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THE CASE OF POLITICAL VIOLENCE**

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NORMALISING THE EXCEPTIONAL: THE CASE OF POLITICAL VIOLENCE

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The article addresses the tension between effectively combating crime and the protection of civil rights and individual integrity. It asks what level of infringements on civil liberties is acceptable in order to keep criminal public order disturbances within reasonable limits. These questions are of special interest when it comes to violence with political overtones. Political violence has become subject to scrutiny in Europe after the top-summits in Prague, Nice, Gothenburg and Genoa. Audiences witnessed both police and demonstrators engaging in a succession of acts of political violence that were quite exceptional. Few would question the *political* nature of the demonstrators' violence, but it should not escape notice that the exercise of state violence through the use of police force is also political, since its objective is the maintenance of the order and security associated with a particular power structure. The article argues that the policing of protest in these cities in the recent past indicates that both the arsenal of instruments employed by the police and the number of areas where their use is deemed appropriate are expanding. This shift can be termed the *normalisation of the exceptional*. In this process, new coercive measures are first introduced in order to counteract serious and very uncommon forms of crime, often in quite exceptional circumstances. Once introduced there follows a slide towards their employment in connection with common and perhaps more minor offences. The normalisation of the exceptional comprises two principle processes: the *normalisation of perceived threats* and the *normalisation of the means of response*. Four actors are identified with important roles in the process of expanding the use of coercive measures: the police, politicians, the control industry and the media. The article provides an account of the, very often, *ad hoc* processes underlying processes which enable the continual expansion of coercive police powers.

Keywords: Police powers; Coercive policing methods; Political violence; Sweden

INTRODUCTION

Violence with political overtones has become the subject of an enormous amount of attention after the economical and political top-summits in Prague, Nice, Gothenburg and Genoa. We have seen both police and demonstrators engaging in a succession of acts of political violence that were quite exceptional. Few would question the *political* nature of the demonstrators' violence. But the exercise of state violence through the use of police force is also political, since its objective is the maintenance of the order and security associated with a particular power structure.

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This article is primarily concerned with the classic conflict between effectively combating crime and the protection of civil rights and individual integrity. What level of infringements on civil liberties is acceptable in order to keep criminal public order disturbances within reasonable limits? And what effect will the events for instance in Gothenburg come to have on the use of police violence in the future? What underlying processes are producing this situation where coercive police powers¹ appear to be in a state of continual expansion?

There has always been a tension between the competing requirements of effectiveness and integrity in relation to crime control. Opinions have been divided as to which should be given priority, both between different actors and from one time to another. Someone who has expressed his priorities in a unmistakable fashion is the (former) British Home Secretary, Jack Straw. On the question of law and order, Straw has stated "I don't adorn my approach to these matters with the adjective 'liberal', but I certainly hope to adorn it with the adjective 'effective'" (Bowring, 1997: 104).

Statements such as these typify the views of those we might characterise as the advocates of effectiveness. Their line is that crime control becomes ineffective when too much concern is shown for the preservation of individual integrity. The chief of the Swedish National Security Police [SÄPO] expressed a similar sentiment in the Security Police's annual report a few years later:

It is however important to realise that the limits placed on SÄPO's working methods out of deference for the need to protect personal integrity also entail a reduction in SÄPO's ability to effectively carry on the fight against the crimes that pose a threat to national security. If we choose to put personal integrity first, we are also choosing to be weaker in the struggle against serious crime. This has to be made clear! (SÄPO, 1999: 6).

The essence of these statements is that if integrity is given too high a priority, the work of the police is made more difficult, and that this in turn promotes crime.

The arguments of the most extreme advocates of police effectiveness are often based on the terminology of warfare. They have declared war on crime. Having begun as a war waged against terrorism and drugs, this has now become a general "war against crime".² The problem is that this particular war is never ending. It rages constantly, right here among us, and there is a steady stream of new enemies that must be fought and overcome. There is no such thing in this war as a decisive "battle". When and how could the "enemy" possibly surrender? This rhetoric gives the impression that we are "on our way towards a state of emergency, where our normal moral perceptions of right and wrong, good and evil, are set aside in favour of a kind of emergency morality, a war ethic" (Halvorsen, 1998: 344). Effective policing methods and stiff penalties constitute "the civilised world's defences against chaos and social

¹In the context of this article, the terms 'police powers' and 'coercive policing methods' refer to such powers and methods as are associated with processual aspects of the penal law.

²A century ago, the enemy in this war was comprised of anarchists (see for example the Secret Protocol for the International War on Anarchism 1904). From 1917 until the end of the cold war (with some exception for the Second World War years), communism was the number one enemy for Western Democracies. During the 1960s and 70s, the group of enemies expanded to include drugs and "terrorism". Following the collapse of the Soviet empire we are into the post-wall era where the focus has shifted to "organised crime". And since the 11th September 2001, "terrorism" has become the number one enemy.

collapse” (*ibid*). In the context of this war, personal integrity is often assigned an extremely peripheral role. The extreme countermeasures that have been taken against “terrorism” – in both the USA and the EU – since September 11th 2001 provide one more tragic example of this. Without recourse to the courts, people are arrested and imprisoned on doubtful grounds, and the financial assets of certain individuals are frozen even though they have not even been suspected of committing a criminal offence. The EU’s framework decisions on combating terrorism and on a European arrest order are just two expressions of this (Council of the European Union 14845/1/01 and 14867/2/01). It is worth noting that several of the measures now employed by the EU are included on the list of suitable measures against “terrorism” sent by President Bush to the EU president, Romano Prodi, in October of 2001 (Statewatch News online 2001-10-26). Promises have been made on several occasions that these measures will not affect political protests. We will have reason to return to these guarantees towards the end of this article.

Four criteria must be met if the introduction of new coercive policing measures is to be regarded as legitimate. There must be evidence to substantiate that the perceived threat is real (the ‘real threat’ criterion). There must at the very least be credible evidence that a problem/threat that does not exist at present is in the process of coming into being. It must also be shown empirically that the new coercive measure in question (the countermeasure) really is effective in relation to the perceived threat that it is to be used against (the effectiveness criterion). This might be achieved by presenting data on international experiences, for example, or by referring to a successful deployment of this measure in other areas. It must also be shown that the activity to be combated is harmful (the harm criterion). This should then be viewed in relation to the infringement of integrity that those exposed to the measure will suffer (the integrity criterion). It is not sufficient that the actors involved contend, in the absence of evidence, that it is important to be prepared, and that waiting until the threat actually manifests itself means it will be too late to do anything about it. Relying on such an argument involves a risk that the introduction of new coercive measures will always be deemed to be the right thing to do: if no danger then manifests itself (by means of an increase in crime, for example) then this can be taken as evidence that the new measures have had a preventive effect. And given such an effect, it is also clear that the measures were necessary. Given such an argument, when could such measures ever be unnecessary?

CONTROL-RELATED HARM OR HOW TO REACT “PROPORTIONATELY”

Social control is intimately associated with power. According to Max Weber, power is held by those who are able to achieve their intent in spite of opposition (Weber, 1975). This is particularly evident in the use of coercive policing measures, which represent the state’s ability to curtail the civil liberties of citizens by means of coercion. The aim of these incursions is partly to ensure that unwanted behaviours do not arise (prevention), and partly to deal with such behaviours if they should arise in spite of these efforts (response). For the most part, the exercise of power may take one of two forms, becoming manifest either as positive sanctions in the form of rewards, or as negative sanctions

which involve the infliction of some form of distress.³ These two forms of sanctions are intimately related, and constitute an almost inevitable complement to one another. In those cases where the carrot does not produce the desired effect, it is necessary, as a last resort, to have a big stick on hand.

The conflict between police effectiveness and the integrity of citizens is of particular interest in states which define themselves as democracies governed by the rule of law. Given a constitution of this kind, undesirable behaviour cannot justify the use of any and all control methods since such constitutions are based on guaranteeing citizens certain essential rights and freedoms. The question of whether the countermeasures are proportional to the perceived threat is therefore of considerable significance. The state is faced with the dilemma of neither under- nor over-reacting. Neither too much nor too little control. Either of these may lead to what are commonly referred to as control-related harms. This in turn affects public confidence in the political leadership. Popular support, the decisive factor in the legitimacy of such systems of government, is weakened.

An under-reaction leads to an insufficient level of crime control, which in the long term can constitute a threat to the system. Crime increases, or at least is not combated to the extent desired by the public. The state falls short in its protection of citizens, or fails to take the fears of these citizens seriously. Thus in this sense, the danger need not be real. The fact that citizens *feel* that the state is failing to offer an adequate level of protection is sufficient to risk undermining the legitimacy of state power. If the response is too great, there may be a backlash in the form of increased sympathy for the phenomenon one is attempting to counteract. In the case of both over- and under-reaction, those in power risk suffering a loss of legitimacy. In other words, it is a question of maintaining the balance between necessary countermeasures and public acceptance at an appropriate level. Since the measures taken affect both those at whom they are directed and the general public (the audience), this in turn means that there is a clear element of communication in the introduction of coercive policing measures. In this context, the mass media constitute an important medium between sender and receiver. The content of what is written in the papers or said on TV and radio has significance for the way both existing threats and the measures taken to counter them are perceived. Figure 1 may illustrate this process. The media are present in each individual arrow as an amplifier and intermediary.

The section of the public that does not react may be passive for one of two principle reasons. For some it may simply be a matter of indifference. Others may have an opinion but for one reason or another choose not to express it.

A negative reaction may be the result of the audience either perceiving the response as an over-reaction or as an under-reaction. In both cases, the legitimacy of decision-makers is reduced. In the case of an over-reaction, the state's response is deemed to have been unnecessarily hard handed. This might be the case for example where the police use excessive force in connection with demonstrations, or where a coercive measure involves an excessive curtailment of personal freedoms in relation to the

³Power may also be exercised through non-decisions, hidden decisions and the withholding of important questions from the political agenda, which Lukes has referred to as the second and third dimensions of power (Lukes, 1974). With regard to non-decisions, see Bachrach and Baratz (1970) *Power and Poverty*. Although these aspects of power are important in themselves, they do not constitute the focus of this presentation. The focus here is primarily on the more open and visible exercise of power.

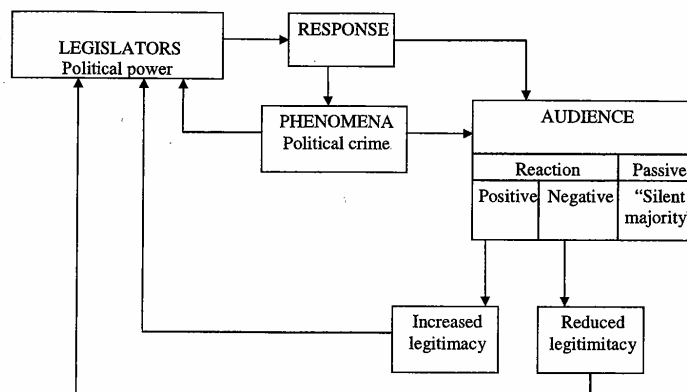


FIGURE 1 Typified representation of the problem of response.

crime that it is intended to deal with. In the case of an under-reaction, the state is deemed to have reacted too leniently, and in doing so has failed in its task of protecting the rights of citizens. This may lead to citizens either seeking improvements in security outside of the confines of the state, in the form of citizens' vigilante groups for example, or by turning to established criminal organisations (Gambetta, 1993). There are several historical examples of this process (Friedman, 1993; Johnston, 1999).

If the public react positively to the countermeasures, on the other hand, the legitimacy of decision-makers is enhanced. The measures are perceived to have been proportionate and crime to have been controlled in a satisfactory way without unnecessary incursions on integrity. But a positive reaction does not mean that a particular countermeasure is necessarily the most suitable. There may be actors with an interest in manipulating public perceptions of both the perceived threat and the countermeasures employed. In the case of the perceived threats, the level of danger may be overstated or concealed, and in the case of the countermeasures, their extent and consequences can be either exaggerated or toned down. As has already been described above, one way of justifying the expansion of the use of countermeasures is to exaggerate existing threats, by depicting imminent danger of dramatic proportions without a shred of empirical support. In a situation of this kind, a crisis consciousness is formed which perceives existing measures as inadequate. Another means of bringing about an expansion of control measures is to tone down the strength and extent of the proposed measures.

In the case of an over-reaction, the state overextends the borders surrounding the exercise of control at the cost of citizens' integrity. The countermeasures introduced are out of proportion to the threat that is to be averted.⁴ If the state moves too quickly in this direction, there is a risk that both democracy and the rule of law will be undermined. Most citizens probably feel that some form of intervention is justified in the lives of persons who have committed criminal acts, or who are at least suspected of having

⁴This assumes that individual freedom of action is regarded as something positive. As we know, this is not always the case, as in constitutional systems where religion constitutes the primary ideology, for example, or in other forms of totalitarian regime where the individual is held in subjection to the needs of the state.

committed such acts. But what about the kind of proactive police work that is primarily about the control and surveillance of persons who are not suspected of offences? This is a central issue in the current context, especially after the introduction of criminal intelligence within the traditional police. Are we witnessing a tendency towards an expansion in the surveillance and control not only of persons against whom there are concrete suspicions of crime, but also of people in general?⁵ The surveillance of non-suspects is a powerful indication of an over-reaction, i.e. that the limit for what constitutes an acceptable infringement of integrity has been crossed. By extension, the question becomes one of whether it is acceptable that we are all monitored so that a few can be prevented from committing crimes.

NORMALISING THE EXCEPTIONAL

The German jurist Thilo Weichert suggests that there are number of problems affecting research into both the background and causes of and suitable responses to security risks. This has allowed “populists and practitioners” a great deal of scope (Weichert, 1995: 301). Failures to examine the relevance of perceived threats and the effectiveness of responses have left the field more or less wide open for those controlling executive and political power (i.e. primarily the police and government) to define the nature of existing threats and to set the agenda. There is a risk that this may lead to what the author has chosen to call the *normalisation of the exceptional* (Flyghed, 1998; 2000). In the following the author illustrates this concept using a typification of the processes involved. There is much to indicate that both the arsenal of instruments employed by the police and the number of areas where their use is deemed appropriate are expanding. New coercive measures are first introduced in order to counteract serious and very uncommon forms of crime, often in quite exceptional circumstances. But once they have been introduced, there follows a slide towards their employment in connection with increasingly minor offences. Thus the most serious forms of crime are those which set the trend in relation to the introduction of incursive new policing measures. The reverse of this process is rarely witnessed, i.e. the removal of certain powers once the threat that led to their introduction has been dissipated. There are exceptions, of course, such as when a war ends or an entire political system – often totalitarian – falls apart, e.g. the collapse of Nazi Germany or the Soviet Union. Instead, attention is focused on new or more tangible dangers that can justify the continued use of the police powers at issue.

It is important to note that the author is not referring to a general expansion in the use of repressive measures at the societal level, but only to the evolution of the use of coercive policing methods in the area of criminal law. Such developments as the abolition of the death penalty, maiming, vagrancy laws, enforced treatment regimes and the decriminalisation of homosexuality all speak against the suggestion of a continually increasing level of repression. But sanctioning systems and methods of police investigation have not evolved in parallel. Even though there may have been a humanisation in the field of punitive sanctioning, it does not seem to be the case that

⁵One example of the way control is applied to the Swedish population in general is the law on the general use of surveillance cameras, which came into force on July 1st 1998 (SFS 1998: 150).

the use of coercive policing methods has developed along these same lines. It seems more reasonable to assume that the use of such powers has expanded steadily. Gary Marx has claimed that this tendency towards expansion is particularly noticeable in relation to what are often termed more unconventional methods (Marx, 1982: 190). Among such methods we could mention *inter alia* the use of hidden microphones and surveillance cameras, entrapment and the use of undercover police officers. Since the Second World War, these forms of surveillance, which are all more or less concealed, have increasingly come to complement, and in some cases even to replace, more open surveillance methods (Marx, 1995; McMullan, 1998: 100f). According to Stanley Cohen, the system of formal social control has expanded since the beginning of the 1970s. "More areas of social life are being subjected to organised forms of control, prevention, surveillance or formal categorisation; more forms of conflict or deviance are finding their way into the 'net'; more of the population are under management of these agencies" (Cohen, 1994: 71). The focus here is on the expansion of those parts of this control net that relate to formal, legally regulated police powers and surveillance methods.

The normalisation of the exceptional can be viewed as comprising two principle processes: the *normalisation of perceived threats* and the *normalisation of the means of response*. In turn, the latter of these processes, which relates to policing methods, can take one of two forms. The practical application of an existing police power or policing method may, on the initiative of legislators, be expanded to a wider range of situations than those originally intended. The alternative is that police praxis itself stretches the limits of what is permitted. In this latter case, there is a risk that the legislation falls behind actual developments, which in turn may lead to a legislation after the event, i.e. a legislative adaptation to practises established in the grey area where the police use of coercive policing measures often takes place.

An additional point is that normalisation of the exceptional is often a rather *ad hoc* process. The expansion of available methods is regarded as a temporary solution motivated by a serious immediate threat, but the changes then take on the appearance of an essential feature which ought to be made permanent. This *ad hoc* process constitutes a link between what is exceptional and normality, transforming extreme and non-representative phenomena into normal ones. In the context of this process, extreme events function as triggers, i.e. as events that boost the normalisation of perceived threats. In certain cases, specific events may serve as direct causes (at least in a manifest sense) to the introduction of measures, such as increased police powers. The events during the EU-top summits in Gothenburg and Genoa constitute an example of key events of this kind.

Normalising Perceived Threats

The first type of normalisation of the exceptional is grounded in unusual and spectacular events. Such events have a high sensation-value and therefore become the focus of a great deal of attention in the media. Individual instances of more everyday types of crime are seldom of any interest from the point of view of the media. Serious offences, particularly violent crimes of a more extreme nature, possess a drama that is perfectly suited to the punchy formulations of banner headlines and the photographic aesthetics of a double-page spread. Acts of political terrorism constitute another example of spectacular events that are often exploited in discussions of which phenomena pose a serious

threat to the social order at any given time.⁶ This has become clearer than ever before in the wake of the events in New York on 11th September 2001. There is an interplay between the media exposure of extraordinary events and the way the police build up and present images of the dangers faced by society at large. Some have described this relationship as being almost symbiotic in nature (Wardlaw, 1989: 76ff; Anderson *et al.*, 1995: 18 and Zulaika and Douglass, 1996: ix.). The spectacular events become linked to perceptions of non-specific and diffuse, but nonetheless serious threats. The objects of these threats are also often quite difficult to define. Such objects include for example “the national security”, “the safety of the nation”, or “public order and safety”, concepts whose content and applicability can vary according to the political situation (Sjöholm, 1978: 23f; Lustgarten and Leigh, 1994: 23–34.). Given this lack of clarity regarding both the perceived threats themselves and the objects of these threats, repeated references to certain spectacular events produce a false consciousness of impending danger. This allows for the construction of a scenario which then appears self-evident to the isolated observer. The first form of normalisation of the exceptional, i.e. the *normalisation of a perceived threat*, is thus achieved by portraying a constantly high level of danger on the basis of insufficient data. This establishes the perception that levels of protection are insufficient, which finally leads to an acceptance of the need for increases in the available measures of control. Those in positions of political accountability can show their willingness to act by means of highly visible, short-term measures. In the area of crime policy, it is immediate and uncomplicated solutions that are used to display political willing, measures which only very rarely have an effect beyond the short-term treatment of surface symptoms. The clearest message, and thus that which is most practical from a political point of view, lies in increased repression. New legislation is often introduced as a means of showing this kind of political will. Legislative proposals for “more police”, “longer sentences”, “new policing methods” provide a simple message which is easily conveyed.

Internationally, crime – and particularly “organised crime” – has emerged as the principal heir to the dangers associated with the cold war (Anderson *et al.*, 1995: 179). Law and order issues have become one of the most important arenas in which to pin one’s colours to the mast, for individual politicians and political parties alike. One factor that makes the introduction of long term measures less politically appealing is that they are unlikely to produce noticeable effects within the lifetime of a government. This makes it easy for political opponents to exploit such policies as a weakness. There is clearly a risk that politicians and other actors looking to achieve maximum exposure for their own particular message will adapt to the logic of the media as described above. In order to succeed, they have to package their message in a media-friendly format. In the context of the interplay that arises between the media and other actors, these actors learn that they have to simplify and dramatise the message. The risk for a self-reinforcing spiral leading to ever increasing levels of superficiality and oversimplification is obvious.

⁶See for example Paletz and Schmid, 1992. In particular, acts of political terrorism directed against the state, are often depicted. Political terrorism sponsored by the state is not presented to the same degree, even though such activities account for the vast majority of politically motivated acts of violence (see Chomsky, 1988 and George (Ed.) 1991). The reasons why state sponsored terrorism so rarely finds its way into the news have been analysed by among others Edward Herman and Noam Chomsky in *Manufacturing Consent* (1994).

Normalising Policing Methods

The normalisation of exceptional policing methods can occur in one of two closely related ways. The one process involves the introduction of coercive policing measures to deal with a very uncommon and serious type of crime, only to be expanded to cover less serious types of crime as well. The other process involves the police themselves stretching the limits of the permitted use of certain policing methods, with this expanded usage later becoming legalised. In the first instance, the legislator constitutes the most powerful actor, whereas in the latter it is the police who step up to the breach.

The first type of normalisation process may occur when new coercive measures have been introduced to deal with a specific, clearly defined threat. The use of the measure is limited to the specific threat as a means of safeguarding rights associated with the rule of law by preventing a more comprehensive application. In spite of the fact that the original threat is often dissipated, it is not unusual for new coercive policing measures to remain in the police arsenal and to be made permanent. Their field of application then spreads to other areas and behaviours. Once this has happened, it is more the rule than the exception that the measures come to be used in connection with less serious forms of crime, and thus against increasing numbers of people. International examples include the special, often temporary, emergency legislation introduced in Italy and Germany during the 1970s to deal with political terrorism. Both the area of application and the term of many of such laws has been extended, and some have been made permanent⁷ (Furlong, 1981: 81f; Kolinsky, 1988: 82ff; della Porta, 1993; Groenewold, 1993). The German legislation on penalties associated with founding and of membership in criminal associations constitutes a good example of this (Paragraph 129 in the German Penal Code). To begin with, these provisions were directed at the political terrorists of the 1970s (Cobler, 1976: 109f). But they were never removed from the legislation and are today used primarily against criminally active motorcycle gangs. The next step in this expansion process is that this legislation is now being used as a model for discussions of proposed EU legislation in this area. The EU's Ministers of Justice have agreed to make participation in criminal organisations a sanctionable offence (JHA Council, Doc 13174/97).

The British anti-terrorist legislation, *The Prevention of Terrorism Act*, constitutes another international example of the normalisation of coercive measures. At the time of its introduction in 1974, the legislation was to be in force for a limited period, but it has since been made permanent. Over the years, the content of the legislation has been altered such that it can now be applied in a much wider context and in principle gives the police "unfettered power to cordon off areas and carry out blanket searches of houses and people" (Statewatch, No.2 1996: 17). As early as 1983, Joe Sim and Philip Thomas pointed out that this legislation lowered the threshold for repression through "normalising the extraordinary" (Sim and Thomas, 1983: 72; Walker, 1992: 293f). The risk for expansion also characterises cases which the majority of people would probably consider much more deserving, e.g. curtailments of the freedom of the press as a means of dealing with child pornography. Once a circumscription of this kind has been established, it becomes much easier to catalogue additional categories of material.

7. Examples of such laws include the so-called contact blocking law and the so-called terrorist provision (paragraph 129a) in Germany. The wording of this latter was tightened on 1/1 1987.

In Sweden, the Law from 1952 on special provisions for the use of coercive measures in connection with specific criminal cases (SFS 1952:98) constitutes a good illustrative example. The object of this legislation was to “make possible an intensification of police work aimed at the prevention and exposure of espionage etc.” (Prop. 1952:22,4). Among the most significant measures was the expansion of the possibilities for phone-tapping and the extension of the length of time persons could be held in custody. According to the existing provisions, this could only be done “in certain highly restricted circumstances” (*ibid* 13). But at the beginning of the 1950s, the foreign policy situation demanded that these limitations be removed. Given that “the worsening in the global political situation witnessed over recent years, it had unfortunately become necessary to allow for the practical possibility that our country might be drawn into war-like complications or at the very least that the nation’s security might come under threat” (*ibid* 22). In the summer of 1950, the Chief Superintendent of Police was given the task of writing a memorandum on this question. This was presented on 1st February 1951, and became the basis for the government bill. In this memorandum, the Chief Superintendent of Police proposed the immediate introduction of legislation which for the most part corresponded to the law on coercive police measures from 1940. This law, which was very hurriedly introduced, allowed the general security services very wide-ranging powers during the Second World War. The possibilities for monitoring postal and telephone communications as well as arresting and detaining persons who might in some way be suspected of involvement in any form of activity hostile to the state were expanded dramatically (Flyghed, 1992: 293ff). The Secretary of State pointed out that when the proposition was formulated, attention had been given to experiences gained from the application of the coercive measures legislation during the Second World War (Prop. 1952:22, 43). The board of the Swedish Bar Association was the only one of the bodies referred to for an opinion on the proposed legislation which commented on the consequences of the legislation for the integrity of the individual. The response of the Secretary of State was that he fully understood the Bar Association’s concerns and regretted that the current situation demanded the curtailment of rules intended to protect the interests of the individual, particularly since these had recently been taken up in the new Code of Judicial Procedure (from 1948). “Considerations of national security weigh so heavy, however, that certain individual interests will have to give way” (Prop. 1952:22, 43). But should there be “a substantial easing of tensions in the area of foreign policy, there should be a return to normal conditions as regards the regulations contained in the Code of Judicial Procedure” (Prop. 1952:22, 44). Since it was a question of the introduction of an exceptional measure, the law would only apply for one year at a time; this as a means of safeguarding the rights associated with the rule of law. In other words, Parliament would decide each year whether or not to extend the life of the legislation. The introduction of the law was undoubtedly facilitated by two spectacular and very conspicuous espionage cases that ran parallel to the work being conducted on the new legislation.

Since its introduction in 1952, Parliament has simply extended the life of the legislation year in and year out. In principle, this has happened without debate. At the same time, however, any real debate has been rendered impossible since not even the legislators “are provided with sufficient information, but are instead asked to make decisions on the basis of information comprising classified material for which they do not have security clearance” (SHMR, 2000: 63). In other words, the

law has existed outside of parliamentary control. The latest extension of the life of the legislation means it now remains in force until the end of 2004 (Prop. 2001/02: 17). This coercive measures legislation will thus have been in force for at least 50 years – despite the one-year safeguard. A “substantial easing of tensions” which might motivate the abolition of this legislation, and thereby a return to the basic provisions of the Code of Judicial Procedure, has apparently yet to be witnessed.

In connection with the proposal to legalise bugging in 1998, the legislators conducted a thorough inquiry into the coercive measures law from 1952; amongst other things, the views of the State Security Police (SÄPO) were sought. SÄPO stated that despite the considerable reduction in international tensions in the area around Sweden, the law was greatly needed “to combat crime associated with both the internal and external security of the nation. (...) The provisions should therefore now be made permanent” (SOU, 1998: 46, 448–449). The Security Police also stated to the inquiry that an internal inquiry had shown that “the coercive measures law from 1952 filled 80–90 per cent of Security Police needs for secret phone-tapping operations” (SOU, 1998: 46, 285). The proposal of the bugging inquiry that this coercive measures law be made permanent is in fact no surprise, since this was included as part of the inquiry’s directive (SOU, 1998: 46, 13).

In other words, the 1952 coercive measures legislation constitutes a good example of how a dramatic tightening of coercive provisions is introduced in the context of a very specific situation (a foreign policy situation that poses a threat to national security) to deal with a serious and unusual form of crime (espionage), and is then expanded. One could even go so far as to say that the coercive measures act of 1940 constitutes the basis of this normalisation of the exceptional. The extremely dramatic situation that characterised the outbreak of the Second World War motivated hurried efforts to work out and introduce new provisions for coercive measures, which came into force in January 1940 (Flyghed, 1992: 292ff). When the war ended, this law was removed from the statute book (30/6–45), but it lived on in the consciousness of police and politicians who were active during the war years. When the cold war then started to take form at the end of the 1940s, it seemed quite natural for the police to propose a return to the coercive measures employed during the war years, a line of reasoning which the politicians of the time clearly accepted. The coercive measures legislation of 1952 can therefore be said to be a normalisation of the exceptional circumstances witnessed during the Second World War. This normalisation has since been successively extended over half a century finally to be made permanent in the present day.

The “Anti-terrorist Act” (SFS 1991: 572) constitutes another Swedish example of the normalisation of exceptional measures. Since its introduction in 1973, both its life and areas of application have undergone constant expansion. This law has now become permanent and covers not only foreign nationals suspected of terrorist activities, but every foreign national who might be presumed to pose a threat to “internal national security” (see further Ribbing, 2000). It is worth noting that according to Swedish legislation, it is foreign nationals alone who are capable of being terrorists.

The Swedish researcher Elisabeth Abiri, has drawn my attention to an example from the area of Swedish refugee policy. A public inquiry at the beginning of the 1990s discussed the issue of situations involving large numbers of refugees, i.e. exceptional events involving hundreds of thousands arriving in Sweden for a limited period (three to six months) (SOU, 1993: 89). Four years later a section was introduced into the Aliens Act (Chapter 2, Section 4a) according to which the government could

issue temporary residence permits to “a certain group” of aliens. No specific reference is made to mass displacement, but it is clear from the legal preamble that the section is intended for use in such situations. Residence permits may be issued in accordance with this section of the law for a period of up to two years. Limited residence permits of this kind have been used since the middle of April 1999 for persons fleeing Kosovo. The period of validity of the first residence permit was fixed at eleven months. The argument employed was that Kosovo Albanians constituted a group affected by mass displacement, and by this means the law was applied to a small group comprising approximately 5 000 persons.

The second process whereby coercive measures are normalised takes place primarily in the context of police work conducted in grey areas that are difficult to monitor and control. Where the line between police activities that are permitted and prohibited is in any way unclear, there is a risk that the police will themselves stretch the boundaries of what is permissible. But in some cases it may also be a question of conscious attempts to expand the boundaries of police powers. This possibility is particularly relevant in relation to proactive police work, i.e. such work as is conducted by the security police and intelligence officers. Thomas Wittke provides a description of this in his book on anti-terrorist activities in Germany (Wittke, 1983). His contention is that there is even a risk that the representatives of executive power, in this case the police, may provoke a quasi-state of emergency into existence in order to legitimate the use of exceptional measures. When illegal praxis is developed among the agents of executive power in this way, it may eventually lead to an *ex post facto* legalisation, i.e. a retroactive acceptance of the measures on the part of legislators. If political controls are insufficient, it is easy for such methods to become irremovable once they are introduced and have become established. Wittke uses the situation that arose in connection with the Red Army Faction’s kidnapping (and later liquidation) of the German employers leader Hans-Martin Schleyer as an example of a situation of this kind. For Wittke, the German anti-terrorism package of 1978 is the result of an *ex post facto* legalisation of the unauthorised executive praxis⁸ that had come into use in connection with the kidnapping of Schleyer. This kind of acceptance of the police use of extra legal measures leads to the second type of normalisation of exceptional measures. Unlawful activities are legalised, and there is an expansion in the use of coercive policing measures.

The Irish legislation against subversive activities has developed along similar lines. A section of the law intended for exceptional circumstances (Section 30) gives the police the right to hold a suspect for up to 48 h without giving a reason. “The police practice of stretching section 30 to the limit by using it as regularly as possible has finally become acceptable” (Walsh, 1989: 1113–1114). The exception has become the rule.

According to Preben Wilhjelm, the attention focused on the investigation of drug crime has had a substantial effect on the general use of coercive measures in Denmark. This attention has “worked like a battering ram for non-traditional methods such as plain-clothes police officers, bugging, and the use of agents and anonymous witnesses” (Wilhjelm, 1990: 43). Kraska and Kappeler have observed a similar normalisation of coercive measures in their studies of the militarisation of the

⁸Europol (former EDU) has followed a similar development (Flyghed, 1998).

American police. In many parts of the USA, special elite units have been established within the police, known as PPU (*Police Paramilitary Unit*), “for patrol, narcotics and gang ‘suppression’ (Kraska and Kappeler, 1997: 12. See also Kraska, 1999). Their work has not merely involved responding to existing events, since “most PPUs proactively seek out and even manufacture highly dangerous situations” (*ibid*). In a number of police districts, these special units have also served as an arena for the testing and introduction of new weapons and new methods. The manufacture of dangerous situations constitutes one means of promoting efforts to normalise the use of extreme weapons and spectacular policing methods. One consequence, and one of the major dangers, is that such extra legal practises in special units later spread to other areas of policing activity (*ibid*). This too constitutes an example of the normalisation of coercive measures. The Swedish national anti-terrorist squad provides a domestic example (Flyghed, 2000: 147–160).

FOUR ACTORS WITH IMPORTANT ROLES IN THE EXPANSION PROCESS

Four actors can be identified with important roles in the process of expanding the use of coercive measures: the police, politicians, the control industry and the media. Their activities are to a large extent guided by the rational pursuit of their own goals. For the politicians, there is also a value-based rationale behind their actions. Common to all these actors is the fact that they have a concrete effect on the way crime control is organised. The first three have the express goal of achieving more effective crime control. The role of the mass media is primarily communicative. But as has been shown above, the introduction of new control methods is not purely a question of improving the effectiveness of crime control. In this context there are a number of interests at work, interests which are both explicit (external rationales) and implicit (internal rationales). And these two types of interest do not always coincide with one another. The relationship between the various actors’ external and internal rationales can be summarised as in Table I.

1. The explicit crime policy goal of politicians is to combat crime. The objective is to reduce crime and to increase levels of security among the public (see e.g. Ds, 1996: 59, 15f and Prop. 1997/98:1). But politicians also use the symbolic value of legislation in order to show the electorate that they are men and women of action. Crime policy constitutes an arena that fulfils all the necessary criteria

TABLE I The actors’ internal and external rationales

<i>Actor</i>	<i>External rationale</i>	<i>Internal rationale</i>
Politicians	Combat crime	Law as a symbolic substitute for action
Police	Combat crime	Organisational expansion, increased resources
Control industry	Effective control of crime and criminals	Raise profile of sector, profit maximisation
Media	Communicate information	Circulation/sales, profit maximisation

for such a project. Such activities have become even more likely in the face of the much-discussed crisis of legitimacy faced by the welfare state. One way of reducing this deficit in legitimacy is to shift the focus of the public discourse "to arenas where it is possible to show willingness to act as a means of achieving some legitimacy" (Estrada, 1999: 133). The use of crime control measures within the EU as a means of bringing about an improvement in people's attitude towards EU membership constitutes a further example (see Flyghed, 1998; 2000).

2. Combating crime and the maintenance of public order constitute two of the principle tasks of the police force. Their external rationale is based on these factors. Their internal rationale, on the other hand is based on an organisational egoism which seeks constantly to expand the organisation's activities and to attract more resources. This can easily give rise to a situation where there is an interaction between the measures employed in the battle against crime and the goal of preserving the organisation that has emerged during this battle. In order to legitimise the continued existence of the organisation, new threats are presented, which in turn require new coercive police measures (Benyon, 1996: 370ff). This organisational rationale is not unique to the police, but is rather characteristic of bureaucracies at large (Emsley, 1997: 2). At the same time, the surrounding environment is continually making demands on the organisation; in the case of the police such demands are most often focused on the need for improved effectiveness. This situation can lead to an interaction between the organisation and the surrounding environment where the organisation is able to exploit the demands being made on it to its own organisational ends. The police are also an important actor when it comes to constructing general perceptions of crime and perceptions of the measures that are best suited to combating crime (della Porta and Reiter, 1998: 23). They are able to move issues they deem to be of interest onto the agenda, and are treated and included as experts in the context of public inquiries and the writing of legislative proposals etc. As specialists in their field – combating crime – they are often given interpretational precedence in the context of discussions on the need for and the effectiveness of countermeasures, which makes them a powerful pressure group. This is particularly visible in relation to the increasing internationalisation of police work. The police participate in international meetings with colleagues and leave such meetings with improved knowledge and new arguments. Within the EU, such discussions between the police forces of the member states have been hosted *inter alia* in the context of the Schengen collaboration and earlier in the TREVI-group (Flyghed, 1998; Bigo, 2000. See also Sheptycki, 1995: 1998). By such means, they have been able to exercise a considerable amount of influence over what makes the agenda in discussions at the national level. The same individuals are then to be found appearing as experts in the context of various national inquiries.

Jerome Skolnick has pointed out that the hierarchical character of the police organisation, in combination with a strong sense of the importance of rule observance, means that the individual police officer often has a very rigid perception of the concept of order. The police have a tendency to view themselves as "workers". As such they are more interested in effective tools than in questions of integrity and civil rights (Skolnick, 1994: 11). This matter was touched upon in the report of the Swedish inquiry into police law, when reference was made to criticisms voiced by the police "against the way that the existing regulations concerning the use of coercive measures have in certain cases in practice been interpreted too

restrictively, which according to the police had detrimentally effected their ability to combat crime" (SOU, 1995: 47, 75). In addition, the requirement that the individual police officer be able to make snap decisions on the spot – to intervene or not to intervene, and in what way – leads to a situation where he/she "develop stereotypes about people and situations perceived as creating trouble or representing a danger" (della Porta and Reiter, 1998: 14). Over the years, they tend to develop an increasingly black-and-white view of reality, which makes it ever more easy to divide people into groups of "good" and "evil".

3. The external rationale of the private control industry is grounded in its interest to effectively control crime and criminals. But it also has a significant interest in maximising its share of the control market and in seeing an expansion in the number of areas of society that need to be monitored and controlled. The business concept also includes making a profit out of the fear of crime experienced by individuals and institutions. These internal interests do not always coincide with the achievement of effective crime control. The control industry, particularly in the areas of surveillance and information technologies, has a tendency to focus on the technical efficiency of the various products available. They present products which lead the police, and also politicians, to hope that technical efficiency will also involve improved effectiveness in crime control. According to Gary Marx, the development of "highly intrusive and easily hidden surveillance technology encouraged undercover work" (Marx, 1982: 168). In the context of this process there exists a clear and important interplay between the police and industry, in which this latter group is often the driving force, constantly producing new technological possibilities in the area of control and surveillance (Christie, 1993; Colvin, 1998.)
4. The external rationale of the media lies in communicating information. But its interest in increasing circulation levels (or viewer/listener numbers in the broadcasting media) and thereby increasing revenue, leads to a heavy focus on dramatic and exceptional occurrences. This selection of extreme events leads to a distortion in the picture of crime that is presented. In addition, there exists a state of mutual dependence between the media and the other three actors. The media need information and the other actors need to reach an audience with their respective messages. Thus the media are both actor and arena.

The behaviour of all four actors can be regarded as underlying causes of the normalisation of the exceptional. Above all it is the actors' internal rationales that contribute to this. There are also times when specific exceptional events are exploited and drive the development of coercive measures forward. These non-representative events are drummed into our consciousness as representing the truth and are normalised so that they turn into perceptions of an ever-present threat. There is often what might almost be termed a demonisation of such threats, something that is clearly visible not only in the media, but also in the rich array of trade journals published by the control industry. Evil groups ("terrorists", "organised drug cartels" and so forth) legitimate the expansion of control. It is usually claimed that only a small number of people will be affected. "We", the vast majority, must protect ourselves against "them", the small minority of evil criminals. It is further claimed that the application of such measures will be very restrictive so as not to endanger the rights associated with the rule of law. But once the countermeasures are established, their use is often expanded successively. Possible time limits are extended in a process that may in the

end lead to the permanent establishment of the coercive measure and to the expansion of its area of applicability to include more minor offences. Anyone questioning this logic is criticised on the basis of the need for effective crime control, often in powerfully emotional terms. Anyone questioning the police need for new methods is accused of shielding criminals and by extension of lacking empathy for the victims of crime – an accusation that it can be difficult to defend oneself against.

In this context it is important to underline the fact that the processes described above cannot be explained by reference to conspiracy theories. Reality is rarely so simple that the solution to complex societal processes can be found in an all-encompassing conspiracy. The various actors (primarily politicians, the police and the control industry) pull in the same direction on the basis of their respective organisational goals. An interactive process arises which mutually enhances their respective positions, but without there ever having been a common, underlying plan.

CONCLUSION

The events surrounding the EU summits in Gothenburg and Genoa last year have had important consequences for EU control policy. The concern felt by many that political protests may be criminalised has shown itself to be not without foundation, for example. On September 20th last year, it was stated that European citizens “will have the right to gather peacefully and to freely express their opinions. In particular, they must be able to exercise this right in ways that neither pose a threat to their own safety nor to the life, limb and property of others”. This is the wording of the German delegation’s proposal for special units to safeguard security in association with meetings of the European Council and other comparable events. “This – as the events in Gothenburg and Genoa have shown – may only be achieved if the EU states act jointly and in collaboration with one another to deal with travelling trouble-makers” (Council of the European Union 11934/01). Clearly certain of the citizens of Europe (i.e. those participating in EU summits) are to be given priority when it comes to gathering peacefully and freely expressing their opinions.

In the middle of February 2002, a decision was made by the Council of the European Union to introduce a standardised form for the exchange of information relating to acts of terrorism. Here the argument is elucidated. “In the course of its activities, the working group has noted a successive increase in the level of acts of violence and vandalism, conducted by groups of radical extremists in association with various EU events and summits, that have created distinct terror-situations within society” (Council of the European Union 5712/02, Rev.1, 1). These events have “led the Union to react and include these acts in article 1 of the framework decision on combating terrorism, where they are defined as criminal offences”. In other words, there is not the least bit of doubt that events of the kind that took place in Gothenburg will in the future be regarded as “distinct terror-situations.”

In this short, but comprehensive communication, the Union takes a further step towards the realisation of its control ambitions:

These events are created by “indefinable circles”, which work under the cover of various different facades within society. The term “indefinable groups” refers to organisations that, by taking advantage of the legal rights they enjoy, engage in ancillary activities that contribute to the realisation of goals characteristic of terrorist organisations that have already been acknowledged as such within the

European Union. This manifest manipulation already constitutes a grave threat, and one which may become considerably more serious in the space of a very short period of time. (*Ibid 2*).

Here the shadow of suspicion is even cast upon organisations and groups operating within the law, as it is argued that they make conscious use of their legal activities as a cover for the promotion of terror. The statement goes so far as to say that the legal operations are necessary to the terrorist-related ancillary activities. It is true that the communication states expressly that the exchange of information in question will not relate to “information on persons who are exercising their constitutional rights to express themselves and to demonstrate at these events”. The individuals referred to are such as “form perfectly organised groups under the direction of terrorist organisations in order to achieve their own destabilising and propagandist objectives” (*ibid*). Given the very unclear definition of terrorism to be found in the Council’s framework decision on combating terrorism, these guarantees do not make for very reassuring reading.

There is a risk that the events in Gothenburg may also lead to another type of normalisation, this time relating to the sentences that have up to now (February 2002) been passed by the courts. The risk is that extreme judicial praxis may be normalised by means of the arguments on collective criminal responsibility upon which the majority of court adjudications for rioting with violence have been based. This has meant that the sentences passed have been considerably stiffer than earlier sentences for similar offences. By comparison with the legal aftermath of similar political disturbances in Seattle and Nice, where the maximum sentences were of nine days and two months imprisonment respectively, the sentences of several years imprisonment passed in Sweden are worryingly high.

In summary, the events in Gothenburg and Genoa have already made a significant contribution to the normalisation of exceptional control methods, at both the national and international levels. There is a serious risk that the line between criminal activities and political protests will be eroded away completely. In this way, the already hard pressed principles of the rule of law are likely to slide still further.

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