

**Stolen Babies in Spain:
Human Rights Abuses and Post-transitional Justice**

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I. Introduction

Human rights abuses and violence committed during dictatorships, military regimes, and civil wars are difficult to live through and impossible to forget. When these conflicts end, the burden of dealing with their consequences falls on the new government. While the new government establishes institutions, elections, and the rule of law, it must also decide what role transitional justice will play in the new political system. Transitional justice employs various mechanisms—amnesty, trials, truth commissions, lustration policies, reparations, national apologies—to denounce violence and promote human rights, strengthen the relationship between citizens and their government, distinguish the present administration from its predecessor, or a combination of these objectives.¹

Though the nature of human rights abuses committed can vary drastically, victims should ultimately be recognized and protected. In addition to attempting to restore safety and peace at an individual level, transitional justice can also help to restore the relationship between civil society and the government that was damaged, and sometimes destroyed, by the abusive regime.

A democracy cannot function without the participation of its citizens, and the citizens must be made to feel that their government will listen to and protect them. This may require relatively minor reforms, such as the purging of the previous regime's employees, or drastic changes, such as the entire reconstruction of government institutions and a new constitution. There are numerous factors to take into account before determining appropriate transitional justice mechanisms, some of which include: the state of the economy, the duration of the conflict, how the conflict ended, and the type of violence that ensued. Every political conflict is distinct and every culture unique, creating infinite possible responses. While there is no simple,

¹ Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001).

guaranteed solution, the 20th and 21st centuries have seen various attempts at transitional justice as well as numerous regions that have suffered without it. The international community increasingly expects that a post-conflict nation undergo some form of transitional justice.

The transitional period between conflict and democracy is critical and often the best time to address past violence. For those nations that wait to address these abuses, certain challenges arise. Victims' suffering gets buried and ignored. With the passing of time, witnesses and evidence are lost. With such a clear incentive to act, why do so many nations struggle to carry out transitional justice? Implementing transitional justice is a delicate process. It can be expensive to pay reparations, hold trials, or establish truth commissions if the economy is in shambles. If the previous regime never collapsed but voluntarily ceded power to a new government, military or authoritarian leaders often maintain substantial political strength to block attempts at transitional justice. An impartial and independent judiciary may not even exist to hold fair trials.² From the perspective of the citizen, one of the greatest challenges of transitional justice is to find a balance between dwelling on the past and ignoring it. Few want to relive the brutality and devastation of the conflict and some view trials and truth commissions as emotionally devastating; others view it as delaying political progress. However, it can be all too easy to ignore the traumatic consequences of the conflict. Whether for economic, political, or psychological reasons, many nations do choose to sidestep transitional justice.

Even so, this decision need not condemn the nation's future. Some states find themselves in a position to confront their traumatic past years, decades, or even generations after the conflict. There are some advantages to delaying this process and instead implementing what is

² Ibid., 12.

called post-transitional justice.³ Time is necessary for an economy to stabilize and government institutions to develop. Whereas conflict or post-conflict nations are often politically volatile and vulnerable, time can lead to the strengthening of both the political system and civil society. Citizens and leaders may be more willing to confront the past when the country is no longer on the verge of collapse, or they no longer live in fear of the former government.⁴ However, post-transitional justice is still a compromise. Surviving victims or witnesses may no longer be able to testify to abuses and other evidence may be long gone. Additionally, there is the added complication of intergenerational justice.⁵ Addressing the abuses committed by previous governments and actors will inevitably place blame; victims' descendants will seek justice and retribution. But it is worth questioning whether today's generations have the responsibility to pay for crimes of the past.

Though Spain now enjoys a strong democracy, it has delayed or, in some cases, altogether ignored discussing the abuses committed during the civil war and ensuing dictatorship before its transition to democracy in the 1970s. Now, the nation must face many of the challenges that come with post-transitional justice. Nothing about the transition boded well for trials, a truth commission, or any transitional justice mechanisms other than amnesty. After nearly four decades of authoritarian rule, the death of dictator Francisco Franco marked the beginning of a political negotiation between his supporters and opponents. The country has gradually modernized and liberalized. Spain is no longer on the verge of either civil war or at

³ Cath Collins, *Post-transitional Justice: Human Rights Trials in Chile and El Salvador* (University Park, PA: Pennsylvania State University Press, 2010).

⁴ Paloma Aguilar, "Transitional or Post-transitional Justice? Recent Developments in the Spanish Case," *South European Society and Politics* 13:4 (March 2009): 417-433.

⁵ Rhoda E. Howard-Hassmann and Mark Gibney, "Introduction: Apologies and the West," in Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud, and Niklaus Steiner, ed., *The Age of Apology: Facing Up to the Past* (Philadelphia: University of Pennsylvania Press, 2008), 5.

risk of undergoing a violent, repressive dictatorship. The government has distanced itself from Franco and enough time has passed that no one in government is seriously affiliated with crimes carried out under the regime. Extrajudicial killings, forced exile, imprisonment, and forced labor were just some of the more infamous crimes committed throughout the civil war and during the early years of Franco's rule, but little is known about the thousands of children abducted during this time period.

Retracing the country's history as far back as the 1930s, the Spanish Civil War arose from a sharp division in the country's political culture. Both sides were diverse and comprised many groups: Carlists, Nationalists, Monarchists, and fascist movements on the right; and Republicans, communists, anarchists, and other liberal groups on the left. After an attempted coup d'état by the Nationalists in 1936 pushed the fragile republic into war, the right wing quickly organized itself under the leadership of General Francisco Franco and his Nationalist supporters. Though the left remained divided ideologically—a weakness that played a significant role in its defeat—all liberals were merely labeled as Marxists in the eyes of the Nationalist, branded as *rojos*, or reds,⁶ and a contagious threat to the Spanish race. Both sides took thousands of political prisoners during the war, but, for the Nationalists, prison served the purpose of containment and control of Marxism. Thousands of women, many with little or no connection to Republican soldiers, were taken as political prisoners during the civil war and throughout the 1940s. Some of these women were captured along with their young children; others were pregnant or raped, later giving birth in prison. A series of laws passed in 1940 under the new Franco government facilitated and legalized the separation of thousands of children from their mothers in prison and either gave them to families who supported the regime, or sent them to

⁶ All translations are my own, unless otherwise indicated.

orphanages or Church-run institutions. This was an attempt to rehabilitate the children and nationalize them according to the ideals of the regime. Only a fraction of these children were actually orphans to begin with but, by 1954, the state was guardian to more than 30,000 children.⁷

By the early 1950s, political resistance had subsided and the devastated economy finally began to recover. The government released nearly all of its political prisoners and, beneath a layer of heavy political and cultural repression; the country appeared to move on. Mothers and children remained vulnerable, though no longer at the mercy of the government. Between the late 1940s and the early 1990s, adoption in Spain was difficult. The process was complicated, time-consuming, and often unproductive, with waiting lists numbering into the thousands. A phenomenon arose of women entering clinics and maternity wards to give birth, undergoing anesthesia, and later waking up to learn that their newborns had died due to unforeseen complications. In reality, thousands of babies were taken and sold to married couples, often childless and unaware of how these children had been procured. Many of these abductions occurred in the same clinics and hospitals across the nation, frequently citing the same doctors and nuns. Further investigation often finds inconsistencies between birth records and death certificates as well as exhumations that reveal empty caskets or human remains with no genetic match to either biological parent. Information is still growing on this topic, but rough estimates predict the number of trafficked and illegally adopted children in Spain during this time to number more than 300,000.⁸

⁷ Mariana Zugarramurdi, *No hay esperanza para los niños "perdidos" del franquismo*, Periodismo Sin Fronteras, www.periodismosinfronteras.com/no-hay-esperanza-para-los-ninos-perdidos-del-franquismo.html (May 1, 2010).

⁸ Enrique J. Vila Torres, *Historias robadas: Un conmovedor relato sobre las adopciones falsas en la España del siglo XX* (Madrid: Temas de Hoy, 2011), 22.

This second period of abductions is distinct from Spain's civil war and postwar years, but the similar nature of the crimes should not be overlooked. While there is no evidence to indicate the government's involvement in this later period, the abuses committed under Franco's regime created an environment conducive to more than four decades of continued abductions and illegal adoptions. Not only did authoritarian rule victimize Republican women and children in the 1930s and 1940s, its continuation for nearly 40 years radically repressed and weakened civil society, leaving people unwilling to speak out or challenge authority.

In this thesis, I first provide a brief political history from early twentieth century Spain to contextualize the national tensions that led to the civil war. In my discussion of the civil war, I primarily focus on the rise of Franco and the Nationalists. By no means do I attempt to ignore or overlook the violence committed by Republican forces, which was extensive and, at many times, matched Nationalist brutality. Republican crimes, however, are not relevant to the abductions at hand. The mothers and children targeted by Franco were innocent victims and an analysis of Republican violence will not change that.

Following the civil war, I include both psychological and political overviews of Franco's regime as they relate to what I refer to as the abduction of children. Since so little has been written on this topic in English, I have chosen to predominantly use a direct translation from Spanish sources. In Argentina, a country with which these abuses are often compared, these are known as the disappeared children. According to this historical precedent and other similar cases, some might also consider the Spanish children to be disappeared, kidnapped, or trafficked. I refer to these children instead as "abducted" or "stolen", staying closely to the term currently circulating in Spain: "robado."

Following an exploration of Franco's regime and oppression, I give a brief outline of Spain's transition to democracy, as well as the national and international events that effected a change in the country's political will to discuss human rights abuses. Concerning the second period of abductions, new articles now appear in the country's main newspapers frequently describing the personal stories of new victims who have come forward, or detailing the ongoing investigations of those who have already begun to take legal action. Therefore, information pertaining to these crimes changes on a daily basis and this paper only summarizes available information through February 2013.

I then define and analyze transitional justice before evaluating current progress made in Spain and the challenges that lie ahead for local, national, and international governments to apply post-transitional justice for these stolen children. Spain still has extensive, unhealed political and psychological wounds dating back to the 1930s. Though some argue that too much time has passed, it is urgent that the country takes action to address these issues as soon as possible. When asked, "Why reopen wounds that have closed?" Argentine investigative journalist Horacio Verbitsky wisely responded: "Because they were badly closed. First you have to cure the infection, or they will reopen themselves."⁹

II. The Spanish Civil War

The Spanish Civil War was a destructive three-year period marked by a sharp ideological division throughout the country and the violence that ensued. It erupted in 1936, but was far from unexpected. Spain spent the previous century declining from its status as a rich, vast world

⁹ Hayner, 133.

empire to a medium-sized European country in need of modernizing to keep up with the rest of the western world. Though Spain claimed neutrality throughout World War I, it was not immune from the economic and political damage that spread throughout the European continent or the Great Depression that followed.

Primo de Rivera and the Polarization of Spain

Following the end of World War I, Spain's economy was weak; unemployment and poverty spread rapidly across the country. Captain General Miguel Primo de Rivera thought himself capable of fixing these problems and led a coup that overthrew the government and established himself as dictator in September 1923. Initially, Primo de Rivera enjoyed widespread support as the country was in desperate need of change. Everyone, including Primo de Rivera, saw his tenure as only temporary or, as he labeled it, a "brief parenthesis" in Spanish political history.¹⁰

Stability was the primary goal. Any opposition to military rule was quieted for the time being in favor of creating a stronger economy. Primo de Rivera saw a powerful, unified government as key to a stronger economy, and political competition as undermining to that effort. He banned members of the Liberal and Conservative parties from serving in government, and the parties eventually collapsed. By the end of the 1920s, however, Primo de Rivera had failed to fix the economic foundation of the country and the people were restless. Without the Liberal and Conservative parties, Spain lacked a strong political center and "radical groupings

¹⁰ William D. Phillips Jr., Carla Rahn Phillips, *A Concise History of Spain* (Cambridge: Cambridge University Press, 2010), 243.

both to the left and to the right grew stronger and more resolute during the dictatorship.”¹¹

Though Primo de Rivera set out to unite Spain, he left it more politically polarized than ever.

The Second Republic

Primo de Rivera resigned in 1930 and, by April 1931, the political left had organized itself enough to hold national elections. It won the majority of votes in Spain’s largest cities but lacked widespread national support. The Republicans, as the left side came to be identified, declared the new system the “Second Republic,” after a brief republic was established in the 1870s.

During the years of the Second Republic, government leadership oscillated between the extreme left and slight right of center. The government was afraid to lose the fragile control it held over the country, and its leaders proved weak and susceptible to protests from either political side. The early years of the Second Republic focused on downsizing the army, land reform, and widening the separation between Church and state. These policies developed in sharp contrast to the beliefs of those on the political right, and movements began to organize in rebellion by 1933. Original dissenters identified as Monarchists, those who supported the King, and Falangists, part of a new fascist movement founded by Primo de Rivera’s son dedicated to recreating an authoritarian regime.

As the Republican government attempted to cooperate and satisfy the growing opposition on the right, it began to face resistance from some of its own very liberal supporters. The extreme left was unsatisfied, claiming its government was “caving to conservative pressure.”¹² In 1935, Socialists and Communists merged to form the Popular Front movement. They aimed to

¹¹ Ibid., 244.

¹² Ibid., 250.

push the government back to the left and won elections in February 1936 with less than 50% of the national vote.¹³ The new liberal Popular Front government, comprised entirely of Republicans, Socialists, and Communists, further infuriated the political right. Violence spread across Spain and the Republican government could do little to stop it.

Outbreak of War

Many members of the military that identified as Monarchists, Falangists, or under the new, more united title of Nationalists, began to plot an overthrow of the government. On July 12, 1936, a republican lieutenant was assassinated. Members of the Republican security forces quickly retaliated the next day, arresting and killing the suspect, a Nationalist member of parliament. Violent uprisings in reaction to both of these murders hurried the Nationalists into action. The young General Francisco Franco joined forces and helped lead the rebellions in Morocco and the Canary Islands on July 17 and 18. While the Nationalists declared the overthrow of the government, the Republicans scrambled to try and negotiate. But negotiation with the Nationalists was futile, and would continue to be so over the next three years. What the Nationalists originally intended to be a quick and successful military coup quickly descended into a violent civil war that lasted until 1939.¹⁴

Divided Resources and Support

The Spanish population, military, and resources were unevenly distributed between the Republican and Nationalist sides. The Nationalists held a larger portion of the army as well as the support of the Church. The Republicans wielded control over more state resources and the

¹³ Ibid., 251.

¹⁴ Ibid., 252-253.

navy. This was not enough for either side. Though England and France emphasized non-intervention and encouraged other nations to sign an agreement in hopes of keeping the violence contained within Spain's borders, both sides received international assistance. The Nationalists, officially led by Franco as of September 1936, strengthened their ties with other fascist powers in Europe. Nazi Germany and Mussolini's Italy provided financial aid and weaponry, while Mussolini sent as many as 120,000 troops.¹⁵ The Republicans received help primarily from Mexico and the Soviet Union. Mexico sent money, arms, and served as a haven for thousands of Spanish exiles. The Soviet Union became involved to support its Communist allies, sending money and troops, but was forced to withdraw resources as Hitler's power extended through central Europe and threatened Eastern Europe in 1938.

Nationalist Advances

The Nationalists faced setbacks in their battle for geographic control but, in less than three years, all of Spain fell to Franco and his troops. Immediately after the coup they gained control of one-third of Spain and slowly spread throughout the south, west, and north, with some resistance from the separatist regions in Basque Country. The Republican government was forced to move its capital from Madrid to Valencia to Barcelona, before much of the government finally fled to France in February 1939. After bombarding Barcelona for two months, the Nationalists took control of Catalonia, and France and England officially recognized Franco as head of state. By the end of March, the Nationalists finally won control of Madrid, the

¹⁵ Arnold Krammer, "The Cult of the Spanish Civil War in East Germany," *Journal of Contemporary History*, 39:4 (October 2004): 531-560.

out executions according to their own agendas.¹⁹ More extreme leftists did not want peace or cooperation with the Nationalists, but a social revolution, which led to internal violence and discord.²⁰ Republican power was seen as “fractured” and leaders often denied responsibility for any of the violence carried out. Today, some claim Republican violence to have been more sporadic and less calculated than that of the Nationalist forces while others still highlight the “red terror” that killed thousands, including members of the Church.²¹

Franco Triumphs After “Unconditional Surrender”

Despite thousands of unsanctioned murders by both Nationalists and Republicans, there is a key difference between each side’s leadership. On numerous occasions the Republicans tried to negotiate with the Nationalists to end the violence and reach an agreement. From the coup attempt in July 1936 to the Republicans’ final surrender in March 1939, Franco would accept nothing but their “unconditional surrender.”²²

In 1939, Spain underwent a strong, repressive dictatorship that would last for nearly four decades until Franco’s death in late 1975. He wielded absolute, centralized power over the country in an effort to achieve true national unity. Democracy, socialism, communism, and other similar movements were merely “foreign movements alien to the authentic character of Spain.”²³ In order to eradicate these anti-Spanish movements and achieve true national unity, Franco and his Nationalist government only continued the brutal violence in the years following the civil war, this time without Republican opposition.

¹⁹ Julius Ruiz, “Seventy Years On: Historians and Repression During and After the Spanish Civil War,” *Journal of Contemporary History*, 44:3 (2009): 460.

²⁰ Phillips and Phillips, 260-261.

²¹ Ruiz, 470.

²² Phillips and Phillips, 261.

²³ *Ibid.*, 263.

III. Psychological Aspects of the Civil War

Nationalist Mentality

While both sides contributed to the violent destruction during the Spanish Civil War, the Republicans and the Nationalists differed in their end goal. The Republicans began the war in defense of the state they had created while the Nationalists sought the overthrow of the government. The Republicans, on more than one occasion, sought to negotiate and come to a truce with their enemy, but the Nationalists would only accept the absolute defeat of their liberal opponents. And, while the Republicans had formed a government largely devoid of Nationalist representation, the Nationalists wanted to form an entire nation cleansed of Republican thought. They were not fighting for territorial control; they were fighting to defeat Marxism once and for all. Whether through torture, execution, imprisonment, or child abduction, the Nationalists wielded a violent campaign that stretched from Spanish territory in Northern Africa to the French border to rid the country of any trace of Marxism.

To Nationalists, Marxism was a dangerous, infectious disease to which women and children were particularly susceptible. Nationalists labeled any Republican, Socialist, or Communist as a *rojo*, and thus a Marxist subversive. Not only were they seen as mentally inferior, they were dangerous. Worse than posing any kind of violent risk to Spanish citizens, they threatened the essence of the Spanish race. The Nationalists believed themselves to exhibit the most admirable qualities: order, discipline, personal sacrifice, punctuality, religiosity, and

patriotism. These last two marked what was considered central to the Spanish race.²⁴ In ridding society of Marxist thought and its followers, the Nationalists, under Franco, would create a unified, authoritarian society centered on strict adherence to the Catholic faith. The fascist mentality of the Nationalists echoed much of the Nazi rhetoric, especially in its scientific justification of eugenics.

Laying the Foundation for Psychological Fascism

Antonio Vallejo Nágera was a highly regarded psychiatrist in Spain even before the civil war began. His time spent in Germany studying alongside professional Nazi psychologists contributed greatly to his Nationalist mentality. When he returned to Spain, he continued to rise in rank under special appointments by Franco during the war and in the early years of the dictatorship.

Vallejo Nágera was the leading academic mind behind the fascist theories against Marxism in Spain. He infused the Nationalist rhetoric, and thus its oppressive and violent campaign, with his own scientific and psychological justification and published extensively on the topic. He attained high positions in both the academic and military fields: he was a professor of psychiatry at the University of Madrid, served as Chief Psychiatrist of the army, and created and directed the Bureau of Psychological Investigations. Under this last organization, he conducted psychological studies and interviews with men and women at concentration camps for Republican political prisoners. He published his findings, allegedly identifying direct connections between a person's psychological state of mind and their display of "Marxist

²⁴ <http://www.periodismosinfronteras.com/no-hay-esperanza-para-los-ninos-perdidos-del-franquismo.html>.

fanaticism.”²⁵ Marxism’s destructive effects, according to Vallejo Nágera, went further than the psychological. In a book published in 1938, he titled a chapter “*La sonrisa del Caudillo*”, making a structured argument that compared Franco with the then leader of the Republicans, Manuel Azaña. The comparison analyzed the physical characteristics of each leader and claimed that Marxism explained why Azaña was significantly uglier than his Nationalist counterpart.²⁶

For Vallejo Nágera, Marxism was a threat to the Spanish race. His specific concept of “race” is important to understand: it was based more in politics and culture than in ethnicity. He was also extremely anti-Semitic and sexist: he believed Spanish Marxism to embody Jewish thought more than the forms that appeared in other European nations and that women should be kept from reading anything other than religious texts.²⁷ Vallejo Nágera’s powerful, influential ideology, whether stemming from genuine psychological research or purely personal beliefs, not only justified but also encouraged the crimes committed against Republican Spaniards in the years during and following the civil war. He was seen as “Hitler-like” in his attempt to “multiply the select few and let the weak ones perish.”²⁸ He saw this end goal as attainable by the militarization of all aspects of Spanish society: schools, universities, workplaces, and even cafes and theaters.²⁹ Vallejo Nágera’s psychological publications led to even more than this, robbing thousands, perhaps hundreds of thousands, of innocent Spanish children of their childhoods and biological connections.

²⁵ Javier Bandrés and Rafael Llavona, “Psychology in Franco’s Concentration Camps,” *Psychology in Spain*, 1:1 (1997): 3-9.

²⁶ Ricard Vinyes, et al., *Los Niños Perdidos del Franquismo* (Barcelona: Plaza & Janés, 2002).

²⁷ Vicenç Navarro, “Los Niños Perdidos del Franquismo,” *El País*, December 24, 2008.

²⁸ Jesús Duva and Natalia Junquera, “Hijo Busca Madre; Madre Busca Hijo,” *El País*, March 6, 2011.

²⁹ Navarro, “Los Niños Perdidos del Franquismo.”

Saving Spain, Stealing Children

The alleged contagious nature of the Marxist disease, coupled with an inherently weak psyche in some adults that succumbed to it, served as the foundation for the abduction of thousands of Spanish children and newborns under Franco's rule. These children were reportedly vulnerable to Marxism from an early age, and severing the ties between *rojo* parents and their easily impressionable youth could help avoid further "contamination and degeneration."³⁰ This process began during the civil war and spread widely through the Nationalist prison system in Spain where thousands of women were taken as political prisoners. Some of these women were incarcerated along with their small children, some were captured while pregnant and later gave birth behind bars, and others were raped and impregnated by their torturers, only to have their babies stolen immediately after labor. The Nationalists were careful not to label this as "stealing." Instead, they were "taking in" these poor, disadvantaged children.³¹ They claimed to have a noble cause: they were saving these children. They were doing what God would have wanted; they had to "separate the wheat from the chaff."³²

IV. Republican Women and Children under Franco: 1936-1954

Women and Children as Political Prisoners

The separation of mother and child began in the Nationalist prison system during the civil war. Hundreds of thousands of Spanish civilians were taken as political prisoners by Franco's forces both during and after the war period. Many of these prisoners had no affiliation with the

³⁰ Ibid.

³¹ Navarro, "Los Niños Perdidos del Franquismo."

³² Benjamín Prado, "Vidas robadas," *El País*, May 3, 2009.

Republican army and often no political presence at all. Proximity to other “reds” or simply failing to show proper support for the Nationalist cause could lead to someone’s arrest. In November 1940, more than 18 months after the civil war officially ended, there were more than 240,000 Republican political prisoners. This figure finally declined by the mid-1940s, with some 15,000 political prisoners remaining across the nation.³³ Women, especially young women, were especially vulnerable to incarceration if they appeared too modern, independent, or secular—all unattractive feminine characteristics according to the traditional, Nationalist model.

The prisons were crowded and unsanitary. Las Ventas in Madrid, one of the most notorious women’s prisons, was constructed to hold a maximum of 500 women. By the end of the civil war, Las Ventas held at least 5,000 women.³⁴ Food, water, and medical attention were scarce in a majority of the prisons. Often only one doctor made a single, daily visit. These visits lasted for no more than 30 minutes, even with many new and expecting mothers.³⁵ Prison wardens and nurses were encouraged to separate the children from their mothers as much as possible, limiting some to only one hour a day together.³⁶ María Topete Fernández worked in Las Ventas and later in Prisión de Madres Lactantes, a prison for nursing mothers. She wanted to ensure that the children “wouldn’t be nursed with communist milk,” perpetuating the belief in Marxist ideals as infectious or transmittable.³⁷ Infant deaths were not uncommon due to inadequate care and the unhygienic conditions, but that was far from troubling for those who

³³ Antonio Cazorla-Sánchez, “Beyond *They Shall Not Pass*. How the Experience of Violence Reshaped Political Values in Franco's Spain,” *Journal of Contemporary History*, 40:3 (2005): 508-512.

³⁴ Vinyes, 101.

³⁵ *Ibid.*, 107.

³⁶ *Ibid.*, 42.

³⁷ *Ibid.*, 130.

thought these mothers to be unfit in the first place. After all, “‘red’ women should have had more sense of responsibility than to have had children.”³⁸

Thousands of women were not just imprisoned, but sentenced to execution as well. If they were pregnant, it was officially required that executions be postponed until after labor. One mother, immediately after giving birth, was permitted to kiss her newborn child as long as she confessed to treason. She refused to do so and was immediately executed.³⁹ Those executed, as well as thousands of other mothers who saw their children taken from them with little or no explanation, were some of the first mothers of Spain’s stolen children.

Legislation Pertaining to Stolen Children

Three important policies were set forth under Franco in the early 1940s to legitimize the abduction of Republican children, creating a generation of stolen children. On March 30, 1940, Franco gave an order dictating the length of time children could remain in prison with their mothers. After a child reached three years of age, the state could legally remove the child from the mother’s custody.⁴⁰ According to Vallejo Nágera, this process helped to “combat the degenerative tendency of children raised in republican environments” and was justified by the government in declaring that it saved thousands of children from “material and moral misery.”⁴¹

On November 23, 1940, a government decree placed all children whose parents were disappeared, executed, or imprisoned under the guardianship of the state.⁴² The government

³⁸ Helen Graham, “The Spanish Civil War, 1936-2003: The Return of Republican Memory,” *Science & Society*, 68:3 (2004): 327.

³⁹ Vinyes, 107.

⁴⁰ Vila, 30-31.

⁴¹ *Ibid.*, 31.

⁴² Vinyes.

viewed them as orphans of the war, and often denied extended relatives the right to care for them.

In early December 1941, a law was passed allowing the government to legally change the names of children who: did not remember or know their own names, had been repatriated, or whose parents could not be easily found.⁴³ This law extended the physical separation between parent and child to one that had the potential to erase any connection at all, as families were not alerted of these name changes.

Repatriated Children

Thousands of children were spared the horrors of jail or seeing their parents executed and tortured because they were evacuated from the country at an early stage in the war. Thousands of Republican families sent their children—at least 32,000—to Russia, France, Belgium, England, France (including territories in Northern Africa), Switzerland, Denmark, and Mexico in hopes of protecting them.⁴⁴ Nearly two-thirds of these children would eventually be repatriated to Spain.

Franco tried to repatriate most of the children in the early 1940s, but it became increasingly difficult to do so in Europe as Nazi influence spread rapidly and complicated international communication.⁴⁵ Eventually 20,266 children were repatriated, the majority against the wishes of their families. Many had forgotten their native language and even their names, easily placing them under the state's custody according to the law passed in December of 1941.⁴⁶

⁴³ Vila, 33.

⁴⁴ Vinyes, 204.

⁴⁵ Ibid., 208.

⁴⁶ Ibid.

Children Taken by the State

Once taken from their mothers or returned to Spain from exile, children under guardianship of the state were usually sent to private or public institutions. The private institutions were run by the Church and therefore closely aligned with Franco's regime. The public institutions, part of the organization Auxilio Social, were modeled after a system in Nazi Germany and run predominately by wives of Nationalist party members. While the government sought to punish Republican parents, these institutions aimed to rehabilitate the children. Rehabilitation included educating them in the values of the regime, molding their attitudes toward it, and turning them against their biological parents. They reportedly came in as "wild creatures from the jungle" and would leave as "rational human beings."⁴⁷ As the future generation of Spaniards, it was important to the regime that these children harbor no resentment against the government for executing or imprisoning their relatives. Instead, they should understand and support the regime's reasons for doing so. The goal was for the children to eventually be able to say: "Certainly Spain executed our parents, but it was because they deserved it." Otherwise, the children were "worthless" and "the waste of society." When mothers in prison learned of the Auxilio Social institutions, they tried to keep their children away from them at all costs. They could be sure that "if they didn't lose their children physically, they would morally; they could be a future enemy of their parents."⁴⁸ These mothers often fought to keep their children with them in prison as long as possible, despite the horrific conditions. Others tried to send messages to friends and family to come and take their children before the government did.

⁴⁷ Ibid., 191-192.

⁴⁸ Ibid., 192-195.

The Lost Children

By 1942, the state had become the guardian of more than 9,000 children. By 1954, that number more than tripled to over 30,000.⁴⁹ These were the stolen children of the civil war and the postwar era, some torn from the arms of their mothers in prison, others forcefully returned to the very country they had fled from. Some never made it out of the prisons alive. Of those who did, some were actual orphans while others were stripped of their identities and families by the regime. Some were sent to government- or state-run institutions. Eventually, most were illegally adopted by supporters of Franco.

V. Spain's Quiet Years

Economic Growth

The first 15 years of Franco's dictatorship in Spain were marked by continued violence, poverty, and political and economic isolation. The fall of Nazi Germany and Mussolini in Italy left Franco behind as the lone proponent of fascism in Europe. Western Europe focused on reconstruction following World War II and avoided entanglements with an anti-democratic Spain. Spain isolated itself economically, cutting off international trade and attempting unsuccessfully to survive on an autarkic system. Agricultural production, economic growth, and per capita income fell and remained below pre-civil war levels for many years.

After more than a decade of economic devastation, Spain's economy began to improve with the Pact of Madrid in 1953. In the context of the Cold War, the United States saw Spain's staunch anti-communist rhetoric and geographic location to be of value. In exchange for

⁴⁹ <http://www.periodismosinfronteras.com/no-hay-esperanza-para-los-ninos-perdidos-del-franquismo.html>

allowing the construction of American military bases in Spain, the U.S. provided Franco's government with generous financial aid.⁵⁰ With a strong political and economic ally, Spain slowly began to integrate itself into the international community, joining the United Nations in 1955 and the International Monetary Fund and the World Bank in 1959.⁵¹ Tourism and trade improved markedly and, during Franco's final years in the 1960s and early 1970s, Spain enjoyed the second-highest economic growth rate in the world, following Japan.

Civil society had grown quiet by this period in Franco's rule, and the regime shifted its focus more toward the economy than political repression and censorship. Though Nationalist values still permeated all levels of Spanish society, public resistance had eased and prisons emptied of political prisoners. Beginning in the late 1950s and early 1960s, dissent was limited and weak. By the time Franco died in 1975, marking the beginning of the end of Spanish authoritarianism, censorship and oppression were deeply entrenched in Spain's political culture.

A Tentative Transition to Democracy

Between 1975 and 1982, Spain made the cautious transition to a democratic political system. Changes were negotiated alongside certain protections for Franco's supporters, many who continued to work in government at the time. The *Pacto del Olvido*, or Pact of Forgetting, was an unofficial agreement between both sides of government at the time proposing that the transition not dwell on the past but instead focus on moving the nation forward. The pact skated

⁵⁰ U.S. Library of Congress, *The Franco Era, 1939-75*, <http://countrystudies.us/spain/51.htm> (n.d.).

⁵¹ Eduardo Aninat, *Reflections on globalization, Spain, and the IMF*, International Monetary Fund, <http://www.imf.org/external/np/speeches/2001/062901.HTM> (June 29, 2001).

over the past and “committed the nation to collective amnesia about political excesses.”⁵² Many supported this pact for fear of reopening deep political divisions that could lead to another civil war. Spain’s transition lacked many of the characteristics of other new democratic transitions following violence and repression, such as truth and reconciliation commissions in South Africa following apartheid, trials in post-Nazi Germany or Argentina, or bureaucratic purges in Eastern and Central Europe after the fall of the Soviet Union.⁵³ The only federal acknowledgement of past crimes was a de facto one, made with the passing of the Amnesty Law in 1977 that effectively solidified the Pacto del Olvido in legislation. It is important to note that this legislation was not only supported by government, but by 61% of the Spanish public, as well.⁵⁴

The precedence of peace and political stability over truth and justice was not unjustified; a failed military coup attempted to reinstate a military dictatorship in early 1981. The new democratic nation narrowly clung together thanks to King Juan Carlos I immediately and publicly denouncing the coup. Only six years after Franco’s death, this near overthrow reminded the nation of its unsteady political footing and further buried the crimes of Spain’s recent history. While the national government refused to acknowledge Franco’s victims, some local governments had already begun to exhume unmarked, mass Republican graves to identify bodies and rebury them appropriately. Following the attempted coup, this movement was seen as a defiance of the Pacto del Olvido. Exhumations ceased until 2000. Over the next two decades, silence continued to encompass Spain’s relationship to the civil war and the abuses during Franco’s dictatorship.

⁵² Omar G. Encarnación, “Pinochet's Revenge: Spain Revisits its Civil War,” *World Policy Journal* 24 (2007): 40.

⁵³ *Ibid.*, 40.

⁵⁴ Omar G. Encarnación, “Reconciliation after Democratization: Coping with the Past in Spain,” *Political Science Quarterly* 123:3 (2008): 442.

Pinochet's Arrest

Spanish democracy steadily strengthened and flourished throughout the 1980s and 1990s, portraying the country as a model of western, developed society. The public, and particularly more liberal government officials, began to openly criticize international human rights abuses and violations of democracy. In 1998, Spanish judge Baltasar Garzón issued a warrant for the arrest of Chilean ex-dictator Augusto Pinochet, accusing him of human rights violations of Spanish citizens in Chile during the regime. The charges later expanded to include human rights violations of Chilean citizens under the controversial and little-invoked umbrella of universal jurisdiction. While overseas in London, Pinochet was arrested. Though the British government ultimately refused to extradite Pinochet to Spain, his arrest and the attention it garnered marked the beginning of a new era in international human rights.

In addition to its international impact, Pinochet's arrest had a direct and immediate effect on Spain. Many international actors such as Chile, who wanted to address Pinochet's crimes domestically, criticized Spain's hypocritical behavior in arresting and condemning Pinochet while continuing to ignore similar crimes committed under Franco. In fact, many had already observed unmistakable parallels between Pinochet's and Franco's dictatorships:

Like Franco in 1936, Pinochet had put a violent end to a leftwing democratically elected government in 1973, and as fate would have it, Pinochet, who fashioned his political regime after Francoist Spain, was the only foreign head of state to attend Franco's funeral in 1975.⁵⁵

Spanish citizens recognized this hypocrisy and began to direct outrage over human rights abuses toward their own nation, shattering decades of silence.

⁵⁵ Encarnación, 2007, 42.

Reevaluating the Transition and Pacto del Olvido

Not all Spaniards openly embraced a return to the crimes and horrors of the civil war and early Franco years. More conservative members of government, particularly those of the Partido Popular (People's Party), which was originally founded by Franco supporters, have labeled the outcry over these crimes as redundant. According to supporters of continued amnesty and silence, why revisit issues already settled by the transition? Why undo 20 years of democratic progress? Some accuse the political left of attempting to "live vicariously the process of revenge they feel they missed out on after General Franco's death, when Spaniards decided to move ahead from dictatorship to democracy and forgive the sins of the past."⁵⁶ But, did all Spaniards really agree to do this? While 61% percent of the population may have supported amnesty for civil war criminals in 1977, this does not necessarily imply their willingness to forget victims or forgive injustices committed. For the first time in decades, the people began to challenge and act independently of the government's actions regarding this dark period in Spanish history, "erod[ing]...the societal complicity that underwrote the rise and maintenance of the politics of forgetting."⁵⁷

With Pinochet's arrest, Spain received a taste of retribution and began to channel this energy into demanding justice for Franco's victims. According to political science professor and author Paloma Aguilar in *Memory and Amnesia*, newer generations who did not live through the civil war or experience the violence and oppression under Franco's regimes are more willing to

⁵⁶ Adela Gooch, "Spain: Clamour for prosecution," *The Guardian* [UK], March 24, 1999.

⁵⁷ Encarnación, 2007, 42.

come forward and address the past.⁵⁸ They have lived through a period of durable democracy and do not fear its collapse.

Since the late 1990s and early 2000s, political anniversaries—such as the beginning of the civil war, Franco’s death, and the ratification of the new constitution—have become more politicized and controversial, sparking protests and challenging submission. New literature has begun to emerge that chronicles the events and lives of Franco’s victims. Movies gaining international acclaim, such as Guillermo del Toro’s *Pan’s Labyrinth* in 2006, have redirected attention to this unresolved era. Both national and regional newspapers focus more attention on the issues than ever before and frequently present perspectives that depart from government rhetoric.

While a divide has emerged between those in support of revisiting these issues and those who contest it, it is important to note that among those leading this new movement, many agree that the silence was necessary, even beneficial in the short run. Though 20 years have certainly made unraveling the silence more challenging, many still recognize that “the pact removed from the political sphere an issue that could have easily derailed the process of democratization.”⁵⁹

Revisiting Stolen Children Under Franco

Where does the discussion of the abduction of Spanish children fit in? New literature that has emerged about Franco’s abuses has not ignored the issue of stolen children during and after the civil war. History professor and author Ricard Vinyes is one of the leading scholars on the disappearance of children in Spain. In 2002, he published *Los Niños Perdidos del Franquismo*

⁵⁸ Paloma Aguilar Fernández, *Memory and Amnesia: The Role of the Spanish Civil War in the Transition to Democracy* (New York: Berghahn Books, 2002).

⁵⁹ Encarnación, 2007, 48.

(The Lost Children of Francoism). It was later made into a documentary, though televised at odd hours of the night and only in Catalonia, Basque Country, and Andalusia. To exacerbate this limited exposure, it was not even broadcasted in Spain's most commonly spoken language, Castilian Spanish. It appeared in Catalán, under the title *Els nens perduts del franquisme*.⁶⁰

In a judicial report published by Spain's Audiencia Nacional, the National Court, in 2008 that investigated disappearances under Franco, judge Baltasar Garzón declared the disappearances and illegal adoption of thousands of children under Franco as a crime against humanity. Garzón claimed at least 30,000 children to be stolen under Franco and in doing so became the first national, political figures to openly acknowledge and denounce these specific crimes.⁶¹ Along with growing attention paid to the abduction of children during and immediately following the civil war, stories and accusations began to arise shedding light on a different, yet eerily similar, era of abductions: that of thousands of children taken from their vulnerable and, at times, unsuspecting mothers by doctors, nurses, nuns, and priests from the late 1940s through the early 1990s.

VI. Second Era of Abductions

“El robo de bebés en España es un verdadero escándalo.” –Lawyer, Carlos Slepoy⁶²

Just as a relatively open discussion regarding the 30,000 children stolen under Franco began to penetrate national discourse, an entirely different and equally, if not more, shocking

⁶⁰ Navarro, “Los Niños Perdidos del Franquismo.”

⁶¹ Luis Gómez, “La Policía Exhuma a Dos Bebés en La Línea por el Caso de Niños Robados,” *El País*, June 15, 2011.

⁶² “The abduction of children in Spain is a true scandal.” María José Esteso Poves, “Hay razones para ser optimistas, los crímenes del Franquismo van a ser juzgados,” *Diagonal*, July 5, 2012.

scandal began to circulate. Stories began to trickle out onto the internet and by word of mouth a decade ago. Now, newspapers, publishers, and television networks are participating too. Most of the information available is anecdotal. Thousands of people are connecting and discovering that their tragedies were not isolated incidents. Organizations have multiplied around the country to serve as outlets for sharing these traumatic stories and provide legal services to victims. No official statistics or data exist. There could be thousands of victims; some activists and lawyers estimate as many as 300,000.

While a detailed, comprehensive history of events is difficult to construct just yet, thousands of stories now fit together to give a general overview of what happened. This period spanned from the late 1940s to the early 1990s. Nongovernmental actors primarily controlled this network of abductions and continued to do so for decades after government-sponsored abductions stopped, even for more than a decade after Franco died. What may have begun as politically motivated abductions eventually developed into a successful, economically driven market of illegal adoptions throughout the country.

The Process of Abduction

By the 1950s, modern culture encouraged childbirth to take place outside of the home and maternity hospitals and clinics began to crop up across Spain. A woman entered the delivery room alone while her family waited outside. Sedation was common; many women slept through the entire delivery process. Later, a hospital employee, perhaps the doctor or a nurse, informed the family that the baby had died. Sometimes this was done immediately while the mother remained sedated so that the responsibility of telling her fell on the father and other family members. Other times this was done after a few hours or days of nursing: a nurse took the baby

away for a check-up and returned claiming there were complications. The doctor or nurse advised the family against seeing the body, alleging there were disturbing physical malformations or it would simply be too traumatic. If the family continued to demand to see the baby, on rare occasions, some clinics produced the frozen, preserved cadaver of a baby kept in storage.⁶³ The hospital either took care of the burial and told the family not to worry or provided them with a sealed box with careful instructions not to open it. The child was then sold to a married couple looking to adopt, often a wealthy couple unable to conceive. The adopting parents were listed as the biological ones. All that was needed was a medical document certifying that the adopting mother had given birth; often the same doctor who forged the death certificate of the child also signed this document. The nearly perfect crime occurred when the adopting parents were as unaware as the biological ones. They were told that the mother had abandoned the child and that they should register themselves as biological parents for the wellbeing of the child. The adopting parents allegedly paid for the mother's hospital bill as well as adoption fees and made yearly payments on the child's birthday until he or she turned 18. Adopting parents paid between 50,000 and 1,000,000 Spanish pesetas,⁶⁴ or between 300 and 6,000 euros today.⁶⁵

The Context of Secrecy

These abductions would never have been so successful or continued for so many years without multiple factors that assured their secrecy. The legal, political, and cultural contexts

⁶³ “Funcionarios y Enfermeras Corroboran el Drama de los ‘Niños Robados,’” *El Mundo*, November 3, 2010.

⁶⁴ Flor Díaz. Interview by the author, Office of S.O.S. Bebés Robados Euskadi, April 24, 2012.

⁶⁵ European Commission, *Spain and the euro*, http://ec.europa.eu/economy_finance/euro/countries/spain_en.htm (January 4, 2011).

reveal much of how this black market thrived. Spanish definitions of birth, rights of the child, and a mother's right to anonymity at the time were particularly conducive. If a child died within 24 hours after labor, this was not considered a death, but an abortion, and the birth was often not reported.⁶⁶ Some hospitals and clinics have fallen under suspicion for having abnormally high rates of abortion or infant deaths during the 1960s and 1970s, always under the care of the same doctors and nurses. Additionally, children had limited rights. If a doctor gave a medical reason to keep a child in the hospital, parents could not always stay with him or her; they were given visitation cards instead.⁶⁷ This allowed time for hospital employees to separate the child from his or her parents and feign medical complications. Finally, a woman who wanted to give up her child for adoption was guaranteed a large degree of anonymity and had the right to withhold her name. This protection was intended to dissuade women from aborting unwanted pregnancies. On the child's birth certificate, the mother was listed as "unknown." Doctors and midwives, however, took advantage of this anonymity to take newborn babies and put them up for adoption, allegedly at the mother's request. Nuns and members of the Church especially invoked the protection guaranteed under this law.

Strong, Catholic values imbedded in Franco's regime guaranteed the power of the Church. It employed thousands of nuns in nearly every hospital and maternity ward in Spain through the 1980s. Many nuns working in these maternity hospitals also worked in or directed orphanages nearby. It was easy for a nun to claim that someone had anonymously left a baby in the doorway of the convent because "nobody questioned the word of a nun."⁶⁸ While the Church appeared to have acted independently of the government, the relationship between the two

⁶⁶ Luis Gómez, "Cruzando La Línea de la Sospecha," *El País*, April 3, 2011.

⁶⁷ Flor Díaz.

⁶⁸ Flor Díaz.

parties is far from irrelevant: “the alliance between the Church and the State formed a perfect pairing and what one did, the other covered up, and vice versa.”⁶⁹ Even today, the Church remains one of the key obstacles for victims. The Church has medical records and information pertaining to thousands of these alleged victims, but is not obligated under any law to release them.⁷⁰ Though the Church in Spain is nowhere near as powerful as it once was under Franco, many still fear accusing anyone closely associated with it of such a crime.

Many victims never reported their suspicions due to a “socialization of silence.”⁷¹ After a brutal civil war and years of violent or political repression, Franco’s regime had developed a pervasive culture of silence. In addition, adoption within Spain was difficult, particularly towards the end of Franco’s regime and into the early years of Spanish democracy. The demand to adopt far exceeded the number of women putting their children up for adoption.⁷² With an increased female presence in the labor force and greater access to contraceptives following Franco’s death, women delayed marriage and starting a family. Waiting lists to adopt only continued to grow. Many married couples looking to adopt heard of the connections these nuns and priests had, and turned to them.

Samples of Tragedy

In the last few years, more and more individuals have been able to share their stories in newspapers, magazines, and books. Two works, in particular, have hit bookshelves and are

⁶⁹ Héctor Rojo Letón and María José Estes Poves, “Al descubierto la trama de secuestro y venta de niños recién nacidos,” *Diagonal*, July 5, 2012.

⁷⁰ María José Estes Poves, “Los 30.000 menores robados del franquismo,” *Diagonal*, May 6, 2009.

⁷¹ María José Estes Poves, “Se estrecha el cerco sobre los responsables de robos de niños en el franquismo,” *Diagonal*, October 1, 2009.

⁷² Flor Díaz.

dedicated solely to individual accounts of these abductions: *Vidas Robadas*, written by journalists Jesús Duva and Natalia Junquera, and *Historias Robadas*, written by lawyer and activist Enrique Vila Torres. These books, in addition to newspapers, have been some of the most widespread ways to share the accounts of individual abductions. The following three examples echo hundreds of other stories.

A few years ago, Antonio Barroso received a phone call from his childhood friend, Juan Luis. On his deathbed, Juan Luis's father confessed that both he and Antonio's parents had bought the children from a priest and nun in Zaragoza. The hospital listed on his birth certificate had no record of his mother ever having been there. Both Antonio and Juan Luis did DNA tests that confirmed they were not the biological sons of their parents. After lobbying the courts to investigate their stories and being continually ignored, Barroso and Juan Luis founded Asociación Nacional de Afectador por Adopciones Irregulares (ANADIR), a legal organization dedicated to hearing similar victims' stories and presenting them to the government. After only six months, the organization had more than 140 clients sharing similar stories. Today, ANADIR is one of the leading organizations in defense of these victims and has presented hundreds of these cases to the Spanish courts.⁷³

In 1975, Ana Josefa Escabia died in childbirth at a hospital in Terrassa. Her husband, Salvador Martín, claims he saw their daughter alive before she was taken away, but doctors insisted she was stillborn. In 2010, Salvador opened the family vault and exhumed the remains. A DNA test proved that they belonged to a baby boy, not a girl, of no genetic relation to either parent. There are no records of a burial of any other baby on that day in Terrassa.⁷⁴

⁷³ Vila.

⁷⁴ Sarah Rainsford, "Spain Investigates Tragedy of 'Stolen' Newborn Babies," *BBC News*, March 30, 2011.

María Luisa Torres Romero was working as a waitress in 1981. While separated from her husband and living on her own with her first child, she entered into a relationship with another man and became pregnant. After reading about a nun, Sor María Gómez Valbuena, that helped young, single mothers and worked at the clinic Santa Cristina in Madrid, María Luisa decided to deliver her second child there. She was sedated for the entire process. When she awoke, Sor María claimed that her daughter had died. Later, she said that the child actually was alive, but had been adopted. When María Luisa tried to protest, the nun threatened to report her for adultery and take away her other child. About 10 years ago, the father of Pilar Alcalde admitted to his daughter that she was adopted and paid for lawyers and detectives to find her biological mother. When Pilar spoke with Sor María, the nun her father had received her from, the nun claimed Pilar's mother was a prostitute who did not want children. Eventually, a journalist connected the details and dates of both stories and put Pilar and María Luisa in contact. A DNA test confirmed their relationship.⁷⁵ The conclusive end to Pilar and María Luisa's story is still very rare; few have been able to locate their missing relatives. Furthermore, in March 2012 Sor María Gómez Valbuena became the first person directly accused by the Spanish government of having a connection to these crimes.⁷⁶ In April 2012, she was forced to appear in court but refused to testify. She was accused of abetting kidnapping and falsifying legal documents. This case and similar accusations towards her were under criminal investigation until her death in January 2013.⁷⁷

⁷⁵ Jesús Duva and Natalia Junquera, "Madre e hija se encuentran 29 años después," *El País*, July 10, 2011.

⁷⁶ Natalia Junquera, "Una monja es la primera acusada por la fiscalía por el robo de bebés," *El País*, March 15, 2012.

⁷⁷ Natalia Junquera, "La monja acusada del robo de bebés se niega a declarar ante el juez," *El País*, April 12, 2012.

The End of the Second Era of Abductions

Government involvement and new legislation in the 1980s helped bring an end to this black market, previously untouched and unaffected by government intervention. In 1981, police raided the clinic San Ramón in Madrid after receiving numerous allegations of illegal adoptions conducted by employees there. Six people were arrested but never convicted. In 1987, Spain passed a new adoption law reducing a doctor's power by requiring him or her to report every case of adoption.⁷⁸ This new degree of accountability did nothing, however, to address the thousands of abductions that had already occurred "with absolute impunity" for more than 50 years.⁷⁹

VII. Contemporary Progress

Since information first began to trickle out, the sheer number of victims and stories have emerged has placed increasing political and legal pressure on the Spanish government to respond and act. With the publication of Garzón's report in 2008, he opened the door for the Spanish government to play a role in revisiting the civil war and Franco's dictatorship. However, the state's response has been far from unified or consistent. Minimal government investigation has been conducted, and local and regional governments lead what little progress has been made.

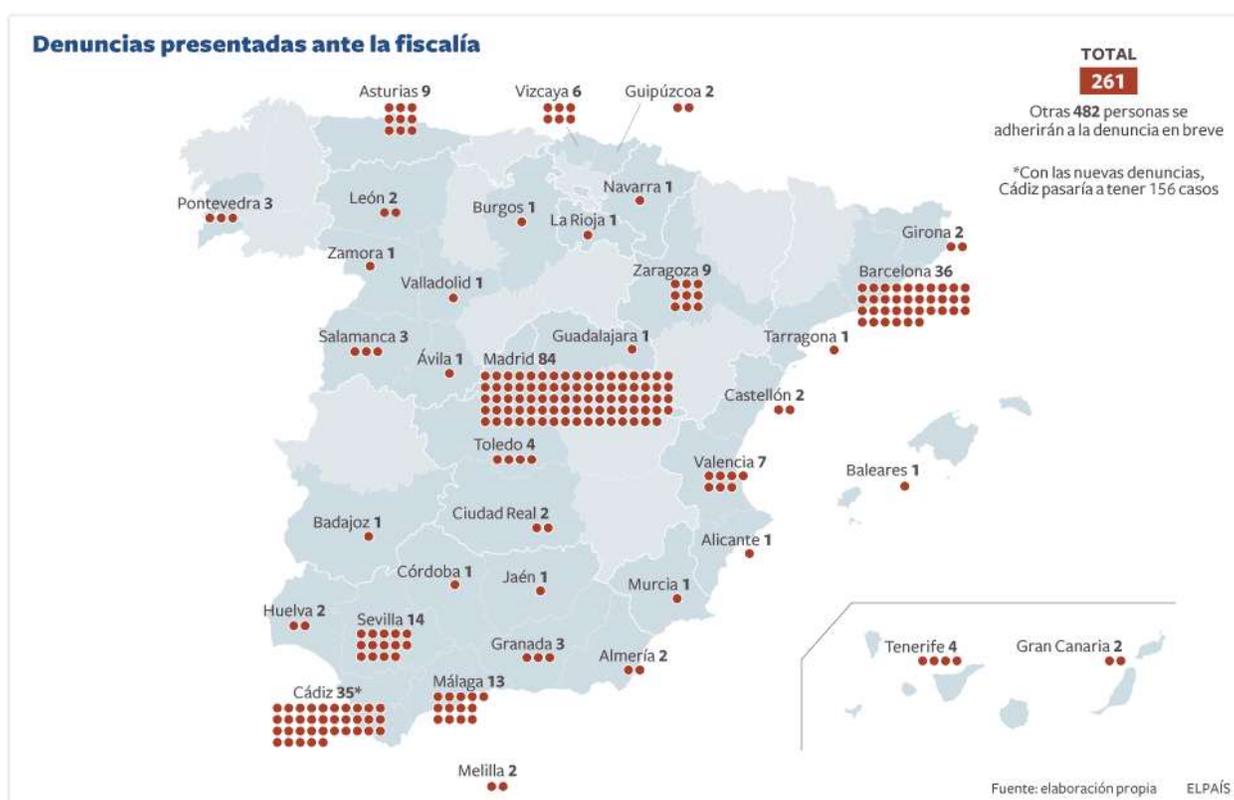
Government Response

Since Garzón's judicial decree in 2008, victims and activists have overwhelmingly viewed the judiciary as the best governmental actor to investigate these crimes. In November

⁷⁸ Jesús Duva, "La llamada de la sangre," *El País*, November 30, 2008.

⁷⁹ Flor Díaz.

2010, after Garzón was suspended, the chief prosecutor of the National Court told victims’ families that the cases of stolen children did not fall under the jurisdiction of the court. His only advice was to create a national DNA bank and, according to him, the executive branch possessed that power.⁸⁰ Two months later, in January 2011, Antonio Barroso’s ANADIR and other victims’ organizations submitted 261 cases to the attorney general of Spain.⁸¹ Below is a map of Spain, updated in March 2011, depicting the geographic locations of these 261 reported crimes:⁸²



In February, the attorney general referred all cases to provincial courts and prosecutors, maintaining that there did not appear to be a national, systematic plan to abduct these children

⁸⁰ Luis Gómez, “La policía exhuma a dos bebés en La Línea por el caso de niños robados,” *El País*, June 15, 2011.

⁸¹ Duva and Junquera, “Hijo busca madre.”

⁸² “Denuncias de niños robados presentados ante la fiscalía,” *El País*, March 5, 2011.

and therefore this was not the responsibility of the national government.⁸³ Thousands of cases are already accumulating on the desks of numerous provincial prosecutors. Though the attorney general now claims these crimes should be considered a “permanent crime that only ends when the victim discovers the truth,” there is no federal law that mandates this, and regions continue to vary in their interpretations of these crimes. A court in Valencia required that a judge reopen a case previously deemed expired,⁸⁴ while, in November 2012, a court in Huelva wrote a judicial decree banning criminal prosecution of these cases.⁸⁵ Former public prosecutor Carlos Jiménez Villarejo criticized the attorney general’s decision to decentralize the investigations, citing the creation of a special public prosecutor at the national level as the best option. According to Jiménez: “If we do not centralize the investigation, we’re condemned yet again to a dispersion of effort, a lack of control over a terrible crime that was repeated throughout Spain.”⁸⁶ Reflecting this sentiment, the current attorney general, Eduardo Torres-Dulce since late 2011, now claims that all district attorneys have to investigate and take an active role in these cases before shelving them.⁸⁷

On a regional level, provincial judges appear more willing to investigate these cases. In April 2012, a Madrid judge called for the arrest of the Spanish nun, Sor María Gómez Valbuena. She was the first and to date the only person arrested for these crimes. Though her death in late January 2013 led the judge to shelve the case, there may be similar cases in the near future.

⁸³ Natalia Junquera, “La fiscalía del estado rechaza abrir una investigación nacional por el robo de niños,” *El País*, February 2, 2011.

⁸⁴ Natalia Junquera and Jesús Duva, “¡He encontrado a mi madre!” *El País*, December 4, 2011.

⁸⁵ “Un hombre que sospechaba que fue bebé robado encuentra a su madre biológica,” *El País*, December 3, 2012.

⁸⁶ María José Esteso Poves, “La Ley de Amnistía no es aplicable a los implicados en el robo de niños,” *Diagonal*, March 25, 2011.

⁸⁷ Natalia Junquera, “La fiscalía ordena agotar la investigación en los casos de bebés robados,” *El País*, December 26, 2012.

There are other nuns associated with similar crimes. Sor Juana Alonso, now 98 years old, worked with Sor María in the same congregation. She reportedly transported children between continental Spain and the Canary Islands during a similar time period. She has also permitted interviews, claiming she knows nothing of stolen children and every adoption was done legally.⁸⁸

With the federal judiciary appearing less than cooperative, Antonio Barroso submitted a popular initiative to congress in January 2012. Barroso requested the creation of a special congressional commission that would investigate the cases of child abduction and illegal adoption. Congress rejected the proposal on the grounds that special commissions cannot be created out of popular initiatives. ANADIR supporters protested outside of the attorney general's office three weeks later.⁸⁹

With failures and setbacks in both the judicial and legislative branches, Spain's Minister of Justice Alberto Ruiz-Gallardón has proved to be one of the strongest federal officials supporting the plight of the *niños robados*. On April 12, 2012, Gallardón, along with the ministers of Health and Interior, met with ANADIR and other victims' organizations to discuss the creation of a national DNA bank as well as a national archive of victims' information. He also promised the increased involvement of the head of the national police force. Gallardón vowed that Spain's government would stand by these organizations.⁹⁰ In keeping with this promise, Gallardón opened an office in Madrid on February 26, 2013 that will focus specifically on stolen children. The office will combine the efforts of civil servants, police officers, and numerous provincial offices to streamline the process for victims.

⁸⁸ Natalia Junquera, "Más monjas bajo sospecha," *El País*, April 22, 2012.

⁸⁹ María José Esteso Poves, "Una familia descubre que el ataúd de su bebé está vacío," *Diagonal*, January 13, 2012.

⁹⁰ María José Esteso Poves, "Gallardón promete un banco de ADN pero no aclara si se va a juzgar a los culpables del robo de bebés," *Diagonal*, April 12, 2012.

The Strength of Social Organizations

Civil society is the true driving force behind the increased attention brought to these crimes. Each individual account about a stolen child or illegal adoption is shocking, but it is the unity of these victims and their stories that creates strength in numbers. Victims' organizations and other social groups dedicated to preserving Spain's history, improving Spanish democracy, and addressing past crimes have been responsible for investigating victim and witness statements, providing legal services, and funding DNA tests and exhumations. These organizations have been the most active voice on behalf of victims. Though government has become more responsive to these crimes, this issue only gained momentum due to constant pressure from these social organizations.

In September 2009, a year after the publication of Garzón's report, the Association for the Recovery of Historical Memory presented a list of 20 cases to a judge in Madrid. The cases ranged from abductions during the early Franco period to illegal adoptions decades later and implicated doctors, lawyers, priests and nuns in Madrid and Bilbao.⁹¹ Following ANADIR's submission of 261 cases to Spain's attorney general in January 2011, it collected another 400 cases. In the meantime, Plataforma Afectados Clínicas de Toda España: Causa Niños Robados also prepared more than 400 cases to present to the authorities.⁹² These and similar organizations mobilized victims to collect more than 90,000 signatures to try and convince the government to reopen closed or archived cases and conduct an investigation similar to that done in Argentina

⁹¹ Esteso Poves, "Se estrecha el cerco."

⁹² Duva and Junquera, "Hijo busca madre."

during its transition in the mid-1980s.⁹³ Due to these groups' persistence, by December 2011, more than 1,400 cases had been presented to district attorneys across the country.

In June 2012, following the meeting between Minister of Justice Gallardón and various victims' organizations in April, more than 25 organizations gathered together and held the first national meeting for victims of child abduction and illegal adoption.⁹⁴ In addition to ANADIR, representatives from organizations such as Todos los Niños Robados Son También Mis Niños, Colectivo Sin Identidad, SOS RAICES, and SOS Bebés Robados were also present. While many of these organizations have been operating relatively independently from another, this meeting produced a unified message, principally that these should be declared crimes against humanity that do not expire.

VIII. Transitional Justice

The growing attention paid to human rights since World War II has made transitional justice an important and increasingly necessary consideration for nations that are recovering from oppressive and violent periods. Spain represents just one example of numerous countries that have been faced with this very challenge. In order to contextualize Spain's history and current progress within the field of transitional justice, it is important to understand how it works. Here I review some of the principal factors to consider when addressing the conflict, the dominant mechanisms used in transitional justice, and how to apply them. Before exploring the

⁹³ Junquera, "Una monja es la primera acusada."

⁹⁴ María José Esteso Poves, "Las asociaciones de niños robados recuerdan a Gallardón que el robo de bebés no prescribe," *Diagonal*, June 18, 2012.

case of Spain today, I also discuss the complicated nature of transitional justice within the international system by examining Spain's involvement in South America.

Factors Affecting Transitional Justice

When a violent and repressive form of government falls, paving the way for a democratic society, universal suffrage and popular elections are not enough to return power and dignity to the people. The nation cannot move forward emotionally or politically until responsibility has been taken for the abuses committed by the previous government. In addition, the new democracy must prove itself distinct from its violent predecessor and demonstrate the ability to protect and serve its citizens and enforce the rule of law. In the aftermath of a repressive regime or destructive civil war, transitional justice must be implemented to condemn the past and empower victims. Recent studies on the topic of transitional justice indicate that amnesty laws, truth commissions, prosecution trials or a combination of these and other processes aimed at confronting human rights violations should be utilized in order to strengthen democracy and prevent or reduce human rights abuses.⁹⁵ There is no one way transitional justice should be applied. Every political situation is unique, though some themes arise that limit or determine the types of transitional justice that can be applied.

A few of the factors that contribute most to the decision of how to apply transitional justice are how the regime ends, how long it lasted, and how it leaves the economy afterwards. Though there are many ways regimes can fall apart—whether slow or fast, violently or peacefully—it is important to consider whether the regime collapsed or negotiated a transition to

⁹⁵ Tricia D. Olsen, Leigh A. Payne, Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington, D.C: U.S. Institute of Peace Press, 2010), 5.

democracy. The collapse of a regime demonstrates failure, and those with previous authority concede power and legitimacy. The government that takes over will not have to compromise as much with its weakened predecessor, allowing it more freedom to condemn past abuses. A negotiated transition, on the other hand, experiences a slower changeover of power from the authoritarian regime to its democratic successor. Members of the regime may even remain in high levels of office and certainly would not advocate punishing themselves. Options for justice are much more limited by a negotiated transition.

The duration of the previous regime is another important factor. Setting aside how the regime ends, the number of years a regime holds power affects how deeply it penetrates institutions and society. Long-term regimes leave legacies that “may lead the new democratic government to accommodate, rather than confront, old authoritarian forces.”⁹⁶ In addition to new leaders being hesitant to challenge past authority, a repressive dictatorship that spans decades, rather than a few years, can create a dependent, weak judiciary and snuff out the voice of civil society often necessary to push government to implement transitional justice.

Finally, what is the health of the economy? Spending months or years prosecuting offenders or holding truth commissions can cost millions of dollars, something a war-torn country often cannot, or does not want to, afford, especially when arguments could be made that resources would be better spent on basic needs such as health, education, and housing.⁹⁷ If the country has a strong middle class or good economic growth, leaders may feel more comfortable setting aside time and money for trials. How a regime ends, its duration, and the state of the economy all help determine the level of transitional justice applied, but understanding the costs

⁹⁶ Olsen, Payne, and Reiter, 43.

⁹⁷ *Ibid.*, 62.

and benefits of each mechanism should also be taken into account.

Principal Mechanisms

Three of the principal tools used in transitional justice are amnesty laws, truth commissions, and trials. Each option increases in cost as well as its level of confrontation with the past. Amnesties are frequently applied and inexpensive. Their condemnation of the past is minimal and only comes into play when offenders must be identified as guilty in order to be legally pardoned. Amnesties have been used to keep offenders from being indicted or convicted of war crimes or crimes against humanity, though there is controversy over the international legality of pardons for such heinous crimes. Amnesty can be granted to the opposition after a civil war or clash with the central government in order to reach an agreement and end oppositional attacks. It can also be granted to members of the previous authoritarian regime in order to encourage them to step down peacefully. Strong human rights supporters often view amnesties as merely condoning the crimes of the past, while those who view reconciliation and the establishment of democracy as paramount recommend amnesties to hasten the process and move forward. In reality, these groups both win and lose. Amnesties often accompany trials and truth commissions, simply because not everyone can be tried in court or not everyone can come forward with their story. However, when a substantial amount of time has passed since the height of the violence under the regime, more often than not, amnesties are granted and fewer trials are held.⁹⁸

Truth commissions are not as common or well known, though they are increasingly popular, particularly in Latin America. A truth commission is “a newly established, temporary

⁹⁸ Ibid., 58.

body officially sanctioned by the state or an international government organization to investigate past human rights abuses.”⁹⁹ Any reports released or hearings run by independent human rights organizations are not sufficient—they must be implemented by the state. Truth commissions involve victims sharing their accounts as well as offenders admitting to guilt. They are distinct from trials in that offenders coming forward and admitting guilt does not necessarily lead to incarceration or other punishment. In this way, truth commissions are often seen as not attaining as much justice for victims as trials do. However, truth commissions are often able to span a greater number of victims, which is preferable to ignoring the past or pretending it did not occur, and therefore “may compensate, to a degree, for the failure to prosecute each individual perpetrator.”¹⁰⁰ In investigating and revealing crimes and abuses from all victims willing to participate, truth commissions allow the opportunity for more stories to be heard.

The most expensive option, trials, is also seen as the one capable of achieving the most justice for a limited number of victims. Some trials have prosecuted just a few, top officials of the previous dictatorship, as Argentina originally did with its first set of trials in the 1980s when it tried five leaders of the military junta and the head of the Buenos Aires police force.¹⁰¹ Others have penetrated all levels of government, though these tend to be far more expensive and time-consuming. Holding trials involves hiring prosecutors, judges, and security, funding investigations that can involve hundreds of witnesses, and building prisons to incarcerate offenders. As the number of defendants increases, so does time and money spent. While these costs may seem to drain the economy during an already difficult transition, international consensus encourages trials. In fact, a nation in transition that puts offenders on trial may be a

⁹⁹ Ibid., 34.

¹⁰⁰ Ibid., 154-155.

¹⁰¹ Naomi Roht-Arriaza, *The Pinochet effect: Transnational Justice in the Age of Human Rights* (Philadelphia: University of Pennsylvania Press, 2005), 97.

candidate to receive more development funds simply by showing that it is cooperating with the international community.¹⁰² Putting aside the economic argument, though, the political context of the transition has a large effect on the possibility of trials. Since the way a regime ends, either by collapse or negotiation, affects the actions of the new democracy and therefore its attempts at justice, it follows that trials will be the most difficult mechanism to institute if the regime negotiated the transition. If members of the previous regime maintain power or influence during and after the transition, they will avoid standing trial for crimes against humanity. It is much easier to put past offenders on trial after a regime has collapsed, when there is a clean break and a strong distinction between the two governments.

If a weak economy is the main reason for not pursuing trials, the government should seek outside help.¹⁰³ Whether that means the creation of an international tribunal to hold trials or requesting international funds to hold the trials domestically, trials are the only true way to truly punish criminals. Experts and members of the international community do not recommend truth commissions as a substitution for trials. Instead, it is suggested that they accompany trials. Perhaps even more important and irreplaceable is the symbolic position that trials represent for a new democracy: that human rights abuses should not and will not go unpunished.

Amnesty laws excuse monstrous crimes, but trials can exhaust economic resources and keep a country from moving forward. Empirical studies conducted by the University of Wisconsin have found truth commissions, when implemented on their own, to negatively impact the protection of human rights and the growth of democracy. Similarly, these studies have also found that neither amnesties nor trials on their own prove effective in improving human rights

¹⁰² Olsen, Payne, and Reiter, 64.

¹⁰³ *Ibid.*, 159.

and democracy.¹⁰⁴ Transitional governments do not, and should not, have to choose only amnesty, truth commissions, or trials, but rather find a combination of these mechanisms that best fits the country's situation.

The Rise of International Justice

Intervention in world wars and the establishment of the United Nations in the first half of the 20th century have paved the way for more international involvement in any country's political affairs. It is more difficult, though certainly not impossible, for a country to commit heinous crimes within its borders and stave off international pressure solely by claiming national sovereignty. Genocide, torture, human trafficking, forced disappearances, and other acts labeled crimes against humanity fall under international jurisdiction according to many different bodies and treaties, such as the Inter-American Commission on Human Rights and the European Convention on Human Rights. The international status of these crimes now justifies any foreign intervention because "certain crimes are so universally agreed to be heinous, so potentially disruptive of international peace, and so difficult for any one state to adequately prosecute, that all states have the right to try anyone accused of them."¹⁰⁵ And with all countries now falling under the watchful eye and constant reporting of thousands of nongovernmental organizations, international attention, and even intervention may be unavoidable if the country itself is unable or unwilling to hold trials. Even if tribunals are never actually formed, the mere threat of them may be enough to push the government into action, as "transnational prosecutions raise risks of

¹⁰⁴ Ibid., 144-146.

¹⁰⁵ Roht-Arriaza, 7.

embarrassment and interference with commercial and diplomatic relations that diplomats tend to avoid if possible.”¹⁰⁶

Given the increasing threat of international justice and intervention, amnesty laws applied at the national level may fail to serve their original purpose. In 2001, in response to murders by security forces in Peru, the Inter-American Court of Human Rights declared blanket amnesty laws in violation of the Inter-American Convention on Human Rights.¹⁰⁷ Declarations like this create pressure and often lead judges within the country to overturn amnesty laws or pursue trials despite them. In Argentina and Chile, both countries that underwent fascist, military dictatorships in the 1970s and 1980s, amnesty laws covered military officials, only to later be overturned due to international pressure.

The 1973 military coup in Chile installed General Augusto Pinochet as dictator for almost two decades. In only 1978, the military granted itself amnesty for any crimes committed up to that point. In 1996, however, a criminal complaint was filed in Spain’s national court accusing Pinochet and the military of genocide, terrorism and torture.¹⁰⁸ Using a few cases that involved victims of Spanish nationality, but also under the umbrella of universal jurisdiction, a Spanish judge heard cases and investigated these crimes. In 1998, Spain issued an international warrant that sought extradition; Pinochet was later arrested while abroad in London. Though never extradited to Spain, his crimes received official international condemnation while in British courts. Once he returned to Chile in 2000, a Chilean judge placed him under house arrest and started amassing criminal charges against him. He died before he could stand trial.

¹⁰⁶ Ibid., 218.

¹⁰⁷ Ibid., 103.

¹⁰⁸ Ibid., 1.

Despite the trials and convictions of a few top military officials and the head of the Buenos Aires police force in the 1980s, Argentina passed two significant amnesty laws: *punto final* in 1986 and the due obedience law in 1987. These laws limited the amount of time when allegations could be made against offenders and granted amnesty for any crimes committed while following orders, respectively. In 1989, the president granted full pardons for all those awaiting trial or anyone already convicted; it was as if the trials never took place. Similar to the case in Chile, a criminal complaint was filed in March of 1996 against Argentine generals.¹⁰⁹ Judge Garzón began to investigate both crimes committed against Spanish citizens as well as Argentines and eventually issued more than 60 arrest warrants for Argentine military officials.¹¹⁰ It was the international pressure and precedence set by Garzón that eventually gave Argentine Judge Gabriel Cavallo the confidence and authority to declare the amnesty laws of 1986 and 1987 “null and void” in 2001.¹¹¹ Two years later, the Argentine National Congress officially overturned the amnesty laws and the Supreme Court followed by upholding the decision in 2005.¹¹² As recently as 2010 and 2012, former dictator General Jorge Videla was tried, convicted, and sentenced to life in prison for torture, forced disappearances, kidnapping, and child trafficking, undoubtedly due to both Spain’s intervention and the Inter-American Court of Human Rights. The latter has declared “accountability for the crimes of a dictator [to be] a human right” and that amnesties granted during democratic transitions should be ignored.¹¹³

While this discussion began as one focused on what new governments can do to address past crimes, strengthen democracy, and reduce human rights abuses, it is also necessary to

¹⁰⁹ *Ibid.*, 2.

¹¹⁰ *Ibid.*, 25.

¹¹¹ *Ibid.*, 114.

¹¹² *Ibid.*, 116.

¹¹³ Ruti Teitel, *Justice Delayed, but Not Denied*, Project Syndicate, <http://www.project-syndicate.org/commentary/justice-delayed--but-not-denied> (December 30, 2010).

address the rising international role in transitional justice. Crimes against humanity can no longer be committed merely under the protection of national sovereignty. Neither is the international community so willing to tolerate inadequate attempts at transitional justice made at the domestic level anymore. According to international human rights lawyer and author Naomi Roht-Arriaza, “blanket amnesty laws or other attempts to manufacture an end to discussion about the past” not only condone previous crimes but consequently fail to restore faith in the government and are “doomed, at least in the long run.”¹¹⁴

IX. Obstacles Facing Post-transitional Justice in Spain

Implementing transitional justice is complicated and the case of Spain presents additional, unique challenges to the process. First and foremost, this is now a case of post-transitional justice. This emerging sub-field is even less developed than traditional transitional justice, but it will become necessary to adapt our understanding of transitional justice to fit the Spanish context. When it comes to the abduction of children in Spain, thousands of these crimes occurred more than half a century ago. Even for those crimes committed during the transition and into the early years of democracy, at least 20 years have elapsed. Cases from the 1940s and the 1980s, though very distinct, share an important characteristic: neither has been served by the democratic transition or the institutions established since 1975. Specifically in response to these crimes, but also as a nation unhealed from civil war and oppression, Spain must take responsibility in the form of post-transitional justice.

¹¹⁴ Roht-Arriaza, 222.

Transitional Justice in Spain Thus Far

Up to this point, Spain has applied limited and insufficient transitional justice mechanisms. One of the first steps taken was in passing the Amnesty Law of 1977 that forbid the prosecution of crimes “of a political nature” committed before 1976.¹¹⁵ This law was intended to quickly bridge the gap between Franco’s rule and the new administration. Numerous judges in Spain have since invoked this law when refusing to investigate crimes under Franco.

For decades, according to Spanish law and official government rhetoric, Republican victims of the civil war and Franco repression were viewed as traitors and enemies of the state. Since the early 1980s, primarily with the support of the socialist party (PSOE) who gained legitimate, political standing after winning the 1982 elections, laws have been passed that increasingly recognize victims of the regime. Beginning in 1984 with a law that “[recognized] the rights and services rendered by those who fought in the civil war”, this bill expanded the country’s official history to include Republicans, in addition to Nationalists, as legitimate Spanish forces.¹¹⁶

The biggest accomplishment for transitional justice and human rights advocates in Spain up to this point has been the adoption of the Law of Historical Memory in 2007. This marked the first official condemnation of the Franco regime and its systematic campaign of repression. In addition to serving as a symbolic milestone, the law also made tangible changes. In condemning the regime, it removed more than 500 public statues and monuments throughout the country that paid tribute to Franco and his supporters.¹¹⁷ The Valley of the Fallen, which was constructed in

¹¹⁵ Madeleine Davis, “Is Spain Recovering Its Memory? Breaking the ‘Pacto del Olvido’”, *Human Rights Quarterly*, 27:3 (August 2005), 863.

¹¹⁶ *Ibid.*, 863.

¹¹⁷ Giles Tremlett, “Spanish civil war victims' bodies finally removed from mass grave,” *The Guardian*, May 5, 2011.

the 1940s to serve as cemetery in honor of Nationalists has been transformed into a memorial for all those who died during the civil war.¹¹⁸ The law extended more than 13,000 pensions to widows and orphans of the war, amounting to around €150 each month,¹¹⁹ and has helped provide funding and government support for organizations such as the Association for the Recovery of Historical Memory (ARMH). Directed by Emilio Silva, ARMH has been the primary organization leading excavations and exhumations of mass Republican graves from the civil war. The government has aided in this effort, for example, by publishing a map online that details the locations of more than 2,000 mass graves.¹²⁰ Some still see the government's involvement as limited, though, especially considering the extensive work required to exhume and examine thousands of bodies, currently performed primarily by ARMH and other victims' organizations.

Factors to Consider for Post-transitional Justice

The Law of Historical Memory, in principle, is valuable for addressing stolen children in Spain because it recognizes the ideological and physical repression that characterized the first era of abductions. However, the law makes no explicit mention of stolen children or how the country will seek truth and justice for victims of these specific crimes. According to the previous section, there are three important factors to take into account for implementing, in this case, post-transitional justice: how the regime ended, the length of the conflict, and the state of the economy.

¹¹⁸ Victoria Burnett, "Bill in Spanish Parliament Aims to End 'Amnesia' About Civil War Victims," *New York Times*, October 28, 2007.

¹¹⁹ Memoria Histórica, *Prestaciones*, <http://www.memoriahistorica.gob.es/Prestaciones/index.htm> (April 11, 2013).

¹²⁰ Memoria Histórica, *Mapa de fosas*, <http://www.memoriahistorica.gob.es/MapaFosas/index.htm> (April 11, 2013).

As mentioned previously, the transition in Spain was negotiated between Franco supporters and those pushing for democratic reform. These negotiations produced an unofficial pact of forgetting, reinforced by policies such as amnesty that continued the power and protection of Franco loyalists. No doubt influenced by a fear of political instability and violence, this pact also built on the idea of “shared responsibility”,¹²¹ that both sides had committed wrongs that would be excused for the sake of reconciliation. Truth and justice, therefore, were sacrificed for “peace, order and stability”.¹²²

While traditional transitional justice takes into account the duration of the conflict itself, it is important here to also consider the time elapsed since the transition. Following nearly 40 years since Franco’s death, there are both negative and positive aspects to waiting so long to address these crimes. Of those children taken from their families in the 1930s and 1940s, many have already passed away; certainly their parents have, too. Evidence and witnesses may no longer be available. This applies to the second era of abductions, too. Sixty years have passed since doctors, nurses, and nuns began abducting children from maternity wards. Many mothers and fathers have passed away, and thousands of these children have no idea they were even adopted, let alone stolen or abducted. For those abducted in the 1980s and early 1990s these crimes may be fresher, but they are still subject to the eroding effects of time. Even if mothers and children are still alive and searching for each other, those with valuable knowledge are passing on, as was made clear by the death of Sor María in early 2013 and the loss of her testimony. Additionally, there is the debate of intergenerational justice. Many that originally accepted the transition now question their responsibility to change or undo it. Why should the

¹²¹ Davis, 865.

¹²² Ibid., 864.

government and people of Spain today have to pay for, both figuratively and literally, the crimes committed decades ago?

Alternatively, time has its benefits. Neither politicians nor civil society were in the position to investigate the past during the transition. Political leaders were subject to the unofficial pact of forgetting and reluctant to unearth scandals that could destabilize the transition. Victims, human rights activists, and other elements of civil society were disconnected and accustomed to the censorship of the regime. Only in recent years have political parties—particularly the socialist, communist, and other leftist parties—and civil society grown to challenge the status quo. In addition, the immediacy of these crimes has passed, leaving victims more distanced from their initial trauma and perhaps more comfortable in coming forward to discuss it.

If Spain's government were to cede to the requests of international and local actors and conduct exhumations and DNA tests on a widespread scale, the costs incurred would be significant, particularly given Spain's current financial crisis. Following these more truth-based measures, children and families that were affected by abductions might seek financial reparations in the future. Currently, though, the fundamental controversy regarding post-transitional justice for these crimes surrounds is an ideological and political one. Until there is a national consensus—among both political parties and the Spanish people—over how to address these crimes, the state of the economy is not one of the immediate factors to consider in implementing justice.

These factors play a critical role in deciding what mechanisms of transitional justice can or should be employed. The next section will review national apologies, amnesty laws, truth commissions, trials, and their applicability today in Spain. The discussion of truth commissions

and trials in particular illustrates the distinct barriers that challenge governments at the local, national, and international levels from implementing post-transitional justice.

A National Apology and Amnesty

Until the 1970s, the Australian government systematically abducted aboriginal children and placed them with white families so that they could “assimilate them into mainstream Australian society.” In 1997, the government established an annual “Sorry Day” in recognition of these abuses.¹²³ While this act can by no means fully forgive these violations, it serves as an example of a country utilizing a national apology as a form of post-transitional justice. Spain’s Law of Historical Memory comes close to a national apology. It officially condemns abuses by the dictatorship and recognizes victims previously oppressed and ignored. This law, however, specifically addresses political victims and those who suffered during the civil war and in the years that followed. There has been no official apology made by the government to the generations of victims that have been affected by child abduction. Though this specific topic has gained public and media attention in the last 10 years, the government has not taken an official stand. A national apology would be one way to do so, though any apology of this sort runs the risk of trivializing the trauma experienced. Can an official document or day of remembrance stir up the kind of national recognition and gravity that these victims deserve? National apologies typically hold greater value when the issuer of the apology can recognize and display guilt for the atrocities committed. Post-transitional justice complicates this: the Spanish government today is entirely distinct from the Franco regime and may not feel or demonstrate actual responsibility

¹²³ Hayner, 17.

for these crimes.¹²⁴ Despite these challenges to issuing a national apology, the act itself would still mark an important step forward. Currently, victims and social organizations are the primary driving factor behind the awareness and investigation of these crimes. A national apology would formally recognize the phenomenon of stolen children and bring the government closer to the people fighting for this cause. After 40 years of oppression and nearly 40 years of silence, an apology could mark a turning point for a government that has long stayed silent on the issue.

For decades, Spain's Amnesty Law has prevented investigation of crimes committed under Franco. There is reason to hope, however, that on both the national and international levels, this may not actually pose a legal obstacle for post-transitional justice. While this amnesty covers political crimes prior to 1976, there is no evidence that the second era of abductions orchestrated by hospital and Church officials had any ties to the government. As non-state actors, the Amnesty Law does not apply to doctors, nurses, priests, or nuns.¹²⁵

The details of the law may not even matter: since 2008, important international actors have declared Spain's amnesty to be in violation of international law. According to both the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the European Court of Human Rights, crimes against humanity should not be eligible for amnesty nor subject to statute of limitations.¹²⁶ Unfortunately, these declarations and requests to repeal the law have been ignored and did not stop the nation from placing Judge Baltasar Garzón on judiciary probation for investigating forced disappearances under Franco and violating the amnesty law.

¹²⁴ Jean-Marc Coicaud and Jibecke Jönsson, "Elements of a Road Map for a Politics of Apology," in Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud, and Niklaus Steiner, ed., *The Age of Apology: Facing Up to the Past* (Philadelphia: University of Pennsylvania Press, 2008), 83-84.

¹²⁵ Estes Poves, "La Ley de Amnistía no es aplicable."

¹²⁶ Human Rights Watch, *Spain: End Amnesty for Franco Era Atrocities*, <http://www.hrw.org/news/2010/03/19/spain-end-amnesty-franco-era-atrocities> (April 11, 2013).

Until the United Nations or the European Court of Human Rights threatens Spain and provides some political or economic incentive to overturn the law, it may continue to impede investigations into the first era of abductions. This may also require victims' organizations and lawyers to shift political pressure from the national government to these international bodies.

Yet another way around the Amnesty Law may be the same path forged by Spanish judges in the 1990s. Following Garzón's implementation of universal jurisdiction in investigating human rights abuses in Chile, Chile was forced to either submit to international prosecution or address these crimes itself, ultimately opting for the latter option. Pinochet was never extradited to Spain and Chile's amnesty law was never officially annulled, but the international pressure caused by Spain's investigations and arrest led Chilean judges to conduct human rights trials and reevaluate the nature of crimes committed in agreement with international law.¹²⁷ That Argentine judge María Romilda Servini de Cubría has now been investigating forced disappearances and other crimes under Franco has the potential to institute changes similar to those made in Chile. The key word, however, is potential. Given Spain's lack of cooperation with previously mentioned international organizations, there is little indication yet that Argentina's investigations will cause a change in Spain's behavior. On a smaller scale, though, the investigations may lead to some trials. In either case, victims' organizations should encourage Argentine and other transnational and international investigations to include stolen children.

¹²⁷ Paloma Aguilar, "Transitional Justice in the Spanish, Argentinian, and Chilean Case." Paper presented at the international conference Building a Future on Peace and Justice, Nuremberg, June 25-27, 2007.

Truth Commissions and Trials

Both truth commissions and trials involve investigations. Though they differ in their final product—truth commissions produce a report while trials may lead to actual punishment of offenders—it is not yet clear which conclusion is more appropriate for these crimes within the context of post-transitional justice. Given the thousands of disconnected accounts and unanswered questions that still remain, it may be more valuable to begin conducting investigations and pursue one specific mechanism later on. The two most concrete steps that have been taken so far and should continue to be executed throughout these investigations are DNA testing and exhumations.

Until recently, local governments and organizations carried out their own DNA tests between potential family members, normally through private labs. Genómica, a lab in Madrid, conducted most of the tests.¹²⁸ Though the minister of justice announced the creation of a national DNA bank and archive of victims' information in April 2012, it has yet to be realized. This bank would only provide free DNA testing for those who present sufficient evidence to a judge,¹²⁹ making the judiciary an obstacle between potential victims and the truth.

Progress in exhumations has been uneven and slow. One of the first government-supported exhumations regarding abducted children took place in La Línea de la Concepción, a town in the southern province of Cádiz, in June 2011.¹³⁰ Twenty-two exhumations in Zaragoza, Albacete, Basque Country, Aragón, Castilla-La Mancha, Catalonia, Valencia, and Madrid also

¹²⁸ Estesio Poves, "Gallardón promete un banco de ADN."

¹²⁹ Natalia Junquera and Lorena Bustabad, "Manuela a su hija: 'Yo siempre supe que no estabas muerta,'" *El País*, March 27, 2012.

¹³⁰ Raphael Minder, "Spain confronts decades of pain over lost babies," *The New York Times*, July 6, 2011.

followed in the same year.¹³¹ The government of Barcelona did not conduct any exhumations until May 2012.¹³² Exhumations for those with family vaults have been much easier, like the family of Rebeca Losa Ocáriz in San Sebastián: those with access to the caskets their children who allegedly died in labor can quickly invalidate false death certificates.¹³³ For some families, the casket reveals no remains whatsoever, that no child was ever buried. For those that do contain remains, though, a DNA test is then necessary to prove or disprove whether the correct child was buried. Most victims' families do not have family vaults and must navigate through the bureaucratic judicial system until an exhumation is approved.

Government: Distinct Levels and Challenges

Victims' organizations can only accomplish so much without the cooperation, authority, and resources of a governmental body. Local, national, and international bodies have responded to these crimes in different ways and created distinct problems at each level. Particularly at the local and national levels: "the practical problems that official noncooperation has posed to date center around lack of resources in the form of judicial cooperation, money, and access to information."¹³⁴ In the sections that follow, I analyze the obstacles unique to each level of government.

¹³¹ Junquera, "Una monja es la primera acusada."

¹³² Jesús García, "La fiscalía ordena la primera exhumación por los niños robados en Barcelona," *El País*, May 9, 2012.

¹³³ Estesó Poves, "Una familia descubre que el ataúd de su bebé está vacío."

¹³⁴ Davis, 880.

Local Government: Isolated

Though local government has been the most receptive to investigating these cases and conducting DNA tests and exhumations, it lacks the resources and collaborative potential of the national government. Particularly during the second era of abductions, these crimes did not take place solely in one city or province: a family living in the Canary Islands might have adopted a child stolen from a hospital in the city of Madrid. Especially without a national DNA bank in place that includes all victims and family members, the potential progress of any local government is limited and isolated. Many victims' organizations have grown to have a central body with regional chapters which may help to bridge this gap between provinces, but there are numerous victims' organizations and no central authority tying them together.

National Government: Divided

While local governments may lack the resources and collaboration necessary to conduct large-scale investigations, the national government currently faces an ideological barrier that manifests itself in different branches of government. In general, the two main political parties in Spain, the socialist party (Partido Socialista Obrero Español or PSOE) and the conservative party (Partido Popular or PP), hold opposing viewpoints on the transition and the relationship Spain should have with its past. As the political party descendant from Franco's supporters, PP opposed the passing of the Law of Historical Memory. It continues to object to investigating or addressing abuses that the transition allegedly resolved.¹³⁵ PSOE's stance has been slightly more complicated. Though it has historically been more active in discussing the civil war and Franco's regime, it varies by administration. The PSOE administration under Felipe González between

¹³⁵ Ibid., 877.

1982 and 1996 did little to challenge the pact of forgetting and the Amnesty Law. This had to do with the timing, as this administration followed immediately after the transition. During the PSOE's tenure from 2004 to 2012, the administration was "less directly dependent than previous PSOE governments ... on the shared story of the transition". The president himself, José Zapatero, had not been in federal government during the 1970s and early 1980s and therefore was not "associated with the compromises made during the transition."¹³⁶ As leaders in PSOE continue to distance themselves from the negotiations of the transition, the party seems to grow more willing challenge them, too. While this may foster greater political support for victims in the socialist party, it does not change the existing deadlock between the two largest political parties in Spain. Even though the deadlock between these two parties does not specifically pertain to stolen children, these abuses began as a consequence of the civil war and have their foundation in Franco's dictatorship. The deplorable nature of stealing children might seem worthy of bipartisan condemnation within a democratic society, but the PP cannot denounce the abuses without ceding to other demands to investigate and criticize the past. Ultimately, without support of the political parties and consistent national support, the most important evidence may remain untouchable. For both eras of abduction, critical documents—such as adoption papers, birth certificates, death certificates, and correspondence—remain hidden away in military and church archives. Both sets of information would provide a better understanding of the government and church's roles in these abductions between the 1930s and 1990s.

The judicial branch has been both the victims' most important advocate and greatest opponent. While a federal judge for the National Court, Garzón's dedication to the Pinochet case led to a turning point for the government's role in the case of stolen children and other crimes

¹³⁶ Ibid., 879.

against humanity, particularly the role of the federal judiciary system. This elicited a strong response from those victims and activists that want the government to revisit the past and see the judiciary as the branch of government to do so. Though Garzón seemed to agree with this, he was suspended for allegedly overstepping his duties in the investigation of crimes under Franco. He was eventually cleared of this accusation but disbarred in February 2012 for illegal wiretapping in another case investigating the current prime minister.¹³⁷ As one of the strongest human rights investigators and pioneers in the application of universal jurisdiction, Garzón's removal from the bench is seen as a blow to human rights activists both nationally and internationally, and even representative of the nation's refusal to abide by international law. This seems to have closed off the judiciary as a path for victims at the national level. Given the ideological deadlock and reluctance of the judicial branch to get involved, Spanish society seems to be moving faster than its politicians.

International Government: Powerless

Just like Baltasar Garzón invoked universal jurisdiction when investigating forced disappearances in Argentina and calling for Pinochet's arrest, Argentina has similarly become involved in some of these crimes in Spain. Though far from resolved or healed, Argentina's transitional justice initiatives, in response to its own history of forced disappearances, stolen children, and a violent military regime, often serve as a model for other nations. Since 2011, Argentine judge María Romilda Servini de Cubría has become closely involved with open cases

¹³⁷ Giles Tremlett, "Baltasar Garzón cleared over his Franco-era crimes inquiry," *The Guardian* [UK], February 27, 2012.

of forced disappearances in Spain and met with ex-prisoners and other victims.¹³⁸ Progress has stalled, however, since Servini canceled her trip to Spain in June 2012.¹³⁹

Under international law, victims' organizations may find greater opportunities, such as this, outside of the country. The development of human rights legislation at the international level is more favorable to the case of stolen babies in Spain, but may not be as influential as it appears on paper. International organizations have already made comments on Spain's disregard for international law and human rights, yet that does not seem to have penetrated Spain's national sovereignty. Fernando Magán, lawyer for ARMH, along with lawyers of other victims' organizations, has threatened to go to the European Court of Human Rights (ECHR) or the United Nations to officially classify these abductions as crimes against humanity if the Spanish courts refuse to do so.¹⁴⁰ Recognizing these abductions as such is vital: these children "do not form a part of the past, but of the present. The disappeared continue being disappeared."¹⁴¹ However, if the ECHR still cannot compel Spain to overturn its Amnesty Law, will declaring these abductions as crimes against humanity actually affect the way Spain reviews these cases?

¹³⁸ "AI presentará en Argentina un informe sobre víctimas del franquismo en España," *La Información*, May 7, 2012 (<http://noticias.lainformacion.com/>).

¹³⁹ Estesó Poves, "Gallardón promete un banco de ADN."

¹⁴⁰ Christine Toomey, "Spain's stolen children," *The Times*, March 1, 2009, 51-57.

¹⁴¹ Vila, 280.

X. Conclusion

“...pensar en el robo de un niño era pensar lo impensable.”

–Journalists, Jesús Duva and Natalia Junquera¹⁴²

The story of stolen children in Spain is still unfolding. We know now that the abuse of power and authority, both in political and private life, led to the abduction and illegal adoption of an estimated 300,000 children since the outbreak of civil war in 1936. Fascism and radical nationalism moved Franco’s government and supporters to target and steal the children of Republican women held as political prisoners. Public institutions and Church officials took in these children, stripped them of their family, home, and identity, and attempted to convert them into model citizens. What began as “ideological extortion” under Franco’s authoritative rule later transformed into a “trading business” of infants under the supervision of doctors, nurses, nuns, and priests across the country.¹⁴³ Recent allegations and the growing influence of social groups have shed some light on this long-kept, shocking secret in Spain’s recent history.

These injustices have long been ignored. Victims deserve recognition, truth, and justice. Minimal efforts made since the transition have excused those responsible and disregarded the Spanish government’s responsibility to its citizens. Since the Amnesty Law passed in 1977, limited reparations and some symbolic gestures established under the Law of Historical Memory have helped transform the nation’s official policy towards the civil war and Franco’s dictatorship. While this marks improvement, the Spanish government still has yet to formally recognize the abduction of children. Both local and national government, especially the latter,

¹⁴² “...to suspect the abduction of a child was to think the unthinkable.” Jesús Duva and Natalia Junquera, *Vidas Robadas* (Madrid: Aguilar, 2011), 24.

¹⁴³ Vila, 18.

have been hesitant to aid in DNA testing, exhumations, and investigations that could, at the very least, help victims learn their true identity and find closure. Victims' organizations are at the center of this movement, constantly lobbying and seeking the participation of government officials to do what thousands of victims have anticipated for decades.

Like other nations healing from the abuses of war and oppression, Spain will face certain options when it chooses to seek justice for the victims of child abduction. A national apology and some combination of a truth commission and trials would help, to some extent, address these wounds made over a 60-year period. Nothing about this process will be easy, though. Given the generations of victims affected by these abuses, post-transitional justice will present both logistical and ideological challenges, particularly in face of those who remain steadfast in their defense of the democratic transition and reconciliation.

The Next Steps for Spain

I distinguish two principal challenges that lie ahead for post-transitional justice in Spain, as it pertains to the abduction of children. First, social organizations will have to join forces and apply enough political pressure to create change, though this involves targeting one level of government. Local government lacks resources and the unifying capabilities of the national government. At the national level, a political stalemate currently prevents significant progress or even the recognition of these crimes. Transnational and international governments may be the boldest in recognizing and condemning the abuses, but they are often weak and unable to effect change. All these levels of government have the potential to deliver greater truth and justice to victims but must be pushed to do so. Victims' organizations, while persistent and influential so far, need to increase social pressure until someone caves. Whether this means compelling local

government to conduct more exhumations, DNA tests, and trials; applying greater legal pressure to the national court system and congress to move forward politically; or working with other governments and international organizations to impose human rights norms on Spain, social groups need to combine forces and strategize.

The second challenge will follow the first: once investigations and trials can be conducted on a widespread scale, it must be determined how to implement post-transitional justice that addresses both eras of abduction. The first was politically driven and orchestrated; the second seems to have been more economically focused and supervised by nongovernmental actors. Many of these crimes occurred decades apart. Still, there is an inextricable tie between the two phases and the phenomenon of stealing children cannot, and should not, be ignored. Paying attention to both eras of abduction will be difficult. It will require victims' organizations to be clear in their demands of the government and work to acknowledge and support victims from both periods of history.

The Argentine Model

Spain does not need to start from scratch; other nations have suffered similar crimes and developed models of transitional justice that Spain can incorporate. The case of 500 disappeared children, or *desaparecidos*, in Argentina during the last dictatorship from 1976 to 1983 made international headlines. The context is very different from Spain: this dictatorship in Argentina lasted less than a decade and the number of victims is significantly smaller. Perhaps the most unique characteristic is that of public resistance at the national level since the abductions first began. Women known as the Mothers and Grandmothers of the Plaza de Mayo began protesting the disappearances of their children and grandchildren soon after the dictatorship began, and still

continue to this day.¹⁴⁴ These women started a movement and left an international mark on human rights. Since these protests began, especially since the return to democracy in the early 1980s, Argentina has made significant progress in transitional and even post-transitional justice. The new democracy established a truth commission, the Comisión Nacional sobre la Desaparición de Personas (CONADEP), and published *Nunca más*,¹⁴⁵ a report detailing 9,000 forced disappearances.¹⁴⁶ In 1987, the government established a national DNA bank—Banco Nacional de Datos Genéticos. Now functioning for 25 years, more than 100 of the disappeared children have been identified.¹⁴⁷ In 2004, then-president Néstor Kirchner opened a previous torture center as a public space and memorial to the people and made a public apology for the crimes committed by the dictatorship.¹⁴⁸ Argentina was a driving force in helping make enforced disappearances a crime against humanity when the United Nations adopted the Convention on Enforced Disappearances in 2006.¹⁴⁹ Finally, as recently as July 2012, former dictators Jorge Rafael Videla and Reynaldo Bignone, were convicted for “systematically stealing babies from political prisoners and giving them new identities” on top of previous convictions for other human rights abuses.¹⁵⁰ Argentina can serve as a model or guide for Spain in establishing a national DNA bank, making a national apology, creating memorials for the people, and investigating and holding trials.

¹⁴⁴ Diana Taylor, “‘You are here’: The DNA of performance,” *The Drama Review*, 46:1 (Spring 2002): 149-169.

¹⁴⁵ “*Never Again.*”

¹⁴⁶ Mary Hanson, “Fingerprint-based Forensics Identify Argentina's *Desaparecidos*,” *IEEE Computer Graphics and Applications*, (September/October 2000): 7.

¹⁴⁷ *Ibid.*; Rita Arditti and M. Brinton Lykes, “Recovering Identity: The Work of the Grandmothers of Plaza de Mayo,” *Women's Studies International Forum*, 15:4 (1992): 465.

¹⁴⁸ Rita Arditti, “‘Do You Know Who You Are?’ the Grandmothers of the Plaza de Mayo,” *The Women's Review of Books*, 24:5 (2007): 12-15.

¹⁴⁹ *Ibid.*, 15.

¹⁵⁰ CNN Wire Staff, “Verdict Coming in Argentine Baby-stealing Trial,” *CNN*, July 5, 2012.

Some Last Remarks

Francisco Franco, Antonio Vallejo Nágera, Sor María Gómez Valbuena, and numerous prison wards, government officials, doctors, nurses, priests, and nuns not only robbed innocent men and women of their children, but also robbed those children of their identity. For Victoria Montenegro, an Argentine woman who recently learned she was adopted by supporters of the regime that murdered her father: “Recovering my true identity was paramount. Having a true identity is a human right.”¹⁵¹

Spain’s population has suffered for generations. For the thousands of women and men who continue searching for stolen children or biological relatives, for the thousands who still do not know they are victims, and for the thousands who have died without the truth, it is time to unbury the past. While a fragile democracy and the goal of reconciliation may have justified neglecting these crimes nearly 40 years ago, they are no longer valid excuses. For the sake of democracy, ignorance allowed the abduction of children to continue for more than a decade after the transition. Now, for the sake of democracy, Spain needs to listen and respond.

¹⁵¹ Rafael Romo and Michael Martinez, “Child of 'Dirty War' Learns Parents Part of Regime that Killed Real Parents,” *CNN*, May 26, 2012.

“Niños robados, vidas tachadas y reescritas...No queda demasiado tiempo. Si nadie lo evita, todo su sufrimiento caerá en los pozos del olvido, esos agujeros negros de los manuales de historia, las hojas arrancadas del libro de la democracia.”

Stolen children, lives erased and rewritten...There isn't much time left. If nobody prevents it, all of their suffering will fall into the depths of oblivion, those black holes of history books, the pages torn from the book of democracy.

– Author, essayist, and poet, Benjamín Prado¹⁵²

¹⁵² Prado, “Vidas robadas.”