are designed to prevent crime, rather than prosecute it.70 In this way injunctions drift away from strategies of community policing or prevention through social services towards a model of broken windows policing focused on “preemptive crime”, akin to an urban, domestic rendition program.

Individuals are incarcerated for activities that are not part of any criminal statute, but based on associations and legal activities that police argue lead to criminal activity – wearing certain colors, talking to certain people, being out at night. The one arrest produced by the North Oakland injunction was of this type. Under a logic of new penology, instead of doing the traditional police work of investigating a crime, following evidence and making arrests, they are interpellating people as gang members under the pretext that they are indirectly responsible for crimes the police

have no evidence to link them with; preemptive guilt by association. From there, the police pursue suspected gang members, not for criminal activity, but for suspected membership in a criminalized group, and for breaking mandates that have nothing to do with California criminal law. This logic of (often, suspected) association with criminal networks as a crime in itself can be found in federal law dating back to at least the 1970s (RICO laws, Patriot Act). All of the people on the injunction list have criminal records, some of them lengthy, some violent. Critics argue that the police are taking people considered to be the usual suspects and instead of trying to demonstrate that they have committed new crimes, they are using very loose and questionable means to put them in prison for offenses that are neither significant nor criminal. The police situate their efforts under the rubric of “smart-on-crime” policing, an innovation to preemptively identify criminals and prevent disorder and crime.

The Logic and Practice of New Penology

Noakes and Gillham trace the shift in protest policing since the Seattle World Trade Organization protests in 1999 towards what they describe as a new penology method of policing, strategic incapacitation, having had its roots in the urban policing techniques of the past three-plus decades (2006: 100). The general paradigm shift that took place in the 1970s and 80s within dominant theories of criminology discarded ideas about rehabilitation and prevention in exchange for often fear-driven punishment – featuring longer sentences, mandatory minimums, three-strikes laws,
more aggressive and intrusive policing techniques (such as gang injunctions), racial profiling, etc. (Wilson 1985). What has emerged in the period of new penology is a reorientation of goals: to identify and preempt threats, with methods geared towards incapacitating “criminal elements” through incarceration or surveillance. The intensified criminalization of urban space and subaltern populations, which is used to legitimate the erosion of civil liberties among targeted groups, has become an inherent part of the process (Blacks and Latinos in the War on Drugs, Latinos in the Southwest in the War on Undocumented Immigration, Muslims/Middle Easterners in the War on Terror). Gang injunctions, and other practices such as Stop-and-Frisk policies, have been introduced in this process, amidst a socio-political backdrop of fear of crime, drugs and violence and a new penology ideological landscape that has concluded that there are no alternatives, that rehabilitation and prevention have been tried and “nothing works.” Jonathan Simon speaks to the shift from the rehabilitation model to new penology, “The new penal policies that emerged during the 1980s, combining pragmatic risk management of presumptuously dangerous populations with populist punitiveness belong to, and in many respects anchor, a new political order” (Simon 2007: 23).

Policing, under the new penology paradigm, has become about social control and preemption through surveillance, harassment and detention. The common denominator of several long-standing policing efforts in the past few decades is to identify a criminal threat, criminalize communities and groups associated with that threat, label individuals or neighborhoods as criminal, and contain and control them
(Wacquant 2001; Davis 1990; Williams 2011). In all of these cases, exceptions to the law (to the fundamental constitutional rights of those targeted and the communities in which they are a part) are common, and legitimated partially through a logic and a practice of domestic “War” – wars that cannot be lost (or won) which are being fought against enemies that are undeterrable and incapable of rehabilitation (Agamben 2005; Simon 2007). As analyses of gang injunctions and similar policies suggest, these practices are about managing subjects who have been labeled a criminal threat and controlling broader populations and space in the process of maintaining the existing social order and relations (Williams 2011).

From the short analysis of the Oakland gang injunctions above, we see clear concerns about the institutionalization of racial profiling at the level of neighborhoods and the erosion of civil liberties among those targeted, also encompassing many others not on the injunction list. Gillham and Noakes argue that many of the general new penology approaches used by police found their translation into the policing of protest: “This shift in police tactics during protests is consistent with broader changes in the ideological underpinnings of crime control, including an emphasis on risk management and the prevention (rather than reaction to) crime and disorder” (2007: 343). Police tactics and strategies, methods and logics, at their most basic function, are “tools” to “solve problems.” As I discussed in Chapter 2, policing approaches are contextual to the task at hand and evolve in tension with the tactics of protesters, not unlike their evolution in various policing contexts. Nonetheless, as Gillham and Noakes have clearly outlined, the commonalities between various policing efforts not
only exist at the macro-level of ideology and the bureaucratic self-definition of the police’s role in society, but at the micro-level of tactical application.

This chapter seeks to illustrate at the level of police tactics how methods of strategic incapacitation and negotiated management demonstrate a thick overlap with the methods of gang injunctions, both in terms of policing and the law. A core thread to this discussion, beyond analyzing common tactics of repression, is the normalization of the erosion of democratic rights through new penology policing in recent decades, a normalization that is absolutely essential to the police’s ability to legitimately use those tactics. As noted by several authors (Noakes and Gillham 2006, 2007; Fernandez 2009; Starr, Fernandez and Scholl 2011; King and Waddington 2006; Wood 2007; Vitale 2007; Noakes, Klocke and Gillham 2005), the emergence of more aggressive, intrusive and preemptive protest policing in the last fifteen years has seen the normalization of restrictions on freedom of assembly and expression, preemptive arrest, entrapment, unlawful arrest, an increase in less-than-lethal weapons, etc. Noakes and Gillham discuss criminalization and preemption of “transgressive protesters” as core elements of strategic incapacitation, bearing in mind what I determine to be the two core factors of effective repression – control and legitimacy. While rightly noting the transferal of the prioritization of criminalization and preemption from broader methods of new penology policing, they fail to sufficiently examine the existent tension within these necessary tools. That tension derives from these tactics commonly involving the violation of civil rights, and that these methods of policing, often criminal themselves, are continually applied as
legitimate tools of protester delegitimation. After examining the police methods used during the raids on the Occupy Oakland Vigil and the use of “stay away” orders against protesters as a condition of bail, and their broad parallels with the city’s gang injunctions, I will analyze the relationship between negotiated management and strategic incapacitation with particular attention to the role of legitimacy and control and the application of new penology forms of knowledge power to maintain police legitimacy while using unconstitutional means partly through criminalizing those targeted.

Methodologically, this chapter is a fusion of textual analysis from various primary sources and participant observation from within the movement. My position as a researcher and active participant provides insights into the changing nature of movement and police activity and relations in the park – before, during and after the vigil – as well the debates and collective common sense about the vigil and the movement’s relation to the police in these same time periods. The substance of the data is primarily derived from a wide range of documents related to my study of the policing of Occupy Oakland as well as the city’s gang injunctions. I draw from the city’s legal filings in California court, primary social movement documents and the academic literature on gang injunctions, primarily to highlight the legal basis of the injunctions and the various oppositional concerns with civil rights and racial profiling. I draw from a broader range of data in relation to the raids on the Occupy Oakland vigil and the subsequent stay away injunctions used against protesters. This data includes press releases from the Oakland Police, Mayor and City Administrator
directly relating to the permit and police actions, as well as directly opposing editorials from the San Francisco Chronicle written by Alameda District Attorney Nancy O’Malley and the American Civil Liberties Union. I situate the chronicling of the events through a combination of mainstream and independent media, as well as publications by Occupy Oakland and participants in it, interviews with one of the crafters of the vigil idea, and members of the committees responding to questions of police tactics, conducted by a member of Occupy Oakland and respected independent blogger.

**A Vigil Permit Enforced With Vigilance: Negotiated Management as Strategic Incapacitation**

Occupy Oakland never fully left Oscar Grant Plaza after the second encampment raid. Beyond having General Assemblies multiple times a week in the Plaza, a tree-sit was erected the same day as the second eviction and the Interfaith Committee maintained a daily presence with a canopy and informational table every day from 12-6 pm. The Occupy Oakland vigil emerged officially on November 29th, two weeks after the second and final encampment was raided, and two weeks before the second Port shutdown. The impetus for the vigil was to maintain a constant presence in Oscar Grant Plaza, maintaining public visibility without erecting another encampment to face another eviction. The vigil was an effort to navigate police repression while maintaining some of the original vitality of the camp, the movement’s signature. As we saw in Chapter 3, the logic of repression had taken on the legal strategy and political discourse of negotiated management, the rescinding of
protesters’ 1st Amendment rights under the auspices of the police and city’s obligation to uphold public health and safety. Even though Oakland and most of the other cities raided in mid-November had not taken out permits for their camps, the logic of negotiated management was imposed and then physically enforced by riot police, with the movement’s inability to ensure public health and safety used to negate their right to assemble and speak. The relationship between the vigil and the police/city would be an extension of this logic of negotiated management intertwined with physical repression, as discussed in Chapter 1.

The permit for the vigil emerged in direct response to police repression; the permit was literally granted as protesters struggled to erect the vigil on November 29th as police physically prevented them from doing so in the Plaza. The idea of the vigil had been approved by the General Assembly, though Occupy Oakland never discussed or decided to take out a permit with the city. We see in this moment the dialectical relationship between negotiated management and strategic incapacitation discussed in Chapter 1, with repression (or the threat of repression) eliciting negotiation, and negotiation (specifically permits) legitimating further repression. In the context of Oakland, we also see the tactical and discursive articulation of negotiated management as a tool of repression coupled with anti-gang techniques, specifically gang injunctions.

The vigil was an attempt at a tactical innovation on the part of some groups within Occupy Oakland, initially an effort to maintain a presence and serve those in need through providing free food in the Plaza where the camp had once stood. The
vigil sought to maintain core aspects of the camp while undermining the pretenses used by the police and city to repress the movement in the two encampment raids. A number of formal and informal groups from within Occupy Oakland led this effort, including the Tactical Action Committee, the Interfaith Tent, the Oakland Nomads, the Kitchen Committee, Occupy Legal and the newly formed Vigil Committee. The idea of the vigil (as such) came from Occupy Legal, an independent group consisting of lawyers and legal observers that had emerged from Occupy San Francisco. They saw the vigil as a Constitutionally protected form of symbolic protest, with vigils being a constitutionally protected activity in public space that could include tents and people, so long as the people were not “dwelling” (i.e. sleeping, living, permanently staying) in that public space.

While the idea for having a vigil in Oscar Grant Plaza under the logic of maintaining a public presence that was squarely under the protection of freedom of speech and assembly was approved by the General Assembly (Occupy Oakland’s decision making process), the idea to take out a permit for the vigil was not discussed or approved by Occupy Oakland. The permit emerged on the day that the vigil was to start, featuring the erection of a Teepee by Zach Running Wolf. The police physically prevented the erection of the teepee, at which point Becca von Behren and Kirk Boyd of Occupy Legal approached neighboring City Hall to speak with the Assistant City Administrator Arturo Sanchez.71 In that meeting a 3-day, renewable permit was negotiated and signed for the vigil that introduced several stipulations on

how the vigil could be conducted. It also imposed terms of conduct and obligations for those involved, which would come to encompass the permit holder’s effective responsibility for all activity in Frank Ogawa (Oscar Grant) Plaza itself. The terms of the permit included no sleeping and no food storage or cooking. The teepee was the only permitted structure and could only be erected from 6am to 10pm. There could also be no disruptions associated with the vigil, anything that could constitute the obstruction of “the free enjoyment of the public Plaza by other residents.”

As discussed in Chapter 1, permits are the cornerstone of the negotiated management method of policing protest, a set of imposed requirements and restrictions that have become normative, placed upon the terms of already Constitutionally protected forms of free speech and assembly. Permits are used to specify personal liability for protest activities, to impose self-policing, and to create a set of broad and vague conditions (i.e. not obstructing others’ enjoyment of the park) that can easily be used to revoke protesters’ ability to lawfully express their views in public space. Phil Horne of Occupy Legal stated quite clearly that the vigil idea had originated among that group of legal observers and lawyers as a means to challenge the city on the grounds that vigils were constitutionally protected and could not be evicted by the police. The permit – which was ironically introduced in the first place because police would not allow the vigil to be created – would itself become a tool to further repress Occupy Oakland. The agreed-upon permit, which had to be physically

present at all times in the Plaza, was a legal document created to ostensibly protect the vigil, when in fact it was used (as all permits are) as an intermediary between protesters and their first amendment rights, and, in this case, as a tool for the police to surveil, harass and repress the vigil itself. Within a few weeks over 40 people associated with the vigil were arrested for various, quite loosely defined, violations of the permit, for possessing yoga mats and blankets (“evidence” of dwelling) as police in riot gear raided the Plaza on numerous occasions with batons swinging, under the pretenses that homeless people were sleeping in other parts of the Plaza or because someone had set their food or backpack down.\textsuperscript{73}

Within days of the permit’s implementation the city began using it to police activities in the Plaza.\textsuperscript{74} The tent belonging to the Interfaith Committee that had stood for 2 weeks prior was ordered taken down, in keeping with the permit’s stipulation that the only permissible structure in the plaza was the teepee.\textsuperscript{75} The Interfaith Committee shifted to using a large umbrella, which was tolerated by the police for about two more weeks until after the December 12\textsuperscript{th} Port Shutdown when more aggressive policing began.\textsuperscript{76} Having learned all too well in late October the

\begin{itemize}
\item \textsuperscript{73} Omar Yassin. “City’s Increased Repression of Oscar Grant Plaza Vigils Producing Ironic Results.” 1/3/12. http://hyphyoo.wordpress.com/category/october-december-2011/
\item \textsuperscript{74} Omar Yassin. “Mystery Canopies Appear Through Time and Space at OGP, Despite Being Banned by City of Oakland.” 12/3/11. http://hyphyoo.wordpress.com/category/october-december-2011/
\item \textsuperscript{76} Omar Yassin. “City’s Increased Repression of Oscar Grant Plaza Vigils Producing Ironic Results.” 1/3/12.
\end{itemize}
price of poorly planned and timed repression, the city and police did not impose any significant repression in the Plaza in the lead-up to the December 12th West Coast Port Shutdown, that would bring out over 10,000 people in Oakland to shut down the Port of Oakland from 5am December 12th until 5am December 13th. The police clearly did not want a camp to reemerge before or on December 12th, making violent arrests on Thanksgiving Day (November 24th) to prevent a portable toilet from being delivered. That police action can be read as an act of necessity from their perspective – and a selective use of repression in the plaza in the period between the second raid on November 14th and the Port Shutdown December 12th – since portable toilets were an essential component of the camps in a downtown sorely lacking in public restrooms. Outside of the conflict over the Port-a-Potties, the police withheld any major policing operations and arrests until after December 12th. The 3-day encroachment permit, initially implemented on November 29th, was perpetually renewed without incident until a list of violations was issued on December 15th, followed by a coordinated police raid on December 20th.

http://hyphyoo.wordpress.com/category/october-december-2011/
Profiling and the Policing of “Public Nuisance”

Starting on December 15th, the Oakland police began confiscating anything found on the ground in the Plaza, and citing anyone who claimed ownership of anything that was on the ground. On December 20th the first of three major police raids took place. Quickly and without announcement or provocation dozens of officers in riot gear made several arrests for violations of the permit. That night three people were arrested for crimes including sitting on a blanket and taking something out of the trash.80 The second raid on December 30th saw thirteen people arrested many on inflated felonies.81 The pretense for the raids was that protesters had sleeping bags and food, neither of which were in violation of the permit that specifically prohibited sleeping and cooking. When the police raided that day, they quickly came into the park and started grabbing and arresting people, creating a melee.82 Two people would face “lynching” charges for allegedly trying to free themselves or others from police custody.83 What quickly became apparent to

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protesters and later confirmed by police documents, was a logic to the raids that featured targeting specific individuals who had criminal records known to congregate at the vigil. Once arrested these people faced probation holds and more serious legal consequences. Those arrested on the 30th also spent several days in jail unable to be bailed out because the courts were not in session due to the holidays. Outside of the raids themselves periodic police rounds sent vigilers scrambling to wake up the homeless sleeping on benches or hurrying to make sure that nothing in the park could be construed as a violation of the permit.84

The permit was officially revoked on January 3, 2012 because police claimed that the vigil had expanded beyond previously agreed boundaries within the plaza, a claim that is both unprovable and indisputable given the terms of the permit and the nature of an open public park. The day after the 3rd raid on January 4th, the OPD released a press statement to justify their actions.85

The statement, given after the rescinding of the permit, echoes the trope of public health and safety originating in the federally coordinated November raids as well as the language of the gang injunctions, which similarly posits “criminal elements” creating a “nuisance which attracts criminal activity.” The political discourse used to situate the November encampment raid (discussed in Chapter 3), taken from a city statement to Occupy Oakland’s camp argued that:

The City of Oakland and its police department support and protect the right of all individuals to engage in free speech and their right to assemble. However, **this encampment is a violation of the law.** Your activities are **injurious to health, obstruct the free use of property, interfering with the comfortable enjoyment of the Plaza, and unlawfully obstruct the free passage or use of a public park or square.**

We see the same logic of paternalistic governance (governmentality) and language of reluctant enforcement for the sake of the public good employed less than two months later concerning alleged violations of the broadly worded vigil permit. The following selection is from that January 4, 2012 OPD press release explaining the rejection of the permit and police actions:

> While the City of Oakland will continue to facilitate expression of First Amendment rights to free speech, in the interest of public health and safety, and the public enjoyment of Frank Ogawa Plaza, unpermitted and unregulated conditions will not be allowed.

This same OPD press release and the raids on the vigil which they are connected to parallel the tactics and language of spatially criminalizing specific individuals as a threat to social order and a public nuisance, characteristic of the gang injunctions. They are both rooted in the same civil law, quoted below in the city’s legal motion for a gang injunction, which is applied by police against targets who are arrested, charged and prosecuted under criminal law.

> The Norteño gang's activities described above **unquestionably constitute a public nuisance under the law.** California law defines a nuisance as: “Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the

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86 City of Oakland, 11/11/11. “Notice of Violations and Demand to Cease Violations.”
87 City of Oakland, 1/3/12. “City of Oakland Revokes and Denies Permit for Teepee on Frank Ogawa Plaza.”

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**free passage or use**, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.”

We see here a clear usage of the same exact code in California Civil law to define a group as a public nuisance in a specific area in an effort to legitimate targeted ("problem oriented") policing in both the gang injunctions and the enforcement/revocation of the permit. Where the injunctions are a court-approved usage of criminal sanctions for violations of a civil legal code (i.e. provisions of the injunction barring wearing certain colors, curfews, limitations on free association, etc.), the permit served as the vehicle to translate violations of the permit (i.e. possessing food, personal property, sleeping) into criminal offenses. The use of civil law (of which permits and injunctions are both examples) to pursue criminal charges is but one concern in terms of repression. Both also encompass an inherent police profiling of certain types of people (racial profiling in specific neighborhoods in the case of the injunctions, targeting of Occupy protesters in Oscar Grant Plaza in the case of the permit and stay away orders – discussed below). Alongside this generalized increase in aggressive policing in a clearly defined geographic area is the much more precise targeting of specific criminalized subjects within vulnerable populations.

Almost all of those targeted by the gang injunctions had criminal records and/or were currently on probation or parole, putting them at risk of significant prison

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time for the most minor offenses (i.e. violations of the provisions of the gang injunction they had been listed on). We saw this process explicitly used in the vigil raids as well as the stay away orders discussed further below. Occupy protesters were able to secure a copy of an OPD photo book which contained faces and a short criminal history for several members of Occupy Oakland known to congregate in the Plaza. Before raids, police were seen with copies of the book as they walked through the park surveying who was present at the vigil at that time, and taking notes. Several of the 40+ people arrested in the raids were people whose faces and criminal records were contained in this police profile photobook. The criminal records help legitimate the diagnosis of a public nuisance, and that establishment of public nuisance creates the preconditions to translate civil law into an arrestable offense. When applied through aggressive policing this practice is designed to drive those people out of specific geographic locations while saturating the area with generalized, increased policing under the legitimized auspices of a smart-on-crime, problem-oriented police strategy to protect the public from those interpellated as a criminal nuisance. The Oakland Police Department’s Public Information Officer, Johnna Watson, told journalist Susie Cagle in relation to the vigil raids:

There’s a core group that is part of Occupy, and we’re seeing those same people continuing to be involved in the same criminal activity. Smart policing is to identify them. If they feel, in their words only, that they are being targeted – if they continue to participate in illegal activity, then yes, they are going to be arrested.89

The pretenses for the police raids and the “criminal activity” they were targeting were the alleged and broadly-enforced violations of the permit already noted, possessing a blanket, food or a yoga mat as evidence of “dwelling.” Police repression made possible by criminalizing legal activities through the imposition of a permit. That permit was then used to overtly target people who were legally vulnerable. Beyond the nature of the raids themselves a legal tactic was bought to bear against the movement that also parallels the logic and methods of the gang injunctions – stay away orders.

**City Hall as Occupy Oakland’s “Victim:” Stay Away Injunctions as Legalistic Strategic Incapacitation**

Coupled with the raids on the Occupy Oakland vigil in late December into January 2012 was another tactic of “smart policing” which enhanced the OPD’s reclaimed control over Oscar Grant Plaza and further criminalized specific members of the movement, while heightening broader aggressive policing of the movement as a whole in downtown Oakland. While the permit was revoked as of January 3, 2012, the strict enforcement of various municipal codes pertaining to the park was introduced (i.e. the need for permits for amplified sound). With the permit rescinded the city quickly introduced a new tactic to control certain individuals in specific urban spaces – stay away orders. A stay away order is an increasingly common tool, historically used most often in domestic abuse cases against an alleged or convicted abuser, which requires those on parole, and often those with pending charges, to stay
a certain distance away from the victim. In the case of Occupy Oakland those arrested during the vigil raids and dozens arrested afterwards were given stay away orders as a condition of being released on bail, before any conviction was made (in most cases charges were eventually dropped months later). The stay away orders made it an arrestable offence for those with them to come within 300 yards of the “victim” – Oakland City Hall and the adjacent Oscar Grant Plaza. This barred many members of Occupy Oakland from attending General Assemblies in the Plaza. When Occupy Oakland moved one of their (at that time) three weekly General Assemblies to a park outside of the 300-yard perimeter, judges began giving stay away orders from both parks, despite the fact that many of those given stay aways after the vigil raids were arrested nowhere near either park.

Over a dozen Occupiers would be given stay away orders in just two months from the first vigil raid on December 20, 2011, with dozens more receiving them in the subsequent next few months. Legally the stay aways are an injunction, not unlike the gang injunctions, which also sit within the logic of strategic incapacitation by identifying people determined by city prosecutors to be criminal threats (or as OPD Public Information Officer Johnna Watson calls them “our problem people”) who can be legally barred from being in specific places under threat of criminal prosecution if

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90 The Superior Court of California: County of San Francisco. “Civil Harassment Restraining Orders.” http://www.sfsuperiorcourt.org/self-help/harassment
violated. The vigil raids and the stay aways both served to criminalize people within the movement and the broader movement said to “harbor” them. These policing tactics derived from legal permits and injunctions (whether the permits or stay aways) served as a pretense, much like the gang injunctions, to heavily police specific areas and surveil, harass and aggressively police all protesters in those designated areas. On a level that is much harder to measure, these forms of criminalization, of which there were certainly more, served to limit the movement’s growth and active popular support (whether peripheral supporters, people from already criminalized communities, people who were strict adherents to what has become known as “non-violence,” or people who felt intimidated). These efforts logically decreased the likelihood that new people would join a criminalized and delegitimated movement that was interpellated and repressed as an “organized, criminal nuisance,” and not a social movement, by the notoriously aggressive OPD.

OPD Public Information Officer Johnna Watson, again, makes very plain the application of (constitutionally questionable) “smart policing” from OPD’s standard repertoire towards Occupy Oakland: “These are some of our problem people and we need to do something to remove them from our streets. This is not something special we are enforcing for protesters, it is something we do and have done in the city for many years.” This new penology approach to policing Occupy Oakland does have a long precedent used against other criminalized groups and individuals. While sitting

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in court during arraignment for Occupy Oakland arrestees, I witnessed a man not connected with Occupy Oakland given a stay away order from every Trader Joe’s grocery store as he awaited trial for allegedly stealing a 6-pack of beer. As part of a new penology approach of criminalization and preemption, it has become a legally questionable, but nonetheless common, legal technique to criminalize the presence of people in specific areas who have not been convicted of a crime. Strategic incapacitation of protest, as Noakes and Gillham (2006) illustrate, is derived from a broader and more longstanding set of new penology techniques.

The American Civil Liberties Union filed suit against the stay away orders, a case that is still pending in court, that challenged the Constitutionality of these practices being used to stifle the assembly and speech of those who have not been convicted of any crime:

In this country, it is unacceptable to keep demonstrators out of the public square because the government thinks they might engage in illegal conduct in a future demonstration… In this instance, the government has failed to show that the orders are necessary to serve any purpose. The orders are also overly-broad and vague… Seeking to prohibit certain protesters from demonstrating in front of, or coming near, City Hall undermines these rights and values.  

In deploying these questionable tactics to control Occupy Oakland, the City of Oakland has made itself vulnerable to lawsuits, which have materialized. However this tactical shift does mark a clear evolution for the OPD, shifting from the random brutality of October 25th, after the first camp eviction, towards a style of repression

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situated, however solidly, in the law (permits and then stay away orders), featuring clear criminalization in an effort to legitimately control urban space using both negotiated management and strategic incapacitation techniques.

The usage of legally-questionable and aggressive, geographically bounded policing against specific individuals that is seen in both the gang injunctions and the policing of Occupy Oakland – the vigil raids targeting specific profiled individuals and stay away orders against them and others as a condition of bail – necessitates a clear process of criminalizing said targets. The absence of successful criminalization was key to the great failure of police repression in the movement’s first month. This criminalization, that is both legal and discursive, is an interpellatory project that utilizes the power of police to define problems and then devise “problem-oriented solutions” as part of their legitimate realm of authority (Althusser, 2001). By situating these practices within a framework of criminalization, police and city officials crafted legitimacy for their efforts to maintain order, while further delegitimizing a mass movement that would soon be subject to the same kind of wanton collective attack that it saw on October 25th, this time achieving its goal of demobilization while mitigating the risk of public sympathy and support.

**From Nortenos to Occupiers: Interpellatory Criminalization and Oakland’s New Penology ‘Widening of the Net’**

Drawing from the City of Oakland’s Motion for a Preliminary Injunction against suspected members of the Norteno street gang and from an editorial written
by Alameda District Attorney Nancy O’Malley defending the use of stay away orders against Occupy Oakland, we see, again a clear parallel process of new penology criminalization and preemption, again, situated in the same civil law. These applications of “problem-oriented policing” are derived from a broken windows logic of focusing on preempting major crime by criminalizing minor, and often otherwise legal or legally unenforced, activities associated with disorder. Both of these legal/policing efforts are rooted in the language of abating criminal nuisances through imposing criminal sanctions upon people who have not been convicted of a crime. Due to questions and contestations over the legality of these policing practices, these efforts are situated in the language of community crisis and the state’s paternal obligation to maintain order against a criminal threat that they establish and define.

In her San Francisco Chronicle Op-Ed, Nancy O’Malley lists serious crimes allegedly committed by members of Occupy Oakland, to establish a criminal threat and root strategic incapacitation within the clear criminalization of targets. It should be noted that no Occupier had been convicted of any of these crimes, many of these crimes had not even been charged (but were simply alleged by police), most charges have since been dropped.

These protests have devolved into militant operations that call for violence against the police and the city of Oakland. People have attended these marches wearing masks and dark scarves that served to conceal their identities. Their actions were violent, senseless and criminal… To date, my office has filed charges against 65 people alleging criminal behavior ranging
from felony assaults on the police, felony vandalism and resisting arrest to trespassing.94

This process of criminalization was key to both the stay aways and the gang injunctions. We see the same type of laundry list of generalized offenses to criminalize those listed on the injunction, to establish the presence of a criminal nuisance, and build legitimacy for its abatement. The injunction motion follows the same formula of criminalization:

Norteño gang members do, and will continue to, kill, shoot, beat, stab, rob, take over residential and public spaces by force to openly deal and use controlled substances, put up gang graffiti, loiter in public, and treat residents' property as if it were their own - all to instill fear in the community and rival gangs.95

After a pattern of criminal history has been presented, and the problem defined by the legal officials of the city, they propose their solutions within the logic of social cohesion and defending the public from criminal threats, based solely on peoples’ criminal records (past criminal behavior) or simply on the fact that they were arrested (and have not been convicted). O’Malley and the Preliminary Injunction document both define the interpellated criminal threat as both outside of and a threat to the community, justifying intensified policing within the state’s obligation to abate criminal nuisances and protect public health and safety.

O’Malley’s criminalization, harkening the Red Scare and Palmer Raids

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criminalization of radical politics, attempts to draw clear lines between the movement and the community, but also between certain protesters and the movement itself:

Let me be clear: These individuals were not rallying on behalf of Occupy Wall Street, or even the greater Occupy Oakland movement. Rather, they advertise themselves as "militant, anti-government, anti-police, and anarchists," with a mission to destroy the community fabric of Oakland through the use of violence.96

The preliminary injunction follows the same logic of situating preemptive policing in the state’s moral obligation to maintain order by eradicating behavior and people they define as a public nuisance.

Plaintiff agrees with the Supreme Court's statement: "The state has not only a right to 'maintain a decent society,' but an obligation to do so…" The community in the proposed Safety Zone [gang injunction area] deserves to live in safe neighborhood free from the criminal and nuisance activities of street gangs. The level of violence and threatened violence is too high in the proposed Safety Zone. The People pray this Court issue the proposed injunction, and abate the public nuisance caused by this defendant street gang.97

The paradigm of new penology is situated within an increasingly carceral political culture where the ability to create or posit moral panic allows for the imposition of preemptive tactics against a criminalized and amorphous enemy of the community. Within the common sense of law and order, whether it be tough-on-crime or smart-on-crime, the state has assumed a widened purview to criminalize, target, and neutralize different groups of people based

on suspicion rather than traditional investigation. I have shown how the resultant slippage of constitutional rights in relation to one group (alleged gang members) quickly establishes a legal and practical norm through which other groups can be targeted.

**Oakland’s Broadening State of Exception: From Gang Injunctions to Tactical Permit Enforcement and Stay Away Orders**

This chapter of the struggle between Occupy Oakland and police repression was far less visible than either the less-than-lethal police aggression of October 25th that almost killed veteran Scott Olsen, or the tens of thousands who would shutter Oakland’s main capital-transmission belt – the Port of Oakland – twice in a six-week period. The raids and subsequent stay away injunctions in the two-month period beginning in late December 2011 were a clear pivot-point for Occupy Oakland. Criminalization helped dampen and/or intimidate public support while driving wedges between “good” protesters and “bad” protesters – who would get a rationalized profiling in this process. Legalistic mechanisms legitimated what would become increasingly aggressive policing against the movement as a whole. Occupy Oakland quickly went from victim of police violence to criminal nuisance.

The movement went from drawing on their momentum to plan massive actions (stretching as wide as the entire West Coast on December 12th) to having reactive, small marches against the police that needed to navigate around the 300 yard perimeter of police turf downtown that had been judicially established by the stay aways. General Assembly discussions got smaller, as the discussions shifted from
where and how to do community outreach, and what the movement’s next big effort should be, to report-backs on police harassment and how to navigate the fact that the movement’s meetings were taking place in a space where dozens of committed members were not legally allowed. Instead of allocating the movement’s meager funds to paying for posters publicizing the movement’s next mass action and for the sound trucks and food necessary for the expected tens of thousands of people, the movement scoured for bail money for comrades and occupied courtrooms day after day.

The criminalization initiated in late-December and early-January was a prelude to the massive coordinated delegitimation and preemptive aggression against several hundred protesters trying to occupy a vacant, public building later that month. By situating questionable police tactics socially, politically and discursively within a framework of criminalization, and tactically and legally within the legal injunctions (however constitutionally precarious), city officials and the Oakland Police Department drew from the pre-existing tools at hand to strategically incapacitate Occupy Oakland.

*Anomie Within the Law as Guarantor of Social Order*

Giorgio Agamben’s theorization of the “State of Exception” helps explain the shift from new penology policing techniques against one target to the next, in this case how the gang injunctions laid the groundwork for the effective repression of Occupy Oakland. Agamben illustrates how the mutual constitution between politics, ideology and the law is being refashioned by agencies of the state (City and District
Attorneys and police departments with support from city officials), using a self-appointed judgment of emergency necessity to combat a criminal nuisance, interpellated as an “enemy of the people.” Agamben’s legal theory is that this is neither outside nor within the law, but a blurring of constitutional rights – an “anomie within the law” – or as the National District Attorney Association (2009) says, in relation to gang injunctions, an ‘innovative’ legal technique making use of ambiguities in the law.\(^98\) Clearly (and admittedly) the practices of gang and stay away injunctions are not rooted in objective criminal law, but in emergency technicalities that allow for the bending and blurring of the law – necessary exceptions to due process and freedom of speech and assembly. As we see in the direct transmission of the legal and political justifications, as well as the tactics and goals, from the injunctions to the stay aways (as well as the normative requirement of permits for already constitutionally protected protest) this ‘anomie within the law’ quickly becomes the new norm, with chilling effects on dissent.

The power of strategic incapacitation is rooted in the police’s ability to legitimately use bureaucratized force, ideology, and legal techniques to create a certain social order using legal and non-legal policing techniques jointly justified by paternal state power and the criminalization of targets. This “innovation” is a shift from an order rooted in laws and rights towards an order rooted in a perpetual state of exception, with subjective political policies aimed at preserving a new penology social order. The epoch of new penology, whether in the War on Gangs or in the

repression of social movements is rooted in a broader logic of governmentality and managerial control of population and spaces. Power is deployed and reinforced through defining threats and preemptively neutralizing them, rather than upholding the law through criminal investigation. Rather than respecting people’s right to protest while upholding the law, the policing of Occupy Oakland saw the withholding of the law to preserve the social order of new penology.
Chapter 5
The Meshing of Force and Legitimacy in the Repression of Occupy Oakland’s Move-In Day

January 28, 2012: The Iron First and Velvet Glove Finally Meet

The strategy of disrupting and containing an effort to occupy the vacant Kaiser Convention Center on January 28, 2012 was, perhaps, the most comprehensive and effective effort by the police and city officials to contain and disrupt Occupy Oakland, using mutually reinforcing strategies of force and discourse. This strategy coupled aggressive street tactics from police, ranging from extensive intelligence gathering, to excessive use of less than lethal weapons, to tactics of kettling\(^99\) and mass arrest, with comprehensive political discrediting of the movement by the mayor and other city officials, and separately by the mainstream press.

While the planning and coordination of the movement's action left much to be desired,\(^100\) the attempt to occupy and make social use out of a building that had lain vacant for years – by providing meeting spaces, food and shelter for the movement

\(^99\) Kettling is a police tactic defined by police encircling protesters, detaining them as a group, and either letting them slowly disperse or subjecting the whole group to mass arrest. The logic is to frustrate the movement of crowds and disperse or arrest them, usually without the widespread use of less-than-lethal weapons. The tactical has been used frequently in the era of strategic incapacitation, and despite numerous legal challenges, is still a highly used and effective police tactic. More information on this tactic is available from NetPol (Network for Police Monitoring): http://networkforpolicemonitoring.org.uk/?page_id=227

\(^100\) Politically, the press conference before the action threatened to shut down the Oakland Airport among other threats if the police prevented protesters from occupying a public space. Tactically, there was no space broken into ahead of time to increase the likelihood of the march getting into the space. There were also poor leadership of the march and no secondary target seriously attempted.
and anyone who needed it – was very much in keeping with the core political objectives of Occupy Oakland and the movement as a whole. Although the action ended up being a repeat of the failure of the November 2nd post-Port Shutdown attempt to occupy the Traveler's Aid building – on a much bigger scale, at a time when the movement had lost considerable steam, and with deeper repercussions for the movements’ trajectory – the potential of Occupy Oakland creating a large social center was a formidable threat. It was a threat that the mayor and police took very seriously. The social control response was multifaceted, strategic and, ultimately, effective.

It is only through understanding the context of the escalation of social movement tactics and their interpretation by powerful officials that we can make sense of the social control response. While the camps themselves had been defined as a social problem, but not the movement, and the raids on the Vigil had been largely invisible from the public and framed in the same parlance of bureaucratic necessity that had underscored the camp raids, January 28th (J28) marked a clear discursive shift on the part of the city. The discourse from city officials moved away from one of depoliticized repression cloaked in the language of amorphous paternalistic obligations to keep the movement safe from itself and to maintain public safety, under a vague logic that presented the movement more as unwieldy and inadvertently burdensome than illegitimate and criminal. In the two months leading into January 28th the press, city officials and the police quickly transitioned towards a wide-ranging political criminalization and full-frontal attack on the movement as a whole.
In the weeks that led up January 28\textsuperscript{th}, the movement itself became the enemy – a depoliticized criminal entity bent on violence and mayhem, an unwelcoming place for respectable people seeking social justice.\textsuperscript{101}

The discourse of the mayor, other city officials, the police and journalists all coalesced in condemning the militancy of a core segment of the movement, equating a lack of a universal commitment to “non-violence” with a lack of integrity and legitimacy. Moralistic blame was placed on anarchists, the broader anti-capitalism endemic to the movement, and Occupy Oakland as a whole, for its failure to police itself and its militant sectors. The combination of aggressive policing and political discrediting of the movement was successful, if hard to fully measure empirically. Occupy Oakland never saw more than a couple of thousand people in the streets after the December 12\textsuperscript{th} Port Shutdown. The criminalization of the movement played no small role in that. While Occupy Oakland persisted as a movement with hundreds of core members after December 12\textsuperscript{th}, and as it went on to engage in grassroots organizing alongside and within working class communities and struggles, the movement failed to garner mass, local support after its first two months. The strategies used in response to the attempted Kaiser takeover serve as the clearest example of broad-based efforts at social control, turning one of Occupy Oakland's founding strengths, its militancy, into a liability.

\textsuperscript{101} According to the City of Oakland’s January 27, 2012 press release: http://www2.oaklandnet.com/oakca1/groups/cityadministrator/documents/pressrelease/oak033073.pdf
As I discussed in Chapter 1, the movement exploited police over-aggressiveness on October 25, 2011, making the tactical mistakes made by police into their strategic failures, taking the social tensions which social control had produced and creating a lack of social control. In short Occupy Oakland was willing to challenge the police and endure repression, which created social control mistakes, mistakes the movement took advantage of. The General Strike and West Coast Port Shutdown, mobilized broad public sympathy and support into mass direct action. As we approached January 28, 2012 the political and discursive foundation had been laid for strategic incapacitation – from the second raid, to the vigil raids and stay away orders, to widespread demonization of the movement in the press. While Occupy Oakland was ready to exploit police mistakes in October 2011, the police took great care to make sure that January 28, 2012 would be the day that they took advantage of the movement’s strategic mistakes. The police would mass arrest over 400 people and later face a resulting class action lawsuit for unlawful arrest.102 However, the police’s tactical victory on that day, combined with the visuals of a movement detained and contained coupled with press demonizations103 of the action, and calls for intra-movement denunciations from the Mayor, far outweigh the potential legal cost that the lawsuit represents, a lawsuit that was yet to be heard over a year later.

102 Steven Angell, et al. V. City of Oakland, et al. United States District Court, Northern District of California (Case # C13-0190).
Criminalization and legitimated strategic incapacitation created a victory for the forces of social control in the “Battle of J28” – it would also be the beginning of the end of the war with Occupy Oakland.

The street policing of Move-In Day was straightforward strategic incapacitation. The objectives were to prevent members of Occupy Oakland from occupying a vacant building. 104 Mutual aid riot forces were on call and utilized by the end of the day. The use of a full range of tactics, including the application of less-than-lethal weapons on entire crowds was available and used, though the command over such orders was reinforced in the planning documents. Kettling and mass arrest tactics were also available for use, although being generally quite questionable legally. It was clear to the police heading into January 28th that the action could be portrayed as having an inherent criminal nature, and the use of strategic incapacitation would not prove counter-productive so long as officers followed orders and command was clear, keeping the incapacitation strategic.

**Definition, Representation and Force:**
**Theories of Political Hegemony, Criminalization, and Control**

Because of the density and breadth of the repression response to the Move-In Day, the theories which help explain this pivotal moment are criminological, political and discursive. Holistically, this moment is the confluence of negotiated management (both applied and normative) and strategic incapacitation – mutually

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constituted, mutually reinforcing and fully activated. The zero-sum game between legitimacy and strategic advancement where the movement had maintained an advantage from the very start, refusing negotiation but preserving popular support, an advantage compounded by police aggression on October 25th, created the momentum that produced November 2nd and December 12th. The depoliticized 2nd raid, stripping the movement of its visibility and its public recognizability, followed by a permit used as a tactical tool of strategic incapacitation under the official parlance of an agreed relationship of cooperation, had begun to turn the tide. Occupy Oakland retained a large militant core, broad networks and functioning general assemblies in spite of the shifting waters – all stranded on the edge of the Bay, waiting for a tide of support and broad-based resonance that either evaporated or was re-channeled.

In spite of a massive policing effort (discussed in greater detail below), the central focus of this chapter is the role of political discourse in criminalizing social movements, enabling full strategic incapacitation that is presented as justified, embedded in a Manichean common sense that goes beyond undermining immediate tactical efforts towards undermining the viability and integrity of movements themselves. This chapter is the story of the meeting of the iron fist with the velvet glove, of police aggression activated and legitimized through the political delegitimation and criminalization of Occupy Oakland (Institute for the Study of Labor and Economic Crisis 1975: 179).
Pathologizing Dissent, Manufacturing Consent

The mainstream press coverage of protests is typically very conflict-driven and analytically shallow. The protest is covered as a disruptive, chaotic event, with protesters often portrayed as confused or apolitical and movements themselves as fragmented, juvenile, or disconnected from the concerns of everyday people. In her analysis of the relationship between the media and social movements during election years, Sarah Sobieraj (2011) illustrates how movements are either ignored or consistently portrayed as culturally marginal or criminal: “For those organizations that did receive coverage… [they] were often characterized by trivialization and an emphasis on violence and disorder” (90). She goes on to articulate a dimension of the negotiated management trap, with actions that went out of their way to police themselves, ensuring “non-violence,” still getting defined by conflict (ibid., 91).

Instead of the press focusing on the issues of the protest, the story became about how orderly the protest was and what the logistics of a peaceful protest look like. The media squarely has a preoccupation with conflict and ‘violence,’ and a universal aversion to substantively covering protests as political events, regardless of the adopted tactics.

Todd Gitlin (2003) borrows from Gramsci and the framing literature to discuss the role of the media in the New Left. The text focuses on how the “mass media have become core systems for the distribution of ideology,” tracing the effect of media framing both inside the movement and outside the movement, in the general public. Following Gramsci, Gitlin demonstrates the political power that media has
through its ability to define, interpret and morally evaluate social actors in political conflict. This ability to construct what Gramsci calls “common sense” imbues the media with the power to determine and distinguish which movements or actions are “legitimate main acts” and which are “illegitimate sideshows.” We will see this distinction drawn quite clearly in the San Francisco Chronicle, as Occupy Oakland is set up as a violent sideshow, a trope the Mayor and police would soon extend into a criminal sideshow.

*The Paternalistic Teacher Finds the Velvet Glove*

Up until J28, the story of Occupy Oakland’s mass mobilizations for city officials and the police was a story of fractured hegemony and policing as a political liability rather than a last line of defense in maintaining social order. A cornerstone of political sociology, as initially established by Max Weber, is the idea that the state’s monopoly over the use of force is rooted in political legitimacy – the consent of the many and the coercion of the few (1946: 78-9). Gramsci expands this basic point into a political framework that takes into account social struggle and contradiction, the ability of that hegemony to be challenged and/or lost. As described in Chapter 1, this is what we had seen in the first few months of Occupy Oakland’s existence. In order for (police) force to reestablish its legitimacy and social control function, other powerful actors (most notably elected city officials) needed to provide a different set of definitions about policing and protest, a political frame that defined
the “protest/police problem” as a problem of disreputable protesters, not rogue cops or a brutal, corrupt police force.

As I discussed in Chapter 2, there is a zero sum game between protesters and police in terms of legitimacy, with legitimacy playing a large role in tactical success or failure. Gramsci defines the state (for him a fusion of political society and civil society) as “hegemony armored with coercion.” City structures of power were presented with a conundrum after October 25, 2011, when their “armor” was seen as illegitimate and their hegemony in danger of being seriously challenged. Both would be reconstituted by reframing Occupy Oakland not only as a problem, but a problem that could only be solved by aggressive policing. We will see in the words of the Mayor, City Administrator, and City Councilmembers the reconstitution of hegemonic control over Occupy Oakland, exactly as Gramsci describes in the Prison Notebooks: 1) speaking for and as “the people” (assertion of hegemony); 2) defining political phenomena, such as Occupy Oakland, its context, and state alternatives to create justice (role of the state as educator); 3) assertion and exercise of the legitimate role to apply coercion in the name of the common good (legitimized police repression). The marginalization and criminalization of Occupy Oakland simultaneously legitimized and activated police repression.

This process of criminalization is not new and has actually taken on a formulaic expression since the World Trade Organization protests in Seattle in 1999. It is however a process that had not been successfully implemented against Occupy Oakland until the lead-up to January 28, 2012. Luis Fernandez quotes a high-ranking
member of the Washington D.C. police about the logic and tactics of protester  
criminalization, that speak directly to the strategies employed by city officials in  
Oakland immediately before the J28 effort: “We try to get all the information we can  
to the media so that people know how violent these groups are and the type of things  
they might do because… of course, we need the public support to do what we do.  
Without it, we can’t do our job” (2008,152).  The power of the state to define  
phenomena as a criminal problem, to forge policing solutions, and garner both social  
control and political legitimacy is a basic process of governing, and a cornerstone of  
repressing unconventional challengers (Weber 1946, Gramsci 1971, Foucault 1994;  
criminalization process:

The state constantly asserts its respect for the rights of ‘peaceful,’ ‘law-  
abiding’ political expression.  Those who refuse to follow the rules of protest  
permits, routes, and styles do not deserve the state’s respect.  Thus, by  
definition, all those who disturb in the slightest the channel provided by police  
are threats, are violent, unpredictable, preternaturally out of control, beyond  
the bounds of social mores.  Political policing cleverly merges social decorum  
with the architecture of state control. (95)

Criminalization is never a simple assertion of the law, but a reinforcement of  
the broader norms of which the law is a part (in the context of protest, non-disruption  
and cooperation with police) and the marginalization of the transgressor (Durkheim in  
Jacoby 1979: 66-7).  In Oakland, the city press releases would define Occupy  
Oakland as a simple criminal entity and not a social justice movement, and go so far  
as to call on other Occupy sites to strip Occupy Oakland of the name “Occupy.”  The  
political marginalization and concomitant police repression are fused, and both tied to
a moral demonization of the movement as a whole, based on a selective and often exaggerated or fabricated list of “unintelligible acts” by individual protesters. David Graeber (2007) discusses the discrediting and criminalization of protesters through a folklorish listing of offensive and physically violent activities (supposedly) previously committed, ascribed to upcoming protests as a whole:

During the WTO protests (Seattle, 1999) themselves, I must emphasize, no one, including the Seattle police, had claimed anarchists had done anything more militant than break windows…. [L]ess than three months later, a story in the Boston Herald reported that, in the weeks before an upcoming biotech conference, officers from Seattle had come to brief the local police on how to deal with “Seattle tactics,” such as attacking police with “chunks of concrete, BB guns, wrist rockets, and large capacity squirt guns loaded with bleach and urine” (Martinez 2000)…. Each time there is a new mobilization, stories invariably surface in local newspapers with the same list of “Seattle tactics” – a list that also appears to have become enshrined in training manuals distributed to street cops. (389)

We saw this laundry list of violent offenses in the OPD operations brief and in their press release, as well as the City of Oakland’s press release, and the media coverage of Move-In Day, before and after J28, as part of a broader set of discourses painting Occupy Oakland as nihilistic outsiders and blaming them for everything from lack of city funds to poor police response to crime.

Data and Methods

The data for this chapter is a variety of primary documents from the Oakland Police, Oakland City Hall, the local mainstream press (primarily the San Francisco Chronicle), legal briefs, and videos taken during the January 28th action. In terms of analyzing the police planning I draw on declassified OPD briefing and planning.
documents used to orient officers before the protest. I also draw from declassified emails sent from OPD Operations to a variety of local, regional and federal forces, that show the scope of the policing effort as well as the methods of surveillance and intelligence gathering used by the Oakland Police. My analysis of City Hall’s political discourse and criminalization of the movement in the days before and after January 28, 2012, is drawn from press releases issued by the city, with other quotes from city officials supplemented by a purposive sampling of the newspaper articles. I also utilize a purposive sample of articles written by Kevin Fagan, the social movements/protest beat writer for the San Francisco Chronicle, because his work is presented as the most analytic depth writing on Occupy Oakland in the leading Bay Area newspaper. I supplement my analysis with ethnographic data from multiple interviews I did with Fagan as a media liaison for Occupy Oakland.

Normative Discourses of Negotiated Management:
The Invocation of the Myth of Non-Disruptive Change in the Press

This question of tactics that fall outside of the parameters of negotiated management – the refusal to coordinate with or defer to the police, and the refusal to adhere to what is contemporarily termed “non-violence” – had been greatly discussed in the media coverage of Occupy Oakland since the shutting down of the Port of Oakland on November 2nd. Kevin Fagan was at the forefront of challenging the legitimacy of Occupy Oakland on the terms of its failure to adhere to negotiated
management, in a prominently featured series of articles. Key to almost all of Fagan's articles on the movement is the amplification of divisions over questions of tactics and conflicts with the police – really conflicts and disruption in general.

The only real conflict that is justified in his articles is the tension between Occupy Oakland and the more respectful and legitimate “99 percenters” whom he interviews in the suburbs and rural areas on the outskirts of the Bay Area. None of these other Occupy sites have ever formally condemned Occupy Oakland, any of its actions, or any of its tactics, but Fagan's primary concern is with identifying protesters who are concerned about alienating people, by setting up encampments or associating with homeless people, or who feel the anti-bank message is lost when

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there are confrontations with police. One article, “Protests of Past Hold Lessons for Today” (December 4, 2011), is framed by police expectations, as provided by a former police sergeant, that revolve entirely around the terms of negotiated management as the only form of legitimate protest. As a media liaison for the December 12th Port Shutdown I was interviewed by Fagan for this article. In an almost 90-minute conversation, Fagan's driving concern was how to create better relations between protesters and police, like there had been in the 1960s. I explained in various ways how the tension was rooted in protesters seeking to disrupt the social order and police trying to maintain it, and how this had less to do with violent versus non-violent tactics, as the history of the 1960s actually illustrates, and more to do with disruption versus cooperation, and the police violence common in maintaining that order.

The article is premised around the idea of a bygone era of the 1960s, mythologized as the coexistence of major social change and cooperation between protesters and police. The problem I identified during my interview with Fagan was that history was being revised to suit the needs of the present in this framing, that the contemporary norms of negotiated management were not hegemonic in the 1960s, and that they actually emerged in response to the upheaval of that period as a

mitigating force for future crises. Those who chose peaceful tactics in the South during the Civil Rights Movement not only took significant risks. They were violently attacked by police, regardless of the orientation of their tactics, because they were disruptive and determined to alter the social order that the police were charged to protect. In the article, negotiated management is defended by the former Sergeant and an older pacifist, both harkening back to the days of police-protester cooperation and peace. The veteran activist and non-violence trainer, invoking norms that are said to stretch from the 1950s through the 1980s, argues that a mutually beneficial relationship of negotiated management between protesters and police has been lost, and should be regained – that people have forgotten the rules. He suggests, “One of those rules is that there would be no surprises.... Each side would say, 'This is what we will do,' and, 'This is what the response will be,' and you had monitors trained in the discipline of nonviolence who would keep an eye on everything.”

While negotiated management has become normalized it was not the norm in the 1960s. It emerged after the 1960s, it emerged because of the 1960s. It arose because of the crises of that period, seeking to mitigate similar upheavals in the future. The conflation of pacifism and cooperation with police comes from the history of the post-1960s, when pacifism as such became wedded to negotiated management (and vice versa), losing the disruptive capacity that had made Martin Luther King Jr., SNCC, or the Berrigan brothers the disruptive and effective political

forces that they were. Civil Rights marchers never negotiated that their children would get attacked by dogs or bombarded with water cannons. Father Daniel Berrigan was forced underground and later served years in prison for the non-violent act of destroying draft files during the Vietnam War, which he certainly did not ask permission to do. Reverend Martin Luther King Jr. wrote one of his most famous speeches from a Birmingham jail cell; he was in jail because he did not have a permit to protest. The conflated concern here is not really over tactics, but over a refusal to follow the directives of the police and (their interpretation of) the law.

“Non-violence” became choreographed and largely stripped of its disruptive capacity by the great extent to which it was incorporated into negotiated management. What is commonly understood as a debate over violent versus non-violent tactics is completely overdetermined by the (usually unspoken) conflict between disruption and cooperation. Outside of the reach of this chapter, but worth noting, is the extent to which certain protesters are defined as violent (and thus illegitimate) for failing to adhere to negotiated management, even if they have no confrontation with police, or any living thing. Wearing a mask or a helmet and breaking windows is understood as violent under the contemporary understanding of protest, even if there is no harm or even engagement with police. The simple wearing of masks is illegal in and of itself in many major U.S. cities as this logic is extended from what is violent (disruptive) to what is provocative (potentially disruptive). An effort was made in Oakland to make
the possession of shields or poles illegal after January 28th.110 We see here, just in small sample of prominent articles in a major paper, how negotiated management is embedded in dominant discourse and the social imaginary, how movements are evaluated and historically situated in the press to create a common sense around dissent, even if history itself needs to be massaged to fit the new norm.

The Anti-Politics of Political Repression: The Power to Define Criminality is the Power to Incapacitate

While the policing of the January 28th action was central to the overall effort to thwart the occupation of the Kaiser Convention Center. Using police tactics which are now being challenged in court,111 the public relations aspect of social control from prominent Oakland politicians saw it’s clearest, sharpest and most forceful application immediately before and after the action. The words of Mayor Jean Quan and City Administrator Deanna Santana need to be evaluated as primary forces of social control, if we are to understand the social and political contexts that aided or hindered support for the movement and that empowered and rationalized the aggressiveness of the police. Because these political discourses explicitly seek to demobilize movement supporters while legitimating police aggression they are squarely as much of a material force as the batons they enable. This was a pivotal

111 Steven Angell, et al. V. City of Oakland, et al. United States District Court, Northern District of California (Case # C13-0190).
moment in which the movement was trying to further its definition of itself as both provocative and socially responsible, while the city and police sought to frame the movement's efforts as violent and politically directionless. While Occupy Oakland lost the battle on January 28th, the failure was also the beginning of the slow end of the war as well.

To quickly contextualize the political discourses that sought to delegitimate the January 28th action and steer sympathizers in another direction while legitimating police aggression, the role of city officials as knowledge producers must be accounted for when evaluating protest and policing (Gramsci 1971: 350). In the few days immediately before and after the action the movement was consistently portrayed as violent, childish, foreign and apolitical, incurring a major financial burden to the city and a distraction to police who were unable to address the city's immense crime problems. According to the City of Oakland January 27, 2012 press release the movement was described as pitching a “tantrum” and “using Oakland as their playground,” engaging in “violent actions against Oakland” intended “to provoke the police and engage in illegal activity,” while it “claim[s] to stand for” addressing issues of social justice. The mayor would go on to offer an alternative to “tactics that are counter-productive and divide our community” with a call to “work together, collectively, productively, and cooperatively” - by giving time and money to a long list of non-profits outlined at the end of the press release, most of whom would be present for the mayor's Volunteer Fair, strategically announced immediately before

the action, traditionally held in the Fall. City Councilmen Ignacio de la Fuente, a potential rival for mayor in the next election and aggressive critic of Quan's perceived lenient handling of the Occupy movement, again said that the movement was engaged in “domestic terrorism.” 113

With the movement’s social justice aims seriously called into question, to the extent that Mayor Quan repeatedly stated that the movement was using the language of social justice to mask mayhem and criminality, the policing of the movement was about crime prevention and not protest management, enabling hard physical repression of the movement while depoliticizing it at the same time. This power to frame debate and define phenomena, to delegitimate social movements (to even strip them of that title), and to empower police repression as the necessary upholding of law, and not the stifling of dissent, is a discursive force with enormous material bearing. The nature of the movement and the police did not dramatically change in the past three months, nor had their respective tactics – but their meaning and effect surely had. Knowledge producers, like city officials, have the power to define protesters and police to a large extent, as well as their actions, the meaning and legitimacy of those actions, and the sentiments motivating them. The aims of the movement, to occupy publicly owned space, which had lain vacant for years, to

provide a location for protest, community and self-sufficiency had not changed, even if the venue had.114

The first camp saw a police force more than willing to turn a blind eye to petty criminality and violations, because of the movement’s aims and the public perception of those aims. Less than four months from the first pitched tent in Oakland the political ambitions of the movement had been discursively erased, the movement's base divided over militant tactics, and the 1500 people in the street interpellated as simple criminals rather than social justice protesters. It is far more likely that the police and city officials became more aware of the militancy at the core of the movement and its propensity to take risks than they were in October, rather than any major changes in the nature of protest policing. It was the City's ability to demonize that militancy that put police violence in a more socially acceptable context. The state's power to define what is “protest” and what is “criminal” (or “violent” and hence illegitimate) is largely connected not only to their position as elected officials, but to the normative power of negotiated management as a force of social control, regardless of whether it is chosen or imposed as a normative structure. This criminalization is only effective if it resonates in the minds and demobilizes the bodies of those who had previously supported the movement. Protests that have politics or utilize tactics that fall outside of the realm of reasonable, cooperative, predictable and containable cease to be considered protest at all. The extent to which many supporters of social justice support this logic amplifies its effectiveness.

When Occupy Oakland did not fall for negotiated management’s bait they got caught in the normative net. These relationships and processes are hegemonic, whether social movements like them or not, whether they are inherently repressive or not, whether they are constitutional or not. As they swim forward, movements will need to either foster widespread delegitimation of the net or formulate viable strategies for cutting its strings, because the dialectics of ‘behaving’/’misbehaving’ (or debates which counterpoise “diversity of tactics” and “non-violence”) constitute swimming in circles.

**Legitimated Soldiers get their Marching Orders**

The police committed hundreds of officers in riot gear – as well as 20 officers, captains and sergeants solely committed to intelligence/undercover work – to their effort to thwart the taking of an indoor space by Occupy Oakland. Internal OPD documents make clear that they would use all the means at their disposal to prevent the takeover of a vacant indoor space. The goals of the action were illegal (breaking and entering, trespassing, etc.) and the police planning was framed quite simply as the prevention of illegal action. Occupy Oakland was also labeled as inherently violent and criminal. The first page of the OPD Operations Plan for January 28th states that Occupy Oakland is “openly hostile towards law enforcement, including several physical assaults.”\(^{115}\) The next paragraph lists various (alleged) offenses of occupiers against police specifically – mostly various forms of assault on an officer, resisting

arrest, and de-arresting fellow protesters. The Operations Plan ends with 16 pages of legal codes for crimes ranging from graffiti to assaulting an officer with a firearm, and from resisting arrest to rioting and arson. While the various tactical operations plans and OPD briefings clearly state that the use of force should be measured and that less-than-lethal weapons only deployed by OPD (and not from mutual aid forces), the planning documents make clear that aggressive policing was going to be the order of the day. The OPD tactics on January 28th encompass all the aspects of strategic incapacitation – criminalization, preemption, less-than-lethal weapons, the control of urban space, and the use of surveillance and intelligence. The most pronounced and enhanced aspect of the OPD’s response to J28, in spite of the tactical victory on the street all day and the tactical advancement in terms of the use of kettling, was their extensive use of surveillance – immediately before, during and after the demonstration on January 28th.

**Strategic Incapacitation in the “War Room”**

Oakland’s Emergency Operations Center, located just north of downtown, was pre-existing and had been used on November 2 and December 12, 2011. From January 28, 2012 on it would be emphasized as a high-tech center for police command and control. The center is the hub for police coordination; information from numerous sources is received and analyzed and useful information is presented to commanders for timely police response. Within the command center at least 3 officers monitor twitter and social media, other officers receive reports from
undercover officers in the protest, updates are received from various uniformed police units, live-streaming (real-time video posted to the web by people embedded with the protest) is monitored, reports from the media are utilized, the OPD email tip-line is watched, among other likely information sources. The emergency operations center is a highly rationalized surveillance network designed to provide the police with real-time knowledge to enhance the effectiveness of their efforts. The application of this set of tools to preempt and neutralize protest shares several similarities with both stakeouts and modern military combat (Haggerty and Ericson 2001: 43-64; Eisenstadt 2012: 134). Despite questions that have been raised by civil libertarians, as the San Francisco Chronicle reports in an article framing the center as a tool of officer safety, the “Oakland police’s war room [is] the new normal.”

Emanating from this war room, besides direct communication with commanders, was a series of emails to a wide range of agencies. A selection of these emails was acquired via the Freedom of Information Act and posted on the internet. These documents show the types of information the OPD was receiving, who it was shared with, and how it was put to use. While most of the email addresses receiving updates from the Command Center on January 28th were OPD sergeants, lieutenants and Captains, or elected officials and officials in the Oakland Fire Department, the emails also went to ICE (Immigration and Customs Enforcement) as well as the Coast

117 Ibid.
Guard command center and several officers. The emails early in the day, before the march took place, had a range of information that was available on the internet, rally times, the rules of conduct for the space after it was taken, etc.\textsuperscript{119} There was also some information that was not publicly available, specifically a word document listing the potential targets for the day, a list police were fully aware of before the protesters even congregated. As people began assembling in Oscar Grant Plaza, there were reports from undercover officers about the number of people and when and where equipment (i.e. shields and banners) was being delivered. The email list was used during the march to report what other officers were confronting and doing as well as reports from heavy monitoring of twitter, live-streaming, websites, unidentified “internet chatter,” and mainstream news reports.

\textbf{“Just No Place for a Street-fighting Man”: Containment, Kettling and the Closure of Move-In Day}

The police used a range of less-than-lethal weapons throughout the day on a crowd of approximately 1500 that was led by protesters with large shields and helmets. The Kaiser Center had no occupiers already inside for the street protesters to support, allowing the OPD to simply follow and attack the march as necessary. Much of the afternoon was filled with protesters trying to out-maneuver police, often in a very unwelcoming geography that was filled with construction sites, fences, and highways.

\footnotesize{\textsuperscript{119} Ibid.}
At one point, projectiles were lobbed over a fence at police who responded with beanbag and rubber bullet munitions. As the day wore on into evening and the crowd dwindled somewhat, the march was kettled (surrounded by police). Protesters were able to escape once, but not twice. Over 300 people were mass arrested without being given a dispersal order, including six journalists, bringing the total number of arrests for the day over 400. While the OPD is now facing an unlawful arrest lawsuit due to this mass arrest, their primary objective of blocking Occupy Oakland's effort to physically reestablish itself was a major victory for the movement's opposition.

Many people spent three days in Santa Rita jail, with the failed action not only taking a political toll but also an emotional and psychological one for hundreds of active people in the movement. The coalescing of City Hall's political delegitimation of the movement, the aggressive tactics of the police, and the movement's failure to meet its objectives on January 28th marks the clear beginning of the movement's decline. It also makes clear the initiation of a coherent and effective strategy of social control that is rooted around the mutually reinforcing set of political tactics that seeks to delegitimize and criminalize the movement alongside evolving aggressive, but strategic, policing techniques.

3 Days in Santa Rita: Harassment and Intimidation

Most of the 400 arrestees were transported to Santa Rita County Jail, where most stayed for three days on misdemeanor charges. The conditions in the jail are typically terrible. On top of the norms of Santa Rita, Occupy arrestees were subjected to
various forms of harassment and intimidation outlined in the class action suit.\textsuperscript{120} The holding cells were overcrowded, were cooled (in winter conditions), and lacked beds. When arrestees were transferred to general population the Sheriffs’ staff informed other inmates that the protesters were the reason for deprivations experienced in the last day, to incite hostility and violence.\textsuperscript{121} Of the over 400 arrested, only 12 were charged with a crime – 8 misdemeanors and 4 felonies.\textsuperscript{122} Beyond this treatment, those arrested on felonies (at least 8 people), were told they needed to give DNA samples in order to eligible to be bailed out. According to the lawsuit, buccal swab samples were taken (from the inside of the cheek). I also spoke with arrestees who had hair samples taken for DNA and their iris’ scanned (a common personal identifier, with similar uses as fingerprinting). On top of the harassment and intimidation in jail, the unlawful collection and retention of DNA materials has a chilling effect on protest.

Three days after Move-In Day, the OPD received an early Valentine’s gift from software developer Cognitech, Inc.\textsuperscript{123} – a donation of its biometric, video-enhancing software system, Tri-Suite 11. The software (which was solicited by OPD and donated by Cognitech) enhances video to improve quality, zoom while preserving quality, and also allows for biometric measurement of subjects captured on video.

\textsuperscript{120} Steven Angell, \textit{et al.} \textit{V. City of Oakland, \textit{et al.} United States District Court, Northern District of California (Case \# C13-0190).}

\textsuperscript{121} Ibid.

\textsuperscript{122} CBS San Francisco. “Charges Dropped Against Many Occupy Protesters Arrested In Oakland.” http://sanfrancisco.cbslocal.com/2012/02/01/charges-dropped-against-many-occupy-protesters-arrested-in-oakland/

\textsuperscript{123} Cognitech was founded in 1988, making its name initially for developing video software to help identify the men who beat Reginald Denny during the L.A. Riots in 1992.
Cognitech’s press release, announcing the gift to the OPD, explains how the biometric imaging works:

Cognitech’s AutoMeasure tool-set is the world’s only automatic forensic photogrammetry software that allows the user to perform accurate bio-metric measurements of a suspect’s dimensions (e.g. height, width, area), including crime and accident scene measurements from video surveillance and photographs. This software is important to the work of police departments as it allows the user to know the suspect’s biometric measurements based on the AutoMeasure calculations which in turn helps the user eliminate and narrow down individuals who might have been considered suspects.124

The reception in the official Bay Area political discourse was that this was a novel way to identify masked anarchists. Again, this is a furthering of the reach and scope of surveillance under the guise of necessity amidst social emergency, more specifically a handful of broken windows.

January 28th was a victory for the enemies and critics of the movement on many fronts. On January 29th Occupy Oakland found 400 members getting harassed and intimidated in jail for days, the movement thoroughly criminalized for its militancy and defeated in spite of it. The OPD gained back the ability to use strategic incapacitation tactics against Occupy Oakland, made possible by the demonization of the movement by city administrators, the press and others – a demonization that was compounded after J28. The tactical dialectic of legitimacy and successful street

124 Cognitech, Inc. “Cognitech, Inc. Announces Donation of Software to the Oakland Police Department: Cognitech, Inc. donates their forensic video enhancement software to the Oakland Police Department in order to assist the Oakland community at large with numerous video footage from the Occupy Oakland protests.” http://www.prweb.com/releases/2012/1/prweb9156548.htm
tactics now belonged to the police, a position reclaimed on January 28th and never surrendered back to Occupy Oakland.

Negotiated Management as Normative Social Control: Knowledge-power, Internal Pacification and Social Legitimacy

“What capitalism is afraid of, rightly or wrongly, since 1789, since 1848, since 1870, is insurrection and riot: the guys who take to the streets with their knives and their guns, who are ready for a direct and violent action. The bourgeoisie was haunted by this vision and it wants to let the proletariat know this is no longer possible.” (Foucault quoted in Datta 2011)

While the repression was successful, with the Kaiser building remaining just as empty on January 29th as it was on the morning of January 28th, Occupy Oakland was not able to escape the logic of negotiated management by refusing to abide by it. It was imposed by city officials, the mainstream press and the police as a reasonable and normative expectation. Once that expectation was not met, J28 was not only demonized in press releases and articles, it ceased to be protest at all. By falling outside of the normative expectations of negotiated management, the goals of the movement became delegitimated, the movement itself turned into a criminal enterprise, and the tactics interpellated as terroristic.

Negotiated management, after becoming normalized, is not simply about whether protesters get a piece of paper from City Hall, or have coffee with the police before an action. After the permitting of protest becomes normal, the traditional terms contained within the permit become the definition of what (legitimate) protest is, and the rubric through which to measure what forms of protest are not acceptable. While the physical permit is a means to an end (public order), the state's concern is
with that end, not the means. Wearing body armor in expectation of police aggression, physically confronting police officers, refusing to obey police orders, and seizing abandoned property are criminalized because they are not permitted (the formal means). They are not permitted because they are disruptive, a (potentially) viable threat to social order (the unintelligible ends of the movement). The state’s goal is not simply to prevent specific instances of disruption, but to make disruption unintelligible as a means to social justice, to negate it as a realm of possibility. In the absence of the permit as a legal document, it remains a moral code of expected behavior, enforced directly by the police. This enforcement is consciously portrayed as taking place outside of what is accepted as “protest” – the enforcement is simply a matter of crime and law, since the tactics chosen have negated the legibility of those in the streets as “protesters.” As the history of Occupy Oakland has demonstrated, the acceptance of these criminalization techniques by (potential) supporters is not a given. Movements need to find more effective ways to pressure bases of potential support, and viable channels for the movement to define its own politics and draw its own distinctions around tactics and strategies (under terms that the movement creates, that are to a great extent insulated from outside pressures), is essential to moving past this set of social control traps.

The normalization of negotiated management helps to legitimate police violence against dissenters who do not abide by its rules. The police violence of October 25th that elicited mass support for the movement – where riot police attacked a peaceful crowd with less-than-lethal weapons for hours – and the police violence of
January 28th were similar. Both days featured the same riot squad and the same use of tear gas and rubber bullets on a crowd who had done nothing besides assemble in the street. However, what the violence meant, the definition of those subjected to it, and whether or not it should be considered illegitimate repression of protest or the legitimate enforcement of law, hinged largely upon the logic of negotiated management and the moral understandings of tactics that fell outside of its norms. The mayor and the media, quite explicitly, defined this effort (before and after January 28th) as criminal, as apolitical, as violent, as illegitimate. While these discursive techniques do not necessarily create tensions within movements, they do utilize existing tensions to splinter movements and maintain social order.

Fagan did not conjure up the “99 percenters,” even if he had to literally seek them out, ninety-minutes outside of Oakland. While social movements are a struggle for political hegemony, there are also struggles within movements over tactics and strategy, which occur organically, but are also exploitable by forces of social control. Fagan's series of articles and the city's press release exacerbated those tensions, bestowing legitimacy on the permitted and the “peaceful,” and activating and justifying forces of repression which neutralized the current threat. Beyond the maintenance of social order in that moment, this entire normative system of negotiated management threatens all who might protest outside of the bounds of negotiated management in the future, offering legitimacy and protection to those who choose sanctioned protest while shunning those who refuse it. Through the state and media inserting themselves into tactical movement debates, both sides of the “non-
violence”/”diversity of tactics” debate are galvanized and the opposing side morally delegitimated – one for its “irresponsibility,” the other for “assuming the responsibilities of the state.” Pre-existing political differences become unbreachable chasms, as repression raises the stakes of movement differences. Social movement actors embodying “good protester”/“bad protester” dualisms sever whatever trust and collaboration could be established.

Negotiated management is a form of knowledge-power that defines the common understandings of protest and deploys techniques of social control to serve its own ends. Even when negotiated management is vehemently rejected by a group of protesters, it is used to criminalize those protesters and subject them to physical repression, reinforcing the norm of negotiated management and the threat of police force contained therein, while morally and politically empowering those who wish to embrace it. The conundrum this presents is that even tactics that deviate from the norm of negotiated management end up reinforcing it, as it is both a micro-power technique of repression as well as a macro-power technique of knowledge that utilizes transgressions to reinforce the norm (Foucault 2007: 358). This is the trap that was set for Move-In Day, it is a trap that clamped hard on Occupy Oakland’s leg, a trap that the movement was tethered to as it struggled on in the following months.
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