REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

ARTÍCULO DE INVESTIGACIÓN

Punitive Populism and the "Good Offender" Paradigm: Self-Incrimination as a Case Study

El populismo punitivo y el paradigma del "buen delincuente": la autoincriminación como caso de estudio

Carlos Fuertes-Iglesias

Universidad de Zaragoza, Zaragoza, España.

Correo electrónico: cfuertes@unizar.es

Resumen

Este artículo ofreció un análisis doctrinal, crítico y comparado de política criminal sobre el populismo punitivo como tendencia estructural de los sistemas penales democráticos, tomando el ordenamiento español como principal referente empírico y normativo. Se examinó cómo la legislación penal española se ha desplazado hacia un modelo maximalista, caracterizado por la expansión del catálogo de delitos, el endurecimiento de las penas y la construcción discursiva de figuras estereotipadas del delincuente (terrorista, reincidente, agresor de género, delincuente sexual) que el discurso político instrumentaliza para legitimar respuestas punitivas crecientes. Como caso de estudio de esta dinámica, el trabajo analizó la emergencia del paradigma del "buen delincuente", que exige al investigado o acusado una colaboración activa en el esclarecimiento de los hechos que le incriminan, en tensión con el derecho a no declarar contra sí mismo y a no confesarse culpable. El artículo sostuvo que esta tensión entre el papel reforzado de la víctima y la preservación de las garantías procesales constituyó una de las manifestaciones más significativas, aunque menos estudiadas, del populismo punitivo contemporáneo.

Palabras clave: Derecho penal, punitivismo, garantías procesales, autoincriminación.

Esta obra está licenciada bajo una Licencia de Atribución-NoComercial 4.0 Internacional (CC BY-NC 4.0).

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

Abstract

This article provided a doctrinal, critical, and comparative analysis of criminal policy regarding punitive populism as a structural trend within democratic penal systems, using the Spanish legal framework as its primary empirical and normative reference point. It examined how Spanish criminal legislation has shifted toward a maximalist model, characterized by an expanding catalog of offenses, the toughening of penalties, and the discursive construction of stereotypical offender archetypes (such as the terrorist, the repeat offender, the perpetrator of gender-based violence, or the sex offender) which are instrumentalized in political discourse to legitimize increasingly punitive responses. As a case study of this dynamic, the paper analyzed the emergence of the "good offender" paradigm, which requires an individual under investigation or accusation to actively cooperate in clarifying the facts that incriminate them, a requirement that stands in tension with the right against self-incrimination and the right not to confess guilt. The article argued that this tension (between the enhanced role of the victim and the preservation of procedural safeguards) constitutes one of the most significant, yet least studied, manifestations of contemporary punitive populism.

Keywords: Criminal law, punitivism, procedural safeguards, self-incrimination.

I. Introduction

Criminal law, while primarily national in scope insofar as it reflects the value judgments that a given community makes regarding the protection of its fundamental legally protected interests against the most seriously harmful conduct, increasingly projects its effects beyond national borders, both through the expansion of extraterritorial jurisdiction criteria and through the progressive convergence of certain principles of criminal protection within a globalized context.

Against this backdrop, this article aims primarily to analyze the contemporary transformation of criminal law from a global perspective, focusing on the rise of punitive trends that shape democratic criminal justice systems. It examines how these dynamics affect the relationship between punitive power, the protection of legally recognized interests, and fundamental procedural guarantees.

The scope of the study is primarily theoretical and critical, grounded in a doctrinal and criminal policy analysis of recent trends across various legal systems, without claiming to be empirically exhaustive. It constitutes a conceptual and doctrinal review that integrates contributions from criminal theory, criminal policy, and comparative criminal law, from a critical position of the current trends in Criminal Law, at the Spanish level but with a broader view of the simply national, which constrain those who are subjected to criminal proceedings, on the one hand, to an original categorization, on some occasions, due to certain types of crimes that threaten especially sensitive goods from the social perspective; and on the other, to a new demand or compulsion to self-incrimination, to the simplification and softening of criminal law when the individual saves the State from evidentiary and economic efforts, under the general pretext of alleviating the pain of the victims and passing the difficult time of punishment.

This article analyses punitive populism as a structural transformation of the contemporary criminal justice paradigm, taking the Spanish legal system as its principal empirical and normative reference. The choice of Spain as a case study responds to a methodological reason: the more than thirty reforms undergone by the 1995 Criminal Code constitute a particularly dense and accessible record of legislative

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

responses to social and media pressure, which makes it possible to trace, with reasonable precision, the mechanisms through which punitive populism operates within a constitutional, rights-based system.

The specific research question that guides this study is the following: to what extent does the political-criminal construction of stereotyped offender figures (and, in particular, the emerging requirement that the offender actively cooperate in their own conviction) erode the procedural safeguards that a rights-based criminal law model is meant to secure? The article does not start from the premise that this erosion has already occurred in a generalized and irreversible manner; rather, it treats this proposition as the working hypothesis to be examined against the doctrinal and normative evidence presented throughout the analysis.

The originality of this work lies in its proposal to interpret so-called "punitive populism" not as a merely circumstantial or reactive phenomenon, but as a structural transformation of the contemporary criminal justice paradigm. In this regard, it is argued that this trend redefines the fundamental categories of the system (offender, victim, and safeguards), shifting the focus of criminal law away from the rational protection of legally recognized interests and toward forms of symbolic and emotional response. In this context, the article argues that we are witnessing the consolidation of a criminal law system that is increasingly detached from its rights-protective foundations, oriented toward the immediate satisfaction of social demands for punishment, and characterized by the expansion of criminal offenses, harsher sentences, and the progressive erosion of the limits inherent to the rule of law.

The scope of the study is primarily theoretical and critical, grounded in a doctrinal and criminal-policy analysis of recent legislative trends, without claiming to be empirically exhaustive. It constitutes a conceptual and doctrinal review integrating contributions from criminal law theory, criminal policy, and comparative criminal law.

The article is structured as follows. Section II presents the theoretical framework of punitive populism (GARLAND, WACQUANT) and examines its manifestation in the expansive trajectory of Spanish criminal law since 1995. Section III analyses the political-criminal construction of stereotyped offender figures (the terrorist, the repeat offender, the reckless driver, the gender-based aggressor, and the sex offender) as discursive devices that legitimize increasingly severe punitive responses. Section IV takes the emergence of the "good offender" paradigm as a case study, examining how the demand for active cooperation by the accused (particularly about the duty to disclose self-incriminating information) tensions with the right against self-incrimination under Spanish and comparative criminal procedure. Section V offers concluding remarks on the relationship between punitive populism, the political return of the victim, and the preservation of procedural safeguards as a structural element of the rule of law.

II. Development

Punitive Populism: Theoretical Framework and the Spanish Case

2.1. Theoretical framework

GARLAND conceptualizes punitive populism as a political-criminal phenomenon that departs from the preventive and integrative models characteristic of the welfare state, embracing instead emotionally charged and disproportionate criminal responses, often instrumentalized politically through

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

public perceptions of insecurity.[1] This phenomenon is not new in itself, insofar as it draws on classical retributivist premises; however, the literature situates its more pronounced and systematic manifestation from the 1980s onward in the context of the "war on drugs" and, with particular intensity, since 2001, in the wake of large-scale terrorist attacks that reshaped security discourse across Western democracies.

This model of "penal welfarism", as coined by GARLAND and further developed by WACQUANT,[2] describes a stage of criminal law characteristic of the welfare state, in which punitive repression is subordinated to integration and education as the principal aims of criminal intervention, including the conception of imprisonment as an instrument of reintegration, materialized through the notion of penitentiary treatment. The progressive abandonment of this model has been linked by several authors to what has been termed "electoral servility": the tendency of political actors to subordinate criminal-policy decisions to short-term electoral approval, even where this entails compromising the essential tenets of a rights-based criminal justice model.[3] This dynamic is, in the Spanish constitutional system, in clear tension with the orientation of custodial sentences and security measures toward re-education and social reintegration.[4]

Three structural elements of punitive populism can be identified in the specialized literature: (i) the transformation of imprisonment from a primarily rehabilitative institution into a predominantly punitive one; (ii) the political return of the victim, whose role in criminal proceedings has gained prominence, at times to the detriment of procedural safeguards; and (iii) the electoral exploitation of insecurity, whereby high-profile criminal incidents are emotionally capitalized upon for political advantage.[5] Several authors note that political parties and media actors instrumentalize the social perception of insecurity to construct populist discourses focused on the expansion of criminal justice, in which increased penalties and the symbolic "spectacularization" of punishment are presented as effective solutions to crime, even absent criminological evidence supporting their deterrent value.[6] Security, under this dynamic, tends to function as a political good exchanged for electoral support, with its substantive protective function relegated in favour of its symbolic dimension.

In the context of a system focused on increasing penal severity and intensifying the afflictive nature of the legal response, the various legal systems tend toward a polarization and segmentation of the subjects to whom coercive criminal norms are applied, based, among other parameters, on their greater or lesser cooperation with the repressive system itself, not at the stage of sentence enforcement (where this might rest on a different rationale, precisely for reasons of penitentiary treatment), but at the stage of assessing criminal liability.

[1] GARLAND (2001) p. 44.
[2] WACQUANT (2012) p. 184.
[3] GARLAND (2001) p. 45.
[4] Regarding the relationships between actors and stakeholders in criminal law and current developments in this field, the essential reference is ZAFFARONI (2017) p. 12. His works constitute a continuous line of thought on criminal safeguards and punitive populism, which connects with MOCCIA (2024) *passim*; FERRAJOLI (2025) *passim.*
[5] About trial by public opinion in the context of a securitization model, GARCÍA (2018) pp. 27-28. On another note, regarding "fear" as a tool for administering criminal justice, MARQUÈS (2017) pp. 690-710; FRANCÉS (2023) pp. 1-3.
[6] ARROYO (2014) pp. 241-255. A similar approach, DÍEZ (2001) pp. 107-130; RODRÍGUEZ (2007) *passim*.

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

Criminal Law is taking steps toward a transformation of its very identity. It is undergoing a certain conversion: from the State's original power to impose a "harm" on an individual as a reactive response to the injury or endangerment of legal interests of particular importance, one that requires no acquiescence, cooperation, or particular compliance from the passive subject of the procedural relationship (that is, the defendant), toward a model in which, rather than rewarding favourable post-offence conduct (in the form of a system of incentive-based criminal law), punishment is intensified and safeguards are curtailed for those who choose to adopt a passive defensive position, one that is non-compliant or refuses to cooperate.

A Criminal Law of the "friend" as against the "enemy", in which an increasingly clear segmentation is drawn, not only among groups of offenders according to the nature of the offences committed (an initial position, already firmly rooted, though no less open to criticism for that, found in every model that favours an offender-based criminal law and expansive tendencies toward categorizing individuals on grounds unrelated to their responsibility for the act) but rather a segmentation premised on the idea that, once the basic facts of potential criminal liability have come to light (sometimes mere indications or purely circumstantial elements), the presumed offender must present himself as a "good offender", what Bocanegra[7] even terms "irreproachable offenders".

This subject is called upon not merely to submit to the sanction or to cooperate in its enforcement. The aim is for the individual to cooperate, for instance, in clarifying the elements that incriminate him, based on a specific demand grounded in an illusory duty to tell the truth, underpinned by the potential reproach attached to an exculpatory lie. This is a form of indirect coercion which, sheltered behind a supposed concern for victims' suffering (for whom, evidently, anything short of the full discovery of the facts and the harshest possible punishment of those responsible breeds a sense of impunity), in fact conceals an economizing strategy aimed at simplifying the State's efforts.

The State is aware that punishing is not only a means of social control but also an enormous expenditure of effort, one that, in many cases, exhausts its purpose in the punishment itself, particularly with certain types of offences where recidivism is high, or in the case of certain profiles of individuals who, embedded in a criminal milieu, prove incapable of reintegration.

The need to economize effort, driven by the recurrent pursuit and orientation of public policy in procedural matters toward the benchmark of "efficiency", a guiding principle that currently pervades judicial models across Europe (and particularly in Spain), leads to an overestimation of negotiated criminal justice, with "plea agreements" treated as the paradigm that, at least within the Spanish legal system, has driven a growing trend toward consent-based convictions. In this scenario, the "good offender" becomes the star of the proceedings, since the "swift" running of the State's "punishment machine" depends on his docility, acquiescence, willingness to hand over incriminating evidence, or his acceptance of the prosecution's account without departing from the truth through excuses or alternative narratives.

This theoretical framework should not, however, be assumed to operate identically across all penal subsystems; the empirical evidence supporting the differentiated weight of media pressure, judicial interpretation, and purely legislative expansion remains, in several respects, a matter of ongoing doctrinal discussion, as will be noted throughout this section.

[7] BOCANEGRA (2024) p. 1.

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

2.2. The Expansive Trajectory of Spanish Criminal Law since 1995

Punitive populism is not a new phenomenon in Spain, and it is certainly not a passing fad in our conception of criminal law. The 1995 Spanish Criminal Code (Código Penal)[8] replaced a pre-constitutional text dating from 1973, itself closely related to the 1944 Penal Code[9]. Since the mid-90s a clear drift toward harsher punishment has been observed.

The 1995 Spanish Criminal Code was a particularly ambitious text in general terms regarding the criteria of minimal intervention and proportionality that should govern the application of criminal law; consequently, the initial reception of the text's first drafts was generally positive. It was even criticized (justifiably, in my view) in some cases for being excessively lenient in its punitive response to certain behaviors.

This initial orientation can be illustrated through the treatment of offences against sexual freedom. GIMBERNAT criticized the elimination, in the 1995 Code, of the specific offence of corruption of minors, which in his view left minors insufficiently protected against acts of sexual abuse committed through coercion or abuse of a position of superiority, and further objected to the comparatively lenient penalties, including mere fines, attached to such conduct.[10] Notwithstanding these objections, the 1995 Code is generally regarded as having sought a clear departure from the moralizing orientation of preceding legislation in matters of sexual offences.

From this initial baseline, however, the Spanish Criminal Code has undergone a sustained process of expansion, documented across more than thirty subsequent reforms. Three episodes are particularly representative of this trajectory. First, the 2003 reform substantially broadened the scope of incarceration and tightened prison conditions, under an avowed aim of reducing minor and habitual offending, while simultaneously increasing penalties across categories of offences not directly related to that stated objective.[11] Second, the 2015 introduction of reviewable life imprisonment (prisión permanente revisable, in Spanish) has been characterized by part of the doctrine as functionally equivalent to life imprisonment, raising doubts as to its compatibility with the constitutional mandate of social reintegration, although this characterization is itself the subject of doctrinal disagreement and should accordingly be read as a contested position rather than a settled conclusion. Third, Ley Orgánica (Organic Law) n. 4/2015 on the Protection of Public Safety, popularly known as the *"Gag Law*" (also known as "Ley Mordaza", in Spanish *slang* and in mass media), introduced significant restrictions on fundamental guarantees through administrative penalty law[12]; although formally outside the criminal code, its relevance to this analysis lies in the fact that the punitive power of the State operates, in practice, as an integrated regulatory ecosystem in which administrative and criminal sanctioning regimes interact and reinforce one another.

This expansive trend has been conceptualized by prominent scholars of Spanish legal doctrine, as SILVA, who conceptualized the "expansion of criminal law", understood as a general tendency in contemporary criminal legislation toward a maximalist model, manifested in the creation of new legally

[8] Currently Spanish Criminal Code, of 1995.
[9] Former Spanish Criminal Code, before 1995, was the Spanish Criminal Code, of 1973.
[10] In his preface to the Penal Code, GIMBERNAT (1997) pp. 15 & 16. TORRES (1999) p. 1.
[11] DÍEZ (2004) p. 8.
[12] ANDREU (2016) pp. 53-110.

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

protected interests, the broadening of criminally relevant risk zones, the relaxation of liability rules, and the relativization of due-process principles.[13]

In the context of a risk society (Beck)[14], the response of criminal law appears, on the one hand, as an ambitious instrument of social control and, on the other, as a means of pacification or satisfaction of a growing demand for intervention. This is clearly linked to a model of information flows aimed at justifying the magnitude of insecurity, danger, or uncertainty. Based on partial, biased, or simply false and manipulated representations of reality, these flows lead to a collective perception of the "inadequacy" of criminal law and of "impunity" for certain behaviors. Consequently, they justify measures to strengthen the system in order to reduce the potential, diffuse, and abstract risk of becoming one of the "victims" of these "depraved individuals." Contributing to this is also the spread of a fallacy, consisting of the use of the term "impunity" to refer to cases in which the victim's punitive expectations are not met, a clear conceptual error often committed from the media's perspective and in certain analyses lacking the necessary methodological rigor.

Several authors caution against the conflation of "impunity", properly understood, with situations in which victims' punitive expectations are simply not met, a conceptual distinction frequently blurred in media coverage and in analyses lacking sufficient methodological rigour. In a related vein, SÁNCHEZ & QUERALT employ the term "criminal inflation" to describe the influence of expansive judicial interpretation on the scope of criminal liability, independently of legislative reform strictly speaking.[15]

From a comparative perspective, Chilean criminal-law scholarship has also emphasized the importance of interpretative limits as safeguards against the expansion of punitive power. In this regard, CAAMAÑO (2025) examines the interpretation of the legal provisions governing the suspension of the limitation period for criminal prosecution, highlighting the significance of legal certainty and the limits of judicial interpretation. Although addressing a different legal institution, this analysis provides a useful comparative perspective on the need to preserve criminal-law guarantees against expansive interpretations that may undermine individual rights.

It should be noted that these three phenomena (legislative expansion, jurisprudential expansion, and the symbolic dimension of criminal law) respond to distinct dynamics and require differentiated analytical treatment; their joint presentation here is intended descriptively, and should not be read as implying a single, undifferentiated causal mechanism.

This symbolic dimension is intensified by the transformation of criminal justice into an object of permanent public consumption. Contemporary societies are not merely exposed to information about crime; they are exposed to a continuous narrative of violence, insecurity, suffering, and institutional insufficiency. Crime news, documentary series, televised trials, and digital commentary construct a permanent emotional environment in which the criminal process is perceived less as a constitutional mechanism for establishing responsibility than as a public drama in which punishment must be delivered, displayed, and socially validated. In that context, the presumption of innocence is not formally abolished, but it is materially weakened in the public sphere, where accusation frequently operates as a preliminary form of conviction.

[13] SILVA (2011) *passim*.
[14] Beck (2006) p. 25.
[15] SÁNCHEZ (2001) p. 712; QUERALT (2007) p. 437.

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

This phenomenon is particularly relevant for the argument developed in this article. Punitive populism does not operate only through legislative reform or through the formal increase of penalties. It also operates through the creation of an atmosphere in which resistance to punishment is interpreted as institutional weakness, and the invocation of procedural safeguards is perceived as an obstacle to justice rather than as one of its defining conditions. The defendant who remains silent, who denies the facts, who offers an alternative narrative, or who refuses to collaborate with the investigative apparatus is easily represented as a subject who not only committed an offence but continues to offend symbolically by refusing to contribute to the closure demanded by victims, public opinion, and political discourse.

This explains why the language of "public confidence" in criminal justice can become ambivalent. On the one hand, no democratic system can remain indifferent to the social legitimacy of its institutions. On the other hand, when public confidence is equated with visible severity, immediate conviction, or the reduction of procedural complexity, the criminal process risks being transformed into an instrument for the emotional pacification of society. The danger is not merely quantitative (more offences, harsher penalties, longer sentences) but qualitative: criminal law ceases to be conceived as a limited power and becomes a mechanism for confirming collective expectations of punishment.

III. The Political-Criminal Construction of Offender Figures

Following the analytical framework proposed by PAREDES (2018)[16], he has identified a recurring discursive strategy in Spanish parliamentary debate: the instrumentalization of specific offender profiles to justify differentiated and increasingly severe criminal-policy response. This provides a compelling framework based on the discursive instrumentalization of the criminal in parliamentary debates and the creation of stereotypical figures to justify different strategies, as outlined by the author. This section examines five such figures, while situating them within the broader doctrinal discussion on punitive populism, of which JAKOBS remains the principal theoretical reference[17]:

3.1. The terrorist

Parliamentary and media discourse has tended to construct the figure of the terrorist as an absolute enemy, whose prospects of reintegration are systematically denied, a construction that doctrine associates with the legitimization of exceptional criminal-policy measures such as full-term sentencing, reviewable life imprisonment, or the practical elimination of prison benefits. Successive reforms in this field have progressively broadened the scope of criminalized conduct from membership in or financing of terrorist organizations to more attenuated forms of liability such as self-radicalization ("autoadoctrinamiento", in Spanish), a trajectory that several authors have linked to the broader expansive tendency described in Section 2.2, although a fuller empirical account of the legislative process behind each specific reform would strengthen this connection.

[16] I must point out (as the reader will likely notice if familiar with the author in question) a highly significant influence of this author and its doctrine, which is very relevant to this subject and which, after reading it, inspired me to write this article. PAREDES (2018) pp. 405-429.
[17] V. JAKOBS (2003) p. 25.

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

3.2. The repeat offender and migration status

A second discursive construction links habitual minor offending to broader narratives of insecurity associated with irregular migration, poverty, or social exclusion. ALASTUEY's analysis of the substitution, in Spanish law, of custodial sentences with the expulsion of foreign nationals offers a documented illustration of how this discursive framework has translated into concrete legislative and administrative measures, including extended pre-trial detention based on the absence of ties to Spanish territory.[18] The doctrinal literature has noted the risk that this framework establishes an empirically unwarranted association between migratory status and criminality; a fuller mapping of the specific parliamentary debates and legislative texts in which this association has been articulated would, however, be necessary to substantiate the scope of the phenomenon beyond the cases already documented in the cited literature. In this way, measures such as immediate deportation are legitimized or extended pretrial detention for certain groups, based solely on factors such as having no ties in Spain and the consequent risk of evading justice. A vivid example, extremely recent in Spain, of the legislature's tendency toward escalation.

3.3. The reckless driver

A third figure, the reckless driver, is constructed as a rational economic actor whose behavior is presumed responsive to the deterrent threat of criminal sanction, in line with classical premises of negative general prevention. This premise, however, has been questioned by part of the doctrine: MIRÓ & BAUTISTA empirical work on compliance with road-safety criminal provisions suggests that the assumed deterrent effect of harsher penalties in this domain is considerably less robust than legislative discourse tends to presuppose.[19] This divergence between the empirical evidence and the legislative narrative is itself a relevant data point for the broader thesis of this article: it illustrates how punitive expansion can proceed independently of, and at times in spite of, the available criminological evidence.

3.4. The gender-based aggressor

The treatment of gender-based violence offenders constitutes a particularly sensitive instance of this discursive dynamic, and one that requires especially careful framing. The gravity of gender-based violence and the differentiated criminal-policy response it has received are amply supported by an extensive criminological, victimological, and legal literature, which this article does not seek to question.[20] The point under examination here is narrower: part of the doctrine has observed that certain specific legislative interventions in this field have, on occasion, been driven by individual high-profile cases rather than by a systematic criminological assessment, a pattern that, when it occurs, is consistent with the broader mechanism of punitive populism described in Section 2.1, without this implying any equivalence between the legitimacy of the underlying protective aim and the adequacy of any particular legislative technique adopted to pursue it.

3.5. The sexual offender

The treatment of sexual offending in Spanish criminal law offers, perhaps, the clearest illustration of how political-criminal pressure can translate into specific legislative outcomes. The 2018 case widely known as "La Manada", initially classified by the Provincial Court of Pamplona as an offence of sexual

[18] The main work, ALASTUEY (2024) *passim*, and its review, by FUERTES (2025b) pp. 323-331.
[19] MIRÓ & BAUTISTA (2013) pp. 4-12.
[20] MOLINA (2016) *passim.*

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

abuse and subsequently reclassified by the Supreme Court, generated a sustained social and political debate regarding the distinction, then existing in the Criminal Code, between sexual abuse and sexual assault.[21/22] This debate culminated in the enactment of LO (Organic Law) 10/2022 (Comprehensive Guarantee of Sexual Freedom), which redefined the centrality of consent in the regulation of sexual offences.[23] The reform met with significant opposition across the ideological spectrum, focused principally on its limiting effect on penalties in certain cases one of the few instances, across more than thirty reforms of the Code since 1995, in which a legislative intervention narrowed rather than broadened the scope of punitive response; this provision was subsequently partially amended by Ley Orgánica (Organic Law) 4/2023, following a public debate over its practical application to pending and final judgments[24].

The criminalization of preparatory conduct in this field, such as the offence of child grooming (Article 183 ter of the Spanish Criminal Code) or the punishment of realistic, though not actual, child pornography (Article 189 of the Spanish Criminal Code), has been characterized by part of the doctrine as illustrative of a maximalist model of criminal intervention, insofar as it anticipates punishment to stages preceding any concrete or plausible endangerment of a protected legal interest.[25] BOLDOVA has questioned, in particular, the appropriateness of punishing "realistic" pornography under the current Code, given the uncertain legal interest that such conduct is said to protect. CARUSO similarly cautions that criminal law is not designed to safeguard collective sexual morality as such, but rather concrete fundamental rights of the individual[26]. These doctrinal positions are, it should be noted, themselves contested; other sectors of Spanish criminal-law scholarship defend the current scope of these offences on preventive or symbolic-protective grounds, and a balanced account of the debate would require engaging more fully with that countervailing literature than space here permits.

The relevance of this example does not lie solely in the existence of severe punishment for sexual offences, which may be fully justified where the legal interest at stake is concretely harmed or placed in danger. The problem is more precise: sexual offending has become one of the privileged fields in which the limits of criminal intervention are displaced towards increasingly remote stages of risk, sometimes to a point at which the connection between the conduct punished and the individual legal interest protected becomes conceptually fragile. In such cases, criminal law no longer reacts to a concrete injury, nor even necessarily to a proximate danger, but to a typological suspicion: the subject is punished because the conduct is interpreted as revealing a dangerous sexual disposition.

---

[21] Judgment nº 38 (2018), Audiencia Provincial de Navarra (Provincial Court of Navarre, Spain), date of issue 20.03.2018.

[22] Judgment nº 344 (2019), del Tribunal Supremo (Second Chamber of the Spanish Supreme Court), date of issue 04.07.2019.

[23] Ley Orgánica (Organic Law) nº 10/2022.

[24] V. FUERTES (2025a) pp. 73-91. With interesting and in-depth arguments, RAMÍREZ (2019) pp. 121-200. Antagonistically, LÓPEZ (2018) p. 3. Most recently, see the position of Spain's highest judicial body, which summarizes this issue in the judgment n. 308 (2026) of the Tribunal Supremo español (Second Chamber of the Spanish Supreme Court).

[25] Position shared with BOLDOVA (2016) p. 47, who questions the appropriateness of criminalizing "realistic" pornography under the current Spanish Penal Code, given the debatable legal interest that such conduct would protect.

[26] V. CARUSO (2011) p. 41, correctly points out that criminal law is not intended to protect the interests of collective morality, but rather specific fundamental rights.

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

This is particularly visible in the treatment of "realistic" child pornography, where the absence of a real minor involved in the production of the material creates a serious difficulty for a strictly individualistic understanding of the protected legal interest. If no child has participated in the creation of the image, and if the image does not correspond to an identifiable victim whose sexual integrity or development has been affected, the justification of punishment cannot be based on the direct protection of an actually injured person. It must instead rest on more indirect grounds: the prevention of future abuse, the suppression of markets that normalize abuse, or the symbolic rejection of certain forms of sexual representation. These arguments may deserve consideration, but they must be recognized for what they are: arguments that move criminal law away from the classical model of injury or concrete endangerment and towards a preventive-symbolic paradigm.

The same difficulty appears, with different intensity, in the criminalization of preparatory conduct such as child grooming. The legitimacy of early intervention is undoubtedly stronger where the conduct is directed towards a real minor and where the communication creates a concrete situation of vulnerability. Nevertheless, the anticipation of punishment must still be assessed with caution. The further criminal law moves away from the attempted offence and the closer it comes to punishing preparatory behavior, the greater the risk that liability will be constructed based on prognostic judgments about the offender rather than on the disvalue of the act performed. Therefore, the sexual offender becomes, in punitive discourse, not merely a person responsible for a wrongful act, but a category of person whose future dangerousness is presumed.

The registry-based treatment of sex offenders reinforces this logic. Its practical effect is not limited to recording a conviction, as ordinary criminal records already do. It creates a differentiated post-sentence status that follows the offender beyond the penalty imposed by the court and that operates on the premise that a person convicted of a sexual offence belongs to a special class of offenders requiring continuing administrative and social control. The difficulty is not that the State adopts protective measures in relation to minors; such measures may be necessary and constitutionally legitimate. The difficulty lies in the undifferentiated logic of the category, which tends to obscure relevant distinctions between offences, levels of gravity, concrete risk, time elapsed since conviction, and individual prospects of reintegration.

This point is frequently difficult to formulate in public debate because sexual offences generate an entirely understandable social revulsion. Yet precisely for that reason, they constitute an especially important test of the resilience of criminal-law guarantees. A system committed to proportionality cannot reserve its guarantees only for socially tolerable offenders. The strength of a rights-based criminal law model is measured precisely where the offender is most despised, the offence most morally repugnant, and the demand for punishment most intense.

The existence of a Central Sex Offenders Registry in Spain, created by Royal Decree 1110/2015, has likewise been the subject of doctrinal scrutiny. SALAT and FERNÁNDEZ have examined its effects on the exercise of professional activities involving contact with minors, noting that the registry operates independently of, and in addition to, the ordinary criminal record, applying uniformly regardless of the specific nature or gravity of the underlying offence.[27] This undifferentiated treatment has led part of the doctrine, including BOCANEGRA, whose critique this article shares, to characterize the regulatory model applicable to sex offenders as an instance of differentiated, and in this sense exceptional, criminal

[27] V. SALAT (2016) p. 2; FERNÁNDEZ (2019) pp. 46-63.

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

treatment, with structural affinities to the theoretical framework of the criminal law of the enemy, developed by JAKOBS, and studied by several authors[28]. It bears emphasizing that this is a doctrinally contested characterization, and one that coexists with significant scholarly defence of the current regulatory framework on child-protection grounds; the present analysis does not purport to resolve that debate, but rather to register the sex offender registry as a further data point within the broader pattern of differentiated treatment under examination.

IV. The "Good Offender" Paradigm: Self-Incrimination as a Case Study

4.1. Approaching the concept of "good offender"

The preceding sections have examined how punitive populism operates through the discursive construction of offender categories defined by the nature of the offence committed. This section turns to a distinct, and comparatively less studied, manifestation of the same broader phenomenon: the construction of offender categories defined not by what was done, but by how the accused behaves once subject to criminal proceedings.

For the purposes of this article, the "good offender" is defined as the offender who, beyond complying with the sanction ultimately imposed, is expected through specific legislative or jurisprudential mechanisms to actively cooperate in the clarification of the facts that incriminate them, under threat of an aggravated or autonomous criminal consequence attached to non-cooperation, concealment, or self-exculpatory denial. This definition seeks to capture a structural feature common to the examples examined below, rather than treating each instance as an isolated legislative anomaly.

This paradigm should be distinguished from the traditional system of post-offence mitigating conduct already present in the Spanish Criminal Code (such as restitution to the victim or voluntary confession), which rewards favourable conduct without penalizing its absence. The phenomenon under examination here operates, by contrast, through the creation or interpretation of offences that penalize the offender's silence, concealment, or denial as such, independently of and in addition to the offence originally under investigation.

The notion of the "good offender" builds on, while seeking to make analytically operative, an insight already advanced by BOCANEGRA in his critique of the differentiated treatment historically reserved for certain categories of offenders, and by JAKOBS in his account of the criminal law of the enemy as a mode of intervention oriented less toward the protection of legal interests than toward the exclusion of those deemed insufficiently committed to the legal order. Where the criminal law of the enemy, in its classical formulation, organizes differentiated treatment around the nature of the offence or the perceived dangerousness of the offender as a type, the present analysis identifies a related but distinct axis of differentiation: one that operates after the offence has already been committed, and is triggered not by what the offender did, but by how the offender subsequently positions themselves vis-à-vis the State's investigative apparatus.

This conceptual move responds to a gap in the existing literature. Most accounts of punitive populism (including those examined in Sections II and III of this article) focus on the construction of offender categories ex ante, by reference to features that precede or accompany the commission of the

[28] V. BOCANEGRA (2024) p. 1.

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

offence: the type of conduct, the profile of the victim, or the social group to which the offender is presumed to belong. The "good offender" paradigm, by contrast, captures a dynamic that unfolds ex post, within the criminal process itself, and that has received comparatively little systematic attention, notwithstanding its potential significance for the architecture of procedural safeguards.

Two clarifications help delimit the concept with sufficient precision. First, the paradigm should not be conflated with the general expectation (uncontroversial in any criminal justice system) that the convicted offender complies with the sentence imposed. Compliance with a final sentence is a separate matter, governed by its own legal regime, and raises no analogous tension with the right against self-incrimination, since by the time a sentence becomes enforceable the question of guilt has already been determined through a process in which that right was, in principle, respected. The paradigm targets, more narrowly, conduct that takes place before or during the determination of guilt: at the stage of investigation, pre-trial proceedings, or trial itself, where the presumption of innocence and the right not to contribute to one's own conviction remain fully operative.

Second, the paradigm should be distinguished from incentive structures that merely reward cooperation, such as sentence reductions for plea agreements or for information assisting the investigation of offences committed by others. Such mechanisms, whatever their own merits or limitations as a matter of criminal policy, leave the defendant's baseline legal position untouched: non-cooperation simply forfeits the benefit, without itself becoming an independent source of liability. The phenomenon examined here is qualitatively different, precisely because it does not operate solely through the promise of a benefit, but through the threat of an additional or aggravated sanction attached to the offender's silence, denial, or concealment as such. It is this shift from rewarding cooperation to penalizing its absence that justifies treating the "good offender" as an autonomous paradigm, rather than as a mere extension of the existing system of post-offence mitigating circumstances, and that gives the concept its specific relevance to the broader thesis defended in this article regarding the erosion of procedural safeguards under conditions of punitive populism.

4.2. Manifestations in Spanish substantive and procedural law

Three examples illustrate this trend with clarity. First, the offence of failing to provide information regarding the whereabouts of a corpse (Article 173.1 of the Spanish Criminal Code) penalizes the omission of self-incriminating disclosure in circumstances closely connected to the underlying offence[29]. Second, the offence of fleeing the scene of an accident (Article 382 bis of the Spanish Criminal Code) similarly attaches criminal consequence to the failure to remain at the scene and disclose one's involvement[30]. Third, and most directly relevant to current legislative debate, Article 17 of the draft Spanish Criminal Procedure Act, drawing on comparative European models, provides that a suspect or defendant shall not be required to take an oath but may nonetheless be criminally liable for perjury where their self-exculpatory statement constitutes a false incriminating statement causing harm to a third party[31].

[29] These effects are analyzed by FUERTES (2024) pp. 215-238.
[30] In this point, VIZUETA (2024) pp. 1-49.
[31] The proposed regulation states, specifically, in its second paragraph (in our translation): "A person under investigation or facing charges shall not be required to take an oath or make a pledge, nor may that person be prosecuted for the crime of perjury for any statements made, except for false and incriminating statements that cause harm to third parties".

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

This last provision raises a specific and significant doctrinal concern: it conditions the defendant's right to remain silent or to offer a self-exculpatory account on the absence of any incriminating effect on co-defendants or third parties, an effect that frequently arises as an incidental and unavoidable consequence of any account that diverges from the prosecution's narrative, rather than as a deliberate attempt to incriminate others. A defendant's exculpatory account may, by corroborating or recharacterizing the role of a co-defendant, generate exactly this kind of incidental incriminating effect, without this reflecting any intention to harm a third party as such.

This tension can be analyzed in terms of two distinct, and in part competing, interests. On the one hand, the defendant retains, under Article 24 of the Spanish Constitution, the right not to confess guilt and not to testify against themselves, a right that has traditionally been understood within Spanish constitutional doctrine to encompass the privilege of offering an untruthful, self-protective account without thereby incurring further criminal liability. On the other hand, the provision under examination seeks to protect third parties and co-defendants from the harm that a knowingly false incriminating statement may cause them, and, more broadly, to safeguard the integrity of criminal proceedings against deliberately fabricated accusations.

A restrictive interpretation of criminal law (one that prioritizes procedural safeguards, as this article maintains) would caution against a reading of this provision that subjects the defendant to truthfulness standards properly applicable to witnesses, since this risks penalizing conduct that falls squarely within the legitimate exercise of the right to defence. Such a reading would distort the procedural position of the person under investigation, displacing the analysis from the legitimate aim of protecting the administration of justice against deliberately fabricated accusations (an aim genuinely served by existing offences against the administration of justice) toward an aim of compelling material truth-telling that is structurally incompatible with the right against self-incrimination as historically understood in Spanish constitutional doctrine. This is not, it should be stressed, an argument against the protection of third parties from deliberate and knowingly false accusations; it is, more precisely, an argument that the threshold for that protection should be calibrated to the defendant's intent to harm a specific third party, rather than to the incidental incriminating effect that any divergent account may produce.

4.3. The case study in relation to the general thesis

The "good offender" paradigm, examined as a case study, illustrates with clarity the broader mechanism described in Sections II and III: the same political-criminal logic that constructs differentiated offender categories by reference to the nature of the offence committed (Section III) operates, in this instance, by reference to the offender's procedural conduct, generating a parallel and largely independent axis of differentiated treatment. Both mechanisms share a common feature: they shift the center of gravity of criminal intervention away from a model anchored in the protection of legally recognized interests through proportionate sanction, and toward a model in which non-cooperation with the State's investigative and adjudicative apparatus is treated as an aggravating circumstance.

This connection should not, however, be overstated as a fully demonstrated causal mechanism; the present analysis identifies a structural and doctrinal parallel between the two phenomena, which future research (particularly empirical research into the legislative process behind Article 17 of the draft Criminal Procedure Act and into the practical application of Articles 173.1 and 382 bis of the Criminal Code) would need to substantiate further.

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

The most problematic aspect of this prospective provision is that it blurs the boundary between the procedural position of the witness and that of the suspect or accused. The witness is called upon to contribute to the establishment of the truth from a position of procedural externality; the accused, by contrast, is the person against whom the punitive power of the State is directed. To impose upon the accused, even indirectly, a duty of truthful cooperation is to alter the basic architecture of the criminal process. The right not to confess guilt and the right not to testify against oneself do not merely protect the accused against physical or psychological coercion. They also protect a sphere of defensive autonomy in which the accused may remain silent, deny the accusation, refuse to assist the prosecution, or construct an exculpatory account without being transformed, for that reason alone, into the author of a further offence.

The difficulty becomes especially acute where the exculpatory account affects third parties. It is true that a false statement made by an accused person may generate investigative consequences for others, may damage their reputation, and may even expose them to criminal proceedings. This is not a trivial concern. However, the solution cannot consist in subjecting the accused to the same truthfulness duties that govern witnesses, because that would make the exercise of defence conditional upon the risk of a new criminal prosecution. In complex proceedings involving several suspects, every exculpatory version may, directly or indirectly, shift responsibility towards another person: by denying participation, by minimizing one's own role, by attributing decisive conduct to a co-defendant, or by offering an alternative reconstruction of the facts that redirects the investigation. If all such defensive strategies are placed under the threat of punishment whenever they are later considered false, the right of defence is emptied of much of its practical content.

This does not mean that the accused enjoys an unlimited right to destroy evidence, intimidate witnesses, fabricate documents, or actively obstruct justice through conduct external to their statement. Those behaviors may legitimately fall within the scope of offences against the administration of justice. The relevant distinction is different: criminal law may punish acts of obstruction that are autonomous and externally verifiable, but it should not criminalize the merely defensive content of the accused's statement simply because it is untruthful or inconvenient for the investigation. The accused may be contradicted, disbelieved, or convicted because of evidence that disproves their version; what is constitutionally dangerous is to convert the falsehood of that version into an additional ground of criminal liability.

From this perspective, the "good offender" paradigm reveals its deeper structure. The system no longer merely rewards confession, reparation, or cooperation as favourable post-offence conduct; it begins to treat non-cooperation, silence, concealment, or defensive falsehood as a further wrong. The result is a transition from incentive-based criminal law to coercive cooperation. In the former model, the offender who contributes to the clarification of the facts may receive more favourable treatment. In the latter, the offender who does not contribute may be exposed to additional punishment or to a more severe evaluation of their procedural conduct. That shift is decisive, because it transforms the accused from an adversarial subject of rights into a potential auxiliary of the prosecution.

The broader constitutional concern is therefore not limited to the specific wording of one provision. It concerns the kind of criminal process that a democratic system is prepared to tolerate. A rights-based criminal process is not inefficient because it allows silence, contradiction, denial, or defensive passivity; it is rights-based precisely because it forces the State to prove guilt without compelling the accused to assist in their own conviction. The cost of that model is procedural complexity. Its value is democratic legitimacy.

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

V. Concluding remarks

This article has examined punitive populism as a structural, rather than merely circumstantial, feature of the contemporary Spanish criminal justice system, and has identified the "good offender" paradigm as a significant, though comparatively understudied, case study of this broader dynamic. Three findings can be highlighted by way of synthesis.

First, the more than thirty reforms undergone by the Spanish Criminal Code since 1995 reveal a sustained, though not uniform, expansive trend, encompassing legislative, jurisprudential, and symbolic dimensions that operate through distinct, and only partially overlapping, mechanisms.

Second, the political-criminal construction of stereotyped offender figures (examined in relation to terrorism, repeat offending, road-safety offences, gender-based violence, and sexual offending) constitutes a documented discursive strategy through which legislative responses are, in specific and identifiable instances, shaped by media and electoral pressure rather than exclusively by criminological assessment; this article has sought to register this pattern with appropriate doctrinal caution, acknowledging that the underlying protective aims in each of these areas enjoy, in most cases, independent and substantial legitimacy.

Third, and most directly relevant to the article's original contribution, the emergence of the "good offender" paradigm (exemplified by Articles 173.1 and 382 bis of the Criminal Code and, prospectively, by Article 17 of the draft Criminal Procedure Act) suggests a parallel and underexamined dimension of punitive populism, in which the offender's procedural cooperation, rather than the nature of the offence, becomes the operative criterion for differentiated treatment, in a manner that requires careful reconciliation with the right against self-incrimination.

This study is subject to certain limitations, which also allow new avenues for future research to be addressed. The analysis is doctrinal and conceptual in nature and does not draw on systematic empirical data regarding the legislative process, parliamentary debates, or judicial application of the provisions discussed; a comparative empirical study of the practical operation of Article 17 of the draft Criminal Procedure Act once enacted would be particularly valuable in testing the concerns raised in Section IV. Likewise, a more extensive comparative analysis of equivalent "good offender" mechanisms in other European jurisdictions would help clarify whether the Spanish case reflects a broader regional trend or a more idiosyncratic development.

In any event, the preservation of procedural safeguards (and, specifically, of the right against self-incrimination) against the structural pressures generated by punitive populism remains a matter of direct relevance to the legitimacy of the criminal justice system as a whole, insofar as the capacity of a rights-based criminal law model to secure the eventual reintegration of those subject to punishment depends, in significant part, on its consistent adherence to those same safeguards.

Acknowledgements:

This article was conceived based on the author's presentation at the seminar *"Populismo Globale vs. Garantismo Penale"*, held at the Università Federico II of Naples and directed by Prof. Gian Luigi Gatta, President of the AIPDP, to whom I am grateful for the opportunity to participate. It was completed within the framework of the author's research stay at the Università degli Studi di Padova, Italy (supervisor:

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

Prof. Enrico Mario Ambrosetti) in 2025; and at the University of Utrecht, Netherlands (supervisor: Prof. Michiel Luchtman), in 2026. I am grateful to the Criminal Studies Group (a group within the Government of Aragon, S13_23R) and its Principal Investigator (Prof. Boldova Pasamar) for the support and funding provided for these research stays, which have given rise to this study.

Conflict of interest:

The author declares that he has no conflict of interest.

About the author:

Carlos Fuertes-Iglesias holds a *cum laude* PhD in Law from the University of Zaragoza. He also holds a Master's Degree in Forensic Sciences and Health Law, and a Master's Degree in Research and Specialization in Criminal Law and Human Rights. He is currently an Assistant Professor of Criminal Law at the University of Zaragoza, accredited as *Profesor Permanente Laboral*, and Coordinator of the Johnson & Johnson Chair in Law and Health at the same institution. He is also a member of the Committee of Experts of the Professional College of Criminology of Madrid. Email: cfuertes@unizar.es; ORCID: https://orcid.org/0000-0002-0791-2390

Bibliography

Doctrine

ALASTUEY, Carmen (2024): *La expulsión penal y administrativa de los extranjeros condenados* (Valencia, Tirant lo Blanch). Disponible en: <https://editorial.tirant.com/es/ebook/la-expulsion-penal-y-administrativa-de-los-extranjeros-condenados-n-187-maria-carmen-alastuey-dobon-9788410567528>. [Fecha de consulta: 28 de junio de 2026].

ANDREU, Roser (2016): "Reflexiones críticas acerca de la Ley Orgánica 4/2015, de 30 de marzo, de Protección de la Seguridad Ciudadana". En *CEFLegal. Revista Práctica de Derecho*, España, Nº 181, pp. 53-110. Disponible en: <https://revistas.cef.udima.es/index.php/ceflegal/article/view/10873>. [Fecha de consulta: 28 de junio de 2026].

ARROYO, Luis (2014): "Opinión pública y castigo en España. La manipulación política de la criminalidad y sus costes sociales". En ARROYO, Luis (coord.). *Securitarismo y derecho penal: Por un derecho penal humanista* (Toledo, Universidad de Castilla-La Mancha y Valencia, Tirant lo Blanch), pp. 241-255. Disponible en: <https://editorial.tirant.com/es/libro/securitarismo-y-derecho-penal-por-un-derecho-penal-humanista-luis-arroyo-zapatero-9788490865071>. [Fecha de consulta: 28 de junio de 2026].

BECK, Ulrich (2006): *La sociedad del riesgo global* (Madrid, España, Siglo XXI Editores). Disponible en: <https://dialnet.unirioja.es/servlet/libro?codigo=324364>. [Fecha de consulta: 28 de junio de 2026].

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

BOCANEGRA, Jara (2024): "Contra el castigo penal de las 'solas' inmoralidades: una defensa de la incorrección moral en tiempos de 'punitivismo'". En *Estudios Penales y Criminológicos*, Nº 45, pp. 1-34. Disponible en: <https://doi.org/10.15304/epc.45.101273>.

BOLDOVA, Miguel Ángel (2016): "El nuevo concepto de pornografía infantil: Una interpretación realista". En *Revista Penal*, España, Nº 38, pp. 40-67. Disponible en: <https://revistapenal.tirant.com/index.php/revista-penal/article/view/343>. [Fecha de consulta: 28 de junio de 2026].

CAAMAÑO, Francisco (2025): "Sobre el hecho o hechos que suspenden la prescripción de la acción penal. Interpretación de la ley y límites". En *Revista de Derecho de la Universidad Católica de la Santísima Concepción*, Nº 47, pp. 108-127. Disponible en: <https://doi.org/10.21703/issn2735-6337/2025.n47.06>.

CARUSO, María Viviana (2011): "Delitos contra la libertad e indemnidad sexuales y protección del menor". En *Revista Penal*, España, Nº 28, pp. 29-43. Disponible en: <https://revistapenal.tirant.com/index.php/revista-penal/article/view/517>. [Fecha de consulta: 28 de junio de 2026].

DÍEZ, José Luis (2001): "El Derecho penal simbólico y los efectos de la pena". En *Modernas tendencias en la ciencia del Derecho Penal y la Criminología* (Madrid, España, UNED). Disponible en: <https://revistas.juridicas.unam.mx/index.php/derecho-comparado/article/view/3703/4543>. [Fecha de consulta: 28 de junio de 2026].

DÍEZ, José Luis (2004): "El nuevo modelo penal de la seguridad ciudadana". En *Revista Electrónica de Ciencia Penal y Criminología*, España, Nº 06-03, pp. 1-34. Disponible en: <http://criminet.ugr.es/recpc/06/recpc06-03.pdf>. [Fecha de consulta: 28 de junio de 2026].

FERNÁNDEZ, Cristina (2019): "Medidas que afligen como penas. La inhabilitación para delincuentes sexuales para profesiones de contacto con menores". En *Revista Penal*, España, Nº 43, pp. 46-63. Disponible en: <https://revistapenal.tirant.com/index.php/revista-penal/article/view/330>. [Fecha de consulta: 28 de junio de 2026].

FERRAJOLI, Luigi (2025): *Derecho y razón. Teoría del garantismo penal* (Madrid, Trotta). Disponible en: <https://books.google.com.cu/books/about/Derecho_y_raz%C3%B3n.html?id=1ocHQgAACAAJ&source=kp_book_description&redir_esc=y>. [Fecha de consulta: 28 de junio de 2026].

FRANCÉS, Paz (2023): "La gestión del miedo como instrumento político". En *Por la Paz*. Disponible en: <https://www.icip.cat/perlapau/es/articulo/la-gestion-del-miedo-como-instrumento-politico/?pdf>. [Fecha de consulta: 28 de junio de 2026].

FUERTES, Carlos (2024): "Alteración de la realidad, distorsiones cognitivas e inexactitud testifical consciente en el falso testimonio y su represión penal". En FUERTES, Carlos (dir.), DE LA HERRÁN RUIZ-MATEOS, Sergio, PASTRANA-SÁNCHEZ, María Alejandra y BOCANEGRA-MÁRQUEZ, Jara (coords.). *Estudios actuales de Derecho Penal* (Pamplona, Aranzadi), pp. 215-238. Disponible en: <https://dialnet.unirioja.es/servlet/libro?codigo=990907>. [Fecha de consulta: 28 de junio de 2026].

FUERTES, Carlos (2025a): "El influjo de la 'perspectiva de género' en la configuración de la reforma del Código Penal mediante la LOGILS: Hacia un Derecho penal y procesal-penal 'identitario' en

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

materia sexual". En BOLDOVA, Miguel Ángel (dir.) y FUERTES, Carlos (coord.). *Nuevos retos en la protección y promoción de la salud* (Pamplona, Aranzadi).

FUERTES, Carlos (2025b): "Recensión a ALASTUEY-DOBÓN, Carmen, *La expulsión penal y administrativa de los extranjeros condenados*, Tirant lo Blanch, Valencia, 2024, 230 páginas". En *Estudios Jurídicos y Criminológicos*, España, Nº 11, pp. 323-331. Disponible en: <https://revistas.uca.es/index.php/rejucrim/article/view/11633>. [Fecha de consulta: 28 de junio de 2026].

GARCÍA, Deborah (2018): *La lógica de la seguridad en la gestión de la delincuencia* (Madrid, Marcial Pons). Disponible en: <https://dialnet.unirioja.es/servlet/libro?codigo=711499>. [Fecha de consulta: 28 de junio de 2026].

GARLAND, David (2001): *La cultura del control* (Barcelona, Gedisa). Disponible en: <https://www.academia.edu/36484687/Garland_David_La_cultura_del_control>. [Fecha de consulta: 28 de junio de 2026].

GIMBERNAT, Enrique (1997): "Prólogo a la tercera edición del Código Penal". En *Código Penal* (Madrid, Tecnos).

JAKOBS, Günther (2003): *Derecho penal del enemigo* (Traducción de CANCIO, Manuel), (Madrid, Civitas).

LÓPEZ, Juan José (2018): "Reflexiones breves: Yo sí te creo". En *Boletín Comisión Penal, Juezas y Jueces para la Democracia*. Disponible en: <https://www.juecesdemocracia.es/2018/12/03/boletin-penal-numero-10-monografico-perspectiva-genero-proceso-penal-volumen-ii-2018/>. [Fecha de consulta: 28 de junio de 2026].

MARQUÈS, María (2017): "Problemas de legitimación del Derecho penal del miedo". En *Política Criminal*, Chile, Año 12, Nº 24, pp. 690-730. Disponible en: <https://www.scielo.cl/scielo.php?script=sci_arttext&pid=S0718-33992017000200690>. [Fecha de consulta: 28 de junio de 2026].

MIRÓ, Fernando y BAUTISTA, Rebeca (2013): "¿Por qué cumplimos las normas penales? Sobre la disuasión en materia de seguridad vial". En *InDret*, España, Nº 4/2013, pp. 1-53. Disponible en: <https://indret.com/por-que-cumplimos-las-normas-penales-sobre-la-disuasion-en-materia-de-seguridad-vial/>. [Fecha de consulta: 28 de junio de 2026].

MOCCIA, Sergio (2024): *La perenne emergencia: Tendencias autoritarias en el sistema penal* (Madrid, Reus).

MOLINA, Antonio (2016): *Vulnerabilidad y daño psíquico en mujeres víctimas de violencia en el medio familiar* [Tesis doctoral, Universidad de Granada]. Disponible en: <http://hdl.handle.net/10481/43550>. [Fecha de consulta: 28 de junio de 2026].

PAREDES, José Manuel (2018): "Racionalidad instrumental del legislador y estereotipos sociales sobre la delincuencia". En *Revista Brasileira de Ciências Criminais*, Brasil, Nº 147, pp. 403-431. Disponible en: <https://dialnet.unirioja.es/servlet/articulo?codigo=7242915>. [Fecha de consulta: 28 de junio de 2026].

QUERALT, Joan Josep (2007): "La corrupción en los negocios: Algunas cuestiones penales". En MIR, Santiago y CORCOY, Mirentxu (dirs.) y GÓMEZ, Víctor (coord.). *Política criminal y reforma*

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

penal (Montevideo, B de F). Disponible en: <https://dialnet.unirioja.es/servlet/libro?codigo=293997>. [Fecha de consulta: 28 de junio de 2026].

RAMÍREZ, José Luis (2019): *Perspectiva de género, prueba y proceso penal: Una reflexión crítica* (Valencia, Tirant lo Blanch). Disponible en: <https://editorial.tirant.com/es/ebook/perspectiva-de-genero-prueba-y-proceso-penal-una-reflexion-critica-jose-luis-ramirez-ortiz-9788413139838>. [Fecha de consulta: 28 de junio de 2026].

RODRÍGUEZ, María José (2007): "Las razones del Derecho penal. Modelos de fundamentación y legitimación". En *Revista Electrónica de Derecho Penal y Criminología*, España, Nº 09-10. Disponible en: <http://criminet.ugr.es/recpc/09/recpc09-10.pdf>. [Fecha de consulta: 28 de junio de 2026].

SALAT, Marc (2016): "El registro de delincuentes sexuales español: Su regulación jurídica y su efecto en la prohibición para desempeñar profesiones que impliquen contacto habitual con menores". En *Revista General de Derecho Penal*, España, Nº 25, pp. 1-15, Disponible en: <www.iustel.com/v2/revistas/detalle_revista.asp?id_noticia=417297>. [Fecha de consulta: 28 de junio de 2026].

SÁNCHEZ, María Isabel (2001): "La criminalización en el ámbito previo como tendencia político-criminal contemporánea". En QUINTERO, Gonzalo y MORALES, Fermín (dirs.). *El nuevo Derecho Penal español. Estudios penales en memoria del profesor José Manuel VALLE MUÑIZ* (Pamplona, Aranzadi), p. 712. Disponible en: <https://editorial.tirant.com/es/libro/el-nuevo-derecho-penal-espanol-estudios-penales-en-memoria-del-profesor-jose-manuel-valle-muniz-9788484106081>. [Fecha de consulta: 28 de junio de 2026].

SILVA, Jesús-María (2011): *La expansión del Derecho Penal* (3.ª ed.), (Madrid, Edisofer).

TORRES, María Elena (1999): "El nuevo delito de corrupción de menores". En *Revista Electrónica de Ciencia Penal y Criminología*, España, Nº 01-12. Disponible en: <https://revistacriminologia.com/01/recpc_01-12.html>. [Fecha de consulta: 28 de junio de 2026].

VIZUETA, Jorge (2024): "El delito de abandono del lugar del accidente: Una posible interpretación". En *Estudios Penales y Criminológicos*, España, Nº 45. Disponible en: <https://doi.org/10.15304/epc.45.9745>. [Fecha de consulta: 28 de junio de 2026].

WACQUANT, Loïc (2012): "El matrimonio entre el workfare y el prisonfare en el siglo XXI". En *Astrolabio*, Argentina, Nº 9, pp. 175-182. Disponible en: <https://www.pensamientopenal.com.ar/system/files/2014/12/doctrina38203.pdf>. [Fecha de consulta: 28 de junio de 2026].

ZAFFARONI, Eugenio Raúl (2017): *Derecho penal humano. La doctrina de los juristas y el poder en el siglo XXI* (Buenos Aires, Hammurabi). Disponible en: <https://campus.eco.unlpam.edu.ar/pluginfile.php/55318/mod_resource/content/1/Zaffaroni_Derecho%20Penal%20humano%20y%20Poder%20en%20el%20Siglo%20XXI.pdf>. [Fecha de consulta: 28 de junio de 2026].

REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA
NOVIEMBRE 2026 • E-ISSN 0719-2150 • VOL. 17 • NO 1. PÁGS. 1-21
RECIBIDO 26/05/2026 – APROBADO 02/07/2026 – PUBLICACIÓN 17/11/2026
https://doi.org/10.7770/rchdcp-V17N1-art1850

Legislation

SPAIN. Constitución Española de 1978.

SPAIN. Ley Orgánica (Organic Law) n. 10/1995, date of issue 23.11.1995, del Código Penal (Spanish Criminal Code). Disponible en: <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>. [Fecha de consulta: 28 de junio de 2026].

SPAIN. Ley Orgánica (Organic Law) n. 4/2015, de 30 de marzo, de Protección de la Seguridad Ciudadana (Protection of Public Safety). Disponible en: <https://www.boe.es/buscar/act.php?id=BOE-A-2015-3442>. [Fecha de consulta: 28 de junio de 2026].

SPAIN. Ley Orgánica (Organic Law) n. 10/2022, date of issue 06.09.2022, de Garantía Integral de la Libertad Sexual (Comprehensive Guarantee of Sexual Freedom). Disponible en: <https://www.boe.es/buscar/act.php?id=BOE-A-2022-14630>. [Fecha de consulta: 28 de junio de 2026].

SPAIN. Ley Orgánica (Organic Law) n. 4/2023, date of issue 27.04.2023, de modificación de la Ley Orgánica 10/2022 (modifies LO 10/2022). Disponible en: <https://www.boe.es/buscar/act.php?id=BOE-A-2023-10213>. [Fecha de consulta: 28 de junio de 2026].

SPAIN. Real Decreto (Royal Decree) n. 1110/2015, date of issue 11.12.2015, por el que se regula el Registro Central de Delincuentes Sexuales (regulating the Central Register of Sex Offenders). Disponible en: <https://www.boe.es/buscar/act.php?id=BOE-A-2015-14264>. [Fecha de consulta: 28 de junio de 2026].

SPAIN. Anteproyecto de Ley de Enjuiciamiento Criminal 2019 (Draft Criminal Procedure Law in Spain). Disponible en: <https://www.mjusticia.gob.es/es/AreaTematica/ActividadLegislativa/Documents/210126%20ANTEPROYECTO%20LECRIM%202020%20INFORMACION%20PUBLICA%20%281%29.pdf>. [Fecha de consulta: 28 de junio de 2026].

Judgments

Sentencia n.º 38/2018, de la Audiencia Provincial de Navarra, Sección 2ª, España. Disponible en: <https://cdn.20m.es/adj/2018/04/26/3934.pdf>. [Fecha de consulta: 28 de junio de 2026].

Sentencia n.º 344/2019, del Tribunal Supremo, Sala II, España. Disponible en: <https://vlex.es/vid/798365717>. [Fecha de consulta: 28 de junio de 2026].

Sentencia n.º 308/2026, de 29 de abril, del Tribunal Supremo, Sala II, España. Disponible en: <https://www.iberley.es/jurisprudencia/sentencia-penal-tribunal-supremo-sala-lo-penal-29-4-26-1840743023>. [Fecha de consulta: 28 de junio de 2026].