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The Criminalization of Dissent and Protest

ABSTRACT

Increasing criminalization of dissent and protest in Western liberal democracies received relatively little attention in the past but is now becoming a significant field of research within criminology and the social sciences more generally. The specialist literature can usefully be linked to a wider literature that extends to work on protest policing and social movements and to sociolegal analyses of criminalization. There is a striking connection, still relatively unexplored, between criminalization of ordinary crime and urban marginality and criminalization of protest. Both are often treated by policy makers as serious threats to the use of public space in the neoliberal city and are increasingly being dealt with by means of similar criminal and noncriminal measures. The literature on the "punitive turn," mostly related to street crime, for example, provides theoretical insights and concepts that illuminate efforts to understand punitive responses to activists in the context of profit-driven neoliberal societies. Recent experience and research, particularly in Spain, Italy, and England and Wales, demonstrate these processes of criminalization and the existence of strong similarities between punitive methods targeting ordinary crime, urban marginality and disorder, and political protest, including recent eco-activism.

Criminalization of political dissent is a subject that covers a wide range of interrelated topics and is common to a variety of disciplines, from law to criminology and from sociology to political science. While theories,

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processes, and practices of criminalization have been widely analyzed by legal and sociolegal scholars, the criminalization of political dissent in particular has been narrowly studied by social movement scholars and other social scientists—mostly through the lenses of policing. Indeed, criminalization of political dissent has been at the margin of the broader, mostly sociolegal, literature on criminalization (Watts 2020) and has been considered almost synonymous with protest policing and therefore predominantly analyzed in studies of police and police violence, rather than more broadly in studies of criminalization processes.

For its part, criminology has focused on the analysis of crime and deviance and—in influential positivist approaches—the deviant individual. Perhaps with the exception only of Marxist criminology, and, occasionally, of radical and critical criminology (see, e.g., Gilmore, Moore, and Scott 2013), criminology has paid virtually no attention to the criminalization of dissent and disobedience (Pali 2022). There are some reasons for the long lack of attention to this subject not only by criminologists but also by legal scholars and social scientists. The first is probably the belief that criminalization of political dissent is mostly a problem of authoritarian regimes, mainly affecting activists or the bravest individuals who dare to stand up and oppose unjust, oppressive regimes. Connected to this belief is that dissent, activism, protest, and freedom of speech are not crimes; in most democratic countries they are constitutional rights of citizens, which the state has a duty to protect. Historically, however, many countries—authoritarian and democratic alike—have undermined and restricted these rights and enforced rules to criminalize behaviors through which dissent is expressed. Indeed, as Watts (2020, p. 111) clearly put it: "The practice of treating dissent as a threat to the state, national security or social order and then criminalizing it has been firmly entrenched in liberal democratic states since the eighteenth century."

This awareness has contributed to a recent interest in the study of the criminalization of political dissent in criminology (Vegh Weis 2021; Pali 2022) and beyond. Such an interest has also undoubtedly been revived by recent cycles of mobilization. On both sides of the Atlantic Ocean, in the first decades of the twenty-first century new social movements and mobilizations have emerged, attracting the attention of social movement scholars, criminologists, and sociologists of policing and social control. Examples are the brutal repression of the antiglobalization movement in Genoa (Italy) at the G8 in 2001; the related cycle of protests of the global justice movement in Spain, Greece, the United States, and many other countries;

and repression of environmental protest all around the world. Other examples include the criminalization of the Catalan independence movement in Spain, of the yellow vests in France, and of the Black Lives Matter movement in the United States. Many of these mobilizations and protests have been violently suppressed by the police, the judiciary, or both; many people have been criminalized and stigmatized in different ways, as we discuss below. The criminalization of activism is now a concern not only of investigative journalists but also of engaged scholars in a variety of disciplines.

In this essay we discuss recent scholarly developments in the criminalization of political dissent, focusing on Western liberal democracies and on some European countries in particular. Our goal is to discuss, connect, and systematize a wide body of literature that spans from protest policing and social movements studies to sociolegal analyses of criminalization. Ultimately, the aim is to understand some of the ways through which political dissent is governed and controlled in neoliberal societies, particularly in terms of punitive tactics and modalities; some of the theoretical insights that illuminate contemporary modes of criminalizing dissent; and the extent to which the criminalization of dissent is connected to the penalization of other forms of serious crime and antisocial behavior and to other punitive tendencies in criminal justice systems. We discuss national cases that illustrate these connections and theoretical frameworks.

Some preliminary definitions of key concepts are necessary. First, borrowing Salter's (2011, p. 212) definition, by dissent we mean "a public discourse that challenges the State and corporate interests in the sociopolitical arena, in the forms of speech and collective action (i.e., it is explicitly performative)—be this printed or electronic media, and broader participatory activities such as marches and other forms of protest." This definition is broad enough to include a variety of behaviors through which activists challenge hegemonic orders. We also use the words "protest" and "protesters" as synonymous with dissent and dissenters, especially when dissent is expressed through a gathering of people who, in a planned or more spontaneous way, perform peaceful, disruptive, or even violent actions during marches, rallies, sit-ins, occupations of public or private spaces, and road or rail blockages (Acabado 2018, p. 394). Other less common forms of dissent such as collective civic and political disobedience might be included too, as in the case of the 2017 Catalan pro-independence referendum that was held in spite of being prohibited by the Spanish state. Our focus here is particularly on the analysis of dissent in public space, but we do recognize

that—in the current digital society—protest also happens online (Nurik 2022).

In this essay we mostly use the concept of criminalization, which we consider to be broad enough to encompass other concepts often used such as repression, penalization, control, and stigmatization. Repression, which in its "soft" version includes stigmatization (see, e.g., Ferree 2004), mostly refers to oppressive state and police actions. In Davenport's (2005, p. 122) definition, state repression is viewed as "actions taken by authorities against individuals and/or groups within their territorial jurisdiction that either restrict the behavior and/or beliefs of citizens through the imposition of negative sanctions (e.g., applying curfews, conducting mass arrests, and banning political organizations) or that physically damage or eliminate citizens through the violation of personal integrity (e.g., using torture, disappearances, and mass killing)." Although there seems to be a certain level of consensus over Davenport's definition of repression in social movement studies and beyond, it is worth noting that conceptualizations and operationalizations of repression vary (Honari 2018). Overall, studies on repression predominantly focus on police action and therefore tend to neglect the punitive actions of other criminal justice actors and punitive state tactics more broadly (Chiaramonte 2019), including the use of "ordinary" crimes to repress dissent (Oliver 2008). For these reasons, González-Sánchez (2019) rejects the concept of repression and prefers using the term "penalization," which includes police action, the broader intervention of the criminal justice system, and other actors (such as the media) who discursively represent protest as a criminal issue to be managed.[1]

Finally, stigmatization is a broad social dynamic that often—although not necessarily—is related to criminalization processes and the criminal justice system. Examples of stigmatization are the media representation of protest as a crime and any other social process aimed at undermining, depoliticizing, and delegitimizing actions of dissent and the images of dissenters (even through attacking their personal reputations).

This essay has six main sections. We consider the broad sociolegal and criminological scholarship on criminalization in Section I, paying particular

[1] "Penalization," however, is often used also to refer to noncriminal measures that, regardless of their form, are punitive in their nature; such measures are usually grounded in administrative or civil law and are usually devoid of the legal safeguards typical of the criminal law proper (Peršak 2017*a*, 2017*b*). For Peršak (2017*a*), all these are forms of criminalization "through the back door."

attention to the criminalization of dissent through criminal and noncriminal measures and through media and public discourses. In Section II we address the multidisciplinary literature on protest policing, offering recent examples of criminalized protest, while also pointing at the increasing importance of fines in the criminalization of protest. In Section III, we link the literature on criminalization to that on the "punitive turn," which helps understand punitive responses against activists and demonstrators in the context of profit-driven neoliberal societies. In Section IV we focus on Spain, where protesting has been targeted through a combination of (aggravated) criminal penalties and administrative measures, with the latter often being used when criminal charges prove unsuccessful. Section V uses the examples of England and Wales and Italy to address the penalization of dissent through the governance of public space, while Section VI addresses the securitization of dissent and its equation to terrorism and serious organized crime. We conclude with Section VII by sketching directions for future research.

I. Defining Criminalization

"Criminalization"—in its narrow meaning—refers to behavior that breaches criminal law and can lead to a criminal sanction. In a broader meaning, however, criminalization refers to a wider process through which some behaviors (including those that violate rules other than criminal ones) are stigmatized and punished.

A. Criminalization in Criminology and Sociolegal Studies

There is now general agreement that the process of criminalization implies different activities carried out by different actors (e.g., law enforcers, private security companies, the judiciary) and is not only the result of enacting new criminal laws defining some behaviors as a crime, even though this is still the most common way to define criminalization processes (Watts 2020, p. 125). The labeling perspective has been among the first and most important criminological theories to address and problematize criminalization. Drawing on labeling theory's central idea that crime is what someone has the power to define as such (Becker 1963), critical criminologists analyzed the criminalization process in terms of primary and secondary criminalization. The distinction aims at singling out the different mechanisms through which criminalization operates: while primary criminalization relates to the production of rules by policy makers, secondary

criminalization refers to the enforcement of the law by the police, the judiciary, and correctional officers or parole boards.

Following the principles of labeling, critical criminology's analyses of processes of criminalization emphasize the selectivity of criminalization processes and the dynamic of asymmetric powers that governs them. While class and social inequality were, for the earlier critical criminologists, the most important criteria to understand and explain selectivity in criminalization processes, the more recent literature focuses on intersectionality, thus explaining the criminalization of different social groups through several systems of oppression and at the intersection of class, race, gender, sexuality, age, and (dis)ability. This theoretical development has contributed to a wide sociological and criminological literature that shows the disproportionate impact that criminalization has on ethnic minorities, Indigenous peoples, and other groups characterized by social and economic disadvantages and often also political disempowerment. This line of thought has recently been expressed by Vegh Weis (2021), who—in the introduction to her edited book on the criminalization of activism—contrasted the overcriminalization of activists and political dissenters with the undercriminalization of powerful state actors and corporations. The asymmetry of power is self-evident in most cases of criminalization of political dissent, no matter how different the reasons (social, political, environmental) that motivated dissent in the first place.

To understand the dynamics of criminalization of political dissent, sociolegal scholars have developed useful categories and concepts. Lacey (2009), for example, distinguished between "formal" and "substantial" criminalization, namely, between criminalization through legal provisions or "in the books" and criminalization in practice, which occurs when those rules are enforced. Lacey developed her distinction further in later studies, where she noted that criminalization goes well beyond policy making and law enforcement: criminalization is also an "outcome" able to provoke "broader social, cultural, economic, emotional and political effects" (2018, p. 123). These ideas can also be easily applied to the criminalization of political dissent, where criminalization and repression have the potential to influence the wider society, for example, by contributing to the spread of authoritarian cultures (Maroto, González-Sánchez, and Brandariz 2019) and configuring new models of social order and of state-citizen relationships.

Other legal scholars have tried to provide a normative theory able conceptually to encompass all the different practices, actors, and mechanisms

deployed in criminalization processes. McNamara et al. (2018, p. 92) analyzed criminalization in three Australian jurisdictions and identified four "modalities of criminalization" (each including several subcategories), or four different ways to criminalize behaviors considered harmful, including protest.[2] Of these four categories, only the first two—"expanding criminalization" and "contracting criminalization"—are discussed here, for their implications for the criminalization of political dissent. Both these two main categories refer to the boundaries of criminalization: the first expands these boundaries, the second limits them.

"Expanding criminalization" includes all mechanisms that increase punitivity. Some of these—such as the creation of new offenses by law, the increase of penalties for already existing offenses, or mandatory sentencing regimes—are the most common and traditional mechanisms of criminalization (McNamara et al. 2018, p. 95). This category, however, also includes other, less obvious, forms of criminalization that do not rely on the criminal law, such as banishment and trespassing orders, civil or administrative orders, and ordinances.

The second category of "contracting criminalization" refers to mechanisms that narrow or regulate criminalization, among which are fines as a substitute for prison (McNamara et al. 2018, p. 96). Fines are a very interesting case as they are often used as a mechanism to penalize political dissent.

Fines as an alternative to criminal prosecution have also been discussed as an example of "hidden criminalization" by Farmer (2018) and Quilter and Hogg (2018). Commonly considered as a more lenient form of punishment that does not impinge on personal freedom, fines nonetheless have a punitive nature and impact. Research by Quilter and Hogg (2018, p. 15) shows that fines disproportionately affect some more vulnerable and economically disadvantaged groups, such as the homeless, ethnic minorities, mentally ill people, and former prisoners. Below, we briefly discuss serious effects of the use of fines in Spain on young dissenters and protesters, in terms of discouraging their mobilizing and hence contributing to the "chilling effect" typically attributed to criminal sanctions. The use of fines—particularly those issued by local authorities—also raises important questions about agencies involved in hidden criminalization and

[2] A modality of criminalization is precisely "a particular method or procedure … by which the coercive and punitive parameters of the criminal law are set and changed" (McNamara et al. 2018, p. 92).

the legal systems they use to punish individuals' behavior outside of criminal law (mostly drawing on administrative or civil law). We address these important points below.

B. Criminalization beyond the Law: Public and Media Discourses

The law is fundamental in criminalization processes: it authorizes states to maintain social order, discipline behaviors, and pursue securitization goals. The use of both criminal and administrative laws has been fundamental to the criminalization of many of the mobilizations we discuss in this essay, such as the 2011 youth protest in Spain (the so-called 15-M movement), the antiglobalization protests in Canada (MacKinnon 2014), some forms of contentious politics and protest in several Australian and New Zealand jurisdictions, and the Occupy Wall Street movement in the United States (Fernandez 2008). In these and many other cases, protest and dissent are reframed by the law as a threat to the security of the state, legitimizing restrictions on the right to protest and even the use of police force against protesters.

However, the contemporary debate on criminalization goes well beyond the law and also includes techniques and concepts borrowed from the sociology of punishment and social control. For instance, apart from the law, and apart from other forms of "hidden criminalization" discussed above, some scholars propose extending the concept of criminalization to include linguistic and communicative processes "which frame and construct certain forms of conduct as a threat to the community" (Farmer 2018, p. 5).

The dangers that lie in discourse, and the implications that language and narratives have for criminalization, were flagged by critical criminologists of the early days, most notably by Marxist criminologists. Within the Marxist-inspired Birmingham School in Britain, the work of Stuart Hall and his colleagues (1978) is particularly noteworthy. Drawing on Antonio Gramsci's ideas of hegemony, Hall et al. (1978) analyzed the ideological strategies mobilized by the British state in the 1970s to overcome its crisis of legitimacy: with the help of the media, the state generated a moral panic around young black male "muggers," thus legitimizing authoritarian and draconian polices against this specific "other." This seminal work is extremely important, as it connected public and media discourses around "problem-people" to processes of criminalization—something also stressed by other prominent critical criminologists of the time, including Young (1971) and Cohen (1972). The study of media constructions of problems

and solutions has since interested not only criminologists but also sociologists, political scientists, and sociolegal scholars.

In the specific area of the criminalization of political dissent, public and media representations (or "framing") of social movements and activists have been found to play an important role in their delegitimization and subsequent or simultaneous criminalization (see, e.g., Rothe and Muzzatti 2004; Boykoff 2006; Chiaramonte 2019). Indeed, in all the recent cycles of protest mentioned in this essay, protest has been criminalized through its framing as a "danger" and a "security problem"; such a framing has often been possible through the use of specific evocative terms—such as "terrorism" or "coup d'etat," among others—which conjure up images of danger, risk, and disorder and lead to demands for tough(er) interventions. According to González-Sánchez (2019, p. 5) this framing strategy is an example of symbolic violence (a concept borrowed from Pierre Bourdieu) that operates at the cognitive level and goes far beyond the antagonistic relationship between the police and protesters. In contemporary democracies, symbolic violence often replaces the most violent forms of police repression of protest, including use of lethal force (Maroto, González-Sánchez, and Brandariz 2019). Similarly, Calvo and Portos (2018) explore other practices of "soft repression" based on communicative strategies by which governments convey messages that depoliticize, or even infantilize, protesters' behaviors, also discrediting the political nature of their protesting.

In conclusion, the criminalization of political dissent is done not only by enacting and enforcing criminal (or subcriminal) law but also through use of public and media discourses that successfully construct social movements and activists as a problem. This framing strategy also pursues symbolic violence: it not only depoliticizes and delegitimizes social movements but also legitimizes punitive responses against them and their mobilization.

II. Criminalization as Protest Policing

There is a rich multidisciplinary literature on protest policing involving political science, social movement studies, criminology, sociology, and sociolegal studies, among others. It has sought to analyze protest policing strategies mostly in Western countries, roughly over the past 60 years. Addressing this rich scholarship in depth goes beyond the remit of this essay; however, we outline its central findings, using recent examples to

show how the strategic incapacitation style of protest policing has been applied in practice. We also illustrate the increasing important role of non-criminal sanctions—fines in particular—in the criminalization of public protest.

Until the late 1960s, the dominant protest policing approach was escalated force based on the incremental use of force against protesters—which, in the United States, was especially used against protests involving African Americans (Davenport, Soule, and Armstrong 2011). Such an approach was replaced beginning in the late 1970s and through the early 2000s by a protest policing style called a "softer negotiated approach"—an approach that sought to avoid physical confrontation with demonstrators and coercive intervention by the police by seeking containment through negotiation and cooperation with protesters (della Porta and Reiter 1998; Waddington 2007; Passavant 2021). Although the use of force within this system was deemed a last resort, in the United States the police were more likely to use it when dealing with anti-police-brutality protests and hence with protests against the police themselves (Reynolds-Stenson 2018).

Between the end of the 1990s and the beginning of the 2000s, more confrontational, aggressive, and coercive tactics began to be adopted by the police when policing "transgressive" protests, with this label frequently being attached to antiglobalization movements and autonomous groups, often perceived as leaderless and uncooperative (della Porta 1998; della Porta and Reiter 1998; Noakes and Gillham 2006; Gillham and Noakes 2007; Waddington 2007; Gillham 2011; King 2013).[3] According to many scholars including Noakes and Gillham (2006), this marked a new, aggressive phase of protest policing—"strategic incapacitation" (see also Gillham and Noakes 2007). This approach involved coercive policing practices, including the establishment of no-protest zones, the increased use of less-than-lethal weapons, the strategic use of arrests before protests, and reinvigoration of surveillance of perceived problematic social movements.[4]

[3] While the negotiated approach continues to be used to contain (generally open and cooperative) protests, the "strategic incapacitation" style of protest policing has targeted "transgressive" and potentially disruptive or threatening protests.

[4] This style of protest policing has been criticized by social scientists, who stress (among other things) the importance of police-protesters interactions before and during protests and the need for the police to facilitate legitimate protests' goals in order for the police to be able to reduce conflict and violence at public protests. For knowledge-based guidelines on public order policing, see Reicher et al. (2004, 2007).

In recent years, several eco-justice movements opposing extractive corporate projects have had experience with this last protest policing approach and with enhanced surveillance by the police in particular. An example from the United Kingdom is provided by Gilmore and colleagues (2020), who analyzed the policing of antifracking protests in Lancashire. Policing in this case involved significant deployment of officers; containment of protesters in specific, well-defined areas; surveillance of activists; and use of violence and intimidation during protests—all justified by the "domestic extremist" label attached to antifracking activists by the police. Strategic incapacitation strategies have also been used in Italy to police eco-justice protests organized by No Tav and No Tap, two eco-justice movements opposing purportedly "strategic" megaprojects (a high-speed train and a pipeline, respectively) at the two geographical ends of Italy: the No Tav movement is based in the Susa Valley in the northwestern Piedmont region; the No Tap movement emerged in the southeastern region of Apulia. These two movements have been heavily policed and criminalized by the state (see, e.g., Chiaramonte 2019; Di Ronco, Allen-Robertson, and South 2019; Di Ronco and Allen-Robertson 2021; Tuzza 2021; Di Ronco and Chiaramonte 2022). In both cases, the police often used violence and brutality to deal with protestors, introduced no-protest zones, and surveilled activists both online and offline.

The intrusive surveillance work often conducted on eco-justice activists is well exemplified in the work of Crosby and Monaghan (2018) on the policing of First Nations people in Canada and in a study by Hasler, Walters, and Whyte (2020) of protest against the Dakota Access Pipeline (DAPL) in North Dakota, which passes through the Standing Rock Indian Reservation. Both studies identify a similar process that led an assortment of state and private actors—what Crosby and Monaghan (2018) regarded as the "security state"—to successfully characterize nonviolent protesters opposing extractive capitalism and asserting self-determination as "terrorists," "enemies," and a "threat to society." Such a process also resulted in tight surveillance of Indigenous peoples and activists through the collection of information during on-the-ground demonstrations, on social media, and in their daily lives and movements. The most extreme case is covert surveillance of eco-justice (and other) activists, which in the United Kingdom, for example, was used to infiltrate movements perceived to be "domestic extremists" (Schlembach 2018). We delve deeper into the securitization of political dissent—and its equation with terrorism and serious organized crime—below. For now, suffice to say that activists characterized

as problematic are often subject to a high degree of surveillance, policing, and repression.

Protesters are targeted not only through criminal law but often also through administrative measures and fines; this has especially been observed during the mobilization cycle of the 2010s (Maroto, González-Sánchez, and Brandariz 2019), as we discuss below. At least in Italy and Spain, administrative fines are usually issued against protesters for two reasons. The first is linked to the commission of minor offenses (contraventions or violations), usually by protest organizers, who either fail to inform the police about an organized protest or do not comply with the conditions imposed on the protest by the police. The second reason arises when demonstrators adopt behavior that is considered "uncivil" or "antisocial" by local authorities. Examples of the latter include littering through the distribution of flyers, using too loud megaphones during protests, and camping in public areas (Maroto Calatayud 2013, 2016).

More administrative measures and fines have been introduced and issued during the COVID-19 pandemic. In particular during the first 2 years of this severe health crisis, many Western countries limited the right to protest in public places, for example, through banning it in certain periods or in certain areas, putting a cap on the number of people lawfully able to protest, or introducing requirements for participants to maintain social distance or wear a mask. These new regulations strengthened police powers and enabled the police to sanction protesters through administrative fines for violations of the new sets of rules.

In some rare instances, courts have upheld the right to protest during the pandemic (in Australia, see Martin 2021, 2022; in Colombia, see Morato 2021). But in general, beyond these few exceptions, protesting during the pandemic was significantly limited. Since the beginning of the health crisis, critical criminologists have carefully analyzed COVID-19-related regulations and policing practices affecting the right to protest (see, e.g., Fatsis and Lamb 2021; Martin 2021, 2022; Burnett, Nafstad, and White 2022). The recent work of one of us also contributes to this literature. Drawing on an extensive ethnography of two eco-justice movements in the northern Italian city of Trento, Di Ronco (2023) showed that the policing of eco-justice protest activists intensified during the pandemic, involving the maximization of police visibility through the deployment of larger numbers of personnel and containment measures that had the effect of "militarizing" the city. At the same time, protesters and their grievances were made invisible to the public eye through local police regulations that

allowed protests only outside the center of the city—a practice often also used before the health crisis began. As Di Ronco (2023) explained, protest policing strategies predicated on police visibility mainly operate at the symbolic level: they help construct protesters as "enemies" to be feared and legitimize enhanced police control of activists, with their reach potentially extending beyond the pandemic. This is an argument also advanced by Fritsch and Kretschmann (2021), who suggested that the criminalization of protest in both "petty" and "large" states of exception is problematic as it tends to normalize the criminalization of all protest (including those traditionally considered less problematic) also after the "crisis."

Connected to this is the use in liberal democracies of exceptional measures designed to deal with specific "states of exception," which are then (often unnecessarily) extended to unexceptional times after the crisis. Apart from the recent pandemic crisis, other examples include recent mega-events requiring exceptional security measures in cities, which often leave "a security legacy that persists . . . after the event is over" (Passavant 2021, p. 10; see also Fussey, Coaffee, and Hobbs 2016).

III. The "Punitive Turn" and the Criminalization of Political Dissent

The debate on criminalization, and on "overcriminalization" in particular, overlaps and resonates with studies on punitiveness and the "punitive turn" that several Western countries experienced in recent decades. The difference between criminalization and punitiveness is that the former is a process, and the latter is a feature of that process. Criminalization can be more or less punitive, depending on several factors that include primary criminalization by policy makers, policy and media discourses, decisions by law enforcers and criminal justice practitioners, and attitudes of victims and the public (see, e.g., Snacken 2010). Not only can (over)criminalization be punitive, but the use of administrative sanctions or fines may have, under some circumstances, punitive outcomes or consequences. The debate on punitiveness—to which we now turn—helps illuminate the recent tendency toward more punishment through broader social, political, and economic factors and processes.

Historically started in the United States, the debate on the punitive turn has since spread in countries and regions all over the world, including in some European countries usually considered as examples of moderate punitivity (Snacken 2010). There are narrower and broader views on

punitiveness. Recent studies on punitiveness, however, stressed that current punitive strategies go far beyond the criminal justice system—and hence go beyond the introduction of new criminal laws, the issuance of disproportionate sentences, and the harshening of prison treatment. Other punitive strategies include the intensification of surveillance, administrative penalization through fines and banishment orders, and even vigilantism or other forms of formal and informal social control that stigmatize and exclude minorities or specific social groups (Nelken 2005, p. 219).

The punitive turn and the processes and practices of criminalization—also sometimes called "law and order approaches"—have important connections with the neoliberal project, its political economy, and the restructuring of social control in postwelfare societies (among many, see Pratt et al. 2005; Reiner 2007; Young 2007; Wacquant 2009; Bell 2011).

Punitive policies, Wacquant (2009, p. 306) points out, are at the basis of the "transnational neo-liberal project," whose goal is to "remake the nexus of market, State and citizenship from above." This goal is achieved through four institutional logics: deregulation of the economy and promotion of the free market; redesign and reduction of the welfare state; promotion of individual responsibility at all levels; and, last but not least, expansion of the penal apparatus (p. 307).

While the work of Wacquant and others focuses on the criminalization of poverty and mass incarceration in neoliberal societies, their work on punitiveness in neoliberal times has important implications also for control of political dissent and protest, as several scholars working in this last field have pointed out (see, e.g., González-Sánchez and Maroto-Calatayud 2018; Maroto, González-Sánchez, and Brandariz 2019; Passavant 2021). First, the shrinking of the welfare state and the reduction of social security is one of the most important reasons for the emergence of social movements and dissent. Second, new (or rather old) categories of "dangerous people" are created to construct symbolic others who can be used by politicians in their public campaigns and law reform initiatives to reestablish state authority through criminalization. Third, the political economy of the neoliberal project promotes the "sanitation" of public space and its cleansing not only from poverty but also from any social relations and expressions considered problematic—such as protests and demonstrations.

Indeed, particularly important is how public space is redesigned in order to be functional in the new urban social order required by the neoliberal economic and political project. The need to create "safe" urban environments and to make cities attractive to wealthier consumers, tourists, and

private investors inevitably affects all individuals and groups who are thought to endanger the fruition of such spaces (Aguirre, Volker, and Reese 2006; Belina 2007; Beckett and Herbert 2008; Peršak and Di Ronco 2018, 2021; Di Ronco 2023). These individuals include the urban poor but also activists and demonstrators. The connection between changes in the urban environment and the control of dissent has been analyzed in depth by Passavant (2021), who explained why police aggressiveness increased in US cities against both urban marginality and dissent. For him, such an intensification is the result of a convergence of phenomena, including the implementation of zero tolerance styles of policing against minor crime and the pervasive influence of Broken Windows theory on a variety of urban problems, not only incivilities (p. 13). Ultimately, in US cities and beyond, a city's attractiveness in neoliberal times depends on its capacity to show that the streets are clean and safe, that the spaces for consumers and tourists are protected, and that social problems—or even the exercise of constitutional rights, like taking to the street to protest—are under control and made invisible.

Brabazon (2017) clearly showed the implications of neoliberalism for political dissent while discussing the role of the law—and, broadly, of the "legal form"—as the main instrument through which neoliberalism can operate in contemporary societies. In such societies, dissent is not only punished but also delegitimized, discouraged, and transformed into an act of hostility toward the state through law and regulations (as well as through communicative techniques, as we illustrated in the earlier sections). The public sphere is no longer an open arena for the exchange of ideas but a space for market competition—a space where, as put by Brabazon (p. 175), "street protest is discouraged . . . as both a disruption of the economic market (when protests threaten to interrupt consumerism, labor or supply chain transit) and a disruption of the political market, in the context of which protest is seen as the attempt of a well-organized minority to impose its will on the majority."

Similarly, Maroto, González-Sánchez, and Brandariz (2019) emphasized that repression of political dissent is central in the process of state transformation promoted by neoliberalism and is also consistent with the increasing authoritarian mentalities and political cultures that now characterize many contemporary democracies. Consequences are not just the increased repression or overcriminalization of protest and dissent but also the tendency to use a variety of legal tactics to overregulate protest (including where, when, and how people can express dissent) or delegitimize

it. Examples of these legal tactics provided by Brabazon (2017, p. 179) include "soft obstructionism" (e.g., when governments make access to information difficult or slower) and underenforcement of some progressive laws (i.e., those recognizing rights to the civic society). These examples resemble the techniques of "hidden criminalization" we discussed above and confirm that the criminalization of political dissent in current neoliberal times is carried out through a sophisticated infrastructure of legal and police powers and of hard and soft strategies (Fernandez 2008), which are common to a variety of democratic contexts.

IV. From the Criminal to the Administrative Criminalization of Political Dissent: The Case of Spain

Recent criminological and sociolegal scholarship has focused on the analysis of forms of "hidden criminalization" or "preventive coercion" and most notably of noncriminal measures such as punitive civil or administrative orders. Examples of these measures vary from the civil orders and bylaws in the Anglo-American systems, such as the infamous (and now repealed) anti-social behaviour orders (ASBOs) in the United Kingdom, and trespassing and banishment orders in American cities (for the latter, see, e.g., Beckett and Herbert 2010). Parallel to the analysis of preventive coercion in the Anglo-American context, criminalization processes in continental Europe studies have increasingly focused on semipenal laws, usually resulting from the exercise of administrative powers by local authorities. The word "burorrepressión," or "low intensity repression" (Olmo 2013), has been used in Spain to conceptualize the repression of a variety of behaviors, including political protest, through administrative laws and practices and other disciplinary mechanisms apparently unrelated to criminal punishment.

In Spain, scholars working on the control of political protest showed that, in the never-ending transition from dictatorship to democracy, an effort was made—in principle only—to decriminalize protest-related offenses, transforming them into administrative violations or contraventions, which are considered to be less severe and hence more consistent with the ethos of the new democratic regime. In 2015, a comprehensive reform of the criminal code was undertaken by the Spanish government, under the label of "democratization" and respect for human rights, urban security, and civic coexistence (Maroto Calatayud 2013, 2016; Acabado 2018). The effort followed earlier reforms of criminal matters after the

transition and aimed at making the rules governing protest and public space softer and more tolerant, declassifying many criminal offenses into administrative infractions. The 2015 law reform was, however, strongly criticized by many scholars for not fulfilling, in its contents and provisions, the expectations raised (see, among the many, Maroto Calatayud 2013, 2016; Acabado 2018).

Indeed, the amended 2015 Penal Code created new criminal offenses and aggravating circumstances against protesters in particular. For instance, passive resistance has been criminalized and is now considered a new "modality" of the crime of "attacks against the authority" (by which the Spanish Penal Code mostly refers to the police), while throwing objects during a protest may qualify as an attack against the police and involve a sentence to up to 9 years of prison. Similarly, the new Penal Code configured other modalities of protest, such as wearing masks or using "dangerous tools," as aggravated circumstances of the preexistent crime of "alteration of public safety," with penalties of up to 6 years in prison (González-Sánchez and Maroto-Calatayud 2018, p. 450).

At the same time, the 2015 administrative law known as LOPSC (Ley Orgánica de protección de la Seguridad Ciudadana, March 31, no. 1) was enacted. Despite being presented by the government as a milder and more tolerant way to deal with protest and incivilities in public space, in reality the LOPSC created a new administrative infrastructure of control and new tools for criminalizing public protest under a new administrative regime.[5] The LOPSC was soon renamed the Gag Law for its illiberal content and attack on the rights of protest and freedom of speech, and it raised national and international concern among scholars and human rights organizations about the violation of the democratic rights of Spanish citizens (Amnistía International España 2018; Calvo and Portos 2018; Fernández de Mosteyrín and Limón López 2018). Of the law's 44 provisions, 21 target protest and dissent, others are in some way related to protest, and more than half have an equivalent in the Spanish criminal code (Casino Rubio 2017, p. 81). Compared to the earlier version of this law (1992), in the 2015 version new (previously lawful) behaviors are now included among those potentially sanctionable, fines have been increased,

[5] The law is the renewed, and tougher, version of similar legislation from 1992, which also was strongly criticized by human rights activists and liberal scholars. Recent efforts to reform the LOPSC have been unsuccessful.

and the protection of the police has been reinforced. For instance, no-protest zones have been expanded, and the organization of unannounced meetings or protests near essential public infrastructure may be fined up to 600,000 euros when causing a "risk to people"—a threshold of intervention that is ultimately left to the interpretation (and discretion) of law enforcement authorities. The LOPSC not only provides the police wide discretion when it comes to enforcing its vague provisions, but it also enhances police protection through the establishment of new sanctions for being disrespectful to the police or even for "not cooperating" with them.

The Spanish case is a clear example of how criminal and administrative rules are combined in a sort of "double track" to control political dissent. This means, for example, that when the judiciary dismisses a criminal charge for public disorder, local authorities may still attempt to sanction protesters through administrative fines as a backup, as shown by Selmini and Salellas i Vilar (2022) in the case of the repression of the Catalan pro-independence movement.

The administrative sanctions envisaged by the LOPSC are potentially very discouraging for protesters even if they do not involve the loss of their freedom. This is particularly the case for fines issued to younger protesters, as they often cannot afford to pay huge fines and may hence be seriously affected by an administrative "chilling effect." Not differently from criminal punishment, economic punishment discourages individual protesters and collective mobilization and can divert the original goal of the protest toward resisting repression. In the Spanish and Catalan cases where fines also target unions and associations (see García 2014, p. 306; Selmini and Salellas i Vilar 2022, p. 14), they weaken opposition at the collective level.

The LOPSC is not the only tool in the new repressive infrastructure used by the Spanish government to undermine dissent. At the local level, other administrative mechanisms have been used to penalize, or de facto criminalize, dissent and protest—through the burorrepressión mechanism mentioned earlier. Municipal ordinances have been enacted in many Spanish cities to control minor crime, nuisance, and incivilities, following the example of the 2006 Barcelona Ordinance (Ordenanza de medidas para fomenter y garantizar la Convivencia ciudadana en el espacio público de Barcelona). Similar to what is happening in other European countries, administrative orders are used by local authorities to regulate individual's "antisocial," "disorderly," "uncivil," or "nuisance" behavior in public

spaces, in this way addressing people's fears and insecurities and increasing the perceived quality of life of the better-off (Peršak 2017*b*; Selmini and Crawford 2017). In Spain as elsewhere in Europe and in the United States, most of these orders have targeted urban marginality and have sanctioned a variety of social problems, such as begging, public drinking, and rough sleeping. Frequently these orders have then been extended to protesters.

Maroto Calatayud (2013, p. 36), for example, showed that protesters have been sanctioned for distributing leaflets and therefore violating the ordinance on street cleaning and littering, using megaphones during a public assembly and hence violating the local order concerning noise, and camping in public spaces. In some cases, noncompliance with the orders implies a criminal charge for disobedience: a further example of how criminal and administrative laws and regulations combine to control dissent.

The use of these administrative tools—both those envisaged by the 2015 LOPSC and those introduced by municipal orders—raises several problems. First, considering that dissent and protest are constitutional rights in many countries, their restriction—even when indirect—should not be allowed through use of administrative measures. Second, the administrative regime lacks the legal safeguards provided by the criminal law and justice system. Third, the use of these "infra-legal devices" (Maroto Calatayud 2016, p. 68) leads to a "symbolic downgrading" of political acts of expressions of dissent into mere incivilities. Behaviors through which people exercise their constitutional rights are indeed "downgraded" and equated to throwing garbage in the street or making noise in public spaces. Ultimately, this downgrading successfully depoliticizes protest and makes its repression less scrutinized and more invisible.

In summary, protesters in Spain can be criminalized in several ways: the new criminal offenses or aggravated circumstances envisaged by the amended 2015 Penal Code, the administrative violations or contraventions introduced by the LOPSC, and local orders that reconfigure political protest as an incivility or a nuisance. Finally, protesters verbally attacking the police can also be criminalized through the use of the criminal offense of hate crime. This happened to several Catalan pro-independence activists, who have been investigated for the offenses of hate crime against the police or hate crime against political parties, for having criticized (either online or offline or both) excessive police presence on the streets, police violence on the day of the Catalan referendum, or the views of some ultra-right-wing

Spanish political parties. In the Spanish criminal code as elsewhere, hate crime is meant to protect the rights of vulnerable minorities, not of groups in powerful positions, as undoubtedly the police are. Nonetheless, people have been prosecuted for such offenses even though, at least so far, the courts have then dismissed the cases (Selmini and Salellas i Vilar 2022). There are clearly no legal arguments to support these prosecutions; however, they show an attempt by the Spanish authorities to reframe dissenters not as legitimate political actors but as "haters"—and freedom of expression as a manifestation of such hate. The political "enemy" is represented not as a rational and sensible human being but as a dangerous and unpredictable citizen who needs containment even when not physically violent. This strategy fits very well with the idea of symbolic violence proposed by González-Sánchez (2019), which is based on the misrepresentation of dissenters and the aims to depoliticize and delegitimize dissent while attacking dissenters' reputations.

V. Penalizing Dissent and Protest in the Governance of Urban Space: The Cases of England and Wales and Italy

Other countries have sought to penalize dissent and protest by means of policies and practices that aim to protect the quality of life of the better-off and the commercial interests of private businesses. In this section, we focus on the control of urban space in England and Wales and Italy, specifically highlighting their implications for the right to protest.

In England and Wales in 1986, 1998, and 2003 the Parliament used the same phrasing to define antisocial behavior and behavior during protests, demonstrations, and urban riots that can trigger police action (Millie 2008, p. 381). The 1986 Public Order Act, the 1998 Crime and Disorder Act, and the 2003 Anti-social Behavior Act all refer to behavior that causes "harassment, alarm and distress" to the public or sections of it—a vague phrasing open to broad exercise of discretion and potentially also abuses. Moreover, the Anti-social Behavior Act 2003 includes a section specifically targeting behaviors related to the right to protest and assembly, increasing police powers to intervene, for example, when there is occupation of public lands and during public meetings.

In England and Wales, police powers to deal with public protest have recently been enhanced through the UK Police, Crime, Sentencing and Courts Act 2022 and the Public Order Act 2023. Grounded on the perceived need to address newly disruptive protest strategies adopted in recent

years by environmental protesters in particular (including Extinction Rebellion, Insulate Britain, and recently JustStopOil, which often use lock-on, gluing, and other protest tactics that authorities consider disruptive), these acts expanded police powers to put restrictions on processions, assemblies, and one-person protests, including on their starting and finishing times, routes, size, and noise levels, and they introduced new police powers to stop and search with and without suspicion and authorized prison sentences for those who use lock-on strategies and block roads. In essence, the government tried to strike a new balance between the right to protest and the general interests of the community, with such an effort arguably being needed to counterbalance the disruptive effects that protests have increasingly caused, especially to businesses (Di Ronco 2023).

In Italy, public protest has been tackled through so-called urban security policies that mainly target the urban poor. In the 1990s, urban security policies were mostly developed at the local level, when they were used to tackle incivilities and minor crimes and to reassure supposedly frightened citizens. Starting from the early 2000s, and progressively since then, a shift from a preventive to a more repressive approach emerged, which gradually transformed these policies from being mostly preventive to focusing on public security and ultimately on public order (Selmini 2020). This is well exemplified by recent decrees on urban security issued in 2017 and particularly in 2018 and 2019.

In 2017, the first Decreto Sicurezza (law decree no. 14 on February 17, 2017) issued by an Italian center-left government focused mainly on tackling urban marginality. A zero tolerance approach was introduced, based mostly on administrative ordinances and banishment orders (while the mayor can issue both local ordinances and bans, the head of the police [the *questore*] can issue bans only). Pursuant to this decree, people disturbing "urban security" by begging, rough sleeping, or camping in some areas of the city can be fined and banned from city spaces by the mayor for short periods (48 hours) or by the *questore* for long periods (up to 1 year or, in some instances, even longer). Mostly, these bans have been used against homeless and drunken people, hawkers, unlicensed car park attendants, and sex workers—many of whom are migrants (Borlizzi 2022)—but the news media reports that they have also been used against protesters. Areas that can be protected through these bans include train and bus stations, parks, areas around schools, universities, museums, and places frequented by tourists (Selmini 2020). In essence, despite this decree's ostensible premises of promoting social inclusion and fostering social prevention for

all citizens, it mostly targeted poor people, immigrants, and homeless people living in public spaces (Crocitti and Selmini 2017; Selmini 2020).

The 2017 decree did not include specific provisions for protests, but—although it has been applied to demonstrators—it paved the way for decrees enacted in 2018 and the 2019 by the then-right-wing government, and most notably by the then minister of the interior Matteo Salvini, of the League Party, who is renowned for his campaigns against migration and his strong support of zero tolerance policies. These two decrees are known as Decreti Salvini (Salvini's decrees).[6] Both of them reinforce earlier measures, in some cases attaching a criminal penalty to the breach of a space ban. These two decrees also extend the areas of the city where banishment orders can be issued, recriminalize behaviors that had previously been decriminalized (e.g., begging), and ultimately conceptualize urban security as matters of "public security" and "public order."

In essence, these two decrees allow local authorities to protect public and semipublic spaces from all types of potentially disturbing behaviors—most notably from dissenters, migrants, the homeless, and people living off the informal economy. In these new decrees, the shift from targeting urban marginality to the control of political dissent is evident. The 2018 decree, for example, recriminalizes the offense of road blockage (which had been decriminalized earlier), which is now punishable by up to 6 years of imprisonment. Occupation of private buildings and lands is also punished more severely than before and includes new aggravating circumstances. The 2019 decree, moreover, cracked down even further on the right to protest. Expanding on already existing laws, the decree increases the penalties for wearing helmets or masks during a protest and establishes new punishable offenses, such as one that criminalizes the use of fireworks, gas, and other potentially dangerous tools during protests. Other new provisions enhance police protection, for example, by aggravating the offense of violence against or resistance to the police, while still others increase penalties for interruption of public services during a protest.

These national decrees have been supplemented by local policing practices, which often forbid protests in city centers or key consumption-focused areas with the explicit purpose of protecting the local economy from disruption. During the COVID-19 pandemic, for example, the then

[6] They are law decree no. 113, of October 14, 2018, known as Decreto Salvini, and law decree no. 3, of June14, 2019, known as Decreto Salvini bis.

minister of the interior, Luciana Lamorgese, adopted a directive allowing local authorities to identify urban areas "of particular interest to urban life" where protests could be banned in the interest of the postlockdown economic recovery (Di Ronco 2023, p. 68). However, the police practice of banning public protest from key urban areas is not unusual in the policing of street protest in Italy during or even before the pandemic.

Protests in England and Wales and Italy have increasingly been viewed as activities that disrupt business and the comfortable use of public and semipublic spaces by the law-abiding and compliant "majority." They have been penalized both through criminal law (in both countries) and particularly in Italy by use of administrative law and anti-incivility regulations.

VI. Blurring the Boundaries among Social Movements, Terrorism, and Serious Organized Crime

According to Hömqvist (2004), in recent years a "security mentality" has emerged among European policy makers, which has "ruptured" the law in two directions: "downward," by subsuming incivilities and minor public order disturbances (such as public protest) into the realm of crime, as we discussed above, and "upward," by blurring the line between crime and acts of war—something that has especially happened in the case of terrorism since 9/11. Hömqvist suggested that the often vague legal definitions of terrorism can lead to excesses and abuses in practice and be used against people who do not pose an external or internal security threat. For example, as he contends, "farmers protesting against agricultural policy by blocking motorways with tractors, fruit and vegetables; environmental activists who chain themselves to rails in front of trains transporting radioactive waste; as well as other forms of civil disobedience: all lie in the danger zone" (p. 7). Peaceful activists, indeed, "all lie in the danger zone" and can be labeled as "terrorists," especially when they fight against state and corporate interests. What enables their labeling—and the use of the special powers that are often invoked in "states of exception"—is, Hömqvist argues, a "security mentality." In practice, such a security mentality—or governmental rationality, to use a concept familiar to governmentality studies—works on the basis of preemptive assessments of potential future risks.

In a similar way, but with the broader intention to address how the state shifted from a welfare rationality to a security one, Hallsworth and Lea (2011, p. 142) pointed out "how developments in distinct areas of social policy, crime control and national security are facilitating the emergence

of a new state form that we term the 'security state.'" Once again, the culprit lies in the vagueness of some legal definitions: in the UK Terrorism Act 2000, terrorism includes not only violence against persons but also actions directed at damaging properties, and it implies the use of threats with "the goal to influence the government" or "to intimidate the public." These vague formulations imply that the label of terrorism may be successfully applied to peaceful protesters. The vagueness of legal definitions in practice enables the police to decide what to define as legitimate protest and what as terrorism. The use of vague concepts is a key mechanism in the criminalization of political dissent, as is their labeling as a "security problem." The labeling of protesters as terrorists seems to be a common step in the process of criminalization of protest. Spain, in particular, has a long tradition of applying the label of terrorism to political protests and charging protesters, particularly pro-independence protesters from the Basque Country and Catalonia, with serious terrorism-related offenses (Selmini and Salellas i Vilar 2022).

In the wake of 9/11, many progressive eco-justice groups have been labeled "domestic terrorists" in the United States for allegedly posing a threat to state values and corporate interests (Salter 2011). Salter also discusses the far-reaching implications of what he calls a "preemptive repression" against activists, namely, its "chilling effects": the fear of being given the "terrorist" label and its associated social costs leads activists to self-censorship and self-regulation. The negative effects of "soft repression" (Ferree 2004) or the labeling and stigmatizing of social movements have also been highlighted by Jämte and Ellefsen (2020), who noted that activists, especially in the more open and inclusive social movements, tend to be less open about their involvement in political struggles and mobilizations to avoid being labeled as "extremists" and receive social sanctions.

Many radical, anarchist, and eco-justice movements have recently been labeled "extremists" or "domestic terrorists" for threatening capitalist and corporate interests. They include radical eco-justice movements such as the Animal Liberation Front and the Earth Liberation Front (Salter 2011), far-left anarchist groups (Jämte and Ellefsen 2020), independence movements (Bernat and Whyte 2020, 2022; Selmini and Salellas i Vilar 2022), and the eco-justice groups discussed above, including the anti-fracking protests in the United Kingdom, the No Tav and No Tap movements in Italy, and the NoDAPL protest in the United States. These movements have been subject not only to soft repression but often also to

hard" repression, including invasive surveillance, heavy protest policing practices, pretrial detention, and heavy charges for crime including that of terrorism. One of the most recent and extreme cases, on US soil on January 18, 2023, was the killing of activist Manuel Terán "Tortuguita" by the Georgia State Patrol. When he was shot, Manuel was camping with other environmental activists in a forest to protect the site from the construction of a mega police construction project; Manuel and the other activists were all accused of domestic terrorism (Pratt 2023).

Activism has been equated not only to terrorism but sometimes also with serious organized crime. While the connection with terrorism is, in the case of political dissent, clearer to an extent, the connection with organized and serious forms of crime is more far-reaching and more recent.

An example of the equation of activists to organized crime offenders is provided by Sentas and Grewcock (2018), who analyzed new criminal laws in New South Wales. They suggested that the creation of new offenses and of new police powers established by these new laws, coupled with the vagueness of concepts such as "risk" or "public safety," allowed an assimilation of protest with other types of serious crime. These laws blurred the boundaries between organized crime and public order, suspects and convicted offenders, and protest and serious crime, creating new "hybrid categories of offender" (p. 76). Examples are new types of orders, such as the Serious Crime Prevention Orders and the Public Safety Orders. Defined as "the most extensive form of supervisory order now available" (p. 80), the Serious Crime Prevention Orders enable courts to control the activity of a suspect in an almost unlimited way. The Public Safety Orders instead target "serious criminals" and "organized crime" and can be issued by a senior police officer to ban any person or group whose presence in a "public event, area or other premises" is considered dangerous for public safety (p. 81). Their primary target is organized crime, but thanks to the vagueness of the concepts on which the use of these orders is based (including serious risk to public safety or security), they can easily be applied to other populations, including activists. These orders are not bound to specific types of criminal offenses and thus can be applied to activists: they can be activated for all offenses subject to penalties of 5 or more years in prison—this is how "serious crime" is defined (p. 82). And, in Australian law, there are indeed offenses specifically targeting activists that envisage penalties of 5 or more years in prison. An example is the Enclosed Lands, Crime and Law Enforcement Legislation Amendments (Interference) Act 2016, which created the new offense of "aggravated unlawful entry" in

designated sites such as mines for coal seam gas and major road construction sites. As explained by Sentas and Grewcock (2018, pp. 81–82), protesting in these sites is considered an interference with economic activities and, in some circumstances, may imply a severe penalty (up to 7 years of imprisonment). As a result, intrusive orders can be issued to control and restrict activists' behavior.

The role of the police is pivotal to use of these pieces of Australian legislation, not unlike other laws elsewhere that we discuss. These laws, because of their fluid and vague legal concepts, make the "police the arbiter of what makes a legitimate protest" (Sentas and Grewcock 2018, p. 84), allowing them to define what are unsafe protests, serious risks, or even serious crimes.

VII. Concluding Thoughts

In this essay, we reviewed the multidisciplinary literature on the criminalization of dissent. We started with sociolegal and criminological scholarship, which enabled us to embrace a broad definition of criminalization that goes well beyond criminal law and criminal justice measures to include measures such as fines that are noncriminal in form but punitive in nature. Among these latter measures, there are often administrative fines that, in the case of Spain, for instance, tend to be used in combination with the criminal law to criminalize dissent. Criminalization is also achieved through media and public discourses, which, as critical criminological scholarship shows, contribute to constructing a group as a "crime problem" deserving of police attention and criminal justice interventions. Public and media framing is a form of symbolic violence that depoliticizes and delegitimizes dissenters and their mobilizing, while at the same time legitimizing their criminalization.

In Section II we focused on scholarship that analyzes criminalized dissent through the lens of protest policing and considered some recent cases in which the protest policing style known as strategic incapacitation was put in place. We then reviewed the literature on the punitive turn and related it to the criminalization of dissent, identifying insights that illuminate patterns of criminalization in neoliberal times, including in the governance of public space. Criminalization of dissent also happens through the governance of public space. To protect economic interests and the quality of life of the better-off, inner-city areas have increasingly been cleansed of "difference," including not only the urban poor but also demonstrators.

In Italian cities, for example, criminalization of protesters has been pursued through not only the criminal law proper and administrative offenses and sanctions but also local administrative orders and local policing practices. Protesting has also been securitized and elevated to a "security threat" or criminalized through use of terrorism and organized crime legislation, having of course a detrimental impact on the lives of activists.

We identified different, interrelated stages and modalities of criminalization of dissent, which are characterized by different actors, distinctive control practices, and adaptations to specific types of protest. Stigmatization—for example, through public and media discourses—is often the first step in the criminalization process, as labeling theory would suggest. This phase is important in the "resignification process" (Maroto, González-Sánchez, and Brandariz 2019, p. 16), as protest is reframed into a "problem" and thereby depoliticized and ultimately also criminalized. In essence, whether constructed as a security or as a crime problem, activists are often stigmatized and represented as a problem in media and public discourses; this can happen in different stages of the criminalization process.

Law making and the enforcement of criminal and administrative laws and regulations against activists are perhaps the most important ways to criminalize dissent. The enforcement stage often involves a great deal of discretion on the part of the police and other enforcement agencies, as they tend to have great leeway in deciding whether to enforce the law (and hence, e.g., fine or arrest individuals)—and, in the case of prosecutors and judges, which laws to enforce (e.g., criminal as opposed to terrorism or organized crime laws). In the case of the police and other law enforcers, this leeway mostly comes from the vague legal definitions that characterize much public order and other legislation in many Western democracies. The creative interpretation of hate crime legislation by the Spanish police to criminalize dissenters is paradigmatic and should encourage critical scholarship to continue to cast a critical eye on the police and their exercise of power against dissenters.

The relationship among stigmatization, police enforcement, prosecution, and sentencing is complex: ultimately, the quantum of criminalization of activists varies case by case according to the types of behaviors and the characteristics of those who are targeted. No clear patterns are detectable. The connection between police, prosecution, and judicial stages, in particular, requires more research, aiming to better understand how often and in what conditions repression in the courts (via sentencing) follows criminalization through the law (via enactment of new punitive

criminal or administrative measures), as well as criminalization in the streets (via law enforcement and police repression) and in the broader society (via media misrepresentations). Such empirically based research can help answer a crucial question: Can the criminalization "chain" (from discourses to sentencing) be broken and, if so, under what circumstances?

Policy transfer also needs to be better understood. Which criminalization approaches have spread across jurisdictions, and how have they been adapted to local peculiarities and factors? Previous studies have pointed out how the punitive turn and the zero tolerance approach moved from the United States to the United Kingdom and other Western countries (Jones and Newburn 2007). Protest policing strategies seem to have evolved in similar ways in Western countries (e.g., Waddington 2007), including in governing protests against extractive megaprojects (e.g., the cases of antifracking, NoDAPL, No Tap, and No Tav discussed above). More comparative research needs to be done to investigate whether an emulation process is underway concerning practices of criminalization of dissent—and their underlying discourses and rationalities.

Research should also look for the subtle exercises of power outside the domain and legal safeguards of criminal law but that nonetheless punish, silence dissent, and obtain acquiescence (Mathiesen 2004). We discussed the surveillance of activists and the forced invisibility of their protests and focused particularly on punitive administrative fines. Research on use of administrative fines against activists and protesters is relatively well developed in Italy and Spain but less so in other countries. With the exception of a few studies in Spain, research on the effects of fines on activists in particular is limited and needs further study and exploration. Studies are also needed on the broad effects of repression and criminalization on individuals, social movements, and wider society—and on their chilling effects on radicalization or demobilization. The chilling effect in itself needs to be better understood including in what conditions it works and whether it not only discourages protests and promotes self-censorship but also shapes behaviors and implies changes in peoples' attitudes and beliefs (Penney 2022). Such studies should also investigate individual responses to repression and criminalization (e.g., Honari 2018), which can illuminate factors and conditions that foster cultures of disobedience (Pali 2022).

Most of the cases discussed in this essay involve protests in public or semipublic urban spaces. We have scarcely addressed protest on social media, focusing mostly on digital activism in Spain and its related forms of police surveillance. Strategies to restrict freedom of speech on social media

are most common in authoritarian regimes but are increasingly also adopted in liberal democracies (Melgaço and Monaghan 2018; Nurik 2022). The subject undoubtedly deserves more investigation.

We decided to address the criminalization of dissent only in liberal Western democracies, synthesizing diverse bodies of scholarship that have not previously been applied to criminalization of dissent. We chose not to focus on nonliberal regimes and countries in the so-called Global South, not because they do not deserve attention. They do. It is often in these areas that the criminalization of dissent takes its most severe forms, involving the cruel punishment of activists and even their deaths (Maroto, González-Sánchez, and Brandariz 2019; Vegh Weis 2021). However, studies on criminalization of dissent in these counties have frequently been done and are often enriched by sophisticated political economy and postcolonial analyses of criminalization practices. Less attention has been paid to the subject in Western liberal democracies, both empirically and theoretically, even though many more sources of information are publicly available (Davenport, Johnston, and Mueller 2005, p. 274).

The theoretical frameworks and perspectives we have discussed provide a useful analytical starting point—along with other conceptual and analytical frameworks—for understanding the criminalization of dissent. Comparative, interdisciplinary, and collaborative frameworks are especially needed.

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