Consent, coercion and the criminalization of dissent

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- In 2013 RCMP tactical units armed with assault weapons raided the anti-fracking blockade of Mi'kmaq activists in New Brunswick.
- In 2015, police tear gassed, pepper sprayed, surrounded, arrested and ticketed student protesters in Montreal for marching without permission.
- In 2015, the federal government passed Bill C51 that increased the power of intelligence authorities to monitor Indigenous anti-pipeline activists.

It appears that the space for dissent is shrinking. And clearly, the state response to dissent is increasingly militarized and pre-emptive. But then we remember the clubbing, shooting and killing of strikers in the Winnipeg General strike in 1919, the armed siege, teargas, and flash-bang grenades against Mohawk protesters at Kanehsatà:ke in 1990 and the infiltration of anti-apartheid movement groups in the 1980s. So perhaps things have always been this way? What has changed? How do we understand the long histories of repression by the Canadian state, while also paying attention to recent changes?

In their analysis of changes to protest policing in Europe and the US, Donatella Della Porta and Herbert Reiter (1998) suggested that protest policing strategy is determined by

1. Configurations of political power
2. Organizational features of the police
3. Public opinion
4. Police occupational culture
5. Police interaction with protesters

All of these are filtered by police knowledge, defined as "the police's perception of external reality, which shapes the concrete policing of protest on the ground (1998:22)." This framework gives us a starting point for understanding the continuities and changes of political repression in Canada, especially if we recognize that the 'configurations of political power' must incorporate the broader political economy that shapes the regime. By locating the operation of repressive authorities (police, intelligence and military) in a framework that pays attention to state formation, in a context of colonialism, capitalism and white supremacy we can see both the continuities and the changes (Smith, 2010).

Charles Tilly's (1985) model of state formation highlights the foundational processes of resource extraction. The particular features of these processes, when combined with the elements in della Porta and Reiter, shape the form repression takes. Tilly's model, like Gramsci's sees states as institutions that combine both coercion and

consent. While liberal democratic states like Canada have emphasized consent, over the past fifteen years, there appears to be a return to more visible repression of increasingly broad sections of the population. While this shift has been identified in other OECD countries, in Canada, the ways this has manifested are rooted in the history of Canada as a settler colonial state.

State Formation and Settler Colonialism

The world is divided amongst nation-states modelled on the regimes that emerged out of struggle between powerholders in 16th - 18th century Europe. To subdue or co-opt challengers both inside and outside of the boundaries of their territory, they needed to extract resources. The demands of state making, war making and offering protection to supporters shaped the subsequent infrastructure. The organization of armed agents of the state required for war making, state making and protection of capital required economic, political and social infrastructure – and necessitated the extraction of resources (Tilly, 1992).

Emergent European powers obtained the resources needed to assert political sovereignty through the dispossession of the people in their own territory, the taxation of trade, contracts with allies, the expansion of the African slave trade, and the colonization of people in distant lands. In North America, as in South Africa, Israel, Australia, and New Zealand, settler colonial control was established through the dispossession of the Indigenous people and the theft of land (Coulthard , 2014a). Over a few hundred years, institutions and structures were imposed on decimated, displaced and marginalized Indigenous populations. At the same time, in much of the Americas, settler colonialism was also shaped by the extraction of resources and forms of social organization made possible by the exploitation of African slave labour.

Settler Colonialism and Repression

Repressive authorities play a particular role in state formation—facilitating the accumulation of wealth and power by those in control. When and how consent and coercion operate is shaped by the way that resources are extracted, by the organization of state power and by the interactions amongst settlers of different classes and Indigenous populations. Extraction had particular features that shaped the Canadian settler state. The earliest European settlers, mainly British and French, were part of a private commercial process of extracting wealth for Europe through the conquest of territory and peoples. The Hudson's Bay Company (HBC) was founded in 1670 and established settlements and treaty relationships. Canadian confederation in 1867 built off of this corporate foundation of land theft and resource extraction, one which offered 'protection' and resources to allies and insiders through cooptation and treaties but sought to subdue or eliminate challengers outside the corporation, and its sponsors in the British monarchy. The first purveyors of organized force would have been the armed guards and private security of corporate interests. Employers used military, militia and "specials" appointed by local magistrates to police strike activities; plus private police such as

Pinkertons as both spies and security forces—some of whom who used beatings and summary executions (deLint and Hall, 2009: 55). But soon, colonial authorities incorporated public police into the growing state infrastructure.

Emsley (1999) argues that these models emerged in 19th century Britain and France, and spread to varying extents throughout Europe, the British Empire, and the United States. "These ideal types — state civilian, municipal civilian, and state military — differ in chain of command and accountability and in the way that men were recruited, equipped, and deployed. In Canada, all three ideal types are represented and can account for long-standing differences among Canada's police" (in The Council of Canadian Academies, 2014).

The state military North Western Mounted Police (NWMP) and its descendants have played a key role in Canadian policing. The NWMP was organized as a paramilitary organization in terms of rank structure, training and weapons, under central government control, the goal of the force the pacification of the territory and the extension of the settler colonial government—through managing conflict, protecting settlers and facilitating the treaty-making process (Marquis, 1997 and 2005 in Dafnos, 2014). The approach was not simply coercive, but attempted to incorporate allies, relying heavily on surveillance, relationship building and the recruitment of Indigenous constables and scouts.

Emsley's "Municipal civilian", or metropolitan policing—emerged a few years later with Sir Robert Peel's London Metropolitan Police Force. This type became the main type of force handling political protest and strikes in Canadian cities. Its emergence was tied to public disorder and the subsequent outcry about police action (Mainwaring-White 1983). There were 29 riots between 1839 and 1864. These riots and the police response led to major government inquiries into British North America policing systems and calls for reforms (deLint and Hall, 2009:56). Thus began a long process in both Toronto and Montreal of professionalization and authorizing the rule of law within policing. Public police forces were established in Quebec (1833), in Toronto (1835), in Montreal (1843), Hamilton (1846), London (1855) etc. By 1849 all towns in Upper and Lower Canada were required to operate a police office. But local forces often became corrupt and were reluctant to "handle disturbances". As a result, in 1856 John A. Macdonald, attorney general at the time, introduced legislation for a provincial police force—Emsley's second state civilian type. In British Columbia a Provincial Police was established to provide "law and order" following the significant arrival of mostly US gold miners in 1858. (de Lint and Hall, 2009: 58). Similarly, due to the threat of US expansion the Ontario Provincial Police were formed in 1909.

Each type of police agency played a role in state building and the pacification of external and internal challengers. But as the population grew, and with it, various challenges from both Indigenous and settler communities across a vast territory, authorities required a more controlled, effective and integrated national policing

infrastructure. In the wake of militia and private security violence in the Winnipeg General Strike, the federal government expanded the NWMP which became the RCMP in 1919. This new institution combined a strong relationship with ruling parties and the political system with the control and surveillance of Indigenous communities as well as immigrant and political groups considered to be dangerous to Canada's status quo— including Communists, Jews, Ukrainians and Chinese communities. The centrality of the RCMP in policing, and its roots in pacification and the extraction of resources established a model that would return.

The Good Old Days? Negotiation, Liaison, Management

From World War I until the late 1960s, Canadian political and economic infrastructure rapidly expanded. Workers struggling to defend their interests gradually gained ground, establishing collective bargaining rights, increased wages and benefits (Panitch and Swartz, 2003). While this meant that some (white, employed, unionized) protesters became incorporated into a consensual relationship with the state and capitalism, others, faced ongoing coercion. Police repressed unlawful protest using a strategy of escalated force, with law breakers punished through arrest or violence. This strategy was called into question at the end of the 1960s, after the civil rights movements triggered police violence, and widespread riots against racism and policing led federal inquiries to condemn police strategy, US police began to rethink this protest policing strategy (deLint and Hall, 2009). Instead of "escalated force", police sought ways to manage protest that limited confrontation. Canadian police decision-makers paid close attention to these shifts. Both US and Canadian police began to communicate with protesters, presenting themselves as a neutral party between employer and workers, or between different "special interest groups" within the state. This emphasis on "consent policing" used the language of the foundations of Sir Robert Peel's metropolitan police. As Turk (1982:23) argues, the "less explicit the threat of violence and the more explicit the concern for safety the more [the appearance of] effective policing" (23). Called "liaison policing" in Canada, the model emphasized negotiations, communications, permits and discretionary enforcement with the goal of maintaining public order and avoiding disruptive escalation and rioting (deLint and Hall, 2009). This approach succeeded at reducing visible repression and criticisms of police strategy.

TINA - There Is No Alterative

As neoliberal restructuring accelerated in the 1980s, this model faced increasing tensions. Proponents of neoliberalism argued that the economy would benefit by reducing regulation, by privatization of publicly owned institutions, and through free trade. Economic decisions became internationalized and privatized, removed from public control. Social spending was cut, but the role of the police expanded. In 1990, the Solicitor General of Canada produced a document entitled "The Future of Policing in Canada", which included predictions on the effect of neoliberal social spending cuts on

policing. Criminologists Andre Normandeau and Barry Leighton coolly describe the integration of the Canadian economy with the world economy, and subsequent "short term dislocations of labour" (15), noting that a "pool of poorly educated, unskilled unemployed people will grow in large cities, contributing to property crime and violence," and describing the downloading of services, the deinstitutionalization of people and the cuts to services (ibid). As a result, the authors conclude, there will be implications for police work: "more civil unrest may be anticipated, based on more groups in society seeing themselves as disadvantaged." In response to these changes, the authors suggest more privatization of policing, increasing collaboration with public and private actors and the use of new technologies (14-33-44).

Twenty five years after that report, it is clear that neoliberal globalization has shifted the attention of political authorities away from the demands of citizens and residents and towards those of investors and shareholders. Income inequality between the richest and poorest in society has increased. In Canada, while the Charter of Rights and Freedoms established important civil and political rights, increased inequalities of wealth and power limited the influence of growing numbers of poor people. Over the past fifteen years, changes to the Canadian economy have accelerated these changes. The increasing importance of oil, gas and mining to the global economy, has led to intensified resource extraction in more remote territories, territories whose Indigenous land claims are unresolved (Sawyer 2004; Altamirano-Jiménez, 2013:1; Gordon, 2013).

At the same time, the field of policing and security has transformed. Over the past fifteen years, the boundaries between public policing, private security, intelligence and military have blurred. The integrated approach and language of "Public Safety", "Homeland Security", and "Emergency Management" represent this shift. Repressive actors are also coordinating and communicating across national boundaries—sharing "best practices" within the heavily privatized arenas of professional policing. In these arenas, the tools and logics that once separated intelligence, private security, military actors and policing are increasingly shared. A recent report by a panel of experts on Canadian policing argues that instead of policing, there is now a "security web" (The Council of Canadian Academies, 2014). As a result, the logic, tactics and practices of security have changed. In this new merged field, policing has taken the logic of risk and threat assessment from the language of intelligence agencies. While consent remains a goal, protest policing increasingly adopts related logics of pre-emption, pacification and militarization.

Strategic Incapacitation

This new policing strategy is visible in Canada as early as the Vancouver Asia Pacific Economic Community Summit of 1997. In the months leading up to this event, the RCMP, encouraged by political authorities, evaluated activist organizations and mobilized ethnic groups in terms of the threat they posed, and when the activists were judged unpredictable and thus threatening, pre-emptively arrested leaders, caged protesters

behind fences, and when they did not remain passive, pepper sprayed them on national television. This strategic combination of threat assessments, pre-emptive arrests, spatial control, and less lethal weapons is sometimes called strategic incapacitation (Gillham, 2011). While police manage the majority of protests and movements through negotiated management or liaison policing, if protesters are seen as unpredictable, risky or threatening, evaluations that are constructed through racialized and classed lenses, police will be likely to shift into a 'strategic incapacitation' or militarized strategy – and the goal becomes incapacitating the protest and protesters. As seen in the APEC example, strategic incapacitation has a number of features.

First, the gathering of intelligence, threat assessments, and pre-emptive policing underlie the strategy. Information is evaluated with the goal of avoiding 'worst case scenarios', and uncertainty. This goal is used to justify surveillance and infiltration, and in the case of mass protests, to explain pre-emptive raids on homes or organizing spaces, and at times pre-emptive mass arrests of crowds.

The second element of strategic incapacitation is spatial control. There are techniques of spatial control, including security perimeters, as we saw around the G20 summit in Toronto. They also include the kettling of protesters—surrounding them with police and refusing to let them leave the area; as is often seen in Montreal. In the recent May Day marches in that city, police kettled a group of anti-capitalist activists, arresting and ticketing 647 activists for violating the city's infamous P-6 anti-protest by-law. Meanwhile, a larger group of activists were corralled by police in riot gear, pepper sprayed and tear gassed (Wheeland, 2015). A third strategy of spatial control is that of "protest pens". This technique, imported from the US, designates particular areas as "free speech zones". Despite such designation, police arrested hundreds of people in the area during the G20 protests in Toronto. The police also use a spatial control strategy that breaks up large groups of protesters through the use of barricades.

The third element of strategic incapacitation strategies is the use of less lethal weapons to disperse or control demonstrators. The earliest of these, tear gas, long used against protesters, has been adapted for the contemporary context. On March 23rd, 2015, 62,000 university and CEGEP students in Quebec held a one-day strike. They were joined by union members and community activists to demand an end to austerity budgets that cut social spending while cutting corporate taxes. Some universities and colleges voted to go on strike for two weeks and on the designated day of action, April 9th, protesters occupied Université de Quebec à Montréal until the police evicted them using tear gas.

Hand held pepper spray (OC spray) canisters began to replace tear gas in the early 1990s. Initially proposed as a tool to be used between the baton and the gun, pepper spray was first targeted at protesters in North America in Ottawa. That was on May 31, 1993 when police used it against anti-racist protesters attempting to disrupt a neo-Nazi rock concert. The third time pepper spray was used against protesters in North America was also in Canada. It was also against anti-racist activists, protesting an election rally by

Preston Manning. Over the next few years, police forces across the country began to adopt the spray —pausing only slightly after the RCMP made front page news when its officers sprayed protesters at the APEC summit in Vancouver in November 1997.

Especially given the relative size of the two countries, Canadian police use of pepper spray against protesters remains disproportionately high. In 2012, according to a Lexis-Nexis search of all media sources, Canadian and US police used pepper spray 28 times against protesters, 20 of which were during Montreal's student uprising, and once in Toronto. Even in 2011 when Occupy was at its height, with mobilizations in hundreds of cities in the US, pepper spray was used 18 times, 3 of which were in Canada—more than double what one would expect, given the size of the two populations, and police forces.

Techniques of strategic incapacitation are often combined. During the aforementioned 2015 protest where Montreal police tear gassed students, they also used pepper spray before detaining protesters within a 'kettle' and ticketing 182 demonstrators with $640 tickets for violating the controversial P-6 law that criminalizes taking part in a protest without informing the police as to the route of the march. (Montreal Gazette, April 9). Since 2012, about 3,500 protesters have been charged under the bylaw.

Following a similar arc of adoption as pepper spray, Canadian police used Tasers against protesters before US police did. The first use of a TASER in a protest context in either country was in Quebec City during the 2001 Summit of the Americas, when an officer Tasered man lying face down, waiting to be arrested. The second time police Tasered a protester was a few months later at Ottawa's G20 protests. The third time was Halifax police used it against anti-war protesters; and the fourth time was when Ottawa police attempted to dislodge Algerian refugees sitting in the Immigration Ministers office. The police use of plastic bullets to subdue protesters also has a particularly Canadian history – with police firing 900 at protesters during the Quebec City protests of 2001.

These are only a few of the less lethal weapons, once used in military confrontations, now used against protesters. Others include the stun grenades/flash bang grenades/smoke grenades/ pepper spray projectiles used on anti-police brutality protests in Oakland and Ferguson Missouri, and student protests in Montreal, Long Range Acoustic Devices (sound cannons), and rubber bullets.

Both the APEC protests of 1997 and the Seattle protests against the World Trade Organization were turning points in protest policing strategies (Gillham, Fernandez, etc.). The move towards strategic incapacitation was consolidated in the period following the attacks of September 11, 2001. After the attacks both the Canadian and US governments elaborated and integrated national security infrastructures. In the United States, this took the form of the Department of Homeland Security and in Canada, Public Safety Canada, established in 2003. These institutions incorporate state authorities, security actors and corporate leaders—particularly in key sectors—a configuration foundational to the Canadian state.   Albo and Fanelli (2014) show how this relationship has been

restructured since 2012, with a move towards "total privatization" and increasingly authoritarian controls over protest.

In Public Safety Canada, the distinctions between crime, political protest and terrorism become blurred. The institution uses a definition of terrorism which includes an "act committed... in whole or in part for a political, religious or ideological purpose, objective or cause" with the intention of intimidating the public ...with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act."

Public Safety Canada uses risk and threat assessments to organize its operations, and allocate its resources. It prioritizes the protection of what is called "Critical Infrastructure" a term defined as "processes, systems, facilities, technologies, networks, assets and services essential to the health, safety, security or economic well-being of Canadians and the effective functioning of government. If protest is believed to target 'critical infrastructure", i.e. rail or highway blockades, national security routines are launched. Such a logic attempts to gain the consent of the dominant majority, while targeting others for criminalization and coercion.

In the spring of 2015, the federal government passed Bill C51. This initiative targets any activity that "undermines the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada." It includes the following: "Interference with the capability of the Government of Canada in relation to intelligence, defence, border operations, public safety, the administration of justice, diplomatic or consular relations, or the economic or financial stability of Canada" (Cuthand, 2015). The government's justification for the Bill as a response to the terrorist threat was largely successful, particularly within Parliament – where criticisms remained limited to questions of oversight and funding. Nonetheless, as news of the bill spread, people mobilized against the way that the Bill, while officially permitting lawful dissent, allows the Canadian Security and Intelligence Service (CSIS) to carry out undefined "measures" against perceived threats, including anything that interferes with Canada's "economic or financial stability" or the country's "critical infrastructure". The Bill passed nonetheless.

One can see the logic that ties dissent to "threat" in a 2014 Critical Infrastructure Intelligence Assessment by the RCMP. Entitled "Criminal Threats to the Canadian Petroleum Industry," it describes a "growing, highly organized and well financed, anti-Canadian petroleum movement that consists of peaceful activists, militants and violent extremists who are opposed society's reliance on fossil fuels". It uses a language of threat, risk and extremism to describe a movement that is diverse and has widespread public support, albeit one which might well be regarded by the Harper government as a threat to the country's economic stability. This same language is visible in police discussions of the Quebec student protests, the Mi'kmaq anti-fracking protests and the security around the G20 summit. This conflation of economic and security interests that benefit the wealthiest has facilitated the spread of strategic incapacitation.

Conclusion

Since the first public police units formed in order to enforce private property and commerce in London, England they have worked to maintain the status quo. However, over the past fifteen years protest policing has changed; and the space for protest has shrunk. Those challenging capitalist and state authorities are surveyed and assessed, kept behind fences and police lines, subjected to less lethal weapons, and arrested before they act. More and more, public protest in Canada and elsewhere is considered threatening – especially when the protesters are Indigenous, people of colour, poor or immigrant. But to simply argue that coercion has increased, ignores the way that coercion and consent have long been used to control the population.

Repressive authorities in the earliest days of settler state formation in Canada adopted a model of colonial policing that aimed to protect resource extraction, pacify populations both inside and outside of the settler nation and build the legitimacy and capacity of both business and the ruling regime. Police combined the use of force with relationship building. They monitored communities and built trust, cracking down hard on those who interfered with the mines, railways, and the occupation of land. As neoliberal globalization has re-empowered corporations and transformed states, and the field of security itself, contemporary security practices are similarly integrating intelligence gathering, militarization and economic interests.

However, we must pay attention to the particular configuration of coercion and consent. As economic decision-making becomes increasingly removed from democratic control, and economic interests and security interests are conflated—repressive actors are given increasing legitimacy, resources and autonomy. When the economic interests of the wealthy become dependent on a small number of extractive industries, priorities shift. Consent is becoming irrelevant as we're told that there is no alternative to the security state. This creeping authoritarianism is allowing police agencies to monitor activists, and to experiment with less lethal weapons and techniques of spatial control. But such incursions and innovations are neither inevitable nor unstoppable. Their blatant nature can build opposition. By challenging the legitimacy, resources and autonomy of repressive authorities as they criminalize dissent, we defend the breathing spaces needed for the building of resistance, relationships and a better world.

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