

# Review of Omar G. Encarnacion, *Democracy Without Justice in Spain: The Politics of Forgetting*

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**Omar G. Encarnación, *Democracy Without Justice in Spain: The Politics of Forgetting Philadelphia*: University of Pennsylvania Press, 2014. 250 pp.**

Since the end of the Cold War, justice has increasingly been seen as an essential part of the transition from authoritarian or totalitarian rule to democracy. In this fascinating book, Omar Encarnación seeks to explain the case of Spain in our current era of transitional justice. In the midst of countries that have dealt with their past history of violence and repression through retributive methods such as trials and lustration and/or reconciliatory methods such as truth commissions, Spain stands out as a country that embraced the politics of forgetting, enshrined immunity from prosecution as an essential part of the transition to democracy and moved forward by incorporating former elites into the new political structures. The negotiated transition from dictatorship to democracy of the 1975-1980 period was grounded in what became known as the “pact of forgetting,” something not challenged until 2007 when the Law on Historical Memory encouraged a more direct confrontation with the past history of violence and repression of the Spanish Civil War era and the Francoist dictatorship that followed. Yet even this law only reversed some elements of the earlier pact and kept, most importantly, the immunity law of 1977 which forbid prosecution of any crimes committed during the dictatorship and did not overturn convictions for political crimes made during the Franco era. Judge Baltazar Garzón’s efforts to challenge this part of the Law on Historical Memory failed in 2010. Encarnación seeks to explain the Spanish case in light of the literature on transitional justice to see if forgetting can, in fact, be a reasonable part of the democratization process that advocates of transitional justice have overlooked in their efforts to connect justice and broader democratization processes.

The book begins with an analysis of the “pact of forgetting” and the key elements that were negotiated in the process of transition following General Francisco Franco’s death in November 1975. This pact, of course, was not an actual agreement, but a series of measures agreed to by the political elite that steered Spain towards democracy in the 1970s. There was no censorship of ideas concerning the civil war and Francoist eras, but rather a use of Francoist institutions to bring in democracy, which implied some sense of legitimacy to those institutions and what they represented. Following this, then, was a related lack of action concerning what to do with the memorial spaces Franco created to justify his interpretation of the civil war and subsequent violence as a necessary purging of enemies from within Spain. All political movements, including those from the left that had been the victims of Francoism for so long, accepted that this was the basis for transition. They did not call for trials, purges and justice, but rather wanted to move beyond their own history of civilian violence during the

civil war, despite the fact that more deaths were the responsibility of Franco and his side. The pact of forgetting thus served the needs not just of those elites moving from Francoism to democracy, but their long-term opponents as well.

The most important place in which Encarnación makes this argument is in his third chapter on the Socialist (PSOE) government of Felipe González from 1982-96. Despite rumblings of discontent within the movement, González and his cabinet were determined to maintain the consensus of forgetting they had agreed to in the 1970s. Whether in the legal sphere, or in cultural or education policy, the Socialist government did not challenge the absence of new interpretations of the past; there was no law on the teaching of history passed until 1991. Encarnación explains the PSOE position as a result of many things, including a desire not to stir up the opposition of the military following the failed 1981 coup, a desire to prioritize a series of social modernization policies that were be opposed by conservative forces, and the need to continue to confront violence in the form of the Basque group ETA. Also important was to demonstrate Spain's smooth transition to democracy in order to allow its entry into the European Community, a goal achieved in 1986. For all of these reasons, PSOE leaders saw increasing divisions by attempting to confront the past as unnecessarily risky. This paved the way for the return of the right to power in 1996, with the Popular Party (PP), which similarly had no desire to challenge forgetting.

What changed the situation was a transformation that occurred within the PSOE and civil society after González. The scandal that developed around the PSOE's support of the illegal use of murder against ETA in the 1980s was seized upon by activists within the party as a step too far back towards Francoist policies. The growing concern that many in civil society had with justice in the mid-1990s, as the Cold War ended and democratization moved forward in eastern Europe and Latin America, increased those voices demanding Spain confront its past, too; they came to argue that the left had been complicit in whitewashing the Franco era, a charge that in particular came from writers of the newspaper *El País*. Encarnación argues that both changes within the PSOE and changes in broader civil society were necessary to put the issue of historical memory front and center in late twentieth century and early twenty-first Spain. Films, novels, and academic research all helped move public opinion, in large part because they challenged the myth that violence against civilians during the civil war had been equally perpetrated by both sides. Instead, they argued that the violence was overwhelming nationalist. These currents were in contrast to the actions of civil actors like *El País* in the 1970s, which accepted and promoted the pact of forgetting, or the cultural movement of *La Movida* in the 1980s that imagined Spain as forward-looking and European, with no baggage from its most recent

history. Also crucial was the Pinochet case that began in 1996 with Judge Garzón's investigation into the Chilean dictator's crimes against Spanish citizens and resulted, by 1998, in Pinochet's arrest in London in 1998 that raised the possibility of extradition to Spain for trial. Although this never occurred, the Pinochet case undermined the pact of forgetting by reminding Spaniards that they had not dealt with their own past. As Encarnación writes, public enthusiasm for the Pinochet case forced many political leaders, including those on the left, to "recall their participation in the suppression of memory" (140). The stage was thus set for a new era, and civil society and human rights activists took up the charge, aided by elements within the PSOE, calling on Spain and the PP to deal with historical memory in a new way. Elements on the right sought to engage in the debate and cast Francoism as a necessary step to contemporary democracy; now the past was a contemporary political issue (151). This brings *Democracy without Justice in Spain* to its final section on Spain's "second transition" under Socialist Prime Minister Jose Zapatero and the 2007 Law on Historical Memory. However, rather than serve as a measure of transitional justice and reconciliation, the law split Spanish society along partisan lines. The right objected, building on their arguments that Francoism had many values for Spain to emulate; many on the left felt the Law did not go far enough because it kept in place elements of the pact of forgetting, such as the amnesty law of 1977.

Encarnación argues that while the Law on Historical Memory is important, he points to the fact that in polls many Spaniards still embrace the perspective that forgetting was an important reason for the transition's success in the 1970s and 1980s. He thus questions if it is in fact necessary for political transitions to focus on justice. In Spain, the need to include political elites from the previous regime outweighed international human rights norms that would demand trials, which is contrary to much of the literature on transitional justice. Moreover, the fact that the Law on Historical Memory came some thirty years into the transition, instead of appearing shortly after the fall of Franco, also contradicts much of the transitional justice literature. For Encarnación, the conclusion is that there is not a clear link between transitional justice and democratization and that there is no model for dealing with the past. The Spanish way removed typical measures of transitional justice, even when it was time for a new generation to force the issue. The political need for amnesty was more important in Spain than the need for justice, and Encarnación suggests that may be the case in other countries as well. Democracy without justice can be a pragmatic response to transition, and a successful one.

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