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Democracy Without Justice in Spain

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Introduction

William Faulkner's famous dictum that "the past is never dead; in fact, it is not even past" aptly captures how the past looms over contemporary Spanish politics. In 2007, the Congress of Deputies approved the Law of Historical Memory with the intention of reconciling the dark legacy of the Spanish Civil War (1936–1939), that epic interwar showdown between democracy and fascism generally regarded as a dress rehearsal for World War II, and the dictatorship of Generalissimo Francisco Franco, whose 1936 coup against the popularly elected Second Republic set the Civil War in motion. Scores of mass killings committed by both sides of the conflict (the right-wing Nationalists and the left-leaning Republicans) earned the Spanish Civil War worldwide infamy. But the violence of the Franco dictatorship, less known outside Spain, was just as brutal and horrific. Franco ruled Spain with an iron fist for nearly four decades, from his declaration of victory over the Republican army on April 1, 1939 to his death of natural causes on November 20, 1975, with the bulk of the violence falling disproportionately during the early years of the dictatorship. With the major democracies of the day (Britain, France, and the United States) at war with Germany's Nazi regime, Franco undertook a vicious policy of *limpieza* (cleansing) that resulted in the execution and imprisonment in concentration and labor camps of hundreds of thousands of left-wing sympathizers. This bloody campaign gave Franco bragging rights of being the Cold War's most successful anti-communist crusader.

Spain's encounter with the past in 2007 was long overdue given the unorthodox handling of the political excesses of the Civil War and the Franco dictatorship during the 1977 democratic transition. To coincide with the restoration of democracy, the national parties from the right and left negotiated

the so-called “Pact of Forgetting” with the intention of letting bygones be bygones. As a consequence of this informal agreement no one was put on trial for the political crimes of the old regime or disqualified from playing a role in the politics of the new democracy, since the pact was accompanied by a broad amnesty law that granted immunity for all political crimes committed prior to 1977. The contrast with Spain’s sister Southern European dictatorships, Greece and Portugal, whose transitions to democracy roughly coincided with the Spanish transition, is striking. The members of Greece’s Colonels’ regime (1967–1974) were hauled off to court on charges of high treason, resulting in death sentences for the top military leadership, sentences later reduced to life in prison. Portugal’s Salazar-Caetano regime (1932–1974) was subjected to a policy of “lustration” intended to purge the state and society of authoritarianism. The purging began with the military and was gradually extended to the civil service and authoritarian collaborators in the business community, the media, and the Catholic Church.

Another consequence of the Pact of Forgetting was to thwart any attempt at “truth-telling” like Argentina’s *Nunca Más* (Never Again), the report by the National Commission on the Disappearance of Persons that chronicled the human rights abuses of the military dictatorship between the years of 1976 and 1983 and that launched several analogous efforts across South America, and South Africa’s landmark Truth and Reconciliation Commission (TRC), which examined the sins of apartheid. Furthermore, the pact to forget effectively precluded an official condemnation of Franco’s military coup in 1936 and even a memorial and an official apology to the many victims of the old regime. Adding insult to injury, the pact facilitated the survival of numerous monuments across the Spanish territory honoring Franco, including the infamous El Valle de los Caídos, Franco’s megalomaniacal monument on the outskirts of Madrid to his Nationalist crusade, which today houses his remains and those of José Antonio Primo de Rivera, founder of the Spanish fascist organization Falange, who was executed by the Republicans during the Civil War.¹ The upkeep of Franco’s burial site is underwritten by the Spanish state, including, until 2007, a mass held by Benedictine monks on the anniversary of his death.

Instead of justice and truth, forgetting and moving on prevailed in Spain. For decades into the new democracy the memory of the past, especially that of the Civil War, appeared to have vanished among the usually contentious Spanish political class. The only occasion that merited a refer-

ence to the past was to stress the importance of not talking about it. In 1977, in anticipation of the first democratic elections since 1936, communist leader Santiago Carrillo, the most prominent member of the democratic opposition to the Franco regime, noted that “In our country, there is but one way to reach democracy, which is to throw out anyone who promotes the memory of the Civil War, which should never return, ever. We do not want more wars, we have had enough of them already.”² Yet more unexpected is that the pact to forget succeeded in turning the past into a taboo among ordinary Spaniards, by making discussions of the violence of the Civil War from either side of the conflict and the political repression of the Francoist era inappropriate and unwelcome in almost any social context. Commenting on the apparent disappearance of the memory of the Civil War among the Spaniards, the *Economist* noted in 2006: “The pact of forgetting has meant that mere mention of the Civil War has been kept of out everything, from politics to dinner-party conversations.”³

Oddly enough, for a piece of legislation generally seen as an act of deferred justice against the Franco regime (Aguilar, Balcells, and Cebolla-Boado 2011), the 2007 Law of Historical Memory is remarkably short on accountability. Indeed, the law left in place much of the status quo about the past introduced by the Pact of Forgetting. Although the law offered reparations to those victimized by past injustices and condemned the Franco regime as “illegitimate,” it did not overturn the 1977 amnesty law, making it highly unlikely that anyone associated with the old regime will ever face prosecution on human rights charges. Ironically, today in Spain only those seeking to bring former Franco officials to justice are risking prosecution in connection to the crimes of the Franco regime. In 2010 a court indicted “Super Judge” Baltazar Garzón, the maverick magistrate who gained worldwide fame in the late 1990s for his audacious indictment on human rights abuses of Chilean General Augusto Pinochet, on charges by the conservative group *Manos Limpias* that Garzón had abused the powers of his office by attempting to use the Law of Historical Memory to prosecute former Francoist officials.⁴ Garzón was eventually acquitted, but other charges forced him to relinquish his judicial post, thereby ending all meaningful efforts to bring justice to the Franco regime.⁵

More striking is that the Law of Historical Memory did not automatically nullify the verdicts of those sentenced by Francoist tribunals, including the kangaroo courts created after the end of the Civil War in 1939, which convicted thousands of people for simply having supported the Republican

government, nor did the law call for the organization of a truth commission to examine the human rights abuses committed during the Civil War and the Francoist period. To its credit, the law mandates removal from public spaces of monuments that glorify either of the sides that fought the Civil War (a stipulation that applies mostly to the numerous monuments honoring Franco and his regime, including those in Catholic churches, a reflection of the symbiotic relationship that developed between the old regime and the Catholic Church), but it protects monuments that possess “historical and cultural significance,” including Franco’s burial site at El Valle de los Caídos.

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