

Between Frustration and Aggression: Legal Framing and the Policing of Public Disorder in Sweden and Denmark

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Against the background of the European Union summits in Gothenburg, Sweden in 2001 and Copenhagen, Denmark in 2002, this article investigates the legal framing of police public order practices in conjunction with mass demonstrations and rioting in urban surroundings. Differences between legalistic and opportunistic ways of administering laws and regulations are illustrated, focusing on the policing of political disorder in two case studies with quite different outcomes. Theoretically, attention is also directed towards the notion of crisis, in terms of frustration and aggression. The basic argument is that the hyper-complexity of the legal framing in Sweden seems to have played an important, but unintended, role in the violent handling of the serious riots in Gothenburg; and that the legal powers in Denmark, in contrast, seems to have contributed to the less aggressive handling of the protest events during the European Union summit in Copenhagen.

Keywords: Policing; Legal framing; Frustration and aggression; Democracy; Sweden; Denmark

Introduction

This article deals with juridical legislation and its significance for the possibilities for police forces to ensure political freedom of assembly in democratic societies. This, of course, leads to a broad complex of problems involving structural and situational

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ISSN 1043-9463 (print)/ISSN 1477-2728 (online) © 2005 Taylor & Francis Group Ltd
DOI: 10.1080/10439460500168600

determinants. If it is true that we are witnessing a turn in the policing of political protest from “hard-hat” confrontation to “soft-hat” negotiation and accommodation, such a shift may have something to add in the local context of interaction between police and protesters (cf. McPhail & McCarthy, 2003; King & Waddington, 2005). In addition to this shift, one also has to consider an expansion since the mid-1990s of more disintegrative tactics among political activists. Bearing this dual trend in mind, I will focus on the legal factor and investigate how “law in books” may influence “law in action”. More specifically, the legal framing of policing public disorder in Sweden and Denmark will be in focus. In addition to police policy and movement dynamics, the shaping of practices when policing demonstrations and public gatherings, I argue, are in some parts related to differences in the statute books. Legally inscribed powers will be interpreted in accordance with, on the one hand, widespread violence during the European Union’s (EU) meeting at Gothenburg in June 2001 and, on the other hand, the largely peaceful and orderly political manifestations at the European Union summit meeting in Copenhagen during the late autumn of 2002. Theoretical points of departure are mainly taken from classical social psychology in its sociological variant.

In Gothenburg, there were three days of massive riots, burning barricades, scores of injured police and demonstrators, including three gunshot-wounded demonstrators of whom one nearly died (Björk & Peterson, 2002). Abby Peterson (2004) argues that the police during this event, wedded to an overall defensive strategy for controlling place, found themselves repeatedly out of control over the situations that developed during the protest campaign. She has called the policing of protest in Gothenburg an example of “police riots”. The soaring spiral of aggression that came to be associated with these events should be contrasted with the summit in Copenhagen and its relatively orderly protests without any significant conflicts between police and demonstrators, apart from some minor skirmishes and a limited number of arrests. Here the police set in practice an overall offensive strategy designed to control the situations, both expected and unexpected, that developed during the protest campaign in the Danish capital city.

In order to understand the meaning of this difference in the policing strategies implemented in the two cities, it is my view that we may get some clues by studying the dissimilarities represented by the legal codes prevailing in the two Scandinavian countries. However, I do not intend to make sweeping statements that “law in books” always makes a difference—far from that. However, as Steve Herbert (1998: 344) says, “the formal and informal commingle in ways that merit investigation”. The enactment of laws has a double meaning: rules are enacted in legal documents and statute books, but they are also moulded into everyday practices—for example, by police officers who try to marshal political protesters and protect civil liberties and public order (Sutton, 2001: 134–135). Police definitions of the situation are always determined by contingent factors, but the legal framework seems to remain “a basal aspect of the police’s social world regardless of the prevalence of discretion” (Herbert, 1998: 353).

Denmark, like Sweden, is engaged in an “evolution” of legal positivism centred upon democratic legislation—that is, legal constellations in which the law is assumed to derive from political decisions rather than from rights given by nature (or by clerics, judges or *juris professores*). Within the framework of such a constellation, however, we can distinguish between legalistic and opportunistic ways of administering laws (cf. Wisler & Kriesi, 1998). Both ways are in some sense “substantive”—that is, directed by parliamentary methods, unlike legal systems where professional jurists representing a “formal” juridical rationality are given a clearly defined position of power—but there is an important difference.¹ While legalism in Sweden upholds absolute equality before the law, legal opportunism in Denmark allows for a more relative assessment of suitability. For example, the police force can subsequently, with firm footing in the legal space, choose *not* to intervene against rioting or severe political criminality if this course seems appropriate in the case at hand (Bring et al., 1999: 137–141).

Perceived in broad terms, the Swedish Police Act is characterized by principles of legality and the Danish police codification by legal opportunism (cf. Holmberg, 2000: 178–180; Granér, 2004 chapter 3). Although police legislation in general permits discretionary choices, this dissimilarity in the juridical framework makes, I think, a difference when it comes to the police’s handling of political protests. Danish police are flexible, equipped with the legal tools for proactive policing measures in order to better ensure the control of situations, both expected and unexpected, that may arise in protest situations. In short, the Danish police authorities are committed to maintain public order in the face of political unrest. By contrast, Swedish police have been drawn into complicated reform liaisons and are obliged to contribute to “promoting justice and safety”, as stated in the Police Act’s initial section. In my view, these contrasting commitments may produce different legal perceptions within the police, and these differences can manifest themselves in different ways of policing public order.²

After this introduction, there follows a theory section. Next comes a two-part comparison between Danish and Swedish police legislation regarding differences in the legal code, focusing on the striking balance between promoting civil liberties and protecting democratic institutions from political disorder. The article ends with a short conclusion.

Theoretical Considerations

Different legal representations (i.e., distinct ways of framing the public’s possibilities of political expression) opt for variations in concrete cases. These variations can be expected to influence overall police strategies and operational tactics. However, I argue that certain legal constructions create more frustration than others. The level of frustration acquires special interest because, according to a classical social psychological preposition, frustration affects people’s “instinct to attack”. On paper, the idea is quite simple: an aggressive policeman cannot execute professionally the

democratic part of his assignment—that is, to guarantee constitutionally protected civil liberties and human rights. The thought behind my analysis, perhaps harder to digest, is that the design of police juridical legislation has a direct impact on the police's capacity to carry out this working assignment. Are we faced with the paradox that legal regulations like the Danish, which focus on issues of order to a greater extent than the corresponding Swedish ones, are in practice the most protest-friendly? It is argued here that open societies and clear-cut policing mandates seem to go hand-in-hand. *Law and Order*, the title of Ralf Dahrendorf's 1985 Hamlyn Lectures, is the classical formulation of a meaningful relationship between the police and the structures of liberal democracy.³

Dispersion and Disintegration

The interplay between national law and more or less frustrating outcomes among the constabulary handling political protest must be treated increasingly in the light of a political first-time phenomenon, where ritualized forms of demonstration appear to dissolve in favour of what can be called “dispersed political behaviour” (Peterson, 2002: Chapter 3). Dispersing political gatherings has always been part of police work. It belongs to the foundations of the construction of the police as the strong arm of the law (Bourdieu, 1987). Yet what we have seen for some time is how disintegrative tactics are transformed into a component of major protest manifestations; demonstrators in Seattle, Prague, Nice, Gothenburg and Genoa have made a rule of the “anarchist” exception. By perpetuating a strategy which Alberto Melucci (1996) summarized as “*Challenging Codes*”, activists have forced the police to act as though they were always about to disperse or dissolve political mass demonstrations and gatherings.

The police, like other professionals, have scope for discretion according to what happens in the situation at hand (Reiner, 2000). More importantly, however, if one does not know what is going on before one's eyes, which is often the case in the volatile protest situations which have emerged in the new wave of “post-Seattle” protest, then one's discretionary choices risk being widened uncontrollably (cf. King & Waddington, 2004: 139–134). For police forces confronted with new forms of protest, the risk is obvious—despite the fact that law enforcement has always involved the representation of general texts in particular contexts (Marx, 1998: 237), these contexts for political protest are increasingly “new”.

However, the EU summit meeting in Copenhagen displayed a difference in this respect (as did the immediately preceding meetings in Seville and Barcelona). Neither disintegrative activists nor policemen dispersing the protesters gathered could be observed in these cases. In part, these differences can be attributed to the effectiveness of the demonstrators' “self-policing” efforts (cf. Innes, 2003: Chapter 5). Learning from the lessons acquired during the riots in Gothenburg, coalition organizers in Copenhagen were committed to organizing peaceful protests. Divergences between the violence played out in Gothenburg and the orderly protests carried out in

Copenhagen can also be ascribed to how the police authorities in the two countries handled the protests. In this article, I argue that an underlying factor behind the differences in the handling of the protest events in question can be attributed in part to differences in the national legal framing of public order policing.

As legal frameworks, juridical police legislation is coloured by either legalism (as in Sweden) or opportunism (as in Denmark), which has in turn varying impact in the field influencing encounters between police and protesters. Police practices, shaped by these different modes of legal framing, can prove to have unexpected or even “perverse” consequences for democratic societies (cf. Waddington, 1999: 94–95). Worst equipped are those police authorities who find themselves forced to move through a hyper-complex legal space, as the Swedish constabulary must do. Here substantive laws seem to trigger an “instinct to attack” protesters. To support this argument, I now turn to the frustration-aggression hypothesis.

Frustration “by the Book”

The more complex the juridical legislation, the more frustration may be anticipated when interventions occur in the field. In times of crises, rules pervaded by legality threaten to create an aggressive atmosphere among officers who are hindered by expectations based on an elaborate juridical codification. “Total panic” is how a policeman on duty recalled the summit meeting in Gothenburg: “One could call it three days with a constant threat of death hanging over us” (Björk & Peterson, 2002: 200). Social researchers have argued that frustration can lead to some form of aggression or response of a conflictual nature. However, as most concepts concerned with violent behaviour, these are essentially contested (cf. McPhail, 1991). To my mind, they still can help us understand the sometimes paradoxical relation between national law and police practices, without supporting “naive extensions of the frustration-aggression paradigm” (Melucci, 1996: 55).

Originally the thesis on frustration is linked to a book by John Dollard et al. (1980) entitled *Frustration and Aggression*. Aggression is understood to be a consequence of frustration. To explore the argument, however, we must take a step back and ask what causes frustration. We then confront an anthropology that pictures the human being as a composite animal, both socially and instinctively regulated. In particular, the human being is a meaning-seeking creature, who strives to make existence fit together, formulating coherent definitions of an incoherent reality. Goal-orientation is culturally conditioned, shaped by the spirit of the times and by the specific aspects of every historical context. Hence, it is when we *do not* feel able to establish meaning that we become frustrated, which can subsequently lead to aggressive behaviour. We are led by a desire to settle scores and can deceive, humiliate or turn to violence in order to reach our goals (Dollard et al., 1980: 142–171).

Dollard et al. discuss instigators of frustration. These refer to a prior condition, both observed and attributed, “from which the response can be predicted, whether this condition be a stimulus, a verbally reported image, idea or motive, or a state of

deprivation” (Dollard et al., 1980: 4). The definition is broad: events, things, moods, explicit or prescriptive statements may lead to disappointed expectations, thereby qualifying as instigators of frustration. In this case, it is the legal framework that could be compared to an instigator. However, the instigation may vary in strength as well as scope. Consequently, a particular design of juridical space can reduce the degree of frustration and, by implication, minimize the degree of police violence. I argue that the Danish police legislation, with its orientation towards opportunism, has a reducing effect; while the Swedish orientation towards a hyper-complex legalism is productive of situations that lead to disappointment among both police and political demonstrators, yielding aggressiveness in their public appearances, such as the situation when police officers shot live rounds at activists in Gothenburg.

This argument can be qualified further if we add three preconditions supportive of violent police reactions: (i) a comparative now and then; (ii) “a tangible antagonist whose action affects the actor’s reference field”; and (iii) a sense of ownership of the situation or object at hand (cf. Melucci, 1996: 58–59). All three preconditions were in place during the summits in Gothenburg and Copenhagen, especially the latter two. There were some expectations to how the troublemaking tactics would take shape; and these new protest techniques were tangible, literally manifesting themselves directly in front of the police; and a sense of ownership was (and is always) present when it comes to public order—that is, a notion that every situation “belongs” to the police due to their professional identity. So, if expected worries are met, whereby the challengers manifest themselves and become a real threat to the police, then we can expect frustration and violent interaction.

If shortfalls or deficits in the performances by the police in such situations are to be reduced, the legal framing needs to be defined in terms of simplicity so that it minimizes the degree of disappointed expectations among the police. Otherwise, in a kind of *catharsis* (Dollard et al., 1980: 50–53), the suppressed monopoly of coercive force threatens to undermine civil liberties and democracy, especially when the ownership of this force is itself threatened by protesters challenging political authority in innovative ways. “It became a cat-and-mouse game,” according to one of the officers injured during the summit meeting at Gothenburg in 2001, who added that “it isn’t the police who were the cat” (Polisförbundet, 2002: 82). In other words, the critical features of the situation that arose in Gothenburg can be traced back to a combination of contextual dynamics (keeping in mind the presence of American President George W. Bush in the city) with the legal space’s more permanent constructions. It is high time to substantiate this proposition beginning with the Swedish case, examining how “law in books” may influence “law in action”.

Legal Framing: The Swedish Case

The juridical regulation of the Swedish police authorities can be characterized as wide-ranging and legalistically oriented in its printed form. Specific instructions (e.g., concerning the use of guns) are few, but the conflicts of values due to comprehensive,

substantive legal rationality are all the more numerous. In practice, they create diffuse, almost amorphous instructions. Such an interpretation is supported by a justice of the Supreme Court, Johan Munck (2003: 101–114; Berggren & Munck, 2003: 20–21), who is perhaps the leading expert on Swedish police legislation. What are the consequences of this complex legal framework for the police's handling of political protests?

Hyper-complexity in Legal Space

The latest Swedish Police Act has been in effect since the mid-1980s. It has the following to say about the police's right to disperse political assemblies, public meetings and popular gatherings of various kinds (Section 13b):

If the police authority, with support by Chapter 2 Section 22 or 23 of the Public Order Act 1993, has decided to cancel or dissolve a general meeting or a public arrangement, a policeman may dismiss or remove participants and observers, if this is necessary to achieve the aim of the decision.

“Dismiss” and “remove” are the key words here, and they refer to the right to prevent access or take individuals out of particular public places. Together with Section 13c, which enables the police to act against other disorderly crowds, a powerful tool seems to exist for the guardians of the law when it comes to the policing of citizens. Still, their starting position is not quite so simple. Apart from the fact that Section 13c allows only the removal of individuals (it does not give a green light for arresting them), the measure's justification must be based on a classification of the crowd as *other* than a general meeting or public arrangement. And this is not easy, especially since the implications expand in the legal framework, as I will try to illustrate below.

Section 13c is related to the Police Act through Section 13b, which was quoted above. Both are connected to Chapter 2 Sections 22–23 in the Public Order Act (*Ordningslagen*), which concern the right to disperse or break up general meetings and public arrangements that have not been examined for permits (cf. Bull, 1997: 633–644). “General meetings” (Section 1) refers to demonstrations and other expressions of opinion (lectures, panel discussions, etc.), artistic performances or religious practices, or “other meetings at which freedom of assembly is exercised”. Both public and private affairs are included. The law does not differentiate between actions against capitalism (or for them, such as the *Walk for Capitalism*) and meetings to support a solitary refugee or some individual citizen who has fallen between stools in the bureaucratic machinery. Curiously enough, even circus performances are assigned to this politically oriented category. “Public arrangements” include sport and music events, amusement parks, markets and fairs (Section 3).

The Public Order Act is difficult to assess regarding how a particular crowd should be classified. For example, “general” has proved to be an almost indefinable requirement (Persson et al., 2003: 34–37). The term and its implications can be understood as connected to a central contradiction in democratic societies. As the

responsible authorities, the police have to both approve demonstrations/meetings and, when approved demonstrations/meetings are conducted, guarantee the citizens' constitutionally protected freedoms and rights. The latter assignment is described in the Police Act's first section as forming a block in "society's endeavours to promote justice and safety". The examination for demonstration/meeting permits is central because it condenses the police's mixture of assignments in an important manner. This can be said to mean that one has a right to *forbid* a certain kind of political activity so as to *allow* another public appearance. With a metaphor borrowed from Pierre Bourdieu (1998: 15–25), we can formulate it as dividing police work between two hands. The left hand has to protect democratic principles and promote justice; the right hand has to intervene against street disturbances and combat crime. This is the dual content of what we have previously referred to as a combination of law *and* order.

Democracy cannot neglect to maintain public order, and neither can this be allowed to undermine citizenship rights. The contradiction is a significant element in a further constellation of institutional forms that are united by an historical tension between those who see democracy as a state founded in natural rights and others who emphasize its basically uncertain character—what Shmuel Eisenstadt (1999) expressed as "*The Paradoxes of Democracy*". The practical consequence has been that most democracies live with unresolved dilemmas in their legal frameworks, formulated here as an unavoidable conflict between the police's left and right hands. To the extent that one hand knows what the other is doing, this weakness can be taken as a pretext for manifest strength. Democracy can be said to involve learning to live with uncertainty and middle paths. Yet the balancing act seems to require some discrimination in the practice of the police. There is an evident need to limit the number of miscalculations resulting from flexibility in legal definitions, despite these texts' non-fixed nature (Bourdieu, 1987: 826, 37–40; Cornell, 1992).

Actually, the Swedish Police Act contains a special section that can be regarded as addressing this issue of balance so important to liberal democracy, but this passage is difficult to interpret. Set forth in Section 8, it is also called the "principle of need and proportionality" (Berggren & Munck, 2003: 51). Here we find that police actions infringing rights may occur only if these can be considered necessary in view of the existing disturbance or presented danger, and that once an operation is conducted, it must be done in such a way that the resultant inconveniences are balanced by the action's advantages.

A policeman who is to carry out an assignment on duty must, with observance of what is prescribed by law or other statutes, intervene in a manner which is justifiable with reference to the measure's purpose and other circumstances. If force has to be used, this must occur only in the form and to the extent that are needed to achieve the intended result, (Section 8, paragraph 1).

As I read this section in the Swedish Police Act and its surroundings in the legal terrain concerning the policing of public order and civil liberties, the Swedish police

are subject to legalistic thinking, which may lead to disappointment when democratic expectations cannot be fulfilled. While politicians have considered it essential not to regulate police activities in detail, believing that this can hamper the police, they have also kept the initiative, resulting in complicated “substantive” features of the police legislation. Thus, the above reservation demands that each policeman remain aware of what both hands are doing. Swedish police legislation does not favour using the right hand; however, instructions for the use of the left hand are riddled with ambiguity.

Law and Disorder

What, then, are the restrictions in the streets to be based on? How should the proportions be distributed in order to best balance law and order? Both the police’s leadership and officers in the field confront a dilemma here, which inevitably calls for a trade-off between different parts of the body of police juridical legislation. Beyond the proportionality principle, the policing of public disorder implies that one “is directed to interpret the constitution” (Berggren & Munch, 2003: 55). Here a severe ideological burden is brought out into the operative landscape. Certainly this complication can be treated as an opportunity for police commanders, but taken together with the absolute obligation to intervene against crimes that the Swedish police are forced to handle (since tolerating encroachments of the law for reasons of plain police tactics is not allowed), such a complication rather risks becoming a source of frustration, which in turn can easily turn into aggressive arbitrariness or *kadi* justice in the patrolling of the political field.⁴ The relevant parts of the Swedish Constitution Act (*Regeringsformen*, Chapter 2, section 12, paragraph 2) are not easy to interpret as a guide for the right hand:

Restriction . . . may be made only to satisfy purposes which are acceptable in a democratic society. The restriction must never exceed what is necessary with regard to the purpose which has motivated it, and neither may it extend so far that it threatens the free formation of opinion as one of the foundations of democracy.

This is not transparently applicable to the police’s right hand, though; especially since all of the freedoms and rights mentioned in the Act can be restricted (according to Chapter 2, sections 13–14), with the explicit reservation that such authority must be balanced by a left hand. The written law makes room for a good deal of influence by the citizenry, or “in the judgement of which restrictions may occur . . . particular attention must be paid to the importance of the greatest possible freedoms of expression and information in political, religious, trade union, scientific and cultural affairs” (Section 13). Recourse can always be found in the Police Act’s Section 10, regarding the use of coercive force. However, this police capacity (“clearing the streets”, in the usual command terminology) is also subject to principles of need and proportionality. Unnecessary escalation of force must be avoided, and the use of

coercive force is allowable only after an examination has shown that other measures appear insufficient (RPSFS 2001:1).

The legal framework, I argue, impedes the maintenance of order as regards the police's possibilities of dispersing protesters in an unclear context of a demonstration. Civil liberties may be limited by legal procedures, but in accordance with the statute book limitations of constitutionally guaranteed civil liberties require support by the constitutional right of necessity (*Regeringsformen*, Chapter 13), in connection with proclaiming "a state of exception". The Swedish government apparently has no wish even to recognize such an alternative for action (Munck, 2003: 95–96), apart from the availability of so-called "terrorist legislation" in extreme cases, which applies solely to foreign citizens (Ribbing, 2000). Nevertheless, in potentially volatile protest situations, the police have the task of making decisions. Through the legal framework, an absolute indeterminacy eats into the police's legal consciousness, which makes their actions blur. Those who have to put their foot down in practice are the constables in the field, policemen who are increasingly drawn into a cat-and-mouse game with activists. The latter's freedoms and rights may be infringed, yet the law's guardians must always pay "particular attention to the importance of the greatest possible leeway for citizens". Where is the limit and when it is exceeded? The legal codes seem to provide little guidance, and the police authorities must decide according to the situation at hand (only afterwards can courts, eventually, come to their aid).

Swedish courts have ruled—in retrospect—that most of the police's actions in Gothenburg were within the legal definitions, naturally not without debate. However, what interests us here is the situation prior to this, at the time of the EU's meeting at Gothenburg in June 2001, when the police found themselves outmanoeuvred by more or less organised forays of militant protesters (Peterson, 2004). Legal framing with no previous practice contributed, in those circumstances, to a high level of frustration among the police in the field, resulting in what Peterson describes as "police riots"—that is, arbitrary and unchecked acts of police aggression in their efforts to recapture the "ownership" of public order. The commander responsible for logistics during the EU summit assignment interpreted the situation in the following words: "It was war. . . . The possibilities of preparing for the task were nonexistent" (Polisförbundet, 2002: 62).

Frustrated to the breaking point, under an order from the heat of battle to "run and take cover if they come in groups and attack" (Polisförbundet, 2001: 16), the police found little support in a complicated legal space. And the police ordinance (SFS 1998:1558) is oriented towards organization (authority structure, processing procedures, disciplinary cases, etc.). The closest one comes to addressing the police's actions in the street is stated under "Duties of Office" (Chapter 4, section 1). Here one reads that the police must "behave politely, respectfully and firmly, as well as maintaining self-control and avoiding what may be perceived as manifestations of unfriendliness or pettiness". It recalls an old-fashioned reprimand, not to mention

that the text contains more liberal-oriented terms, as the police “should strive to give citizens advice and support” (Chapter 1, section 5).

In Sweden, police codes and ordinances were of no help preventing a large number of clashes, more or less bloody (with 350 work-related injuries among police officers, and 550 arrests and countless injuries among the activists). Just as the police in Malmö some months previously had found themselves lacking possibilities to work out a functioning “legal-tactical concept” (Polismyndigheten i Skåne, 2002: 35–37), the police in Gothenburg demanded, for example, a ban on masks and a new right of arrest (Polismyndigheten i Västra Götaland, 2002: 174–176). In short, the police were in retrospect demanding greater clarity in the law, and the legal space to develop more offensive or pro-active operational tactics. This is also a conclusion that can be drawn from the court trials against the operational chief in Gothenburg, Håkan Jaldung, who was acquitted in two courts of professional misconduct, with the explanation that the legal usage is unclear (Justieombudsmannen, 2004: 1–2). The court decisions, I contend, support my interpretation that the hyper-complexity of the legal framing of practices was *one* contributing factor to the spiral of frustration and aggressive interaction in the streets that characterized the police handling of the protest events in conjunction with the summit meeting in Gothenburg in 2001.

Legal Framing: The Danish Case

In both Sweden and Denmark, we are dealing with police forces that foster processes enabling human action in the face of uncertainty. In the last resort, we are speaking of efforts intended to prevent dissolution of order in a democratic society (cf. Szakolczai, 2001). In the comparison here, I have described the problem of order in terms of two ways of framing the political field by juridical codes. On the one hand, the Swedish police legislation seems to enhance a legalistic shaping of conduct, paradoxically making the strong arm of the law quite uncontrollable in political crises. On the other hand, we have the Danish case with its opportunistic framing of legal consciousness that better ensures, so it seems, political freedom of assembly in democratic societies. I will attempt to illustrate this hypothesis in the following empirical section.⁵

Simplicity in Legal Space

The Danish police codes concerning political disorder are interesting as a point of comparison with the corresponding Swedish juridical legislation. Moreover, we find a national watershed in the history of Danish public order policing that bears striking similarities with the violence that was played out in Gothenburg. I refer to the protest events in May 1993 in conjunction with Denmark’s referendum on the Treaty of Maastricht, when the police fired 113 shots into a rioting crowd, wounding at least eleven people. The lessons learned from this event mark a shift in how public order is maintained in Denmark, illustrated here with the policing of the protest events in

conjunction with the EU summit meeting in Copenhagen 2002—events that were largely orderly and policing efforts that were largely routine (cf. Mikkelsen, 2002).

After the Nørrebro riots, which can be unequivocally designated as a trauma for the Danish police, three major judicial investigations found the police, to different degrees, unprepared and untrained to deal with major public disorder in a manner that did not involve the excessive use of force. The Nørrebro riots resulted in a growing gulf between the police and some influential middle-class opinion-makers, which contributed to undermining the legitimacy of the Danish police force. The event was significant in converting policing into an overt political issue in Denmark. It is against this background that Kai Vittrup was appointed commander of the uniformed police in Greater Copenhagen expressly to come to terms with what was deemed an inadequacy in Danish public order policing. Public order should be maintained, but not at the expense of civil liberties. His appointment was in effect a mandate to completely restructure and develop public order policing capabilities for large public gatherings and demonstrations in order to better come to terms with *both* public order *and* civil liberties. According to the Danish police union's description of this development, the "lessons at Nørrebro" evolved with time into a "police syllabus" (Scharling, 2003a, 2003b).

Dansk politi (the internal media organ of the Danish police) attributes the success of their "police syllabus" to strategic and tactical competence at a high level of command, which also emphasizes the officers' calm and unprovoked attitude in the field. Briefly stated, the police's own commentators emphasize the police's capacity for well-informed and professional action, which prevents frustration and aggressiveness in individual cases of demonstrations. It was claimed that "the logistics were superb", and this is probably true. At the same time, however, we must not forget that this restructuring of operational police planning was made possible by the Danish legal system. Juridical framing based on principles of opportunism, a clear-cut delimitation of the task that a "simpler" and more straightforward body of police legislation than the corresponding Swedish legal codes enabled, gave the Danish police different strategic points of departure which, in turn, influenced their legal-tactical re-orientations.

The Danish police, unlike their Swedish counterparts, do not have the task of advancing any kind of "justice". According to the Danish code of justice (*Retsplejeloven*), the police are required to "uphold security, peace and order". Section 108 emphasizes only the function of public order policing, in conjunction with their importance for criminal legal proceedings. Discipline and chasing crooks—with reference to Bourdieu, we can describe the starting-point in the Danish legal representations as an advantage for the right hand. Not a word is devoted to the police's significance for justice, or liberal democracy, or the left hand—with the metaphor I make use of in this conjunction.

Further examples with the same implications can be found in the Danish Constitution (cf. Koch & Hvit, 1999; Zahle, 1999: 451–488). The right to form associations is possessed by every group of citizens, but their meetings can be

restricted by legal measures (i.e., political organizations can be dissolved by the nation's highest court) with the help of the police. This applies to associations that "strive or seek to attain their goals through violence, incitement to violence, or similar punishable influences on different thinking" (Section 78, paragraph 2). In addition, every Danish citizen has the right to assemble in streets and squares for expression of opinion (Section 79). However, in the event of possible public disorder, "when danger for public peace can thereby be feared", then—alongside the police—"the armed forces may . . . step in, after the crowd has been directed thrice in vain to disperse in the name of the king and the law" (Section 80).

Here we have two features of the Danish juridical legislation that lack any Swedish counterpart. In Sweden, it is considered unconstitutional to dissolve political associations (exceptional cases dealing with so-called "unlawful corps" or paramilitary groups not included), and there is no right to use the military in domestic political conflicts. The Danish constitutional text regarding the use of armed forces (dating back to 1871) is admittedly seen today in practice as referring to the police and not the military, but Henrik Zahle (1999: 486) makes the comment, not without importance, that it has to do with "combating riots under *normal* conditions". In November 2002, events were not expected to be normal. Danish military forces were directly involved in the preparations for the EU summit meeting, to the extent that they enclosed the conference centre with a man-high barbed-wire fence, three kilometres long (Københavns Politi, 2003: 63, 73), as well as aiding in the monitoring of airfields prior to the summit and securing the airspace during the meeting.

Chapter 15 in the Danish criminal code (*Straffeloven*) regulates politically inspired crimes against order in public places. Heading the text are Sections 133–134 regarding riots and incitement to riots, vandalism and destruction directed at people and objects. Collective shifts of mood are in focus. In the Danish legal framework, permissible crowds are taken to include only well-disciplined groups, or people who follow a recognizable plan. "If an originally peaceful—and thereby legal—gathering loses its management or self-control, for example because it is dissolving due to unrest, it is thereafter regarded no longer as a gathering, but as a riot" (Jensen, 2000: 3).

The advantage for the right hand in the Danish case is intended to serve liberal purposes. This should not be forgotten. Experience of the Nazi occupation during the Second World War is significant for how the above texts are interpreted. It seems to be an unwritten rule that the police ought to serve democratic aims (Zahle, 1999: 476–480). Yet if independence is stressed above political docility, the range of maintaining order must be limited, just as the legislators are limited by the courts' right to examine, in accordance with current practice and with Section 3 of the Danish Constitution (*Danmarks Riges Grundlov*; see Zahle, 1999: 40–44; 2001: 156–172). Peace in the sense of control over potentially violent political movements and other forces of societal dissolution and unrest (gang formations, criminal networks, etc.) is what must be ensured so that it corresponds in practice to the citizenry's notion of democratic credibility.

Legal power—minimal policing—confidence in institutions: so the chain is apparently intended to hang together. The tactical leeway is also thereby widened; long-term strategies can be designed and tested in reality. It is a combination that invites massive discretion in operative police work. This, in turn, seemingly creates an overview and firm identity in the role of a professional police force. In Denmark, so it seems, legal framing of police practices contributes to lessening frustration and, subsequently, to restraining uncontrolled aggression. Danish policemen need not defend, to the same extent as their Swedish colleagues, absolute legal principles during confrontations with political protesters. The police have been given their restrictions that evidently establish a space of possibilities for coping with demonstrations even at the outermost and uncertain border of politics where violent interactions await. And civil liberties will be secured even in times of crisis.

Law and Order

Translated into operative situations, this capacity means that Denmark possesses legislation the consequence of which is that the police need *not* consult the Constitution when things get hot in urban surroundings. And, as noted, the right to demonstrate has seemingly benefited from this case of conscience, at least in our comparison of two public order policing operations in conjunction with EU summit meetings—the operation in Copenhagen contrasted with the operation in Gothenburg. In particular, three “intermediate” laws appear to support the policing operation that has since been praised by Swedish police colleagues, who were cited in *Dansk Politi* as saying that: “They were satisfied, knew their assignments, and things were under control” (Scharling, 2003a).

One of these laws (Section 750 of *Retsplejeloven*) deals with the police’s possibilities of identifying demonstrators without having any special suspicion of crime, as “everybody is . . . obliged to give on request his name, address and date of birth to the police”. Democracy usually implies that certain political freedoms and rights are conceded to citizens, but also that certain obligations are entailed. Sweden and Denmark both have legal requirements of general military service and liability to taxation, but the obligation to identify oneself for a policeman without being suspected of any crime whatsoever is exclusive to Danish jurisprudence. In Sweden, identification is equated with deprivation of liberty (*polisiering*), the assumption being that the person must be wanted or, alternatively, can be suspected on good grounds of a crime that warrants imprisonment for longer than six months (Berggren & Munck, 2003: 102).

Danish legislation allows the police to search participants in meetings or demonstrations. This is supported by Section 792d, paragraph 4, which is especially applicable in relation to crimes under Sections 133–134. The implication is that constables can act *before* peaceful demonstrations turn into riots (cf. Jensen, 2000: 4–6), thus anticipating public disorder. The law speaks of searches in immediate connection with “the execution of a serious crime of violence or presentation of a

threat thereof, and in other investigative situations where a well-founded suspicion exists that someone present is concealing a weapon on his person". Hence, if the situation is considered threatening enough, the police have support from the system to move in advance against what they perceive as undisciplined crowds, and "undertake searches of all persons encountered at the place with a view to finding weapons". Here is a part of the legal code that makes it possible to intervene against activists who are waiting for a demonstration in the immediate surroundings, with the purpose of disrupting the march and inciting riots. This was the case in Gothenburg where black bloc activists organized their direct encounters with the police in a park adjoining the route of the major mass demonstrations; while march stewards were able to maintain order in their ranks, black bloc activists instigated acts of violence on the periphery of the demonstrations' action spaces. However, similar proactive actions on the part of the police are, as already mentioned, precluded in the Swedish police codes and ordinances, even though exceptions occur for the planning of deadly crimes (Police Act, Section 19; Berggren & Munck, 2003: 122–8).

Flexible use of militarized mobile units in armoured emergency vehicles that can be driven into a crowd for proactive purposes, carrying riot-equipped police who aim at highly selective confrontations with anarchistic protesters is a tactical measure that has its background in the above-mentioned combination of legal framings. The law allows searches, and Danish citizens and inhabitants, as well as foreign visitors, are obliged to identify themselves if the police so wish, being otherwise subject to arrest and further legal proceedings. The establishment of temporary "checkpoints" (bridges, squares, bus terminals, etc.) is another solution enabled by the juridical legislation. Naturally, such police efforts are also based on extensive knowledge about strategic choices and operational tactics (Peterson, 2004). Furthermore, the mere existence of legal support does not automatically result in a given action-sequence, as Chief Police Inspector Kai Vittrup in Copenhagen has maintained in two educational volumes, *Strategi* (Vittrup, 2002a) and *Operation* (Vittrup, 2002b).

However, without a legal framework that makes it possible to anticipate activists who are planning to disrupt and incite violence in public, every demonstration risks being transformed into burning barricades, spilled blood, and hundreds of injured people (including many policemen). The situation threatens to create humiliated citizens and an endless police hunt for street rebels, as in Gothenburg in 2001. Or, for that matter, as in Genoa some months later when a demonstrator was fatally shot by police.

A main priority of the police during the Danish chairmanship in the fall of year 2002 was to avoid the type of uncontrolled violence that had erupted in Gothenburg and Genoa (Københavns politi, 2003: 55–56). The planning staff was of the opinion "that an effective, mobile emergency force with a high level of training, implementation of new intervention techniques useful for handling large crowds, and a high level of supervision were a precondition for legitimate conduct of the Danish chairmanship" (Københavns politi, 2003: 56). Dialogue with demonstrators was part of the plan, as was a high level of tolerance during peaceful demonstrations and sit-down actions, or with circus-like pranks, including illegal ones. Yet the operations were, and

this is vital, always to be carried out so “that the police, by retaining the initiative, maintain control of the situation” (Københavns politi, 2003: 57).

This type of offensive approach to the policing of public disorder is explicitly endorsed by the Danish Constitution (Section 78) and the justice code’s general power of attorney for the police sector (Section 108): violently disposed political networks must be opposed in a way that aims to “uphold security, peace and order”. Referring back to the frustration–aggression hypothesis, we may recall that this simple idea of legally sanctioned manoeuvring can be interpreted as protection for peaceful demonstrators against excessive police violence caused by frustrated commanders who grope in uncertainty and panic. In other words, Danish police with its clear-cut legal mandate to work proactively were helpful in creating a leeway for peaceful protesters to lodge their challenges in a safeguarded public space in the City of Copenhagen in December 2002.

The Ban on Masks

In addition to the juridical legislative complex summarized above, a much more recent change in the Danish criminal code has direct implications for offensive or proactive public order policing. This is a ban on wearing masks (Section 134b), which has made punishable acts to cover one’s face at public meetings and arrangements.

Whoever, in connection with meetings, assemblies, performances or the like in a public place, keeps the face partially or entirely covered with a hat, mask, paint or the like, in a manner which is intended to prevent identification, is punished by fine, detention, or prison for up to 6 months.

The law is not entirely recent, as a similar ban existed in Danish constitutional law and local police ordinances between 1949 and 1968. The country’s citizens were thereby forbidden from appearing in public places “masked, disguised or blacked” (Jensen, 2000: 2). Interestingly, the same German word for disguised recurs in the Copenhagen police’s report (Københavns politi, 2003: 81). The word (“*formummet*”) must be regarded as obsolete (at least, my own dictionary lacks it), but nonetheless suggests a curious historical parallel. The choice of words seems to signal that the police of Copenhagen know their history, and remember “the state of exception” that in mid-nineteenth-century Europe meant a step forward in Denmark (and elsewhere) for the idea of a democratic society characterized by law *and* order (cf. Kaspersen, 2004).

In the juridical commentary on the proposed law from the Social Democrats and the then Minister of Justice, Frank Jensen, it was stated that the ban is broadly formulated so as to prevent forces of protest with dissipative ideals or openly anarchistic tactics in the field. At the same time, it was observed that “the ban does not include all masks in public places”. This is simply because it aims “to prevent—or ensure the possibility to punish—violence, malicious damage, and other infringements committed in connection with demonstrations”. (Firemen are thus allowed to wear gas masks, Moslem women to keep their veils on, and children to spook the city on Halloween.) Nor does

the Danish legislator or lawmaking representatives entertain any illusion of being able to prevent all forms of public disorder in the country, only to reduce the number of acts of political violence (Jensen, 2000: 3, 8). Democracy always involves competition and conflicts among adversaries or, as Copenhagen's highest chief constable put it, "unrest arises in greater or lesser degree from time to time" (Bech Hansen, 1999: 4).

What we see expressed here in laws, their preliminary work, and individual commentaries is a basically pragmatic attitude that boasts of the principle of opportunism pervading the whole Danish system of penal law procedure (Justitieombudsmannen, 2003: 2–3). Unlike their Swedish colleagues, the Danish police have no absolute duty to intervene against crime. Hence, criminals may be allowed to continue their activities for a time if, from the viewpoint of police tactics, a delay in intervening is suitable; this is a pivotal point in the police tactics developed by Vittrup (2002b: Chapters 8, 10.4, 14.5).

Danish juridical legislation, as described above, enables the "adapted offensive intervention" that characterized the Copenhagen operations in conjunction with the summit meeting in 2002. Police codes allowed a high degree of discretion on the part of the police command staff and this is the underlying logic for an overall offensive public order policing strategy. In contrast with the Swedish police operation in conjunction with the summit meeting in Gothenburg the previous year where militant activists used uncertainty as a tool for retaining the offensive, the Danish police wielded uncertainty as an instrument of police power. When the demonstrators did not know whether the police would intervene or not (e.g., against widespread masking), the constables were given a strategic advantage that could be used tactically by the field commanders. He or she could choose to let activists proceed with hoods and helmets, as during the demonstrations beginning at Christianborg on 14 December, and could thereby be seen as protecting civil liberties. On a later occasion the same day, however, a selective intervention was made against an anarchistic contingent with support from Section 134b, where after "the popularity of hoods as a headgear went into sharp decline" (Københavns politi, 2003: 82–83). So speaks a confident actor with mild irony and good humour! Still, it is obvious to the sociologically educated that this option for enforcement was utilized for purposes of social control. With a sure hand, the Danish police could spread uncertainty about their own idea of manoeuvring: "Will the pigs intervene?", "Should we let ourselves be lulled into false security?" The questions piled up behind the hoods. Thus an advantage was secured through unpredictable practices. "The power to be lenient," claims K.C. Davis (quoted in Holmberg, 2000: 186), "is the power to discriminate."

An advantage of power appears to earn the institution the confidence of the public. The police have done their job and protected the constitutional freedoms of expression, assembly and demonstration in a critical situation. Opportunistic functions in Denmark are in opposition to legalistic powers in Sweden, the right hand in contrast with the left hand as a guide for operational police strategy. On the basis of our comparison, it would appear that democratic freedom of movement is best protected by the former, while frustration and aggression with subsequent

encroachments upon civil liberties are a direct result of the latter juridical approach. This is a certainly a tragic irony or, perhaps, a result of a “perverse” democracy. In the terrain of contemporary contentious politics, the police forces in countries, however democratic, seem unable to be anything other than forceful night-watchmen who with “credible preparedness keep the initiative and thereby limit or prevent disturbances or greater unrest” (Københavns politi, 2003: 56).

Legal Uncertainty and the Policing of Public Disorder

Operations whose outcome is unforeseeable but no less essential to estimate have become more of a commonplace for the police, if we are to believe, Richard V. Ericson and Kevin D. Haggerty (1997). In the openly politicized protest context, this trend means that demonstrators have become quite unpredictable and difficult to control. If the law then is substantive or legalistic in its construction, full of ideological shifts in meaning that need to be handled in the field, then the probability grows that those who must do the job become frustrated, whereupon the exercise of excessive coercive force is close at hand (cf. King & Waddington, 2004: 119–121). This is especially the case when field commanders, as well as rank-and-file officers, are forced to confront demonstrators who deliberately play with conflicts of value or loopholes in the law: bands of anarchists and other activists who invite the police to drink from the blend that P.A.J. Waddington (1991: 177–178) calls a “red mist cocktail”. An ingredient in this deceptive brew is the trade-off, always so problematic in open societies, between civil liberties and public order—or what my text has also referred to as the police’s left and right hands respectively.

The legal regulation of political protests varies among neighbouring countries in Scandinavia. In Denmark, police work appears to be more simply and straightforwardly regulated, with an advantage for the right hand; in Sweden, the left-handed police are equipped with much more slippery, hyper-complex principles. Especially the latter can be assumed to create or instigate widespread frustration when it comes to operative police interventions, so that the situation risks leading to spirals of violence. Codes of law and codes of conduct are interrelated, but in an unexpected way. Paradoxically, this comparison shows that the police force with a strong right hand was best able to guarantee order and protect protesters’ constitutionally guaranteed civil liberties, as was the case in Copenhagen 2002. In contrast, a left-handed police constabulary, which fielded the action spaces of protest in conjunction with the EU summit meeting in Gothenburg 2001, can lead to uncontrollable situations, resulting in a spiral of violent interaction and the subsequent mass encroachments upon civil liberties and human rights.

Clive Emsley (1997) has discussed codes of conduct in historical policing, and argues that police thinking in modern times is centred on the concepts of “*Polizeistaat*” and “*Wohlfahrtstaat*”, with an intended trade-off or balancing between them. That public order and individual well-being were closely related was maintained by the German Enlightenment philosopher, Johann Heinrich Gottlieb

von Justi (quoted in Emsley, 1997: 3), who saw a need to organize “the internal constitution of state in such a way that the welfare of individual families should constantly be in a precise connection with the common good”. The police were to be the technique for this difficult task of balancing, to satisfy demands for both the rule of law and the common good. They were to assist with justice and safety, finding resonance in formulations in the Swedish Police Act.

Thanks to a stark emphasis on the *Wohlfahrtstaat* side of the equilibrium in Sweden, creating a hyper-complex juridical legislation, the pendulum may in periods of contention and crisis swing in favour of the *Politzeistaat*. This is just another way of saying that the police legislation in Sweden was working against its own premises in Gothenburg 2001. There may be some lessons to be learned from the Danish model of protest policing. Nevertheless, differences in the overall legal framework exist, which make a simple transmission of strategies and tactics from one Nordic country to another difficult. The Swedish police are presently “importing” some of the Danish police’s strategies and tactics, and this transmission might prove successful in the Swedish context as well, but it could also take new unexpected turns. This is how democracy works, without perfection in a world that never stands still. Dahrendorf (1985: 138) states that:

Democracy is about seeking progress in a world of uncertainty. Its constitution must make change possible, but remove it from arbitrary acts of the few. This means that it must create conditions for initiative but also for control, and both must be related to rights and interests of citizens.

Against the comparison made in this article, the creation and re-creation of police authorities through juridical legislation is best served by framings in terms of openness and simple straightforward instructions, with honesty regarding the obvious advantage conferred by their exercise of substitute aggressiveness. Cringing reliability or a falsely obedient role-taking in the face of non-institutionalized protesters, threatens to go wrong. With reference to observations by the British journalist Thomas Hodgskins (quoted in Emsley, 1997: 7) during the 1820s in Berlin, one-sided operations favouring law or order (i.e., *neither law nor order*) can be described as follows: “They tend to destroy all the confidence of men in each other, and to set strife and hatred betwixt them.”

Notes

- [1] The distinction between substantial and formal law can also be described as a question of whether the law is to be considered the border of politics, surrounding its field of activity according to a classical power distribution model. Or, whether it should be seen as a kind of administration of politics, an extension of ideological manoeuvres. The division goes back to Max Weber’s (1978) sociology of law.
- [2] Differences in the case of Denmark and Sweden will not be attributed solely to legal causes. My focus lies there, but causal connections are always difficult to assess, depending on both empirical conditions and the choice of perspective. I cannot point to any extensive

changes of law in the Danish case between 1993 and 2002 that would have been needed to strongly support a purely legal explanation. However, an important change of law has been carried out during the period from the riots at Nørrebro until the summit meeting in Copenhagen barely ten years later—namely, the ban on masks, to which I shall return.

- [3] There is reason to recall in this context that “law and order”, historically speaking, has not only been synonymous with a conservative slogan. The conjunction “and” refers to a distinction between the community’s peace or social calm, on the one hand, and the republican state’s evolution of rights, on the other. For further discussion, see Dahrendorf (1985) or Small (1923, 1924). See also Weber (1994: 80–129).
- [4] Capricious whims of local party bosses, opinion among intellectuals, and/or emotional involvement among local police must not determine how the law is exercised. Weber (1978: 976–978) uses the term for local Islamic courts of justice (“*kadi*”) to designate more inconsistent or ideological forms of legal application.
- [5] My research is based on the situation before the new police regulation of 6 September 2004 (*Lov om politiets virksomhed*). This, as far as I can see, makes no difference for the overall interpretation.

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