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Open wounds can't heal

Challenging Spain's Pact of Oblivion in today's consolidated democracy

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We have to try to face our own past, to name it, to draw conclusions from it, and to bring it before the bar of justice. Yet we must do this honestly, and with caution, generosity, and imagination.

Vaclav Havel

Abstract

The human rights abuses committed under Franco's dictatorship have been silenced since time of the Spanish democratization process, in accordance with the transition agreement known as Pact of Oblivion. Nonexistent political will and shortage of judicial accountability have contributed to a constraint of truth, justice and reparation, and ensured that silence and lack of transitional justice has continued.

This study encompasses a historical background of the Spanish Republic and Civil War in the first chapter as well as characteristics and repression methods of the Franco regime.

The second and third chapters cover Spain's democratization process and different transitional justice approaches from other countries, and finally the last chapter covers the current socio-political context that situates Spain in a *momentum* of change.

This thesis aims to demonstrate that the narrative of the transition has created a culture of impunity which has caused a social perception of Spanish democracy as of low-quality; while it argues that socio-political changes over the country (including the 15M, the Argentinean Lawsuit and the emergence of political party *Podemos*, amongst others), have presented a regime change that wishes to leave behind the silence imposed on the country at Franco's death, in order to attain a new participatory democracy. This thesis ultimately suggests that the current socio-political scenario creates an opportune surrounding for a change of Spain's transitional justice approach, towards the inclusion of a Truth Commission.

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List of Abbreviations

ARMH	Asociación de la Recuperación de Memoria Histórica
PP	Partido Popular
PSOE	Partido Socialista Obrero Español
TJ	Transitional Justice
TRC	Truth and Reconciliation Commission
UN	United Nations

Table of contents

Abstract	ii
Acknowledgements.....	iv
List of Abbreviations.....	v
Table of contents	1
Introduction.....	2
1. Historical background: from the Republic to the Stolen Babies.....	4
1.1 The Republic and the Civil War.....	4
1.2 Dictator Francisco Franco: political features and methods of repression.....	9
1.3 Last years, death of Franco and end of dictatorship.....	18
1.4 Concluding remarks	20
2. Transition to democracy.....	22
2.1 Huntington’s third wave.....	22
2.2 Basic mechanisms of Transitional Justice.....	24
2.3 Democratization process in Spain	26
2.4 Pact of Oblivion	32
2.5 Concluding remarks	37
3. Foreign inspirations, different TJ approaches.....	39
3.1 Southern Europe: Portugal.....	39
3.2 Post-communism: East Germany.....	42
3.3 South America: Chile	44
3.4 Concluding remarks	48
4. The momentum of change.....	50
4.1 “They don’t represent us”	51
4.2 Garzón and Servini: counter-current judges	57
4.3 “There is someone new in politics: YOU”	60
4.4 Concluding remarks	65
Conclusion	67
Bibliography.....	74

Introduction

The human rights abuses committed under Francisco Franco's dictatorship have been hidden and silenced all throughout the Spanish democratization process and beyond.

Both nonexistent political will and lack of judicial accountability have contributed to a constraint on the truth and have infected those open wounds for far too long, systematically rejecting the initiatives of civil society to seek truth and reparation; that is, excluding the possibility to sanitize the wounds before closing them.

Moreover, this transitional justice approach founded in the so called Pact of Oblivion along with its shadow over the transition, has failed in restoring the heavily damaged relationship between civil society and the government, setting up a culture of impunity and inattention to the victims that reflects today's democratic vices. Recently, a new narrative of the transition has arisen, accompanied by a conjunction of social movements and a newly born emergence of political alternatives (aside from Spain's classical bipartisanship). This emergence has settled the base for a regime change that wishes to leave oblivion behind and refill the memory gap that was created within the transition.

Therefore, this thesis aims to demonstrate that due to many different factors to be explained in detail, it is in this precise generation where the will to change Spain's transitional justice model has finally detonated; and consequently the public's yearning to move from "forgetting" to "remembering" is pushing through, strong and unstoppable.

Methodology and novelty

The nature of this thesis is a historical analysis, which is mainly descriptive, concerning the historical background of the Spanish Republic, Civil War and Dictatorship, along with the Democratization process that determined Spain's transitional justice model. In this model, a doctrinal approach also briefly analyzes the existing laws and internal discourse behind the transition as well as the birth of the historical memory movement. Additionally, a third chapter encompasses a slightly comparative nature when offering to the reader different transitional justice approaches followed in other countries. Finally, the last section offers a non-doctrinal approach, addressing the socio-political events that have driven Spain into a

momentum of change where both the narrative of the transition as well as the impunity of the regime are being highly contested.

The originality of this thesis, in order to contribute with some novelty to the voluminous writing on the issues of the Civil War and the transition towards democracy in Spain, lies in the current socio-political events occurring in the country, including the sudden incorporation into the political arena of new parties that offer alternative ways of governing.

At last, for the purpose of this study and in order to make it richer and more credible, a greater challenge than that of the methodology has been the ambition of impartiality to what concerns the sources resorted to. In this regard, a balance of contrasting sources and ideas has been pursued in both the material regarding the narrative of the transition (with a combination of the “classic version” where authors like Julián Santamaría or J.M Maravall can be highlighted, and a “recent version” which encompasses the work of authors like Julián Casanova or Rafael Escudero), as well as the plentiful journalistic and media resources of the last chapter (which includes left wing media such as the newspaper *Diario Público* or the television program *La Tuerka* together with right wing media such as the newspaper *La Razón* or the television channel *Intereconomía*).

Structure

The first chapter of this study explains the establishment of the Second Republic in Spain, the military coup organised against it which led to a Civil War, and finally the forty year long oppressive dictatorship under General Francisco Franco’s rule. Consequently in this section, along with the historical review and regime’s features there is a special focus on the common graves, *paseos*, forced disappearances and stolen babies, repression tactics coined by Francoism.

Secondly, there is a chapter on the transition towards democracy. Within it, basic mechanisms of transitional justice are explained and detailed, as well as the influence of Huntington’s Third Wave, therefore giving an overview of the democratization process that Spain has gone through, which gave birth to its actual Constitution in 1978. Moreover, Spain’s choice of transitional justice model will be assessed in order to determine some of the imperatives and flaws of the so-called Pact of Oblivion, and what impact has it generated on today’s society. This chapter also contains a clarification of the contents of

the 1977 Amnesty Law and the subsequent Historical Memory Law approved thirty years later in 2007.

The third chapter provides for examples of different countries and their contrasting transitional justice policies, such as prosecution through retributive justice as well as the implementation of Truth and Reconciliation Commissions. The examples include Portugal, East Germany and Chile, in order to illustrate some of the advantages and disadvantages of these approaches.

Finally, the last chapter compiles the various reasons why the present time is said to be a moment of regime change, which resolves the enigma proposed in this thesis: is there still space in Spain's consolidated democracy for other transitional justice mechanisms such as a truth commission?

Some of the aspects which are exposed are the economic crisis, corruption scandals and denial of historical memory policies that have caused a social perception of lack of democracy in Spain, translated into the uprising of the 15M social movement. Furthermore, the consistent and numerous condemnations of the current model and demands of accountability by the international community are addressed, together with the attempt of Judge Baltasar Garzón of investigating the crimes committed under the dictatorship and the recent General Cause opened by judge Maria Servini which is the only one currently investigating the events of the dictatorship.

Finally, this study attempts to demonstrate that the vices of a silenced transition (along with the "myths" it created) have provoked a social perception of a low-quality democracy. This disenchantment has been canalised through the emergence of the political party *Podemos*, which seems to bring desires of change into the State's powers in order to tackle society's concerns (including the recovery of historical memory). Conclusively, this thesis argues that all of this has created a fruitful scenario for a new approach of (post)-transitional justice that will pursue mechanisms which are in more in compliance with human rights, such as a Truth Commission.

1. *Historical background: from the Republic to the Stolen Babies*

1.1 The Republic and the Civil War

Tuesday, 14 of April 1931, the night has fallen and a farewell note is left behind at the Royal Palace of Spain, with the last words of King Alfonso XII before leaving for the exile: “The elections held last Sunday clearly show me that I do not have the love of my people today”.¹

With Primo de Rivera’s seven year long dictatorship falling in 1930, different sectors of the Spanish population got together against the Monarchy and built a new future for Spain under the light of a Republic.² The social disenchantment with the Monarchy was characterised by growing anger and disappointment for its impassibility against the dictator, and demonstrated at various meetings, plots and *pronunciamientos* throughout Spain and causing, in words of the historian Julián Casanova, “a sudden process of politisation and a surge in republicanism”.³

Following street politics, on the local elections that took place on April 1930, the Republicans were victorious in 41 of 50 provincial capitals and the following day the King Alfonso XII was leaving the country, as numerous cities and towns proclaimed the Republic after the electoral results. Finally, following a provisional government with Nieto Alcalá Zamora as President of the Republic, the Constitution of 1931 effectively established the Republic.⁴

This regime change brought changes on the land distribution, public education and employment protection,⁵ as well as a clear separation of the State from the Church (which had been historically the vertebral spine of the society and did not welcome all those innovations that the Republic brought under liberalism or democracy).⁶ It was the most

¹ Casanova, 2010. p. 9.

² Ibidem, p.1.

³ Ibidem, p. 12.

⁴ Ibidem, p. 23.

⁵ Ibidem, p. 2.

⁶ Ucelay-Da Cal in Juliá, 1995, p. 53.

intense and quick period of change, along with the grater social conquests that Spain had achieved so far in its history.⁷

According to Casanova, the Republic “captured the imagination of the masses and was welcomed with overwhelming enthusiasm”,⁸ it was a political fact.⁹ It emanated from the people and was a symbol of a major social change that put its biggest expectations on the achievement of freedom and a regime that would defend and fight for the rights of the working class. It coincided with the hope of a shift of power structures which would focus on agricultural property, labour and education as well as the autonomous desires of the regions of Spain.¹⁰

Nonetheless, despite being born under an atmosphere of joy, revolutionary hopes and demands of reform, the Republic faced several obstacles which led to the resort to violence as a way to achieve power, a very divided social structure and a problematic excessive variety of political parties which provoked the fragmentation of the system ending on a political polarization carried out throughout all the live of the regime which would end, five years later and accompanied by a *coup*, in a war.¹¹

According to Juliá Santos, democracy did not manage to consolidate in Spain during the 30`s due to the economic structures, fight of classes, political culture and the gradual gain of strength of its numerous enemies (the military, Catholics, nationalists), which was exacerbated by the confusing and fragmented system of parties.¹²

On 17th July 1936, some sectors of the Civil Guard in Melilla, Ceuta and the Spanish protectorate in Morocco revolted against the republican regime, and on the 18th this uprising was extended to the Peninsula.¹³ It was portrayed by several Generals of the military including Mola, Franco and Sanjurjo, amongst others. Although the *coup d'état* failed in the larger cities of Spain, it triumphed on various strategic regions such as Navarra, León, Galicia or both the Balear and Canary Islands.

⁷ Casanova, 2010. p. 2.

⁸ Casanova, 2004, p. 3.

⁹ Ibidem, p. 4.

¹⁰ Ibidem, p. 6.

¹¹ Juliá, 1995, p. 113.

¹² Ibidem, p. 140.

¹³ Casanova, 2004, p. 101.

So as not to fall into the myths constructed afterwards by the Francoist regime, it is very important to keep in mind, as many historians have reminded, that it was not the flaws and politics of the Republic (needless to say its ideology) which caused the Civil War, but the illegitimate military uprising of 1936.

Finally, the coup of 1936 that transformed into a civil war was, from the very beginning, repelling any kind of possibility of reconciliation. Mainly because what was at stake in that war was precisely to define what kind of country and society was Spain going to be.¹⁴

The uprising opened the door to a violent and cruel period of repression, a Spain divided between those who supported it and those who did not. Two sides confronted to death that caused the most traumatic episode of Spanish history of the XXth century. On one side there were the republicans (also named as the counter-revolutionary) composed by those supporters of the legitimate government of the Republic and on the other side there were the revolted (also wrongfully self-called national side) which were composed by those who prepared the coup and a big part of the military.

It was July 1936, and the civil war begun.

First and foremost, the Spanish Civil War was a class war, “a war of religion, a war revolving the idea of homeland and nation; and a war of ideas, beliefs that were at the time at loggerheads on the international stage”.¹⁵ Actually, in this respect it is noticeable that Spain is not so different from other European countries. Through the decades of the 1930’s and 1940’s Europe was falling apart behind the fist of dictatorship and absolute powers, and thus by the end of 1940 there were only six democracies which managed to remain as such.¹⁶

The Spanish Civil War was a battle between low and high class citizens, religion and secularism, conservatism and modernization, which went by during a context of two opposing ideologies: Communism and Fascism.¹⁷

It got rid of a large proportion of its cultural heritage through the elimination of anyone involved in the “other side”. As Alicia Alted Vigil claims, the first weeks of the war were

¹⁴ Juliá, 1999, p. 23.

¹⁵ Casanova, 2010, p. 2.

¹⁶ Those were the U.K, Ireland, Iceland, Sweden, Finland and Switzerland, as stated by Julián Casanova in Casanova, 2010, p. 4.

¹⁷ *Ibidem*, p. 3.

impregnated with the exercise of a terror towards the enemy that used to come from revenge satisfaction, irrational hate or score-settling,¹⁸ and this was done by both sides. Not for nothing, the Spanish Civil War is remembered on the pages of history as “for the way it dehumanised its adversaries and for the horrific violence that it generated”.¹⁹

On the 28th of March Francoist troops entered Madrid and on 1st April 1939, Francisco Franco declared the end of a victorious war and the nascence of a new era for Spain.

This uprising of a large part of the Army against a legitimate government triggered horrific waves of repression, murders, disappearances and, in a nutshell, the terror of a war which desired the blood of the opponent. Therefore, all those who would be identified with any kind of support to the Republic or a refusal of accepting a different authority were fined, imprisoned, tortured, deprived of all their goods, sentenced to death and executed by firearm.²⁰ As noted by Felix Luengo, the population became the protagonist and direct victim of the war, which as moving forward started to deepening more and more on its doses of cruelty and violence.²¹ The violence born in this war context on 1936 was much more than trenches and bombarding, it was also filled with *paseos*, trials with no guarantees and depositions of those labelled as the *undesired red*.

There has been, on the literature about the repression and violence of the war, an understanding that even though it was perpetrated by both sides, there was a crucial dissimilarity on the way it was done. To what concerns the insurgents, violence was originated from the top of the apparatus of power, perpetuated far after the war had ended and the intensity of violence along with its institutionalization was far larger and better organised. The new regime found a semi-legal way of perpetuating its violent tactics through the declaration of “Status of War” (in order to be able to apply military justice to all those who it considered had not supported the coup) and created a series of laws

¹⁸ Alted Vigil, 2001, p.74.

¹⁹ Casanova, 2010. p. 3.

²⁰ Alted Vigil, 2001, p.74.

²¹ Luengo, 1998, p. 253.

contrary to human rights. Furthermore, it maintained this legal status of the country until 1948.²²

On the contrary, in the republican side, violence did not, in the first place, come from the State itself. The State's impossibility of forming a joint strong counter-revolution developed into the creation of local authorities, which made decisions on their own base and risk. Secondly, and as a direct consequence of this lack of organization, the violence perpetrated from the counter-revolutionary side was characterized by being spontaneous and immediate.²³ Third and finally, the repression perpetrated by the republican side was limited to the time while the war lasted.

In addition to the unity of Francoists and disunity of republicans, there were some external factors that also influenced the result of the war. These are the non-interventionism of western democracies as well as the imbalance of material resources due to the help provided to Franco by the Nazi Germany and Fascist Italy.²⁴

And as a consequence of losing the war, Spain lost everything it had gained on its political life during the XXth century, as well as the artists, poets, writers, painters, musicians, economists, historians, doctors, architects...that had led the way of the cultural life of Spain up to date. In addition, all those social conquests of the Republic (Parliament as the centre of political life, the Autonomy Statutes, labour movements, agrarian reforms and secularization of the State)²⁵ were also suppressed and eliminated for the sake of the "unity of the nation".

Under the burial of all this Spain began a new dawn. A new time that created the foundation in which Franco and the victors would build an authoritarian regime.

1.2 Dictator Francisco Franco: political features and methods of repression

Political Features of the Regime

Franco's Regime was a dictatorial one, which encompassed several features. Firstly, it shall be characterised as an authoritarian regime born from a conservative coalition,

²² Luengo, 1998. pp. 254-255 & Alted Vigil, 2001, p. 62.

²³ Luengo, 1998. p. 256.

²⁴ Casanova, 2010. p. 3.

²⁵ Juliá, 1999, p. 31.

accompanied by a powerful presence of the military and a strong national Catholicism which perfectly reflects how the mentality spread across the “new Spain” was that of those who won the war. Therefore, in this sense it must be highlighted that it was not a collective dictatorship but a personal one, based on the figure of Franco which was conceived as the cornerstone on top of which the political building rested²⁶ (so much so that it did not fade away until the dictator’s death and for forty years it carried the name of the person who gave birth to it – Francoism-).²⁷ All the powers of the State were in the hands of a single person, who happened to be a Catholic General.

Moreover, a cultural unity was imposed, that of the national-Catholicism which led to a political ideology determined by four keynotes: the Catholic Church, the homeland, the order and the national unity.²⁸

According to the historian Javier Tusset, fascist regimes always choose to mobilize the citizen’s support and so Francoism did it from the beginning, through “cultivating an inarticulate, passive society”²⁹ which perfectly heads to the second characteristic feature of this regime: a consensus majority. Meaning that the population ended up accepting and tolerating the regime due to the extreme repression exercised during the Civil War and the first years of the post-war period, which made sure of erasing any chance or desire of opposition.

Moreover, the National Movement (political party born under the union of *Falange* and *Carlism*) became just another part of the machinery, totally controlled and utilized by the dictator³⁰ - as it also happened with The Cortes (legislative assembly) which served mainly to add more legitimacy to Francoist politics, decided by himself.³¹

Furthermore, as abovementioned, the dictatorship also characterised for the influence received and exercised by non-political powers such as the Catholic Church and the Army. The former was hand to hand with the regime since the very uprising, and continued to be

²⁶ Fernández Puig, 2011, p. 2.

²⁷ Tusset, 2007, p. 13.

²⁸ Fernández Puig, 2011, p. 3.

²⁹ Tusset, 2007, p. 14.

³⁰ Fernández Puig, 2011, p. 2.

³¹ Tusset, 2007, p. 16.

so as a very important actor throughout the entire regime, in such a powerful way that Tusset even suggests “it has been possible to look on it as the intellectual force behind the regime”.³²

Despite Francoism not being a collective regime, the Army also had a very influential and powerful role; let us not forget they were the ones who won the war. According to Tusset’s words it was decisive to “create a weapon capable of keeping in power those who had won it”.³³ Hereinafter they were in control of the population’s behaviour, and therefore public order was always part of their jurisdiction.

The last of the main features of the dictatorship is the degree of political repression carried out, shaped in the philosophy of the *victors vs vanquished* and accompanied by a legislative and judicial reform, maintaining military jurisdiction at the core of the regime and resorting to repression tactics that will be explained in detail afterwards.

Franco’s repression, exercised from the power apparatus, caused an astonishingly high number of deaths, but also a social fragmentation that devastated Spain after the Civil War and which was perpetuated throughout the regime. This social fragmentation is one of the most visible and relevant consequences of Francoist politics, which was based on a constant dichotomy between winners and losers, meaning numerable acts of glorifying for the former and absolute, non-stop persecution for the later. Some of the collaborators of Franco were even mentioning the “need to disinfect the country”.³⁴

According to Casanova, the first feature of the terror that was spread through the post-war period is that it was organised from above, since it was legitimized by a series of legislative reforms and military jurisdiction.³⁵ The war was over, and yet the violence had only begun. This repression gears hit very heavily an already fragmented society, and opened arbitrary and extrajudicial paths for persecution of the “reds”, to the extent that by October 1941 there were already 125.286 cases opened and another 200.000 persons waiting to suffer the “justice” of the victors.³⁶

³² Ibidem, p. 15.

³³ Ibidem, p. 15.

³⁴ Ibidem, p. 21.

³⁵ Casanova et al, 2002, p. 20.

³⁶ Ibidem, p. 22.

Hundreds of people, arrested because of their leftist past or ideas were tortured, imprisoned and murdered; others couldn't handle it and chose suicide.³⁷

Procedural guarantees were mainly inexistent, and those on the defense of the accused had to be soldiers, but not necessarily lawyers. Moreover, as Tussel points out, "the brief time that elapsed between the courts and executions shows just how rapidly cases were expedited".³⁸ The number of deaths encountered from the post-war period is only limited, some specialists suggest it to be over 50.000, but is no more than an estimation since the documentation of the deaths during this context was partial, as the law did not consider mandatory to list those who lost their lives due to a penal sanction. This, along with the disparity between the number of cases heard and the deaths recorded shows "how diffuse the terror was".³⁹

During the first period after the war a legal repression machinery was created, composed by enacted laws (with retroactive effect) to prosecute all those who fought on the Civil War's counter-revolutionary front and which created a judiciary that acted at the orders of the dictator. Most of the trials ended up decreeing the recently adopted death penalty.

Executions were carried out with the famous formula so-called "*Paseos*". Accordingly, Tussel encounters almost a thousand people to have been killed this way from May to December 1939, and 2.663 shot "immediately following the war".⁴⁰

Another instrument that the repressive system of power used was of course, prison. The number of prisoners in Spain raised from 10.000 to 270.000 during the war period, and these figures only decreased dramatically in 1945 (43.000), still holding four times more prisoners than at the end of the Republic.⁴¹ With an immense lack of space, basic necessities and sanitary conditions it was a beehive of sicknesses and misery. According to Tussel, "prison, especially in the early postwar years, meant a lot more than the loss of liberty".⁴²

Within time, the system substituted some sentences in exchange of work, which led to the institutionalization of concentration and work camps.

³⁷ Ibidem, p. 24.

³⁸ Tussel, 2007, p. 23.

³⁹ Ibidem, p. 23.

⁴⁰ Ibidem, p. 23.

⁴¹ Ibidem, p. 24.

⁴² Ibidem, p. 24.

First they were conceived as a place where all the captured dissidents of the war could be retained, since at wartime and the immediate post-war period all prisons in Spain had already exceeded their demographic limitations in a huge scale, and there was still a legal gap between capture of prisoners and trial.⁴³ Nonetheless, and although the history has treated these camps as a belligerent necessity, Javier Rodrigo Sánchez manifests to share the opinion of various other scholars that they were indeed meant as a very effective and harsh method of repression.⁴⁴

Then, as stated by Rodrigo Sánchez, the camps responded to a change from a combative need into a mean for applying systematic repression to prisoners in order to make them realise what was their role in the new established order. Herein, the author states that Francoism “is born from the “right of conquer”, from rational and calculated violence as a political goal”.⁴⁵ Used as a weapon to isolate, humiliate and punish the vanquished, the concentration camps were conceived under a long term intention and used as a weapon of political violence.

In order to make this new machinery effective, another necessary tactic was the purge of the Administration: there could be no “red” trace in those institutions which were now commanded to support the regime, and neutrality was also not permitted among civil servants; they had to be supporters committed to the regime.⁴⁶ This tactic was especially severe also within the education system.

One last aspect that I would like to highlight in this general overview of the repression tactics is the encouragement of everyday citizens to inform and report to the authorities the whereabouts of the opposition, even to the extent of maintaining that “denunciation by the police should be highly thought of as a patriotic action”.⁴⁷ Casanova sees this phenomenon as a necessary tool for the terror machinery created from the top, which from the very first moment provided for centers for denunciation.⁴⁸ Within the mobilization of this collaboration from below, a year after the war had ended this system of denunciation

⁴³ Rodrigo Sánchez, 2001, p. 181.

⁴⁴ Ibidem, p. 175.

⁴⁵ Ibidem, 2001, p. 195.

⁴⁶ Tussel, 2007, p. 25.

⁴⁷ Ibidem, p. 25.

⁴⁸ Casanova et al, 2002, p. 29.

became legal (just like with the trials under military jurisdiction) and served for its repressive purposes in a very efficient way at least until the 1950's. As it appears, the terror exercised during Francoism also managed to break friendships and social solidarity.⁴⁹

Franco's dictatorship was born with the idea of hate and absolute elimination of the opposition, the *red* vanquished, and it remained with this totem throughout all its existence. Harsh repression served to "settle scores", and inflicted a tremendous fear in society, which was a very fruitful weapon for the survival of the dictatorship in power through varying international contexts.

"Paseos"

Paseos -strolls- were executions carried out for reasons and by means defined as clandestine.⁵⁰ Those accused of leftist ideology, of being part of syndicalist organizations or not manifesting expressly their religiosity and support to the regime were taken to unofficial buildings (which, at every effect but the name, were like prisons) to be "questioned". Some days later they were "taken for a walk" (mostly at night or dawn) and executed by firing squad.⁵¹

Thousands of deaths were un-registered and in most of the cases, the "*paseados*" were buried in common graves. *Paseos* were mostly used at the beginning of the war (April-December 1936) and immediate post-war period.

Moreover, despite repression being institutionalized after the war through the military jurisdiction, the Law of Political Responsibilities or the Concentration Camps, this did not hinder the applicability of the *paseos*, even long after the end of the war (especially from 1947-1949). Hence, incidents like the one in "*Los Barreros*" left, according to the German historian Hartmut Heine, 1.500 people "taken for a walk" by April 1939.⁵²

Unfortunately, the majority of the people who died through this tactic were never registered, and this is why the data obtained is blurry and incomplete.

⁴⁹ Ibidem, pp. 29-30.

⁵⁰ Cervera Gil, 1995-1996, pp. 63.

⁵¹ Galella, 2015, p.95.

⁵² Ibidem, p. 99.

Common graves

Mass graves resulting from past experiences of violence are claimed by the anthropologist Francisco Ferrandiz as being “crucial evidence of the wounds of history and a key to understand the dynamics of terror”. They have the goal of burying “the social memory of violence and this strengthens the fear-based regimes of the perpetrators”, since unidentified corpses are a source of anxiety and division within a wounded society.⁵³ He encounters that reliable sources have situated the number of executed people during and after the war in-between 70.000 and 100.000, and it is also claimed by Judith Jimenez that this belligerent scenery was characterised in most of the occasions by leaving the dead there where they had been shot, hidden on the side of roads, walls of cemeteries, rivers, wells or abandoned mines. These places herein represent “silenced tombs that reflect a violence not as a mean for obtaining victory but as an instrument to crush the enemy”.⁵⁴

By 2013, Eduardo Muriel stated on the newspaper *La Marea* that Spain is the second country with bigger number of common graves, just after Cambodia.⁵⁵

Indeed, they constituted a cheap and effective restraint for letting the opponents to the regime know what is the “destiny that was awaiting the uncomfortable voices”.⁵⁶

The more than 60 years that have gone by since the events took place until the first official exhumations started to be carried out shows, according to Ferrandiz the “resilience of traumatic memory through years of silence and fear”.⁵⁷

Enforced disappearances

Disappeared persons are conceived as those who having been detained by authority forces and retained under custody, have afterwards been murdered, buried in common graves, roads or entrance to cemeteries and whose whereabouts or destiny was never communicated or registered. The Lorente Acosta Report developed by the Institute of Legal Medicine of Granada has estimated that the number of persons disappeared during

⁵³ Ferrandiz, 2006, p. 7.

⁵⁴ Giménez Porcel, 2013, p.8.

⁵⁵ Muriel, *La Marea*, 2013.

⁵⁶ Giménez Porcel, 2013, p. 14.

⁵⁷ Ferrandiz, 2006, p. 12.

the war and dictatorship is around 30.000 and 40.000, a very similar data to the one offered by Casanova.⁵⁸ Nevertheless, Rights International Spain claims that Spain is between the countries with more enforced disappearances in the world (establishing a recent calculation on 114.266 persons).⁵⁹ And in this regard, Rafael Escudero, claims that official data actually situates the number of disappeared persons in between 114.000 and 130.000, stressing that these data is official but that there is still much more investigation to do, and the more it is investigated, the more the number tends to increase.⁶⁰ Olivia Carballar, from the newspaper *La Marea* also maintains this last number of 130.000 disappearances in a very recent article from April 2015.⁶¹

Stolen babies

This method of repression is one that Francoist dictatorship shared with Varela's in Argentina, and which nowadays constitutes a topic of discussion and investigation.

Margarita Bonet Esteva describes the reality of the stolen babies as “the separation of babies and children from their parents to be relocated into “*ad-hoc*” families”,⁶² which lasted since the end of the Civil War until the first part of the 1990's, and it has been contextualised as a systematic practice, part of the huge institutionalized repression machinery of the Franco regime.

The repression against men in the multiple variations that I have been showing along this chapter was tremendous and sharp, undoubtedly; but women, on top of all that, experienced a tremendous repressive policy also through this particular tactic. They were taken to institutions of “refinement” controlled by the *Falange* in order to convert them into the regime's ideal of women, while their children were taken from them and adopted by families, supporters of the regime. Those who could not be adopted started to form part of institutions belonging to the State and supported by religious orders.⁶³

Prisons for women also exceeded their demographical possibilities during the Franco regime, and the best example for this is Las Ventas, in Madrid, which had capacity for 500

⁵⁸ Galella, 2015, p.176.

⁵⁹ X, RT, 2014.

⁶⁰ Muriel, *La Marea*, 2013.

⁶¹ Carballar, *La Marea*, 2015.

⁶² Bonet Esteva, 2013, p.1.

⁶³ *Ibidem*, p. 2.

women and by the end of the war “held at least 5.000”.⁶⁴ The children of these republican women who were imprisoned, disappeared or murdered constitute the first group of stolen babies, which took place mainly between the mid 1930s and the 1950’s. The second group, according to Bonet is that of the children coming from families who could not economically maintain their children, or from relations outside marriage or single mothers, and it is the one practised mainly in hospitals and clinics, and the one that lasted until the 1990’s. She concludes, herein, that “what started as a trauma result of a politic of elimination of dissidence, turned into a large net of trafficking of minors and illegal adoptions”.⁶⁵ A further detailed classification can be found in Monica Musci’s work, including the so-called Children of the War (the thousands of children sent abroad by their parents who had to return to Spain and whose parental authority would now belong to the State).⁶⁶

Furthermore, various laws were passed for the State to attain custody of these children, and so once again the legal apparatus was manipulated by Franco in order to, already at the early 1940’s, “legitimize abduction of Republican children, creating a generation of stolen children”.⁶⁷

To what concerns the reasoning behind it, it is necessary to mention the figure of Antonio Vallejo Nájera, a very well-known Francoist psychiatrist who developed the theory of the “red gene” in order to support Franco’s obsession to eradicate the political dissidents;⁶⁸ and who utilized science to “prove” the biological inferiority of the enemy.⁶⁹ And so the stealing of babies began while, as Josephson claims, “the alleged contagious nature of the Marxist disease (...) served as the foundation for the abduction of thousands of Spanish children and newborns under Franco’s rule”.⁷⁰

Additionally, as highlighted by Vadillo, it mustn’t be forgotten that the Army was not the only one participating in this business (as legible candidates to raise the children), so was the Church.

⁶⁴ Josephson, 2013, p. 20.

⁶⁵ Bonet Esteva, 2013, p. 3.

⁶⁶ Musci, 2011, p. 2.

⁶⁷ Josephson, 2013, p. 21.

⁶⁸ Bonet Esteva, 2013, p. 2.

⁶⁹ Vadillo, 2012.

⁷⁰ Josephson, 2013, p. 19.

Concerning further detailed explanation of the process of the “baby stealing”, consult the work of Kimberly Josephson and Monica Musci.⁷¹

Once the stealing was performed and the children could not be sent to some ad-hoc family, most of the kids ended up in private or public institutions. The former were run by the Church, the later by the Department of State called “Social Aid” (*Auxilio Social*). So “while the government sought to punish Republican parents, these institutions aimed to rehabilitate the children”, but, as it has been demonstrated through the own children’s testimonies, the treatment received in these places responded to the same terror dynamics of the adult penitentiaries and concentration camps.

Thanks to this dynamic, by 1942 the State “had become the guardian of more than 9.000 children”, and twelve years later, by 1954 this number turned into 30.000.⁷² If this would be happening nowadays, it would have a name, and it would be child-trafficking.

Finally, in order to acknowledge the dreadful physical and psychological conditions of these institutions it is necessary to resort to the testimonies gathered in the documentary “Boarding schools of fear” by Montse Armangon and Richard Belis which gives voice to the thousands of children who spent their childhood (and in most cases also their adolescence) in these schools controlled by the regime, while being subject of beatings, slavery work, ill treatment and sexual abuse.⁷³

1.3 Last years, death of Franco and end of dictatorship

In this last section of the first chapter, I would like to briefly touch upon some key points of the internal and foreign policy adopted by Franco regime, in order to finish the long path which started in the emergence and fall of the Republic at the begging of this Chapter, and must end with the conclusion of the authoritarian regime that followed it, so that the road into the Democratic Transition can be clearly plotted.

During the 40’s, once the dictatorship started consolidating in Spain, there were two main characteristics of its attitude towards the exterior that went through significant changes, as

⁷¹ Josephson 2013 & Musci 2011.

⁷² Ibidem, p. 24.

⁷³ Armangon & Belis, 2015.

the international scene started to change. These two features are defined as the interventionist temptation and the isolation from the exterior. The first one corresponds to the World War II. The political attitude of Franco during the War changed along with its circumstances, starting with neutrality, followed by a “non-belligerent” status. Nonetheless, as German victories started to become more numerous, a special division of soldiers was created to be sent to Russia in order to fight alongside the Nazi troops (named the Blue Division), so the side that Spain had chosen to support was no secret towards the international sphere. In 1943 with the defeat of the Axis, Franco became neutral again. This change needs to be contextualized in Franco’s desire to remain in power.⁷⁴ As a consequence of this, neutrality was born under the fear that the Allied powers would intervene in Spain in order to destroy Francoism as it was happening with Fascism across Europe. The political consequence of this was called “cosmic change of the Regime” as Franco was trying to exteriorize a democratic appearance, calling the regime itself an “Organic Democracy” in order to legitimize a dictatorial regime within the international community.

The second feature of isolation was a direct consequence of the defeat of the Axis at the end of World War II. The outcome of this were a series of measures taken from abroad that damaged Spain as a way of punishment for its avoidance of democracy. Consequently, the border with France was closed, the foreign ambassadors of Spain left and all commercial relations within Europe were eliminated (except for Portugal which was also dominated by a dictatorship). This, as highlighted by Fernández Puig created an economic situation unbearable of misery and hunger in Spain.⁷⁵

With the 1950’s and the development of the Cold War, a bigger tolerance grew within the international community for the Franco regime, especially from the United States who “saw Spain’s anti-communist rhetoric and geographic location to be of value”.⁷⁶ The regime started fulfilling certain Pacts (first with the Vatican and then with the United States) which helped for the normalization of diplomatic relations with the international community.⁷⁷

⁷⁴ Fernández Puig, 2011, p.4.

⁷⁵ Ibidem, 2011, p. 5.

⁷⁶ Josephson, 2013, p.24.

⁷⁷ Fernández Puig 2011, p.9.

Related to the internal policy, one of the most important changes to highlight would be the birth of an internal opposition when the pillars of the regime started to crumble. Most of the revolts and revolutionary social actions to manifest the opposition for the regime were organized by the young, at the Universities. Student and working class movements were growing bigger year by year and in the beginning of the 1970's it coincided with a division of the Church and the Vatican starting to distance itself from the Regime.⁷⁸

By 1974, Franco was on a very advanced stage of Parkinson and senility could be perceived through his voice during the speeches he performed. After several months of hospitalization, Francisco Franco died in a room of the Hospital La Paz, in Madrid.

It was 20th of November of 1975, and thus the Spanish dictatorship died along with the man who had given birth to it.

1.4 Concluding remarks

The II Republic of Spain was born under hopes of change and freedom but it faced troubles which along with a resort to repression and intimidation as an answer to social demonstrations led to a perpetual conflictive atmosphere. The fight of classes, a gradual strengthen of the enemies of the Republic and a fragmented system of parties also contributed to hinder the consolidation of the Republic.

A violent military uprising in July 1936 organised by several Generals who had the support of a big part of the Army led to a terribly cruel Civil War that generated a tremendous social fragmentation. It was a class war over the ideas of religion, nation and beliefs and although violence was perpetrated by both sides, the extent, length and intensity was by far much higher on the revolting side that would, at the end of the war install a Dictatorship through the person of the Catholic General Francisco Franco.

Violence and repression were institutionalized in various forms, through a whole new legislative, political and judicial structure that would include penitentiary overpopulation, instalment of concentration camps, common graves, murder through *paseos* and torture, enforced disappearances and a generation of stolen babies.

⁷⁸ Ibidem.

It has been demonstrated that repression was exercised in a systematic way which responded to the Francoist obsession of reminding the vanquished that they had lost the war, and that left no place for them in the “new” Spain.

2. *Transition to democracy*

2.1 Huntington's third wave

Samuel P. Huntington is known among the democratization scholars (between other findings and contributions to the Transitional Justice (hereafter TJ) movement) for creating the concept of the “democratization waves”. In order to deepen into his ideas, it results convenient to firstly explain the concept of democracy that he bases his study on. From his view, the classical theory of democracy derived from the Ancient Greece appears to be insufficient, since it only focuses on defining democracy by source and purpose. So, he recalls into Schumpeter's approach where democracy is defined as a an “institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote”.⁷⁹

Following Schumpeter's proposal, Huntington establishes the core value and essence of democracy in the existence of “fair, honest, and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote”⁸⁰, while at the same time guaranteeing and ensuring basic civil and political freedoms. These components are the ones that make the concept of democracy a useful one, since they offer the possibility of determining if a country is more or less democratic depending on how well or badly it fulfils these criteria. Surprisingly, he also points out that although civic virtues such as an honest and responsible government or equal participation are qualities which may be introduced into the concept of democracy, democracy as such should not be defined just by these terms since this would again carry the problems of defining by purpose and therefore he stresses that open, free and fair elections are the true *sine qua non* of democracy.⁸¹ He also offers several additional points to define democracy, but according to the purpose of this thesis I will only briefly comment on the idea of an “efficient and fair government” that wishes to be democratic. In this sense, he maintains that the fact that a government is irresponsible, corrupt or making policies distant from the public good may make that government undesirable but it does not make it undemocratic.⁸²

⁷⁹ Huntington, 1993, p. 6

⁸⁰ Ibidem, p. 7.

⁸¹ Ibidem, p. 9.

⁸² Ibidem, p. 10.

As a consequence of this, in order to define (or even achieve) what might be named as “desirable democracy”, we must start from the basic Greek concept but we cannot stop there. I would even say that we mustn’t stop at Schumpeter’s definition either, but include into democracy the civic values abovementioned in order to create an efficient, non-corrupted, responsible government that will truly pursue the common good of its people.

Having introduced the concept of democracy, it is time to explain what Huntington means by the waves of democratization, which he defines as “a group of transitions from non-democratic to democratic regimes that occur within a specified period of time and that significantly outnumber transitions in the opposite direction during that period of time” as well as “liberalization or partial democratization in political systems that do not become fully democratic”.⁸³

Huntington determines that three waves of democratization (and two reverse waves) have taken place since the American and French revolutions. The first saw Spain move into the democratic column (with the Republic in the early 1930s) and with the reverse wave that started with Mussolini’s raise to power, Spain also fell under the authoritarian fist after the civil war ended in 1939.⁸⁴ The second wave promoted by the Allied powers at the end of World War II saw its end during the 1960s and turned to reverse dramatically by the end of the early 1970s, when democracy was almost gone from the global arena.⁸⁵

The third one (relevant for this study) started with Portugal in 1974 and was also shortly followed by Spain, Brazil and Greece on the first place, and another thirty countries in Europe, Asia and Latin America along the following fifteen years.⁸⁶ However, this was not a simple process since, as Huntington wisely explains, “the death of the dictatorship did not ensure the birth of democracy”.⁸⁷

The author poses independent variables that pushed the democratization processes of the third wave into taking place in that concrete moment of history, such as deep legitimacy problems of the authoritarian regimes marked by their economic failure, a global context where democratic values were being widely spread and promoted, consequent global economic growth during the 1960s which created a more educated middle class, along with

⁸³ Ibidem, p.15.

⁸⁴ Ibidem, pp. 16- 18.

⁸⁵ Ibidem, p. 19.

⁸⁶ Ibidem, p.5.

⁸⁷ Ibidem, p.4.

deeply relevant changes among the Catholic Church and in the foreign policy of external actors during the 1970s.⁸⁸

2.2 Basic mechanisms of Transitional Justice

One of the problems connected to democratization involves the concept of Transitional Justice. TJ is a concept that was developed during the end of the past century (due to 1980's and 1990's Latin American and Southern Europe transition periods from repressive authoritarian regimes into democracies through human rights activity⁸⁹ and Central and Eastern Europe within the fall of communism)⁹⁰ as joint theories and practices through which a society tries to come to terms with a past marked by atrocities and generalized human rights violations (deriving from a context of civil war, authoritarian regimes or colonialism), and consequently Michael Walzer relates it to the term *jus post bellum* (the law or justice after a war).⁹¹ In few words, it is a branch of justice that regards “how successor governments should deal with the crimes of their predecessors”.⁹²

Moreover, as stated by the International Centre for Transitional Justice (ICTJ), TJ has the goal of recognizing and acknowledging the victims as well as promoting “initiatives of peace, reconciliation and democracy”.⁹³

Some authors claim that the best way to do so is through criminal prosecution for the human rights abusers of the former regime, in order to ensure that “justice was achieved upon a foundation of the Rule of Law”⁹⁴, as specified by Neil Kritz. It is argued that determining responsibility serves helping both the restoration of victims' dignity and society as a whole,⁹⁵ as it shows a breaking point between the new and old regime while proportioning legitimacy to a new state that condemns the past repression. Kritz also highlights that precisely the first test for the establishment of a democracy is the principles that will distinguish the former regime from the new one, arguing that dealing with the perpetrators of past human rights violations is “one way to demonstrate a clear break

⁸⁸ Ibidem, pp. 45-46.

⁸⁹ ICTJ, 2009 & Paige, 2009, pp. 324-334.

⁹⁰ Huntington, 1993, p. 23.

⁹¹ Valencia Villa, 2007, p. 1.

⁹² Paige 2009, p. 322.

⁹³ ICTJ, 2009.

⁹⁴ Kritz, 1995, p.26.

⁹⁵ Hafner & King, 2007, p.92.

between regimes” and a “commitment to the principles of democracy and rule of law”.⁹⁶ Moreover, assessing criminal responsibility also serves to create an image of re-establishment of the state which resembles more democratic.⁹⁷ Nevertheless, trials can also bring about several problems such as leaving victims aside or even utilising them as a mere judicial tool. In the case of national trials, there is also the risk that the judiciary won’t act independently, especially if it hasn’t been purged after the regime change.⁹⁸

Anyhow, there is a common understanding between the scholars of the field, that TJ measures must be complementary and not subsidiary. It is therein stated by the ICTJ,⁹⁹ as it is by Donald Hafner,¹⁰⁰ Hernando Valencia¹⁰¹ and specially Arthur Paige (amongst others) that a comprehensive approach serves firstly to provide some sort of justice for those who suffered the repression and secondly to facilitate “an exit from authoritarianism and shoring up a fragile democracy”.¹⁰²

The idea behind TJ measures is based in three principles: the right to truth, the right to justice and the right to reparation. These rights have both individual and collective spheres and respond to an international concern versus impunity of grave human rights violations, which also develops a duty from the State to investigate these violations in an exhaustive and impartial way.¹⁰³

How is it then that a state must confront past human rights violations? Should they pursue personal accountability or forget the abuses for the sake of reconciliation? Unfortunately, there is no single answer to these questions. Each state must deal with the past on their own way depending on their particularities; and this must be done with the goal of finding a balance upon the so-called truth and justice dilemma. Even though casuistic plays a major role here, it can be presumed, for example, that elites who gain power through a revolution will normally implement harsher mechanisms of retributive justice while negotiated transitions through an old elite transformation “show restraint in the accountability sphere”

⁹⁶ Kritz, 1995, p.31.

⁹⁷ Hafner & King, 2007, p. 96.

⁹⁸ Ibidem., pp. 99 and 104.

⁹⁹ ICTJ, 2009.

¹⁰⁰ Hafner and King, 2007, p. 93.

¹⁰¹ Valencia Villa, 2007, p. 8.

¹⁰² Paige 2009, p. 355.

¹⁰³ Ardila, Escola de Cultura de Pau, pp. 4-6.

and are more inclined to resort to blanket amnesties.¹⁰⁴ However, determining a full and official accounting of the past “is increasingly seen as an important element to a successful transition” and it can also be stated that compensation for the victim’s suffering and repression is a must for any democratic transition which wishes to be based on principles of justice and understanding.¹⁰⁵

Finally, concerning the concrete mechanisms available within TJ, there are plenty of policy possibilities as it does not constitute a closed-up list; nonetheless, I decided to follow Grodsky’s classification since it seems to be the most complete. Consequently, the “*TJ spectrum*” would be organized from the less aggressive measures to the most, and encompasses: (a) the cessation and codification of violations of human rights, (b) the condemnation of old system, (c) rehabilitation and compensation measures, (d) the creation of Truth and Reconciliation Commissions, (e) the purge of abusers of human rights from the public positions and finally both the criminal prosecution of (f) executors and (g) commanders. In this scheme of seven progressive possible steps to follow, Spain’s transition can be barely situated in the third step, since, as it will be specified afterwards, it was based on an Amnesty Law (1977), where rehabilitation was only partial.¹⁰⁶

2.3 Democratization process in Spain

Antecedents

First of all, and in order to fully understand the democratization process that took place in Spain during the 1970’s and early 1980’s, I would like to expose some of the factors from the period of 1950’s to 1975 which were decisive to understand the TJ approach chosen during democratization in the Spanish case.

During the 1950’s a severe economic crisis was hitting the Spanish society with misery and hunger as a result of the international isolation applied during the 1940’s abovementioned in the first chapter, and this clearly demonstrated the fragility of the regime which in the end forced Spain to internationally open the doors of the Spanish market.¹⁰⁷ Nevertheless, as it is wisely resumed by Edward Malefakis, “no longer dependent on the dictatorship *vis-*

¹⁰⁴ Grodsky, 2009, p. 821.

¹⁰⁵ Kritz, 1995, pp. 36-37.

¹⁰⁶ Laplante, 2009, pp. 916-917.

¹⁰⁷ Maravall & Santamaría in Kritz, 1995, p. 301.

à-vis labour relations, the economic elite tended to abandon it ideologically, and the regime came to be regarded as an obstacle to further economic growth”.¹⁰⁸

Following this deterioration of the regime, the period of 1965 onwards (the last period of Francoist dictatorship) was marked by a return of the most repressive measures that had been if not abandoned, fairly diminished along the regime since the immediate post-war period had ended. This increase of repression was led by the figure of Admiral Carrero Blanco and involved not only arrests and firing of union leaders and workers based on political activities but also extended to university (which was constantly being occupied by police performing arrests or dismissing teachers), and opposition groups which were put on trial by the Tribunal of Public Order. In January 1970 alone, this tribunal dictated “100 sentences in trials for crimes of association and propaganda”.¹⁰⁹

Furthermore, other elites of the regime that had actively participated and supported the dictatorship also left its ideology, such as the Catholic Church who publicly withdrew its support to the regime in 1971 “acknowledging its error in taking sides in the Civil War”.¹¹⁰

All these factors started to highlight that the bases of that characterising consensus majority of the regime were disappearing and the dictatorship proved to be unable to solve its internal conflicts, as a growing discontent of the economic elite, public administration and middle classes started to grow, unstoppable. Finally, the assassination of Carrero Blanco by the terrorist Basque group of ETA (Euskadi Ta Askatasuna) “dashed the last hope” of continuity of the regime.¹¹¹ According to Malefakis, at this point, as wider sectors of population “began to believe that the regime was no longer necessary for and might even have become a hindrance of consolidation of the latter (socioeconomic progress), the justification for its continuation evaporated” and society started to put its hopes on democracy (also within an international atmosphere of encouraging Europerization which necessarily implied democratization).¹¹² This, along with the clear loss of authority and credibility of the regime’s institutions and its discredit due to an inability to counter

¹⁰⁸ Malefakis in Kritz, 1995, p. 302.

¹⁰⁹ Maravall and Santamaría in Kritz, 1995, p. 307.

¹¹⁰ Ibidem., p. 308.

¹¹¹ Ibidem., p. 308.

¹¹² Malefakis in Kritz, 1995, p. 305.

terrorism and improve the economic situation turned to be the bomb which exploded at the time of Franco's death, where "the pillars of the regime were already crumbling".¹¹³

Describing the transition

Once the various factors that led to it have been addressed, here comes the time to describe the transition period. In doing so, the *ruptura* and *reforma* dimensions will be explained as a mirror of the situation in which the Left and Right of Spanish politics decided to reach a transition to democracy by agreement which resulted in the so called Pact of Oblivion. The shared view among scholars and TJ experts that Spain went through a successful and exemplary transition will be likewise contested with a more recent narrative. Moreover, some determining circumstances of the transition will be explained in order to be able to understand the current situation regarding Spanish politics of memory (which will be dealt with in the fourth chapter) derived from the Pact of Oblivion, such as: the Amnesty Law, the elections of 1982 and Felipe Gonzalez's socialist approach to the politics of forgetting, the 1990's social memorialistic movement that gave birth to the *Asociación de Recuperación de la Memoria Histórica* (Association for the Recuperation of Historical Memory, herein ARMH) and last but not least the Historical Memory Law of 2007.

As it has been clarified by Rafael Del Águila, irrespective of having appeared an irrefutable truth in the time that the only way to get out of Francoism was indeed democratization, it is sometimes forgotten that under this idea there were very different political paths which could lead to different places.¹¹⁴

Indeed, when having to confront the reality of building a democracy after the dictator's death, the Right and Left of Spain's politics realised that both were mutually dependent from each other in order to manage a successful transition. In this way, the left justified the necessity of consensus arguing that political and social *ruptura* (rupture) with the older regime would be impossible to achieve on their own, while the Right justified it

¹¹³ Maravall & Santamaría in Kritz, 1995, p. 308.

¹¹⁴ Del Águila Tejerina, 1982, pp. 102-102.

highlighting that only the *reforma* (reform) through a pact would be the secure way towards a democratic regime.¹¹⁵

As stated by Kritz, “the transition proceeded without a radical break”¹¹⁶ and was characterised by a consensus approach through a Pact. This is why in the democratization furnished in Spain, “the Right referred to the emerging regime as the result of a “*reforma pactada*” and the Left called it a “*ruptura pactada*””.¹¹⁷ Adolfo Suarez (who had been head of the *Movimiento Nacional*, closest institution within Francoism resembling a political party)¹¹⁸ was the figure in charge of leading the democratization process and thus the original demand from the Left of a *ruptura* failed. For a detailed and illustrative enunciation of the exigencies from both the Right and Left in order to install a democratization (for which we unfortunately do not have time here), resort to the complete and precise literature of Kritz.¹¹⁹

The Right and Left were, as it has been demonstrated, interdependent for the process of democratization; in Rafael Del Águila’s words, “it wasn’t possible to get out of the dictatorship without “the others”, and therefore the efforts are directed towards negotiation”.¹²⁰ This phenomenon translated into an hegemony of the process where the Francoist system did not disappear but partially.¹²¹

In addition, interestingly enough Tussell addressed the argument in favour of forgetting as a necessity of the concrete time in order to achieve democracy (the justification behind the Pact), declaring that this idea might have been positive and true in the 1970’s but has driven the Spanish people to loose most of their signs of a collective identity.¹²² Indeed, as Rafael Escudero points out, Spain had to move on into a new democratic regime with forgetting as “an ideological background of the new constitutional system”.¹²³

This approach of the transition served for several purposes such as assuring the silence of the opposition concerning the crimes committed during the dictatorship (consequently, as

¹¹⁵ Ibidem, p. 103.

¹¹⁶ Kritz, 1995, p. 298.

¹¹⁷ O’Donnell & Schmitter, 2013, pp.42-44.

¹¹⁸ Encarnación, 2008, p. 440.

¹¹⁹ Kritz, 1995, pp. 312-315.

¹²⁰ Del Águila Tejerina, 1982, p. 111.

¹²¹ Ibidem, p. 113.

¹²² Sevillano Calero, 2003, p.308.

¹²³ Escudero, 2014, p.132.

Escudero brightly notes, “amnesia is the first clause of the transition agreement”), the mutual agreement of renouncing to the past (the left would renounce to the Republican form of government that was installed before the authoritarian regime, and the right had to renounce to the dictatorship), and thirdly, the establishment of a base for this agreement, in the form of a blanket amnesty act in 1977.¹²⁴

Critique and consequences for the present democracy

Having arrived to this, it appears unavoidable to bring up some questions; has then, the Spanish model of transition really been a success? Can it be regarded as an exemplary transition, that of building democracy through negotiation by paying the price of leaving the past untouched?

Before answering this question it should be noted in the first place that, after all, the decision to avoid resorting to TJ measures was agreed by both sides. The Left consequently did not pursue punishment or prosecution either, rather it agreed from the very beginning to this consensual ideology of amnesia: as Encarnación points out, “indeed, amnesty rather than retribution was the left’s main demand during the years of democratic transition in Spain”.¹²⁵ Moreover, Huntington himself declared in his literature that an Amnesty law is not necessarily undemocratic, and in the particular case of the third wave transitions it was a shared tendency that, if rejected, would have meant to “exclude the most prevalent form of democratization”.¹²⁶ Finally in this line, it has been stated by the Committee on Enforced Disappearances of the United Nations that since the Amnesty Law was enacted at the time of restoration of democracy, with popular approval and by a democratic government, it was in no conflict with international or national law.¹²⁷

Even so, a more recent narrative has started to contest this official conception of the Spanish transition, leading to a negative answer to the abovementioned question.

Francisco Sevillano argues that in spite of the public efforts to overcome the past, the remembering of the civil war and Francoist repression “still forms a part of the collective memory of many people”, and in this sense, what he regards as the confusing consensus

¹²⁴ Ibidem, p.132.

¹²⁵ Encarnación, 2009, p.28.

¹²⁶ Huntington, 1993, p. 217.

¹²⁷ United Nations Office of the High Commissioner for Human Rights, Committee on Enforced Disappearances examines report on Spain CED/C/ESP/1, 6 Nov 2013.

that seemed to drive the Spanish transition into a political change wasn't founded on official consciousness of responsibilities or moral acknowledgement of blames. Spain created its social memory on the grounds of a desire to leave in the past a traumatic reality on behalf of a peaceful transition towards a brighter future into democracy. Neither remorse nor reconciliation were present into the building of such collective memory,¹²⁸ and consequently, "there would be no meaningful Transitional Justice of any kind in Spain: no truth and reconciliation commission, no bureaucratic purges, and no military trials".¹²⁹ This Pact of silence and forgetting, thus, created a culture of impunity in Spain, which has remained so until the present day.¹³⁰

Finally, Escudero exposes a variety of arguments in order to gently and expertly challenge the official version of success that the Spanish transition has been marked by. Basically, he claims that the academic debate is starting to differ from the "hegemonic narrative" in relation to a very relevant topic for this study (that is, the fact that actual democracy in Spain is, let's say, of a low quality due partly to the transitional model chosen for Spain during the 1970s that has remained practically unchallenged until recent times). He argues, therefore, that Spain's current political system is now regarded as a "low-level democracy" since it lacks alternative methods of citizen participation in political affairs apart from the four year elections, deeply low and almost irrelevant power is given to popular referendum within the Spanish legal system and the accentuated bipartisanship has transformed into a lack of representation of the plurality of political options. According to Escudero, "this style of low-level democracy was the only one that could be achieved under the circumstances surrounding the transition agreement".¹³¹ Secondly, he recalls on the ambient under which the first efforts of democratization were performed. Usually conceived as a peaceful time, the time shortly following the dictator's death was a very conflictive period marked by social and political movements demanding democracy while the process of transformation itself was being controlled by "politicians and former authorities from the Franco dictatorship"¹³² to the point that the Military Party conditioned the pact to the continuity of the monarchy while the Catholic Church impeded the transition of Spain into

¹²⁸ Sevillano Calero, 2003, p. 299.

¹²⁹ Encarnación, 2009, p. 8.

¹³⁰ Aguilar, 2013, p. 21.

¹³¹ Escudero, 2014, p.135.

¹³² *Ibidem*, p. 134.

a secular state. In this way, Professor Vincent Navarro shares Escudero's concerns and expressly states that defining the Spanish transition as exemplary is on his opinion a mistake.¹³³

2.4 Pact of Oblivion

The Pact of Oblivion that characterised the Spanish transition was founded in the basis of an ideology which marked the steps that subsequent democratic governments (the Socialist one under PSOE- *Partido Socialista Obrero Español*- and the conservative Right wing one under PP- *Partido Popular*-) have followed until today.

This initiative challenged every rule of the TJ movement which encourages truth revelation and victim's reconciliation over silence and amnesties. It has been defined, in Encarnación's words, as "an agreement between the parties of the right and the left, -that-institutionalized collective amnesia about past political excesses, including the mass killings of the Spanish Civil War (1936-1939) and the repression of the Francoist era (1939-1975)"¹³⁴ and was the reason why almost no TJ measures were taken throughout the transition. However, he also argues that this lack of accountability towards the older regime doesn't seem to have compromised the democratization process in Spain.

The Pact involved an amnesty that was complemented with a very limited compensatory policy for the victimized by Franco's dictatorial regime.¹³⁵ Furthermore, as has also been noticed by Jonas Rubin on Encarnación's work, this unwritten agreement was made in order to avoid future discussions about Spain's past and consequently the Pact itself has been conceived as a "pragmatic sacrifice" or an effort to forget the past for the sake of the nation's future.¹³⁶ According to Encarnación's recent literature, the Spanish case poses a very peculiar feature that is the complicity of civil society "in maintaining the Pact of Forgetting, despite a post-dictatorship boom and in contrast to most other democratic transitions".¹³⁷ Actually, as recalled by the data he shows, by the time of Franco's death as much as 61% of the Spanish society was in favour of a blanket amnesty, which eliminated

¹³³ Sevillano Calero, 2003, p. 317.

¹³⁴ Encarnación, 2008, p.437.

¹³⁵ Ibidem, pp.437- 438.

¹³⁶ Rubin, 2014, p.1.

¹³⁷ Ibidem, p.1.

the fear for the political elite to apply a TJ policy that could be confronted or contested by the public.¹³⁸

However, Estrella del Diego points out that through this pact, “Spain invented a past that was only present and future”¹³⁹ and consequently distorted its collective memory, without ever being able to “let go” and therefore conditioning the formation of a common identity to a late historical awareness of memory.

Observing the Pact in the historical moment it was born, it seems determining that it helped proceed democratization in more peaceful conditions, reducing possibilities of an immediate conflict, but it also brings a discourse on the literature that “nobody really forgot” since a huge part of the death were never properly buried, and a fake mourning was put into practice when the moment for justice and accountability passed in front of the nation’s eyes and the country “collectively decided not to pursue” it.¹⁴⁰

A timid dismissal of civil servant’s jobs and a poor system of pensions was the extent to what the new regime was willing to deal with the repressive past of Spain. No official condemnation of 1936’s coup, no judicial accountability for those involved in the killing, torture, imprisonment and forced labour perpetrated by the Franco regime; “Franco’s authoritarian state did not collapse, it was reformed from the inside out through negotiations between Francoist officials and leaders of the democratic opposition”.¹⁴¹

Not surprisingly Escudero, on an interview for the newspaper *La Marea* argued that “the disappeared people are a symptom of the democracy we have today”.¹⁴²

The **Amnesty Act** enacted in 1977, which as a first step started to consolidate the Pact was critical for the further consideration of political compromises between the two sides of the negotiation process. Amnesty and prohibition of further politisation of the past were set up for both sides, even before a new Constitution was discussed. Let us not forget that the Amnesty Act it was the first law passed by a democratic parliament.¹⁴³

Finally, to what concerns the justification around the idea of amnesties, Louis Mallinder argues that when introduced with democratic approval and accompanied by “mechanisms

¹³⁸ Encarnación, 2008, p. 442.

¹³⁹ De Diego, 2012, p.4.

¹⁴⁰ Ibidem, p.5.

¹⁴¹ Encarnación, 2008, p.439.

¹⁴² Muriel, *La Marea*, 2013.

¹⁴³ Aguilar, 2013, pp. 11-12.

to fulfil victim's rights",¹⁴⁴ a conditioned amnesty can be a very smart and un-dangerous way of facing a democratization process. Moreover, he argues that when amnesty is conceived as necessary in order to perform a transformation of power towards democratic leaders, it actually does help fulfil the victim's rights when it is reinforced by the creation of truth commissions.¹⁴⁵ He nevertheless avoids praising for blanket amnesties with nearly no consideration on victims, as the one in the Spanish case.

As demonstrated by Escudero, "a clear break from the past for the state and government in Spain would have to wait until the 1982 elections", and the swift in government in favour of the Socialist Party (PSOE) with the figure of Felipe Gonzalez. Surprisingly, this period was conceived as "the years of great silence and of no memory"¹⁴⁶, since no revision of the past was pursued by the socialist government. The administration of Felipe Gonzalez was more centred in the modernization of Spain, the problem of terrorism in the Basque Country and the desire to be incorporated into the European Community.¹⁴⁷ Moreover, the failed coup promoted by the extremist right in 1981 provoked great fear among the society, bringing back to present the memories of the repressive and painful past that were trying to be forgotten. This reality reminded to the nation (for at least a few hours), the "omnipresent fear, during the transition that a coup will be attempted and succeed",¹⁴⁸ since as it has been recalled by Paloma Aguilar, especially in the earliest times of the transition, the army was very capable of destabilizing the democratic system.¹⁴⁹

The **1990's and 2000's** were definitely the moment when a demand for the change of TJ approach started to emerge within academia, but mostly within society itself, and this was inspired by two phenomena: first, the attempted prosecution of Pinochet issued by the former Spanish judge Baltasar Garzón and second the birth of the ARMH. The first was immensely controversial taking into account the degree of *TJ spectrum* applied in the Spanish case, but also very significant, since there is an undeniable similarity between

¹⁴⁴ Mallinder, 2007, p. 210.

¹⁴⁵ Ibidem, 2007, p. 228.

¹⁴⁶ Encarnación, 2008, pp.440-441.

¹⁴⁷ Messenger, 2014, p. 3.

¹⁴⁸ O'Donnell & Schmitter, 2013, p. 25.

¹⁴⁹ Aguilar, 2013, p. 12.

the Spanish and Chilean regimes,¹⁵⁰ and it provoked what Encarnación has defined as an “irruption of memory” -and so “in a way, it was as if the Spaniards were wishing to punish Pinochet for the crimes committed by Franco”-.¹⁵¹ This marked a stage within the Spanish society, a new era leaded by human rights activism and civil society movements which started to call “on Spain and the PP -which entered into government on 1996- to deal with historical memory in a new way”.¹⁵²

Silence had been the only possible respond to this controversial past that perpetuated the *victors vs vanquished* ideology; until January 2000, when Emilio Silva (Spanish journalist) looking for his grandfather who was allegedly shot in 1936 and thrown into a mass grave, set out an exhumation in the village the province of León. The grave was opened by October that same year, and in 2003 a DNA test confirmed one of the people buried under this unmarked spot was, indeed, Emilio’s grandfather. This is how (together with Santiago Macías), the ARMH was created, which has been the major promoter of the opening of other identified mass graves and similar processes of recovering historical memory until the present day. By the end of 2005 more than 500 corpses were found among 60 exhumations.¹⁵³

Other organizations soon followed, as it has been recalled by Encarnación, which has ended up into the current scenery of 160 associations working in the creation of the historical memory movement in Spain.¹⁵⁴ Actually, Professor Carmen Pérez argues that it is clear the memorialistic movement the one that has truly taken the step of demanding a change towards the transitional justice approach of the country; that the grand-children have been the ones fighting for the forge of a common and true historical memory.¹⁵⁵ Nevertheless, she also stresses, as well as Escudero, how these initiatives of exhumations and investigation of the past have been privatized¹⁵⁶ and therefore the autonomous regions and city halls -and not the State- are the ones who have endorsed the responsibility to investigate and assist the victims and associations. After all, as highlighted by Sevillano,

¹⁵⁰ Rubin, 2014, p.2.

¹⁵¹ Encarnación, 2008, p.448.

¹⁵² Messenger, 2014, p.4.

¹⁵³ Ferrandiz, 2006, p. 8.

¹⁵⁴ Encarnación, 2008, p. 450.

¹⁵⁵ Muriel, *La Marea*, 2013.

¹⁵⁶ Ibidem.

“maybe a new generation who did not star in the political transition is starting to demand their right to remember the recent past”.¹⁵⁷

Finally, when the first draft of the **Historical Memory Law** was passed by 2004, almost 30 years after Franco’s death, Spain had already survived three decades of stable democratic government and the threat of regression into an authoritarian regime or immersion into a chaotic civil war had vanished with the time. It was born on the first generation without trauma. This turn indeed “made confronting the past seem less threatening”.¹⁵⁸ Therefore, in 2007 the Historical Memory Act was passed by the socialist government of Zapatero and became “the first explicit legal condemnation of the Francoist Regime”.¹⁵⁹ In between other measures, this Acts provides for an obligation from national, regional and local governments to finance exhumations, established a Documentary Centre for Historical Memory and recalls for the eradication of Franco’s material legacy¹⁶⁰ by means of the withdrawal of symbols commemorating the coup of 1936 or the dictatorship, reparations were widened, financial compensations improved and the right to obtain Spanish citizenship was granted to those who were descendants of the exiled from the war and dictatorship times.¹⁶¹

Regardless of being expected from the victim’s associations to be a corner stone for the change of TJ approach, the Law disappointed most of the public since it reduced the condemnation of the past regime to the observation of larger pensions and withdrawal of Francoist symbols, something that has not even yet been fulfilled (not by the Zapatero government and obviously not by the subsequent -and current- government of the Right under the mandate of Mariano Rajoy).¹⁶² The Historical Memory Act has proved to be insufficient and the truth is that this law “didn’t satisfy the demands of the victims”¹⁶³ and has failed to provide them with an effective remedy when denying the State’s responsibility to clarify the “whereabouts and fate of the disappeared as well as the identification of the

¹⁵⁷ Sevillano Calero, 2003, p. 319.

¹⁵⁸ Encarnación, 2008, p. 447 & Encarnación, 2009, p.33.

¹⁵⁹ Escudero, 2014, pp. 141-142.

¹⁶⁰ Encarnación, 2008, p. 447 & Encarnación, 2009, p. 452.

¹⁶¹ Escudero, 2014, p.142.

¹⁶² This document shows that the PP, as late as December 2014 rejected a proposition presented in the Senate by a Basque nationalist party (PNV) to bring reparation to the victims of Francoism.

Boletín Oficial de las Cortes del Senado, X Legislatura, No 455, Moción 671/000149, 2014.

¹⁶³ Chichón Álvarez, 2012, p. 34.

remains and perpetrators”¹⁶⁴ and privatizing the right to truth.¹⁶⁵ Javier Chichón has precisely addressed two main arguments against this law and they are, on the one hand that the measures provided are both incomplete and insufficient and do not fulfil the victim’s rights under international law, and, on the other hand that it maintains an attitude of impunity when renouncing to the possibility of an official investigation. Consequently, the ball remains on the State’s roof and the game keeps on depending on the State’s will to play, even in the case of forced disappearances which entails obligations with permanent nature, as stated by the European Court of Human Rights,¹⁶⁶ and recently reiterated by the Working Group on Enforced Disappearances of the United Nations.¹⁶⁷ Escudero also points out a deficit in the law when it comes to concrete measures in order to deal with the past, since although it implies the first condemnation of Francoism from the Spanish Parliament, it fails to fulfil one of the most relevant demands from the historical memory movement, that of nullifying the Francoist judicial sentences.¹⁶⁸ As a consequence of all this, and in Encarnación’s words: “in Spain the choice to deal with the past by not dealing with it at all was shaped by the “agreed” nature of the democratic transition”.¹⁶⁹

The crimes committed under the civil war and authoritarian regime crimes were silenced for the sake of a peaceful transition into democracy which would keep Spain united, but Franco never completely left, not even after his death. The Pact of Oblivion perpetuated the dictator’s “strong, silent presence, and not just symbolically observing the whole country from the Valley of the Fallen”.¹⁷⁰

2.5 Concluding remarks

In conclusion, the third wave surely installed a democracy in Spain. Nevertheless, Spain’s democratization ignored the possibility of encouraging TJ measures towards fulfilling the State’s obligation to comply with the rights of truth, justice and reparation which were only slightly granted.

¹⁶⁴ Vicente Márquez, & Chinchón Álvarez, *Rights International Spain*, 2012.

¹⁶⁵ Escudero, 2014, p. 143.

¹⁶⁶ Chichón Álvarez, 2012, p. 36- 37.

¹⁶⁷ Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances: Mission in Spain, A/HRC/27/49/Add.1, July 2014.

¹⁶⁸ Muriel, *La Marea*, 2013.

¹⁶⁹ Encarnación, 2009, p.36.

¹⁷⁰ De Diego, 2012, p.11.

The transition born in the light (or perhaps the darkness) of a blanket amnesty has been proved to have distorted the Spanish collective historical memory and it has been consequently growingly challenged by social movements and new desires of democracy from a new generation. This novel turn has been promoted by the actual society where compliance with silence and forgetting has increasingly turned into demands for truth and official acknowledgement of Spain's historical past.

It has been demonstrated that although traditionally conceived as an exemplary democratic transition and as a necessary step taken at the late 1970's towards a peaceful process of democratization, the TJ approach behind the Pact of Oblivion left behind considerable problems and flaws towards achieving a desirable democracy, which has led to criticism by recent experts on the matter.

3. *Foreign inspirations, different TJ approaches*

Throughout history and the immense variety of examples of democratization across the world, other approaches of TJ different from oblivion have been pursued. In this section, I will firstly introduce some basic notions about the two approaches that will be studied (which differ from the one chosen by Spain) that are criminal prosecution and truth seeking. Secondly, I will address three countries (Portugal in Southern Europe, East Germany as a post-communist example and Chile in South America) so as to explain what do these approaches offer and lack. Finally, I will present concluding remarks which will suggest a different possible direction towards a new TJ approach in Spain's consolidated democracy.

3.1 Southern Europe: Portugal

As it has been stated above, the *forget vs remember* dilemma is one of the most crucial present during a democratization process, and it is one that all transitions to democracy have had to confront. In this regard, Luc Huyse focuses on the importance of the past and its myths, and he states that both selective remembering and forgetting is crucial within the process of composing a historical myth, bringing sense to history. The author claims that in the cases of Spain and Portugal, precisely the selective forgetting is more relevant (than the selective remembering) since it “eliminates unpleasant memories” such as the participation of the military on the rise of authoritarianism.¹⁷¹

In Portugal, on 25th April 1974 a coup prepared by junior and middle-rank officers of the Portuguese Armed Forces (MFA), followed by a wide sympathy and backed up from society, withdrew the dictatorship that Antonio de Oliveira Salazar had consolidated in the 1930s and that Marcelo Caetano had inherited afterwards. One of the first steps to follow was the purge of the institutions from those who represented the old regime through arrests and active prosecution,¹⁷² and throughout the period of social protests and revolutionary upheavals the military put itself in the position of deeming and applying military jurisdiction.¹⁷³ The power struggles and differences between Right and Left were

¹⁷¹ Huyse, *CEGES-SOMA*, 2013, pp. 13-14.

¹⁷² Kritz, 1995, p. 284.

¹⁷³ Linz & Stepan, 1996, pp. 118-119.

gaining a perpetual character and kept hindering the transitional process until they resulted in a civil war which lasted until November, when “a more moderate government assumed control” and thus a new democratically elected legislature started in 1976.¹⁷⁴

Caetano had learned very closely from Salazar but did not share the same character and it has been argued by Kenneth Maxwell as well as Kritz that when the later died and the former raised into power at the late 1960’s as Prime Minister, the perfect opportunity for liberalizing the country passed in front of his eyes, and he made the mistake of not taking it, consequently turning down the last option there was to go through a negotiated transition.¹⁷⁵

Two of the most determining characteristics of the democratization in Portugal are, first of all the fact that various Portuguese colonies in Africa were struggling for independence¹⁷⁶ and the government took this campaign of war very seriously, sending huge numbers of soldiers to Africa in order to maintain the colonies under control. Nothing further from the truth, Portugal seemed unable to bear this burden, burden which, as Maxwell wisely points out, “was especially onerous on those called to fight the battle: the Portuguese Army”.¹⁷⁷ The second feature, which actually makes the Portuguese transition unique, is that “the dictatorship was stopped by the Army”.¹⁷⁸ It was them who destroyed the authoritarian system, with desires to play a role in politics,¹⁷⁹ and therefore “popular mobilization followed the coup, it did not cause it”.¹⁸⁰

As it is recalled by Encarnación, in a wide part of the literature on the matter, Spain and Portugal are conceived as “twin dictatorships” mainly due to the “striking historical parallels in the political development of both countries”.¹⁸¹

They democratized almost at same time, both regimes were born due to military uprisings against a Republican government and in the sake of interwar period; moreover, the nature of the regime was the same since both were qualified as authoritarian. Nevertheless, the choice regarding TJ was an absolutely different approach. In Portugal, a “witch-hunt” went

¹⁷⁴ Kritz, 1995, p. 284.

¹⁷⁵ Kritz, 1995, p. 284 & Maxwell in O’Donnell et al., 1983, p.113.

¹⁷⁶ Kritz, 1995, p. 283.

¹⁷⁷ Maxwell in O’Donnell et al., 1983, p.109.

¹⁷⁸ Ibidem, pp. 109 and 112.

¹⁷⁹ Ibidem, p. 109.

¹⁸⁰ Ibidem, p. 288.

¹⁸¹ Encarnación, 2009, p. 6.

on from 1974 until 1976 where a considerable cleanse was being practised and prosecution was the road chosen; in Spain, on the contrary, forgetting prevailed. Many reasons why this happened can be listed: Linz and Stepan for example highlight the fact that Portugal was, indeed, the first country to democratize during the third wave (as it is also stated by Huntington),¹⁸² and therefore they had to start from scratch, with no other model to learn from. Additionally, they also argue that what Portugal lacked in 1974 in order to go through a less turbulent transition was “an innovative leader”¹⁸³ who would lead the country into the transition. It must also be taken into account (and so it can be found repeatedly in the literature) that other crucial differences included that the Communist Party gained a lot more influence after the previous regime collapsed in Portugal than Spain, but also (and mainly) that there were differences of power between the old regime and new democratic opposition that, on the case of Portugal implied that the authoritarian regime collapsed completely, and in Spain, on the other side the state itself developed its own democratic transformation.¹⁸⁴

More interestingly, Robert M. Fishman argues that due to this decision of choosing completely different TJ approaches, the democracy in both countries is also different in many ways. He highlights the fact that while Portugal has included citizenship education into their educational program (including study of the historical past), Spain has not yet fulfilled that effort.¹⁸⁵ And not only this, he also stresses that in nowadays democracies, while Portugal is very open to what concerns public protest, Spanish governments have always dealt with “democracy’s wide array of voices and perspectives” ignoring or denying them.¹⁸⁶

Consequently, Fishman argues that Portugal’s democracy is conceived as more successful and fuller than the Spanish one.¹⁸⁷ Nevertheless, others argue the opposite, such as Encarnación who determines that precisely because of the decisions made during democratization; Spain’s democracy is now more successful than Portugal’s.

¹⁸² Huntington, 1993, p.3.

¹⁸³ Linz and Stepan, 1996, pp. 116-117.

¹⁸⁴ Encarnación, 2009, p. 5 &7.

¹⁸⁵ Fishman, 2005, pp.36-37.

¹⁸⁶ Ibidem., p. 39.

¹⁸⁷ Ibidem., pp. 35 and 37.

3.2 Post-communism: East Germany

Huntington argues that one of the most relevant troubles within the elimination of an authoritarian regime in order to move direction towards a democracy is what he calls “the torturer problem”, or what kind of reprisals (if any) should be taken in order to deal with the members of the past regime.¹⁸⁸

In the case of Germany, Kritz notes that efforts to prosecute the Nazi machinery and purge the public institutions from it, went on far after 1945 under the Western German government.¹⁸⁹ In this sense, as highlighted by John Hertz, the principles in order to remake the nation after the devastating scenario that Hitler had left behind were drafted in Postdam in 1945 by the Allied powers.¹⁹⁰ They consist in 4”d”s: denazification (which is the one dealing with purge and prosecutions), demilitarization, decentralization and decartelization. Nevertheless, he adds another “d” to this composition which is that of democratization, “a term that took on different coloration when interpreted by the Soviets and the Western Allies; hence the split of the country”.¹⁹¹

Additionally, another relevant point to mention is that when considering if the TJ approach was endogenous or exogenous, Elster writes that “East Germany’s transition itself was endogenous (since) the regime collapsed from within”, however, the prosecution efforts were carried out by West German judges.¹⁹²

Three core elements involved the TJ strategy adopted by the Allied powers towards Eastern Germany: criminal prosecutions, purges and a truth commission.¹⁹³ To what concerns the trials, Huyse affirms, as it was also stated before through Grodsky’s *TJ spectrum* -on which East Germany could be placed as having fulfilled all criteria, even with the prosecutions that did not stop at the border guards but went also higher in the chain of command-¹⁹⁴ that “criminal trials constitute the most radical form of justice after transition”.¹⁹⁵ Many trials were carried out but the outcome of these were not as satisfactory as the society would have expected since there were several problems to face

¹⁸⁸ Huntington, 1993, p. 211.

¹⁸⁹ Kritz, 1995, p. 2.

¹⁹⁰ Hertz, 1995, p. 3.

¹⁹¹ Ibidem, p. 3.

¹⁹² Glatte, 2011, p. 6.

¹⁹³ Ibidem., p. 9.

¹⁹⁴ Quint, 1999, p. 305.

¹⁹⁵ Glatte, 2011, p. 10.

when it comes to this nature of crimes, such as for example the existence of the principle of non-retroactivity under German law, accompanied by the fact that the conduct of the border guards was not typified as illegal under the former German law of the time.¹⁹⁶ Quint also argues that due to the high level of sentence suspensions and numerous findings of guilt, criminal use was conceived at the time more as a political weapon than as serving the legal traditional functions of deterrence or even retribution that it is characterised of.¹⁹⁷

Concerning the purge or “disqualification from public sector positions to those who had worked for the Stasi”,¹⁹⁸ Gauk suggests that if it was going to be expected from the citizens to trust the public officials and institutions, it was crucial to “re-fill” these institutions with trustworthy people. This lustration had also the purpose of fulfilling the demands of East German people “that persons who had conspired with the regime, unbeknown to their fellow citizens, should be deemed unsuitable for public positions of trust”.¹⁹⁹

On top of this, a Truth and Reconciliation Commission (TRC) was created, conceived as the only way for East and West Germans to “achieve a happier union” through the understanding of “each other’s pasts”, taken as “an essential prerequisite for the ‘inner unity’ of the nation”.²⁰⁰ To the same extent, it is also remarked that through this particular TJ measure, there was a considerable opening of a new space, for suffering voices to achieve social healing and democratic consolidation.²⁰¹

Despite the enormous effort within the case of East Germany to serve justice through the absolute separation of former and present regime by all these TJ schemes, Glatte argues that this “multi-tiered structure (...) proved to be largely counterproductive to the overall success of the process”,²⁰² as she suggests the ambition to cover all aspects of the past in various manners may have caused inadequacy and incompetence.²⁰³ Finally, both Glatte and Quint agree that even though the transition of East Germany has been traditionally conceived as a success and intensely proactive, other critics have condemned (especially the

¹⁹⁶ Quint, 1999, pp. 309-310.

¹⁹⁷ Ibidem, p.324.

¹⁹⁸ Glatte, 2011, p.15.

¹⁹⁹ Gauk and Fry quotation extracted from Glatte, 2011, p. 17.

²⁰⁰ Glatte, 2011, p. 21.

²⁰¹ Ibidem, p. 20.

²⁰² Ibidem, p. 2.

²⁰³ Ibidem, pp. 24-25.

trials) as a political tool and is not deemed of success; actually, in Glatte's words "transitional justice in Germany has nevertheless fallen short of fulfilling its objectives".²⁰⁴

3.3 South America: Chile

Although Chile differs from the two given examples in that it opposed prosecution,²⁰⁵ it is on my humble opinion one of the best examples to study the consequences of a TJ approach basically and strongly centred in the creation of Truth and Reconciliation Commissions so as to appreciate the validity of this tool.

The beginning and end of this transition can be situated respectively on the triumph of the "No" campaign which preceded the plebiscite of 1988 as well as the arrest of Augusto Pinochet in 1998.²⁰⁶ Following this later event with the inauguration of President Alwyn, as stated by José Zalaquett, "Chile became the last of the Southern Cone countries ruled by similarly minded military dictatorships to achieve restoration of democratic government".²⁰⁷

Spain and Chile undoubtedly share very relevant parallels within their history and type of regime: in both cases a right-wing military coup overthrew a legitimate Republican government, which was followed by a prolonged period of dictatorship;²⁰⁸ Pinochet's regime was "fashioned" after Francoism, the political forces in both cases set an agreement to leave the past out of political debate through an amnesty law,²⁰⁹ most of the courts and executions performed after the coups were dubiously legitimate, illegal killings as well as deep repression was backed by the institutions of the regime, including the judiciary and the military,²¹⁰ and at the moment of transition, except from a strong presence and supervision from the democratic opposition towards the wording of new Constitution, "the rest of the well-designed authoritarian structure remained"²¹¹ in Chile as it did in

²⁰⁴ Glatte, 2011, p. 2 and Quint, 1999, p. 325.

²⁰⁵ Huntington, 1993, p.229.

²⁰⁶ García Gutiérrez, 2009, p.23.

²⁰⁷ Zalaquett in Kritz, 1995, p.495.

²⁰⁸ Kritz 1995, p. 453 and Encarnación 2008, p. 449.

²⁰⁹ Aguilar, et al., 2011, p. 4.

²¹⁰ Aguilar, 2013, pp. 3-6.

²¹¹ Correa, 1995, p. 458.

Spain. Finally, it should not be avoided to mention that Pinochet was indeed “the only foreign head of state to attend Franco’s funeral”.²¹²

Nonetheless, the answer given to the torturer problem and coping with the past was strongly different in the Spanish and Chilean transitions; also because despite the similarities abovementioned there are relevant differences within the transition that played a major role. Firstly, it should be highlighted that while Francoism had to wait until the death of the dictator to vanish away, the huge human rights movement in Chile’s society was the determinant factor that finally implied a moral defeat of the regime, along with the victory of the “No” campaign. Secondly, the Amnesty Laws from both countries differ in origin (in Chile it was a self-amnesty given by the authoritarian regime itself and in Spain it was approved at the democratic *Cortes*) and nature (since Spain’s was a blanket amnesty and Chile’s was a conditioned one) and in the case of Chile it was only followed strictly during its first years until the “Alwyn doctrine” started to encourage judges and courts to conduct investigations before granting the Amnesty.²¹³ Consequently, a crucial difference between the Spanish and Chilean cases defined the path chosen to be followed by judges taking into account this Amnesty Law. While in Spain the judicial power is one of the state powers that is showing most hindrance is putting to the investigation of the events of the dictatorship, in the Chilean (specially after Pinochet’s arrest) case, judges decided to stop being hindered by the amnesty and even “key stakeholders have called for its repeal”.²¹⁴ Moreover, unlike Spain, Chile issued a nationally televised apology to the victims and created a TRC²¹⁵ in the very first moment of the democratization process.

Additionally, even though both transitions were deemed through a consensus, Chile followed the *ruptura* approach instead of Spain’s *reforma*.²¹⁶ But probably the most relevant difference within both transitional approaches is the attitude of society. While in Chile, precisely the social movements against the regime were the motor that promoted and made possible the TJ measures abovementioned, Spanish society did not pronounce against the Amnesty Law or in favour of prosecutions or truth at the time, making their fear become an accomplice of the oblivion.

²¹² Encarnación, 2008, p. 449.

²¹³ Aguilar, 2013, p. 12.

²¹⁴ Ibidem, p.1.

²¹⁵ Kritz 1995, p.454.

²¹⁶ García Gutiérrez, 2009, p.21.

As it has been stated above and is reiterated by García, “the movement for the defence of human rights was the most direct opponent of the regime”²¹⁷ in Chile, and therefore, when the time for democratization arrived, the democratic political forces followed an “acknowledgement” approach, a strategy of avoiding a direct confrontation in order to present human rights as “a demand to encourage peace”.²¹⁸ Not surprisingly Encarnación conceives this “policy of justice within the limits of the possible” a key component of the transition.²¹⁹ As a consequence of this approach and due to the insistence from various sectors of society, the Rettig Commission was created (and another one centred on cases of torture named Commission Valech would follow). Its report has been internationally considered as exemplary and it offered numerous attainments such as well-serving educational and reconciliation purposes, providing an effective opportunity for victims to relieve their pain and feel integrated in the tale of national history, achieve a faithful reach of truth and, finally and most importantly, establishing an “official truth” which aided reconstruct the collective memory of Chilean people.²²⁰

After having addressed the TJ approach that Chile followed during the transition, the question arrives: Have these truth-seeking initiatives helped democratization?

There is a common opinion in the literature that the answer is undoubtedly yes. Sevillano argues that ignorance and oblivion “depreciate the identity of the democratic state (...) whose legitimacy is founded on the acceptance of its own history”²²¹, while Zalaquett’s own experience as one of the members from the TRC convinced him of “the paramount importance and cathartic power of seeking to establish the truth”. Furthermore, Correa offers a detailed and rich argumentation of the truth as both a lesser alternative of punishment and a starting point for reparation, and he relates it tightly to the idea of reconciliation and relief;²²² as García stresses that “no real social democratization will be concluded through amnesic democracies, since the memories of a doubtful past tend to reveal with time”.²²³

²¹⁷ Ibidem, p. 25.

²¹⁸ Correa, 1995, pp. 456-457.

²¹⁹ Encarnación, 2009, p. 37.

²²⁰ Wessbrodt and Fraser in Kritz, 1995, pp. 466- 473.

²²¹ Sevillano Calero, 2003, p. 309.

²²² Correa, 1995, pp. 486-493.

²²³ García Gutiérrez, 2009, p.33.

Now, from the three models that I have been discussing in this Chapter, Chile shares, certainly, the most symbolically parallelism with Spain. Interestingly enough, this similarity keeps growing bigger when noting that precisely the arrest of Pinochet (which by the way was issued by the Spanish former judge Garzón), shattered the Spanish Oblivion “catalyzing a wave of civil society movements from those seeking to apply the same standards of historical accountability within Spain”.²²⁴ And it did so through two phenomena: the so-called “irruption of memory” which refers to the moment when “a nation is reminded of its unresolved issues” and a “political opportunity structure” which refers to a “change in the political environment that encourages the rise of collective action”.²²⁵

Subsequently, and picking up the thread of the argumentation followed at the very end of Chapter II and on the last paragraphs of this Chapter, the international critique of huge lack of politics of memory in Spain has highlighted the relevance of building social memory within the identity of a country when going through democratization,²²⁶ and is conceived by some authors (such as Maravall or Josep M. Colomer) as a significant insufficiency of the process towards democracy.²²⁷ What is more, a study of Aguilar, Balcells and Cebolla demonstrates that “victimization and socialization on political identities” is crucial in the long run and that not only the Pact of Oblivion did fail in making Spaniards forget, but also “the lack of appropriate TJ measures may have prevented victims and their relatives from leaving the past behind”.²²⁸

Slowly but surely, Spain has been changing its historical narrative²²⁹ and it has started to experience within society, a growing demand of truth, investigation, respect...of acknowledgement of the history it left behind but never forgot. Recent studies on the Spanish population itself, pursued by different authors abovementioned have proved that Spanish society feels ready to face the past and is supportive for the application of more demanding TJ policies.²³⁰ Curiously, not even the amnesty law is an absolute justification of

²²⁴ Rubin, 2014, p. 2.

²²⁵ Encarnación, 2008, pp. 448-449.

²²⁶ Sevillano Calero, 2003, p. 304.

²²⁷ García Gutiérrez, 2009, p. 30.

²²⁸ Aguilar et al, 2011, p. 21.

²²⁹ Encarnación, 2008, pp. 448-449.

²³⁰ Encarnación, 2008, p. 455 & Aguilar et al., 2011, p. 22.

avoiding such a truth seeking approach since TRC and amnesties are not fully incompatible, and the former can be introduced after the later, like it happened precisely in Chile.²³¹

3.4 Concluding remarks

Accountability has recalled reinforcing the rule of law and protection of human rights that separates the democratic from the authoritarian regime, to fulfil the moral obligation towards the victims, and to repair the public and private damage that repression or conflict had previously caused in society. It has been conceived by many as “a sort of ritual cleansing process through which national self-respect is restored”.²³² Be it that, criminal prosecutions are always a very aggressive and yet delicate decision to make, and lots of criteria must be fulfilled in order to do it democratically. Reconciliation complicates when no tolerance is permitted towards the abuses of the former regime and “purging the society of its bad elements can, they say, jeopardize the transition”.²³³

Truly, it seems highly unlikely that Spain will, in a close future, opt for prosecuting the former regime, not only because long time has gone by since the repression of the civil war started or due to the impossibility to investigate with the amnesty law; but mainly because of the problem of judiciary impartiality and the lack of purge in this power, because of its outstandingly active way of involving in repression during the post-war and dictatorship periods, according to Huyse.²³⁴ Moreover, along with the political right wing in power, the judiciary has been one of the main obstacles for the investigation and removing of the past, as it is highlighted by the work of Chichón.²³⁵

Howbeit, the intergenerational justice is in fact playing a very relevant role (that is intensifying with time), redirecting social demands towards a more fulfilling TJ model. Despite Spain already has well entered a consolidation phase of democracy, some steps

²³¹ Mallinder, 2007, p. 224.

²³² Huyse, 2013, p.9.

²³³ Ibidem, p.9.

²³⁴ Ibidem, p.11.

²³⁵ Chichón Álvarez, 2012.

have been left unfulfilled and tasks unfinished to what concerns reconciliation and truth seeking.²³⁶

“The impact of war and dictatorship continuously requires additional, corrective, and new measures and narratives”,²³⁷ and on the following chapter I will demonstrate that Spain’s society and political arena (the former much more than the later) are constructing and developing new measures and narratives of social memory.

What would then this model be? What is the *sine qua non* of Transitional Justice?

Various authors suggest that at least TRC as well as transformation of state security apparatus are the basic steps to follow in order to set the path of a successful transition (Paige 2009, Hafner 2007, Valencia 2007, between others such as Henkins or Zalaquett) as they provide a better historical account, and official truth-telling facilitates national reconciliation.

As democracies enter the secondary path of consolidation, like Spain has, in Aguilar words “different dynamics may emerge as a consequence of generational changes, judicial reforms, political replacements or transformations in the international arena, allowing for changes in TJ arrangements”, and this dynamics that erupt from society must be listened to and taken into account, specially by those countries which claim to follow a political model that is based on the government of the people.

²³⁶ Huyse, 2013, p. 18.

²³⁷ Ibidem, p. 28.

4. *The momentum of change*

Last but not least, the final chapter of this thesis means to place the reader in the present time.

In order to offer a vision global enough so as to understand the relevance of the boiling social and political context in which Spain is immersed, I will describe firstly the situation of crisis and controversial corruption scandals from the PP, both crucial elements to understand the ‘momentum’ of change.

I will demonstrate how the convergence of these factors, along with an absolutely absent politic of historical memory as well as a hindrance from the institutions of the State for any investigation, has led to the disappointment and anger from the people, who have been systematically ignored and therefore have managed to, through the path of protests and civil disobedience, made clear these feelings. Moreover, I will focus on the 15M, the social movement that pursued the democratic revolution from where the political party *Podemos* (which I will also introduce in the last section, along with its political position and contributions towards historical memory) has emerged.

On the second section I will explain the attempt of former Judge Garzón to initiate an investigation about the disappearances and deaths of Francoism as well as the Lawsuit that has been opened by the Argentinean judge Maria Servini, which is still in course while I write these words – spring 2015-.

Additionally, I will reveal that the previously described “consensus” on which the transition to democracy was based, was not a consensus of reconciliation and it furthermore constituted one of the factors that have caused society’s perception that Spain is not a real democracy, dragging its vices until the present day.

Finally it will be explained how all these factors have led to a socio-political context of a regime change that will gather the faculty of inspiring a new approach of (post)-transitional justice that will pursue mechanisms which are more in compliance with human rights, such as a Truth Commission.²³⁸

²³⁸ On the grounds that most of the aspects regarding this chapter are being developed and constantly re-shaped at the moment of writing this thesis, I have been conditioned by their contemporary nature and therefore most of the sources relied upon in this chapter emanate from media and particularly daily publications.

4.1 “They don’t represent us”

The current political and social situation in Spain has been marked in the past years by several phenomena that are crucial to appeal to: the economic crisis, the scandals of corruption of first the Royal Family and then the PP as well as the abandonment and hindrance of historical memory by the State’s institutions.

The economic crisis that started over 2007-2008 has brought a situation of precariousness and implementation of numerous measures of austerity, along with immense social welfare cuts and privatization. And this, far from bringing the progress and improvement that the Government claims, has created a “more impoverished, unfair, unequal and less free society”.²³⁹ This crisis stands out not only for its devastating numbers (which situates Spain in the highest rate of unemployment of Europe, especially on the youth which reaches almost 50%)²⁴⁰, but also because it has enlarged the inequalities of society, affecting primarily to the most vulnerable sectors of society. In 2012, 3.000.000 of Spaniards were living in a situation of “severe poverty”,²⁴¹ and this situation hasn’t improved in the last three years. But this economic crisis, as both Jose Ignacio Torreblanca and Amando de Miguel have determined, does not come alone; it is one of the aspects of a bigger crisis; a crisis of values, a social crisis which involves its institutions and politics,²⁴² reinforced by a civic perception of political corruption.²⁴³

The scandals of abduction of public funds, fraud and money laundering started with the Royal Family,²⁴⁴ which entailed the imputation of the Princess Cristina in the well known Case Noós. But it did not stop there, at the moment the PP is facing corruption charges from various of its members: Rodrigo Rato (former finance minister) has been arrested for tax evasion, regional politicians have been alleged to commit money-laundering²⁴⁵ and Luis Bárcenas (former treasurer) is confronting trial, accused of creating a secondary account for the party filled with illegal financing and salaries for the “leadership” members (including

²³⁹ De Francisco, *Rebelión*, 2014.

²⁴⁰ De Miguel, 2015, p.62.

²⁴¹ Torreblanca, 2015, p.31.

²⁴² De Miguel, 2015, p.22.

²⁴³ Torreblanca, 2015, p.32.

²⁴⁴ Juliana in Osuna, 2015, p.17.

²⁴⁵ Zabala, 2015.

the actual Prime Minister of the country Mariano Rajoy) along the past 20 years and amounted in 8.000.000 of euros.²⁴⁶

According to De Miguel, a crucial element of political systems is legitimacy (in terms of trust from the citizens to the rulers), and he explains how Spanish democratic transition's fail of legitimacy has been the political corruption.²⁴⁷

Historical Memory has not been an exception of the restrictive rule of the PP. While Almudena Grandes explains that "Spain is the only European country where there is no public policy on memory" and that "we have the only European Right that has not broken its ties with Fascism",²⁴⁸ Soraya Rodriguez (current congresswoman of the PSOE) reminds us that the Spanish Right still refuses to condemn Francoism and that in 2013 it voted against considering apology to Francoism as a crime.²⁴⁹ Additionally, the PP has also very recently reaffirmed that the Amnesty Law will not be abolished since it constitutes an essential "reconciliation tool",²⁵⁰ and has left the Historical Memory Associations with no funding at all.²⁵¹ Surprisingly, this "clear, permanent standstill and dilatation"²⁵² does not only affect the Government, but all three judicial, legislative and executive powers, according to Amnesty International (AI).

AI criticises that the judiciary systematically closes the files containing the complaints of the victims, that in 2008 the National High Court refrained from dealing with a complaint on 114.266 disappearances (rerouting the competence to Territorial Courts) and the Supreme Court's sentence STS 101/2012 practically closes any chance of criminal investigation. Besides this, AI reports that the legislative power is guaranteeing impunity when refusing to ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.²⁵³

The anthropologist Francisco Ferrandiz resumes this institutional behaviour by two majors: inattention to the victims and absence of public policies on memory, to which José L.

²⁴⁶ Romero, *El País*, 2015.

²⁴⁷ De Miguel, 2015, p. 73.

²⁴⁸ Constenla, *El País*, 2015.

²⁴⁹ Juquera, *El País*, 2013.

²⁵⁰ X, CEAQUA, 2015.

²⁵¹ Juquera, *El País*, 2013.

²⁵² Ugarriza, R., CEAQUA, 2015.

²⁵³ Jovtis, *Amnesty Internacional*, 2013.

Mateos adds the tendency of the party to maintain impunity of the elites which he claims derives inevitable from the transition, and the consequent “sick” democracy that was inherited thereafter.²⁵⁴ Nevertheless, Ferrandiz argues that society is creating a political culture that refuses to accept Francoism’s impunity, traduced to other phenomena such as the results of the European and local elections of Spain (which created a political scenario in which the PP has lost a huge percentage of their absolute majorities) or the recent King’s abdication in favour of his son; “everything is part of the same process”.²⁵⁵

The main issue here appears to be that, as highlighted by Emilio Silva (President of ARMH) and Pablo Iglesias (vivid image of *Podemos*), the Right of Spain resists to condemn Francoism and act on that assumption because they think that one can be democratic without being antifascist, and that is utterly incompatible.²⁵⁶ Actually, the political scientist Juan Carlos Monedero argues that this assumption derives directly from the narrative of the transition and is one of the things that differentiates Spain from the rest of Europe. He claims that in the rest of Europe, after World War II antifascism had a crucial role in its “constitutional and political reconstruction” while in Spain Franco’s death and the Pact of Oblivion implied the duty to forget Francoism, and along with it the oblivion of the Republic together with antifascism, and this required the nation to start from scratch. “And when having to start from scratch we lost the stamp of fighting authoritarianism that has marked the people of Europe”, he assures.²⁵⁷

That said, I move on to address what has been the reaction of the society to this combination of policies and attitudes implemented by the government; that is, the democratic revolution.

Several collectives that feel outraged by the quality of Spain’s democracy gathered a demonstration in the capital’s square of Sol (Madrid) on the 15th of May 2011, to protest for several of the realities that have been abovementioned; around forty people decided to “camp” and spend the night in the square and this started a spontaneous series of pacific

²⁵⁴ Mateos Fernandez, *El Diario*, 2014.

²⁵⁵ Campelo, *Diario Público*, 2014.

²⁵⁶ Carballar, *La Marea*, 2015, p.12; Intereconomía Television, Debate: Pablo Iglesias versus Fernando Paz on Francoism in *El Gato al Agua*, 2013.

²⁵⁷ Monedero, Intervention in the X Federal Republican Conference: “Republic and Human Rights”, 2011.

protests that created the social movement of the *Indignados*, 15-M (outraged) which claimed the need for a participatory democracy and end of granting privileges to banks, finance entities and political parties. The movement defended that “the troubles of society lack real democracy”²⁵⁸ and on their manifesto signed on the 20th of May they asked for a change of the electoral law, transparency of political parties, condemnation of corruption and a fiscal policy that would favour the low incomes as well as a participative democracy and recovery of the historical memory, between others.²⁵⁹ One of the intellectuals sympathetic with the movement from the very beginning was Stéphan Hessel, editor of the Universal Declaration of Human Rights. In response to this popular rising, he wrote a book called *¡Indignate!* (Be Outraged!) where he actively supports and encourages –specially the young- to protest and fight -always peacefully- for the rights that were so hard to conquer by his generation.

The 15M soon became “an inspiring example of democracy, of determined civic fight, of pacific disobedience” towards a hope of empowering the people. Lots of experiences were shared, projects were made and slogans were created with eagerness during those days - apart from the one utilised by Hessel “Be Outraged!”-, such as “They call it Democracy but it is not” or “They don’t represent us”.²⁶⁰ In addition, according to Torreblanca, this mobilization had two major features that guaranteed its success. First, it was not organized by any political or union force and second –and mostly-, the spontaneous and immensely diverse crowd that later on joined the movement.²⁶¹ This social movement (within many others of similar nature such as the Marches of Dignity, Youth Without a Future or the PAH-Platform of the Affected of the Mortgage-) has been said to be beneficial in order to redefine the notion of good governance,²⁶² involving the inclusion and participation of the people beyond an electoral system.

Monedero claims that this anger and outrage (that characterized the 15M) descends from our history. Particularly, he argues that “there is a hole in our memory which impedes us from seeing that our actual rage was anticipated in the past; and the difficulty to find where

²⁵⁸ Movement Outraged, Ideology.

²⁵⁹ Movement 15-M, July 2013.

²⁶⁰ Movement 15M, Sentences and slogans of 15M.

²⁶¹ Torreblanca, 2015, pp. 119-120.

²⁶² Flesher Fominaya, 2014.

to base our anger (...) has to do with the interpretation of the transition”.²⁶³ In order to explain this idea, he maintains that there were some convictions that were invented in the transition and have functioned as clichés with the purpose of creating the ideal of a peaceful and fraternal democratization. Some of these ideas are the consensus (which translates today into the reprisal from the Right that those who are trying to find the disappeared and dead buried in the kerbs are only trying to “open the wounds”) or the idea that it is necessary to defeat the past with oblivion (translated into the narrative that both the victors and vanquished share the same guilt or were equally repressive, something that has been demonstrated to be unreliable at the end of section a) on the first chapter of this thesis). “That transition where suddenly it was decided to hide overmuch did not solve the problems but only freezed them”, which in his opinion explains nowadays the problem of the monarchy and its legitimacy, the cultural problem with Autonomous Regions, as well as the struggles with education and the welfare state.²⁶⁴

The grandsons-daughters of this transition, at bottom are the ones that, because of having ignored the myth of the transition, the myth that “nothing can be done”, broke the narrative of a “satisfied democracy”; which suddenly helped to surface the crowd that starts to wonder where their grandparents are buried, “where does the DNA of our democracy rest”.²⁶⁵

To what concerns historical memory measures there is currently no national policy enforced by the Government and the authorities constantly refuse to condemn Francoism as they consent impunity. This attitude has been criticised not only by the society, victim’s association and a large part of historians but also by international organisms such as the Council of Europe (on its Recommendation 1736 of 2006), as well as by the Working Group on Enforced Disappearances of the United Nations (A/HRC/27/49) and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, in 2014. Both United Nations (hereinafter UN) reports highlight the tremendous administrative obstacles and difficulties to access information that the associations face, as well as the lack of communication from the State towards the victims

²⁶³ Monedero, Intervention in the X Federal Republican Conference: “Republic and Human Rights”, 2011.

²⁶⁴ Ibidem.

²⁶⁵ Ibidem.

and lack of a public and national plan towards a culture of respect, accountability and rule of law. Moreover, it has been argued that the withdrawal of symbols of Francoism should be more noteworthy and both organisms of the UN also coincide that the 2011 Plan for the Valley of the Fallen should be restarted in order to provide a new reconciliatory symbolic meaning for the monument. Also, the Special Rapporteur has highlighted the wrongful attitude of privatization of exhumations, the necessity to include a single true narrative about the past in the history books and expressly stated his concern about the Reform of the Judiciary Organization Law (LOPJ: *Ley Orgánica del Poder Judicial*) by the PP in 2014 that nearly obsoletes universal jurisdiction.

The Working Group concludes that with the combination of an inefficient legislative frame, a judiciary who separates itself from the interpretation of international law and Public Prosecutors that do not investigate, an intense pattern of impunity has been created among Spanish memory politics.²⁶⁶ Not only this, several personalities from the world of culture such as Pedro Almodóvar, Marivel Verdú, Hugo Silva, Juan Diego Botto, Pilar and Javier Bardem, Miguel Ríos and Paco León, between others, have got together to raise awareness of the disappearances and to demonstrate their support to the memory associations.²⁶⁷

The sociologist Amando de Miguel, borrowing the expression from his teacher Juan J. Linz, postulates that all regime transitions (like the one he claims we are going through nowadays) have to confront an "insoluble problem". This expression makes reference to the problem that "was not solved at its time, festers within and carries its negative effects to the next regime".²⁶⁸ And in this case, the transition from one period to another (1977 to 2014) has been marked by corruption; that was the match which started the fire. Curiously enough, Monedero as well as historian Paul Preston find a deep connection between the high level of corruption (which has developed a sentiment of lack of democracy) and the dictatorship,²⁶⁹ as well as Pablo Iglesias, who claimed in a debate against Fernando Paz in

²⁶⁶ UN Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, Addendum: Mission to Spain, 2014, A/HRC/27/49/Add.1., parr. 18, 24, 33, 36 and 37; UN Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 2014, A/HRC/27/56/Add.1, parr. 27, 33, 34, 36 and 83.

²⁶⁷ Junquera, *El País*, 2010.

²⁶⁸ De Miguel, 2015, p. 69.

²⁶⁹ Guerrero, *Diario Público*, 2014.

the television channel *Intereconomía* that Francoism installed a mechanism of fear that today explains “a cast of rich who defend their own interests and keep growing rich not because they are entrepreneurs but at the expense of the State. Those wealthy people have a lot to do with the fraudsters that are now responsible for the crisis”.²⁷⁰

In this sense, Monedero reasons that the transition was filled with intentions and profits that explain today’s democracy; interests of several sectors who were in the position to impose their ambitions. A King who wanted to “maintain his job”, a military pressing to “guarantee some of its privilege in the new regime” and bankers and entrepreneurs who wished to “incorporate to a democratic Europe in order to secure their businesses” are some of them.

“The vices of the transition are the vices of our democracy”, he sentences.

4.2 Garzón and Servini: counter-current judges

Baltasar Garzón is a Spanish jurist and a former judge of the National High Court (from late 1980’s until 2012 when he was disqualified by the Supreme Court for being accused of perversion of justice in the Case Gürtel and the case of the dictatorship disappearances). He has been a fervent champion of universal jurisdiction and is well-known internationally (especially for having Augusto Pinochet arrested in 1998). Garzón has also pursued a direct fight against Al-Qaeda and Basque terrorism, as well as political corruption and condemnation of members of the Argentinean Military Junta.²⁷¹

As it has been demonstrated in Chapter II, Spain’s *Pact of Oblivion* clearly closed the channels for investigation -let alone prosecution- of Francoism. Nevertheless, on October of 2008, in the frame of a complaint filed by 22 victims’ associations for crimes and enforced disappearances committed during the dictatorship, Garzón declared himself and the National Court competent to investigate, basing his ruling on “his own finding that Franco and 34 of his generals and ministers were guilty of crimes against humanity” for both the military coup of 1936 and the systematic repression exercised during the

²⁷⁰ Intereconomía Television, Debate: Pablo Iglesias versus Fernando Paz about Francoism in *El Gato al Agua*, 2013.

²⁷¹ Poggioli, *National Public Radio*, 2010.

dictatorship in order to eliminate “the regime’s supposed political enemies”,²⁷² with which he also demanded the exhumation of 19 mass graves. This decision rose big criticism from many sectors of politics, society and even within the judiciary itself, particularly from the Attorney of the National Court; and after Garzón refrained his competence in November for the sake of the territorial courts where the common graves were situated, the Criminal Division of the National Court recalled that he was not competent for investigating the matter.²⁷³

Then, in May 2009 the far-right union *Manos Limpias* (Clean Hands) lodged a complaint before the Supreme Court against the judge for perversion of justice on his own interest and for deliberately avoiding the Amnesty Law of 1977. In June that same year the association *Libertad e Identidad* (Freedom and Identity) joined the complaint. The Spanish Falange of JONS (Committee of the National Union Offensive) also filed a lawsuit which was admitted within the previous one, for which the State Judicial Council suspended judge Garzón of his functions as such in 2010. Finally on 2012 the judge was absolved by the Supreme Court²⁷⁴ but expelled of the judiciary with a disqualification of 11 years to exercise his profession.

This judgement has also found criticism in between the National Court itself and so the judge Ramón Sáez Valcárcel has characterised it as “excessive” and has recalled how this proves the non-existing will of the authorities to prosecute Francoism according to international standards. At the same time he argues that a large group of society responded to Garzón’s suspension by protesting in the streets of different cities of Spain as well as a spontaneous demonstration at the doors of the Tribunal, demonstrating that there is a sector of society who still demands a settle of the scores of history.²⁷⁵ Ultimately, when asked about his opinion on the matter on the television programme *La Tuerka* in June 2015, Garzón himself argued that the problem in Spain is that although it has been repeated over and over that Francoism surpassed, “40 years of dictatorship weigh like a gravestone, and provide the backbone of the nerves and sorrows of Spain”. He claims that democracy has been constructed over a false appearance of reconciliation which is not real

²⁷² Abend, *TIME*, 2008.

²⁷³ Lejarcegi, *El País*, 2010.

²⁷⁴ X, *Europa Press*, 2012.

²⁷⁵ Giniger & Caruso, *CCC Magazine*, 2010.

because if it was, “nobody would have been surprised by the year 2008 that someone would investigate on Francoism”.²⁷⁶

In the light of these facts and after the definite abovementioned sentence of the Supreme Court that Francoist crimes will not be investigated under Spanish justice, the families of the victims of the dictatorship along with various Spanish and Argentinean associations decided to seek for justice in the international sphere, relying on the principle of universal jurisdiction. Consequently they filled a complaint before the Federal Criminal and Correctional Court Number 1 of Buenos Aires (Argentina) with the petition for an investigation about the crimes of the dictatorship and identification and prosecution of the responsible, under the number 4591/2010 and undertaken by the judge Maria Servini de Cubría.²⁷⁷

On the 21st of March 2013 the Argentinean complaint had already accused and filled international detention orders for 9 men from Franco’s Administration. By September Servini pronounced a detention order to the Interpol against four men accused of torture (including the so-called *Billy en Niño*), demanding their extradition, to which the Spanish National Court opposed and denied based on the preference of Spanish jurisdiction. On 31st October 2014 the judge called to the Interpol for the arrest of 20 accused including former ministers, judges, police-men and one doctor; action which has not been expressly denied by the Spanish Courts yet, but has also not taken place at the moment – July 2015-. This lack of cooperation has been criticised by many lawyers, judges and numerous members of Parliament and Senate from Spain and Argentina who have joined the complaint, but also by the Working Group and Special Rapporteur of the UN on their respective reports.²⁷⁸

Despite the attitude of the State’s institutions, some find a positive outcome in this initiative maintaining that this is, without doubt the broadest procedure there has even been concerning the Francoist dictatorship.²⁷⁹ Meanwhile, one of the lawyers of the complaint, Carlos Slepoy focuses on the progresses achieved through this enterprise followed by what he determines as a growing public outcry against impunity such as the

²⁷⁶ X, *La Tuerka*, 2015.

²⁷⁷ CEAQUA.

²⁷⁸ UN Working Group of Enforced Disappearances, A/HRC/27/49/, 2014 parr. 50; UN Special Rapporteur, A/HRC/27/56, 2014.

²⁷⁹ Mateos Fernandez, *El Diario*, 2014.

protests of associations like *Jueces por la Democracia* or *Unión y Progreso de Fiscales*, the report of Constitutional Court's Manuel Miranda to suggest that this court should investigate the crimes or judges like Fernando Abreu who are helping the Argentinean complaint move forward.²⁸⁰ He insists that this backlash, accompanied by the political changes that will come could be immensely favourable to the encouragement for Spanish judges to start investigating. Actually, Servini herself has also offered a similar opinion that “if there is a political change” judges could start investigating, which she has claimed is something “more than one judge would like to do”.²⁸¹

4.3 “There is someone new in politics: YOU”

The classic Spanish scenario of continuous shared power through a bipartisanship society that has been dancing from PP to PSOE for the past forty years, has been hit by the new phenomenon of *Podemos*.

This political party was founded in January 2014, and on the most recent study developed by the Centre of Sociological Investigation (CIS) in April 2015, it has already become the third political force of the country.²⁸² *Podemos* has been claimed to have achieved to “read the national mood and learn from social movements”, creating an “ordinary citizen” discourse against corruption and willing to fight for a democratic regeneration.²⁸³ More interestingly, *Podemos* has arrived –and manage to stay- in Spanish politics, supported by a large social demand and according to Orencio Osuna, “the system of interests of the Transition does not seem to be able to prevent it”. Within less than a year, this phenomenon has thwarted bipartisanship,²⁸⁴ and has managed to give back to the people the excitement and interest in politics, so beneficial for democracy.²⁸⁵ As Osuna has wisely resumed: “*Make a move: turning outrage into a political change* is the undeniable premise that embodies a process of democratic change which is thrilling a growing proportion of the

²⁸⁰ Rodríguez, *El Diario*, 2014.

²⁸¹ Torrús, *Diario Público*, 2015.

²⁸² The study of January 2015 situates *Podemos* as the second political force after the PP (estimation of 23.9% of vote vis-à-vis 27.3% of PP) while the most recent study, April 2015 situates it as the third one (25.6% PP, 24.3% PSOE and 16.5% *Podemos*) in CIS, January 2015, Studio no 3050 & CIS, April 2015, Studio no 3080.

²⁸³ Flesher Fominaya. 2014.

²⁸⁴ Osuna, 2015, p. 20.

²⁸⁵ Torreblanca, 2015, p. 17.

Spanish citizens”.²⁸⁶ Their programme has been qualified by Jiménez Villarejo as of “democratic rupture” and it includes policies such as a fair fiscal regime based on higher taxation for large fortunes, erasing fraud and fiscal paradises as well as temporary political mandates, “incomes with a ceiling” for politicians and absolute transparency.²⁸⁷

All of this, accentuated by a clear dissection in the party’s ideology of “us” (the people) vs “them” (a collective named as “caste” and composed by politicians, banks and corrupted institutions)²⁸⁸ led *Podemos* to achieve, in the evening of 25th of May 2014, 200.000 votes and 5 deputies in the European Elections.²⁸⁹

Moreover, *Podemos* has also attained the international spotlight and has been regarded with enthusiasm, especially in diaries like *The Guardian*, *Financial Times*, *Le Monde Diplomatique* and *BBC*.²⁹⁰ As well as in both Spanish left wing and right wing diaries such as *Insurgente* and *La Razón*, respectively.²⁹¹

Accordingly, Torreblanca has evoked the appearance of *Podemos* as “the most important phenomenon that has taken place in Spanish politics in the last 30 years”.²⁹²

When comprehending the peculiarities around the emergence of this political force, it seems unavoidable to ask oneself, why now?

To answer this question, it is indispensable to mention the 15M movement that gave birth to *Podemos’ modus operandi* and ideal, which, according to Torreblanca was what created the opportunity for it to generate the polarized political discourse based on the differentiation of “people” vs “caste”. Additionally, Monedero argues that the 15M is the one responsible of dismantling the idea that elections authorise politically. That is to say, in Monedero’s words, that thanks to the 15M “winning elections is not a blank cheque anymore”.²⁹³

To this, all the factors mentioned in section a) of this chapter should be added on, which according to the CIS’s data have caused a spontaneous answer towards the direct intention

²⁸⁶ Osuna, 2015, p. 19.

²⁸⁷ Jiménez Villarejo, (b), 2014.

²⁸⁸ Estella, 2014.

²⁸⁹ Torreblanca, 2015, p. 9.

²⁹⁰ X, *Insurgente*, 2014 & X, *La Razón*, 2015.

²⁹¹ *Ibidem*.

²⁹² Torreblanca, 2015, p. 43.

²⁹³ Monedero, Intervention in the X Federal Republican Conference: “Republic and Human Rights”, 2011.

of vote situating PP behind PSOE and *Podemos* and recalled a feeling that PP has realized a “very bad management” of the country.²⁹⁴ In response to this, *Podemos* has proposed a model based on social control of banking, auditing of the debt and intervention on the electric industry in order to eradicate poverty,²⁹⁵ that is to say, *Podemos* has campaigned precisely on the issues that have been mostly demanded by the “outraged” society; and has demonstrated an outstanding ability to canalize their anger and disappointment.²⁹⁶ Not surprisingly it has been said that our time is the *momentum* of social critique.²⁹⁷

Torreblanca highlights that democracy has greater needs beyond a citizenry interested in politics and a quality public debate, such as the impossibility to coexist with situations of inequality, injustice or corruption; approaching that concept of “desirable democracy” that was developed on the second chapter when he recalls that a democracy that cannot fight these troubles “is a democracy unworthy of such a name and of the respect of its citizens”.²⁹⁸ By the same token, Monedero argues that the actual social movements stem precisely from a fight against inequality, which is something that must be understood in order to accordingly “articulate a political answer”.²⁹⁹

Podemos has connected with the people, precisely because they have followed this analysis in order to re-create the political scenery, which has brought them to an undeniable success on the last local and autonomous elections of 24 May 2015 and has provoked a consequent fracture of bipartisanship (the proportion of votes for PP and PSOE together fell to 52%).³⁰⁰ It is also significant to remember that to what concerns Spain, “the history of insurrection was written in local handwriting”,³⁰¹ as it happened with the local elections of 1931, the ones that led to the proclamation of the Republic. And therefore, at the time of Franco’s death, when new elections were to be called, the king Juan Carlos manifested “his satisfaction for having avoided the mistake that his grandfather made in 1931”.³⁰² As a

²⁹⁴ CIS, April 2015, Studio no. 3080, pp. 13-15.

²⁹⁵ De Francisco, 2014.

²⁹⁶ Zabala, 2015.

²⁹⁷ In this sense, Osuna defines momentum as the intensity of a social dynamic that overcomes different phases of resistance towards a desired goal, in Osuna, 2015, p. 17.

²⁹⁸ Torreblanca, 2015, pp. 18-19.

²⁹⁹ Monedero, Intervention in the X Federal Republican Conference: “Republic and Human Rights”, 2011.

³⁰⁰ Moruno, *Diario Público*, 2015.

³⁰¹ Martín García, *La Marea*, 2015.

³⁰² *Ibidem*.

consequence of this, when Adolfo Suárez started to build the political agenda of the transition, he placed the local elections at the end of the list, making the people wait as late as April 1979 to elect democratic city-halls; but it was already too late a time to pursue a different direction than the one the transition had already chosen since both the Amnesty and the Constitution were already in force. This anecdote helps to understand how local power has been a fundamental tool in the Spanish context (especially in circumstances of pressing crisis like this) in order to construct a project of democratic revolution.³⁰³

On top of that, I would like to address the historical memory politics that *Podemos* would offer, if it were to reach power. Firstly, it should be remarked that historical memory, despite being one of the points developed at the 15M manifesto and throughout the existence of the movement, it has not been one of the central or key issues of *Podemos*. Far from being noteworthy at its programme (in which economic measures and political anticorruption are the main features of the campaign), whatever can be said about *Podemos*' proposals are mere brush-strokes given timidly from stem to stem. However, I will try to gather up some of these, in order to determine the frame that could be expected.

The cultural programme of the Community of Madrid presented on May 2015 clusters some of *Podemos*' initiatives on historical memory, and even though they have not yet been specified into concrete propositions, they have promised to give full institutional support as well as line items from the budget in order to help the associations open the mass graves and identify the corpses of their loved ones.³⁰⁴ Likewise, Monedero determined in an interview with *Diario Público* that “the programme about historical memory of *Podemos* will be the one proposed by the associations”. He focuses on the need to rebuild the narrative of the Transition, arguing that “politics of memory are at the heart of the reinvention of the democracy in Spain”, as he seconds the need to create a Truth Commission.³⁰⁵

More recently, on July 2015 the new mayor of Madrid, Manuela Carmena (head of the local candidacy of *Ahora Madrid*, ramified from *Podemos*) has, on the first months in power taken concrete measures on historical memory; such as the proposition to open a participatory

³⁰³ Ibidem.

³⁰⁴ López de Miguel, *Diario Público*, 2015.

³⁰⁵ Guerrero, *Diario Público*, 2014.

process to change the names of the streets of Madrid that are named after Francoist personalities in order to comply with the Historical Memory Law of 2007.³⁰⁶

Moreover, in the Balear Islands, *Podemos*, together with *Més* and the socialist party (PSIB) have very recently agreed to pass an autonomous law on historical memory as well as a law of common graves.³⁰⁷

Other relevant initiatives have taken place from civil society such as the creation of an International Center of Memory and Human Rights in Madrid (CIMEDH) in order to investigate about enforced disappearances and acts of massive violence and violation of human rights,³⁰⁸ or a group of investigators (BIOMICs) of the Public University of the Basque Country (UPV/EHU) who have analyzed the bodies of 252 people from common graves of different parts of Spain, and have also created a web where DNA qualities can be introduced in order to make it easier for the families to find out if the rests that have been identified belong to them, regardless of where they were found.³⁰⁹

Meanwhile, the creation of a TRC for Spain is an initiative that is rising popularity and finding its spot on the public discourse.

Currently, a Platform for a Truth Commission exists, which is formed by victims, memory associations, jurists and human rights defenders who are campaigning for the cease of impunity, basing their claims on the United Nations reports mentioned above and which also counts with the support of personalities such as Baltasar Garzón, Federico Mayor Zaragoza, Almudena Grandes...between many others. Villarejo, in a conference about the role of files within human rights and historical memory investigations indeed remarks that there doesn't seem to be any possibility to hope for the move forward of this proposal in the context of the present PP government, based on the actions they have taken which have perpetuated impunity, as it has been demonstrated.³¹⁰ Arturo Peinado, current president of the Historic Memory State Federation Forum also shares Villarejo's concern and remarks that the only possibility to build a Truth Commission free of Francoist myths and capable of bringing justice would be in "a new transitional process towards a regime

³⁰⁶ X, *El Huffington Post*, 2005.

³⁰⁷ X, *El Mundo*, 2015.

³⁰⁸ Cabrera, *El Diario*, 2015.

³⁰⁹ Domínguez, *Deia*, 2015.

³¹⁰ Jiménez Villarejo, (a), 2014.

willing to break up with Francoism and its executioners”.³¹¹ Interestingly enough, steadily there is a discourse that is gaining more and more strength. This discourse claims that we certainly are in this precise moment of Spanish history, in a moment of transition, of change. In this sense, De Miguel recalls that by September 2014, Spain found itself in a critical moment that he describes as the “entrance hall of a constitutional period, a new period that leaves behind the consensus of the Transition of 1976” and is determined by a demand of change towards a greater democracy.³¹² Oscar Martín (Doctorate in Contemporary History) also coincides with this view when he argues that “like today, forty years ago this country was facing a decisive process of historical change”.³¹³

4.4 Concluding remarks

The economic crisis has impaired Spain, plunging it through a bigger crisis of social nature, a crisis of its institutional organisms and politics. This, esteemed by De Miguel has led to “a change of regime”,³¹⁴ influenced not only by this crisis ambience but also by other events such as the abdication of the king Juan Carlos in favour of his son Felipe VI, the growing demands of independence from the historical regions of Cataluña and Basque Country (especially the former through the *9N enquiry*) and the emergence of *Podemos*. He claims that this new regime will have to face diverse dilemmas such as ending the corporate remainders of Francoism, fighting for the guarantee of independence of unions and judiciary as well as the contend against the *fulanismo* (the problem that rises when importance is given to the individuals that hold the power instead of to values and ideas).³¹⁵

It has been richly explained, that the reconciliation premise in which the democratic transition was constructed has more of myth than of reality, and that an actual political debate is regarding to criticise the model of transition, linked to the idea of low-quality democracy that derives from it. There is a current political understanding that the vices of our modern democracy, historian Casanova evokes “are vices from the transition that we have had 40 years to solve”.³¹⁶ Correspondingly, Ferrandiz presumes that precisely one of

³¹¹ Peinado, *Wordpress*, 2012.

³¹² De Miguel, 2015, pp. 59-63.

³¹³ Martín García, *La Marea*, 2015.

³¹⁴ De Miguel, 2015, p.22.

³¹⁵ *Ibidem*, pp. 65-66.

³¹⁶ Alós, *El Periódico*, 2015.

the immediate consequences of the memorialistic movement and its immense advocating efforts (specially through the opening of mass graves) has made unstable not only the narrative of the Transition, but also “the political architecture and institutions derivative from it”; and has situated among this process, other circumstances such as the results of European elections and their questioning of bipartisanship, as well as the abdication of the King, like De Miguel.³¹⁷ “We are debtors of Francoism in our attitude towards politics”, Mirta Núñez sentenced.

On top of that, Torreblanca notes that a significant part of the electorate not only feels outraged but it is actually going further, “psychologically breaking up with the system born in 1978 and ready to accept a new social pact that would include new meanings of democracy, sovereignty and social rights”.³¹⁸

All in all, it seems not so daring to affirm, given the circumstances, that Francoism was not defeated by the Transition and that oblivion did not soak through a large part of society. Besides, it seems like nowadays the matter of crimes under the dictatorship of Franco is regarded as an issue of democratic necessity; the fact that a family is unaware of where his grandfather is and wishes to bury him, Almudena Grande claims, “has nothing to do with politics or ideologies, is a matter of human rights”.³¹⁹

Lastly, to what concerns the winds of change conveyed by *Podemos*, it can be glaringly deemed to be a juicy hope of change, but it is also crucial to take reality as it is, to be critical and see *Podemos* with its strengths and weaknesses, because not even the party that rises from popular demand is unsusceptible to failure.

³¹⁷ Campelo, *Diario Público*, 2014.

³¹⁸ Torreblanca, 2015, p.137.

³¹⁹ Constenla, *El País*, 2015.

Conclusion

The Spanish Civil War and its resulting authoritarian regime controlled under dictator Francisco Franco left thousands of death, hundreds of thousands of disappeared and a footprint of fear and repression through a social fragmentation that has required another 40 years to dare to demand for the fulfilment of the rights to truth, justice and reparation according to international human rights standards.

Recent literature has demonstrated that the conflict was neither a direct consequence of the Republic nor a “war of brothers”, as Casanova has repeatedly demonstrated. Although violence was, as in every civil war, perpetrated by both sides, the repression machinery thoroughly created by the revolted side was intensely institutionalized and had a defining goal of erasing the “undesired red” who had no longer a place in a Spain ruled under the fist of Franco’s authoritarianism. This has been proved through the methods utilised by the regime such as massive firing squads, burials at cemetery walls and road sides or the stealing of babies. All of these tactics were accompanied by the creation of detention centers where denunciation was highly encouraged, managing to break even friendships and solidarity within society. In addition, they were all utilised as instruments to crush the opposition and had a clear purpose of impeding the blooming of any kind of divergent culture from that of national Catholicism.

Forty years of repressive dictatorship created a void in collective Spanish memory, which was further reinforced by a pact transition, lead mostly by those who had been ruling under Franco.

We have seen how Huntington claims that irresponsibility, corruption or frustration of the public good may recall a government as undesirable, however, it does not seem sufficient to make it undemocratic.

But isn’t a desirable democracy what we must pursue? I believe that the concept of ideal democracy functions as a utopia. As Fernando Birri marvellously explained once in Cartagena de Indias, “utopias are in the horizon, and I know well that I will never reach it.

If I walk ten steps it will move away ten steps, it keeps distancing inasmuch as I get closer to it. Utopias serve this purpose, to teach you how to walk".³²⁰

This is how, as much as I recognize the validity and advantages of Huntington's approach, the concept of a desirable democracy appears more worthy of its name, a path worth walking through. One that will lead to an efficient, non-corrupted, responsible government that will truly pursue the common good the people who elected it.

To what concerns the third wave, it has been assessed that factors such as the deep legitimacy problems marked mainly by the regime's impossibility to overcome the economic situation (added to the incapability of fighting terrorism in the case of Spain), along with the desires of Europeization (with the consequent democratization that this process demanded) and the withdrawal of the Catholic Church who officially refused its support to the regime along the 1970's, opened a clear way towards democratization at the time of the dictator's death.

Notwithstanding, there was never a clear break during the regime change, and so Francoism was maintained as a silent presence throughout the whole transition, and beyond.

When having to confront how to build a democracy in Spain, the Right was pursuing a reform in order to adjust the old regime, and the Left advocated for a rupture. Adolfo Suarez being the charismatic figure to lead the transition, the rupture option finally vanished, and the Left had to conform to an Amnesty in order to be able to free all those who were still imprisoned for political crimes sentenced under authoritarian laws.

As a consequence of this, up until today, Franco's ideology and its most powerful sectors never completely left the State apparatus, since remaining part of their power was one of the conditions for consensus.

The narrative of forced consensus and oblivion may have been well-aimed at the 1970's in order to avoid an immediate coup, but it was based on the intentions of those dominant sectors, which caused a perpetuation of myths and impossibility for victims to move on.

³²⁰ Translated from the words of an experience shared by Eduardo Galeano, available at <https://www.youtube.com/watch?v=GaRpIBj5xho> (consulted on 10 July 2015).

Furthermore, this approach of TJ, although it helped to build the democracy rather peacefully, also perpetuated the oppression of the vanquished (who were never able to properly bury their ancestors) as well as a culture of impunity that has led to a germination of corruption among the State apparatus.

And so the Pact of Oblivion managed to furnish up a blind collective amnesia of the past atrocities, on the basis of tricked arguments so as to justify the blindness.

Then, as stated throughout this study, neither remorse nor reconciliation were present into the building of such collective memory. And consequently, the Spanish transition was deployed under two premises: impunity and an absence of transformation of the State's institutions. The transition did not include a blackboard where all the concerns of the ones present in the negotiation would be discussed on an equal footing; the transition had elites with intentions. And these elites who championed the reform approach had something very powerful on their side which made all of this possible: the people were terrified to rebel, taking into account how the last counter-revolution ended up.

The Pact was founded in the basis of a "tug of war" which stamped the steps that the two subsequent parties that have attained power (PP and PSOE) have followed until today, creating a culture of bipartisanship that has transformed into a lack of representation of the plurality of political options, and has ignored and drop the guard before society's concerns.

The narrative that recalls the transition as a peaceful consensual deal, a pragmatic sacrifice that was done by both sides on equal terms with the good intention of leaving the past behind and harmoniously building together a new democratic regime goes in line with that of conceiving the civil war as a "war of brothers" that created the myth of the two Spains and that of assuring that both sides are equally guilty for the horror and repression exercised, something that this study has challenged through serious and reliable literature.

Pinochet's arrest in the late 1990's caused an irruption of memory, and people such as Emilio Silva started to slightly break the silence and ask to recuperate the past. He became the first person to manage the identification of a corpse found in a common grave, to whom hundreds started to follow. Little by little they created the ARMH. And after that other organizations soon followed, creating the Spanish historical memorialistic movement. However, nowadays these initiatives of exhumations have been privatized and the last

national institutional effort that was the Historical Memory Law of 2007, born on the first generation without trauma, has proved to be insufficient and failed to provide the victims with an effective remedy when denying the State's responsibility to investigate on the abovementioned disappearances and privatizing the right to truth.

Currently the burden of investigation is on the autonomous regions and city halls -not the State- and this basically relies upon their political will to do so.

On the other side, the experiences from different international TJ approaches have suggested some keynotes. To what concerns prosecution, it has proved that it can help to restore the national trust in a new regime and institutions which seek to break dramatically with the former regime's ideology; it helps to the legitimacy issue, undoubtedly. Yet it constitutes a very aggressive and delicate measure that easily turns criminal procedures into political tools. Too much ambition tends to cause inadequacy.

Being realistic, probably no prosecution will take place in Spain, at least not championed by the actual national institutions themselves since they have been actively hindering and opposing every investigation and removing of the past. Hopefully the Argentinean Lawsuit, through the powerful instrument of universal jurisdiction will manage to restore some of the truth, justice and reparations that the victims have awaited for far too long.

Nevertheless, to what concerns TRCs, the literature is very clear on the fact that they are a basic step (along with the transformation of the state's security apparatus) to take so as to achieve a greater democratization, as they procure a better historical account and official truth-telling facilitates national reconciliation

It has been demonstrated through the Chilean experience, that TRCs serve for educational and reconciliation purposes, as they provide an opportunity for victims to feel part of the collective national history and also help the establishment of an "official truth" in order to attain a reconstruction of the collective memory of the people.

Moreover, they enrich the democratization process offering a lesser aggressive alternative of punishment and a basis for reparation, which approaches the idea of reconciliation.

What is more, recent studies performed on the Spanish population recall that society no longer feels that facing the past is fearful or unnecessary and supports the implementation of more demanding TJ policies. In addition it should be noted that not even the Amnesty

Act could be a hindrance on this process, since TRCs can be created after an amnesty has been enacted and still serve these purposes, as it has been demonstrated by the Chilean experience.

The economic crisis that started in Spain on 2007 and corruption scandals revealed throughout the last few years have enlarged the legitimacy problem, creating a bigger crisis that involves also its institutions and politics.

Moreover, historical memory associations have lost their funding and are constantly ignored and rejected by the State's powers, guaranteeing impunity and causing an astonishing and disrespectful inattention, reinforced by the absence of national policies on the matter, which perpetuates a political tendency to maintain the impunity of those elites which derive from the transition.

This attitude has been criticised by various sectors of society, as well as the international community through different organisms such as the Council of Europe or the UN, which nonetheless does not seem to have affected the Government's approach of historical memory.

In response to all of this, the society finally outraged. And so the 15M was born, and soon it became an inspiring example of democratic empowerment of the people, a pacific disobedience to protest against the inequality gap that has enlarged enormously along the past years, and which surely seems to differ from the society's ideal of social contract.

This outrage has been claimed to come from the hole that the empty interpretation of the transition left behind.

In addition, the last judicial attempt from the former judge Baltasar Garzón to attend the victim's demands on investigation of the disappeared ended up in the judge's forbiddance to exercise as such by the Spanish judiciary itself, which made crystal clear for once and for all the reluctance of the judiciary to prosecute Francoism according to international standards.

Consequently the victims filled a complaint before the Federal Criminal and Correctional Court Number 1 of Buenos Aires (Argentina) with the petition for an investigation on the matters of disappearances and torture, which still remains open up to date. State

institutions haven't offered any help to the cause, rather refusing the extradition of suspects of torture for their questioning in the matter.

However, the 15M was not born alone. And from the social thirst of political alternatives, cut off from the classic bipartisanship, a new party has recently raised, committed to reach a place in the State's institutions in order to try to fulfil (or at least get closer to) that utopian ideal of desirable democracy. *Podemos* has read the national mood and created a discourse against corruption and in favour of social rights, willing to fight for a democratic regeneration. In less than a year it has thwarted bipartisanship and achieved to return the excitement of politics to the people, so advantageous for democracy.

Moreover, as soon as they have started to acquire a certain degree of representation in some parts of Spain through the past local elections, they have implemented, in between the first measures decided from a large list of political goals, historical memory measures according to international human rights standards such as the withdrawal of Francoist names in streets in Madrid, or the compromise of passing a new law of historical memory and another on common graves in the Balear Islands.

Several authors insist on the idea that nowadays constitutes a *momentum* of change in Spain's history, a moment of transition, of regime change. In this sense, it seems that all the elements mentioned along this study have gathered together to acquire, by 2014, a social claim to leave the transition's counterfeited consensus behind.

Meanwhile the idea of creation of a TRC for Spain starts shaping within society and slightly finding its spot on the public discourse. Both the ideological context of participative democracy in which *Podemos* has strongly based its creation and their disposition to recover collective historical memory, set the perfect scenery for a scene change in which a Truth Commission could achieve to create a unique narrative of history for the future generations and to give back a true "rest in peace" to past generations.

We have already taken our seat in the spectacle. The curtain is still dropped but rumours through the country hold that it could be a success. The play seems promising. From our seats we can hear the hustle and bustle behind the curtain.

And now it is our turn to be patient, and hope that the ticket was worth it.

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