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COUNTER-SURVEILLANCE, PROTEST AND POLICING

Dean Wilson¹

Abstract

This paper, based upon 17 semi-structured interviews with individuals involved in video activism, examines the growing importance of visually documenting protest events for both activists and police organizations. It is argued that while visual recordings of protest events by activists may be useful in terms of securing safety, dissuading instances of police violence and in providing evidence against police misconduct, there are also unintended negative consequences of video-activism. These negative consequences include self-incrimination, the promotion of spirals of surveillance whereby the police video protestors, and the removal (at times with disproportionate force) of activists with recording devices from protest events to prevent visual documentation of police activities. Thus the practice of video activism at protest events is one with the potential for both negative and positive outcomes in terms of activist aims.

Keywords: counter surveillance, protest, surveillance technologies, protest policing

Introduction

This paper examines the use of video by protesters as a form of ‘counter-surveillance’ at protest events in Australia. Counter-surveillance can be defined as the ‘intentional, tactical uses, or disruptions of surveillance technologies to challenge institutional power asymmetries’ (Monahan 2006: 516). Marx (2003: 384) also suggests that counter-surveillance moves involve ‘turning the tables and surveilling those who are doing the surveillance’. To date, the term ‘counter-surveillance’ has primarily been engaged to describe resistance tactics aimed squarely at surveillance infrastructure itself, notably in the case of the activities of the Surveillance Camera Players in New York, or similar groups in Europe who aim to challenge the widespread dispersal of video cameras in public space (Yar 2003; Koskela 2004; McGrath 2004; Monahan 2006). However, there is a significant

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lineage of groups who have engaged surveillance technologies to monitor agents of state power, such as the police, in order to foster accountability and render transparent instances of police brutality and misconduct (Huey et. al. 2006; Lyon 2007).²

While these studies have focused on groups such as 'Cop Watch', which see their primary aim as the monitoring of police activities, this paper focuses on counter-surveillance by activists whose political project transcends surveillance critique, such as forest blockaders and 'anti-capitalist' social movements. Analysis of video activism has largely been subsumed within larger studies examining the role of ICTs in the organization, coordination and communication of social movements (Juris 2005, 2008; Atton 2002, 2003). There is also growing interest in the use and impact of protest images in a rapidly transforming media landscape (Greer & McLaughlin 2010; Wilson & Serisier 2010). Here, however, I wish to examine the specific attributes of video activism as a form of counter-surveillance at actual protest events, in negotiations with the police, and in subsequent attempts to hold police officially accountable following protest events.

This paper is based upon data gathered for a larger project analysing the practice of counter-surveillance in relation to the spaces of protest, the legal life of images and the distribution and consumption of visual material collected through practices of video activism in Australia (for a more extended discussion of this research and the data see Wilson and Serisier 2010). The project involved 17 semi-structured interviews conducted with individuals involved in video-activism, either directly as videographers or indirectly through the use of footage in legal proceedings. This provided an opportunity to think through the intended and unintended consequences of counter-surveillance practices at protest events and the ambiguities that subsequently emerged in discussion with participants. The discussion is organized thematically around the central issues arising from the interview data. I begin by examining the practice of video activism in protest situations, noting that such practices frequently stimulate moves and counter-moves between control agents and protestors. The outcomes of this ongoing dance are deeply contradictory, at times heightening safety and accountability, while simultaneously containing potential dangers such as video activists being targeted by authorities. Moreover the recent increase in the levels of visual

² Although most common in the US and Canada there are three 'Cop Watch' websites now operating in Australia, in Sydney, Melbourne and Brisbane, although the Brisbane group goes under the name of 'Forcewatch'. See <http://www.sydneycopwatch.org/>, <http://melbournecopwatch.org/> and <http://brisforcewatch.wordpress.com/>.

surveillance conducted by both control agents and protestors potentially dilutes the impact of monitoring.

The discussion then examines how the law is mobilized as an element of the moves and counter-moves between police and video activists. Police frequently mobilize a range of laws in order to neutralize the monitoring of video activists. Video activists also engage the law, seeing particular importance in visual evidence of police misconduct when laying complaints against police. However, within the legal domain the status of visual images as evidence was seen to be ambiguous. The power of the police to provide interpretations of visual evidence within official inquiries and legal proceedings can undermine the power of the image to hold the police to account. Moreover video activists noted the risk that images might incriminate the very people it was intended to protect. Overall, the utility of visual images was principally viewed as lying in providing a bargaining tool in 'backstage' negotiations between police and protestors.

1 Moves and Counter-Moves

The term 'video activist' refers to people who use video as a tactical tool to deter police violence, document abuse and misconduct by police authorities, and in an effort to influence and set the political agenda. Harding links the birth of video activism to three convergent trends: the emergence of a vibrant form of activism, the availability of camcorders and the failure of mainstream TV to adequately cover 'the boom in mainstream politics' (1998, 83). From its inception, video activism has been inextricably intertwined with a larger move and counter-move dance of tactical innovation engaging internal and external actors in protests. Video activism is thus an element of complex processes of 'coevolution' (Oliver & Myers 2002) whereby interactions and relationships between protestors and police stimulate tactical innovations sometimes traversing unpredictable trajectories. The primary focus here is on what might be termed 'witness video'. Harding suggests that witness video can function in three ways: as a pacifier at events, as a defence against false arrest or violent assault, and as 'offence' – namely in terms of gathering evidence (2001, 65). I will now examine each of these in turn, analysing how move and counter-move are reiteratively connected.

Camcorders and other visual imaging technologies can protect the public in their dealings with police, and many individuals and organized groups have adopted the videotaping of police interactions with the public in a range of situations (Doyle 2003, 74-75). For video activists, the protection of those involved in protest actions was a principal reason for monitoring police conduct and protest actions more generally. As one videographer

succinctly remarked when asked about the purposes of videoing protest events, 'I think safety is the main one, I think it provides protestors with a sense of safety that the police are being monitored' (Prickett interview). In conversation with those engaged in video activism, safety persistently emerged as a key objective of counter-surveillance. As one activist commented, the objective of videoing was 'dissuading them [the police] from being complete arseholes... I mean it really is that cautionary thing isn't it – at least they know they are being watched, they may hopefully rein it in a bit' (Morris interview).

It has been noted that innovative tactics of resistance can spur state agents to implement new modes of control to neutralize challenges to state power (Hardt & Negri 2004). This is evident in the ironic situation of video activists, whose efforts to secure safety through imaging renders them exceptionally visible to police. The monitoring of police in turn kindles counter-neutralization tactics, in particular 'strategic incapacitation' (Gillham & Noakes 2007) that aims to neutralize visual monitoring, either through direct physical force or through spatial strategies of containment. Getting 'beaten up' was one of the foremost hazards of video activism, and those interviewed reported that individuals armed with video and digital cameras were commonly targeted by police at protest actions. One activist suggested, 'police do target people like that at protests, I've seen it. People with megaphones, people with cameras – they get taken down pretty quickly' (Jacobs interview), while another recollected that 'quite a few people have ended up with a black eye and a bruised head' (Morris interview).

Spatial strategies of isolation and containment are an additional counter-neutralization move engaged by police. One participant suggested that the police pursued a clear strategy of 'make sure you've identified who the camera people in the protest group are, sideline them, don't give them any good footage and don't give them anything that will turn up in court' (Morris interview). While another video activist suggested 'some police will act against you for being the teller of the truth so you can get targeted, camera can get trashed and your tapes ripped out or personally removed from a protest because you are documenting it' (Jacobs interview). Becoming a target of police attention is intertwined with a wider range of police counter-moves at protests that seek to neutralize the impact of counter-surveillance. In many aspects, the neutralization techniques mobilized against counter-surveillance initiatives mirror the moves outlined by Marx (2003). The most common move, discussed above, is to engage a 'breaking move' that renders counter-surveillance inoperable. For police officers in protest situations this involves simply mobilizing the significant asymmetry power to neutralize monitoring either through physical force, the confiscation of equipment or

both. Several participants discussed having their cameras and film confiscated and then damaged or reported difficulty in reobtaining the equipment.

Such counter-neutralization moves stimulate innovative tactics on the part of video activists that utilize space and evasion to elude agents of control. The Sydney Copwatch website publicizes techniques video activists can engage to avoid arrest and confrontation while undertaking video monitoring. These include advising video activists to only take photos when there are others present, or others with cameras who could film any potential assault, and during protests to remain in the middle of a group. It also warns video activists that they may be assaulted at the conclusion of a protest, and should consider handing footage on to someone else so as to avoid it being destroyed by police (www.sydneycopwatch.org). These defensive tactics were frequently raised by participants during interviews, particularly in the context of forest blockades where police violence can occur unmonitored by the presence of commercial media.

It's mostly direct, the threat that the person will be roughed up, that their equipment will be destroyed and so obviously you develop protocols around that, where you might have one person coming and film for a while, they leave, they put the footage somewhere safe, another person comes, so in effect, the football analogy, you have one person on the field at a time. (Cam Walker interview)

The police also engage in this cat and mouse game, and another frequently deployed tactic in protest situations has been the removal of identification badges by police officers in order to remain anonymous. Dale Mills, founder of Sydney Copwatch, suggests that police officers generally react negatively to videoing and filming at protests as 'they don't want individual accountability, I think that's why they don't wear their badges' (Mills interview).

The constant interaction of move and counter-move between the police and video activists activates rising spirals of surveillance and counter-surveillance, what Marx has termed a 'surveillance arms race' (2007, 299). Thus, while the safety of protestors and the witnessing and documenting of misconduct remain powerful drivers of video activism, an increasingly frequent rationale of video activism is to counter the increasing visual surveillance of protest events undertaken by police.

One video activist remarked:

I think it is [video] important as well to counter the incredible levels of surveillance that police put on protests. They have really sophisticated surveillance on protests, like camera positioned in key strategic areas and telephoto lenses with small digital cameras

right on hot spots. So we need to have our cameras there as well because you see in cases which have happened in the past evidence the police collect, somehow all of the footage of events which incriminate the police go missing while all the evidence that might incriminate protestors of certain things comes to light. (McEwan interview)

This transformation also appears to accompany a diminishing of the power of the image in relation to protests. As one video activist with 15 years' experience videoing protests remarked, 'at one point it was very powerful to have even just a portable camera there, that was the new thing... eventually they realised it was better to just have their own cameras there, so I gradually saw the collaboration of more and more police cameras' (Jacobs interview). Situations where police are armed with cameras facing protestors armed with cameras can reach heights of absurdity, as the same videographer suggested, 'so you video them videoing you and it just gets sillier and sillier. We know you're looking at us and it's that sort of projection of power through the process of surveillance and sort of static' (Jacobs interview). Such counter moves on the part of police potentially lead to a Kafkaesque situation where 'counter counter-surveillance' promotes a spiral of surveillance enmeshed within layers of neutralization. The surveillance spiral ends in a cancelling out whereby the act of monitoring has surpassed both action and control.

2 Mobilizing Law

In protest situations the law becomes an instrument mobilized by all parties to execute moves and counter-moves. Police regularly invoke the power of legal statute to rationalize blocking moves aimed at video activists. Video activists have been threatened with several pieces of legislation that have been mobilized to curtail filming and threaten video activists with the prospect of criminal proceedings. Dale Mills gives the following example: In New South Wales at least it's an offence under some circumstances to audio record a conversation without the other person's permission, and of course most video has audio on it, and so that has raised the question as to whether for example if we're recording a conversation between a protestor and a police officer, and neither of them know that they're being recorded has raised the question as to whether that's legal. On more than one occasion we've had police officers come up to us and say you need to turn the video off now, because you're breaching the Surveillance Devices Act, that's a recording device...and we've said but we're not recording anyone, and the police officer said well I'm speaking to you and you're recording me. (Mills interview)

Another videographer was threatened with prosecution under recent counterterrorism laws, and was informed that the facility he was videoing (a large power station) was categorized as 'key infrastructure' (McEwan interview). Such inventive redeployments of law equate with the 'soft-line' social control outlined by Fernandez, where a wide range of legislative instruments – often diverted a significant distance from their intended purpose – are marshalled to restrict dissent (2009, 90-91).

Video activists also strategically engage the law, and the surveillance of police actions was perceived by participants to have significant evidentiary value, as footage could potentially be utilized to file complaints against police misconduct. For Dale Mills, founder of Sydney Copwatch, the purpose of monitoring police at protest actions is:

Essentially to do the job that the superior officers should be doing, and that is to make a complaint about police misbehaviour, to highlight the question with police misbehaviour, and to offer the video as solid evidence. People can easily challenge oral evidence, a bit more difficult to challenge photographic evidence but video is very good. (Mills interview)

However, there was a consensus amongst all participants that, at least in the current regulatory system, complaints against police behaviour at protests were highly unlikely to succeed irrespective of the presence of video footage. It was suggested that there is a lack of accountability 'because the police investigate themselves, and the Ombudsman's Office endorse whatever the police do' (Mills interview). The possibility of seeking official redress is limited in a number of ways. 'Masking moves' (Marx 2003) may foreclose the usefulness of footage for official exposure of police misconduct. Complaints to the New South Wales Ombudsman, for example, have been returned on the basis that without a name or number it is impossible to ascertain the police officer involved. As police officers frequently refuse to give their name on request and just as frequently fail to wear identifying badges in protest situations, they are capable of neutralizing the official visibility of the activist's camera (www.sydneycopwatch.org/police-identification.html). Moreover, such images are inserted and recontextualized in official contexts within which police interpretations occupy a privileged, though not unassailable, position. Surveillance images are always subject to interpretation, and in the domain of official inquiry and legal proceedings the police are positioned to supply the 'official definition of the situation' (Doyle 2006, 211). The structural space of those undertaking surveillance is therefore of considerable consequence, as it is not inevitably coupled with the power of interpretation. This perhaps explains the pervasive cynicism based on experience expressed by all participants regarding the capacity of counter-surveillance to render police officially accountable.

If the capacity of video footage to bring about official accountability is constrained, images nevertheless constitute an important tactical device in defending against accusations by the police and in 'backstage' negotiations. Several participants noted the value of video for defence purposes, particularly if footage captured police misconduct. John Jacobs, for instance, was charged with 'assaulting against a police officer' at a protest; however on the basis of video evidence which exposed that Jacobs himself had been 'put in a headlock and bashed in the face', the case was dismissed, although no further action was taken against

police officer responsible (Jacobs interview). Moreover, the mere existence of images can be deployed to negotiate with the police. One community lawyer with extensive involvement in logging protests noted the utility of footage in negotiations and 'situations where we have kind of ruffled some feathers through telling the sergeant of the relevant police station of the existence of our footage, that having the impact of having that person at least informally reprimanded' (Bleyer interview).

One of the key ironies is that in monitoring and documenting protest actions video activists may inadvertently assemble a database that incriminates those it is intended to protect. Andrew Lowenthal, a video activist at numerous protest events, suggests, 'the downside is that, yeah, you do the surveillance work of the police, and you can help them do dossiers, or background or convict people' (Lowenthal interview). Another videographer noted, 'sometimes...your footage might be counter-productive, so you might actually catch somebody committing an offence so that material could be used against your aims' (Prickett interview). There is consequently the danger of footage being subpoenaed, or even police raids, as occurred in 2001 at one community television station, Channel 31, which was raided by police officers searching for footage of protests outside a Nike store in Melbourne (Davi interview). Even footage not directly incriminating can prove ambiguous and counterproductive. For instance, following the protests at the Beverley Uranium mine, footage was subpoenaed in court of 'a greenie meeting where the greenies are saying...“we're outnumbering the cops. Let's go anyway”. The cops one of their arguments is “we didn't use excessive force, we were outnumbered and we had to do this” so that video comes to support their argument' (Davi interview). Some community groups have offered specific training in video activism that includes advice to avoid filming protestors performing illegal activities (Davi interview). Nevertheless, just as the police may become visible under public CCTV systems (Goold 2004, 178-186), so too might video activists become subjects of their own surveillance. Potentially empowering images might also be reinterpreted in different contexts, co-opted into official archives where their meaning is perversely inverted.

Conclusion

This brief paper has examined two important aspects of video activism at protest events: how such video activism is part of a series of moves and counter-moves between police and

protestors and how both police and protestors mobilize the law in relation to images. There can be no doubt that video counter-surveillance in protest situations can be empowering. It can secure safety, modify the behaviour of control agents, and provide a powerful bargaining tool in a variety of contexts. Nevertheless it is important to acknowledge the double-edged nature of video activism. Such counter-surveillance practices can also risk incriminating the less powerful. Moreover, they can potentially spark ever more extreme counter-moves from those seeking to disarm counter-surveillance.

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