Constructing victimhood in post-Franco’s Spain: the recovery of memory by the grandchildren of victims of the Civil War and dictatorship

Estela Valverde*

Since the end of the Spanish Civil War their victims have lived in a state of repression and terror that did not allow them to claim victimhood or any restitution to the State. Furthermore, the post-Franco Amnesty Law in 1977 made a blanket statement about the issue: there were no winners or losers, no victims or perpetrators. Everything had to be forgiven and forgotten.

This paper will analyse the new Spanish movement for exhumation focused on the disappeared during the Civil War and the dictatorship of Franco. The analysis will look into the judicialisation of politics; the reasons why the 2007 Law of Historical Memory that attempted to challenge amnesty has been resisted and whether this law will heal the body of Spanish society and promote social reconstruction. What could be the ultimate danger of contesting collective memory 40 years after Franco’s death in this highly stratified society?

Keywords: Spain, transitional justice, amnesty law, victimhood.

Introduction

This paper will analyse the special characteristics that transitional justice has taken in Spain and the causes of its delay and failures by looking at the different factors that had delayed this process. Transitional justice in Spain is indeed very different from the Balkans or Latin America. It will also analyse the new Spanish movement for exhumation focused on the disappeared during the Civil War and the dictatorship of Franco.

* Dr Estela Valverde is a professor at Macquarie University, School of International Studies, Head of Spanish and Latin American Studies, E-mail: estela.valverde@mq.edu.au
Franco’s dictatorship

The Spanish Civil War (1936-39) was a bloody armed conflict, with huge numbers of human rights infringements on the part of both parties but especially the Nationalists. Franco won the war and established a dictatorship. Since the end of the Spanish Civil War their victims have lived in a state of repression and terror that did not allow them to claim victimhood or any restitution to the State. While the suffering of the pro-Franco (Nationalists) victims were acknowledged and compensated during his government, the Republicans (the Reds, as they were contemptuously named) were repressed and terrorised well after the war was over.¹

After the Civil War both parties seemed to had agreed in the name of peace building, but in reality it was a consensus imposed by Franco through very repressive measures. As Aguilar (2002) exposes in her book Memory and Amnesia. The Role of the Spanish Civil War in the Transition to Democracy, the winners always have the upper hand.

Extra-judicial executions had taken place well after the Civil War was over, making the Republicans very weary of exposing themselves by denouncing human rights abuses.

Democracy does not bring justice

1975 was the year of Franco’s death, ending nearly 40 years of oppressive dictatorship and opening up the possibility of democracy. Juan Carlos I of Spain had been designated by Franco as the next head of state. He took power as head of the new constitutional monarchy and assisted in the restoration of democracy calling for general elections in 1977. This same year the controversial Amnesty Law was passed,² stalling the already overdue transitional justice process and depriving the Republicans again of any kind of re-dress for their suffering during the Civil War and the dictatorship period. The Amnesty Law declared that there were no winners or losers, no victims or perpetrators. Everything had to

¹ Benito Zambrano’s last film – ‘La voz dormida’, based on Dulce Chacón’s famous novel reflects very well the environment of the Civil War and is very telling about the different treatment that both sides got out during the Franco’s regime.

² Amnesty Laws are very common after period of state terrorism. Argentina, Uruguay, Algeria, Kenya have all been subjected to these laws.
be forgiven and forgotten; there was a ‘pact of silence’ or an ‘amnesic ailment’
tainting any memory initiative stemming from the post-traumatic memory of
the Civil War (Aguilar: 2002, xix). This was not an enforced situation but a self and
mutually imposed condition of censorship to promote tolerance and consensus
building as safeguards against a new political polarisation. The Amnesty Law
passed guaranteed that silence was kept and that the process of transitional
justice was delayed even further, perhaps forever.

Democracy brings a rupture in memory politics

The first important public recognition of the Republicans was not until
25 June 2004, nearly 30 years after Franco’s death, through a huge concert
organised in Rivas Vaciamadrid by the first citizens involved in the revival
of historical memory (Santos, 2004). 30,000 people attended the concert
where many luminaries participated. It was the beginning of the construction
of victimhood for the Republicans. Although this was not the only act in
recognition of the Republicans held at that time, it was certainly the one that
made more impact as one week after this concert the Spanish government
approved the creation of a Commission for the study of the victims of the Civil
War and the dictatorship.

Emilio Silva, President of one of the first NGOs dedicated to bring
justice to the victims of the Spanish Civil War through the Asociación para
la Recuperación de la Memoria Histórica (Association for the Recovery of the
Historical Memory) recounted a very telling story. Describing that concert, he
explained that they had especially set up 500 chairs in the front rows that
were reserved for the few Republicans war veterans that were still alive. The
Republicans came to the concert but none of them occupied those chairs,
fearing a possible ambush or a plot by the Nationalists to finally eliminate
them. This was the extent of the fear Franco had instilled in the opposition
(Valverde, Humphrey, 2005).

Thus the ARMH had initiated a rupture in Spanish memory politics. The
families of the victims, that for a long time had suffered an aborted grief
process, were instrumental in the creation this association. They could never
have closure because the bodies of their family members had never been
found or even acknowledged. ‘The presence of the body in the grieving
process is essential. Habeas corpus fosters not only legal recourse, but closure
as well’ (Agosin, 2000). Hence, the exhumation of Emilio Silva’s grandfather represented the transition from invoking the dead to materialising them physically. When interviewing Silva in 2005, his grandfather’s bones had recently been found. The remains were located easily because within the town that his grandfather had been killed, everyone knew who was executed and where. After the war was over the Republicans were raided in many towns by the Franco troops and taken for ‘a walk,’ never to return home again. They were executed and buried in common graves very close to their own towns. A code of silence prevailed for some 70 years. State terrorism had been the most powerful tool to keep the state crime secrets (Valverde, Humphrey, 2005) and to ensure victims remained silent.

Silva, with the assistance of the Sociedad de Ciencias Aranzadi forensic team, launched a national campaign for human rights claims and disinterment. The second destape (‘uncapping’) had just commenced. The first came very soon after Franco’s death, best represented by Almodóvar filmmaking portraying a society in total transition and upheaval, doing all the things they dreamt about but could not even fantasise of making a reality for so many years. Through the first destape the Spanish people were re-claiming their religious and sexual rights after decades of repression by the government in tandem with the Catholic Church, Franco’s quiet partner. While this moral liberation movement took place almost immediately after the fall of the dictatorship, the human rights destape around ‘the disappeared’ and all the unspoken tragedies of the Civil War and the dictatorship took three more decades to be revealed. As mentioned earlier nobody dared to explore any issues publicly until 2001. By 2005 the Spanish cauldron was simmering, exploding in every corner of the country.

Making memory a right: The Law of Historical Memory

On 14 December 2006 the families and the many associations now representing the victims of the Civil War and Franquismo appealed to the High Court seeking an investigation into the fate of their disappeared relatives. They demanded exhumation, identification and the initiation of judicial procedures. The petition was assigned to Tribunal Number 5 of the National Audience, which examines the most important criminal cases, including organised crime, terrorism and money laundering. The famous
Judge Baltazar Garzón was the Examining Magistrate. Judge Garzón has a well-founded reputation. In 1998 when General Augusto Pinochet, former dictator of Chile, visited London, Garzón issued an international warrant for his arrest, with the intention of indicting him for the human rights atrocities he committed in Chile. Pinochet was detained for 18 months in London while the extradition request was considered. Margaret Thatcher came to his rescue and returned him to Chile before he could be extradited, but this potential indictment made Garzón more visible than ever as Pinochet had eluded any form of justice for so many years. Garzón had also been very active in the defence of Spanish human rights victims from the Argentinean and Chilean military dictatorships, prosecuting some of the perpetrators in Spain when processes were forbidden in their countries of origin due to the amnesty laws that prevailed in those countries. In both instances he used the principle of ‘universal jurisdiction’ that holds that human rights crimes like torture or terrorism can be tried in Spain even if the accused had no link to the country. ‘One has to judge the crimes where they have been committed; but if that is not possible, then the universal jurisdiction should apply through the justice of other countries’ (Garzón, Romero, 2008).

Judge Garzón then became the main actor in identifying human rights infringements during the Franco years. He also played a key role in 2002 suspending the left-wing party Batasuna for helping the Basque separatist terrorist group ETA. In 2003 he requested the arrest of 35 terrorists, Osama Bin Laden included, accused of aiding the September 11 hijackers. ‘In 2005, 24 of them were put on trial in Europe’s biggest trial of alleged al-Qaeda operatives’ and 18 of them were found guilty and sentenced to long prison terms (BBC World News, 2010).

Garzón had made the decision that the Amnesty Law does not impede the Spanish Government to investigate the grave infringements to human rights committed during the dictatorship. This was extremely unexpected by the government: they had anticipated the court would find the challenge to the Amnesty Law illegal, thus closing the demands to investigate the past. This finding was followed in 2007 by the passing of the Law of Historical Memory (Law 52/2007) approved after one full year of negotiations. This was the most serious attempt to challenge the 1977 Amnesty Law, 30 years after it was passed. The Law of Historical Memory establishes mechanisms to compensate victims of persecution or violence during the Civil War and fosters remembrance and disinterment of the 30,000 disappeared during the
Civil War and Franco’s dictatorship. This was possible because the Amnesty Law does not exclude the access to justice through courts and tribunals. On 16 October 2008 Judge Garzón made these findings regarding the Amnesty Law:

- There had never been an investigation on these crimes that effected the Republicans but the Franquistas had investigated, located and compensated every member of the winning party.
- Between 17 July 1936 and 31 December 1951 there had been systematic persecution, incarceration and mass murders of political opponents: war crimes and crimes against humanity.

Taking these finding into consideration Judge Garzón determined that the Amnesty Law could not be applied. This resolution was based on regulations from the Inter-American Court of Human Rights, the European Tribunal of Human Rights and the jurisprudence of the Spanish Supreme Court that recommends the use of international law in the resolution of crimes against humanity. Garzón then ordered to continue with the investigations of an estimated 114,266 victims; the exhumation of the bodies buried in common graves and the establishment of organisations to coordinate and facilitate the investigation of these crimes.

Victimization of Judge Garzón

On 20 October 2008 the Spanish National Audience accused Judge Garzón of ‘prevarication’ (unjust judgement). This is a very controversial accusation as judges must be independent ie. beyond censorship. The Penal Court of the National Audience annulled Judge Garzón’s decision arguing that he did not have the power to rule over the Franquismo period – those were ‘crimes of rebellion’ in which the National Audience has no competence. This verdict infringes the right of judicial independence and the judges’ function to guarantee responsibility against systematic and generalised crimes.

Judge Garzón appealed immediately to the European court for human rights arguing that their accusation violated several obligations of the European Convention on human rights. On 14 May 2010 Judge Garzón was suspended by the Spanish Supreme Court while the case was heard. Ironically he was immediately appointed by the European Committee for the
Prevention of Torture in The Hague, elected over two other candidates by the 47 members of that council.

Memory and victimhood

The Law of Historical Memory provides the tool to legally challenge any remnant of amnesty, making it a very controversial law as many Spaniards still question whether it would help heal the body of the Spanish society and promote social reconstruction or it would have the opposite effect of dividing once again a society that had never been able to achieve a true national identity. Will this process be transformative or not? Why has it been so resisted?

In those post-dictatorship regimes where amnesty laws have delayed the transitional justice process a division often emerges between the victims (and/or families of victims) who continue to seek justice and the wider public of non-victims who prefer to forget. Law seems not to be the essential ingredient to construct victimhood in a society whose rights have been quenched by the legacy of an *habitus* of repression built over 70 years. It has been very difficult for Spaniards to think outside the framework of the ‘pact of silence’ or the ‘amnesic ailment’ that prevailed for so many decades after the Civil War. In Spain there is a very strong memory of an extremely stratified society of the past and the possibility of reconstructing the antagonistic ideologies brings fear to those who had experienced that fatal division. The Spanish Civil War was the confrontation of two very strong ideologies. It is understandable that many Spaniards fear the possibility of going back to the past, recreating similar problems.

The conditionality of victimhood is also shaped by the changing political context through the judicialisation of politics. The non-victims cannot understand the need of the victims to find the remnants of their disappeared family members after so many years. The non-victims think that the victims are simply disinterring the past, bringing the divisions and hatred back into the folds of society, not understanding their needs to find closure through the presence of the remains of their loved ones.

We have to remember here that the victim is a political construct embodying two essential attributes: rights and trauma. Contemporary legitimacy of trauma has made possible ‘the politics of reparation, of testimony, and of proof’ (Fassin, Rechtman: 2009: 39) which are the basis of
eligibility for recognition and compensation. What could be the ultimate
danger of contesting collective memory 40 years after Franco’s death in
this highly stratified society and constructing a militant victimhood that
challenges the *habitus* of repression embedded in this society? There are
several problems in the construction of victimhood in Spain.

**The postmemory problem of the present victims**

One of the points that makes Spain different from other post-dictatorship
cases is that most of today’s victims do not have a direct memory, but what
is now designated as a ‘postmemory’, a condition identified as ‘having one’s
own biography conditioned by the loss of people, places, or cultures that
one cannot personally recall’ (Renshaw, 2011: 33). They do not have direct
knowledge of these events, but like the children and grandchildren of the
Holocaust victims, they pick up the sadness and trauma of their families by
nuances and feelings expressed unconsciously. Many of them end up in
psychological treatment and only then discover the hidden causes of their
trans-generational grief.

The actors who demand memory and justice nowadays in Spain are not
the direct victims, they are the grandchildren of the victims, who were denied
the truth since they were born and who are rapidly catching up with their own
family history. They never experienced the violence of the state directly nor
do they have even a vicarious remembrance of the past, as their grandparents
deliberately hid away the truth in the name of peace. This aspect has been
amply documented in last decades and is explicitly exposed in documentary
films such as Peñafuerte’s *Los caminos de la memoria* (2009) where many
grandparents and children are interviewed about their recollections and
secrets of the Civil War, trying to reconstruct the map of the disappeared
buried in hundreds of common graves across Spain.

The Law of Historical Memory and the exhumations opened up
new discursive spaces to create different representations of the past by
grandchildren who barely knew the history of their ancestors. It also opened
up a general question mark on all the unsolved human rights issues pending
in the Spanish repressed memory.
Victims as revolutionaries

The Law of Historical memory has also brought about other revelations of even more shocking secret dealings during Franco’s dictatorship. It stirred up a wave of revisionism in the entire Spanish society in which the victims reconstruct themselves based in the new knowledge they are now able to acquire. In the context of democratisation, victims become the legal and moral focus for searching truth, justice and healing and often mobilise as a social movement seeking to achieve rights and recognition for other victims. Hence victims can also become dangerous as they have the potential to revolt society.

One of the poignant developments in the last year was the enquiry into disappeared babies in adoption rackets conducted with the help of the Catholic Church during the dictatorship. The news made headlines everywhere: Spanish society has been shaken by allegations of the theft and trafficking of approximately 300,000 babies by nuns, priests and doctors, which started under Franco and continued up to the 1990s.

The Franco regime had an irrational prejudice that there was ‘a Marxist gene’ that had to be eradicated, hence, any baby born from a Republican woman in a Catholic hospital would pose a risk, so the nuns would try to kidnap the child for adoption and tell the mother that the baby was dead. For that purpose some hospitals kept a frozen baby that they would show the mother to convince her that her baby was dead. They would then pretend to inter the baby in the grounds of the same hospital to cover up the story. These babies would then be sold for approximately 5,000$ all over the world. Only now has this truth come to light to the horror of the international community. These people who were adopted out as babies are now appearing from all over the world, part of the repressive machine of the Franco’s dictatorship that is finally leaping out into the public eye. Hundreds of affected parents are now battling to obtain an official investigation into these kidnappings (Dunbar, 2011; Radio BBC, 2011).

What does the future hold?

Ironically, despite of the trials held against Judge Garzón, in May 2011 he was declared the Winner of the first ALBA (Abraham Lincoln Brigade Archives), a new prize given to people who participated in the brigades in Spain, and Puffin Prize for Human Rights because, as they declared: ’Judge Garzón is one
of the most innovative and inspiring thinkers in the field of International Law and human rights’. It was expected that this finding would have effected the decision of the Supreme Court favourably, but it had no consequence with the idiosyncrasy of the Spanish bench.

On 16 February 2012 the Spanish Supreme Court disbarred Judge Baltazar Garzón for 11 years for illegally recording defense lawyers’ conversations with clients, an unjust and political finding that has effectively ended his legal career in Spain as there is no judicial possibility of appeal against this finding. He is presently fighting against the decision but the consequence of his dismissal is very detrimental to the future of the transitional justice process in Spain. The prospects of him being pardoned and reinstated as a Judge in Spain are grim given the results of the last government elections where a right wing majority won the polls. The idea that Garzón used to be a left wing Senator in the Spanish Government raises serious political questions regarding the objectiveness of its Supreme Court judgement. Furthermore, the Fundación Nacional Fco. Franco (Fco. Franco National Foundation) recently granted a prize to the ultra-right wing association Manos Limpias (Clean Hands) for their role in accusing Judge Garzón of working against democracy by finding that the Amnesty Law could be legally challenged.

However, Garzón was cleared by the Supreme Court of the main accusation: overstepping his authority by opening an investigation into the 100,000 disappeared victims during the Franco era. The argument he won on was that these were crimes against humanity and should not be subject to the 1977 Amnesty Laws. The perpetrators can now potentially be trialed.

The question now remains on whether this finding will inflame or quench the claims of the postmemory victims. Will this new right wing government manage to bring the Amnesty Laws to an end?

Conclusion

What is perhaps the most important aspect of the Spanish case is that the victim has acquired a prominent role and has learnt the mechanisms to gain access to the truth and to keep transitional justice moving forwards. Civil society has become instrumental in facilitating the process together with other important tools: the media, social media, internet and blogs have all become powerful instruments to gain access to justice. That is truly positive
and empowering, sometimes far more transformative than legal processes that leave societies depleted of energy and meaningful outcomes and can become quite destructive.

The example of the *Madres de la Plaza de Mayo* (Mothers of Plaza de Mayo) in Buenos Aires, who never sought compensation but instead created a series of institutions targeting the transformation of future generations, such as the University for the Future, demonstrates the potential of a different focus. Here, the youth becomes pivotal to the transformation of society. Let’s reflect on that possibility in the name of future generations and make public the injustices that still affect peoples of the world.

Judge Garzón has now become the newest victim of the Franco regime and as such has too become a revolutionary. He has presently called for the 500,000 necessary signatures needed from the Spanish citizenship to request the Congress to create a Truth Commission in Spain. He is demanding to ‘pull down the wall of silence’ and allow victims ‘to be heard and have justice, even if justice is as modest as recognising an injustice made to them’\(^3\). His battle is not over yet. The international legal community will no doubt will support him.

If a Spanish Truth Commission gets finally off the ground memory politics will demonstrate to be the most powerful instrument to achieve justice for the victims.

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Estela Valverde


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Konstruisanje žrtve u post-Frankovoj Španiji: obnovljeno sećanje unuka žrtava građanskog rata i diktature

Od kraja španskog građanskog rata, njegove žrtve živele su u stanju represije i terora koji im nije dozvoljavao da se predstave kao žrtve niti da traže restituciju od države. Osim toga, Zakon o amnestiji donet 1977. nakon završetka vladavine Franka jasno se postavio u vezi ovog pitanja: nije bilo pobednika ni gubitnika, žrtava, a ni počinilaca. Sve je moralo biti oprošteno i zaboravljeno.

U ovom radu analizira se novi španski pokret za ekshumaciju koji je fokusiran na nestale tokom građanskog rata i Frankove diktature. Analiza će razmotriti judikalizaciju politike, razloge zašto se Zakon o istorijskom pamćenju iz 2007. godine koji je pokušao da ospori amnestiju sreo sa velikim otporom, kao i da li će ovaj zakon zalečiti špansko društvo i promovisati socijalnu rekonstrukciju. Šta bi mogla biti najveća opasnost osporavanja kolektivnog sećanja 40 godina posle Frankove smrti u ovom visoko stratifikovanom društvu?

Ključne reči: Španija, tranziciona pravda, zakon o amnestiji, žrtve.