Franco's Regime. From Totalitarianism to Authoritarianism in its Repressive Model (April 1936 – November 1975)

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> "With the Constitution, it is possible to achieve a civil concord called Spain, where citizens who, because they have different opinions, beliefs or convictions, complement each other. Those who kill, kidnap and extort, those who opt for violence as a method of political action, are not our complements. They are only the destroyers of democratic values. The evil they procure and the harm they inflict, they do to us all."
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> *Adolfo Suárez*, Prime Minister of Spain (1976 – 1981)[1]

With the paper we are presenting at this Symposium From Dictatorship to Democracy by Invitation of the Research Project The Berlin Administration of Justice after 1945, our intention is twofold: on the one hand, to offer some brief but, as we understand, necessary features of the Franco Regime between 1939 – 1975 (after the end of the Civil War, on 1 April 1939, it developed an authoritarian State that had its genesis with the formation of the so-called Technical State Junta of 1 Obtober 1936, which replaced the National Defense Junta – constituted on 24 July 1936 in Burgos and after the failure of the coup d'état by the rebels –, with General Franco as head of the Government); On the other hand, to establish the political-institutional features, particularly of Franco's jurisdiction, in order to address the reasons for the amnesty and its scope in the Spanish Transition.

This period began, with the death of the dictator Francisco Franco on 20 November 1975, practically from the appointment as Head of State, with the title of King, of Juan Carlos I on 22 November 1975: although he swore the Francoist Fundamental Laws, in the face of the misgivings of the Franco's Parliament (Cortes), in a somewhat diffuse speech the new monarch stated that he would seek "a consensus of national concord",[2] and so he did.

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[1] Speech given on the occasion of the presentation of the Human Values Award on 11 April 2002 (Group Correo-Prensa Española).

[2] In application of the Law of Succession to the Head of State of 27 July 1947, this constituted Spain as a Catholic Kingdom and State and established Francisco Franco as the Head of State for life. He was legitimized to propose his successor to the Francoist Cortes. This appointment was made in the person of Juan Carlos with the title of "Prince of Spain", thus

I. Introduction. The Spanish Political Transition

The arrival of King Juan Carlos I as Head of State in November 1975 allowed what is considered in the Transition as the Spanish "political miracle"[3]: the first "peaceful" transition from a dictatorial state in Europe, exhausted and without legitimacy, to a constitutional regime, and always based on the permanent search for consensus among all the political-social-economic actors involved.

Therefore, we have witnessed a political change since the death of the Dictator which was pushed forward from within the state structures themselves and which was also brought about by the far-sightedness of all the political compromisers.

This intense change from "dictatorship to democracy" (as the title of the Symposium puts it) in barely three years had, as we see it, three key moments that we specify in terms of political-legislative activity (in chronological order):

First, the Law of 4 January 1977 for Political Reform. Its author, the jurist and politician Torcuato Fernández Miranda (president of Franco's Congress of Deputies from the end of November 1976) presented to the King, who approved it, the idea of the reform "from within" of the Fundamental Laws – following the traditional way of Spanish politics since the beginning of 19th century constitutionalism of "reformist rupture" or "ruptures reform" using the mechanisms existing in the aforementioned Fundamental Laws –[4]: it established the preliminary political bases of the democratic system by specifying the path along which the Francoist Cortes had to travel (a law considered the eighth and last Fundamental Francoise). Under his hand, the Decree-Law regulating the first democratic general elections in forty-one years and the first regulation of the right to trade union association was passed on 15 March. Elections were called for 18 April. Following the resignation of Torcuato Fernández-Miranda as president of the Parliament (Cortes and of the Council of the Kingdom – in Spanish, Cortes y Consejo del Reino –) on 31 May, the Cortes were democratically elected

bypassing the natural order of succession that corresponded to his father Juan de Borbón under the Law of 22 July 1969 providing for the succession to the Head of State. Juan Carlos was proclaimed successor to the Dictator by Franco's Cortes on 22 July 1969, swearing "loyalty to the principles of the National Movement and other Fundamental Laws of the Kingdom".

[3] Especially if we compare it with the disintegration of Yugoslavia, which claimed 140,000 lives, or with dictatorships that managed to perpetuate themselves by stifling the incipient civil movement for reform (the case of Tiananmen in China).

[4] Franco was reluctant to spell out in detail the powers vested in him, opposing the drafting of a constitution reminiscent of the previous period. The decision to institutionalize his power came in response to a series of external events and, logically, to the need to perpetuate the regime. He would enact seven Fundamental Laws that would be known as "the other Constitution" (in the words of Jorge de Esteban), the eighth dead Franco was attributed to the one for Political Reform. The seven laws were, in chronological order: The *Fuero del Trabajo* (9 March 1938); The *Ley Constitutiva de las Cortes* (17 July 1942); The *Fuero de los Españoles* (17 July 1945); The *Ley de Referéndum* (22 Obtober 1945); The *Ley de Sucesión a la Jefatura del Estado* (26 July 1947); the *Ley de Principios del Movimiento Nacional* (17 May 1958) and the *Ley Orgánica del Estado* (10 January 1967). In this respect, *vid. De Esteban*, J., Las Constituciones de España, Madrid, 1982, pp. 28 – 30.

on 15 June 1977, and Antonio Hernández Gil, professor of civil law, was appointed as the new president until the Constitution came into force (27 December 1978), with Adolfo Suárez being confirmed as president of the Government (17 June 1977).[5]

The Law for Political Reform allowed for further constitutional debate with the intervention of all the political forces present in the Parliament (Congress and Senate). It practically put an end to the Franco regime: on 22 July Juan Carlos I inaugurated the new constituent Cortes, defining himself as a "constitutional king with functions of integration and arbitration in a democratic system".[6] It is worth to point out that, on 28 July the Suárez government submitted its application to join the European Economic Community.

Second, the so-called Moncloa Pacts signed on 25 Obtober 1977 (formally there were two: Agreement on the program of reform of the Spanish economy and Agreement on the program of legal and political action), signed by all the political forces with parliamentary representation, business associations and some trade unions. They laid the foundations for the necessary reforms in the areas of the economy, politics and justice, based on consensus (remember the context of the international economic crisis caused by the oil crisis which, in Spain, was profound, with high unemployment and unemployment rates, and the territorial issue with the Basque-Catalan problem and the strong presence of the terrorist groups ETA and GRAPO). In this context, political normalization was promoted, and on 14 Obtober the Spanish Parliament unanimously approved the Amnesty Bill, and Spain subsequently signed the Convention for the Protection of Human Rights and Fundamental Freedoms on 24 November.

[5] Unión de Centro Democrático (UCD) won the relative majority with 165 seats, followed by Partido Socialista Obrero Español (PSOE), with 118 seats; Partido Comunista de España (PCE), with 20 seats; Alianza Popular (AP) with 16 seats; Pacte Democràtic per Catalunya (PDC), with 11 seats; Partido Nacionalista Vasco (PNV), with 8 seats; Partido Socialista Popular-Unidad Socialista (PSP-US) with 6 seats; Unió del Centro i la Democracia Cristiana de Catalunya (UC-DCC) with 2 seats, and Esquerra de Catalunya-Front Electoral Democràtic (EC-FED), Euskadiko Ezkerra-Izquierda de Euskadi (EE-IE), Candidatura Aragonesa Independiente del Centro (CAIC) and Candidatura Independiente del Centro (CIC), all with one seat.

[6] The King would defend "since popular sovereignty has its highest personification in the Crown, I would like to call upon you to cooperate fully and resolutely to achieve these ends. Democracy has begun, that is undeniable. But you are well aware that much remains to be done, although goals that many were reluctant to imagine have been achieved in a short time. Now we must try to consolidate it (…) The Crown desires – and believes it is interpreting the aspirations of the Cortes – a Constitution that will accommodate all the peculiarities of our people and guarantee their historical and current rights. It wishes to recognize the diverse reality of our regional communities and shares in this sense all those aspirations that do not weaken, but rather enrich and make the indisputable unity of Spain more robust".

Solemn joint opening session of the Congress of Deputies and the Senate, held in the Palacio de las Cortes on Friday, 22 July 1977, in the presence of His Majesty the King, at *Diario de Sesiones de las Cortes*, n° 3, 22 July 1977, pp. 38–41.

Third, with the approval of the Spanish Constitution, following a national referendum held on 6 December 1978, which came into force on 29 December of that year and established the current political system of parliamentary monarchy and the regime of Autonomous Communities.

The Spanish Transition therefore has two features that make a unique model:

1. It was one of the first to take place peacefully till the date (although it is currently questioned from leftist positions in the historical review that is being carried out: not only because of the presence of terrorist groups but also because of the military coup attempts such as the failed one of 23 February 1981). It is followed by numerous examples of democratic transitions in Eastern Europe after the fall of the Berlin Wall, such as the peaceful transition to democracy in Poland, where the Spanish model was studied in some detail, and in Czechoslovakia, Hungary, and Bulgaria, among others (by contrast, Romania was the only Eastern Bloc country to violently overthrow its communist regime and execute its head of state. The case of East Germany, as is well known, is different).

2. The 1978 Constitution is the fruit of consensus: that of all the relevant political parties represented in the Cortes of 1978. In this context, dialogue was sometimes difficult, which led, for example, the politician Gregorio Peces Barba to leave the Constitutional Committee on 7 March 1978 when the PSOE considered that the political conditions that maintained the consensus *facit legem* had been breached. Although there was a broad majority of right-wing political parties, we must highlight the following actions that culminated the Spanish constituent process: that of the "political genius" and commitment of Adolfo Suárez (president of the UCD government); the aforementioned support of Fernández Miranda (president of Congress) and the political vision of other leaders (Manuel Fraga, AP, Felipe González, PSOE, and Santiago Carrillo, PCE, mainly), and, last but not least, the firm commitment to political reform of King Juan Carlos I, even more firmly established in the Crown since his father Don Juan de Borbón renounced his dynastic rights in his favor on 14 May 1977.

This meant that the Constitution was not imposed by one political group against another but, for the first time in our political history since the first nineteenth-century constitutionalism (the Cadiz Constitution of 11812 introduced the principle of Catholic constitutional monarchy); the Constitution of 6 December 1978 was accepted by all the political forces present in the Chambers with few exceptions.

In conclusion, the consensus, far from being an obligation, was deliberately sought and sought, especially by the President Adolfo Suárez. In this 1975 – 1978 framework, what was the political background? Is it possible to consider the Francoist state a repressive regime? What was its nature? What decisions were taken in terms of reconciliation – amnesty, pardons, etc. – that made the great pacts and laws of the Transition possible?

II. The Franco Regime

On 18 July 1936, a military uprising against the Second Republic began but failed, leading to the Civil War.

The initial failure of the "National Uprising" (as described in the abundant archival documentation preserved) made it necessary to establish a new administrative structure for the territories under rebel control. This new government, capable of replacing that of the Second Republic, began to take shape with the formation of the *National Defense Board* (Junta de Defensa Nacional), set up by the military rebels in the city of Burgos on 24 July 1936.[7]

In this war context, it did not take long for a military man, general Francisco Franco Bahamonde, to stand out: on 1 Obtober 1936 he was proclaimed Head of the State Government by the Junta itself (before: on 21 September he had managed to unite the military leadership and was named Generalissimo of all the Armies, holding the sole military command) and, consequently, he assumed "all the powers of the new State".[8]

We are witnessing the genesis of the so-called Francoist State. When Franco was appointed head of the National Government, it was the beginning of a process of concentration of power around him that allowed the bureaucratic structuring of the "new State": after the "Nationals" defeated the Republicans in the Battle of Teruel (December 1937), seeing themselves as the victors of the conflict, a new Administration was promoted with its capital in Burgos, in accordance with the Law on the Organization of the State Administration of 29 January 1938. This is the date of the formation of what it is considered to be Franco's first "centralist" government (a power that he exercised uninterruptedly until his death on 20 November 1975).

Also, together with the new bureaucratic structure, an iron institutional apparatus was developed to repress the enemy and control the population. Prior to this, a purge of civil servants and the seizure of assets of those disaffected with the Popular Front had been carried out.

The end of the Civil War marked the beginning of the long period of the Franco dictatorship (1 April 1939 – 20 November 1975). But what was the nature of the Francoist State? In addition, can it be considered a fascist State?

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[7] Composed of seven military personnel and presided over by Major General Miguel Cabanellas (the most senior), collegially assuming all the "powers of the State". *Vid. Decreto n° 1 por el que se constituye una Junta de Defensa Nacional que asume los Poderes del Estado y representa legítimamente al País ante las potencias extranjeras*, in: Boletín Oficial de la Junta de Defensa Nacional de España – hereinafter BOJDNE – n° 1, 25 July 1936, p. 1.

[8] Decree no. 138, 29 September 1936, appointing His Excellency Major General Francisco Franco Bahamonde as Head of the Government of the Spanish State, who will assume all the powers of the new State (BOJDNE n° 32, 30 September 1936, pp. 125 – 126). In this respect, *Pino Abad*, M., "Apuntes sobre el ceremonial de nombramiento de Franco como jefe del estado", in: REI, vol. 3, n° 4 (2016), pp. 63 – 78.

1. Francoism, a Pseudo-Fascism

It should be made clear that we are not debating its nature, i. e. whether it was totalitarian or authoritarian. The idea that the coup d'état of 18 July, which initially failed, was carried out by the military in order to impose a fascist regime is a later reinvention that is not accepted by historiography.

In this respect, Linz Storch de Gracia considers that in contrast to non-democratic and totalitarian political regimes – characterized by the implementation and imposition of a total political integration between the state and society in which the adherence of the political community was an obligation –, Francoism was an authoritarian regime in which the state controlled political power without the citizens being able to participate in decision-making. This is, a limited political pluralism lacking of an elaborated and guiding ideology. Consequently, without the pretension of controlling social life by means of ideology, it sought, among its objectives, to achieve the passivity of the citizens themselves. The author argues, therefore, that Francoism is ascribed to a non-democratic and non-totalitarian political system that brought together, among its characteristics, a "limited political pluralism, not responsible, lacking an elaborated and leading ideology, but with characteristic mentalities, lacking extensive and intense political mobilization, except at certain moments of its development, and in which a leader or sometimes a small group exercised power within formally ill-defined but in reality predictable limits".[9] If we follow this thesis, we can frame this long Dictatorship, for some "chameleonic", within the non-totalitarian and non-democratic systems far from a specific ideology (unlike the Nazi or Italian fascist parties: in fact the Regime took ideas mainly in social doctrine from the Catholic Church – national Catholicism –, but also from liberal democratic regimes as far as the field of economic policy is concerned – especially after the entry into the OECD, the UN, etc., or including the first measures in defense of consumers in 1957 –; and practically devoid of mobilization insofar as Franco generally used popular rallies on few occasions). Finally, we should bear in mind that Generalissimo Franco, its leader, exercised power with the support of the army from the formation of the Junta Técnica de Estado (constituted, as mentioned above, in October 1936).

Without going into the question of the political nature of the regime, we are interested in the historical-legal sphere of the ways in which power was exercised, par-

[9] *Linz Storch de Gracia*, J. J., "Una interpretación de los Regímenes autoritarios", in: Papers: Revista de Sociología 8 (1978), pp. 11 – 16, the quotation on p. 11, and Sistemas totalitarios y regímenes autoritarios, vol. 3, edited by José Ramón Montero and Thomas Jeffrey Miley, Centro de Estudios Políticos y Constitucionales, Madrid, 2009. His extensive bibliography is analyzed by *Chehabi*, H. E., *A bibliography of Juan J. Linz*, in: Linz, J. J./Michels, R., Political Sociology and the future of Democracy, 2006, pp. 173 – 210; by the same, An Authoritarian Regime: The Case of Spain, in: Erik Nard and Yrjo Littunen (coord.), Cleavages, Ideologies, and Party Systems, Helsinki, 1964 (reprinted with the same title in Erik Allard and Stein Rokhan – comps. –, Mass Politics: Studies in Political Sociology, New York, 1970. Page references are to the latter edition, p. 255).

ticularly in the Administration of Justice. In the jurisdictional sphere, military control of its institutions was evident from the outset, a control which gradually disappeared after the change of the war scenario in 1942 in favor of the Allies during the Second World War. In this sense, we must affirm from the European context that we cannot simply assimilate Francoism to European fascism, especially as it coincided with the profile and period of German and Italian fascism. From a comparative perspective, and following Aróstegui Sánchez, it can be considered a pseudo-fascism when analyzing the actions of Franco and his cronies, the military and civilian support received in the Civil War, the absence of a previous political party to support him – this support would not come until the Spanish Falange was formed as a single party with the Juntas de Ofensiva Nacional Sindicalista (abbreviated as FE de las JONS or FE-JONS), a minority party set up by the so-called Unification Decree of 20 April 1937 and which from 1939 would become the political arm and sole party of the now Glorious National Movement) and, above all, the long evolution of the Regime up to 1975 in terms of its organization and legislation in repressive matters, which we will analyze below.[10] Franco was a survivor who knew how to adapt his regime to changing international circumstances in order to guarantee its continuity (in 1942, after the German setbacks in the war, he made his repressive militarized jurisdictional model more flexible and transferred it to ordinary jurisdiction, as exemplified by the reform of the jurisdiction of political responsibilities in February or by the Law establishing the Cortes, of 17 July, which declared them the highest organ of participation of the Spanish people in the tasks of the State), or in 1945, after the end of World War II, with the approval of the Law of Referendum (17 Obtober), designed for cases of consultation of the Nation on draft laws in the case of public interest or prior approval of the Law of Referendum (17 Obtober); or in 1945, after the end of World War II, with the approval of the Referendum Law (22 Obtober), designed for cases of consultation of the Nation on draft laws in cases of public interest, or the prior approval of the Fuero de los Españoles (17 July), which proclaims respect for the dignity, integrity and freedom of the human person as a guiding principle of State acts, among other moments).

Let us specify the particular features that allow us to describe Franco's regime as pseudo-fascism:

a) It had the pretence of being considered a State of Law, not a revolutionary one, a framework in which it legislated abundantly also for the sake of repression. The of-

[10] In this respect, *vid. Arostegui Sánchez*, J., "Opresión y pseudo-juridicidad, de nuevo sobre la naturaleza del franquismo", in: BHCE 24 (1996), pp. 31–46, la cita es de la p. 37. También, del mismo, Los componentes sociales y políticos, en: *Tuñón De Lara*, M./*Aróstegui*, J./*Viñas*, A./*Cardona*, G. Y./*Brical*, J. M., La Guerra civil española cincuenta años después, Barcelona, 1985; "Una dictadura conservadora", in: La aventura de la Historia 16 (2000), pp. 16–18; y "La oposición al franquismo. Represión y violencia políticas", en *Tusell*, J./*Alted*, A./*Mateos*, A., La oposición al régimen de Franco. Estudio de la cuestión y metodología de la investigación, Actas del Congreso Internacional, t. I, vol. 2, Madrid, UNED, 1990, pp. 235–256.

ficial gazette Official Gazette of the Spanish National Defense Board (Boletín Oficial de la Junta de Defensa Nacional de España – BOJDNE –), published in Burgos (25 July – 2 Obtober 1936), was constituted and replaced by the Official State Gazette (Boletín Oficial del Estado, hereinafter referred as BOE) en on 2 Obtober 1936, in which Franco's ukases were inserted. Consequently, the legislation that has come down to us allows us to assert that it acted from the proclamation of fundamental legal principles of criminal law and legality (non-retroactivity, non bis in idem, proportionality of penalties, among others) which, on the other hand, it never observed. This is why we use the expression "State with law" to refer to Francoism.

b) Unlike national-socialism or Italian fascism, the Franco regime incorporated the "special" repressive jurisdictional institutions throughout the period of its rule within the structures of the State itself.[11] Within this framework, it developed the judicial arbitrariness typical of non-democratic political systems in the absence of independence from political power, with judicial proceedings being characterized by extraordinary speed, brevity and discretion, breaking the fundamental legal principles of the previous constitutional order. Consequently, and as a distinct feature, the new Francoist state incorporated the repressive jurisdictional institutions, among others, arbitrarily designated by the political power within the very fabric of the state, exemplifying a model which legalized violence from its beginnings until its disappearance. As Del Águila has masterfully pointed out, the model of the special jurisdictions exemplified a broad procedural discretionally

> "often assimilated to the most absolute arbitrariness of the proceedings, which empowered the judicial body to dispense with any guarantee, requirement or procedural procedure, however substantive it might appear, favoring an impunity which was even formally consecrated (…), as occurred in the case of monetary crimes, smuggling, political responsibilities and the repression of Freemasonry and communism".[12]

c) The preservation of repressive documentation. Francoism, on the other hand, acted "for the good of Spain", which is why it promoted the Glorious National Uprising – an expression included in the archival documentation –, vindicating the postulates of traditional 19th century liberalism which it understands to have been broken during the Second Republic (1931 – 1936) and which it now wishes to re-establish: traditionalism, national Catholicism and national trade unionism, to which it adds militarism. The slogans of the "Homeland" that we find in the documentation we have worked on summarize his ideology well, a clear nationalist simplification of the concept of Spain: Viva España Única! Viva España Grande! Viva España Libre! Spain, one (indivisible, it denies separatism), great (recalling the Spanish im-

[11] In this respect, *vid. Czeguhn*, I., El Derecho penal político en el Tercer Reich, in: Pérez Juan/Moreno Tejada, Represión y orden público durante la II República, la Guerra Civil y el Franquismo. Una visión comparada, Pamplona, 2019, pp. 339 – 350.

[12] *Del Águila*, J. J., El Top. La represión de la libertad (1963 – 1977), Barcelona, 2001, p. 394. Del mismo, además, "La represión política a través de la jurisdicción de guerra y sucesivas jurisdicciones especiales del franquismo", in: Hispania Nova 1 (2015), pp. 211 – 242.

perial idea of the 16th century that was now to be projected to Africa since the international conference of Algeciras in 1906) and free (without foreign influences, in response to what is considered to be an international Judeo-Masonic-Marxist conspiracy). This action on behalf of Spain has meant that the documentary sources – in particular, those derived from the confiscation of assets, courts martial and special trials, among others in the sphere of the Administration of Justice – have not been expurgated and have been preserved practically in their entirety (with the exception of those relating to the Falange).

2. Repression: Features and Phases

Fundamentally, and in order to understand the scope of the political amnesty laws of the Spanish Transition, there can be no doubt that the Francoist state was a repressive state from the outset and throughout the entire period of its existence. Repression was an instrument of domination and "forced consensus". It created an extensive repressive network, one of its objectives being to physically and ideologically eliminate the "enemy" (Republicans, communists, trade unionists, Freemasons…), and to terrorize the population as a whole, covering all possible fields (social-political, economic, labor, cultural…). Those who could were banished. A significant classification was established, particularly in the field of university repression, by Baldó Lacomba, when he spoke of the exiled, the terrified and the buried.[13]

Having affirmed that repression was inherent to the regime, we can ask ourselves, once the Civil War was over, what was its scope in quantitative terms? How did it develop? What repressive institutions were established?[14]

Let us look at the quantitative sphere: the figures of repression. In the period of more than thirty-six years that the regime lasted (why it lasted so many years is another question, in relation to the international context of the Cold War), the balance sheet leaves no room for doubt:

a) During the Civil War (on both sides): recent demographic studies estimate that the conflict caused some five hundred and forty thousand deaths (540,000).

b) It should be noted that there were approximately 700,000 exiles (700,000), the great exodus. Mainly to France after the occupation of the city of Barcelona on 25 January 1939 (which divided the Republican Zone in two), a territory in which emigration was massive, settling around 60% of the refugees (defeated soldiers, politicians, civil servants, people from all the refugee territories in Catalonia). The first "mass emigrations" of the 20th century and allowed the great humanitarian transports to America, *verbi gratia*, the voyage of the steamship Sinaia that left the French port

[13] In this sense, *Baldó Lacomba*, M., "Represión franquista del profesorado universitario", CIAN 14 (2011), pp. 31–51. En particular, pp. 32 y ss.

[14] In this regard, among others, *Arnabat Mata*, R., "La represión: el ADN del franquismo español", Cuadernos De Historia 39 (2013), pp. 33–59.

of Sète on 25 May, 1939 constituting the first great humanitarian transport of refugees[15]), reaching in this territory the approximate figure of five hundred thousand exiles (500,000 exiles).[16] Other Spanish-American territories (mainly Mexico and Argentina) received around 19%, and Germany approximately 4%. The Franco regime rarely allowed exiles to return.

c) From April 1939 – 1975 it is calculated that there were almost one million political prisoners (1,000,000) and approximately two hundred thousand dead (200,000), including executions, imprisonment, etc., with the creation of two hundred and ninety-six (296) concentration camps in which some 700,000 people were held. War councils, special criminal courts, criminal law, etc. represented the institutional and legal framework for the legalization of repression.

Let us focus on this last section: the legalization of repression and *ad hoc* jurisdictional institutions within state structures. As we have pointed out, this is a feature which differentiates it from totalitarian regimes, particularly Hitler's, in which repressive institutions remained outside bureaucratic structures and did not develop legislation on the matter; in many cases, however, there was an oral transmission of these institutions, which, consequently, lacked such legislation.

On the other hand, far from imposing a penal system that was indulgent towards the defeated, Francoism assumed the need for a procedure of physical and moral extermination of the "enemy". In general, it is stated that "Francoist violence was carried out in a very specific way, by means of repression. Repression will acquire a triple meaning: it will constitute an element of punishment for the disaffected, it will become an element of submission for the undecided, it will become an element of cohesion for the victors', and, consequently, one of the characteristics of the regime is the use of violence throughout the whole of its existence.[17] To this end, as Tussel

[15] *Sherzer*, W.M., "El viaje de Sinaia", BIEG 211 (enero-junio, 2015), pp. 293 – 304.

[16] The situation was aggravated because after the international recognition of the Francoist State by the French and British States on 26 February 1939, they were exiled and defenseless… stateless, without any legal protection (let us not forget the French internment camps). A situation of "alegality" which, thanks mainly to Mexico and the help of its ambassador to France, Nicolas Bassoll, enabled them to obtain a legal status that allowed them to emigrate to America (the first of these was the large humanitarian transport ships, the aforementioned steamship Sinaia, which left the port of Sète on 25 May 1939), and also allowed the Republican political cadres to go to that country to form the Republican Government in Exile. In this respect, *Sánchez Aranda*, A., En Nombre Del Glorioso Alzamiento Nacional. Los procesos de depuración y represión política de Gabriel Bonilla Marín, Catedrático de procedimientos y práctica forense de la Universidad de Granada, Dykinson, Madrid, 2018, pp. 167 et seq.

[17] *Hernández Burgos*, C., "La represión franquista en la Universidad de Granada", in: Gómez Oliver, M./Martínez López, F., Historia y Memoria. Todos los nombres, mapa de fosas y actuaciones de los Tribunales de Responsabilidades Políticas en Andalucía, Universidad de Almería, 2007. I quote from the online work, p. 1. This is a generic quotation from the article in: *Mir Curcó*, C., "El estudio de la represión franquista: una cuestión sin agotar", Ayer 43 (2001), pp. 11 – 35. Also the first, Granada azul. La construcción de la Cultura de la Victoria en el primer franquismo, 1936 – 1951, Granada, 2011.

Gómez pointed out, it developed a unique repressive model which is difficult to find in Western Europe, not even in the aforementioned cases of Fascist Italy or Hitler's Germany, although it is explained in Spain by the existence of military conflict.[18]

With the repressive institutions incorporated into the very structures of the State, Francoism developed an exceptional criminal policy based on three main features:

(A) Instrumentalization of military jurisdiction (mainly, through the Bandos de Guerra from July 1936: thus, for example, the one that declared the state of war in the city of Granada published, finally, on 20 July by the ill-fated commander Miguel Campins Aura, loyal to the Republic and whom Queipo de Llano, declared Chief of the Southern Army at the end of July 1936, territory of Andalusia and Extremadura, ordered to replace and try in summary court martial, being shot on 16 August). The Bando was published in the following terms, exemplifying the extension of the jurisdiction of this "exceptional justice" to the detriment of ordinary criminal jurisdiction[19]:

> BANDO. MIGUEL CAMPINS AURA, Brigadier General and Military Commander of this square. I LET KNOW:
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> Article one. In view of the state of disorder which has prevailed throughout the nation's territory for the last three days, the absence of action by the central government and in order to save Spain and the Republic from the existing chaos, a STATE OF WAR is hereby declared throughout the territory of the province.
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> Article 2. All authorities who fail to ensure public order by all the means at their disposal shall be immediately suspended from their posts and held personally responsible.
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> Article 3. Anyone who, with the aim of disturbing public order, terrorizing the inhabitants of a town or carrying out social revenge, uses explosive or inflammable substances or employs any other means or artifice that is proportionate and sufficient to cause serious damage or cause accidents by rail or other means of land or air transport, shall be punished with the maximum penalties established by the laws in force.
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> Article 4. Anyone who, without due authorization, manufactures, possesses or transports explosive or inflammable materials, or even if they possess them legitimately, issues or facilitates them without sufficient prior guarantees to those who then use them to commit the offences defined in the previous article, shall be punished with the maximum penalty of major arrest to major imprisonment.
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> Article 5. Anyone who, without directly inducing others to commit the offence punishable under the first article, publicly provokes others to commit it or advocates this offence or its perpetrator, shall be liable to a maximum term of imprisonment or a minimum term of imprisonment.
>
> Article 6. Robbery with violence or intimidation of persons carried out by two or more criminals, when any of them are carrying weapons and the act results in murder or injury as referred to in number 1 of Article 1 of this Act, shall be punishable by the maximum penalty.

[18] *Tussel*, J., Los grandes procesos penales de la Época de Franco. Desde la Posguerra a Grimau y el Proceso de Burgos, in: Muñoz Machado, S., Los grandes procesos de la Historia de España, Barcelona, 2002, pp. 484–493, mainly p. 485.

[19] Newspaper Ideal of Granada, martes, 21 de julio de 1936.

> Article 7. Any individual in possession of weapons of any kind or explosives shall hand them in before midnight today at the nearest military or Civil Guard post.
>
> Article 8. Groups of more than three people shall be broken up by force with maximum energy.
>
> GRANADINOS: For the disturbed peace, for order, for love of Spain and the Republic, for the re-establishment of the laws of labor, I await your collaboration in the cause of order. Long live Spain. Long live the Republic. Granada, 20 July 1936".

Special military jurisdiction, exceptional justice, endowed with broad powers for the summary application of military criminal law (mainly the Code of Military Justice of September 1890) to citizens by means of summary courts martial. This feature gradually disappeared from 1939 onwards, giving way to a mixed civilian-military jurisdictional model which was generalized until 1945. In order to understand Franco's repressive discourse, which denied charges of rebellion and sedition against those who took up arms, the inverse process by which the defenders of the legitimate Republican regime were turned into rebels is key. What was sarcastically called "justice in reverse": Republicans who supported the Popular Front (remember that Manuel Azaña had been President of the State since May 1936 and that the Popular Front had won the general elections to the Cortes in February of the same year) were accused of "Adherence to the Rebellion, Aid to the Rebellion, Military Rebellion" or sedition. The rebels called themselves defenders of order and the homeland, the raison d'être of the "Glorious National Uprising". Franco himself later stated that "the Glorious National Movement had never been an uprising. The rebels were and are the Reds".[20] As the leader Ramón Serrano Suñer, Minister of the Interior and Franco's brother-in-law, cynically stated a few years later in his memoirs,

> "It was established that the 'rebels' were the populist front, forgetting that the rebellion against a situation that was considered unjust was legally in the National Uprising. As a result, the rebels against the constituted – republican – State Government was, according to the Code of Military Justice, those who rose up, and all of them, in the National Uprising. Those who rose up and all of us who assisted and collaborated with them, and that those who were with the 'constituted' Government could not be legally such (…) On this basis of upside-down justice – an unusual system in the history of political-social upheavals – the War Councils began to function".[21]

Justices that did not seek the truth, but assumed that all the accused were guilty unless proven the contrary, which was almost impossible in the framework of Franco's truculent military judicial system where the right of defense was non-existent. In

[20] *Suárez*, Á., Y Colectivo 36, Libro blanco sobre las cárceles franquistas, 1939–1976, Paris, Ruedo Ibérico, 1976, p. 45. Arnabat Mata points out that in the sentences of the courts martial we see written "again and again: that against the legitimate powers of the State, assumed by the Army from 17 July 1936 in fulfilment of its constitutive function, an armed uprising and tenacious resistance developed, with all kinds of violence being committed in support of it", in "La represión", cit. on line.

[21] *Serrano Suñer*, R., Entre el silencio y la propaganda. La historia como fue. Memorias, Barcelona, 1977, extractos de las pp. 244–248.

this context, a broad amnesty was granted to those who had participated in one way or another in the coup d'état and subsequent war. Extinction of criminal responsibility, withdrawal of criminal records, etc., without analyzing the practice of pardons which, following Orza Linares, with regard to the Franco dictatorship, we should point out the following provisions[22]:

– Law of 23 September 1939 (BOE 27 September 1939), amnestying criminal acts committed from 14 April 1931 to 18 July 1936. This law was a true amnesty, although the word "amnesty" does not appear once, and all supporters of the Popular Front were excluded from it.
– On the other hand, the Decree of the Ministry of Justice of 30 December 1939 (BOE of 10/01/1940) annulled actions taken by officials outside the National Movement (art. 20 declared null and void any general or individual amnesties and pardons granted by "Red bodies or authorities" after 18 July 1936).

(2) Development of the so-called "criminal law of perpetrator" (also known in recent historiography as "criminal law of the enemy").[23] In contrast to criminal law which punishes the facts, the act" – understanding that the concept of action is central to the theory of crime: man does not commit a crime insofar as he is, but insofar as he acts –, the criminal law of the perpetrator punishes man for what he is, for his ideas, thoughts, that is, for his personal characteristics (thus leaving open the criminal route to punish a person for the mere fact of having been a republican, communist, freemason, trade unionist, etc.).

The totalitarian justice system of the time applied the criminal conception of the perpetrator, breaking the basic criminal rights and principles consolidated in Spain since the Criminal Code of 1822, which enshrined, for the first time, the principle of criminal legality.[24] At this time, all legal fictions were possible: among others, the documentation that has led us to confirm the breakdown of the principles of *non bis in idem* (several criminal sentences were imposed for the same circumstance, sometimes up to a quadruple sanction as we shall see); of non-retroactivity in criminal matters unfavorable to the offender (criminal laws were passed that sanctioned

[22] Al respecto, sigo el excepcional trabajo de *Orza Linares*, R., Amnistías e indultos durante el Franquismo y la Transición, in: Pérez Juan/Moreno Tejada, Represión y orden público cit., pp. 115–139, en particular para la etapa de nuestro análisis, pp. 120–127.

[23] With regard to this concept and its application, *vid. Portilla Contreras*, G., La consagración del Derecho penal de autor durante el franquismo. El Tribunal especial para la Represión de la Masonería y el Comunismo, Granada, 2010; and, in relation to the concept of criminal law of the enemy, *Tébar Rubio-Manzanares*, I. J., La representación del enemigo en el Derecho penal del primer franquismo (1938–1944), Universidad de Alicante, 2015; "Derecho penal del enemigo en el primer franquismo. El caso de Julián Besteiro", in: Revista de Historia Actual 11 (2013), pp. 63–78; and "El ‚derecho penal del enemigo': de la teoría actual a la práctica represiva del "Nuevo Estado" franquista", in: Pasado y Memoria 13 (2014), pp. 227–250.

[24] In this respect, *Ruiz Robledo*, A., "El principio de legalidad penal en la Historia Constitucional española", in: RDP 42 (1996), pp. 137–169.

acts committed prior to their entry into force, normally going back to October 1934, the date of the Asturias revolt); of criminal proportionality, developing an arbitration that imposed penalties and economic sanctions according to the subject and his assets for the sake of confiscation of goods; of *nullam poena sine prævia lege*; of presumption of innocence (now presumption of guilt) or, among others, of non-compliance with the principle of extinction of criminal liability by the death of the perpetrator of the crime.

This authoritarian criminal law is to be found, among others, in the legislation on political responsibilities which explicitly recognized in its Preamble the need for judicial discretion to modulate penalties and economic sanctions (introduced with the Law of 9 February 1939 of the same name[25]), which allowed criminal sentences to be passed in "political-social" matters, allowing this expression to be used, establishing criminal and civil responsibilities – its collection purpose was one of its main objectives – for which all fundamental principles were violated, also in some cases imposing post mortem sentences on shot prisoners, as it had a double purpose: To legitimize punitive action from the beginning of the war and to legalize the confiscation of property, generating the "just" title for its incorporation into the State, economic plundering, yet another form of repression developed from the beginning of the conflict[26]) or in the Law of 1 March 1940 on *repression against Freemasonry and communism* which introduced a new law.[27] The very Preamble of the *Law of Political Responsibilities* – hereinafter, LRP – specifies the criminal conception of the perpetrator, recognizing the exceptional nature of the law:

With the total liberation of Spain approaching, the Government, conscious of the duties incumbent upon it with regard to the spiritual and material reconstruction of our homeland, considers that the time has come to pass a Law of Political Responsibilities; The time has come to enact a Law of Political Responsibilities, which will serve to settle the faults of this order contracted by those who contributed with serious acts or omissions to forge the red subversion, to keep it alive for more than two years and to hinder the providential and historically inescapable triumph of the National Movement, which will translate into practical effectiveness the civil responsibilities

[25] BOE n° 44, 13 febrero 1939, pp. 824–847. In this respect, *Álvaro Dueñas*, M., "Por ministerio de la ley y voluntad del Caudillo". La Jurisdicción Especial de Responsabilidades Políticas (1939–1945), Centro de Estudios Políticos y Constitucionales, Madrid, 2006; y *Quesada Morillas*, Y., Notas sobre la historiografía jurídica de la Jurisdicción Especial Franquista de Responsabilidades Políticas, in: *Pérez Juan*, J. A./*Moreno Tejada*, S. (coordinators), Justicia y represión en los Estados Totalitarios. España, Alemania e Italia (1931–1945), Valencia, 2021, pp. 409–451.

[26] We have dealt with economic repression in En Nombre Del Glorioso Alzamiento Nacional cit., pp. 261–293 y en La organización y práctica de la intervención de bienes en la provincia de Granada: de la Oficina de Intervención a la Comisión Provincial de Incautación (septiembre 1936–junio 1939), in: *Serrano*, J., La Guerra Civil a les terres del l'Ebre (1936–1939), Barcelona, 2022, pp. 1–62, en prensa.

[27] BOE n° 62, de 2 de marzo de 1940, pp. 1537–1539. In this respect, *Sánchez Aranda*, En Nombre Del Glorioso Alzamiento Nacional cit., pp. 361–392.

of the guilty persons and which, finally, to allow the Spaniards who have saved our country and our civilization in a tight beam, and those others who erase their past mistakes through the fulfilment of just sanctions and the firm will not to go astray again, to live together in a great Spain and to render to its service all their efforts and all their sacrifices.

The purposes of this Law and its development give it a character that goes beyond the strict concepts of a penal provision fitted into molds that have already expired. The intentional magnitude and the material consequences of the offences inflicted on Spain are such that they prevent punishment and reparation from reaching proportionate dimensions, as these would be repugnant to the deep sense of our National Revolution, which does not wish to punish with cruelty, or to bring misery into homes. This is why this Law, which is not vindictive but constructive, on the one hand mitigates the severity of the punishment and, on the other hand, seeks, within the framework of equity, formulas that allow the sacred interests of the Nation to be harmonized with the desire not to break the economic life of individuals.

A part of legal historiography wonders whether it was necessary to forge this special "author" criminal legislation of an autonomous nature for the atrocious repression initiated from the beginning of the war, on the understanding that other legal instruments were available which could without difficulty accommodate any criminal conduct, such as the Criminal Code in force, the Public Order Law of 1933 and later the State Security Law. There is no doubt that the special criminal legislation allowed the repression to be extended with extraordinary effectiveness in the control and extermination of the "enemy" to all the territories that had escaped repression at the beginning of the war because they were under Republican administration, as in the case of Catalonia.

(C) Establishment of exceptional repressive jurisdictional institutions from the practical end of the war – as we have pointed out, introduced with the aforementioned criminal legislation – which allowed the development of common models of repression throughout the territory of the State: we refer to the so-called special jurisdictions (with the exception of the ordinary jurisdiction) which had the aim of applying criminal offences which reflected the conception of the perpetrator (for example art. 4 of the LRP) and, at the same time, to control the social population. Jurisdictions that were regulated in the same body of law that specified the facts incurring political responsibilities or those of Freemasonry and communism (mixed laws).

Between 1939 – 1975 there were, among others, three special jurisdictional models with totalitarian overtones implemented, which in turn shaped the corresponding repressive phases of varying scope:

First repressive phase, 1939 – 1945: this was the harshest, coinciding with the end of the war and its virtual extinction, in response to the change in the international scene following the Allied victory in World War II and the need to cover up the atrocious repression. It is estimated that around fifty thousand people were shot. A fourfold system of repression was established:

– The intervention of all kinds of enemy property (real estate, etc.) of the defeated from the beginning of the Civil War (also trade unions, political parties, cultural associations, etc.) is legally legitimized and passed on to the State, putting an end to the discriminatory plundering that had been going on since the beginning of the conflict.
– Depuration of "disaffected" civil servants (in particular, school teachers and university professors: in order to introduce the new national-Catholicism, the entire educational system was controlled and instrumentalized by the so-called Depuration Commissions, which began to operate in January 1937 and would continue to operate at the end of the war).
– The first ad hoc repressive institutions were introduced throughout the national territory: special criminal jurisdictions made up of military judges, members of the Falange de las JONS party) and career judges and magistrates, all freely appointed by the State, constituting collegial courts. There were two:

a) The special jurisdiction of Political Responsibility (the aforementioned Law of 9 February 1939 in force, reformed by the *Law of Reform of Political Responsibility* of 19 February 1942, which dismantled this special jurisdiction and transferred it to the ordinary justice system, transferring its competences to territorial and provincial courts. It was abolished in April 1945, although the corresponding Liquidation Commission was maintained until its abolition by Decree 2824/1966, of 10 November, which granted a total pardon for pending sanctions arising from political responsibilities (a pardon which was to be executed by the Commission until 31 December 1966, when it was dissolved). Its jurisdictional action remained, therefore, in the sphere of ordinary criminal justice to finalize cases, hear appeals or execute its sentences until its definitive abolition on that date. It judged, for example, within the framework of criminal law, membership of political parties or trade unions retroactively to October 1934 (the date of the Asturias mining uprising, breaking the non-retroactivity of criminal law) and, in general, all political-social behavior by supporters of the Republic (Article 4, a real catch-all due to its underlying arbitrariness, included seventeen cases of criminalization).

b) The special jurisdiction for the Repression of Freemasonry and Communism (Law of 1 March 1940, in force until its suppression by the Law of 2 December 1963, with its Liquidation Commission functioning until 1971): aimed mainly at repressing Freemasons and Communists who had been able to evade the jurisdiction of political responsibilities.

The intervention and extermination were atrocious, there was no clemency. An example of the ferocious repression of the enemy is given by the cases in which it was possible for a person, because of his political militancy and if, for example, he was a teacher and a Freemason (normally the profile of many intellectuals of the Republic: university professors, etc.), to be declared politically criminally responsible, a Freemason, have his assets seized and be permanently removed from

his teaching post (in other words, a fourfold punishment for the same acts in breach of *non bis in idem* and the non-retroactivity of criminal law).

Second repressive phase, 1945 – 1963. Repression was now in the hands of ordinary civilian judges (who defended the principles of the Glorious National Movement): social control and the imposition of Christian morality were carried out with the introduction of the principle of criminal prevention (they could be arrested before committing a crime). Thus, with the special jurisdiction of *Vagos y Maleantes* (Law approved in September 1933, influenced by the principle of prevention postulated by von List and introduced in Spain by the criminal lawyer Jiménez de Asúa), which the Republic barely had time to apply and develop, establishing its special jurisdiction well defined since 1945 and confirming that violence and repression was not a characteristic aspect of the post-war period but inherent to the whole period of the Francoist state. In 1954, it was suitably reformed and instrumentalized for social control and to persecute homosexuals and prostitutes, among other social sectors, for preventive purposes – let us not forget the prevailing Catholic morality of the time. This special jurisdiction was displaced with the exception also introduced with the Law on Dangerousness and Social Rehabilitation (5 August 1970), which was in force until 23 November 1995.

Third phase, 1963 – 1975. This coincided with the opening up of the regime and the formation of Franco's technocratic governments. In response to the social movements of protest against Francoism, not forgetting that it coincided with generations who had not lived through the war or the post-war period, and the reorganization of the opposition, a special jurisdiction for public order was established with the Law of Public Order (30 July 1959). This was a new legal instrument of exception for repression created by the authorities which, since Law 154/1963, of 2 December 1963, on the creation of Public Order Courts and Tribunals, had at its highest level a Public Order Tribunal (aimed at responding to social protest against the regime in general, and in particular student protests at universities and trade unions) made up of magistrates and prosecutors freely appointed by the Executive. The jurisdiction was abolished on 4 January 1977.

Incidentally, in application of convictions for crimes of terrorism and aggression against the armed forces, the last use of this jurisdiction, on Saturday 27 September 1975 the Regime shot the last five people (José Humberto Francisco Baena Alonso, Ramón García Sanz, José Luis Sánchez-Bravo Solla, Ángel Otaegui Echevarría and Juan Paredes Manot) in El Palancar (Madrid). It was the last service to the National Movement given by the military jurisdiction.

III. By Way of Conclusion

We have already pointed out the changes that Franco's regime underwent from an initial totalitarian model to an authoritarian as the thirty-six years that it lasted progressed, in the sense indicated very early on by Juan Linz.

From that initial pseudo-fascism, it already presented one of its most characteristic features, which was its attempt to subject its political and, above all, its judicial organization to the law.

It was a law, however, particular, repressive, far removed from the principles already established at the time by codified criminal law, and which had no limits on the exercise of power. As it has been pointed out, we are dealing with a State with Law, but not with a State of Law, at least according to the most defining features of the latter, as currently understand it from our democratic point of view.

By way of conclusion, and prior to the considerations regarding the 1977 amnesty laws passed by the Suárez Government during the Political Transition to democracy, which made it possible to promote the consensus characteristic of this period, and which are examined in another chapter of this collective work, we would like to include two final considerations regarding the study of Franco's repression.

The first is the fact that all the documentation of the special jurisdictions was preserved – in particular, from the first seven years, the hardest, such as the aforementioned cases of political responsibilities (remember that, in turn, it included the intervention of assets from the beginning of the war), Masonry and the military – relating to their constitution, aims, composition, judicial processes, etc. The cause …? Francoism, in its attempt to justify "legal" action in defense of the "Homeland" and for a "single, free and great Spain", never carried out an expurgation of the corresponding archives.

This repressive action by the special jurisdictions "in the name of the Glorious National Uprising" – later the war ended as the "Glorious Movement" – and "for the good of Spain" – as stated in the documentation, claiming to defend the neo-liberal political, economic and religious ideals of the 19th century "which the Popular Front had displaced" with its popular revolution –, together with the instrumentalization of history as a weapon to legitimize political change and the military uprising, consequently has another derivative: Being the main cause of preservation of documentary collections that allows the extent of repression to be addressed.

This was helped by the fact that the Regime, from the end of 1937, had the collaboration of a Gestapo Commission (headed by Heinz Jost) which was integrated into the Internal Security, Public Order and Frontiers Service (based in Valladolid and directed by the military officer Martínez Anido, reporting directly to the Head of State). One of the legacies of this collaboration was the creation of a political and social "information warehouse" in Salamanca, the city to which all the documentation produced by the Information Services themselves or seized from the enemy during the war was sent. In April 1938, a further step was taken by creating the

State Delegation for the Recovery of Documents in the city of Salamanca, with the aim of collecting, storing and classifying all the documentation of political parties, organizations and individuals hostile and disaffected to the National Movement with the clear purpose of facilitating their location and punishment, as well as carrying out a wide-ranging and effective confiscation of all their assets. The Delegation would create a documentary base (made up of millions of political and social records of disaffected persons), being the institutional predecessor of the National Delegation of Documentary Services (Salamanca, 1944), which inherited its functions and collected the aforementioned funds. These have now reached us and are deposited in the Centro Documental de la Memoria Histórica (Salamanca, June 2007), which brings together practically all the documentary series from the period 1936 – 1978 – the aforementioned files and political-social records, Freemasonry, political responsibilities, etc. – and which, by the way, is doing an extraordinary job of locating, classifying and divulging them.

Other archives, such as that of the Royal Court and Chancery of Granada, which preserves the collections of the intervention of assets and the jurisdiction of political responsibilities in Andalusia (of the eight Regional Courts established), are also doing an extraordinary job of diffusion and making the corresponding documentary sources available to researchers. Finally, we should point out the recent opening of general military archives such as the Guadalajara archive for the study of courts martial, together with the important work of the National Historical Archive in political-social matters and, especially, in the field of exile by compiling and incorporating documentary sources from other national archives such as that of Mexico.

The second consideration leads us to specify, however, that the Spanish Political Transition rests on the decisive choice of the main political actors of the time not to use the confrontations present since the war, including repression and exile, as an excuse for not reaching agreements aimed at establishing in Spain a democratic political system perfectly comparable to that which existed in other Western European countries. Although one sector of the doctrine alludes to a tacit "pact of forgetting" and a calculated "impunity" in relation to the preceding regime and, at the same time, equidistant from the Second Republic (1931 – 1936), the truth is that the idea of "forgetting" does not seem to be the most precise (you just have to look at the newspaper archives and doctrinal articles of the time). What should be emphasized, however, is the determination not to use the past to boycott the agreements necessary for the construction of a democratic system and the approval of the 1978 Constitution. There are also numerous testimonies of this determined will in other documentary sources: those emanating from the debates contained in the Session Journals of the Congress and the Senate, since the aforementioned first democratic elections of 15 June 1977.

However, we should point out that it is possible that the urgencies and needs of Spain in the 1980s including the complicated negotiations for its necessary integration into NATO and the European Union (whose incorporation did not materialize until 1986 – eleven years after Franco's death) did not allow the necessary research

to be carried out in order to understand the scope of Franco's repression and the political-institutional system that generated it from April 1939, when the war ended.

At the same time, there was not enough chronological distance for historians to begin to deal with these issues with certain objectivity. In recent years, through what has come to be called the Historical Memory of the period 1936–1978, proposed by the Socialist government with Law 52/2007, of 26 December, which recognizes and extends rights and establishes measures in favor of those who suffered persecution or violence during the Civil War and the dictatorship, a certain and controversial rewriting has been promoted, not of Franco's repression but of recent Spanish history, of the Transition itself, putting forward the fallacious idea of a forced and imposed consensus.

This regulation, however, also recognizes the need for an individual right "to the personal and family memory of each citizen" (art. 2). 2), and declaring unjust "all convictions, sanctions and expressions of personal violence produced for unequivocally political or ideological reasons", sanctioning "the illegitimacy of courts, juries or bodies of any administrative nature created in violation of the most elementary guarantees of the right to a fair process, as well as the illegitimacy of sanctions and sentences of a personal nature imposed for political, ideological or religious beliefs".

Finally, there is no doubt that the last decade has seen the promotion of a necessary heritage of research which has arisen at a time of consolidated constitutional maturity. For this reason, this contribution aims to collaborate in the necessary knowledge of the period of our history, which of the Francoist regime, far removed from polemics and from the attempt at an essential objectivity, exclusively supported by an archival documentary base which, as we have indicated, is becoming increasingly accessible to researchers.