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## RESEARCH ARTICLE

# The production of punishment on social mobilisation in the neoliberal state. The case of Catalan pro-independence movement.

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**ABSTRACT:** This manuscript takes as its starting point the punitive extension of the neoliberal state over dissent and contentious political participation, questioning how the repertoires of judicial and police agencies lead to punitive actions, with material and symbolic violence. Starting from a legislative and political-media sphere of criminalisation of pro-independence activism, a dual strategy of punitive advancement against protest is identified. The first involves a resignification of the concept of violence projected onto collective action, together with an ideological interpretation by the courts, defined as judicial militancy. The second lies in an intensification of police violence as a tool for controlling political participation in the public sphere, derived from the activation of specific factors of the police subculture, such as the warmongering conception of protest, national defence linked to the illegitimacy of demands, a weak acceptance of legality and a habitus of male domination.

This is an ethnographic study, with interviews with activists prosecuted in legal proceedings, lawyers and family members, a documentary analysis of legal and journalistic material on the cases, and participatory observation in protests within the period. A contextual study is carried out with the creation of a database of protests from 2017 to 2021 to identify their main features, such as police actions and those of the participants.

**KEYWORDS:** criminalisation, punishment, protest, police violence, pro-independence activism

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## 1. Introduction

Over the past decade, we have witnessed a wave of mobilisations against neoliberal policies which, in the case of Catalonia, has overlapped with an economic, territorial and political legitimacy crisis (Della Porta et al.,

2017), leading to a cycle of protest dominated by demands for independence and secession from the Spanish state. This has triggered a series of repressive and punitive actions against the mobilised population. There have been reports of arbitrary and disproportionate police violence, as well as massive and random legal proceedings against pro-independence activists.

For these reasons, it represents a relevant example for analysing how the neoliberal state's logic of control and punishment operates, providing an opportunity to delve deeper into state-citizenship and state-collective action relationships. For the same reasons, it enables an approach to the strategies and actions used by the state, through judicial and police agencies, to deploy the punitive logic from which the study is based.

Although studies on criminalisation and political repression condition this process to the degree of threat perceived by elites to their interests (Davenport 2000; Earl and Soule 2006: 145), the present study shows how the deployment of punishment, as a characteristic of repression, is determined by cultural factors of the judicial and police institutions that apply it with significant autonomy, beyond legal constraints in a specific repressive context.

To this end, forms of criminalisation are analysed based on a description of the political-discursive and legislative sphere of the state. Subsequently, the judicial strategy is addressed, based on a resignification of the idea of violence and a praxis defined as judicial militancy. Next, the factors of the police subculture that participate in a model of intensified violence as a tactic for controlling protest and dissent are outlined. In this vein, the punitive shift in policing (Vitale, 2017) is assumed from a previous model of selective incapacitation (Gillham, 2011) where punishment becomes an end in itself, through arbitrary and indiscriminate violence.

The study set aside the idea of preventive punishment in favour of a notion of punitive advancement in which contentious political action is defined as a crime by the political-discursive sphere, the criminal justice system and the police agency, based on their interpretation of the context of protest and the threat posed by the independence movement.

Finally, the analysis seeks to connect with the necessary debate on the "acceptance of state violence in a society founded on the prohibition of force, in an irresolvable contradiction between force and law" (Monjardet, 1996:281).

## **2. From criminalisation to punitive measures against protest**

A process of criminalisation takes place whereby "behaviours and individuals are transformed into crime and criminals" (Michalowski, 1985: 6). This basic definition, applied to political dissent, requires an initial process of stigmatisation of collective action, in which it is redefined as a threat and interpreted accordingly as a "security problem" (Selmini and Di Ronco, 2023: 221), which enables it to be treated as a source of crime in the criminal sphere. This link is in fact part of a securitisation strategy, whereby political elites position themselves "through discourses on a particular issue treated as a threat to survival, which in turn (with the consent of a significant part of the electorate) enables emergency measures and the suspension of political normality to address that issue" (McDonald, 2008: 567). It is also the result of a set of practices, places and devices where discourse is just one more security element, alongside everyday acts such as information gathering, identification checks and security camera recordings (Huysman, 2011). From this security logic, the independence movement and its actions are defined by the state as political dissent and a serious threat to the constitutional order (Camps et al., 2021: 662).

Criminalisation encompasses the concepts of repression, penalisation, control and stigmatisation (Selmini and Di Ronco, 2023: 201), which allows for the inclusion of both the discursive actions of the security framework and the punitive actions of state actors. It delineates a repressive infrastructure that combines soft

repression tactics (Ferree, 2005) with a predominance of symbolic forms of violence, and hard repression, with a predominance of material and direct violence. In the former, three categories can be distinguished, characterised by the use of non-violent means: ridicule, stigmatisation and silencing (Ferree, 2005: 142). It is a cultural strategy that can be used by political, civil and media actors and aims to discredit and damage the public image of the movement and its activists (ibid., 2005). Harsh repression involves a series of coercive attempts by state actors to suppress activism through violence, harassment and surveillance (Davenport, 2007), which is associated with police management of protests and a growing continuum of control and surveillance actions in activist environments. This analytical distinction does not, however, anticipate how police and judicial actions can equally generate stigmatisation, self-censorship and discredit. The common goal of repression is in any case "to prevent, control or restrict non-institutional collective action, including its initiation" (Earl, 2011: 263).

If criminalisation is a process in which various repressive tactics converge, punitivism is a characteristic of this process, in the sense that criminalisation can be more or less punitive (Selmini and Di Ronco, 2023: 210). In the current context, we are witnessing, in most Western societies, an increase in incarceration rates, countless examples of penal populism and growth in public investment in different forms of policing and security (Calvo and Portos, 2019: 2). This entails an intensification and diversification of forms of violence and police control, spurred on by the emergence of technologies of repression and punishment, concomitant with the reaffirmation of the criminal justice system as a source of legitimacy for the neoliberal state (Wacquant, 2010). The law thus becomes the basis for repression, a legal repression (Balbus, 1973; Barkan, 1984) where a preventive and creative use of the law is developed by the judicial apparatus in proceedings and cases linked to social movements, experiencing a "perversion of justice, from the bottom to the top, from the police to the Supreme Court (Lewis et al., 1966: 289). The need for (re)legitimation of the neoliberal state replaces the traditional function of protection through the provision of welfare with another of protection through the defence of law-abiding citizens against the precarious and dissidents, the non-citizens, who embody a threat to the status quo. It embodies a galvanisation of social boundaries and the othering of a large part of society, defined by social deviance. Thus, the centrality of the criminal justice system as an expression of sovereignty and regulator of symbolic and material boundaries, together with the spread of punitive policies, is compounded by the exaltation of the bureaucratic criminal justice system as a means of increasing control over the working classes through punishment (Wacquant, 2010: 212), all three defined as guarantors of the neoliberal social order.

The analysis of repressive state actions, penalising actions (González, 2019), includes police actions, the criminal justice system and also the participation of other actors such as the mass media. This phenomenon is approached from a strategic consideration of punitive advancement rather than preventive punishment, as outlined in some studies of punitive sociology. The reason is that, despite the labelling of the independence project as a threat to security, which could trigger a preventive response to minimise risk, in the sense pointed out by Johnston and Shearing (2003: 96) of "anticipation of the commission of the crime", the analysis does not suggest this preventive nature. What is affirmed is a criminal categorisation of protest and pro-independence activism, which conditions the actions and discourse of judicial and police agencies. Mobilisation for independence is in itself the crime.

### **3. Political and protest context in Catalonia**

The process of negotiating a new statute of autonomy for Catalonia ended with a ruling by the Constitutional Court (TC, 31/2010) declaring much of its content unconstitutional. This triggered a first demonstration

(10/07/2010) under the slogan "We are a nation. We decide", led by the Catalan government (PSC, Socialist Party).

Previously, in 2009, popular consultations on independence were held in many Catalan municipalities, 518 between 2009 and 2011 (Vilaregut, 2018: 231). In 2012, a cycle of protests began, characterised by the monopoly of two political actors, Òmnium and ANC (Catalan National Assembly), with mass demonstrations continuing until 2017. At the same time, the Catalan party system shifted towards the demand for self-determination and the right to decide, with the creation of the joint candidacy of ERC (left-wing Catalan party) and CIU (conservative Catalan party) of "junts pel sí" in 2015, after the progressive increase in the pro-independence vote. Support for independence rose from 19.4% in February 2010 to 48.5% in November 2013 (Della Porta et al., 2019: 5). Against this backdrop of growing collective demand, the state's "belligerent institutional hostility" favours the construction of a "democratic-emancipatory framework" (Della Porta et al., 2017: 33-34). This transcends class divisions and the traditional boundaries of Catalan nationalism, establishing "different discourses around the meaning of nation and its association with class and redistributive issues" (Della Porta and Portos, 2020: 406). The broad consensus on the right to decide (Della Porta et al., 2017: 101) connects different elements of national identity with the democratic narrative of the right to self-determination, offering a utilitarian justification for nationalism (Bello, 2015).

The period prior to the study framework (2009-2017) is defined as performative-symbolic, with national holidays, *Diada*, every 11 September, taking centre stage in the form of mass marches (Della Porta et al., 2017: 3) where protest is dramatised and gamified, with coordinated actions by participants, such as the Catalan Way on the *Diada* in 2013<sup>1</sup>. The model of institutionalisation of protest practised by the ANC and Òmnium is based on a powerful infrastructure, with 500 local assemblies of the ANC and 50,000 members (Cramereri, 2015:115) and more than 100,000 in the case of Òmnium. The holding of the referendum on 1 October 2017 marked a turning point, both in the protest model and in the state's response. Its prohibition by the Constitutional Court and the police actions ordered by the Public Prosecutor's Office and the High Court of Justice of Catalonia (TSJC) led to the deployment of 6,000 police officers and civil guards in Catalonia in the so-called Operation Copernicus, aimed at preventing the referendum from taking place (Palou, 2017). Prior to this, actions were taken to prevent the referendum, including the arrest of political leaders, searches of the Regional Ministry of Economy and harassment at the headquarters of the CUP (pro-independence and anti-capitalist party) in Barcelona, among others (ibid).

The illegalisation of the referendum and the hostility of the state have closed off political opportunities and made institutional negotiation strategies impossible, leading to a downward appropriation of opportunities, a downward escalation of the movement (Della Porta et al., 2019: 2), with organisational fragmentation of the mobilisation. This is how the CDRs emerged, first as Committees for the Defence of the Referendum, and later as Committees for the Defence of the Republic.

The post-referendum period was characterised by limited disruption, with the emergence of police violence and disruptive actions in some protests, linked to the loss of the monopoly on protest by the central actors, the ANC and Òmnium, and the impact of state violence on the referendum, with more than 1,000 civilians injured<sup>2</sup>. In this period, 60 protests between October 2017 and October 2019 are analysed. Subsequently, a period of disruptive escalation (October 2019-February 2021) is defined, beginning with the protests against the trial

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<sup>1</sup> Regarding the Diadas, see: <https://int.assemblea.cat/es/que-es-la-anc/la-diada-fiesta-nacional-catalana/2013-por-todo-el-pais-la-via-catalana/>

<sup>2</sup> See the report issued by the Catalan government: <https://govern.cat/salaprensa/notes-premsa/303722/comunicat-sobrepersones-ateses-carregues-policials-l-o>

verdict<sup>3</sup> (14/10/2019) and ending with the calls for the imprisonment of rapper Pablo Hasel. The fragmentation of actors at the micro level remains, but there are attempts at coordination and increasing appropriation of opportunities for mobilisation, as in the case of *Tsunami Democràtic*, with mass calls for action in the form of collective challenges, via Telegram and Twitter, without identifiable leadership, such as in the occupation of the airport or the blockade of the AP7 motorway on the French border. A lower frequency of protests and a hardening of police and participant actions can be identified across the 39 protests in the series.

**Table 1. Summary table of protests 2017-2021** (for categories see appendix 2)

Period of Limited Disruption (October 2017-October 2019)	Period of Disruptive Escalation (October 2019-February 2021)
60 protests	39 protests
18% police actions categories 5-8: baton charges, projectiles, vehicles against protesters, arrests and damage to protesters, including arbitrary police violence, persecution, harassment and violent arrests	46% police actions between 6-11: charges with projectiles to high-intensity violence, arrests and serious assaults on protesters
22% actions by participants in categories 5-7: occupation of private institutions or entities, blocking of roads, train stations, underground stations, throwing objects at the police and barricades	33% actions involving categories 7-10: actions by demonstrators, ranging from barricades and throwing objects to confrontations with the police
85% protests without significant material damage	48% protests with material damage 23% with significant damage to public property
92% protests without arrests or injuries	36% protests with arrests and injuries 20% category 2: serious damage to protesters, > 8 injuries, > 15 arrests for protesting

Source: own elaboration

It is worth highlighting the third quarter of 2019, when, especially around the post-sentence protests (14-20 October), there was a particular episode of police violence and disruption of the mobilisation. The Saidavi report (2019) by Irídia, a human rights organisation, confirms the disproportionate use of force, injuries to protesters, persecution, violent arrests, harassment, humiliation, degrading treatment and injuries caused by projectiles (Saidavi Report, 2019). The newspaper Ara (14-20 October) reports 214 arrests, 33 in preventive detention and 639 injuries (226 police officers and 413 civilians) during the week of protests following the sentencing. The Mossos d'Esquadra (catalan police force) information unit also identified 97 incidents linked to unannounced gatherings and demonstrations, with 109 incidents, 14 arrests and 460 identifications.

Of the 41 cases in the sample, 15% (6) are linked to participation in protests during the limited disruption period (Holi protest, TSJC, country shutdown), while the remaining 85% are related to participation in post-sentence protests, Urquinaona, AP7 roadblocks and *Tsunami Democràtic* actions at the end of 2019, and protests for Pablo Hasel in February 2021.

<sup>3</sup> Verdict on the Catalan independence process political leaders, la *sentència del procés*:

<https://www.poderjudicial.es/cgpi/es/Poder-Judicial/Noticias-Judiciales/El-Tribunal-Supremo-condena-a-nueve-de-los-procesados-en-la-causa-especial-20907-2017-por-delito-de-sedicion>

## 4. Methodology

In order to properly analyse the cycle of mobilisation and the context of protest, a database of 135 protests (2009-2022) by the independence movement was compiled, selecting the protests corresponding to the period 2017-2022 (99). A coding process was established, based on a relevant adaptation of the variables present in the Dynamics of Collective Action Project<sup>4</sup>. A total of nine variables with 48 possible categories were used. They are presented as continuous variables, i.e., as a consecutive and coherent set of categories that differ in the gradation of the variable (Appendix 1).

It is compiled from an analysis of Catalan digital media that specifically monitor the protest cycle, cross-referenced with documents from civil and political rights organisations (Iridia and OSPDH, Observatory of the Penal System and Human Rights), the Mossos d'Esquadra and the Ministry of the Interior (security reports, annual reports and police reports), for greater credibility. Following this analysis, a set of protests is selected, due to their disruptive nature (see table 3), where police violence, identifications and arrests of activists occur. Thus, a sample of 41 cases of activists prosecuted for participating in these selected protests is compiled, with a documentary analysis of their legal proceedings, using legal, police and journalistic material. Thirty in-depth interviews were conducted, both in person and online, 20 with activists who had suffered reprisals, 3 with lawyers and 7 with family members and members of support groups (Appendix 2). The methodological design is completed by participant observation in protests linked to the case studies. The qualitative analysis follows a narrative analysis methodology in which contextual and documentary information collaborates in the interpretation of the empirical material from the interviews, revealing the possible meanings of what was experienced and at the same time unfolding a reflexive space for thinking and learning (Goodson, 2010), accepting the partiality and temporality of the narratives that "construct, update and sustain reality" (Cabruja et al. 2000: 68).

## 5. Criminalisation in the legislative and political-discursive sphere

The recent interest in the study of the criminalisation of political dissent and disobedience (Pali, 2022) has shifted the traditional focus that defined it as a problem of authoritarian regimes to accept its centrality in democratic regimes with constitutions that protect the rights of expression and political participation (Selmini and Di Ronco, 2023).

Critical criminology outlines a primary criminalisation based on media discourse, policies and legislative decisions and their application by the judicial agency (Snacken, 2010), which is an essential factor in punitive extension. The production of laws by the legislator allows for the stigmatisation of the behaviour in question and, at the same time, its effective punishment, with the aim of extinguishing it.

Thus, legislative reforms are being enacted to increase punitive options regarding the rights of assembly and political participation, establishing new offences or extending penalties (McNamara et al., 2018: 95). Following this logic, Organic Law 1/2015 of 30 March, reforming the Criminal Code, and Organic Law 4/2015 of 30 March, on the protection of public safety, known as the gag law, were enacted. The former proposes an increase in penalties for offences related to the right of assembly and participation and broadens the types of offences considered terrorism, without the need to be part of any organisation (individual terrorism) or with the offences of indoctrination and self-indoctrination, among others. The second transfers, in part, minor

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<sup>4</sup> Coordinated by D. McAdam, J. McCarthy, S. Olzak and S. Soule. See <http://web.stanford.edu/group/collectiveaction/cgi-bin/drupal/>

offences from the criminal to the administrative sphere, while increasing the protection and discretion of the police in their preventive and punitive actions in public spaces, such as offences for "disrespect and lack of consideration" towards police officers (art. 37, p. 22) or other actions considered to be "disturbances of public safety" (art. 23, p. 16).

Added to this legislative configuration is a particular political-discursive sphere in the state, where central political actors (PP, conservative party, and PSOE, progressive party) and the media share discursive elements that spread negative and stigmatising representations of the independence movement and its demands with slogans about the "flight of companies", "separatists," "coup d'état," or "Spain is breaking apart" (Monferrer and Bellido, 2018).

It is a cultural strategy of soft repression, shared by public and private actors, which aims to discredit and damage the public image of the movement and its activists (Ferree, 2005). Koopmans (2005) defines repression in this sense as "an act of strategic communication in the public sphere" (Ibid, 2005: 159), understood as "a framework of discursive opportunities based on three characteristics: visibility, resonance and legitimacy, the combination of which will determine the possibilities for the development of repressive actions, providing elasticity to the costs of repression to the state" (Ibid).

## 6. Punitive advance of the judicial agency

The elements mentioned above, namely a discourse that criminalises the independence movement and the existence of a legal framework that enables punitive measures to be taken against collective action, appear to be decisive factors in the deployment of repressive actions in a context of radicalisation of protest in Catalonia. In this vein, there has been an expansion of the context of judicial opportunities, defined as "the degree of legal closure and level of threats posed by the criminal justice system when protesters are brought before the courts, not for reasons of litigation but of prosecution, for their involvement in direct action" (Doherty and Hayes, 2014: 6). From this perspective, prosecutions of activists are defined as political processes that are "efforts by authorities and other groups to wear down political and social dissidents" (Barkan, 1986: 155).

With the context of pro-independence protest framed as a threat and challenge to the constitutional order by the courts, three main punitive actions are identified: preventive detention, disproportionate charges and protracted proceedings.

**Table 2. Judicial proceedings (N=41)**

Pre-trial detention	Charges (prosecution)	Years of proceedings	Court ruling
18 (< 2 months)	3 cases dismissed	5 (< 2 years)	14 acquittals
2 (> 3 months)	5 (< 2 years)	12 (2-4 years)	7 convictions (< 2 years)
2 (8 months)	26 (< 9 years)	24 (> 4 years)	3 convictions (> 2 years)
	6 (9 - 27 years) (terrorism)		15 pending trial 2 appeals

**Source:** own elaboration

These actions are based on two main elements: the reinterpretation of violence and judicial militancy. The first involves an expansive use of the concept of violence, applied vaguely and imprecisely to situations of social mobilisation. The second refers to familiar ideas of lawfare or "juristocracy" (Romano et al., 2019: 23) in which the courts adopt political positions. In this case, the term judicial militancy specifically refers to the ideological projection onto political activism and protest and not onto other institutional political adversaries. The reframing of violence stems from legal discourse in which non-violent protest actions are equated with violent actions and, on occasions, also with terrorism. Thus, the report by the State Attorney General's Office (2021, section II) includes, under the heading "4.5.2 Domestic terrorism", after assessing, among other things, the threats posed by the now defunct armed groups ETA and GRAPO, the "violent Catalan independence movement". The actions that justify this categorisation are a set of "violent and sabotage actions" consisting of: "placement of banners, 8; railway/road blockades, 2; damage, 2; damage to flags, 1; damage caused by fireworks, 5; damage to Francoist symbols, 7; burning of flags, 1; burning of symbols, 10", among other actions (ibid: 420). These are actions that do not constitute a crime in a liberal democracy. This labelling projects a criminalising symbolic burden on the movement and the protest, making use of a category with a strong social stigma.

The construction of terrorism charges against political activism generates arbitrary proceedings, since, in the cases studied, there are no charges based on specific facts, or these are inconsistent and imprecise. For example, activist Tamara Carrasco, sentenced to confinement in her municipality, was acquitted in May 2022 of the terrorism charge<sup>5</sup>. A second case against twelve activists, known as Operation Judas or Case 23S, carries charges of 27 years in prison for manufacturing explosives, belonging to a terrorist organisation and attempted destruction in two cases in the study sample. Held in preventive detention for four months, one of them explains his arrest:

You can't say anything, you can't... You don't really know... They're arresting you for terrorism, but... They don't have any more information. The lawyers didn't have any more information either. Terrorism based on what? There were no concrete facts? Everything was under judicial secrecy. That is, we were in three days of absolute isolation, without dark circles under our eyes, without laces in our shoes, thrown into the cells in Tres Cantos, nothing. (R1)

Another activist in this case was released on the same day he was arrested: "They opened the cell and took me to a room where there were two plainclothes officers and the solicitor. There, the solicitor explained what was happening, I exercised my right not to make a statement and was released on terrorism charges! It was all so incongruous" (R4).

On other occasions, violence is projected onto the protest situation by the courts, using the concept of environmental violence or intimidation<sup>6</sup> to refer to vague violence that cannot be attributed to an individual but which nevertheless constitutes a crime. This allows punishment to be applied on the basis of a generic threat to public safety, without distinction between peaceful participants, disruptive participants or spectators, and without the need to prove the perpetration of specific acts, as indicated in this excerpt from a court ruling:

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<sup>5</sup> See: [https://www.ara.cat/politica/suprem-absol-definitivament-tamara-carrasco-l-oposicio-marchena-llarena\\_1\\_4388988.html](https://www.ara.cat/politica/suprem-absol-definitivament-tamara-carrasco-l-oposicio-marchena-llarena_1_4388988.html)

<sup>6</sup> Concept used for the first time in the Supreme Court ruling on the Aturem el Parlament protest. Id. Cendoj: 28079120012015100105, Criminal Chamber. Rapporteur: Manuel Marchena Gómez.

With regard to the first, consisting of the burning of the AVE railway barricade, we cannot fully prove their individual involvement, given that, as can be seen in the images of these events, almost all the people involved have their faces covered. (ruling R9)

This carries a one-year prison sentence for public disorder and serious damage to traffic, despite not acknowledging responsibility for the acts. The offence is thus equated with participation in the protest. The final form of reinterpretation of violence can be found in hate crime charges, as in case R12, where a five-year prison sentence is being sought for alleged insults to a plainclothes civil guard officer while participating in a demonstration. The case has been pending trial since 2018.

These projections of violence against individuals facilitate preventive detention, reinforced by the 2015 penal reform, as well as disproportionate accusations on charges such as disobedience to authority or public disorder. For example, in the R13 case, the prosecution requested eight years in prison, a fine and compensation, resulting in a final acquittal after three years of proceedings. The cases of Ibrahim and Charaf, with eight months of preventive detention and a prosecution request for nine years in prison and a fine of €7,200, also ended in acquittal. As can be seen in Table 2, 63% of cases (26) receive charges of more than two years (the limit to avoid going to prison without a criminal record) and less than nine years. The charges contrast with the subsequent sentences, with only three cases resulting in convictions of more than two years. Thirty-four per cent (14 cases) are acquittals, 7% are dismissed (3) and 37% (15 cases) are pending trial.

The length of the judicial proceedings appears to be a consequence of previous punitive actions. Fifty-eight per cent of the cases involve judicial proceedings lasting more than four years (24 cases), with sentences involving imprisonment and, in many cases, postponements requested by police officers or the court itself.

The reframing of violence cannot be understood without referring to the notion of judicial militancy, whereby judges, magistrates and prosecutors use the courts as an instrument of ideological projection in line with the criminalisation of protest, political activism and, in particular, independence as a political option. A dual judicial system is emerging in which procedures and the classification of crimes are modified according to the political profile of the accused. In the words of lawyer (A3): "Yes, there is a particular violation of guarantees in political activism, sometimes it is there and sometimes it is not. But I want to say that it depends a lot on the judges, but that especially in political activism there are fewer guarantees than in other proceedings."

This perceived bias against activism is accentuated in the case of the independence movement, given that "procedural violations, in terms of the right to defence, have been a constant feature in cases against independence" (A2). The exacerbation of Spanish nationalism among judges, associated with a defence of the unity of the state and the constitutional order as the guarantor of social order, is perceived by the activists on trial:

So the person on duty was a woman, a judge, and when I walked in I could see what was going on, because she was wearing a bracelet with the Spanish flag on it and she was super... well, a bit like that. So when I saw her I said, oh dear, I don't stand a chance here (R6, one month in preventive detention ordered by the judge).

The ideological projection of the courts operates in the opposite direction when it comes to cases where the police are accused of crimes of injury, abuse or torture. In these cases, there are perceptions of deliberate obstruction, where the police do not provide the required documentation or do not carry out the requested identifications, and of intentional negligence in the investigation phase or in the prosecution's role:

and it is very clear that in all the cases that have been opened in the different courts of the Principality, the police have directly obstructed justice; first of all, we have encountered the difficulty that if a case is not handled diligently and is not properly investigated, it will simply die a natural death; instead of acting as the prosecution, the public prosecutor's office has acted as a systematic defence, which is absolutely insane because it is not in the statute of the Public Prosecutor's Office to act as a defence (A1).

In this argument, the approval of the amnesty law for institutional, political and social normalisation in Catalonia (Organic Law 1/2024 of 10 June) has served to grant amnesty to 50 police officers charged with violence on 1 October<sup>7</sup>, some for crimes of torture. Previously, the Public Prosecutor's Office had requested that the case be closed (Saidavi Report 2019: 12).

## **7. Punitive advance by the police agency**

Studies on police management of protests point to a convergence between two initial and contrasting models, one of intensified force, the king's police, and the other of negotiated management, the citizen's police, towards a model that guarantees the rights of assembly and expression in the 1990s (Della Porta and Fillieule, 1998; Gillham, 2011). This model is defined by the search for negotiation, the use of force as a last resort, tolerance of disturbances, and high levels of communication with protesters (Gillham, 2011: 640). Subsequently, around 2000, after the Seattle protests<sup>8</sup>, a model of selective incapacitation was identified, in which the police employ differential and specific forms of action, determining in advance, selectively and unilaterally, "the places, times and behaviours that will be tolerated" (ibid: 641). A distinction is thus made between conventional protesters and transgressors, which involves preventive detentions, less lethal weapons and space control techniques (ibid: 647).

Currently, some authors point to a punitive shift, defined by a "conception in which social problems must be managed by the police, the courts and detention centres" (Vitale, 2017: 27), in parallel with a militarisation of police forces and an intensification of the use of violence, as shown by actions against the French yellow vests, the Black Lives Matter movement and the Catalan independence movement.

The degree of threat perceived by the security forces acts as a predictor of their actions. This may respond to the use of contentious or confrontational tactics by mobilised groups (McAdam, 1982), the existence of radical or revolutionary objectives (Bromley and Shupe, 1983) or very high levels of mobilisation with mass protests (Davenport, 2000).

To explain police practice, Della Porta and Fillieule (1998) outline three dimensions: the organisation of the institution, based on the degree of centralisation, militarisation and accountability (ibid: 223); police knowledge, which includes aspects of contextual and organisational culture, stereotypes and police tradition in relation to the acceptance of legality; and, finally, the relationship with the political system and the degree of influence on the policing model (ibid: 226-27).

It is worth noting, in the case at hand, the presence of political allies, with far-right parties such as Vox or conservatives such as the PP, with a discourse of legitimisation and glorification of the security forces,

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<sup>7</sup> See: [https://www.ara.cat/politica/50-dels-74-amnistiats-l-1-son-policies\\_1\\_5085006.html](https://www.ara.cat/politica/50-dels-74-amnistiats-l-1-son-policies_1_5085006.html)

<sup>8</sup> With reference to the protests staged by the anti-globalisation movement in that North American city during the World Trade Organisation (WTO) summit in 1999.

especially the Spanish police in actions such as the referendum on 1 October<sup>9</sup>. The existence of police unions (Jupol, SUP), with a high degree of corporatism and little democratic culture, act as a pressure group against the state itself, to obtain favourable legislation, while defending police officers prosecuted for crimes against activists.

On the other hand, the institutional framework of the state does not provide for external mechanisms of accountability for police actions, which creates a lack of defence in court cases where the police have to investigate themselves. Political, media and institutional alliances thus favour greater autonomy for the police agency when it comes to determining degrees of threat and defining its actions accordingly. Due to the limitations of the study, the analysis focuses on the factors of contextual and organisational culture, in this case police subculture, which condition both the definition of threat and the configuration of punitive actions against political dissent and protest.

The punitive scope lies in an intensification of violence against activists at two different moments: in the context of protest and during arrest and custody procedures. This centrality of violence is related to four elements of police subculture: a bellicose conception of protest, national defence linked to the illegitimacy of demands, a weak acceptance of legality, and a habitus of male domination.

First, protest is defined as a battlefield where police advance on a hostile environment. The police narrative in reports reinforces the criminalising bias, with the use of negative representations of activists and protest, a dialectic of the enemy that marks symbolic boundaries between them, the defenders of order and the activists, the provocateurs of disorder, a stigmatisable otherness: "the violence of their actions grows until it becomes a hostile mass that attacks the police forces from different flanks, with the clear objective of injuring and undermining the physical integrity of as many officers as possible" (Actions 1: 8).

The use of bellicose terms or expressions, such as "perfectly organised ambush" or others such as "hand-to-hand combat", projects a collective rationality onto the activists that contradicts the notions of "hostile crowd" or "wild protest" that appear in other reports and point instead to an amalgam of fragmented, reactive and unforeseen group actions. reactive and unforeseen. The exaggeration of the violence described, such as "suffering extreme violence such as the throwing of large objects such as traffic signs" (Proceedings 1: 169), contradicts the minor injuries to officers and limited material damage to containers, vehicles and shop windows reported in the same reports (Proceedings 2, Saidavi Report 2019, MMEE Report).

Secondly, as mentioned above, the illegality of the referendum, linked to the discourse of demonising the independence movement and its demands on the state, crystallises into an all-encompassing and simplistic definition of an attack on the constitution and the unity of the nation-state. The demonstrators are defined as "coup plotters", antagonistic subjects, an offence to the nation, the greatest possible threat, since nationalist, non-Spanish issues "are the devil" for the police (Jaime-Jiménez and Reinares, 1998:183). The slogan "go get them" with which Spanish riot police (UIP) bid farewell on their journey to Catalonia expresses this otherness, assimilating independence to Catalan identity and turning it into an object of confrontation, in an approximation to a notion of colonial policing<sup>10</sup>. On occasions, police verbalisations express this otherness, as expressed by R20 during his violent arrest in the street: "Fucking Catalans, you're going to pay dearly for this". This antagonistic perception is reinforced by interaction with demonstrators, facilitating violence against peaceful protesters (Fillieule, 1997: 221).

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<sup>9</sup> On 29/09/2018, a demonstration was held in Barcelona, organised by police unions and supported by Vox (far right), PP (conservative-right) and Ciudadanos (liberal-right) to commemorate the "success" of Operation Copernicus in preventing the referendum. This triggered a "holi" counter-protest, for which 20 activists were prosecuted. <https://directa.cat/tag/holi-festival/>

<sup>10</sup> It should be noted that the Spanish national police do not have public order powers in Catalonia. It was an exceptional authorisation by the state, first with Operation Copernicus to stop the referendum and later with the temporary suspension of the regional government under Article 155 of the Constitution.

Thirdly, this national defence is linked to a weak tradition of acceptance of legality, especially in the case of riot police units, which are responsible for public order. In the case of the UIP, Jaime-Jiménez and Reinares (1998) affirm the existence of a "military ethos" that maintains the notion of public order originating from the Franco dictatorship, without significant changes in terms of the suppression of protest and "without major changes in the police mentality" (ibid: 178). These units exhibit strict discipline and a need for mutual protection in managing perceived threats, which generates internal obedience, corporate group pressure and normalises repression and violence (Benedicto, 2016).

They deploy a harsh version of policing, law and order, where actions are guided by an "imperative of control" in the face of the "situational threats" embodied by the gathered crowd (Earl and Soule, 2006:149). Thus, compliance with the law does not appear to be a limit on interventions, and the use of violence plays a leading role in the management of protest.

Reports from the organisations Iridia and OSPDH testify to 248 cases of police violence in Barcelona, including head injuries, fractures, blows to the head, dragging along the ground, punches to the face, projectile impacts (rubber bullets are banned in Catalonia) and eye injuries (Saidavi Report, 2019: 25) during the post-sentence protests (October 2019).

**Table 3. Sample of participatory observation protests linked to the case studies**

Location	Turnout	Police actions	Protesters' actions	Material damage	Civil/police damage
Barcelona (Holi September 2018)	6,000	(8) Arbitrary police violence, persecution of protesters, violent arrests, harassment of protesters	(1) staying in one place with slogans + painting on police line	(1) minor damage, graffiti or breakages	(1) Minor physical damage (2) < 15 arrests 10 demonstrators injured (1) 6 police officers slightly injured
Countrywide strike (various locations)	400,000	(8)	(6-10) Blocking and occupying roads, railway lines, stations, underground, ports or airports/ Confrontational actions against police officers	(1-2)	(2) Serious physical damage 37 injured > 15 arrests > 300 identifications (1) 15 police officers slightly injured
Barcelona/ Girona (4 days)October 2019	5000	(11) high-intensity violence, serious assaults	(8) violence against property, throwing objects at the police	(2) significant damage to street furniture	(3) Large number of injuries >100 injured >25 detainees (2) > 25 police officers with minor injuries

Location	Turnout	Police actions	Protesters' actions	Material damage	Civil/police damage
Girona AP7 tolls (2 days) November 2019	1,000	(8)	(6) roadblocks	(1) minor damage, graffiti or breakages	(3) >100 injured >25 arrested (1) < 8 police officers with minor injuries
Sabadell/Barcelona (3 days) February 2021	1,000/2000	(8)	(8) violence against property, throwing objects at the police	(2) significant damage to street furniture	(2) > 25 demonstrators injured > 15 arrests (1) < 8 police officers slightly injured

Source: own elaboration

In the context of the post-sentence demonstrations (October 2019), one interviewee explains his encounter with a police cordon (UIP) when he tried to leave a demonstration via an adjacent street and asked for permission to pass: "They literally didn't tell me I was under arrest or anything. They started beating me up. Of course, I was a person against... with batons. I don't know. With batons. Five or six police officers. Yes, yes, yes, yes" (R20).

Another participant explains, in the same circumstances of leaving the protest, her arrest and transfer to the police station:

I fall to the ground [...] I feel them grab me by the arms and start dragging me across the ground, and I literally didn't move a muscle, my body was paralysed, I didn't move, and they dragged me, yes, and well, you can see it in the video, I don't know if there are one or two police officers, but they grab me and drag me across the ground, then a third one arrives and starts hitting me, then they fuck me up inside the van, and once I'm inside the van, another officer appears and puts his arm inside and keeps hitting me [...] all the way, because I'm lying face down on the floor, covering my face because they're hitting me, and one of the police officers says to another, 'Kill her, kill her, right? So at that moment [...] I think they're going to kill me, it's really short, but it seems infinitely long to me. (R15)

Violent arrests during protests account for 49% (19) of the total, combined with the same percentage of abusive arrests, carried out unnecessarily to notify the individual of the accusatory process, with episodes of deprivation of liberty in custody where 85% remain between 10 and 24 hours, as shown in Table 4.

**Table 4. Police actions (N=41)**

Age	Sex	Arrests	Witnessed police violence	Time in police custody
8 (40 or more)	29 H	20 in protest	19 in protest	2 (2 hours)
7 (30-39)	11 D	12 in public spaces	7 complaints of	35 (10-24 hours)
23 (20-29)	1 NB	7 at home	torture	4 (48 hours)
3 (< 20)				

Source: own elaboration

Finally, the use of violence as a form of control is related to a masculinised conception of social order and public order. Some authors point to an association between police work and "the need to use physical force, aggressive crime fighting and roughness", establishing a "police habitus" (Chan, 2011: 66) that glorifies violence as a form of conflict management and disregards other interpersonal skills for resolving situations, turning police work into a "man's job" (Martin, 1999: 111-126). This model of hegemonic masculinity is based, among other things, on the power of force and the projection of violence, especially towards other men, together with contempt for everything considered feminine (Kaufman, 1999; Connell and Messerschmidt, 2005). Thus, while an image of the police as warriors is projected<sup>11</sup> in the context of protest, differential violence related to a weak conception of the female sex is sometimes perceived. In this regard, the testimony of a young female detainee is interesting:

at least to us girls, in any kind of treatment, but with the boys you could see that they had a much more aggressive attitude towards them, especially when new detainees arrived, as if they always had to show that they were in power, I don't know, if they asked someone for their ID and they didn't have it or couldn't find it, they had to pay for it, there was blood on the walls, so we made them kneel facing the wall, and then sometimes someone would walk by and they would get hit and things like that (R6).

For the same reason, as shown in Table 4, 70% of detainees are male, and almost all of them experience this violence.

## 8. Conclusions

In light of the reaffirmation of the criminal justice system as a source of legitimacy for the neoliberal state (Wacquant, 2010), this study reveals a dual strategy of punitive advancement, in the sense that it affirms effective punishment of individuals rather than prevention of potential crime. The reason is that the processes of criminalising protest and pro-independence activism end up defining them, *de facto* and *de jure*, as crimes. In the judicial sphere, the reinterpretation of violence through formulas of terrorism, environmental violence or hate crime broadens and advances punitive options, hand in hand with politicised action by the courts. Thus, preventive detention, disproportionate charges and protracted legal proceedings become punitive elements.

At the level of police action, the punitive advance is due to the centrality of violence in the management of protest, over the rights of assembly and political participation, which is also transferred to the procedures for the arrest and custody of activists. This violence stems from an autonomous interpretation of the threats faced by the security forces and their legitimisation by political and media power. This autonomy allows elements of the police subculture that condition their actions to be activated, identifying a bellicose conception of protest and national defence linked to the illegitimacy of demands, a weak acceptance of legality and a habitus of male domination.

Punitive actions combine symbolic and material violence, provoking processes of social (re)categorisation towards protest, activism and violence. The direction of these processes points to an increase in the threshold of legitimate police violence (decriminalisation) and a decrease in the threshold of tolerable violence in protest

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<sup>11</sup> For example, in September 2017, the official Twitter profile of the Civil Guard published a message in which they likened themselves to a war : "I am the storm". See: <https://www.publico.es/tremending/2017/09/24/twitter-yo-soy-la-tormenta-asi-es-el-tuit-amenazante-de-la-guardia-civil-a-una-semana-del-referendum-catalan/>

(criminalisation), conditioning political socialisation (Della Porta et al., 2019), especially among young people, and stigmatising contentious political participation. The state thus ratifies the logic of punitive extension over dissent as a form of relegitimisation before society and the exercise of violence for that purpose.

In the case of the independence movement, the analysis reveals factors that do not appear in other conflicts, such as national defence. Even so, we are currently witnessing legal and police action against the housing rights movement and the feminist movement, which point in the same direction of punitive advancement, with elements of judicial militancy and police violence as the main tools for managing social mobilisation.

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Note: Legal documentation related to the cases is not referenced to ensure confidentiality

**Appendix 1. Interviews**

Code	Sex	Age	Profile	Activism	City/ county	Interview date
R1	M	40	Worker	CDR	Vallès occidental (Barcelona,BCN)	06/2023
R2	M	45	Representative	CUP (anticapitalist-pro-independence party)	Gironès	06/2023
R3	M	35	Student	CUP/ housing union	Gironès, Girona	09/2023
A1	M	30	Lawyer		Girona	09/2023
R4	F	40	Worker	CDR Sabadell	Sabadell	09/2023
R5	M	45	Worker	CDR Sabadell	Sabadell	09/2023
R6	F	22	Student		Vallés Oriental	09/2023
F1	M	60	Professor	JuntsxCatalunya (conservative pro-independence party)	BCN	09/2023
R7	M	45	Fireman	CDR Lleida	Lleida	10/2023
R8	M	40	Worker	CDR Cerdanyola	Cerdanyola, BCN	10/2023
P1	F	35	Psicologist		BCN	10/2023
R9	F	26	Student	Leftist movements	Girona	10/2023
R10	M	30	Worker	CDR Vilafranca	Alt Penedès, BCN	10/2023
R11	M	24	Professor	CUP	Badalona	10/2023
A2	M	40	Lawyer	Alerta Solidària	Sabadell	11/2023
R12	M	20	Worker	Anarchism	Badalona	12/2023
R13	M	20	Student	Pro independence student organizations	BCN	12/2023
R14	M	19	Worker	Anarchism	Alt Camp, Tarragona	12/2023
F2	F	55	Unemployed	Xarxa Familiars Detingudes (network of relatives of detainees) XFD	Badalona	01/2024
R15	F	30	Worker	Antifascism	BCN	01/2024
F3	F	60	Retiree	XFD	Badalona	02/2024
A3	M	35-40	Lawyer		BCN	02/2024
F4	F	60	Worker	XFD	BCN	02/2024
R16	M	27	Worker	Anarchism	BCN	02/2024
R17	M	24	Student	Anarchism	BCN	02/2024
F5	F	60	Retiree	XFD	BCN	02/2024
F6	F	55	Worker	XFD	BCN	02/2024
R18	M	20	Student		Girona	03/2024
R19	M	16	Student	Students Union	BCN	03/2024
R20	H	19	Student		BCN	12/2024

**Appendix 2.** Summary coding of protests  
(only the categories mentioned in the text are displayed)

- A) Date
- B) Date of protest
- C) Number of participants/attendance

**D) Police actions**

- 01. Effective presence at some point/time.
- 02. Presence of troops in riot gear
- 03. Perimeter of demonstrators using force (delimitation of protest space and itinerary)
- 04. Intimidatory actions, searches, requisitioning of material or preventive identifications
- 05. Police baton charges
- 06. Police charge demonstrators with projectiles and vehicles.
- 07. Arrests and physical harm to demonstrators
- 08. Arbitrary police violence, persecution of protesters, violent arrests, harassment of protesters
- 09. Infiltration among demonstrators
- 10. Raiding private establishments, public transport, stations, health centres or private homes.
- 11. High-intensity violence, mass arrests and very serious assaults

**E) Demonstrators actions**

- 01. Parading or standing in a place with chanting, shouting or slogans, with or without banners.
- 02. Performing performances, dances, *batucadas* in movement or static.
- 03. Parading with torches or pyrotechnics.
- 04. Moving with motorised or non-motorised vehicles.
- 05. Occupying institutional or private entity headquarters.
- 06. Blocking and occupying roads, railways, stations, metro, port or airport.
- 07. Throwing objects at the police, setting up barricades.
- 08. Violence against material goods (entities, furniture, vehicles, vandalism, fire).
- 09. Violence or confrontation with people (pedestrians, shopkeepers, counter-movement).
- 10. Confrontational actions in front of police (sticks, blows)

**F) Harm to demonstrators**

- 00. No record of physical harm.
- 01. Minor physical harm to demonstrators (bruises, abrasions, dislocations, with or without broken bones), arrests < 15 arrests < 8 injured (Oporto)
- 02. Serious physical harm to demonstrators (projectile impacts, head injuries, being run over, serious injuries to the abdomen or none) 8-30 injured, 15-49 arrests
- 03. Large number of injured > 30, of varying severity, mass arrests > 50

**G) Harm to police officers**

- 00. No record of physical damage
- 01. Minor physical injuries to police officers (bruises, dislocations) < 8 injured
- 02. Serious physical damage to police officers (blows causing head injuries, no serious injuries or abdominal injuries) 8-30 injured
- 03. Large number of injured > 30 of varying severity

**H) Material damage**

- 00. No record of material damage

01. Minor material damage (graffiti or minor damage to façades, street furniture, shops, street lighting, vehicles)
02. Considerable damage to public and private property, fires in containers, broken glass, damage to vehicles and shop windows.
03. Very significant and extensive material damage (shop looting, considerable urban destruction, vehicle fires). Monetise damage

**I) Form of protest** (rally, staged protest, march, caravan, urban protest, disruptive actions, confrontational actions).

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