

BETWEEN SILENCES AND REPARATIONS: COMPARATIVE ANALYSIS OF DICTATORIAL LEGACIES AND TRANSITIONAL JUSTICE PROCESSES IN BRAZIL AND SPAIN



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ABSTRACT

In this article, we propose a comparative analysis of the Transitional Justice processes in Brazil and Spain after their respective traumatic experiences. Both countries sought reconciliation, avoiding direct confrontation, which, to a certain extent, compromised the policies of memory and justice for the victims of the Brazilian Military Dictatorship and Spanish Francoism. Our objective is to examine the pertinent legislation, focusing on the Amnesty Law (Law No. 6,683/1979) in Brazil and the law that provides for the Spanish amnesty (Law No. 46, of 1977), among others. We intend, therefore, to highlight the paths chosen by these two countries within the models of Transitional Justice and their impacts on memory policies. In addition, we will investigate how these choices may have contributed to the strengthening of denialist and revisionist theories, which have supported the advance of conservative and reactionary groups both in Spain and in Brazil. It is essential to emphasize that one of the essential steps of the legislative analysis methodology is the thorough reading and interpretation of the legal text. In this process, it is crucial to consider the historical, social, and political context in which each law was enacted, as well as its relationship to other legal norms and constitutional principles. This approach will allow for a deeper and more nuanced understanding of the Transitional Justice processes in both countries.

Keywords: Transitional Justice. Spain. Brazil. Francoism. Military Dictatorship.

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INTRODUCTION

In this article, we propose a comparative analysis of Transitional Justice processes in Brazil and Spain, countries that have faced traumatic authoritarian periods in their recent histories. Both nations, when emerging from dictatorial regimes, opted for paths of reconciliation that prioritized political stability to the detriment of a more direct reckoning with the past. This approach, while facilitating peaceful transitions, had significant consequences for the politics of memory and justice, particularly for the victims of the Brazilian Military Dictatorship (1964-1985) and Spanish Francoism (1939-1975).

Our main objective is to examine the legislation that underpinned these transitional processes, with special attention to the Amnesty Law (Law No. 6,683/1979) in Brazil and the law that established the Spanish amnesty (Law No. 46, of 1977). In addition to these essential laws, our analysis will extend to other relevant norms, such as the Law of the Disappeared (Law No. 9,140/1995) in Brazil and the Law of Historical Memory (Law 52/2007) in Spain. This legislative examination will allow us to outline the Transitional Justice models adopted by each country and assess their long-term impacts on memory and reparation policies.

A crucial aspect of our inquiry will be the analysis of how the choices made during these periods of transition may have inadvertently contributed to the strengthening of denialist and revisionist narratives. These narratives, which often distort or minimize the atrocities committed during authoritarian regimes, have served as the ideological basis for the advancement of conservative and reactionary groups in both Spain and Brazil. We will examine how the lack of a more direct confrontation with the past may have created fertile ground for the propagation of these ideas, which challenge the fundamental principles of transitional justice and democratic consolidation.

Our legislative analysis methodology will be rigorous and multifaceted. We will begin with a thorough reading and detailed interpretation of the legal texts, considering not only their literal content but also their broader implications. This process requires a historical, social, and political contextualization, recognizing that laws are not created in a vacuum, but are products of specific circumstances and complex political negotiations.

In addition, our analysis will take into account the relationship of these laws with other legal norms and constitutional principles of each country. This is particularly important in the context of transitional justice, where there are often tensions between the goals of national reconciliation and the imperatives of justice and accountability. We will examine

how these laws align with or conflict with international human rights obligations and the fundamental principles of the rule of law.

Finally, the article will extend beyond purely legal analysis to examine the social and cultural impacts of these transitional policies. We point out how legal and political decisions made during these critical periods shaped collective memory, influenced public discourse about the authoritarian past, and affected the construction of national identity in both countries.

Through this multidimensional analysis, we hope to contribute to a deeper and more nuanced discussion of the complex processes of Transitional Justice in Brazil and Spain. Our ultimate goal is to not only shine a light on the past, but also to provide contributions to the ongoing challenges that both societies face in consolidating their democracies.

For a comprehensive understanding of the processes of Transitional Justice, it is imperative that we begin our analysis with an examination of the historical, political, social and economic factors that culminated in the establishment of dictatorial regimes in both countries.

Francisco Franco's dictatorship, one of the longest of the twentieth century, was consolidated from the rubble of the Spanish Civil War (1936-1939), triggered by a failed coup d'état in 1936 against the Spanish democracy of the time, under the aegis of the Second Spanish Republic. This failure turned into a 33-month war conflict, the outcome of which was the establishment of a dictatorial government that lasted until Franco's death in 1975. The period was characterized by intense nationalism of a fascist and authoritarian nature, according to the mutations that the dictatorship promoted in its regime, even to meet external demands for its "legitimacy", in a context of cold war, in alignment with various sectors of the Catholic Church and its hierarchy, with intense repression of any form of dissent, materialized by censorship and the suppression of cultural and regional movements, especially those related to Basque and Catalan cultures, as well as serious systematic violations of human rights.

The dimensions of the atrocities of Francoism are extremely complex and of gigantic figures to the point that Paulo Preston (2013, p. 17) calls them as a whole the "Spanish holocaust" by quantitative and qualitative analyses, already in the course of the Spanish Civil War, between the years 1936 and 1939, the author points out:

During the Spanish Civil War, about 200,000 men and women were killed in front of the front, ejected extrajudicially or in the precarious legal process. Murieron the root of the military coup against the Second Republic on July 17 and 18, 1936. For this

same reason, at least 300,000 men lost their lives on the battle fronts. An unknown number of men, women and children were victims of the bombings and the exodus that followed the occupation of the territory by Franco's military forces. In the set of Spain, after the definitive victory of the rebels at the end of March 1939, 20,000 republicans were ejected. Many more children and illnesses in prisons and concentration camps where they are trained in infra-human conditions. Otros succumb to the slave conditions of the batallones de tra-bajo. More than a million refugees do not leave the most in exile, and many perished in the French internment camps. Several miles ended up in the Nazi extermination camps. All of this constitutes what my justice can do is the "Spanish holocaust".³

It is also important to note that a substantial number of deaths was never possible to be counted in any way, such as those who fled the threats of Franco's African columns as cities and towns were occupied by such military units, which constantly murdered refugees from other areas of Spain, whose origin of birth and even their names were known. It is likely that the exact number of open field murders by Phalangists and Carlists will never be known. Likewise, it is impossible to determine the whereabouts, after the fall of Malaga in 1937, of thousands of refugees; the same can be said about the refugees in Barcelona, coming from various Spanish regions, who died fleeing to France in 1939 or even those who committed suicide after waiting in vain in Mediterranean ports, losing hope of being evacuated (Cf. Preston, 2013, p. 23).

After the end of the civil war, a context of a Spain in ruins, both economically and in its infrastructure, the Francoist dictatorship was configured:

Con el establecimiento total del régimen, se perguió y repressó a los losadores. Thus, some 130,000 people ejected or watched since the end of the Civil War until 1950, missing people and their corpses were buried in nearby communes (Cotarelo 2011). Other established data that were more than 100,000 fusilados, which are waiting in the fields and cunetas of the territory, convirtiendo España en el segundo país del mundo en desaparecidas forzadas (Lizundia 2015). Las limpias en el seno de la sociedad y de las personas con ideologías contrarias se pusieron a la orden del día. The fight against communism and its possible sympathies was open, defending militarism and the nation, as well as traditionalism and the Catholic religion as true faith (Delgado 2020). Thus, between the totalitarian military government and the Iglesia, domination was imposed as a method of control and as a weapon to defend its interests throughout the 36 years that remain (Delgado 2020).

³ "During the Spanish Civil War, nearly 200,000 men and women were murdered far from the front, executed extrajudicially or after precarious legal processes. They died as a result of the military coup against the Second Republic, on July 17 and 18, 1936. For the same reason, at least 300,000 men lost their lives on the frontlines. An unknown number of men, women and children were victims of the bombings and exodus that followed the occupation of the territory by Franco's military forces. In Spain as a whole, after the definitive victory of the rebels at the end of March 1939, about 20,000 republicans were executed. Many more died of starvation and disease in overcrowded prisons and concentration camps where they were in inhumane conditions. Others succumbed to the conditions analogous to slavery of the labor battalions. More than half a million refugees had no choice but to go into exile and many died in French internment camps. Several thousand ended up in Nazi death camps. All of this constitutes what in my opinion can be called the 'Spanish holocaust'

With all the power centralized in the new dictatorial government, it is based on normative precepts such as the Law of Political Responsibilities, the Law of Represión de la Masonería y el Communism o la Ley de Bandidaje y Terrorismo, and used the prisons, torture, forced labor, disappearances, purges and clandestine asinatos as *modus operandi*. Dejó la condición ciudadana enteca, y no suponía la existencia de una persona titular de derechos y libertades anteriores al Estado (Cotarelo 2011). The opposition was not only physical, political, cultural or moral, but also led to mental and psychological attacks, which had horrible existence for the very existence of the people⁴. (Garcia-Petit Monserrat, 2022, p. 124)

The beginning of the 1960s in Brazil was marked by intense political turmoil, a reflection of both internal tensions and the international context of the Cold War. The presidential election of 1960 brought these contradictions to the fore, with the victory of Jânio Quadros, supported by the National Democratic Union (UDN), and the election of João Goulart, by the Brazilian Labor Party (PTB), as vice-president, representing an opposing political current. At that time, we observed a growth in anti-communist discourses and the attempt to link Vice President João Goulart to communism.

The brief government of Jânio Quadros, characterized by a peculiar style and controversial decisions, culminated in his resignation in August 1961, after only seven months in power. His style of government generated a succession of crises, including with the UDN itself. "Jânio imagined that he could govern the country as he did with the state of São Paulo, that is, without party commitment. His distancing from the UDN [...] was detected and Carlos Lacerda began to escalate scandalous accusations" (Gorender, 1987, p. 19). His hasty departure paved the way for an even deeper political crisis, with the imminent inauguration of João Goulart.

⁴"With the full establishment of the regime, the losers were persecuted and repressed. Thus, about 130,000 people executed or murdered from the end of the Civil War until 1950 were documented, people who disappeared and whose bodies were buried in mass graves (Cotarelo 2011). Other data establish that more than 100,000 people were shot, waiting in the fields and ditches of the territory, making Spain the second country in the world in forced disappearances (Lizundia 2015).

"Cleansing within society and among people with opposing ideologies has imposed itself as the order of the day. The fight against communism and its possible sympathies was open, defending militarism and the nation, as well as traditionalism and the Catholic religion as the true faith (Delgado 2020). Thus, between the totalitarian military government and the Church, domination imposed itself as a method of control and as a weapon to defend its interests throughout the 36 years in which it was maintained" (Delgado 2020).

"With all power centralized in the new dictatorial government, it was based on normative precepts such as the Law of Political Responsibilities, the Law of Repression of Freemasonry and Communism or the Law of Banditry and Terrorism, and used imprisonment, torture, forced labor, disappearances, purges and clandestine murders as a *modus operandi*. He left the weakened condition of citizen, and did not suppose the existence of a person who held rights and freedoms prior to the State (Cotarelo 2011). The oppression was not only physical, political, cultural, or moral, but also entailed mental and psychological attacks, which made even people's very existence horrible."

Goulart assumed the presidency amid strong opposition and under the constant shadow of coup threats. The growing anti-communist discourse, fueled by the context of the Cold War and events such as the Cuban Revolution, was used to undermine his authority and question his ideological loyalty.

As the Goulart government advanced with proposals for social reforms, political polarization intensified. Events such as the Rally for Basic Reforms and the Sergeants' Revolt in March 1964 served as catalysts for the military intervention that would follow.

The Civil-Military Coup of 1964, analyzed by scholars such as Dreifuss (1981) and Bandeira (2010), can be understood as an articulated reaction of conservative sectors of society against what they perceived as excessive advances by the popular strata. This interpretation reinforces the idea of a "class coup", where economic and social interests played a crucial role.

Also in this sense, Cunha (2014) states that:

Regarding the motivations that led to 1964, it is certain that the urban civilian elites identified in the coup and the dictatorship the way to implement a new economic regime that favored national capital associated with the multinational. In the countryside, the landlords saw the coup and the dictatorship as the solution to avoid agrarian reform and the extension of labor rights to rural areas. In the city and in the countryside, the civilian elites understood that it was necessary to repress, discipline, subjugate and make workers more productive, in order to enable a greater accumulation of wealth, as well as to maintain existing privileges." (p. 60).

The author goes on to state that there was great collaboration between companies and public agents in order to repress popular demonstrations in a preventive and reactive way, seeking to prevent "(...) union membership, participation in assemblies, the organization of opposition slates to run in elections for the board of directors of the unions (...) making it difficult for progressive sectors to articulate and resume the unions." (Cunha, 2014, p. 63).

Carneiro and Cioccarri (2011) point out that the violence in the post-1964 period indicated this situation, of a "class coup":

A political repression that reveals a two-sided violence, one directly commanded by the State, by the action of the police forces and the Army, and the other, private, expressed by the action of militias and gunmen at the behest of landowners. An imbrication that accentuates the singularity of political repression in the countryside, and that leaves no doubt that the resistance of the peasants, in their struggle for land and rights, carried within itself all the energy of the struggle for the democratic transformations of the countryside and the country. (p. 14).

Thus, it is undeniable that the fall of President João Goulart represented a hard blow to the workers and, in fact, had a class clash character, making it possible to unite – before and after 1964 – industrialists, bankers, landowners, the media and the military, to reverse the social advances achieved by the popular classes.

The overthrow of João Goulart by the military represented the interruption of this process of rising mobilization of the Brazilian working class. The elaboration of a new labor policy initiated by the Castelo Branco government (1964-1967), applied together with the repressive measures, as well as the interventions in the unions, made possible a true employers' revenge. The alliance between businessmen and the police has become even more solid and widespread. A climate of fear and persecution would come to dominate the interior of companies. In the countryside, an as-yet-uncalculated number of rural workers were driven from their lands and many were killed. An anti-labor economic policy prohibited strikes, compressed wages, ended job stability, facilitating layoffs and labor turnover. The deliberate weakening of unions greatly facilitated the overexploitation of workers, one of the hallmarks of the authoritarian regime, increasing the number of accidents and deaths in the workplace. (Negro, 2014: 5).

In the post-1964 period, the organization and struggle of the workers became, at least legally, practically impossible. In July 1964, the right to strike was regulated by Law 4,330, which significantly hindered the possibility of strikes, prohibiting public employees and essential service workers from any strike demonstration. The number of strikes, which had been growing until 1963, decreased abruptly after April 1964. In the countryside, the organization around the Peasant Leagues or the Rural Unions also suffered a severe blow with the military intervention.

The violence against the workers began in the first hours of the coup movement, always with the aim of containing and controlling the workers. Cunha (2014) indicates that, in 1964 alone, 409 unions and 43 federations suffered intervention by the Ministry of Labor.

The military regime that was installed ruled Brazil for 21 years, left a legacy of serious human rights violations. In addition to the repression of social movements, the workers' and peasants' movement, we have seen a series of arbitrary arrests, torture, murders and forced disappearances. The lack of proper accountability for the perpetrators of these crimes remains an open wound in society.

The full recognition of the atrocities committed, both in Brazil and in Spain, and the search for justice for the victims and their families remain crucial challenges for the democratic consolidation of these countries. Memory of this period and understanding of its complexities are essential to prevent the repetition of such violations and to strengthen democratic institutions.

SILENCE AND COLLECTIVE MEMORY: TRANSITIONAL JUSTICE MODELS

The legal precedents of transitional justice can be found in the Nuremberg Tribunal (from November 20, 1945 to October 1, 1946), held by the Allied forces after World War II to try the crimes against humanity committed by prominent members of the political, military, and economic leadership of Nazi Germany. Also in Europe, Transitional Justice was used in the transition from several dictatorial to democratic regimes, such as in Portugal and Spain. From a more regional perspective, this approach can be related to the transition to democracy in Latin America.

Transitional Justice is a system designed to analyze, judge, and address human rights violations that occurred in contexts of wars, dictatorial and authoritarian regimes. Its goal is not only restricted to holding perpetrators accountable, but also includes restoring the dignity of victims, promoting social reconciliation, and building a strong foundation for a democratic and just society.

However, one of the main challenges of these models is to decide the path to be followed, which must seek reconciliation without leading to impunity, in addition to holding human rights violators accountable without compromising the transition itself. Therefore, it is essential to analyze how the crimes and abuses committed during dictatorships were treated (or ignored) after the transition to democracy, both in Spain and in Brazil, examining the impact of these omissions on the construction of collective memory and national identity.

The issue of transitional justice is also central because, when new democratic regimes try to create or restore a democratic political culture, they face the dilemma of adapting to some constraints, for stability, or pursuing legal and moral principles. From a legal point of view, the principle of equality before the law makes impunity for human rights violations and crimes against humanity unacceptable, and politically punishment seems important to promote a democratic culture. But it is also the case that "total" justice and lustration for all human rights violations is an ideal and a practical impossibility, and this is a qualitative loss for a process of democratization. (Brito, 2013, p. 323.)

In 1975, with the death of Franco, a transition process led by King Juan Carlos began and intensified with the ascension of Adolfo Suárez as prime minister. In general terms, "[...] the Suárez government set itself three main tasks: the construction of a social pact to resolve the critical economic situation, the drafting of a political constitution and the solution of the problem of nationalities." (Suárez-Iniguez, 2011, p. 171)

The achievement of Suárez's first objective occurred with the "Moncloa Pacts", agreements of a socioeconomic nature, to face the economic crisis and the creation of an

environment of social stability for the transactional process, between the government, opposition parties, union segments and employers. "The Moncloa Pacts," Carrillo said, "laid the foundations of the rule of law and democracy, as they meant the abolition of previous fascist laws and the strengthening of workers' rights." (Suárez-Iniguez, 2011, p. 171)

The second task of the government of Adolfo Suárez was to draft a new democratic Constitution and closely associated with this task was its third objective, that of equating the question of nationalities:

To this end, a Commission was set up composed of one member from each party: UCD, PCE, PSOE, AP and one from the Catalan minority. As expected, the division between right and left was evident, but each party knew how to give in in exchange for something to have a democratic Constitution. Thus, the left accepted the parliamentary monarchy as a form of government without having to submit to a referendum and the right accepted that the state was responsible for economic management. The difficult point of the negotiation was related to the government's third objective: the problem of nationalities. There were conflicting positions between nationalists and regionalists, aggravated by the exclusion of Basque representation in the Commission that prepared the draft Constitution. This led to abstentions and votes against the Constitution by the Basques (some members of the PA also did so). In total, the Constitution was approved in the referendum of December 6, 1978 with an overwhelming majority of votes in favor: 87%. In this way, the Spaniards gave a clear signal of their commitment to democracy. The problem of nationalities implied the revision of the Statutes, especially those of the Basque Country and Catalonia, which existed before the civil war and had two objectives: to satisfy the "complex nationalisms" of the Basque and Catalan communities, supported by large sectors of their communities, and the intention of overcoming the centralism of Spanish political life that had existed since the eighteenth century. which would later be expressed in the respective Organic Law (LOAPA) accepted by the two major parties that already dominated political life: UCD and PSOE. (Suárez-Iniguez, 2011, p. 171, 172)

The Spanish transition, although aimed at reconciliation, avoided direct confrontation with the authoritarian past, as observed in the Amnesty Law of 1977 and the Constitution of Spain of 1978. Although essential for political stabilization, these measures faced criticism for the lack of attention to historical memory and justice for the victims of Francoism.

As a rule, the Spanish transition is understood as an "exemplary" model, a narrative that obscures the deep tensions and contradictions of the context in which the Franco dictatorship is succeeded by the restoration of the parliamentary monarchy and the Bourbon dynasty, with the coronation of King Juan Carlos, the democratic election of a new government and the promulgation of a new democratic Constitution in 1978.

Currently, thinking about the asymmetries that marked this conjuncture is something that is related to the way amnesty was negotiated (in the context of the transition), as well as to the reflection on how democratic Spain would deal with its demands

for justice in the face of the crimes committed in almost four decades of dictatorship. The law that provides for the Spanish amnesty (Law n° 46, of 1977), as occurred in the Brazilian case, did not meet the expectations of parts of the opposition to the dictatorship. It was voted in a political scenario marked by the death of the dictator and the weakening of sectors linked to the authoritarian regime. This did not mean, however, that the Francoists were defeated by the democratic opposition in the dispute over the terms of the amnesty. As a result of a non-existent ability to determine the course of the transition and even the content of the law that would be voted on by Parliament, portions of the left and the opposition to Francoism saw an amnesty approved that fell short of their expectations in the name of continuing the transitional process (AGUILAR; PAYNE, 2018, p. 25). (Gallo, 2022, p. 11)

Regarding the difficulties or even the unfeasibility of a "retroactive justice" in Spain, the prioritization of the so-called "national reconciliation" occupied the transition agenda in such a way that:

To the extent that Spanish "national reconciliation" was a priority, the possibility of a retroactive measure of justice was not raised. On the other hand, fear also inhibited the protagonists of the moment from proposing institutional reforms necessary for a better functioning of the democratic system (AGUILAR, 2001, p. 341). Also according to the same author, unlike several Latin American countries, in Spain the military did not feel the need to surround themselves with protection in the face of possible attempts to punish past crimes, after all, a long period had already elapsed since the atrocities committed during the civil war, so that Human Rights were no longer a problem (2001, p. 341). Precisely in this context, it can be said that the debates on the Amnesty Law in Spain were shaped by the memory of the civil war. (Porto, 2012, p. 101)

The reformist and extremely cautious character with the structures of the Franco dictatorial regime in the period of Spain's transition to democracy is described as follows by António Costa Pinto:

The change of regime took the direction of a transition by reform that had the introduction of a consensual democracy as the ultimate goal. As such, it was a break with the past, but a break in which each step had to be a reform characterized by respect for the authoritarian system, in terms of structure, institutions and legal framework. (2013, p. 37-38)

With the process of redemocratization in Spain concluded, access to the Judiciary by Spanish society to confront the past has been presented as an unsuccessful alternative, due to the barrier of the Spanish amnesty law.

There was, of course, the beginning of actions seeking the realization of the right to memory and truth, but, as Aguilar (2013, p. 282) comments, the only criminal action (the so-called "Ruano Case") that is usually identified as positive for the demands of the victims of Francoism was not effectively so, given that it did not help to clarify the facts ascertained, nor did it result in the conviction of the accused. Thus, the non-trial of those responsible for the violations between 1936 and 1977 is what characterizes the Spanish trajectory with regard to justice (AGUILAR; PAYNE,

2018, p. 32-33) This diagnosis is also corroborated by the fact that the ruling elites of the regime have never been accountable for their actions. Franco passed away in November 1975, after a long illness. Neither the presidents of government in the final phase of Francoism, between 1973 and 1975, nor other collaborators who held high command positions during the dictatorship were even held accountable for the crimes committed. (Gallo, 2022, p. 11)

A consolidated interpretative hegemony of the Spanish Amnesty Law was maintained in all hierarchical spheres of the Spanish Judiciary in the last two decades of the twentieth century (GALLO, 2022).

In the early 2000s, some aspects of this reality began to cause changes in the Spanish scenario on the issue of the recent and "forgotten" past of human rights violations in Francoist Spain. More than two decades after the end of the dictatorship and the death of the Spanish dictator, the so-called "grandchild generation" of the victims of Francoism began to mobilize politically and publicly, with the essential claim of the right to accurately locate the remains of their ancestors, hidden in mass graves. Through the establishment of the *Association for the Recovery of Historical Memory (ARMH)*, articulated in 2000 by Emilio Silva, grandson of a republican murdered by Francoists in the 1930s, the debate on impunity for crimes against humanity perpetrated by Francoism intensified (GALLO, 2022).

Despite the increased visibility of the issue, reinforced by the exhumations, among other actions led by relatives of victims of the dictatorship and human rights groups, in the judicial arena nothing would change (AGUILAR, 2013; BARAHONA DE BRITO; SZNAJDER, 2013). On the other hand, in December 2007, as a result of increased internal pressure on the issue, during the first term of José Luis Rodríguez Zapatero (2004-2008) the "Ley de Memoria Histórico" (Law No. 52 of 2007) was sanctioned, providing for measures of reparation (especially symbolic) for the victims of the dictatorship. The following year, an emblematic case that represented a possibility of change in the legal treatment of the subject in the country was the case accepted by Judge Baltasar Garzón, in October 2008, at the National Court (Spanish Superior Court). The cause, initiated by relatives of victims inspired by the actions proposed by the ARMH in previous years, covered crimes such as torture, illegal arrests and disappearances committed by the Francoist apparatus in Mallorca. (Gallo, 2022, p. 12)

Regarding the "*Ley de Memoria Histórico*" (Law nº 52 of 2007), in its initial article on the primordial content of the legislation, it contemplates the importance of the broader recognition of rights and memory, especially of the victims of the civil war and the Franco dictatorship, in the sense of also reaffirming the issue of national reconciliation:

Article 1. Object of the Law.

1. The purpose of this Law is to recognize and extend rights in favor of those who suffered persecution or violence, for political, ideological or religious reasons, during the Civil War and the Dictatorship, to promote their moral reparation and the recovery of their personal and family memory, and to adopt complementary

measures aimed at eliminating elements of division among citizens, All with the aim of promoting cohesion and solidarity among the various generations of Spaniards around constitutional principles, values and freedoms.

2. Through this Law, as a public policy, it is intended to promote democratic values and principles, facilitating knowledge of the facts and circumstances that occurred during the Civil War and the Dictatorship, and ensuring the preservation of documents related to this historical period and deposited in public archives. (Spain, 2007, n./p.)

Although progress can be recognized with the initial decision of Judge Baltasar Garzón, who accepted the demand, the developments emerged as legal setbacks, making the original intent unfeasible. The case did not have the proper progress because the competence of the National Court was questioned to judge it and the magistrate was sued by extreme right-wing sectors, after several controversies due to the opening of the case, being punished and removed from office, on charges of malfeasance, in 2010 (Gallo, 2022).

In February 2012, the Supreme Court acquitted him of the crime of malfeasance, but endorsed as mistaken the thesis he defended when accepting the victims' claim in the Mallorca region, in which he argued that it was possible, despite the amnesty law, to ascertain the facts and responsibilities, since these were crimes that could not be subject to statute of limitations (AGUILAR, 2013, p. 300-301). (Gallo, 2022, p. 12-13)

It is also noted that in 2018 a parliamentary group linked to the political party Podemos led a project with the aim of modifying the Spanish amnesty law that did not prosper, being defeated in Parliament with the support of parliamentarians from right-wing parties, such as the PP and CIUDADANOS, as well as members of the PSOE, a historic center-left party (Gallo, 2022).

Spanish society has been following, more recently, the news about the cases of *Querella Argentina* and Ligia Ceballos, referring to the theft of babies by Francoists, in cases that are being processed abroad, more precisely in the judicial powers of Argentina and Mexico respectively. "Despite the efforts of the Argentine and Mexican justice systems in an attempt to investigate and punish Franco's crimes, the Spanish State has not collaborated with the progress of the proceedings (AMNESTY INTERNATIONAL, 2022)." (Gallo, 2022, p. 13)

Law 20/2022, of October 19, of Democratic Memory, already in its preamble, emphasizes the importance of fostering public policies of democratic memory in order to enable and give concreteness to the aspirations of civil society, encouraging citizen participation and social reflection, in the sense of due recognition of the dignity of victims of

any form of violence, in addition to affirming that the conquest and consolidation of Spanish democracy, under the terms of the 1978 Constitution, must consider the awareness of the course of Spanish democracy and the struggle for freedoms waged by women and men who were victims of the violence of the Spanish State under the Franco dictatorship. In this normative text, the duty of Spanish society to honor in memory the people who suffered persecution, imprisonment, torture and the loss of their property and their own lives is recognized, for the defense of freedom and democracy (Law 20/2022, of October 19, of Memoria Democrática):

The memory of the victims of the coup d'état, the Spanish War and the Francoist dictatorship, its recognition, reparation and dignity, represent, therefore, an inexcusable moral debate in political life and is a sign of the quality of democracy. History can not be built since the oblivion and silence of the vanquished. El conocimiento de nuestro pasado reciente contribuye a aposto nuestra convivencia sobre bases más firmes, protegiéndonos de repetir errores del pasado. The consolidation of our constitutional order allows us to face the truth and justice on our past. El obvido no es opción para una democracia.⁵

Regarding the general principles of the law under analysis, its article 2.3, although it does not derogate from the Amnesty Law of 1977, states that all Spanish laws, expressly mentioning the aforementioned law of 1977, must be interpreted and applied in accordance with international treaty and customary law, especially in accordance with the dictates of international humanitarian law, "[...] according to which the crimes of war, against humanity, genocide and torture have the consideration of imprescriptibles and no amnestiables."⁶

The 2022 Spanish legislation on Democratic Memory reaffirms the value and validity of the 2007 legislation on Historical Memory, recognizing the advances made then, but also the need to move forward on certain points, including to address pending issues identified by international organizations and the European Union itself on the issue:

Law 52/2007, of 26 December, is a fully valid text, although it is more than three years of validity, if there is a power to relieve the need for its reform to achieve its

⁵ The memory of the victims of the coup d'état, the Spanish War and the Franco dictatorship, their recognition, reparation and dignity therefore represent an inexcusable moral duty in political life and are a sign of the quality of democracy. History cannot be built from the oblivion and silencing of the vanquished. Knowledge of our recent past helps to establish our coexistence on a more solid basis, protecting us from repeating past mistakes. The consolidation of our constitutional order today allows us to confront the truth and justice about our past. Oblivion is not an option for a democracy. (Law 20/2022, of October 19, of Democratic Memory, free translation by the authors)

⁶ "[...] according to which crimes of war, crimes against humanity, genocide and torture are considered to be imprescriptible and not amnesty" (Ley 20/2022, of October 19, from Memoria Democrática, free translation by the authors).

objectives. Quedan cuestiones pendientes en este ámbito de la protección de las víctimas de la guerra y el franquismo a las que esta nueva norma pretende dar respuesta. Pending issues and of special importance that have also been held by different international organizations in the field of human rights. Subsequently to the approval of Law 52/2007, of 26 December, the international perspective of human rights in relation to the victims and serious violations of human rights committed during the war and the Francoist dictatorship have particular relevance, with significant achievements such as the ratification and entry into force of the International Convention for the Protection of All Persons against Forced Disappearances, of December 20, 2006, and ratified by Spain on July 14, 2009. In the context of the European Union, the European Parliament Resolution of 2 April 2009 has been able to relieve the firm will to build a solid European identity around democratic values and against all forms of totalitarianism, as well as the importance of honouring the victims who oppose any form of dictatorship, and the importance for the future of Europe of keeping alive the memory of the past, because it cannot be reconciled without truth and without memory.⁷

In general, efforts to judicialize crimes committed by Francoism continue to be neutralized by the validity of the Spanish amnesty law, since the 1970s. Although the Spanish State has progressively adhered to international norms for the protection of human rights and since 2000 there has been a growth and consolidation of efforts to rescue the memory of Franco's repression in order to dignify the victims, the fact is that, in the domestic sphere, with regard to justice for the victims, the results are heartbreaking (Gallo, 2022).

In the Brazilian case, the process of democratic transition "[...] it was a political project articulated from within the authoritarian regime itself, having been headed by the dictator-president Ernesto Geisel with the help of the mentor of the National Security Doctrine (DSN), General Golbery do Couto e Silva" (Gallo, 2017, p. 82)

This process, which lasted at least throughout the 1980s, was reflected in the model of Transitional Justice adopted in Brazil. We went through a negotiated "transition", with an amnesty prepared by the military itself to guarantee their impunity. This law, enacted in

⁷ Law No. 52/2007, of 26 December, remains a fully valid text, although, after more than thirteen years of validity, the need for its reform to achieve its objectives has been highlighted. Outstanding questions remain in this area of the protection of victims of war and Francoism to which this new rule aims to respond. Outstanding issues of particular importance that have also been highlighted by different international bodies in the field of human rights. After the approval of Law 52/2007 of 26 December, the international human rights perspective in relation to the victims and the serious human rights violations committed during the war and the Franco dictatorship demand particular attention, with significant milestones such as the ratification and entry into force of the International Convention for the Protection of All Persons from Enforced Disappearance, dated December 20, 2006 and ratified by Spain on July 14, 2009. Within the framework of the European Union, the European Parliament Resolution of 2 April 2009 highlighted the firm will to build a solid common identity around democratic values and against all forms of totalitarianism, as well as the importance of honouring the victims who opposed all forms of dictatorship and the relevance for the future of Europe of keeping alive the memory of the past, since there can be no reconciliation without truth and without memory. (Law 20/2022, of October 19, of Democratic Memory, free translation by the authors)

1979 (Law No. 6,683/1979), allowed the regime's torturers and murderers to go unpunished. Even today, this topic is the subject of debates and controversies, as many victims and victims' families seek justice and reparation.

For Lemos and Quinalha, Transitional Justice "[...] understood as a set of judicial or non-judicial measures aimed at memory, truth, justice, reparation and institutional reforms [...] was belatedly initiated in Brazil and, even with the passage of time, continues to be neglected [...]" (2023, p. 159).

The 1988 Constitution provided for reparation for the victims of the Civil-Military Dictatorship, focusing on those who suffered acts of violence, and not on those responsible for committing them. However, it did not open space for judgments on serious human rights violations. Law No. 9,140/1995, known as the Law of Reparation for the Dead and Disappeared, was created to regulate this reparation, establishing criteria and procedures for the recognition and compensation of victims and their families. Although this legislation represents an important milestone in the recognition of human rights violations during the Dictatorship and in the search for justice and reparation, it maintains the focus mainly on the financial issue. In 2002, Law No. 10,559/2002 established the Amnesty Commission, in charge of administratively judging requests for reparation. The Commission's competence is exclusively to analyze requests for declaration of Political Amnesty, following a special administrative procedure.

In relation to the Amnesty Law, it is noteworthy that a law created with the purpose of dealing with the past and overcoming its traumas has generated so many doubts, controversies and questions about its legal effectiveness, since its enactment. Many believed that granting amnesty, which prevented the perpetrators of past crimes from being held accountable, was a more convenient choice than addressing conflicts during the transition.

To try to resolve these controversies and doubts surrounding the Amnesty Law, the Brazilian Bar Association (OAB) presented, in 2008, the ADPF (Allegation of Non-Compliance with a Fundamental Precept) No. 153 to the Federal Supreme Court (STF), seeking a strictly constitutional interpretation of the Law. The OAB argued that the benefits guaranteed to the victims of the dictatorship should not extend to common crimes committed by state agents. In the votes of the Ministers of the STF, the intention to leave the past behind was evident, reinforcing the thesis of the need for conciliation. As a result, an opportunity to promote justice was lost.

In general, the justices argued that the terms under which the agreements for the approval of the Amnesty Law were made should not be changed, since they resulted from a conciliatory pact between civil society and the State. This understanding aimed to equate crimes and, consequently, offer mutual forgiveness to all involved. They also claimed that this posture could help Brazil overcome many of the traumas that have marked its recent history. With these differences resolved, it was believed that Brazilian society could finally look to the future without the weight of an unresolved past.

In this context, the premises of the Amnesty Law were maintained, resulting in the virtual impossibility of criminal accountability of human rights violators. Therefore, what remained were the reparatory policies carried out by the State, which gradually assumed its guilt, but without recognizing the responsibility of the individuals involved in these violations.

IMPACTS ON CONTEMPORARY DEMOCRACY

Evidently, these models of Transitional Justice have impacted and still impact the political, social and legal structures of Spain and Brazil. It is essential to understand how these processes have influenced democratic consolidation, national reconciliation, and public perception of justice and human rights, as well as to analyze the long-term impact on collective memory and contemporary democracy.

For a long time, Spain had been considered, along with Ireland and Portugal, one of the few cases on the European continent in which no ultra-right force occupied a place of relevance in the political system, which gave it a character of exceptionality. Thus, since the Spanish redemocratization, a hegemonic theoretical framework has been consolidated, beyond the academic field, but also rooted between political parties and citizenship. However, the emergence of the Vox party, at the end of 2018, in different electoral disputes, brought questions to such a paradigm of Spanish exceptionality. (Ortiz Barquero, Ruiz Jiménez, Gonzáles Fernandes, 2020, p. 201)

In its statements, the far-right party, when questioned about the Franco dictatorship, plays games of relativization of it, through a non-identification of Franco with the dictatorial reality or even by displacing the issue to the Cuban regime: "[...] the signifier *dictadura* already signals an absence in relation to Franco, which may or may not be recovered by the indeterminate referent; on the other hand, the fitting of *the dictature* is directed to the

then present, to the Cuban regime, obliterating relations with the past [...]" (Ragievicz, 2023, p. 153)

The recent legislation on historical and democratic memory approved in Spain needs to strengthen a culture of memory about the contemporary history of your country to properly combat the phenomenon of *Fake News* and its propagation through digital media with great potential to corrupt and deteriorate the memory of your country, inserting in the heart of it denialism and efforts to rewrite history through fanciful narratives, which often aim to confuse the roles of criminals with those of victims, who have suffered serious human rights violations, as well as to mobilize crowds to be outraged by democracy and human rights.

In the Brazilian context, the longed-for "conciliation" between the parties involved in the period of the military dictatorship never actually materialized. What has been observed over the years is a persistent attempt to erase from the collective memory the events that occurred during this dark period of national history. This approach, however, has not been successful and continues to generate significant tensions in contemporary debates on the subject. The creation of the National Truth Commission (CNV), established by Law No. 12,528/2011, represented an important step towards historical clarification. However, even with this initiative, there have been considerable efforts to limit or even prevent the revelation of the "truths" related to the military regime. The Amnesty Law (Law No. 6,683/1979), in turn, ended up establishing a kind of censorship over the events of that period, making it difficult to access crucial documents and making it impossible to try and convict those responsible for acts of torture and other human rights violations.

This policy of silencing contributed to the consolidation, in certain segments of society, of the mistaken notion that the dictatorship would have been a "necessary evil" and that the military would be heroes who saved the country from the supposed "communist threat". In this complex political game of transferring responsibilities, the three powers of the Republic ended up, in a way, complying with this pact of oblivion.

It is crucial to highlight the particularities of Transitional Justice in Brazil, which was fundamentally based on the idea of forgetting, to the detriment of the preservation of memory. This approach, based on the conception that direct confrontation with the past should be avoided and a conciliation should be promoted in the name of governability and a supposed "responsible transition", ended up relativizing the serious human rights violations that occurred during the military regime. Such a strategy, far from contributing to

a healthy debate or overcoming collective trauma, has only served to perpetuate an uncomfortable and potentially dangerous silence about our recent past.

The absence of effective policies for the preservation of historical memory in Brazil played a fundamental role in the construction and strengthening of distorted narratives. The idea was propagated that the 1964 coup was necessary to contain corruption and, above all, to stop the advance of communism in the country. This distorted view, in turn, has served as fuel for arguments that defend the possibility of new military interventions, whenever supposed threats to the established order are perceived.

The danger of this narrative was evident especially after the defeat of candidate Jair Messias Bolsonaro in the 2022 presidential elections. In this context, discourses in favor of a military intervention gained renewed strength, culminating in the unfortunate episode of January 8, 2023, in Brasilia, when protesters invaded and vandalized the headquarters of the Three Powers.

This tragic event serves as a stark reminder about the importance of preserving historical memory and promoting critical education about Brazil's authoritarian past. Only through an honest and courageous confrontation of our recent history will we be able to build a truly solid democracy that is resistant to attempts at authoritarian regression.

FINAL CONSIDERATIONS

Overcoming the collective trauma resulting from dictatorial regimes is a complex and challenging process. In the case of Brazil, it is evident that, without a reckoning with the past and without a restorative justice, even if only from a historical point of view, progress in the healing of social wounds remains hindered. The unequivocal condemnation of the apology for the dictatorship and the torturers is a crucial step in this path. The Brazilian democratic transition was significantly inspired by the Spanish model. However, as in Brazil, Spain also faces challenges related to historical memory and the proper accountability of those who violated human rights during the dictatorial period.

In Spain, the terms "pact del silencio" or "pact del olvido" refer to a tacit agreement between the political leaders of the right and left after the death of dictator Francisco Franco in 1975. This pact aimed to build a unified democratic future, paradoxically requiring a kind of "collective amnesia" about the country's recent past, marked by the Civil War (1936-1939) and the subsequent Franco dictatorship, one of the longest of the twentieth century.

Similarly, in Brazil, the 1979 Amnesty Law represented a "pact of silence" imposed by the military. When the opportunity arose to review this choice, with the judgment of ADPF 153 in 2010, the Federal Supreme Court reaffirmed the need to maintain the oblivion of the past in favor of national conciliation.

The absence of an in-depth debate on the dictatorial period, the transition process and the Amnesty Law can, to a large extent, explain the persistent sympathy that part of the population still has for the military dictatorship, as well as the resistance to the punishment of the torturers of that period.

The recent events that demonstrate flagrant disrespect for democracy and propagate discourses of exaltation of the dictatorship and the violence associated with it give rise to a worrying reflection on memory policies and transitional legislation. These events highlighted significant gaps in both spheres.

The legacies of authoritarian regimes are fundamental to understanding both contemporary Brazil and Spain. In the Brazilian context, current political practices and the struggle for justice and memory clearly reflect the lasting effects of the military dictatorship. In Spain, the echoes of Francoism manifest themselves in the complexities of nationalism, regional politics, and the ongoing debates about the authoritarian past. Both countries face the challenge of reconciling with these historical periods, which has profound implications for the present.

Decades after the end of the Franco dictatorship, the agreed logic of oblivion has been exhausted and the so-called "grandchild generation" of the victims of the civil war and the Franco dictatorship began a mobilization, with the demand to give a dignified burial to the ancestors murdered in the dictatorial context of Francoism, beyond the period of the civil war.

The intensification of the debate on impunity for crimes against humanity committed by Francoism, although it has not made progress on the issue within the Spanish judiciary, has led to the approval of normative diplomas, such as the laws of historical memory (2007) and democratic memory (2022), providing for and intensifying, respectively, reparation measures for the victims of Francoism, especially symbolic.

Contemporary Spain needs to advance in reparations to the victims of Francoism, honoring their memory, investigating their past in depth, and not allowing the advance of fanciful narratives and denialism propagated by the recent organized outbreak of its extreme right.

This discussion, far from being simple, deals with elements of a history of the present time, characterized by the absence of a definitive "epilogue", since the events and their repercussions remain alive and controversial. However, it is a necessary and urgent debate to warn about the risks of new institutional ruptures and their potential harmful consequences for society.

Building a solid and resilient democracy requires an honest confrontation with the past, the promotion of justice, and the preservation of collective memory. Only through this process of recognition and reparation can we strengthen democratic institutions and prevent the repetition of the mistakes of the past.

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