



## POLITICS AS USUAL? THE TRIALS AND TRIBULATIONS OF THE LAW OF HISTORICAL MEMORY IN SPAIN

### ¿LA POLÍTICA DE SIEMPRE? LOS DESAFÍOS Y CAVILACIONES DE LA LEY DE LA MEMORIA HISTÓRICA EN ESPAÑA

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#### **Abstract**

The aim of this article is to evaluate the Law of Historical Memory from a political perspective where politics is understood as "the art of the possible". It will be argued that the Law of Historical Memory is a product of the compromises which characterise the process of politics as usual in a functioning democracy. An analysis of the Law of Historical Memory, therefore, can illuminate the way in which politics functions in Spain today. Two main issues are focused on: the primacy of electoral considerations and the interaction between state and civil society.

**Keywords:** historical memory, democratization, civil society

#### **Resumen**

El objetivo de este artículo es evaluar la Ley de la memoria histórica desde una perspectiva política, donde la política es entendida como "el arte de lo posible". El artículo plantea que la Ley de la memoria histórica es producto de los compromisos que caracterizan al proceso de la política en un sistema democrático. Un análisis de la Ley de la Memoria Histórica, por lo tanto, puede aportar interesantes datos en torno a la manera en que funciona la política en España. El texto examina dos temas principales: la primacía de las consideraciones electorales; y en segundo lugar, la interacción entre el Estado y la sociedad civil.

**Palabras claves:** memoria histórica, democratización, sociedad civil.

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In an article on transitional justice in Spain, published in 2005, I argued that the struggle to recover historical memory was an attempt by those active within organizations in civil society to renegotiate the original pacts of the transition<sup>1</sup>. Their aim was to move beyond the narrow *political conciliation*, symbolized by the 1978 constitution, to a broader *social reconciliation*, symbolized at the time of writing that article by the Spanish parliament's unanimous condemnation in November 2002 of the military coup of 1936. This current article builds upon this argument through an analysis of the Law of Historical Memory, approved by the Spanish parliament on the 31<sup>st</sup> October 2007. The argument here is that the Historical Memory Law is an end product of the process of "politics as usual" and, as such, it sheds light on the functioning of democratic politics within Spain today.

### Renegotiating the transition

In my earlier article, I compared the original transition pacts (Table One below), symbolized by the 1978 Constitution, and the renegotiated pact symbolized, at the time of writing the original article, by the historical declaration of the Spanish parliament in 2002, condemning the military uprising of 1936. Each pact reflected what was possible given the "political opportunity structure" in place at the time<sup>2</sup>. The original transition pacts were limited by the fear of conflict, not just as a result of the traumatic memory of the Civil War but also as a result of the violence of the early years of the transition. The original transition pacts, therefore, required the drawing of a clear line between Spain's turbulent dictatorial past in order to ensure a peaceful, democratic future. The original pacts were therefore forward-looking in nature. Looking forwards, however, did not mean that the memory of the past was not present at the time of the original pacts. On the contrary, the memory of the past was present as a way of avoiding the mistakes of the past, but people's memory of the past was enacted publicly through deliberate silences and "apparent" forgetting.

The renegotiated pact was, by contrast, strengthened by the fact that Spain had experienced the longest democratic period of its history. Numerous anniversaries, not the least the 25<sup>th</sup> anniversary of the constitution in 2003, were testament to the consolidated nature of Spain's democracy. Therefore, the renegotiated pact could be backward-looking in nature. Public deliberation and remembering replaced the public silence and forgetting of the original, forward-looking transitional period. In the case of the renegotiated pact, there was both a greater need and possibility for the memory of the past to be enacted through public deliberation and remembering. Indeed, the 2002 condemnation in Parliament was preceded by a veritable explosion within civil society of books, exhibitions, television documentaries and radio programmes dedicated to the act of remembering publicly what had until then been private memories of the Civil War period and the subsequent Francoist dictatorship<sup>3</sup>.

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1 BLAKELEY, G., "Digging Up Spain's Past: Consequences of Truth and Reconciliation" in *Democratization*, vol. 12, n° 1, (2005), pp. 44-59.

2 The political opportunity structure refers to «those dimensions of the political environment which either encourage or discourage people from using collective action», TARROW, S., *Power in Movement. Social Movements and Contentious Politics*. New York, Cambridge University Press, 1994, p. 18.

3 A paradigmatic example of this was the appeal by a Spanish radio programme, *Hoy por Hoy*, in September 2001 asking Spaniards to write in with their personal memories. The programme was inundated by personal testimonies, 80% of which referred to the Civil War and the Dictatorship. ELORDI, C., *Los años difíciles*. Madrid, Aguilar, 2002.



Table One

	Aim	Basis	Direction	Mechanisms	Result
<b>Original transition pacts (1970s)</b>	To establish democracy	Consensus	Forward looking	Public silence and forgetting	Political conciliation
<b>Renegotiated pacts (2000s)</b>	To consolidate democracy	Dissent	Backward looking	Public deliberation and remembering	Social reconciliation

Several arguments can be drawn from this earlier comparison which are pertinent for the discussion of the Law of Historical Memory below. First, the comparison highlights the extent to which the balance of power pertinent at the time of Spain’s transition to democracy had shifted to allow the issue of transitional justice to come to the fore. This demonstrates that the balance of power which shapes the early phases of democratization does not stay static as the consolidation of democracy progresses<sup>4</sup>. What seems impossible at one point in time may become possible later. Hence, the pacts of both the 1970s and 2000s are open-ended in nature. The transition to democracy and its crystallization in the 1978 Constitution are not an endpoint in the democratization of Spain. Similarly, despite the wishes of the right-wing PP at the time that the approval of the 2002 resolution meant the permanent removal of the issue of “the two Spains” from politics, the resolution does not and cannot represent closure. Both pacts are open to interpretation and modification by subsequent generations. As will be argued below, this is also true of the Law of Historical Memory which can be seen as another step in this process of continually renegotiating the original democratic settlement.

Second, those active within civil society have been key agents in each pact. Although the role of elite-level actors was much more visible in the original transition pacts than the role of civil society actors, the latter were very much present at the time of the elite-level pacts<sup>5</sup>. The behaviour of actors within civil society served to pressure and influence the behaviour of elite-level actors to move in a democratic direction<sup>6</sup>. Similarly, in 2002, it is unlikely that the Spanish Parliament would have moved to unanimously condemn the 1936 military uprising without the sustained pressure from civil society organizations such as the Association for the Recovery of Historical Memory [AMRH]. As will be argued below, the sustained pressure of civil society organizations has also been visible in the struggle to pass the Law of Historical Memory.

Third, transitional democracies and consolidated democracies each enable and require a different kind of politics. A transitional situation provides a unique window of opportunity where the achievement of consensus amongst political elites is made both necessary and possible. Functioning, established democracies, by contrast, require and make possible a different kind of politics: a “politics as usual” where the management of dissent rather than the achievement of consensus becomes both necessary and possible. According to Mouffe, we should understand the specificity of modern democratic politics in terms of “agonistic pluralism” which acknowledges that conflict is part and parcel of democratic politics and that any compromises reached “should be seen as temporary respites in an ongoing confrontation”<sup>7</sup>.

4 SKAAR, E., “Truth Commissions, Trials or Nothing? Policy Options in Democratic Transitions” in *Third World Quarterly*, vol. 20, n° 6, (1999), p. 1124.

5 BERMEJO, N., “The Power of the People” in *Working Paper ICPS*, n° 97, (1997).

6 For an extended version of this argument, see BLAKELEY, G., “Digging up Spain’s Past...”, *op.cit.*, pp. 52-53.

7 MOUFFE, Ch., *The Democratic Paradox*. London, Verso, 2000, p. 102.



The aim of this article, therefore, is not to evaluate the Law of Historical Memory from either a human rights or a legal perspective, but to analyze the Law from a political perspective where politics is understood as “the art of the possible”<sup>8</sup>. It will be argued that the Law of Historical Memory is a classic product of the compromises which characterise the process of politics as usual in a functioning democracy. An analysis of the passage of the Bill through Parliament as well as of the substance of the Bill, therefore, can illuminate the way in which politics functions in Spain today.

### **The Bill to recognise and extend rights and to establish measures in favour of those who suffered persecution or violence during the Civil War and the Dictatorship<sup>9</sup>**

The birth of the Law was itself a result of a strategic, political calculation. The Law was not part of the original PSOE manifesto for the 2004 general election although it soon became a central plank of the PSOE’s legislative programme once in power as the Government sought to strengthen its position<sup>10</sup>. Without an absolute majority of seats, the Government needed support to achieve its legislative agenda. This meant seeking the support of its allies on the Left, primarily the IU/ICV coalition. The PSOE was well aware that its victory was due, in part, to the fact that, given the extraordinary circumstances in which the election had taken place, only three days after the Madrid bombings, many voters who would have voted for the IU switched their votes to the PSOE in order to better assure its victory over the right-wing PP. The use of tactical voting was clear in the fall in the number of IU seats from the nine it had gained in 2000 to the five it gained in 2004<sup>11</sup>. The Government also needed to supplement the five votes of the IU/ICV coalition, however, by gaining the support of the key nationalist parties, the CiU and the PNV. Nor could the Government ignore the increase in the number of seats for the ERC from only one seat in 2000 to eight in 2004, particularly given that the Catalan Socialist Party was leading a tripartite government in Catalonia with the ERC and the ICV. Moreover, all of these parties had supported resolutions in the previous legislature relating to different aspects of what would come together in the Law of Historical Memory.

In response to the parliamentary resolution of 1<sup>st</sup> June 2004, the Interministerial Commission for the Study of the Situation of the Victims of the Civil War and Francoism was established on the 18<sup>th</sup> October 2004. The Commission was led by María Teresa Fernández de la Vega, the Vice-President of the Government, itself an indication of the importance the Government attached to the Law. Despite this start early in the legislature, however, it took two years for a draft bill to be approved by the Council of Ministers on the 28<sup>th</sup> July 2006 and well over another year for the parliament to approve the Bill on 31<sup>st</sup> October 2007. At the time of writing, the Bill is awaiting its passage through the Senate prior to its final approval in the Parliament<sup>12</sup>.

The Bill covers a wide range of issues which do not always logically fit together. This characteristic notwithstanding, the sensitive and controversial nature of some of the issues

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8 The German statesman, Otto von Bismark (1815-98) defined politics as the art of the possible.

9 This long-winded title replaces the previous Bill of Historical Memory although it is still commonly referred to as such. The reasons why the label “historical memory” was inappropriate, given its Orwellian overtones, are well known. I will refer throughout this article, however, to the Law of Historical Memory for the purpose of ease which is why I suspect the media also continue to refer to it in this way.

10 PSOE, “Merecemos una España mejor”, *Programa Electoral Elecciones Generales*, 2004 [<http://www.psoe.es>].

11 BLAKELEY, G., “It’s Politics, Stupid!” The Spanish General Election of 2004” in *Parliamentary Affairs*, vol. 59, nº 2, (2006), p. 345.

12 Ley 52/2007, de 26 de diciembre, *por la que se reconocen y amplían derechos y se establecen medidas a favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura* [Editor’s Note].



made the achievement of unanimous support difficult from the start<sup>13</sup>. The Bill consists of legislation on the following issues: compensation payments to various categories of victims; statements of public recognition to different groups including the declaration of personal reparation and recognition; the illegitimacy of Francoist courts and sentences; the removal of Francoist symbols from public places; the exhumation of civil war graves; the Valley of the Fallen; the issue of forced labour; the concession of nationality to the international brigaders; the recognition of the work of victims' associations; the creation of the Documentation Centre of Historical Memory and the management of the General Archive of the Civil War; the acquisition and preservation of documents relating to the Civil War and Francoist dictatorship and the right to access public and private archives. Only a year after beginning its work, the Interministerial Commission announced that it needed more time to adequately consider the issues before it. In acknowledgement of the complexity of the issues, and the myriad interconnections between them, the Government declared "These issues are like cherries, you pull on one and another few are pulled out at the same time"<sup>14</sup>.

The first draft of the Bill, dated 8<sup>th</sup> September 2006, was discussed in the Parliament Plenary on 14<sup>th</sup> December 2006 when three amendments to the totality of the Bill were presented. Both the IU/ICV and the ERC presented alternative texts for consideration while the PP simply requested the Bill be withdrawn. Although all three amendments were rejected, the Government faced a difficult period of negotiations prior to presenting the next draft of the Bill. In the intervening period, 377 separate amendments to the Bill were presented<sup>15</sup>. Its chief negotiating partners during that time were the IU/ICV coalition and the nationalist parties, principally the CiU, and to a lesser extent the PNV, the BNG and a number of regionalist parties. The influence of these negotiating partners can be seen clearly in the changes between the draft of the Bill and the final draft approved by Parliament on the 31<sup>st</sup> October 2007.

#### **Changes between the first and final draft of the Bill<sup>16</sup>**

A number of key changes between the first and final drafts of the Bill can be grouped under two headings which I have labelled greater historical specificity and greater state responsibility. In addition to these, key changes also occurred with regard to the issues of annulment and impunity.

The first heading of greater historical specificity relates to a number of changes, achieved primarily at the behest of the IU/ICV and to a lesser extent some of the nationalist parties, which concern the need for historical accuracy. In many cases, this simply meant a change in language away from vague, euphemistic references to "the conflict between Spaniards" to more precise, historical references to the Civil War and the Francoist dictatorship. Thus, in the preamble of the final draft, in the section relating to the removal of Francoist symbols, the initial phrase "avoiding the exaltation of the conflict between Spaniards" was replaced in the final draft by the phrase "avoiding the exaltation of the military uprising, the Civil War and the repression under the Dictatorship." Likewise, the CiU achieved recognition of those in the Republican Zone who suffered repression because of their Catholic faith despite their support of the Republic. In many articles of the final draft, there is now a reference to repression

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13 As an "ordinary" Bill, deputies can vote on each article in turn. On the one hand, this allows the Government to gain support on each discrete issue even when overall support may be lacking. On the other hand, it denotes a lack of overall consensus.

14 CUÉ, C., "Las asociaciones se impacientan y exigen una solución definitiva", *El País*, 12<sup>th</sup> September 2005.

15 Boletín Oficial de las Cortes Generales, 14/III/2007, nº 99-20 [<http://www.congreso.es>].

16 All quotes in this section of the article are taken from the first draft of the Bill published on the 8<sup>th</sup> September 2006 and the final draft of the Bill published on the 7<sup>th</sup> November 2007 in the Boletín Oficial de las Cortes Generales [<http://www.congreso.es>].



suffered not just as a result of political or ideological beliefs but also as a result of “religious belief”.

In other instances, greater historical accuracy has been achieved in the final draft by the removal of references to “the two factions”. Article 17 of the first draft of the Bill referred to the removal of Francoist symbols “when they exalt only *one of the factions* fighting in the Civil War...”. In addition to the possibility that memorials to some of the leading figures of the Second Republic might also have to be removed, this terminology also lacked historical specificity by putting the legally and democratically elected Republican Government on the same footing as the illegal, military uprising. In the final draft of the law, this aspect has been improved. Article 15 now talks about the removal of symbols which exalt “the military uprising, the Civil War, and the repression under the Dictatorship”.

This “equivalence problem” was also apparent in other aspects of the first draft. Article 2 recognised and declared the “unjust character” of “sentences, sanctions and any form of personal violence produced, for ideological or political reasons, during the Civil War, *whatever the band or zone* in which those who suffered were located...”. Again this established equivalence between the illegal military uprising of General Franco and the legally established Republican Government. In the final version, the phrase “whatever the band or zone” was deleted.

Although references to “the two sides” were removed from the final draft, some associations remain critical of the fact that the Government has established an equivalence between the victims of the Civil War and those of the Dictatorship as the title of the Bill itself denotes. In an open letter to the President of the Interministerial Commission, the Association AGE (Asociación para la Creación del Archivo de la Guerra Civil, las Brigadas Internacionales, los Niños de la Guerra, la Resistencia y el Exilio Español) remarks on the strangeness of mixing together the victims of the civil war with those persecuted and repressed under Francoism, not the least, they argue, because those victims of the civil war who belonged to the winning side have been amply compensated from 1939 onwards<sup>17</sup>. For this association, therefore, the underlying “equivalence problem” runs throughout the Bill and has not been adequately addressed in any subsequent draft.

Finally, greater historical specificity has been achieved by the inclusion within the final draft of an unequivocal condemnation of Francoism. Although the Spanish parliament issued an unanimous condemnation of Francoism on the 20<sup>th</sup> November 2002, some parliamentary groups considered that this was insufficient as it occurred within the Constitutional Commission rather than within the plenary of the Parliament. In its preamble, the final draft of the Law now states unequivocally that it adopts the declaration of the 20<sup>th</sup> November 2002 as well as “the condemnation of Francoism” issued by the Report of the Parliamentary Assembly of the Council of Europe on the 17<sup>th</sup> March 2006 which also “denounces the serious violations of human rights committed in Spain between 1939 and 1975”<sup>18</sup>.

The second heading of greater state responsibility relates to those changes which have resulted in a greater role for all levels of the state, but with particular emphasis on the central state’s responsibility, in ensuring that the legislation is carried out. In the preamble of the final draft, for example, a new paragraph was inserted to ensure that the public authorities carry out “public policies aimed at promoting knowledge of [Spain’s] history and democratic memory”. This responsibility of the state to “educate” its citizens about their collective past is also acknowledged in the preamble in the paragraph which refers to the legislators’ role in protecting each individual’s right to their personal and family memory. Additional language was added to

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17 AGE, “Carta Abierta a la Vicepresidenta del Gobierno y Presidenta de la Comisión Interministerial para el Estudio de la Situación de las Víctimas de la Guerra Civil y el Franquismo, María Teresa Fernández de la Vega”, 12<sup>th</sup> November 2004 [<http://www.derechos.org/nizkor/>. Read, 01/XI/2007].

18 See CONSEJO DE EUROPA, “Need for international condemnation of the Franco regime”, *Doc. 10078*, Ref. 2926, de 2 marzo de 2004, adoptado por unanimidad el 4 octubre de 2005 [<http://www.coe.int>].



the final draft which strengthened the state's role in "promoting constitutional values and knowledge and reflection about our past in order to avoid the repetition of situations of intolerance and the violation of human rights such as those previously experienced". Moreover, a second clause was added to the final draft of Article one, which sets out the Law's aims, affirming the state's role in educating citizens about the Civil War and the Dictatorship.

The state's role in carrying out certain aspects of the Law has also been strengthened in other respects. In Article 11 of the final draft [previously Article 13] there is a greater emphasis on central state responsibility vis-à-vis the mass civil war graves. The state is now obliged to draw up work plans and to award grants to ensure that the civil war graves are located and opened. Article 12 of the final draft [previously Article 14] similarly obliges the central state to assume a more proactive role in this area. This article now requires the central state to establish a protocol to regulate exhumations and to produce a map of all of the civil war graves. A new point requiring the public authorities to adopt measures to adequately preserve these areas was also inserted into the final draft of the Law.

In Article 15 [previously Article 17] relating to the removal of Francoist symbols, the central state now has to take responsibility for the removal of symbols at all levels of the state not just at those levels under central state jurisdiction. Two new clauses were added to this article. Clause three obliges the central state to collaborate with regional governments and local councils to produce a catalogue of the remaining symbols of the Civil War and the Dictatorship while clause four refers to the possible withdrawal of public grants from those bodies which fail to remove Francoist symbols<sup>19</sup>. On a similar note, Article 17 [previously Article 19] places a new responsibility on the central state to produce a census of buildings and public works which were built by forced labour under the Francoist dictatorship.

The IU/ICV coalition also forced changes in two other key areas: the issue of declaring sentences of the Francoist era null and void and the issue of impunity. With regard to the latter, the first draft of the Bill contained two instances of impunity which, had the Bill been approved in that form, would have contravened UN legislation<sup>20</sup>. Article 7 of the first draft related to the declarations of reparation and recognition of the "unjust" nature of Francoist rulings which individuals could request if they so desired. In the first draft, clause three of this article established impunity for those who might be identified in any Francoist rulings by providing for the omission of their identities in any declaration issued. In the final draft of the Bill, this clause is omitted. The other instance of impunity in the first draft of the Bill was in Article 25 [Article 22 in the final draft] which sets out the right of access to public and private archives. Clause three of Article 25 established that any document which revealed the identity of anyone involved in any Francoist ruling would be protected. Rather than having access to the originals in this case, individuals would be provided with a certificate of the content of the document to preserve the identity of those involved. In the final draft, this clause was also removed.

The issue of declaring sentences of the Francoist era null and void was the most controversial of all of the Bill's aspects. The Government was anxious to avoid the possibility of annulment right from the start. Revision of sentences on a case-by-case basis, the Government argued, could collapse Spain's already teetering court system while a blanket revision of sentences would not distinguish between those sentences issued for political or ideological reasons and those sentences for common crimes. A blanket revision could also lead to legal "uncertainty", a point that will be returned to below. Despite Government reticence, however,

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<sup>19</sup> A compromise amendment, reached between the PSOE and the CiU, was presented during the plenary on 31<sup>st</sup> October 2007. It was also supported by the PNV and CC. The PP rejected it, however, because it had not been consulted beforehand despite the fact that it was a measure the PP would ordinarily have approved. The new clause protects the interests of the Church by ensuring that symbols do not need to be removed if there are "artistic-religious" reasons for not doing so.

<sup>20</sup> EQUIPO NIZKOR, "The question of impunity in Spain and crimes under Franco". Madrid, 14<sup>th</sup> April 2004 [<http://www.derechos.org/nizkor>. Read, 01/XI/2007].



the aim of declaring sentences of the Francoist era null and void was a constant demand of many civil society organizations involved in the recovery of historical memory and of the IU/ICV coalition and the ERC. The Catalan Generalitat also presented a demand to the central government in 2004 to annul the court-martial against Lluís Companys, the President of the Republican Generalitat, shot in 1940, as well as the sentences of all the victims of the Franco regime. Moreover, both the PNV and the CiU and the smaller nationalist parties within the Mixed Parliamentary Group had supported this demand at various points, although none insisted on it during the final stages of negotiations<sup>21</sup>.

In the first draft Bill, the Government tried to side-step the issue through the creation of a “committee of five notables” to be elected by three-fifths of the Parliament. Any victim or his/her relatives could apply to this committee to request “a Declaration of reparation and personal recognition” which would be published in the Boletín Oficial del Estado. This solution was rejected unanimously. For many on the Left, in particular, it smacked ominously of the infamous “good behaviour” passes issued by the Francoist regime. The Government potentially faced a further problem: the PP could block the formation of the committee’s membership given that the nomination of the five notables required the vote of three-fifths of the Parliament.

In April 2007, however, the PSOE reached an agreement with the IU/ICV to withdraw the idea of the “committee of notables” and to declare Francoist sentences “unjust”. This declaration, according to the PSOE, would have “political and moral” consequences but it would not have “legal” or “economic” consequences, an outcome the PSOE was keen to avoid. The final draft of the Bill, however, goes further following intense negotiations with IU/ICV. Article 3 declares the “illegitimacy” of sentences emanating from any of the Francoist courts or other penal or administrative organs issued for political, ideological or religious reasons. Moreover, the final draft contains a provision to expressly repeal a number of key laws making up the repressive architecture of the Francoist state from the Bando de Guerra of 28<sup>th</sup> July 1936 to the Law 15/1963 which created the Public Order Tribunal. According to the IU/ICV, this provides those who wish to obtain a revision of their sentences to apply to the Supreme Court using the Law of Historical Memory as additional proof for the Court to consider. The PSOE has also acknowledged that the Law leaves open the door to this possibility. Even so, it is unlikely that there will be an avalanche of requests to do so.

The possibility to apply to the Supreme Court to request a revision already exists although few have previously made use of this. Of those cases that have reached the Supreme Court, moreover, the precedents are unpromising for those wanting annulment. On 15<sup>th</sup> June 2004, the Military Division of Spain’s Supreme Court rejected the request of the Asociación de Familiares Represaliados por el Franquismo to revise 72 death sentences issued by the Francoist courts. The Association had used a number of resolutions approved by the Spanish Parliament to demonstrate the illegality of the Francoist uprising which, in turn, demonstrated the illegality of the death sentences issued. In rejecting the request, the Military Division of the Supreme Court argued that the parliamentary resolutions were “only an opinion with political and ethical value...”. Therefore, “we cannot give them more value than that which corresponds to them in a parliamentary sense, and, in consequence, they can have no bearing on changing the facts which are said to have been proven in the sentences”<sup>22</sup>. This has obvious implications for the ability of associations to successfully use the Law of Historical Memory as proof but it also denotes a distorted historical view which is prevalent amongst certain sectors within Spain that the Francoist regime was not an illegal regime. On the contrary, the Supreme Court maintains that Francoist laws have not been revised; they have simply been substituted by others. All requests for revision have so far been rejected on the understanding that those people were judged according to the Francoist laws in force at that time and that these

21 See the positions of these parties in the first plenary debate. Diario de Sesiones del Congreso de los Diputados, nº 222. Sesión del 14/XII/2006 [<http://www.congreso.es>].

22 Noticia, “El Supremo rechaza revisar 72 ejecuciones del franquismo al estimar que no fueron ilegales”, *El País*, 19<sup>th</sup> June 2004.





have not been annulled although the 1977 Amnesty Law and the 1978 Constitution rendered them inoperable<sup>23</sup>. Thus, Francoist rulings are considered legal and, as a result, only a specific law can annul them.

Jurists are also divided over the issue. José Antonio Martín Pallín, Magistrate of the Supreme Court, has argued that Francoist rulings can be declared null and void. For him, it is not a question of revising each case in turn; rather it is a question of “simply declaring that the system followed in order to impose the sentences is repugnant and incompatible with the values of any democratic culture or civilized society”<sup>24</sup>. Other jurists are not so convinced. For some, a general annulment could produce «legal uncertainty» given the lack of a rupture between the dictatorial regime and the new democracy. José Luis Requero, of the Consejo General del Poder Judicial, for example, argued that revisions on a case-by-case basis were already being carried out, but that “a blanket revision would be counterproductive and would produce “legal uncertainty””. Moreover, he argued “it is not possible to retroactively impose the legal guarantees of the 1978 Constitution, or those of 2006, to 1936 or to 1940.” He also argues that this would set a “bad precedent” because “who is to say that within 30 or 40 years someone decides to request the annulment of the trials of ETA, GRAPO...”<sup>25</sup>. This last argument establishes an equivalence between the democratic regime in which trials against ETA or GRAPO are conducted and the trials conducted under the illegal dictatorship of General Franco. As such, it is consistent with the perspective mentioned earlier which sees the Franco regime not as an illegal regime but simply as displaying a different type of legality to that of Spain’s current democratic regime.

### Evaluating the Historical Memory Law

As stated above, the aim of this article is not to evaluate the Law from a legal or a human rights perspective, but to evaluate it from the perspective of politics where the Law is seen as both a product and reflection of the conduct of “politics as usual” in Spain. If viewed from this perspective, the question then is what the Law can tell us about Spanish politics today. Two key aspects will be touched on in this section: the first relates to the primacy of electoral considerations; the second relates to the interaction between state and civil society.

#### *Electoral Considerations*

Political parties are an essential element of modern liberal democracies. Government within a modern democracy is therefore party government. This means that politics is played out with a view to electoral considerations and consequences. The Law of Historical Memory is both a product and a reflection of the weight of electoral considerations in Spain particularly given the nearness of the approval of the Law in Parliament on the 31<sup>st</sup> October 2007 to the next general election in March 2008. It is also, however, a product of the political environment arising from the 2004 general election held only three days after the Madrid bombings. Although widely expected to win that election, the PP was punished electorally for its handling of the bombing which also returned to the foreground the unpopular issue of the Iraq War and other instances such as the Prestige and the Yak-42 disasters where the PP was regarded as having manipulated information and disregarded public opinion<sup>26</sup>. The Law of Historical Memory is a product of this new and tense political environment in which the PSOE has had to

23 CUÉ, C. & DÍEZ, A., “PSOE e IU-ICV dan un vuelco total a la Ley de Memoria y declaran ilegítimos los juicios de Franco”, *El País*, 20<sup>th</sup> April 2007.

24 MARTÍN PALLÍN, J. A., “Nacido en el 36”, *El País*, 12<sup>th</sup> November 2004.

25 LÁZARO, J., “Seguridad jurídica o nulidad de sentencias”, *El País*, 15<sup>th</sup> December 2006.

26 For an extended version of this argument, see BLAKELEY, G., “It’s Politics Stupid!...”.



rely on its left-wing and nationalist allies in the face of hostile opposition from the PP. The “political opportunity structure” at the time of the parliamentary resolution of 2002, which condemned the military uprising of 1936, was defined by the comfortable electoral position of the PP. Having gained an absolute majority for its second legislature from 2000-2004, and with a strong lead in the opinion polls throughout much of this period, the PP could support the 2002 resolution from a position of strength. By the time of the Law of Historical Memory, however, the “political opportunity structure”, resulting from the changed political environment following the 2004 election, was not propitious to gaining PP support.

Electoral considerations weighed heavily during the negotiations when who supported the Bill often became more important than the Bill’s content. The PSOE, for example, was anxious for the Bill not to be seen as just a left-wing initiative. With its eye on the upcoming 2008 general election, the PSOE was caught in the difficult position of trying to be radical enough to appeal to those voters who in 2004 had switched from the IU to the PSOE while trying to appear moderate enough to not alienate those centrist voters who had voted for the PP in 2000 but, in 2004, had returned to the PSOE<sup>27</sup>. The PSOE, therefore, did not just need the votes of the nationalist parties to supplement the five votes from the IU/ICV coalition; it also needed their visible support to prevent the PP from portraying the Bill as a purely left-wing initiative. Moreover, the PSOE spent a lot of time negotiating in the last few days before the plenary at the end of October 2007 to gain not just the support of the two main nationalist parties, the CiU and the PNV, but also the support of the BNG, the CHA and the CC so that it could argue that the Bill was supported by the broadest possible sweep of parties. The nationalist parties, in turn, needed the Bill to attract the broadest support within Parliament, particularly from the range of nationalist parties present, in order to be able to sell the Law as a key piece of centrist legislation, underpinned by broad support.

Electoral considerations also meant that what the Bill symbolized, and how this symbolism could be used, became more important than the substance of the Bill. The triumph of symbolism over substance can be seen most clearly in the view that the Law is unnecessary. In legal-technical terms, the majority of the Law’s aims could have been achieved through other measures such as governmental decrees or, even more simply, by ensuring that existing legislation is used to achieve these ends. However, it can be argued as the PSOE did within the second plenary debate, that the Law is necessary in a political sense. The PSOE spokesperson, Torres Mora, argued that although there were technical reasons why a law was unnecessary, politically it was important because, “A law has a symbolic value which is particularly valuable and relevant when the content of that norm is precisely one of public reparation...”. He continued that “a decree would, moreover, be an exclusively governmental measure, whereas we all participate in a law. The more we support it, the more reparatory value the Law will have”<sup>28</sup>.

The Law of Historical Memory is, therefore, more important for what it symbolizes politically than for its legal consequences. For example, the provision which expressly repeals a number of Francoist laws is politically symbolic but legally unnecessary as the 1978 Constitution already fulfils this aim. The 1978 Constitution contains a provision which not only repeals all of the Francoist organic laws in point one, but, also repeals, in point three, any law which contravenes the Constitution itself. This includes, of course, the entire repressive legal framework of the Francoist regime. According to the Government, however, there are two key aims

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27 According to Suárez, of the three million new votes which the PSOE gained in 2004, 1.5 million came from former absentee voters, over 500,000 from new voters, approximately 700,000 from the PP and about 303,000 from the IU. SUÁREZ, S., “Mobile Democracy: Text Messages, Voter Turnout and the 2004 Spanish General Election” in *Annual Meeting of the American Political Science Association*, 2005, p. 24, quoted in BLAKELEY, G., “It’s Politics Stupid!...”.

28 *Diario de Sesiones del Congreso de los Diputados*, nº 296. Sesión del 31/X/2007, p. 14633 [<http://www.congreso.es>].



in this respect: "one is pedagogic and the other is an express repeal with «more political than legal force»<sup>29</sup>.

The political symbolism of the Law is therefore substituting for a previous lack of political will in some instances. In many areas of Spain, local councils have been removing Francoist symbols since the first democratic local elections in April 1979 without the need for a specific law. In regions such as Catalonia, local citizens often did not even await this early institutional response but replaced street signs with their own hand-made signs. In contrast, in many right-wing controlled areas, such as Cantabria and Valencia, Francoist symbols remain plentiful. While it is often the right-wing which has been most reluctant to remove such symbols, some left-wing councils have also shown reluctance to act given the controversy this issue can incite particularly in small towns and villages. Nonetheless, it is the lack of political will to carry out these actions in each case which is the explanatory factor rather than the lack of a legal imperative. It is in this sense that we can understand Sempere's argument that "here and now, a law to recognise victims has more value for the State than for the victims. It is the State which is asserting its own claim to be a representative of the people by condemning the coup d'état and its political and legal effects"<sup>30</sup>.

The importance of symbolism over substance is also apparent in the ways in which the two main parties have portrayed the Bill. The PSOE was keen to portray the Bill as an integral and coherent part of its overall legislative agenda based on extending rights. On introducing the Bill in the first plenary, Fernández de la Vega argued that the right of each person to their individual, private and family memory, which is enshrined in the Bill as a key right of democratic citizenship, is evidence of the Government's ongoing commitment to extending rights<sup>31</sup>. The PSOE spokesperson, Torres Mora, argued in the second plenary that the Bill was "coherent with the politics of recognition and extension of rights followed by this Government throughout this legislature"<sup>32</sup>. This interpretation of the Bill also chimes with the PSOE's view, as well as that of the IU/ICV and the nationalist parties, that this Bill is one more step in a series of measures to honour and recognise the victims of the Civil War and the Dictatorship which have been approved by Parliament since the first democratic elections in June 1977. Moreover, the Government does not see the Law as any kind of "full-stop" law. On the contrary, the Government has acknowledged that the Law leaves the door open to further action especially in the courts. Some associations have already presented demands to the courts to revise sentences and it is likely that the Law of Historical Memory will be used to continue this process in both national and international courts.

In contrast, the PP portrayed the Law of Historical Memory as a break with previous pacts<sup>33</sup>. In the first plenary, the PP's spokesperson, Atencia, declared that the Law broke with

29 Noticia, "Ley de Memoria con efectos limitados", *Público*, 10<sup>th</sup> October 2007.

30 SEMPERE, J., "Memoria histórica y consolidación democrática", *El País*, 31<sup>th</sup> January 2007.

31 Diario de Sesiones del Congreso de los Diputados, nº 222. Sesión del 14/XII/2006, p. 11258 [<http://www.congreso.es>].

32 Diario de Sesiones del Congreso de los Diputados, nº 296. Sesión del 31/X/2007, p. 14631 [<http://www.congreso.es>].

33 This is a sentiment shared by the Catholic Church. In its Instrucción Pastoral, Moral Directions for the Current Situation in Spain, issued in Madrid on the 23<sup>rd</sup> November 2006, the Church lamented that: «A society which seemed to have found the path of reconciliation and peace, finds itself once again divided and in conflict. A selective use of "historical memory", reopens old wounds of the civil war and stirs up hostile feelings which seemed to have been overcome. These measures cannot be considered real social progress, but rather a historical and civic backward step, with the obvious risk of tensions, discriminations and disturbances of a peaceful co-existence», CONFERENCIA EPISCOPAL ESPAÑOLA, *Orientaciones morales ante la situación actual de España. Instrucción pastoral de la LXXXVIII Asamblea Plenaria de la Comisión Episcopal Española*. Madrid, 23 de noviembre de 2006 [<http://www.conferenciaepiscopal.es>. Read, 24/X/2007].



the spirit of the transition and the 1978 Constitution. He portrayed the Law as “nothing more than a further step in the strategy of breaking with the great pact of coexistence amongst Spaniards which was the transition and the Constitution”<sup>34</sup>. This theme was continued in the second plenary when the PP spokesperson, Zaplana, argued that the Bill “breaks with the heritage of consensus with which the transition to democracy was built”<sup>35</sup>. Zaplana accused the Government of using the Law of Historical Memory “to delegitimize nothing more and nothing less than the pact of the transition; this is what is behind all of this”<sup>36</sup>.

The PP’s emphasis on the Bill as a break with previous pacts, particularly the 1978 Constitution and the 2002 parliamentary condemnation of Francoism, is part of the wider oppositional strategy followed by the PP throughout the 2004-2008 legislature. This oppositional strategy has consisted of arguing that Zapatero has abandoned the centre ground of Spanish politics and has passed legislation the primary aim of which is to create an atmosphere of division and confrontation within Spain. In the second plenary, Zaplana declared: “For the first time, a President of the Government makes the division of Spanish society its only political programme”<sup>37</sup>.

The PP’s oppositional strategy is based on the knowledge that the majority of Spanish voters place themselves ideologically on the centre-left<sup>38</sup>. Given that it is difficult for the PP to locate itself in that ideological space, the PP has chosen an electoral strategy based on trying to move the median Spanish voter towards the right. One way of doing this is by attempting to steer political debate within Spain towards “negative” topics such as ETA, immigration or separatism. This strategy has two inter-related aspects: on the one hand, a strategy of confrontation with the Government aims to shore up the PP’s hard core of right-wing voters; on the other hand, by creating an atmosphere of constant tension and conflict through its emphasis on “negative” topics, the PP hopes to dissuade centre-left voters from voting. The Law of Historical Memory and the PP’s implication that it is leading to the division of Spain is a key element of this strategy. Thus, in another triumph of symbolism over substance, the PP was both vociferous and vocal in its opposition to the Law of Historical Memory despite the fact that it actually voted for a number of the Law’s key articles. Articles five to nine, for example, which improve compensation payments to various categories of victims of the Civil War and the Dictatorship gained the most consensual support including that of the PP<sup>39</sup>.

The PP’s twin-pronged strategy of trying to shore up its core vote while dissuading left-wing voters from voting also explains behaviour which otherwise seems contradictory. On the one hand, the PP has spent much time and effort on portraying itself as a modern, European conservative party. This is an image which befits a party which is a member of the centre-right Popular Party grouping within the European Parliament and which declares itself as the heir to nothing more than the transition and the 1978 Constitution<sup>40</sup>. On the other hand, sections within the PP continue to engage in behaviour which highlights the Francoist roots it is so anxious

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34 Diario de Sesiones del Congreso de los Diputados, nº 222. Sesión del 14/XII/2006, p. 11260 [<http://www.congreso.es>].

35 Diario de Sesiones del Congreso de los Diputados, nº 296. Sesión del 31/X/2007, p. 14627 [<http://www.congreso.es>].

36 Diario de Sesiones del Congreso de los Diputados, nº 296. Sesión del 31/X/2007, p. 14628 [<http://www.congreso.es>].

37 Diario de Sesiones del Congreso de los Diputados, nº 296. Sesión del 31/X/2007, p. 14628 [<http://www.congreso.es>].

38 The regular opinion barometer surveys carried out by Centro de Investigaciones Sociológicas [CIS] show that voters place themselves around 4.5 on an ideological spectrum where the extreme left equals one and the extreme right equals ten [<http://www.cis.es>].

39 Articles five, six, eight and nine received 314 votes in favour, and ten against while article seven received 311 votes in favour, 10 against and one abstention.



to disown. A few examples will suffice. The first homage paid by Parliament to all victims of Francoism took place on the 1<sup>st</sup> December 2003 with the support of all the political groups apart from the PP. Luís de Grandes, the PP's spokesperson declared: "They are persisting in paying homage to goodness knows who"<sup>41</sup>. In an interview published in the newspaper "The Voice of Galicia" on 14<sup>th</sup> October 2007, Jaime Mayor Oreja, previously PP Minister of the Interior and currently a European deputy for the PP, questioned why he should condemn Francoism "when many families experienced it peacefully and without bother"<sup>42</sup>. Finally, in December 2006, PP councillors in Salamanca refused to declare null and void the expulsion of Unamuno as councillor in 1936 while in January 2007, they voted against the motion presented by the PSOE to revoke the title of honorary mayor of Salamanca bestowed on Franco in 1964<sup>43</sup>.

The strategy of the PSOE and the PP, as described above, is commensurate with the conduct of "politics as usual" where electoral considerations dictate that symbolism and the way in which issues can be portrayed to the public become more important than the substance of these issues. The Law of Historical Memory, however, is also a product of the changed political environment since the 2004 general election. Since that point, the PP has maintained a hostile opposition to the Government's legislative agenda and the Law of Historical Memory has been a key element of this. The Law of Historical Memory, therefore, reflects the process of politics as usual albeit conducted at a time when politics in Spain is particularly tense following the unusual circumstances of the 2004 general elections. On the one hand, this tells us that Spain's democracy functions in much the same way as all modern, liberal democracies do. On the other hand, we can question why the two key parties failed to use this Law to further consolidate the quality of democracy in Spain.

### The Interaction between State and Civil Society

The achievement of successive pacts is a result of the interaction between state and civil society. Reconciliation, according to Bloomfield, is a process, rather than an end-state in which the interaction between top-down, state initiatives and bottom-up civil society initiatives is crucial<sup>44</sup>. In Spain, this interaction is clear but the impetus has always come from civil society. This is true of the original transitional pacts, the 2002 resolution and, most recently, the Law of Historical Memory. In each case, those active within civil society have constantly pushed and prodded the political elites to act while the latter have often been tardy and reluctant to do so. It is surprising, for example, particularly for outside observers, that the energy Spain has shown in bringing human rights abusers to account in Latin America has not been directed with equal effort at the human rights abuses committed under the Franco regime. Opinion polls, moreover, show that voters in Spain are well disposed towards this issue. In an Instituto Opina poll in June 2006, for example, 54,9% of those questioned thought that it was

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40 It is noteworthy that the PP spokesperson, Atencia, justified his group's amendment in the first plenary on the Bill by saying: «I do so with the calm and authority from doing so in the name of a political group which has no more past and no more heritage than the transition and democracy», *Diario de Sesiones del Congreso de los Diputados*, nº 222. Sesión del 14/XII/2006, p. 11259 [<http://www.congreso.es>].

41 BLANCO, A., "El deber de la memoria", *El País*, 31<sup>st</sup> December 2003.

42 CUÉ, C. & DÍAZ, A., "Mayor Oreja se niega a condenar el franquismo y Acebes evita desautorizarle", *El País*, 16<sup>th</sup> October 2007.

43 Noticia, "Franco continuará como «alcalde honorario a perpetuidad» de Salamanca", *El País*, 26<sup>th</sup> January 2007.

44 BLOOMFIELD, D., "On Good Terms: Clarifying Reconciliation" in *Berghof Report*, nº 14, (2005).



fitting for the Government to be preparing the Law of Historical Memory<sup>45</sup>. In another question, 64.5% said they were in favour of investigating *everything* related to the Civil War, of locating the common graves and of rehabilitating all those affected. Moreover, although more of those responding in favour of this question were PSOE and IU voters, 77,0 and 80,0% respectively, 44,8% of PP voters also responded favourably. Finally, 63.8% disagreed with the statement "The best one can do with regard to the 18<sup>th</sup> July 1936 and the Civil War is to not speak about it and to investigate nothing". Again, 45,7% of these respondents were PP voters, 75,5% were PSOE voters and 80,0 were IU voters. The CIS October 2006 Barometer also suggested similar support: 54.1% of those interviewed agreed that some initiative should be carried out as a sign of recognition for the victims of the Spanish Civil War and 53.3% felt that the victims of the Civil War had been forgotten and that it was now time to put right this injustice<sup>46</sup>. In short, voters and civil society organizations seem more ready to confront Spain's past than their political elites.

This suggests that Spain's two main parties, the PSOE and the PP, could have followed the lead from organizations within civil society by contributing, through the Law of Historical Memory, to the consolidation of democracy in Spain in more robust ways. From its position in Government, the PSOE could have produced a more ambitious Law. What is missing from the Law is, therefore, just as important as what is there. The most important omission is the failure of the Government to take on board the demand of key organizations in national and international civil society, as well as those of some of its key political allies, to declare Francoist rulings null and void. The Equipo Nizkor, representing over 70 Francoist victims' organizations maintained in a report that the Law continued to be "aberrant" because it was "contrary to international law, European jurisprudence and, as a consequence, it violates Spanish internal law"<sup>47</sup>. Moreover, precedents were not lacking elsewhere. The Government could have followed the precedent set by the right-wing CDU Government in Germany which passed the Law to Nullify Unjust National-Socialist Sentences on 25<sup>th</sup> August 1998. This Law effectively "declared the entire apparatus of Wehrmacht "justice" as unjust, null and void"<sup>48</sup>. To miss the opportunity to not declare Francoist sentences null and void is to miss the opportunity to declare once and for all that the differences between Spain's dictatorial past and democratic present and future is not one of degree but of kind.

The Government could also have been more forceful in promoting a democratic culture based on an accurate knowledge of the Civil War and Dictatorship: in short, the use of past memory as an educational tool for the future. Article 16 relating to The Valley of the Fallen is particularly timid in this regard as it only prevents people from holding political acts there. Although the aim of honouring and rehabilitating the memory of all those who died in the Civil War and the subsequent repression is mentioned in an additional provision on the Valley of the Fallen, there is no concrete provision for an educational centre as demanded by many in civil society. The opportunity has thus been lost at this present point to turn the Valley of the Fallen into an educational centre about the horrors of dictatorship as has occurred with concentration camps from the Nazi era or with torture centres used during the military dictatorships of Latin America. While it is not the role of Governments to produce or promote an official historical memory, it is the role of democratic Governments to ensure that its citizens have

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45 INSTITUTO OPINA, *Encuesta España*, Flash 18 July 2006 [<http://www.institutoopina.es>. Read, 31/X/2007].

46 CENTRO DE INVESTIGACIONES SOCIOLÓGICAS, *Barómetro Octubre 2006*. nº 2657, (2006) [<http://www.cis.es>].

47 EQUIPO NIZKOR, "An aberrant Law", 30<sup>th</sup> October 2007 [<http://www.derechos.org>. Read, 10/XI/2007].

48 PEIFER, D., "The Past in the Present: Passion, Politics, and the Historical Profession in the German and British Pardon Campaigns" in *The Journal of Military History*, vol. 71, (2007), p. 1125.



accurate knowledge of their own history<sup>49</sup>. Again, there was no shortage of precedents upon which the Government could have drawn. In Andalucía and Catalonia, both Socialist strongholds, the regional governments have been at the vanguard of the recovery of historical memory and of the dissemination of this memory. In Catalonia, the Generalitat created the Democratic Memorial Project, an institution aimed at researching, disseminating and commemorating the Second Republic and the anti-Francoist struggle. Since 2006, the Democratic Memorial Project has awarded grants to a variety of projects related to historical memory<sup>50</sup>. A similar centre of historical memory is planned in Andalucía where, as in Catalonia, the regional government has provided grants to various projects associated with the task of recovering historical memory<sup>51</sup>.

The importance of this educational aspect cannot be overstated. The lack of historical accuracy in the first draft of the Bill as well as the vague, euphemistic language that was often used to refer to these particular historical periods demonstrates the extent to which even left-wing parties like the PSOE are prisoners of a particular conception of the past. Moreover, it is arguable that the “equivalence problem” detailed above is still evident even in the final draft given that the title of the Bill itself places the Civil War and the Dictatorship on a par with each other. Nowhere has this “equivalence problem” been more evident, however, than in the decision of the Socialist Defence Minister, Sr. Bono, to invite for the first time in 2004 a veteran of the Blue Division, sent by Franco to support Hitler’s troops in Russia, to march alongside a veteran of the Leclerc Division, which played a key role in liberating Paris from the Nazis, as part of the military parade on Columbus Day. This is the “equivalence problem” writ large. As Ramoneda argues: “The desire for reconciliation should not be confused with moral relativism, as if, with the passage of time, actions lose their meaning, everything becomes the same”<sup>52</sup>.

If the Government could have presented a more ambitious Law, the PP, on the other hand, could have made the Law irrelevant by having acted on many of its aims through its control, not just of the national legislature from 1996-2004, but of various autonomous governments and local councils. In some autonomous communities, the PP has been more willing to confront the past than in others. The PP in Catalonia, for example, has been supportive of much of the Generalitat’s policy on historical memory, including the establishment of the Democratic Memorial centre. However, while the previous leader of the PP in Catalonia, Josep Piqué, declared himself in favour of the removal of Francoist symbols, the President of the PP, Mariano Rajoy, accused Zapatero of “breaking with the spirit of the transition” by removing the last statute of Franco left in Madrid in March 2005<sup>53</sup>. Thus, the PP at national level at least, is still stuck in the forward looking mode which characterised the original transition pact and rejects any need to look towards the past. Indeed, in the second plenary on the Law for Historical Memory, the PP spokesperson, Zaplana, urged the Government to “stop looking in the rear-view mirror and look forwards”<sup>54</sup>. For the PP, history starts afresh with the transition

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49 The report by the Equipo Nizkor highlights that the UN framework enshrines this right under Principle 2 of the Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity. This provides that: «A people’s knowledge of the history of its oppression is part of its heritage and, as such, must be preserved by appropriate measures in fulfilment of the State’s duty to remember. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments», EQUIPO NIZKOR, “The question of...”, *op. cit.*

50 See <http://www.gencat.net>.

51 See <http://www.juntadeandalucia.es/justiciayadministracionpublica>.

52 RAMONEDA, J., “Poco más que un desfile”, *El País*, 14<sup>th</sup> October 2004.

53 Noticia, “Rajoy acusa al PSOE de romper el espíritu de la transición al retirar la estatua de Franco”, *El País*, 19<sup>th</sup> March 2005.

54 Diario de Sesiones del Congreso de los Diputados, nº 296. Sesión del 31/X/2007, p.14630 [<http://www.congreso>].



to democracy and the 1978 Constitution. In this way, the PP denies any continuity between the Second Republic and the anti-Francoist struggle and the current democracy. Throughout the passage of the Law of Historical Memory, the PP struggled to prolong the consensus reached in the transition and, by so doing, to continue to deny history before the transition to democracy and the 1978 Constitution as a way of denying its own links to the Francoist past. For Ridao, the PP's "incomprehensible stubbornness in maintaining Francoist symbols made it lose sight of the fact that one of the most decisive contributions it could have made to the democratic system was to have withdrawn them on its own initiative, creating a constitutional space in which there was no room for doubt: the 1978 Constitution is the most robust, incontestable condemnations of Francoism"<sup>55</sup>.

Through the Law of Historical Memory, therefore, we see clearly the gap between the mood in civil society and Spain's political elites. To return to Sempere's argument, the Law of Historical Memory is perhaps at its most useful in aiding the State to restore its own reputation as a faithful representative of the people. For the victims of the Francoist dictatorship, their own private reputation was never in doubt. While a state guarantee of the individual right to private memory is unnecessary, a state guarantee of the collective right to public memory is. It is a shame that the two key parties in Spanish politics have not been able to contribute to this both earlier and more unequivocally. Both parties have put electoral calculations ahead of improving the quality of democracy. That they have done so is evidence, on the one hand, of the extent to which party democracy is embedded in Spain. On the other hand, however, it is evidence of the extent to which parties in Spain remain tied to a particularly distorted concept of the past in which the difference between the Francoist dictatorship and the current democracy is one of degree rather than one of kind. It is not always the case, therefore, that citizens get the politicians they deserve. Citizens sometimes have to content themselves with the politicians and politics which are possible at any given time. Although all pacts, including the current Law of Historical Memory, are open to renegotiation as the interaction between state and civil society continues, it is true that in this case, given the advanced age of the Civil War generation, time is running out.

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55 RIDAO, J. M<sup>a</sup>, "Memoria y voluntad", *El País*, 24<sup>th</sup> September 2007.





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