

The growing criminalisation of protest in Europe and around the world

Wednesday 6 December 2017, by [Della PORTA Donatella](#), [NORMAN Anna](#) (Date first published: 4 December 2017).

How and where is criminalisation of protest a growing trend? Who are the actors at play? And what are the dangers signs we should be looking out for?

Anna Norman (AN): Is criminalisation of protest a growing trend in Europe and around the world? Can you talk about ways that protest is being repressed by different states.

Donatella della Porta (DP): I think it is a growing trend. I don't have quantitative data to show this, but there are many signals. There is a growing criminalisation of protest in 'hybrid' regimes, but also in democratic countries. In the hybrid regimes, some countries are going more and more in the direction of repression. Turkey is one example. Hungary is another – the criminalisation of protest has been developing very quickly there, with the invention of new types of crimes and also the implementation of very old provisions in the legal system. In Turkey, the attempted coup d'état [in 2016] is being used as an excuse to implement a lot of repression, on the basis of claimed contacts with the golpistas; and [repressive powers] have been used very broadly against journalists and activists. We have been doing some research on groups that support refugees; these types of groups are actually quite moderate in their claims, yet charities in countries like Turkey are less and less able to do voluntary work. There is less open repression in Hungary, where it's more about public stigmatisation, with NGOs being accused of being Soros-financed, and acting against Hungary and so on.

What is striking is that this increasing criminalisation of even voluntary types of work is developing very quickly, even in democratic systems. In the UK, 'crimes' such as sleeping rough have been used against migrants to expel them. And data collected by NGOs has been misused. In Mediterranean countries, NGOs such as Jugend Rettet and also Save the Children, have been accused of helping migrants and of helping the clandestine traffic of human beings; some activists have been put on trial. And types of legal provisions that were conceived for very different types of crimes are now being used against peaceful protesters, or against political activities.

Take also the response to the recent civil disobedience in Catalonia, where people who were acting peacefully have been put in prison. The government has tried to justify the violent response by the police against Catalans who went to vote in their referendum on 1 October through accusations of sedition and rebellion.

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In the United States at the moment there is also enormous use of coercive power against opposition,

with recent movements like Black Lives Matter subject to brutal forms of repression. What's more, terrorism and other forms of political violence are used to justify the massive use of state surveillance against activists and citizens. The powers of border police to control your phones and your computers – even if you haven't been accused of anything – have increased dramatically.

AN: Anti-terrorism laws and the refugee crisis have been used by states as a way of repressing protest and social movements. Is this an ideological strategy by some states?

DP: I think that there is, from a certain point of view, a strategy. There are always tendencies by police to ask for more power, and by law and order coalitions to see solutions to problems in increasing repression. There is instrumentality by some; others believe that we are in situations in which the challenges are so big that you have to reduce civil liberties. It's certainly the case that laws and practices that were originally developed to combat terrorism are now used very broadly against political activism and social movements. Take the example of the anti-G20 protests in Hamburg [in July 2017], where the police intervened in a very violent way, using force to disperse peaceful demonstrators. And how responsibility has been put on these demonstrators and even on NGOs for the violence carried out by small groups of protesters. Police are more and more armed, Robocop-style, and coercive actions are more and more widespread and are being used more and more in non-appropriate ways to persecute legal, peaceful, non-violent protest.

The tendency by institutions has been to deny the existence of problems, and to shut down the channels that were open for talking with protesters

When the legitimacy of governments is challenged, rather than reacting by trying to understand what is at stake and trying to devise strategies to talk with the protesters, there is to the contrary less and less possibility of opening up channels of negotiation. This was very clear during the G20 summit, which presented a strong challenge to the very legitimacy of power of the 20 leaders in Hamburg. And their response was to deny any rights to criticise. So I think also in situations of broad crisis of legitimacy, the tendency by institutions – rather than reflecting on how to solve problems – has been to deny the existence of problems, and to shut down the channels that were open for talking with protesters.

This is a tendency that has increased since the financial crisis of 2008. What has developed further with the refugee wave is also a push to the right, which has convinced centre-right parties, and even centre-left parties that they need more and more of these repressive types of policies. So, in Germany, there was no political party, with the exception of Die Linke, that wanted to understand what went wrong in the interactions between police and the demonstrators in Hamburg. And in Spain, the Socialist party is voting with the centre-right parties to trigger Article 155, which entails also repressing peaceful movements. And in the United States, since 9/11, a growing spectrum of laws and legal provisions have been developed that actually prove to be of very little help in the struggle against terrorism, and are instead broadly used to repress activism.

AN: Who are the different actors at play in this increasing repression of protest, particularly through the use of anti-terrorism laws? And what role does the judiciary play?

DP: There are many new laws concerned with crimes related to terrorism and there are more laws and regulations that give more powers – more arbitrary powers – to the police. These have also been used a lot during anti-austerity protests, such as the Occupy movements. Old laws – for instance, laws concerning the use of fire in public space, or against vagabonds – are also being reinstated. Maybe you remember during Occupy Wall Street, in New York, the laws that were used to prohibit people putting their bags down in public parks? All of these things have also been done in a very aggressive way; states have created a situation whereby use of public spaces, of squares, of parks,

and so on, has become more and more controlled, less and less free.

Judiciaries have intervened in different ways. In some cases, the judiciary has defended the right to demonstrate, while in others they have also used these types of provisions against demonstrators. You may have followed the situation in Catalonia, with the presence of two different courts with two different types of policies. The Supreme Court (Tribunal Supremo) is more independent from the political power, while the Audiencia Nacional, which is an adaptation of the Franco-era special tribunals, has been the one that has been particularly repressive against the independence movement. This situation, of division within the judiciary, is also played out in other nations.

In some countries there are associations of democratic judges that are struggling for laws that can be used as checks and balances on the brutality of the police. In Italy, in a few weeks time, I have been invited by judges to join a discussion on torture by the police, which has been practically relevant in Italy recently. So [as well as being an agent for repression], judiciaries have also in some cases introduced checks on repression. However, the criminalisation process doesn't necessarily depend on the judiciary, as a typical pattern is that the police will make arrests that the judges do not agree with, and then the judges free the protesters. But in the meanwhile the demonstrations have been disrupted, escalations have been produced, people have been arrested, and so on.

AN: Can you tell me more about the issue of state surveillance of protest, and how this contributes to increasing repression and criminalisation. And what about the role of private security forces?

DP: This is another issue that is also of increasing relevance, and there have recently been scandals in the UK, a re-enacting of scandals, relating to the massive use of secret police infiltrations, with no political accountability.

There are different types of private/secret police forces in different countries. Very often they're part of the secret services, and so are often directly controlled by the government, and you'll usually have secret services for foreign affairs and secret services for internal affairs. The secret services for internal affairs - as well as the secret bodies within the police force - have often developed infiltration strategies, including the infiltration of peaceful groups. (There was some debate in the UK some time ago surrounding a secret police agent who infiltrated an environmentalist group.) And this is something that has been developing a lot.

Private security is also a big concern because there are more and more, including in democratic countries, semi-private and completely privatised spaces. So, malls, airports, schools, universities... these are all spaces in which law and order types of controls are often outsourced to private police. The same can happen in factories and in shops, and so on. And in these cases, accountability is lower than it is for state police. Private police are accountable to private firms. This is not something new, it always used to be the case in the past. I remember the repression of the labour movement in Italy Fiat, for instance, had an internal private police force, which functioned as an anti-union force. This was heavily criticised and in some cases this type of private policing declined, but I think now it is increasing again.

In most cases, these private and sometimes violent forces are being used against people who have very few possibilities to defend themselves - especially refugees, and migrants without papers. So this goes beyond the repression of political activism.

AN: What are the big danger signs that we should be looking out for?

DP: The criminalisation of protest may have two types of effects, which are both dangerous for the

political system.

Firstly, criminalisation could be successful, creating fear in people. And when people are scared by a regime, this usually radicalises protest, because people correctly think that there is no more space for peaceful resistance. At the same time, the process of criminalisation reduces the capacity of governments to collect information about problems and from finding alliances to solve problems. The act of protest very often produces positive ideas, leading to proposals; protests make people aggregate, and this brings about mutual help, solidarity and so on. So protest brings about positive side effects in terms of solidarity, which a repressive approach would not allow to develop.

At a certain point you need interactions between those who control coercive powers and the movements

If criminalisation of protest is not effective – think about the Arab Spring in 2011 – then those in power also risk strong radicalisation of the protest aims. And so less and less legitimacy for representative institutions, police, political parties and so on, and they will fuel a sort of growing mis-trust in these institutions and then be something different. This can also be a positive type of development, but as the situation in Catalonia indicates, at a certain point you need interactions between those who control coercive powers and the movements. You need to interact with the outsiders; escalations are not the best way to convince people to prove their points.

AN: What steps can we take to try to reverse the trend for criminalisation of protest and repressive state responses?

DP: Well, I think that to stop it one needs to build broad coalitions, because the different agencies that are involved in the criminalisation are also not homogenous. So from the point of view of the legal system, I think one needs to put pressures at different levels – on national levels but also at the level of the European Union – to develop specific denunciations of these forms of repression, and to use all of the instruments that can bring about support and alliances from within these institutions. So there is a tendency in the police to align with the right, but there are also democratic unions within the police and there are units and policeman who are less keen on repression. There have been denunciations from inside the police, which are blowing against the use of some forms of legal controls on demonstrators. The judiciary is also divided. So I think one needs to use all these. There is very good knowledge by specialised groups like State Watch, or other groups specifically campaigning for civil liberties. And I think having information and spreading information and using investigative journalism is all very useful.

Repression is hitting very hard in universities, particularly in countries considered to be hybrids between democracies and utilitarian regimes. And so there is also inside the universities resistance by academics with information about repression of freedom of teaching, research, and so on. It also makes me think of when civil rights groups mobilised against very repressive attitudes in Chile and Argentina; what was effective was to broaden the range of groups involved through networks of democratic lawyers, democratic journalists, democratic judges, NGOs, and through lobbying the United Nations and so on. And also a lot of media work. These responses were all part of an international campaign oriented to produce a boomerang effect against the dictatorship.

We should also use resources available in democratic countries to help countries where repression is hitting hardest at the moment. So, in Turkey and Hungary, we can use resources from outside, transnational campaigns in support; for instance, the campaign that developed in support of the Turkish Academics for Peace or Central European University in Hungary.

INTERVIEW: ANNA NORMAN

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P.S.

* Open Democracy. 4 December 2017:

<https://www.opendemocracy.net/protest-donatella-della-porta-interview>

* This interview is part of Right to Protest, a partnership project with human rights organisations CELS and INCLO, with support from the ACLU, examining the power of protest and its fundamental role in democratic society.

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