

# “Vandals”, “Workers” and “Citizens”: Criminal Subjection and Political Legitimacy in the Criminalization of June 2013 Protests\*

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## INTRODUCTION

This study aims to present a preliminary analysis of a process of criminal subjection identified during a research project about the criminalization of the protests of June 2013 in São Paulo. Michel Misse uses criminal subjection as an analytical operator to analyze criminalization, and understands it as the process of preventively building social types prone to criminal practice which justify definitive force reactions beyond control procedures. This is a social process which stretches the boundaries of judicial and police procedures and institutions by simultaneously feeding and being fed by them (Misse, 2008, 2010, 2014).

Misse (2008) suggests other analytical operators for the analysis of criminalization processes: *criminalization* in its strict sense, which is the action of turning morally reprehensible conduct into institutional codes of law (codes, laws); *crimination*, understood as successive interpretive processes about the same fact which seek to frame it into the legal classification of what is institutionalized as a crime; *incrimination* of the person who committed the action, i.e., the individual is held responsible for a conduct interpreted as a crime, according to institutionalized

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legal and moral codes. Although these processes were identified during the study which generated this article, they will not be individually analyzed here, but rather considered as we discuss the relationship between criminal subjection, crimination and incrimination.

According to Misse (2008, 2014), criminal subjection occurs when the following characteristics are present:

- (i) the expectation that certain individuals and social groups are prone to committing crimes as part of their personality and character;
- (ii) the shift in focus from criminalizing the *crime* and the *act of breaking the law* to the (individual or collective) *subjects* of the crime, as defined by their potential dangerousness and irrecoverability;
- (iii) the selective discrimination of certain characteristics associated with these individuals and groups, which are mobilized by justice and security agents, as well as preventive strategies of social control;
- (iv) the lack of need of a relationship between criminal subjection and a crime which actually occurred or a specific legally defined criminal type;
- (v) the structuring of a relationship between social types which does not depend on face-to-face interactions and socially justifies arbitrary and violent institutional practices allegedly in order to eliminate the danger represented by the social types of criminal subjection;
- (vi) the construction of subjectification processes by assigning criminal characteristics to criminal subjects, thus justifying their difference.

From a political point of view, the problem of criminal subjection is that “there are different types of subjectification which process subject who is neither revolutionary, democratic, egalitarian nor oriented towards common good” (Misse, 2010:17). The concept of criminal subjection was initially formulated in order to understand “marginal” and “bandit” figures as criminal subjects produced by police and judicial intervention in a context of urban violence structured by inequalities

(Misse, 1999, 2010). Since then, the concept has been used in many studies about different subjectification processes related to punitive practices, especially regarding common criminality (Grillo, 2013; Santibanez, 2016; Teixeira, 2011, 2012).

In recent years, many studies have analyzed the protests which took place in Brazil in June 2013 – and in the following years. These studies have sought to understand the dynamics of these mobilizations (Bringel and Pleyers, 2015; Cohn, 2017; Sorj, 2014; Tatagiba, 2014; Tatagiba, Trindade and Teixeira, 2015), either situating these events in more comprehensive analyses of medium and long-term processes in Brazilian politics (Avritzer, 2016; Bucci, 2016; Figueiredo, 2014; Nobre, 2013; Singer, 2013) or investigating the problem of violence, repression and criminalization of protests (Fernandes and Câmara, 2018; Kahn, 2014; Silva and Fernandes, 2017). The later groups often involve the *black bloc* tactic and its association to *moral panic*<sup>1</sup> as a central theme (Diretoria de Análise de Políticas Públicas, 2014; Oliveira, 2017; Oliveira, 2015; Pinheiro Júnior, 2016; Solano, Manso and Novaes, 2014). With a focus on the concept of criminal subjection, I believe that this article can contribute to debates involving different perspectives.

Based on Misse's (1999, 2000) original question about the criminal subject as non-democratic, non-revolutionary and not oriented towards common good, using the concept of criminal subjection to analyze the subjectification of agents involved in practices of political contestation ensues other issues related to the questions raised by aforementioned studies: How to understand criminal subjection processes which affect political activists and social movements focused on claiming rights and democracy, citizenship practices and the common good? What are the social and political effects of these processes – characterized by selectivity, exclusion and justification of exceptional solutions – for the constitution of a democratic political space and the legitimation of political protests in Brazilian politics? What is the role of justice and security institutions in defining legitimate political spaces, practices and subjects through their routine activity of social control and by mobilizing coercive instruments and criminalization processes?

This study analyzed criminal proceedings<sup>2</sup>; eight notes extracted from the website of the State Prosecution Service of São Paulo (Ministério Público do Estado de São Paulo – MPSP), 33 notes from the São Paulo State Department of Public Safety (Secretaria de Segurança Pública – SSP), 14 notes from the Free Pass Movement (Movimento Passe Livre

– MPL), interviews with protesters and criminal justice agents<sup>3</sup>, and other documents such as media texts and materials selected from cases not included in the original study sample. These materials address the protests against the increase in public transport fares which took place in São Paulo between 2013 and 2015. Since they happened in a period of intense and diverse political protests (Bringel and Pleyers, 2015; Tatagiba, 2014), I believe the findings of this study can be useful for future investigation about criminal subjection processes in situations involving direct relations among criminal justice, punitive demands and political protest practices.

Lawyers connected to MPL, who provided legal aid to arrested protesters back then, facilitated our access to criminal proceedings and claimed these documents to comprise the total amount of criminal proceedings resulting from the arrest of protesters in that period under their professional supervision, although not all the accused individuals were organic MPL activists. Notes by MP, MPL and SSP were selected after reading all notes published on these institutions’ websites during the studied period, which allowed the identification of individuals related to the theme of the protests.

Media texts were selected by searching themes such as protests, violence and black blocs along with the dates of more important events. Lawyers, judges, protesters and the police were selected for interviews through snowball sampling (Biernacki and Waldorf, 1981), based on initial contacts with informants. Protesters were also selected through their identification in the proceedings analyzed in this study.

The content from interviews and documents was analyzed through coding (Saldaña, 2009) and lexicometry (Conde, 2015) techniques, with the help of *Atlas.ti* qualitative analysis software.

#### **“VANDALS”, “WORKERS”, AND “CITIZENS”: THE SOCIAL TYPES OF PROTEST REPRESSION**

In general, the content analysis of criminal proceedings shows a more sober legal language, not prone to rating the legitimacy of the protests. Yet, even the “technical objectivity” of legal classifications and opera-

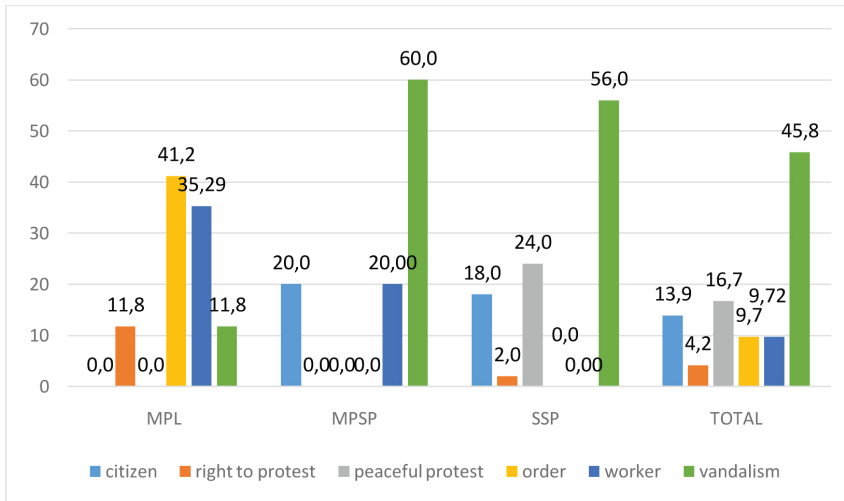
tions concerning the protests reveals elements of symbolic classification of contestation politics. These elements relate to their legitimacy and to the criminal subjection of protesters.

One particularly pungent example lies in the sentence of one of the criminal cases analyzed. Even when the lack of inculpatory evidence led the judge to absolve the accused individuals – thus deflecting their final incrimination –, the judge created a classification of the legitimacy of the protests which took place on the date of the facts, based on the occurrence of the crimes reported – with physical but no inculpatory proof: “There is no denying the indignation of everyone who watched the scenes of excesses in popular protests which had been *so far legitimate*” (Proceeding 5 – emphasis added).

In the case of social movements, a previous study about the criminalization of agrarian movements had already demonstrated that the legal classification of land occupation actions by the Landless Rural Workers Movement (Movimento dos Trabalhadores Rurais Sem Terra – MST) in the 1990s, by accusing them of property and public-peace offences, would lead to the criminalization of political actions demanding land reform (Sinhoretto and Almeida, 2006). In the cases analyzed here, not only the same criminal classifications are applied to the processes of *crimination* and *incrimination*, but also they are associated with extra- or quasi-legal discourses of criminal subjection which seek to build distinctions and hierarchies between categories of protests (peaceful/violent, legitimate/illegitimate) and citizens (peaceful/vandals, workers/protesters).

When we analyzed the documents issued by organizations, vandalism stood out as the word and theme referred to by the main agents of the protests and repression in the public debate. The chart below is the result of a simple coding of notes published on MPL, MPSP and SSP’s websites, based on keywords or expressions defined in a previous reading of the documents, which could be classified under the following codes: “citizen”, “right to protest”, “peaceful protest”, “order”, “worker”, “vandalism” (Chart 1). The values represent the percentage of occurrence of each code among the total selected codes<sup>4</sup>.

Chart 1  
Occurrence of codes related to qualifying protests and protesters in documents from MPL, MPSP and SSP (%)



Source: Conflito Político e Sistema de Justiça: a judicialização criminal dos protestos urbanos em São Paulo (2013-2015).

Vandalism is the predominant theme both among total mentions and in the discourse of state institutions. It is followed by reference to “peaceful protest” in general and in SSP’s documents. Obviously, given the position of MPL in the dynamics of the conflict analyzed here, the occurrence of codes in their discourse is different: mentions of “order” outweigh mentions of “worker”.

An in-depth analysis of MPL documents shows that mentions of order refer to *reporting order* – and not *defending* or *maintaining* public order. See, for example, the following excerpt:

It highlights what we have already reported: the correctional system is selective, as it only criminalizes poverty and everyone who fights against an order that has been created only to explore and oppress the disadvantaged (MPL, 2013).

“Worker” is the second most mentioned code in MPL’s discourse, as well as the second most frequent code in selected MPSP documents. However, a difference is observed between MPL and MPSP. While for MPL “worker” is an *active* political subject, the main agent in the struggle manifested in the protests against the increase in public trans-

portation fares, for MPSP “worker” is a *passive* political subject, whose rights must be protected from any disturbance caused by political protests.

For example, the excerpts below were extracted from documents produced by both organizations about protests occurred after 2013. Regarding a strike of bus drivers and fare collectors in 2014, MPL observed: “For this reason, only an alliance between transport workers and workers who use public transport every day will enable us to build a new high-quality public system for everyone!” (MPL, 2014b).

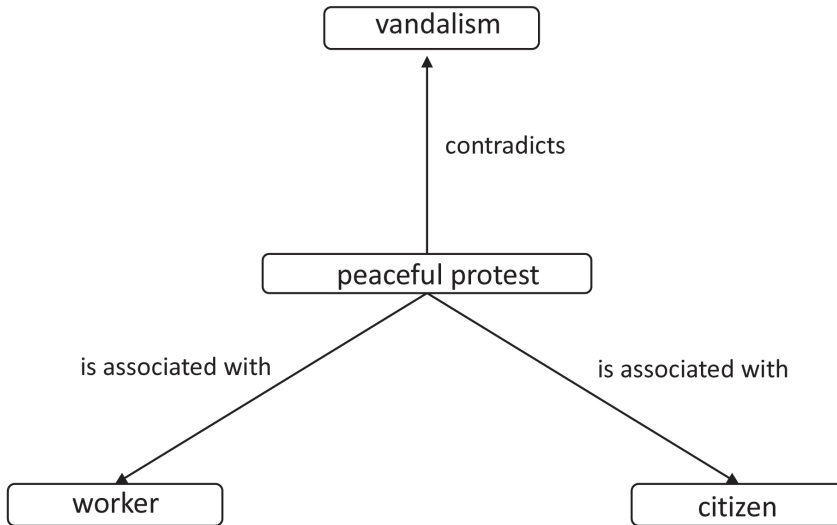
Also in 2014, MSPS commented on the conflicts surrounding “*rolezinhos*” – gatherings of poor young people inside malls in São Paulo<sup>5</sup>:

According to Prosecutor Eduardo Valério, from the Policy Center, the idea is “to guarantee the full exercise of citizenship to these young people, with access to all public spaces and malls, with dignity, respect, without discrimination, while ensuring the safety of mall consumers, visitors, shopkeepers and workers” (MPSP, 2014).

It is also significant that the presence of “worker” in MPL’s discourse is so clearly opposed to that of “citizen” in SSP’s and MPSP’s discourse. The former, as a social movement, sees the “worker” as a political subject in the struggle against the *status quo* and the injustice of a transport system and a city subject to capitalist order, to economic interest and to the market’s privatizing rationale. For state institutions (MPSP and SSP), “citizen” (and “worker”) are the main political subjects to be protected by state justice and safety apparatuses. This interpretation assumes that, although the legitimacy of political protests is recognized, they are potential obstacles to the rights of citizenship, which is considered in a manner both abstract and ideologically linked with labor.

The analysis of the co-occurrence of codes<sup>6</sup> reveals a negative differentiation between “worker”, “citizen”, and “vandal”, which varies depending on how the protest occurs or should occur. In other words, data show that the main factor used to distinguish these social types – “worker”, “citizen”, and “vandal” – is the protests’ *peaceful* character – rather than *legitimate*, in the sense intended by rule of law theory. The illustration below shows the semantic relationships among the codes observed in the analysis with the aid of *Atlas.ti*:

Figure 1  
Semantic relationships among codes:  
“peaceful protest”, “vandalism”, “worker”, and “citizen”



Source: Conflito Político e Sistema de Justiça: a judicialização criminal dos protestos urbanos em São Paulo (2013-2015).

The following note by SSP illustrates the argument above:

Protests are natural and the right to protest is guaranteed by the country’s constitution, *as long as they do not involve violence or deprivation of public or private property*. “We want our city to preserve what is right and what is natural: a legitimate demonstration of thought and expression”, said Fernando Grella<sup>7</sup>. “Protests are legitimate, and we want to guarantee everyone’s safety” [...] Grella and Meira held a press conference this Sunday afternoon (June 16) at SSP to formalize the invitation made to the MPL. “We want protesters to exercise their right to protest. And we want to ensure that, after this meeting, *people who work and study, or who want to return home* can do so in the best possible way” (SSP, 2013a – emphasis added).

Likewise, another SSP note states:

The State Department of Public Safety and the Military Police inform the population that a protest is scheduled for this Tuesday (July 30) at Largo da Batata, in Pinheiros, starting at 6 pm. The call is being made by the same group which promoted acts of vandalism last Friday (July 26) on Avenida Paulista. *The Military Police respects the right to protest and will be present at the*



*protest to ensure the safety of peaceful citizens* and will act with the necessary energy to prevent criminal acts (SSP, 2013b – emphasis added).

It is important to note that *protest legitimacy* does not derive from the *right to protest* in absolute, but from its *peaceful character*, as we can see above. Legal theory often shows that no right is absolute. However, rule of law requires that conflicts between rights be arbitrated by the judiciary and tend to protect individual freedoms, especially in conflicts between individuals and state powers (Ferrajoli, 2002). This aspect reinforces evidence showing that the police – especially the Military Police, at the time of protests – is the institutions actually arbitrating rights – of protest versus right to come and go, or to safety. This arbitration has a lasting character in criminalization flows and suffers poor control or submission to contradictory and logical-formal legal procedures.

So far, at least three of the six dimensions of criminal subjection listed by Misse (2014) are present:

- (i) the expectation about the proneness of certain individuals and social groups – in this case, “vandals” and the “black bloc” – to commit crimes as part of their personality and character – for example, direct associations made in the “black bloc investigation” and in other SSP notes regarding their tendency towards violence, identifiable even before protests, and the *non-citizen* character of vandals;
- (ii) the shift in criminalizing focus, from *crime/breaking the law* (analyzed *a posteriori* in crimination processes) to the *subjects of the crime*, defined by their potential dangerousness and irrecoverability; and finally,
- (iii) the selective discrimination of certain characteristics associated with these individuals and groups, which are mobilized by justice and security agents, as well as preventive strategies of social control – we identified reference to masks and the investigations made by the Civil Police in the “black bloc investigation” to map political preferences, connections and social media posts by people accused of belonging to the alleged criminal organization.

An empirical analysis of these dimensions and other evidence collected for the study revealed two other dimensions of criminal subjection listed by Misse (2014):

- (iv) the lack of need of a relationship between criminal subjection and a crime which actually occurred or a specific legally defined criminal type – in this case, there is no single specific crime corresponding to “vandalism” and, mainly, to the general prevention constructed by justice and safety bodies in relation to the general social type called “vandal”, regardless of individual acts and responsibility, and able to previously justify state repression; and
- (v) the structuring of a relationship between “citizens” and “vandals” which does not depend on face-to-face interactions and socially justifies arbitrary and violent institutional practices allegedly in order to eliminate the danger represented by the social types of criminal subjection – a dimension evidenced not only in official discourse which justifies violent and generalized police repression, but also in the subjectification processes of criminal accusation analyzed below.

Now we proceed to analyzing the last dimension of criminal subjection based on collected data, which corresponds to what Misse calls the *subjective dimension of criminal subjection* (2010), that is:

- (vi) the process of subjectification of criminal characteristics attributed to subjects and the justification for their difference.

The term does not refer to the mere uncritical or passive incorporation of these characteristics. Subjects submitted to the social type built by criminal subjection express subjectification in the strategies they use to resist, confirm, deny and interpret the accusations and social definition attributed to them. These strategies have the purpose of neutralizing guilt or remaining silent in case of imposed subjection (Misse, 2010, 2014).

## “EVERY PRISONER IS A POLITICAL PRISONER”? – THE SUBJECTIVE DIMENSION OF CRIMINAL SUBJECTION

MPL’s discourse displays a strategy of resistance to criminalization based not only on reporting police violence and defending the political legitimacy of protests, but also on reporting criminalization in general, resorting to discourse from critical criminology and penal abolitionist movements which point to the selectivity of criminal justice and to its role in the criminalization of poverty<sup>8</sup>. This strategy of symbolic classification, which fully delegitimizes judicial and police institutions, involves defending protest legitimacy in more evidently political – thus less legal – terms. MPL notes, for example, mention the “legitimacy of the struggle” more often than the “right to protest”. Also, “every prisoner is a political prisoner” became popular words of protest in the movement’s demonstration.

Another characteristic of this strategy is the movement’s refusal to submit its central public transportation claims to the public security agenda. MPL systematically refused to participate in meetings with SSP to plan protest routes and safety measures, as well as to accept the distinction between “vandals” and “peaceful protesters” and publicly report on the black bloc tactic.

An interview with one of MPL’s lawyers helps understand this strategy of denying the distinction between “good” and “bad” protesters, and its connection with legal strategies of technical defense applicable to formal procedures in which crimination and incrimination take place. When addressing Proceeding 7 (“black bloc investigation”), the lawyer stated:

It had nothing to do with a specific object of criminal investigation. He obviously had a general task of investigating black blocs. The black bloc was the perfect enemy for them, right? And to restore order, the state’s strategy was... pressuring MPL to accept this division between good and bad protesters. MPL’s resistance was very interesting. That’s why I say that there, after June, it was... it was necessary, it wasn’t even... obviously the elements were in place, so that’s why I say, the elements that came from way before, they strengthened this attitude, but it was necessary to consider the issue politically, and not legally. Then it was necessary to see whether we could find any legal grounds or assume full risk. So, at the State Sector for Criminal Investigation [Departamento Estadual de Investigação Crimi-

nal – DEIC], we provided the legal foundations. But the legal basis for us was the least important point; the most important aspect was to publicly challenge and weaken that investigation (Interview with Lawyer 7).

MPL did not deny episodes of violence from protesters and refused to distinguish *common crimes* from *political crimes*, as well as *peaceful protesters* from *violent protesters*. See, for example, the following note by the movement:

*The decision concerning what a crime is a political decision. It is not by chance that, in a capitalist society, most punished crimes are property crimes. In addition, the decision about who to arrest or not is also a political decision, and it is not by chance that the Judiciary, the Military Police and the Executive practice a policy which incarcerates thousands of poor and black people, mainly those living in peripheries.*

[...] For this reason, we keep saying that *every prisoner is a political prisoner*, and we continue fighting for a life without prisons and without turnstiles (MPL, 2014c – emphasis added).

See also the following excerpt from the interview with an MPL activist:

And the Brazilian left has a historical saying: “fighting is not a crime”. To create a distinction, between... “One who fights is not a criminal”. I think the process we witnessed in 2013 was very helpful as it shows it is not a matter... We are not arrested because we are fighting, we are arrested because we challenge the order, and incarceration and other judiciary instruments of repression are for everyone who stands against the order. People are not necessarily arrested because they commit crimes, right? So, understanding a little about class mechanisms and how the judiciary and the police in Brazil are two very... important forces in this game of class repression. And to place ourselves, therefore [...] with the movements and organizations that deal with victims of police violence, with the mothers of young black men murdered by the police – anyway, with those who discuss mass incarceration, with everyone who fights – aims to unmask the police state (Interview with Protester 1).

In addition, under a motto which became famous during those protests – “vandalism is the fare” – MPL also reversed the accusation and tried to characterize the action of the state and the private sector as “violence”, “vandalism” and “organized crime” in relation to public transport:

Resisting suffocation, passengers yesterday revolted and took over the tracks. The government, instead of assuming the problem, responded by attacking and criminalizing the population – Jurandir Fernandes, Alckmin’s secretary, calls passengers “vandals” and says he will monitor them. *Well, if there is an “organized group” responsible for chaos on the tracks, it is clear that it is the government itself, allied to Siemens and Alstom cartels, that PROFITS with workers’ and passengers’ pain, destroying and privatizing the service* (MPL, 2014c – emphasis added).

On the other hand, one of the protesters interviewed, who was arrested and prosecuted in one of the cases analyzed by this study but had no organic relationship with MPL, claimed political prisoner status, demonstrating another strategy of subjectification of the criminal character generally attributed to protesters. The different character of his criminal subjectification is associated with the political aspects of the protest in which he participated, and the injustice of his arrest in particular, considered arbitrary and deprived of evidence:

From the start, we considered ourselves political prisoners. For this reason, because the protest at that moment was taking huge proportions, and the police were trying to stop it alongside with the state. After the 12<sup>th</sup>, the 13<sup>th</sup>, people with vinegar were being searched, framed or prevented from going to protests. There were police blockades at subway exits to avert protesters. *We think our arrest that day was meant to show society and protesters that whoever was against the established order would be sued and would respond judicially.* So, from the first moment, we considered ourselves as political prisoners because we saw that *we were arrested in an arbitrary and unfair manner in a political protest, which claimed social improvements. In this sense, we understood that it was a political prison* (Interview with Protester 2 – emphasis added).

The third protester interviewed, while acknowledging the generalizations constructed by the media and safety corporations about black blocs – just like Protester 2 –, attributes the degree of police violence to the difference between protests *with* and *without* the presence of black blocs. When asked about the difference between previous MPL protests in which he participated (in 2011 and 2012) and the protests in 2013, he replied:

In 2011... in 2012, there was no black bloc on the street, and in 2013 there was, and then the police had to in 2013... they didn’t know how to... neutralize these groups. Then they learned how, because in 2014, in the protests

against the World Cup, they were absolutely neutralized, so there was no way... for these black bloc groups to do anything, and even today they are totally neutralized. Then in 2013... I think there was very strong repression... because of the police, because the police didn't know how to deal with these groups, understand? They repressed in one place, the groups went to another place, broke that other place, set fire, then they went there, hit them again, understand? (Interview with Protester 3).

The distinction between black blocs and other protesters was produced not as an attempt of safety institutions to delegitimize protests, but as some movements' strategy to defend themselves and the political characters of their claims and their prisoners. One of the MPL's lawyers states this conflict to have emerged within political organizations in 2013. This conflict would have been triggered by the MPL's strategy to delegitimize the repressive action of the state based on the idea that “every prisoner is a political prisoner”, as well as on their refusal to take defendants to testify under the “black bloc investigation” (Proceeding 7):

Because that was a visionary combination, like, between a legal tactics hiding in a strong political tactic, which was the refusal to testify at DEIC. It caused some friction in the left wing. [laughs] The Workers' Unified Socialist Party [Partido Socialista dos Trabalhadores Unificado – PSTU] called MPL “crazy”, “inconsequent”, and accused it of wanting “to screw everybody” (Interview with Lawyer 7).

Therefore, empirical evidence demonstrates that protesters subjected to criminal subjection strategies – which attempt to attribute, in a general and preventive manner, a criminal character to certain types of political profiles and conducts – can react in at least four different ways – either isolated or combined – in their subjectification processes:

- (a) denying or reversing accusations of vandalism while refusing to distinguish between ordinary prisoners and political prisoners (MPL and Protester 1);
- (b) refusing to address the issue of violence or black blocs as produced in the accusation proceedings (MPL and Protesters 1 and 2);

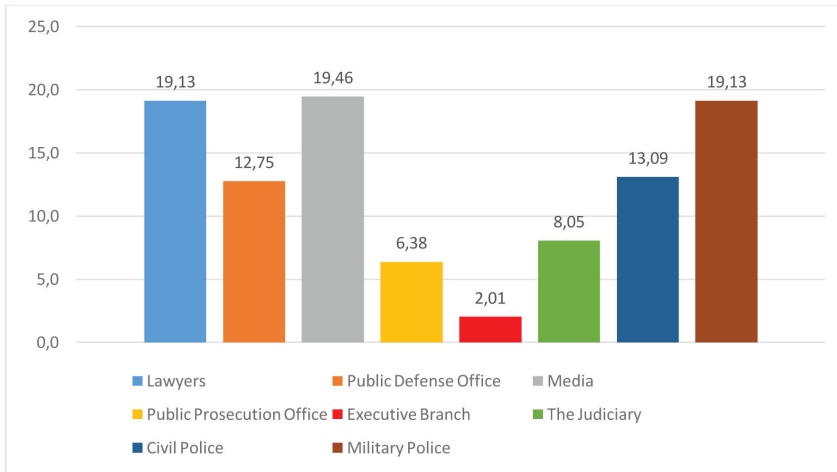
- (c) assuming a distinction between ordinary prisoners and political prisoners, claiming the political character of their own acts, but denying a violent or criminal character – either by denying crime authorship or by reporting police arbitrariness in crimination and incrimination processes (Protesters 2 and 3); or
- (d) accepting the accusation of vandalism generically made to black blocs, but attempting to differentiate themselves from them (Protester 3 and other left-wing organizations mentioned by Lawyer 7).

In addition, a fifth form of subjectification should be considered, but was not analyzed in this study, since our data refer to a specific movement – MPL. This form is the acceptance and praise of violence as legitimate form of political expression, which is adopted by members of the black bloc tactic, studied by other authors in the context of the protests of June 2013 (Pinheiro Júnior, 2016; Solano, Manso and Novaes, 2014).

#### **“IT IS TIME TO END IT”: THE MEDIA AND CRIMINAL SUBJECTION IN TWO EDITORIALS**

It is not possible to fully understand these criminalization processes – especially criminal subjection ones – without a specific analysis of the role of the media, which stands out in interviews with lawyers as an agent mentioned as often as the police (Chart 2).

Chart 2  
Occurrence of codes related to the actions of institutions in interviews with lawyers (%)<sup>9</sup>



Source: Conflito Político e Sistema de Justiça: a judicialização criminal dos protestos urbanos em São Paulo (2013-2015).

Obviously, the media are not a formal agent of the procedural flow of criminalization. However, its role in the social construction of crime and in the operation of criminal justice is recognized by studies in this area (Gomes, 2015; Lacey, 2007; Reiner, 2002; Xavier, 2015) and must be taken into account when analyzing the relations of determination and autonomy between law and politics in the case of the criminalization of social movements.

Interviews and institutional documents basically indicate two types of interactions between the agents included in the study and the media in general. The first of them, which is not analyzed here, is the use of media as an instrument to report police violence, especially (but not only) so-called the *alternative media*<sup>10</sup>. The second is the press coverage of protests, somehow associated with the criminalization of social movements, especially through processes of *criminal subjection* and *crimination*. The former involves the construction of generically and potentially criminal social types, such as “vandals”, whereas the latter is the adoption of a general and quasi-legal classification of “vandalism” for the characterization of certain behaviors as criminal conduct, which allows preventive strategies of social control and crimination based on social types built on criminal subjection processes. In this concern, a protester says:



I think that the media, mainstream media, have a major responsibility in the action of the police – speaking of the police specifically. *Folha's* penultimate editorial asked the police to act harder and do their job in relation to protesters. The fact that... the police was given a blank check, considering that investigation is not the Military Police's role, not necessarily to stop protesters... It also has to be the role of the Military Police. But you see, it's also a contrary thing to criticize the way the police act in protests, and even the narrative they use, the way narratives are constructed... "and three drug dealers were killed by the military police". They are not people with families, a drug dealer, so it is a terrible category. So they are not protesters, they are a black bloc. Black blocs, it was already built that black bloc was an inclusive idea in protests, so acting hardly upon black blocs is legitimate, they are not people who are there... And you imply that the corporation... the situation is legitimate, you support the actions of the police (Interview with Protester 2).

The *Folha de S. Paulo's* editorial mentioned by the interviewee was published on June 13, 2013 ("Retomar a Paulista", "Take the Paulista Avenue back"). It reproduces patterns of criminal subjection previously identified in the discourse of justice and public safety institutions when they considered protesters were

*young people predisposed to violence by a pseudo-revolutionary ideology who seek to take advantage of the understandable general irritation with the price paid to travel in crowded buses and trains (Folha de S. Paulo, 2013 – emphasis added).*

The editorial goes on reinforcing the use of masks as a distinctive characteristic of "vandals" – subjects of a "marginal and sectarian condition" against whom "the force of the law" should be used, according to the same text –, legitimizing police discretion in arbitration of the conflict between rights. Such discretion underlies the dichotomy established between "protesters" – who have the right to demonstrate – and "citizens" – who have the right to come and go –, also present in aforementioned discourses by SSP and MPSP:

The few protesters who seem to have something on their heads besides hoods justify violence as a reaction to the alleged brutality of the police, which they accuse of repressing the constitutional right to protest. This way, they show they are unaware of a basic concept of democratic coexistence: the public power imposes rules and limits to the exercise of rights by groups and people in the case of a conflict between prerogatives (*Folha de S. Paulo*, 2013).

On the same day, *O Estado de S. Paulo* newspaper published an editorial in a similar tone (“Chegou a hora do basta” – “It is time for ‘enough’”), which reproduced the elements of criminal subjection mentioned above – reinforcing the social type “vandal” as predisposed to violence due to innate characteristics (“radicalism”), the opposition between vandals and the “population” that “wants the end of the riot”, and the legitimization of final solutions of force against vandalism:

It was another terrible day, worse than others, on which the violence of protesters directly scared and harmed hundreds of thousands of people who work on Avenida Paulista and downtown, while millions of apprehensive people watched the scenes of depredation on TV.

MPL’s leaders have recognized that they have lost control over protests, as well as over the array of groups comprising it – anarchists, the Socialism and Liberty Party (Partido Socialismo e Liberdade – PSOL), PSTU and the youth of the Workers’ Party’s (Partido dos Trabalhadores – PT), all of whom share radicalism. This acknowledgment does not reduce their responsibility for the fire they started. Although fragmented, the movement retains its strength, because each group has its leaders, and they have already demonstrated their power of organization and mobilization. They know very well what they are doing (*O Estado de S. Paulo*, 2013).

As mentioned above, the protests on June 13, when both editorials were published, are considered by experts – and many interviewees – to be the peak of police violence, which included journalists – six of which from *Folha de S. Paulo* (Bochinni, 2013). It represented a turning point in popular support to protests, with the gradual adherence of new groups and agendas (Secco, 2013; Viana, 2013). Both journalistic texts<sup>11</sup> must be considered alongside other media interventions in the construction of a narrative about the protests, about protest legitimacy and vandalism, which has been partially analyzed in other studies (Malini, Moura and Passos, 2014; Oliveira, 2015; Pinheiro Júnior, 2016) and able to contribute to the criminal subjection process investigated here.

#### “IT FIT LIKE A GLOVE”: CRIMINAL SUBJECTION, CRIMINATION AND INCRIMINATION IN THE “BLACK BLOC INVESTIGATION”

Although criminal subjection is a process which exceeds *criminalization* formally conducted in police and legal proceedings, both feed back into each other (Misse, 2010). It is in Proceeding 7 (“black bloc investigation”) that the relationship among criminal subjection, crimination

and incrimination become more evident. Unlike other proceedings analyzed in this study, Proceeding 7 does not originate from the arrest of protesters caught in *flagrante delicto* or from individual acts occurred in specific protests. It is an investigation to analyze the existence of an alleged criminal organization focused on the practice of acts of vandalism. Such acts are referred to in a generic fashion, and the members of this organization are generically associated with “vandals”.

In the absence of unequivocal evidence of the existence of this criminal organization, the “black bloc investigation” started as a result of police reports from *flagrante delicto* arrests of different protesters in different protests which occurred in 2013. Such protests had already informed specific investigations to scrutinize facts and individualize responsibilities. Therefore, it is in the criminal subjection of “vandals” and in the assumptions associated with them – oriented to crime, criminal personality, facial masks, danger to society and the current order – that the discourse of the police finds a link between isolated acts and individualized protesters. This link in turn justifies a preventive and comprehensive investigation of an alleged criminal organization, as seen in the act which opened the investigation:

Considering that, in recent months, during the protests in the central region and other areas of this capital, a group of individuals called “black bloc” infiltrates protests and promotes criminal acts;

Considering that on the 7<sup>th</sup>, members of this *notorious gang* destroyed the headquarters of private companies and stores, among others, when a vehicle of the São Paulo State Civil Police was attacked and destroyed, which resulted in the arrest in *flagrante delicto* of a couple, a fact registered in the 2<sup>nd</sup> Police District<sup>12</sup>;

Considering that *such individuals act in an organized manner, practicing acts of vandalism in order to question the current system, and consequently, break the parameters of normality and safety of society*;

Considering that the members of the group called “Black Bloc” *wear black clothes and masks during criminal actions performed by the gang, with the sole and exclusive objective of preventing their identification* (Proceeding 7, opening act by police – emphasis added).

Starting with these statements, Proceeding 7 follows crimination and incrimination practices which are different from the other proceedings analyzed in this article, all of which are based on arrests in the act, individual accusations and well defined facts. This way, it seeks to investigate not only material connections – networks of relationships and organizational forms which would group several protesters into a criminal organization –, but also personal predisposition of the accused to the criminal practice characterized as “vandalism”.

In this sense, this study found that police work in this investigation basically involved: gathering data from other criminal proceedings; monitoring protests on site (diligences), with the subsequent production of reports with descriptions and photographs of protest events; monitoring individuals, groups and political protests on social media, especially on Facebook; producing subpoenas and in-person testimonies of activists identified in other criminal proceedings or on social media.

In addition, the deposition of people identified in other criminal proceedings or on social media in Proceeding 7 was based on a) questions about their political preferences and their participation in political organizations; b) their knowledge of people and strategies associated with the black bloc tactic, the clothing items and other devices (masks, objects) associated with the black bloc tactic; information related to the forms of black bloc organization (with emphasis on questions about leadership and funding), and from other organizations participating in the protests of June 2013 (such as the MPL and left-wing political parties), and any possible relation among them.

Based on these characteristics of the crimination and incrimination strategies developed in Proceeding 7, we can understand the criticism to this investigation from the activists and lawyers interviewed. Basically, these criticisms are made in the sense of reporting the “black bloc investigation” as an instrument of political *monitoring* and *intimidation*. According to Protester 1 and a MPL member:

then we have a broad strategy for collecting information, and I think this is what happened with the black bloc investigation, which also develops from an intimidation strategy. With that investigation, they didn’t just... With that investigation, they didn’t only collect a very large amount of information, they also intimidated many people who usually participated in acts with more or less similar characteristics (Interview with Protester 1).

According to the MPL lawyer:

Indeed, this investigation included... I think we played an important role in resisting to it, but even so, I think it created terror among people. People were very frightened by this investigation. Can you imagine, a mother was subpoenaed to testify at DEIC. Some people didn't even know what they were doing there. It scares people, right? (Interview with Lawyer 7).

Therefore, Proceeding 7 shows how criminal subjection processes – which exceed formal individualized legal and police procedures, although they mutually feed each other – can be triggered by concrete and formalized crimination and incrimination processes by safety and justice agents and institutions. And even if it does not result in individualized liability and formal legal convictions, it reinforces the criminal subjection which precedes formal crimination and incrimination procedures.

Proceeding 7 reveals this process when, after 23 months of investigation, throughout which activists and demonstrations were monitored, the “black bloc investigation” was closed by the Civil Police after being considered inconclusive regarding the objectives leading to its creation. On the other hand, the productive (and reproductive) relationship among criminal subjection, crimination and incrimination is reinforced by the prosecutor of the Prosecution Service working in that criminal proceeding. In statements for an article published by *Folha de S. Paulo* about closing the investigation, the prosecutor explained the thesis which had supported the investigation for almost two years:

“As there was strong networking among them, there was the idea of framing them according to article 288-A, which refers to creating a group to practice any of the crimes described in criminal law. *It fit like a glove*, but many police inspectors didn't act like that”, says Prosecutor Marcelo Barone, who worked in the case.

For him, the police make mistakes now as they did in past protests by not taking masked people immediately to the police station for investigation. In Barone's opinion, *it could be done by use of police power and their prerogative to inspect and act before the practice of a crime* – a controversial thesis among lawyers.

“Why is a masked person at a peaceful protest? I find it absurd for the Military Police to take pictures and leave this person there. When a group is created to commit crimes, the crime is already done” he says (Ferraz, 2016 – emphasis added).

The prosecutor interviewed by the newspaper explained the accusation thesis by reinforcing one of the characteristics of the criminal subjection processes, which is the justification for exceptional and preventive strategies of repression against criminal subjects: arrests for investigation, preventive surveillance of masked people and deliberate action of police officers to classify isolated acts and individuals as part of a criminal organization.

#### **FINAL CONSIDERATIONS: POLITICAL CITIZENS OR CRIMINAL SUBJECTS?**

The analysis developed in this article attempted to show how state repression of protests and social movements can trigger a specific process of criminal subjection, characterized by the following: expected punishment of predetermined social types considered prone to committing crimes (the “vandals”); a focus on potentially criminal subjects, rather than on crimes specifically defined by law or in concrete and individualized practices of breaking the law; selective discrimination of characteristics associated with these individuals (masks, radicalism, sectarianism, political ideologies) so as to justify preventive strategies of social control and support the police’s discretion in protests; different forms of subjectification by protesters of the accusation which creates these social types (refusal, admission, attribution of the “vandal” profile to other subjects who should not be confused with “legitimate” protesters); the relative autonomy of criminal subjection (the “vandals”, “vandalism” and the “terror” they represent) in relation to concrete practices and processes of diversion and criminalization (the crimes effectively foreseen by law, practiced and investigated); and, finally, the social and institutional structuring of a relationship between “I” (the “citizen”, the “worker”, the “peaceful protester” or the state agent which cares for his security and rights) and the “other” (the “vandal”) which justifies the elimination of the criminal subject from social life and the unequal rights in the state’s relationship with this subject.

In the case of a criminal subjection process which affects subjects and political practices, distinctions between “good” (“peaceful”) and “bad” protesters (“vandals”), between “protesters” (protest participants) and “working citizens” (who do not protest), between “legitimate” (“peaceful”) and “illegitimate” (“violent”) protests are assumed by the many actors involved in the dynamics of protests and repression. However, even though they are produced within the scope of criminalizing processes conducted by justice and safety institutions and by the media, they are also present in the discourse of activists submitted to them. These activists, along their different subjectification processes, may end up accepting the distinction built in the middle of repression between what is considered legitimate in terms of protester profiles and forms of political protest.

Ultimately, the creation and stabilization of these distinctions in political, police and judicial institutions and practices can have lasting effects on the delimitation of space and of political actions considered legitimate. This is problematic not because of the normative need to define the political and its legitimacy criteria, but due to the fact that this definition, as it is structured, occurs in the midst of criminalizing processes full of physical and symbolic violence, reproducing inequalities, and poorly susceptible to social control and public, democratic and egalitarian deliberation.

In this sense, the investigation of criminal subjection processes developed in the context of state repressions against social movements seems to be a productive route to theoretically develop the concept and to improve the understanding of the role of the media, safety and justice institutions in the delimitation of spaces, practices and political subjects in a formally democratic context.

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## NOTES

1. The concept of moral panic was coined by Stanley Cohen (2011) to explain social unrest about deviant groups and practices. The concept has been widely used in criminology, and it combines the action of public opinion, political and police institutions and the media in the production of perceptions about various urban phenomena, such as the use of drugs and vandalism (Machado, 2004).
2. Five police investigation cases and two criminal lawsuits cases, identified here as Proceedings 1 to 7; see Annex I).
3. Eight lawyers, two judges, one police officer, identified here by their professional activity and an ordinal identification number, see Annex II).
4. Percentages were calculated in relation to the total occurrence of the codes analyzed at this specific moment of the analysis and with a specific group of documents – and not the codes applied to all the material analyzed throughout the study. The codes applied throughout the qualitative analysis process refer to different analytical and interpretive purposes, and can be segmented into thematic groups – or “families”, according to the terminology of *Atlas.ti* software, used in this study). Then, particularly in this chart, “total” corresponds to the codes of protest legitimacy and adjectivization of subjects, applied to the documents analyzed for this specific purpose. This measurement of proportion and its analysis were developed using coding (Saldaña, 2009) and lexicometry techniques applied to discourse analysis (Conde, 2015).
5. About “rolezinhos” as political events, refer to Pinheiro-Machado and Scalco (2014).
6. Co-occurrence analysis is a mechanism which shows, measures and interprets the occurrence of more than one code in the same sentence in a text.
7. Fernando Grella was then the head of São Paulo State Department of Public Safety.
8. Regarding these theoretical-political aspects, refer to Baratta (1991) and Passetti (1999, 2006).
9. For coding procedures and percentage calculation for this chart, see note 4 above.
10. About the strategic use of media and alternative media by social movements and their lawyers, see Almeida and Noronha (2016).
11. For an analysis of *Folha’s* editorial in the perspective of building the image of a “protester”, refer to Costa (2016): For an analysis of both editorials, refer to Bucci (2016).
12. It is important to highlight that this mention of a specific criminal fact in the opening of an investigation document is done in a merely illustrative manner, to show the direct offense against an asset (vehicle) and the authority of the Civil Police, since during the course of Proceeding 7, this fact does not have any relevance in relation to the investigation conducted, as shown below.



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## ANNEX I

## List of criminal proceedings analyzed

Date of demonstration	Number	Type	Accused individuals	Charged with	Caught in the act?	Prisoners released?	Situation
June 6, 2013	1	Criminal suit	2	Damage	Yes	Yes	Suspended sentence (plea bargain)
	2	Police investigation	4	Damage	Yes	Yes	Open (awaiting production of evidence)
	3	Police investigation	1	Disrespect towards officer	Yes	Yes	Closed due to lack of inculpatory or material evidence
June 11, 2013	4	Police investigation	10	Damage Arson Conspiracy	Yes	Yes	Open (awaiting production of evidence)
	5	Criminal suit	2	Damage Bodily harm Disrespect towards officer	Yes	Yes	Acquitted (non-involvement proven by the accused)
June 13, 2013	6	Police investigation	5	Damage Incitement Conspiracy	Yes	Yes	Concluded (forwarded to Prosecution Service, with conclusive report about materiality and guilt)
Unspecific	7	Police investigation	Unspecific	Conspiracy	No	NA	Closed

## ANNEX II

### LIST OF INFORMANTS

Lawyers 1 and 2: members of the Activist Lawyers (Advogados Ativistas) collective, interviewed on August 22, 2014.

Lawyer 3: contributor to MPL, interviewed on September 3, 2014.

Lawyers 4 and 5: public defenders from the Specialized Center on Incarceration of the Public Defender’s Office of the State of São Paulo (Núcleo Especializado da Situação Carcerária da Defensoria Pública do Estado de São Paulo), interviewed on September 23, 2014.

Lawyer 6: coordinator at the Conectas Human Rights NGO (Conectas Direitos Humanos), interviewed on October 23, 2015.

Lawyer 7: MPL lawyer, interviewed on November 11, 2015.

Lawyer 8: contributor to MPL, interviewed on May 3, 2016.

Judge 1: São Paulo city judge who conducted the initial hearing of protesters arrested during demonstrations, interviewed on September 14, 2016.

Judge 2: São Paulo city judge who conducted the execution of repossession warrants in political conflicts, interviewed on October 13, 2016.

Protester 1: MPL activist, interviewed on November 17, 2016.

Protester 2: present in the demonstrations of June 2013, suffered arrest and criminal charges, interviewed on September 9, 2016.

Protester 3: present in the demonstrations prior to June 2013, suffered police violence, interviewed on September 13, 2016.

Police officer 1: soldier from the Military Police of the State of São Paulo, who participated in the monitoring of demonstrations. Interviewed on October 14, 2016.

## RESUMO

*“Vândalos”, “Trabalhadores” e “Cidadãos”: Sujeição Criminal e Legitimidade Política na Criminalização dos Protestos de Junho de 2013*

O artigo apresenta uma análise preliminar de um processo de sujeição criminal de manifestantes dos protestos de junho de 2013, na cidade de São Paulo. O conceito de “sujeição criminal” foi formulado inicialmente para compreender o “marginal” e o “bandido” como sujeitos criminais produzidos pela intervenção policial e judiciária em um contexto de violência urbana estruturado por desigualdades. Todavia, empregá-lo na análise dos processos de subjetivação de atores envolvidos em práticas contestatórias de evidente conteúdo político faz surgir algumas questões: Como compreender processos de sujeição criminal incidentes sobre ativistas políticos e movimentos sociais? Quais os efeitos sociais e políticos desses processos para a constituição de um espaço político-democrático e para a legitimação das ações políticas contestatórias na política brasileira? Para responder a essas questões, a pesquisa analisou procedimentos criminais, documentos institucionais, entrevistas com manifestantes e operadores da justiça criminal, e textos jornalísticos.

**Palavras-chave:** sujeição criminal; criminalização; criminalização dos movimentos sociais; protestos; junho de 2013

## ABSTRACT

*“Vandals”, “Workers” and “Citizens”: Criminal Subjection and Political Legitimacy in the Criminalization of June 2013 Protests*

This article aimed to analyze a criminal subjection process identified in a study about the criminalization of protests held in June 2013 in the city of São Paulo. Initially formulated to understand the “marginal” and the “bandit” as criminals produced by police and judicial intervention in a context of urban violence structured by inequalities, using the concept of criminal subjection in the analysis of the subjectification processes of actors involved in protest practices with evident political content raises specific questions: How to understand criminal subjection processes affecting political activists and social movements? What are the social and political effects of these processes for the constitution of a democratic political space and the legitimation of political protest in Brazilian politics? To answer these questions, this study analyzed criminal proceedings, institutional documents, interviews with protesters and criminal justice agents and authors of media texts.

**Keywords:** criminal subjection; criminalization; criminalization of social movements; protests; June 2013

## RÉSUMÉ

*“Vandales”, “Travailleurs” et “Citoyens”: Sujétion Criminelle et Légimité Politique dans la Criminalisation des Manifestations Juin 2013*

L'article présente une analyse préliminaire d'un processus de sujétion criminelle de manifestants aux manifestations de juin 2013 dans la ville de São Paulo. Le concept de "sujétion criminelle" a été initialement formulé pour comprendre les termes "marginal" et "bandit" comme des sujets criminels produits par l'intervention policière et judiciaire dans un contexte de violence urbaine structurée par des inégalités. Cependant, son utilisation dans l'analyse des processus de subjectivation des acteurs impliqués dans la contestation de pratiques à contenu politique évident soulève quelques questions: comment comprendre les processus de sujétion criminelle des militants politiques et des mouvements sociaux? Quels sont les effets sociaux et politiques de ces processus pour la constitution d'un espace politique démocratique et pour la légitimation des actions politiques contestataires dans la politique brésilienne? Pour répondre à ces questions, l'enquête a analysé des procédures pénales, des documents institutionnels, des entretiens avec manifestants et opérateurs de la justice pénale, et des textes journalistiques.

**Mots-clés:** sujétion criminelle; criminalisation; criminalisation des mouvements sociaux; protestations; Juin 2013

## RESUMEN

*“Vándalos”, “Trabajadores” y “Ciudadanos”: Sujeción Criminal y Legitimidad Política en la Criminalización de las Protestas de Junio de 2013*

El artículo presenta un análisis preliminar del proceso de sujeción criminal de manifestantes en las protestas de junio del 2013 en la ciudad de São Paulo. El concepto de "sujeción criminal" fue formulado inicialmente para comprender al "marginal" y al "bandido" como sujetos criminales producidos por la intervención policial y judicial en un contexto de violencia urbana estructurado por desigualdades. Sin embargo, emplearlo en el análisis de los procesos de subjetivación de actores involucrados en prácticas contestatarias de evidente contenido político genera algunas preguntas: ¿Cómo comprender procesos de sujeción criminal incidentes sobre activistas políticos y movimientos sociales? ¿Cuáles son los efectos sociales y políticos de esos procesos para la constitución de un espacio político democrático y para la legitimación de las acciones políticas contestatarias en la



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política brasileira? Para responder a esas preguntas, la investigación analizó procedimientos criminales, documentos institucionales, entrevistas con manifestantes y operadores de la justicia criminal, y textos periodísticos.

**Palabras clave:** sujeción criminal; criminalización; criminalización de los movimientos sociales; protestas; junio de 2013