

Deusto Journal of Human Rights

Revista Deusto de Derechos Humanos

No. 11/2023

DOI: <http://dx.doi.org/10.18543/djhr112023>

ARTICLES / ARTÍCULOS

The price of protest

El precio de la protesta

Tanya M. Monforte

<https://doi.org/10.18543/djhr.2774>

E-published: June 2023

Copyright (©)

Deusto Journal of Human Rights / Revista Deusto de Derechos Humanos is an Open Access journal; which means that it is free for full and immediate access, reading, search, download, distribution, and reuse in any medium only for non-commercial purposes and in accordance with any applicable copyright legislation, without prior permission from the copyright holder (University of Deusto) or the author; provided the original work and publication source are properly cited (Issue number, year, pages and DOI if applicable) and any changes to the original are clearly indicated. Any other use of its content in any medium or format, now known or developed in the future, requires prior written permission of the copyright holder.

Derechos de autoría (©)

Deusto Journal of Human Rights / Revista Deusto de Derechos Humanos es una revista de Acceso Abierto; lo que significa que es de libre acceso en su integridad inmediatamente después de la publicación de cada número. Se permite su lectura, la búsqueda, descarga, distribución y reutilización en cualquier tipo de soporte sólo para fines no comerciales y según lo previsto por la ley; sin la previa autorización de la Editorial (Universidad de Deusto) o la persona autora, siempre que la obra original sea debidamente citada (número, año, páginas y DOI si procede) y cualquier cambio en el original esté claramente indicado. Cualquier otro uso de su contenido en cualquier medio o formato, ahora conocido o desarrollado en el futuro, requiere el permiso previo por escrito de la persona titular de los derechos de autoría.

The price of protest

El precio de la protesta

Tanya M. Monforte¹
Concordia University, Canada

<https://doi.org/10.18543/djhr.2774>

Submission date: 12.07.2022

Approval date: 17.04.2023

E-published: June 2023

Citation/Cómo citar: Monforte, Tanya M. 2023. «The price of protest.» *Deusto Journal of Human Rights*, No. 11: 41-71. <https://doi.org/10.18543/djhr.2774>.

Summary: Introduction. 1. Critical infrastructure and fines: shrinking space for protests. 2. Predictive policing and the expanding categories of risk. 2.1. Actuarial risk and regular policing. 2.2. Security and terrorism. Conclusion. Bibliography.

Abstract: Many liberal democracies are presently dismantling the foundations of deep democracy through the construction of a juridified security framework. The expansion of security exceptions that privilege private property interests of a small elite above the human rights that promote democratic accountability such as the freedom of assembly and the freedom of expression has accelerated this anti-democratic tilt. The legislative designation of «critical infrastructure» insulates certain sectors of the economy from protests. Security exceptions that safeguard the normal functioning of the economy effectively insulate the fossil fuel sector from democratic political pressure due to status quo dependency. Fossil fuels are targeted by protester and designated as critical infrastructure precisely because economies are dependent on them. The use of extreme fines to incapacitate disobedient citizens as risk mitigation favors the interests of property holders against the interests of groups that are overwhelmingly young and often Indigenous in North America. This paper maps out a tendency towards harsher economic penalties for protest in the U.S. and Canada and argues that the transition to extreme fines for protesters relies in part on the ramping up of the category of (the kind) of crime protest falls into which could potentially expand the number of sanctioned persons exponentially.

Keywords: Critical infrastructure, fines, freedom of assembly, freedom of speech, security, neoliberalism, legal personality.

¹ E-mail: tanya.monforte@concordia.ca. Orcid: 0009-0000-5529-936X.

Resumen: Muchas democracias liberales están actualmente desmantelando los cimientos de una democracia profunda a través de la construcción de un marco de seguridad juridizado. La expansión de las excepciones de seguridad que privilegian los intereses de la propiedad privada de una pequeña élite por encima de los derechos humanos que promueven la responsabilidad democrática, como la libertad de reunión y la libertad de expresión, ha acelerado esta inclinación antidemocrática. La designación legislativa de «infraestructura crítica» aísla a ciertos sectores de la economía de las protestas. Las excepciones de seguridad que salvaguardan el funcionamiento normal de la economía aíslan efectivamente al sector de los combustibles fósiles de la presión política democrática debido a la dependencia del *statu quo*. Los combustibles fósiles son el objetivo de los manifestantes y se los designa como infraestructura crítica precisamente porque las economías dependen de ellos actualmente. El uso de multas extremas es una tendencia preocupante que se utiliza para incapacitar a los ciudadanos desobedientes, ya que la mitigación del riesgo favorece los intereses de los propietarios frente a los intereses de grupos que son abrumadoramente jóvenes y, a menudo, Indígenas en América del Norte. Este documento traza una tendencia hacia sanciones económicas más duras por protestar en los EE.UU. y Canadá y argumenta que la transición a multas extremas para los manifestantes se basa en parte en el aumento de la categoría de (el tipo) de crimen en el que cae la protesta que podría potencialmente ampliar exponencialmente el número de personas sancionadas.

Palabras clave: Infraestructura crítica, multas, libertad de reunión, libertad de expresión, seguridad, neoliberalismo, personalidad jurídica.

Introduction²

We are living through a tumultuous time and political contestation can be found to extend from the ballot box to the streets. According to Isabel Ortiz and her co-authors, protests are increasing around the world; since 2010 we have entered a period, like other turbulent periods over the centuries, «shaken by protests» (Ortiz *et al.* 2022, 13). In this article, I address some of the ways liberal democracies are repressing nonviolent resistance in a period of global unrest. The state response to the swell of political will outside the «accepted channels for political participation» in the form of «protests, strikes, boycotts, and demonstrations» is drawing democratic institutions to construct new legal tools of repression (Chenoweth and Gallagher 2013, 271). The complex interplay between national security, political dissent, and economic efficiency is tilting the political economic structures away from the side of deep democracy and away from the fulfillment of human rights.

This article maps out part of a trend in the expansive evolution of economic sanctions used against protesters in Anglo-North America that are developing as one tool of repression in the set of best security practices for global governance.³ National security and public order limitations on the freedom of assembly are being used to allow for extreme fines against protesters who employ nonviolent resistance. Disobedient citizens and residents can be incapacitated through these economic sanctions which are far more efficient economically than incarceration. Economic sanctions against individuals are being developed as a paradigm for state security that can incapacitate legal persons without much financial cost to the state. The use of economic incapacitation is becoming ubiquitous in many areas of criminal justice, national security and in the enforcement of human rights. It is also becoming a tool against peaceful assembly in different forms of protest in North America as economic sanctions gain acceptance across

² I would like to thank Jenna Underhill for her assistance with citations.

³ Anglo North America is a reference to English-speaking North American states as I am studying the state-based fines. There are of course many languages spoken on the continent that include Indigenous languages, Spanish and French, but the Anglo reference is meant to designate tendencies in legal and political structures of Canada and the U.S. North America includes Canada, the United States of America and Mexico. This paper, however, is dealing primarily with the United States and Canada and not Mexico since the shared security arrangement, and the common law legal histories that are described do not include Mexico in the same way as the U.S. and Canada.

political lines and even in defense of human rights. For protests⁴, economic sanctions are developing as a powerful tool/weapon of the state, that if normalized could render certain political rights effectively meaningless. These sanctions are developing within a context of advanced and heavily tech-based systems of administration that have facilitated economic sanctions capable of total control over legal persons without ever touching an actual body.

In relation to Article 21 of the International Covenant on Civil and Political Rights (ICCPR), the right of peaceful assembly, the Human Rights Committee expressed in General Comment 37, that for this right to be meaningful states would have to reign in national security exceptions that limit this right, stating, «there are, in effect, limitations on the limitations to be drawn» (CCPR Human Rights Committee 2020, para. 8). The extreme fines that are developing as national security or public order exceptions to article 21 constitute a form of rights limitation that can render the right to assembly essentially meaningless and does so in a way that also violates or even destroys other rights, such as Article 16, the right to recognition everywhere as a legal person.

Fines are techniques that provide the means for massive expulsions of economically «superfluous» persons. Under the heading «The Savage Sorting», Saskia Sassen writes that there is a crisis in our global political economy as an increasing number of political and economic «expulsions» are taking place (Sassen 2014, 1). She says not only that more people and enterprises are being «expelled from the core social and economic orders of our time» but that this is in fact a global phenomenon which she explains as a set of complex processes (Sassen 2014, 1). While Sassen describes different processes from the ones I outline, she proposes that the expulsions are an economic adjustment for shrinking economies. She concludes that «[t]he reality at ground level is more akin to a kind of economic version of ethnic cleansing in which elements considered troublesome are dealt with by simply eliminating them» (Sassen 2014, 36). An economic cleansing, that takes hold over the legally constructed economic person can destroy the person's capacity to function as a full member of society. Looking at certain protesters as troublesome and disruptive, especially

⁴ Protests are defined as «a formal objection to a particular set of policies or practices in which the protesters perceive some form of injustice to exist... most protests, ...occur in public spaces with a preplanned spatial strategy». The authors note that protests can include property damage, but they distinguish between a protest and a riot. (Lessard-Lachance and Norcliffe 2013, 182).

to the economic political structure, they can be made nonpersons in law by expelling them from the economic order. These new fines should be placed alongside Sassen's account as a technology of power that is contributing to the complex interplay that constitutes the modern forms of social and economic expulsion.

In the following pages, I make the case that criminalizing protests and ratcheting up the kinds and severity of crimes that protesters are being charged with is a way of redistributing resources away from disruptive protesters towards the private interests of an economic elite. In part II, I look at the expanding notion of «critical infrastructure» and the ways in which extreme fines are being created to deter or penalize public protests that challenge economic interests. In Part III, I turn to the ways in which within the context of high costs for incarceration, risk analysis and predictive policing models rely on high-value fines to efficiently incapacitate persons deemed risks. Fines can be a comparatively efficient means of incapacitating threats. But as the amount of each fine must be calculated so that it is sufficiently high to deter the action of protest, and the fine must be proportionate to the crime, disruptive protests are being classed as more serious crimes.

1. Critical Infrastructure and Fines: Shrinking Space for Protests

There has been a wide array of new bills introduced to curb political protests over the last decade (Ingraham 2017). I will argue that the political will to contain and even eradicate protests has coalesced dramatically around what has been labeled «critical infrastructure». This section will deal with the issue of extreme fines as punishment for protests against the expanding category of critical infrastructure. Critical infrastructure are the physical and virtual systems that are considered so vital to government that their incapacitation or destruction would have debilitating effects on national security, national economic security, national public health or safety, or any combination. Complex political and economic sectors of society have formed public-private partnerships in which privately held businesses are integrated into the fabric of what is considered of critical importance for the functioning of a country. The economic interests of a very small set of private individuals then has become a protected interest of national security.

Fossil fuel companies and other private, for-profit industries in the energy sector are being insulated against public protests in general, but especially against disruptive protests. The introduction of bills to increase the baseline of penalties for protesting in the U.S. around

oil and gas is a relatively new phenomenon. Especially in the area of pipelines, new legislation has been proposed and introduced in several U.S. states designating pipelines as «critical infrastructure» in order to transform the criminal sanctions for protests against pipelines from misdemeanor offences to felony offences (Ellinger-Locke 2019). Several states introduced legislation starting in 2019 to increase the criminal classification for certain forms of protest and civil disobedience as felony offences especially in U.S. states where there was significant opposition to the construction of pipelines or else oil and gas are especially important industries. According to the International Center for Not-For-Profit Law which has been tracking the development of anti-protest laws in the U.S., South Dakota introduced legislation in 2019 to expand civil liability for protesters as well as their funders. In Oklahoma, trespass on property containing critical infrastructure is still only a misdemeanor, but evidence of intent to impede operations is a felony offence punishable by one year in jail, but with a minimum fine of \$10,000 and no maximum cap on the penalty (International Center for Not-For-Profit Law 2023). It is also important to note here and it will be expanded on later, that many of the pipelines in these states pass through First Nations ancestral lands or their waters and much of the political opposition has been led by Indigenous movements after pipeline routes were rerouted away from city-centers for fear of contamination (Ruddock 2019).

The complex relationship of international trade and also the interconnected nature of foreign relations can make protests and the movements that support them transnational as both the protest movements and problems that are being protested are themselves transnational. The shared security relationship between the United States and Canada, for example, has translated into a few transnational issues and movements. The Black Lives Matter movement (BLM), as one recent example, began in the United States to protest against the killings and the general excessive use of police force against Black citizens. Soon, however, BLM protests popped up in cities around Canada as well. The integrated security relationship between the U.S. and Canada, the shared origins as British and French colonies, similar histories in relation to Indigenous dispossession, but also very different historical trajectories from these origins has led to significant overlaps in political movements as well as important political distinctions between the two countries. Protesters in Canada at times manifest symbols and slogans that either display a perceived commonality with the U.S. or else are intentionally designed to distinguish themselves from their southern neighbor. The «Freedom Movement» that developed from

the «Freedom Convoy» that veers towards Canadian Conservatism with a smattering of alt-right extremists mixed in, was supported financially and even joined in person by U.S. supporters. Their protests in Ottawa against vaccine mandates and COVID-related restrictions bore resemblances to MAGA rallies in the U.S. in terms of symbols, slogans, and actors. The Freedom Convoy which occupied Ottawa and a key bridge between the U.S. and Canada blocked traffic with their trucks and impeded trade flows between the two countries. The Premier of the provincial government of Ontario declared a state emergency, and Prime Minister Trudeau invoked the Emergencies Act days later. In the midst of the COVID epidemic, governments were (governments were struggling...) struggling to pay unusually high health care costs as well as basic cost of living payments for persons who had lost their livelihoods. The government had been hemorrhaging money. The Convoy protest blocked trade routes that further damaged the economies at a rate of at least \$1 billion a day. The government response was to threaten protesters with \$100,000 fines if they refused to move their trucks. It is important to note that none of the high fines have been enforced at the time of writing as the Liberal and Conservative governments were not inclined to follow through with the fines.

There are many shared movements across the U.S. and Canada border and there are also relationships in terms of similarities in legislation. Legislation on infrastructure similar to that in the U.S. has been introduced at the federal and provincial levels in Canada. Bill 1: The Critical Infrastructure Defense Act, came into law in Alberta in 2020. The Critical Infrastructure Defense Act was created to stop Indigenous protesters acting in opposition to a gas pipeline in Northern British Columbia. «Public order» fines have been introduced in Canada following similar legislation in the U.S. to stop protests against and the sabotage of what is considered critical infrastructure (Government of Alberta 2020). The law covers both public and privately held property that includes pipelines, oil and gas production sites, highways, railways, utilities, telecommunication lines, towers and equipment, mines, and now, after the many protests against COVID 19 restrictions outside hospitals, hospitals as well. It is further expanding what is considered to be critical infrastructure so that cellphone towers and truck terminals are all also considered critical (Graham 2011). This law introduces fines for individuals of \$10,000 to \$25,000 for trespass depending on the number of offences (Government of Alberta 2020).

As a point of comparison to mark change over the decades and the way that transformation is happening, in 1987 in the U.S. a group of protesters climbed a fence and chained themselves to logging

equipment. Six persons were charged with criminal mischief, spent 30 days in jail and were fined \$500 each. This was then considered a normal fine for protesters who wanted to raise awareness of a politically marginalized view and their desperation to stop an action of environmental destruction. The organization of these protests and the willingness to chain oneself to equipment is a mode of political expression that is increasingly criminalized out of the possibility of expression. Although the forestry industry is not clearly classed as part of critical infrastructure, during the COVID restrictions, the National Hardwood Lumber Association and others noted that the Department of Homeland Security designated the forestry industry that manufactures and distributes products as «essential critical infrastructure» to exempt workers from COVID restrictions (NHLA 2020).

While the criminal penalties were not too onerous in 1987, a subsequent civil suit was brought, and they were required to pay an additional \$25,000 in damages in total in a suit that was subsequently called a Strategic Lawsuit Against Public Participation (SLAPP). It had been a misdemeanor offence to protest industry in 1987 and the use of civil suits to intimidate or incapacitate political oppositions, SLAPPs would only provide these companies with inconsistent results depending on the judge and the damages awarded and of course they require a trial. Consequently, industry had instead moved away from individual cases to lobby for a change in the fine structure so that now the state fines automatically start at \$25,000.

The intersection of protests and national security can get complicated, and we can see how fines in the past were used to chill free speech, assembly, and dissent. In 2005 a protest by the organization «Voices in the Wilderness» was fined for violating the U.S. trade embargo against Iraq. The group brought medicine to Iraqis as a form of protest of the sanctions levied against the country. Years later, the group was fined \$20,000. Bert Sacks was one of the activists who was fined \$10,000 for violating the embargo against Iraq in the 1990s, which he challenged in court (Democracy Now! 2007). What the lawyer for Voices in the Wilderness noted was that the group and individuals were fined only years after the initial actions in 2002, after they were «prominently involved in anti-war protests» (Institute for Public Accuracy 2005). The implications being that the fines were used to quash otherwise legal, anti-war protests. It was not without irony the group noted that the U.S. oil companies had violated the embargo for profit motives but were not penalized, while a humanitarian organization was penalized for violating the

embargo for humanitarian motives as their protests made them (from the state's perspective) a troublesome and divisive minority during a national security crisis.

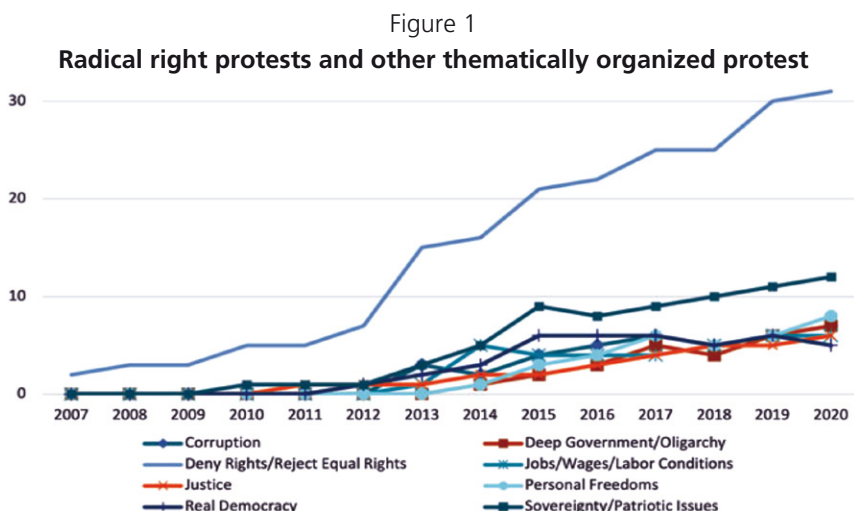
There are diminishing spaces where rights to assembly are protected in the U.S. Protests on privately owned public spaces are in fact not well protected in the U.S. And, while there are many parts of the world that have plenty of public space to assemble on, many parts of the United States do not. There is of course a protected right to protest on private property if it is publicly accessible according to the Human Rights Committee (General Comment No. 37): «Assemblies can be held on publicly or privately-owned property [provided the property is publicly accessible].» In practice, however, that right is frequently trumped by private interests and claims of property owners of their privilege to exclude. What's worse is that the few public spaces that exist, such as roads, are becoming hostile environments for protesters. The most frequently proposed anti-assembly legislation, thematically, is being introduced to eradicate protests that block traffic (ICNL 2023). Taking one's political message to the streets is increasingly seen as a form of illegitimate interference with economic intercourse. Lawmakers are looking at higher fines to curb this form of disruptive disobedience as well as more extreme language to describe protests. In the state of Washington, a Bill was up for consideration to increase penalties for anyone who impedes access to highways or railways calling the action «economic terrorism» (Ingraham 2017). The American Civil Liberties Union has argued that the bills to fine protesters for blocking roads or classifying it as a form of economic terrorism is not out of a need to fill «some gap in the law» (Ingraham 2017) since everywhere in the United States there are already laws prohibiting the obstruction of traffic on busy roads. Instead, the clear intention is to increase «the penalties for protest-related activity to the point that it results in self-censorship among protesters who have every intention to obey the law» (Ingraham 2017). This also seems to be the case for the laws that are passed that bar criminal prosecution for people who drive into protesters. Shifting the default protection in the rules to favor drivers who hit protesters may be intended in part to protect drivers who are caught in the middle of violent protests, but they are certainly also, if not primarily, intended to make protesters self-censor to stay off the roads and out of the way by protecting drivers who hit protesters with their vehicles.

While critics of critical infrastructure legislation and other extreme fines around national security have noted that there are already existing laws against trespass on the books, the severity of the new

finances appear structured to securitize the gas and oil sector against protests altogether (Ruddock 2019). The use of extraordinary fines is designed as a deterrence measure –to make the penalties so extreme that no one would rationally make the choice to protest or else they would be fined out of existence. It is future-looking and preventive in its design and so significant police-power discretion is built into it in order to reduce the injustice that is levied in practice. The structure, however, is a template that exists in contexts that are already built on historical injustices and processes that have not protected the rights of different groups. Notably these laws are direct responses to movements and protests that have been organized largely by Indigenous land and water protectors (Mene 2020). The discretionary powers available to police have a problematic dimension especially in relation to First Nations protests both in terms of the unique situation of First Nations peoples in colonial structures that have failed to respect their self-determination, but also as political minorities in democratic structures. A recent case in Washington state of two young women who were caught, arrested, and convicted for tampering with the railroad tracks in what «the authorities, who have been investigating dozens of similar cases this year, believe the actions are intended to express solidarity with Indigenous people in Canada who oppose the construction of an oil pipeline» (Hauser 2020). The two women were convicted on charges of terrorism, and as the charges were laid by the FBI taskforce in part on the basis of evidence of a photo of one of the convicted women's car that had a bumper sticker with a map of the U.S. that read «Indigenous».⁵

While quantitative research suggests a political valence of many of the global protests in recent years that skew progressive along the lines of anti-imperialism or climate justice, for example (Ortiz *et al.* 2022), pressure for stronger legislation against protests comes from various actors across party lines as right wing protests are on the rise as well, as evidenced from calls for stronger economic sanctions against the Freedom Convoy. As Ortiz *et al.* note, «radical right protests» show a demonstrable increase in frequency with the largest increase in protests aimed at denying rights or rejecting equal rights (Ortiz *et al.* 2022, 52). The increase in the number of protests based on themes for the radical right can be seen in the following graph.

⁵ See the court documents United States District Court Western District of Washington at Seattle (2020).



Source: Ortiz et al. (2022, 85)

There is sometimes support from all major political parties for protest fines due to the shifting politics of protests and the movements that support them in North America or else because of the political target of the protests. A case example of the introduction of a bill that shares support in the U.S. Congress from both political parties is aimed at prohibiting boycott campaigns against Israel and entails extraordinary fines. Because the relationship between Israel and the U.S. is outlined as both a security arrangement and also an economic one, the coupling of anti-boycott laws with the designation of a security arrangement allowed for fines for organizations or individuals who call for boycott of the state of Israel between \$250,000 to \$1,000,000 (Shakir 2017). This legislation targeted the Boycott, Divest, Sanction (BDS) movement, a Palestinian led movement vocal on university campuses frequently holding public protests. As penalties become more extreme, and they garner political support irrespective of party affiliation, the chilling effect on speech and assembly is palpable.

The appropriate size of fines for protest in democracies is a moving goalpost. How large would a fine have to be to be sufficient to protect public and private infrastructure and how much would be considered excessive? In *Timbs v Indiana* the U.S. Supreme Court in 2019 reversed a ruling that the Eighth Amendment prohibiting excessive fines and forfeitures does not apply to states and local government. The Court ruled that it does apply, reversing the decision by the Indiana Supreme

Court that allowed a \$40,000 car to be taken from a drug addict who sold a few grams of heroin to support his addiction. The Court ruled that this was an excessive forfeiture and that Constitutional protections are not limited to Federal fines but also to state and local fines. While this case is certainly a move in the direction of protecting private property of «criminals», this case marks a pretty low bar for what counts as «excessive» and allows for wide breadth of interpretation. Protection of property rights tends to get the most support across the political spectrum as it is offensive to those sympathetic to less punishment as well as to conservatives who ideologically are more invested in protecting private property. Tangible property such as vehicles or houses may be given a bit more protection than intangible capital that is accessed through fines. After *Timbs*, there are complex questions to answer about what counts as an excessive fine especially when the same actions are being categorized as more serious crimes. A complex model of what counts as excessive is formed in the nexus between graduated fines with the seriousness of the crimes. That is to say, because of protections against excess fines, the state needs to create new crimes to bring up the value of the fine. What would have been a misdemeanor for trespass a few decades ago has turned into a felony or worse, a charge of terrorism, and so the test for eighth amendment protections becomes more difficult to meet. Larger fines go along with more serious crimes, so necessarily charges against protesters have to become more serious if the point is to prevent people from protesting.

Fines and forfeitures are newly configured, old tools of governments which are often underexamined forms of contemporary securitization (Prior and Roth 2013; Murphy 2007). While the U.S. has received significant attention for the pernicious use of fines in relation to persons in situations of poverty (Braden *et al.* 2019), Canada's use of fines for security, while generally more measured in comparison, have the potential to fully incapacitate as well. Penalizing persons without housing with fines occurs largely through police discretion (Chesnay *et al.* 2013). The ticketing of actions which are constitutive of the existence of the person is a quintessential status-enforcing law. That is to say, tickets that target someone for loitering or sleeping in public, for example, target persons who exist in public and have no private dwelling. These fines, even when quite small, can fine them out of existence. Likewise, Canada's fines against protesters may be more measured compared to the U.S. as well, but fining people out of existence is not the only effect that is possible. In Montreal, the criminal code and the now repealed P-6 municipal bylaw were used to target

protesters with fines of no less than \$500 and no more than \$3,000 (Cox 2012)⁶. These regulations not only had a potentially chilling effect on protest, which was the purpose, but they had the potential to split social mobilization by effectively gentrifying street dissent or political contests so that only those financially capable of taking a financial hit could be engaged in public mobilizations. While this maximum of \$3,000 may seem like a reasonable fine compared to some of the legislation discussed previously, economic precarity in North America with fewer people having any kind of savings may make protesting a luxury activity.

2. Predictive policing and the expanding categories of risk

2.1. Actuarial risk and regular policing

The entrenchment of economic sanctions as a way to target legal capacity for protesting is intimately related to the phenomenon of mass incarceration and counterterrorism in North America. Jennifer Earl has speculated that repression and these two areas might be connected, and I want to make the case for a political economic connection (Earl 2011). Budgetary needs to reduce costs of the criminal justice system along with justified criticisms of mass incarceration are transforming policing and punishment, and fines can appear as a «softer» form of penalization and thus more attractive to many law makers⁷. To understand the extent of the crisis in the U.S. and the transition towards alternatives that make the corrections system payoff, a short digression is necessary.

The United States is the world leader in incarceration of its citizens. The most recent statistics of the rate of incarceration in the U.S. show that it is at its lowest it has been in the past twenty years, and yet still it is by far the highest rate of incarceration per capita in the world (Gramlich 2021). One thing that politicians of every stripe agree on in the U.S. is that Americans are spending too much money on locking people up and they are looking for ways to reduce costs. While rates of governmental expenditure have sharply increased in recent decades,

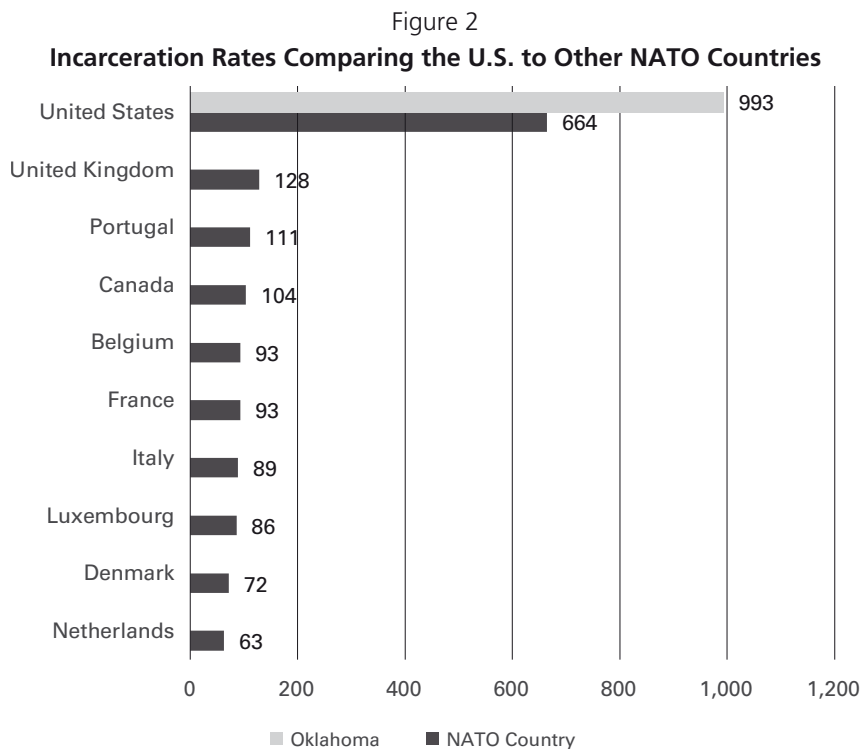
⁶ For arguments on the impact of fines on political activism as well as the economic disparities fines have on different populations, see esp. Sylvestre *et al.* (2011); Sylvestre (2010). For a more extensive discussion of the ways state repression impacts and affects social movements, see esp. Chenoweth *et al.* (2017).

⁷ For an account of the ways the complex penalization process works in relation to policing of protests and demonstrations, see esp. Calvo and Echeverría (2022).

politically every side converges in the conclusion that more than \$80 billion spent annually on corrections in the U.S. is too much (Jones and Holden 2018; Lee 2015). Likewise, in Canada the approximately \$20 billion spent annually is a tremendous sum compared to its overall GDP (John Howard Society of Canada 2018). Recent developments are directed towards targeting legal capacity as networked individuals in order to increase cost efficiency in punishment. The United States is in the process of moving from mass-incarceration, a wholly inefficient use of state resources, to mass incapacitation. The most contemporary discussions about criminal justice and human rights in the U.S. do not ignore the millions of persons incarcerated, but attention has been turned to the impact of mass convictions rather than simply mass incarceration as parole and other forms of community surveillance and forms of incapacitations have expanded as incarceration rates drop. While mapping the trends towards more economically efficient forms of state control, fines should be read as an additional instance of this trend with devastating consequences. Fines in the U.S. with vast wealth inequality can be debilitating for some and devastating for low-income persons (Schierenbeck 2018). With prison overpopulation hitting state budgets hard especially for low-income states, like Oklahoma as one example, the turn to small fines, asset forfeitures, or extreme fines in lieu of long prison sentences can appear to be good public policy to fiscal conservatives and progressives looking to stop mass incarceration.

While fines have always been a penalty available in criminal law, and civil suits make economic recovery of damages possible, the nature of fines are changing as an alternative mode of securitizing spaces and incapacitating persons. They can be large or extraordinary fines, or many small fines directly withdrawn from bank accounts as civil law works in conjunction with criminal processes in new ways. Alternatively, even small singular fines against those in precarious situations can be devastating (Sylvestre 2010). The changes and possible expansion of the use of fines is a technique of incapacitation that is getting re-organized. It is a security paradigm made of legal techniques that can expand exponentially in moments of political crisis. If the underlying desire for punitive justice doesn't alter, any systemic changes will tend to expand populations under state control as the market expands as Hadar Aviram explains, «It is therefore more accurate to present the correctional regime not just via the concept of actuarial risk assessment, but as the outcome of a cost/risk equation». They go on to say, «there is a strong correlation between how much a state can spend in general and how much it spends on corrections

in particular, [...], some of the major changes in law enforcement, sentencing, and corrections corresponded with cycles of the market» (Aviram 2015, 121).



Source: Figure by author.

Discussions about the U.S. as a carceral state are shifting as the net-widening effects with the proliferation of consequences of a felony conviction even without imprisonment, are a new troubling trend for criminologists. Studying the trends in the changing patterns of convictions and incarceration, Sarah Shannon and her co-authors observed, «although incarceration levels are stabilizing or decreasing, the broader population of those with felony records will likely continue to grow as states turn to community supervision as an alternative to incarceration» (Shannon *et al.* 2017). The trends in Canada are different as the prison population is going down and the number of

persons under community supervision is trending downward as well since a change in the ruling party in government (Malakieh 2020).

The majority of persons currently under state supervision are not inside prisons or jails. The number of Americans and Canadians living under state-surveillance outside a penal institution far exceeds the more visible high number of persons inside the prisons. There are important differences between the American and Canadian rates of incarceration and rates of convictions, however, both states have relatively high rates of incarceration and high rates of community supervision⁸. As higher percentages of persons come into contact with the criminal justice system in the U.S., there are simultaneously higher numbers of consequences for criminal records (Shannon *et al.* 2017). These measures are purportedly taken to mitigate risks posed to the general population by persons with a criminal record.

The risk analysis paradigm for criminal justice comes from the discipline of economics and in its speculative nature attempts to control the future in the present. A neoliberal logic dominates through the belief that the risk can be quantified, measured, and contained, but also this risk analysis underpins all dimensions of social life. Predictive policing is a kind of economization of human behavior as is the pursuit of efficiency. Risk analysis is an integral part of preventive policing and criminal justice as crime prevention. The idea that crime is seen by policing institutions as a calculable risk is in line with the trends David Garland referred to in outlining «the new criminologies of everyday life». Mitigation of the risk posed by persons with a previous record (based on recidivism rates) explains the targeting of specific persons.

In the United States, although rates of incarceration are not uniform across states, as evident in figure 2 above, and overall the incarceration rates are falling, every state in the U.S. has had a significant *increase* in the percentage of citizens with a felony conviction from 1980 to 2010 (Henderson 2018). «Most of the growth in U.S. correctional supervision has been among nonincarcerated probationers and parolees who are supervised in their communities» (Shannon *et al.* 2017, 1796). John Calvin Smiley's work goes into detail about the economic efficiency of parole that has debilitating if not cruel conditions built-in, so the state can punish inexpensively while not giving up on a tough on crime stance (Smiley 2014). The growth in the rates of persons with criminal records is staggering as the number of persons with arrest records is greater than the number of Americans who are married as seen in figure 3.

⁸ See e.g. Phelps (2018).



Sources: U.S. Department of Justice (2014).

Within the Canadian criminal justice system, like in the U.S., older models are giving way to more managerial modes of policing. Under the header *Economics of policing, intelligence-led policing in Newfoundland*, the new models are described in the following way:

The Royal Newfoundland Constabulary implemented intelligence-led policing in 2011 as a business model and managerial philosophy. Intelligence-led policing uses data and crime intelligence to support objective, informed decision making that maximizes police efficiency. The approach has been adopted as a best practice in many police organizations around the world. (Public Safety Canada 2011)

The language displays an inching in of economic logics into the way public services are being reconfigured. It is interesting that policing has a business model to speak of while it is also described as a «managerial philosophy» in order to «maximize police efficiency». This model of policing requires a targeted approach that is designed not to police everyone equally, but instead to identify *a priori* problem persons in society for increased scrutiny in order to incapacitate them to prevent future crime. Fines and extraordinary fines exist in a relationship to the economics of crime prevention. They are market interventions that are tipping the balance towards the protection of certain economic interests over others.

2.2. *Security and terrorism*

Intelligence-led policing is a form of securitizing domestic spaces. Security occupies itself with the management of risk (Petersen 2008)⁹. In Canada, risk-analysis and security threats have been instrumental in expanding police-powers to reduce rights protections such as rights to privacy against state surveillance at every level of the police force from the national to the local (Murphy 2007). In a post 9/11 world, when terrorist threats shifted from relatively low casualty campaigns to instead pose potentially catastrophic destruction and loss of life, the field of security transformed to incorporate risk analysis into its legal framework (Posner 2004)¹⁰. The crime of terrorism brings different institutions and agencies together so that law enforcement and national security agencies as well as the private sector and other security-related organizations are being drawn in to cooperate and work together (Gabor 2004). As different political bodies or institutions lose the strong barriers of separation such as between the military and the police, so too are domestic and foreign logics and techniques collapsing into one another through legal frameworks. At home, we use the same techniques as those in military campaigns abroad that include surveillance and intelligence gathering, targeted policing and targeted legal incapacitations but it is «untethered» from any specific threat or war as it becomes a form of governance (Harcourt 2018). Domestic security is concerned with policing the enemy at home. Jennifer Daskal introduced the term «crenemy» as an important figure to discuss the collapsing paradigms of security and criminal law around the crime of terrorism (Daskal 2019). The «crenemy» status is an umbrella status that marks a large-scale transformation in law along the same lines as the work of Gunter Jakobs (2003) who discusses the development of criminal law of the enemy. The criminal law of the

⁹ Lund Petersen argues that though they were disciplinarily separated, risk analysis and security have converged as threats that include terrorism and climate change have potentially devastating impacts (Petersen 2008, 173).

¹⁰ As an example of the shift in the treatment of different acts classed as terrorism, successfully hijacking a plane in the early 1970s could carry a penalty as minor as a few years in prison and allied countries would even grant asylum to some «terrorists». One Black Panther member who hijacked a plane to Algeria at gunpoint commented that hijackings were rather common in the early 1970s. Consequently, the story of this member of the Black Panthers is that he settled in France and became a social worker as the French Government saw the cause of the struggle exculpatory for the hijacking. That is no longer the case as allies are drawn into a common struggle against terrorism (see Bockman 2020, Petersen 2008).

enemy creates new «anticipatory» crimes that form a calculation of risk and impact. The new «anticipatory» crimes emphasize the character of the criminal as opposed to actual actions or crimes (Ohana 2014). Anticipatory crimes, therefore, are designed to regulate risk; they are designed to prevent crimes rather than to punish someone for a criminal action in itself. Belonging to a criminal organization, for example, becomes the crime that prevents a harmful action rather than committing a crime.

There is no single definition of terrorism as different bodies even within the same country often define it differently, yet there are some common attributes for making a claim about anti-terrorism laws as a general category. Despite differences, there is still significant agreement between the U.S. and Canada as «threats», «violence» and «politically motivated tactics» are common to the definitions (Government of Canada 2014)¹¹. While much of the U.S. Patriot Act has expired, it has had a lingering impact and did provide in some instances a template for other countries dealing with domestic terrorism. As the American Civil Liberties Union *et al.* (2002) noted, in the U.S. under the Patriot Act:

[t]he definition of domestic terrorism is broad enough to encompass the activities of several prominent activist campaigns and organizations. Greenpeace, Operation Rescue, Vieques Island and WTO protesters and the Environmental Liberation Front have all recently engaged in activities that could subject them to being investigated as engaging in domestic terrorism¹².

¹¹ In Canada, section 83.01 of the *Criminal Code* defines terrorism as an act committed «in whole or in part for a political, religious or ideological purpose, objective or cause» with the intention of intimidating the public «...with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act». Activities recognized as criminal within this context include death and bodily harm with the use of violence; endangering a person's life; risks posed to the health and safety of the public; significant property damage; and interference or disruption of essential services, facilities or systems. It is useful to briefly contrast this definition with those adopted by other nations operating under law systems similar to that of Canada.

¹² The U.S. government official website from the Justice Department (n.d.) contests this position and responds with the following: «Reality: The Patriot Act limits domestic terrorism to conduct that breaks criminal laws, endangering human life. Peaceful groups that dissent from government policy without breaking laws cannot be targeted. Peaceful political discourse and dissent is one of America's most cherished freedoms, and is not subject to investigation as domestic terrorism. Under the Patriot Act, the definition of "domestic terrorism" is limited to conduct that (1) violates federal or state criminal law and (2) is dangerous to human life. Therefore, peaceful political organizations engaging in political advocacy will obviously not come under this definition (Patriot Act, Section 802)».

In Canada the government recognizes in some interpretations of the meaning of terrorism a broad reading that includes: «Activities recognized as criminal within this context include death and bodily harm with the use of violence; endangering a person's life; risks posed to the health and safety of the public; significant property damage; and interference or disruption of essential services, facilities or systems» (Government of Canada 2014). Because «interruption of essential services» is considered a criminal act under the terrorism definition in Canada, one can see how easily non-violent protest could become classed as terrorism. Indeed, Canadian authorities began to review the extent to which they too would class what is in essence non-violent direct action as terrorism after the conviction of the two Washington women who tampered with the railroad tracks. Douglas Bond's work on the meaning of nonviolent action addresses the distinction between an action that could be classed as either violent or nonviolent, but looks to the democratic conditions that impacts the kinds of political interventions nonviolent activists engage in (Bond 1988). When the Liberal Party came into power in Canada, they added amendments to earlier legislation to preclude protesters from being classed as terrorists. This is an important and meaningful exception that doesn't exist South of the border. There are significant forces and pressures emanating from corporations that already have their own internal security and intelligence apparatus to push for protection of supply chains as part of national security strategies (Bergin *et al.* 2019).

Risk analysis is structuring legal relations on a scale that even influences the adoption of predictive policing across national borders. Canada, at the national level, has been reticent to go as far as the U.S. to legislate severe penalties for disruption to the energy infrastructure, but the special security relationship between the U.S. and Canada could push Canada towards a harder-line stance. An early position paper coming out of the Canadian Centre of Intelligence and Security Studies at Carleton University argued in 2008 that the possibility of being found negligent in U.S. court cases *should* influence Canadian policy. «Given this reality, governments in Canada should not take lightly the emerging body of case law in the United States that suggests that inadequate counter-terrorism practices could be deemed negligent in light of reasonably foreseeable risks» (Shore 2008). The paper goes on to claim that since the energy sector is largely private, the protection of Critical Energy Infrastructure (CEI) under most public-private partnerships means that private security firms in partnership with the government are creating emergency management plans that deal with all forms of security «risk» that would disrupt normal operations.

Environmental activists have long complained of a misplaced characterization of them as terrorists (Potter 2011). Although priorities are changing in the last decade as armed right-wing groups have stepped up their campaigns, non-violent environmental protest had been a top priority for U.S. agencies. A spokesman for the FBI mentioned in a 2004 Senate hearing that «the FBI's investigation of animal rights extremists and ecoterrorism matters is our highest domestic terrorism investigative priority» (Hatch 2004, 18) In the same hearing, Senator Hatch made the following comment:

Well, I know very wealthy people who love animals and have given hundreds of thousands of dollars to PETA, for instance, because they believe that they are really trying to protect animals. Yet, without animal research, we would soon fall behind a lot of other countries and we would fall behind in these life-saving treatment therapies that are essential for mankind. (Hatch 2004, 19)

In the above comment, Hatch mentions that the intention to stop some forms of animal testing touches on American competitiveness internationally. The cross between the domestic and the international touches on national interests, but there is another international dimension as some of the online campaigns come from Europe. In some of the testimony, the harassment campaigns, it was reported, had as a goal to change the modes of production. The complaint of the executives invited to speak at the hearing was that it would cost \$50 million U.S. to make the demanded changes and that was not cost effective. The hearing purported to investigate the possibility of bumping animal and environmental action and harassment into the category of terrorism. Among the complaints of executives of certain corporations who gave testimony were complaints that the system as it stood in 2004 had insufficient fines and insufficient penalties to stop the harassment. The domestic terrorism law in the U.S. has been up for reconsideration and it is likely it will take up the issue of fines.

As organizations that are considered too moderate for many such as People for the Ethical Treatment of Animals (PETA) and Greenpeace begin to be pulled into a security logic based on being a threat to national security, they face counter-terrorist surveillance and tougher anti-protest laws. Increasingly the language of terrorism (eco-terrorism or economic terrorism) is being used and justifying the ratcheting up of penalties for civil disobedience. «This is a miscasting of protesters as economic terrorists» according to Vera Eidelman, a staff attorney with the ACLU (Cagle 2019). Republican

party sponsored laws in areas where the oil industry is particularly strong increase penalties for «impairing or interrupting» pipeline construction to a felony that is punishable by up to two years in jail, and a \$10,000 fine (Cagle 2019). The public-private partnerships that have become paradigmatic of North American security arrangements represents economic risks to private interests of companies as risks to public welfare (Petersen 2008). The irony is that demonstrations that attempt to highlight the risks companies pose to public welfare are being criminalized to tilt risk equations towards private economic interests. «The laws purport to only criminalize violence and property damage in service of pipeline safety, but critics say their greater intent appears to be to deter nonviolent civil disobedience by framing it as potentially violent in itself» (Cagle 2019). The potentiality for violence over critical infrastructure that is deemed necessary to economic security by the state and persons with strongly held political beliefs considered «extremist» by many in law enforcement creates the conditions for an expansive criminal/security framework that effectively criminalizes potential actions. Fines meet what David Garland refers to as the «language of penalty» in that the kind of sanction depends on the sensibilities of societies (Garland 1990, 59). Fines are punitive but not as crass as corporal punishment or even locking someone up, and they are brutally punitive while being invisible and fit the idea that potential harm is not the same as actual harm. The real risk for economic sanctions around these new terrorism charges reside in guilt by association crimes. Because these groups are membership based, the status of belonging to an environmental group creates the grounds for inclusion to a potentially dangerous class that are at the very least subjected to heightened surveillance if not economic sanctions.

Demonstrations in opposition to the XL pipeline that connects Canada and the U.S. saw a heavily militarized police response in North Dakota. In the summer of 2017 at least 700 persons were arrested, some faced minor charges such as trespass, but several faced felony charges (Levin 2017). In the same year the FBI Terrorism Taskforce was investigating the Standing Rock protests. Lauren Regan, a civil rights lawyer, commented regarding FBI inquiries into the demonstrators, «The idea that the government would attempt to construe this Indigenous-led non-violent movement into some kind of domestic terrorism investigation is unfathomable to me...» (Levin 2017). Protests around pipelines are not *a priori* any particular kind of crime—that is to say it is discretionary whether to treat it as a felony, misdemeanor, or act of terrorism. Research on policing of protests in New York suggests

police reactions to protests can correspond to the size and the level of actual «threat» posed by the protesters but that there are multiple factors that influence this and the kind of response is nuanced (Earl, Soule, and McCarthy 2003). In the U.S. then, we might expect what is perceived as a «softer» approach that does not include any physical confrontation, no arrests, no contact with actual bodies but mere fines would work well when protests become large and unmanageable for a small police force. Consequently, a mere fine for something that can be classed as terrorist activity but involves students or a sympathetic group can thus appear to be an appropriate mercy in the context of more severe classes of crimes.

There are aspects of these protests that allow for Water Protector protests to fall under international terrorism laws. Several of the Indigenous protesters are formally citizens of Canada as the First Nations in the North are not contained by U.S. and Canadian borders, nor are the environmental protests. Pipelines can cross international borders and they are also considered critical infrastructure by both the U.S. and Canada. It is a complex situation as environmental protection is bound up with Indigenous treaties, land claims, and issues of sovereignty over the land and there are essentially police presiding over an international conflict. As one Water Protector commented regarding engaging in civil disobedience by chaining himself to a pipeline, he did it «to protect the treaties that my ancestors failed to uphold» (Corbett 2021). There is a significant risk of turning these protests into full-fledged political conflicts through the use of draconian legislation and an ongoing failure to protect the basic rights of First Nations peoples, some of which are also enshrined in the UN Declaration on the Rights of Indigenous Peoples.

Other non-violent environmental movements are also turning to obstructive civil disobedience as environmental destruction advances and environmental protection becomes all the more urgent. Extinction Rebellion, also known as XR, which was founded in the UK in 2016 is now a global movement and has groups throughout Canada and the U.S. While they are committed to non-violence, they view their ends as a defense against environmental collapse and extinction. They also specify that «our governments have failed to act» (Extinction Rebellion 2021). Their stated methods are non-violent, but they advocate violating the law. «Traditional strategies like petitioning, lobbying, voting and protest have not worked due to the rooted interests of political and economic forces. Our approach is therefore one of non-violent, disruptive civil disobedience – a rebellion to bring about change, since all other means have failed» (Extinction

Rebellion 2021). Despite XR's commitment to non-violence and the scientific soundness of their cause (it is not alarmist to cite the best scientific evidence that we have a small window of under 10 years to stave off climate disaster) police are finding it difficult to classify the activists and their activities that include forms of disruptive assembly. Counter-terrorism police in South-East England had originally listed the group as an extremist group under a program to prevent youth at risk of extremism. They delisted the group after a news report from the Guardian and cited «an error in judgment» (BBC News 2020) Under the header «Why are they a threat?», counter-terrorism officials authoring the guidelines for police training originally wrote the following: «An anti-establishment philosophy that seeks system change underlies its activism; the group attracts to its events school-age children and adults unlikely to be aware of this. While non-violent against persons, the campaign encourages other lawbreaking activities» (BBC News 2020). It is a positive sign that the police delisted the group, however, one can see the inherent conflict in the way «critical infrastructure» and their systems are insulated by laws that criminalize protest and protesters because they are inherently part of the system that in the short term protects human life and society, even if in the long run scientific evidence shows they will destroy it. The short of it is that despite how critical it is to transform systems for planetary preservation and human rights, legislation is being created that efficiently and without clear limits criminalizes protests and protesters challenging these systems.

While non-violent protest is not frequently prosecuted as terrorism in Canada, this is a matter of prosecutorial discretion rather than a matter of law. Often, I would argue, the non-violent character of civil disobedience and disruptive social movements that activists use to further environmental goals (such as the reduction of carbon emissions, for example) that have been legitimized at the international level by treaty, but are not being realized at the national level, could make some of the supposed «softer» mechanisms of fines more palatable to the public. Instead of throwing protesters into jail for years, for example, it is economically better and politically safer to fine them out of existence. This is indeed the movement in legislation that sees the spectrum of political dissent as a nuisance (PEN America 2020). That is not to say the state uses only «soft» liberal and accepted mechanisms such as fines, as long-term incarceration is still an available tool. And for some states that work outside human rights law, there is no more efficient way to target the legal person than through disappearances and summary executions for troublesome

political opposition.¹³ The soft and hard mechanisms of legal incapacitation work hand in hand with outright death at the most extreme end. In any event, the structures for extreme fines are now in place and the only thing limiting the limitations of human rights often fall within discretionary powers.

Conclusion

While it should be assumed that the use of extreme fines and more serious criminal classifications for protests are designed to deter any possibility of protest, the creation of new, more serious crimes for civil disobedience also brings more people under state control. Estimates suggest that almost half of all American children have at least one parent with a criminal record (Joiner and National Journal 2015). This is a staggering, almost unimaginable statistic with wide ranging social effects. The use of fines renders the economic limits to the numbers of persons a state can sanction virtually boundless, and so what are already staggering percentages of persons under state control could continue to grow in response to political unrest. Fines, like asset freezes and travel bans, target the legal person rather than the actual body and subject it to an efficient and relatively invisible form of discipline. There is a risk of a net widening of persons considered to be in conflict with the state as fines and criminal records become their own form of cost-effective penalty as long as the punitive impulse in North America does not diminish.

Indigenous Peoples, activists, and young people are frequently on the front lines of nonviolent political protests that are being sanctioned in the U.S. and Canada for being particularly disruptive to the political economic order. Persons pushing for system change are being economically expelled, and the expulsions are being designed through law. Property holders who have the most to lose from a systemic transformation are exerting direct influence over legislation to protect their interests. But solutions to this problem are not easy. Protests are not only in support of human rights, as many protests in the last decade have also been directed against the rights of minorities,

¹³ «Egyptian security forces are using extrajudicial killings in a systematic way in place of official executions, which have decreased in recent years despite the higher rates at which death sentences have been issued» (Mandour 2019, 1). This is explained due to the push back against official death sentences from the citizenry and international organizations.

vulnerable groups, or against the rights of non-citizens. As political divisions deepen in the U.S. and Canada, this paper diagnoses a problem without offering a clear solution for it. Disruptive protests are becoming part of the landscape and since penalties increase the state coffers rather than diminishing them, they could provide more resources and an endless capacity for an already widening criminal justice net.

Bibliography

- American Civil Liberties Union *et al.* 2002. «How the USA Patriot Act redefines "domestic terrorism".» *American Civil Liberties Union*. Accessed March 7, 2023. <https://www.aclu.org/other/how-usa-patriot-act-redefines-domestic-terrorism?redirect=national-security/how-usa-patriot-act-redefines-domestic-terrorism>.
- Aviram, Hadar. 2015. *Cheap on crime*. Oakland: University of California Press.
- BBC News. 2020. «Extinction rebellion: counter-terrorism police list group as "extremist" in guide.» *BBC News UK*. January 10. Accessed February 27, 2023. <https://www.bbc.com/news/uk-51071959>.
- Bergin, Anthony, Donald Williams, and Rhys De Wilde. 2019. «From board room to situation room.» *Australian Strategic Policy Institute*. Accessed February 27, 2023. <http://www.jstor.com/stable/resrep23021>.
- Bockman, Chris. 2020. «The black panther who hijacked a jet to Algeria and started again in France». *BBC Stories*, December 6. Accessed February 27, 2023. <https://www.bbc.com/news/stories-55192772>.
- Bond, Douglas G. 1988. «The nature and meaning of nonviolent direct action: an exploratory study.» *Journal of Peace Research* 25 (1): 81-89. doi: 10.1177/002234338802500108.
- Braden, Myesha, Leah Watson, Talia Gilbert, and Jason Enos. 2019. «Too poor to pay: How Arkansas's offender-funded justice system drives poverty & mass incarceration.» *Lawyers' Committee for Civil Rights Under Law*. Accessed February 27, 2023. <https://indd.adobe.com/view/f3b39ab5-1da5-409e-97a6-a0b060d2f578>.
- Cagle, Susie. 2019. «"Protesters as terrorists": growing number of States turn anti-pipeline activism into a crime.» *The Guardian*. July 8. Accessed February 27, 2023. <https://www.theguardian.com/environment/2019/jul/08/wave-of-new-laws-aim-to-stifle-anti-pipeline-protests-activists-say>.
- Calvo, Kerman, and Aitor R. Echeverría. 2022. «15-M Mobilizations and the penalization of counter-hegemonic protest in contemporary Spain». *Social Movement Studies*, doi: 10.1080/14742837.2022.2061943.
- CCPR. 2020. General Comment no. 37 on right of peaceful assembly (article 21) Human Rights Committee, 129th session, CCPR/C/GC/37. Accessed March 7, 2023. <https://digitallibrary.un.org/record/3884725?ln=en>.

- Chenoweth, Erica, and Kathleen Gallagher. 2013. «Understanding nonviolent resistance: an introduction.» *Journal of Peace Research* 50 (3): 271-276. doi: 10.1177/0022343313480381.
- Chenoweth, Erica, Evan Perkoski, and Sooyeon Kang. 2017. «State repression and nonviolent resistance.» *Journal of Conflict Resolution* 61 (9): 1950-1969. doi: 10.1177/0022002717721390.
- Chesnay, Catherine T., Céline Bellot, and Marie Ève Sylvestre. 2013. «Taming disorderly people one ticket at a time: the penalization of homelessness in Ontario and British Columbia.» *Canadian Journal of Criminology and Criminal Justice* 55 (2): 161-85. doi.org/10.3138/cjccj.2011-E-46.
- Corbett, Jessica. 2021. «Arrests in Minnesota after water protectors chain themselves inside pipe section to halt line 3 construction.» *Common Dreams*. January 14. Accessed February 27, 2023. <https://www.commondreams.org/news/2021/01/14/arrests-minnesota-after-water-protectors-chain-themselves-inside-pipe-section-halt>.
- Cox, Ethan. 2012. «Montreal by law restricting protests ruled unconstitutional: Quebec Superior Court judge invalidates key sections of by law P6.» Accessed January 3, 2023 <https://ricochet.media/en/1241/breaking-montreal-by-law-restricting-protests-ruled-unconstitutional>; repealed law R.B.C.M. 2012. «Ville de Montréal: P-6 By law.» 6: 3-5 «Original law on file with author».
- Daskal, Jennifer. 2019. «The terrorist crenemy.» In *Criminals and Enemies*, edited by Austin Sarat, Lawrence Douglas, and Marhta Merrill Umphrey (101-129). Amherst: University of Massachusetts Press.
- Democracy Now! 2007. «Peace Activist Bert Sacks Challenges U.S. Fine for Bringing Humanitarian Aid to Iraq in 1997.» *Democracy Now!* January 23. Accessed March 7, 2023. https://www.democracynow.org/2007/1/23/peace_activist_bert_sacks_challenges_u.
- Earl, Jennifer. 2011. «Iron fists, velvet gloves, and diffuse control.» *Annual Review of Sociology* 37: 261-84. doi: 10.1146/annurev.soc.012809.102609.
- Earl, Jennifer, Sarah A. Soule, and John D. McCarthy. 2003. «Protest under fire? Explaining the policing of protest.» *American Sociological Review* 68 (4): 581-606. doi: 10.2307/1519740.
- Ellinger-Locke, Maggie. 2019. «Anti-protest legislation is threatening our climate.» *EcoWatch*. May 6. Accessed March 7, 2023. <https://www.ecowatch.com/anti-protest-legislation-2636409012.html?rebellitem=2#rebellitem2>.
- Extinction Rebellion. 2021. *Extinction Rebellion: Join the Fight Against Climate and Ecological Collapse*. Accessed February 27, 2023. <https://rebellion.global/>.
- Gabor, Thomas. 2004. «The views of Canadian scholars on the impact of the anti-terrorism Act.» *Department of Justice Canada: Research and Statistics Division*. Accessed February 27, 2023. https://www.justice.gc.ca/eng/rp-pr/cj-jp/antiter/rr05_1/rr05_1.pdf.
- Garland, David. 1990. *Punishment and modern society: a study in social theory*. Chicago: The University of Chicago Press.

- Government of Alberta. 2020. «Protecting infrastructure from illegal activity.» *Government of Alberta: Government News*. February 25. Accessed March 7, 2023. <https://www.alberta.ca/release.cfm?xID=68684ECA2E9B2-C992-9251-78COAE348BC7A61F>.
- Government of Canada. 2014. «Definitions of terrorism and the Canadian context». *Memorializing the victims of terrorism*. Accessed February 27, 2023. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr09_6/p3.html.
- Graham, Andrew. 2011. «Canada's Critical Infrastructure: When Is Safe Enough Safe Enough?» *The MacDonald-Laurier Institute*. Accessed March 7, 2023. <https://www.macdonaldlaurier.ca/files/pdf/Canadas-Critical-Infrastructure-When-is-safe-enough-safe-enough-December-2011.pdf>.
- Gramlich, John. 2021. «America's incarceration rate falls to lowest level since 1995.» Pew Research Center. Accessed February 27, 2023. <https://www.pewresearch.org/fact-tank/2021/08/16/americas-incarceration-rate-lowest-since-1995/>.
- Harcourt, Bernard. 2018. *The Counterrevolution*. New York: Basic Books.
- Hatch, Orrin G. 2004. «Animal rights: Activism vs. criminality.» *Hearing before the Committee on the Judiciary United States Senate*, 108-764. Accessed February 27, 2023. <https://www.govinfo.gov/content/pkg/CHRG-108shrg98179/pdf/CHRG-108shrg98179.pdf>.
- Hauser, Christine. 2020. «Two women charged with train terror near Canadian border.» *The New York Times*, December 2. Accessed February 27, 2023. <https://www.nytimes.com/2020/12/02/us/train-shunt-washington.html>.
- Henderson, Tim. 2018. «Felony conviction rates have risen sharply, but unevenly.» The Pew Charitable Trust. Accessed February 27, 2023. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/01/02/felony-conviction-rates-have-risen-sharply-but-unevenly>.
- Ingraham, Christopher. 2017. «Republican lawmakers introduce bills to curb protesting in at least 18 states.» *The Washington Post*. February 24. Accessed February 27, 2023. <https://www.washingtonpost.com/news/wonk/wp/2017/02/24/republican-lawmakers-introduce-bills-to-curb-protesting-in-at-least-17-states/>.
- Institute for Public Accuracy. 2005. «U.S. Government fining activists for taking medicine to Iraq.» *Institute for Public Accuracy*. July 6. Accessed February 27, 2023. <https://accuracy.org/release/1082-u-s-government-fining-activists-for-taking-medicine-to-iraq/>.
- International Center for Not-For-Profit Law. 2023. *US Protest Law Tracker*. Accessed February 27, 2023. <https://www.icnl.org/usprotestlawtracker/>.
- Jakobs, Günther. 2003. «Derecho penal del enemigo.» In *Especialización en Derecho Penal y Derecho Procesal Penal*, edited by Manuel Cancio, 313-352. Madrid: Thomson/Civitas.
- John Howard Society of Canada. 2018. «Financial facts on Canadian prisons.» *John Howard Society of Canada*. August 23. Accessed March 7, 2023. <https://johnhoward.ca/blog/financial-facts-canadian-prisons/>.
- Joiner, Lottie, and National Journal. 2015. «Families pay the never-ending price of a criminal record.» *The Atlantic*, 1. Accessed February 27, 2023. <https://www.theatlantic.com/politics/archive/2015/12/how-families-pay-the-never-ending-price-of-a-criminal-record/433641/>.

- Jones, Van, and Mark Holden. 2018. «This bipartisan bill is Congress' chance to fix our failing prison system.» *CNN*. June 22. Accessed March 8, 2023. <https://www.cnn.com/2018/05/18/opinions/bipartisan-support-prison-reform-bill-opinion-jones-holden/index.html>.
- Lee, Trymaine. 2015. «America's incarceration problem hits bipartisan sweet spot.» *MSNBC*. March 28. Accessed March 8, 2023. <https://www.msnbc.com/msnbc/incarceration-bipartisan-sweet-spot-msna560736>.
- Lessard-Lachance, Maxime, and Glen Norcliffe. 2013. «To storm the citadel: Geographies of protest at the Summit of the Americas in Québec City, April 2001.» *Annals of the Association of American Geographers* 103 (1): 180-194. doi: 10.1080/00045608.2011.628249.
- Levin, Sam. 2017. «Revealed: FBI terrorism taskforce investigating standing rock activists.» *The Guardian*. February 10. Accessed February 27, 2023. <https://www.theguardian.com/us-news/2017/feb/10/standing-rock-fbi-investigation-dakota-access>.
- Malakieh, Jamil. 2020. «Adult and youth correctional statistics in Canada, 2018/2019.» *Statistics Canada: The Daily*. December 21. Accessed March 7, 2023. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016-eng.htm>.
- Mandour, Maged. 2019. «Egypt's invisible executions.» *Carnegie Endowment for International Peace*. April 25. Accessed February 27, 2023. <https://carnegieendowment.org/sada/78998>.
- Mene, Boritse. 2020. «The Constitutionality of the Critical Infrastructure Defence Act (CIDA).» *ACLRC*. July 23. Accessed March 7, 2023. <https://www.aclrc.com/blog/2020/7/23/the-constitutionality-of-the-critical-infrastructure-defence-act-cida>.
- Murphy, Christopher. 2007. «Securitizing Canadian policing: a new policing paradigm for the post 9/11 security state?» *Canadian Journal of Sociology* 32 (4): 449-75. doi.org/10.2307/20460665.
- National Hardwood Lumber Association. 2020. *Latest Update on COVID-19 from the Hardwood Federation*. March 31. Accessed February 27, 2023. <https://nhla.com/latest-update-on-covid-19-from-the-hardwood-federation/>.
- Ohana, Daniel. 2014. «Günther Jakobs's Feindstrafrecht: A dispassionate account.» In *Foundational Texts in Modern Criminal Law*, edited by Markus D. Dubber, 353-372. Oxford: Oxford University Press.
- Ortiz, Isabel, Sara Burke, Mohamed Berrada, and Saenz Cortés Hernan. 2022. *World protests: a study of key protest issues in the 21st Century*. New York: Palgrave Macmillan.
- PEN America. 2020. *Arresting Dissent: Legislative Restrictions on the Right to Protest*. Accessed February 27, 2023. <https://pen.org/arresting-dissent/>.
- Petersen, Karen Lund. 2008. «Terrorism: when risk meets security.» *Alternatives: Global, local, political* 33 (2): 173-190.
- Phelps, Michelle S. 2018. «Ending mass probation: sentencing, supervision, and revocation.» *Future of Children* 28 (1): 125-46.
- Posner, Richard. 2004. *Catastrophe: risk and response*. Oxford: Oxford University Press.

- Potter, Will. 2011. *Green is the new red: an insider's account of a social movement under siege*. San Francisco: City Lights Publishing.
- Prior, Tim, and Florian Roth. 2013. «Disaster, resilience and security in global cities.» *Journal of Strategic Security* 6 (2): 59-69.
- Public Safety Canada. 2011. *Intelligence-Led Policing*. Accessed February 27, 2023. <https://www.publicsafety.gc.ca/cnt/cntrng-crm/plcng/cnmcs-plcng/ndx/snps-en.aspx?n=37>.
- Ruddock, Jenna. 2019. «Coming down the pipeline: first amendment challenges to State-level "critical infrastructure" trespass laws.» *American University Law Review* 69 (2): 665-702.
- Sassen, Saskia. 2014. *Expulsions: Brutality and Complexity in the Global Economy*. Cambridge: Harvard University Press.
- Schierenbeck, Alec. 2018. «The constitutionality of income-based fines.» *The University of Chicago Law Review* 85 (8): 1869-1926.
- Shakir, Faiz. 2017. «Oppose S. 720 - Israel anti-boycott Act.» *American Civil Liberties Union*. Accessed February 27, 2023. https://www.aclu.org/sites/default/files/field_document/2017_07_17_aclu_letter_opposing_s_720_israel_anti-boycott.pdf.
- Shannon, Sarah K.S., Christopher Uggen, Jason Schnittker, Melissa Thompson, Sara Wakefield, and Michael Massoglia. 2017. «The growth, scope, and spatial distribution of people with felony records in the United States, 1948-2010.» *Demography* 54 (5): 1795-1818. doi.org/10.1007/s13524-017-0611-1.
- Shore, Jacques J.M. 2008. «The legal imperative to protect critical energy infrastructure.» *Critical Energy Infrastructure Protection Policy Research Series* 2: 1-16. Accessed February 27, 2023. <http://cip.management.dal.ca/publications/The%20Legal%20Imperative%20to%20Protect%20critical%20energy%20infrastructure.pdf>.
- Smiley, Calvin John. 2014. «Existing but not living: neo-civil death and the carceral State.» *CUNY Academic Works*, 201. Accessed February 27, 2023. http://academicworks.cuny.edu/gc_etds/283.
- Sylvestre, Marie Eve. 2010. «Disorder and public spaces in Montreal: repression (and resistance) through law, politics, and police discretion.» *Urban Geography* 31 (6): 803-24. doi: 10.2747/0272-3638.31.6.803.
- Sylvestre, Marie-Eve, Céline Bellot, Philippe Antoine Couture Ménard, and Alexandra Caroline Tremblay. 2011. «Le droit est aussi une question de visibilité : l'occupation des espaces publics et les parcours judiciaires des personnes itinérantes à Montréal et à Ottawa.» *Canadian Journal of Law and Society* 26 (3): 531-61. doi.org/10.3138/cjls.26.3.531.
- Sylvestre, Marie Eve. 2010. «Disorder and public spaces in Montreal: repression (and resistance) through law, politics, and police discretion.» *Urban Geography* 31 (6): 803-24. doi.org/10.2747/0272-3638.31.6.803.
- United States Department of Justice. n.d. *Dispelling some of the major myths about the USA Patriot Act*. Accessed February 27, 2023. https://www.justice.gov/archive/ll/subs/u_myths.htm.

- United States District Court Western District of Washington at Seattle. 2020. *MJ20-764, Case No., and Complaint for Violation 18 U.S.C. S1992(a)(5). United States of America V. Ellen Brennan Reiche and Samantha Brooks.*
- United States Department of Justice. 2014. *Survey of State Criminal History Information Systems, 2012.* Accessed Month day, year. <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

