

Radical Criminology, No 2 (2013)

Everyone is a Terrorist Now: Marginalizing Protest in the U.S.

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Political policing (or state "high policing") usually is defined as activity which is directed, through surveillance and counterinsurgency, to control particular groups and communities. It is not deviant behavior but a core function of government to protect a political regime. In the U.S. context, the practice has deep historical roots and almost always is done secretly because it undermines the intention of the First Amendment, which protects free speech and assembly. Until the mid-1970s, most American political policing was directed against actors identified as "subversive." Afterwards, the category of "terrorism" became the legal basis for most domestic security investigations.² While this change from subversion to terrorism was intended to reduce government spying, one effect has been stigma and marginalization: the labeling of protest as terrorism undermines the legitimacy of a wide range of political expression. In the era of the "war on terror" against radical Islam, the concept of what constitutes terrorist activity is thoroughly confused. The American state deliberately makes little distinction between fighting violent terrorism with overseas roots and fighting peaceful, legal, domestic political activity. In the FBI's view, terrorists are found everywhere there is disagreement and conflict in society. Indeed, the very act of criticizing the government outside of a protest movement can result in being labeled a terrorist. Even though American radicals rarely commit crimes, the FBI claims they pose a major challenge to peaceful order in society. The terrorist label so broadly has been misapplied that it has lost most significance and meaning.

The level of political violence in the U.S. is very low regardless of whether it originates overseas or at home. Yet, despite the absence of violent acts, the U.S. government touts the threat as a top danger to the nation. It needs terrorists to exist and wants America to face a terrorist threat. If there is no real threat, they must fabricate one. This fabrication allows the FBI to surveil and attack oppositional political formations. Since there are so few real terrorists, the government has built up a phony threat, a ghost of a menace, a "scare" that does not have much grounding in reality. It serves conservative political interests.

What is Terrorism?

In its effort to contain dissent, the American government benefits that definitions of terrorism vary widely. In both academic and government discourse, a consensus does not exist about what terrorism involves, which has allowed powerful interests to distort terrorism debates. In academic discourse, Lisa Stampnitzky notes, "One of the most oft-noted difficulties has been the inability of researchers to establish a suitable definition of the concept of 'terrorism' itself, with the result that practically every book, essay, and article on the topic has been compelled to take on this so-called 'problem of definition.'"³ Meanwhile, in governmental politics the United Nations, for example, cannot agree on a definition. Since 9/11, the U.N. has proved unable to gain consensus on any comprehensive statement or action on the issue. Since no universally accepted definition exists within the international community, anti-terror measures vary widely by nation. Indeed, in the decade after 9/11 more than 140 nations passed new anti-terrorism laws. In many cases, the new legislation justified increased repression toward domestic populations.

Human Rights Watch points to the "dangerous expansion of powers to detain and prosecute people, including peaceful political opponents...the tendency of these laws to cover a wide range of conduct far beyond what is generally understood as terrorist. More often than not, the laws define terrorism using broad and open-ended language." The threat to domestic dissent is real. "In dozens of countries, acts of political dissent that result in property damage, such as demonstrations, may be prosecuted as terrorism where the element of terrorist intent is broadly defined (for example, to 'disrupt the public order' or 'endanger public safety')." More than 50 of the new counter-terror laws in the U.S. place new restrictions on speech by criminalizing expression that encourages terrorism absent any charge of incitement to violence, and more than 120 laws vastly expand police surveillance and detention powers. Moreover, governments in several nations "redefined longstanding armed conflicts as part of the 'global war on terror' for internal political purposes or to gain international support." For example, Russia views the conflict in Chechnya as a struggle against international terrorists, not as a separatist conflict.⁴

In considering the U.S. conflation of dissent with terrorism, it is useful to consult the new field of Critical Terrorism Studies (CTS). CTS adopts the view that existing counter-terror policies often serve the interests of hegemonic power structures to

maintain the status quo. Terrorism is a social construction and different groups and forces in society conceptualize it differently. CTS casts a critical eye on state power both as a perpetrator of political violence and for manufacturing ideas contrary to emancipatory objectives. In the debut issue of *Critical Studies on Terrorism* in 2008, the editors outlined a series of topics that had received scant attention, including: the role of state terrorism; the effects of the war on terror on poor peoples; the cultural construction of terrorism; and the "ideographic qualities" of the terrorism label. ⁵

Protest as Terrorism

A major reason the FBI calls nonviolent protestors terrorists is related to official FBI Guidelines for investigation developed by the U.S. Department of Justice. According to these Guidelines, the FBI is instructed to respect the First Amendment and civil liberties. The Bureau is forbidden to investigate the politics of Americans unless they can be linked to advocacy of violence or efforts to organize violent acts. "These Guidelines do not authorize investigating or collecting or maintaining information on United States persons solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States." ⁶

A fuller statement of the FBI's alleged respect for legal and Constitutional rights is contained in a Bureau document distributed to its personnel: the *Domestic Investigations and Operations Guide* (DIOG). Strong civil liberty protections are outlined, as if an attorney from the American Civil Liberties Union (ACLU) had written these sections. Nearly 20 pages of DIOG are devoted to "Privacy and Civil Liberties, and Least Intrusive Methods." The document states:

Protecting the public includes protecting their rights and liberties. FBI investigative activity is premised upon the fundamental duty of government to protect the public, which must be performed with care to protect individual rights and to ensure that investigations are confined to matters of legitimate government interest...

Race, ethnicity, religion, or national origin alone can never constitute the sole basis for initiating investigative activity...

Employ the least intrusive means that do not otherwise compromise FBI operations. Assuming a lawful intelligence or evidence collection objective, an authorized purpose, strongly consider the method (technique) employed to achieve that objective that is the least intrusive available (particularly if there is the potential to interfere with protected speech and association, damage someone's reputation, intrude on privacy, or interfere with the sovereignty of foreign governments) while still being operationally sound and effective.⁷

A second important FBI document, the "FBI Agents Legal Handbook," outlines restrictions on uses of informers. This is not a minor matter since informers function as a key undercover spying tool. The FBI cannot direct these "human assets" to act in ways that are forbidden for other FBI personnel. The Handbook states:

Although informers are private individuals in the sense that they are not commissioned representatives of the government, they are considered agents of the government when performing informant-related tasks....As such, they are subject to the same legal restrictions that govern the conduct of Special Agents. It follows that if the informant's contemplated action would be illegal or unconstitutional if performed by a Special Agent, it is also impermissible if performed by the informant.⁸

FBI public documents echo these private ones. In the document, "Our Responsibility to Protect Civil Liberties," the FBI states:

The FBI is committed to carrying out its mission in accordance with the protections provided by the Constitution. FBI agents are trained to understand and appreciate that the responsibility to respect and protect the law is the basis for their authority to enforce it. The FBI puts a premium on thoroughly training our special agents about their responsibility to respect the rights and dignity of individuals. ⁹

An article titled "Domestic Terrorism," which is posted on the FBI website, asserts:

Hate and anger are not crimes; neither are hard-line and poisonous ideologies. It's only when actions by groups or individuals cross the line into threats, the actual use of force or violence, or other law-breaking activities that we can investigate. ¹⁰

Thus, the limitations on FBI spying seem significant. But in practice these Guidelines, Handbooks, and public pronouncements carry little weight. The FBI subverts them by calling everyone terrorists and by claiming the threat is severe or imminent. It is official dishonesty in secret documents that few outside the FBI can access. Unaccountability is integral to the mislabeling of political activity.

As part of the "criminalization of dissent," associating speech and writing, as well as peaceful social action, with terrorism

functions to discredit subjects. The state smears political opponents as dangerous and disloyal in order to marginalize them. Although subjects of FBI terrorism investigation often are not arrested, the investigations allow the government to collect intelligence to be used to undermine social movements based, for example, on anti-war, anti-capitalist, or anti-globalization politics.

The USA Patriot Act (2001) codified a loose definition of terrorism in federal law. Section 802 created the federal crime of "domestic terrorism" to cover "acts dangerous to human life that are in violation of the criminal laws of the United States or of any State." A terrorist act consisted of any effort "to intimidate or coerce a civilian population" or "to influence the policy of government by intimidation or coercion." The precise meaning of intimidation and coercion remains unclear. The FBI has viewed peaceful civil disobedience as terrorism.¹¹

Despite the Patriot Act, disagreement exists within the government about what constitutes terrorist behavior. In 2010, the Office of the Inspector General at the Justice Department reviewed FBI surveillance of five domestic political advocacy groups and found the FBI misapplied the terrorism classification. The Bureau "relied upon potential crimes that may not commonly be considered as 'terrorism' (such as trespassing or vandalism) and that alternatively have been classified differently, such as under the classification for crimes on government reservations." ¹²

Moreover, the vast majority of criminal charges brought by the FBI for terrorism do not hold up in court. In 2008, government prosecutors declined to bring charges against 73 percent of the criminal cases referred to them for terrorism, up from 61 percent in 2005. Syracuse University's TRAC research group found: "Federal agencies can't seem to agree on who is a terrorist and who is not. The failure has potentially serious implications, weakening efforts to use the criminal law to combat terrorism and at the same time undermining civil liberties." ¹³ This uneven approach points to a pattern of abuse. Falsely charging a person with terrorism, even if prosecution fails, is a form of state harassment. It also is one way the FBI manipulates public opinion to build up the gravity of the threat. Arrests make headlines and the public is led to believe a grave danger exists. By contrast, the dismissal of charges rarely makes headlines; and the pattern of overcharging rarely is discussed in popular media discourse.

Under the banner of fighting terrorism, U.S. intelligence agencies monitor popular websites, blogs, and message boards unrelated to specific groups and individuals. The U.S. Department of Homeland Security (DHS) has taken the lead in a program called "Social Networking/Media Capability." DHS tracked dozens of popular sites to identify criticism of U.S. policies. They call it "situational awareness": popular opinion about news events that "reflect adversely" on the U.S. government. As one prominent example, DHS conducted mass monitoring of Facebook to "capture public reaction" regarding the possible relocation of Guantanamo terror detainees to a prison in Michigan. DHS also monitored the comments section to articles in the *New York Times*, *Los Angeles Times*, and the *HuffingtonPost* looking to identify criticism of the intelligence community. Other websites under surveillance include:

Twitter	Hulu	My Space
YouTube	Flickr	Wikileaks
Drudge Report	ABC News	Wired
Cryptome	Jihad Watch	Informed Comment ¹⁴

DHS employs analytical computer software in its monitoring, which relies on hundreds of key words and search terms to detect controversial political expression. The Electronic Privacy Information Center (EPIC) reports that the list includes "vast amounts of First Amendment protected speech that is entirely unrelated to the Department of Homeland Security mission to protect the public against terrorism and disasters."¹⁵ Fifty-six words or terms are listed under the category of "domestic security." ¹⁶ (See Tables 1-3, below.) When these terms appear in a domestic communication, the whole message or article may be flagged for further inspection.

Most political intelligence gathered by DHS is made available to the FBI. The same sharing of information characterizes the Counter-Terrorism Unit of the Federal Bureau of Prisons.

Table 1: Domestic Security Keywords

Assassination	Emergency management	Gangs
Attack	Emergency response	National security

Domestic security	First responder	State of emergency
Drill	Homeland security	Security
Exercise	Maritime domain awareness (MDA)	Breach
Cops	National Preparedness initiative	Threat
Law enforcement	Militia	Standoff
Authorities	Shooting	SWAT
Disaster assistance	Shots fired	Screening
Disaster management	Evacuation	Bomb (squad or threat)
DNDO (Domestic Nuclear Detection Office)	Deaths	Crash
Mitigation	Hostage	Looting
Prevention	Explosion (explosive)	Riot
Response	Police	Pipe Bomb
Dirty Bomb	Organized crime	Incident
Facility		

Table 2: Hazmat & Nuclear Keywords

Hazmat	Leak	Gas
Nuclear	Biological infection (or event)	Spillover
Chemical spill	Chemical	Anthrax
Suspicious package/device	Chemical burn	Blister agent
Toxic	Biological	Chemical agent

National laboratory	Epidemic	Exposure
Nuclear facility	Hazardous	Burn
Cloud	Hazardous material incident	Ricin
Plume	Industrial spill	Sarin
Radiation	Infection	North Korea
Radioactive	Powder (white)	

Table 3: Health Concern + H1N1 Keywords

Outbreak	Salmonella	Agriculture
Contamination	Small Pox	Listeria
Exposure	Plague	Symptoms
Virus	Human to human	Mutation
Evacuation	Human to animal	Resistant
Bacteria	Influenza	Antiviral
Recall	Center for Disease Control (CDC)	Wave
Ebola	Drug Administration (FDA)	Pandemic
Food Poisoning	Public Health	Infection
Foot and Mouth (FMD)	Toxic	Water/air borne
H5N1	AgroTerror	Swine
Avian Flu	Tuberculosis (TB)	Pork

Author Will Potter obtained government documents revealing this Unit maintains files about journalists whose writings, interviews, and lectures are critical of government repression. Potter found multiple references to his own book, *Green is the New Red*, about government attacks on the environmental and animal rights movement. Several of Potter's public lectures also were monitored. In one lecture, he

spoke about how 'terrorists' have become the new enemy of the hour and a rhetorical tool to excuse all manner of harassment, intimidation, and surveillance...What does it say about our government and our culture's understanding of 'terrorism threats' that these dossiers included articles, speeches, and books?¹⁷

The state strategy of calling everyone a terrorist is underappreciated in U.S. popular consciousness. On the one hand, there may be general timidity to directly challenge the dominant ideas and practices of the intelligence community, fearful that such criticism might prompt state countermeasures. The FBI, for example, has a long history of tracking its critics. On the other hand, it is difficult for dissidents to advance ideas on this subject because the mainstream media rarely allows such questioning of the intelligence community.

In 2012, a major U.S. Senate report found significant ineffectiveness in domestic anti-terror efforts related to official "fusion centers." The DHS runs about 70 such centers across the nation to consolidate and analyze regional political intelligence. While the Congressional report referred to "wasteful" spending and "irrelevant" and "useless" intelligence reporting, it did not acknowledge political policing as a function of government.¹⁸ Yet, there is little doubt protest movements in America continue to be subject to state scrutiny. Recent revelations about government spying on the Occupy movement in more than 15 cities demonstrates, once again, that DHS and the FBI labeled homegrown protestors as terrorists. FBI memos refer to "domestic terrorism" and note local Joint Terrorism Task Forces helped in "counterterrorism preparedness" and "WMD [Weapons of Mass Destruction] preparedness." In Los Angeles, the social control function explicitly was articulated after a legal, nonviolent Occupy protest in the subway system. The government worried about Occupy alliances with the homeless.

[Text redacted] stated that transit-related crime in Los Angeles County has gone up recently...[Text redacted] blames the rising crime rate on mostly economic factors. In tough economic times, many shelters and care facilities for mentally ill individuals and drug users either close or have to turn people away. The aforementioned people account for a large percentage of the transit crime in the County of Los Angeles...

On 10-19-2011 a peaceful protest by the 'Occupy Wall Street' movement occurred on a Blue Line train. [Text redacted] stated the protesters had all purchased tickets and were all cooperative. [Text redacted] is concerned however about what may happen if the 'Occupy Wall Street' protesters mix with the more violent individuals upset about the alleged mistreatment of prisoners in the LASD jails.¹⁹

In retrospect, the eventual police crackdown on the Occupy movement seems predictable since authorities have come to view protest through a prism of terrorism. The prospect of widespread repression in America hangs large before the people.

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² Ivan Greenberg, *The Dangers of Dissent: The FBI and Civil Liberties Since 1965* (Lanham, MD: Lexington Books, 2010); Athan G. Theoharis, "Political Policing in the United States: The Evolution of the FBI, 1917-1956," in Mark Mazower, ed., *The Policing of Politics in the Twentieth Century: Historical Perspectives* (Oxford: Berghahn Books, 1997), 191-212.

³ Lisa Stampnitzky, "Disciplining an Unruly Field: Terrorism Experts and Theories of Scientific/Intellectual Problems," *Qualitative Sociology*, 34 (March 2011): 3.

⁴ Human Rights Watch, "In the Name of Security: Counterterrorism Laws Worldwide since September 11," June 29, 2012, 4, 6, 21-22, 41, 51, www.hrw.org/reports/2012/06/29/name-security. See also Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (New York: Cambridge University Press, 2011).

⁵ Marie Breen Smyth, Jeroen Gunning, Richard Jackson, George Kassimeris, and Piers Robinson, "Critical Terrorism Studies -An introduction," *Critical Studies on Terrorism*, 1 (April 2008): 3. See also Richard Jackson, Marie Breen Smyth, and Jeroen Gunning, eds., *Critical Terrorism Studies: A New Research Agenda* (New York: Routledge, 2009).

⁶ U.S. Department of Justice, "The Attorney General's Guidelines for Domestic FBI Operations," 2008, 13, <http://www.justice.gov/ag/readingroom/guidelines.pdf> (accessed Aug. 19, 2012)

⁷ Federal Bureau of Investigation, "FBI Domestic Investigations and Operations Guide (DOIG) 2011," October 15, 2011, 69, www.vault.fbi.gov (accessed Aug. 19, 2012).

⁸ Federal Bureau of Investigation, "FBI Agents Legal Handbook," Aug. 20, 2003, 112, http://fbiexpert.com/FBI_Manuals/Legal_Handbook_for_Special_Agents/FBI_Agents_Legal_Handbook.pdf

- 9 Federal Bureau of Investigation, "Our Responsibility to Protect Civil Liberties," <http://www.fbi.gov/about-us/intelligence/liberties> (accessed Aug. 19, 2012).
- 10 Federal Bureau of Investigation, "Domestic Terrorism," Sept. 9, 2009, http://www.fbi.gov/news/stories/2009/september/domterror_090709.
- 11 Jules Boykoff, *Beyond Bullets: The Suppression of Dissent in the United States* (Oakland, CA: AK Press, 2007), 293-95; Nancy Chang, *Silencing Political Dissent: How Post-September 11 Anti-terrorism Measures Threaten Our Civil Liberties* (New York: Seven Stories Press, 2002), 112.
- 12 The five groups were: Thomas Merton Center; Society of Friends (Quakers); Greenpeace USA; People for the Ethical Treatment of Animals (PETA); and the Catholic Worker. Office of Inspector General, U. S. Department of Justice, "A Review of the FBI's Investigations of Certain Domestic Advocacy Groups," September 2010, 1-2, 188.
- 13 Transactional Records Access Clearinghouse (TRAC), "Who is a Terrorist? Government Failure to Define Terrorism Undermines Enforcement Puts Civil Liberties at Risk," Sept. 28, 2009, 1-2, <http://trac.syr.edu/tracreports/terrorism/215/>.
- 14 "Homeland Security Watches Twitter, Social Media," *Reuters*, Jan. 11, 2012; Stone, Andrea. "DHS Monitoring of Social Media Under Scrutiny by Lawmakers," in *HuffingtonPost*, Feb. 16, 2012, http://www.huffingtonpost.com/2012/02/16/dhs-monitoring-of-social-media_n_1282494.html ; "DHS Monitoring of Social Media Concerns Civil Liberties Advocates," *Washington Post*, Jan. 13, 2012.
- 15 "Homeland Security Manual Lists Government Key Words for Monitoring Social Media, News," *HuffingtonPost*, Feb. 24, 2012, http://www.huffingtonpost.com/2012/02/24/homeland-security-manual_n_1299908.html.
- 16 "Dept. of Homeland Security Forced to Release List of Keywords Used to Monitor Social Networking Sites," *Forbes* May 26, 2012, <http://www.forbes.com/sites/reuvencohen/2012/05/26/department-of-homeland-security-forced-to-release-list-of-keywords-used-to-monitor-social-networking-sites/>.
- 17 Will Potter, "Counter-Terrorism Unit Keeps Files on Journalists, Reports that My Book is 'Compelling and Well Written,'" July 26, 2012, <http://www.greenisthenewred.com/blog/counter-terrorism-unit-keeps-files-on-journalists/6247/>.
- 18 "DHS 'Fusion Centers' Portrayed as Pools of Ineptitude, Civil Liberties Intrusions," *Washington Post*, Oct. 2, 2012; U.S. Senate Homeland Security and Governmental Affairs Committee, "Investigative Report Criticizes Counterterrorism Reporting, Waste at State and Local Intelligence Fusion Centers," Oct. 3, 2012, <http://www.hsgac.senate.gov/subcommittees/investigations/media/investigative-report-criticizes-counterterrorism-reporting-waste-at-state-and-local-intelligence-fusion-centers>
- 19 FBI Los Angeles [Text redacted] to Los Angeles, "Intelligence Briefings or [sic] Liaison Squad I-1, Mass Transit (Surface)," Oct. 10, 2011. Declassified government spy documents on the Occupy Wall Street movement have been posted online by the Partnership for Civil Justice Fund, <http://www.justiceonline.org/commentary/fbi-files-ows.html>.