

POST-TRANSITIONAL JUSTICE IN SPAIN: PASSING THE HISTORIC MEMORY LAW

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ABSTRACT

This paper traces the origins of the post-transitional justice efforts by the Spanish government to recognize and offer reparations for the human rights crimes committed during the Spanish Civil War and subsequent Franco dictatorship. After a delay of at least thirty years, reparation legislation was enacted in 2007 with the passage of the Historical Memory Law, which is regarded as one of Spain's most ambitious measures to address its past human rights violations. This thesis argues that three main factors encouraged the Law's passage. First, Spanish involvement in foreign social justice shined a spotlight on Spain's own unsettled past. Second, the maturation of a younger generation that did not experience the worst years of the dictatorship turned public opinion in favor of reparation. Finally, the Law was introduced under opportune political circumstances and encompassed minimal reparations in order to receive the necessary congressional vote.

INTRODUCTION

When Spanish leader Francisco Franco died in 1975 after a rule of over three decades marked by human rights abuses, Spain underwent a radical change in governance from dictatorship to democracy. During this transition, the country did not respond to the human rights abuses of the Franco regime, or, in other words, it failed to pursue transitional justice. Transitional justice is defined as “the array of legal and political mechanisms devised to hold departing authoritarian regimes accountable for their political transgressions.”¹ This field of study began with the Nuremburg trials in the 1940s and was popularized by a worldwide wave of democratization in the

1980s that occurred from southern Europe to Latin America. Most countries engaged in transitions from authoritarian systems of government to democracy, such as Portugal and Chile, immediately pursue accountability and reparation measures for crimes committed by their fallen authoritarian regimes. Spain, however, is distinctive in its decision to ignore its past human rights violations, amid the fear that doing so would destabilize the new democracy.² Nevertheless, Spain eventually faced both foreign and domestic demands to pursue what can be referred to as “post-transitional justice.”³ With pressure mounting in October 2007, the country achieved a monumental piece of justice legislation, the Historical Memory Law, which addressed the

human rights violations that took place under the dictatorship of General Francisco Franco.⁴ Scholars have speculated on the motivations behind this surge of renewed concern for Francoist crimes, yet the analysis of Spain's recent accountability and reparation measures has been limited and explanations are incomplete. This article strives to contribute to this sparsely researched area of Spanish social justice. Understanding the context in which the Historical Memory Law was passed could help to illustrate why accountability for Franco-era crimes became an issue on the political agenda so many years after the collapse of the Franco regime and not earlier.

BACKGROUND

The Crimes of the Franco Regime

Francisco Franco's dictatorship in Spain, which lasted from 1939 to 1975, began after a gruesome three-year Civil War between the Republicans, who were loyal to the established Spanish Republic, and the Nationalists, a rebel group led by General Franco. The crimes of the Franco regime can be divided into two phases: the years immediately following the war (1939–1947) and a more stable period that lasted until the regime fell in 1975. The most serious crimes occurred during the former period, but political crimes continued throughout the latter.⁵

As part of a deliberate system of revenge, Francoist troops targeted civilians in locales of Republican support in the immediate post-war years.⁶ Around 440,000 Republicans were exiled immediately after the war, 10,000 of whom died in Nazi concentration camps. Mass trials and executions occurred regularly, with Franco showing little restraint in signing death warrants. Some 400,000 people were subjected to forced labor, torture, prison time, or internment camps. The number of these "official" victims who suffered directly from repression policies is unclear and the number of those who were terrorized, kidnapped, and murdered in secret is almost impossible to determine. Children were separated from their Republican parents and often adopted into families of Franco loyalists without ever knowing their true origin. Although many of these crimes continued well into the later years of the dictatorship, later violations by the Franco regime consisted mostly of political sentencing and torturing of government opponents.⁷

Forgetting the Past

Despite this horrifying past, or perhaps because of it, Spain chose to forego any system of accountability after Franco's death in 1975 and during the subsequent transition to democracy. There was an attempted coup d'état in 1981, in which the Civil Guard tried to reinstate the military government of the past thirty-five years. Although the coup failed, it demonstrated the precariousness of the new democracy. In response, victims chose to protect the country's democratic achievements at the expense of reparation. Rather than speak openly about the Franco regime's crimes, Spain adhered to an unspoken *Pacto del Silencio* or *Pacto de Olvido* (Pact of Silence).⁸ The first democratic Parliament after the dictatorship passed an Amnesty Law in October 1977 that pardoned all political crimes, regardless of nature or outcome, including those committed by the Franco regime against its enemies.⁹ Many scholars have argued that this path allowed for a peaceful governmental transition and helped stabilize the new democracy.¹⁰ In fact, despite its neglect of justice processes, Spain's transition is regarded as a model for securing strong democratic outcomes after a dictatorship. Conversely, according to some academics, Portugal's proactive investigations into past crimes during its transition compromised democratic stability. Per this view, these pursuits distracted the country from political reconciliation.¹¹ Following this reasoning, the UN has historically supported laws granting amnesty and preventing prosecution as a means of restoring peace and solidifying democratic governments.¹² Nevertheless, in choosing this method of transition, Spain did not fully conclude its tragic past. Moreover, a general consensus exists that this law is unconstitutional and incompatible with international human rights law.¹³

Several obstacles perpetuated Spain's pact of silence and hindered judicial inquiry into the Franco government's violations. The first obstacle concerns statutes of limitations embedded in most legal systems, including Spain's. These statutes ensure that prosecution for a crime may occur only within a reasonable period after the crime is committed. However, counterarguments hold that such statutes do not apply to Franco-era government violations, for the disappearances have not been solved, making them ongoing crimes. Another obstacle pertains

to basic due process rights for the accused; these cannot be upheld, as the deceased are unable to defend themselves.¹⁴ Retroactive justice scholar Angela Guarino argues that fighting to bring justice to crimes whose perpetrators are likely deceased is unproductive and others assert that attaining justice for the crimes of past regimes is unnecessary and simply unrealistic.¹⁵ However, to other scholars investigating Franco-era crimes, such as Mónica Zapico Barbeito, the purpose of retroactive justice is not only to ensure justice, but also to establish the truth about the crimes committed and to grant reparations to those affected.¹⁶

The Historical Memory Law

While Spain evaded a transitional justice process in the early stages of the new government, the country faced increasing pressure at the turn of this century to reveal the past transgressions of the Franco regime. The Franco regime's human rights violations were neglected for decades until around 2000 when a nongovernmental organization, the Association for the Recuperation of Historical Memory (ARMH), was created to assist private initiatives in exhuming mass graves and investigating the fate of disappeared persons.¹⁷ Subsequently, in 2006, a "fever for remembering" occurred, when the Spanish public pressed the government to acknowledge the truth behind Franco-era crimes.¹⁸

In October 2007, Spain officially acknowledged the actions of Franco's dictatorship as "unjust" for the first time by passing the Historical Memory Law.¹⁹ The Law received international and domestic attention for its efforts to finally address the country's silenced past. However, in an attempt to achieve broad appeal, the Law intentionally did not refer to any historical or collective memory, nor did it establish an account of what human rights violations took place, nor did it condemn the Franco regime for its actions. It simply recognized each citizen's right to "personal and family memory," or the right to investigate crimes pertaining directly to one's family.²⁰ The bill created a process for victims to seek a "Declaration of Reparations and Personal Recognition," enhanced the pensions of Republican survivors and Franco-era political prisoners, and instructed local administrative units to help locate and exhume mass graves. Further, it required removal of partisan commemorative symbols and

prohibited political acts at the Valley of the Fallen, Franco's burial site.²¹

While the Socialist Worker's Party (*Partido Socialista Obrero Español*, or PSOE) introduced the Historical Memory Law expecting quick, unanimous passage, the political process for the Law proved unexpectedly contentious. The country's two main political parties, the center-left PSOE and the center-right Popular Party (*Partido Popular*, or PP), had both been active in the debate for retroactive justice in Spain. The PP objected to the proposal for the Law in its entirety, accusing the PSOE of attempting to destroy Spain's democratic transition.²² Some attribute the PP's position to the public ties party members and their families had to Franco's institutions.²³ Despite these opposing views and the resulting political drama, Congress eventually agreed upon a revised version of the legislation, which passed with 127 votes for and 119 against (115 of which were from the PP).²⁴

Breaking the Silence

The question remains as to what propelled the new push for Spanish transitional justice that materialized in the Historical Memory Law. Furthermore, there is no agreement on why the new law was passed when it was. Transitional justice literature suggests that ethical principles do not drive pursuits for accountability and reparations, but rather a combination of other elements condition the process.²⁵ Thus, to discover why the first reparations law in Spain passed in 2007 and not earlier, I conduct a situational examination rather than an ethical one. Furthermore, by examining trends at both the domestic and international levels, I provide an account thorough enough to explain why reparations legislation was finally passed in 2007.

It is important to recognize that the conversation for justice is not exclusively a domestic matter, as foreign governments and organizations also play a role. Carmen González Enríquez claims that active advocacy, including international advocacy, is central to guaranteeing prosecution of human rights crimes.²⁶ In her opinion, lobbying and political strategizing by the international community is consequential.²⁷ Additionally, the desire and perceived need to enter the "European family" may favor transitional justice.²⁸ Whether and how these international factors played a role in the Spanish

pursuit of justice is discussed in Section 1 of this thesis.

While the international factor may be important, the local community and public opinion cannot be ignored.²⁹ In transitioning countries, retroactive justice is not intended to deter further crime, but rather to validate the rights of citizens and legitimize young democratic governments. Some believe that new state authorities must address these violations; otherwise they may be construed as retroactively supporting the perpetrators.³⁰ Eijkman explains that public opinion on the priority of justice determines whether the prosecutions are appropriate.³¹ Internal pressure is examined in Section 2, which compares the Spanish populace of 2006, when the Historical Memory Law was introduced, to that of previous periods.

Finally, differing ideas on retribution and reparations often become attached to political parties, making politics a crucial element in transitional justice. The agendas of these parties can mobilize demands for justice, and other political factors, such as institutions, can shape the way a country confronts its difficult past.³² For example, the PSOE and the PP have been strategic in advocating for and against reparations, with the latter even defining justice attempts as an attack on the foundation of Spanish democracy.³³ Such political factors behind the passage of the Historical Memory Law are explored in Section 3.

Although modest compared to the desires of the political left, the Historical Memory Law attempted to break the country's silence and amnesia regarding past human rights violations. In this article, political debate, media reporting, and interviews surrounding the passage of the Historical Memory Law are used as evidence for the proposed motivations behind the justice concerns in Spain. In the subsequent sections, I argue that the bill came at a time of renewed interest in Francoism and the Civil War. Developments in international criminal law and victims' rights norms encouraged initial self-reflection in the country. Further, a new generation of social and political participants that were willing to discuss past justice problems was replacing those who had lived and suffered through the Civil War and the Franco dictatorship. Finally, the politicians found reparation electorally favorable in 2006 and engaged in strategic negotiations to ensure the Law's passage. Looking at

the international, generational, and political contexts provides a comprehensive understanding of the factors that led to the Historical Memory Law.

METHODS

Parliamentary dialogues retrieved from the online journal of the Spanish Congress of Deputies were examined to assess the political debate on the Historical Memory Law. These journals were obtained from the website of the Congress of Deputies, <http://www.congreso.es>, which organized the journals by parliament session. The particular journals analyzed were retrieved by searching speeches in the eighth legislative session (2004–2008) under the keywords *Guerra civil y la dictadura*, which were contained in the title of the original bill. The search yielded three journals, from October 31, 2007, December 14, 2006, and November 11, 2006. On these dates the debate of the Law was recorded, with members of each parliamentary party speaking on particulars of the bill, offering amendments, and expressing overall support or concerns. The political parties that spoke on the bill included the Spanish Socialist Worker's Party (PSOE), the Democratic Popular Party (PP), the Vasco Party, the Parliamentary Coalition of the Canaries and New Canaries, the *Catalán* parliamentary group known as Convergence and Union, the United Left, the Republican Left of Catalonia, and the Mixed Group comprised of nine members belonging to parties not large enough to create their own parliamentary group.

In each session, members of all parties contributed to the debate over the Historical Memory Law. Generally, in each session, only one speaker for each party spoke on behalf of the entire party, expressing all the positions, concerns, and opinions of that group. The three congressional sessions were screened for speeches, culminating in thirty-six speeches that in total comprised the various party stances in Congress at the time. The debate was analyzed for several factors. First, to evaluate politicians' receptiveness to the Law, complaints about the bill were monitored. These complaints were recorded in areas where justice was still considered to be incomplete after the Law was passed, according to findings from the literature review. Any complaints outside this time condition were documented as "other complaints." The recorded areas included:

- *complaints about the Valley of the Fallen;*
- *proper documentation of the dictatorship and Civil War;*
- *sufficient apology or recognition of victims;*
- *condemnation of the Franco regime or establishment of a truth commission;*
- *concrete policy on the exhumation of mass graves;*
- *annulment of summary judgments during the Franco regime; and*
- *prosecution of perpetrators of human rights violations.*

Any comment that was disapproving toward, critical of, or opposed to the bill was considered a “complaint.” A “complaint” was not necessarily negative in tone, but also included any constructive comment that suggested changes, ways to improve the bill, or personal desires for the bill that had not yet been addressed. Additionally, to assess overall satisfaction with the bill, a parliamentary member’s overall judgment of the bill as either “sufficient,” “insufficient,” or “neutral” was recorded. Judgments recorded as “insufficient” were readily apparent in speeches that referred to the bill as “lacking,” “not enough,” “disappointing,” or “insufficient.” If explicit language was not used, then speeches that contained arguments for further reparation were marked as “insufficient” interpretations, while those that lacked such arguments and expressed optimism or satisfaction with the bill were marked “sufficient.” When an argument did not clearly fall into these categories or when there were conflicting interpretations in the same argument, it was marked as neutral.

References to the international community, such as international human rights law, Spanish involvement with the Pinochet case, or international interest groups such as Amnesty International, were documented within the congressional debate entries. These references were important in assessing what role the international community played in passing the Law and gauging how often debate referenced the international stage. Furthermore, the congressional debate was tracked for any evidence of a generational change occurring within Spain and among the congressional representatives. For example, if a member stressed a need to do justice for his or her grandparents or alluded to an inability to pass such a law previously because of the instability of Spain’s democracy, his or her comment was included in

generational tracking. Finally, the congressional debate entries were tagged with the political party with which each respective speaker is affiliated. This allowed me to better see how party politics affected the shaping and passage of the Law.

Congressional debate data was supplemented with an analysis of arguments for the Historical Memory Law found in the two most circulated newspapers in Spain, *El País* and *El Mundo*. *El País* has a loosely liberal affiliation, while *El Mundo* skews slightly conservative. Using both of these sources ensured inclusion of the most relevant articles and a representative sample of arguments associated with both ideologies. Furthermore, it was possible to compare the coverage of both of these newspapers to reveal any partisan differences. Articles and opinion pieces from 1990 to 2013 were gathered in the LexisNexis database using search terms corresponding to the Historical Memory Law, human rights, and the Franco dictatorship. Duplicate articles and editorials were eliminated, as well as false positives that did not refer directly to the above search criteria. The extent of news coverage was quantified as the number of articles within certain time frames that referenced the Historical Memory Law, Franco, international human rights, and indications of generational changes, such as appeals to justice for grandparents.

The final data source consisted of interviews that were conducted in person in Madrid, Spain in the summer of 2013. These interviews were designed to obtain opinions of those familiar with the Historical Memory Law in order to elucidate what some people view as its benefits and drawbacks. Furthermore, these interviews were used to gain insight into the reason the bill was on the political agenda, public opinion on the Law, and general perspectives on the debate that may not have been acquired through analyses of journal and newspaper documents. Lastly, information gathered from these interviews was used to enhance the historical background behind the transitional justice process in Spain.

The most useful interview was with Carlos Castresana-Fernandez, a renowned Spanish prosecutor, criminal law professor, and head of the International Commission against Organized Crime in Guatemala (CICIG). He has particular expertise in Spanish justice, as a consequence of having

worked with Superior Courts of Justice of Madrid and Catalonia, as well as in the Special Prosecutor's Offices against Corruption. Castresana-Fernandez is an expert in international human rights and has won many honors for his work in the subject area, including the National Award for Human Rights in Spain in 1997 and the Human Rights Award from the Argentina Association of Human Rights in 1999. The interview took place on August 29, 2013.

Additional interviews were conducted with Patricia Esteban, a resident of Madrid and professor of Spanish literature at the Universidad San Pablo; Juan Pulgar, a lawyer in Madrid; and Pilar Pulgar, a worker residing in Madrid who lived through the Franco dictatorship.

RESULTS

Section I: International Context

The renewed interest in justice and accountability that occurred in Spain in the 2000s after years of observance of the *pacto de olvido* was situated in a unique moment on the international stage and in the evolution of international law. Post-transitional justice in Spain resulted from a variety of international factors including elevated international pressure, the establishment of international human rights laws, Spain's involvement in foreign transitional justice, and the progression of transitional justice in other countries in the late 1990s.

Active International Pressure

Spain was not required to address its past human rights violations by the international communities it joined following the democratic transition; however, the international community did actively contribute to Spain's "fever for remembering."³⁴ When Spain joined the Council of Europe in 1977, the Council did not impose entry requirements pertaining to Franco-era crimes. Although in 1950 this Council forged the European Convention of Human Rights, an international treaty to protect human rights and fundamental freedoms in Europe, it did not attempt to apply this doctrine retroactively to Spain and force the country to offer reparations to victims of the Franco government.³⁵ As a result, Spain did not face pressure to pursue transitional justice in the 1970s. The country's subsequent entry into the European Union in 1986

similarly occurred without any precondition relating to Spain's pursuit of accountability.³⁶ Therefore, in the 1980s, the international community still did not require Spain to acknowledge Franco-era crimes or bring justice to Franco-regime victims.

More recently, the European Union has strictly imposed reparation conditions on countries before granting membership. Entry requirements for Serbia included the surrender of all war criminals to the former Yugoslavian tribunal.³⁷ Conditions were also imposed on the Czech Republic and all former members of the Warsaw Pact. Spain and Portugal, however, were both accepted without such demands.³⁸ Thus, a direct request by the international community never drove the Spanish pursuit of justice through the Historical Memory Law. The Law also had no direct repercussions for Spain in the international community, so Spain should have felt no pressure via the international stage to address its transitional justice concerns.³⁹

Although there were initially no specific international demands for Spain to address victims of the Franco regime, later requests by non-governmental international organizations resonated with the country, which could help explain why post-transitional justice occurred in 2007 and not earlier. Amnesty International implored Spain to do justice for the thousands of victims up until and even after the Historical Memory Law was passed.⁴⁰ These appeals were publicized to the Spanish population through *El País* in articles from May and November of 2003. In the May 2003 article, the newspaper covered Amnesty International's support of new initiatives honoring Civil War victims and exhumations of mass graves.⁴¹ Likewise, in 2002, the United Nations Human Rights Office recommended that Spain "investigate the disappearance at the hands of the Franco regime [of] at least two cases of Republicans shot after the Civil War."⁴² *El País* featured this recommendation on November 16, 2002, which consequently sparked an immediate and unprecedented motion in Parliament on November 20 condemning Franco's uprising in 1936 as an illegal rebellion against a legitimate government.⁴³ This earlier reaction by the Spanish Parliament to the request of international organizations suggests that the pressure from such organizations contributed to the milieu in which the Historical Memory Law was passed. In sum, international pressure grew in the

early 2000s, which fostered dialogue on transitional justice issues.

Building International Norms

In addition to the pressure directly exerted on Spain by international actors, the evolution of international human rights norms has had a great influence on the trajectory of the Historical Memory Law debate. These developments began with the Nuremberg trials in 1945, when the United Nations resolved that atrocities like those of World War II should never recur. The United Nations adopted the *Universal Declaration of Human Rights* three years later, though this declaration and the similar *Declaration on the Protection of All Persons from Enforced Disappearance* (1992) are not legally binding.⁴⁴ In contrast, the UN's *International Covenant on Economic, Social and Cultural Rights*, and the *International Covenant on Civil and Political Rights* are legally binding human rights agreements, effective as of 1976. The Rome Statute of the International Criminal Court (ICC) was adopted in 1998 and put into effect in 2002, establishing four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression.⁴⁵ Spain ratified the Rome Statute in 2000, although the Court did not have retroactive power to look into Spain's past. Finally, in 2005, drawing on the efforts of previous doctrines, the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* defined and outlined thirteen necessary parameters of reparation. According to this retroactive standard, full and effective reparation requires restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁴⁶ Moreover, the parameters explicitly obligate prosecution of persons allegedly responsible for human rights violations, provision of proper assistance to victims seeking access to justice, and the inapplicability of statutes of limitations.⁴⁷ With the accumulation of all such human rights doctrines, the UN has a basis for recommendations on handling human rights violations, including the 2002 recommendation to Spain discussed previously. Finally, since Spain is part of the UN community, all such norms that have retroactive power apply to Spain for Franco violations.

This evolution of criminal law in the 2000s set the stage for Spain's renewed interest in Franco-era crimes.⁴⁸ Almost 20 percent of debate speeches on the Historical Memory Law cited World War II as the origin of the international criminal law applicable to Spain, referring to it as the structural basis of European democratic culture and the foundation of the core European value of human rights.⁴⁹ Speeches also acknowledged the sixtieth anniversary of the precedent's existence.⁵⁰ Moreover, 36 percent of the debate speeches explicitly accused Spain of violating established international human rights doctrines, indicating that deputies were cognizant and respectful of the norms that the international community expected to be upheld.

In the debate over the Historical Memory Law, 71.4 percent of deputy accusations referred to the violation of some UN human rights doctrine. Most accusations cited noncompliance with *UN International Covenants of Human Rights*, followed by neglect of the Rome Statute. Other UN doctrines, such as the *Universal Declaration of Human Rights*, were mentioned less often. Specifically, Joan Tardà i Coma of the Republican Left argued on October 31, 2007, that "[Spain] deliberately ignored UN resolution 95 on the recognition of judgments and the principles of international law arising from Nuremberg."⁵¹ He referred to the mandatory subrogation requirement, whereby one person takes over the rights or remedies of another against a third party, implying that the current Congress was responsible for remedying the Franco regime's violations against Spanish citizens. Similarly, Deputy Begoña Lasagabaster Olazábal complained that the bill did not adhere to the UN doctrine on war crimes and crimes against humanity.⁵² In this sense, although the United Nations did not impose demands on Spain to execute post-transitional justice, the norms the organization set came alive during the Historical Memory Law debate. Even if UN human rights norms did not directly influence reparation, they at least pressured the Spanish Congress to answer more questions about justice for crimes against humanity in 2006 than in any previous year.

The Council of Europe's human rights developments, specifically the decisions of the European Court of Human Rights (ECHR) also played a large role in the debate, with 28.5 percent of

the accusations and 11 percent of the entire debate referencing statements made by the organization. For example, Aitor Esteban Bravo of the Vasco Group insisted that the parameters for judging the Historical Memory Law should not be limited to the Spanish constitution, but should also include the ECHR.⁵³ Arguments for the existence of a general international human rights norm appeared in 42.9 percent of the accusations and 16.7 percent of the debate. Congressional deputies referred to the need to explicitly condemn the Franco regime and combat historical relativism painting Franco as a “soft” dictator in order to abide by this norm.⁵⁴ Overall, more than 50 percent of the bill debate referenced some international human rights development, giving voice to the international community along the route to the Historical Memory Law’s passage.

Moreover, *El País* consistently referred to UN human rights doctrine and the Rome Statute in articles from 2000 to 2008, thereby informing the Spanish public of the existence of such norms during this time.^{55, i} The dominant Spanish news source highlighting these norms for other human rights cases created an interactive space that fostered Spanish citizens’ introspection on Spain’s compliance with these standards. Expressing interest in this international doctrine on human rights, the Spanish public responded with 380 opinion pieces on human rights and UN doctrine in *El País* between 2000 and 2007. These findings suggest that international human rights norms informed both the political debate and the Spanish media. Perhaps most importantly, they indicate the extent to which the Spanish populace reacted to these international norms around the introduction of the Historical Memory Law in 2006. This, in turn, demonstrated the saliency of this issue in Spanish politics and pressured Spanish politicians to take action.

At the turn of the millennium, public interest in human rights concerns peaked in response to media stories of crimes against humanity and justice around the world. The increased attention to such concerns primed discussions over domestic human rights and ultimately increased attention to Franco violations. Overall, the prevalence of human rights development and international justice norms in the Congressional debates highlights that the development of international human rights helped

shape the reparations discussion in Spain.

The Justice Cascade

Another key component of the international environment facing Spain in the early 2000s was the progression in transitional justice that had taken place in other countries, especially those in Latin America. Transitional justice was pursued in Chile, Argentina, and Guatemala in the late 1990s, ICC cases were brought against Uganda, Congo, Sudan, and South Africa in the early 2000s, and truth commissions were created in twenty-five countries during these two decades.⁵⁶ These occurrences left people wondering when Spain’s victims would have their turn for justice. In an opinion piece in *El País*, Javier Maravall wrote:

Argentina and Chile, in their democratic transition processes, looked to the Spanish transition as a model of peaceful and consensual change. Maybe it’s time you España look now to processes that have occurred in these two brotherly countries to clarify human rights violations that occurred during the dictatorship of General Francisco Franco (1939-1975).⁵⁷

From 1997 onward, *El País* featured several other opinion pieces contrasting reconciliation in Spain with that in other countries, particularly Argentina and Chile.⁵⁸ Spain not only witnessed accountability measures in other countries with similar pasts, but also actively participated in these cases. In 1999, Guatemalan citizen Rigoberta Menchú used the Spanish High Court to bring a case against the Guatemalan military leadership for human rights violations against indigenous populations during its civil war. In June 2003, Spanish judge Baltasar Garzón jailed a former naval officer of the Argentine military dictatorship after he was extradited from Mexico to Spain pending trial for genocide and terrorism.

In September 2005, Spain’s Constitutional Court ruled that the “principle of universal jurisdiction prevails over the existence of national interests,” allowing the National Court to reach beyond national borders in cases of torture, terrorism, or war crimes, even when no Spanish victims were involved. Subsequently, on January 11, 2006, the Court initiated an investigation into seven former Chinese officials, including former President Jiang Zemin, who allegedly took part in genocide in Tibet.

i 380 articles between 2000 and 2008 in *El País*, retrieved from LexisNexis Academic.

On July 7 of that year, six Guatemalan officials were formally charged to appear in the Spanish Court in regard to the Menchú case. This is the environment in which the Historical Memory Law was passed in 2006. Unsurprisingly, people began to demand Spain's own accountability for human rights crimes considering that Spain was playing such a central role in many cases regarding international human rights crimes.

The case of Chilean dictator Augusto Pinochet, one of Spain's early probes into foreign human rights crimes, was pivotal in fostering pressure for Spanish vindications of Franco-era crimes.⁵⁹ In 1998, Spanish magistrate Baltasar Garzón issued an international arrest warrant for General Pinochet for ninety-four counts of torture of Spanish citizens and for the 1975 assassination of Spanish politician Carmelo Soria.⁶⁰ The charges filed by Spain for infractions that were not only in another country but on another continent highlighted the Spanish government's hypocrisy. Spanish citizens and the international community alike wondered why the country would provide justice for the victims of another dictatorship but not for its own victims.⁶¹ Such reflections appeared in sixteen articles in *Agence News Press* and a range of other international news sources, including *The New York Times*.⁶² The bulk of such international media occurred in 1998. Spanish citizens raised the same concerns in *El País* opinion pieces, with one professor saying, "...when we asked [sic] that Pinochet be held accountable, we must prove that there is no contradiction between our peculiar relation with the Franco dictatorship and the request for Pinochet's prosecution. Or there must be very good reasons for holding different criteria."⁶³

The debate over the Historical Memory Law featured identical sentiments. For instance, Joan Tardà i Coma noted the "contradiction that Spanish state judges pursue crimes committed in Chile or Argentina a few years ago instead of in the State itself."⁶⁴ In fact, a third of the debate speeches looked to the legal protection of victims in other countries as precedents, with two-thirds directly referring to Spain's involvement in the Pinochet case. Although Patricia Esteban conceded that there was a difference in sensitivity between dealing with Spain's issues and with those in other countries, she too felt that Spain's involvement in foreign justice issues was "paradoxical." Clearly, the debate over the Historical

Memory Law was shaped partially by the irony of Spain condemning foreign human rights abuses while failing to address its own.

"Honeymoons" for Justice

Spain's lack of engagement in any international conflict also made the pursuit of reparations plausible in 2006.⁶⁵ Spanish lawyer, judge, and magistrate Carlos Castresana-Fernandez refers to periods of international calm, like this period, as "honeymoons" for justice.⁶⁶ For example, the international tranquility just after World War II nurtured the Nuremburg trial process; however, justice efforts following this early post-World War II period were suspended for almost half a century until the end of the Cold War. The fall of the Berlin Wall in 1989 ushered in an international peace that allowed for retroactive introspection worldwide. An enormous volume of justice occurred in the next decade that had been impossible during the fifty years of the Cold War, including the aforementioned Latin American cases.⁶⁷ Still, even the late 1990s did not prove politically favorable for Spanish justice, as demonstrated in Section 3.

The honeymoon of the 1990s ended with the attacks on the Twin Towers in 2001. Although the Iraq War lasted until 2011, Spain pulled troops out of Iraq in 2004 under Zapatero, reinstating international peace for Spain. With the onset of the 2008 economic crisis, however, such international stability ended, limiting the government's ability to carry out reparations requiring heavy state involvement.⁶⁸ Therefore during the few crucial years between 2004 and 2008, Spain was sufficiently at ease to pursue reconciliation with its past.

As discussed in Section 3, the international peace coincided with domestic political developments to make reparation a possibility. Both of these conditions were necessary, but neither was sufficient, to usher in reparations legislation.

Ultimately, requests made by international organizations such as the United Nations and Amnesty International resonated with the country and elicited a reaction. The development of international human rights norms informed and framed the political debate of the Historical Memory Law. The justice cascade at the turn of the millennium provided the momentum needed to ignite Spanish retrospection, and the Pinochet case

focused attention on Spain's particular unresolved issues. Finally, an international peace was conducive to action on the part of the Spanish government. It was the confluence of these developments, not one in particular, that accounted for the international contribution to the "fever for remembering" and ultimately the passage of the Historical Memory Law.⁶⁹ Still, generational turnover and political cooperation, discussed in the next sections, are what made reparation most plausible in the early 2000s as opposed to earlier years.

Section 2: Generational Turnover

During the Socialist PSOE rule from 1982 to 1996, the government shied away from significant accountability and reparation measures. In the following terms from 1996 to 2004, the majority Popular Party showed reluctance to invoke heavy reparations. During a renewed PSOE term from 2004 to 2012 under Prime Minister Rodriguez Zapatero, however, a new opportunity for reparations arose. Yet this new opportunity was more than just the result of a political changeover. With the passing time and changing governments, a simultaneous generational transition occurred. The composition of the Spanish general public moved from those who were directly affected by the Spanish Civil War and the Franco dictatorship to a more removed population: their children and grandchildren.

Political Continuity

In many respects, the descendants of the Franco era represent a continuity of their predecessors. Carlos Castresana-Fernandez noted a "natural heritage" in the Spanish lineage originating during the Franco dictatorship.⁷⁰ The end of the Spanish dictatorship was not achieved through a defeat of the regime, as in Greece, Italy, or Portugal, but rather through negotiation. As a result, remnants of the dictatorship remain, even in the form of indifference toward the past.⁷¹ The social group that represented and supported the dictatorship now comprises the social mass that votes conservative, although it no longer holds the same authoritarian values. For example, Joan Tardà i Coma chastised the PP for allowing a member of the Franco regime, Manuel Fraga Iribarne—who was responsible for the police's killing of five workers in Vitoria in 1976—to hold a distinguished position in the party.⁷² Similarly,

the political opposition during the dictatorship now aligns with the leftist parties (ERC and IU) or the PSOE. As a result, the same conservative and progressive divisions from the dictatorship still exist and rotate in and out of office. Because of their ties to the Franco regime, the conservatives tend to be less interested in pursuing accountability and giving reparations to the victims of the Franco regime, preferring not to "reopen old wounds," as university professor Patricia Esteban puts it.⁷³ Likewise, the liberals, who disproportionately represent the victims of the Franco regime, are more inclined to pursue these reparations. The number of reparation measures these groups have passed while in office illustrates this difference. Although they passed a similar number of symbolic reparation measures, the PP passed only one material reparation during its 2000–2004 term, while the PSOE passed fifteen during its 2004–2008 term.^{74, ii}

Reservations of the Elder Generation

The large distinction between the old and new generation was visible in other ways as well. In an opinion poll conducted by *El Mundo* in 2006, negative opinion towards Franco's uprising that started the Civil War was greater amongst younger individuals than amongst the elderly. Moreover, the elderly were less inclined to speak on the matter at all, as a larger proportion of elderly respondents chose not to state any opinion.⁷⁵ Thus in 2006, the elder generation was more hesitant to speak about, let alone confront, the terrors of the Franco regime. The younger generation, according to Joan Tardà i Coma of the Republican Left, was comprised of "people who had internalized so much pain and terror in the years of transition [that they] only dared to undertake timidly a tough journey to repair the memory of their parents."⁷⁶ Those of the previous generation who lived through the dictatorship preferred to portray the "placidity" of the dictatorship and the normality of life under it.⁷⁷ Patricia Esteban, a professor of literature in Madrid, noted that some of the elder generation, even today, do not regard Franco as a dictator and deny that any oppression occurred, despite all investigations and evidence indicating otherwise. Although Juan Pulgar, a conservative who lived through ten years of the dictatorship, conceded that atrocities occurred,

ii Five during the PP 2000-2004 term; 6 during the PSOE 2000-2008 term

he argued that 2006 was not a proper time to deal with such matters. He resented that the government's efforts were being directed at "ghosts of the past" instead of the economy.⁷⁸

A New Pro-Justice Generation

On the other hand, there was a growing trend in Spain in the 2000s towards a favorable opinion of justice. While only twenty-six opinion pieces relating to General Francisco Franco were published in *El País* from 1995 to 1997, there were more than 200 pieces from 2004 to 2006.⁷⁹ This suggests a growing willingness of the public to engage in debate over the dictatorship, which was also reflected in the political sphere. To begin, all political parties favored democracy in 2006 when the Historical Memory Law was introduced, while in the late 1970s, authoritarianism still pervaded the country. Deputy Esteban Bravo of the Vasco Party maintains that, as of 2006, no longer was any political party fully in favor of silence and against the pursuit of justice, "because it is not good for democracy nor for coexistence and equality for all citizens."⁸⁰ In fact, only three of thirty-six speeches during the Historical Memory Law debate regarded the Law as "unnecessary."⁸¹ Even these reservations were strictly directed towards particulars of the Law, rather than to the idea of reparations in general. The Spanish people's increased willingness to tackle post-transitional justice issues, which strongly contrasted the reservations of the Civil War generation, opening a door for debate over reparation and accountability that was previously barred.

How do we know, however, that Spanish politicians' increased willingness to consider reparations legislation is the result of a new generation rather than simply the consequence of a favorable political climate? To examine this question, we may turn to both interviews and debate speeches. Patricia Esteban discussed how children in Spain did not, and still do not, learn in full about Spain's recent history and the extent of the Franco dictatorship and its human rights violations, as these topics have been considered almost taboo.⁸² Thus, many children and grandchildren of Franco-regime victims became tired of being shielded and eager to seek justice for their relatives who were never able to procure it themselves. Thirty-nine percent of the debate speeches on the Historical Memory Law referenced

the generation of victims' grandchildren, whether by directly acknowledging an old versus new generation or by appealing to do justice for their grandparents. Jorge Fernández Díaz, for example, mentioned "a new generation... [that] does not share the hatreds and passions of those who participated in [the Civil War.]"⁸³ Although several deputies, like Jordi Xuclà i Costa from Convergence and Union, recognized that, thirty years ago, the only possible path was one of selective amnesia (to usher in the peace and harmony necessary for democracy), this new generation of deputies agreed that another route was now possible. Joan Tardà i Coma effectively embodied this conviction during the debate, stating:

I'm not a person of the transition or who fought against Franco. I am one of the grandchildren, and my generation... has gone through school without studying and without knowing what was the struggle against Franco. We know from our family tradition, or the explanations of friends, colleagues, but we have not studied it. It would be impossible for this to happen in France, Germany, Portugal, and in so many countries that have shown that they have done good.⁸⁴

Such comments and attitudes suggest that the new interest that Spanish politicians took in reparations and accountability for the Franco regime's crimes cannot merely be explained in terms of international pressure and political development, but must also take intergenerational change into account. Grandchildren of Civil War victims were more adamant for reparations than their predecessors because the younger generation that dominated during Zapatero's term was distanced from past horrors. Not only had they evaded the worst of the Civil War and dictatorship, but they also grew up in a world where the topic was considered taboo. This generation rejected the taboo imposed on them, instead showing openness towards justice and accountability that manifested in a renewed push for reparation legislation.

A Decline in Surviving Victims

The willingness of the grandchildren of the victims of the Franco regime to pursue reparation measures can in part be attributed to a desire for dignity and decent burial for familial victims. Such a desire led to the emergence of the Association for the Recuperation of Historical Memory (ARMH), which drove early attempts to break the "pacto de olvido."

The ARMH was created in 2000 after the privately led exhumation of a mass grave of thirteen civilians killed by Republican gunmen in 1936. Many came to the excavation site in Leon Priaranza del Bierzo for assistance in finding other missing persons, which motivated those working at the site to create ARMH to provide such help. Since then, the group has worked to dignify Spain's past, do justice for those who deserved it, and deepen Spanish democracy.⁸⁵ According to an *El País* survey, by July 2006, 64 percent of those questioned wanted bodies from mass graves to be exhumed, identified, and returned to their families.

Pressure to act before all the victims of the Franco regime were deceased further contributed to the new pro-justice consensus. The years 2005 and 2006 marked the thirtieth anniversary of Franco's death and the seventieth anniversary of the beginning of the Civil War, respectively. These anniversaries served as a reminder of both the time lapse since the Franco regime and the declining number of living victims of that regime. Descendants wanted monetary or other tangible compensation for their elder relations during their last years. Even those without personal connections to Franco-regime victims acknowledged the urgency to address the issue while victims and relatives of victims were still alive.⁸⁶ Such urgency was expressed during the debate over the Historical Memory Law, such as when Begoña Lasagabaster Olazábal of the Mixed Group said he took his ninety-seven year-old grandfather multiple times to request annulment of his sentence from the Military Division of the Supreme Court under the Franco regime.⁸⁷ Moreover, many with deceased relatives began to think, "Well, my grandfather is still buried in a clandestine grave. I want the body, I want the corpse, and I want a dignified process of re-vindication and a decent burial, not a clandestine one," which Castresana-Fernandez confirmed was absolutely legitimate.⁸⁸

Clearly, the aging of the population and the desire for proper burial of victims served to foster discussion on reparation among the younger generation. The younger Spanish were therefore impelled to discuss reparation not only because of their distance from the atrocities of the Franco regime and their desire for breaking taboo, but also because of the social context in which they were

embedded. The younger generation represented a constituency that, if not actively pressuring Congress to pursue retroactive justice, at least sought to hold accountable those representatives who were averse to measures of reparation. In fact, in all debate speeches, the PP complained that the PSOE was using the Historical Memory Law as a political weapon to boost its image and distort that of parties in opposition. The PSOE was operating under the assumption that the public would side with them in their pursuit of the reparation measure and against the PP who opposed the justice legislation, suggesting that the general constituency was supportive of justice for the Spanish people and disapproving of those against reparations. All this considered, it is evident that the Historical Memory Law came about in part due to the maturation of a younger Spanish generation in both the political arena and in Spanish society as a whole.

To conclude, since the transition from dictatorship to democracy was achieved through negotiation rather than overthrow, remnants of the dictatorship, including societal divisions and sources of influence, remain. These remnants contributed to the indifference towards Franco and reservations towards reparation among those who lived during the Civil War and the dictatorship. However, the sheltered children and grandchildren of this generation did not harbor the same fears and ties to the past and, therefore, were more willing to confront it. The younger generation undertook the task of dignifying the memory of familial victims through the Association for the Recuperation of Historical Memory. Finally, the anniversaries of Franco's death and the beginning of the Civil War reminded the country of the declining number of living victims as well as the waning time in which reparation and compensation would be relevant. Such generational factors certainly created a sense of urgency that was not achieved by the factors associated with the international community.

Section 3: Political Considerations

Although many point to the Historical Memory Law as a heroic measure of reparations, others insist that the degree of justice achieved by the Law is overstated. Supporters of the bill often referred to it as a "starting point," acknowledging the bill's limitations as well as its potential to

serve as a precedent for future, more substantial, reparations.⁸⁹ Others during the debate argued that the Law was trivial and would not satisfy anyone without remedying all persisting justice concerns.⁹⁰ Because the Law encompassed sensitive and controversial topics, Congress struggled to reach a consensus on many areas of reparation.⁹¹ Interviews and the congressional debate suggest that the PSOE strategized to acquire sufficient votes by compromising aggressive reparation in the Law. If this is the case, then the accomplishment of this justice law thirty years after the dictatorship seems like less of a feat.

Political Motivations Behind the Law

The introduction of the Historical Memory Law itself was a strategic political move. The Law was not, in fact, included in the Socialist Worker's Party manifesto for the 2004 general election, yet it eventually became a centerpiece of the PSOE's legislative agenda once the Party came to power. It was meant to strengthen the Party's position after a fortuitous election that swung votes in its favor, making the PSOE the majority party by only five percent.⁹² Out of a total of 394 members of Congress, 187 represented the PSOE, 170 represented the PP, and 47 were members of other parties. This illustrates the PSOE's narrow margin of victory over the PP, which created a dually dominated Congress. The PSOE had to look for new opportunities, such as the Historical Memory Law, to garner support and retain their majority position in the next election. Esteban indeed cited the Law as an opportunistic play of the PSOE, comparing it to the issues of abortion and gay marriage used to strengthen and advertise its leftist politics as distinct from conservative ideologies. Additionally, in the bill's congressional debate, PP deputies consistently accused the PSOE of manipulating reparation both for achieving political gain and attacking the PP's conservative ties. For instance, Jorge Fernández Díaz claimed the purpose of the bill was "from day one, a deliberate attempt, make no mistake, to marginalize the [Popular] Party, to present this as a policy in which the opponents are factious, pro-Franco or fascists while the progressives understand the pain and suffering of the people."⁹³ On the contrary, PP representative Manuel Atencia Roblado explained PP opposition to the Law as resistance to imposing an official historical memory

and rejecting a single Law that simultaneously aimed to address an array of complex social justice issues.⁹⁴ Several PP speakers defended the party's continuous support of reparations, reminding Congress of the past reparation measures they had enacted.⁹⁵ Nevertheless, the PSOE loosely painted opposition to the Law as opposition to victim reparation in order to tarnish the Popular Party's public image.

Still, the Socialist Worker's Party lacked an absolute majority in Congress and thus had to appeal to other congressional parties to support the bill. During the political debate of the Historical Memory Law, discussions attempted to get the maximum consensus possible. Congress debated the first draft of the bill, from September 8, 2006, on December 14, 2006, when three amendments were also presented. The United Left and the Republican Left presented the first two amendments as alternative texts for consideration and the PP presented the third amendment that simply requested withdrawal of the bill, yet Congress ultimately rejected all three of the amendments. Following this debate, 377 more amendments to the bill were presented. Thus, agreement was a strenuous process and intense negotiations occurred up until the bill's passage.⁹⁶ In the end, the final Law sacrificed aggressive reparations to reach an agreement and is accordingly unsatisfactory for the formal authorities, international standards, and the victims.⁹⁷ Patricia Esteban noted that a large part of the Spanish population believes the Law is useless, and she also felt that the Law has not made a significant impact on society. Many members of Congress demanded that the bill be more aggressive on certain reparations, yet to no effect, as outlined below. Ultimately, the PSOE was forced to reconcile with the PP, which underscores the role political maneuvering played in influencing the trajectory of the Historical Memory Law.

Strategic Specifications within the Law: Annulment of Judgments

The most frequent concern in the Historical Memory Law debate regarded annulment of judgments. Out of the thirty-six entries, it was mentioned seventeen times, taking up approximately 47 percent of the debate. The Historical Memory Law declared illegitimate the military tribunals that condemned individuals based on political standings.

These thousands of judgments spanning from 1933 to 1978 include criminal sentences for political, military, religious, or ideological reasons. Congressional deputies insisted these judgments occurred without due process of law, have errors of form and substance, and should be null and void.

The main controversy was over the term “illegitimate,” which did not carry sufficient legal value. By declaring the judgments illegitimate, victims and their families were only allowed to “solicit individual reparation” before a council of five appointed senior social scientists who would examine each case independently before granting annulment or compensation—a process that could take decades. Many congressional deputies viewed the appeal process as an unfair burden on victims. They proposed amendments to make it the state’s duty to review these judgments, rather than to require 50,000 people to sue for the same nullity. These amendments failed. Others suggested an explicit condemnation of the Franco dictatorship, whereby the regime would be formally expelled from the legal system and oppressive legislation and judgments from the period would be deemed crimes against humanity and repealed.ⁱⁱⁱ Such a condemnation was rejected as well. In each of her three debate speeches, Congress member Joan Herrera Torres of the United Left cited this issue as the “main stumbling block in the negotiations with the government.”⁹⁸ She noted that the governing PSOE party did not want the annulment of judgments and in the original text did not even declare the judgments illegitimate. Several other congressional representatives expressed the same frustration, citing hundreds of interest organizations, including Amnesty International, which agreed that Spain should abide by UN doctrine on crimes against humanity and annul these judgments.⁹⁹ Nevertheless, opponents cited “legal difficulties” in annulling the military trials and deflected appeals for across-the-board annulment by saying that certain victims carried their sentences as medals of honor, “proud to have defended democracy.”¹⁰⁰

Thus the bill strategically addressed Franco’s repressive military judgments while avoiding a larger conflict over government obligation to review all military judgments of the time and over Franco’s legacy. The bill managed to sidestep

any governmental burden, either financial or temporal, that would have been borne if the government annulled sentences after the bill’s passage. This secured the PSOE the political credit for the reparation without incurring much expense. Declaring the judgments illegitimate rather than annulling them was beneficial not only for the ruling PSOE, but also for the Popular Party, which was notably silent on the annulment issue during the debate. The Popular Party, due to its historical link to the dictatorship, had a vested interest in Franco’s legacy. By maintaining rhetorical limitations in the document, Congress did not alienate the PP nor commit the PSOE to address or compensate for the sentences for years to come. In this manner, the final Historical Memory Law included the most passable, though necessarily unsubstantial, solution to Franco’s military judgments.

Strategic Specifications within the Saw: the Valley of the Fallen

The Valley of the Fallen was another prominent point of contention with the Law. Over 30 percent of the debate speeches expressed discontent with Law’s solution for the Catholic basilica and memorial in the municipality of San Lorenzo de El Escorial, Spain. Franco conceived the area as a site to bury and honor those who died during the Civil War. The Valley of the Fallen remains controversial for two reasons. First, it was constructed in part by a workforce of prisoners of war. Secondly, it is a common burial ground for both Franco-regime victims and war victims from both sides.¹⁰¹ While some insisted that it would be disrespectful for the dictator to remain buried next to his victims, others argued that it would be dishonorable to disturb the monument. Uxue Barkos Berruezo of the Mixed Party fought during the debate to convert the Valley into a Civil War memorial.¹⁰² Esteban Bravo of the Vasco Group wanted to go even further, calling it “inadmissible” to have the tombs of both Franco and Jose Antonio Primo de Rivera, a notable politician and lawyer executed by the regime during the war, occupy the same resting place. Bravo called for Franco’s remains to be relocated. On the other hand, Jorge Fernández Díaz of the Popular Party argued that the Valley of the Fallen was “first and foremost a place where the remains of 60,000 people who died during or as a result of the civil war are” and

ⁱⁱⁱ Twenty-eight percent of debate speeches expressed a desire for explicit condemnation of the Franco regime in the bill.

firmly held that the area should remain undisturbed. The distinctly incompatible opinions on the bill's dictation for the Valley of the Fallen resulted in an outcome that ultimately preserved the status quo. In the end, the Historical Memory Law simply prohibited demonstrations, political events, and exaltation of Franco at this burial place. Moreover, it provided that the grounds would be governed by the rules for establishments, places of worship, and public cemeteries.

These disagreements over the Valley of the Fallen complicated the debate of the Historical Memory Law and the bill ultimately fell short of transforming the site into a real symbol of reconciliation. In agreeing to offer limited reconciliation through the Valley of the Fallen, Spanish politicians kept the controversy surrounding the Valley from impeding the Law's passage. Had the Valley measures been more explicit and drastic, crucial support would likely have been put in jeopardy. Disturbing any of the tombs would have put the Popular Party's support at stake, while not addressing the Valley at all would have angered the Vasco Group, the Mixed Party, and others. Thus to appease such differing perspectives, the Law only minimally addressed the Valley of the Fallen. Clearly, the political maneuvering needed to pass the bill limited the extent of reparations possible. The dynamics of Spanish party politics made only a simple de-politicization of the Valley a possibility.

Strategic Specifications within the Law: Grave Exhumations

Finally, the Law was necessarily evasive in stipulating how mass grave exhumations would be administered. The Law provided state financial support and assistance for families in tracking, identifying, and eventually exhuming Franco victims who were subjected to extrajudicial executions and placed in mass graves unbeknownst to their families. Representatives from the Convergence and Union, Vasco, United Left, Republican Left and Mixed Group parties all attempted to secure active governmental responsibility for these identifications and exhumations during the political debate in Congress, yet in the end the Law simply allowed families to request authorization for such actions, without dictating any state duty. Carlos Castresana-Fernandez explained the difficulty of privatizing the exhumation

process through the example of the famous poet Federico Garcia Lorca, who was executed by Nationalist forces. Evidence suggested Garcia Lorca was buried along with three or four other victims in a mass grave. While the families of the other victims all desired to exhume the bodies, Garcia Lorca's family objected, thereby hindering the ability of other families to obtain proper burial for their relatives. Moreover, Castresana-Fernandez argued that with, "more than 100,000 forced disappearances, it is obviously a process that cannot be dealt with privately by the families."¹⁰³ This process was not only inefficient, but was also noncompliant with international human rights standards that mandate the state to establish truth and coordinate the legal consequences of reparation. In accordance with the UN "Right to a Remedy," it is the duty of the state "to investigate violations effectively, promptly, thoroughly and impartially," and conduct "the search for the whereabouts of the disappeared."¹⁰⁴ Still, the Garcia Lorca story illustrates the divide among the Spanish on whether to exhume these graves or leave the dead in peace. Instead of displaying a firm stance on the issue, the Law opted for a noncommittal reparation, keeping the current government from bearing any leadership burden in the process. It offered the government's neutral support of grave exhumations as a facilitator rather than leader. Ultimately, these provisions kept the status-quo in the exhumation process, not ordering any exhumations but rather permitting individuals to deal with the graves of their relatives as they deemed fit. Although deputies could argue for a greater governmental role, such a compromise kept the grave exhumations from being a derisive issue that could potentially block the bill's passage, and the public financing was deemed at least "a foundation."¹⁰⁵

In sum, while disagreements still remained among conservatives and progressives over the extent to which reparation should be given, a digression from the political sentiments of the dictatorship presented a new political atmosphere where all parties held democratic values and agreed that at least some recognition and reparation was necessary. Furthermore, the political circumstances of the 2004 election provided the stimulus for the government to present the Historical Memory Law. Thus, politics in one sense advanced the cause of Spanish social justice and yet, in another sense, hindered it. The range

of pending issues of reparation and accountability that needed to be addressed made for complicated legislation that inevitably made it politically contentious. Because there was no consensus on several sensitive matters, such as truth commissions, exhumations, and nullification of judgments, strategic provisions in the Law intended to secure the most votes caused the final product to fall far short of compliance with international standards on remedy of human rights violations.

CONCLUSION

Instead of addressing the Franco regime's violations once Spain's democracy stabilized, Spain continued to shun its painful history for decades. Spain's involvement with the United Nations, the development of international human rights norms, and other international justice pursuits in the 1990s set the stage for Spanish post-transitional justice in the early 2000s. With each passing year, the Spanish population became further removed from its painful history. Thus, by the thirtieth anniversary of Franco's death and the seventieth anniversary of the Civil War in 2005 and 2006, respectively, Spain was more ready to face the Franco violations than ever before. Finally, the opportune moment for justice came after the 2004 congressional election, when the PSOE employed the past to strengthen its electoral advantage. Therefore, the "pacto de olvido" was finally broken by the Historical Memory Law in 2006, when favorable international, social, and political conditions converged.

The three factors contributing to Spanish justice all interplayed to foster an environment conducive to reparation and accountability. International social justice cases from Latin America to Eastern Europe informed public opinion of international justice norms. Grandchildren in Spain, sheltered from the reality of Franco's human rights violations, saw the country arrest Pinochet in London and ultimately requested the same legal protection Spain provided for victims in foreign countries. With time ticking and a diminishing number of surviving victims, Spain faced a "now-or-never" moment to bring justice to those affected. The domestic push penetrated the political sphere by encouraging politicians to pass reparation measures and creating an atmosphere of disapproval toward representatives who outright opposed such measures.

Taking advantage of this public opinion, the PSOE introduced the Historical Memory Law, in part to marginalize the conservative PP. Still, because of the issue's complexity, the Law went through a process of negotiations and compromises that ultimately reduced the degree of justice incorporated. This confluence of factors accounts for why it took until 2007 to pass significant reparations legislation such as the Historical Memory Law. However, conditions did not prove favorable enough to fully rectify transitional justice concerns, as the standards of "full and efficient reparation" defined by the UN were not all addressed. I argue that it was largely party politics that limited the scope of the Law.

All three factors (international human rights development, generational changeover, and political circumstances) were necessary for the Historical Memory Law to pass, yet none were singularly sufficient. Without international social justice developments, the Spanish public may not have been as adamant for reparations; without a public desire to grant reparations, Spanish politicians would have been less likely to support reparation measures; and without political cooperation, reparation measures could not have been officially enacted. Still, these considerations do not exclusively explain the Law's passage. Other factors that may have played a role include domestic organizations, the media, and institutional frameworks. Further research into the existence and roles of such factors would be beneficial. Moreover, which of the three factors discussed contributed most to Spain passing the Law can be researched further. Finally, a study comparing the extent of reparation between countries pursuing justice immediately and those that pursue reparation retroactively would be useful to enhance our understanding of transitional justice.

Furthermore, the delay in Spanish justice pursuits has made subsequent attempts to secure reparations and retribution difficult.¹⁰⁶ Because Spain failed to implement reparation and accountability measures during the transition, pessimism for the future of reparations is apparent in Spain. Patricia Esteban commented that, if full reparation did not occur in 2008 while some of the direct victims and relatives of the victims were still alive, then restoration of memory and justice would likely never be achieved. As time passes, it will no longer be a priority, and "a legacy

of neglect and manipulation of the memory of the Franco dictatorship will remain for future generations.”¹⁰⁷ Indeed, in November 2013, Spain maintained that it would not review the amnesty law for crimes committed during the war and dictatorship to a critical U.N. Committee on Enforced Disappearances.¹⁰⁸ Though the Historical Memory Law has often been referred to as a “starting point” for bringing justice to the victims of Franco-era crimes, one must wonder if there will ever be an ending point.

Finally, scholars must note that the trajectory of Spanish transitional justice has implications beyond its own borders. The factors that caused Spain to acknowledge its past crimes some seventy years later can shed light on efforts in other countries to revisit their past justice concerns. Advocates for retroactive justice can use the Spanish precedent to better understand when international, domestic, and political conditions in a country are favorable to its execution and how to capitalize on them. Moreover, the shortcomings of Spain’s delayed transitional justice process can inform other transitional justice cases—for example, teaching countries to be proactive in guaranteeing efficient reparation rather than delaying the process. Overall, the Spanish situation can shed light on how past human rights violations can be handled and when, if ever, it is too late to right past wrongs.

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