

## Neoliberalism and Contemporary Challenges to the Exhumation of Mass Graves

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### Abstract

Neoliberalism as a political and economic ideology has pervaded all aspects of social life in modern western economies. Its impact has been wide ranging on social lives of political subjects. This is evident in the wake of the global financial crisis and its impact on the investigation of enforced disappearance in Spain through the implementation of austerity measures to combat rising debt. Given the exhumation of clandestine graves is not a profit generating industry it relies upon financial assistance from governments, international organisations, non-governmental organisations and private donors. This has been the experience of groups such as the Association for the Recuperation of Historic Memory (hereafter, ARMH), who over the last two and a half years have relied on donations from international groups to maintain their restricted operations. In this paper I ask: If the hegemonic economic rationalization globally has been that of neoliberalism how can human rights be realized in the exhumation of clandestine graves?

**Key Words:** Exhumation, mass graves, human rights, neoliberalism

According to David Harvey (2007) neoliberalism is a 'theory of political economic practices proposing that human well being can best be advanced by the maximization of entrepreneurial freedoms within an institutional framework characterized by private property rights, individual liberty, unencumbered markets and free trade' (pp.22). This theory holds that through minimal state sanctioned institutional frameworks such as the judiciary to secure obligations and rights, the market will provide all necessary goods and services in a free market economy and that state intervention should be kept to a minimum to prevent distortion and bias (Harvey, 2007: 22-23). However, this presumes that the market will provide that which the state fails to provide to its citizenry, failing to acknowledge that the market makes decisions based on economic benefit and profit. I follow a Keynesian approach calling for state intervention, especially in the realm of human rights. Given there is no profit to be made in the investigation and exhumation of clandestine graves it would hold that private markets and industry would not have motives to provide such assistance to victims. If the hegemonic economic rationalization globally has been that of neoliberalism how can human rights be realized in the modern era?

Harvey (2007) claims that neoliberalism has 'become hegemonic as a mode of discourse and has pervasive effects on ways of thought and political-economic practices to the point where it has become incorporated into the common sense way we interpret, live in, and understand the

world'(p.23). This may be seen in the prevalence of austerity policies following the global financial crisis. The dominant mode of dealing with the failure of the free market due to global financial deregulation was for governments to leave the free market to provide a solution. Ironically it was the free financial market, which placed the global economy in such a perilous position, and now governments in Europe including Spain would reduce government spending in the hope that the private sector would pick up the slack. This has seen the shrinking of economies such as Greece and Spain with increased unemployment, homelessness, erosion of labour rights and the spread inequality amongst its populations. In the foreword to Amnesty International 2009 Annual Report Irene Khan states that it '...is also clear that not only have governments abdicated economic and financial regulation to market forces, they have failed abysmally to protect human rights, lives and livelihoods. Billions of people are suffering from insecurity, injustice and indignity' (Khan, 2009: 6). This may be seen as a call to 'Keynesian economic...interventions to get production going in times of crisis' as the state is viewed as the best recourse to protect the vulnerable members of society (Fraser et. al., 2013: 39). The actions of the European governments is what Stephen Gill refers to as 'new constitutionalism' whereby the global governance structure seeks to divorce economic policy from accountability to political constituents on the rationale that they are required to respond the market.

The expectation that the market would provide for growth in the economy in place of the state was erroneous as the market will only act on its own interests while the state is supposed to act in the interests of its constituents or citizenry according to democratic ideals. While a vast number of individuals have been lifted from poverty through economic growth, as the recent global financial crisis highlights many have been left behind. From a sociological perspective the international normative and legal order held within International Law, 'appear to bear little relation to what occurs in everyday life within nation-states, but these treaties often provide the social context for political and social action'(Sjoberg et al. 2001: 13). The Spanish government while having signed and ratified the Convention on Enforced Disappearance (2006), continues to fail in their obligations to victims. This is highlighted by the fact that the Working Group on Enforced Disappearance continues to investigate cases in Spain. Given the cost of human rights can often be deemed too high, many disregard the importance of rights. As Khan (2009) points out:

Human rights were too often relegated to the backseat as the juggernaut of unregulated globalization swept the world into a frenzy of growth in recent years. The consequences are clear: growing inequality, deprivation, marginalization and insecurity; voices of people protesting suppressed with audacity and impunity; and those responsible for the abuses – governments, big business and international financial institutions – largely unrepentant and unaccountable (p.7).

What is evident in the current global economic climate is that governments, big business and international financial institutions have been extending the inequality gap in most western democracies. This inequality has social impacts, including the ability for victims to access their 'right to know' in relation to their missing relatives.

The poor and vulnerable have slowly lost their symbolic capital, as discourses label them as living beyond their means or lazy. There has been a similar situation in Spain in relation to the labelling of the victims of the Spanish Civil War and Francoist dictatorship, as vengeful and undeserving victims. These labels inhibit the cultural capital such groups may obtain in order to further their cause. Since austerity was introduced in Spain, government funding to assist the relatives of the missing to investigate and exhume clandestine graves has ceased. Dominant discourses relating to the exhumation of graves in the wake of the global financial crisis have claimed that it is an unnecessary expense that cannot be warranted while the state attempts to recover economically. On this basis, the Spanish government has ceased all funding to NGOs such as the ARMH. This has financially left the victims in the sidelines and dependent on the

good will of national and international donors for the investigation and location of clandestine graves almost 80 years after the deaths of their relatives.

In some instances victims have been forced to dip into their personal savings as they seek to access their right to know. For example Ascension Mendieta at the age of 89 has been searching for her fathers grave in Guadalajara. To date the authorities refuse to allow her to excavate and exhume the site of the grave. In order to provide testimony before a court of law she has had to travel to Argentina at her own expense. This is due to the nature of the Spanish judiciary which to date claims that no investigation can be undertaken given all crimes of this nature have been amnestied through the Amnesty Law 1977. This law is one of the greatest impediments to a victims 'right to know' in the Spanish case.

Given the lack of financial recompense available in the exhumation of mass graves, associations such as ARMH have been forced to reduce their operations substantially over the past two and a half years. 'The creation of the neoliberal system has entailed much destruction not only of prior institutional frameworks and powers' but also to individual rights and liberty (Harvey, 2007: 23). Given the cost of locating a mass grave, exhuming and identifying the individual remains can be quite expensive. For this reason state funding is required to assist citizens in accessing their right to know. Additionally from a moral stand point given the state sanctioned these deaths the state has an obligation to resolve this matter for once and for all. As has been observed in similar cases, states do not necessarily guarantee rights and obligations in relation to human rights and civil liberties. According to Amnesty International 2009 Annual Report their investigation 'reveals a world where, time-and-again, states pick and choose the rights they are willing to uphold, and those they would rather suppress (p.7). This has been evident in the case of the Spanish state in cases of enforced disappearance, whereby the judiciary holds other governments to account but not their own. An example of this is the charging of the Chilean dictator Pinochet by the Spanish Supreme Court on the basis of universal jurisdiction, however to date no case has successfully tried the Franco regime. While an attempt was made by Judge Baltasar Garzón in 2008 to investigate crimes committed by Franco, the judge was charged with exceeding his judicial authority and the case is slowly being closed.

Exhumations have been conducted in Spain over the last 15 years, by civil society lead associations, not by the Spanish government. Despite the longevity of the movement, it is not uncommon to observe the states administration continued attempts to hamper these efforts. Despite being enshrined in international treaties signed and ratified by Spain. Additionally it fails to provide an avenue for victims to access their rights, established in domestic legislation such as the Law of Historic Memory (2007). While the Law of Historic Memory provides various rights including financial and non-financial assistance for the location of the missing, it fails to institute a single body with authority. This creates a highly bureaucratic and convoluted system for victims to traverse in order to achieve the aim of exhumation. Commonly various institutional and legal authorities may claim jurisdiction for the purpose of blocking victims access to their rights as has occurred in Cataluña and Andalucía. Conversely there have been instances where these very institution and legal authorities claim not to hold authority, which can in turn hinder the exhumation of a grave.

Previous to the change in government the Spanish state provided approximately 45-60,000 Euros annually to NGOs assisting victims through the exhumation of mass graves. While this did not cover all aspects of exhumation, given the costs involved, ARMH managed to conduct many exhumations aiding various victims to relocate their loved ones. Funding commenced in 2007 and continued until 2011, this funding provided for approximately 10 exhumations annually. The table below highlights how imperative state funding was to the continued access to exhumations by these victims. Additionally it is interesting to note that the reduction in exhumations prior to

the ceasing of funding may be attributed to increasing complications associated with possibility of locating mass graves. For example in 2008, an elderly townsman would attend the grave and say it is under your feet. Over time these people with the knowledge have slowly been passing away, with changes to the landscape and the passage of time it is clearly becoming more difficult to locate these gravesites. For example we attended a location known as the valley of the dead, various townspeople told us of different locations in the field as to the burial site. Despite this the table clearly shows that in 2013 and 2014 very few opportunities to exhume occurred on the basis state based funding scheme not being available. In 2014, the three exhumations conducted were made possible by a Norwegian syndicate who donated 7,000 Euros to the association. Socially the impact of exhumations for victims, relatives and society more generally is that of healing. It is not uncommon to hear a relative say 'now I can die in peace' after the exhumation has been conducted.

**Exhumations Conducted and the Number of Victims Recovered by ARMH from 2000 – 2015 (30th July)**

Year	No. Exhumations	No. Individuals
2000	1	13
2001	1	4
2002	12	38
2003	30	238
2004	13	155
2005	10	72
2006	17	220
2007	13	314
2008	24	111
2009	13	80
2010	9	34
2011	6	34
2012	4	17
2013	2	4
2014	3	5
2015	3	7
Total	161	1344

The case of Cataluña is very interesting because although strongly Republican during the civil war and successive left wing governments since, it has been difficult to obtain permission to conduct exhumations in this autonomous community of Spain (Gassiot Ballbé & Wolfe Steadman 2008). The Law for the Localisation and Identification of the Spanish Civil War Disappeared (Ley 10/2009) 1, stipulates who and how exhumations are to be conducted in Cataluña. The law establishes requirements for exhumations that are virtually impossible for groups such as ARMH to achieve due to budgetary constraints. For example the requirement for all relevant specialist to be on site during exhumation at all times. The association does not have a forensic anthropologist on hand due to the cost associated with this particular expertise. These specialists on occasion may donate their time to the association, however, it is around their schedules and this does not always fit with the needs of exhumation. Given there is no direct involvement by

1 *Ley 10/2009 (Ley 10/2009 - BOE 186) sobre la localización e identificación de las personas desaparecidas durante la Guerra Civil* (for The Localisation and Identification of those Disappeared Persons from the Civil War)

the United Nations and the state refuses to fund the exhumation, funds are not available to pay for specialists.

The effect of the law has been a political project to complicate the exhumation of mass graves, with their political agenda set to the memorialisation of memory in Catalunya. On this basis to date ARMH has never successfully conducted an exhumation in Catalunya and have little hope of doing so. The governing body known as 'Memorial Democràtic', was formed on 31 October 2007, they hold the authority to decide whether or not to allow exhumations to be conducted. The Generalitat de Catalunya generously financed the Memorial Democratic. What is made clear by the table is that with all the funds made readily available for historic memory purposes in Catalunya, most if not all the mass graves could have been funded with this money. For example between 2010 and 2014 an allocation of over 10.5 million Euros was made available for various projects. This body appears to have a different perspective on reconciliation and believes that the building of monuments serves victims in a more constructive manner to that of exhumation. The 'Memorial Democràtic' wants to identify mass gravesites, however, they feel that memorialisation as opposed to exhumation as the best avenue for reconciliation.

#### **Funding of the Memorial Democràtic by Catalan Government from 2007 – 2014**

Year	Amount
2010	3,700,000
2011	2,100,000
2012	1,880,000
2013	1,480,000
2014	1,415,000
Total	10,575,000

In an interview with the vice president of ARMH he said that they had worked all over Spain, except for in Catalunya. He said:

Cataluña has their own program for historical memory, which is called 'Memorial Democràtic' and they say that no one is exhumed there. The leftist party that governs says that they put monuments, spaces for memory, I don't know...but they don't exhume.

However based on my fieldwork experience in Escobar de Campos it is clear that only by exhumation can you really know the graves exist and who is buried there. Another distinctive aspect of the search for gravesites in Catalunya is that, while associations and universities on behalf of the families have initiated excavations, typically the government has controlled all aspects without any familial support or presence. Often this has been attributed by those in the field as being for the purpose of proving the fallibility of exhumation and identification of the remains recovered. In a study conducted by Gassiot Ballbé and Wolfe Steadman (2008) they found that in 2004 the Catalan Government requested the Institute of Legal Medicine to conduct an exhumation of a site in Prats de Lluçanès. They found that the exhumation was not made public and claimed that identification was not possible in large groups. Given in this instance they had seven soldiers and a civilian and the identification:

...was not based on biological or genetic attributes but that he...lacked military attire...the Catalan government used the results to assert that opening the graves is unnecessary since identifications are unlikely (p.437).

Similarly the association has made similar claims about the Catalan government's failure to include the families. In an interview with Marco he said 'Like we say, Catalunya has conducted two exhumations and neither has been at the request of the families'. Meanwhile, ARMH would prefer exhumations to be initiated and motivated by families who want to recover their dead and not as a politically motivated exercise. This is an acknowledgement of the families 'right to

know', which is enshrined in international law. In the case of Catalunya they activities appear to be centred around making political statements without acknowledging the needs of the relatives. This highlights the extent to which the government can be 'ambivalent or even obtrusive' in the movement to exhume mass graves in Spain (Gassiot Ballbé and Wolfe Steadman, 2008: 436). Thereby one might conclude that the prevention of exhumation in this sense is part of a wider political agenda.

The experience of family members seeking permission from the Memorial Democratic in Catalunya to exhume their disappeared relative indicates that rejection can be for quite pragmatic bureaucratic reasons. René reported to be that he was given a series of reasons when he requested to exhume the mass grave of his great-grandfather. Initially their rejection was justified on the grounds that the relatives of those buried in mass graves in Catalunya were not interested in exhuming their dead.

I was speaking with a woman who told me that in *Cataluña* the families don't want to conduct exhumations.

René challenged her and asked how she could speak on behalf of all the families, when a majority of the families wished to exhume. The problem that this raises is one of the institutional dishonesty, through their ambivalent actions they hope to avoid dealing with irate families by placing the blame for not exhuming back on the relatives of the victims. When René then revealed that he was an archaeologist with ARMH and that he intended to make an official request to conduct an exhumation on behalf of the association. The official's tune changed completely. She let him know that the problem was not really the opposition of the families, however, concerns were of the snowball effect that might be produced by the exhumation of the grave in Girona.

Then she told me, alright look it's just that there is going to be a problem, if you want to open the grave at the cemetery of *Girona*, later they will want to open the one in *Barcelona* and *Tarragona*

René further expressed that the only issue they had with the exhumation was that they did not want to conduct others. For him this was a failure of the government to act on their responsibility to assist relatives to recuperate their dead. René expressed surprise that they could refuse to conduct exhumations, however, were content to place monuments in those locations. From my own experience the folly of such actions were clear, imagine if we had placed a monument in *Escobar de Campos* after nine days we had no idea where the grave was.

The Memorial Democratic in Catalunya has responded to the management of historical memory by distancing itself from the victims. The interview highlights how the Catalan government has utilized ritualized recognition of the dead by creating sites of memory in the place of exhumation, which perhaps is more arduous, costly and time consuming, however, would provide families with a sense of closure, especially those close relations still alive. While the argument of the fiscal responsibility does not appear to be a major concern in this instance given the inversion of funds, it is clear that the motivation is a political one. Similar to this the Spanish government has not cut spending in all areas, in 2013 the Spanish government allocated 300,000 Euros for the purpose of renovating the crumbling Francoist monument, The Valley of the Fallen. My argument is that while nations claim to be following a neoliberal politico-economic policy, this argument is used to prevent closer examination of their political ideology.

What is clear is that neoliberalism provides governments with a readily available explanation for their inaction as they claim fiscal responsibility. It is in this sense that neoliberalism continues to challenge human rights discourses. Through economic rationality arguments and fear mongering the public is won over. The recent example of the treatment of Greece highlights the willingness of the global population to accept that the Greek people must take responsibility for their

overspending and repay the debt. It highlights the fact that the public more generally is not well informed given it is not the debt of the people but that of the financial institutions. Perhaps the danger to human rights in the neoliberal ideology is that people more generally don't understand what it means and what challenges it brings to their worlds. With no economic benefits to be found in the exhumation of mass graves, it is clear that this activity is one based upon ethical and moral arguments. The social implications of exhumation provide healing and closure to victims nearly 80 years after the incident occurred. However, if this right can no be realised due to a failure of the state in its obligations to victims, they remain in a state of limbo.

### **Bibliography**

- Fraser, Alistair, Murphy, Enda, and Kelly, Sinead (2013), 'Deepening Neoliberalism via Austerity and 'Reform': The Case of Ireland', *Human Geography*, 6 (2), 38-53.
- Gassiot Ballbé, Ermengol and Wolfe Steadman, Dawnie (2008), 'The Political, Social and Scientific Contexts of Archaeological Investigations of Mass Graves in Spain', *Archaeologies: The Journal of World Archaeological Congress*, 4 (3), 429-44.
- Gill, Stephen (1998), 'European Governance and new constitutionalism: Economic and Monetary Union and alternative disciplinary Neoliberalism in Europe', *New Political Economy*, 3 (1), 5-26.
- Harvey, David (2007), 'Neoliberalism as Creative Destruction', *The ANNALS of the American Academy of Political and Social Science*, 610, 22-44.
- Junquera, Natalia (2013), 'El PSOE pide explicaciones por un gasto de 300.000 euros en el Valle de los Caídos', *El País*.
- Mayor, Lenor (15 January 2012), 'La Generalitat mantendra este ano 228 'chiringuitos' con dinero publico', *El Mundo*.
- Rico, Jose (2013), 'Generalitat planteja nous despidos en el Memorial Democràtic', *El Periodico Politica*.
- Sjoberg, Gideon, Gill, Elizabeth A., and Williams, Norma (2001), 'A Sociology of Human Rights', *Society for the Study of Social Problems*, 48 (1), 11-47.
- Vallespin, Ivanna (21 December 2011), 'Unio coloca un abogado afiné al frente del Memorial Democràtic', *El País*.