

*The Production of ‘Dependent  
Individuals’ Within the Application  
of Spanish Law 39/2006 on Personal  
Autonomy and Dependent Care in  
Andalusia, Basque Country  
and Madrid*

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**D**URING THE FIRST term of socialist president José Luis Rodríguez Zapatero (2004–07), many laws regarding the social rights of minority citizens were passed in Spain, taking the long-term demands of social movements into the mainstream political and policymaking agenda.<sup>1</sup> Some of these new laws referred State attention to disenfranchised groups, encompassing gender violence, gender equality, same-sex marriage, immigration regulation, support provisions for excluded citizens and sign language recognition, among others.<sup>2</sup> Subsequently, on 14 December 2006, the Spanish Congress approved the Ley de Promoción de la Autonomía Personal y Atención a las personas en situación de Dependencia (Law 39/2006 on Personal Autonomy and Dependent Care), providing services for the elderly and people with disabilities.<sup>3</sup>

Presented as an historical event that would ‘expand the pillars of the Spanish Welfare State’ Law 39/2006 added social care to the existing service provision

<sup>1</sup> C Kerman, ‘Matrimonio Homosexual y Ciudadanía’ (2005) *Claves de la Razón Práctica* 154.

<sup>2</sup> RL Platero, ‘Outstanding Challenges in a Post-Equality Era: The Same-Sex Marriage and Gender Identity Laws in Spain’ (2008) 21(1) *International Journal of Iberian Studies* 41–49.

<sup>3</sup> Spanish Government, *39/2006 Act on Personal Autonomy and Assistance of People with Dependency* OSG [BOE, Boletín Oficial del Estado] 299 14 December 2006.

of pensions, health care and education (known as the ‘three pillars of the Welfare State’).<sup>4</sup> Law 39/2006 is commonly known as the *ley de dependencia* (‘dependence law’) creating a new group of citizens labelled ‘dependent people’ – adults whose disabilities have been certified by the State, as well as the elderly (65 years and older).

Law 39/2006 was intended to fulfil Spain’s commitments following its ratification of the Convention on the Rights of Persons with Disabilities (CRPD).<sup>5</sup> In order to further its commitment, the Spanish government passed Law 26/2011, which includes actions against intersectional discrimination, fosters local participation of people with disabilities (PWD), and describes a system of juridical protection which includes arbitration and intends to expand free legal assistance.

The implementation of Law 39/2006 has been problematic for several reasons. Firstly, Spain is a quasi-federal State, but the implementation of Law 39/2006 took place on a regional level, with disparate results which provided very different protection to citizens with dependency needs.<sup>6</sup> Secondly, the implementation of the law requires State funding, which has been severely affected by austerity cuts. Thirdly, even though Law 39/2006 was devised as an element to fulfil the requirements of the CRPD, its wording raises questions about the law’s commitment to the social model of disability.<sup>7</sup> Fourthly, the law refers to care as a genderless action that nevertheless takes place within the family context.

On 2 September 2011, the Partido Popular, then in office, with the supporting votes of the other two major parties in Parliament, approved an amendment of Article 135 of the Spanish Constitution.<sup>8</sup> This restricts the capacity of the Spanish Government to issue public debt and to contract credit to ‘the maximum structural deficit permitted for the State and for the Regional Governments in relation to the gross domestic product thereof’ by the European Union.<sup>9</sup> This modification of the Constitution further aggravated inequalities among regions and we want to show how it has been put into practice in Madrid, Andalucía and

<sup>4</sup> IMSERSO, *Libro Blanco de Atención a las Personas en Situación de Dependencia en España* (Madrid, Ministerio de Trabajo y Asuntos Sociales, 2004).

<sup>5</sup> UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 24 January 2007, A/RES/61/106.

<sup>6</sup> V Marbán-Gallego, ‘Actores Sociales y Desarrollo de la Ley de Dependencia en España’ (2012) 70(2) *Revista Internacional de Sociología* 375.

<sup>7</sup> F Guzmán-Castillo, M Moscoso-Pérez and M Toboso-Martín, ‘Por Qué la Ley de Dependencia no Constituye un Instrumento para la Promoción de la Autonomía Personal’ (2010) 48 *Zerbitzuan: Gizarte Zerbitzuetarako Aldizkaria. Revista de Servicios Sociales* 47.

<sup>8</sup> Spanish Constitution Art 135. Available at: [www.lamoncloa.gob.es/lang/en/espana/leyfundamental/Paginas/titulo\\_septimo.aspx](http://www.lamoncloa.gob.es/lang/en/espana/leyfundamental/Paginas/titulo_septimo.aspx).

<sup>9</sup> Anon, ‘El artículo 135 de la Constitución, Antes y Después de la Reforma de 2011’ (2014) *El País*. Available at: [www.elpais.com/politica/2014/11/24/actualidad/1416849910\\_452980.html](http://www.elpais.com/politica/2014/11/24/actualidad/1416849910_452980.html).

the Basque Country. We have chosen these three regions because they show the heterogeneous reality of a quasi-federal Spain. The Basque Country pioneered an independent living programme (ILP) before Law 39/2006 came into force and it is by far the best developed programme in the country; Madrid is the administrative capital of the country, where the application of the law can be considered as average. Lastly, in the region of Andalucía, hardly any measures have been developed.

Therefore, in this chapter we analyse the implementation of Law 39/2006 across Spain and assess the concept of dependency which forms the basis of the Personal Autonomy and Dependence Law. Using a critical disability perspective, we show that the law reinforces dependency, with care being mainly provided by women or at the expense of a precarious third-sector workforce.

#### LEGISLATION AND ASSISTANCE FOR DEPENDENCY

According to the latest Spanish report, there are 3.84 million people in Spain with disabilities, representing 8.5 per cent of the population.<sup>10</sup> The average person with disability is 64.3 years old; 2.3 million are women and 1.55 million are men. According to data published by the *Consejo Superior de Investigaciones Científicas* (National Research Council) (CSIC), in 2017 there were 32.6 per cent more elderly women (4,995,737) than men (3,768,467) due to higher male mortality rates in all age groups.<sup>11</sup> In the same report, the CSIC shows that some regions in Spain have high rates of elderly people (21 per cent of the population), such as Asturias, Castilla y León, Galicia, the Basque Country, Aragón and Cantabria, while other regions like Murcia, Baleares and Canarias have low rates (below 16 per cent of the population). The proportion of the Spanish population that is elderly continues to grow due to two key factors: the continuous increase in the number of people aged 65 and over due to lengthening lifespans and the low birth rate (in 2018, Spain had its lowest birth rate since 1941).<sup>12</sup>

People with disabilities in Spain are categorised according to their level of dependency (see Table 14.1). Two thirds are women and one-third are men; more than 70 per cent are aged 65 years or older; and more than 50 per cent are aged 80 or older.

<sup>10</sup> VVAA, *Panorámica de la Discapacidad en España* (Madrid, National Statistics Institute, 2008). Available at: [www.ine.es/revistas/cifraine/1009.pdf](http://www.ine.es/revistas/cifraine/1009.pdf).

<sup>11</sup> A Abellán-García, J Ayala-García, A Pérez-Díaz and R Pujol-Rodríguez, 'Un Perfil de las Personas Mayores en España' in *Informes Envejecimiento, Indicadores Estadísticos Básicos* (Madrid, Informes Envejecimiento, 2018). Available at: [www.envejecimiento.csic.es/documentos/documentos/enred-indicadoresbasicos18.pdf](http://www.envejecimiento.csic.es/documentos/documentos/enred-indicadoresbasicos18.pdf).

<sup>12</sup> *Ibid.*

**Table 14.1** Number of people with disabilities in Spain over time by level of dependency

	2005	2010	2015	2020 (est.)
Stage III: Great Dependency	194,508	223,457	252,345	277,884
Stage II: Severe Dependency	370,603	420,336	472,461	521,065
Stage I: Moderate Dependency	560,080	602,636	648,442	697,277
Total	1,125,90	1,246,429	1,373,248	1,496,226

Source: *Libro Blanco de la Dependencia*, with data from the *Instituto Nacional de Estadística* (National Statistics Institute), 2004.<sup>13</sup>

### What Services are Offered to Dependent Individuals?

As summarised in Table 14.2, the dependency law provides economic support for the provision of care services, including services aimed at preventing dependency situations and funding for personal assistance, which is intended to improve the living situation and personal autonomy of severely dependent adults.<sup>14</sup>

**Table 14.2** Catalogue of services granted by Law 13/2006

1. Helpline services	Remote medical assistance Health services delivered to the home
2. Home care service	Household chores: cleaning, washing, cooking and others Personal care in carrying out activities of daily living
3. Day and night care centres	Day care centres for the elderly Day care centres for under-65s Special day care centres Night care centres
4. Nursing home care	Nursing homes for elderly dependent adults Care centres for dependent adults based on severe disability
5. Personal assistance	Household chores but also assistance to be able to work and study

Source: *Agencia Estatal de Evaluación de las Políticas Públicas y la Calidad de los Servicios* (Spanish Agency on Evaluation of Public Policies and Quality of Services) (AEVAL) 2008.<sup>15</sup>

Care can be provided either by professionals, hired by a company which is linked to the local social services or by non-professional individuals.<sup>16</sup> Caregivers are

<sup>13</sup> Libro Blanco de Atención a las Personas en Situación de Dependencia en España 2004.

<sup>14</sup> 39/2006, Art 19.

<sup>15</sup> AEVAL, *Evaluación sobre la participación de la Administración General del Estado en el sistema para la autonomía y atención a la dependencia* (Madrid, Ministerio de Administraciones Públicas, 2008) 19.

<sup>16</sup> 39/2006, Art 18.

often female relatives or immigrants, who are modestly paid for this work.<sup>17</sup> The precarious situation of caregivers has an impact on the quality of services dependent individuals receive and on the caregivers themselves.

The financial aid contributes to the hiring of personal assistants for a certain number of hours, enabling people to access education, work and basic activities of daily living. The funding received for personal assistance varies among regions. Funding is only offered to those individuals in the two higher degrees of dependency (see Table 14.1), with active lives that may include study or paid employment.<sup>18</sup>

The Spanish government currently funds 17 per cent of these expenses, regional administrations 63 per cent, and the remaining 20 per cent is paid for by citizens themselves.<sup>19</sup> In 2017, there was an increase of 89,267 in the number of recipients, but one in every four had to wait for funding to be granted.<sup>20</sup> Although the waiting list shrank to 38,189 by the end of 2017, it is likely to take eight years for the last person on the list to receive services. In 2016, more than 40,000 individuals died without accessing the services they needed.<sup>21</sup>

#### DEPENDENCY VS AUTONOMY

Although the term 'autonomy' is used in the legislation, the key concept in Law 39/2006 is dependency, defined as:

(...) the permanent state of a person who, by reason of age, illness or disability and in connection with a lack or loss of physical, mental, intellectual or sensory autonomy, requires the care of one or more others, or significant aid, to carry out basic activities of daily living or, in the case of persons with intellectual disability or mental illness, other forms of support for his or her personal autonomy.<sup>22</sup>

Furthermore, the focus on adults clearly puts children and young people at risk, leaving families with total responsibility for coping with their difficulties. Dependency also raises a feminist debate concerning how all individuals are interdependent and interconnected, constructing care as a social issue rather than a personal problem.

The law's restrictive concept of dependency is focused on physical or psychological impairment that decreases the abilities of the person, the inability to perform the basic activities of daily living related to self-care or needing

<sup>17</sup> Ibid.

<sup>18</sup> INTERSOCIAL, *Análisis Económico: Estudio Comparativo de la Asistencia Personal y la Atención Residencial* (Madrid, OVI, ASPAYM, Comunidad de Madrid, 2014).

<sup>19</sup> IMSERSO, *Información Destacada de la Evolución de la Gestión del SAAD* (Madrid, Ministerio de Trabajo y Asuntos Sociales, 2019).

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> 39/2006 Art 2.

a third-party's assistance.<sup>23</sup> Dependency is thus related to the ageing of the population and focuses solely on the most basic activities of daily living and self-care, which are the services funded by Law 39/2006.

Asís and Barranco see the definition of dependency in Law 39/2006 as coming entirely from the biomedical model, rather than from the social model of disability.<sup>24</sup> They note that 'dependent situations may originate or be aggravated ... from lack of social inclusion such as lack of accessible environments and adequate resources for elderly people'.<sup>25</sup> Law 39/2006 therefore, poses dependency as an individual problem.

As opposed to dependency, autonomy points to agency and the ability to live life on one's own terms. However, in Law 39/2006, autonomy is defined as being able to carry out one's own personal care and household chores and possessing essential mobility, as well as the ability to understand and perform basic orders. It focuses on not being a burden to others: 'It is the situation in which a person with a disability makes decisions on their own lives and actively takes part in community according to the right to the free development of one's own personality.'<sup>26</sup>

José Luis Rodríguez Zapatero's socialist government addressed dependency as a radical issue that could transform the basis of the welfare state but did not provide relevant funding nor include feminist perspectives in this policymaking. In addition, the austerity measures implemented by the conservative government of Mariano Rajoy Brey played a key role in putting PWD and their families at risk. In fact, the New General Law on Disability (2013), approved by Mariano Rajoy, restricts the provision of services even further, with increasing budgetary restrictions for familial caregivers, resulting in fewer hours of caregiving.<sup>27</sup>

#### THE 39/2006 LAW IN PRACTICE

As mentioned previously, Spain has a multilevel political system, in which national law is implemented at a regional and local level. The Spanish regions have different levels of economic development and, more importantly, different degrees of development of social services and the welfare state, ranging from excellent (Basque Country and Navarre) to well developed (Madrid) or struggling (Andalucía). In the following section we examine the development of ILPs in these regions and examine how they construct the notion of dependency as an identity.

<sup>23</sup> Ibid.

<sup>24</sup> RD Asís-Roig and MDC Barranco-Avilés, *El Impacto de la Convención Internacional Sobre los Derechos de las Personas con Discapacidad en la Ley 39/2006, de 14 de Diciembre* (Madrid, Colección Convención ONU, 2016).

<sup>25</sup> Ibid, 28.

<sup>26</sup> 39/2006 Art 2.

<sup>27</sup> Spanish Government, *Royal Decree 1/2013, Final Text of the General Law on the Rights of People with Disability and their Social Inclusion* OSG [BOE, Boletín Oficial del Estado] 289, 29 November 2013.

### Etxean – An Independent Living Programme in the Basque Country

The first pilot programme in independent living took place in Gipuzkoa, one of the three Basque Country provinces. The pilot programme, called *Etxean* (At home), was started in February 2004, two years before the 39/2006 law was passed, based on Gipuzkoa Law 11/2004.<sup>28</sup> In order to be accepted into the programme, an adult was required to have been a legally registered resident for two or more years, have an accessible dwelling, a network of support and be willing to manage a *plan individual de atención* (PIA) (individual care programme). The PIA can include a moderate co-payment (never less than 70 per cent). Each participant in the programme must manage their own personal assistants, including recruitment (which excludes family members, since there is specific budget provision in Law 39/2006 for family caregivers), training and timetables. Because of the amount of paperwork this implied and the novelty of the programme, a cooperative was set up, called *Bikcovi*.<sup>29</sup>

Since 2008, ILPs spread throughout Gipuzkoa and, by 2011, *Etxean* covered 1,063 of 8,393 applicants.<sup>30</sup> The Basque Country province of Araba has run an ILP that offers funding for personal assistance since 2013. It involves a substantial co-payment (40–100 per cent), includes children over the age of three years and is extended to dependence Stage I in some circumstances. The applicant has to prepare a PIA, be a legal resident, be involved in educational pursuits or in the workforce and be able to manage their own personal assistants or, in the case of minors, have a registered person to help them. Another difference between the programmes in Gipuzkoa and Araba is that the Araba Act sets requirements for those working as personal assistants, which include being 18 years old or older, being a legal resident in Spain and holding a vocational training degree in socio-cultural services.<sup>31</sup>

Bizkaia also started its own programme of independent living in 2013, also with a substantial co-payment (never less than 70 per cent). Eligible applicants must have Stage I dependence or above and be aged between 16 (emancipated in the case of minors) and 65 years. It sets a minimum of 3–5 hours of personal assistance for each dependence stage. The Bizkaia programme excludes household chores and no more than 75 per cent of the hours can be used on basic

<sup>28</sup> Gipuzkoa Government, *Local Decree 11/2004, Regulating Individual Grants for People with Disability or a Dependency Situation* OSG [BOG, Boletín Oficial de Gipuzkoa] 39, 24 February 2004.

<sup>29</sup> X Urmeneta-Sanromá, 'La Vida Independiente en Gipuzkoa: Una Alternativa para las Personas con Discapacidad y Dependencia' (207) 42, *Zerbitzuan: Gizarte Zerbitzuetarako Aldizkaria. Revista de Servicios Sociales*, 87.

<sup>30</sup> X Urmeneta-Sanromá, 'Vida Independiente y Asistencia Personal' (2011). Available at: [www.forovjdaIndependiente.org/wp-content/uploads/vi\\_ap\\_urmeneta.pdf](http://www.forovjdaIndependiente.org/wp-content/uploads/vi_ap_urmeneta.pdf).

<sup>31</sup> Álava Government, *Local Decree 39/2014, Regulating Economic Assistance for the Autonomy of Dependent People in Álava: Grants for Caregiving Within Families and Non-Professional Caregivers, Funding for Personal Assistance and Related Services* OSG [BOTH, Boletín Oficial de Álava] 143, 23 July 2013.

activities of everyday life.<sup>32</sup> As in Gipuzkoa and Araba, the participants must prepare their own PIA.

As outlined above, the three provinces of the Basque Country implemented the guidelines of the Gipuzkoa pilot programme with some differences with respect to age, assistant requirements and stage of dependency. Assistance is always offered to those individuals pursuing further education or who are able to work and implies the management of assistance professionals. The Basque Country has 184,451 PWD, of whom 14,475 live in residential facilities and 169,400 in their homes.<sup>33</sup> Only 5,372 people have received personal assistance from the most developed programme of independent living in Spain.

### Madrid and the ASPAYM Independent Life Programme

*The Paraplégicos y Personas con Gran Discapacidad Física de la Comunidad de Madrid* (ASPAYM) (Association of Paraplegics and People with Great Physical Disability in the Community of Madrid) set up a pilot ILP in Madrid in July 2006. Initially, the programme targeted 35 people and later offered personal assistance to 62 people, hiring 120 personal assistants between 2006 and 2008.<sup>34</sup> Over 2008–11, 63 people received personal assistance, of whom 52 per cent held a job, 35 per cent were studying and 13 per cent were both studying and working. Forty-two per cent of them were aged 18–30 years, and the remainder were older.<sup>35</sup>

Personal assistants provide people with support for the basic activities of daily living, according to each person's unique needs. The programme provides a maximum of 11 hours per day and is funded by the Local Government of Madrid. More than 113,280 PWD live in Madrid,<sup>36</sup> ASPAYM's eligibility criteria are active involvement in community life and/or studying/working, actively looking for a job, or having family-related duties. Accessible housing and a reliable network of support are also required. People with lower incomes are given priority.<sup>37</sup>

### Andalusia

Andalusia is the most populous Spanish region, with 20 per cent of the national population, and has the largest number of people in a situation of dependency. At 9.1 per cent, the proportion of Andalusia's population with a disability is

<sup>32</sup> Bizkaia Government, Local Decree 103/2013, regulating individual grants for personal assistance, OSG [BOB, Boletín Oficial de Bizkaia] 143, 23 July 2013.

<sup>33</sup> Panorámica de la discapacidad en España 2008.

<sup>34</sup> Observatorio Estatal de la Discapacidad, 2006–2016: *10 años de la convención internacional sobre los derechos de las personas con discapacidad: Balance de su aplicación en España* (Madrid, 2017).

<sup>35</sup> Government of Madrid, *II Action Plan for People with Disabilities in Madrid 2005–2008* (2015) p. 10.

<sup>36</sup> Panorámica de la discapacidad en España 2008.

<sup>37</sup> Government of Madrid, *III Action Plan for people with disabilities in Madrid 2012–2015* (2016).



slightly above the Spanish average. Some 54 per cent of the population are aged 65 years or older, while 43.5 per cent are aged between 16 and 64. Andalusia has higher migration rates (both regular and irregular) than other areas. Many of these migrants come from the former Spanish colonies of Morocco and Western Sahara and end up working within the black economy, perpetuating the colonial exploitation of people in low-paid jobs.

The Andalusia Independent Living Programme was launched in 2008, led by Viandalucía. Despite an eligible population of 80,189, the programme was offered to a very small group of individuals. In 2013, 14 individuals were registered on the programme, the most since its launch.<sup>38</sup> As of 2018, nine individuals were receiving personal assistance.<sup>39</sup>

In 2016, the Committee on Equality, Health and Social Policy, along with the Spanish Left Party, urged the Andalusia Parliament to develop programmes and funding for personal assistance, in accordance with Article 19 of the CRPD. However, the 2019 elections brought a coalition of right-wing parties into office, reducing the prospects that the needs of people with dependency in Andalusia will be met.

Even though legislation addresses the uneven distribution of care, dependency remains a personal problem due to insufficient State-funded service provision.<sup>40</sup> Unemployment has led to many families in Andalucía taking their elders out of nursing homes. Familial caregivers contributed to the household economy through the familial care service allowance (€350 per month) and their retirement pensions.<sup>41</sup> The attempt to dignify caregiving, mainly performed by women through the familial care service allowance, was very short-lived, being offered only until 2013.<sup>42</sup> Since 2013, these women have provided services for free, with few to no options of returning to the labour market. Some families also apply for family caregiving, in an effort to alleviate their financial struggle in a situation of endemic unemployment, aggravated by the debt crisis.<sup>43</sup> The familial care allowance was revoked in Andalusia as part of austerity measures proclaimed in Royal Decrees 16/2012, 1050/2013, and 1051/2013.<sup>44</sup>

<sup>38</sup> Viandalucía, 'Un Paso Adelante para la Vida Independiente en Andalucía' (Sevilla, Federación Vida Independiente, 2013). Available at: [www.federacionvi.org/un-paso-adelante-para-la-vida-independiente-en-andalucia/](http://www.federacionvi.org/un-paso-adelante-para-la-vida-independiente-en-andalucia/).

<sup>39</sup> The typical recipient is a 38-year-old man, with a university degree and stage III dependency. A Iáñez-Domínguez and JL Aranda-Chaves, *Impacto Económico y Social de la Asistencia Personal en Andalucía* (A Coruña, Diversitas Ediciones and Andalusia International University, 2017).

<sup>40</sup> Andalusia Government, *I Action Plan for the Promotion of Personal Autonomy and Prevention of Dependency in Andalusia (2016–2020)* (Sevilla, Andalusia Government, 2016) art 3. Andalusia Government, *I Action Plan for the Integral Assistance of Children Under 6 with a Dependency Situation* (Sevilla, Andalusia Government, 2017).

<sup>41</sup> I Zambrano-Álvarez, MT Martín-Palomo, JM Muñoz-Terrón and E Olid-González, 'Nuevos Interrogantes en el Modelo de Provisión de Cuidados en Andalucía' (2015) 60 *Zerbitzuan: Gizarte Zerbitzuetarako Aldizkaria. Revista de Servicios Sociales* 113.

<sup>42</sup> *Ibid*

<sup>43</sup> *Ibid*, 123.

<sup>44</sup> Spanish Government, *Royal Decree 16/2012, on Urgent Actions to Guarantee the Sustainability of the National Health Care System, and the Improvement of Quality and Security of*

## CRITICAL ANALYSIS

Law 39/2006 on Personal Autonomy and Dependent Care can be framed within what Mitchell calls a ‘bait and switch scheme’.<sup>45</sup> It enabled dependent people to live in their communities, with discrete State funding for familial caregivers between 2007 and 2011, after which point they found themselves back in their previous situation – dependent on the unsalaried female caregiving of a relative. As the case of Andalusia demonstrates, the bait and switch scheme has continued since the debt crisis onset in 2011, with women who were laid off or who have left the workforce to become a familial caregiver (under the €350 stipend) having few opportunities to return.

As noted previously, there are regional differences in budgets for social services and service provision for people with dependency in Spain. Between 2006 and 2012, the national budget for dependency was reduced to €0 in the Spanish General Budget, which transferred the costs to regional governments.<sup>46</sup> This situation was a result of Zapatero’s amendment (2011) of Article 135 of the Spanish Constitution, which limits the level of State debt.<sup>47</sup> Since then, the national and regional budgets have been set by the European Union, so that Spain can meet the mandate concerning its debt.

Law 39/2006 creates, as Jasbir Puar would put it, ‘objects of uncare’ targeting certain groups of the population.<sup>48</sup> In the three regions we analysed, areas with stronger social services, lower debt and comparatively lower migration, such as the Basque Country, have the best ILPs. Meanwhile, Andalusia, hit hard by chronic unemployment and with less capability to offer social services, has only marginally implemented ILPs. The ILP in Madrid is somewhere in between, stable but with lower provision of services than in the Basque Country.

As Jasbir Puar has pointed out, disability is a ‘rhetorical biopolitical positioning’ enabling care and life.<sup>49</sup> Puar analyses how the concepts of disability in our liberal democracies define it as ‘an exceptional accident or misfortune’,<sup>50</sup> while leaving aside impairments due to imperial war or environmental hazard, thus disqualifying significant numbers of people from receiving any kind of

*Assistance* OSG [BOE, Boletín Oficial del Estado] 98, 20 April 2013; *Royal Decree 1050/2013, Regulating Minimum Protection Under 39/3006 Act on Personal Autonomy and Assistance of People with Dependency* OSG [BOE, Boletín Oficial del Estado] 313, 27 December 2013; *Royal Decree 1051/2013, Regulating the Service Provision for People’s Independence and Autonomy for Dependent Individuals Established on the 39/3006 Act on Personal Autonomy and Assistance of People with Dependency* OSG [BOE, Boletín Oficial del Estado] 313, 27 December 2013.

<sup>45</sup>DT Mitchell, *The Biopolitics of Disability: Neoliberalism, Ablenationalism, and Peripheral Embodiment* (Ann Arbor, University of Michigan Press, 2015) 39–40.

<sup>46</sup>Anon, 2014.

<sup>47</sup>Ibid.

<sup>48</sup>JK Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham NC, Duke University Press, 2017) 92.

<sup>49</sup>Ibid, 104.

<sup>50</sup>Ibid, 66.

protection. Moreover, the category of disability often serves as an ideological tool to injure colonial populations, as we have suggested in the case of Andalusia.

Modern democracies are torn between two conflicting tendencies: 'embracing disability as a universal and inevitable condition'<sup>51</sup> which discredits the concept of disability as a personal tragedy and allows for the fight against the production of disability, on the one hand, and targeting one collective as recipients of benefits, services and care on the other. Regarding the latter, Puar states that:

... disabled people have shifted from modernity's exception (a line of defect to be isolated and eradicated) to postmodernist [neoliberal] exceptionality (failing bodies resuscitated by an increasingly medicalized state). In this latter state, the ontology of disability retrieves a formerly fallen object and makes it newly available for 'cultural rehabilitation', a euphemism for producing cultural docility. Mitchell and Snyder track this shift of people with disabilities located from 'a former era of economic burden' of paternalistic, institutional, and welfare regimes when disabled people were 'social pariahs,' to what they term 'objects of care' that impel the investment of service economies and neoliberal strategies of intervention and rehabilitation – a 'hot' ticket item for potential research and funding schemes.<sup>52</sup>

### **Analysis of Gender in Law 39/2006**

Disability is presented in Law 39/2006 and its implementation as a singular misfortune and a private tragedy but at the same time, disability should not be conceptualised as a universal problem affecting everyone.<sup>53</sup> The numbers of people with dependency vary across regions of Spain. Class, age and gender are also relevant to the development of a disability. Dependency (aging and disability) is not a neutral event that can happen to anyone.

What is not so evident is that with the production of dependency comes an invisible production of debilitation as an active practice of exploitation of those who care for the dependent individuals.<sup>54</sup> Caregivers are mostly working-class women, who are close relatives of the dependent individuals and, when they are not available, migrants of both genders provide care. Therefore, Law 39/2006 reinforces the tradition of a female caregiving role, something deeply ingrained in Mediterranean culture.

The conditions in which care is provided produce more disability in the mid-to-long term, as a consequence of the exploitation practices that follow from Law 39/2006. As we have described, the provision of services to dependent individuals has fallen primarily to familial caregivers, with little impact on

<sup>51</sup> *Ibid.*, 70.

<sup>52</sup> *Ibid.*, 46.

<sup>53</sup> *Ibid.*, 70.

<sup>54</sup> *Ibid.*

independent living in most Spanish regions. The Law enabled the incorporation into the workforce of women and migrants who had precarious jobs, many of whom were laid off as soon as austerity measures came into force.

The National Statistics Institute's Survey on the Use of Time in 2018–19 (yet to be published) estimates that the annual hours of caregiving in Spain amount to 28 million full-time jobs.<sup>55</sup> As we have shown, very little of this time counts as jobs, since even in the regions with the best-developed systems ILPs require a developed support network. According to sociologist María Ángeles Durán, the conditions in which these caregivers work would be deemed 'unacceptable by any collective agreement'.<sup>56</sup>

This divide between receivers of care and caregivers is already misleading, because many of the caregivers are middle-aged or elderly women, whose vulnerabilities have not been taken into account and are therefore considered an expendable population. In *Right to Maim*, Jasbir Puar argues that disability serves as an ideological tool which entwines the politics of disability (identifying populations as deserving of protection and citizenship), and the politics of deliberate exhaustion of the population targeted to be maimed.<sup>57</sup> The divide between people labelled as dependent under Law 39/2006 singles out a whole category of people as legitimate receivers of care, while it correlatively sets out a totalising category of caregivers as 'not needing care'. This targets women in precarious jobs and migrants for low salaries and extenuating jobs as a population to be worn out and debilitated.

## CONCLUSION

With the dramatic political and social changes going on in Spain since the onset of the debt crisis, an in-depth analysis of the implementation of Law 39/2006 in the country was needed to evaluate its impact on the wellbeing of its target populations, what we have called 'dependent people', as well as on caregivers. Our analysis provides valuable insights for both policymakers and grassroots organisations that can be used to design future public services and policies.

In this chapter we have analysed how a new social category – the dependent individual – was created by Law 39/2006 and its implementation in three regions of Spain. Governmental practices targeting the elderly and PWD create a dichotomy between those who receive and those who provide care. This false dichotomy singles out those performing care services – overwhelmingly women and migrants. Often, women provide unpaid caregiving in their families. As a

<sup>55</sup> MA Durán, 'El Trabajo del Cuidado' (2019) *El País*. Available at: [www.elpais.com/elpais/2019/03/06/opinion/1551891773\\_900685.html](http://www.elpais.com/elpais/2019/03/06/opinion/1551891773_900685.html).

<sup>56</sup> *Ibid.*

<sup>57</sup> JK Puar, *Right to Maim: Debility, Capacity, Disability* (Durham, NC, Duke University Press, 2017).

result of austerity cuts, women and migrants have little to no chance of rejoining the workforce. They become an expendable population that will eventually fill up the ranks of dependent people themselves due to their precariousness.

At the same time, the CRPD prepares dependent people for what David Mitchell<sup>58</sup> has called a bait and switch scheme (ie, making a whole cohort of people legally eligible for benefits that are never implemented by regional and local institutions). The fact that, as of 2019, every day 80 people eligible for benefits under Law 39/2006 died before receiving those benefits<sup>59</sup> reveals the gap between what a person labelled as dependent is nominally entitled to demand under the provision of Law 39/2006 and the services he or she may actually receive.

In this scenario, national legislation, such as Law 39/2006, uses disability as a 'rhetorical biopolitical positioning' which singles out a collective in a positive way, enabling care and life to conceal colonial and patriarchal practices of debilitation and the wearing out of migrant and female populations.<sup>60</sup> In a similar fashion, Mitchell has pointed out that under the strictures of increasing scarcity due to the debt crisis, PWD have become the object of an exceptionalist discourse, thus making them symbols of civilisational aptitude at the expense of precarious female, often migrant, caregivers in what he calls 'ablenationalism'.<sup>61</sup> Therefore, we want to stress the importance of an intersectional policy analysis to disentangle the impact of implementing legislation aimed at fulfilling the commitments Spain accepted on signing the CRPD amidst a context of budgetary restrictions imposed by the EU. The fact that, after 2011, the funding of Law 39/2006 was left to regional and local authorities created gross inequalities across the country.

Lastly, we want to highlight the State's abandonment of many people with dependency on waiting lists, who must turn to their families or to charitable organisations for care. The Spanish population continues to age, with fewer and more debilitated social services, especially in those regions that have a larger debt and, in some of them, increasingly conservative governments willing to dismantle an already weakened welfare state.

<sup>58</sup> Mitchell, 'The Biopolitics of Disability' (2015).

<sup>59</sup> EFE, 'Cada día mueren en España 80 personas esperando recibir las ayudas de la dependencia' (2019) *Radio Televisión Española*. Available at: [www.rtve.es/noticias/20190228/espana-mueren-80-personas-dia-esperando-recibir-ayudas-dependencia/1892124.shtml](http://www.rtve.es/noticias/20190228/espana-mueren-80-personas-dia-esperando-recibir-ayudas-dependencia/1892124.shtml).

<sup>60</sup> Puar, 'Terrorist Assemblages' (2017) 104.

<sup>61</sup> Mitchell, 'The Biopolitics of Disability' (2015).

