

## The Neoliberal Legal Systems and the Implications for Madrid's Urban Spaces. An Analysis of the New Regulatory Framework 'Citizen Security Protection Act of 4/2015'

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### Abstract

This paper explores the topic of social justice and the Right to the City as experienced through the enforced regulation 'Gag Law' in Madrid. This policy has been explored up-taking a Foucauldian view-use and organisation of space, and using the concept of the Right to the City developed by Lefebvre. Hence, the 'Gag Law' has aimed to prohibiting undesirable protests, restraining political rights and the right to protest. Evaluating the case study of Madrid, results demonstrate that the fusing control and the claim to 'community safety' of neoliberal agendas, caused a shrinking of democratic rights in the Spanish city. The main objective has been to stress the importance to allow for a deeper understanding of urban policy implications on citizen's rights.

**Keywords:** geography, social justice, right to the city, right to protest, inclusion, city transformation

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## **1. Introduction**

In recent years, Lefebvre's (1970; 1996) notion of the Right to the City (RttC) has been increasingly discussed within academic literature discourses and social movement practices, conceptualised in relation to urban studies, social movement philosophy and governance theories (Mayer, 2013). It involves the demand for a renewed access to urban spaces, perceiving the urban as a socially constructed and representational space, due to its association with symbols and images dealing with the lived experiences of users which seek to change and appropriate urban environments (Lefebvre, 1991; Merrifield, 1993). Acknowledging different types and scales of political action, this essay is placed within the paradigms of the city as a political medium, how actors are empowered and mobilised through intervening in urban processes, and political community, the idea that social change cannot be viewed as derived from institutional arrangements (Iveson, 2014; Davidson and Martin, 2013; Carr, 2014). This essay addresses the implications of the so-called 'Ley Mordaza' or 'Gag Law' (GL), undertaking the formal name of 'Organic Law 4/2015 of Citizen Security' (OLCS) (LO 4/2015 Protección de la Seguridad Ciudadana, 2015). The underlying value of this analysis stems from the substantial influence legal systems have to exert power over citizens acting as a tool to restrict protesting in public spaces and provides valuable insight on the incongruities in the language used to present laws. This has a particular significance for Spain, where social movements and protests play a major role in influencing political rights, as seen through the Indignados and 15M movements (Flesher Fominaya, 2016). Specific importance is attributed to Madrid as a capital city, having potential to change the country's political climate regarding social reproduction and the RttC. This provides an opportunity to deepen geographical engagement and knowledge on the consequences affecting the right of assembling, protesting and freedom of speech, by focusing on how elements of policy circulate in and through institutions, urban spaces and citizens.

The GL was a response to increasing anti-austerity and anti-corruption protests in Spain, due to the resulting economic climate after the 2008 crisis (Flesher Fominaya, 2016). Since the 15M and Indignados movements, social protests with sustained mobilisations spanned across the country, with Madrid holding the largest concentration of these. They attempted to reclaim democratic rights after the introduction of austerity measures, including cuts to social security and public services benefits, due to their direct impact on the re-shaping and re-making of the urban sphere of social reproduction (Katz, 2001). Since the election of the Spanish conservative government (Partido Popular) in 2011 and in the wake of these protests, the OLCS legal reform was introduced to manage the right to protest by adopting the discourse of 'public safety' for Spanish citizens.

## **2. The Right to the City, democratic rights, displacement**

The RttC transformation depends upon exercising a collective power to reshape the processes of urbanisation (Harvey, 2000; 2003; 2008). Theorised to address injustice, exclusion, displacement, marginalisation currently entrenched in urban poverty, the RttC aims to achieve a new urban world. Attoh (2011) engages in the importance of rights, studying some of the inconsistencies of the legal system. Additionally, Dworkin's conception of rights referring to laws that infringe upon dignity and equality, such as the

GL, establishes rights as claims against democratic tyranny, meaning the language of rights not only allows to challenge but to break such laws (Bellamy, 2017). Thus, rights exist precisely to protect individuals that act in ways that a democratic majority deems unacceptable.

Similarly, Hubbard and Lees (2018) affirm there are legalities of displacement within housing rights, which can be applied to the GL, as the 'legalities of exclusion' in Madrid's public spaces. This entails an understanding of the importance the legal system plays in legitimising certain behaviours, which has often been understudied and overlooked regarding the RttC (ibid). Universalising the RttC without an account of the legal context, fails to address the entire picture, as the law is implicated in Madrid's citizens' struggle for democratic rights. Declaring freedom of political speech and pacific protesting and assembling illegal, Dworkin's ideas concerning rights can be applied to argue that Madrid's citizens are justified in breaking the law, and gather to assert their rights through protesting, calling for a radical rights-based agenda (Parnell and Pieterse, 2010). Rights exist precisely to constrain the will of the democratic majority passing laws that are unjust and discriminatory, justifying instances in which citizens act against legal systems. Therefore, Dworkin's notion of rights as trumps allows to make sense of civil disobedience. Attoh (2011) argues Dworkin's explanations on rights can be classified as 'narrowly focused on individual rights'. However, they raise important questions about the relationship between democracy, civil disobedience, laws and the RttC.

Regarding democracy, this leads to an enclosure of public space through the GL imposing an exclusion-inclusion dichotomy on public spaces. Legal systems paradoxically create spaces of exclusion, where the Spanish government has claimed authority over citizens by determining what behaviour is considered (il)legal. The public space sphere, a place for contestation and representation, has become increasingly controlled, surveilled and enclosed, where behaviour that does not fall under that of 'normative' is framed as disorderly (Bilbao Ubillos, 2015; Staeheli, 2009). Conflict between different users of public space and between order and disorder has been previously discussed by a range of scholars (Sennett, 1970; 2009; Keller, 2008). This is clearly confirmed through statements such as "reporters become scared and prefer to stay away from reporting on police. For months, I too chose not to take photos when police were present. I just did not want any more trouble" (Mong, 2022). Other testimonies include fines such as Bauluz who faced two fines amounting to 1,060 euros for purportedly disrespecting authorities and neglecting to identify himself as a journalist while documenting harsh conditions for migrants and refugees in Arguineguín, Gran Canaria, in November 2020 (Mong, 2022). The GL was therefore enforced in an attempt to manage public 'disorderly' (that considered unruly or disruptive) behaviour, hindering public encounters and protests, and the right to participate in public life. It acts as a mechanism to maintain order in publicly accessible spaces. Disorder can be a powerful tool in fostering democracy, as it highlights the conflicts and agonisms inherent in democratic politics (Staeheli, 2009). To reinforce this argument, Sampson (2009), states perceptions of disorder are contextually shaped by social conditions that go well beyond the usual suspects of observed disorder and poverty, a process that in turn shapes reputations, reinforces stigma and influences the future trajectory of certain societal groups and geographical expansion.

Exploring resistance to this law unveils the uneven relations targeted by the neoliberal urban agenda, through criminalising certain behaviours and social groups, in an attempt

to reduce protests (Feenstra, 2015). As mentioned in the previous paragraph, it is usually the low-income groups that are affected by these fines. The GL has reduced the space for social contestations by promoting public urban spaces that must be 'cleaned-up' following the argument that this would entail safety. However, the underlying reason is to be adapted to serve consumerism for an exclusive desired clientele. This reshapes Madrid's urban landscape by the intangible aspect of the privatisation of public spaces. Rather than imposing physical fortressing, this privatisation has enforced social control through Spain's legal system in an attempt to silence citizens. Therefore, it seeks to get rid of whoever 'threatens to diminish these spaces and their exchange value, or disrupt the exclusive business and consumption meant to take place in these' (Brenner and Theodore, 2002).

Similarly, other countries have also implemented similar legislations, including Mexico, Venezuela and Puerto Rico. Even though this paper is concerned with the GL in the context of Madrid, it is also important to acknowledge similar analyses conducted in different cultural contexts. This helps understand the similarities and differences between cases, as well as due to colonial connections between Latin American countries and Spain. For instance, fifteen nations in Latin America continue to criminalise defamation with the threat of imprisonment, notably including Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, the Dominican Republic, Uruguay, and Venezuela (Ramírez, 2023). However, these are usually concerned with digital expression, in social media or newspapers. Therefore, even if it does converge with the Spanish GL in some areas (freedom of expression) these other laws specifically influence media control in these countries. Additionally, it must be acknowledged the socio-economic and cultural conditions are different for all of these, as well as the political history that influences the consequences. Therefore, this is not a comparative analysis of these, but rather a recognition that similar laws exist in different contexts around the world, with similar implications for the RttC and freedom of expression.

This all suggests neoliberal urbanism has contributed to shape uneven and differentiated geographies, with enclaves of wealth and regions of deprivation, dispossession and marginalisation. Marginalising austerity victims through reducing their possibilities of resistance to unjust policy measures, only further exacerbates class polarisation. This promotes unequal urban transformation through violating democratic rights.

The many fields of existing struggles are intertwined, voiced through protesting and everyday practices. However, the GL results in increasingly narrowed and restricted public spaces for social contestation, related to specific social groups interwoven in Madrid's protesting dynamics (Martínez, 2018). The 'streets, parks and plazas' comprise crucial significance within public space in the practice of lived democracy, by being the most visible spaces for public address (Staehele 2009, p 71; Hou and Knierbein, 2017). In examining the spaces, conditions, and processes in which neoliberal practices have profoundly impacted the everyday social, economic, and political life of citizens and communities around the globe, regulations have had a great impact for social reproduction. Class stratification influences the RttC, through the many individual and collective barriers hindering capability for action and access (Imbroscio, 2004; Harvey, 2012). Adopting Foucault's (1986) paradigm on surveillance, and Rancière's (1999; 2004) philosophy relating to understandings between police and politics, Katz (2001) contends 'certain populations are not only hidden but targeted'. Therefore, this notion has a

particular resonance with the right to assemble and protest, affecting minorities and low-income groups unequally as the outcome of spatial practices of domination and privilege are the controlled public spaces in the city.

### 3. Framing implications

The language employed in the title conveys a safety message. However, when analysing the content and the restrictions established, inconsistent language appears, with controversies present regarding its framing and its contents. Distinguishing between the city as a political and democratic space (Purcell, 2018; Low, 2004) and as an autocratic space (space is highly surveilled as a place of social control), the GL acts as a tool to achieve Madrid as an autocratic space, despite its title discourse assuring to be protecting citizens. The GL aims to achieve power over citizens and their right to protest through the legal system. These tools layered onto each other and worked together to achieve further domination over city life and behaviours.

### 4. Digital media

ICT and its influence on spaces has contributed to new patterns of mobilisation and social networks among participants and supporters. New technologies have contributed to the articulation of networks and collective action enhancing several social movements (Walliser, 2013). Some aspects include open-source communities, collaborative intelligence and independence from political institutions, making this micro local special dimension turn these projects into reference points at an international level.



Figure 1: Greenpeace activists placing 'Protesting is a right' sign in Madrid (González, 2015).



Figure 2: Image depicting the location of the sign, next to Madrid's congress (González, 2015).

It can be argued the GL affects the 'Digital RttC', through severely limiting digital information, by prohibiting the filming of any agent within the police and national military police (Lefebvre, 1996). Consequently, this serves to legitimise acts of violence within protests, through the lack of factual evidence of such behaviours. Restricting online mobilisation of abuse serves as a tool to silence citizens and hold control over them. Several photography projects from artists such as Daniel Mayrit have surfaced, ironically criticising the GL by pixelling police faces in different contexts (Garcia, 2016). Throughout the first year after implementation, Greenpeace reported 25.000 sanctions were imposed for behaviours which were legally protected as rights previous to the GL (González, 2015). This NGO joined the resistance movement to repeal this law, joining protests in Madrid on the day it was passed. They voiced the slogan 'Protesting is a Right' as depicted in Figures 1 and 2. Grassroots organisations have emerged in response to the GL, for instance those under the slogan 'We are not a crime' (No Somos Delito, 2021), a collective that reports against this violation of rights (Zlobina and Gonzalez Vazquez, 2017). Resistance culture was also enacted through hologram protests in front of congress in 2015, as illustrated in Figure 3, where citizens strive to assert their RttC (Lefebvre, 1996). Virtual protests in the form of holograms circulated as resistance to the GL opposing views on the day it was approved. In the global context, the GL has reached the global scale, with news articles reaching the popularly known newspapers such as NY Times and The Guardian, demonstrating the global impact of this undemocratic law. It has been compared to Franco's dictatorship regime, rather than a democratic state. Reaching international online newspapers (Redacción BBC Mundo, 2015), but also global participation in the hologram protests, with people from Russia to Mexico taking part (Córdoba Vallet, 2015).



Figure 3: Image illustrating hologram protest against GL at Madrid's congress the day after the regulation is implemented (González, 2015).

## 5. Conclusion

Overall, this paper adopts an urban studies and geography perspective in the analysis of regulations, such as the GL, stressing its importance to allow for a deeper understanding of its implications on citizen's rights. It has argued how its approval demonstrates the shrinking of democracy in Spanish society. Therefore, revealing that although the framing of the GL being 'citizen safety', it paradoxically supervises public (dis)order behaviour up-taking a Foucauldian view-use and organisation of space prohibiting undesirable protests (Katz, 2001). By doing so, it protects a class system where the rights of lower classes claiming their democratic rights to protest is restricted, in turn encouraging larger social disparities and socio-spatial fragmentation within Madrid's citizens. The evaluation of recurring overarching themes outlines the key implications for rights, including the right to freedom of speech, to assemble and protest, to participate and to the Digital RttC (Lefebvre, 1996). This demonstrates the GL acts as a tool tailoring legislation to silence dissent, clear response to anti-austerity and pro-democracy protest (Flesher Fominaya, 2016). Research conducted in Latin American countries demonstrates there is a similar restriction, where citizen's rights have been reduced in terms of right to protest (Ramírez, 2023). Hence this agrees with this paper's thesis that the GL restrains important political rights for Madrid's citizens, implying further legal improvements are yet to be achieved to advocate for the RttC, especially, since the GL was set to be repealed in 2021, being unsuccessful; the planned reform is still under revision, and still in vigour, as the law is currently under parliamentary discussion (Mong, 2022). There is a visible diaspora for further research, being able to formulate further arguments concerning immigrant rights and citizenship status in Madrid. In addition, a further analysis focusing on citizen experiences, in the

form of how the GL impacted their lives, which could be carried out with interviews, anonymous surveys or focus groups. This would allow for a deeper analysis of the consequences and the potential solutions, as well as mapping which areas of Madrid have been negatively impacted by this legislation, mapping the neighbourhoods that have had more fines for instance. However, due to the limited length of this research these could not be included, but could offer further research avenues which would imply a wider range of understandings of citizen's RttC and social reproduction in the Spanish context.

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