

## *Commentary*

# LEGAL RESPONSES TO MASS PROTEST ACTIONS: THE DRAMATIC ROLE OF SOLIDARITY IN OBTAINING GENEROUS PLEA BARGAINS<sup>©</sup>

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My commentary deals with mass protest actions challenging some of the abusive practices associated with globalization. An important purpose of these protests has been to question the legitimacy of globalizing agencies and to hold them accountable. From a U.S. perspective, the World Trade Organization (WTO) meeting in Seattle in November of 1999 was a crucial turning point. Before the meeting, or the lead-up to the meeting, most people in the United States barely knew what the WTO was and even fewer had any idea that the WTO was doing anything that might harm them in any way.

This innocence was suddenly lost for many individuals when they saw television news footage of what some called a riot in the streets of Seattle. Knowledge of the WTO had come to others more gradually during the lead-up to the meeting when various news reporters interviewed, sometimes sympathetically, spokespeople for some of the organizations planning to hold anti-WTO demonstrations. Those following the news during October and November of 1999 would know that a broad coalition of labour unions, young people, and other generally leftist organizations appeared to be developing, raising questions about the undemocratic nature of the WTO. Much of the news footage, however, focused on the advance preparations the Seattle police were

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making, which they said was “to ensure that there would be no violence.”

When the demonstrations began in late November, the first thing many noticed was a short delay in the beginning of the meeting. Participants in the WTO meeting were quite aware that it was unable to begin on time because of demonstrators blocking the streets and doors. Demonstrators charged that the police response was violent and excessive. Nonetheless, by the time of the evening news, much of the reporting fixated on a small group, dressed in black, who the media referred to as anarchists or *provos*. This was the group responsible for the notorious garbage can thrown through the window of Starbucks—some would add “or was it McDonald’s?” While this property damage did not occur until some time after much of the police violence had already been inflicted upon demonstrators who had been sitting peacefully in the street, such fine points were lost on most of the media. During the next two days, the footage of the garbage can thrown through the window was shown repeatedly; interviews were occasionally aired in which the people of Seattle expressed outrage at the unprovoked violence engaged in by the police.

Any effort to analyze the overall effectiveness of the demonstration would require a complex assessment of several factors: the increased public scrutiny of the actions of the WTO; the possibility that the demonstration helped to empower the smaller countries to stand up to various kinds of bullying and exclusion from decision-making meetings that some claim had become normal behavior by the larger countries; the communication and alliance building among people within the United States and people from other countries; and the momentum for further street activism that any such action can create. My goal is the much more modest: I shall examine the use of solidarity tactics by the demonstrators during and after their arrests.

One of the many areas in which the law on the books differs from the law in practice is in the police response to demonstrations. In the law on the books, the United States respects freedom of speech and allows people to demonstrate against government policy and to protest actions taken by the United States government or its agencies. In theory, when foreign business people or dignitaries choose to meet in the United States, one of the things they must take into account is that demonstrators may disrupt the atmosphere the group would prefer to enjoy during the meeting. In actual practice, however, a claimed concern with the physical safety of the meeting’s participants or even a concern with general decorum or the participants’ psychic welfare serves to limit freedom of speech. Police and other government officials attempt to control protest activities by limiting parade permits and by instigating confrontations with demonstrators.

In this commentary, I examine some of the more successful responses to these police strategies. My primary focus will be on three mass protests: the WTO meeting in Seattle, Washington in November, 1999; the World Bank

meeting in Washington, D.C. in April, 2000; and the Democratic National Convention in Los Angeles, California in 2000. In all three situations, the police appeared to use publicity surrounding their advance preparations for anticipated disruptions to discourage more moderate would-be protestors. Evidence of the success of this tactic is difficult to assess. There is considerable anecdotal evidence that demonstrators were discouraged, and such a response is intuitively understandable. There is also some evidence that the police preparations may have increased the general publicity surrounding the demonstrations, contributing to the particular publicity efforts of the groups sponsoring the demonstrations. Thus, two factors served to counterbalance the intimidation effect: first, increased knowledge of the expected demonstrations, and second, specific resistance to, or defiance of, efforts to minimize the demonstrations.

Each of these three demonstrations was preceded by an extraordinary number of training sessions at which potential demonstrators and their volunteer lawyers discussed non-violence, anticipated a variety of police responses to the demonstrators, and role-played actions during and after the demonstrations. This role-playing included devising ways to defuse hostile situations, to gently control police agents *provocateurs* posing as demonstrators or demonstrators who strayed from agreed upon non-violent scenarios, and to protect as best one could against the effects of chemical and conventional police weapons. In addition, demonstrators role-played arrests, bookings, arraignments, and plea bargaining.

Although a number of participants in each of these three demonstrations planned and intended to engage in non-violent civil disobedience—usually blocking doors or streets—most of the people arrested were attempting merely to engage in a lawful demonstration. Press reports sometimes described the arrests as caused by being at the wrong place at the wrong time. In each of the three demonstrations considered here, there were also a considerable number of people arrested who never intended to be arrested and, in some cases, who in fact had nothing to do with the demonstrations.

In Seattle especially, the police arrested large numbers of people who either did not participate at all or who joined in the demonstrations in response to what they considered to be abusive behaviour by the police. Approximately six hundred people were arrested during two days of demonstrations. A significant number of individuals, including both those who had participated in pre-demonstration training and those who had not, refused to give their names to police upon arrest. By refusing to give their names, the demonstrators reduced the authorities' ability to release the arrestees one by one. Despite the demonstrators filling the jails and supporters surrounding the jails, no acceptable plea bargains were offered for four to five days. A large proportion of the detainees had not expected to be arrested and were not prepared to spend

an extended period of time in jail. To avoid an inevitable dwindling away of their numbers as people had to return to family or work obligations, the defendants determined to give their names, accept release from jail, and move their struggle to the courts. They pleaded not guilty, refused to waive their right to a speedy trial or to a jury trial, and requested court-appointed counsel. Some forty-two people, or 7 per cent of those arrested, accepted conventional plea bargains individually, one by one. The other 93 per cent resisted pressure to plead out and as the speedy trial time began to expire, the prosecutors dropped another 92 per cent of the cases.

During the last few weeks before the cases would have been dismissed for the denial of a speedy trial, the prosecutors chose six cases to bring to trial. Five of the six defendants brought to trial won acquittals or dismissals and the single conviction resulted in a small fine and community service.

In Washington, D.C., more than twice as many people were arrested over a period of three days. Of some 1,300 people arrested, about 150 refused to give their names or addresses and remained in jail. The D.C. jails were under a standing court order to prevent overcrowding with a provision that imposed financial penalties on the warden whenever the limit was exceeded. This allowed the 150 demonstrators to put considerable pressure on the system.

The Chief Judge responded to this numbers crisis by ordering the court-appointed attorneys for the demonstrators to file motions for the release of their clients. The defense lawyers filed their motions. The demonstrators refused to go to court for the hearings. In some cases, the detainees stripped naked and tied themselves to the bunks in their cells. The few who were nevertheless taken to court had the knowledge and confidence to speak up to the judge, demanding the dismissal of their court-appointed counsel and withdrawal of the motions for release. At this point, the judge ordered the prosecutors to negotiate with the defense lawyers chosen by the demonstrators.

The agreement negotiated was a reduction of all charges from misdemeanours to civil infractions with an agreed penalty of a \$5 fine. Moreover, the agreement provided that those activists who had already pleaded or forfeited bail could also withdraw their pleas and take advantage of the negotiated plea bargain.

In Los Angeles, the demonstrations were preceded by an extraordinary amount of litigation in response to repeated efforts by the police and the city to limit the area and scope of demonstrations. Shortly before the Democratic Convention and at the same convention site, the police did nothing to prevent a riot by sports fans celebrating the victory of their basketball team. The rioters burned police cars, destroyed commercial property, and attacked passersby. Predictably, the police were criticized for doing too little. Some in the city realized that the police intended to react very differently to the case of demonstrations at the Convention and would delight in claiming that their

overreaction to the demonstrations was somehow related to or in response to the criticism of their failure to respond to the sports riot.

During the Democratic National Convention, the downtown area of the city was flooded with more police than citizens realized existed in the entire state of California. University dormitories were rented to house out-of-town law enforcement officers. Many of the police were in full riot gear. Under the circumstances it was surprising that no more than some 170 people were arrested during the three days of demonstrations. Since the Los Angeles jails have a capacity of around ten thousand and do not experience an overcrowding problem, standard jail solidarity would barely have been noticed by the system.

Of the 170 arrested, about 50 refused to give their names or addresses and remained in jail. Knowing they could not otherwise exert pressure, the group had decided in advance to fast in jail. They obtained medical advice and appointed “designated eaters” to remain healthy and monitor the physical and emotional well-being of their colleagues. At the arraignment, each activist announced the fast by the following statement:

Your Honor, I am in solidarity with all other activists arrested here. We want to negotiate collectively with the prosecutor, to work out a universal plea bargain. Until then, we will not give our names or addresses, nor will we promise to return to court if we are released. At this time, I plead not guilty while reserving the right to demur; I do not waive time; and I request court-appointed counsel.

The fast inside the jail was supported by a sympathy fast by supporters holding a vigil outside the jail that received much media attention. Those outside the jail included some dozen people and fifty life-size puppets named J. Doe, representing each of the fasters in jail. The fasters’ demand was that the sheriff persuade the prosecutor to negotiate directly with the incarcerated activists as a group. In the end, the prosecutor obliged and went to the jail, spending two hours with the men followed by two hours with the women. The prosecutor eventually accepted the deal the activists insisted on—reducing the misdemeanours to infractions and suspending any fines in consideration of the time spent in jail. As in Washington, D.C., the deal applied to those already released as well as to those still in jail negotiating the agreement. In addition to agreeing to their demands, the prosecutor also made repeated public statements acknowledging the integrity and commitment of the demonstrators.

Solidarity tactics were remarkably successful in achieving dismissal of the criminal charges. In both D.C. and L.A., a small percentage of the activists remaining in jail were able to pressure the system to reduce charges to infractions. In addition, the solidarity tactics achieved minor victories for the protestors along the way: keeping individual prisoners from being separated or getting them returned to the group if they had been separated; persuading the jail officials to allow them to hold mass meetings and councils of

representatives from the various groups of detainees; and allowing their lawyers and legal assistants to meet with the prisoners *en masse*.

In each of the three demonstrations, some fifteen to thirty people were also charged with felonies. Although the demonstrators also tried to get these charges reduced, they were unsuccessful. Thus, there are at least two different stories that could be told about the demonstrations and the police response.

One story would emphasize the police success at keeping the demonstrations no larger than they have been and at dominating the media with talk of violent anarchist groups. Anyone who acts in a disruptive manner is successfully prosecuted for a felony, while the people jailed and released generally should never have been arrested in the first place. In this story, those engaged in civil disobedience are marginalized and, by their getting out of jail, most of the public will not consider them to be engaged in civil disobedience—the popular mind still requires one to go quietly or happily to jail to dramatize one's disagreement with an unjust law. The demonstrators' time and energy are dissipated taking care of themselves instead of protecting the environment, improving wages and working conditions, or replacing free trade, run by and for the corporations, with fair trade, conducted by and for the people of the world.

A second story is very different. It emphasizes the growing public awareness of the issues involved in the world financial system and world trade. In this story the World Bank and the WTO are under greater public scrutiny than ever before. Perhaps most important of all, alliances are being built between trade unionists, environmentalists, feminists, and other activists throughout the world.

The solidarity tactics I have described in this commentary play an important role in building the movement and demonstrating the power of the people. Police repression simply will not work—at least not until they devise some counter-strategy to get around the current legal strategies used by the demonstrators. These solidarity tactics can be and are being adapted to work in other countries throughout the world. The World Bank, WTO, and other corporate financial organizations can no longer hold quiet meetings behind closed doors—demonstrations are taking place everywhere. The trade union movement in the United States, moribund as it has been, shows important signs of coming back to life. Non-governmental organizations (NGOs) are springing up everywhere and beginning to work together in evolving alliances.

There is a world economy supported by a world financial network that suffers from what the European Union calls a “democratic deficit.” This democratic deficit is now on the table and being struggled with throughout the world. It is still too early to be sure which of these two stories will prevail or whether a third story will emerge. One thing is clear: solidarity tactics have significantly altered legal responses to mass protest actions.

