8

Surveillance, Democracy, and Protest in a Time of Climate Crisis

Katerina Hadjimatheou

The question of how political protest should be regulated and policed in a democracy has long been a topic of philosophical debate (Rawls, 1999, Brownlee, 2012). But it has acquired renewed political urgency in recent years. Most recently, government responses to the Covid-19 pandemic have prompted public protests across the world, often in defiance of strict lockdown restrictions enacted under emergency legislation. These have ranged from anti-vax demonstrations contesting the introduction of restrictions to the activities of the non-vaccinated, to demonstrations related to the economic consequences of the pandemic, to protests against the methods adopted by law enforcement in their efforts to police lockdowns. In some cases, pandemic-related protest groups have also sought to coincide their actions with demonstrations organized by more established campaign groups, such as climate change activists, in order to draw attention to their cause.[1] This chapter examines the question of how surveillance should be used to police protest in a time of emergency, focusing on environmental activism as a case study from which conclusions relevant to protests in other conditions of crisis can be drawn.[2]

A growing acknowledgement of a global climate emergency has propelled the rise of environmental protest movements such as Extinction Rebellion (ER), Fridays for Future, and Global Climate Strike (Kyllonen 2014). The approach of such movements is to invite mass participation in non-violent but often disruptive protest or 'actions', such as using passive resistance to block key roads in cities in order to draw attention to climate change. Extinction Rebellion also seek to prompt political change, both by influencing government policy, and by advocating the

---

[1] In 2021 anti-vax protesters in London appeared to highjack Extinction Rebellion gatherings, sparking violence which led to the injury of four police officers (BBC 2021).

[2] Note that there is also a pertinent distinction between the two groups as well. While most today would endorse the right of both groups to protest, contemporary society is generally more sympathetic to environmental protest than to anti-vaccine protestors. This may lead to important considerations regarding when surveillance may be used to legitimately deter activists from engaging in illegal activities, such as protesting outside schools or the 6 January storming of the US Capitol. While these considerations are important to the overall debate, they go beyond the scope of this current chapter which focuses on police surveillance of legitimate protest.

establishment of 'citizens' assemblies', to which they argue climate policy decisions should be delegated.[3] While ER's campaign for citizens' assemblies has yet to yield results, there is already significant evidence showing that mass climate protests have been successful on a range of other important fronts, including by increasing public support for climate change action (Bugden 2020), prompting regional governments to reduce emissions locally (Muñoz et al. 2018), and convincing firms to divest in fossil fuels resulting in emissions reductions (Glomsrød and Wei 2018).[4]

The rationale and rhetoric of emergencies is actively deployed by environmental groups seeking to justify the disruption to daily life caused by their protests. For example, Extinction Rebellion defend their campaigns by emphasizing the existential stakes of climate change and stressing the need for exceptional measures that reach, in their words, 'beyond politics'. ER's case for replacing policymaking by representative democracy with a deliberative alternative is similarly based on the argument that climate change has proven to be a challenge 'too controversial and difficult for politicians to deal with successfully by themselves' given the pressures of the electoral cycle and the political influence of lobbyists representing polluting industries (Extinction Rebellion 2019a). Their position is both supported and contradicted by the fact that, at least in the UK, where ER was founded, Parliament has recognized officially the existence of a climate emergency and appears likely to pass new legislation authorizing the use of emergency powers in response.[5] Political acknowledgment of an ecological emergency has also begun to influence judicial decision-making around the criminality of 'direct action', or acts of civil disobedience undertaken by environmental protesters. In 2021, the convictions of three ER protesters were overturned by a judge who found that blocking a public highway was a proportionate exercise of the right to protest peacefully (Casciani 2021).

In contrast, the approach of law enforcement to environmental protest in the UK has recently hardened, with police announcing intentions to 'rebalance' enforcement in favour of business and daily life, and against protesters seeking to disrupt these (HMICFRS 2021; NPCC 2022). Some evidence of a toughening of the police stance is already evident: in 2021 London police exercised powers designed for the prevention of serious crime and terrorism to raid an architecture studio storing scaffolding that had been used by some ER protesters. Once inside, they seized the mobile phones and laptops of those present for inspection and arrested them on suspicion of 'conspiracy to create a public nuisance'. Police have also begun to use less orthodox methods such as 'doxxing' to shame protesters. For example, in 2021 London's MET police posted on Facebook the names and addresses of climate

---

[3] For a discussion of ER and the 'securitization' of climate change see Slaven and Hayden (2020).
[4] For a summary of recent research in this field, see Fisher and Nasrin (2020).
[5] Climate and Ecological Bill 2021–22.

protesters involved in peaceful disruption of a printing press, which led to their harassment by members of the public (APPG 2021: para.156[e]).

Police in England and Wales have also declared an intention to intensify their use of surveillance powers against protest movements, through the use of informants[6] and undercover police infiltrators and the expansion of technological surveillance such as facial recognition (HMICFRS 2021: 2). A recent national review recommends police urgently improve their intelligence about individual protesters 'who seek to bring about political or social change in a way that involves unlawful behaviour or criminality' in order to prevent or disrupt them. At the same time, new legislation currently making its way through Parliament lowers the threshold at which police action to prevent or disperse a public protest is legally justified, making it easier for surveillance to be deployed in support of such measures (Home Office 2021).

These developments invite a re-examination of the ethics of police surveillance of protest movements. Environmental and climate activism serves as a useful case study in this regard. While environmental movements are by no means the only protest groups subject to police surveillance, their broad reach and ability to generate mass participation, including amongst children (an estimated 7.6 million people participated in climate strikes across the world in 2019 [Rosane 2019]) means that climate activists are more likely to come under such surveillance than others. Environmental protest movements are only likely to expand their following further as climate-related disasters and crises increase in both frequency and severity, touching the lives of ever greater numbers of people. Finally, the fact that government actions continue to fall short of what climate science has identified as necessary to avert catastrophic effects suggests that public protest will continue to have a key political role to play on this issue. For these reasons, issues around police surveillance of protest movements are intertwined with urgent political questions about how prepared we are as democratic societies to deal with a climate emergency, an emergency that intersects ever more frequently with other crises, including the ongoing Covid-19 pandemic.

The Ethics of Police Surveillance of Protest: Privacy and the Chilling Effect

Most people's experience of exercising the right to protest[7] is conditioned by how broadly or narrowly that right is interpreted by police, and by the intrusiveness of

---

[6] Evidence of ongoing police attempts to recruit environmental activists as informants can be found, e.g., on Netpol's website and the APPG report (para.156[b]).
[7] The right to protest is recognized as a discrete legal right in the European convention of human rights, include freedom of assembly, association, and expression.

the means used by police to enforce its boundaries.[8] Police in many countries have broad discretion to interpret where thresholds of legality lie and to choose which tactics—from persuasion to 'kettling',[9] water cannon or tear gas—to use to contain or disperse protests.[10] Discussions of the ethics of police surveillance of political activity have tended to focus on the risk it poses to the rights of the individual (Baker et al. 2017). But, as sociolegal theorists Starr et al. (2008) and Aston (2017) have argued, police surveillance also affects protest movements as collectives. People tend to exercise their right to protest through a movement, group, or organization, and not alone standing on a soapbox. Indeed, for most people involved in activism, a protest movement is both an important stimulus for the formation of a political stance and a forum within which to express political views and be heard. For this reason, protest movements should be understood as vital prerequisites to the exercise of those rights, contributing directly to the capacity of individuals to exercise those rights (or, put otherwise, facilitating the conversion of formal freedoms to protest into 'capabilities' to do so). The existence and operation of such groups cannot be reduced to aggregate exercises of individual rights. So an examination of the impact of police surveillance on protest must include an examination of its effects on those groups. Specifically, it must examine the impact on groups' ability to 'mobilise' for action, with mobilization understood in sociological terms as processes of building support and planning activities, for example through 'meetings, networks, strategic planning, and extensive communicative and solidarity building activity' (Starr 2008: 257).

Both Starr and Aston make important contributions in this respect, drawing on first-hand testimonies of activists who have been subject to police surveillance to demonstrate empirically the considerable ways in which it stunts and inhibits the mobilization of protest movements. While Starr provides a general overview of all kinds of state surveillance on a broad range of social justice protest movements, Aston focuses exclusively on the effects of overt—i.e., publicly visible—police surveillance on environmental activism in the UK. Taken together, their insights advance current understandings of the implications of police surveillance in important ways, in particular by providing a deeper and more systematic account of how police surveillance exerts a 'chilling effect' on the collective exercise of

---

[8] This merely restates political scientist Bayley's insight that the way in which police exercise discretion 'directly affects the reality of freedom' for citizens (Bayley 1985: 5).

[9] A controversial police tactic that involves corralling protesters into contained areas, often for hours without food or water or means of departure. When protesters are permitted to leave the kettle, this is typically through a single point of exit where police subject them to questioning and search.

[10] As a recent parliamentary review noted, when police are given expanded coercive powers in relation to authorizing protest, they become both 'law maker' and 'law enforcer' (APPG 2021). This undermines their legitimacy as normatively neutral enforcers of legislation. What is more, it allows the significant reasons police have to want to discourage, prevent and constrain assemblies (mainly resource considerations as discussed in footnote 3 above) to shape illegitimately their determination of whether a protest is legal.

political liberties. In doing so, both aim to lay the conceptual ground for better informed judicial assessments of the proportionality, and thereby the legality, of specific tactics of protest policing.

The present chapter builds on this body of work in two ways. First, by extending the analysis to examine in depth the distinctive effects of a specific kind of surveillance known as 'covert human intelligence' (or more commonly undercover infiltration), on protest movement mobilization. Second, by proposing refinements to the concept of 'chill' in order to capture more precisely the impact of surveillance on the ability of protest movements to address social problems. The aim of the discussion to follow is therefore twofold: to understand better the practices and tactics police deploy to surveil contemporary protest movements, and to conceptualize more precisely their impact. The first section addresses the first of these aims by providing an overview of police surveillance as documented in reliable accounts drawn from four kinds of sources: testimony from two activists (referred to as Luke and Davin) interviewed by the author as part of an ongoing study of police surveillance and the chilling effect;[11] activist testimony as reported in previous articles by Starr et al. (2008), Aston (2017), and Gilmore et al. (2020); evidence and statements submitted by activists, their lawyers, and police for public inquiry into undercover policing currently in progress in the UK; and a 2020 parliamentary report on the policing of public protest. A distinction is made between overt and covert surveillance. The second section focuses on the concept of chill.

Police Surveillance of Protest Movements: Tactics and Practices

Overt Surveillance during Protests and Assemblies and Immediately before and after Them

Overt police surveillance of protests is justified by police as a form of intelligence gathering; to enable them to identify anyone who breaks the law should the protest turn into disorder; and to identify those with organizational and leadership roles in a movement. Monitoring can involve searches, questioning, filming, and photographing of all and any protesters, but also more intense, targeted surveillance of specific activists identified as leaders. A 2019 court case revealed that police use data collected at protests to compile databases and detailed dossiers on activists, even those who have never been even distantly associated with

criminality.[12] Though police justify the use of these kinds of surveillance powers as a means of identifying and disrupting protesters who are violent and intent on criminality, in practice they tend to be directed towards everyone present at a protest, including those clearly identified as legal observers, medics, and journalists (APPG 2021: paras. 148–9). Recent years have also seen the use of more aggressive techniques of registering and monitoring protesters. In 2013, police were found by a judge to have illegally 'kettled' large numbers of protesters into a small area and then obliged them to provide their personal details, submit to a search, and be filmed and photographed as a condition of release (Mengesha v Commissioner of Police of the Metropolis: 2013).[13]

Activists described the impact of these kinds of indiscriminate data gathering as exerting a deterrence or 'chilling' effect on the exercise of political freedoms by discouraging people from participating in protest. In addition to the unpleasantness of being 'kettled' and treated as suspicious by police, which most would reasonably want to avoid, some people have an insecure immigration status and fear detention or deportation if the police label them as criminal in an official database (Aston 2017: 4); some may be on probation or other restriction orders and fear re-criminalization; and some may fear racism, brutality and disproportionate criminalization from the police because they or people who share their racial or other traits have done so in the past (Starr et al. 2008: 258–9). In the UK, fears of being included in police databases are also linked to recent revelations that police shared personal details of environmental activists and union organizers with private companies which compiled blacklists of people who were then excluded from employment, in some cases for decades (Lubbers 2012: ch. 2).[14]

During protests, police routinely target intense surveillance at specific activists who have presumably been identified as leaders or instigators of protests. A distinctive tactic of police appears to be singling out individual activists and calling to them by name, with the individuals concerned having no idea how police had identified them. One activist reports that this occurred 'all the time ... shouting from vans, the other side of crowds, pointing me out in a way that made it clear that the aim was to make me know I was being watched' (Jeremy, quoted in Aston 2017: 8, see also Gilmore 2020: 371). Another described this tactic as 'pure intimidation' (ibid.). In addition, many activists reported being closely tailed and

---

[12] Similarly, in 2019 a court found that police had been systematically monitoring and recording information about peaceful protesters simply because they attended protest events. In the specific case that prompted the trial, an elderly protester discovered that police had included detailed information on him in a database of 'domestic extremists' without any ground for suspicion of criminality (Catt vs United Kingdom 2019).

[13] A 'sneaky' use of powers allowing police to search people for possession of weapons under counter-terrorism laws was also used to obtain identifying information from activists (Bob, quoted in Aston 2017: 7, see also p. 6).

[14] A collection of journalistic reports on blacklisting is available here: https://www.hazards.org/blacklistblog/

photographed and filmed by police, before, during and sometimes long after protests. Thus, one spoke for many when he talked of having 'one or two uniformed police following you, wherever you go, whatever you do' (Jack, quoted in Aston 2017: 7). This was described as intrusive and frightening. It also induced in activists a preoccupation with police, which one described as having police 'infiltrating your way of thinking' (Brian, quoted in Gilmore et al. 2020: 372). Similarly, another activist who had been followed constantly for four days was left feeling that surveillance had 'taken over [his] life' as he found himself thinking and even dreaming about police all the time (John, quoted in Aston 2017: 8).

These testimonies draw attention to the expressive and indeed performative aspects of this kind of surveillance. Intense, targeted surveillance conveys a message to specific activists that police consider them troublemakers and will not leave them alone until they stop participating in activism. But it also shows people at the margins of protest movements that the authorities consider those at the centre to be dangerous and criminal, thus, in the words of one activist 'put [ting] people off from wanting to participate' (Jenny, quoted in Aston 2017: 4, 11). For example, one activist in Aston's study reported that an old acquaintance of his told him that she 'didn't really want to associate with me' after she saw him being surrounded by uniformed police during a protests, who were constantly taking 'large numbers of photographs from a very short distance'. The acquaintance told him that '[s]he was scared she'd be targeted in a similar manner or worse' (Evan, quoted in Aston 2017: 4, 11). This speaks to the ways police surveillance undermines the ability of protest groups to attract and retain members.

The chilling effect exerted by this kind of police surveillance was also described as creating fear or suspicion within movements, chilling associations between existing members and helping to create schisms. As one activist reported, 'sometimes their presence, which is supposedly to monitor and prevent...is quite divisive and creates this kind of "that's the militant people over there, with the cameras", and other people are drawn away from that, because why would you want to be [associated]?' (Jenny, quoted in Aston 2017: 11). A further way in which police surveillance divided groups was by prompting activists already under heavy surveillance to isolate themselves during protests, in order to protect more peripheral protesters from unwanted police attention. For example, one of Aston's participants reported that police would immediately stop and search anyone who approached her, so that she felt forced both to avoid social interaction during protest—thereby risking seeming unfriendly and aloof—and 'to warn other people that that was the consequence of associating with us on a protest...[that] police will take an interest in you' (Ellen, quoted in Aston 2017: 4). Similarly, another described how, when police 'were following me, personally, around on demonstrations, I would end up on my own...because I wouldn't want people to be with me [and] people also don't want to be around you' (Esther, quoted in Aston 2017: 7).

Surveillance of Non-Protest Gatherings: Meetings, Camps, Workshops, Etc.

Away from protests themselves, environmental activists describe a pattern of heavy overt police surveillance of meetings, in one case every single meeting that took place over a period of two years (Magnus, quoted in Aston 2017: 10). This typically involved numerous uniformed officers with clearly marked vehicles stationed directly outside the venue, filming and taking photographs of every person entering and leaving the building so that, in the words of one activist interviewed for this chapter, 'there's no way of getting in or out of the building without being filmed' (Davin). Activists believed police used this kind of monitoring to build an intelligence picture of the organization and individual members through 'profile-building, you know, who turns up at these same different events, who's involved' (ibid.). But they also felt it was used expressively, 'to intimidate people' and to deter newcomers from becoming involved in the movement by sending a message to the effect that 'if you even want to *talk* to these people about what they are doing, you're on file. We have four officers taking this down, that's how seriously we are taking this' (Magnus, quoted in Aston 2017: 10).

Activists both in the UK and the US were convinced that this strategy was successful in deterring people from getting involved in activism. One participant spoke for many when he said that people 'who had seemed quite confident and really excited and enthused about getting involved in the movement would come to a meeting and they'd suddenly shrink, and be less confident and they would not participate and often they didn't come back' (Ricky, quoted in Aston 2017: 11). This hampered the ability of groups to engage new members. It also demoralized existing members: as one US activist explained 'people are staying home to avoid being on a list, so then it feels like nobody cares' (Starr et al. 2008: 259). Activists in Starr et al.'s study felt that a heavy police presence at meetings 'sullies the reputation of organizations' (Starr et al. 2008: 265), tainting them as criminal and leading other organizations using the same venue to view them with hostility, with some venue owners refusing to rent them space for their meetings, further hampering efforts to organize (ibid. 259). More generally, overt police surveillance was felt to tarnish activism as a means of political expression, and thus alienate people from the desire to become involved in activism. As one of Starr et al.'s participants said, 'even the word "activist" is stigmatized. People have disgust for what you do. You're not a committed, responsible citizen' (Starr 2008: 264).

Activists also reported overt surveillance of other non-protest gatherings such as workshops, festivals and camps, designed to generate new ideas and build social capital and solidarity. In 2008 a climate camp in the UK was surrounded by 1400 police officers, a number that almost equalled that of activists (Saunders and Price 2009: 118). Those entering and leaving were subjected routinely to stops and

searches, resulting for some participants in several searches a day (Schlembach 2018: 501). Participants in Aston's study emphasized again the expressive aspect of this kind of police monitoring. For example, one activist at a women's peace camp described how sometimes police would arrive suddenly at night 'with cameras, they video everyone. From quite close, within a few feet' (Iona, quoted in Aston 2017: 112), while another at an environmental camp described police as a constant presence, 'sitting in the bushes taking pictures of people eating, having discussions, in workshops' and even monitoring the open toilet facilities (Ricki, quoted in Aston 2018: 112). This apparently intentionally conspicuous police monitoring disrupted mobilization in two ways: by ruining the sense of a space of solidarity where interactions were spontaneous and ideas could be explored and expressed safely, and by creating a collective preoccupation with police surveillance.

The preoccupation described here mirrors the individual fixation with police surveillance described by activists who were singled out for monitoring, but at a collective level. In one case, this preoccupation was described as derailing the focus of an entire event, shifting collective attention away from climate change and towards questions of how to manage police surveillance. One activist described how police would arrive, periodically but at unpredictable times and without warning, to a climate festival, demanding immediate tours of the site ostensibly to check compliance with rules on health and safety and trespass. He says:

> they started off by just having two officers walk round with somebody, and then they wanted three and then they wanted to make it more frequent. They would just turn up with more, they would turn up and say 'we want to do it now. And if you don't let us check that everything's alright we will have to assume the worst and you won't like it', basically threats to bust on site and close down the camp. And…we'd have to stop the meetings…we'd have to break and say, 'do we let them on, do we let them on more?   (Magnus, quoted in Aston 2018: 179)

The testimonies discussed in this section challenge current police and legal conceptualizations of surveillance as a kind of passive 'monitoring' or mere 'gathering of intelligence' by showing how they constitute an active, expressive, and sometimes even performative means of deterring and disrupting peaceful political activity.

Undercover Policing: Infiltration

In 2010, it was revealed that since 1968, 150 British undercover police had infiltrated over 1000 peaceful environmental, social justice, and left-wing political

groups.[15] Undercover officers lived with activists for years, some had long-term intimate relationships with unsuspecting women (including in a small number of cases, fathering children), and all collected vast banks of detailed information on anyone associated with the groups. As the many testimonies of activists and even undercover agents themselves now reveal, infiltration also involved police stepping into key organizational roles in political movements: taking positions on national executive committees, as treasurers, drafting manuals used by protesters, running logistics for protest camps, and so on.[16] This enabled police to collect information on membership and finances, to obtain keys to buildings and passwords to email inboxes, and to be party to all plans for political action.

While it is impossible to assess precisely the impact of undercover infiltration on the ability of movements to mobilize, there is evidence that police sought to disrupt, divide, and discredit organizations from the inside.[17] Documents submitted to the public inquiry detail how officers used their senior positions 'to discredit others within the organization and assist in sowing discord' (ibid.: 10), for example, by lobbying to have other senior members of committees removed and in one case even planning to overthrow and replace the leadership of the organization.[18] At least some used their position to 'sabotage the organization' and actively disrupt organizational activities, for example by deploying their advance knowledge of the locations of public meetings 'to enable uniformed officers to warn the proprietors (falsely) that the organization was illegal'. The venues 'were encouraged to cancel the meetings' (Opening Statement to the Undercover Policing Inquiry on behalf of Lois Austin et al. 2020: 9). In one now notorious case, an officer was instructed to infiltrate a family campaign seeking justice for a victim of a racist murder which the police had failed to investigate properly. The aim was to try to find information with which to smear and discredit the family and their campaign (Evans and Lewis 2013). Undercover officers also advocated for and indeed coordinated acts of illegality, apparently in order to divide groups and delegitimize them in the eyes of the public (Evans and Lewis 2012). In one example, an officer proposed repeatedly to activists that their organization, which

---

[15] These figures are gathered from a range of sources submitted to the ongoing Undercover Policing Inquiry and cannot be attributed to a single source.

[16] This strategy was acknowledged in the witness statement of an undercover officer to the ongoing public inquiry (First Witness Statement of HN301 2019: 6). And it is now in the public domain that many undercover officers including Mark Kennedy, 'Vince Miller', 'Rick Gibson', 'Carlo Neri', 'Marco Jacobs', and others held organizational roles. For example, 'Gary Roberts', who enrolled as a student in his undercover role, became vice president of the student union.

[17] The counterfactual estimations would involve too many assumptions to be reliable. But the fact that police sought roles that otherwise would have been taken by genuine activists is itself likely to have had a distorting effect on the strategies pursued. Activists have claimed that their activities 'influenced the political direction of' of organizations such as Greenpeace (Opening Submissions 2020: 20–1).

[18] 'Rick Gibson' is mentioned repeatedly as seeking to create rifts within the organization he had infiltrated and taken a leading role within (Undercover Policing Inquiry Tranche 1 [Phase 2] Evidence Hearings, Day 10 transcript, pp. 80–5).

had never used violence before, should firebomb a shop, apparently in full knowledge that 'provocation of serious criminality would not just discredit organizations, it would destroy them' (Opening Statement to Undercover Policing Inquiry 1: 18). Here we can see how police surveillance goes well beyond passive monitoring and intelligence gathering of protest movements, to include active manipulation and disruption. Surveillance techniques are used for interference rather than (merely) insight.

A different way in which undercover infiltration disrupts protest movements from within is by provoking their adoption of what is known as 'security culture'. Security culture refers to the adoption of organizational measures, behaviours—including language—and attitudes designed to defend and protect a group against surveillance and infiltration. Security culture remains almost entirely unexamined in the academic literature on undercover policing or surveillance of protest movements. A notable exception is Starr et al., who discuss it only briefly, mentioning that it hobbles organizations by leading them to plan and carry out even basic organizational activities in secret, but also that it poisons them by encouraging pervasive mutual suspicion, divisions between those who have proven their credentials and those who have not, and active distrust of new arrivals (Starr et al. 2008: 263). Starr et al.'s findings were echoed by a UK activist interviewed for the chilling effect study who explained:

> it's how you interact with new people in activism, are they undercover, can you trust them, it's awful because it creates a false paranoia in circles which you think should be safe and, you know, caring. You're working together with likeminded individuals to make a change to the environment . . . as opposed to bad things like terrorism.

As we will now see, for some activists, security culture has been the single most damaging consequence of police surveillance for protest movements.

Above, it was argued that surveillance can have the effect of fixating the attention of individuals and groups on policing and surveillance to the detriment of organization and mobilization. Undercover infiltration, or the widespread awareness of the possibility of it, has a similar effect, causing organizations to devote time, attention, and organizational resources to security and to prioritize it over issues of vital importance such as recruitment, egalitarianism inclusiveness, solidarity and community building, and efficiency. For example, one activist interviewed for this chapter described having

> constant debates about which email system and messaging apps are secure, using poorly designed platforms and switching all the time . . . it has affected our movement because a lot of people think [we're using] a shit platform . . . every collective has this discussion, the extent to which security culture is used in their

organizational structure, so the same conversations happen again and again . . . it really messes with people's heads.   (Davin)

Security culture was described as both constraining and distorting communication and association within groups, with frank conversations happening only in selected fora and only after all those present have been subject to background checks or 'vouched for'. As a veteran environmental activist interviewed for this chapter explained:

> you're thinking are they from a private company or from the authorities? You have to try and do your research about them without offending them and that takes time, it has to be done very carefully, because I'm sure as many tactics as activists come up with, there's countermeasures—especially with all this new technology of state surveillance to come round that make fake IDs and fake profiles. You have to challenge, that's the kind of level of work you have to do, you go to their family home, meet their mother, their father, you know is this person who they say they are, you know it's kind of horrible.   (Luke)

He described how being vouched for is also a condition of being included in meetings: 'you arrive at a meeting and before it starts you say "is everybody here comfortable with who is present? Or "put up your hand if you can vouch for this person so we can make sure we're all vouched for" . . . These precautionary things, it leaves a very uncomfortable feeling in meetings sometimes.' As will be discussed in the following section, these organizational reactions to surveillance are quite distinct from mere inhibition or self-censorship typically associated with fear of being monitored.

Both of the activists interviewed for this chapter were convinced that security culture had fundamentally corrupted and disrupted previously peaceful, united movements, with one saying, 'all those years of infiltration had a huge effect on bringing distrust, inhibited and restricted us in so many ways . . . the amount of people the movement has lost from being distrustful, unfriendly', and another adding: 'security cannot be at the expense of a mass movement, and it has paralysed groups' (Davin and Luke, respectively). There is an obvious irony in the fact that protest movements have sought to protect themselves from unwanted police surveillance by developing their own surveillance techniques and turning these on each other. But there is also something deeply ironic about the way police can induce peaceful, lawful campaigns for social and environmental justice to behave as if they were clandestine, criminal organizations with something to hide, just by treating them as if they were such.

This section has sought to draw attention to the array of ways in which police surveillance of political movements inhibits, disrupts, and distorts the exercise of political freedoms to protest. Though activists have attempted to raise awareness

of these implications in various forums,[19] they remain entirely unacknowledged by police, whose official guidance only requires them to consider the impact of their actions on individual rights. They are also overlooked in recent public discussion of the ethics of undercover policing, which has focused overwhelmingly on issues arising in relation to officers' intimate relationships with female activists. The absence of debate about—and indeed legal recognition of—this distinctive category of harms or wrongs reflects the lack of an accepted vocabulary or concept with which to describe it. The next section addresses this gap.

Conceptualizing the Impact of Surveillance on Protest Mobilization: The Limits of the 'Chilling Effect'

While Starr et al. and Gilmore et al. limit themselves to identifying and describing the implications of police surveillance, Aston conceptualizes them and in doing so makes an important step towards refining and deepening ethical and legal debate on this topic. Her argument is that surveillance practices 'create harms that extend beyond individual privacy, by "chilling" the process of assembly mobilizations and amounting to (at least arguably) a restriction of assembly rights' (Aston 2018: 34–5). Like legal theorists before her, Aston understands the chilling effect as deterrence of benign, worthy, or legally protected behaviour, resulting from ambiguities or uncertainties in the law or its application (Schauer 1978; Kendrick 2013; Pech 2021). This notion of chill has been used in empirical efforts to demonstrate the causal relationship between mass surveillance of online communications and self-censoring behaviour by writers, activists, and citizens in general (Penney 2016; Stoycheff et al. 2020; PEN 2015). Thus chill is a kind of externality (or unintended but costly byproduct) of uncertainty and latent threat: people are unsure of whether or at what point their exercise of protected behaviours will invite negative conse- quences, therefore they protect themselves by refraining from those behaviours. According to this account, chilling effects may not necessarily constitute direct interferences with rights, but they reduce the scope of their free exercise (typic- ally beyond what is justified or legitimate) and this is problematic in a liberal democracy (ibid.). Aston's contribution to this line of legal theorizing about chill is both to extend it to police surveillance of environmental activism, and to expand it to include effects on organizations—in this case protest movements— alongside individuals.

This 'classic' theory of chill has advanced significantly our understanding of the inhibiting and disruptive impacts of police surveillance, and their moral

---

[19] See, for example, the Charter for Freedom of Assembly Rights, devised by the association of protest groups Netpol (Network for Police Monitoring) which has been signed by forty-four different groups in the UK.

implications. But there are three features of it that limit its ability to capture the full range of inhibiting and disruptive impacts on protest movements described above. These are: its insistence on uncertainty as a causal factor; its recognition of only one motivating attitude, namely fear of negative consequence; and its reductive assumption that outcomes are limited to individuals *refraining from* certain behaviours. Taken together, these conditions exclude many of the effects this chapter—and Aston herself—wishes to draw attention to. For example, the conspicuous overt police monitoring at protest camps Aston describes was unambiguous in its scope and aims, and hardly provoked fear in activists. Though it did inhibit free and frank discussion to some extent, it was primarily disruptive, diverting activists' attention and resources towards talking, thinking about, and managing police surveillance. Similar points can be made about the development of security culture in protest movements: here, uncertainty about infiltration was key, but the effect was not only to inhibit behaviours but also to generate *new* self-protective behaviours that were themselves deleterious to the movement. In contrast, Penney (2016) and Stoycheff et al.'s (2020) studies of online surveillance recognize only the 'silencing' or 'avoidance' effects of chill. A more nuanced concept of chill than that provided by the 'classic' theory is therefore required.

In his deep and wide-ranging analysis of the chilling effect, legal theorist Penney (forthcoming) draws both on the social theory of privacy and on social scientific insights into the effects of surveillance on behaviour to argue for an expansion of the concept of chill in a way that 'take[s] the social shaping of the *subject* of chilling effects seriously'. His 'social conformity theory of chilling effects' expands the definition of chilled behaviour to include 'speaking, acting, or doing, just in a way that conforms to, or is in compliance with, a perceived social norm' (2022: 5). He also rightly does away with the uncertainty criterion in relation to chilling effects of state surveillance, pointing out that chill can occur even in conditions in which activists know their activism will result in them being watched, followed, recorded and categorized, and ultimately suffering interference with their liberties. Penney's theory constitutes an important step towards recognizing that surveillance not only deters people from acting in certain ways but also conditions and distorts their motivations and preferences. This enables his theory to accommodate the way heavy overt police surveillance may lead third party observers to associate activism with bad and criminal behaviour and therefore to adapt their preferences around the exercise of their political freedoms to protest (though he does not explicitly note this himself).

However, like legal theorists before him, Penney ultimately specifies the behavioural outcomes in a way that is too narrow. As the examples given above illustrate, a desire to avoid legal, privacy or other harms associated with state surveillance can lead to a range of behaviours beyond mere conformity, such as actions designed to avoid surveillance, to manage it, to conceal behaviour, or to obstruct or counteract it. His theory neither explains nor captures these important

behaviours. At the same time, Penney's theory is too expansive: by including *any* kind of threat of sanction from any source, and conformity with *any* perceived social norm, it loses sight of the distinctive moral problem with chill (and indeed the only thing that distinguishes it from deterrence) which is that it involves the exercise of state power in such a way as to inhibit or disrupt behaviour that is morally valuable and should be protected.

This chapter cannot provide a full defence of a new theory of chill. However, it does suggest some ways in which the concept could be refined in order to better describe and capture the impact of police surveillance of protest movements. Specifically, recognizing that chilling effects occur at the level of the organization and not just the individual; that they can include a range of distorting and disruptive attitudinal and behavioural responses on the part of both observers and targets, and not just omissions or avoidances; and that, when targeted at protest movements, they always exert an inhibiting or disruptive effect on the exercise of political liberties. Adapted in these ways, the notion of chill could constitute an important conceptual tool in current debates about the surveillance of protest movements and beyond.[20] Protest and civil disobedience are a fundamental aspect of both normal and emergency politics in a democracy, as the public turn to activism in crises from climate change to the Covid-19 pandemic have illustrated. This chapter has argued that police surveillance exerts a chilling effect that is deleterious to legitimate protest movements and, as such, to democracy itself.

References

Aston, V. 2017. State surveillance of protest and the rights to privacy and freedom of assembly: A comparison of judicial and protester perspectives. *European Journal of Law and Technology* 8 (1): 1–19.

APPG 'All Party Parliamentary Group on Democracy and the Constitution'. 2021. Police Power and the Right to Peaceful Protest. Institute for Constitutional and Democratic Research. At: https://www.icdr.co.uk/bristol-clapham-inquiry-home

Baker, D., S. Bronitt, and P. Stenning. 2017. 'Policing Protest, Security and Freedom: The 2014 G20 Experience'. *Police Practice and Research* 18 (5): 425–48.

---

[20] Is there a risk that the analysis here could be inverted to construct an argument in *favour* of overt and covert police surveillance of illegitimate and illegal protest movements, and indeed organized crime and terrorist groups? Unlike environmental movements, the mobilization of such groups is itself a source of threat to civil liberties and human rights, so there is little to lose by deterring or disrupting their activities. But while this line of argument is not unreasonable, and it is worth exploring these possibilities further, the conclusions are not foregone: there is some evidence suggesting that surveillance of organized crime groups can be self-defeating. For example, an in-depth account of the undercover infiltration of drugs markets found that police action drives them further underground and makes their leaders more dangerous and violent, as they seek to root out and punish suspected informants who are often the most vulnerable individuals at the margins of the organizations Woods 2017).

Bayley, D. H. 1985. *Patterns of Policing: A Comparative International Analysis*. Rutgers University Press.

BBC. 2021. 'Four Met Police officers injured in anti-vaccine protest'. 3rd Sept. 2021. At: https://www.bbc.co.uk/news/uk-england-london-58440700

Brownlee, K. 2012. *Conscience and Conviction: The Case for Civil Disobedience*. Oxford University Press.

Brownlee, K. 2012a. *Conscience and Conviction: The Case for Civil Disobedience*. Oxford University Press.

Bugden D. 2020. Does Climate Protest Work? Partisanship, Protest, and Sentiment Pools. *Socius*. 6, 1–13.

Burke, E., C. C. Collins, L. Bergeron et al. 2020. 'Teen Activism Leads to Local Laws Banning Single-Use Plastics: A Two-Year Experiential Learning Journey'. *Sustain Earth* 3: 15.

Casciani, D. 2021. 'Extinction Rebellion: Judge demands review of protester convictions'. BBC News, 4 August. At: https://www.bbc.co.uk/news/uk-58092234.

Catt vs The United Kingdom. 2019. European Court of Human Rights, Strasbourg (Application no. 43514/15), 24 April.

Dodd, V. and J. Grierson. 2020. The Guardian https://www.theguardian.com/uk-news/2020/jan/10/xr-extinction-rebellion-listed-extremist-ideology-police-prevent-scheme-guidance

Evans, R. and P. Lewis. 2012. 'Call for police links to animal rights firebombing to be investigated'. *The Guardian*, 13 Jun 2012. https://www.theguardian.com/uk/2012/jun/13/police

Evans, R. and P. Lewis. 2013. 'Police "Smear" Campaign Targeted Stephen Lawrence's Friends and Family'. *The Guardian*, 24 June 2013. https://www.theguardian.com/uk/2013/jun/23/stephen-lawrence-undercover-police-smears

First Witness Statement of HN301 to the Undercover Policing Inquiry. 2019. Ref.MPS-0742600. 25 October. At: https://www.ucpi.org.uk/publications/first-witness-statement-of-hn301/

Fisher, D. and S. Nasrin. 2020. Climate Activism and Its Effects. Wiley Interdisciplinary Reviews, Climate Change. 2021;12 1–11.

Gilmore, J., W. Jackson, H. Monk, and D. Short. 2020. Policing the UK's anti-fracking movement: facilitating peaceful protest or facilitating the industry? *Peace, Human Rights, Governance* 4 (3).

Glomsrød, S. and T. Wei. 2018. Business as unusual: The implications of fossil divestment and green bonds for financial flows, economic growth and energy market. *Energy for Sustainable Development*, 44, 1–10.

Haggerty, K. and M. Samatas. 2020. *Surveillance and Democracy*. Routledge.

HMICFRS 'Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services' 2021. Getting the balance right? An inspection of how effectively the police deal with protests. At: https://www.justiceinspectorates.gov.uk/hmicfrs/publications/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests/

Home Office. Police, Crime, Sentencing and Courts Bill 2021. UK Government. At: https://publications.parliament.uk/pa/bills/cbill/58-01/0268/200268.pdf

Kendrick, L. 2013. 'Speech, Intent, and the Chilling Effect' (2013) 54(5) William and Mary Law Review 1633.

Kyllönen, S. 2014. 'Civil Disobedience, Climate Protests and a Rawlsian Argument for "Atmospheric' Fairness'. *Environmental Values* 23 (5): 593–613.

Lubbers E. 2012. *Secret Manoevres in the Dark: Corporate and Police Spying on Activists.* Plutopress.

Mengesha v Commissioner of Police of the Metropolis [2013] EWHC 1695 (Admin) (18 June 2013) At: http://www.bailii.org/ew/cases/EWHC/Admin/2013/1695.html

Muñoz, J., S. Olzak, and S. A. Soule. 2018. Going green: Environmental protest, policy, and CO2 emissions in U.S. states, 1990–2007. *Sociological Forum*, 33 (2): 403–21

NPCC 'National Police Chiefs' Council'. 2022. Protest Operational Advice Document.

Opening Submissions on Behalf of Core Participants Represented By Hodge Jones & Allen, Bhatt Murphy and Bindmans Solicitors. https://www.ucpi.org.uk/wp-content/uploads/2020/11/20201026-Opening_Statement_CPs_represented-by_HJA_BM_Bindmans-MRQC.pdf

OSUPI 1. 'Opening statement to the Undercover Policing Inquiry on behalf of: Lois Austin Richard Chessum "Mary" Dave Nellist Hannah Sell Youth against Racism in Europe'. 20 October 2020. https://www.ucpi.org.uk/wp-content/uploads/2020/11/20201022-AMENDED_Opening_Statement-CPs_represented_by_PILC.pdf

Pech, L. 2021. 'The Concept of Chilling Effect: Its Untapped Potential to Better Protect Democracy, the Rule of Law, and Fundamental Rights in the EU'. Open Society European Policy Institute Report. Open Society Foundations.

PEN America. 201. 'Global Chilling: The Impact of Mass Surveillance on International Writers'. https://pen.org/research-resources/global-chilling/

Penney, J. 2016. 'Chilling Effects: Online Surveillance and Wikipedia Use'. *Berkeley Technology Law Journal* 31 (1): 117–82.

Penney, J. 2022. 'Understanding Chilling Effects'. 106 *Minnesota Law Review* Logical Forum 33 (2): 403–21.

Rawls, J. 1999. A Theory of Justice. Harvard University Press.

Rosane, O. 2019. '7.6 Million Join Week of Global Climate Strikes'. *EcoWatch*, 30 September 30. https://www.ecowatch.com/global-climate-strikes-week-2640790405.html

Saunders, C. and Price, S. 2009. One person's EU-topia, another's hell: Climate Camp as a heterotopia. Environmental Politics, 18:1, 117–122.

Schauer, F. 1978. 'Fear, Risk and the First Amendment: Unraveling the Chilling Effect'. *B.U. L. Rev.* 58: 685–732.

Schlembach, R. 2018. 'Undercover Policing and the Spectre of "Domestic Extremism": The Covert Surveillance of Environmental Activism in Britain'. *Social Movement Studies* 17 (5): 1.

Slaven, M. and J. Heydon. 2020. 'Crisis, Deliberation, and Extinction Rebellion'. *Critical Studies on Security* 8 (1): 59–62.

Starr, A. and others. 2008. 'The Impacts of State Surveillance on Political Assembly and Association: A Socio-Legal Analysis'. *Qualitative Sociology* 31 (3): 251.

Stoycheff, E. Burgess, S., and Martucci, M. 2020. 'Online Censorship and Digital Surveillance: The Relationship between Suppression Technologies and Democratization across Countries'. *Information, Communication & Society* 23 (4): 474–90.

Tucker, D. Interviewed by Cara McGoogan for Episode 7 'Inquiry, part II' of the Telegraph Newspaper podcast 'Bed of Lies', at minute 23–4.

Woods, N. 2017. *Good Cop, Bad War.* Ebury Press. Penguin.