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Criminalising Dissent: A closing space for civil society?



University of Brighton

Centre for Spatial,
Environmental and
Cultural Politics

BSC British Society of
Criminology

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Introduction

The criminalisation of protest is a growing and worrying trend across the world. While in North America and Western Europe this trend has been researched extensively, the research capacity in England and Wales appears much smaller.

To address this, this seminar and roundtable discussion brought together some of the key UK-based experts on protest, direct action, repression, policing and law.

Invited speakers presented work-in-progress reports on public order policing and covert surveillance, trials and sentencing, court decisions and legislative changes.

A few of the contributions have been collected in this report.

Details

This event was made possible by the generous support of the Centre for Spatial, Environmental and Cultural Politics (SECP) at the University of Brighton and an Innovation Fund Grant by the British Society of Criminology. It took place at the Falmer campus of the University of Brighton on Friday 01 March 2019.

The organisers would like to thank everyone who helped with the organisation and all participants who shared their experiences and expertise on the day.

Raphael Schlembach
Deanna Dadusc
Roxana Cavalcanti
Francesca Kilpatrick

Brighton, 15 March 2019

Escaping the paradigm of privacy: state surveillance and the 'chilling effect' on protest

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It is sometimes asserted that state surveillance has the ability to 'chill' political protest, yet it is rarely clear what a 'chilling effect' means, or how it relates to individual rights. On those occasions where the courts have acknowledged the 'chilling effect' of surveillance, such an effect is typically associated with individual privacy, and in particular a loss of information autonomy resulting from the retention by the state of personal data relating to political activity. There is, however, an increasing body of research that suggests that the 'chilling effect' is not exclusively a matter of privacy, but rather that state surveillance has the capacity to disrupt and impede the ability of protest groups to make protest happen.

The collective capacity of social movements to mobilise (i.e. to create the conditions for protest to take place) may be constrained – or 'chilled' - by surveillance activity in at least three ways. Firstly, it may alter protester perceptions of the opportunities available to them by creating the impression of a hostile or intolerant policing environment. This dampens commitment and enthusiasm, induces a highly restrictive level of self-policing, and curtails the impetus for creativity and innovation within social movements. Secondly, surveillance may be disruptive to organisational activities, by

distracting attention from other matters, or by constraining the way in which people participate. Thirdly, surveillance may limit internal and external communication by social movement groups, by stigmatising actors (individually or collectively) and creating conditions un conducive to the building of social networks.

Data obtained from interviews with social movement actors illustrates some of the ways that these disruptive impacts arise. One activist, for example, reported that the scale and pervasiveness of police surveillance capabilities damaged her belief in the utility of protest. She stated that her belief in the utility of protest was eroded by ‘the fact they’ll go to those lengths, they will throw so many resources at things’. Another said that when organisational meetings were subject to visible surveillance people would ‘suddenly shrink, and be less confident and they wouldn’t participate’. And a third spoke of how surveillance disrupted solidarity and communication because ‘you’ve been marked out...[as] the dodgy people’.

Generally however, the courts have been reluctant to recognise that a ‘chill’ of protest activity arising from surveillance will also amount to an interference with protest rights, in particular the right to freedom of assembly and association. Instead the courts have dealt with surveillance issues almost exclusively through the framework of privacy. In the context of public protest, where there is deemed to be no ‘reasonable expectation of privacy’ in relation to being watched or photographed by state actors, a reliance on this framework is problematic. It provides no redress for those whose individual or collective autonomy is limited, and no obligation on state actors to demonstrate surveillance acts are justified and proportionate. If the right to engage in expressive assemblies is to be properly protected, there is a need to unpack with greater clarity what we mean by the ‘chill’ of state surveillance, and explore the relationship of the ‘chilling effect’ with the restriction of Article 11 rights.

Divide and Rule: The Resistible Rise of Europe's Far-Right

When Bertolt Brecht (1) parodied the Nazis by comparing them to US gangsters organising violent crime, he stressed the potential for resistance to bring them down. Their victory in the 1930s was not inevitable: A movement united against fascism could have swept them off the streets and out of power. This only underlines the importance of understanding the rise of contemporary racism and authoritarian leaders. The style of government characterised as ruling through division has become increasingly common in the 21st century in Europe and America, as explained by the discourse analysis of Ruth Wodak:

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Currently, we observe a normalization of nationalistic, xenophobic, racist and anti-semitic rhetoric, which primarily works with 'fear': fear of change, of globalization, of loss of welfare, of climate change, of changing gender roles; in principle, almost everything can be constructed as a threat to 'Us', an imagined homogenous people inside a well-protected territory' (2)

For example, in recent years there has been an increasing emphasis in Britain and the US in combatting so-called radicalisation through surveillance, labelling and repression. But even though governments believe they have a democratic mandate so to do, through their pledge to the public to fight the 'war on terror', the results of these actions can be problematic and often achieve the reverse of their

intended goal of suppression. When Muslim youth in the UK, for example, feel subject to a panopticon-style level of observation (3) online where teachers and lecturers are encouraged to surveil their IT use, referring concerns on to agencies directly linked to the security services, MI5 and MI6, as well as the police. These processes of investigation threaten punishment, they demand and manufacture consent derived from the fear of persecution. But they also reinforce the labelling of this group as 'dangerous', mirroring the Islamophobic stigmatising discourse already surrounding them and risking their becoming so alienated that the radicalisation threat becomes a self-fulfilling prophecy. This paper will apply some of the ideas to the evolving political climate in Europe, where much concern has been voiced over the growth of another form of radicalisation – populism, on the right and left.

(1) Brecht, Bertolt (1941) *The Resistible Rise of Arturo Ui* (German: Der aufhaltsame Aufstieg des Arturo Ui)

(2) Wodak, Ruth (2015) *The Politics of Fear* London: Sage x

(3) Refers to Jeremy Bentham's design for a prison where all the cells are visible to a central control point i.e. stimulating self-control through fear of surveillance.

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***Brian Doherty,
Keele University***

***Graeme Hayes,
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Hoffmann's Bargain

In February 2006, the House of Lords heard an appeal by twenty activists who had been convicted and conditionally discharged for various offences of aggravated trespass or criminal damage at Marchwood military port facility and RAF Fairford in February and March 2003, immediately prior to the start of the US/UK invasion of Iraq (Jones, [2006] UKHL 16). The appellants argued that their convictions were unsound, on the basis that the invasion of Iraq was illegal under international law (a 'crime of aggression' under Article 5 of the Rome Statute of the International Criminal Court), thereby meaning that: (i) they had a lawful excuse (under s1 of the Criminal Damage Act 1971); (ii) they used reasonable force (under s3 of the Criminal Law Act 1967); and (iii) their actions were justified under the common law defence of necessity (or duress of circumstances). The Lords dismissed the appeal, finding the public international law crime of aggression not to be a crime under domestic law, and thus s3 of the 1967 Act could not apply.

Hoffmann LJ, in his judgment, examined 'the limits of self-help' (§70-94) in the context of s3 of the 1967 Act (the use of 'reasonable force'), both for offences against property as well as against the person. Hoffmann argued that the initial convictions would have been sound even if aggression had been a crime in domestic law (§88), as in a democratic state, 'the citizen is not entitled to take the law into his own hands' (§84). Nonetheless, he also stated,

civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account. (§89)

Accordingly, Hoffmann sets out the attendant ‘practical implications [...] for the conduct of the trials of direct action protesters’, such that the acts in question

must be considered in the context of a functioning state in which legal disputes can be peacefully submitted to the courts and disputes over what should be law or government policy can be submitted to the arbitrament of the democratic process. In such circumstances, the apprehension, however honest or reasonable, of acts which are thought to be unlawful or contrary to the public interest, cannot justify the commission of criminal acts and the issue of justification should be withdrawn from the jury. Evidence to support the opinions of the protesters as to the legality of the acts in question is irrelevant and inadmissible, disclosure going to this issue should not be ordered and the services of international lawyers are not required. (§94)

Hoffman’s opinion creates a set of conventions, and a normative framework, for understanding a what he implies is a British tradition of toleration, guiding how the criminal justice system should respond to the conscientious and non-violent, but ostensibly illegal,

actions committed by social movement activists. We call this framework Hoffmann's bargain.

Our research speaks to four key questions surrounding the nature and implications of this bargain. We currently focus in particular on the trial of the Stansted 15, who were charged with and convicted at Chelmsford Crown Court in late 2018 of an offence of the intentional disruption of services at an aerodrome contrary to section 1(2)(b) of the Aviation and Maritime Security Act 1990, for their participation in a peaceful but disruptive direct action, in which they blocked the loading and departure of a Home Office charter deportation flight at Stansted airport on 28 March 2017. AMSA 1990 was designed to implement into domestic law the 1988 'Montreal Protocol' regulating international terrorism, passed by Parliament in the wake of the Lockerbie bombing. We observed this trial throughout its ten-and-a-half-week span, and interviewed a number of the defendants both prior to and after the trial.

Our key areas of exploration are:

1. Hoffmann's bargain as an 'invented tradition': the extent to which Hoffmann's bargain (i) accurately represents the charging and sentencing of social movement activists in the criminal justice system prior to Jones (this is an empirical question to be investigated); and (ii) functions ideologically to reinforce claims to the fairness of decision-making in the criminal process, located in a conservative narrative of national identity.
2. Hoffmann's bargain is presented as a guarantee of restraint (and thus as a compact favouring leniency in the charging and sentencing of activists for their commission of unlawful acts, based on their co-optation within the liberal democratic tradition). Under its terms, non-violence will result in a non-custodial sentence. Yet there is an alternative reading of the bargain: rather than a guarantee of leniency, it acts as a guide to conviction, thus ignoring other potentially available, and more radical traditions, including jury nullification. Under its terms, there is no route to acquittal for 'self-help'; if Hoffmann's bargain

reduces the likelihood that non-violent activists are imprisoned, it also ensures that they are convicted.

3. Recent trends in charging and sentencing suggest that Hoffmann's bargain is breaking down. These trends include the initial willingness of the District Judge in the Heathrow 13 case to impose prison sentences (check that is the case....we have the judgement) ; the charging of the Frack Free Four with a public nuisance offence, their conviction and initial sentencing to substantial prison terms, and the rejection of Hoffmann's Bargain by the Court of Appeal when allowing their appeal against sentence (Roberts, Blevins and Loizou [2018] EWCA Crim 2739); and the charging of the Stansted 15 under terrorism-related offences, as outlined above.
4. The judge's sentencing remarks in the Stansted trial indicate that the non-custodial sentences handed down to the activists (three were given suspended prison sentences of nine months, and all were given community service orders) nonetheless remain within Hoffmann's framework: the judge argued that the offence was serious and passed the threshold for a custodial term, but that the defendants' conduct and motives reduced their culpability. Yet Hoffmann's bargain is notable not just for what it enables and entails (conditions of arrest, charging (although the charges, in this case, were in breach of the bargain), and sentencing) but for what it excludes within the trial process, such as the use and definition of necessity (although the trial judge did withdraw necessity from the jury only after the close of the defence case, allowing the defence to advance their claims), appropriate disclosure practices, the judge's conduct of the trial, and the use of a route to verdict (which, in effect, closes down options for the jury, such as nullification, by providing the jury stepped questions that frame and shape their verdict in accordance with the law).

Academia and the policing of protest: a call for radical reorientations

The police are upholding the law. They are not upholding the Government. This is not a dispute between miners and government. This is a dispute between miners and miners ... It is the police who are in charge of upholding the law ... (they) have been wonderful.

These comments by former British Prime Minister Margaret Thatcher were made during a BBC interview aired on 9 April 1984, just over a month into the year-long coal dispute in Britain. As we approach the thirty-five year anniversary of the start of the miners' strike, this statement is difficult to reconcile with what is now known about the degree of government interference in the policing of the dispute (Milne 2014; Fine and Millar 1985).

The policing of the miners' strike shattered the myth that Britain has a uniquely benevolent police force. Yet, claims that the police act as neutral arbiters in social conflict has retained remarkable traction within official police discourses. This portrayal of police officers as 'citizens in uniform', accountable to the community rather than government, has been central to attempts to secure public legitimacy in policing since the inception of the modern police (Reiner 2010). Periodic crises in policing have been followed by attempts to (re-)secure public legitimacy, usually in the form of legislative and policy reforms to restrain police discretion and enhance police accountability.

**Joanna Gilmore,
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It is within this context that recent reforms in public order policing should be located. Triggered by the renewed crisis of legitimacy in public order policing in the aftermath of the G20 protests in 2009, a number of reforms ostensibly aimed at making public order policing more 'human rights compliant' have been welcomed by a growing body of academic writers in the area. Protest policing is said to be entering what Her Majesty's Inspectorate of the Constabulary (HMIC 2011) has described as a "new era", grounded on consent, mutual collaboration and an overarching respect for protesters' human rights.

My research on the policing of anti-war (Gilmore 2010), anti-fascist (Gilmore 2013) and anti-fracking protest (Gilmore et al 2017; Jackson et al 2018) offers a critique of the growing academic consensus on public order policing in the wake of the HMIC report. I argue that in contrast to the presumed consensual approach underpinning the official response and reflected in much of the academic literature, the relationship between the police and protesters is based upon grossly unequal power. The disparity has intensified in recent years with a significant expansion of state control over public protest, including a proliferation of public order offences, an expansion of pre-emptive public order regulatory powers, the use of private law remedies as a proxy for criminalisation and an expansion of the state's intelligence and security apparatus to monitor political movements.

During a period in which 'police partnership research' has become entrenched within universities, I argue for a radical reorientation in public order policing research from the 'velvet glove' to the 'iron fist'.

(Re)defining legitimate forms of political expression in the UK

The recent high profile cases of Rich Loizou, Simon Blevins and Richard Roberts – imprisoned for their involvement in anti-fracking protests in Lancashire – and the Stanstead 15, have highlighted the criminalisation of non-violent protest in the UK. While the release of Loizou, Blevins and Roberts following appeal, and the non-custodial sentences handed to the Stanstead 15, have been welcomed, the evidence suggests that the criminalisation of dissent in the UK continues apace.

Based on research into the policing of anti-fracking protests in England, our work has sought to highlight the role of the police in this process. We have documented experiences of violent policing and the repression of anti-fracking protests by police and in doing so, we have challenged the idea of a wholesale transformation in the policing of protests in recent years (Gilmore, Jackson and Monk 2016). But we have also highlighted how police in the UK have sought to (re)define what is, and is not, legitimate political action. This intervention by police, evident in both policy and practice, has had significant impact on campaigns against fracking, but arguably has wider implications for all forms of popular protest and political activism.

As we have discussed elsewhere (Jackson, Gilmore and Monk 2018), recent official documents have demonstrated how police define the distinction between legitimate and illegitimate forms of protest. The ability, and willingness, of police to define categories including ‘demonstrator’, ‘protester’, ‘activist’ and ‘extremist’, reveals a great

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Moore's University***

deal about the political choices being made by police in their response to different forms of popular protest.

Crucially, the divide between acceptable and unacceptable behaviour drawn by police does not rest on a distinction between violent and non-violent protest, but is instead based on the target and goal of protest. In relation to anti-fracking protest, the basic opposition to onshore oil and gas extraction, combined with a commitment to disruption, through peaceful, non-violent, direct action protest, has been sufficient for the movement to be categorised as extremist (Netpol 2018a).

We are observing a narrowing of the parameters within which acceptable protest is defined, and it is significant that it is police, through developments in national policy and local operational policing, who are the drivers of this redefinition. The category of “domestic extremist” for example, has been developed to capture forms of political activism that are seen to pose a threat to the status quo, and, as Baroness Jenny Jones (2018) has noted, “it is police, rather than the Home Office or parliament who decide how to categorise campaigners as “domestic extremists””.

The discretion afforded to police to define legitimate protest has enabled them to categorise direct action as criminal and to reinforce a view of acceptable protest as that which goes no further than a symbolic register of opposition. In the last two years, these parameters have been further narrowed through a series of legal injunctions taken out by the fracking industry on the advice of police (Netpol 2018). These injunctions have been even more prescriptive in setting out what protesters can and cannot do and have significant implications for all forms of direct action protest (Brock et al 2018). The mobilisation of the law to limit the capacity of protest is not new, but the way that the law has been used to reinforce the police vision of acceptable political action has significant implications.

The history of undercover policing demonstrates that the police in the UK have been willing to make political decisions in the targeting of dissenting groups (Bunyan 1976; Evans and Lewis 2013; Woodman 2018), but the continued drive by police to (re)define acceptable political activism in recent years is significant. The choices made, and the targets identified, further expose the politics of policing and draw

our attention to the autonomy police enjoy at local and national levels to shape, and intensify, the criminalisation of dissent.

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The #spycops inquiry

The public inquiry into undercover policing, set up by Theresa May, opened in July 2015 (Schlembach 2016). It was supposed to run for no more than three years. Now, in early 2019, we have been told to wait for another year before the first evidence will be heard. It is now not expected to report back until 2023 at the earliest.

I have been following the matters with which the inquiry is concerned for over eight years. In 2011, an acquaintance I knew as Mark Stone was exposed as a former undercover police officer. His real name was Mark Kennedy and he had acted as a 'covert human intelligence source' for a secretive political policing unit run by what was then the Association of Chief Police Officers (Schlembach 2018).

I had met Mark, and two other undercover officers, at climate change protests and on many social occasions over a number of years. Although I am certain that I was not their target, they pretended to be committed activists as well as friends, partners and fellow travellers of the network of environmentalists they had infiltrated. On at least one occasion, a 'covert human intelligence source' (Marco Jacobs) acted as an agent provocateur to set me up for a protest-related arrest. It allowed police to search my house and confiscate, as 'evidence', materials for the PhD that I was working on.

The public inquiry into undercover policing appears to show little interest in such information gathering of a 'routine nature' (Transcript, Privacy hearing – 31/01/19, p. 211) - in the words of inquiry chairman Sir John Mitting – although he admitted that the monitoring and disrupting of protest groups was so widespread that 'the task of

investigating 50 years of undercover policing is formidable' (Transcript, Privacy hearing – 31/01/19, p. 27).

There is little we know for certain, but estimates have it that over 1,000 political organisations were reported on in the 1968-2011 period and 5,000 individuals could be identified from intelligence reports made by a Metropolitan Police unit in a ten year period alone (Transcript, Privacy hearing – 31/01/19, p. 57).

The targets of undercover deployments were numerous. Amongst the first was the Vietnam Solidarity Campaign. During the 1970s and 80s, there were long-term deployments in the Socialist Workers Party and other socialist groups. They also included animal rights groups, environmental protesters and some far right groups.

For campaigners, a focus of the inquiry should be on institutional racism, given that police have admitted to collecting information on a number of black family justice campaigns.

They have also accused police of institutional sexism, referring the common practice of undercover officers having sexual and intimate relationships with women in the target groups. A 'tradecraft manual' that was disclosed last year advised officers to have 'fleeting, disastrous relationships with individuals', but several of them lasted for years before officers disappeared when their deployments were ended.

Frequently, those with personal stakes in the matters of the inquiry direct their frustration at the highly contested figure of the inquiry chair. The distrust was summed up by Helen Steel, a prominent non-police core participant in the inquiry:

If you can't see the mental distress and the fear that this process will cause to those who have already been spied on, and the risk of causing additional trauma and psychological harm to those already abused, then I am afraid to say you are lacking in empathy and it is not appropriate for you to be presiding over this Inquiry (Transcript, Privacy hearing – 31/01/19, p. 121).

The Inquiry has cost more than £10million already, with little to show for other than the alienation of many core participants.

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Open letter from UK academics: The harsh sentencing of anti-fracking campaigners sets a dangerous precedent

17 October 2018

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The co-initiators of this open letter are very happy about the court of appeal's decision to overturn the excessive sentencing of Simon Blevins, Richard Roberts and Richard Loizou. In the last few weeks, people across the UK, including over 1,500 signers of this open letter, have spoken out in shock and disbelief. Most importantly, the anti-fracking movement showed that it was not intimidated by the ruling, with people continuing to take action, not least on Monday, when Cuadrilla started its fracking operations in Lancashire and activists blockaded their site for 12 hours. We need more, not less, direct action to challenge the government's support of the fracking industry. Even though today's result is a victory, we must not be complacent. We must be vigilant and continue to resist the suppression of resistance and the criminalisation of protest in the UK.

From The Guardian: Court quashes fracking protesters' 'excessive' jail sentences <http://bit.ly/2P3K0OX>

This letter was originally titled 'Open letter from University of Sussex academics: The harsh sentencing of anti-fracking campaigners sets a dangerous precedent'. Although signers from other organisations have always been welcome, given the overwhelming support, we have officially opened it up to academics from across the country (and international allies) who wish to express their concern]

We the undersigned are writing to express our growing concern about the shrinking space for communities and environmental defenders to engage in civil opposition to fracking developments in the UK.

This week three non-violent campaigners opposing fracking were jailed for 15 to 16 months simply for 'causing a public nuisance' and for not expressing regret. Although others have received jail sentences in more recent times, this is the first time since 1932 that environmental defenders have been imprisoned for such long periods of time for staging a protest in the UK. It is also the first time ever that activists have been jailed for anti-fracking actions.

With fracking companies increasingly granted civil injunctions to prevent protest, the scope of protest is becoming more and more restricted, representing a threat to fundamental rights to freedom of expression and assembly.

Fracking is controversial in the UK. According to government surveys conducted in 2017, only 16% of people support fracking development. Given the grave environmental consequences of hydraulic fracturing and growing concerns about climate change, this is not surprising.

The ruling sets a worrying precedent, curtailing opportunities for the kind of public protests that have historically been effective in instituting the legal and policy changes that defend our environment for our future generations. We need more, not less, space for action to confront unsustainable industrial practices that harm our communities and perpetuate our reliance on fossil fuels.

We oppose this absurdly harsh sentence and join calls for an inquiry into the declining space for civil society protest that it represents.

The repression of activism in Italy: criminalising 'moral support' and 'social dangerousness'

From the Genoa G8 in 2001 to the Hamburg G20 in 2017, from anarchists to migrants' solidarity groups, there has been a worrying European trend in the criminalisation of local and international networks of activists. These forms of criminalisation went far beyond traditional forms of policing of protest and arrests of protesters. While the repression and control of protest have increasingly become militarised, the scope of criminalisation reached further than the 'protest event' in itself. All over Europe, we are witnessing widening international police co-operations for arrests, investigations, profiling and prevention of travel of activism, often associated with the closing of international borders before large demonstrations. Moreover, networks of activists are increasingly being criminalised by the use of 'organised crime' laws and anti-terrorism measures, which have the effect of widening the scope of criminalisation, from protest events and individual protesters to entire networks of activists.

In Italy, this is done through the use of legal tactics that remove the need of evidence for the criminalisation of activism, thereby suspending key principles of due process. The vague concepts of 'moral support' and of 'threat to social disorder', together with the aggravating circumstances of 'criminal association' are increasingly being used as a strategy to extend the scope of criminalisation to an aleatory potential dangerousness of activism, thereby allowing the use of 'Special Surveillance Measures' that preventively restrict people's freedom of movement and association. The following provides a summary of the key milestones of these forms of criminalisation.

Devastation and Plunder: criminalising 'moral support'

In the aftermath of the anti-G8 protests in Genoa, in July 2001, activists were charged with 'Devastation and Plunder': this law was created in 1935, during the Italian fascist regime, and it addressed

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extreme forms of 'social dangerousness' to the constituted order: at the time, a fascist order. In 2011, ten years after the protests took place, 10 activists were condemned to a total of 100 years of prison under this law. The re-adaptation of this old law was particularly problematic due to its capacity to incriminate the 'moral support' to Devastation and Plunder. This way, activists are *not* put on trial for their alleged behaviors during the protest: just the fact that they were present at the protest, in a context where 'devastation and plunder' supposedly occurred, was enough to consider them guilty for the events, due to their alleged moral support for the events. While more than 200,000 people converged during those days, pictures of two of protesters on a moppet in different locations where 'things were happening' was enough to consider them responsible for everything that happened during those three days of urban *guerrillas*.

Similarly, after a large demonstration in Rome that took place on October 15th 2011, [Davide Rosci](#), [Mauro Gentile](#) and Cristian Quatraccioni were convicted to 6 years in prison because a police car was set on fire. The protest brought together 5,000 people but, again, the only evidence for conviction of the three protesters was a picture of them standing next to the vehicle on fire, and laughing. The public campaign that followed, under the slogan 'Many of us were laughing' ([A ridere eravamo in tanti](#)) highlighted the novelty of these legal tactics that criminalise one's *presence* to a collective protest, remove the necessity of material evidence, and deliver exemplary punishments by imprisoning individuals as representative of an entire movement.

Both in this case, and in the case of the 1st of May 2015 –No Expo demonstration in Milan, where both Italian and Greek anarchists were convicted for 'Devastation and Plunder', activists were not arrested during the protests, but after a long investigation by the DIGOS (Special Operations Division) that led to their identification through footage and video materials. All charges were increased by aggravating circumstances of 'criminal association': the collective nature of the protests, and the either material or ideological involvement of individual activists to broader struggles, was considered as a key element in defining their participation to so called 'social disorder'. Therefore, not just actions and behaviors, but the ideological inclinations of activists, as well as their alleged 'social dangerousness' were put on trial. The latter, defined as their capacity

to contribute to social disorder, is arbitrarily based on evaluations of their surroundings, social networks, occupation and overall lifestyle.

Special Surveillance Measures: containing ‘social dangerousness’

The trend continues with the recent application of [‘special surveillance measures’](#) for containing the alleged ‘social dangerousness’ of activists. ‘Special surveillance measures’, usually reserved for cases of organised crime and terrorism, entail the revocation of suspects’ passports and driving licences, as well as evening curfews and the prohibition to meet more than three people at once. Special Surveillance measures (L. n. 1423/1956) are a heritage of fascist preventive tactics, which are not based on the evaluation and judgment of behaviors enacted in the *past*, but of their probability to happen in the future.

In January 2019, three years of ‘Special Surveillance’ were enforced on [5 activists](#) due to their participation to the YPG struggle in Rojava. Again, activists were not arrested due on evidences of their actions, but on suspicions based on their political and ideological inclinations, their social networks as well as their overall lifestyle. The activists ‘moral support’ to what the Italian State defines a terrorist organisation (paradoxically dismissing YPG’s attempts to fight against ISIS) is equated to participating in terrorist activities.

Similar surveillance measures and definitions of social dangerousness were also applied to [No-Tav activists](#) in Val di Susa, where the accusation of ‘moral support’ and ‘criminal association’ keep on justifying arrests and convictions. In the aftermath of large demonstrations that took place between June 27th and July 3rd 2011, 38 activists were sentenced to a total of [140 years](#) of imprisonment, each one receiving between 6 months and 4 and half years. Although they were eventually acquitted, four other activists, suspect of damaging to property during an act of sabotage of the construction of the High-Speed train line, were accused of terrorist activities: their ‘terrorism’ defined as ‘damaging the *image* of Italy’.

A European Trend?

The Italian case is not isolated and seems to constitute the forefront of European trends. In Spain, in 2015, the so-called [Operación Piñata](#) in association with [Operations Pandora](#) and Pandora II mobilised three

years of investigations that led to 14 house raids and the arrest of 33 anarchists with the attempt to prove the existence of “coordinated anarchist groups with [terrorist ends](#)” which “subvert public order and seriously disrupt the social peace.” as well as and the offence of “criminal organisation” (Article 570bis of the Criminal Code). So called ‘Coordinated Anarchist Groups’ (GAC), were accused of the “promotion and the coordination of sabotage”, mostly for distributing anarchist fliers and zines, including an essay titled ‘[Contra la democracia](#)’, as well as the use of encrypted communication systems defined as ‘extreme security measures’. The public prosecutor openly stated that rather than investigating criminal acts, the priority was “[investigating the organization, and the threat they might pose in the future](#)”. After weeks of pre-trial detention, most anarchists were released on conditional bail under judicial supervision (passport confiscation, ban on leaving the territory, and to sign-on every 15 days).

While these are just few examples, and more research on the rest of Europe is needed, there is a clear pattern that requires new forms of resistance to these forms of criminalisation: a resistance that needs to reach beyond the walls of the court-rooms and beyond the legal defence of individual cases, and that instead formulates collective strategies to counter criminalisation at a local and international level.

The criminalization of dissenting communities in Brazil

Brazilian informal urban settlements or *favelas* have a long history of resisting colonial, political, economic and racial oppression (Zaluar and Alvito, 2006). Their resistance cannot be narrowly defined as single or episodic. Instead, their multiple forms of community resistance are embedded into daily life, language, song, dance, and ways of living, self-construction of housing and subverting patron-client relations for example. Their resistance is best thought of as ‘weapons of the weak’ (Scott, 1985). Yet, their struggle for social justice, access to health, education, housing, living wages and political voice has become more politicised and criminalised than the forms of resistance Scott described.

Brazil has a long history of criminalising the activities of its poorest and most diverse communities. Samba – one of the nation’s most prominent musical forms, which emerged in the *favelas* and has been used by black communities to criticize and dissent white privilege – used to be criminalised. New popular styles of music in the *favelas* such as Brazilian funk are also criminalised through coercive policing and control of the *baile funk* (outdoor funk parties). The same story is familiar with the past criminalisation of *capoeira*, a sport, dance and martial art, which emerged as a form of resistance to slavery in Brazil’s colonial period. The very word ‘marginal’ in Brazilian Portuguese is used to conflate people who are socially and economically marginalised with criminality (Perlman, 2010). The word ‘marginal’ in Brazil is largely used as an insult, it is understood as the same as ‘criminal’.

After the most recent re-democratization period in Brazil (1985 onwards), there was hope that social movements and leftist activists had gained voice, pushed away the military and authoritarian governments out of politics. The left gained some space in mainstream politics. The Pink tide in the 2000s, that is, the period of left-wing politics in Latin America, was a time of hope for Brazil’s subaltern and often criminalised communities.

In the 2000s, and in the run-up to mega events such as the World Cup and Olympics in Brazil (2014 and 2016), a number of ‘public security’ projects emerged throughout the country allegedly aiming to curb Brazil’s high rates of homicide. Such projects often assumed the narrow view that crime and violence reside exclusively in favelas or in the dissenting communities I described above. This is seen in the wording of the titles of these programmes of securitization and in the application of ‘hot-spot’ policing in poor communities. For example, the program known as ‘Police pacification Units’ in Rio de Janeiro assumed that the poor needed to be ‘pacified’. The programme ‘Pact for Life’ in Pernambuco is another illustration of the securitization and criminalisation of dissenting communities process, where my previous research revealed the criminalisation of the use of public space by poor black people (Cavalcanti, 2017a, Cavalcanti, 2017b).

Despite the democratization of the country, transgressing social and spatial boundaries is increasingly risky in Brazil’s highly unequal society. The workers’ party allowed a stew of punitive neoliberal politics in the penal sphere, permitting the growth of mass incarceration, making political coalitions with the political right, while also investing in education, health and welfare (Azevedo and Cifali, 2015). The result was explosive. The left speedily lost its support during Brazil’s most recent economic down turn (2013-date). Right wing politicians had already re-gained majority in congress and were ready to use Brazil’s conservative media to associate the left with corruption, and use the politicization of the judiciary in its favour to oust the worker’s party.

The end of the Workers’ Party government was characterised by a number of street protests, which ranged from student movements against rising bus fares to right-wing, middle-class and elite protests for the ousting of president Dilma. Now, Brazil’s dissenting communities face even larger challenges with the rise of far-right president Bolsonaro to the presidency. Little is known at this stage about how much of Bolsonaro’s rhetoric will turn into policy and practice. But what he has said in public is highly concerning. His comments – celebrating torture; announcing that Brazil’s most recent military dictatorship (1964-1985) should have shot to kill more adversaries; telling a congresswoman she was too ugly to merit rape; declaring that he would prefer his son to be killed in a car crash than gay; declaring he would deregulate protections over the Amazon

rainforest; and promising his followers he would rid the land of the socialist left – are especially concerning for subaltern groups and criminalised communities. They remind us of the need to reorganize and continue the struggle for social justice.

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