

January 2021

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Hunter Kolon
hkolon@smu.edu

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Recommended Citation

Kolon, Hunter (2021) "A Legacy of Violence: The Lack of Transitional Justice in Post-Franco Spain and its Impact on Victimhood," *SMU Journal of Undergraduate Research*: Vol. 6: Iss. 1, Article 4. DOI: <https://doi.org/10.25172/jour.6.1.4>
Available at: <https://scholar.smu.edu/jour/vol6/iss1/4>

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A Legacy of Violence: The Lack of Transitional Justice in Post-Franco Spain and its Impact on Victimhood

Hunter Kolon

hkolon@smu.edu

Victor Tricot¹, Felipe Gomez Isa², Rick Halperin³, Brad Klein⁴

ABSTRACT

In order for a country to transform from a society in which rights were severely repressed to a society in which rights are respected and protected, the violations of the past must be properly and adequately addressed. However, instead of using the transition to democracy to confront the country's history of violence and repression, the Spanish government and society actively stifled the memory of the Civil War and forty-year dictatorship, failing to address the country's legacy of violence and the victims left in its wake. Despite the Spanish transition being regarded as a remarkable success story, an institutionalized historical amnesia resulted in many oppositional counter-memories as forms of cultural resistance. This paper will demonstrate how repressing memory left the door open for the legacy of political violence to persist in Spain.

Prioritizing processes of transitional justice and historical memory is crucial in working toward sustainable peace in Spain and the Basque Region today. This paper will provide an overview of transitional justice and historical memory and an analysis of the impact of Spain's lack of transitional justice, specifically regarding the politicization of victimhood. It is important to examine the implications of the *pacto del olvido* (pact of silence) and the 1977 Amnesty Law in rendering Franco's victims invisible and in sustaining Spain's legacy of political violence. Furthermore, this paper will explore how the Basque terrorist group, *Euskadi Ta Askatasuna* (ETA), carried on Spain's legacy of political violence for another four decades following the end of the Franco dictatorship. The next section of this paper will analyze how the 'memory boom' of the early 2000s led to greater recognition of the victims of Francoism and to the passing of the 2007 Historical Memory Law. This analysis will show how the politicization of victimhood resulted in an inequity between the measures taken to recognize and protect different victims' groups, subsequently providing more protection for victims of ETA violence. Overall, this paper contends that, in the case of Spain, a lack of transitional justice has perpetuated a long legacy of violence and a silencing of the victims of Francoism that remain unresolved.

1. INTRODUCTION

After traveling across Poland on a Holocaust Remembrance Trip with Southern Methodist University's Human Rights Program, I spent four months researching and writing about the legacy of the Nuremberg Trials on creating universal human rights standards, ending cycles of impunity through international accountability, initiating peace processes, and documenting human rights violations on a global scale. Transitional justice has not only been discovered as a way to cope with the past, but also has been found to contribute to the prevention of future violence. When a society deals with its past by actively choosing to remember it, the risk of violence reoccurring is lowered and the chance of achieving sustainable peace is increased¹.

Upon arriving in Spain for the semester, I learned that the crimes of the Civil War and of Franco's dictatorship have never been adequately addressed. Everything I had learned about the necessity of transitional justice was thrown

into question—I was in a country that is considered a successful European democracy, but that has never come to terms with its long legacy of political violence and institutionalized repression of memory.

In 1936, Francisco Franco's Nationalist army initiated this legacy of violence with a coup d'état against the democratic Second Republic, launching a bloody Civil War that lasted for three years. After the Nationalist army won the war, Franco ruled as dictator for forty years, heading a regime that imprisoned, tortured, disappeared, and murdered innocent Spaniards. Following Franco's death in 1975, his appointed successor initiated Spain's democratization. While this transition period provided an opportunity to address the crimes of the Civil War and the dictatorship, Spanish government and society reached an unofficial consensus, *el pacto del olvido* (pact of silence), to avoid looking into the crimes of the past. This pact of silence was institutionalized through the 1977 Amnesty Law, which cancelled all penal responsibility for crimes during the Civil

¹ Academic Director, School for International Training, Bilbao, Spain.

² Independent Study Project Adviser, University of Deusto, Bilbao, Spain.

³ Academic Director, Embrey Human Rights Program, Southern Methodist University, Dallas, TX 75275.

⁴ Academic Director, Embrey Human Rights Program, Southern Methodist University, Dallas, TX 75275.

War and the dictatorship. Consequently, the law removed the pathway for victims to pursue justice through a court of law or any system of accountability.

Coming to terms with the past is never easy. But addressing the dark parts of the past is crucial in building a shared, peaceful futureⁱⁱ. Spain has never fully experienced these processes of remembering and healing. Instead of providing an opportunity for reconciliation, the transition left many of the wounds of the past gaping open. It has been said that if societies do not know their history, there remains a danger of repeating it. Spain's attempts to eradicate historical memory do not make the pain and suffering of victims disappear; instead, they create opposing narratives about the past that make reconciliation harder and reoccurring conflict more likely.

With a legacy of violence that was never resolved, the young Spanish democracy entered a new period of violence as ETA, an armed Basque separatist group, claimed the lives of more than 800 victims over the last fifty years. With ETA's recent disbandment in 2018, there is a need to address how the legacies of political violence have shaped Spain's current situation and what can be learned that will be useful moving forward. "History cannot administer justice; its moral authority comes from its regard for truth seeking and its social utility from its power to explain and interpret"ⁱⁱⁱ. To move into a future marked by sustainable peace, Spanish and Basque society must first fully address the past and work to heal history's wounds.

1.1 Research Methods and Ethics

The research for this paper consisted mainly of qualitative data collected from over fifteen articles from academic journals and several books written by scholars and historians. These works make up this paper's background information and theoretical foundations of transitional justice, historical memory, and the politics of victimhood. In addition to these sources, my research drew from an interview I conducted with Dr. Galo Bilbao, a professor of ethics at the University of Deusto. This interview provided further context about the current situation in the Basque Region after the dissolution of ETA. The interview was conducted following the School for International Training's Institutional Review Board's protocol and ethical standards.

2. ANALYSIS

2.1 Transitional Justice

After World War II, the world was confronted with the most horrific and far-reaching crimes history had ever seen with no model of how to deal with this level of violence. The Allied Powers recognized that letting these crimes go unpunished would have created a dangerous precedent for the rest of history. Thus, the Allied Powers launched the International Military Tribunal, known as the Nuremberg Trials, to try 24 Nazis on counts of war crimes, crimes against the peace, crimes against humanity, and conspiracy to commit these crimes. These trials were the first international criminal proceedings during which a multi-country coalition held individuals accountable for their crimes. The Nuremberg Trials planted the seeds for an impending global movement. In the late 1980s and early 1990s, the fall of the Soviet Union led to changes in

governments in Latin America and Eastern Europe. As these countries democratized and sought ways to deal with their pasts, the *transitional justice* movement officially emerged. The International Center for Transitional Justice defines transitional justice as a "response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice, but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades"^{iv}. The goals of transitional justice are to strengthen democracy and peace after periods of mass human rights violations; its processes are undertaken by a broad scope of actors, including but not limited to government institutions, individuals in positions of power and influence, and civil society. Transitional justice is founded on the principles established during the Nuremberg Trials: rejecting impunity; confronting, truthfully addressing, and remembering histories of violence and abuse; centering victims; and valuing healing and accountability^v.

While transitional justice has many advocates in the civil and academic sectors, including "a large and diverse community comprising legal scholars, human rights activists, political theorists, the International Criminal Court and non-governmental organizations such as the International Center for Transitional Justice," it also has plenty of skeptics^{vi}. Critics hold that "too much emphasis has been placed on transitional justice as a foundation for democratization"^{vii}. They argue that those who advocate for transitional justice unfairly equivocate justice and democratization. Critics contend that advocates of transitional justice fail to recognize that there is no one-size-fits-all model for democracy building, thus challenging advocates' notion that "the more comprehensive and vigorous the effort to bring justice to a departed authoritarian regime for its political crimes, the better the democratization"^{viii}. An example critics cite is the different approaches to transition in Spain and in Portugal. Spain is often held as a country that smoothly transitioned into a democracy without having to dig into its past. On the other hand, Portugal's transition was marked by purging members of the old regime and "dispens[ing] justice so arbitrarily and radically that it nearly derailed the democratic transition" and brought the nation to the brink of civil war^{ix}. This contrast is used to highlight that transitional justice measures should not be hailed as a fix-all solution to a society's problems and that there is "no pre-ordained outcome to any attempt at transitional justice"^x.

Regardless of its critics, there are few transitional contexts in which some element of transitional justice was not applied. Additionally, advocates of transitional justice do not promote it as a fix-all solution to the past because processes of healing and remembering cannot change or erase history for victims. However, as was first recognized and established by the Nuremberg Trials, recognizing victims of mass human rights abuses and trying to address their needs is better than doing nothing. Since Nuremberg, transitional justice has grown and transformed to include more than solely judicial measures. The components of transitional justice processes are truth, justice, and

reparations, with all parts equally as important to addressing the past and working toward healing^{xi}. According to the United Nations, transitional justice is “both judicial and non-judicial including prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations”^{xii}. By aiming to deliver on all parts, transitional justice “can contribute to achieving the broader objectives of prevention of further conflict, peacebuilding and reconciliation”^{xiii}.

Historical memory, a key component of transitional justice processes of truth-telling, is the way in which people construct their own narratives of the past to make sense of what is going on in the present and to plot their futures^{xiv}. While it takes place within the individual, it is “socially and politically embedded”^{xv}. “Historical memory is a form of social memory in which a group constructs a selective representation of its own imagined past”^{xvi}. It refers “to a hidden past that is valued and rescued before being forgotten”^{xvii}. How societies remember events of the past shapes how they move forward: the legacies that are formed, the institutions that are built, the laws that are created, the narratives that are promoted, and the people who are remembered. “Political conflict over memory highlights the fact that (living) memory remains under the surface of law and sometimes becomes the object of laws”^{xviii}.

The Spanish case presents an example of one of the few transitional democracies that did not pursue any processes of transitional justice. Despite a bloody Civil War and forty-year repressive dictatorship, Spain chose not to address its past abuse and instead actively chose to forgo an accurate retelling of history. “Any society trying to transition from a history of violence to a future of peace struggles with reconciling the divisiveness of its violent legacy with the necessary cohesion and inclusiveness needed to build a peaceful future. The fields of historical reconciliation and transitional justice focus on the nexus where past traumas claw at the nascent reconstruction of politics and society. Both fields are concerned with at least two core questions. First, in order to constructively move into the future, to what extent must a society deal with its past? Second, how should a society in the pursuit of peace heed its past?”^{xix}. In order to analyze how the lack of transitional justice has impacted Spain, it is important to first address the facts and to understand the extent of its history of violence.

2.2 *Background: Civil War & Franco*

Between 1936-1975, there were two distinct periods of human rights abuses in Spain: the atrocities committed during the Civil War (1936-1939) and the Franco regime’s revenge against Republican supporters and the repression of regional minorities (1939-1975)^{xx}. In 1936, General Franco and his Nationalist army staged a coup d’état against a “legitimate, democratically elected government,” the Second Republic of Spain^{xxi}. While the Civil War’s exact death count is still unknown, the human cost has been estimated to be somewhere between 500,000 and 600,000 lives. This estimate has the potential to grow upon further discovery of the bodies of people who disappeared.

Following the war, “Franco’s government promoted its own version of historical memory during its first decade in power and promoted it without

ambivalence”^{xxii}. Franco rewrote the narrative of his regime’s coup d’état against the legitimate Republican government, portraying the Nationalist Civil War victory as “a successful crusade against godless communism”^{xxiii}. The regime only recognized the Nationalist side’s victims, granting them martyrdom and honor. “The legitimacy of Franco’s regime after the Civil War was partly based on the memory of the nationalists’ victims...The aim was to preserve the memory of ‘his’ victims and to eliminate [opponents]”^{xxiv}. This inaccurate version of historical memory worked to validate Franco’s narrative of history, which he used to justify his regime’s repression and violence. Franco’s Civil War “victory [w]as contingent: without continued vigilance (that is, elimination of all opposition by whatever merciless means)...triumph would be threatened”^{xxv}. “For the victors, the war was to be memorialized and commemorated as a necessary Nationalist war to save Christian Spain. For the defeated, the war continued, experienced as their ongoing repression as the *enemy* as well as a silenced personal traumatic memory”^{xxvi}. Franco’s manipulation of the Spanish people’s memory of their own history warped their understanding of victimhood, painting the Nationalists as the rightful heroic victims and the Republicans as wrong and deserving of violence.

Franco’s dictatorship can be broken down into two phases: the immediate post-war period (1939-1947), which was marked by the most brutal crimes, and a stabilizing period (1947-1975), when the regime began to move away from fascism and toward economic stability in order to gain greater acceptance by Western powers such as the United States (while still maintaining an authoritarian and repressive regime)^{xxvii}. In the first half of the 1940s, the prison population was over 300,000^{xxviii}. More than one million people were sentenced by Franco’s War Councils and military tribunals—most were sentenced to death or lifetime prison sentences just for being Republican supporters during the war^{xxix}. Significant numbers of children born to women in prison were systematically taken by the government and adopted out to the families of Franco’s supporters. In 1944, the Ministry of Justice stated that over 190,000 prisoners had been executed or had died in prison^{xxx}. Tens of thousands of people were stripped of their jobs and professional titles, 500,000 Spaniards were forced into exile, and citizens were beaten, imprisoned, tortured, and executed daily. The regional communities faced Franco’s fiercest repressive policies. The Basque and Catalan regions were prohibited from speaking their regional languages and thousands of Basques and Catalans were imprisoned, tortured, and executed for speaking their languages or practicing their cultures. The complicity of ordinary people and of the Catholic Church in supporting and collaborating with the regime allowed Franco to stay in power. Although the second phase of Franco’s dictatorship saw a shift away from fascism, the repressive authoritarian nature of his regime persisted. This period’s injustices “consisted of sentencing people for political reasons and an extended use of torture against the enemies of the regime”^{xxxi}. Additionally, his regime continued to use military tribunals and War Councils to hand out unjust sentences to their opponents. As a result of the lack of a truth commission or any official fact-finding body, the extent of

the violence and repression of both the Civil War and the dictatorship is still being uncovered today.

2.3 *Pact of Silence*

Following Franco's death, his appointed successor led Spain into a period of democratization. Spain is one of the few transitional contexts in which no attempts at truth, justice, or reparations were made by the government upon democratization. In fact, in the Spanish context, quite the opposite occurred: the new Spanish system was "predicated upon the 'social contract' of the burial of the past—no reopening of old wounds and no questions asked"^{xxxii}. Spain's "political transition did not come from a break with the past but rather from a transfer of power that was accepted by the former autocracies...[and] from an agreement made between them and the emerging democratic forces"^{xxxiii}. This social contract, *el pacto del olvido*, was not just a passive process of forgetting the atrocities of the Civil War and Franco's forty-year dictatorship, but "an active process of deliberately ignoring events that were remembered only too well"^{xxxiv}. "In keeping with the desire to forget and move on, the only acknowledgement of Franco's political crimes consisted of restoring the pensions of Republican Civil War veterans and reinstatement of civil servants dismissed from their jobs under Franco for political reasons. There would be no official recognition of the killings of the Civil War, especially from the Nationalist side headed by Franco, which committed the bulk of them, nor of the large-scale repression of dissidents and regional nationalists that lasted until the final days of the dictatorship. Nor would the leadership of the Catholic Church, the media, and the business community be called to answer for their overt collaboration with the Franco regime"^{xxxv}.

Spain had no trials, no bureaucratic purges, no reparations, no truth commissions, no reports on the crimes and human rights violations, and not even an apology or a recognition of the suffering caused by the nation's long legacy of political violence and repression. And in 1977, the pact of silence was institutionalized and legally codified with the 1977 Amnesty Law which succeeded in permanently canceling the legal and political consequences of the Civil War and Franco's regime^{xxxvi}. The law "encompassed acts of political violence committed during the civil war and the forty-year [Franco] dictatorship that followed. The law included both those victimized by [Francoist] repression and the agents of that repression, a concession to the right that reflected the balance of political forces at the time"^{xxxvii}. Not only did the 1977 Amnesty Law conceal past crimes, it quarantined past memory, allowed for the normalization of the country's legacy of violence, and marginalized Franco's victims^{xxxviii}. Instead of addressing the past, "Spain chose amnesty and a kind of institutionalized amnesia"^{xxxix}. The 1977 Amnesty Law is still in place today.

The pact of silence and the Amnesty Law were decided upon with a great degree of political and social consensus as the path "to forgive the mistakes of the past and to build a future based on reconciliation"^{xl}. The broad consensus on passing the Amnesty Law came to fruition for several reasons^{xli}. Firstly, despite the active choice not to discuss the horrors of the Civil War or to enforce accountability for the violence committed on both sides, the instability that led to the Civil War had not been forgotten.

"The democratic opposition to the Franco regime both inside and outside of Spain was keenly aware that the political misfortunes of the past, especially the democratic breakdown of the interwar years, were rooted in too much political polarization and too little willingness to compromise"^{xlii}. Peace and stability were extremely tenuous during Spain's transition to democracy, and many feared that bringing up the grievances of the past would reignite political tensions between those who had been (and still were) Franco supporters and the rest of Spanish society.

The second reason the Amnesty Law was passed was the weakness of democratic forces during the transition that allowed much of the power to remain in the hands of the Franco regime's descendants. "The transition was basically organized by the Francoist institutions themselves, without any break in the continuity of the laws established by Franco"^{xliii}. In another form of Franco's manipulation of the historical narrative of the Civil War, his former officials spread the lie that the atrocities committed by Nationalists and Republicans during the Civil War were on the same scale. This lie was legally codified in the 1977 Amnesty Law, which "re-coded Civil War memory by creating symmetry between the victors and vanquished as victims. Both sides were now blamed for causing the fratricidal war and both had suffered"^{xliiv}. As a result, the false version of memory that Franco used to justify his repressive policies was perpetuated after his death. "[A]chieving vindication and justice for victims of the past were seen as less urgent than strengthening a political alternative for the future. Since both sides in the Civil War were responsible for committing atrocities, they concluded nothing would be won by digging up the past other than bringing old family demons to life"^{xliv}.

Lastly, although many have hailed Spain as a successful and peaceful democratization, during this time there was a steep increase in terrorist violence that originated in the Basque Region and was led by *Euskadi Ta Askatasuna*. By some accounts, during the transition period 773 people were killed by groups from the extreme right, left, or ETA between 1972 and 1982, and 450 of these victims were killed in the Basque Region^{xlvi}. "This fear of conflict, combined with the uncertainty of the political situation during transition, and the central role played by moderate elites (reformists from within the Franco regime and the moderate democratic opposition, between whom the features of the new system were negotiated), contributed to a climate of risk-aversion. The presence of extremist forces (ETA and right-wing groups) engaging in political violence and seeking to undermine negotiated change also reinforced the overriding emphasis in the mainstream on consensus and reconciliation"^{xlvii}.

The fear of Francoist political elites was that a look into the past would reveal the truth about their own roles in supporting the violence and repression of the Franco regime. The fear of Spanish society and Franco's opposition was that pursuing any processes of transitional justice would destabilize the new democracy and cause a second Civil War^{xlviii}. Thus, all sides agreed that looking to the future by avoiding the past was the only way "to ensure, at long last, a peaceful transition toward democracy"^{xlix}. However, as this paper will explore, the pact of silence and 1977 Amnesty Law denied Franco's victims and future generations of Spain the truth about their history. "Denying the validity of

memory as a source of fact attempts to keep these terrible crimes from public knowledge¹.

2.4 Legacy of Violence

In political contexts where histories of violence are treated with impunity and an absence of accountability, that legacy of violence continues into the future. As violence goes unaddressed and forgotten, “new cycles of impunity” may ensue and create the conditions for “those previously victimized [to] use the past and their analysis of it to argue for their legitimacy as victims while at the same time justifying action which do violence to others”^{li}. This pattern of violence and subsequent victimhood was borne out by Franco’s narrative of Nationalist victimhood used to perpetrate crimes against his opponents and Spain’s regional communities, creating another class of victims, some of whom would go on to carry out more violence and bloodshed in the post-Franco era.

By failing to engage with the past, Spain’s transition “reveal[s] the incapacity of the Spanish democracy to break with the ingrained interests and values inherited from Francoism which were incorporated into the political culture of the country”^{lii}. The pact of silence and political arrangement that left many of the Francoist institutions still intact “exacerbated the opposition of those who had held out for more”^{liii}. “This decision to ‘forget,’ then, was shaped and reinforced by dominant political and cultural discourses in a way that continued to marginalize, or indeed actively suppress, the stories and memories of those on the losing side in the civil war, even after the transition was complete”^{liv}. Even after the war was long over and the dictatorship had ended, the victims of Franco were the victims of a movement working to forget and silence their pain. The failure of the Spanish government to integrate any processes of transitional justice, and in fact to actively stifle the memory of the victims and the violence they endured, allowed the legacy of violence perpetuated by the Franco regime to live on in the new democracy. The absence of transitional justice rendered sustainable peace less likely and helped victims justify their own acts of violence.

2.5 ETA

The remainder of this paper will focus on how the lack of transitional justice affected the Basque region and Spain’s legacy of violence that has persisted for decades. “Victims of state-sponsored terrorism [were] often Basque nationalists. Thus, many in this victim community trace their victimization to the oppressive policies of Franco’s authoritarian regime, feeding the argument that current state violence simply continues long-standing policies of state repression. In truth, the conflict between ETA and the Spanish state began during Franco’s authoritarian regime. ETA first emerged in 1958 as a political group focused on propaganda that splintered the Basque Nationalist Party, *Partido Nacionalista Vasco* (PNV). Eventually, though, ETA became dissatisfied with the complacency of the PNV, the lack of recognition for the Basque cause and was radicalized by repressive state policies directed at Basque culture and citizens under Franco”^{lv}.

ETA, *Euskadi Ta Askatasuna* (Basque Freedom), is responsible for fifty years of domestic terrorism that

resulted in the murders of 830 people, the majority carried out after Franco’s death and the transition to democracy^{lvi}. In its early stages, “ETA found legitimacy for its existence, ideology and actions in Franco’s repression of Basque culture and identity and targeted excesses against it”^{lvii}. It was widely assumed that after Franco’s death and the transition to democracy, the Basque region would no longer be a target of repression and ETA’s advocacy for the Basque region’s culture and language would no longer be considered necessary and would thus naturally come to an end. Instead, the years following Franco’s death “were the bloodiest in ETA’s history,” and ETA’s violent opposition to the transition almost derailed Spain’s democratization^{lviii}. For some, ETA’s violence *might* “have been understandable as a response to Franco’s repression, [but] during the transition to democracy” a threshold of acceptability was crossed^{lix}. For many, “there [was] no justification for ETA’s violence in democratic Spain”^{lx}.

ETA’s fifty-year existence can be broken down into several phases. From ETA’s founding in 1959 to Franco’s death in 1975, the group was considered to be a legitimate resistance organization advocating for the protections of those living in the autonomous communities, specifically the Basque region, against a repressive and violent dictatorship which targeted these regional communities. For some who supported ETA’s cause, its fight against a regime that was particularly harsh on the Basque Country was enough to justify ETA’s violence. ETA’s early victims were mainly members of the police and military, and many of these victims were considered to have died as a part of their duties and were thus largely ignored^{lxi}. Following the transition, from the mid-1980s until 1997, ETA targeted and killed more widely known social and political actors and conducted their first indiscriminate bombings. This period saw the growing of Spanish society’s recognition of and compassion toward victims of ETA violence. The major turning point in public sentiment opposing ETA followed the 1997 murder of Miguel Angel Blanco. ETA kidnapped Blanco, a 29-year-old *Partido Popular* (PP) politician, and then gave the Spanish government the ultimatum to transfer ETA prisoners to the Basque Country or Blanco would be killed. After the deadline for the ultimatum had passed and was unmet, ETA murdered the young politician. Blanco’s death launched the turning point in Spanish society’s perception of terrorism and its victims by “inaugurat[ing] legislative recognition of victims of [ETA] terrorism,” leading to the creation of the first victims organizations in Spain, and uniting the country against ETA^{lxii}.

This paper’s analysis of the forces that may have helped perpetuate and sustain ETA’s violence is not a justification for their violent crimes, the 830 lives taken, or the many more lives changed forever. Seeking to understand what forces prompted ETA to carry on such violence and terror for forty years “expose[s] fissures in Spanish society that had remained open since the transition to democracy”^{lxiii}. The long-term costs of the transition without transitional justice was a lasting legacy of violence that left the door open for ETA to continue down the unresolved and unaddressed path of violence and destruction.

2.6 *Memory Boom*

The Franco regime promoted a false narrative of the Civil War that served as the foundation of and justification for decades of repression and extreme violence. Then, during the transition, Spanish society allowed their memories of the Civil War to justify actively repressing public discussion and collective memory of the war and the dictatorship. Subsequently, a section of Basque society used their memories of the Franco regime's violence to promote their own independence agenda and to justify their perpetuation of the dictatorship's legacy of violence. Democracy has a responsibility and a "duty of memory": an obligation to remember so that history is not repeated^{lxiv}. By refusing to acknowledge the power of collective memory building, Spanish society opened the door for the construction of competing historical narratives about Spain's legacies of violence.

"Franco's victims...[had] remained invisible until the early 2000s, while the dictatorship's narrative of a conflict for which both sides were to blame was not challenged"^{lxv}. However, with the murder of Miguel Angel Blanco, Spanish society was finally waking up to the need to address the nation's victims. Following the turn of the century, the forces of civil society pushing for a return to memory helped shift the political balance. After the exhumation of the unmarked grave of his grandfather, Emilio Silva Barrera founded the Association for the Recuperation of Historical Memory in 2000 and led civil society's charge in demanding truth and justice for victims of the dictatorship. Between 2003 and 2005, the number of victims' organizations increased from 30 to almost 170, "reflecting an emerging sensitivity by generational change, new developments in international law and the increasing predominance of victim's advocacy"^{lxvi}. Along with internal political and societal forces, the transitional justice movement had revitalized international concern over historical memory and served to propel Spain's 'memory boom'^{lxvii}.

It is hard to believe that there is any part of Spanish society that refuses to accept a condemnation of a repressive dictatorship. However, "even today, it is not unusual to come across sweetened perceptions of Francoism: it was a period in which, despite the lack of freedom, there was plenty of work and the country seemed to experience a general improvement of living standards"^{lxviii}. But Spain's memory boom revealed that the political consensus of the transition no longer existed^{lxix}. In the early 2000s, the left-leaning parties and other parties that were historically opposed to the dictatorship finally called for a review of the past to correct the deficiencies of the transition. On the right, *Partido Popular* (PP) refused to go back to criticize the Franco regime^{lxx}. However, as civil society's pushes for political change began to gain momentum, the Socialist Party (PSOE) won a majority for the first time in 2004 and intensified the calls for a return to memory^{lxxi}. The PSOE began "attacking the PP where it was most vulnerable...and depicted the right as the enemy of 'historical memory'"^{lxxii}. The combination of the calls from civil society and the PSOE's rise to power finally put historical memory of the Civil War, dictatorship, and transition on the political agenda. PSOE deemed the 2006 the "Year of Historical Memory," and made the first serious efforts by the Spanish government to rectify Franco's

narrative of history and to commemorate the dictatorship's silenced victims.

As a result of the memory wars between the political left and right, consensus on legislation to legally codify these memorialization efforts was hard to reach^{lxxiii}. However, in 2007, over thirty years after Franco's death and the beginning of the transition to democracy, the Spanish Parliament passed the Law of Historical Memory. The law "recognizes the individual 'right to memory'; it denies the legitimacy of the Francoist courts that violated fundamental rights, therefore repealing the validity of their norms and resolutions; it offers economic support for those excluded from former compensation programs; and it sets a series of rules both for the exhumation of mass graves and for the eradication of every form of apology of the Civil War and the dictatorship from the public space"^{lxxiv}. The most symbolically profound element of the 2007 Law of Historical Memory is that this law marked the first time Spanish law formally acknowledged the crimes and human rights violations committed under the dictatorship. This law finally classifies the Franco regime as illegitimate and breaks the hold of the pact of silence. Following the lead of international transitional justice movements, the "[I]aw represents the victim-centered choice of transitional justice by examining past violence through the experience of victims rather than through the crimes of perpetrators"^{lxxv}.

Despite the victory of the law's "symbolic effect and its open-ended status which does not close the door on future transitional justice measures," the Historical Memory Law has many critics^{lxxvi}. While the law officially ended the pact of silence, it failed to end the cycle of impunity protected by the 1977 Amnesty Law, revealing the persistent lack of political consensus to hold perpetrators accountable. The Historical Memory Law also failed to adequately address truth-telling transitional justice processes. The law guarantees each individual's right to remember the past in their own way, but it is "not accompanied by public policies that ensure effective implementation"^{lxxvii}. The law could have followed the example of South Africa post-apartheid, when the government established the Truth and Reconciliation Commission "which granted amnesty to the old regime in exchange for confessing to its political sins"^{lxxviii}. It created no such truth commission or any official, government-led fact-finding body. Lastly, the law has been largely criticized for failing to overturn the thousands of politically motivated sentences issued by Franco's War Councils and military tribunals^{lxxix}. While "it re-coded the Civil War memory by revealing the number of unrecognized victims and the institutional responsibilities for human rights violations[.]...the Law recognized victims' rights more than it created victims' rights"^{lxxx}.

Truth, justice, and reparations—none can be isolated from the other in transitional justice processes. While the 2007 Historical Memory Law made a stride in the right direction toward reclaiming an accurate historical memory, its efforts were not exhaustive. The "law will probably never lay completely to rest the profound disagreements—over national history and identity and the claims of memory, both individual and 'collective'—that have preoccupied" Spain since Franco's death^{lxxxi}. The passage of the Historical Memory Law began important work in recognizing Franco's victims and reclaiming truth

from the regime's warped and manipulated narrative of history, but the law cannot be the end of this story. "A standard to evaluate the dignity of society is the way in which it treats its victims. This is how the demands for justice and symbolic restoration have entered the dimension of 'historical memory'"^{lxxxii}.

2.7 *Victimhood*

While transitional justice is intended to be victim-centered, its models run the risk of taking for granted who the victims are. "Identifying victims is not always as straightforward as it may seem, and much is at stake. Transitional justice measures, especially reparations programs, need to identify who the victims are, which may politicize them"^{lxxxiii}. In the Spanish context, defining victimhood is extremely controversial. "The figure of the victim is mobilized almost universally in Spain...for politics in Spain presents itself as an imagined dispute among victims"^{lxxxiv}.

Victimhood can be defined as "the identity, meaning and status of victims in society...[but it] is not given. Rather, it is historically and socially constructed, which of course does not mean that victims' suffering is not 'real.' [It] is simply that the [legal] status of victims in society is not directly related to the harm suffered"^{lxxxv}. As such, the legal status of victimhood becomes inevitably entangled in politics. This may lead to "contests over the identity, meaning and status of victims in society beyond the victim-perpetrator continuum in relation to a specific episode of violence" as can be seen in the context of the memory wars between Spain's political left and right, both sides claiming opposing groups of victims and thus politicizing them^{lxxxvi}. While the different forms of victimization are "impossible to measure, classify, or quantify," "how the victim is constructed shapes the way justice, moral community and state legitimacy are configured" and how history is remembered^{lxxxvii, lxxxviii}.

2.8 *Interview: Dr. Galo Bilbao*^{lxxxix}

As a part of my research, I interviewed Dr. Galo Bilbao about his work with victims of terrorism in the Basque Region. Dr. Bilbao specializes in the field of ethics, and much of his life's work has focused on the best ways to approach victims and questions of victimhood in the Spanish context. He has collaborated on and led several initiatives in his field, such as bringing together different victims' groups to work toward building mutual understanding, introducing victims' stories inside Spanish classrooms, and bringing together ETA victims with ex-ETA members to create space for reconciliation, healing, and peace.

My conversation with Dr. Bilbao makes up an important component of my research. Our interview was conducted in Spanish and translated by SIT's academic director, Dr. Victor Tricot. As someone who has worked directly with victims and perpetrators of violence in the Basque Region, Dr. Bilbao has a very important perspective. Although some of Dr. Bilbao's opinions differ from the other scholars I cite in this paper, his insight on the topic of the politicization of victimhood in the context of Spain and in the specific context of the Basque Country is valuable.

2.9 *Counterpoint: No Continuity*

One of Dr. Bilbao's main assertions—and counterpoints to my argument in this paper—is that he believes there cannot be an established continuity between the Civil War, Franco dictatorship, and ETA's violence. In his opinion, to say that one period of violence led to another and could possibly explain ETA's violence runs the risk of justifying ETA's use of violence in the newly democratic Spain. Furthermore, ETA activity was much more violent in the period of democracy than during the dictatorship. In our interview, Dr. Bilbao expressed the importance of not using the flaws of the transition as an excuse or legitimization of ETA's violence.

As was raised by Dr. Bilbao in our interview, it is important to reiterate that this research is not an attempt to justify or legitimize any form of violence. This paper's argument is not that there is a clear and direct link leading from the Civil War to Franco's regime, from the dictatorship to the lack of transitional justice during the transition, and then the failings of the transition to the violence of ETA. Spain's history, like all history, is extremely complex and nuanced. In this case, to assert finite causation is not only a logical fallacy but an extremely oversimplified version of history and of memory. Like Dr. Bilbao said, everybody constructs their own memory about how history happened, and we have to be able to coexist with these different stories, even if they are contradictory. Memory, even historical memory, is living. The argument of this paper, however, is that there is a legacy of violence stemming from the Franco regime's violent repression of memory which left the resulting counter-narratives of different victims' groups unaddressed, forgotten, and stifled, contributing to continued cycles of violence and impunity.

2.10 *Victims of Terrorism*

Dr. Bilbao and I did agree that when looking at the treatment of Franco's victims and of victims of ETA terrorism, important parallels and distinctions in their treatment and politicization can be made. When discussing victims of terrorism, Dr. Bilbao spent much time discussing the breakdown of victims. He said that the Law for Victims of Terrorism, and the majority of society's focus, centers on victims of ETA violence. He said that many of the victims who are often forgotten or overlooked are the victims of government-sanctioned, extreme-right groups such as *Grupos Antiterroristas de Liberación* (GAL) and the victims of police abuse—those who were tortured or murdered while in custody. To him, while these are distinct types of terrorism, all three groups are victims of terrorism, and he believes that all groups should have a law that protects and recognizes their victimhood. Due to the scope of this research, my interview with Dr. Bilbao focused on two victims' groups—victims of Franco and victims of terrorism (mainly victims of ETA violence). This is not to diminish or devalue the plight of other victims' groups in Spain.

Dr. Bilbao believes that civil society is far removed from the concerns and plight of the different victims' groups. As for the sentiment of Spanish society toward the victims of the Franco regime, many Spaniards believe that the concerns of Franco's victims are the problems "of our grandparents" and feel that the issue should not be a priority^{xc}. For the victims of terrorism, there were

around 1,100 total victims over ETA's fifty years of violence. While ETA was committing violence as late as 2011 and their mark is still fresh on Spanish society, since ETA's violent campaign was stretched out over five decades, many Spaniards were largely left unaffected by terrorism which allowed them to continue to live their normal lives^{xcii}. This apathy results in victims' groups maintaining their own causes, continually representing the roles of victims (even if they have overcome that role), and reliving their pain in order to have their voices heard. As Dr. Bilbao so aptly described it, society turns its back on victims because the "presence of victims reminds us that things are not as good as we think they are. That our transition was not as good as we thought. And that our response to ETA and terrorism was also not as good as we thought"^{xciii}.

2.11 *Inconsistent Treatment of Victims*

Victims of terrorism have seen a much more expedient and forceful reaction by Spanish government and society. The aftermath of Blanco's murder in 1997 led to the first law to "recognize and provide protection to victims of terrorism" in 1999^{xciiii}. The Spanish Parliament passed the Act on Solidarity with the Victims of Terrorism which "established a system of compensation that would completely cover the question of civil liability, providing a compensation to both the direct and indirect victims of terrorism"^{xcv}. The measures outlined by this law "cover[ed] such concepts as expenses for psychological help and also recognized other rights in different orders, such as those concerning enrolment at state schools. The protection afforded by the Act covered all terrorist acts committed since 1968, when ETA made its first fatal attack"^{xci}. In 2000, PSOE and PP signed an agreement known as "the Pact for Liberties and against Terrorism" which outlines the government's priority to "grant [victims of terrorism] the recognition and the attention of Spanish society...to preserve their memory, to establish a system of daily and permanent assistance"^{xcvi}. In 2011, Congress adopted the Act on the Recognition and Comprehensive Protection of Victims of Terrorism which "strengthens the existing regime and adds several new rights"^{xcvii}. "The new Act expressly recognized all of the victims of terrorism as victims of abuses of human rights. Additionally, the political significance of the victims of terrorism was explicitly recognized in the preliminary recitals"^{xcviii}. The 2011 Act for victims of terrorism "proclaimed the rights to memory, dignity, justice and truth, requiring the institutions to take appropriate action to discover the truth and the real causes of victimization, thus contributing to a narrative that avoided any neutrality, ambiguity and/or moral and political equidistance between victims and terrorists"^{xcix}. Additionally, some of Spain's autonomous regions have developed initiatives to recognize and provide reparation to victims of terrorism. In 2011, the Basque Parliament adopted a Declaration "relating to the victims of violations of human rights other unjust causes of suffering produced in a context of politically motivated violence"^c. In 2012, the Basque Government expanded on these provisions through a decree "which highlighted the need to put an end to the institutional oblivion suffered by these victims and accepted that the victims of terrorism could be deemed victims of violations of human rights"^{ci}.

Despite the need to recognize all victims equally, Franco's victims often hold that they are "second-class victims" and point to the inadequacies of the 2007 Law of Historical Memory Law as their proof^{cii}. The law's official name is the "Law to Recognize and Broaden Rights and to Establish Measures in Favor of Those Who Suffered Persecution or Violence during the Civil War and the Dictatorship"^{ciii}. Along with the inadequacies analyzed earlier in this paper, a notable addition is that the Historical Memory Law does not grant Franco's victims the legal status of victim. In fact, the law does not even use the term 'victims,' only referring to "those who suffered the consequences of the Civil War and of the dictatorship," thus emphasizing the refusal to recognize them not as actual victims, but as past damages^{civ}. "This contrasts greatly with other laws which repeatedly use this concept, above all the Act 29/2011 on recognition and full protection of the victims of terrorism"^{cv}. Franco's victims argue that, compared to the rights and reparations measures granted to victims of terrorism outlined above, especially victims of ETA's violence, the 2007 Law grants far fewer rights and reparations of a much more limited scope^{cvi}. Many argue that the 2007 Historical Memory Law creates two classes of victims of human rights violations in Spain: the more recognized victims of terrorism championed by the political right, and the second-class victims of Franco's regime^{cvi}.

The first law for the victims of terrorism was passed in 1999, thirty-one years after ETA's first fatal attack. The Historical Memory Law was passed in 2007, over seventy years after the legacy of violence began in 1936. After comparing the measures the Spanish government has passed for victims of terrorism to those supporting Franco's victims, it is pervasive that the treatment of these two groups has not been equal. However, as this research outlined, many of ETA's early victims, especially members of the military and the police force, are not recognized or honored as fully as are the later victims of ETA terrorism. This assertion, combined with Dr. Bilbao's explanation of the complex layers of Spanish victimhood, reveals the unfairness in Spain's recognition of nearly all victims' groups. This inequality stems from the politicization of victims that political parties capitalize on to win votes or to push their agendas. If the inconsistent treatment of victims is not addressed, Spain's potential to move toward a sustainably peaceful future will be held back.

3. CONCLUSION

The active choice to address victims' issues and to rectify the inconsistent treatment of victims' groups will be crucial in making any further progress in transitional justice, historical memory, reconciliation, and sustainable peace in Spain. This paper began by introducing the idea of transitional justice and establishing its importance in countries emerging from periods of human rights abuse and violent conflict. While transitional justice cannot guarantee or inevitably cause certain outcomes such as lasting peace, history has shown that taking measures to recognize, respect, remember, and honor victims is often an essential step in recovering from past violence. After providing an overview of Spain's long legacy of violence beginning with the Civil War and Francisco Franco's forty-year dictatorship, this paper examined how Spain actively chose to bypass an

opportunity to implement measures of transitional justice during its transition to democracy. Instead of pursuing truth, justice, and reparations, political pressure resulted in a pact of silence between the new government and Spanish society. Consequently, the perpetrators of the past were protected under the 1977 Amnesty Law and the victims of Francoism were forgotten and silenced. This paper argued that while there is no identifiable, direct link between Spain's histories of violence that in any way justifies them, the lack of transitional justice during the transition allowed the legacy of violence of the Civil War and of Franco's regime to live on unaddressed and protected in the new democracy. Subsequently, for the next forty years, this legacy of violence was carried on through ETA terrorism. Over the last century, Spain's institutionalized unaddressed history of violence has left scores of victims, many silenced and forgotten. This paper goes on to establish the inadequacies of the 2007 Historical Memory Law in addressing the needs of Franco's victims, even to go so far as to deny them the legal status of victimhood. Meanwhile, the multiple laws passed by the Spanish Parliament for victims of terrorism recognize this group of victims as more deserving of recognition and of rights. The politicization of victimhood resulted in laws that treat and classify victims' groups differently, creating a cleavage of inequity between them, deepening division and making reconciliation between them more difficult. While seemingly disconnected and unrelated, these differences launch the victims of Francoism "implicitly...into an imagined dialogue with the victims of ETA"^{cviii}.

History cannot be understood in isolation. "When we talk about historical memory our view goes back to 1936 and the start of Francoism. That is where we begin the narrative"^{cxix}. To deny that there is a legacy of violence in Spain is to once again repress the memory of the violence of the Civil War, the Franco regime, and ETA. This denial perpetuates the repression so many victims have experienced. The 2018 disbanding of ETA presents Spain's government and society with a unique opportunity to turn a new page for *all* victims. "Sustainable peace requires ending the cycle of impunity as well as building an inclusive political community and governance framework. At this propitious moment, Basque society and the Spanish state are again on the verge of entering a new peaceful era"^{cx}.

"[A] careful consideration of Spain's history of violence over the last eighty years and the competing analyses of it actually demonstrates that, if unreconciled with its past, new cycles of impunity will ensue. In these cycles, in each new political context, those previously victimized use the past and their analysis of it to argue for their legitimacy as victims while at the same time justifying actions which do violence to others, in turn creating more victims and more deeply entrenched victims' communities. Thus, contrary to conventional thinking, reconciliation in Spain and the Basque country will need to address the fact that victims of *Euskadi Ta Askatasuna* (ETA) violence and victims of state counterterrorism methods have constructed competing historical narratives about their shared legacies of violence. In other words, it will be important for Spain to find ways to fit the objective truths of human rights violations into the more complex and subjective dynamics by which victims are also perpetrators"^{cxii}. In order to

continue to pursue sustainable peaceful relations, there needs to be an understanding of how Spain's recent history and its resulting conflicting victims' narratives about the legacies of violence have shaped the Spain of today. Not just for ETA's victims, but for the victims of Francoism, state terrorism, police abuse, and all mass violence.

The future of Spain relies on the country's ability to remember and honestly address its past. On Sunday, April 28th, 2019, Spain lost its status as the last major European country without a significant far-right presence in its national government. The far-right, anti-feminist, and anti-immigrant Vox party earned 10% of the vote in the national elections and earned twenty-four seats in the Spanish Parliament. Although the PSOE remains in the significant majority, these elections mark a partial return to and embrace of Spain's divisive, fascist past. "The past hasn't lost...it's just been forgotten"^{cxiii}.

In the ninth grade, I read *Night* by professor, political activist, Nobel Laureate, and Holocaust survivor, Elie Wiesel. His book set me on the path to become a Human Rights major, to become passionate about the transitional justice movement, and to conduct this research. Although he primarily writes of his experience as a Holocaust survivor, the lessons we can learn from Elie Wiesel apply to larger contexts and themes of human dignity and peace. I think it is fitting to end my research with an excerpt from Elie Wiesel's Nobel Prize lecture^{cxiiii}:

Of course, we could try to forget the past. Why not? Is it not natural for a human being to repress what causes him pain, what causes him shame? Like the body, memory protects its wounds. When day breaks after a sleepless night, one's ghosts must withdraw; the dead are ordered back to their graves. But for the first time in history, we could not bury our dead. We bear their graves within ourselves.

For us, forgetting was never an option. Remembering is a noble and necessary act. The call of memory, the call to memory, reaches from the very dawn of history...It is incumbent upon us to remember the good we have received, and the evil we have suffered.

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5. ACKNOWLEDGEMENTS

Firstly, this research would not have been possible without the plethora of scholars who have devoted their lives to the topics covered in my paper. I thank them for their dedication to truth and justice.

I would also like to thank the School for International Training and the University of Deusto for such a formative semester abroad. I am thankful to all of the faculty and staff who helped me along the way, especially SIT in Bilbao’s Academic Director, Dr. Victor Tricot, and my Independent Study Project Adviser, Dr. Felipe Gomez Isa. Additionally, my research was greatly strengthened by my interview with Dr. Galo Bilbao. His work with victims

in the Basque Region is inspirational, and I thank him for taking the time to share that with me.

My semester abroad would not have been possible without the support of SMU's Hunt Leadership Scholarship and the Hunt family. This program has believed in me from the very beginning, and for that I am forever grateful. I also want to thank SMU's Embrey Human Rights Program and my academic directors, Dr. Rick Halperin and Dr. Brad Klein. The inspiration for this research stems from my travels with the program across Poland on a Holocaust remembrance trip. I am lucky to be a part of such an incredible, world-changing program and to be surrounded by people who inspire me in my research and advocacy.

Most importantly, I never could have studied abroad without the love and support of my amazing friends and family. Their support and confidence in me gave me the strength to conduct this difficult, yet imperative, research.

This is my challenge to every reader to look into the ways your community can better remember and honor its victims. I would like to dedicate this paper to all those affected by and lost in violent conflict. May we never stop working to build a safer and more inclusive world for all people.

Lest we forget.

6. ENDNOTES

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