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RESEARCH ARTICLE

Multilevel Governance in Post-Transitional Justice: The Autonomous Communities of Spain

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ABSTRACT: The method adopted by Spain in dealing with the legacy of the Civil War and the Dictatorship can be depicted as a blank page approach, incorporating a combination of amnesty and amnesia. Among the actors that challenge this official line, the Autonomous Communities (ACs) particularly energize the post-transitional justice process. Complementing, transcending and superseding the efforts at the national level, the law-making activity in AC legislatures has come in two separate and diverse waves, leading to the development of public policy and institutions dealing with the recovery of memory. Political cycles surface as the factor shaping the resilience of governments' commitment. It is argued that the reinvigorated coexistence of regionalist and left-wing parties in the ACs bodes well for further memory-related policy development and institutionalization. With an interplay and occasional discord between the national and subnational governments, the experience of Spain demonstrates that multilevel governance is an aspect to be reckoned with in relation to how countries deal with their past.

KEYWORDS: Autonomy, multilevel governance, political parties, post-transitional justice, Spain.

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1. Introduction

The democratic transition in Spain which was initiated by the 1976 Law on Political Reform incorporated the return to multiparty competitive elections, the signing of pacts by all major political parties,

the drafting of a new constitution, and the establishment of Autonomous Communities (ACs). The state level¹ blank page approach dominated the historical memory of the country arguably until the initial two decades of the 21st century. Despite the decades-long state level policy of amnesia, revival of historical memory can be observed owing to the efforts of victims, associations, local governments, and ACs.

Memory policies of Spain following the introduction of Historical Memory Law in 2007 deserves to be studied as a case of post-transitional justice (post-TJ) as already hailed by Aguilar (2008). The introduction of post-TJ discussions in the literature rests on the emergence of various cases where victims, civil society, public and political figures challenge the official policies on memory. In the Spanish case, resistance to the culture of forgetting has been on the rise, producing new possibilities and transforming the reality at the time, exemplifying how memory is ‘plural’ and involves a ‘process’ (Valcuende and Narotzky 2005, 13 and 9). Relatives at the local level as early as in 1970s (Aguilar 2017), victims’ associations (Rubin 2014; Sütçüoğlu and İter Akarçay 2020), Civil War Grandchildren (Aguilar 2008), municipal authorities (Aragó Carrión 2016), and ACs have been developing counter discourses to the blank page approach.

Post-TJ denotes the judicial processes that take place ‘at least one electoral cycle after the transition to democratic rule’ (Skaar 2012, 26). For Collins, post-TJ refers to ‘challenges to or deepening of transition-era settlements around truth, justice and reconciliation’ (2012, 399). Even though Collins (2008, 2010) and Skaar (2012) specifically focus on punitive practices that hold perpetrators accountable, post-TJ measures are by no means confined to judicial prosecutions. In Latin America, memorialisation efforts including the marking of sites of past repression, testimonial art, cultural production, and other forms of commemoration prevailed in late 1990s (Wilde 1999). A similar trend can be observed in Spain. In line with Collins’ (2010) reference to the internationalised character of post-TJ measures, the legal complaint waged by the Spanish victims in Argentina displays a commitment to the pursuit of justice beyond the borders.

Collins also focused on the ‘accountability actors’ who press legal charges against the perpetrators of past crimes (2010, 40). In the case of Spain, the generation of ‘Civil War grandchildren’ has been studied in detail (Aguilar 2008, 427). Attention is drawn at how the post-TJ processes have ‘been largely non-state, driven by private actors operating both ‘above’ and ‘below’ the state, [with] divergent aims’ (Collins 2010, 22). The work of the generation of grandchildren and associations have been facilitated and complemented by the AC governments, i.e., the core actor under the spotlight here.

Among the plurality of actors in post-TJ settings, the pioneering laws and institutions of ACs are treated here as a case of meso level input into governance and the making of memory-related policies. Even though this administrative organization is peculiar to Spain, the role of ACs is regarded in this study as a model in coming to grips with multilevel governance. The role played by subnational governments has indeed received scant attention in TJ studies. In a rare study focusing on the South African case, Marshfield argues that subnational arrangements are likely to contribute to the stability of transitional measures (2008).

In this study, following the exploration of the increasingly multilevel nature of governance, a discussion on the TJ measures in the aftermath of the Transition is undertaken with an emphasis on their limitations and the factors underpinning a blank page approach. In succession, the AC model of Spain is briefly introduced and the memory policies at the AC level are analysed. Since the central aim of the study is to point out the role of ACs in the post-TJ period, memory-related laws approved following the landmark effort at the state level in 2007 are comparatively explored. The categorization, adopted here, along two waves is based on the content and scope of the laws rather than when they were passed. An examination of the laws and public institutions in Catalonia, the Basque Country, Navarre, and the Balearic Islands demonstrates that a

¹ The expression “state level” refers to the Spanish level, as Spain is considered by many of the actors analysed in this study as a multi-national state, and denotes the central government’s policies.

convergence of post-TJ measures took place to constitute wave 1. Yet, the legislation under the category of wave 2 went far beyond. The study underlines that political cycles are the key factors in shaping the meso-level law-making. The ACs where regionalist and left-wing parties have a sustained presence in government are also the ones which developed legislation and institutions promoting historical memory. In the final analysis, the case scrutinized introduces a debate on whether multilevel governance - and the meso-level in particular - becomes integral to the efforts at reckoning with the past.

2. Multilevel Governance as a Rising Trend

The shift to multilevel governance entails that local and regional tiers of government are increasingly involved in policy making and implementation. Empowerment of regional governments has become the prevailing pattern even in unitary states. Meso-level government denotes the growing influence of the middle level of government between the centre and local governments. Accordingly, 'Multiple tiers of government involved in policy making give more points of access and influence for these private groups' such as associations, unions, and other constituencies (Hague and Harrop 2013, 254).

Dispersal of authority away from central governments and heterogeneity are considered to be the hallmarks of modern governance (Hooghe and Marks 2003). An era of subnational empowerment (Schakel, Hooghe, and Marks 2015) is witnessed, as 'polycentric governance architecture' prevails (Alcantara, Broschek, and Nelles 2016, 37). Governance is considered to involve a process that increasingly incorporates a diverse set of actors contributing to a pluralist universe. The role of sub-national or local actors (Stephenson 2013, 817), along with the engagement of civil society (Homsy, Liu, and Warner 2018; Alcantara, Broschek, and Nelles 2016), is particularly marked. This new approach demands the regulation of how various decision-making actors at different levels relate to one another and linkages connect the levels (Stephenson 2013).

Multilevel governance requires coping with the challenge of coordination. As the policies of one jurisdiction are expected to have spillovers, a sanctioning and coordinating power is needed (Hooghe and Marks 2003; Homsy, Liu, and Warner 2018). Duplication of efforts or resort to opposing practices can thus be averted. Otherwise, jurisdictional discord and blame game between different levels are likely to recur.

These dynamics are also observable in the realm of memory politics in Spain. In a recent case, the provisions of the Andalusian law on the documental heritage confiscated during the Civil War and the Dictatorship were contested on grounds that the state had exclusive jurisdiction on the matter, until the AC government issued guarantees on how it would interpret the limits of its powers following negotiations with the state level government (Cela 2017). An interplay between the state level and the AC governments as well as the municipalities (Aguilar 2017) contributing to historical memory can lead to a better grasp of the Spanish experience. In this study, AC governments are identified as pivotal actors, based on the argument that the administrative organization of the state can be considered a major asset in the way the country deals with its past.

3. The Blank Page Approach: An Overview of TJ in Spain

The Civil War (1936-1939) inflicted a heavy toll that continued well into the Dictatorship (1939-1975). A total of 271,139 political prisoners (Preston 1986, 4), 450,000 in exile (Tusell 2011, 26), and 344,000 loss of life (Payne 2017, 199) are among the figures pointing at the gravity of victimization caused by the war.

During the Dictatorship, tens of thousands were expelled from their jobs and no pensions or compensation schemes were designed for veterans, civilians, widows, and orphans on the defeated side (Aguilar 2008, 419).

In the second half of the 1970s, Spain initiated a pacted transition in which the terms and conditions of the competitive political process were carefully negotiated by the exiting regime. Such transitions are expected to dilute or delay TJ instead of preventing it (Cesarini 2009) and usually lack retributive measures (Pinto 2010). A model based on amnesia and forgetting was institutionalized in the late 1970s (Escudero Alday 2013, 322; Clavero 2014, 24-25).

The hegemonic discourse in Spain presents the Transition as a model worthy of theoretical exaltation and exportation to other countries (Escudero Alday 2013, 322). The tactfulness of the political leadership, despite being to a large extent the collaborators or insiders of the previous regime (Valcuende and Narotzky 2005), in the glorification of the peaceful and consensual nature of the Transition has been emphasized. The prevailing approach was not to look for problems (Valcuende and Narotzky 2005). Before an exploration of how ACs have established the legal setting for voicing ‘inconvenient truths’, the main TJ measures resorted to in Spain and their limitations are covered below.

The pacted character of the Spanish transition was mainly institutionalized by the Amnesty Law of 1977. Amnesty is the most commonly utilized method of TJ (Gülener 2012, 52). Huntington argues that ‘a general amnesty for all provides a far stronger base for democracy than efforts to prosecute one side or the other or both’ (1995, 69). The party led by Francoist reformists ‘inserted two clauses that amnestied any authorities responsible for human rights violations’ (Aguilar 2013, 256). The 1977 Law granted immunity for ‘all acts of political intentionality... regardless of whatever outcomes that they may have generated’, while the deadline for immunity was extended from December 15, 1976, to October 6, 1977 (Encarnación 2014, 71). Combined with the agenda of the political opposition seeking the release of political prisoners, the Law has been considered as the clearest manifestation of the pact of forgetting (Escudero Alday 2013, 323-324).

Reparations including financial and in-kind compensation, restitution of property or symbolic redress in the form of commemoration and apologies are commonly introduced in TJ processes (Firchow and Ginty 2013; Ratner and Woolford 2014). Reparations constituted the backbone of Spain’s efforts. Yet, an integrated scheme of reparations (Escudero Alday 2013c) could only be developed over decades. Through the decrees of 1975 and 1977, recognition was granted to the heirs of the deceased for payable benefits (Tamarit Sumalla 2014). Four pieces of legislation were passed from 1978 to 1979 (Pinto 2010). Starting with 1979, ‘an explosive growth in the number of legislative initiatives could be observed ... in order to make the agreement work’ (Humblebæk 2010, 419). A variety of setbacks were involved in the way the reparatory measures were put into practice. In addition to the economic crisis, complaints were voiced about government-imposed bureaucratic hurdles (Encarnación 2014).

In the 1990s, new categories of victims were defined, and compensatory policies were expanded. In the 2000s, a host of other reparatory measures were introduced (Aguilar 2008, 422-424). In 2002, the Congress of Deputies unanimously approved a declaration to honour victims and to support the initiatives to recover the disappeared, on the condition that these moves would not be ‘used to reopen old wounds and to revive old grudges’ (Blakeley 2005, 50 and 55). Restitution of the property of trade unions and political parties was relatively facilitated in 2005 and 2007.

The main missing link in Spain’s TJ process is criminal prosecution. Aguilar argues that ‘the more direct the involvement of the judiciary in authoritarian repression, the less likely is the establishment of judicial accountability or truth measures during the democratization period’ (2013, 246). Judges have been invoking the provisions of the Amnesty Law and the prescription dates as well arguing that a retrial would

require new facts or that the perpetrators have already passed away (Sáez 2013, 85). The annulment of judgments during the Dictatorship or by war councils is another area of contestation, as neither the Supreme Court nor the Constitutional Court acknowledged the necessity (De la Cuesta and Odriozola 2018). Even the Historical Memory Law confined itself to declaring them illegitimate and unjust (Escudero Alday 2013).

In spite of a 2012 Supreme Court ruling (Aguilar 2013b), save for exceptions, the judges of first instance courts shunned away from starting proceedings, managing the opening of a grave or appearing in the location where the facts were discovered (Escudero Alday 2013(2), 152). After major setbacks before the Spanish and European courts, the memory movement resorted to the internationalization of their cause, through the Argentinean Complaint of 2010 (Messuti 2013).

Another limitation of the TJ process has been the lack of purges. Indeed, ‘a purge of the military and the police was ill advised because there was no one else available to fight the terrorist threat coming from the Basque separatist movement’ (Barahona de Brito and Sznajder 2010, 494). Moves such as the formation of the Constitutional Court intended to oversee court judgments, the transfer of the power to elect the General Council of the Judiciary to the parliament, and the reduction of the retirement age (Aguilar 2013, 258) failed to alter the composition and the mindset of the judiciary.

What this study describes as the blank page approach has been accounted for with a reference to the Transition taking place earlier than the ‘human rights revolution’ and during the Cold War (Barahona de Brito and Sznajder 2010, 497), the pre-transitional regime being credited for restoring order and economic growth, and the upsurge in politically motivated violence during the transitional era.² Making a reference to the Second Republic holding ‘the leaders of the Primo de Rivera dictatorship (1923-1930) accountable, as did Franco, with the leadership of the Republic, and ... General Primo de Rivera’s regime with the Restoration regime (1874-1931)’, Encarnación also identifies the past retributive TJ measures as excessive (2014, 21-22). Additionally, as the violations stretched over a period of almost four decades, the most serious ones coincided with the initial years of the Dictatorship (Tamarit Sumalla 2013, 19). The society assuming the role of a ‘silent accomplice’ (Encarnación 2014, 99) is another argument voiced in explaining the limitations of TJ measures.

A combination of factors such as the resilience of Francoist elements and figures in the legislative and judicial institutions, a culture of compliance, and the Amnesty Law have played their part in the dissemination of the blank page approach. The horizontal and vertical intensification of calls for ‘not forgetting’ arguably represent how the voicing of truth cannot be avoided in the long run. The commitment of the ACs is an additional challenge to the blank page approach, as they set the legal framework to introduce a new dimension of historical memory.

4. The Role of ACs as Meso Level Actors in Post-TJ Spain

Besides the outright rejection of centralism and an aspiration for the establishment of regional autonomy during three specific episodes - 1873, 1931 and 1978 - this compact fell short of a clear constituent will and a definitive model (Villar 2018). The current autonomy system triggered by the third episode is based on pillars such as the 1978 Constitution, statutes of autonomy, verdicts of the Constitutional Court, and the pacts between political parties dating back to July 1981 and February 1992 (Reyes 2006). The Constitution put forth a set of norms based on the recognition of the right to autonomy, with diverse combinations and degrees of administrative and political decentralization (Villar 2018, 405). The system was gradually

² In addition to the 644 violent political deaths, most of which were caused by *Euskadi Ta Askatasuna* (ETA), 140 more deaths could be attributed to the State as well as right-wing elements (Tamarit Sumalla 2013, 21).

engineered through the statutes of autonomy forming ACs, while being subjected to continuous reform from 1991 on. The principal rounds of competency enlargement were undertaken in 1994, from 1996 to 2001, in 2002, and from 2004 on. The loss of absolute majorities in the state level legislature and the need for the support of regionalists coincided with the reforms of 1993-2006 (Villar 2018). Formal amendments then continued into the 2010s.

In such an administrative context, no other effort has been as central as the Historical Memory Law approved by the Spanish legislature in affirming the rights of victims of the Civil War and Francoism. Reparation programs and memorialisation efforts are at the heart of the Law (Blakeley 2013). Various articles dictate the involvement of ‘public authorities’ at different levels, as in subsidizing the efforts of direct descendants of victims in Article 11 or mapping the location of victims, exhumations and preservation of sites in Article 12. Similarly, Article 13 requires the competent ‘public administrations’ to aid the related parties in locating the remains of victims, identifying as well as moving them to another location, and establishing communication between victims’ families and the ‘general state administration’. Article 14 outlines how the ‘public administrations’ are considered to be competent in authorizing temporary occupation of property to the previously stated ends. According to Article 15, ‘offices of public administration’ are required to ‘take appropriate measures to withdraw signifiers of the Civil War and Francoism’. Article 15 also includes the sole explicit mentioning of AC governments in the text, aside from the issue of reparations. Under the heading of ‘symbols and public monuments’, the state level government is expected to ‘co-operate with the [ACs] and local entities to prepare a catalogue of vestiges pertaining to the Civil War and the Dictatorship’.

Based on the provisions of the Historical Memory Law, various ACs passed their own legislation. However, legislative initiatives preceded this law in four ACs. In Catalonia, Motion 217/VI of 2003 on the recuperation of historical memory included measures such as attaining a map of mass graves, elaborating a census of the disappeared, developing the means to recover and classify human remains, exhuming bodies, and dignifying mass graves. In 2005, the law on the restitution to the *Generalitat* of the documents seized during the Civil War and guarded in the General Archive of the Spanish Civil War became another landmark.

In Andalusia, decrees in 2001 and 2003 established a compensation regime for former prisoners and victims of reprisals. The 2004 decree called for the creation of the Interdepartmental Commission for the Recognition of Victims of the Civil War and Francoism. The Documental and Research Center specializing on historical memory was also formed in the same year. In a further step, a Commissioner for the Recovery of the Historical Memory was designated in 2005. The Directorate General of Democratic Memory assumed the functions of planning and coordinating memory-related activities following the approval in 2007 of a law on the administration of the government of Andalusia.

The Basque Government established an Interdepartmental Commission in 2002 to locate the graves of the disappeared of the Civil War, out of which emerged collaboration with the Aranzadi Society of Sciences (De la Cuesta and Odriozola 2018, 18). In 2003, the Basque President initiated a comprehensive investigation on the victims of the Civil War. Extensive archival work as well as the collection of testimonies followed. The decrees of 2002 and 2006 addressed the economic difficulties experienced by the victims. Calls for subsidies for activities and projects on the recovery of historical memory were made within the framework set by ordinances from May 2006 on.

In 2003, a declaration by the Parliament of Navarre made a reference to the recognition and symbolic reparation of citizens executed during the 1936 coup. With a law approved in the same year, the removal and replacement of symbols of Francoism were dictated. Including also the case of Navarre, the AC legislation in post-2007 setting consolidate and place the previous achievements under greater legal safeguards.

As post-TJ practices on the part of AC governments intensified, reports prepared by UN representatives began to pay considerable attention to such efforts. Special Rapporteur De Greiff (2014) emphasized that the ACs had developed legislation and measures that offered greater recognition and protection to victims than at the state level. However, both De Greiff (2014) and the UN Working Group Report (2014) called for coordination between the state and the meso levels.

4.1. Wave 1: The Pioneers

A transformation in the contents and the structure of AC legislation can be observed during the first decade of the laying out of the state level framework which serves the differentiation between what this study terms wave 1 and wave 2 legislation. De la Cuesta and Odriozola (2018) identify three generations of legislation. While the first generation adopts a limited scope, the second generation of laws exemplified by Catalonia and the Balearic Islands are devoted to the annulment of judicial rulings and the third generation consists chronologically of the 2017 laws (2018, 17).

De la Cuesta and Odriozola (2018) enumerate the common elements in the laws which constitute wave 1 legislation in this study. The laws they classify under the second generation share these mentioned characteristics and indeed are marked by the establishment of ‘official organs’ (2018, 17). Wave 1 legislation sets up public institutions, the responsibilities of which are summarized in Table 1. It is therefore argued here that the listed legislation demonstrates shared intentions and can be summed up under a single wave. The comparison of different legislation, identification of waves and a more thorough analysis of the laws in Extremadura and the latest one in the Balearic Islands in an effort to demonstrate the recent trends set out the contributions of the current study.

The setting up of public institutions specifically tasked with historical memory constitutes a pivotal feature of the legislation in the ACs. To cite an example, the preamble of the Catalan Memory Act notes that the *Memorial Democràtic* is created as the instrument directed at the recovery of the memory of victims of the Civil War along with individuals, organizations and institutions that confronted various forms of repression between 1931 and 1980.

Table 1- Public institutions dedicated to memory work

| <i>AC</i> | <i>Institution</i> | <i>Tasks and Features</i> |
|----------------------|--|--|
| Catalonia | The <i>Memorial Democràtic</i> | <ul style="list-style-type: none"> • Embodies an ‘organic and functional autonomy’ • Entitled to a segment of the general budget of the <i>Generalitat</i> • Annually reports its activities to the <i>Parlament</i>, alongside the government. |
| Navarre | The Technical Commission on Coordination in the Field of Historical Memory | <ul style="list-style-type: none"> • Collaborates with Navarrese Parliament and public administration • Coordinates the activities of associations, academic institutions and public entities for the correct enforcement of 2013 Law |
| The Basque Country | The Institute of Memory, Coexistence and Human Rights | <ul style="list-style-type: none"> • Defined as an autonomous organ of an administrative character • Responsible for the coordination of activities of public organs and entities, with a view to stimulating the dissemination, promotion and defence of human rights and peace |
| The Balearic Islands | The Technical Commission of the Disappeared and the Graves | <ul style="list-style-type: none"> • Invited to annually produce a memoir of activities to be presented to the Parliament and the Presidency of the AC |

On the whole, ranking at the top of the responsibilities the legislation assigns to such institutions has been the identification of the victims and the disappeared. The legal framework vests in public institutions the responsibility to configure a census of the disappeared. In Navarre, this duty has been assigned to the Centre for the Historical Memory. In the Basque Country, the scientific association Aranzadi Society of Sciences and the AC government have been collaborating in drawing up a census of the disappeared (The UN Working Group Report 2014, 10).

Besides the censuses, AC governments have a role to play in the drawing up of maps of mass graves as well as the exhumation of bodies. A variety of ways in which the authorities can assist the efforts of the victims is outlined in the laws. The 2013 law of Navarre incorporates a commitment to the provision of appropriate psychological care for families during localization of remains and exhumations. In Article 18, the government of Navarre is also invited to facilitate the process whereby families apply for reparation and personal recognition certificates. Provisions of the laws also expansively define the financial commitments of the AC governments. Among the range of issues covered by wave 1 legislation are the reporting of the findings to judicial authorities, the designation of sites of memory, the removal of Francoist symbols and honours, and collaboration with victims and their families.

Of all the legislation studied under wave 1, the 2009 law of Catalonia and the 2016 law of the Balearic Islands are the most emblematic and representative. Wave 1 legislation is more specific, targeted, issue-based, and less extensive in scope. These laws concentrate mostly on one main pillar of memory work and address the concerns of a particular set of victims. The 2009 law in Catalonia and the 2016 law in the Balearic Islands specifically focus on the disappeared. Regarding the temporal frame, the Civil War and the Franco era constitute the period covered by both laws.

Due to their relatively narrower scope, wave 1 laws had to be complemented by the later laws, motions, programs or work plans. The Catalan Memory Act of 2007 setting up the *Memorial Democràtic* was followed by a 2009 law. To testify to the ongoing and cumulative nature of efforts, in December 2013, the Catalan Parliament approved a motion to set up a DNA bank. The University of Barcelona (UB) took the lead in announcing on its website, in July 2015, the initiation of a project titled ‘The DNA of memory: the UB DNA Bank of the Spanish Civil War victims’ (The University of Barcelona 2015). The *Generalitat* launched collaboration with universities mainly through funding projects. The Catalan Parliament also voted in favour of processing the draft law on the annulment of politically motivated summary judgments of Francoist war councils (*Luz Verde del Parlament* 2016). More recently, the Catalan law of July 2017 annulled the judgments of Franco era courts in Catalonia in the period April 1938 – December 1978. The Catalan government issued its first certificate of nullity on September 2017 (De la Cuesta and Odriozola 2018, 20).

Similarly, the 2014 law establishing the Institute of Memory, Coexistence and Human Rights in the Basque Country was succeeded by the Base Program of Priorities and the Basque Plan 2015-20. Additionally, the Balearic Islands approved a new law transcending the plight of the disappeared. Two separate laws were drafted in two consecutive years in an attempt to take memory beyond opening graves as the drafter of the latter argued (Eza Palma 2017). Designation of sites of memory and removal of Francoist symbols and honours are added to the post-TJ measures with the enactment of the new law.

4.2. Wave 2

The cumulative experience of some ACs encouraged others to experiment with more integrated and comprehensive legislation. This experimentation culminated in the wave 2 legislation listed in Table 3. Even

the recent state level efforts at revising or replacing the 2007 Historical Memory Law are modelled along this wave.

As early as the 2013 Navarrese law, triggering the third generation laws in the account of De la Cuesta and Odriozola (2018), new elements could be discerned in the AC legislation. The law in Navarre can indeed be regarded as the closest approximation to a harbinger of the new wave of legislation and a bridge between the two waves. The early adoption in 2011 of the Protocol for Exhumations of the Foral Community of Navarre, along with other efforts, still points at the cumulative nature of the Navarrese experience. In December 2018 too, a new law on places of historical memory was approved to complement Navarrese efforts.

Enumerated among the shared characteristics of wave 1 and 2 legislation can be the drawing up of a census of the disappeared as well as maps of graves, the carrying out of exhumations and identifications, the reporting of the findings to judicial authorities, the designation of sites of memory, the removal of Francoist symbols and honours, the collaboration with victims and their families, and the making of financial commitments on the part of public authorities. To cite a specific example, drawing up a census of the disappeared is among the main tasks laid out by wave 1 AC legislation. In the same vein, Article 6 of the 2017 law passed in Andalusia assigns the department competent on the matter of democratic memory the duty to put together a census of the victims, with a public character. Moreover, the database of victims created in the context of the project titled '*Todos los Nombres*' has among its sponsors the AC government.³

The draft law proposed in 2014 and finally approved in March 2017 in Andalusia can be contemplated as the vanguard of wave 2 legislation which can be distinguished from wave 1 in carrying the commitment to memory politics to a different level. Escudero (2014)'s comparison of the Historical Memory Law and the then draft law in Andalusia is also instrumental in comparing the two waves of legislation at the AC level. A marked convergence in the wording of provisions can indeed be observed among the law of Andalusia and the rest of the wave 2 laws. These texts are more inclusive and integrated, with a multitude of areas being regulated in a single document. Some of the post-TJ measures that can exceptionally be found in wave 1 laws have become institutionalized and entrenched in the new wave legislation. In contrast to prior legislation, except for the bridging 2013 Navarrese law, the wave 2 laws incorporate provisions on genetic tests and a DNA bank.

Most emblematic of this new wave is the resort to a broader and more encompassing definition of a victim. In the wave 1 legislation, the emphasis is on the disappeared and the victims of repression. The first law in which a detailed and extended definition of a victim has been outlined is the 2017 Andalusian law. From the stolen children to anti-Francoist guerrilla or those sent to extermination camps, the inclusion of new categories is noticeable. Different types of victimhood defined by the Andalusian law are identically listed in the other wave 2 legislation. Women and forced labour are specifically covered by the law in Aragon. Whereas the Andalusian law introduces the plight of those who suffered repression due to their sexual orientation, the law in Aragon includes those repressed on grounds of their political or religious beliefs as well as ethnic origins. Gender identity finds a place in Valencia and the 2018 law in the Balearic Islands. These two texts are the first to explicitly extend recognition to indirect victims. In Article 3 of the Valencian law and Article 4 of the 2018 law of the Balearic Islands, an indirect victim is established as the relatives until the third degree or dependents who have immediate relation with the victim, and people who were harmed while intervening to provide assistance. The incorporation of the relatives into the category of victims is crucial, given that the direct victims are rarely still alive.

The time period covered by the wave 2 legislation is also prolonged. A more frequent, explicit, and

³ The project '*Todos los Nombres*' involves the collection of data on victims of Francoism in Andalusia, Extremadura, and North Africa.

marked emphasis on the Transition is evident. These laws specifically extend their temporal dimension to the approval of the statutes of autonomy in Andalusia, the Balearic Islands, and Extremadura.

Another common and distinguishing feature is the setting up of a regime of sanctions in response to violations of the provisions of the laws. The categories of very grave violations, grave violations and slight violations are identified. The amounts of fines were firstly cited in Article 54 of the law in Andalusia, only to appear in exactly the same figures in the following laws, which is yet another element that makes the Andalusian law the model wave 2 legislation. Other possible sanctions include the temporary loss of the right to obtain subsidies, discounts or public support.

Measures that qualify among the guarantees of non-repetition such as revising the curricula or transmitting knowledge further constitute a distinctive characteristic of the wave 2 legislation. Scientific investigation, accumulation and dissemination of knowledge on memory as well as the inclusion of democratic memory in the curricula from primary school to university programs are listed among the responsibilities of public authorities in all the wave 2 texts and in strong resemblance to the Andalusian law.

With the additional provisions of the Andalusian and the succeeding laws, deadlines and timetables intended to accelerate the processes are introduced. Other emboldened measures include the demands of nullity of the Franco era court rulings in the cases of Extremadura and the Balearic Islands or the setting up of a truth commission in Valencia. In the wave 2 laws, a separate title is also devoted to the associative movement and foundations. The relevant provisions create a registry and a council with a view to bringing associations together.

Another distinctive quality of the new wave of legislative activity is that the drafting coincided with the announcement of UN recommendations. Bridging the two waves, the 2013 Navarrese law highlights the guidance provided by the UN. Yet, the wave 2 legislation starting with the Andalusian law make recurrent references to the UN principles, resolutions, declarations, and the work of its bodies along with the reports and findings by the UN Working Group and Special Rapporteur. Hence, greater UN involvement in Spain's memory debate finds its reflection to a larger extent in wave 2 in comparison to wave 1 legislation.

5. The Impact of Political Cycles over Memory Policies in the ACs⁴

Political cycles have been the main determinant of the extent of policy stability by shaping the odds for reversals in previously endorsed policies. In manifestation of the impact of political cycles at the state level, Spain's reckoning with its past was stalled shortly after the greatest leap forward in 2007. The electoral victory of the *Partido Popular* (PP) in 2011 general elections had dramatic implications for the commitment to the measures outlined in the Historical Memory Law, given the party's strong reservations on memory policies.

The PP has above all been criticized for defunding the Historical Memory Law and causing the *de facto* halting of policies. While subsidies were confined to the projects of exhumation, the complete elimination of financing exhumations was undertaken with the budget of 2013 (Escudero, Campelo, González, and Silva 2013). The PP government's decision to not only to dismantle the Office for the Victims of the Civil War and the Dictatorship but also to elevate the cost of applications by individuals for entitlements through a raise in judicial fees (Escudero, Campelo, González, and Silva 2013) were enumerated among the factors displaying its commitment to the blank page approach. In another manifestation of the significance of

⁴ The data on political cycles was compiled by the authors through the analysis of various websites over the period March 2015 - October 2017.

political cycles, the *Partido Socialista Obrero Español (PSOE)* government presided over by Pedro Sánchez signalled that, part of the 2019 budget would be allocated to historical memory and a public policy on exhumations (Baquero 2018). The *PSOE* declared it would draft state level legislation on historical memory (*El PSOE anuncia* 2018). A concrete but also a symbolic step was put in place in 2019, as Franco's remains were moved from the *Valle de los Caídos* to a cemetery in Madrid in October.

In resemblance to the state level, the *PP* and the left-wing parties have primarily been on opposing sides at the meso-level on historical memory. The distance between the main political parties rests on a profound divide with deep roots in Spanish history. The *PP* were considered 'the principal political inheritor of the winning side of the civil war' whereas the Socialists were the losing side (Humlebæk 2010, 418). The *PP* has been the strongest voice in expressing the blank page approach, arguing that the essential steps in the pursuit of truth and justice had already been taken. While the *PP* emphasizes the potential of memory initiatives to involve a pursuit of vengeance and the risk of opening old wounds, the continuity of the Francoist elite in the ranks of this party has been raising questions (De la Cuesta and Odriozola 2018). The founder of the party was a minister in Franco governments and the party has been drawing 'much of its support from business and right-wing sectors with historic links to Francoism' (Davis 2005, 877).

Political parties repressed under the former regimes have become the champions of transitional justice (Cesarini 2009). After Franco's death, the opposition was made up of party structures that survived in a clandestine manner during the Dictatorship such as the socialists, communists, and regionalist parties (Humlebæk 2010, 418). This mixed group took the initiative in dealing with the past as early as during the exhumations following the 1979 local elections. It should however be pointed out that when the *PSOE* formed consecutive governments for the first time after the Transition in 1982-1986 and 1986-1989, memory-related legislation was not pushed through (Humlebæk, 2010). In a major policy reversal, the *PSOE* won the 1993 legislative elections 'by insinuating that a victory by right-wing *PP* would mean a return to Francosim' (Encarnación 2014, 84). Yet, the most concerted effort by left-wing and regionalist parties coincided with *PP*'s electoral victory in 2000. They undertook various parliamentary initiatives for official declarations on Civil War and Francoism (Humlebæk, 2010; Aguilar 2008).

Regional identities came under fierce attack during the Dictatorship. Centralizing and homogenizing practices of Francoism were considered as frontal attacks that culminated in the deprivation of regional autonomy and bans on language. Regionalist parties in the ACs that have taken the role of memory leaders have been in collaboration and actual coalition with the left-wing, while not without exceptions. On memory-related policy development, left-wing regionalist parties have been empowered by the rise of *Podemos* and collaboration with *Izquierda Unida (IU)* (Paricio, 2019). Yet, the regionalist camp has been remarkably heterogeneous. The Catalan, Basque, and Navarrese nationalists occasionally showed dissent on AC initiatives, as conservative trends could be prevalent in each (Ibid., 2019).

Given the ideological divide among political parties and their relationship with the memory of the Civil War and the Dictatorship, the development of institutions and policies on historical memory at the AC level is equally susceptible to political cycles. UN Working Group Report indeed stated that 'the support offered by the various [ACs] is highly contingent on the governing political party in each place' (2014, 8). In the ACs acting as memory leaders, governments have been formed by left-wing and/or regionalist parties, with the representatives of these two political party families occasionally acting in coalition. The initiative on memory policies at the meso-level has principally come from left-wing and regionalist parties.

Table 2- Wave 1 and political cycles

| <i>AC</i> | <i>Legislation</i> | <i>Governing Party/Parties</i> |
|----------------------|--|---|
| Catalonia | Law 13/2007 of Democratic Memorial | <i>PSC, ERC, and ICV-EA</i> |
| | Law 10/2009, on the Locating and Identification of the Disappeared of the Civil War and the Franco Dictatorship and the Dignifying of Mass Graves | <i>PSC, ERC, and ICV-EA</i> |
| Navarre | Foral Law 33/2013 of the Recognition and Moral Reparation of Navarrese Citizens Killed or Victimized by the Repression as a Consequence of the Military Coup of 1936 | <i>UPN</i> (proposed by a legislative coalition excluding the <i>UPN</i> and with the <i>UPN</i> not voting in favour of the draft law) |
| The Basque Country | Law 4/2014 of the Creation of the Institute of Memory, Coexistence and Human Rights | <i>PNV</i> |
| The Balearic Islands | Law 10/2016 for the Recovery of the Disappeared during the Civil War and Francoism | <i>PSIB-PSOE and Més per Mallorca</i> |

In Catalonia, twenty-three years of uninterrupted rule under the leadership of the regionalist *Convergència y Unió (CiU)* was replaced by two consecutive tripartite governments formed by the Catalan Socialists (*PSC*), the regionalist *Izquierda Republicana de Cataluña (ERC)*, and the left-wing *Iniciativa por Cataluña Verdes - Izquierda Unida y Alternativa (ICV-EA)* in the periods 2003-2006 - when the first initiatives dealing with historical memory were taken - and 2006-2010. The two laws pivotal to historical memory in Catalonia were passed during the second tripartite coalition. Following the 2015 elections and the crisis of investiture, the continuity in power of the Catalan regionalist bloc *Juntos por el Sí (JxSí)* which also includes the larger partner in what used to be the *CiU* represents a sustained commitment to confronting the past. None of the political parties that rotated in Catalan governments until this far voice reservations on the relevant laws.

The regionalist *Unión del Pueblo Navarro (UPN)* and the Socialists (*PSN-PSOE*) have alternated in leading the governments of Navarre. The 2003 parliamentary declaration on reparations and law on removal of symbols entered into force under *UPN* rule. While the 2011 protocol for exhumations was endorsed during the brief *UPN*-Socialist coalition, the Navarrese governments have very frequently been minority governments. This factor to a large extent explains how the 2013 Law was enacted in spite of the abstention of the governing *UPN*. A coalition made up of the integrants of the Basque nationalist camp initiated the legislation. While the *UPN* was the winner of May 2015 AC elections, a new government led by the regionalist *Sí al Futuro (Geroa Bai)* was voted in with the support of the *Izquierda Unida Navarra y Bazarre (Izquierda Ezkerra, I-E)*, the Basque nationalist *Reunir Euskal Herria (EH Bildu)*, and the left-wing *Podemos-Ahal Dugu*. Under this left-wing coalition with a Basque nationalist emphasis, the political formations that once gave a strong impetus to memory policies while in opposition came to control the Navarrese government.

In the Basque Country, four different political formations have so far joined governments led either by the regionalist *Partido Nacionalista Vasco (EAJ-PNV)* or the Basque Socialists (*PSE-PSOE*). The decrees of 2002 and 2006 were steps taken under the *EAJ-PNV*, *Solidaridad Vasca (EA)*, and *Izquierda Unida-Verdes (EB-B)* coalition. The *PNV* was the governing party during the approval of the 2014 Law, which was also

endorsed by the Socialists. The *EAJ-PNV* appears as an element of continuity, including with its strong electoral showing in September 2016 AC elections.

Table 3- Wave 2 and political cycles

| <i>AC</i> | <i>Legislation</i> | <i>Governing Party/Parties</i> |
|----------------------|--|--|
| Andalusia | Law 2/2017 of Historical and Democratic Memory | <i>PSOE</i> |
| Aragon | Law 14/2018 of Democratic Memory | <i>PSOE</i> |
| Valencia | Law 14/2017 of Democratic Memory and for the Coexistence | <i>PSPV-PSOE</i> and <i>Compromís</i> |
| Extremadura | Law 1/2019 of Historical and Democratic Memory | <i>PSOE</i> |
| The Balearic Islands | Law 2/2018 of Democratic Memory and Recognition | <i>PSIB-PSOE</i> and <i>Més per Mallorca</i> |

In the Balearic Islands, the *PP* presided over governments in the periods 2003-2007 and 2011-2015, to be succeeded each time by Socialist (*PSIB-PSOE*) led governments. It was under the left-wing alliance *Més per Mallorca*, with regionalist components and made up of the Socialists and the greens, that a draft law on historical memory was proposed. Yet, there was unanimous support during the legislative vote in 2016. The law of 2018 was in turn sponsored by the Socialists, *Podemos*, and *Més*. The *PP* and the *Ciudadanos* also extended support to some of its provisions.

Andalusia has been ruled by Socialist presidents since the granting of autonomy. The *PSOE* has uninterruptedly been in government when the pre-2007 decrees, formation of a relevant commission, and the 2014 draft law were initiated. The law on democratic memory was drafted as the product of the accord forming the coalition between the Socialists and the left-wing *Izquierda Unida Los Verdes - Convocatoria por Andalucía (IULV-CA)*. In October 2015, the newly formed Socialist Council of Government endorsed the draft law without revisions and in spite of the *IU* losing its representation in the government.

In Valencia, after two decades of governments led by the *PP*, a coalition government bringing the Valencian Socialists (*PSPV*) and *Compromiso (Compromís)* together was formed in 2015. As a regional bloc, *Compromís* unites the left-wing *IU* with Valencian nationalists, greens, and republicans. The parties constituting the coalition voted in favour of the law on democratic memory along with *Podemos*. In Aragon and Extremadura, the wave 2 laws were approved under Socialist governments as they replaced the *PP* and heavily criticized its inertia (Paricio, 2019).

6. Conclusion

In recognition of the diversification of actors in governance and post-TJ settings, this study focuses on the contributions made by an underexplored actor in memory politics. In line with the rising significance of the meso-level in governance, the work of the ACs of Spain in unearthing the truth and dealing with the past human rights violations is scrutinized. The ACs, together with victims and families, have been among the pioneers of memory boom.

The ACs have demonstrated their commitment to historical memory at varying levels, by approving specific legislation and establishing institutions, particularly after the state level Historical Memory Law of 2007 took effect. The targeted, specific, issue-based wave 1 legislation focusing on a particular set of victims had to be expanded by complementary legislation or regulations. A cumulative process has thus been

followed. Through wave 2, in contrast, a long list of progressive measures was designed to widen the scope into a multiplicity of areas. The definition of ‘victim’ became more comprehensive, fines and other sanctions were outlined, non-repetition measures were integrated, references to UN findings and recommendations were introduced, associations of victims as well as their relatives were incorporated, and deadlines were established.

The impact of political cycles has been observed, given the fact that the alternation of political parties at the state level either boosted or halted Spanish post-TJ processes. Thus, an analysis of political cycles as an indicator of the role of the meso-level was also incorporated. The cases studied confirm that the regionalist and left-wing parties have been leading memory-related policy development. Given that, policy stability has reached remarkable levels particularly in Catalonia, the Basque Country, and Andalusia.

The reinvigorated coexistence of regionalist and left-wing parties in AC legislatures, as was demonstrated by the 2015 AC elections (Navarro 2015; Rodon and Hierro 2016), bodes well for further memory-related policy development and institutionalization. The memory landscape of Spain is looking prone to expose the blank page approach to more challenges as the number of ACs introducing new legislation, renewing existing ones, and setting up institutions has been expanding. The Spanish case, hence, invites a debate on whether multilevel governance, and the meso-level in particular, can increasingly be considered an integral part of the effort at reckoning with the past.

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