

# MEMORY OF NATIONS

## Democratic Transition Guide

[ The Spanish Experience ]



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# TRANSFORMATION OF THE POLITICAL SYSTEM

PABLO PÉREZ-LÓPEZ

## INTRODUCTION

The Transition to democracy in Spain occurred after the death of General Francisco Franco in 1975. This political change established a democracy which had previously failed (1931–1936) and led to the tragic Civil War of 1936–1939. The memory of that failure was very present in the democratization process in the seventies.

In order to understand Franco's regime, it should be kept in mind that it was not an appendix to the defeated totalitarian regimes. It has sometimes been identified with the losers of World War II, as if the victors had been only democratic countries. Such an identification forgets that communist totalitarianism was also a great victor of the war, a fact that prevented the democratization of half of Europe. And an even more important issue: that the Spanish Civil War took place prior to World War II. Thus, it was neither a replica nor an anticipation of the World War, even if it was a precedent.

At the end of World War II, the Spanish Republican exiles promoted an intervention in Spain to depose Franco. Democracies opposed, recognizing that such a complicated problem was an essentially Spanish issue, and that the solution should be Spanish too. The Civil War had been the consequence of numerous breakups in the Spanish society: between right and left, revolutionaries and counterrevolutionaries, radicals and moderates, totalitarians and democrats, secularists and Catholics, separatists and advocates of national unity, republicans and monarchists, etc. Such divisions had crossed the interior of large political groups and had been the cause of an increasing violence which undermined the rule of law until it was finally demolished. The military uprising and the revolutionary movements that opposed it split the country in just two sides, but did not neutralized the differences within each of those groups.

Franco interpreted his victory as a personal triumph that confirmed the validity of his rather unsophisticated political ideas: the communist revolutionary threat was the worst enemy; individualist liberalism and democracy were disintegrating systems that had to be rejected to build a united nation, strong and in peace. The solution was to recognize the greatness of the Spanish past and edify the national coexistence upon it. Traditional institutions would be the way to achieve that restoration.

His approach was tested by the facts: within his own side there were opposed political factions competing for power – the most active one following the principles of fascism, a rising ideology at that time. But the most traditional Spanish institution was its monarchy, and there was in fact a pretender to the throne willing to return to Spain; the international situation was very complicated and threatened to drag Spain into a new war; the Catholics, who had sought refuge in the rebel army in the face of religious persecution, did not agree with the fascists and considered the political project too State dependent ... The Army, which was the General's main support, silenced all dissent and established what would turn to be the main principle during the whole regime: Franco's own "persona" as the key legitimating principle of the political system.

The opposition to Franco abroad remained much divided. Socialists, anarchists and nationalists did not forgive the communists, while some monarchists became anti-Franco when they saw that he rejected the pretender's return. An agreement on how to effectively oppose Franco was not found, a fact that explains both why foreign intervention was the only hope of overthrowing him and why democracies decided not to interfere in the task.

## LEGAL FRAMEWORK OF THE POLITICAL SYSTEM

The Civil War was understood by both parties as a confrontation between two incompatible ideas of Spain. The repression, accordingly exerted, attempted to make two things clear: first, that the destiny of those who were not victors was exile or death; second, that those held responsible for the war should pay for it. Franco's victory meant a harsh repression for all those who had supported the Republican regime, even before the military uprising. In its early stages, the regime focused on eliminating the opposition and subduing and unifying the factions that had supported it during the war. Franco did it with extraordinary forcefulness, especially against the defeated ones, but also against those who initially supported him and dared to dissent.

World War II began a few months after the end of the Spanish War and plunged the new Spanish regime into perplexity: Nazi Germany, Franco's friend, agreed to a compact with the Soviet Union (USSR), its greatest symbolic enemy, who on top of that attacked Poland, a Catholic country with which Franco and the forces that supported him joined in solidarity. In the first years of war, the German victories suggested that Spain should implement a Nazi-fascist-style regime and join the winning side; even more so when Germany attacked the Soviet Union in the summer of 1941. But by then, Franco had turned his initial circumspection into a permanent state of caution: Spain remained neutral or non-belligerent during the war; and when the United States entered, it progressively moved away from the powers that had supported it in the Civil War.

Mussolini's removal and Italy's armistice were the turning point: Franco realized that he had to find another way. That was not a problem for him, for the support of the military and the Catholics was his natural way out. But the political structure that he had created during the war did not change: a unified party, *Traditionalist Spanish Phalanx and of the JONS* (FET, *Falange Española Tradicionalista y de las Juntas de Ofensiva Nacional Sindicalista*). Despite being an untenable amalgam of pro-fascists, rightists, monarchists and traditionalists, this platform became Franco's instrument to attract politically interested people and tame them for his own benefit. The repression softened and the ideological backbone of the regime was put in the hands of politicians with a Catholic profile.

The political institutions of the regime were gradually defined. First, the "traditional constitution" of the country was evoked as the basis of the new system. Spain was defined as a kingdom, but without allowing the return of the King, nor name Franco

as a regent. It was thus stated that Franco was above the Monarchy. His political system claimed to embody the tradition of the Spanish people, which he represented, taking power in a moment of political crisis that, once surmounted, would be followed by the return of the power to a monarch. Almost unbearable for the monarchists, this idea – which resulted from the very victory of the civil war – was the guide of Franco’s exercise of power. In 1947, a law of constitutional rank ratified in a referendum defined Spain as a Kingdom. Together with the empty throne, the Spanish parliament – the so-called “Cortes” – was established as a representation of the Spanish people. The parliamentarians were partly chosen by Franco, and partly elected by the entitled corporations: state unions (which included businessmen and workers), municipalities and universities, among others. In a very different fashion to the liberal individualist Western democracies, an “organic democracy” was created, attempting to be a synthesis of the traditional Spanish freedoms and the channel of an authentic representation of the people.

## **CHANGES DURING FRANCO’S MANDATE AND POST-FRANCOIST HORIZON**

The regime’s resistance and the inability of its adversaries to overthrow it found an ally in the international situation. The Cold War – especially after 1950’s Korean War – transformed the American and part of the European conservatism into an anti-communism, and opened the possibility to an understanding with Franco, which was reinforced by the geostrategic interest of the Iberian Peninsula. The General did not miss the opportunity: his regime overcame international isolation through an understanding with the Vatican and the United States. Spain began to open up abroad and joined the United Nations in 1955. In the late 1950s the obvious need for economic reform pushed Franco to shift his policies: an economic opening began to transform the country’s economic structure and sponsored a progressive and limited political openness. All this culminated in the adoption of new fundamental laws that slightly modified the architecture of the system and, above all, in 1969, led to the appointment of Franco’s successor: Prince Juan Carlos de Borbón, son of the pretender Juan de Borbón and legitimate crown heir in the Royal House that had ruled until 1931.

The initial repression had softened, and civil freedoms were gradually increased. Several legal reforms tended to re-establish the Rule of Law – not without the restrictions of a system that lacked political freedom. At the same time, public administration was modernized; it became more effective and increased its responsibility before the law and before citizens. Freedom of opinion, still very limited, made its way since the mid-sixties. The new generations of professional and political cadres in Spain were formed within the idea of democracy as the future of the country, once the stage symbolized by the General as winner of the war was overcome. Society as a whole pointed towards the same direction. Politically inactive, it underwent very intense changes in the ways of life as a result of the strong economic growth experienced within a few years. Spanish per capita income grew, as well as the level of education. Spain became the tenth largest economy in the world in the late sixties. On the other hand, while it is true that, since the war, Catholicism had been a call to reconciliation, in the aftermath of the Second Vatican Council the idea that a confessional regime

was the best political option for a country with a Catholic majority vanished. Pluralism and religious freedom were the new paradigm.

## **PREPARING FOR THE TRANSITION**

The idea of removing the General from power had proved illusory. The opposition began to think about what would happen after his death. The idea of a transition to democracy emerged among exiles and internal opposition. But there were also groups of university students, professionals, senior public servants and politicians within the regime that began to prepare a change. Different proposals ended up converging on the following solution: a political transformation from within the system into a democracy. To do so, several steps were necessary: first and the most important, the new Head of State, the King, should be willing to lead the change; and second, the Francoist political class should step back from power. It seemed difficult, but possible: there was a reformist minority among the Francoists, determined and young, who could convince the most recalcitrant of the convenience of doing so. It seemed a little bit more difficult that the Army, the most solid cornerstone of the regime, allowed that change. Finally, it was also necessary that society approved the change. It became increasingly clear that Spanish society preferred a peaceful change, without shocks or violence that would take away the danger of confrontation and a new war. Finally, it was essential for the process to have the support of the opposition. Since the late sixties, it seemed that something like this was possible: facing the dilemma of choosing between a Republic (as opposed to a Monarchy) and political freedoms, many Republicans – including some socialists and communists – had conceded that the most important issue was the recovery of political freedom, not the specific kind of constitutional regime. If a Monarchy granted political freedoms, it could be an effective way of transition to democracy. However, some elements of the opposition claimed that the rupture with Franco’s regime was an essential condition for democratization.

## **THE TRANSITION: REFORM THROUGH AN AGREED RUPTURE**

Franco died in November 1975 and King Juan Carlos I took the Office of Head of State. He immediately began to drive a democratization process that stagnated in the first stage. In order to accelerate it, the young King appointed a new President of Government in July 1976, Adolfo Suárez, who shared his intentions and skillfully handled the situation among the Francoist political class. His government approved a draft of the so-called *Political Reform Act* (*Ley para la reforma política*), a statute creating the conditions to transform the political institutions into new democratic ones. The project was sent to the Francoist parliament. By approving this Act, the single political party and the Cortes enabled their own dissolution. The Law was submitted to a national referendum in December 1976. The Spanish people approved it by an overwhelming majority: 94 % voted in favor, with a participation of 78 %. The Government had opened the door to democratization.

There were many dangers that could prevent the successful completion of the transition, but three of them deserve

a particular attention. First, the possibility of a reactionary backlash, especially if it relied on the military and pushed for a military coup; though attempted, it did not finally happen. Second, a radical denial of the opposition refusing to join the proposed transition process. Only the members of the terrorist organization ETA (*Euskadi ta Askatasuna*, “Basque Country and Freedom”) and of some other far-left formations, as well as a small far-right faction, violently tried to prevent the Transition from succeeding.

By contrast, popular support to the project was high and solid. Juan Carlos I and Adolfo Suárez became the spokesmen of that national will, negotiated with the political actors, and gained the support or acceptance to the project by almost everyone, especially the opposition. The last obstacle was the legalization of the Communist Party of Spain in the spring of 1977. With that, everything was ready for the first democratic elections, which took place in June of that year. They were won by the Union of Democratic Center (UCD) a coalition of reformist parties in which former Francoists and opponents of Franco co-existed. The second place was for the Spanish Socialist Workers Party (PSOE); third, the Communist Party; followed by the right-wing party closer to Franco and, finally, by some other groups, including the nationalist parties.

## THE NEW CONSTITUTION AND ITS APPLICATION

The new democratic Cortes were commissioned with the task of drafting and approving a new Constitution. The different groups approached such enterprise with the will of working together, jointly, and not in opposition to each other. It was intended to be a work of consensus and not a partisan document, as had happened with the previous constitutions of the 19th and the 20th Century. The challenge was achieved in a relatively short period of time despite the strong terrorist onslaught of the ETA separatists and the economic difficulties experienced during that years – which were managed through a specific compact between trade unions and business organizations aimed *inter alia* at preventing the economic crisis from adding obstacles to the political task. The search for a fundamental political convergence went hand in hand with the granting of a broad amnesty. The amnesty put an end to the political repression of Franco’s time and the criminal consequences of the lack of political freedoms, and it became a symbol of reconciliation. In parallel with the creation of the new Constitution, there was also a decentralization of territorial power that anticipated what would be enshrined in the Constitution: the so-called Spain of the Autonomous Communities. Relations between the parties continually sought “consensus”, a word that became a descriptor and symbol of the constituent period.

All this was possible because of the social consensus found in the referendum and the elections. The people had expressed their support for the proposal of political reconciliation that reflected the one already lived within society. The Constitution was approved by the new democratic Cortes and ratified in a referendum held in December 1978 with an extremely successful outcome: 92 % voted in favor, with a very high participation (67 % of the electorate). Finally, the Constitution was sanctioned by the King, thus transformed into a Constitutional Monarch. Virtually everyone agreed that it had been a historic achievement.

The following year new general elections were held, and the UCD won them again. Local elections were also held, so that the first democratic municipalities were constituted. In the local

elections, although the UCD obtained a majority of votes, it did not obtain the mayoral office of several important cities, including Madrid. It was the symptom of a tendency that would manifest itself in the following elections: the UCD entered into a serious internal crisis in 1980 and the PSOE won by an absolute majority the elections of 1982. The arrival of the left in power with the new Constitution endorsed the validity of the system. Many people consider that moment the end of the Transition to Democracy in Spain.

Yet, before the Socialists arrived in power, there had been other events of great political significance. The first one was the consolidation of a system of distribution of territorial power that enshrined the creation of autonomous governments in all Spanish regions. It was a long-standing demand that was expected to be resolved with the new Constitution. The elections held in the new autonomous regions, first in Catalonia and the Basque Country, manifested the crisis of the political center and the strength of some nationalists. Second, it was hoped that this democratization and decentralization would mean the end of the ETA separatist terrorism, but it was not so. On the contrary, the terrorist group increased their violence and caused more deaths than ever in the first years of democracy, thus demonstrating that their war was not only against Francoism but against democratic Spain. Third, partly as a result of the terrorist offensive and doubts about whether decentralization could degenerate into disintegration, there was an attempted internal coup d’état, promoted by the military, in February 1981. However, it was aborted by the political forces due to the lack of adhesion of most of the Army. The King and the institutions were the key players in redirecting the situation. The judicial process that followed the coup helped to reaffirm the supremacy of civil power over the military and to prevent further coup attempts.

## LESSONS LEARNT AND RECOMMENDATIONS

The Spanish Transition to Democracy surprised many by its effectiveness, its relative speed, and its peaceful nature. It was seen and studied by many as a beacon and inspiration for the replacement of a dictatorial regime with a democratic one. To a large extent it was that, but it should be noted that Franco’s regime in the 1970s was more an authoritarian regime with features of a Rule of Law system than a personal dictatorship. J.J. Linz defined it as an authoritarian regime of limited pluralism. Although Franco kept the ultimate management of the levers of power and there were no political freedoms, respect for the law was a fact in many areas. It should also be kept in mind that a good part of the forces that had supported the regime were eager for a change to a more democratic society, and they publicly expressed it in a more or less explicit way. It was the case of most of the educated classes, the Catholic hierarchy, moderate right-wing groups, a part of the Army, a part of trade union organizations and most of the businessmen, etc. They were joined by a political opposition that understood the advantages of a pragmatic negotiation preventing a breakup in exchange for full and guaranteed political freedoms. The King acted as a pilot of that transformation and allowed an orderly change in which the symbol of power, the Crown, while not changing, completely transformed its role: from a rather limited personal power, to a neutral and symbolic one.

Over the years of political practice, some shortcomings of the process began to arise. The most important one was

the difficult integration of autonomous territorial powers into a unitary project. Certainly, the territorial model enshrined in the Constitution had been an audacious choice attempting to solve the difficult problem of combining diversity and unity, and it did not work as expected. In some cases, the autonomous governments became competitors to the central power, and that has put the State itself (and, consequently, Spanish democracy) at risk. At the same time, it seems to have left those who claim their own political personality unhappy. This political dissatisfaction has been connected with the terrorist problem and with the State's response to terrorism, since the most tenacious and bloody terrorism in Spain has had a separatist aim. When, after a long struggle, ETA stopped killing, it seemed that democracy had won the police and judicial battle against terror. Nevertheless, the same has not happened with the problem of political

legitimacy. This was partly a consequence of the fact that, during the Transition, some political groups granted legitimacy to ETA as a fighter against Francoism, a support that was difficult to remove when it continued to fight against democracy. For many, it was a bitter lesson that some people paid for with their lives. Military power, despite appearing to be the greatest initial problem, has adjusted well to the functioning of democracy. Finally, the question of the victims of the Francoist repression and of the historical memory, which initially seemed resolved, was re-awakened as a political argument in the late 1990s. From this approach, a tendency to denounce the Transition as a process of deception and camouflage arose – a claim that is not supported by the available historical evidence. A clear balance of the victims and the historical memory, which could have been better managed, cannot yet be made.

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# DISMANTLING THE STATE SECURITY APPARATUS

RICARDO RUIZ DE LA SERNA

## INTRODUCTION

The authoritarian nature of the Francoist regime made the police apparatus a central element of the power structure in Spain. This apparatus comprised of two planes. On the one hand, the police forces with successive denominations that were adapting to the times from the first years of the Post-War period until the advent of democracy. On the other hand, the Civil Guard has maintained its denomination, although its structure keeps changing?

Both corps used the usual techniques of police work, i.e., infiltration, capture of confidants, interception of communications, monitoring, tracking, etc., in a legal framework in which the system pivoted on the notion of “public order”.

In fact, perhaps the greatest change performed during the transition is the replacement of the notion of public order with that of “citizen security”, as of article 104 of the Constitution of 1978.

This transformation, however, was not accompanied by the dismantling of the police apparatus, but rather by its reform.

On the one hand, a general framework of the State Security Forces and Corps, in which both regional and local police entered, was redefined.

On the other, the officiality was not depurated, but it kept renewing as retirements or, where appropriate, the steps to the reservation were taking place. The cadres of the security forces complied with the constitutional order that had emerged from the transformation of the Francoist State to the democratic State in the famous formula of Torcuato Fernández-Miranda “from law to law through law”.

Of course, this did not prevent the practices of the dictatorship from surviving during the beginning of the democratic period: the practice of torture and ill-treatment at the police station, arbitrary detentions, etc. However, the consolidation of the constitutional regime was eradicating these practices and normalizing the system of fundamental rights enshrined in the Constitution.

## POSITION AND STRUCTURE OF THE STATE SECURITY APPARATUS BEFORE THE TRANSITION

The police forces during Franco’s regime (1939–1975) were of a different nature. As a characteristic of the police State, the entire administrative apparatus was at the service of police control and, in this sense there was no scope of administrative action that could not be made available to those corps.

During the Civil War, the Information and Military Police Service (*Servicio de Información y Policía Militar*, SIPM), as its counterpart, the Military Information Service (*Servicio de Información Militar*, SIM) of the Republic, assumed spying, counterespionage and political police tasks. Created in 1937, its antecedents were the Military Information Service (1936) and the Northeast Spain Information Services (1936) as well as the Information and Investigation Service, which depended on the Traditionalist Spanish *Phalanx* (*Falange Española Tradicionalista*, FET) and of the National Syndicalist Offensive Boards (*Juntas de Ofensiva Nacional*

*Sindicalista*, JONS). The functions of these bodies were assumed, at the end of the war, by the Political-Social Brigade.

After the war, the armed forces controlled most of the police activity and social control. The Police Services Reorganization Act of 1941 created a police structure comprising of two bodies: the General Police and the Armed and Traffic Police Corps.

The General Police Corps was in charge of the investigation and political repression tasks while the Armed and Traffic Police Corps was assigned the task of operational intervention and public order.

Attached to the General Police Corps was the General Public Order Police Station and the most relevant force depended on it for the purposes of political repression: The so-called Social Political Brigade.

Indeed, the police force that performed during most of Francoism was the Social-Political Brigade, which was active from 1941 to 1978. Its official name was the Social-Investigation Brigade. The Decree of June 24, 1938 indicated among its functions “the control of matters in political action” as well as the prevention and repression of activities that obstruct or divert the general guidelines of the government.

Together with the Falange’s police and information services, it is necessary to mention the Civil Guard that, under the Act of March 15, 1940, “reorganizing the Meritorious Civil Guard Corps”, had a military nature and was entrusted with “the surveillance and safeguarding of the fields, towns, rural agglomerations, factories, industrial and mining centers isolated from the populations, coasts and borders, the persecution of smuggling and fraud, the forecasting and repression of any subversive movements and, at all times and places, the persecution of criminals”.

Thus, this organization of the apparatus led to the creation of archives of a different nature, namely, civil and military, which in turn were distributed according to the respective deployments.

## NUMBER OF MEMBERS OF POLICE FORCES, APPARATUS AND NETWORK OF COLLABORATORS

Perhaps it was Joaquín Bardavío who has best described the police forces and the functioning of the power of the State’s order forces during the Transition:

“The General Directorate of Security, under the Ministry of the Interior, is a fundamental department in the structure of the country. [...] The Directorate is entrusted, in large part, with the support of the social and political structure of Spain. Its functions are diverse: repressive of common crimes and of politicians who undermine the established legal status; administrative in issuing passports and hunting licenses; humanitarian in the search for a lost child or insane person; informative for the location of a friend or a relative distant for years; but always preventive for the safety of citizens and for the security of the State.

8,200 officers of the General Police Corps and almost 20,000 members of the militarized Armed Police are responsible for

maintaining, together with the Civil Guard, order in the Spanish society.”<sup>1</sup>

The police command apparatus was divided into two scales: the superior with 750 chief commissioners and commissioners and the executive with 7,450 chief inspectors, inspectors and sub-inspectors. Within the police scheme, the General Commissariat of Social Investigation is highlighted for its special political importance, whose mission is to “maintain the internal security services of the State, preserve its institutions from danger and defend and preserve public order.” Thus, it has “preventive and repressive functions for crimes punishable by common and special legislation that refer to alterations of order, illegal organizations, attacks on institutions, etc.” This police station is entrusted with the supervision and coordination of the Social-Investigation Brigades spread throughout Spain: It “centralizes information and issues orders, guidelines and news to prevent the type of crime entrusted to it and neutralize all illegal activity.”<sup>2</sup>

The General Police of Public Order also highlighted because of its competences and some of its functions “the preparation and establishment of the security services for the displacements and trips and travels of the Head of State, the Prince of Spain and their respective families as well as the trips and travels of Government ministers and foreign personalities”, as well as “the processing of orders for and ratifications of imprisonment” and “authorizations for the conduct of detainees or incarcerated in prisons or before the presence of governmental or judicial authorities that require them”. It was also in charge of guarding “the number of foreigners detained at the request of other countries for the application of extradition and of those who for various reasons await their immediate expulsion from the national territory”.

At the end of the Civil War, all State institutions were reformed and this affected the forces and corps of public order. The Civil Guard was reorganized after the Civil War under the Act of March 15, 1940 and had merged with the *Carabineros*. In this way, the Armed Institute, as Bardavío states, assumed the surveillance of ports and borders for the suppression of smuggling. During the Transition, it had approximately 60,000 men.

The Meritorious, as the Civil Guard is known, depended administratively on the Ministry of the Interior, but its organization, instruction and weaponry depended on the Ministry of the Army, thus reaffirming its status as a military corps. Hence, the new Civil Guard “adopted all the characteristics of a large Army corps unit while retaining in the background its characteristics of a uniformed police institution.”<sup>3</sup>

It has to be added the numerous information services that operated at the political level to the two corps with police functions. Under the Decree of August 30, 1939, created by the High General Staff, there was granted to its Third Section the mission of “providing the supreme command with the necessary information for the most accurate assessment of the military and economic potential of other countries”. In February 1944 this mission was extended to “confront in and out of Spain the complex foreign spying services and coordinate the action of the various agencies responsible for repressing them.”<sup>4</sup>

Around this Third Section, a complex apparatus of information services that made necessary a reserved order of December 20, 1945 in which the powers were distributed among the different ministries was developed:

“The senior management of the military-type information services corresponds to the High General Staff, coordinating the actions of the specific ones of the three Armies [...] To the Ministry of the Interior, with its specific body, the General Directorate of Security, corresponds the full responsibility and competence with regards to the general information services related to public order and the internal security of the State [...] The questions of competence will be resolved by the Presidency of the Government.”<sup>5</sup>

At the beginning of 1968, the Third Section was articulated in the Bureau of Studies and Reports, the Bureau of Operations, with the sub-bureaus of Interior and Exterior, and the Technical Bureau, in charge of encryption, encoding and decryption services, transmissions, listening and other technological needs.

From the Third Section, the so-called Central - Information Service Bis of the Army - (*Central-Servicio de Información Bis del Ejército*, CESIBE), which assumed powers in political research both at the espionage and counterespionage level, was detached. It was fed by the military information services, but also from the General Directorate of Security, the Civil Guard and the information services of the Traditionalist Spanish Phalanx and the JONS, the Spanish Trade Union Organization and other informants of the political and social organizations.

Following the 1968 student mobilizations, the National Counter-subversive Organization (*Organización Contrasubversiva Nacional*, OCN), dependent on the Third Section whose function was the control of student organizations and then expanded to intellectual, social and religious circles was created. As of 1972, its mission was continued by the Central Documentation Service (*Servicio Central de Documentación*, SECED), which was structured in the areas of “information” and “operations”. Some of the most important operations of the Transition were directed from the SECED, such as obtaining information about the XII Congress of the Socialist Party in Suresnes (France).

Thus, in the years of the Transition, as Ernesto Villar mentions, “Spain had eleven information services. The Caudillo had wanted it that way; following the manual for use among the dictators (the principle of ‘shared information’) according to which the best vaccine against a coup d’etat is to distribute knowledge of sensitive data. In other words, ensure that everyone has a part of the information that they must convey to their superior, but not all.”

## POWERS OF THE SECURITY APPARATUS

As General Andrés Cassinello, under the pseudonym of Carlos I. Yuste, described in the famous book “Subversión y reversión en la España actual”, published in a year as emblematic as 1975 by the now disappeared Editorial San Martín, “the danger of subversion increases as part of an organized, powerful and coherent front, of an enemy who knows what he wants and has the necessary

1 Joaquín Bardavío, *La estructura del poder en España*, Madrid: Ibérico europea de ediciones, 1969, 223.

2 *Ibid.*, 232.

3 Antonio Morales Villanueva, *Las fuerzas de orden público*, Madrid: San Martín, 1980, 176. Also Antonio Morales Villanueva, *Administración policial española*, Madrid: San Martín, 1988, 202.

4 Juan María de Peñaranda, *Los servicios secretos de Carrero Blanco. Los orígenes del CNI*, Barcelona: Espasa, 2015, 20–21.

5 *Ibid.*, 21.

experience and means to achieve it. Such is the case of Marxist subversion, spread throughout the world. [...] In the face of this ideological aggression, it is necessary to consider the problem as a real battle and conduct a detailed study of factors that allow us to achieve victory. We have plenty of means to achieve it, but it is necessary to use them with opportunity and efficiency”.

Indeed, the means and powers available to law enforcement agencies to combat what they considered “subversion” were very remarkable and served to bring about “reversion”, i.e., in Cassinello’s words, the “reaffirmation and relaunch of principles on which society is based; the strengthening of the institutions in which it is articulated and the destruction of the groups and of the ideas that try to subvert it”.

To that purpose, the actions of the safety apparatus are distributed in two different orders:

“[...] the first, strengthening the attacked society, in the double aspect of its organic and spiritual structure; it constitutes the fundamental, essential means, the channel of the natural dissatisfaction and of the legitimate hopes that justify, before ourselves, the commitment; the second, totally sterile if not accompanied by the first, responds to the principle of legitimate defense of society against an implacable and persevering enemy. In the general development of the process it will be necessary to implement psychological actions to modify the ideas and attitudes of the population, political actions to adapt the system to the aspirations and needs of the population; administrative actions for the resolution of old and new problems and police and judicial actions for the location and neutralization of hostile groups.”<sup>6</sup>

In the terminology of the anti-subversive struggle, what will be called “destruction action” is based on three possibilities that can be coordinated: informative possibilities, police possibilities and psychological actions of consolidation.

The scope of the informative actions refers to the knowledge of the enemy and it is the responsibility of the internal and external intelligence services that work at the service of the State. They ascertain who the people and groups “committed to the revolutionary adventure” are, where they act (universities, professional associations, religious organizations, etc.) as well as their forms of action (strikes, pickets, assemblies), and the moments chosen for it (for example, revolutionary commemorations). The internal and external intelligence services analyze the types of subversive propaganda, its origin, its dissemination and, in general, the ideological and doctrinal aspects. For this, the security apparatus will use both open sources accessible in Spain and abroad as well as information obtained through networks of confidants and infiltrated agents. This intelligence purpose can be coordinated with the strictly police purpose of prosecuting common and political crimes.

There are many cases of famous infiltrators such as the Agent Conesa, with whom the infiltration of the Communist Party of Spain in 1947 and the subsequent fall of a good part of its organization in 1952 was achieved, but also those of confidants and collaborators who are often “natural members of the same group captured by the information service for their secret identity with the cause of the reversion or due to the benefits of any kinds that this collaboration could provide (money, protection of police records, etc.)”.

Along with these possibilities of information, there are the police that start from a “legal system for the description of offenses

against society, intended to be punished, and with an agile system to empower the police to exercise their functions”.<sup>7</sup>

Here, the change in the Transition from the model of public order enshrined in the pre-constitutional order through the Public Order Act of 1959 to the democratic constitutional order that, as of the Constitution of 1978, would replace that notion with that of citizen security, becomes of the utmost importance. Indeed, the Law of Public Order of 1959 defined the different states of normality, of exception and of war in a different gradation that oscillated “between the total exercise of defined freedom and its limitation for the sake of a serious need.” However, it warned about the danger of abusing situations of exception: “the occasions of limitation of freedoms must be few and short in time, since they have an unfavorable impact on the mass of citizens not engaged in subversion.”

Here it is the background of police thinking during the years of the Transition in which, in the words of Alfredo Grimaldos, it produced “the repressive action of the Armed Police and the Civil Guard against concentrations of strikers and popular demonstrations” that “causes dozens of deaths and countless wounded between 1976 and 1980”. In this sense, the triumph of the Transition “from above” instead of the “revolutionary process” that the communist parties had theorized meant the continuity of the security apparatus, which was adapted to the constitutional order but not radically substituted. There were, no doubt, retirements, dismissals and substitutions in the command posts, but there was not, in general, a depuration of the police cadres, the Civil Guard and the information services.

In effect, the Police Forces Act of December 4, 1978, changed the name of the Armed Police to National Police and supposed important symbolic modifications such as the disappearance of gray uniforms and their replacement with brown ones, but this did not prevent, for example, that the commands continue to feed on the military cadres. Figures such as the Creix brothers or the aforementioned Conesa benefited from the Spanish Amnesty Act 46/1977 of October 15, which also benefited the opponents of the regime.

Thus, the different police techniques to combat subversion, infiltration, monitoring, tracking, observation and interception of correspondence, records, seizures, capture of confidants or informers, etc., had the dual purpose of obtaining information for intelligence purposes and the police, and, where appropriate, judicial persecution, of the “subversive” organizations. The legal framework after the Constitution of 1978 will limit, on the one hand, these police powers and will subject the intelligence services to the internal and external parliamentary and judicial controls that are applied nowadays.

## REACTION TO POLITICAL CHANGES

As has been said, the Spanish Transition was considered as a transformation “from above” in which one would go “from law to law through law” in the phrase coined by Torcuato Fernández-Miranda.

Thus, the reaction to political changes by the political forces of Francoism was more an internal matter between

6 Carlos I. Yuste [Andrés Cassinello], *Subversión y reversión en la España actual*, Madrid: San Martín, 1975, 215.

7 *Ibid.*, 239.

the “open-minders” and the so-called “bunker”, the whole of the involution forces, than the response to changes imposed from outside. These tensions grew as Francoist Cortes made themselves the “hara-kiri”, according to the expression that became popular in the Transition, through the approval of the Law 1/1977 for the Political Reform that Torcuato Fernández-Miranda wrote to execute the “controlled demolition” of General Franco’s regime. In statements to the press cited by the famous *Diario 16*, “since one thousand eight hundred we, the Spaniards have had procedures to modify the laws that political groups never followed, while now we are faced with the possibility of creating a radically different political assumption starting from the Fundamental laws themselves that are reformed”.

In this sense, article 5 of the legal text gave King Don Juan Carlos the power to lead the change through a constitutional referendum:

“The King may directly submit to the people a political option of national interest, whether constitutional or not, to decide by referendum, the results of which will be imposed on all the bodies of the State.

If the object of the consultation refers to matters of the competence of the Cortes and they will not make the corresponding decision in accordance with the result of the referendum, they will be dissolved, proceeding thus to call for new elections ...”

This consolidated its role as the “engine for change” that had been in evidence since the death of the General. Thus, the involution attempts clashed with the support that, from outside Spain and from the opening forces of the interior were given to the figure of the King and the change he represented. Of significance was, for example, his trip to the United States between May 31 and June 6, 1976.

The speech of King Don Juan Carlos on June 2, 1976 to the United States Congress was an obvious commitment to openness:

“The evolution of our society continues to offer tensions, difficulties, setbacks and even violence. We suffer from the current crisis in the world, i.e., unemployment, inflation, the contraction of demand and high production costs are among our priority government concerns. But no obstacle will decisively oppose our Spanish community to continue working towards the creation of an increasingly prosperous, fairer and more genuinely free society.

The Spanish Monarchy has committed, from the first day, to be an open institution in which all citizens have a comfortable place for political participation without discrimination of any kind and without undue pressure from sectarian and extremist groups. The Crown protects the entire people and each of the citizens, guaranteeing through the right, and through the exercise of civil liberties, the rule of justice.

The Monarchy will ensure that, under the principles of democracy, social peace and political stability are maintained in Spain, while ensuring orderly access to power of the different government alternatives, according to the wishes of the people freely expressed.

The Monarchy symbolizes and maintains the unity of our nation, a free result from the determined will of countless generations of Spaniards, as well as crowning a rich variety of regions and towns, of which we are proud.”

Continuity and involution sectors of the regime failed in their attempts to disrupt the transition process through political

violence. From the so-called “last great political crisis of Francoism”, the cessation of the Minister of Information and Tourism Pío Cabanillas Gallas, until the coup d’état of February 23, 1981, all efforts to disrupt the Transition will fail. As Juan Tomás de Salas wrote in the pages of *Diario 16*, “when the past turned in the form of Girón and the blues, when Arias Navarro was defeated and forced to go back, it was too late for any design to perpetuate the dictatorship. The country had spoken, it had been seen, it had been confirmed that the peaceful Spaniards were a crowd”.

It was not, therefore, a linear process.

Adolfo Suárez, appointed as President of the government and personally elected by King Don Juan Carlos as President to lead the reform, had to face the opposition from the continuity sectors, first, and then from the leftist opposition. In both cases, the information apparatus provided the President with services without which the Transition would have been difficult or, perhaps, impossible. As Ernesto Villar states, “every time the terrorists have filled their hands with blood, the men of Valverde and Cassinello [the intelligence services] have stood firm next to the President, even to defend the so shaken Anti-Terrorist Law. But this does not mean, much less, that the government must take a step back in its reforms. Not even those of the ‘bunker’ triumph. Rather the complete opposite. It must be, the SECED says, a punch on the table so as not to entrench behind it, but to open the doors of the ‘essential reforms’ in the political and social fields”.

Thus, in general, the security apparatus was on the side of the institutions that, at the same time, led the change and embodied it. Both King Don Juan Carlos and President Suárez embodied this change that, by legal means, was taking place in Spain. The forces of the State were limited, in general, to fulfill the orders emanating from who, at any time, was the legal authority.

There were stops and setbacks, for example, the contradiction between the opening of Arias Navarro and his spirit of “February 12” of 1974 and his retreat on June 15 of that same year, but the steps towards democratic reform were decided and coming from the structures of the regime itself. Thus, on August 31, 1974, a group of officers founded the Democratic Military Union (*Unión Militar Democrática*, UMD) (remember that in April of that year there was the Carnation Revolution in Portugal). There are terrorist actions of the extreme right, the extreme left, for example, the attacks of the First of October Anti-Fascist Resistance Group (*Grupo de Resistencia Antifascista Primero de Octubre*, GRAPO) and the Anti-Fascist Revolutionary Front (*Frente Revolucionario Antifascista*, FRAP), and the Basque and Catalan separatists. ETA blows up the Rolando cafeteria on Correo street, next to the Puerta del Sol in Madrid: twelve dead and eighty injured. The carrying out of death penalties of terrorists of ETA and of the FRAP unleash international campaigns to support those convicted and criticize the regime. However, none of these forces manages to stop the process.

Nor can the forces on the left stop it. The legalization of the Communist Party on April 9, 1977 marks a milestone in the Transition because it integrates the most powerful political force of the non-nationalist opposition into the system. It joins the more moderate forces that had been organized in the Democratic Junta of Spain and the Democratic Convergence Platform (*Plataforma de Convergencia Democrática*, PCD), which in turn are grouped in March 1976 into a new opposition body: Democratic Convergence, also known as “*Platajunta*”.

Thus, the Transition has a centripetal force that will bring the liberalizing sectors to the opposition forces within the system

and the opposition forces outside it to an institutional game that evolves towards a democratic regime. Unions, the Catholic Church, professional associations and corporations are joining a process that, with terrible stops and episodes such as the shooting of Montejurra (May 9, 1976), the murder of Atocha labor lawyers (January 26, 1977), the murder of two policemen and a civil guard at the hands of the GRAPO (January 28, 1977) or the bombs placed by ETA on the slogans of the Atocha and Chamartín railway stations, which killed seven people and wounded a hundred more on July 29, 1979.

The resistances in the forces of public order had their swan song in the coup d'état attempt on February 23, 1981, which meant the consolidation of the King as guarantor of the process that had begun in the early 70s. Its weak monitoring and the determined reaction in support of the King and the Constitution in the whole of Spanish society marked the end of the opposition to the Transition. Henceforth, only terrorist organizations will try to end the democratic regime in various ways.

## **FORMS OF TRANSFORMATION OF THE SAFETY APPARATUS; LEGAL AND POLITICAL FRAMEWORK OF CHANGES IN THE SECURITY APPARATUS**

The transformations in the security apparatus had to be performed in three areas: the police forces, Civil Guard and intelligence services. In all cases, the way to undertake them was through normative instruments, i.e., laws and regulations, which led the system to transform both in the pre-constitutional period as it did when the Constitution of 1978 itself was already in force.

### **POLICE FORCES**

In the case of the National Police and the Civil Guard, the greatest transformation was the change from a police model based on the notion of public order to another that started from the concept of citizen security.

The desire to maintain public order justified the administrative, legal and police controls that inspired the "Police State" of the Francoist regime. From a system in which, often, the direct prohibition or the need for permits is the norm and freedom the exception, it had to move to another in which everything that was not expressly prohibited was understood as to be allowed. The State had to assign quotas of power so that civil society and citizenship could be developed.

The first step was the Royal Decree 1558/1977, of July 4, which laid the foundations for the restructuring of certain organs of the Central State Administration and reorganized ministries and departments. The justification, as indicated by the explanatory statement itself, was the changes that Spanish society was facing:

*The magnitude and intensity of the political changes that Spanish society has experienced, the deeply felt need to achieve greater efficiency in the direction of political-administrative tasks, the convenience of coordinating dispersed bodies that coincide in their actions on the same social sectors, the demand for more intense public action in some fields that require greater emphasis and more specific treatment, made the corresponding changes in the structure of the State Administration imperative.*

This led to the old Law of 1941 that reorganized the police services being replaced by a new rule that introduced that new sensitivity that displaced the center of the police action from the maintenance of public order to the guarantee of citizen security. Thus, the Law 55/1976 abolished the Armed Police Corps and structured the police force into two bodies, the Superior Police Corps and the National Police Corps, whose functions were in accordance with its second article, as can be seen below:

- a) Maintain and restore public order and the safety of citizens, guaranteeing the exercise of their rights and freedoms.*
- b) Avoid the commission of criminal acts, and, if committed, investigate, discover and detain the alleged culprits and ensure the effects, instruments and evidence of the crime, making them available to the competent judicial authority.*
- c) Provide assistance in case of public calamities and particular misfortunes, collaborate with the Public Assistance Institutions and Organizations and assist, at the request of the parties, the peaceful settlement of disputes between private subjects.*

Finally, the change occurred definitively, since in the constitutional period, with the Organic Law No. 2/1986 on State Security Forces and Services of March 13, which embraced the mandate of article 104.1 of the Constitution, which attributes to the Security Forces and Corps, under the dependence of the Government, *the mission to protect the free exercise of rights and freedoms and guarantee citizenship security.* For the fulfillment of said mission, art. 11.1 attributed to the Security Forces and Corps provides that:

*The State Security Forces and Corps have the mission of protecting the free exercise of rights and freedoms and guarantee the citizen security through the performance of the following functions:*

- a) Ensure compliance with the Laws and general provisions, executing the orders they receive from the Authorities, within the scope of their respective powers.*
- b) Assist and protect people and ensure the conservation and custody of assets that are in danger due to any cause.*
- c) Monitor and protect public buildings and facilities that require it.*
- d) Ensure the protection and security of high personalities.*
- e) Maintain and restore, where appropriate, order and citizen security.*
- f) Prevent the commission of criminal acts.*
- g) Investigate crimes to discover and detain the alleged culprits, secure the instruments, effects and evidence of the crime, making them available to the competent Judge or Court and prepare the appropriate technical and expert reports.*
- h) Capture, receive and analyze how much data are of interest for public order and security, and study, plan and execute crime prevention methods and techniques.*
- i) Collaborate with civil protection services in cases of serious risk, catastrophe, or public calamity, under the terms established in civil protection legislation.*

A similar transformation occurred in the Civil Guard, which was fully integrated into the model of citizen security assuming, under the Organic Law No. 2/1986 of March 13 and as stated in its explanatory statement, "its authentic mission in the current society: guarantee of the free exercise of the rights and freedoms

recognized by the Constitution and the protection of citizen security, within the collective of the Security Forces and Corps”.

Thus, the Civil Guard move from a role of military force to the service of civil power with functions of maintaining public order and border control, according to the Law of March 15, 1940 and subsequent regulatory development, to be a part of the Security Forces and Corps of the constitutional State responsible for guaranteeing the free exercise of rights and freedoms and for protecting citizen security.

Finally, the intelligence services went from being an area of military action to being part of the constitutional state’s security system. This began with the aforementioned Royal Decree 1558/1977, created by the Ministry of Defense, which came to replace those of the Army, Navy and Air Forces, with a broader vision than the management of the armed forces. This reorganization was developed through Royal Decree 2723/1977, of November 2, which organically and functionally restructured the Ministry of Defense, providing it with a certain desire for transparency through the creation of the Directorate for the Information, Dissemination and Public Relations of Defense and ordering its intelligence services “in order for the Defense to have the information it needs to fulfill its functions” for which it created the Superior Defense Information Center, (*Centro Superior de Información de la Defensa*, CESID). Already in the constitutional period, by Royal Decree 726/1981 of March 27, the CESID function was defined as “the body responsible for obtaining, evaluating, interpreting and providing the head of the Department as much information as necessary and of interest to the National Defense and to the fulfillment of the missions entrusted to the Armed Forces by article 8 of the Constitution, first and foremost attending the needs of the Board of Joint Chiefs of Staff”. In 2002, the Law 11/2002, of May 6, regulator of the National Intelligence Center was approved.

Thus, in the three areas of transformation, this one was operated through formally valid regulatory changes that were adapting the security and information corps to the democratic and constitutional framework to which it was transited.

## **CITIZEN CONTRIBUTION TO THE TRANSFORMATION**

In general, as has been seen, the transformation of the security apparatus was done through legal means and with strict submission to the principle of legality as it corresponded to a Transition process “from above” directed from the institutions and channeled through the reform of the political system through its own formal channels.

In this way, in general, civil society organizations did not have such an active role as in other countries when it came to changes in the security apparatus. The transition from a public order model to a public security model had, without a doubt, a legal framework in which citizens participated to the extent that they participated so much in the referendum of the Political Reform Act (December 15, 1976, participation of 77 % of the census) as in the general elections of June 15, 1977 (participation of 78.83 %) and in the referendum on the draft of the Constitution of December 6, 1978 (participation of 67.11 %).

Of course, as the transition progressed, civil society gained increasing prominence in the Spanish political and social life and this resulted in criticism and some influence on the security apparatus. Thus, for example, the return of the Catalan nationalist leader Josep Tarradellas and his appointment as president

of the pre-autonomous Generalitat of Catalonia on October 17, 1977 gave clear signs that police pressure on the so-called “subversive forces” should be mitigated. Secret political appointments with the opposition, the emergence of political parties, the PSOE congress in Suresnes, the legalization of the PCE and many other gestures towards those who had been in exile, hiding or ostracism indicated to the apparatus of security the political and social changes that were coming.

Similarly, the resistance of terrorist organizations to the transitional process and, especially the attempt to seize the occasion for their own purposes by ETA and other terrorist groups identified the need to keep the security apparatus alert to those who had declared war on democracy as titled *Diario 16* in its history of the Transition.

Thus, what really favored the Transition process, along the lines of demobilization and depoliticization of the Spanish society, which did not align with the side of the continuist sectors or the violent rupturist sectors, but rather it supported by the formal channels the process towards democracy through the established formal channels.

## **LESSONS LEARNT: POSITIVE AND NEGATIVE**

In the first place, the transformation of the security apparatus was possible because it was conducted through the legal and administrative instruments that the current Law required. The inability of the opposition forces in hiding to overthrow the regime and the power of law enforcement forces prevented a transformation into a revolutionary key. On the contrary, the Transition model “from above” was adapting these corps to the new reality of evolution towards democracy.

Similarly, the gradual but inexorable change from a model based on the notion of “public order” to others based on that of “citizen security” allowed the Security Forces and Corps to move from one model of a police State to another in which they themselves were guarantors of rights and freedoms. The last involution attempt of the immobilist forces, the coup d’etat of February 23, 1981, was thwarted by the lack of support within those security forces.

However, despite these changes, peripheral nationalisms used the continuity of police forces to create regional police. This has resulted in the fragmentation of the security and information apparatus and certain coordination problems between the bodies.

## **RECOMMENDATIONS**

The main recommendation that could be made in view of the described period is the importance of using legal channels for the transition from authoritarian regimes to democratic systems. In this sense, the law provides stability that, for example, a charismatic leadership does not offer.

## **CONCLUSION**

The transformation of the security apparatus was one of the essential processes for the success of the Transition. The use of the law was the starting point for adapting the bodies of public order to the new democratic reality to which it was moving.

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# ARCHIVES OF THE REGIME

**RICARDO RUIZ DE LA SERNA**

## INTRODUCTION

The first archive to be mentioned, as an introduction, would be the National Historical Archive, created by Royal Decree of 28 March 1866 and which was, until the creation of the General Archive of Civil Administration, the main recipient of collections from ministries with competence in police matters from the end of the nineteenth century and the first decades of the twentieth century. It conserves 32 collections from Contemporary Institutions, as well as 40 personal and family archives, of personalities corresponding to the scientific (Isaac Peral y Caballero, etc.), political (Margarita Nelken, Marcelino Pascua, etc.), literary (Luis Rosales Camacho, Juan Ramón Jiménez, etc.), diplomatic (Juan Antonio Rascón Navarro, etc.), and military (Vicente Rojo, Valeriano Weyler and Nicolau, etc.) fields.

Mention should also be made of the Central General Archive of Alcalá de Henares, created under the Public Instruction Act of 1858 and destroyed by fire at the end of 1939. It was the first great ministerial archive, although its collections are only partially known to us.

It was not until 1969 that the General Archive of the Civil Administration of the State was created by the Decree of 1969 to continue the work of the archive destroyed by fire in 1939. Initially, its function was purely administrative. Custody of the documentary collections corresponding to the bodies of the Peripheral Central Administration and the Spanish Administration in North Africa, as well as the documents produced by the political-administrative institutions of the period 1939–1975. The collections produced by the activity of the organs of the Judicial Branch are especially interesting for this topic.

Finally, the relevance of the Civil War Archive of Salamanca, today called the Documentary Center of Historical Memory, which was created by Order on 29 May 1937 and whose collections began to house the documentation of the closed Masonic lodges, should be pointed out. Next to the “Masonic Section”, a “Social Political Section” was created. In 1999 it was elevated to the rank of general archive with the denomination of General Archive of the Spanish Civil War.

Today, the Documentary Center of Historical Memory holds the collections coming from the Documentary Services of the Presidency of the Government and from the Special Court for the Repression of Freemasonry and Communism of the Franco era and those incorporated after 1979.

In addition to the collections with documentation relating to the ministries, it should be noted the importance of both the archives of trade unions and political parties in hiding and the private archives, which often keep public documentation among their collections.

These include the personal collections of the University of Navarra’s Historical Collection. It should be noted that personal archives are one of the most valuable sources for historical research. For this reason, the University of Navarra, as an institution committed to quality research, is responsible for safeguarding, organizing and disseminating all the donations it receives. The aim

of these collections is to put them at the service of researchers of different chronologies and various themes, hence the plurality of these collections. At present, it includes the archives of more than one hundred outstanding personalities both from Franco’s regime and from the opposition.

## CONTENT OF POLICE AND JUDICIAL ARCHIVES

### POLICE ARCHIVES

The police forces during the Franco regime (1939–1975) were of various kinds. As a characteristic of the police state, the entire administrative apparatus was at the service of police control and, in this sense, there was no scope of administrative action that could not be made available to those forces.

During the Civil War, the Information and Military Police Service (SIPM), like its counterpart, the Republic’s Military Information Service (SIM), took on the tasks of espionage, counter-espionage and political police. Created in 1937, its antecedents were the Military Information Service (1936) and the Information Service of Northeastern Spain (1936) as well as the Information and Investigation Service, which depended on the Traditionalist Spanish Falanx and the Councils of the National Syndicalist Offensive. The functions of these bodies were assumed, at the end of the war, by the Political-Social Brigade.

After the war, the armed forces controlled most of the police activity and social control. The Police Services Reorganization Act of 8 March 1941 created a police structure comprising two bodies: the General Police Corps and the Armed Police and Traffic Corps.

The General Police Corps was assigned the tasks of investigation and political repression, while the Armed Police and Traffic Corps was assigned the task of operational intervention and public order.

The General Police Corps was attached to the General Commissariat of Public Order and the most relevant body for the effects of political repression depended on it: the so-called Social Political Brigade.

In fact, the police force that acted during most of Franco’s regime was the Political-Social Brigade, which was active from 1941 to 1978. The Decree of 24 June 1938 indicated among its functions “the control of matters in political action” as well as the prevention and repression of activities that obstruct or deviate from the general guidelines of the government.

In addition to the police services and the information services of the Falanx, the Civil Guard should be mentioned which, under the March 15, 1940 Act “reorganizing the meritorious Civil Guard Corps”, had a military nature and was entrusted with “the surveillance and guarding of the camps, villages, rural agglomerations, factories, industrial and mining centers isolated from the populations, the coasts and borders, the persecution of smuggling and fraud, the anticipation and repression of any subversive movement and, at any time and place, the persecution of criminals”.

Thus, this organization of the apparatus led to the creation of archives of a different nature, civil and military, which in turn were distributed according to the respective deployments.

## THE JUDICIAL ARCHIVES

Among the judicial archives, those relating to the special courts dedicated to the prosecution of elements opposed or disaffected to the regime are of particular importance. The three that are mentioned are conserved in the Documentary Center of Historical Memory.

### a/ Special jurisdiction for the repression of Freemasonry and Communism (1939–1966)

Created under the March 1, 1940 Act, this new jurisdiction was aimed at persecution and punishment of supporters of ideas “against Religion, the Fatherland and its fundamental institutions and against social harmony”. The Court has the services of the Special Services Section of the Special Delegation for Document Recovery, which was attached as an Auxiliary Office. Its function was to collect the documentation in the Masonic Archives, where the documents seized from the lodges were kept. In 1963, the special jurisdiction for the repression of Freemasonry and Communism was replaced by the Court of Public Order (Law 154/1963).

### b/ National Court of Political Responsibilities (1939–1945)

The February 9, 1939 Act on Political Responsibilities created a special jurisdiction with the same name and charged with the persecution of natural and legal persons who, between October 1, 1934 and July 18, 1936, would have contributed to the creation of the social and political climate that led to the coup d'état of July 18, and from that date to all those who had actively or passively opposed the insurgents.

### c/ Public Order Court (1963–1977)

Under the Law of December 2, 1963, there was created within the ordinary jurisdiction a Court and a Public Order Court to which the rule “confers exclusive jurisdiction to hear crimes committed throughout the national territory, singularized by the tendency in a greater or lesser gravity to subvert the basic principles of the State, disturb public order or sow anxiety in the national conscience”. The Court was also given jurisdiction over the offences provided for in the Law of March 1st, 1940 while the Special Court for Freemasonry and Communism was abolished.

Article 3 of Law 154/1963 provides that it shall have exclusive jurisdiction to try the following offences:

- *Against the external security of the State, against the Head of State, the Courts, the Council of Ministers and form of government, on the occasion of the exercise of the rights of the person recognized by law, for rebellion, sedition, public disorder or illegal propaganda and, provided that they obey a political or social motive, the following crimes: illegal detentions, abduction of minors, breaking and entering, threats and coercion, discovery and disclosure of secrets*
- *Those whose knowledge is inhibited by military jurisdiction*
- *Related offences and incidental misdemeanors of the above-mentioned offences.*

There should be emphasized the work of the Special Court for Crimes Committed in Educational Institutions, which prosecuted cases involving crimes committed by students at universities and other educational institutions. Also important

are the collections relating to the Special Court for the Investigation of Illegal Propaganda in the National Territory.

## CHARACTERISTICS AND CONTENT OF THE ARCHIVES

Probably the first remarkable feature was the dispersion. Without prejudice to the corresponding archives of Ministries that could have a certain link with police control tasks such as Justice or Defense, the archives dependent on the Ministry of the Interior were of the utmost importance precisely because both the police archives and those of the Civil Guard depended on it, and previously on the Ministry of the Interior.

In application of the no-law Proposition approved by the Plenary Session of the Congress of Deputies on June 1 2004, the Council of Ministers agreed, on July 23, 2004, to set up an interministerial commission responsible for *studying the situation of those who, as a consequence of their democratic commitment, suffered repressive actions during the Civil War and Francoism, and until the restoration of the democratic freedoms, as well as for proposing the measures, legal or otherwise, that are necessary to offer them adequate recognition and moral satisfaction.*

Within the framework of the work of this commission, the so-called “Report on Archives” was elaborated, which is a privileged source to know the information contained in the archives of the Ministry of the Interior.

The report states that “a summary in figures of the census-diagnosis carried out at a central and provincial level indicates the existence of 65 linear kilometers of documentation of central services in 46 premises in Madrid and 200 linear kilometers in the units of the peripheral services”.

With regard to content, the report states that the documentation of the *Ministry of the Interior can be classified as follows:*

- *Documentation containing general information. The access regime is free, with no conditions other than material restrictions*
- *Documentation with personal data that does not affect the privacy of persons referring to procedures for the application of the law. In addition to its holders, those who demonstrate a legitimate and direct interest may have access to it.*
- *Documentation containing personal data of a police, procedural, clinical or any other nature that affects the security and privacy of individuals (the majority affected by the Commission).*
- *Documentation affected by regulations on classified matters. This is the case, for example, of the one referring to, and generated by, the information services by the agreement of the Council of Ministers of November 28, 1986. Reference is made in the conclusions of this report to the desirability of revising the scope of this declaration.*

Alongside the archives of the Ministry of the Interior, the police matter was also covered by the workers in the General Archive of the Administration concerning “control and repression of the internal opposition”, which the Report on Archives classifies as follows:

a/ *Administration Control Bodies: As a result of the Civil War, different purification bodies were created in all the Ministerial Departments. A citizen can obtain data on the separation of the public function through the Documentary Series of Political Responsibilities and Purification Files, an archive that contains the purification files of Ministry officials, although those corresponding to the Ministry of Justice are distributed between this Archive and the National Historical Archive.*

**b/** *Judicial oversight and repression bodies: this includes a number of special jurisdictions that disappeared during the transition, such as the Political Responsibility Court, the Public Order Court (TOP), the Public Order Courts, etc. The General Archive of the Administration contains the documentation of the National Court of Political Responsibilities, as well as the documentation of the extinct General Secretariat of the Movement, Trade Union Organization, Ministry of Information and Tourism, the Administration of Justice, and the Devastated Regions collection, as well as a large photographic collection. The Archive guards the procedures followed before the Public Order Court, although not all of them, given that the Civil War Archive of Salamanca also keeps part of these judicial collections. To these courts should be added the documentation coming from the jurisdiction of Vagos and Maleantes (Vagrants and Miscreants), where repression was derived for social (and even ethnic, such as the gypsy population) and not merely political reasons, such as homosexuality, dishonest conduct, pregnancies, abortions, etc. Finally, there is the Penalized and Rebels Archive, already used in previous compensations for the deprivation of liberty which occurred during the Franquist Regime.*

**c/** *Jurisdictional Bodies: the General Archive of the Administration holds the documentation of the First Instance and Instruction and Municipal Courts of the Province of Madrid, where there are archives referring to the non-recognition after the Civil War of judicial resolutions in matters of rights and liberties, subsequently annulled (among others, the final divorce sentences dictated during the republican period).*

To these archives must be added two of those deposited in the National Historical Archives: the General Cause and the archive of police files, whose actions continued until 1977.

Thus, in addition to dispersion, we must add the variety of matters that the police archives covered and that included not only criminal matters, but also civil, labor and administrative matters, both judicialized and non-judicialized (follow-ups, confidential information, confidential reports, etc.)

Finally, the time elapsed and the lack of proper preservation and maintenance has put some of the archives mentioned in the report itself at risk of becoming unusable.

## **THE SITUATION OF THE ARCHIVES DURING THE TRANSITION AND THEIR USE. ARCHIVES CONTROL AND ACCESS RISKS.**

Decree 914/1969, of May 8, which created the General Archive of Civil Administration, warned of a secular lack of Spanish archives:

*Almost all the archives of the Civil Administration of the State, Ministry, General Directorates and other Organisms have currently exhausted their capacity due to the interruption, as of the year nineteen forty, of the periodic remittances that, since the time of Philip II, had been made, first to the General Archive of Simancas and then to the disappeared General Archive of Alcalá de Henares.*

This led, continues the explanatory memorandum of the Decree, to the destruction of a large part of the official documentation that possesses not only historical interest, but also on many occasions, full administrative validity.

To this was added the Decree for economic reasons to conclude that it was essential to establish a current of documentation that would guarantee the preservation of documents that have to

*have historical value and give adequate treatment to those that have a temporary value as a reflection of the rights and duties of the State or citizens, while decongesting public offices and streamlining administrative action.*

This normative provision affected the archives we are now dealing with insofar as it authorized the *General Archive of the Civil Administration* to make a proposal to the *General Directorate of Archives and Libraries* to send to the *National Historical Archive* that documentation which, in its opinion, is more than twenty-five years old, lacks administrative validity and has historical value. The *General Directorate* will decide in each case, after consulting the interested Departments.

Along the same lines was Law 26/1972 of 21 June on the Defense of the National Documentary and Bibliographic Treasure and regulation of the export trade of works belonging to the same.

In effect, the Law integrated in the nation's documentary treasure "the existing collections in the Libraries and Archives of the Public, Central, Local and Institutional Administration, whatever the time to which they belong" but fixed a negative administrative silence to the consultations on whether or not a document was included in this treasure: "Any doubts that may arise regarding the content of this article shall be resolved by the Ministry of Education and Science at the request of the interested party, within two months of the formulation of the consultation, by means of the competent technical services. Once the two-month period indicated has elapsed without the Ministry having replied, it shall be understood that the document or work in question is not included in the concept of Documentary and Bibliographic Treasure of the Nation".

This law foresaw the inclusion of a series of documents in the nation's documentary treasure, but sent the initiative to the Administration: "the National Service of Documentary and Bibliographic Treasure of the Nation will proceed to make a Register-Inventory of the documentary series, collections or pieces that must be integrated in the National Documentary and Bibliographic Treasure".

Thus, the legal framework during the transition was not conducive to the conservation of archives that might have political relevance as such, from the purging of responsibilities to the restitution of property, but only their historical value.

The last law relating to archives, we are referring to Law 16/1985 of 25 June, on Spanish Historical Patrimony, establishes measures for the conservation of documents due to their age, another way of indicating a pretended historical value, but not due to their political transcendence. Thus, article 49 of the law, which is still in force, provides as follows:

*Article Forty-nine.*

*1. For the purposes of this Law, a document is understood as being any expression in natural or conventional language and any other type graphic, sound or image expression given on any type of material medium, including computer media. Non-original copies of publications are excluded.*

*2. Documentary heritage includes documents from any time generated, preserved or collected during the exercise of its function by any public organization or entity, by legal entities in which the State or other public entities hold a majority share of the capital and by private persons, physical or legal entities managing public services with regard to the management of such services.*

*3. Documentary heritage also includes documents more than forty years old that are generated, preserved or collected during*

*the exercise of their activities by entities and associations of a political trade union or religious nature and by entities, foundations and cultural and educational associations of a private nature.*

4. *Documentary heritage also includes documents more than one hundred years old that are generated, preserved or collected by any other private entities or persons.*

5. *The State Administration may declare that certain documents, though not as old as those mentioned in the above sections, shall form part of the documentary heritage.*

Only with the approval of the no-law Proposition of the Plenary Session of the Congress of Deputies, of June 1st 2004, approving a text relating to the recognition of the victims of the Civil War and Francoism, and with the approval of Law 52/2007, of December 26, to recognize and broaden rights and to establish measures in favour of those who suffered persecution or violence during the Civil War and the Dictatorship, were specific measures adopted for the conservation and management of the police archives inherited from Francoism. However, as will be seen, the measures did not arrive in time to prevent the destruction of documents during the Transition.

In general, the use of public archives during the Transition remained unchanged since, in a model of political change “from above”, it cannot be said that there were “risks of access” in the sense that whoever wanted access would be exposed to an evil or a harm. Naturally, there were limits to access, which, as we have seen, were ceded as the Transition process progressed. However, it would be an exaggeration to state that there was a risk which, in fact, could be summed up in the denial of access.

In general, access to the archives was controlled by the administrations owning them and this was maintained throughout the entire Transition process as befits a process directed from power so that those administrations continued to function until the democratic period and, in some cases, until the present, after adaptation to the constitutional regime.

## **ATTEMPTS TO DESTROY ARCHIVES**

There is no doubt that, between 1939 and 1975, there was destruction of archives due to different circumstances.

First, archives were destroyed or expunged to prevent or limit future investigations. As Urquijo Goitia points out, “the last years of Francoism and the first years of the Transition were a real disaster for the historical documentation of this country. The Franco dictatorship not only repressed, but also laid the groundwork to make it difficult to study this period. In the last moments, collections of the legitimating organisms of the Regime (Phalanx, Feminine Section, etc.) or police files of opponents disappeared”.

The Order of the Presidency of the Government of December 19, 1977 published in the Official State Gazette (BOE) of January 13, 1978 arrived too late to save all the collections and, although it had a mechanism to prevent uncontrolled destruction, it also referred to the Ministry of the Interior the establishment of limits on access to certain time series:

*FIRST. – By personnel of the General Directorates of Security and of the Civil Guard, of the Ministry of the Interior, and of the General Directorate of Artistic Heritage, Archives and Museums, of the Ministry of Culture, an analysis will be carried out of all the data, antecedents and documents relating to legally*

*recognized political and trade union activities and organizations that exist in the archives of the two general directorates mentioned above, in order to declare their administrative uselessness and to select those that, due to their historical value, should be conserved.*

[...]

*THIRD. – At the proposal of the general directorates indicated in the first article, the Ministry of the Interior shall determine the periods during which the documentary series selected for conservation may not be consulted, in accordance with the legislation in force*

With regard to the destruction of documents, in the early years of the Transition, the debate arose as to whether or not the police archives should be destroyed, precisely in order to prevent the information collected by the Francoist police apparatus from implying illegitimate interference in the privacy of those under investigation.

In 1978, Senator Josep Benet i Morell led an interpellation in the Senate regarding an internal order of the Ministry of the Interior “ordering the elimination and destruction of the part of all the archives dependent on the General Directorates of the Civil Guard and Security that contains documentation relating to the membership or participation of people in activities or political organizations and trade unions yesterday clandestine and today legally recognized”. In his interpellation, Mr. Benet asked “what measures he has taken and intends to take to prevent the continuation of the savage destruction of archives of public bodies and entities, unfit for a modern State, which are the historical heritage of all the citizens and peoples of Spain, and why a commission, made up of historians and archivists, of the various peoples of the State, with parliamentary representation, has not been created to decide which documents should be preserved because they have historical value”.

The response of the Minister of the Interior, Mr. Martín Villa, was that “the decision to proceed to the administrative disablement of personal records in the archives of the General Directorates of Security and the Civil Guard, containing data and records relating to the membership or participation of persons in political and trade union organizations and activities, prohibited under previous legislation and now legally recognized, responds, as I also had occasion to indicate to Senator Fernández Viagas, in a session of the Committee on Justice and Home Affairs of this House, to a spirit of concord derived from the normalization of Spanish political life”.

Thus, for the sake of the “spirit of concord”, archives were expunged and documents destroyed. The aforementioned order of December 19, 1977, the limitations of which we have already seen, was invoked as a defense against the accusation of destruction of documents.

However, most of the documentation is preserved. As the report on archives itself pointed out, “in Spain an enormous amount of collections related to the Civil War and Franco’s regime are conserved. Neither the conflict itself, nor the transition to democracy, produced a massive destruction of documentation”.

## **DECLASSIFICATION OF ARCHIVES**

As indicated in the “Report on Archives”, the non-law proposition on the recognition of the victims of the Civil War and Francoism,

approved on June 1st 2004, already mentioned, “urged the Government to organize, promote and open the archives, both public and private, where the data required for individuals to have access to existing aid would be kept, and to collaborate in the search for those personal data that would allow them to know the particular cases and recall them in a general way, in order to project them in the social culture of our country, what happened during the Civil War and the subsequent Franco repression. Consequently, one of the tasks entrusted to the Interministerial Commission for the study of the situation of the victims of the Civil War and Franco’s regime is to draw up a report on the conditions allowing access to the public and private archives necessary to carry out its purpose (article 2 of the Royal Decree of September 10, 2004), which, according to paragraph (a) thereof, is the general study of the rights recognized to the victims of the Civil War and to those persecuted and retaliated by the Franco regime, as well as to elaborate a report on the state of the matter”.

Law 52/2007, of December 26, to recognize and broaden rights and to establish measures in favour of those who suffered persecution or violence during the Civil War and the Dictatorship, guaranteeing the right of access to both public and private archives held with public resources:

*Article 22. Right of access to the resources of public and private archives.*

1. For the purposes of the provisions of this Law, the right of access to documentary resources held in public archives and the right to obtain any copies requested is hereby guaranteed.
2. The provision of the preceding paragraph shall be applicable in full to those private archives which are maintained in whole or in part by public funds.
3. The public authorities will adopt necessary measures for the protection, integrity and cataloguing of such documents, in particular in those cases where there is serious deterioration or a risk of degradation

In order to give effect to this right, an administrative procedure has been articulated which, however, is not absolute. There are certain limits:<sup>1</sup>

- *The legal accessibility of the document for not having complied with the deadlines established in article 57 of Law 16/1985, of 25 June, on Spanish Historical Heritage. The documents are accessible if they are older than 50 years old or if more than 25 years have passed since the death of the person affected by the file.*
- *If none of the above requirements are met, access to and reproduction of the documents are reserved for persons whose personal, police or procedural data are included in the documents, or third parties, by means of a request for authorization, provided that they have the permission of those affected or their relatives to consult or reproduce the documentation or prove its use for research.*

Simple or certified copies of the documents may be obtained by requesting them from the respective archive centers that hold the documentation.

## RIGHTS AND ACCESS PROBLEMS

### ACCESS TO ARCHIVES AND CLASSIFIED INFORMATION

As Julio Aróstegui pointed out in his famous 1992 article “Franco’s historiography of Spain. Promises and weaknesses”, “the archives

usable for the history of the Franco period are subject to several types of limitations”. The first of these was the documentation relating to living persons. The second, said the author, “is the serious question of the destruction of certain types of political or police archives, of which there is news, but not enough or contrasted. Third, the illegal removal from the public domain of official documentation of what may be a clear example of what is happening with the documentation emanating from the Head of State during the period, which is currently illegally in private hands”. Aróstegui concluded by pointing out that “certain pretended private archives are, in reality, the result of the improper appropriation of public documents”.

Therefore, there is a problem with access to private archives, which depends on the will of the owner of the archive or, as the case may be, the custodian. However, not all private archives are in the same situation. Perhaps the most interesting case is that of the Francisco Franco National Foundation, which is integrated into the Spanish Archives System, as provided for in Article 66 of Law 16/1985 of 25 June on Spanish Historical Heritage while retaining its status as a Private Archive, and is publicly and freely accessible.

Another issue that should be pointed out is that relating to classified matters which, although they do not directly affect police or judicial archives, may affect other archives such as those of the Foreign Office, which may be relevant to police investigations.

Antonio Malalana Ureña and Lorena Moreno Pérez have analyzed the legal framework that limits the activity of researchers on the basis of the classification of information:

- Law 9/1968 of 5 April 1968 on Official Secrets, as amended by Law 48/78 of October 7, 1978.
- Decree 242/1969 of 20 February 1969 implementing the provisions of Law 9/1968 of 5 April 1968 on Official Secrets.
- Agreement of the Council of Ministers of 28 November 1986 classifying certain matters and matters under the Law on Official Secrets, as extended by the Agreement of the Council of Ministers of 17 March and 29 July 1994.
- Agreement of the Council of Ministers of 16 February 1996 classifying certain matters and matters in accordance with the Official Secrets Law.

The first interesting thing is that two of the four rules that apply date back to the period of the Franco regime. It is true that Law 9/1968 was modified in 1978, in full Transition, but the current regulatory framework presents, as we shall see, notable deficiencies.

In effect, there have been successive agreements of the Council of Ministers which, since Decree 242/1969, have extended the matters considered to be classified. Malalana-Ureña and Moreno Pérez echo a letter from the Ministry of Foreign Affairs listing the matters considered secret:

1. *Spain’s basic positions and strategies in political, security, economic and trade negotiations [...].*
2. *Information on Spanish positions in international or internal conflicts [...].*
3. *Information concerning the actions of terrorist groups and movements associated with them, organized crime and trafficking in drugs, human beings and arms [...].*

<sup>1</sup> See: <http://pares.mcu.es/victimascfpportal/staticContent.form?viewName=copia>

4. Information regarding the deployment of units of the Spanish Armed Forces and State Security Corps and allied both in Spain and in international missions.
5. Negotiations and good offices on kidnappings and the release of Spaniards or foreigners, as well as information on extraditions or transfers of sentenced persons.
6. Contacts for mediation or good offices [...] with third countries and opposition groups and leaders [...].
7. Protection of Human Rights.
8. Asylum and refugee issues.
9. Processing of approvals of Spanish and foreign heads of mission.
10. Issues affecting the sovereignty, independence and territorial integrity of Spain or friendly countries [...].
11. Information relating to the implementation of bilateral or multilateral security and defense agreements, including overflights, stays and stopovers of ships and aircraft.
12. Matters relating to the most serious crimes of international concern over which the International Criminal Court may have jurisdiction.
13. Preparations for the journeys of the King and Queen and the President of the Government and, when circumstances so advise, of ministers and other State authorities.
14. Keys and cryptographic material

Thus, as Malalana Ureña and Moreno Pérez denounce, the classification of documents has gone from a restrictive criterion to extensions that can restrict the freedom of investigators.

## ACCESS TO ARCHIVES, INDIVIDUAL RIGHTS AND PERSONAL DATA

The legal framework for access to archives in relation to individual rights and personal data is marked by article 57 of Law 16/1985, of 25 June, on Spanish Historical Heritage, which establishes a triple access regime:

*Consultation of documents forming part of the Spanish Documentary Heritage referred to in article 49.2 shall be covered by the following rules:*

- a) *In general, once such documents have been duly processed and deposited and registered in the central archives of the appropriate official entities in accordance with legally-established procedure, they shall become available for consultation unless they relate to subjects classified under the Official Secrets Law or that must not be made known publicly because of an express provision of the Law, or unless dissemination of their content*

*may involve risks for State safety and defense or investigation of a crime.*

b) *In spite of the provisions of the above paragraph, it may be possible to request administrative authorization for access to documents excluded from public consultation. Such authorization may be granted, in cases of secret or reserved documents, by the Authority which made the respective declaration, and in other cases by the head of the department responsible for safeguarding the documents.*

c) *Documents containing personal details of interest to the police, courts, medical services or of any other type that may affect a person's safety, honour, personal and family privacy and image may not be publicly consulted without the express consent on the part of those involved or until twenty-five years have passed after the person's death, if the date is known and, if not, fifty years after the date of the documents*

Thus, there is a general principle of free access for consultation with the exceptions of classified information or information relating to State security or the investigation of criminal offences.

This principle is complemented by two rules. The first is the consent of the data subject to access to documents containing certain personal data. The second is the setting of time limits from death or, in any case, from the date of the document.

In principle, this provision is consistent with paragraph#33 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

## LESSONS LEARNED AND RECOMMENDATIONS

With regard to access problems, it is only appropriate to recommend, with the majority of historians, that the expansion of subjects considered to be the object of official classification be discontinued and that at least the cases provided for in the Official Secrets Law be re-conducted.

Similarly, it would be desirable to arbitrate legal mechanisms for the restitution or obtaining of copies of public or official documents held in private archives

Finally, it would be advisable, as recommended in the Report on Archives, to provide the Ministry of Culture with the necessary means to encourage and facilitate the acquisition of private funds, either directly or through agreements with certain countries.

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# PURGES OR DEPURATIONS

JOSÉ MANUEL FERRARY, RAFAEL ESCOBEDO

## INTRODUCTION

During the transition to democracy, in Spain there was no systematic and legal process of purges or depositions. Both personalities from the Francoist political world, as well as from the majority sectors of the democratic opposition, chose to promote a democratization that included as many citizens as possible. Determined to close the deep wounds of the Civil War, in which purges and purifications were common, they attempted to implement a transition that would not generate new grievances that could jeopardize the establishment of democracy.

The first epigraph shows a synthesis of the political, social and economic situation of the country after the death of the dictator, important to understand the viability and problems of a transition without purges. The second point offers a synthesis of the democratic consolidation measures, an alternative to the deputation which was implemented by the last Francoist government and the first democratic ones. The last epigraph refers to the current situation of the debate around the issue, as the lessons learned from the Spanish case are presented.

## SPAIN AFTER FRANCO'S DEATH (1975)

The use of a political purge in a process of transition to democracy is justified, mainly, for two reasons. In the first place, for a pragmatic question: the need to separate individuals or groups from the areas of power that could jeopardize the development of the democratic system. For democratization to be viable, it is understood that it is necessary to remove the elements closest to the previous regime from the inherited state apparatus (administration, security and defense force, etc.), to clear the way for elites committed to democracy. On the other hand, the use of depositions would be justified on moral grounds; justice to the victims of the repression of the authoritarian regime.

The distinction between the first Francoism (1939–1957) and the second (1957–1975), characterized the latter by a progressive opening, modernization and development of the country, as well as by technification of the State apparatus, is a commonplace in the historiography of Franco's regime.

With regard to the Administration, the distinction between the “Regime” and the “State” is consolidated throughout the 1960s. When becoming professional, the political criterion lost weight in favor of a technical one at the time of reaching bureaucratic positions. Progressively, there was a dissociation between the concepts “serving the State” and “serving the regime”. Thus, after Franco's death, we find in Spain a state bureaucracy little politicized in favor of the regime. This was also not very numerous: it was only 9.3 % of the active population, compared to 16 % of the community average.<sup>1</sup> This was the case even in the parallel Administration of the *Movimiento* (the only party of the regime, which also included the *Organización Sindical*, the single union). Although it could constitute a focus of Franco's ideological reserve in some cases, the truth is that it had mostly

become a bureaucratic mass that would end up being docile to its dismantling, already during the Transition.<sup>2</sup>

In the economic field, the regime favored the “normalization” as of 1959, the year in which it was decided to open and modernize the country with the IMF, the OECD and the World Bank cooperation, ending thus, the years of autarchy, through the implementation of a stabilization and economic liberalization plan. Although the economic system continued to suffer from excessive control by the authorities, during these years progress was made in the construction of an orthodox free market economic system.<sup>3</sup> Thus, although there were influences, contacts and transfers, the distinction between the political elite of the regime and the economic elite of the country was becoming sharper since then.

This “depoliticization” of key sectors, as well as the progressive corrosion of the legitimacy of the regime in its second stage, had a decisive impact on Francoist elites. After Franco's death, there were many people who assumed the need for reform, as well as those who agreed to collaborate with the democratic opposition.

Said democratic opposition had undergone a process of growth, consolidation and gradual transformation. Starting with the Communist Party, and progressively assumed by all groups, it promoted a policy of “national reconciliation” since the 1960s with a view to an orderly transition to democracy.<sup>4</sup> From the beginning of this decade the idea of “purging the fascist apparatus” disappears among the opposition. This is another reason why these types of policies were not promoted during the Transition. A consensus between the opposition groups was generated and later assumed by the government of Adolfo Suárez, in favor of an inclusive process, of reconciliation of the “*dos Españas*” seen in the Civil War, and of the use of amnesty as a means to do so.

Thus, it was intended to attract a broad social mass that, without rejecting Franco's figure or his regime, was open to an opening of the system. It is symptomatic that in a survey conducted at the end of 1975, 53 % of Spaniards declared that they felt “pain or sorrow” for the death of the dictator, while a clear majority declared themselves in favor of democracy, with an overlapping of the two positions in many cases.<sup>5</sup> Being in favor of democratic change did not always imply, therefore, a total rejection of the previous order, and in this context a demonization of Francoism could have destabilized the process of change, as well as caused a certain loss of legitimacy.

In this way, when Franco died in 1975, there was a situation in Spain at a social level and state structure that, if not clearly in

1 Charles Powell, *España en democracia, 1975–2000*, Barcelona: Plaza y Janés, 2001, 99–101.

2 *Ibid.*, 182

3 A simple work for more information: Joaquín Estefanía, *La larga marcha: medio siglo de política (económica) entre la historia y la memoria*, Barcelona: Península, 2014.

4 Santos Juliá, *Transición. Historia de una política española (1937–2017)*, Barcelona: Galaxia Gutenberg, 2017, 230–235.

5 Charles Powell, *España en democracia, 1975–2000*, Barcelona: Plaza y Janés, 2001, 45–46

favor, at least was open to democratic change. The absence of a purge process is understood, opting for a pragmatic approach, from this point of view: there was no imperative need to perform purges, because the dynamics of the political and ideological evolution of the country already pointed towards democracy. With one important exception: the Army.

If there was an institution in which Francoism was able to penetrate and consolidate itself, these were the Armed Forces, defenders of the legality and integrity of the Francoist State. The Army's status was reflected in its autonomy from the rest of the system: the key to the chain of command was the Head of State, i.e. Franco, and they were represented in the government cabinet by three military ministers, which placed it outside the civil power. Their independence and loyalty to Franco, therefore, did pose a risk of involution, as demonstrated by the coup attempts in 1978, 1981, 1982, and 1985.

And, nevertheless, a systematic purging process was not performed, but it was decided to always act afterwards; i.e. to react by judicial means once punishable acts had been committed. The management of the issue of the Armed Forces is, precisely due to its difficulty, very illustrative of the Transition. Protection of the viability of the process was what prevailed when addressing the problem. Certainly, the Armed Forces could be a focus of opposition. But, in an institution with a strong, closed esprit de corps, where the individual grievance was shared by the whole,<sup>6</sup> would a depuration have been appropriate?

The danger that a strong corporate reaction would jeopardize the Transition led to the integration of the military into the process; in the first place, through the figure of the Monarch, the Head of State, to whom the Army had sworn its allegiance, despite the erosion of his figure before the eyes of some military sectors; and, in second place, through the reform and progressive subjection and subordination to the military Government. Said reform was made based on the more open elements of the body, as well as those loyal to the monarch, and slowly and progressively, acting comprehensively before an institution that witnessed how its political and social status was reduced.<sup>7</sup> Without forgetting the tensions produced by the terrorism of the Basque nationalist group, ETA, whose main objective was to provoke the destabilization of this process through its attacks on the defense and security forces.<sup>8</sup>

This way of proceeding with the Army was justified in the "moral" order by the amnesty policies, initiated by the opposition and assumed by the Government, which promoted a message of reconciliation, forgiveness and forgetfulness. In that context, one may also ask whether it would have been coherent not to apply that spirit of reconciliation to the Armed Forces.

## THE TRANSITION AND ITS CONSOLIDATION: THE GOVERNMENTS OF ADOLFO SUÁREZ AND FELIPE GONZÁLEZ

The key ideas that explain the absence of a systematic purge policy in the Spanish case have already arisen: absence of an imperative need to perform them and a claim by the opposition; corrosion of the unity of the Francoist regime; consensus on the idea of national reconciliation; an attempt to attract as many social sectors as possible; primacy to the stability of the process over other

considerations, the choice of the path of the reform of the system to reach a democratic rupture proceeding "from law to law".

## THE GOVERNMENTS OF SUÁREZ (1976–1981)

As anticipated, one of the ways proposed by the opposition to achieve reconciliation was an amnesty. The government led by Suarez, still within Francoist legality, decreed at the end of July 1976 a first, partial amnesty. A total amnesty for all political prisoners, aimed at freeing the last jailed for terrorist offenses, was approved in October 1977, by the democratic parliament elected in June. The proposed law of the *Partido Socialista Obrero-Español* (PSOE) [Spanish Socialist Workers Party] was completed by the *Unión de Centro Democrático* (UCD) [Democratic Center Union], which added the extinction of criminal responsibilities for crimes of political intent to the officials of the previous regime.<sup>9</sup> The law was approved by an absolute majority.

Amnesty policies, which thus nullified any attempt to purge individuals who had served the previous regime, were aimed at preventing the creation of grievances in the present, as well as resolving those of the past. In this line, the reparations policy implemented by the Government is understood and explained in the corresponding chapter.

Another of the measures implemented by the first government of Suárez was the dismantling of the organs of the *Movimiento* (Movement), including the *Organización Sindical* (Trade Union Organization), whose officials were distributed to different positions of the Administration. Thus, central institutions of the previous regime were dismantled, but avoiding depurations.

All of this was accompanied by a gradual increase in the influence of the opposition in the process. Government-opposition contacts, reform of symbol laws, trade-union freedom, legalization of opposing parties, the Moncloa Pacts, etc.<sup>10</sup> allowed a regeneration of the country's culture and political elites by consolidating new blocs and political groups with effective political responsibilities.

Key in this regeneration process was the call for elections in a phased manner. The first democratic elections of June 1977 allowed new elements to enter into government organs. From the former Francoist *Cortes*, only 77 of the 557 members would access the new hemicycle,<sup>11</sup> and only 24 were among the parliamentarians of the UCD,<sup>12</sup> the majority party, with 165 deputies. Likewise, the municipal elections of 1979 would contribute to give entry to new elites in positions of responsibility at the local level, and the general elections of that same year to consolidate multi-party politics.<sup>13</sup>

The entry into the political system of these new elites consolidated a political speech that indirectly marginalized the political

6 Narcís Serra, *La transición militar: Reflexiones en torno a la reforma democrática de las fuerzas armadas*, Barcelona: Debate, 2008, 185

7 Charles Powell, *España en democracia, 1975–2000*, Barcelona: Plaza y Janés, 2001, 260.

8 Ibid., 262–263

9 Santos Juliá, *Transición. Historia de una política española (1937–2017)*, Barcelona: Galaxia Gutenberg, 2017, 425–438.

10 For more information: Charles Powell, *España en democracia, 1975–2000*, Barcelona: Plaza y Janés, 2001, 145–222.

11 Charles Powell, *España en democracia, 1975–2000*, Barcelona: Plaza y Janés, 2001, 169

12 Santos Juliá, *Transición. Historia de una política española (1937–2017)*, Barcelona: Galaxia Gutenberg, 2017, 510.

13 Ibid., 542–543

groups most strongly associated with Franco's regime, somewhat evident after the general elections of 1979. Democratic Coalition, the party led by Fraga, a former minister of the regime, which integrated personalities from the moderate Francoist sector, barely got 6 % of the votes. National Union, the party of former immobilists, gained only 2.3 % of the votes. Thus, without the need to implement a purge process, the parties identified with the country's recent past, and the political elites that integrated them, were placed on the margins of the electoral spectrum and, therefore, of the centers of political power<sup>14</sup>.

## THE GOVERNMENTS OF FELIPE GONZÁLEZ (1982–1996)

The electoral victory by absolute majority of Felipe González in 1982 was especially important for giving the Government to a party that was clearly unrelated to the previous regime.<sup>15</sup> Following the line initiated by Adolfo Suárez in the summer of 1976, the PSOE would continue the policies of orderly transition and consolidation of democracy: it reinforced the legal framework of the new order, but avoided insulting ostracisms. Thus, the PSOE assumed the principle that, in the words of Felipe González himself, consider that "any collaborator, at any stage of the previous regime, is disqualified forever [...] would be an almost insurmountable obstacle to reach a great national agreement that would allow an orderly democratic transition."<sup>16</sup>

In these years, the constitutional order was settled. With regard to the regeneration of the political class, the consolidation of the State of the autonomies (process initiated in 1979) was essential because the creation of new parliaments, bureaucracies, laws and autonomous institutions configured a new establishment, without connection with the previous.

Likewise, the socialist governments were able to take the reform of the Army further than the UCD. After the coup crisis of February 23, 1981, and the attempts of 1982 and 1985, the PSOE performed a profound reformist program that definitely subordinated the Army to civil power, by placing the Armed Forces under the jurisdiction of the president and the Minister of Defense. In a coordinated manner, conflicting elements were isolated through legal means and justified by acts of indiscipline or rebellion,<sup>17</sup> while at the same time a policy of approaching the high command and modernization of the Army was undertaken.<sup>18</sup>

As for the officials, some modifications were introduced, called to put an end to the corporatist and, according to the Government, excessively conservative tendencies. An example of this was the reform of the Judiciary in 1985, which put in the hands of the parliament the election of the members of its highest authority, the General Council. Politicizing some sectors of the Administration, measures of this type, contributed to consolidate the regeneration of the State at all levels. In other cases, administrative reforms were able to be taken advantage of that, although aimed at improving the efficiency of the civil service, also served to regenerate it. This is the case of the Public Service Reform Act of 1984, which, rigorously applied since January 1987, set the retirement age for public officials at 65 years of age, removing in a clean and orderly manner, elements from Francoism.<sup>19</sup>

Another area of reform was that of the security forces, probably the most conflictive aspect of the transition process. During the governments of Suárez, it was attempted to accommodate them into the new democratic constitutional order, through reforms such as the suppression of the political police of the regime<sup>20</sup>, the recognition of the power to create police

forces particular to some autonomous governments, or the distinction and autonomy between defense and security forces; all this without displacing prominent repressors, who continued to hold positions of responsibility during the socialist government. At the end of the government of Felipe González it was decided to renew the police leadership, as a reaction to the government crisis caused by the involvement of the Government in dirty war operations against the terrorist group, ETA, in which agents from Francoism had played an important role.<sup>21</sup>

While it is true that the police aspect may be one of the black points of the transition, it is also worth asking whether the media and judicial pressure, and the social rejection to which the government was subjected to, which would end losing the elections, do not reveal precisely the consolidation of a solid democratic system. Also, without excusing it, the use of shock measures (illegal or on the verge of legality) by governments in contexts of great terrorist tension has been relatively common in democratic states such as Germany, France or the United Kingdom.

## CURRENT SITUATION AND LESSONS LEARNED

The crisis of confidence in the Spanish political class after the Great Recession of 2008, the corruption scandals within the two main parties at the national level (PP and PSOE), the social protest phenomena that some commentator called the "Spanish spring" (2011), as well as the Catalan separatist crisis (since 2012) have introduced the questioning of the transition into the political debate, often emphasizing the absence of a depuration process. This new speech, despite being previously restricted to marginal anti-system circles, has managed to jump into broader opinion sectors, has its roots in the prejudice that the problems nowadays are explained by the original structural deficiencies. From this perspective, the Transition was actually an entelechy, since the power, whether administrative, judicial, police, of course military, as well as even financial and business, continued in the same hands. The rejection that certain sectors of the left or of peripheral nationalisms generated certain actions was interpreted, by elevation, as an extension of Francoism by other means. It is not difficult to find representations of this argument in the press or in political speeches.

However, it is important not to lose sight of the high and increasing rates of popular legitimacy that the system has enjoyed

14 At the municipal level this is more treatable: in spite of the important entry of alien political elites to the previous system, it was common for Francoist councilors to be elected in the municipal elections of 1979. It is also true that, in those cases, appearing under the acronym of the Suárez's party, the symbol of change, increased the chances of electoral success, as evidenced by the results of the UCD compared to the poor results of Fraga's party.

15 Ibid.

16 Sergio Bitar, Abraham Lowenthal (eds.), *Transiciones democráticas: enseñanzas de líderes políticos*, Barcelona: Galaxia Gutenberg, 2016, 504.

17 Narcís Serra, *La transición militar: Reflexiones en torno a la reforma democrática de las fuerzas armadas*, Barcelona: Debate, 2008, 186–208 y 235.

18 Charles Powell, *España en democracia, 1975–2000*, Barcelona: Plaza y Janés, 2001, 373–378.

19 Official State Gazette, August 3, 1984, <https://boe.es/buscar/doc.php?id=BOE-A-1984-17387>.

20 The Brigada Político Social [Social-political brigade]

21 For more information: Charles Powell, *España en democracia, 1975–2000*, Barcelona: Plaza y Janés, 2001, 532–540

since the 1980s. In a study conducted for the newspaper *El País* 20 years after Franco's death, 82 % said they felt proud of the way in which the transition had taken place.<sup>22</sup> In 2008, the percentage of those who valued democracy as the best possible system had increased to 85 %, <sup>23</sup> remaining stable until today.<sup>24</sup>

Precisely, these data indicate that the success of the transition must be valued in perspective, focusing not only on the process, but on the result. With its deficiencies, Spain enjoys a solid democratic system, comparable to that of the rest of the countries of the European Union. It could hardly have achieved a peaceful transition and with a high degree of acceptance of the system, growing in time, were it not for the search for ways of democratic consolidation alternatives to the depuration.

In Spain there were social conditions and a concrete common political will to make this possible. However, it is possible to extract some lessons applicable in other contexts; in the first place, the pragmatic approach to the question. It is vitally important to consider the extent to which purges are essential to ensure the democratizing process. The social tension and the grievances that purges can generate could increase the risk of involution or civil confrontation, or the exclusion from the system of an important social mass.

Likewise, the development of a State policy, aimed at democratizing the system in a progressive, slow but sure way, through

recourse to legislative reform through consensus, was fundamental to the final success. A renunciation of maximalist projects implied a renunciation of purges, which would probably have destabilized the process. The primacy of the possible over the desirable by some groups is another of the lessons of the Spanish case.

As it has been seen, for all the above, Spain opted for an integrating transition, reinforced by the moral argument of amnesty policies, a supposed starting point for the reconciliation of the country and a new political culture.

Another lesson learned refers to memory policies. An adequate "memorialization" of the process and of the values of the transition would help as a counterweight to the new stories, which distort the reasons and consequences of the decisions taken at that time, and which require an explanation in historical perspective, as is the case of the option for democratic change without depurations.

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22 *El País*, 19/11/2001. Ver [https://elpais.com/diario/1995/11/19/portada/816735602\\_850215.html](https://elpais.com/diario/1995/11/19/portada/816735602_850215.html)

23 Omar G. Encarnación, *Democracy without justice in Spain: the politics of forgetting*, Philadelphia: University of Pennsylvania Press, 2014, 196

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# INVESTIGATION AND PROSECUTION OF REGIME CRIMES

JOSÉ LUIS ORELLA MARTÍNEZ

## INTRODUCTION

The investigation of crimes committed by supporters of the totalitarian ideology in Spain is complex due to the political evolution. After 1939, with the configuration of the authoritarian regime of General Franco, numerous criminals guilty of torture and murder (around 72,344 victims from the Popular Front according to Ramón Salas Larrazabal) were prosecuted in trials where those responsible for the national area were not included, due to being the winners. After some violent episodes produced by the Maquis (anti-Francoist Guerrilla Organizations), the following experience will come from the emergence of a new symbol of terrorism during the second Francoism. As of 1957, the best known was ETA, but which would be accompanied by different groups of revolutionary communist ideology; many of them coming from extremist splits of the PCE (Communist Party of Spain, which exerted an almost hegemonic work of the opposition to Franco's regime in its eagerness to demolish it). The fight against its activities will be performed by the Political-Social Brigade, whose components will shape, during democracy, the fight against terrorism through the Central Research Brigade, for being faithful servants of the executives of the UCD and the PSOE. These people are those who, due to their interrogation procedures, similar to the French or American police in the Cold War, have appeared in the press accused of being "Francoist criminals" even though their best-known crimes were committed in the first twenty years of Democracy.

## DESCRIPTION OF THE STATUS OF THE ISSUE

According to the historian Ramón Salas Larrazabal in his work *The Exact Data of the Civil War*, he quantified 72,500 deaths in the Republican rearguard and 35,500 in the National one. National repression focused on the elimination of cadres and activists from the Popular Front parties. On the contrary, in the Republican zone, the highest number of deaths was because the official authority disappeared in favor of the Revolutionary Committees, who throughout the conflict initiated a systematic hunting of the ambushed enemy, exterminating those groups considered counter-revolutionaries, as was the Catholic clergy. In the repression after the Civil War, until 1952, the figures speak of 22,716 death penalties issued by the War Councils, from which only half of those convicted were executed, replacing the remaining penalties with mere imprisonment. With respect to the internal population, prisoners amounted to 270,719, mostly soldiers surrendered from the popular army. However, with the policy of redemption of sentences, in 1947, 36,379 inmates remained in prisons.

In the field of political opposition, the parties of the Republican period were non-existent, except the PCE, who had adapted to the new circumstances, and had the economic and media

support provided by the USSR during the time of the Cold War. The recruitment of upper-class students, and the infiltration into the Church labor associations, will provide the PCE with the political hegemony of the opposition. However, the Communists will have their own splits, such as the Maoist Communist Party of Spain (Marxist-Leninist) PCE (m-l) in 1964, from which, ten years later, the terrorist group Revolutionary Anti Fascist and Patriot Front (*Frente Revolucionario Antifascista y Patriota*, FRAP) will be organized; In 1967, the Paris PCE group will follow the same path, due to its Maoist tendency, as the Marxist-Leninist Organization of Spain (*Organización de Marxistas-Leninistas de España*, OMLE), although in 1975, it became the PCE (reconstituted) and created its armed wing that will be the First of October Anti-Fascist Resistance Groups (Grupos de Resistencia Antifascistas Primero de Octubre, GRAPO); In 1968, the PCE (VIII-IX) comes on the scene, following a pro-Soviet line, because of the criticism that the PCE made of the invasion of Czechoslovakia. These groups will be persecuted by the Political-Social Brigade. One of the most important international cases will be the arrest of Julián Grimau in 1962. The communist leader was during the war the head of the Criminal Investigation Brigade and inspector of the Military Intelligence Service (*Servicio de Inteligencia Militar*, SIM). Identified as one of those responsible for the communist Cheka (Secret Police) in Barcelona where he practised torture, and for also being responsible for the murder of 62 supporters of the Nationals, Grimau was sentenced to death and shot on April 20, 1963. Shortly after, the Official State Bulletin (*Boletín Oficial del Estado*, BOE) of 1 April 1969, said: "Article first. All crimes committed prior to April 1, one thousand nine hundred and thirty-nine are declared prescribed. This prescription, through the Ministry of the Law, does not require being judicially declared and, consequently, will take effect with respect to all kinds of crimes, whatever their perpetrators, their seriousness or their consequences, regardless of their qualification and alleged penalties, and without taking into account the rules established by the Codes in force regarding the calculation, interruption and resumption of the statute of limitations for the offense ...". Since then, criminals of the Civil War, such as Santiago Carrillo, General Secretary of the PCE in the final years of Francoism, had been accused of being responsible for the Public Order in Madrid, during the war, and also, for being responsible for the murder of four thousand detainees on the outskirts Madrid. The Measure of 1969 closed the prosecution of criminals on the defeated side, who could no longer be prosecuted for their crimes during the Civil War. Those on the winning side were never prosecuted during the Francoist period.

## DESCRIPTION OF THE TRANSITION

The Amnesty of 1969 and the development of the Rule of Law, oriented the regime towards an openness that led to a Democracy

recognized by the rest of the western countries. Repression will be irrelevant in the years of economic growth, except in communist groups. Opponents of other ideologies were part of the regime and helped the evolution of the regime. As for the death sentences, they will not be applied until the end of the regime in 1975, after the fall of the technocrats of Carrero Blanco, killed in December 1973, and the replacement of his team by his greatest enemies, who were the ones who visualized the images of police repression in the street, which remained during the first governments of Democracy.

During that period, the greatest violent totalitarian element was the ETA terrorist group (Euskadi Ta Askatasuna) born in 1959. The group members came from the group called EKIN, who were university students, children of families of Basque high society and supporters of Basque Nationalism. The group had formed seven years before and had been integrated into the Basque Nationalist Party (*Partido Nacionalista Vasco*, PNV) youth organization, the EGI (Euzko Gastedi-Basque Youth). However, the passivity developed by the *Jetzales* (Basque nationalists), raised the criticism of the former members of EKIN, who became independent again to fight for Basque independence through violence. The resulting ETA will be organized into four fronts: political, cultural, economic and military, similarly to the Algerian FLN that in those years fought for its independence against France. The terrorist organization will not have the authority to fight on all fronts. The majority ideological current will be the one that defends the Third World thesis. This stated that each action encouraged a repression and in a phased manner, the people would be encouraged to support the armed struggle, by the repressive action of the police. The establishment of a Basque socialist and sovereign State could only come from the use of violence, as the Algerian case had been. Some leaders, such as Eduardo Moreno Bergaretxe, "Pertur", leader of the ETA political-military, who was favorable to an evolution towards political activity in the new Spanish Democracy, would disappear in France in 1976, at the hands of his comrades.

In December 1970, a trial of sixteen members of ETA, accused of four murders, provoked one of the biggest campaigns in favor of the terrorists. The defense lawyers seized the moment to prosecute the regime. The clashes between the police and demonstrators, supporters of ETA, took place in Madrid, Barcelona, Bilbao, Oviedo, Seville and Pamplona. On December 12, three hundred artists occupied the Abbey of Montserrat claiming an Amnesty and the right to self-determination. However, five days later, half a million Spaniards gathered in the Plaza de Oriente proclaiming their adherence to the regime. At this time, ETA increased their capacity for action, thanks to the media effect of the trial, taking advantage of it to make new recruits and rebuild the group. The assassination of the president of the government, Admiral Luis Carrero Blanco, in December 1973 and a subsequent attack, in September 1974, with fourteen dead, will be ETA's most violent blows during Francoism.

The arrival of democracy caused ETA to play a decisive role in the new political configuration in the Basque Country. The murders of Basque citizens of rightist sympathies increased, taking on the aspect of true ethnic cleansing. The police, thanks to the work of an infiltrator, will get to arrest much of the leadership dome of ETA political-military. In the same year, on September 27, the death penalty of three members of the FRAP and two of ETA, who were responsible for blood crimes was carried out; however, due to there being a campaign of political support from

the opposition and from abroad that made people forget their victims, on the contrary, the regime was condemned. In those years the GRAPO, one of the terrorist groups that emerged from the radicalized dissent of the PCE, had begun its bloody path.

Already in the Transition to Democracy, on October 15, 1977, the General Amnesty Law that released political prisoners and hundreds of ETA activists and other terrorist groups was signed. In the case of ETA, those released quickly reconstituted an organization that was dismantled and starred in the deadliest period of terrorism with one dead every three days in the Basque region. Its performance until the arrival to Democracy was 44 murdered. It will be thereafter, with the arrival of the amnestied militants, the economic aid provided by the extortions and the security protected by France, when their offensive against Basque society is unleashed. In 1976, 18 were killed; in 1977, 12; but in 1978, with the reorganization of the terrorist group, they rise to 66; in 1979, they increase to 80; and in 1980, they reached their annual maximum, 98. The profile of the murdered was a person of local importance whose elimination extinguished the possibility of being able to found a rightist party in that locality, which with his disappearance consolidated the hegemonic position of the Nationalist Party Basque (PNV) in the Basque rural area. To achieve its objectives, the following years will be of real importance with the massive elimination of members of the Armed Forces, public order and Civil Guard. The indiscriminate actions against the military were an attempt to provoke repressive action by the military that led to massive support for the ETA cause.

The Spanish Democratic Transition has been disclosed as a role model, especially in Latin America, for describing the evolution from an Authoritarian system to another Democratic system in a bloodless way. However, the streets were bloodied by the action of virulent groups of the extreme left and by groups directed from the State, which were cataloged from the extreme right, to recruit their activists in that ideological field. The data provided by Mariano Sánchez Soler in his work are devastating. Between 1975 and 1983, there were 591 deaths from political violence (terrorism of the extreme left, extreme right, dirty war and repression). Of these, 188 of those killed, the least investigated, fall within what the author defines as "political violence of institutional origin". From the death of the Head of State on November 20, 1975 until December 31, 1983, in just eight years of Democratic Transition, 2,663 victims were counted for political violence between the dead and hospitalized wounded. Of these 2,663 victims, a total of 591 people had lost their lives. As for the injured, according to the only data available from the Interior Ministry, more than 1,000 were victims of leftist and nationalist terrorism (ETA, GRAPO, FRAP and others), and a total of 1,072 injured were victims of violence triggered by police repression and groups promoted by the State.

A report of the Basque Government's Office for Aid to Victims of Terrorism of 2010, directed by Maixabel Lasa and José María Urquijo, and commissioned by the Basque Parliament, recorded between 1975 and 1990, 74 terrorist acts of the parapolic groups in the Basque Country in that time, with a balance of 66 dead. The murders of this terrorism were claimed by the GAL (*Grupo Antiterrorista de Liberación*) (24), Spanish Basque Battalion (18), Triple A (8), Spanish Anti-Terrorist Groups (6) and others. The linking of these groups with Gladio (a secret intelligence network that operated in Europe under the direction of NATO) was discovered on October 24, 1990 when the Italian Prime Minister Giulio Andreotti announced their existence. One

of the police officers of this period, with a strong presence, was Roberto Conesa, head of the Political-Social Brigade, who in subsequent services against the terrorist fight, was awarded in 1977 with the Gold Medal for Police Merit by the Minister for Home Affairs, Rodolfo Martín Villa, who was in office from July 5, 1976 to April 5, 1979, one of the moments of greatest political violence in the streets. Conesa was a man of the regime, a young talent of the single party, an enemy of Carrero Blanco's technocrats, and who made a career in politics and in public enterprise, as one of the main leaders of the UCD, the centrist formation that led the governments of Democracy. His predecessor had been Manuel Fraga Iribarne, in office from December 12, 1975 to July 5, 1976, who was the founder of the AP, one of the sworn enemies of technocrats. During his term, the events that confronted traditionalist factions and caused the Acts of Montejurra, with two dead in May 1976, followed. Another important event was the events of Vitoria, on March 3, 1976, with five dead, because of a labor protest, which was severely repressed and ended in a bloody way, endorsing the discourse of nationalists and independentists about the repression of the Spanish State.

On April 14, 2010, a complaint before the Courts of Justice of the Argentine Republic requesting an investigation of the crimes committed by the members of the Franco dictatorship to be conducted identifying those responsible and penalizing them was filed. The petition came from relatives of PCE members, although without distinguishing victims from guilty parties who had been tried for their crimes after the Civil War. However, most of the facts raised as crimes of Francoism, are subsequent to the death of the Head of State, Francisco Franco, and the defendants, are the aforementioned ministers and their police teams, who participated in the service of former governments.

## CURRENT STATUS

The legal process that has developed in the recognition of the right-wing of the populist front-side during Democracy was to equate in social services those who served on the defeated side. The laws and decrees issued in their favor were the following:

- Decree 670/1976, of March 5, which regulates pensions in favor of the Spaniards who, having suffered mutilation because of the past contest, cannot be integrated into the Honourable Corps of Disabled in the War for the Fatherland (*Benemerito Cuerpo de Mutilados de Guerra por la Patria*, BCMGP)
- Law 46/1977, of October 15, on Amnesty.
- Law 5/1979, of September 18, on the recognition of pensions, medical-pharmaceutical assistance and social assistance for the widows, children and other relatives of the Spaniards who died as a result or on the occasion of the last Civil War.
- Law 35/1980, of June 26, on pensions to the mutilated ex-combatants of the Republican zone.
- Law 6/1982, of March 29, on pensions for Civil War mutilates.
- Law 37/1984, of October 22, on the recognition of rights and services provided to those who during the Civil War were part of the Armed Forces, law enforcement agencies and the Carabineros corps of the Republic.
- Eighteenth additional provision of Law 4/1990, of June 29, on the General State Budget for 1990, which determines the compensation in favor of those who suffered imprisonment as a result of the assumptions contemplated in Law 46/1977 of 15 October, on Amnesty.

However, under the socialist government of Rodríguez Zapatero the process has been to break the consensus, and with the support of the autonomous governments of nationalist ideology, proceed to stigmatize the previous regime, through the control of education and culture, by equating Francoism with Nazism and Fascism, and promoting an idealized version of the Second Republic. The revolutionary vision of the last republican government, which favored murders and attacks that moved a part of society to revolt with a minority part of the army in defense of their freedom as Catholics is denied. The communist and totalitarian character of the PCE in the opposition is denied; the criminal nature of the terrorist groups has been treated very late and the criminal action of members of the State has been hidden because they are politicians of the Democratic Transition.

In that line will be framed the Law 52/2007, of December 26, which recognizes and extends rights in favor of those who suffered persecution or violence during the Civil War and the Dictatorship, popularly known as the Law of Historical Memory, a law of the Spanish legal system, approved by the Congress of Deputies on October 31, 2007, which will equate Francoism with Fascism and Nazism, against the opinion of accredited professionals in History, and that has proceeded in its application to the elimination of street names because of their relationship with Francoism, but which has actually been extended to names of religious people or conservative profiles without links to Francoism.

## LESSONS FOR TODAY

### POSITIVE EXAMPLES

The Democratic Transition was conducted in a bloodless manner, from power, with the leadership of the future King, in consensus between moderate groups of the regime and moderate groups of the opposition, as a normal channel where the regime would land after the disappearance of the Head of State.

When Spain led its Transition to Democracy without bloody periods, it also favored a role model by maintaining the economic standard of living and naturally deriving a Democratic Parliamentary system. The Spanish governments, later of the Monarchy, accepted the path that led to the accession of Spain to the western bloc for its military integration into NATO and politics in the EEC.

The forgotten Amnesty of 1969, helped to not fracture Spanish society, and that of 1977 helped to start a Democratic regime from scratch, where the consensus between the right and the left, resulted in a constitution that officially included all political forces, even Basque and Catalan nationalists, establishing a framework that should bring everyone together, leaving no arguments for the terrorist struggle of those in favor of totalitarian positions.

### NEGATIVE EXAMPLES

The assassination of Admiral Carrero Blanco in 1973 meant the elimination of all his technocratic team and its line of government. The new government of Arias Navarro, was unable at an international level to maintain its open image and ended up reinforcing the need to eliminate a repressive and sterile regime in any type of openness. Even after the death of General Franco himself, the repressive profile was maintained by the Minister of the Interior, Manuel Fraga, and his successor Rodolfo Martín

Villa. Both responsible for the main crimes of Francoism made after the death of the dictator.

The repressive apparatus of the last two years of Francoism remained under the orders of its superiors without debugging, and it was those who staged the dirty war against terrorism, maintaining a mode of conduct similar to that of the era of Francoism, under the subsequent guidelines of their bosses with the centrist and socialist governments. In a very similar way to characters like the Papon case in France.

## RECOMMENDATIONS

The recommendations are mainly in education. The history of Francoism is about to be made and today it has failed. The spirit of the democratic consensus with which the Transition took place

disappears with the generation that led it, but the Basque and Catalan nationalists have not yet proceeded to their integration into a culture of Democracy.

A democracy represents the will of a plural society, which decides to live according to standards respected by all and that are taught through education. Both the left and the right have made efforts to favor criteria in a climate of dialogue, avoiding the use of historical facts or references from the past that arouse social ruptures again.

A study of the memory made by professional and academic criteria and far from the policy that avoids its contamination and fraudulent use is necessary. In the Spanish case, a study of the crimes *of the regime is necessary; it was born from a Civil War, from an undemocratic opposition to the regime, led by communism and the use of the most radical elements of terrorism as a form of political change.*

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# REHABILITATION OF VICTIMS

SANTIAGO DE NAVASCUÉS, RAFAEL ESCOBEDO

## INTRODUCTION

The Spanish Civil War and the forty years of Dictatorship that followed left a large balance of victims of serious human rights violations both on the National and the Republican sides, i.e., executions, arbitrary detentions, disappearances, forced labor of prisoners, and torture, among others. The consequences of the conflict were dramatic for several generations. The total numbers of victims are unknown, partly because some files have remained closed so far, due to the dispersion of information and the absence of definitive studies. The rehabilitation process has been characterized by political disagreements and a lack of agreement on how to implement a common policy.

## DESCRIPTION OF THE INITIAL SITUATION

The most recent demographic studies have calculated a death toll in excess of 540,000 people in the years of the Civil War, among which were those killed in combat, which are close to 300,000, for retaliation, and those who perished due to poor living conditions.<sup>1</sup> We can distinguish two phases in the repression: the one that took place during the years of the war (1936–1939) and that of the regime years (1939–1975). Historians agree that extrajudicial execution, mass incarcerations, various forms of torture, rape and plunder took place on both sides during the first phase. On both sides, specific bodies aimed at the repression of the political adversary by violent methods were established. The whereabouts of many of those people executed are still unknown.

As for the numbers of repression on both sides, the version of historians closest to the Francoist version is expressed in the book by Ramón Salas Larrazábal,<sup>2</sup> a position in which Pío Moa<sup>3</sup> has also reaffirmed. According to this version, those shot by the Republican side would be around 72,500, while those shot by the Francoist side would be about 58,000, including around 23,000 executions after the war. However, investigations of the last twenty years have questioned these figures, which have been increasing in recent years.<sup>4</sup> The data of the previous historiography have been corrected upwards in terms of the Francoist repression of 1936 and downwards in terms of the Republican repression. Santos Juliá estimates a total of 100,000 shot during the war and 40,000 during the postwar period, while the figures of the Republican repression, which according to the historians of the regime were about 70,000, should not exceed 50,000.<sup>5</sup>

The most recent studies are those collected by Espinosa, which estimate 130,200 victims of the Francoist repression during the war and 49,270 victims of the Republican repression.<sup>6</sup> At the end of the conflict, the Francoist regime put a lot of effort into repairing the damage done to victims of revolutionary violence, both materially and symbolically.

In addition to the direct victims of repression during the war, there was a second phase of repression. After the victory of the Francoist side, the victors prepared to lay the foundations of the new State. The new regime proceeded to dismantle

the Republican regime, to outlaw political parties and unions, and to pursue any manifestation of political, religious or moral dissent. Thus, the repression of all those behaviors conceived as incompatible with the new regime was formalized. Although violence diminished significantly after the first months of the war, the State repression apparatus continued until the end of the regime.

## DESCRIPTION OF THE TRANSITION

The climate of violence in which the transition occurred, such as the increase in attacks committed by ETA (*Euskadi Ta Askatasuna*), the Basque nationalist leftist terrorist organization, or the attack perpetrated by an ultra-right command against a group of militant labor lawyers of the Spanish Communist Party (*Partido Comunista Español*, PCE) and the *Comisiones Obreras*, (CCOO) in his office on Atocha Street, fed in large part a fear of a repetition of the atrocities of the Civil War. The memory of the past was very present at all times, which explains how negotiation, the pact, tolerance and consensus were instituted as a means to resolve the process. In some crucial moments this consensus became not only a means, but an end in itself, regardless of what was agreed. Although in the short term the consensus achieved the formation of a full and stable democracy, nowadays reparation policies have proved incomplete or require updating.<sup>7</sup>

## AMNESTY LAWS

This spirit of consensus drove Amnesty laws, the first major conscious and historically mature attempt to overcome civil war and dictatorship. In this process we could distinguish three differentiated and consecutive phases: amnesty, rehabilitation and reparation for victims.

During the Francoist regime some movements had begun from the State for a national reconciliation, such as the promulgation of a series of pardons in 1945, 1961, and 1964; the 1969 law prescribing all crimes prior to 1939,<sup>8</sup> or the construction of the Basilica of the Valley of the Fallen (*Valle de los Caídos*) with

1 Ortega, José Antonio, Silvestre, Javier, "Las consecuencias demográficas de la Guerra Civil", in Martín-Aceña, Pablo, Martínez-Ruiz, Elena (eds.), *La economía de la guerra civil española, 1936–1939*, Madrid: Marcial Pons, 2006, 53–105.

2 Ramón Salas Larrazábal, *Pérdidas de la guerra*, Barcelona: Planeta, 1977.

3 Pío Moa, *Los crímenes de la Guerra Civil y otras polémicas*, Madrid: La Esfera de los Libros, 2004.

4 At the opposite end of the scale to the figures of this version is the work of Paul Preston in his controversial book *El Holocausto español. Odio y exterminio en la guerra civil y después*, Madrid: Debate, 2011.

5 Santos Juliá (coord.), *Víctimas de la guerra civil*, Madrid: Lável, 1999.

6 Francisco Espinosa Maestre (ed.), *Violencia roja y azul. España, 1936–1950*, Barcelona: Crítica, 2010

7 Paloma Aguilar Fernández, *Políticas de la memoria y memorias de la política. El caso español en perspectiva comparada*, Madrid: Alianza, 2008, a237

8 Decree-Law 10/1969, of March 31, declaring the prescription of all crimes committed prior to April 1, 1939.

the intention of implementing a policy of “unity and brotherhood among the Spaniards”; as a monument to all the fallen “without distinction of the field in which they fought”.<sup>9</sup> On the other hand, reconciliation was also part of the political discourse of the opponents to Francoism, as evidenced by the “minimum program” approved by the Spanish Communist Party in 1960 to establish a general amnesty “extended to all responsibilities arising from the Civil War, in both contending fields”.<sup>10</sup>

### 1/ Pardons and Amnesty

With the beginning of the Transition, partial grace measures were approved, such as the pardon of November 25, 1975, motivated by the coronation of King Juan Carlos I. But the first amnesty law was the Royal Decree of July 30, 1976, which granted amnesty for all crimes and lack of political intent and opinion included in the Criminal Code “as long as they had not endangered or injured the life or integrity of people”.<sup>11</sup> On June 1, 1976, of the 373 inmates, incarcerated for crimes of lack of political intent or opinion included in the Criminal Code, 287 were amnestied with release and 43 were amnestied but held for other reasons. Another 43 inmates were not amnestied, among which there were some prisoners of ETA and of several terrorist groups such as the Revolutionary Antifascist Patriotic Front (*Frente Revolucionario Antifascista y Patriota*, FRAP), a terrorist organization of the extreme left.<sup>12</sup>

On October 15, 1977, the first Amnesty Law was passed by the newly released democratic parliament, which complemented the pardon of July 1976.<sup>13</sup> It was approved by a large parliamentary majority. Its objective was to extinguish criminal responsibility and release those imprisoned for crimes related to acts of political intent, without excluding blood crimes, as well as crimes of rebellion and sedition or conscientious objection. This first Amnesty Law reflected the demands of all opposition parties and consensus that marked the first stage of the Transition. It benefited 153 prisoners, of which 140 were released and 13 held for other responsibilities. Due to political crimes, at that time there were 38 preventive prisoners in prisons. This amnesty was specifically addressed to the group of prisoners of ETA who had not been able to benefit from the previous decrees-law on pardon or amnesty for having been prosecuted or being convicted of crimes and lack of political intentionality that had injured life or physical integrity of people.

At that time, the Amnesty Law was enthusiastically received by almost all political sectors. Arias Salgado, a spokesman for the Democratic Center Union (*Unión de Centro Democrático*, UCD), the parliamentary group that represented the majority of the government, declared in the parliamentary debate that “amnesty is the ethical-political precondition for democracy, of that democracy to which we all aspire, which upon being authentic does not look back, but, fervently, wants to overcome and transcend the divisions that separated and faced us in the past”.<sup>14</sup> For his part, Camacho Zancada, representative of the *Grupo Parlamentario Comunista*, claimed that “amnesty is a national and democratic policy, the only consequence that can close that past of civil wars and crusades”. Santiago Carrillo, historical leader of the Communist Party and its secretary-general, was in favor of an amnesty “for all those on one side and those on the other”, to make a “cross and line over the Civil War once and for all”.<sup>15</sup>

### 2/ Rehabilitation and reparation measures

In the second phase, the Government complemented amnesty with other measures to rehabilitate the defeated. In March 1978,

“the situation of the military that took part in the Civil War” was regulated;<sup>16</sup> in May of the same year the request for amnesty was regulated by the officials of the Generalitat of Catalonia, an institutional system by which the Spanish autonomous community of Catalonia is politically organized; in November, “pensions were granted to the families of the dead Spaniards as a result of the 1936–1939 war”,<sup>17</sup> and in December “economic benefits were recognized for those who suffered injuries and mutilations in the Spanish Civil War”.<sup>18</sup>

These measures were completed in a third phase with reparative laws. In 1979, pensions, medical-pharmaceutical assistance and social assistance were recognized in favor of the widows, children and other relatives of the Spaniards who died as a result or on the occasion of the last Civil War.<sup>19</sup> In 1980, pensions were given to mutilated ex-combatants of the Republican zone.<sup>20</sup> Finally, in October 1984, “services rendered” were recognized, as well as pensions and assistance, to those who joined the Army or the Law Enforcement Agencies during the war.<sup>21</sup> In 1986, a loophole in the Amnesty Law was settled, which prevented the reintegration into the Army of those who had belonged to the Democratic Military Union (*Unión Militar Democrática*, UMD), a clandestine military organization that emerged in 1974 in order to extend the democratic ideology among the Armed Forces, which affected three commanders and nine captains. Finally, a 1990 law that provided compensation for those who suffered imprisonment for three or more years as a result of the assumptions referred to in the Amnesty Act of 1977 is important.<sup>22</sup>

## LEGAL FRAMEWORK OF THE REHABILITATION

In addition to the above, there are a number of legal problems facing Spanish justice when assessing the victims of Francoism. If the State has the duty to investigate, prosecute and punish

9 Decree-Law of August 23, 1957 establishing the Foundation of the Holy Cross of the Valley of the Fallen (*Valle de los Caídos*).

10 Santos Juliá (coord.), *Víctimas de la guerra civil*, Madrid: Lável, 1999, 49.

11 Royal Decree-Law 10/1976, of July 30, on Amnesty.

12 Ibid.

13 Law 46/1977, of October 15, on Amnesty.

14 Journal of Sessions of the Congress of Deputies No. 27. Plenary Session Number 11. Proposal for the Amnesty Law. 14/10/1977

15 “Sin el rey ya habría empezado el tiroteo. Mitin de Carrillo en Madrid”, in *El País*, 2. 10. 1977, [https://elpais.com/diario/1977/10/02/espana/244594804\\_850215.html](https://elpais.com/diario/1977/10/02/espana/244594804_850215.html)

16 Royal Decree-Law 6/1978, of March 6, regulates the situation of the military that took part in the Civil War is regulated

17 Royal Decree 2925/1978, of December 7, for compliance with Royal Decree-Law 35/1978, of November 16, on pensions to relatives of deceased Spaniards as a result of the 1936–1939 war.

18 Royal Decree-Law 43/1978, of December 21, which recognizes economic benefits to those who suffered injuries and mutilations in the Spanish Civil War.

19 Law 5/1979, of September 18, on the recognition of pensions, medical-pharmaceutical assistance and social assistance in favor of widows, and other relatives of the Spaniards who died as a result or on the occasion of the last Civil War

20 Law 35/1980, of June 26, on pensions to former mutilated combatants in the Republican zone

21 Law 37/1984, of October 22, on the recognition of rights and services provided to those who during the Civil War were part of the Armed Forces, Law Enforcement Forces and the Police Corps of the Republic.

22 Law 4/1990, of June 29, on General State Budgets for 1990. Additional provision Eighteen. Compensation in favor of those who suffered imprisonment as a result of the cases contemplated in Law 461/1977, of October 15, on amnesty.

violations (the so-called “duty of guarantee”) against human rights and reparation of victims, we find that it is not clear that, in the thirties, there were obligations to international law referring to human rights, so there is no legal duty of reparation or punishment. Therefore, the events that have occurred have not been described as violations of rights against humanity, provided for in the Criminal Code of 1995, because the principle of legality and the non-retroactivity of the unfavorable criminal law prevent it.

This has generated a recent debate: from when exactly is there an obligation or prohibition in general and conventional international law for Spain. As stated, although “it is possible to sustain the existence of criminal proceedings and, of course, of international norms on the regulation of war prior to 1936–1939, the truth is that it is not easy to be able to assert undoubtedly that crimes committed in an internal armed conflict then compromised the international responsibility of their perpetrators”.<sup>23</sup> Therefore, “it is not clear that the Spanish State has pending obligations derived from the crimes committed during the fratricidal conflict, in regard to the responsibility of its perpetrators, although [...] it would be possible to raise some exception with respect to the forced disappearance of people”.<sup>24</sup> Undoubtedly, the investigation about cases of enforced disappearances is the most pressing duty for the Spanish State. The majority of disappearances date from the period of the Civil War (which, in legal terms, is considered prior to possible non-applicability) and those that occurred afterwards have an unsystematic character, so they would become violations of human rights or crimes of international law, but not crimes against humanity.

Secondly, as regards the violations of rights committed after the war, there would be three areas for reparation: torture, which was applied both in prisons and in police stations; homicides derived from police violence and the silence imposed on the disappearances that occurred in the rebellious rearguard during the Civil War. In the case of crimes during the Francoist era after 1945, we find that, once again, “it cannot be said that extrajudicial executions were systematically committed by the regime after 1945, which means that, in any case, they can be valued only as human rights violations and not as crimes against humanity”.<sup>25</sup>

## CURRENT SITUATION

In the last two decades, the rhetoric of amnesty reparation guidelines has changed substantially, which so far did not affect the sufferings of those who had allegedly fought for a legitimate regime, the Republican, or disqualified the Francoist regime and the people who had committed injustices in it. The first mention of the “fight for freedom” is a law of 1984.<sup>26</sup> Then, in a Royal Decree of 1996, concerning international brigade members, the nation’s gratitude for their work for freedom was mentioned.<sup>27</sup> In December 1998, the first disqualification appears, although indirectly, of some of the actions of the dictatorship.<sup>28</sup> In the 2004 to 2008 legislature there was a great change in the way of articulating the reparation rules. With a Royal Decree in 2004, an “Inter-ministerial Commission to Study the Situation of the Victims of the Civil War and Francoism” was created, whose report dated July 28, 2006 sets the standards for reparation.<sup>29</sup> Other laws, such as the one of March 2005, on economic and health benefits for children of war, have recognized the “historical debt that Spain has to these citizens”, establishing for the first time in a legal text the legitimacy of the Republic and endorsed the responsibility of the Civil War to

the rebels.<sup>30</sup> At this point, with the approval of the law of historical memory in 2007, we arrived at a fundamental change in the laws.

## SCOPE AND TYPE OF REHABILITATION

The Historical Memory Law of 2007 has meant a Copernican turn in the rehabilitation of the victims.<sup>31</sup> Its insertion in the legal system, after a controversial parliamentary debate, has not been accompanied by the social acceptance necessary to achieve the spirit of harmony that the law intended to promote and criticism from various sectors has been increasing. A decade after the law was published, the scenery is uncertain.

First of all, the law recognizes in its preamble an individual right to personal and family memory of those who suffered persecution or violence during the Civil War and the Dictatorship. This recognition is specified in three aspects: moral reparation of the victims through a double official recognition, both general and private; economic reparation through economic benefits that extend or improve those already recognized by previous laws, and recovery of personal and family memory through the location and identification of missing persons. Secondly, it establishes the bases for public authorities to implement complementary policies aimed at the knowledge of our history and to the promotion of democratic memory in the collective sphere, such as the withdrawal of symbols from the Civil War or Dictatorship: changes in the denomination of the streets, destruction or withdrawal of monuments of Francoist exaltation, and revocation of honors, among others.

An example of the implications of this law, which presents serious legal conflicts, has been the lack of budgetary provision for the exhumations of victims since 2012, the year when the government stopped financing them. As a paradigmatic case, we can briefly explain the exhumation at the end of 2016 of General Sanjurjo, one of the leaders of the military uprising in 1936, who died in the early days of the Civil War. In order to materialize it, the municipal government of Pamplona made a misleading interpretation of the general rules of the applicable law, arguing the need to exhume the remains deposited in the Monument

23 Javier Chinchón, “El viaje a ninguna parte: Memoria, leyes, historia y olvido sobre la guerra civil y el pasado autoritario en España”, in *Revista del Instituto Interamericano de Derechos Humanos (IIDH)*, 47, 151–152.

24 Paloma Aguilar Fernández, *Políticas de la memoria y memorias de la política. El caso español en perspectiva comparada*, Madrid: Alianza, 2008, 489.

25 *Ibid.*, 490. This partly explains the failure of some judicial processes, such as that of Baltasar Garzón or the one known as the Argentine Complaint, the litigation filed before the courts of justice of the Argentine Republic in 2010 with the objective of investigating the crimes committed by the members of the Franco dictatorship, to identify and penalize those responsible.

26 Law 18/1984, of June 8, on recognition as years worked, for the purposes of Social Security, of the periods of imprisonment suffered as a result of the assumptions contemplated in the Amnesty Law of October 15, 1977.

27 Royal Decree 39/1996, of January 19, on the granting of Spanish nationality to fighters of the International Brigades in the Spanish Civil War.

28 Law 43/1998, of December 15, on Restitution or Compensation for Political Parties of Assets and Rights Seized in the application of the regulations on political responsibilities of the period 1936–1939.

29 Royal Decree 1891/2004, of September 10, establishing the Inter-ministerial Commission to Study the situation of victims of the Civil War and Franco.

30 Law 3/2005, of March 18, which recognizes an economic benefit to citizens of Spanish origin displaced abroad, during their minority, as a result of the Civil War, and who developed most of their lives outside the national territory.

31 Law 52/2007, of December 26, which recognizes and extends rights and establishes measures in favor of those who suffered persecution or violence during the Civil War and the dictatorship.

to the Fallen (*Monumento a los Caídos*), a building in memory of the Navarrese fallen from the rebellious side, on the mandate to abolish and remove the “symbols” of the Francoist era. Although the exhumation is a private right of the relatives, who were expressly opposed to it, the municipal government did not hesitate to transform it into a public power, whose exercise legitimized qualifying the burial place (a crypt recognized as a private usufruct) as a public cemetery, allowing thus its closure.<sup>32</sup>

## SOCIAL SATISFACTION AND REHABILITATIONS STATUS

A year after the approval of the Law of Historical Memory, the judge of the National Court, Baltasar Garzón, opened the first formal investigation into disappearances under the Francoist regime. In his order, he attributed to the dictator Francisco Franco and 34 other leaders who led the rebellion against the Government of the Republic, a plan of systematic extermination of their opponents and repression. This also led to some public movements in favor of the victims: Garzón ordered the opening of 19 mass graves and received from several memorial organizations a partial census of names of more than 140,000 missing persons,<sup>33</sup> a figure that, in contrast to academic literature, is at least surprising.<sup>34</sup>

The judge framed these facts in the context of crimes against humanity, which, as previously seen, is doubtful from the legal point of view. Judge Garzón’s decision was taken against the criteria of the State Attorney General’s Office, so he was forced to abandon the investigation only a few weeks after opening it. The complaints of several associations of the extreme right were admitted by the Supreme Court, which led to the opening of a trial that was finally acquitted in February 2012.<sup>35</sup> The controversy hit the streets, causing a long series of debates.

This situation has reached an increasingly bitter public debate about the need to rehabilitate victims, which is currently at a critical point. Misinformation and partisan manipulations have caused a serious flaw in the formation of a coherent account of the victims of Francoism. On the one hand, we find state initiatives such as the map of graves prepared by the Ministry of Justice, which numbers 2,000 illegal burials during the Civil War and Dictatorship.<sup>36</sup> On the other, there are organizations such as the Association for the Recovery of Historical Memory (*Asociación para la Recuperación de la Memoria Histórica*, ARMH), which claim that the number can double and work to continue the exhumations.<sup>37</sup>

In this sense, the Law of Historical Memory has failed to respond effectively to its proposals. Since its inception it has had problems that have ballasted its application, i.e., it has not had a unanimous social acceptance, it has developed in the middle of the controversy, which has generated a lack of agreement and will, as well as its discredit. As Lafuente states, the law “has spoiled its purpose of achieving a democratic and peaceful coexistence of all citizens to the extent that it only recognizes the ‘right to historical and personal memory’ to the victims of the Civil War and of the Francoist Dictatorship, justifying this fact in the need to discriminate positively to achieve the alleged equality between the defeated and the victors.”<sup>38</sup> In the balance sheet, it can be said that the recognition of economic benefits to victims or their families as reparation is the only mandate that is peacefully fulfilled. The rest of the provisions are not complied with due to the inactivity of the responsible Administrations for not adopting the necessary public policies for their materialization (such as the budgetary provision for subsidies for exhumations) or for not dictating the legal decisions necessary

to update the regime of certain institutions (such as indecision about the future of the Monument of the Fallen Valley). This has led to public and private actors using procedures outside the law (such as the exhumation of Sanjurjo) to comply with the purposes of the Law of Historical Memory.<sup>39</sup>

## LESSONS LEARNED AND RECOMMENDATIONS

Amnesty laws, which were one of the axes on which the transition to democracy pivoted, have recently been subjected to criticism, linked on many occasions, to political interests.<sup>40</sup> It has been widely discussed about the supposed “pact of oblivion” that, by promoting forgiveness without first addressing the injustices of the past, i.e., without allowing transitional justice, prevented the establishment of a framework for public articulation of memories and overcoming of trauma.

However, the conception of the Transition as a “pact of oblivion” is a distortion of history. As Santos Juliá has shown, among

32 It is necessary to highlight, on several occasions, laws of historical memory have been enacted in the different autonomies to cover some of the insufficiencies of state regulations (Julián Chaves Palacios, “Consequences of Francoism in democratic Spain: legislation, exhumations of graves and memory”, In *Contemporary History*, 60, 2019, 529–530).

33 “Garzón receives more than 140,000 names of the disappeared in the Civil War and the dictatorship”, in *El Mundo*, 22. 9. 2008.

34 Among the most popular figures at the popular level is the one provided by the association Judges for Democracy, who affirm that Spain is “the second country in the world, after Cambodia, with the largest number of victims of enforced disappearances whose remains have not been recovered or identified” (“Judges for democracy accuses the Government of breaking the law of memory”, in *El País*, 9. 10. 2013, [https://elpais.com/politica/2013/10/09/actualidad/1381322308\\_843838.html](https://elpais.com/politica/2013/10/09/actualidad/1381322308_843838.html)). This is a disconcerting figure in view of previous studies that, in addition, is not supported by any study or part of a novel examination of documentary sources, archives or censuses, and has only very recently been disproved (“Por qué España no es el segundo país del mundo con más desaparecidos”, in *El Mundo*, 6. 12. 2019, <https://www.elmundo.es/internacional/2019/11/05/5dc1bb20fc6c8311768b460c.html>).

35 Among the complainants were the Manos Limpias (Clean Hands, a trade union registered in Spain), the Freedom and Identity Association and the Falange Española de las JONS party.

36 Historical memory, “Map of graves”, <http://www.memoriahistorica.gob.es/es-es/mapafosas/Paginas/index.aspx>

37 The ARMH is the most important association in Spain dedicated to locating victims of repression during the Spanish Civil War and the Franco dictatorship. Since its foundation in 2000, it has carried out more than 150 exhumations in which more than 1,300 victims have been recovered; a figure that remains insufficient. However, its ideological affiliation with the Second Spanish Republic makes it difficult for its work to be impartial. Web page: <https://memoriahistorica.org.es>.

38 According to Lafuente, the actions have generated social unrest, as the reparation of some victims becomes discredited for others. The law, in this sense, has reopened wounds and increased litigation (María Mercedes Lafuente Benaches, “Balance de la Ley de Memoria Histórica”, in *Revista española de derecho administrativo*, 188, octubre-diciembre 2017).

39 *Ibid.*

40 Among others, organizations such as Human Rights Watch and Amnesty International have called for the repeal of the amnesty law and, in 2008, the UN Human Rights Committee first recommended the repeal of the law, the adoption of “necessary legislative measures to guarantee the recognition of the imprescriptibility of crimes against humanity by national courts; provide for the creation of a commission of independent experts charged with restoring the historical truth about human rights violations committed during the Civil War and the dictatorship; and allow families to identify and exhume the bodies of victims and, where appropriate, compensate them” (Human Rights Committee, 94th session, Geneva, October 13 to 31, 2008, CCPR/C/ESP/CO/ January 5, 2009).

others, the huge number of books and research published since 1975 on the Francoist repression and Civil War in general throw down the myth of the pact of oblivion during the transition to democracy.<sup>41</sup> On the contrary, amnesty laws were keys to achieving stability and democratic coexistence in a period characterized by the threat of violence in which forgiveness and oblivion were imposed while moving towards the demand for truth.<sup>42</sup> Today, however, we must rethink the way in which the right to truth, justice and reparation for victims has been promoted.

One of the most complete reports on the evolution in the rehabilitation of victims was prepared by the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Pablo de Greiff, in 2014. The report noted, among other issues, “an excessive formalism in the interpretation of the law that prohibits any reflection on possible alternatives to guarantee the right of victims to truth and justice”, which currently *de facto* prevents investigations into crimes committed during the Civil War.<sup>43</sup> Recently, the Rapporteur once again observed that “a determined State policy that does not fall prey to political tensions and divisions is necessary, but that guarantees integrated, coherent, prompt and impartial measures, in favor of truth, memory and reparation”, and advocated a nonpartisan state policy.<sup>44</sup>

## POSITIVE AND NEGATIVE EXAMPLES

As positive examples, a long series of amnesties and reparations has been run since the Transition. Criticisms of the amnesty laws are not unanimous. Indeed, as some authors claim and have been demonstrated by the facts, it was essential to avoid polarization and chaos during this time. Thanks to it, and against all odds, the Transition was peaceful and happened through “transition by transaction”, so it became a model worthy of being studied and analyzed for the potential service it could provide to Latin American countries, like Chile and Argentina.<sup>45</sup>

We have, however, negative examples in the rehabilitation of victims. The most important is the neglect suffered by the bodies of the disappeared during the war and the lack of state planning accordingly. In addition, efforts to respond to the legacies of the Civil War and Dictatorship through the Law of Historical Memory have been characterized by fragmentation. In delegating important aspects of reparation in private associations there has been a lack of rapprochement between the State and the victims, and there has been a politicization of attempts at historical trial from the parliamentary level. Two words can summarize this negative experience: the politicization of the problem and the privatization of exhumations derived from the law that, in the words of Pablo de Greiff, has produced “the indifference of State institutions”.<sup>46</sup>

From the above we can summarize some conclusions. In the process of rehabilitation of the victims there have been several positive aspects, such as the amnesty laws, which were a fundamental piece of the Transition gear.

However, we also have negative examples. A historical review reveals the limited scope of the Law of Historical Memory and the lack of budget for its implementation; the validity of the amnesty law according to what has been interpreted by the judicial authorities; the lack of a law on access to information; the difficulty in accessing the archives, and the lack of a national plan to search for missing persons, among others. It should also be added the political and partisan character that has sometimes been adopted in the discussion on memory, which has frequently prevented the achievement of minimum results.

Secondly, we have the specific recommendations of the Report of the Working Group on Enforced or Involuntary Disappearances of the United Nations. In general, the Spanish State was recommended to “act with due urgency and speed in the matter of enforced disappearances as required by the Declaration and other international obligations” and “implement the recommendations made to Spain by different international human rights organizations, in particular those issued by the Committee on Enforced Disappearances and by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition”.<sup>47</sup> On the other hand, the Rapporteur of the Working Group on Enforced Disappearances recommended that the Spanish State assume its responsibility and lead these initiatives so that they were part of a comprehensive, coherent, permanent, cooperative and collaborative State policy.<sup>48</sup>

There are still open wounds from the Civil War and Francoism that affect part of our society and are unresolved. The State, due to the complex historical and political plot, must satisfy the demands of truth by avoiding sectarian or partisan differences.

41 Santos Juliá, *Transición. Historia de una política española (1937-2017)*, Barcelona: Galaxia Gutenberg, 2017, 48.

42 On the other hand, it should be noted that the amnesty did not obtain peace in any way with ETA. Rather, the opposite happened: persuaded of the effectiveness of its long-term strategy and convinced of the weakness of the Government in the war declared against them, ETA reinforced its commands with new additions and responded by climbing another step in the escalation of targeted attacks. To high military commanders.

43 Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Pablo de Greiff, 07.27.2014, A / HRC / 27/56 / Add.1.

44 Pablo de Greiff, “The strength of democracy is measured in the ability to respond to victims’ claims”, 19. 5. 2017, <https://www.ohchr.org/sp/News-Events/Pages/DisplayNews.aspx?NewsID=21641&LangID=S>

45 Santos Juliá, “1977. Amnistía”, in Xosé M. Núñez Seixas (dir.), *Historia mundial de España*, Barcelona: Planeta, 2018, 878.

46 “El relator de la ONU insiste: España debe juzgar los crímenes del franquismo”, in *El País*, 3. 2. 2014, [https://elpais.com/politica/2014/02/03/actualidad/1391443224\\_877477.html](https://elpais.com/politica/2014/02/03/actualidad/1391443224_877477.html)

47 Human Rights Council, session twenty-seven, July 2, 2014, A/HRC/27/49/ Add.1.

48 Speech Addressed by the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances Ariel Dulitzky at the 27th session of the Human Rights Council (September 8 - October 3, 2014). Geneva, September 12, 2014.

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## LAWS AND DECREES

- Decree-Law 10/1969, of March 31, declaring the prescription of all crimes committed prior to April 1, 1939
- Law 46/1977, of October 15, on Amnesty
- Law 5/1979, of September 18, on recognition of pensions, medical-pharmaceutical and social assistance in favor of widows, and other relatives of the Spaniards who died as a result or on the occasion of the last Civil War
- Law 35/1980, of June 26, on pensions to former mutilated combatants in the Republican zone
- Law 37/1984, of October 22, on the recognition of rights and services provided to those who during the Civil War were part of the Armed Forces, the Law Enforcement Agencies and the Cuerpo de Carabineros of the Republic
- Law 18/1984, of June 8, on recognition as years worked for the purposes of Social Security of the periods of imprisonment suffered as a result of the assumptions contemplated in the Amnesty Law of October 15, 1977
- Law 4/1990, of June 29, on General State Budgets for 1990. Eighteenth Additional provision. Compensation for those who suffered imprisonment as a result of the cases contemplated in Law 461/1977, of October 15, on Amnesty
- Law 3/2005, of March 18, which recognizes an economic benefit to citizens of Spanish origin displaced abroad, during their minority, as a result of the Civil War, and who developed most of their lives outside the national territory
- Law 52/2007, of December 26, which recognizes and extends rights and establishes measures in favor of those who suffered persecution or violence during the Civil War and the dictatorship
- Royal Decree-Law 10/1976, of July 30, on Amnesty
- Royal Decree-Law 6/1978, of March 6, on regulating the situation of the military who took part in the Civil War
- Royal Decree-Law 43/1978, of December 21, which recognizes economic benefits to those who suffered injuries and mutilations in the Spanish Civil War
- Royal Decree 2925/1978, of December 7, for compliance with Royal Decree-Law 35/1978, of November 16, on pensions to family members of Spaniards who died as a result of the 1936–1939 war
- Royal Decree 1891/2004, of September 10, establishing the Inter-ministerial Commission for the study of the situation of victims of the Civil War and Franco

## WEBSITES

<https://memoriahistorica.org.es>

# EDUCATION AND PRESERVATION OF SITES OF MEMORY

ANNA KATARZYNA DULSKA

## INTRODUCTION

According to Pierre Nora, “self-awareness emerges from the signs of what has already happened.”<sup>1</sup> These signs, the places of memory, shape the public space in which the life of a nation unfolds and evoke its past. When it comes to a society that in its recent history suffered a civil war, as happened in the case of Spain where, in addition, the conflict between two opposing views of the country had worsened long before the military conflict, the management of this memory becomes very complex, because what some want to remember, others prefer to fall into oblivion. The illustrious poet, Antonio Machado thus reflected the Spanish peculiarity: “Little Spaniard just now coming into the world, may God keep you. One of those two Spains will freeze your heart.” Although written long before the Civil War, these verses can serve as a metaphor for the preservation of places of memory after it ended.

## THE INITIAL SITUATION

For forty years, from Franco’s rise to power until after his death, Francoism implemented a large-scale memory policy, which initially aimed to establish its power, and subsequently after the victory in the contest, eliminate their adversaries of collective consciousness and memory and legitimize the new regime.<sup>2</sup> In the public discourse, and therefore, the politics of Francoist memory, three phases can be distinguished. The first corresponds to the years 1936–1959, i.e., from the Civil War until the approval of the Stabilization Plan, and it was focused on extolling the military victory, first underlining the alignment with the Germany of Hitler and the Italy of Mussolini, and then detaching from this awkward image that had cost so much to create; the second phase covers the period of economic growth (“developmentalism”), when the commemoration of the war was replaced by the celebration of Peace; while the third phase coincides with the decline of the Dictatorship and the dawn of the Transition. Said policy consisted mainly of the reordering of public space and time according to the new symbology and iconography and was implemented in all levels of social life: physical, legal, political, intellectual and cultural, so that, referring to Machado’s words – one of the Spains froze the other in the name of the slogan “*Una, Grande, Libre*” which since 1938 stamped the state shield.

## SYMBOLOLOGY

Francoism modified the national symbols of Spain. For the flag, the gules and or was restored. In the shield, heraldic elements belonging to the Catholic Monarchs were introduced, i.e., the yoke with the Gordian knot, the beam of arrows, at that time already symbols of the Spanish Falangists, and the eagle of Saint John, as well as a phylacterium with the aforementioned heraldic emblem which replaced Ferdinand’s “*Tanto monta*” (abbreviation of “It amounts to the same, cutting as untying”). To the letter of the national anthem

composed by José María Pemán during the Dictatorship of Miguel Primo de Rivera (originated as a military march of the eighteenth century, the Spanish anthem never had an official letter) were added the expressions “arms raised” and “yoke and arrows”.

In addition to the shield, other emblems that filled the public spaces were: the monogram known as “*Víctor*”, which until then had been used as *graffiti* in the oldest Spanish universities by the new doctors, but since the Victory Parade of 1939, became one of the main symbols of Francoism, and Franco’s personal weapons (standard, script and shield), inspired by the Royal Band of Castile enriched with the columns of Hercules.<sup>3</sup>

## STATUES

Another element of “the imposition of the present and the will of future permanence inserted in the foundational fact of the military victory”;<sup>4</sup> were the statues and effigies of the dictator erected throughout the Spanish territory, in the main squares, in the entrances or enclosures of public and military institutions. Here we can also distinguish three periods.<sup>5</sup> With equestrian busts and statues erected in the forties, the memory of the victory of the Civil War was sought to be eternalized and legitimized Franco’s power; those of the sixties paid tribute to the dictator and his exploits; while those of the seventies tried to root the memory of the Francoist regime in the collective conscience and preserve it for posterity. In addition, the idealized image of Franco, whose real appearance “was not very appropriate for propaganda purposes”;<sup>6</sup> appeared on coins, stamps and in all kinds of periodicals.

Francoists tried to make visible in the public space also those “fallen by God and Spain” and, he dedicated a multitude of plates, crosses and obelisks placed in cemeteries, squares and churches. In each parish an inscription was to be placed listing the names of the martyrs.

## GAZETTEER

Crucial for memory and awareness was the street gazetteer.<sup>7</sup> Thus, the names of the streets and squares that maintained

1 Pierre Nora, “Between Memory and History: Les Lieux de Mémoire”, in *Representations, Special Issue: Memory and Counter-Memory*. 1989, (26), 7.

2 Walther L. Bernecker, Sören Brinkmann, *Memorias divididas. Guerra Civil y Franquismo en la sociedad y política españolas (1936–2008)*, trad. Marta Muñoz-Aunión, Madrid: Abada Editores, 2009, 127.

3 Today it is used by the Dukes of Franco, a noble title granted by King Juan Carlos I to Franco’s daughter a week after his death.

4 Jesús de Andrés, “Las estatuas de la dictadura y viceversa. El franquismo y sus símbolos (1936–2018)”, in Jordi Guixé, Jesús Alonso Carballés, Ricard Conesa, eds., *Diez años de leyes y políticas de memoria (2002–2017). La hibernalción de la rana*, Madrid: Catarata, 2019, 161.

5 *Ibid.*, 161–162.

6 Walther L. Bernecker, Sören Brinkmann, *Memorias divididas. Guerra Civil y Franquismo en la sociedad y política españolas (1936–2008)*, trad. Marta Muñoz-Aunión, Madrid: Abada Editores, 2009, 132.

some relationship with the Republic were eliminated and the urban plans were filled with protomartyrs, “the Fallen”, heroes of the Francoist side (highlighting among them Franco himself, José Antonio Primo de Rivera, José Calvo Sotelo, Gen. José Sanjurjo), the myths of the Civil War (July 18, the Alcazar of Toledo, among others), as well as military and political faithful to the regime. The toponymy of some localities was also modified especially those linked in one way or another to prominent figures of the regime, for example, Ferrol became Ferrol del Caudillo, Alcocero, Alcocero de Mola or San Leonardo, San Leonardo de Yagüe. Certain newly created nuclei within the framework of the agrarian colonization were baptized Villafranco or received the suffix “del Caudillo”.

## EMBLEMATIC PLACES

Regarding the places, three are worth mentioning.<sup>8</sup> The first is the town of Belchite in Aragon. Besieged between August and September 1937 by the Republicans, it was the scene of a bloody confrontation in which no hostages were taken. The Republicans conquered the square and maintained it for half a year until its recovery by the Francoists in March 1938. The Caudillo declared the town, or rather what was left of it, a national monument and prohibited its reconstruction so that its ruins perpetuated the victory. Instead, he ordered a new town to be built using a workforce of a thousand Republican prisoners located in one of the concentration camps.

The second place is the Alcazar of Toledo, the emblematic military academy, in whose ranks Franco had been formed, which was unsuccessfully besieged by the Republicans between July and September 1936, whose defense produced myths that they were for the benefit of the Francoist propaganda and that over time it became the symbol of Franco’s Spain.

The third place is the Valley of the Fallen, erected between 1940 and 1959 60 kilometers from Madrid, in the Sierra de Guadarrama, as a monument of war and a mausoleum; the flagship of Franco’s memory policy. In addition to the monument itself, the enclosure houses a Benedictine monastery created for the monks to pray for the thousands of fallen, killed in combat and reprisals. As in Belchite, in its construction a workforce of prisoners of war was used, in this case a total of twenty thousand, who thus received the possibility of “reparation”, and “spiritual and political rescue”, as well as a reduction of their sentence. In the crypt inside the basilica rest: the founder of the Falange, José Antonio Primo de Rivera, forty thousand “fallen for God and for Spain”, represented allegorically in the central mosaic, as well as some of the Republicans of the Catholic faith that were moved there when, instead of war it began to celebrate peace. Finally, and without Franco having arranged it, the Caudillo himself was buried there, turning the Valley into a tribute to his regime.

## HOLIDAYS

Finally, in addition to the symbolic and physical space, public time was subordinated to memory.<sup>9</sup> The festivities were eliminated from the festive calendar with some Republican connotation and replaced by others that were Francoist. Thus, to mention the most solemn celebrations, on July 18, the beginning of the Civil War was commemorated; on April 1, the victory of the Movement against the unconditional capitulation of Republicans, on October 1, the proclamation of Franco as Head of

the Government of the Spanish State, the celebration of the 12th day of the same month, called the [Hispanic] Day of the Race (the day when, in 1492 Columbus landed in America) or the Hispanic Day, it definitely became a national holiday, while November 20, the day of the death of José Antonio Primo de Rivera, was converted into National Mourning Day.

Thus, when on November 20, 1975, General Francisco Franco died, the places of memory and conscience supported not only the legitimacy and imagery of the regime, but also the identity and values of the “official Spain” and constituted a true Gordian knot for the architects of the Transition, with the particularity that in a democratic system it is not so much as to cut or untie.

## THE TRANSITION

As of 1975, Spain undertook the path of the “without rupture” political Transition towards Democracy. Three years later, the Constitution proclaimed on December 6, 1978 laid the legal basis for the new system, whose configuration was terminated with the electoral victory of the Spanish Socialist Workers Party (PSOE) in the autumn of 1982. The attitude towards recent history and its memory taken by political elites and backed by citizens, who in those years valued economic development and peace over justice and freedom,<sup>10</sup> was called the “pact of silence” and consisted of silencing the debate, not cutting off or unleashing, simply silence, so as not to open the wounds, not instrumentalize history for political purposes and, ultimately, build the present and the future through a reconciliation with the past. In this way, it was intended to avoid incurring the risk of destabilizing the young Democracy, agitated by the terrorism of FRAP (Revolutionary Anti-Fascist and Patriot Front, an armed organization of the extreme left), ETA (Euskadi Ta Askatasuna, a Basque-based terrorist group) and GRAPO (First of October Anti-Fascist Resistance Group, a terrorist group born in Vigo in 1975), with demands for responsibilities and account adjustments that, together with the political tensions of those times, could open the door to a new coup d’état and even to a new civil war.

## “SILENCE PACT”

The Transition was, therefore, marked by an inactivity regarding the transformation of public spaces. The national symbols (the flag, the shield and the anthem) and the physical places of memory remained unchanged. The Constitution (art. 4) kept the gules and or flag as the national one, while the shield was slightly modified in 1977 although Francoist symbols were not eliminated until 1981, after the coup of February 23. Law 33/1981 that regulated it set a period of three years to depose the previous

7 Jesús de Andrés, “Las estatuas de la dictadura y viceversa. El franquismo y sus símbolos (1936–2018)”, in Jordi Guixé, Jesús Alonso Carballés, Ricard Conesa, eds., *Diez años de leyes y políticas de memoria (2002–2017). La hibernación de la rana*, Madrid: Catarata, 2019, 162–165.

8 Walther L. Bernecker, Sören Brinkmann, *Memorias divididas. Guerra Civil y Franquismo en la sociedad y política españolas (1936–2008)*, trad. Marta Muñoz-Aunión, Madrid: Abada Editores, 2009, 166–187.

9 *Ibid.*, 192–197.

10 Paloma Aguilar Fernández, “Presencia y ausencia de la guerra civil y del franquismo en la democracia española. Reflexiones en torno a la articulación y ruptura del ‘pacto de silencio’”, in Julio Aróstegui, François Godicheau, eds., *Guerra civil: mito y memoria*, Madrid: Marcial Pons Historia y Casa de Velázquez, 2006, 263.

shields of public spaces, except those existing in buildings declared as historical-artistic monuments or in those constructions whose ornamentation formed a substantial part or whose structure could get damaged by separating the shields.

Regarding the anthem, Peman's letter ceased to be used without replacing it with another one in order to avoid conflicts in the search for a letter that represented all Spaniards. This is not an obstacle so that from time to time in official international ceremonies with a Spanish presence some letter sounds, whether that is from the Dictatorship of Franco, or from Primo de Rivera or from the Second Republic.<sup>11</sup>

The most emblematic places of memory of the Francoist era, such as Belchite, the Alcazar of Toledo or the Valley of the Fallen were converted into a taboo.

With regard to the holiday calendar, in December 1975, November 20, now with one more meaning, became a military holiday called Memorial Day, which in 1984 was transferred to the 2nd of the same month.<sup>12</sup> The Victory Parade, which in 1976 was chaired by King Juan Carlos I,<sup>13</sup> was replaced by the Armed Forces Day, and since 1984 its biggest celebrations including the military parade, were integrated into the October 12 party. This, on the other hand, was confirmed as "National Day of Spain or *Fiesta Nacional de España* and the Hispanic Day" in 1981, however, this last name does not appear in the Law of 1987. The day of the constitutional referendum of December 6, 1978, was declared festive as Constitution Day in 1983.

A certain milestone for the management of the places of memory were the first democratic municipal elections of 1979, since the competences over public monuments, street and toponymy were reserved for city councils. In the cities and municipalities where the left won (PSOE, in some cases in agreement with the Communist Party of Spain, PCE), including Madrid and Barcelona, or the nationalist parties in Catalonia and the Basque Country, the names of localities and some streets were changed and the Francoist's monuments were gradually removed, but without coordination from the State. This process lasted until 1987 when, after the partial "cleaning", in some localities, such as Guadalajara, the descendants of the Francoist regime continued to promote new statues of the dictator, the memory was immersed in a silence agreed by the public administrations, under which boiled social conflicts between those who wanted their permanence and those who did not accept it. On the other hand, in rural areas, especially in Aragon and La Rioja, a work was carried out to convert the clandestine graves of the victims of war and persecution during the Francoist regime into public places of memory, while in the Basque Country, Cantabria or Asturias several exhumations were performed, later indicated with commemorative plaques. The coup of February 23 interrupted any form of answer to the silence about the past.

## THE GUERNICA

During these early years, when the memories of the Civil War were far enough away and those of the Francoist Dictatorship uncomfortably close, there was only one episode of confrontation with the past linked to places of memory. This is the case of Guernica, or rather *Guernicas*: on the one hand, the Biscayan village bombed by the German Condor Legion on April 26, 1937, which became one of the main symbols of the Basque nationalist thinking and the famous painting by Pablo Picasso, painted for the Spanish pavilion of the Universal Exhibition of Paris, opened

a month later and inspired by the news about what had happened, on the other. Around the fortieth anniversary of the events, the relative German and Spanish archives were opened and a commission of experts subsequently issued a report that attributed to Franco a co-responsibility for the destruction of the municipality. At the same time, the Cortes urged the Government to take the necessary actions to recover the painting, then guarded by the Museum of Modern Art in New York, because at the will of the artist, it could only be exhibited in Spain when Democracy was restored. A Basque senator requested that the painting be displayed in the town of Guernica itself, but the request was dismissed. The work arrived in Spain in 1981, and since 1992 it has been exhibited at the Reina Sofia Museum in Madrid, being one of the most widely known places of consciousness among visitors to the Spanish capital, and therefore, transmitter of the Civil War narrative not only among Spaniards, but also to millions of tourists who visit it every year. For its part, the town of Guernica had to wait almost twenty years, until 1998, for the opening of its own museum space and at the same time the first museum dedicated to the Civil War in all Spanish territory, since 2003 known as, paradoxically, The Peace Museum.

In the eighties, especially its second half and in the context of the Euro-Atlantic integration of Spain, a process of reconciliation, at least superficial, of Spanish society with itself can be observed, as it was time to collect the domestic and international fruits of the Transition, which 80 % of Spaniards considered a source of pride.<sup>14</sup> It was also at that time that in the public imagination some kind of ambivalence about Francoism began to consolidate as "a stage that had good things and bad things" shared by half of society, according to the polls. At the same time, within the other half, opinions diverged more and more clearly, increasing the voices that valued it as a negative period and decreasing those that positively remembered it. At the same time, however, economic and socio-cultural dynamics made the themes of History, the less recent as the Civil War or more recent, but increasingly distant as the Dictatorship passed to a plane of the social agenda, and by both public, farther.

## PACT BREAK

A turning point was brought about in 1993, when, after three legislatures in absolute majority and before a growing loss of support, just before the elections the PSOE decided to break the "pact of silence" and the unspoken agreement not to instrumentalize History with political purposes to use the Francoist past of the Popular Party (PP) as a trick in the electoral campaign. The result was partially successful, as the Socialists remained in power, although losing the absolute majority. Likewise, a precedent was established that was used since then in the fight for votes. In 1996,

11 "El himno de España con letra de Pemán se cuela en un acto del Rey en Nápoles", in *La Vanguardia*, 7. 5. 2019, <https://www.lavanguardia.com/politica/20190507/462099577451/rey-espana-himno-napoles.html>

12 "Los militares ya no celebraran el Día de los Caídos el 20-N, sino el 2 de noviembre", in *El País*, 2. 12. 1984, [https://elpais.com/diario/1984/12/02/espana/470790020\\_850215.html](https://elpais.com/diario/1984/12/02/espana/470790020_850215.html)

13 "El Rey presidio el Desfile de la Victoria", in *El País*, 1. 6. 1976, [https://elpais.com/diario/1976/06/01/ultima/202428001\\_850215.html](https://elpais.com/diario/1976/06/01/ultima/202428001_850215.html)

14 Paloma Aguilar Fernández, "Presencia y ausencia de la guerra civil y del franquismo en la democracia española. Reflexiones en torno a la articulación y ruptura del 'pacto de silencio'", in Julio, Aróstegui, François Godicheau, eds, *Guerra civil: mito y memoria*, Madrid: Marcial Pons Historia y Casa de Velázquez, 2006, 264.

in the following elections, in which the PSOE could no longer defend itself against the winning PP by removing the canons of the Dictatorship, but instead of saving them, it decided to turn, successfully, the memory and memories of the past into an element permanent in the political agenda of Spain. In this context, the PP government unsuccessfully tried to implement a reform in the field of history teaching, which sought to promote Spanish identity and reduce the weight of regionalisms that had grown considerably since the 1980s, as well as channeling the debate, holding, not without reason, discussion by separate memory, that “the only sequel to the Dictatorship, the only legacy of Francoism that hindered democratic coexistence was the existence of ETA.”<sup>15</sup>

On the margin it is worth mentioning two examples that extended the country’s borders. First, in 1996, with the sixtieth anniversary of the outbreak of the Civil War in the background, by unanimous vote of the Congress of Deputies there was created a new intangible place of memory as a way to repair the damage of the past: Spanish nationality, this time granted to some four hundred international brigades who were still alive. Subsequently, this measure will be applied to the citizens of Latin American countries and Sephardic Jews. Second, a monument to the fallen Blue Division who fought alongside the Germans on the Soviet front was inaugurated near St. Petersburg in Russia the following year.

## TOWARDS THE “LAW OF HISTORICAL MEMORY”

The beginning of the new millennium, having consolidated Democracy and produced a generational and cultural change, brought with it the intensification of the struggle for memory in all areas: political, media, academic and social. In 2000, the Association for the Recovery of Historical Memory (ARMH) that claimed the identification and recognition of victims buried in mass graves was created. In 2002, the July 18 uprising was institutionally condemned. In 2004, after the return to power of the PSOE after social discontent due to the action of the PP government after the March 11 attack, the “Inter-ministerial Commission for the Study of the Civil War and Francoism victims was created”, in order to prepare a report on the status of the relevant issues, among them, the elimination of Francoist symbols. Suffice it to say that there were still thousands of names of streets and towns with allusions to Francoism and still in the mid-1990s coins that were minted during the Dictatorship, despite having been officially withdrawn from circulation in 1988. Meanwhile, they multiplied media repercussions, historiographical publications, exhibitions, commemoration ceremonies of victims and acts of reply of the Francoist relics, especially the statues of Franco and commemorative plaques: peacefully promoted by citizens, or violently agitated by regionalist formations or ETA. The demands for converting mass graves into cemeteries, creating memorial sites (the Lluís Companys mausoleum in Montjuïc in Barcelona was an isolated case) were becoming increasingly apparent, opening military and civil archives related to Francoist repressions and reviewing schoolbooks. In the summer of 2006, on the seventieth anniversary of the outbreak of the Civil War, the Commission delivered its report and, subsequently, the Government introduced its bill. The negotiations lasted until the last days of the following year when, finally, on December 26, 2007, Law 52/2007, “by which rights are recognized and extended and measures are established in favor of those who suffered persecution or violence during the Civil War and the Dictatorship”, better known as the “Law of Historical Memory” was enacted.

As far as the places of memory and conscience are concerned, the law contains four articles in this matter. Thus, Art. 12, “Measures for the identification and location of victims” obliges public administrations to prepare and make available to interested parties a map that locates the remains of deceased persons in defense of Democracy between January 1, 1969 and October 6, 1977 containing information about them; Art. 15, “Symbols and public monuments” provides for measures to remove all types of artifacts (shields, badges, plaques) that exalt the military uprising, the Civil War and the repression of the Dictatorship, prior to drawing up a catalog of them, not being that they are strictly private memorabilia or when they are contradicted by artistic, architectural or artistic-religious motives protected by law; Art. 16, “Valley of the Fallen”, provides for the depoliticization of the monument by applying general rules of places of worship and public cemeteries and prohibiting any political act or exaltation of the Civil War, its protagonists or of Francoism in the enclosure. Finally, Art. 20, “Creation of the Documentary Center of the Historical Memory and General Archive of the Civil War”, constitutes the Documentary Center of the Historical Memory in Salamanca.

## CURRENT SITUATION

While it is true that the law “represents a serious paradigm shift in the official treatment of the recent past”,<sup>16</sup> since its promulgation it provoked severe criticism and it soon became clear that many ends were left untied: “The law tried more, to be a symbol in itself than in giving a real solution to the problems it intended to address”,<sup>17</sup> and did not provide an effective settlement to the issue of the uncomfortable presence of the past in public spaces. Returning to the metaphor of the Gordian knot, it could be said that it was still untied, but at least its existence was recognized.

## MAP OF MASS GRAVES AND PLACES OF REPRESSION

The Ministry of Justice, in collaboration with the Autonomous Communities and private entities dedicated to the recovery of historical memory, has been commissioned to create an interactive map that visualizes the mass graves of both sides spread throughout the country, and of the symbols that have been placed for its commemoration.<sup>18</sup> As indicated by the ministry itself, “the information, so far incorporated, represents a first approximation or initial version of the map and that its completion will be a continuous and dynamic process, in which there are still missing places of burial already located, and that will be subject both to the incorporation of new locations and to a constant update of the data included in the already located graves”. The platform has a mailbox for citizens to provide their testimonies and contribute to the development of this place of virtual memory. However, there is still much work to study, signal, dignify and “patrimonialize” places of repression.

15 Ibid. 289.

16 Walther L. Bernecker, Sören Brinkmann, *Memorias divididas. Guerra Civil y Franquismo en la sociedad y política españolas (1936-2008)*, trad. Marta Muñoz-Aunión, Madrid: Abada Editores, 2009, 330.

17 Jesús de Andrés, “Las estatuas de la dictadura y viceversa. El franquismo y sus símbolos (1936-2018)”, in Jordi Guixé, Jesús Alonso Carballés, Ricard Conesa, eds., *Diez años de leyes y políticas de memoria (2002-2017). La hibernación de la rana*, Madrid: Catarata, 2019, 168.

18 Mass graves map application, <https://mapadefosas.mjusticia.es>.

## SYMBOLS AND PUBLIC MONUMENTS

In 2008, the symbols were removed in accordance with the provisions of the law and conserve the artifacts extracted in the deposits of the Ministry of Culture in view of a possible Interpretation Center. Apparently, due to the economic crisis that hit Spain that same year and later, already during the new PP legislature initiated in 2012, a reduction or even elimination of budget items dedicated to this end, mean progress was not satisfactory, especially, at the regional and municipal level, and raised criticism from the special rapporteur of the United Nations Organization (UN), who presented his report in 2014. In 2016, also in the buildings of the central administration there were still a hundred Francoist remains.

Regarding the street, according to data from the National Statistics Institute, in May 2018 there were still more than a thousand streets with names that refer to Francoism, including more than one hundred dedicated to Franco and more than three hundred to Primo de Rivera.<sup>19</sup> The example of Madrid speaks of the political and legal complexity of removing everything related to Franco from the streets, where since 2016 the City Council has been trying to change the names of fifty streets and cannot conclude the task due to the contentious-administrative procedures that examine the justification of many of the changes, especially the existence of links between the people who gave names to the streets and the Francoist regime.<sup>20</sup>

## VALLEY OF THE FALLEN

Also in 2008, reports were presented with recommendations for the Valley of the Fallen, according to which the monument should remain standing, but it was necessary to transform its meaning into “a place for the memory of the victims and dead of the Civil War”, to which there was a *sine qua non* condition to remove Franco’s mortal remains. The UN report corroborated it, finding that the tomb of the dictator adorned with flowers could hardly be a place of reconciliation and peace. It will not be until the summer of 2018, when the Government returns to the theme of the Valley and the decree (Royal Decree-Law 10/2018) that “enables the exhumation of the mortal remains of people other than those fallen during the War [...] and] expressly consecrates the Valley of the Fallen as a place of commemoration, remembrance and equal tribute to the victims” is approved. The decree sparked several legal debates that involved the State, the Catholic Church and Franco’s family directly, but also indirectly to Spanish and foreign public opinion. In the context of huge political uncertainty in the country after the arrival of the PSOE to power through a motion of censure presented to the government of Mariano Rajoy, and before the inability of Pedro Sánchez to govern because of the unfavorable composition of the Cortes, this activation of society in discussions about the past by putting on the public agenda of such a socially sensitive issue, there was recalled the maneuver used by the PSOE in 1993. After the April 2019 elections Franco and Primo de Rivera were still buried in the Valley in tombs decorated with flowers for a few more months, while Sánchez tried unsuccessfully to get support for his government. When new general elections were called on September 24 and the Supreme Court endorsed the exhumation of the dictator, not without protests from the family and the prior Benedictine of the Valley, the issue again became the key point in the new electoral campaign. One month later, on October 24, Franco’s mortal remains were exhumed and transferred to

the Mingorrubio cemetery in Madrid and deposited with the dictator’s wife, Carmen Polo. Following the event, Sánchez declared that the transfer put “an end to an anomaly in a European democracy” and that since then “we proclaim that the ensign of democracy and coexistence will always fly in our homeland.”<sup>21</sup> If this issue influenced the electoral result of the elections in April and then November 2019, it is not to be dealt with here, but the truth is that Franco’s exhumation assured Sánchez of going down into the history books and distracting the media from the very serious crisis in Catalonia, where democratic coexistence then fluttered at half-mast in the middle of the barricades. The question of the permanence of Primo de Rivera and the future of the monument was left open for the next legislature.

## HISTORICAL MEMORY DOCUMENTARY CENTER

The Documentary Center of the Historical Memory was created in Salamanca in 2007 with the purpose of gathering the archival funds related to the period between 1936 and 1978.<sup>22</sup> In addition to the tasks of an archive, the entity organized exhibitions, cultural activities and guided tours, as well as elaborating audiovisual resources and in itself it has become a place of memory. However, due to lack of material and human resources, the reunification of documentary funds dispersed by a multitude of military and civil archives has not yet been completed, while users are exposed to long waiting periods to receive copies of the documents.<sup>23</sup>

## THORNY TASKS: EDUCATION AND MUSEALIZATION

Spain has two major tasks pending in terms of preserving memory. The first is education, the most serious aftermath from the citizen’s point of view of the lack of a responsible History policy. According to the 2000 surveys, a significant part of the generation of young people born in democratic Spain did not know how to place Franco in their historical context.<sup>24</sup> In 2014, as the aforementioned UN report found, education in this area remained poor. In the textbooks, which are the basic support of teaching in secondary and high school education centers, the subjects related to the Second Republic, the Civil War and the Dictatorship occupy only 9 % of the scholarly curriculum about the twentieth century and in some cases they are not even studied, either because they don’t have time, or because professors fear facing “thorny issues”, no matter how “aseptic” their treatment is in

19 “Franco, Primo de Rivera y otras figuras del franquismo conservan 1.143 calles en España”, in *El País*, 10. 5. 2018, [https://elpais.com/politica/2018/05/09/actualidad/1525863933\\_856305.html](https://elpais.com/politica/2018/05/09/actualidad/1525863933_856305.html)

20 “El cambio del callejero franquista se le atraganta a Carmena”, in *La Vanguardia*, 1. 6. 2018, <https://www.lavanguardia.com/local/madrid/20180601/443978932587/cambio-callejero-franquista-madrid-atraganta-carmena.html>

21 Transcript of “Institutional Statement of the President of the Government: Exhumation of Francisco Franco”, Presidency of the Government, Secretariat of State for Communication, Directorate-General for Communication 24. 10. 2019.

22 Centro Documental de la Memoria Histórica, <http://www.culturaydeporte.gob.es/cultura/areas/archivos/mc/archivos/cdmh/portada.html>

23 “Fosas sin excavar, símbolos fascistas y nula financiación: diez años de fracaso de la ley de Memoria Histórica”, in *El Diario*, 27. 12. 2017, [https://www.eldiario.es/sociedad/simbolos-financiacion-acabado-desmemoria-historica\\_0\\_723028328.html](https://www.eldiario.es/sociedad/simbolos-financiacion-acabado-desmemoria-historica_0_723028328.html)

24 Walther L. Bernecker, Sören Brinkmann, *Memorias divididas. Guerra Civil y Franquismo en la sociedad y política españolas (1936–2008)*, trad. Marta Muñoz-Aunión, Madrid: Abada Editores, 2009, 281.

written materials. As a result, students have a greater knowledge of World War II and repressions in the USSR than of the Civil War and Francoist repressions.<sup>25</sup>

The second task is the musealization of the recent past. Given the role that museums dedicated to contemporary History created in other European countries are having as a platform for debate and historical education, it is alarming that today Spain does not yet have a state museum dedicated to the Civil War and Francoism.

The Army Museum, completely transferred in 2010 to the Alcazar of Toledo, contains a room dedicated to the 20th century, paying special attention to the Civil War. In 2016, the Madrid City Council created the Commission of Historical Memory, whose functions were the study of the feasibility of a museum project on this subject in the capital of the country, but it was dissolved two years later without having submitted a report in this regard.<sup>26</sup> In fact, regional and local museums and interpretation centers have been created, such as the aforementioned Museum of Peace in Guernica, the Refuge Museum of the Civil War in Cartagena, Museu Memorial de l'Exili (MUME) in La Jonquera, while in the museum spaces already existing corresponding contents have been introduced. An interesting project underway is the Museum of the War-Battle of Teruel in this town planned for 2019/2020, which aims to be a museum of reconciliation with the ambition to call for reflection rather than seek differentiation between sides.<sup>27</sup> Where more dynamism is perceived lately is in the creation of tourist routes on the ground, some examples being the Route of the Battle of the Ebro in Aragon and Catalonia, the Fugue of Ezkaba and the Route of the Bunkers of Franco in Navarra or the Route of the Traces of the Civil War around Belchite, converted into an open-air museum.

## ALTERNATIVE MEMORIES

In parallel and in the opposite direction to all of the above, since October 1976 a unique cultural institution known as the Francisco Franco National Foundation has been operating in Madrid, which is dedicated, among other things, to the fight against “the wrongly named Law of Historical Memory, seriously damaging to the coexistence between Spaniards”, as well as to the management of Franco’s personal archive, integrated into the Spanish Archives System and public accessibility but retaining its status as a private archive, and visits to Pazo de Meirás, summer residence of the dictator and property of the Franco family, whose title is being questioned by the Xunta de Galicia.<sup>28</sup>

On the other hand, it is shocking and worrying the confrontation in the public spaces of the Basque Country and Navarra between the memorials of the victims of ETA terrorism and all kinds of manifestations of support for the people who constituted the group (banners, *graffiti*, and photographs of prisoners).

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## LESSONS (NOT) LEARNED AND RECOMMENDATIONS

The experience of democratic Spain, unlike Francoist Spain, around the management of places of memory and consciousness has shown a notable lack of strategic thinking. While the initial “pact of silence” was prudent when democratic institutions and a civic society were consolidated, the tabooization that followed and the politicization with which it alternates both at the state and regional and local levels depending on political cycles, led to, in a democratic and seemingly plural Spain, the two Spains descendants of those, referred to by Machado, surviving. Neither the law, nor politics nor education have been able to defrost, not even at the same time to open the door to true reconciliation, symbolic reparation and forgiveness and the Gordian knot of historical memory is still there. It seems that in order to unleash it, it will be necessary to:

- 1/ Provide the Law of Historical Memory with greater clarity and a sanctioning regime with coercive powers in case of non-compliance;
- 2/ Demand from the political class a sense of long-term responsibility, beyond the political cycle or the election campaign of the moment, in the matter of the politics of History, including places of memory;
- 3/ Encourage citizen participation in the debate about the past, so that they can dialogue with each other different political options, since only then will it be possible to make progress in reconciliation; and
- 4/ Adapt educational programs so that students know their recent history, develop a capacity to reflect on sensitive issues that it presents beyond the political correctness of the moment and acquire historical self-awareness.

25 Enrique Díez, “La Memoria histórica invisibilizada en la educación”, in *El Diario de la Educación*, 1. 4. 2019, <https://eldiariodelaeducacion.com/blog/2019/04/01/la-memoria-historica-invisibilizada-en-la-educacion/>

26 “El Comisionado de Memoria Histórica estudia proponer un museo del franquismo”, in *El País*, 9. 8. 2016, [https://elpais.com/ccaa/2016/08/08/madrid/1470678101\\_823377.html](https://elpais.com/ccaa/2016/08/08/madrid/1470678101_823377.html); “Se disuelve el Comisionado de Memoria Histórica de Madrid”, in *La Nueva Tribuna*, 15. 6. 2018, <https://www.nuevatribuna.es/articulo/madrid/3000fusiladosmadrid-fusiladoscementerioeste-victimasfranquismo-comisionadomemoriahistoria-fusiladostapiacementerio-listadofusiladosmadrid-franciscasauquillo-mauriciovaliente-ejecutadosposguerra-ejecutadosfranquismo-guerracivil/20180615190451153070.html>

27 “El Museo de la Guerra Civil de Teruel ‘no diferenciará entre bandos’ porque ‘quiere llamar a la reflexión’”, in *El Diario*, 25. 2. 2019, [https://www.eldiario.es/aragon/sociedad/Museo-Guerra-Civil-Teruel-diferenciara\\_0\\_871763406.html](https://www.eldiario.es/aragon/sociedad/Museo-Guerra-Civil-Teruel-diferenciara_0_871763406.html)

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# CHRONOLOGY OF THE MAIN EVENTS

**GEMA PÉREZ HERRERA**

<b>November 20, 1975</b>	Death of Francisco Franco.
<b>November 22, 1975</b>	Juan Carlos I de Borbón is proclaimed King of Spain.
<b>December 1975</b>	Carlos Arias Navarro chairs the first Government of the Monarchy.
<b>January 24, 1976</b>	Treaty of Friendship and Cooperation between Spain and the U.S.
<b>March 3, 1976</b>	General strike in Vitoria. Five workers die from police shooting.
<b>June 1976</b>	Journey of the kings of Spain to the U.S.; speech by the King in favor of democratic freedoms. Registration of Political Associations Act.
<b>July 3, 1976</b>	The King appoints Adolfo Suárez, former Secretary General of the Movement as President of the Government.
<b>September 10, 1976</b>	Suárez announces the Law for the Political Reform.
<b>October 4, 1976</b>	ETA assassinates Juan María Araluce Villar, President of the Diputación de Guipúzcoa. Throughout this year 1976 there were 18 fatalities due to ETA.
<b>November 18, 1976</b>	Law for the Political Reform passed in Congress.
<b>December 15, 1976</b>	Referendum on the Law for the Political Reform.
<b>January 1977</b>	Right-wing extremists assassinate in Madrid lawyers close to the Communist Party (PCE) in Atocha. Interview between Adolfo Suárez and Santiago Carillo, leader of the PCE: recognizes the Spanish flag and Monarchy.
<b>February 1977</b>	Reform of the Political Associations Act. Legalization of political parties in Spain.
<b>February 11, 1977</b>	Antonio María de Oriol y Urquijo, President of the State Council and former Minister of Franco, and Lieutenant General Emilio Villaescusa, President of the Supreme Council of Military Justice, who had been kidnapped by GRAPO were released by the police.
<b>March 11, 1977</b>	Expansion of the Amnesty for political crimes, which allowed the release of 1,940 people.
<b>April 9, 1977</b>	Legalization of the Communist Party of Spain.
<b>June 15, 1977</b>	First democratic elections. Victory of Suárez's Union of the Democratic Center (UCD) party.
<b>July 28, 1977</b>	The Government officially requests entry into the European Community.
<b>August 1977</b>	Work on the constitutional paper in the Cortes begins.
<b>September 29, 1977</b>	The Generalitat of Catalonia is restored by decree.
<b>September–October 1977</b>	The Moncloa Pacts and economic agreements between political forces of different ideology. Generalization of pre-autonomies. Amnesty Law.
<b>October 8, 1977</b>	Augusto Unceta, President of the Diputación de Vizcaya dies in an attack perpetrated by ETA. During that year 1977, ETA caused 10 fatalities.
<b>November 1977</b>	The Council of Europe admits Spain as a full member.
<b>January 4, 1978</b>	By decree of the Government, the Basque General Council is created as a pre-autonomous institution.
<b>March 10, 1978</b>	Galicia becomes the third territory with a regional self-government regime.
<b>August 1978</b>	Political and military crisis, fear of an involution.
<b>December 6, 1978</b>	Referendum on the draft of the Spanish Constitution.
<b>December 29, 1978</b>	Approval of the 1978 Constitution in the Cortes.

<b>March 1, 1979</b>	Second democratic elections. UCD victory. The 1st Legislature begins.
<b>May 1979</b>	The Spanish Socialist Workers' Party (PSOE) abandons Marxism.
<b>July–August 1979</b>	Negotiations and approval of the first Statutes of Autonomy: Basque Country and Catalonia.
<b>October 25, 1979</b>	Approval referendum of the Statute of Autonomy of the Basque Country. Referendum of approval of the Statute of Autonomy of Catalonia.
<b>May 30–31, 1980</b>	Motion of censure by the PSOE on Adolfo Suarez.
<b>June 1980</b>	France imposes a pause in negotiations for the entry of Spain into the European Community.
<b>October 1980</b>	Spain becomes a member of the UN Security Council. Negotiations for the entry of Spain into NATO are launched.
<b>November 1980</b>	Madrid hosts the Conference on Security and Cooperation in Europe (CSCE).
<b>December 21, 1980</b>	Referendum of approval of the Statute of Autonomy for Galicia.
<b>January 27, 1981</b>	Resignation of Adolfo Suárez, succeeded by Leopoldo Calvo-Sotelo.
<b>February 23, 1981</b>	Investiture of Leopoldo Calvo-Sotelo. Coup d'état of the Lieutenant Colonel of the Civil Guard, Antonio Tejero, in the Congress.
<b>July 31, 1981</b>	Autonomous pacts between PSOE and UCD to order the transfer of territorial power.
<b>October 20, 1981</b>	Referendum of approval of the Statute of Autonomy of Andalusia.
<b>December 10, 1981</b>	The members of the Atlantic Alliance sign the Accession Protocol of Spain into NATO.
<b>April 2, 1982</b>	Falklands War, Argentina occupies the Falkland Islands then under British sovereignty.
<b>May 30, 1982</b>	The Spanish Government deposits the instrument of accession of Spain into NATO.
<b>June 30, 1982</b>	New Treaty of Hispanic-American Cooperation.
<b>July 28–31, 1982</b>	Suárez leaves UCD and announces the creation of the Democratic and Social Center (CDS).
<b>August, 1982</b>	Announcement of the dissolution of the General Cortes.
<b>October 28, 1982</b>	General elections; victory of the PSOE of Felipe González by absolute majority.
<b>December 2, 1982</b>	Takeover of the Socialist Government chaired by Felipe González.

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## **LAWS AND DECREES**

- Decree-Law 10/1969, of March 31, declaring the prescription of all crimes committed prior to April 1, 1939
- Law 46/1977, of October 15, on Amnesty
- Law 5/1979, of September 18, on recognition of pensions, medical-pharmaceutical and social assistance in favor of widows, and other relatives of the Spaniards who died as a result or on the occasion of the last Civil War
- Law 35/1980, of June 26, on pensions to former mutilated combatants in the Republican zone
- Law 37/1984, of October 22, on the recognition of rights and services provided to those who during the Civil War were part of the Armed Forces, the Law Enforcement Agencies and the Cuerpo de Carabineros of the Republic
- Law 18/1984, of June 8, on recognition as years worked for the purposes of Social Security of the periods of imprisonment suffered as a result of the assumptions contemplated in the Amnesty Law of October 15, 1977
- Law 4/1990, of June 29, on General State Budgets for 1990. Eighteenth Additional provision. Compensation for those who suffered imprisonment as a result of the cases contemplated in Law 461/1977, of October 15, on Amnesty
- Law 3/2005, of March 18, which recognizes an economic benefit to citizens of Spanish origin displaced abroad, during their minority, as a result of the Civil War, and who developed most of their lives outside the national territory
- Law 52/2007, of December 26, which recognizes and extends rights and establishes measures in favor of those who suffered persecution or violence during the Civil War and the dictatorship
- Royal Decree-Law 10/1976, of July 30, on Amnesty
- Royal Decree-Law 6/1978, of March 6, on regulating the situation of the military who took part in the Civil War
- Royal Decree-Law 43/1978, of December 21, which recognizes economic benefits to those who suffered injuries and mutilations in the Spanish Civil War
- Royal Decree 2925/1978, of December 7, for compliance with Royal Decree-Law 35/1978, of November 16, on pensions to family members of Spaniards who died as a result of the 1936-1939 war
- Royal Decree 1891/2004, of September 10, establishing the Inter-ministerial Commission for the study of the situation of victims of the Civil War and Franco

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