



Off-the-Cuff Law-Making: Policing Pandemic Dispossession in Spain

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Abstract

This article presents a discussion concerning the role of police rationale(s) in Spain within the context of the Covid-19 pandemic, where exceptionalist strategies aimed at curtailing the spread of the virus came to dramatically strengthen existing social divisions. In line with some authors who have already approached this phenomenon from different disciplines, our premise is that most serious emergencies boosted by Covid-19 were not a *mere* matter of public health, but rather a particularly harmful expression of accumulation by dispossession. Thus, rather than a flaw in the system produced by an exceptional friction between public security and public health, securitarian performances deployed by neoliberal states can be read as symbiotic strategies, from both *law and order* and *business as usual* approaches, to manage the social “externalities” of capitalist predatory strategies. As we will argue, phenomena such as the reinforcement of the policing consensus, police production of law, or the authoritarian turn favored by the Covid-19 health crisis must all be analyzed in this context.

Introduction: On Disaster Capitalism and Security

I call these orchestrated raids on the public sphere in the wake of catastrophic events, combined with the treatment of disasters as exciting market opportunities, *disaster capitalism* (Klein 2007: 6).

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You will cease to be heroes when people are no longer afraid. You will cease to be heroes when politicians are interested. Now you are cannon fodder, that's why they call you heroes (J.M. Lloreda, paediatrician, Jaén-Spain, 9 April 2020, on Twitter).

The notion of “new normal” defines a key feature of political economy under late neo-liberalism: “We have profitable capitalism with high unemployment. It is a unique combination of capitalism with austerity which works in terms of benefits but does not restore growth to a level that can meet the crisis of unemployment... This is the new normal” (McNally 2014). In 2020, “new normal” was also a term that most governments took as a recurrent topic during the pandemic. The Spanish Government promised a new landscape emerging after the 2020 lockdown: “we will recover [...] much of what we lost when the virus so dramatically invaded our lives” (La Moncloa, 2020). This scenario necessitated “urgent preventative and containment measures”,¹ yet there was a silver lining: as the President of the Government announced while introducing the new normal, “there will be a tourist season this summer” (La Moncloa 2020). Consequently, the *new normal* represented the apex of pandemic management by the Spanish government, which, when framed as a mere technical reaction to a natural phenomenon, we argue, obscures the persistence and magnification of certain police/state action logics.

As pointed out by Erikson (1976) almost 50 years ago, all natural disasters are also social objects. Questions as to the way these disasters are represented, what images are evoked, and even which social groups become most affected by/after the “shock” (Klein 2007), are all traversed by social forces. It is obvious that changes to social rules do not appear from nothing, but rather, these changes emerge from the previously established status quo that they appear to transform. Indeed, more than a description, the very conception of such events as “pure accidents “ or random events subjected to the unpredictable and ungovernable laws of nature, is more a narrative aimed at denying responsibilities and covering up the unequal distribution of harm (Green 2021, ch.2). If we look at the social reactions and how interventions are conceived, this becomes even more evident. Therefore, although responses are dressed up as technical and rational solutions to so-called unpredictable natural disasters, they are nonetheless dependent on the social representation of disaster itself—for example, criminal policies and measures cannot be discussed without addressing the mere definition of *crime*.

In all contemporary societies, these problem-construction processes often take the shape of risk production and management (Garland 2001), which tries to represent itself as a purely technical matter whereby “the expert “ detects potential threats and proposes response pathways aiming to minimize the risks and their effects. But questions regarding risk sources, risk levels, how to define/detect them, and how to deal with their effects, cannot be answered in purely objective terms (Douglas 1992). Firstly, because—as mentioned above—responses are taken within hierarchical social fields where legitimate representations of reality are produced (Bourdieu 2014). Secondly, because even if we accept all the premises of objectivity that underpin risk analysis, it is still an eminently moral task

¹ See: https://administracion.gob.es/pag_Home/atencionCiudadana/Crisis-sanitaria-COVID-19.html.

(Cohen, 2002). Ultimately, even ignoring the processes of “truth construction” (Foucault 2011) that we have outlined, the weighing of risk raises unanswerable questions outside the realm of morality and, therefore, inescapably political questions: what risk is unacceptable; who will bear the consequences of reaction; who will bear the consequences of inaction?² In the context of the Covid-19 pandemic and immediate reactions to it by the Spanish government, we argue that while the way to ‘bend the curve’ and get back to the ‘new normal’ was presented as technical measures implemented to stop the (physical) spread of the virus, these measures share the structural conditions of possibility with inaction and abandonment of most over-exploited and excluded social groups. Although there can be attempts to disguise management as *rational*, responses reflect a sort of automatism executed with the peace of mind that comes from a previously constructed and legitimizing framework.

Managing social problems through securitarian means is an axiomatic feature of Neo-liberalism (Wacquant 2009; González 2021; Jiménez 2016), just as harm monetization and capital concentration are two symbiotic dynamics within its current accumulation regime. This article discusses the performance of two related phenomena in the heat of the pandemic in Spain (March–June 2020): the escalation in the dynamics of accumulation by dispossession³ and the expansion of police rationale(s). This entails the recognition, under and through the pandemic, of a structure of inequality producing higher and higher levels of harm, the expansion of humanitarianist discourses⁴ promoting *minimum eligibility*⁵ policies, and the role of policing proving to be essential for this emergency to consolidate a “national-liberal” (Lazzarato 2019)⁶ turn.

Background: Accumulation Through Harm in Spain

Necropolitics could be defined as a kind of counter-power linked to the concept of necrocapitalism, as understood by Sayak Valencia in his essay *Gore Capitalism*; that is, to contemporary capitalism, which organizes its forms of capital accumulation as an absolute goal that prevails over any other logic or meta-narrative (Falomir 2011: 15).

² These questions are being contextualized below in the specific period of strict confinement (March–June 2020) and the abusive and irregular use of the Citizen Security Law.

³ “A general re-evaluation of the continuous role and persistence of the predatory practices of ‘primitive’ or ‘original’ accumulation within the long historical geography of capital accumulation is, therefore, very much in order [...] Since it seems peculiar to call an ongoing process ‘primitive’ or ‘original’ I shall, in what follows, substitute these terms by the concept of ‘accumulation by dispossession’” (Harvey 2004: 74). “In the absence of any strong revival of sustained accumulation through expanded reproduction, this will entail a deepening politics of accumulation by dispossession throughout the world in order to keep the motor of accumulation from stalling entirely” (id. 81).

⁴ “a humanitarianism whose object is an ahistorical and dispensable mass, depoliticized insofar as it is naked, devoid of rights. The humanitarianist gaze works by depoliticizing, converting this nakedness into an identity mark of the object to be rescued. Although it often accompanies a genuine and necessarily human impulse, the humanitarianist gaze culminates the process by which expelled subjects are not only rendered non-citizens but also sub-humans. In its ultimate expression, humanitarianism is the (social or institutional) rearguard line that sustains the survival of those who are ‘only (and still) human.’ In its anti-political essence, humanitarianism is the definite mark of segregation; the ultimate solution to make every existence liveable (only liveable) in the impossible habitat of structural violence” (Jiménez et al. 2020: 10).

⁵ Through which the state abandons its rights-based responsibilities by minimizing the operating principles of social policy to the mandate to keep lives functional to the market.

⁶ Lazzarato discusses the term *neo-fascism* proposing *national-liberalism* (as opposed to *national-socialism*) as the preservation of market mechanisms and capital accumulation through vigorous and ‘patriotic’ attacks on (wide) minorities.

The breakdown of the welfare State can be seen in the displacement of governmentality by the economy (legitimate and illegitimate transnational corporations that force the entire system to adopt the laws of the market), a shift that transforms the concept of the nation-state into the nation-market [...], i.e., transforming a political unit into an economic unit governed by the laws of exchange and corporate profit, and connected by multiple links to the world market” (Valencia 2010: 25–31).

According to the definitions that head this section, the necropolitical performance of the Spanish nation-market soared in the 2020–21 period. Sudden and brutal effects were faced by employees working poor, especially those working informal types of labor in nursing homes, and especially by the working poor in domestic and care jobs, agricultural seasons, slaughterhouses, street vending, sex work, all those living under irregular administrative situations or engaging in work that does not allow for social distancing or observance of work from home orders, suffered extreme violations of their fundamental rights, especially the right to health, during the considered period—without any kind of institutional supervision or law enforcement effort. In large cities such as Barcelona, homeless people, being unable to comply with stay-at-home orders, ended up fined and/or locked up in municipal facilities, and subjected to total discipline and surveillance.

Accompanied by the background noise of daily applauses from the balconies at 8 p.m., mantras such as ‘let us protect essential industries’, ‘thanks to essential workers’, ‘health staff are our heroes’ or ‘we must take care of the most vulnerable’ became ubiquitous. Meanwhile, thousands or millions of people labeled as such remained submitted to a gore managerial rationality, thus reproducing severe conditions of exploitation, abandonment and death. The largest slaughterhouse in Europe is Litera Meat, located in Binéfar (South Pyrenees), occupying; slaughtering; freezing 2500 tonnes of meat per day and, exporting to more than 50 countries. Around 1.600 workers (more than 1.400 of which are ‘non-Spanish’) were forced to work without any protection measures, even having to relieve themselves on the work chain. Almost half of them were eventually infected with COVID-19, and only their ages prevented the company’s policy from triggering a mass corporate murder case. Subjected to intimidation and physical violence, these workers labored under conditions summed up as follows: “exploited without care for their health, infected and dismissed, now...several people...face eviction...given two days to leave the company houses, which are part of their salary in kind” (Babiker 2020).

Regarding the realm of social policies, most measures sold by the Spanish government as ‘social’ implied a variety of indirect budget transfers from public to corporate hands. “Whereas the crisis led to a greater decrease in market incomes for the poorest people, some measures introduced by the government proved to be effective in compensating the rise of income inequality in the first months of the pandemic” (Berkhout et al. 2021), but temporary compensations are obviously not enough to face the “pandemic of inequality” (Mansilla 2020). Quite the contrary, as we will argue in the fourth section, a humanitarianist rationale of *minimum eligibility* came to legitimize the priority of state support for capital reproduction. Words (social discourses) and deeds (governmental actions) do not coincide, but humanitarianist rhetoric legitimizes a sort of ‘emergency neoliberalism’ through which state interventions focus on sustaining supply (read ‘subsidizing capital’), while the number of people ‘too poor to receive aid’ increases. The whole picture, three years after, shows a new harmful twist whose four main axes are privatization, financialization, and “socialism for the rich” (Ruggiero 2013, 137 ff.). Accordingly, the social divide deepens, while public policies remain subjected to a variety of eligibility requirements—among which housing and minimum income subsidies are probably the two most relevant

areas. Indeed, the formula seems to be limited to sustainably transferring public money to private interests and keeping a quarter of the population below the poverty line (see Sect. 4). Let us add some data to better explain this process.

Between 2020 and 2021, ordinary profit rates reported by corporations grew by almost three points, while the risks of falling under the poverty line impacted the population more than the simultaneous loss of jobs caused by the lockdowns (FOESSA, 2022: 136). The latter were lower than those in previous crises because of measures such as state-funded ERTes (temporary layoff procedures, *Royal Decree-Law 8/2020*), through which the state assumed labor costs on behalf of private corporations in order to prevent a massive rise in unemployment rates. According to Eurostat (2022), profit margins in non-financial Spanish corporations (annual change between the first half of 2021/2022) grew by 7.9%, while the European average fell by 3.1%. ERTes saved companies €38 billion in wages, as the state provided almost €21 billion in benefits for workers with suspended contracts and exempted companies from paying € 8.2 billion in social security contributions, plus almost €9 billion in lost wages for employees (Bayona 2020). Meanwhile, inspections by the labor market regulator detected 6895 violations among 43,403 revised ERTes.⁷ Occupational mortality rose by 10% (505 deaths in 2020) despite the suspension of activity, job losses, redundancies and teleworking since mid-March 2020. As underlined by ILO (2021), social harm caused by the public health crisis and its economic impact went beyond the damage caused by Covid-19. Conditions of exploitation and disregard for the dignity of those who had ensured the livelihood of the population in the harshest days of the lock-down were repeated in many areas. In July 2020, a shanty camp housing 400 migrant seasonal workers in Lepe (Huelva) suffered its third fire ‘of unknown origin’ in five days.

In disaster capitalism, natural events are barely discernible from ongoing crises caused by the dynamics of capital—and vice versa. As we explain, the social consequences of natural disasters are subjected to profitable management which, in turn, produces social disasters. In criminological terms, this scenario calls for a redefinition of the concept of *crime* beyond its positive legal meaning, as a process/policy based on producing social harm as a condition for increasing and sustaining the accumulation of capital. This is how “gore capitalism” (Valencia 2010) becomes an extreme expression of “the crimes of the economy” (Ruggiero 2013) that must be addressed through *zemiology*.⁸

Barely a month before the governmental declaration of the State of Alarm on March 14, 2020, UN Special Rapporteur on extreme poverty and human rights, Philip Alston, published a devastating report after his official visit to Spain between 27 January and 7 February, in which he “urges Spain to expand coverage and eligibility for the minimum living income” after claiming to have visited “places that I suspect many people in Spain would not recognize as part of their country”, while referring to high poverty rates as “a policy choice” (2020). Compared to labor market policies, state budgetary efforts toward

⁷ People working on days/times when their contracts were suspended; new employees hired or working overtime on ERTE, not notifying the SEPE that any of them were returning to their duties, carrying out dismissals before deadlines had elapsed... (Bayona 2020).

⁸ “A zemiological perspective prefers to work outside of the realms of individualistic or street-level crimes. Although they can be harmful and indeed negatively impactful, as zemiologists we seek to consider socially and institutionalized harms which have far greater impacts on many more people. In sum, although we acknowledge the harms of some deviant or ‘criminal’ acts, we are more interested in training our focus on acts which often occur on grander scales and outside of the rule of law. Studying endemic harms requires us to ‘look up’ at powerful institutions, social structures and political elites” (Canning & Tombs 2021: 59).

minimum income, non-contributory benefits or so-called income for the poor were minimal and, above all, slow. A new Minimum Living Income allowance delivered by the state central administration came into effect on June 15, 2020, retroactively claimable from June 1, 2020. According to Foessa (2022), by March 2022 25% of its potential claimants were granted the benefit, while 67.8% of potential applicants failed to apply, and another 6.2% did so but left before signing or were unable to complete the procedure.

The real estate market continued to raise prices (except in the last quarter of 2020 and 2021), and the high risk of a new eviction wave as in 2008–14 rests now on increasing rents, while no government seems willing to regulate it.⁹ Spain has never had any housing policies, but a *state real estate policy*. The average rent for a housing unit on offer in Spain in the second quarter of 2020 (€904 a month) equals 92.9% the average net salary of a young person in the same period (Observatorio de la Emancipación, 2020). Only the hard lockdown period brought a short halt in the constant flow of evictions, now mostly related to rent defaults, but the trend continues while a legal reform to effectively protect tenants seems impossible. Instead, in the heat of two election campaigns (spring and winter 2023), the media's exploitation of squatting as a profitable source of moral panic is growing, along with the prominence of neo-Nazi vigilante gangs, which join the political debate alongside police associations and unions. On behalf of landlords and the right to private property, the recovery of the accumulation cycle demands an optimum rise in rental prices, as the gap between middle-class owners and poor tenants increases (Carmona 2022). In large Spanish cities, the most profitable neighborhoods in which to buy a property with the intention of renting it out are in the poorest districts.

All that being said, 'externalities' of privatization and cutbacks in public healthcare came to produce the worst of all episodes involving the public health emergency in Spain. On March 20, 2020, the Madrid Government issued an internal protocol to explicitly prevent the most vulnerable residents from being transferred to hospitals from nursing homes. The document setting out the "exclusion criteria" (*sic*) for hospital referrals of elderly people was sent to several hospitals and nursing homes in Madrid (Rico 2021). 7291 inmates died without receiving medical care (5795 with Covid-19). A similar scandal occurred in Catalunya, although to date no legal action has succeeded and no political responsibility has been admitted in any of the cases. Around 30,000 Spanish elderly died alone in care homes between the time that Covid-19 was declared a pandemic, until December 2021. According to the Citizens' Commission for Truth,¹⁰ 77% of people who died in nursing homes in March and April 2020 did not receive hospital care.

Meanwhile, a €140 billion budget (€72 billion in grants and €68 billion in loans, financed through borrowing on the financial markets) was meant to be transferred to Spain under the NextGenerationEU (NGEU) funds, regulated by Royal Decree-Law 36/2020, to be implemented by private corporations through public–private partnerships (called Strategic Projects for Economic Recovery and Transformation), and managed through outsourcing to private consulting firms such as Deloitte, Pricewaterhouse Coopers, KPMG and Ernst & Young (OMAL, 2020), thus reinforcing managerial practices toward regressive

⁹ The first Housing Rights Act of Spanish democracy passed on April 27, 2023, presented by the Spanish government as a historical advance. Tenants unions and PAH (platform of people affected by mortgage) defined it as a farce: "It is still not too late to demand a real solution to the thousands of evictions that occur every day in Spain and that will continue to happen with this law" (Cúneo 2023).

¹⁰ People's tribunal (headed by experts and chaired by emeritus judge of the Supreme Court José Antonio Martín Pallín) created in 2023 to investigate what happened in the residences of the Community of Madrid between March and April 2020.

redistribution. Two years on, this decision-making process can be read in terms of shock doctrine,¹¹ since its profitability for the economic elites is beyond any doubt.

Order Over Law. Policing the Lockdown

Given this context of harm production and profit concentration, let us move the focus to the realm of *order production and maintenance* (see Neocleous 2000a; Rocher 2022).

Our main thesis links the two phenomena within the framework of a political economy of dispossession that relies on the police as an agency of control in the service of a policy focused on facilitating accumulation by any means, with the data presented in the previous section illustrating this market order. What we want to address here as a relevant example is the practice of police law-making based on *disobedience*. Manuel Maroto's early analysis is probably the first and most valuable contribution on this topic:

Some [examples] were relatively irrelevant, such as the publication of police lists of essential goods whose purchase justified leaving the home, or the requirement to carry certain documentation in order to move between neighborhoods. Others have been more worrying, such as the production of new categories of offences through simple ministerial instructions. Other cases, such as the video, disseminated on social networks, of the police entering a house where a party was being held, because the police considered that the refusal to identify oneself constituted a «flagrant offence» of disobedience, point to the persistent danger of the «police creation of law»: the expansion of purely formal notions of disobedience that consider the principle of hierarchy as the foundation of the legal order, and which openly conflict with the material meaning of fundamental rights as guarantees against the state (Maroto 2021: 222).

The police powers under these Acts [*i.e.*, *English 1824 Vagrancy Act*] reversed the traditional assumption of innocence on the part of the accused—police officers determine the guilt of the suspect under these statutes, and the onus is on the suspect to prove his or her innocence. Given that most street encounters are structured by stop-and-search legislation and fall way outside any systematic legal regulation, this grants police considerable quasi-judicial autonomy. Finally, the law is very much a police product (Neocleous 2020b: 105).

As stated by Neocleous, the constitutive way that police power is performed does not function under the law but rather as a law producer in the name of (a certain notion of) order. As stated by Mansilla, the way in which reality is created, “especially in certain moments of political and social tension such as the measures taken to fight a pandemic, is never neutral but intentional” (2021:52). The “preventivist” (Aguerri and Jiménez 2021:823) reaction enabled by the State of Alarm Decree¹² involved different expressions of the same

¹¹ “There is nothing like a true disaster, a genuine churning of society, to open up a new frontier” (Klein 2007, 278)—see also McGee (2022), Caamaño (2022) for the context of Covid-19 pandemic.

¹² The State of Alarm (Art. 116 Constitution: *States of Alarm, Exception and Siege*) was declared on 14-02-2020 (*Royal Decree 463/2020, 14 March, declaring the State of Alarm in order to manage the health crisis caused by COVID-19*), constitutionally limited to 15-day periods, progressively extended up to 6 weeks, and revised every 7 or 14 days. Its extension until mid-June (which progressively ‘relaxed’ some restrictions as stages 0–1–2 were officially declared for every regional government) was proposed by the State government and being approved by the Parliament (Jiménez et al. 2020). Full list of legal enactments: https://www.boe.es/biblioteca_juridica/codigos/codigo.php?id=355&modo=2¬a=0&tab=2.

secitarian reason. A warlike narrative developed by public authorities depicted the virus as an enemy that threatens the nation, thus feeding what could be described as the *abuse of obedience*. “We are all soldiers”, stated General Villarroya joining the government representatives at a press conference (20minutos.es 20.03.20). The official leader of the Spanish Army, King Felipe VI, joined a few official acts and attended a number of civilian facilities in his military uniform, while Villarroya publicly emphasized that “our king is the first Spanish soldier” (ElNacional.cat 23.03.20). From the very first moment, at the press conference declaring the state of alarm, President Sánchez had stated that “a war without bombs” (lamoncloa.gob.es 18.04.21) had to be fought, and we had to “stay united against the enemy”... feeding *national security* rhetoric over a *public health* issue.

Officers of the Spanish Army went as far as to impose fines.¹³ A police protocol issued on March 16, 2020, listed the steps that police agents must take in order to arrest an offender who may show symptoms of the disease, say that he/she has it or has been in “close contact with infected people” or in areas of “special incidence of the virus.” On April 12, 2020, the Ministry of Home Affairs informed the Congress about a project to provide National Police and Guardia Civil agents with 1,200 tasers so they do not have to use their firearms in certain situations” (Jiménez et al. 2020: 24).

According to the State of Alarm Decree (Art. 20), failure or resistance to comply with an order from the authorities implies a sanction in the terms of Organic Law 4/1981 of the States of Alarm, Exception and Siege (whose Article 10 refers to Organic Law 4/2015 to Protect Citizen Security), Law 17/2015 on the National Service for Civil Protection, Law 33/2011 of Public Health, and the Penal Code, which involves a wide range of sanctions and a high level of arbitrariness for security officers. Police agents could thus qualify the same fact as an ‘administrative’ or ‘criminal’ issue. Administrative sanctions in the *Gag Law*¹⁴ (*minor, serious or severe*) impose 100 to €600,000 fines. Criminal sanctions can impose 6 months to 4 years in prison plus pecuniary sanctions (Penal Code, Articles 550 & 554: *attack on authority*), 3 months to 1 year imprisonment, fines (Arts. 556–1: *disobedience and resistance to authority*), or lower fines (Art. 556–2 PC: *minor crime for lack of respect and due consideration to authority*). Between March 14 and May 12, 2020, 8,003 people had been arrested and enforcement actions by police agents amounted to 944,665—up to 150% of all fines imposed in the previous 4 years under the 2015 *Gag Law*. Human Rights organizations publicly denounced the skyrocketing of ethnic profiling, stop-and-search procedures and racist aggressions by police agents (SOS Racisme 2020).

“Administrative and criminal offenses of disobedience provide legal cover for police discretion, sometimes even allowing an authentic police creation of Law” (Maroto, 2021: 200). Indeed, this sort of ‘arbitrary management’ embodies a symptom of the historical nature of policing (Neocleous 2000a: xiii-xiv) and of its particular role under a shock conjuncture. Police patrols fined 1.1 million individuals and arrested more than 9,000 in 90 days under the *Gag Law*. The notion of ‘disobedience’ was thus being arbitrarily applied by police agents to people walking the streets from/to their workplaces, using public, transportation joining food banks or groups assisting their disabled neighbors and people in

¹³ The state Government Delegation in the Canary Islands finally rejected them as illegal. In accordance with the third additional provision of Law 39/2007, of November 19, on the Military Career, in relation to articles 15.3 and 16 e) of Organic Law 5/2005, of November 17, on National Defence, the members of the Armed Forces in the performance of their duties provided for in this royal decree shall be “law enforcement officials”.

¹⁴ Officially for the Protection of Citizen Security (Organic Law 4/2015).

need, and even stretching their legs in small private courtyards of housing blocks. Article 36.6 of OL 4/2015 defines “disobedience or resistance to the authority or its agents in the exercise of their functions, when it cannot constitute a crime, as well as the refusal to identify one’s self at the request of the authority or its agents or the provision of false or inaccurate data in the identification process”, as a serious administrative offense with a range of sanctions between 601 and €10,400 (minimum grade), €10,401 to €20,200 (medium), and €20,201 to €30,000 (maximum).

According to data recorded by the Spanish Home Office,¹⁵ 605,174 administrative sanctions were imposed under the Law for the Protection of Citizen Security in 2020, an increase of 108% compared to 2019. As shown in Fig. 1, this growth was due to a significant increase of 2,560% in fines for disobedience (Citizen Security Law Art. 36.6), from 12,983 in 2019 to 345,406 in 2020. Meanwhile, mainly because of the restrictions imposed by successive decrees, all other sanctions declined compared to previous years.

If we delve deeper into this *wave of disobedience* deployed by police officers¹⁶ in 2020 (see Fig. 2), we can describe how a large number of fines for disobedience were imposed in March ($n = 115,201$), April ($n = 138,837$), May ($n = 59,933$) and June ($n = 14,075$). During the first three months (March, April and May), those involving the measures of strict lockdown and the beginning of the so-called de-escalation (Spanish term referring to relaxation of confinement measures), fines for disobedience amounted to 52% of all sanctions imposed in 2020, and exceeded the total amount of all other fines in the same period. To put these figures into context, it should be noted that 435,976 sanctions for disobedience had been imposed since the Citizen Security Law came into force in June 2015 until the end of 2021, 313,971 (72%) of which were imposed in the months of March–May 2020.

On April 16, 2020, the Ministry of Home affairs sent a communication to all state government offices (*Delegaciones del Gobierno*) “in the interests of unity of approach in the exercise of the power to impose penalties” (Ministerio de Interior 2020) on those who disobey the order of general lockdown. Fines amount to €601—€10,400 as established by the Organic Law to Protect Public Security. The Ministry provided its delegations with a template to impose sanction procedures for offences of disobedience to authority—Art. 36.6 OL 4/2015.

As also noted by Maroto, the Spanish jurisprudence stresses that, according to constitutional principles, “rules can be broken, but not disobeyed” (2021). A police officer cannot take ‘disobedience to authority’ (included in the *Citizen Security Law*) as a pretext to punish the mere non-observance of general provisions without breaking the constitutional principles of legality, criminality and legal certainty, all of them linked to a fundamental right (art. 25 SC) that was not suspended during the state of alarm. This is precisely what would be finally confirmed by the Constitutional Court, and why most of the fines imposed during those four ‘hot months’ were never effectively paid by the majority of alleged offenders. However, the effects of this *wave* for pre-sanctioning street hyper-activity carried out by police officers were, in performative terms of order, unquestionable.

¹⁵ The data presented below have not been published by the Spanish state but are of a public nature, and as such, they can be requested by any citizen under the Transparency Act. This has been the procedure employed by the authors to obtain the data.

¹⁶ Since ‘disobedience’ would be finally proved to be an illegal pretext for police intervention (see below), police officers exerted ‘off-the-cuff law making’ precisely through the sanctions they were imposing. In a sense curiously similar to that described by Goffman in *Asylums*, “the staff problem here is to find a crime that will fit the punishment” (1961, 85).

In addition to this, the number of criminal actions by the police was also significant. From March to June 2020 alone, Madrid-based NGO Defender A Quien Defiende recorded 330 situations of police violence and abuse. Fifteen people died in 2022 as a result of police and Guardia Civil interventions, according to the Ministry of Interior, which published for the first time ever, the number of deaths during arrests (59 since 2015, admitting a sharp increase in 2022). This figure includes neither the victims of municipal and regional police forces, nor migrants killed at the borders of Ceuta and Melilla.¹⁷ According to the ministry's own data (only including actions by the National Police and Guardia Civil), 26 cases were brought against police for injuries and deaths caused by arrests, the plaintiffs of which were awarded a total of €363,000 in compensations between 2008 and 2018.

Police law-making and brutality were also accompanied by an increase in 'political participation' on the part of the state security forces. This phenomenon was actively supported by all right-wing parties, found its way paved by the emergence of Covid-19 (as argued above), and consequently fed a conservative shift of the political axis regarding public discourses on order and security. On 6 May 2020, the Spanish Constitutional Court admitted an appeal of unconstitutionality presented by Vox—the neo-fascist political party which had given parliamentary support to the State of Alarm Decree. The decree was declared unconstitutional on a vote of 6 to 5 members in July 2021. Four months later, the second decree (extending the validity of the first) was also declared unconstitutional by six to four votes, arguing that the Spanish Constitution does not allow any suspension of fundamental rights under the legal imposition of a State of Alarm, but only under Exception or Siege. As a result of these judicial decisions, most sanctions imposed have been cancelled.

Given that the appeals that led to this decision of the Constitutional Court were due to mere political disputes and not to any guaranteeing concern on the part of the appellant, the debate concerning the alleged illegality of the formula applied by the government will not be developed here. It suffices, for greater emphasis on the notion of exceptionality, to point out that the acceptance of both appeals makes it highly probable that any government that might have to face another similar emergency in public health would thus be forced to declare the state of exception, which is the option contemplated in the Spanish Constitution to suspend the fundamental rights of the population.¹⁸ As a result, a 'win-win' process under the pandemic shock rationale favored the securitarian turn of the political axis and the constitutionalization of exceptionism—just as previous financial crisis led in 2011 to constitutionalization of debtocratic austerity.¹⁹

As a result of this process, on November 27, 2021, thousands of National Police, Guardia Civil and Prison officers demonstrated in Madrid against the Home Office Minister. This image would be hard to find in any other European state, not to mention what it would mean in certain Latin American countries. It was by far the largest among all street protests

¹⁷ Nor did it occupy the pages of any mainstream newspaper at the national level; it was only picked up by local or regional dailies.

¹⁸ See Art.116 SC and OL 4/1981 on the states of alarm, exception and siege.

¹⁹ Constitutional reform (27 September 2011) through which article 135 was rewritten: *1. All public administrations shall bring their actions into line with the principle of budgetary stability. [...] 3. The State and the Autonomous Communities shall be authorized by law to issue public debt or contract credit. [...] Credits to satisfy the interest and capital of the public debt of the Administrations shall always be considered as budget expenditures and their payment shall be an absolute priority. [...] 4. Limits to structural deficit and public debt may only be exceeded in the event of natural disasters, economic recession or situations of extraordinary emergency beyond the control of the State which considerably harm the financial situation or the economic or social sustainability of the State, as determined by an absolute majority of the members of the Congress of Deputies.*

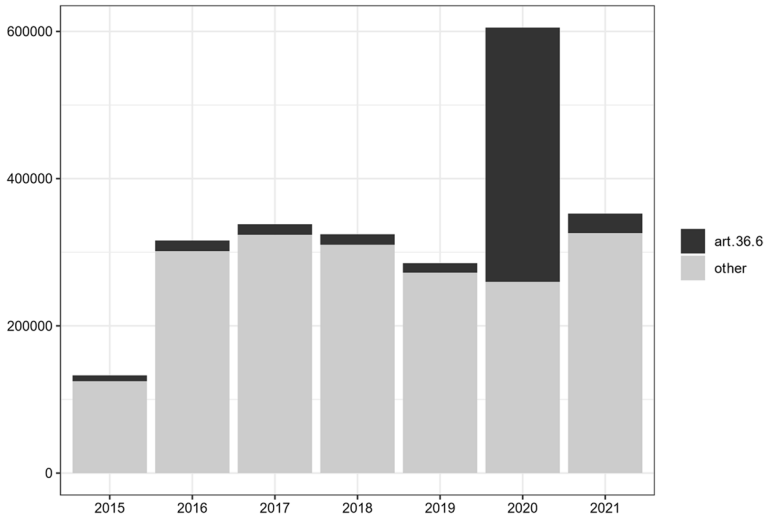


Fig. 1 Number of sanctions imposed under the Citizen Security Law per year

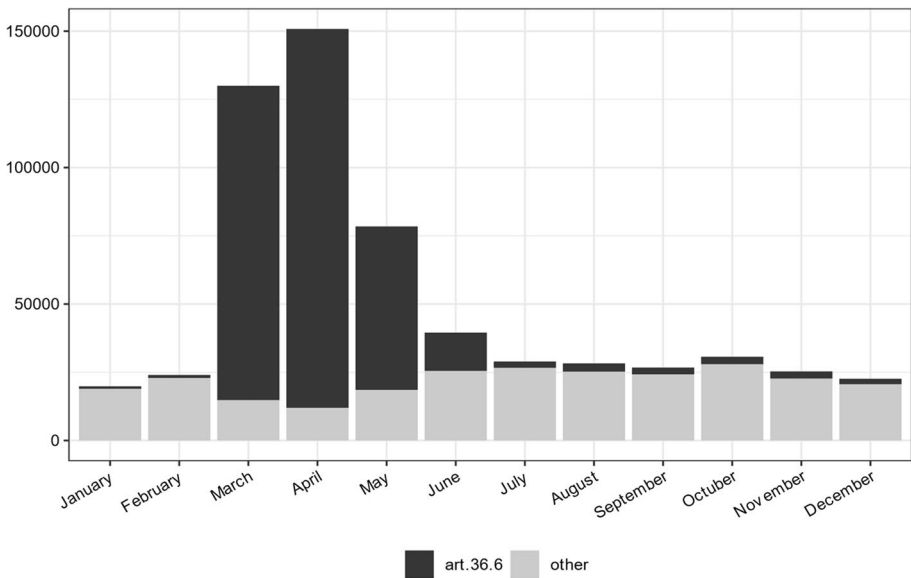


Fig. 2 Number of sanctions imposed under the Citizen Security Law in 2020

in Spain between March 8, 2020 (feminist movement) and November 2022 (in defence of public health). The pretext was an alleged draft reform of the Citizen Security Law²⁰: “We are on the streets together with the most loyal and hardest working servants of Spain. We

²⁰ The reform had not even been discussed in the Parliament, and consequently there was no detailed draft to oppose. Pedro Sánchez, in power since June 2018, had promised in 2015, 2016, 2017, 2018, and 2019

are here against a law passed by the government together with all the enemies of Spain and its constitutional order. That is the perfect summary of the situation now facing Spain and why we are on the streets”, declared the leader of the Vox party on stage.

One year after the massive police demonstration, nine police and Guardia Civil unions threatened another demonstration against the government’s alleged intentions to reform the *Gag Law*. Such reform did (and will) not happen, but police lobbies and mainstream media insist on their demand of respect and protection. Meanwhile, the reinforcement of administrative repression intertwines with new penal reforms. In early 2023, a new reform in the Penal Code repealed the penal type of sedition, but also redefined “public disorder”, widening its coverage and imposing punishments. Again and again: right to security prevailing over security of rights, both as an effect and a condition for the deployment of a particular accumulation model—as seen in Sect. “No one behind? The conditions of possibility for policing prevalence”.

In 2022, while the Spanish government increased the salaries of police officers by 38%, police unions called again for street protests against the same non-existent reform with much support from media corporations and right-wing judicial operators. Once order proves to prevail over law and political responses involve nothing more than uncritical and disciplined attitudes, national-liberal narratives activate both the depoliticizing functions of policing and the political agency of police forces. Critical responses to the management of the crisis were voiced under the monopoly of far-right discourses, and privileged the narratives of the upper classes. This paved the way for a right-wing authoritarian consensus and contributed to shielding the immunity²¹ of most operators and beneficiaries of damage production.

No one Behind? The Conditions of Possibility for Policing Prevalence

The main depoliticizing function of politics consists in hiding the current impasse we face behind the illusions and small hopes of the lesser evil. Authentic transformative political action is blocked because what is politically feasible will change nothing, while actions that could promote truly significant change are politically unthinkable (López-Petit 2016, XXXIII).

In the 2010s, the Citizen Security Law (4/2015) came into force while debtocratic loss of sovereignty became state policy with the constitutional reform of Article 135 (2011). Later, in the 2020s, the Gag Law has allegedly proved to be non-derogable (as confessed by those who promised to repeal it) but quite profitable in symbolic terms.

After the 2008 financial crash, the global strategy for capitalist recovery deployed an ‘accumulation through austerity’ model within a wider process of geoeconomic peripherization. A long and winding decade after the Great Recession was declared, the pandemic opened the way for another wave of reverse Keynesianism characterized by wealth concentration and social harm. The notion of *minimum eligibility* can help us analyze how

Footnote 20 (continued)

that the Socialist Party would repeal the ‘Gag Law’ as soon as it won the election. In punitive matters, neo-liberal reason never seems to back down.

²¹ “If *communitas* is what binds its members in a commitment to one another, *immunitas*, on the other hand, is what frees them from this weight, which exonerates them from this burden. Just as community refers to something general and open, so immunity, or immunization, refers to the privileged particularity of a situation defined by the fact of being free from a common condition. This is evident in the legal definition, according to which those enjoying—parliamentary or diplomatic—immunity are not subject to the same jurisdiction concerning all other citizens, through derogation of common law” (Esposito 2012: 104).

humanitarianist discourses can be exploited while living units are turned into profitable assets for value production ('individuals and families', in Thatcherian terms, from the right to housing to minimum income policies), and growing sections of society being pushed below the poverty line.

'Leaving no one behind' came to function as the main governmental slogan in Spain during Covid-19, although public order and sustainable accumulation remained the pillars of crisis management. This seeming paradox provides a good example of a nation-market's manifest and latent functions, which is basically what has been emphasized after every 'crisis', emergency, shock, or disaster through which politics has been submitted to securitarian-exceptionist measures. This outlines the theoretical framework for our analysis of the goals and effects of securitarian policies adopted by the Spanish state in 2020: it is not easy to frame a 'crisis' under permanent exception.

A decade earlier, in the midst of the financial crisis, a campaign under the slogan "We can only fix this together" (*Esto sólo lo arreglamos entre todos*, 2011) had been funded and promoted by the employers' association of large construction companies *Seopan*, the major IBEX35 (Spanish stock market) corporations, and the Chambers of Commerce. "We are not leaving anyone behind, no person, no region," stated Spanish prime minister Pedro Sánchez in March 2020. Government campaigns such as *I stay home* (*Yo me quedo en casa*, promoted by famous celebrities) and *We'll stop this virus together* (*Este virus lo paramos Unidos*, announcing the basic preventive measures all individuals were ordered to take) were broadcasted across the media. This campaign was publicly funded and amounted to €4.5 million. In both events, a new humanitarianist-neoliberal notion of less eligibility ensured that no one was left further 'behind', but also that no one was left in better conditions with access to more rights than they already had.

In the meantime, as in the previous decade, public order stood as the total object of a double movement: first, *police free will* as the spiritual reservoir of liberal punitive ethos; second, police control as the widespread rationale throughout the social body, hence *law and order* unveiled its essential rationale as *order over law*. Police forces seem therefore to hold and perform the power to punish, no longer infractions of law but an odd form of disobedience arbitrarily valued by the agents who can intervene, denounce, propose sanctions and thus create the norm that has come to be transgressed. All this was 'legally cooked' in the 2010s. Although this surely could have been put into practice without the current Citizen Security Law, the whole process reveals that the aforementioned historical nature of policing (Sect. 3) involves executive arbitrariness and police law-making power as two key ingredients.

In March 2020, everything started with progressive, solidarity statements along the lines of "now we will learn the importance of public health (and public services in general)", "let's applaud the health workers", and "essential workers are putting their lives on the line for us"...but ended with rising discontent among doctors, nurses and wardens. At the same time, while many balconies saw people applaud the efforts of front-line workers every day at 8 p.m., they now turned these occasions into exposing possible offenders of covid rules. These so-called balcony police were one of the most symptomatic phenomena of the effective expansion of punitive control rationality throughout the social body.²² Securitarian hegemony—as already mentioned above—could not have happened without a

²² The term 'balcony police' was coined in reference to the repeated cases in which neighbors in the cities were dedicated to rebuke from their windows and balconies or denounce with calls to the police those neighbors who were in the street in apparent violation of the rules and schedules imposed during the confinement.

specific conception of public order being adopted and historically consolidated by punitive populism as in all neoliberal regimes.

Throughout the construction of this frame, citizens were pushed to buy their access to a commercialized catalog of rights on credit, while states substituted their duties before citizenship for the absolute priority of debt payment. The mechanics of extortion, usury and blackmail prevailed over welfare narratives, protections and guarantees, while accumulation by dispossession unfolded as financialized extractivism or “profit without production” (Lapavistas 2013). This analysis can help us understand the current role of policing, from its classic features as described by Michel Foucault, who defined the modern police institution as “the circulation of men and goods in relation to each other. It is the whole problem, precisely, of these vagrants, of people moving around. Let’s say, in short, that police is [...] an institution of the market, in the very broad sense” (Foucault 1978, 335). Hence, we must revise the meaning of ‘market’ and to what extent contemporary governance should be read as *government through the market*. On his part, Mark Neocleous also shows how the very origin of policing focuses on “mastering the market” (2000b, 11), remaining linked to an economic rationale of government and a historically disputed concept of ‘prosperity’.

Police is the direct governmentality of the sovereign *qua* sovereign. Or again, let’s say that police is the permanent coup d’état. It is the permanent coup d’état that is exerted and functions in the name of and in terms of the principles of its own rationality, without having to mold or model itself on the otherwise given rules of justice (Foucault 1978: 339–40).

What to conclude when those ‘rules of justice’ are given to serve, come what may, the iron rule of capital accumulation? Foucault’s words make us point to a managerial approach whose consequences are being confirmed in Spain: capital concentration tends to expand its constitutive violence in the form of structural inequality, while the friendly face of the neoliberal state invokes humanitarianism. Evictions, restricted access to healthcare, immigration exclusion and hyper-exploitation, school segregation, misery subsidies, *law and order* narratives. We argue that the immeasurable volume of social harm generated by debtocratic policies requires a critical approach to state-corporate criminality. Regarding the socio-political consequences of such decisions, Green and Fazi (2021) clearly warned about the immediate future we are already experiencing: “Any form of popular dissent is likely to be hegemonized once again by the (extreme) right.”

As an accelerator of social inequality—which in turn is the (first) condition for capital reproduction under the current accumulation model—the context of the Covid-19 pandemic and subsequent new normal must be analyzed as a single profitable event whereby policing *order over law* proved to be the management of a political asset to maximize capital accumulation to unprecedented levels. In a nutshell: the conditions of possibility for police law-making—and more broadly the expansion of securitarian and punitive rationales throughout the social body—are rooted in the harmful nature of the accumulation model: *like looting, like security*, to the extent of placing the production of law in the hands of those who allegedly enforce it (and effectively ignore it) to ensure the convenient unfair order.

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