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# The vindication of the executioners for a policy of forgiveness





**The Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly on 10<sup>th</sup> December 1948, in the Palais Chaillot in Paris, with 48 votes for, 8 abstentions and none against. Its beginnings were not easy.**

Numerous intellectuals and non-governmental organisations took part in the preliminary work and several philosophers were even called upon to outline the ethical principles of Human Rights. The pressure exerted by governments, still in a state of shock over the end of a war that will always have the idea of “Evil” associated with it and the realisation of a polarized world, made the Declaration an “imperfect” text, not for what it says but for what it does not say.

However, despite everything, despite the criticisms of its entrenched liberalism and the lack of explicit references to the right to strike or collective rights (to be included in later agreements), its great virtue is that everyone can identify themselves with it. The 30 articles, preceded by a very short preamble of intentions, are clearly set down as a didactic Decalogue. Put simply: it may be recited in schools as the contract that human beings sign to preserve their existence and their very nature. And this happens in spite of the etymological complexity and the polysemy that the different languages and cultures of the world may have with regard to key concepts like dignity, humiliation, recognition, freedom, equality.<sup>1</sup>

■ <sup>1</sup> OSSET HERNÁNDEZ, Miguel, “Podem parlar dels drets humans?”, *Revista del Col·legi Oficial de Doctors i Llicenciats en Filosofia i Lletres i en Ciències de Catalunya*. No. 124, July 2005, pp. 25-31.



Most countries' political constitutions make explicit references to the Universal Declaration of Human Rights. The 1978 Spanish Constitution does too.

*"The laws relating to the fundamental rights and freedoms that the Constitution recognises will be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements concerning these issues ratified by Spain"*<sup>2</sup>.

Thus, the text of the Constitution subordinates any interpretation of people's fundamental rights to the dictates of the document that the United Nations General Assembly adopted in 1948 and the international agreements that derive from it.

If we try to make an assessment of the violation of human rights in Spain between 1936 and 1975 (still provisional as there are no partial and comprehensive studies to establish the scope of repression during the military dictatorship), we realise that each and every one of 30 articles were broken with premeditation and precision, continuity and absolute cruelty.

## THE VIOLATION OF HUMAN RIGHTS AND INSTITUTIONALISED VIOLENCE

During and after the Civil War the military dictatorship infringed the "right to life"; "the right to freedom"; the right not to be subjected to "torture", "enslavement", "servitude", or "cruel, inhuman or degrading treatment"; the right to be tried before an "independent and impartial court"; the right to keep "private life, family, home, correspondence" free from arbitrary interference; the "right to own property, individually and collectively"; the rights of "freedom of thought, conscience, religion, opinion, expression and union membership"; the right not to be deprived of one's nationality and the right to take part in the task of government directly or through representatives elected by universal suffrage. The totalitarian regime (the term that best defines the characteristics of complete control of society, despite the ongoing theoretical debate) that was established from 1939 onwards corresponded to a political will, publicised and agreed: to eliminate the adversary in the name of the State.

Between 1936 and 1939 400,000 people were killed in combat and 155,000 were murdered behind the lines: 100,000 on the fascist side and 55,000 victims of political violence in the republican-controlled zone. The Francoist repression continued killing in the post-war period with 50,000 further victims<sup>3</sup>. These figures do not include the deaths from hunger and disease in the concentration camps, in the prisons, in the punishment gangs, or the thousands of people who were condemned to die from lack of food, overwork, typhoid, diphtheria, diarrhoea, tuberculosis or meningitis. In 1939 the infant mortality rate was 40% higher than in 1935. And, in Catalonia, the number of young widows (under 30 years of age) had risen five-fold in relation to 1930<sup>4</sup>. One fact to help us to understand the nature of the dictatorship: Mussolini executed 27 people between 1922 and 1940<sup>5</sup>; Franco, 150,000 between 1936 and 1950.

■ <sup>2</sup> First title: Concerning Fundamental Rights and Responsibilities.

<sup>3</sup> JULIÀ S., CASANOVA J., SOLÉ I SABATÉ J. M., VILLARROYA J., MORENO F., *Víctimas de la guerra civil*, Temas de Hoy, Madrid, 1999, p. 411.

<sup>4</sup> DE RIQUER, Borja and CULLA, Joan B. in Pierre Vilar, ed., *Història de Catalunya*. Vol. VII, Edicions 62, Barcelona, 1989, p. 25.

<sup>5</sup> MALEFAKIS, Edward "La dictadura de Franco en una perspectiva comparada" in J. P. FUSI, J.L. GARCÍA

In 1952, the Ministry of Justice, faced with the demands of the inspectors of the Commission Internationale contre le Régime Concentrationnaire (CICRC), handed over a statistic of the Spanish prison population: the official figures gave a population behind bars of 270,719 people in 1940<sup>6</sup> (the population census, always incomplete, for that same year was 25,768,556<sup>7</sup>). This monstrous figure did not include either the penal detachments or the military penal colonies or the prisoners working for private companies like, for example, the one run by businessman José Banús, who years later was to build his property empire in Marbella. Another figure to compare: on average, between 1931 and 1941, the concentration camps of the Third Reich held 20,000 people annually<sup>8</sup>. Torture, enslavement, humiliation, cruelty and also “ethnic cleansing” were the daily bread of the Francoist prisons. Major Antonio Vallejo Nágera, head of the Army’s psychiatric services, experimented on ways of improving the Spanish “race” with female prisoners of war. Nor did children escape the prison system: the order of 30<sup>th</sup> March 1940 on the keeping of children in prisons “legitimized” the path of “total segregation” that promoted the separation of imprisoned Republican mothers from their children. The aim was to keep the boys and girls in centres run by the State —mainly religious schools— in order to re-educate these children according to the *New Spanish State* and, in many cases, these children were given in adoption to families supporting the regime, obviously without the knowledge and consent of their parents. In one word: it was kidnapping legalised through the *Boletín Oficial del Estado*. Between 1944 and 1954, some 30,960 children, above all girls, were in the charge of the State<sup>9</sup>.

As the mayor of Villarta de los Montes said, shortly before executing 23 people without going through any prior legal channels: “we had the balls to win the war and now we’ll have them to cleanse the population”<sup>10</sup>. The ultimate responsibility for the “cleansing” fell to the army, the highest authority of the entire repressive machinery, while the application or not of the death penalty depended on the Captains General.

The purging zeal trapped thousands of citizens who had never been noted for their public outbursts against the regime. These men and women had the bad luck to cross the path of a Falangist, a priest, a terrified or grudge-bearing neighbour, a property owner, and all of them could set in motion, by denunciation or betrayal, the mechanisms of the “justice” of the New Order.

From May 1939 the legal farce of the courts martial became commonplace. They were almost always collective and no effort was made beforehand to discover the truth. The reports to the authorities and the mandatory reports (Town Hall, Falange, Guardia Civil) were unquestionable. It was justice the other way round: the defendant had to demonstrate his innocence as he was guilty to begin with. The entire mockery was

DELGADO, S. JULIÁ, E. MALEFAKIS, S.G. PAYNE, *Franquismo. El juicio de la historia*, Temas de Hoy, Madrid, 2005, p. 47.

<sup>6</sup> VINYES, Ricard, “El universo penitenciario durante el franquismo”, in C. MOLINERO, M. SALA and J. SOBREQUÉS, eds., *Una inmensa prisión. Los campos de concentración y las prisiones durante la guerra civil y el franquismo*, Crítica, Barcelona, 2003, p. 160.

<sup>7</sup> TUÑÓN DE LARA, M., ed., *Historia de España*, Labor, Barcelona, 1980. Vol. 10, p. 25.

<sup>8</sup> Op. cit., *Franquismo. El juicio de la historia*, p. 47.

<sup>9</sup> VINYES, R., ARMENGOL, M., BELIS, R., *Els nens perduts del franquisme*, Proa, Barcelona, 2002 and Àngela CENARRO, “La institucionalización del universo penitenciario franquista”, in *Una inmensa prisión...* pp. 133-154.

<sup>10</sup> MORENO GÓMEZ, FRANCISCO, in J. CASANOVA, ed., *Morir, matar, sobrevir*, Crítica, Barcelona, 2002, p. 200.



prepared in order not to get to the bottom of things but to prove the defendant's guilt. At the present time, we have no trustworthy calculation of the total number of courts martial held all over Spain. But the very recent access, as in the case of Catalonia —where the courts martial are being counted and studied— will make it possible to establish the number of trials, identify the victims and name the people responsible for this barbarous assault on democracy.

Besides political repression there was financial repression by way of the Law of Political Responsibilities of February 1939, which subsumed previous partial laws and, above

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all, gave an appearance of “legitimacy” to the practice of uncontrolled and arbitrary pillage that ensued from the earliest days of the military uprising.

In short: the law was a safe conduct for the financial despoiling of the defeated, individually and collectively. The people on the losing side's right to own property lost all meaning and the State and any Falangist believed they had the

right to help themselves to other people's possessions. By October 1941, 125,286 people had been prosecuted in Spain<sup>11</sup>. The assets of Republican combatants imprisoned or executed were confiscated and later auctioned off at rock-bottom prices: it could just as easily be a donkey as a building in the Passeig de Gràcia in Barcelona. This was also the origin of many personal fortunes after 1939.

Crimes against morality and proper behaviour began to be dealt with by ordinary courts especially after 1944, by which time the regime had laid the foundations of political persecution and financial punishments, and they were in the ascendant until the mid-1960s<sup>12</sup>. Abortion, suicide, homosexuality, prostitution and public indecency were some of the crimes in this category. But it is through the analysis of these trials that we can see the degree of control that the police, the single trade union, the single party, the confessional, the pulpit, the place of work, the town hall, the district, the school, the neighbour or the family exerted over the individual. Correspondence was also read and censored. In short, it was a society under surveillance and guarded.

Jobs were also spoils of war. Those in public service were taken by the winners: ex-combatants, ex-prisoners, *camisas viejas*, orphans, disabled servicemen, while private companies had to employ preferably those expressing support for the regime. Everyone had to present a sworn statement of their activities before, during and after the war and an *unswerving* adherence to the regime. Only from the perspective of reward and punishment can the purging, for example, of the tramcar and railway workers be understood.

Political and ideological cleansing affected the entire staff of the civil service and also the professional societies: doctors, lawyers, journalists and even football referees. Teachers and university lecturers were conscientiously purged. Another example: in 1939, 135 lecturers at the University of Barcelona were expelled (half the teaching staff of 1936<sup>13</sup>) and 25%



of Catalan schoolteachers were removed from the classrooms. Those who remained were forced to swear loyalty to the regime. The poet and Falangist José M. Pemán was in no doubt as to how the indoctrination had to be done: “The Catechism or proverbs, which speak with assertions, are believed more than Philosophy lecturers, who speak with arguments”<sup>14</sup>.

The persecution of national, cultural and linguistic minorities; of freemasons and homosexuals; and the social and legal discrimination of women also unequivocally violated article 2 of the Universal Declaration of Human Rights when it states that “All the rights and freedoms proclaimed in this Declaration belong to everyone, without distinction of race, colour, sex, language, religion, political or any other kind of opinion, national or social origins, fortune, birth or other condition”.

In 1940 there were 2,890,974 people living in Catalonia, according to the figures of the incomplete official census; in 1978 there were almost 6 million. For four decades, millions of Catalans were unable to exercise a fundamental right in public: to speak their own language. A situation that also affected, and this is often forgotten, citizens expressing themselves in Castilian, whose right of linguistic choice was restricted. The degree of stupidity was so great that, for example, in 1937 at the height of the war, the Francoist authorities prohibited the numerous Catalan community staying in San Sebastián from using Catalan in public. That is, there were Catalan Francoists, but there was no *collaborationism* in Catalan. The Catalan national minority, and also the other nations within the state saw how the regime reduced their symbols to unbearable levels of banality and banished into secrecy the cultural initiatives struggling to keep pace with modernity.

Half the Spanish population, i.e. the women, simply ceased to have any rights. The emphatic and offensive phrase “wives or whores” illustrates to perfection the condition that the regime granted the female sex. Before 1961, women could not apply to be a notary, a registrar, a State attorney, a secretary at the town hall or in any administrative body. To be able to gain access to the judiciary, they had to wait even longer (and this is the reason why there are now so few women on the General Council of Judicial Power)<sup>15</sup>. Their husband’s permission was necessary to open a current account or get a job (Catalan civil law exempted women from this prerequisite but civil servants or bank clerks very often ignored it). To travel, their father or husband’s permission was necessary. Women were guarded and watched over by all public and private authorities. Freemasons and homosexuals were sent straight to prison.

To the brutal internal repression we have to add the 440,000 people —according to the French authorities’ figures— who crossed the border between 28<sup>th</sup> January and 12<sup>th</sup> February 1939, 170,000 of whom were women and children<sup>16</sup>. Franco could perfectly well have closed the frontier but he preferred to keep it open in order to complete his policy

■ <sup>11</sup> Op. cit., *Víctimas de la guerra civil*, p. 347.

<sup>12</sup> MIR, Conxita, *Vivir es sobrevivir. Justicia, orden y marginación en la Cataluña rural de posguerra*, Editorial Milenio, Lleida, 2000.

<sup>13</sup> SANTACANA, C., “La desaparición de un modelo de intervención. Intelectuales, profesionales y científicos en la posguerra: el caso catalán”, in J. CHAVES PALACIOS, coord., *Política científica y exilio en la España de Franco*,

Universidad de Extremadura-Diputación de Badajoz, Badajoz, 2002, pp. 113-128.

<sup>14</sup> Quoted by MORENTE VALERO, FRANCISCO, “La depuración franquista del magisterio público. Un estado de la cuestión”, in *Hispania*, LXI/2, 208 (2001), pp. 661-688.

<sup>15</sup> Remembered by the lawyer Montserrat Serrallonga on the back page of *La Vanguardia*, 28<sup>th</sup> August 2006.

<sup>16</sup> Op. cit., *Història de Catalunya*. Vol. VII, p. 24.







of “clearing out” the enemy. By September 1939, half of these displaced persons had returned to Spain simply because they had nowhere else to go and many thought that the new regime had no “objective” evidence against them. They were wrong —what it did not have it invented.

The term “exile” has become the official way of referring to the many thousands of republicans displaced by force, first to the refugee camps —inhuman and degrading— installed in France and later dispersed according to the goodwill of the receiving countries. Yet the term “exile” does not identify the legal situation to which they were condemned because according to the international clauses they were “stateless”, “de-nationalised” by the victorious State. This politically originated mass migration was a relatively new phenomenon in modern Europe. The figure of the stateless person begins to be important politically after the Great War and the peace treaties of 1919. In chronological order, the Soviet regime was the first to repudiate a million and a half citizens, the Greek government did so with 45,000 Armenians and hundreds of thousands of German Jews and non-Jews had their nationality withdrawn after 1934 by the Third Reich. Soon afterwards, there came the definitive Diaspora of about 250,000 Republicans, who could not return as they would be risking their lives. None of these people had a valid current passport, if they had one at all, as it had been issued by the Republican State and this no longer existed. Therefore, 1% of the population of Spain (25,768,556 in 1940) found itself deprived for almost 40 years of the legal protection their own government should have afforded them. About 70,000<sup>17</sup> of these stateless people were Catalans, i.e., 2.5% of the Catalan population in 1939.

## THERE ARE NO VICTIMS WITHOUT EXECUTIONERS

This is in general terms, broadly speaking, the balance of the military dictatorship between 1936 and 1975. The aim of this brief review is to make clear the scope and the nature of the military repression in wartime and in the time of Francoist *peace*. To do so, I have used the precise terms used in international law when speaking of “war crimes” and “crimes against humanity”. Behind it, obviously, there is an intention: to break the public, constant and relentless account that has been constructed about the war and Francoism in order to achieve the *obligatory* aim of the reconciliation between the *two Spains*, which since 1978 has materialized in a formulation that is an offence to common sense and history: “everyone was a victim”. The affirmation of the opposite would be: “no-one was guilty”. So, the forty years of military dictatorship have been dispatched with a lapidary: “no victims, no crimes, no-one was guilty”.

Another example of the biased use of words: during the almost three years the war lasted, the Republicans announced to the world that they were making “war on fascism”, and so thousands of *brigadistas* came to fight in Spain against the wishes of their countries’ governments, terrified by the force of this popular international solidarity.

■ <sup>17</sup> Idem.

Well, if at first the war was considered a preamble to the Second World War, now it is a “fratricidal war”, or “civil war”, i.e., it has lost the international dimension.

This liturgy of the word, placed at the service of minimising the *collateral effects* of the war and the military dictatorship, has its legal point of reference in the Amnesty Law of 15<sup>th</sup> October 1977. Law 46/1977 granted the leaders, organisers, collaborators and accomplices of the Francoist regime impunity.

However, despite the efforts of the democratic State to impose *obligatory oblivion*, international law considers that “war crimes” and “crimes against humanity” never

expire. The categorization of these crimes rests on two basic conditions: a State that practises an exclusive ideological hegemony and the existence of a concerted and systematic plan to eliminate the political enemy or against individuals for belonging to racial, cultural or religious minorities.

## Thirty years after Franco’s death, the victims are still waiting for a formal recognition of the crimes committed against them

It was the Charter of the

International Military Tribunal in Nuremberg, dated 8<sup>th</sup> August 1945, that distinguished for the first time between “crimes against peace”, “war crimes” and “crimes against humanity”. According to the definition given by the Nuremberg Charter, crimes against humanity were: murder, extermination, enslavement, deportation and other inhuman acts committed against the civilian population, and persecutions carried out for political, racial or religious reasons. The tribunal specified that the “leaders, organisers, instigators or accomplices who take part in the formulation or carrying out of a general plan to commit these crimes are responsible, whoever the final executor may be”. In other words, there is no exemption from responsibility for anyone taking part in the chain of repression. Later resolutions adopted by the United Nations General Assembly confirmed the classification and definition of the crimes specified at Nuremberg. Moreover, in 1966 the violation of economic rights and apartheid were incorporated as serious crimes against humanity and two years later the General Assembly ratified the Convention on the non-expiration of “war crimes and crimes against humanity”. That is, none of these crimes is limited in any way in time and all are subject to international law beyond the internal decisions of UN member States. Put simply, this is the legal *corpus* used by Judge Baltasar Garzón to take Pinochet to court in London.

Therefore, it is neither anachronistic nor gratuitous to refer to the Nuremberg International Military Tribunal when we speak of “war crimes” and “crimes against humanity” committed by the army and supporting organisations between 1936 and 1975 in Spain. But beyond the limited legal and criminal responsibilities that this kind of tribunal can clarify per se (in the case of Nuremberg, 24 members of the Nazi party and 8 organizations were tried: the SS, the Nazi party, the Gestapo, the SD), Nuremberg acted as a general catharsis. There were crimes, victims and guilty parties.



The Amnesty Law (considered in terms of utility and not of reparation) imposed institutional oblivion and raised to the category of ethics and aesthetics the maxim of not remembering (under the threat of being branded as vengeful or of initiating a “Causa General” but the other way round). The philosopher Paul Ricoeur says it with admirable concretion: “The more than phonetic, even semantic, proximity between amnesty and amnesia points to the existence of a secret pact with the denial of memory that truly distances it from forgiveness after proposing its simulation”<sup>18</sup>.

The Amnesty Law and the official policies of reconciliation have wished to impose pardon by decree —and this is impossible. All religious, humanistic, philosophical and historical tradition knows that one cannot rid private and collective memory of its traumatic content. Without forgiveness and sorrow it is impossible to legitimately achieve “a happy memory” —as Ricoeur would say— that is obliged not to cover up evil, but to express it in a calm and peaceful way.

The first condition to be able to forgive is that someone should acknowledge the offence and ask to be forgiven. The offenders can do it, like the writer Günter Grass, aged 78, who has never denied his portion of blame as a fervent Nazi —despite the controversy now stirred up by his recent and late confession of belonging to the elite corps of the SS— or representatives of the institutions that, as though in a sort of space-time continuum, can legitimately acknowledge a historical guilt, even though they were not alive at the time. This was the case of the German chancellor Willy Brandt, a fighter against Nazism who was stripped of his nationality by the Third Reich in 1934, when he was just 19, and was a member of the International Brigades. Brandt made an official visit to Poland in 1970 and in front of the walls of the Jewish ghetto in Warsaw he knelt, wept and apologised on behalf of his compatriots.

More recently, a country that has emerged from the barbarity of apartheid has sought imaginative and fairer ways of being able to reconcile policies of acknowledging blame and policies of forgiveness. I am referring to South Africa. In 1994, after the election won by Nelson Mandela, a lively public and political debate got under way that culminated in the creation of the “Truth and Reconciliation” commission presided over by Nobel Peace Prize-winner Desmond Tutu. The commission was formed by 29 people from religious, political and civic groups, and divided into three committees: the Human Rights violations group, with the task of establishing the nature, the cause and the scope of the abuses committed between 1964 and 1994 (given wide-ranging powers to investigate and bring to trial); the reparation and compensations committee, with the aim of identifying the victims and studying their denunciations; and the amnesty committee, given the job of examining the requests for pardons on the condition that those responsible for political crimes should go before the commission and make a complete confession. Of the 7,000 requests for pardons presented, only 10% were able to resort to this new form of individual and conditional amnesty (which shows that a thorough job was done). However, in fact, the public exposition of the offences has been the main sentence for those responsible for apartheid and the best acknowledgement for the victims<sup>19</sup>. South Africa has explored a new path: pardoning those who have admitted their crimes.

■ <sup>18</sup> RICOEUR, Paul, *La memoria, la historia, el olvido*, Editorial Trotta, Madrid, 2003, p. 588.

<sup>19</sup> PONS, Sophie, *Apartheid, L'avenue et le pardon*, Bayard, Paris, 2000, pp. 13-18.

**FORGETTING BY LAW**

The bill for the “Recognition and extension of rights of the victims of the Civil War and the Dictatorship”, better known as the Law of Historical Memory, which the Spanish government has presented last summer, insists on creating a nice family portrait featuring victims and executioners. From a distance, it seems to be inspired on the South African model, when it talks of “Declaration” and the formation of an independent panel of experts that will judge each case in turn. But unlike the South African way, the five Spanish experts have to pronounce on the suitability of the victims. To sum up: it is the victims (or their close relatives) who have to demonstrate their condition. In return they will receive a “certificate” of good conduct.

The Spanish government is trying to impose a certain “official memory”, although it denies this when it claims:

“As an expression of the right of all citizens to the reparation of their personal and family memory, the unlawful nature is recognised and declared of the sentences, sanctions and any other form of personal violence that took place, for political or ideological reasons, during the Civil War, on both sides or in the zone where those who suffered it were, as well as those suffered for the same reasons during the dictatorship that lasted until 1975”. (Art. 2, 1).

In other words, the executions by firing squad of General Domènec Batet —head of the Sixth Military Division, loyal to the Republican constitution and shot in Burgos in 1937— and of President Lluís Companys are the same as the shooting of General Manuel Goded, who took part in the coup, sentenced to death for military rebellion, in August 1936, according to the military code in force during the 2<sup>nd</sup> Republic.

Therefore, the direct descendents of Companys, Batet or Goded can request before the commission a “declaration of personal reparation and recognition” (Art.3). And the five experts will certify with their signatures that the rebel general Goded was unlawfully executed. Obviously, the Republican constitution will be placed on the same level as Franco’s *justice*. Of course, under no circumstances will the Declaration make public the identities of the people who took part in the courts martial: “The Declaration will leave out any reference to the identity of the people who may have taken part in the events or in the legal actions that gave rise to the sanctions or sentences” (Art. 7, 3).

Article 17, on public symbols and monuments, states that “(...) the appropriate steps will be taken to remove coats of arms, insignia, plaques and other commemorative mentions of the Civil War when they extol only one of the two sides (...)”. Put another way, in the cemetery of Montjuïc castle, beneath the name of Lluís Companys —according to the government text— the name of General Goded, also shot by firing squad at Montjuïc, will have to be inscribed. This is what the law and the criterion that has to guide the action of the five “good men” states literally (to be honest, they have a real job on their hands).

The bill’s preamble denies —it says— any intention to introduce “a specific ‘historical memory’, as it is not the task of the legislator to construct or reconstruct a supposed ‘collective memory’. But it is a duty of the legislator (...) to establish and protect, with the maximum legal vigour, the right to personal and family memory as an expression of full democratic citizenship. This is the commitment the legal text undertakes”.

It should be said that the only way states have to “establish” and “protect” the right to





| Harar (Ethiopia), Toni Catany (2007)

“personal memory” is to provide the means necessary. And the Spanish state denies this when it is the associations or the relatives of the disappeared who will have to pay the compensation that the private landowners can ask for during the work digging up the common graves. Moreover, it is the relatives who will have to pay the removal and burial costs of their relatives. The State, through its repressive bodies, the organisations and the single party, was responsible for this violence.

Yet it is not true that the bill is not imposing a particular “collective memory”; it does so when repeatedly throughout the document it refers to the 1978 Constitution as the founding text of the State itself. In other words, it is a State without a past. Therefore, it does wish to construct a single memory and this is why it insists on the official account of the “reconciliation” during the Transition. But the discourse of consensus has not been able to impose oblivion, and the proof is the drawing up of this bill for a Law of Historical Memory 29 years after the pre-constitutional Amnesty Law. Memories (in the plural) are

stubborn and the victims are still waiting for a formal and solemn recognition of the crimes that the generals of the coup and Francoism committed against them. On the other hand, the democratic State, its head bowed, gives them sticking plasters when what is needed first is to disinfect the wound.

Historians and the media have also created a polysemic account of the repression during the war and the military dictatorship. According to the treatment they give the issue of the repression, we may divide historians into five categories: those that give a victim count; those who offer a “sweetened” view and assign the repression a minor role; those who see the repression as a cornerstone of the dictatorship; the equidistant view: sharing out responsibilities equally on both sides; and finally, the interpretation that points out the political function and the classist nature of the repression<sup>20</sup>. While the view of terror as a political tool of the first order has been confined to academic circles, the equidistant theses and the *recommended* ones have triumphed in the main in both the public and private media. But what is even more serious is the fact that an evident unease over naming those responsible for the brutality has installed itself in the teaching and scientific worlds. Apparently, it would seem, Franco did it all on his own.

Historians are also citizens subjected to the bombardment of an official univocal construction of the account under the threat of contravening the founding myth of the Transition. And if historiographic tradition eliminates praise and apologetics, it now seems it is also trying to eliminate disapproval. And let it be said, although it is obvious, that disapproval is not at odds with thorough and careful work on the history of Francoism and its organisations. But the negative image of the military dictatorship cannot be the subject of any revision: we cannot excuse the crimes committed by the State against a part of the population to which it owed protection and security. The most straightforward result of this political desire to obscure or gloss over the crimes has been that no-one has felt any moral concern and, therefore, they have never felt ashamed of it. Günter Grass has confessed that it has taken him fifty years to refer to his joining the Waffen SS out of “shame”<sup>21</sup>. Here nobody has demanded responsibilities, either political or moral, and, therefore, no-one has had the opportunity to say they are sorry.

One example, from first-hand experience. A few years ago the father of a friend of mine died. The father had been an important councillor on Barcelona City Council and a devout Francoist through action and omission. During the mourning, my childhood friend showed me the death notice that had been published in *La Vanguardia* and asked me: “Do you think it’s all right?” In reply to the question I could only say: “Your father would have liked it”. The death notice included all his titles: ex-combatant, *camisa vieja*, and posts, medals, crosses and awards from so many years of loyalty to Francoism. While he was alive, he never once expressed a single word of doubt or shame. The family has every right to honour their father’s memory as they wish; however, neither the State nor society can give him a “victim’s certificate” for having been shut up in the Model prison during the war at the behest of the Generalitat.

■ <sup>20</sup> This classification can be found in Conxita MIR, Fabià CORRETGE, Judit FARRÉ and Joan SAGUÉS, *Repressió econòmica i franquisme: l’actuació del Tribunal de Responsabilitats Polítiques a la província de Lleida*, Publicacions Abadia de Montserrat, Barcelona, 1997, pp. 31–36.

<sup>21</sup> *La Vanguardia*, 17<sup>th</sup> August 2006, p. 27.

<sup>22</sup> JASPERS, Karl, *Die Schuldfrage* (1946), *La Culpabilité allemande*, Minuit, Paris, 1990.



## A JUST MEMORY

Biology has already taken care of blocking the route of the international courts to condemn “war criminals” and “criminals against humanity” during the war and the Franco regime. However, let us remember that the crimes never expire. I have already mentioned that the most important thing about these trials —like Pinochet’s— is the public monitoring that can be made of them and the cathartic effect they generate in the victims. What I am suggesting is that the State and its spokespeople in the media should abandon the pretence of passing a *consensus* on memories. It is the social agents who will construct the story of the past: historians, associations, those who have survived the tragedy, their families, etc., without the threat or the seduction of a canonical discourse that brooks no argument.

Democratic states with a traumatic past do three things: ask for forgiveness, place the administration at the service of the victims and regularize the means of compensation. No more, no less. We are, then, looking at three different types of action: symbolic, administrative and financial reparation.

The Spanish State has granted itself a right it does not have: pardoning itself. This is the opposite of what the Canadian government has done. It has just apologised to the citizens of Asian origin that were enslaved during the building of the railway in the late 19<sup>th</sup> century. In the case of Spain, the line of continuity is even more consistent and unbroken when the Head of State is someone appointed by General Franco himself. States have no conscience; therefore, it is their representatives who have to take responsibility for the offence: to apologise, not to pardon.

To change the official linguistic register and keep always a fair distance between victims and those guilty. A year after the Second World War, Karl Jaspers<sup>22</sup> distinguished between criminal guilt, political guilt and moral guilt with regard to the Third Reich. According to Jaspers, the members and organisations involved in the policies of the State have political responsibility, regardless of their individual and collective actions and the degree of consent, because, moreover, they benefited from the favours introduced by the regime. Moral responsibility falls on those individual acts, great or small, that contributed through action or omission to the criminal policies. The same distinction is useful for ruling out any attempt at equidistance between the victims and the executioners.

There are other questions that have to be dealt with thoroughly, imaginatively, generously and fairly: making the administration work to guarantee unrestricted access to the archives and documentary sources that may shed new light on the repression; seeking legal ways of making it possible to annul the courts martial and all the sentences passed by Franco’s judges for political, moral, sexual, religious, etc. crimes. Paying for the location, exhumation and burial of the 30,000 people who disappeared that for 70 years have been awaiting a worthy mourning ceremony.

And as a first step to really going in depth into a “just memory”, the Spanish government should withdraw this mockery of a bill on the “historical memory” or change it radically during its passage through parliament. Thirty years after the death of the dictator, the millions of victims of the military dictatorship are still waiting for someone to make an apology. And it is for the victims to decide if they accept it, or not ■