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A Spanish Genocide? Reflections on the Francoist Repression after the Spanish Civil War

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A Spanish Genocide?

Reflections on the Francoist

Repression after the Spanish

Civil War

JULIUS RUIZ

To many non-Spaniards, awareness of Nationalist political violence is at best restricted to a number of specific figures or events during the Spanish Civil War. Remembered perhaps is the murder of the poet and homosexual Federico García Lorca in Granada, the crazed speeches given on Radio Seville in the summer of 1936 by Queipo de Llano and the massacre of Republican militiamen in the Badajoz bullring in August 1936. On the other hand, the consequences of Franco's unconditional victory in the civil war have been almost completely overshadowed by the greater cataclysms of the Second World War and the Holocaust. Thanks partly no doubt to George Orwell, the elimination of the anti-Stalinist Partido Obrero de Unificación Marxista (POUM) after May 1937 is better known than the more extensive subsequent Francoist repression in Catalonia.¹

Yet the Francoist repression after the civil war should not be forgotten. Recent research has shown what the consequences of Franco's unconditional victory in the civil war were for defeated Republicans. Although a Francoist general, Ramón Salas Larrazábal, claimed in 1977 that there were no more than 22,716 executions, local studies indicate a figure of approximately 50,000.² It is also likely that the number of inmates in Francoist jails by November 1940 exceeds the 280,000 figure admitted by the regime in 1946.³ The sheer scale of the repression after March 1939 is emphasised if it is placed in the wider European context. Repression by other dictatorships in

¹ The suppression of the POUM in 1937 led to around sixty executions; there were 3,905 Francoist executions in Catalonia. Santos Juliá Díaz, ed., *Víctimas de la guerra civil* (Madrid: Temas de Hoy, 1999), 341, 411.

² Ramón Salas Larrazábal, *Pérdidas de la guerra* (Barcelona: Planeta, 1977), 390–1. The current estimate can be found in Julián Casanova et al., *Morir, matar, sobrevivir. La violencia en la dictadura de Franco* (Barcelona: Crítica, 2004), 8.

³ The public admission was made in Ministerio de Justicia, *Breve resumen de la obra del Ministerio de Justicia por la pacificación espiritual de España* (Madrid, 1946). The veracity of the 280,000 figure has been questioned by, among others, Ricard Vinyes in 'El universo penitenciario durante el franquismo', in Carme Molinero et al. *Una inmensa prisión* (Barcelona: Crítica, 2003), 157–60.

Europe was more selective. The Salazar dictatorship in Portugal convicted ‘only’ 18,714 people for political offences between 1932 and 1948.⁴ Special courts created under the 1926 State Defence Law in Fascist Italy to punish ‘anti-national’ political activity issued 3,596 sentences between 1927 and 1939.⁵ It even appears that no less a figure than *Reichsführer* SS Heinrich Himmler, on a visit to Spain in October 1940, was shocked by the scale of the repression and advised that Franco would be better served incorporating workers rather than punishing them.⁶ Yet the Spanish dictator was not interested in Nazi dreams of a *Völksgemeinschaft*. Rather, he was determined to punish Republicans for resistance during the civil war. Reconciliation was out of question; as Franco declared in his first postwar New Year speech after the civil war, punishment was justified because the Republic had caused ‘so much damage to the Patria [and] such devastation within families’.⁷

Franco, in other words, placed the responsibility for the civil war in Republican hands. This reflected the basic underlying assumption of the post-civil war repression – the extraordinary notion that the Nationalists, not the legally elected Republican government, represented the legitimate authority in Spain from July 1936. This was encapsulated in the declaration of martial law by the rebel military National Defence Council (Junta de Defensa Nacional) in Burgos on 28 July 1936. This proclamation was deemed to apply not only in those areas where the rising had triumphed but also throughout the whole of Spain. It specifically warned that any resistance to Nationalist – later Francoist – forces would be punished by military tribunals for the crime of ‘military rebellion’.⁸

This would turn out to be no idle threat. By the end of the civil war in 1939, military courts were the central feature of Francoist justice in the Nationalist zone. Immediately following the occupation of Barcelona on 26 January 1939, for example, the military authorities declared martial law on the same basis as the original July 1936 decree.⁹ The first military investigation in the Catalan capital was against nine prominent officers of Catalonia’s pre-war Civil Guard, including its then commander General Aranguren, who stayed loyal to the Republic in July 1936. Only one escaped the firing squad for the crime of ‘military rebellion’.¹⁰

Franco’s unconditional victory in the civil war would see not the derogation but the extension of military justice to the remnants of Republican Spain. Martial law would remain in force until April 1948.¹¹ Military tribunals were therefore the primary

⁴ *Presos políticos no regime fascista, vol. 4, 1946–1948* (Lisbon, 1981), 415–26, quoted by Polymeris Voglis, *Becoming a Subject: Political Prisoners during the Greek Civil War* (Oxford: Berghahn Books, 2002), 22.

⁵ Doug Thompson, *State Control in Fascist Italy: Culture and Conformity, 1925–43* (Manchester: Manchester University Press, 1991), 35–6.

⁶ Paul Preston, *Franco: A Biography* (London: HarperCollins, 1993), 392.

⁷ *ABC*, 2 Jan. 1940. All translations are by the author.

⁸ *Boletín Oficial de la Junta de Defensa Nacional* (hereafter *BOJDN*), 30 July 1936.

⁹ *La Vanguardia Española*, 27 Jan. 1939.

¹⁰ Manel Risques, ‘L’execució del general Aranguren Abril de 1939’, in Manel Risques et al., *Les ruptures de l’any 1939* (Barcelona: Publicacions de l’Abadia de Montserrat, 2000), 153–69.

¹¹ Manuel Ballbé, *Orden público y militarismo en la España constitucional (1812–1983)* (Madrid: Alianza Editorial, 1983), 409.

mechanism by which Republicans were punished in the period after March 1939. In examining this aspect of the repression in his memoirs written in 1977, Ramón Serrano Suñer, Franco's brother-in-law and ex-Interior Minister at the end of the civil war, admitted that the punishment of Republicans for the crime of military rebellion was 'absurd'; it was '*justicia al revés*', or 'justice turned on its head'.¹²

While this is the best description we possess of the reality of Francoist justice after the civil war, it is not what Serrano Suñer believed at the time. Indeed, he was responsible in December 1938 for the appointment of a special commission charged with the task of demonstrating the legality of the 1936 military rebellion.¹³ The composition of this body reflected the importance of its task; among those selected were fifteen former parliamentary deputies and ten former ministers from pre-1936 right-wing governments. Unsurprisingly, when it reported in February 1939, barely two months later, it concluded that the military rising of July 1936 'cannot in any sense be defined as rebellion'; the Republican government was 'fundamentally and strictly illegitimate'.¹⁴

This report laid bare the ideological assumptions of *justicia al revés*. Central was the notion that Republican and Popular Front organisations were essentially 'criminal' and 'anti-national'. The 1932 Catalan statute of autonomy was the 'denial of all national history'. The revolutionary insurrection of October 1934 was a criminal attempt to 'dissolve' Spain. The military rebellion of 18 July 1936 was depicted as a movement that not only 'restored' the rule of law but 'saved Spain and maybe Human [sic] civilisation' from 'imminent' Communist revolution. It was contrasted with the Republican government, which was not only held responsible for the 'anarchy' of the Republican zone in the summer of 1936 but also for the murders of 'over 500,000' Spaniards.¹⁵

The commission also defended the right of the military to 'save' the Patria. It acted in July 1936 'at the service of the legitimate national interests'.¹⁶ Such an argument was hardly novel; it reflected the existence of a long-standing tradition of army intervention in civilian affairs. When the military rebels declared martial law in July 1936 they spoke in terms of carrying out 'their duty'.¹⁷ Doubtless they had in mind other rebellions – or *pronunciamientos* – when the military had overthrown

¹² Ramón Serrano Suñer, *Entre el silencio y la propaganda, la Historia como fue. Memorias* (Barcelona: Planeta, 1977), 245.

¹³ *Boletín Oficial del Estado* (hereafter BOE), 22 Dec. 1938.

¹⁴ Estado Español, *Dictamen de la Comisión sobre ilegitimidad de poderes actuantes en 18 de julio de 1936* (Barcelona: Editora Nacional, 1939), 104.

¹⁵ *Ibid.*, 19, 24, 28–29, 69–75, 77–102. Although space does not permit a detailed rebuttal of these claims, it is important at least to note that the Republican government repeatedly condemned the murders carried out in the Republican zone during the civil war. Indeed, its failure to prevent such killings was a direct consequence of the collapse of state authority following the partial failure of the military rebellion. When state authority was restored in the winter of 1936–7, arbitrary executions, which did not exceed 50,000, largely came to an end. On this see Juliá, *Víctimas*.

¹⁶ Estado Español, *Dictamen*, 65.

¹⁷ *BOJDN*, 30 July 1936.

a government if the interests of the 'nation' had allegedly been at stake.¹⁸ They could also point to the fact that before 1936 military tribunals had regularly punished civilians for public disorder offences.¹⁹ Above all, they could refer to Article 2 of the army's own Constitutive Law of 1878, which stated that its primary purpose was 'the defence of the Patria against external and internal enemies'.²⁰

Conflation of the state with the 'nation' and political opposition with criminality was not confined to the Franco regime in the 1930s and 1940s.²¹ But other right-wing dictatorships of the period were not forced to establish their authority in a prolonged, fratricidal civil war following a failed military coup. Indeed, the scale of the post-civil war repression is to a great degree explained by the Franco regime's denial that its legitimacy was in fact based on force of arms. Given the Francoist inversion of legality, anyone in the Republican zone during the civil war could have committed a potentially criminal act of 'rebellion'. As Eugenio Fernández Asiaín, a military prosecutor in Bilbao, San Sebastián and Badajoz, put it in 1943, 'the defence of the old [Republican] political order constituted the true rebellion'.²²

The determination to punish 'red criminality' was not the product of the civil war. The director of the military rebellion of July 1936, General Mola, had emphasised in his very first directive to his fellow military plotters in May that a period of 'exemplary violence' against Popular Front supporters would be required to ensure the success of the rising.²³ Many historians have taken Mola's instructions as evidence of a plan of extermination that was carried out in Nationalist Spain after July 1936 against supporters of the Republic. Alberto Reig Tapia, in a discussion on Nationalist 'extermination policy', stresses that the 'repression was planned as demonstrated by the instructions and declarations of General Mola [before the civil war]'.²⁴ In a similar vein, Francisco Espinosa's recent examination of the objectives of the military rebels in 1936 was entitled 'July 1936. Military coup and the plan of extermination'.²⁵ The post-civil war repression has often therefore been regarded as the logical culmination of this 'plan'. As Michael Richards puts it, the policy of 'physical extermination . . . did not cease with Franco's declaration of the end of the Civil War'; he warns against the 'intellectual laziness' of attributing Francoist political violence to the civil war, since this serves only 'to obscure . . . a programme of terror'.²⁶

¹⁸ For the 'praetorian' traditions of Spanish politics see Stanley Payne, *Politics and the Military in Modern Spain* (Stanford: Stanford University Press, 1967), and Carolyn P. Boyd, *Praetorian Politics in Liberal Spain* (Chapel Hill: University of North Carolina Press, 1979).

¹⁹ The militarisation of Spanish policing in the nineteenth and twentieth centuries is the central theme of Ballbé's *Orden público y militarismo*.

²⁰ Quoted in Manuel Álvaro Dueñas, 'Los militares en la represión política de la posguerra: la jurisdicción especial de responsabilidades políticas hasta la reforma de 1942', *Revista de Estudios Políticos*, 69 (1990), 142.

²¹ For a stimulating comparative analysis see Voglis, *Becoming a Subject*, 22–6.

²² Eugenio Fernández Asiaín, *El delito de rebelión militar* (Madrid: Instituto Edit. Reus, 1943), 13.

²³ Stanley Payne, *The Franco Regime* (Madison: University of Wisconsin Press, 1987), 210–11.

²⁴ Alberto Reig Tapia, *Franco «Caudillo»: mito y realidad* (Madrid: Tecnos, 1996), 191–2.

²⁵ Casanova, *Morir, matar, sobrevivir*, 51–119.

²⁶ Michael Richards, 'Civil War, Violence and the Construction of Francoism', in Paul Preston and Ann L. MacKenzie, eds, *The Republic Besieged: Civil War in Spain 1936–39* (Edinburgh: Edinburgh

This emphasis on ‘plans’ and ‘programmes of terror’ is reminiscent of the charges laid against leading Nazis at Nuremberg in 1946.²⁷ Indeed, Francisco Espinosa has argued that the Franco regime is guilty of ‘genocide’ as defined by the Polish jurist Raphael Lemkin and incorporated into international law in 1948 following the Nuremberg trials – namely, the systematic destruction of national, racial, religious or political groups.²⁸ Denunciations of Francoist ‘genocide’ are also a feature of the current political campaign for the formal legal rehabilitation and compensation to victims of the Franco regime.²⁹ In April 2004, for instance, the human rights group Nizkor, with the support of sixteen other human rights and victims’ associations issued a report, ‘The question of impunity in Spain and crimes under Franco’. In its third section, entitled ‘The crimes of the Francoist repression form part of the European context and the types of offences committed are determined by the Nuremberg doctrine’, the authors highlight that the regime acted on ‘a plan of extermination’.³⁰

It is paradoxical that while discussion of Francoist ‘genocide’ takes Nuremberg as its conceptual focus, historians of genocide have largely rejected mechanistic explanatory models based on plans or programmes of destruction. Donald Bloxham, for example, while dismissing Turkish denials that the Armenian genocide of 1915 and 1916 ever took place, nevertheless contends that ‘there was no a priori blueprint for genocide’; he points to a process of ‘cumulative policy radicalization’.³¹ In other words, Bloxham argues that the ruling faction in the Ottoman government, the Committee of Union and Progress, saw its Christian Armenian population as a threat to the territorial integrity of the empire and an obstacle to the creation of an ethnically homogeneous Turkish ‘national community’ before the First World War. Nevertheless, a genocidal policy, causing the deaths of at least one million Armenians, was only adopted in May 1915 in reaction to the course of the war and developing out of local initiatives to resolve the ‘Armenian question’.³²

It would be very difficult to claim that a similar process of ‘cumulative policy radicalization’ occurred in Nationalist Spain after July 1936. Indeed, one could argue that the exact opposite happened. This can be seen if we examine the number of executions in Nationalist Spain during and after the civil war. Fortunately, we can take advantage of the findings of over twenty years of detailed local research dedicated

University Press, 1996) 209, 239. See also his book, *A Time of Silence: Civil War and the Culture of Repression in Franco's Spain, 1936–1945* (Cambridge: Cambridge University Press, 1998).

²⁷ The charges are discussed in detail in a contemporary account by Robert W. Cooper, *The Nuremberg Trial* (Harmondsworth: Penguin Books, 1947), 37–45.

²⁸ Casanova, *Morir, matar, sobrevivir*, 59.

²⁹ This campaign has had some success. In September 2004 the current Spanish Prime Minister, the Socialist José Luis Rodríguez Zapatero (the grandson of an army captain shot by the Nationalists in August 1936), established an inter-ministerial commission to study the question of the rehabilitation of victims of the Franco regime. *BOE*, 20 Sept. 2004.

³⁰ The Nizkor report was accessed at <http://www.derechos.org/nizkor/españa/impuspa.html>.

³¹ Donald Bloxham, ‘The Armenian Genocide of 1915–1916: Cumulative Radicalization and the Development of a Destruction Policy’, *Past and Present*, 181 (Nov. 2003), 143.

³² *Ibid.*, 186–91.

to quantifying the number of victims. In April 1999, when a synthesis of this local work was published, twenty-four provinces (just under half but including the most populous provinces) had been subject to a detailed investigation by local historians.³³

Local studies, utilising a methodology that combines cemetery and death registers with oral testimony, have demonstrated that general estimates of executions based on contemporary anecdotal evidence are unreliable.³⁴ Contemporary reports of hundreds of thousands of executions, especially after the civil war, are exaggerated.³⁵ This is above all true for the estimates contained in British diplomatic reports of the 1940s. For example, the British vice-consulate in San Sebastian reported in January 1945 that 4,586 executions had taken place in the Basque province of Guipúzcoa since 1936.³⁶ Recent research suggests 600.³⁷ There is a general consensus that throughout Spain around 100,000 executions had taken place by April 1939 as well as 50,000 after the end of the civil war.³⁸

As these figures imply, local research indicates the vital importance of chronology. Executions were generally more frequent in those provinces under Nationalist control from the summer of 1936 than those occupied near or at the end of the civil war, irrespective of factors such as the political strength of Republican organisations. Thus with the exception of Malaga (7,000 victims), provinces with over 6,000 executions had been fully or partially occupied by Nationalist troops in 1936. These are Córdoba (9,579), Seville (8,000), Badajoz (6,611) and Zaragoza (6,029).³⁹ By contrast, none of Spain's most populous provinces – Barcelona (1,716), Madrid (3,113) and Valencia (3,128) all occupied in 1939 – approach the 6,000 figure.⁴⁰

In other words, local research indicates a correlation between the institutionalisation of the Francoist 'New State' and a decline in the number of executions; the bureaucratisation of the killing process produced fewer victims. Although Nationalist Spain was officially under martial law from 28 July 1936, arbitrary murders – often carried out by civilians and with the approval of the military authorities – were the

³³ Juliá, *Víctimas*, 411–12.

³⁴ See Josep M. Solé i Sabate, *La repressió franquista a Catalunya 1938–1953* (Barcelona: Edicions 62, 1985), 19, for a discussion of the methodology.

³⁵ See, e.g., the claim made in 1948 by Charles Foltz, an American journalist, that an 'anonymous official' within the Justice Ministry had told him that 192,684 people were executed in Spain in the period April 1939–June 1944. Charles Foltz, *The Masquerade in Spain* (Boston, MA: Houghton Mifflin, 1948), 97.

³⁶ National Archives, Foreign Office General Correspondence, 49575, Document reference Z1893/89/41.

³⁷ Pedro Barruso, 'La represión del republicanismo en Guipúzcoa (1936–1945)', in *Cuadernos Republicanos*, 38 (1999), 72.

³⁸ Casanova, *Morir, matar, sobrevivir*, 8.

³⁹ We should also probably add Granada to the list, as it is certain that the provincial minimum figure of 5,048 victims is a serious underestimation. All these figures are listed in Juliá, *Víctimas*, 411–12, with the exception of that of Badajoz, which can be found in Francisco Espinosa, *La columna de la muerte. El avance del ejército franquista de Sevilla a Badajoz* (Madrid: Crítica, 2003).

⁴⁰ Juliá *Víctimas*, except for Madrid, which is found in Julius Ruiz, 'La Justicia Militar en Madrid 1939–1944. Justicia exterminadora?', in José Manuel Chico Isidro, ed., *España en guerra. Protagonistas para un conflicto* (Madrid: Dykinson, 2003). Note that the figure for Madrid figure is a minimum, although it is unlikely that the true figure will be significantly higher.

norm in the summer of 1936.⁴¹ During this period military tribunals were primarily reserved for leading military and political figures who did not accept the legality of the rising.⁴² At least 433 people had been arbitrarily murdered by the time the first military trial was held in Seville on 14 August 1936.⁴³ The first defendant was General Miguel Campins, military commandant in Granada, who had been less than enthusiastic in his support for the military rising. His execution two days later reflected the fragmented nature of military authority in the Nationalist zone – General Queipo de Llano, the highest military authority in Andalucía, rejected a plea for clemency by Campins's personal friend, General Franco.⁴⁴

However, the winter of 1936–7 saw the slow institutionalisation of military justice. This partly reflected the general trend towards the centralisation of power in the Nationalist zone following General Franco's investiture as Commander-in-Chief of the Nationalist army and head of state and the creation of a new administration, the *Junta Técnica*, in October.⁴⁵ It was also indicative of the widespread optimism, given the rapid advances of the Army of Africa, that the fall of Madrid – and therefore the possible end of the civil war – was imminent. Thus in November 1936 a decree created a military legal column to direct the implementation of military justice in 'liberated' Madrid.⁴⁶ When the failure to take the Spanish capital suggested that a prolonged civil war was likely, a decree was issued in January 1937 ordering a rapid extension of military justice throughout the Nationalist zone.⁴⁷

Local studies have recorded the results of this process of institutionalisation in the Nationalist zone. In Seville, judicial executions largely replaced arbitrary murder from February 1937. In the period from July 1936 to February 1937, 3,028 executions took place in the city; between February and October 1937, there were 'only' 137.⁴⁸ Overall, for those provinces occupied by the Nationalists during the course of 1936, the winter of 1936–7 was the watershed in terms of executions; indeed, only 10 to 20 per cent occurred after December 1936.⁴⁹ Moreover, even provinces divided into Republican and Nationalist areas during the civil war did not see a return to the slaughter of 1936 after Franco's unconditional victory in 1939. In Badajoz, for example, where the eastern part of the province remained in Republican hands until

⁴¹ For a synopsis of this period see Juliá, *Víctimas*, Part I, ch. II.

⁴² See, e.g., Juan Ortiz Villalba, *Sevilla 1936: del golpe militar a la guerra civil* (Córdoba: Imprenta Vistalegre, 1998), ch. VI.

⁴³ Alfonso Braojos et al. *Sevilla, 36: sublevación fascista y represión* (Seville: Muñoz Moya y Montraveta editores, 1990), 252–3.

⁴⁴ Ortiz, *Sevilla 1936*. 190–5.

⁴⁵ BOE. 2 Oct. 1936.

⁴⁶ This consisted of eight military tribunals, sixteen examining magistrates and the Auditoria del Ejército de Ocupación (Office of the Judge Advocacy General of the Army of Occupation), BOE. 5 Nov. 1936.

⁴⁷ BOE, 26 Jan. 1937.

⁴⁸ Braojos, *Sevilla, 36*, 252–7; 262.

⁴⁹ Juliá, *Víctimas*, 65.

April 1939, executions in 1936 alone accounted for 79 per cent of the total of 6,610, and executions after March 1939 for only 15.5 per cent.⁵⁰

It is important to stress that institutionalisation does not mean that the broad objectives of the repression changed. As noted earlier, the military rebels in 1936 saw themselves as the traditional defenders of Spain against 'internal enemies'. General Franco, when declaring martial law in Spanish Morocco on 18 July 1936, referred to the need to re-establish 'the principle of authority'.⁵¹ The restoration of 'authority' cost over 500 lives in Melilla alone during the summer of 1936.⁵²

Yet the institutionalisation of the 'New State' meant that the restoration of 'the principle of authority' could take forms other than execution. For example, it was all too common in 1936 for Republican militiamen to be executed after capture. As Colonel Yagüe infamously explained to the American journalist Jay Allen, the executions of Republican militiamen in the Badajoz bullring in August 1936 were to him unavoidable – 'Was I supposed to turn them [the militiamen] loose in my rear and let them make Badajoz red again?'⁵³ However, in March 1937 Franco ordered the creation of a regular concentration camp system in preparation for the northern offensive on Vizcaya.⁵⁴ These camps were to classify prisoners in three ways: suspected 'red criminals' were to be tried by military courts, 'sympathisers' of the Nationalists were to be released (and generally later conscripted into the Nationalist army) and the rest were to be classified as prisoners of war and used as forced labour.⁵⁵ By the end of 1937, 106,822 prisoners in more than sixty camps had been classified.⁵⁶ Of those, 59,000 POWs (55 per cent) were deemed ideologically reliable enough to fight for Franco; 34,143 POWs (32 per cent) toiled in sixty-six militarised work battalions throughout the Nationalist zone.⁵⁷ According to the May 1937 decree that regulated work battalions, forced labourers were given the 'right-obligation' to work. In other words, they were given not only the right to take part in the material reconstruction of Spain, but also the obligation, since as Republicans they were 'guilty' of causing the civil war.⁵⁸ In total, an estimated 507,000 Spaniards passed through Francoist concentration camps before they were largely wound up by the end of 1940.⁵⁹

This is not to say that we can draw a clear dividing line between 'arbitrary' and 'institutional' repression in 1937. After all, state-building in Nationalist Spain was a slow exercise; the construction of the 'New State' only began with Franco's accession

⁵⁰ Espinosa, *La columna de la muerte*, 241.

⁵¹ Ronald Fraser, *Blood of Spain* (London: Pimlico, 1994), 60–1.

⁵² Casanova, *Morir, matar, sobrevivir*, 63.

⁵³ Quoted by Paul Preston, *A Concise History of the Spanish Civil War* (London: Fontana Press, 1996), 89.

⁵⁴ Javier Rodrigo, *Los campos de concentración franquistas, entre la historia y la memoria* (Madrid: Siete Mares, 2003), 62.

⁵⁵ *BOE*, 11 March 1937.

⁵⁶ Rodrigo, *Los campos*, 72, 214–15.

⁵⁷ *Ibid.*, 76–7, 130–1. Only 11 per cent were classified as suspected criminals.

⁵⁸ *BOE*, 25 May 1937. Since working for the Francoist state was meant to be regarded as a 'privilege', POWs classified as suspected criminals were excluded from work battalions.

⁵⁹ Rodrigo, *Los campos*, 221.

to power in October 1936 – the creation of a single party did not take place until April 1937 and Franco did not appoint his first government until January 1938.⁶⁰ The weakness of central authority in terms of dispensing ‘justice’ can clearly be seen in the repression in Málaga following the occupation of the city in February 1937. The fledgling state was represented by the military legal column created for Madrid in November 1936. However, its authority did not go uncontested by the heterogeneous force that took the city. Apart from another military legal column owing allegiance to General Queipo de Llano, Franco’s legal column had to face claims of supreme authority by General Roatta, head of the Italian brigades. There were also autonomous Falangist and Carlist militias operating the city.⁶¹ The jungle of jurisdictions did not mitigate the repression in Málaga in any way: at least 3,027 were executed in the city by January 1938.⁶² Nor does it imply that the punishment of ‘internal enemies’ in Málaga did not meet with Franco’s full approval: the Caudillo rejected Italian appeals to intervene on behalf of those condemned to death.⁶³

But by the end of the civil war in 1939, military justice was the principal source of executions. Not all extra-judicial killings ceased, especially during the chaotic first weeks of the post-civil war period. Irregular executions undoubtedly took place, for example, in rural areas immediately following occupation in 1939. Los Pedroches, a district of northern Córdoba that had remained Republican throughout the civil war, witnessed at least sixty arbitrary murders in April 1939.⁶⁴ Yet there is little evidence indicating the existence of a stable, parallel, ‘unofficial’ system of extrajudicial executions after the civil war. While those arbitrarily murdered do not leave a trail of paper, they do leave their remains. Our knowledge of the location of Nationalist common graves has been immeasurably enhanced by the activities of the Asociación para la Recuperación de la Memoria Histórica (Association of the Recovery of Historic Memory – ARMH). This grassroots organisation was created in March 2000 by Emilio Silva and Santiago Macías to identify and excavate the sites of mass graves of victims of the Franco regime.⁶⁵ Their work has confirmed the essential distinction between the civil war and post-civil war repression. Of the seventeen mass graves located by the ARMH throughout Spain that have yet to be exhumed, only two date from the period after March 1939. Moreover, on reading the testimony of victims’ relatives, it becomes apparent that they had been tried and sentenced to death by a military tribunal.⁶⁶

⁶⁰ For a general account of this state-building process see Payne, *Franco Regime*, 163–96.

⁶¹ Ignacio Arenillas de Chaves, Marqués de Gracia Real, *El proceso del Besteiro* (Madrid: Revista de Occidente, 1976). Arenillas served in the legal column created for the occupation of Madrid in November 1936 throughout the civil war.

⁶² For the repression in Málaga see Antonio Nadal, *Guerra civil en Málaga* (Málaga: Arguval, 1984), and Encarnación Barranquero Texeira, *Málaga entre la guerra y la posguerra* (Málaga: Arguval, 1994).

⁶³ John F. Coverdale, *Italian Intervention in the Spanish Civil War* (Princeton: Princeton University Press, 1975), 191–2.

⁶⁴ Juliá, *Víctimas*, 334.

⁶⁵ Emilio Silva and Santiago Macías, *Las fosas de Franco* (Madrid: Temas de Hoy, 2003).

⁶⁶ *Ibid.*, 285–303.

Given that military tribunals were punishing Republicans for ‘rebellion’, the fact that ‘only’ 50,000 executions took place after the civil war does not necessarily indicate the absence of an extermination policy. For Francisco Espinosa, the development of the military justice system was simply an attempt by the Franco regime to cover up its ‘serious crimes . . . with the appearance of legality. It was only a case of *keeping up appearances*’.⁶⁷ In a similar vein, Francisco Moreno has dismissed military trials as ‘a mere step [*trámite*] to physical elimination’.⁶⁸

Clearly, a thorough examination of military justice after the civil war is necessary. Was it simply a matter of ‘keeping up appearances’? Was death the most likely outcome of a military trial? The task is made more difficult by the dearth of detailed research, which partly reflects the long-standing problems of access to the military archives.⁶⁹ Admission is now at least possible, although it is still restricted and documents remain largely uncatalogued.⁷⁰ Given these continuing problems, some historians have understandably chosen to seek out and analyse the case files of prominent Republicans sentenced to death after the civil war. Thus we are better informed about the circumstances of the executions of the president of the Catalan Generalitat, Lluís Companys, in 1940 and the anarchist leader Joan Peiró in 1942 among others.⁷¹ Yet it is of course impossible to generalise about the ‘exterminatory’ nature of military justice from such cases. Mirta Núñez’s claim that those given prison sentences were ‘survivors who had managed to free themselves from death sentences’ is at the very least questionable, given that her own work in the Madrid military archive has concentrated almost exclusively on cases ending with a death sentence.⁷²

The few studies that have examined a broader range of military sentences would indicate that the term ‘survivor’ is a rather misleading one to apply to those who escaped a firing squad. Manuel Ortiz, whose research on military justice in the province of Albacete is based on sentences found in defendants’ prison files, estimates that only 3 per cent of military sentences resulted in execution. The most common outcome was a prison term ranging from twelve years and a day to twenty years.⁷³ My own research on military justice in Madrid, based on sentences remitted to the Law of Political Responsibilities (LPR) authorities created in February 1939, has

⁶⁷ Casanova, *Morir, matar, sobrevivir*, 58 (emphasis in original).

⁶⁸ Juliá, *Víctimas*, 321.

⁶⁹ Alberto Reig Tapía, *Ideología e historia: sobre la represión franquista y la guerra civil* (Madrid: Akal, 1984), 23–4.

⁷⁰ For a recent discussion of the general state of access to the archives see Manel Risques, ‘Archivos y fuentes documentales del mundo concentracionario y penitenciario español’, in Molinero, *Una inmensa prisión*.

⁷¹ Josep Benet, *La mort del president Companys* (Barcelona: Edicions 62, 1998); Albert Balcells ‘El consejo de guerra contra el dirigente cenetista catalán Joan Peiró en 1942’, *Hispania Nova I: Revista de Historia Contemporánea* 2 (2001–2), at <http://hispanianova.rediris.es>

⁷² The quotation is given in the prologue to Rafael Torres, *Los esclavos de Franco* (Madrid: Oberon, 2001), 8. Mirta Núñez Díaz-Balart and Andrés Rojas Friend, *Consejo de guerra. Los fusilamientos en el Madrid de la posguerra (1939–45)* (Madrid: Compañía Literaria, 1997).

⁷³ Manuel Ortiz Heras, *Violencia política en la II República y el primer franquismo* (Madrid: Siglo XXI, 1996), 370–1.

brought me to a similar conclusion.⁷⁴ Out of over 20,000 sentences held within the LPR collection in the state archive of Alcalá de Henares near Madrid, I selected a sample of 947 convictions from the period March 1939 to December 1942. The sample indicates that in Madrid prison sentences of eight to twelve years and a day were most common, followed by sentences of fourteen to thirty years.⁷⁵ In other words, although extremely harsh, the military sentencing policy was not exterminatory.

So why were some sentenced to death but not others? Social class is undoubtedly a significant factor. Research indicates that post-civil war victims of the Franco regime tended to have working-class or peasant backgrounds. In Alicante, Albacete and Madrid, for example, over two-thirds of those shot were workers or peasants.⁷⁶ It is also appears that villages were most affected; in Barcelona, the repression was harsher in surrounding rural areas than the Catalan capital itself.⁷⁷ In Madrid, my analysis of over 3,100 death sentences issued in the province between March 1939 and February 1944 shows that peasants were far less likely than any other social group – including workers – to have their sentences commuted.⁷⁸ Yet no conclusive evidence has been produced to indicate that social class was the *determining* factor in postwar executions. The fact that, for instance, a sample of 166 acquittals in Madrid shows that the majority of those exonerated also had peasant or working-class backgrounds indicates that a broad generalisation based on quantitative data is not an adequate substitute for detailed case analysis.⁷⁹ That Francoist military tribunals punished peasants or workers is unquestioned; whether they were exterminated is another matter.

Despite the great volume of research that has been carried out on the post-civil war repression, there has been very little detailed examination of the specific criteria employed by military tribunals when sentencing defendants to death. This article necessarily relies on my own analysis of death sentences issued in Madrid. Of course, there is the danger that Madrid is unrepresentative of the rest of Spain. It is the case that the Franco regime regarded Madrid as particularly ‘red’ in 1939. So ‘red’ in fact that there were serious discussions as to whether it should remain the Spanish capital at all. Discussions of alternative, more ‘Spanish’ candidates, that apparently included Seville and Valladolid, took place at governmental level throughout 1939.⁸⁰

⁷⁴ This law, which demanded economic reparation from those ‘guilty’ of causing the civil war, stipulated that all those condemned by a military tribunal be subject to a Law of Political Responsibilities investigation. Art. 4(a), *BOE*, 13 Feb. 1939.

⁷⁵ The full results can be found in Ruiz, ‘La Justicia Militar’, 105.

⁷⁶ Miguel Ors Montengro, *La represión de guerra y posguerra en Alicante (1936–45)* (Alicante: Instituto de Cultura Juan Gil-Albert, 1995), 303–4; Ortiz, *Violencia política* 290; Ruiz, ‘La Justicia Militar’, 99.

⁷⁷ Solé i Sabate, *La represió*, 10.

⁷⁸ Most, but not all these sentences can be found in the aforementioned LPR collection in the Archivo General de la Administración (AGA), Alcalá de Henares. Ruiz, ‘La Justicia Militar’, 99.

⁷⁹ This sample was chosen from among the sentences located in the AGA. The full results were working-class/peasants: eighty-eight (53 per cent), middle-class/professional: seventy-eight (47 per cent).

⁸⁰ Manuel Valdés Larrañaga, *De la Falange al Movimiento (1936–1952)* (Madrid: Fundación Nacional Francisco Franco, 1994), 118–19. Valdés was the first Falangist chief in Madrid after the civil war, and then under-secretary in the labour ministry from August 1939. See also Serrano, *Entre el silencio*, 247–8.

The idea was abandoned only after opposition from the military, which stressed Madrid's imperial past.⁸¹

Although Madrid's 'red' reputation was partly based on the tenacity of resistance by the city's Republican defenders from the winter of 1936–1937, it mainly derived from the murder of perhaps as many as 8,815 suspected Nationalist sympathisers during the civil war.⁸² Indeed, death sentences issued in Madrid after March 1939 suggest the importance of memories of the so-called 'red terror' and the desire to avenge Republican 'crimes of blood'.

To state that there exists a relationship between Republican murders and post-civil war executions does not imply an acceptance of Francoist propaganda. Given that Republicans were being punished for 'military rebellion', the regime's claims that only those with 'blood on their hands' should fear Francoist justice are untenable. Defendants had little opportunity to defend themselves against the accusations made against them. In post-civil war Madrid, as elsewhere in Spain, defendants were generally tried collectively after having only been given access to a lawyer (who was always a military officer) hours before trial.⁸³

Above all, such a stance does not imply that executions after March 1939 were non-political. Ex-Republican ministers or prominent Popular Front leaders unfortunate enough to fall into the claws of Francoist military justice rarely escaped a death penalty for their responsibility in furthering the 'military rebellion'. In July 1942, Joan Peiró, the anarchist Industry Minister in the Largo Caballero government of 1936–1937, was tried and shot in Valencia (seat of the Republican government in 1936–1937) rather than in Barcelona (his political power base and where he was accused, unjustly, of 'blood crimes').⁸⁴

On a more local level, military tribunals often held Republican leaders responsible for 'blood crimes' committed in neighbourhoods under their formal responsibility, irrespective of whether they had participated in – or opposed – such murders. Thus Pedro González González, mayor of Leganés (a town 12 kilometres south of Madrid) in the summer of 1936, was sentenced to death in November 1939 for the arrest and subsequent murder of a local Augustinian monk by 'outside militias'. He was shot in Madrid in June 1940, despite the fact that the military tribunal accepted that he had aided other Augustinians as well as known right-wingers.⁸⁵

More generally, Republican murders served to intensify the conflation of criminality and 'anti-Spain' and 'anti-Spanish' ideas. The Bellón commission report of February 1939 into the 'illegality' of the Republic emphasised how the 'over 500,000'

⁸¹ Santos Juliá et al. *Madrid. Historia de una capital* (Madrid: Alianza Editorial, 1994), 431.

⁸² For the figure cited above see Rafael Casas de la Vega, *El Terror: Madrid 1936. Investigación histórica y catálogo de víctimas identificadas* (Madrid: Fénix, 1994), 21–2. Although Casas, an ex-Francoist general, maintains that we should treat his figure as a minimum, Javier Cervera has pointed out errors and duplications in his lists of victims. Javier Cervera, *Madrid en guerra. La ciudad clandestina 1936–1939* (Madrid: Alianza Editorial, 1998), 88–9.

⁸³ Juliá, *Víctimas*, 316–22.

⁸⁴ Balcells, 'El consejo de guerra'.

⁸⁵ AGA (Alcalá de Henares), Justicia, Fondo Responsabilidades Políticas, legajo 468 (henceforth AGA, J(RP) 468).

murders in the Republican zone confirmed the ‘criminal’ nature of the Spanish left. This was also the conclusion of an internal military report from 1938 detailing ‘red crimes’. It explained that ‘only Marxist doctrine . . . could have produced in Spain, after years of tolerated preparation, the awful havoc represented by the poisoning and subversion of so many consciences and conducts, turning respectable citizens into barbarous criminals’.⁸⁶

Nevertheless, we cannot interpret any relationship between ‘blood crimes’ and post-civil war executions as merely (to use Francisco Espinosa’s phrase) ‘keeping up appearances’. My work on Madrid indicates that sentencing was far too varied to suggest a uniform extermination policy based on political background. Why is it, for example, that when the entire Republican leadership of the village of Valdepiélagos (Madrid) was put on trial in Colmenar Viejo on 22 July 1939, only two death sentences were issued, against the local councillor Victoriano González Anton and the local president of the socialist trade union, the UGT? Both were accused of the murder of the local Falangist leader, José Fuentes, in 1936. The others, including the Communist mayor Cecilio Calleja, received prison sentences for the confiscation of property.⁸⁷ Furthermore, how can we explain away the fact that in Madrid, an active Popular Front political background *alone* was sometimes not enough even to secure a conviction, let alone a death sentence? Francisco Figuerola Torres was found not guilty of ‘military rebellion’ by a Madrid military tribunal in June 1939, despite being a member of the Socialist Party and secretary of the UGT branch in the state communications company, Telefónica.⁸⁸

The absence of a post-civil war extermination policy can be also demonstrated by an examination of why mass executions declined. Curiously, while so much effort has been expended in explaining why mass executions took place in Francoist Spain, the question of why they decreased has not received much consideration. It is only in a footnote in Richards’s study of Francoist Spain, for example, that he asserts that Francoist policy was modified ‘in October 1945 under pressure from the Allied victors after the end of the Second World War’.⁸⁹ Other historians also place emphasis on the Second World War, although the change in policy is dated earlier – usually at 1942–3 following the Allied landings in north Africa under Operation Torch in September 1942 and the fall of Mussolini in July 1943.⁹⁰ The assumption is, however, the same – Francoist policy was determined by external events; ‘extermination’ would have continued but for the likelihood and ultimately the reality of Allied victory.

The results of local research do not support either 1942–3 or 1945 as the turning point. Rather, it appears that mass executions had largely come to an end by 1941.

⁸⁶ Archivo General de la Guerra Civil Española (Salamanca), Delegación Nacional del Servicio de Documentos (Presidencia), legajo 35. The report, entitled ‘The First Provisional Catalogue of Red Crimes’, was produced in summer or autumn 1938 by the army information service.

⁸⁷ AGA, J(RP) 356. The death sentences of both men were commuted in October 1939.

⁸⁸ AGA, J(RP) 30387.

⁸⁹ Richards, *Time of Silence*, 223.

⁹⁰ See Helmut Heine, ‘Tipología y características de la represión y violencia políticas durante el período 1939–1961’, in Javier Tusell et al. *La oposición al régimen de Franco* (Madrid: UNED, 1990), 312.

Thus, for instance, the biennium 1939 to 1940 accounts for 72.5 per cent of all executions in Madrid, 74.2 per cent in Levante and 84.5 per cent in Barcelona.⁹¹ In other words, we should be considering internal not external factors, in particular, the crisis that had enveloped military justice by 1940. What will be suggested is that from 1940 the Franco regime, far from implementing an exterminatory policy, was in fact winding up the whole process of mass military justice.

Before discussing the nature of the post-civil war crisis, we need to examine briefly the bureaucratic structure of military justice. Given that the military's established role was the protection of Spain against its external and internal enemies, the main institutional features of the Francoist military justice system were in place before the civil war. Indeed, the Military Justice Code that provided the procedures that regulated the activities of Francoist military tribunals dated from 1890.⁹² A key feature of the code was the autonomy it gave to a military tribunal when sentencing.⁹³ All individuals condemned by a military tribunal were found guilty of a legal form of military rebellion. The most serious, carrying the death penalty or thirty years' imprisonment, was 'adhesion to the rebellion'.⁹⁴ The only check on military tribunal autonomy in the 1890 Military Justice Code was the judge advocate (*auditor de guerra*).⁹⁵ All sentences issued by military tribunals were provisional until the highest territorial military authority (for example an army group commander) confirmed or rejected them. In practice, the latter acted on the advice of his legal advisor, the judge advocate, who would examine the sentence first to ensure that the military tribunal had acted in accordance with military law and the evidence presented in the case file. But even if these higher authorities disagreed with a military tribunal, they could not overturn the sentence and impose another one; instead, the case would have to be sent to the Military Supreme Court for a retrial and a definitive decision.⁹⁶

However, the mass expansion of Francoist military justice after July 1936, and the necessarily ill-defined nature of the crime of 'rebellion', reinforced military tribunal autonomy at the expense of the centre. Given that anyone in the Republican zone was potentially guilty of 'rebellion', hundreds of thousands of military investigations were opened during, and especially after, the civil war. While it is impossible to give an exact figure, an indication of its likely scale can be deduced from the fact that in Granada alone, following the complete occupation of the province at the end of the

⁹¹ Nuñez and Rojas, *Consejo*, 109, 113; Vicent Gabarda, *Els afusellaments al país Valencià (1938–1956)* (Valencia: Edicions El Magnànim, 1993), 74; Solé i Sabate, *La repressió*, 9.

⁹² It was not replaced until July 1945. *BOE*, 20 July 1945.

⁹³ Arts. 172 and 173 not only gave tribunals the right to promulgate sentences that they considered 'just' but also the ability to determine a sentence based on whether there were any 'attenuating' or 'aggravating' factors in the case.

⁹⁴ Arts. 238–241, 252.

⁹⁵ Defendants could only appeal if they could demonstrate that the evidence used to convict them was unsound (Art. 678). However, Franco withdrew this limited right of appeal in November 1936; *BOE*, 23 Nov. 1936.

⁹⁶ Art. 597.

civil war, twenty-eight military tribunals worked round the clock in 1939 to hear the approximately 60,000 cases that had been opened.⁹⁷

The merciless logic of Francoist military justice also ensured the systematic punishment of Francoist sympathisers unfortunate enough to have remained in the Republican zone throughout the civil war. One striking example is Julián Vidal Torres, the first *Nationalist* civil governor of Guadalajara in March 1939. Vidal, a lawyer, worked as a prosecutor in a Republican military tribunal in Madrid during the civil war. However, he was also an agent for the Nationalist military information service, SIPM, and attempted to sabotage the work of the military tribunal. By March 1939 he had become leader of a clandestine Falangist group in Guadalajara, and he negotiated the peaceful surrender of the province with the local Republican commander. Nevertheless, because he had served on a Republican military tribunal, he was deemed to have aided the 'rebels', and was given a twelve-year prison sentence in June 1941.⁹⁸

Not surprisingly, the legal section of the Nationalist army, the Military Juridical Corps, was massively expanded to meet the self-created demand for punishing 'rebels'. Conscription of lawyers was in place as early as November 1936.⁹⁹ From 1937, any ideologically 'reliable' individuals with knowledge of law were liable for service in the Military Juridical Corps.¹⁰⁰ It was not uncommon, especially in rural areas such as Córdoba, for defendants accused of 'blood crimes' to find that they were being investigated by the victims' families.¹⁰¹ So given the explosion of military cases and the mass recruitment of civilian personnel often ignorant of military procedures, the actual implementation of military justice, far from being a 'mechanical' exercise of state terror, could often be extremely chaotic.¹⁰² José Méndez Leyra, a twenty-year-old shop assistant, was sentenced to death on 9 November 1939 for taking part in 'blood crimes' in Madrid. However, due to a clerical error his case file was then misplaced. Because of the constant changes of court personnel, the error was not recognised until October 1942. Méndez was finally reprieved on 30 May 1943.¹⁰³

Moreover, the chaotic application of military justice was accompanied by a lack of central control. This is not to suggest that this mitigated its severity. When military jurisdiction was massively expanded after July 1936, no specific guidelines were issued to relate newly created 'crimes' to pre-existing legal definitions of military rebellion listed in the 1890 Military Justice Code. In this situation, military tribunals were

⁹⁷ Rafael Gil Bracero, 'La Justicia Nacional y el Tribunal de Responsabilidades Políticas de Granada: las fuentes y primeras conclusiones', in *Justicia en guerra* (Madrid: Ministerio de Justicia, 1990), 606. Since some military cases were collective, the actual number of people tried was even higher.

⁹⁸ AGA, J(RP) 524.

⁹⁹ BOE, 11 Nov. 36.

¹⁰⁰ Mónica Lanero Táboas, *Una milicia de la justicia. La política judicial del franquismo (1936-1945)* (Madrid: Centro de Estudios Constitucionales, 1996), 362-3.

¹⁰¹ Juliá, *Victimas*, 318.

¹⁰² The end of the civil war saw the proliferation of military manuals designed to explain military justice procedures to legal conscripts. One such guide, *Manual de Justicia Militar*, written by a member of Franco's own legal staff, Commandant Rafael Díaz-Llanos Lecuona, went through six editions by 1941.

¹⁰³ AGA, J(RP) 1067.

dependent on the periodic issuing of guidance from the Military Supreme Court. These instructions were so broad as to be almost meaningless. In March 1937 a circular explained the offences of 'adhesion to the rebellion' (which potentially meant death) and 'help to the rebellion' (a maximum twenty-year prison sentence). For the former, the defendant 'not only aids or co-operates with the rebellion, but identifies with its objectives . . . and is united in spirit with the rebels'.¹⁰⁴ Legal generalities therefore put military tribunals in a powerful position to formulate their own interpretation of precisely what constituted the different legal kinds of military rebellion. The only curb on military tribunals, the judge advocates, turned out to be an insufficient means of control because of the sheer number of cases. In November 1939 a decree doubled the number of judge advocates in order to centralise the implementation of military justice.¹⁰⁵

In other words, military tribunals did not act upon specific orders from above when sentencing. The extent to which sentencing varied from tribunal to tribunal can be illustrated by comparing two sentences issued on the same day, 3 July 1939, by different military tribunals in Madrid province. The military tribunal in Alcalá de Henares handed down a thirty-year prison sentence for 'adhesion to the rebellion' to Pedro Ayra, a pre-civil war member of the liberal Izquierda Republicana. Although the military tribunal considered it to be proved that Ayra had been a member of the revolutionary committee in the nearby village of Torrejón de Ardoz during the civil war, it rejected accusations that he had taken part in any crimes committed in the village, noting his 'moderate behaviour'.¹⁰⁶ By contrast, Petra Martínez, the leader of the Communist Party's Women's Section in Torrejón de Ardoz, received a prison sentence of six years and a day for the lesser offence of 'incitement to the rebellion' from a military tribunal in the capital. This is despite the fact that the military tribunal noted with disapproval that she took part in propaganda activities and the confiscation of property.¹⁰⁷

Of course, the chaotic, decentralised nature of military justice does not preclude extermination; it might be argued that military tribunals had simply internalised Francoist exterminatory ideology, making orders from above unnecessary. After all, policy making in Nazi Germany became increasingly fragmented and radicalised during the 1930s as competing state and party agencies 'worked towards the Führer'.¹⁰⁸ Nevertheless, in Francoist Spain the consequence of the chaotic nature of military justice would not be the 'cumulative radicalisation' of policy; rather, by the winter of 1939–40, the regime wished to reassert central control over the punishment of civil war 'crimes' in order to tackle the growing crisis of the military justice system. Tellingly, the preamble of the aforementioned November 1939 decree

¹⁰⁴ Fernández, *El delito*, 55–6.

¹⁰⁵ BOE, 11 Nov. 1939.

¹⁰⁶ AGA, J(RP) 392.

¹⁰⁷ AGA, J(RP) 841.

¹⁰⁸ For the concept of 'working towards the Führer' see the two-volume biography of Hitler by Ian Kershaw, *Hitler 1889–1936: Hubris* (London: Allen Lane, 1998), and *Hitler 1936–1945: Nemesis* (London: Allen Lane, 2000).

talked of the need for greater centralisation in order to ‘liquidate rapidly this important problem’.¹⁰⁹ The ‘problem’ was the logical consequence of Francoist military justice: overcrowded prisons and thousands of unresolved investigations. In the capital, there were probably 50,000 prisoners.¹¹⁰ According to the regime itself in 1951, there were only 20,000 prison places available nationally in 1939.¹¹¹

But how was this ‘problem’ to be addressed? For the Franco regime, liquidation was not a euphemism for genocide; rather, it was a signal that the whole process of mass military justice was to be discontinued. Central to this policy was the order issued by Franco’s personal department, the *Presidencia de Gobierno* on 25 January 1940.¹¹² This codified the crime of military rebellion in the context of the civil war. Its aim was to eliminate ‘inequalities that may have occurred and have occurred in many cases, given . . . the lack of uniformity of criteria to judge and punish similar crimes of equal seriousness’. The order established, in an annexe, eighty-two different types of ‘rebellion’, divided into six general groups.¹¹³ The predominance of ‘blood crimes’ among the most serious offences is clear. Thirteen of the seventeen offences listed as warranting an automatic death penalty are for participation in murders.

However, the vague wording of many listed offences in the annexe is also apparent. Although membership of a Popular Front organisation is not specifically listed as ‘rebellion’, individuals could be sentenced to twenty years and a day for having been ‘agitators or propagandists of the Marxist or revolutionary parties against the Movement’.¹¹⁴ Therefore the significance of the annexe lies not in the text alone but in how the regime wanted it to be interpreted. The other sections of the order imply that military tribunals had generally been too harsh in sentencing. Article 1 established in every province a revision commission to re-examine in the light of the new sentencing criteria all sentences imposed prior to the issuing of the order. They were forbidden to recommend sentences higher than those originally imposed.¹¹⁵

The January 1940 order, then, effectively ended the autonomy of military tribunals. Judge advocates could reduce the length of a sentence with reference to the annexe without referring the case to the Military Supreme Court. In March 1940 a Madrid military tribunal sentenced Eladio Campeno, an ex-Popular Front councillor and leading trade unionist in the village of Torrelaguna, to thirty years’ imprisonment.

¹⁰⁹ *BOE*, 11 Nov. 1939.

¹¹⁰ José E. Leiva, *En nombre de Dios, de España y de Franco. Memorias de un condenado a muerte* (Buenos Aires: Unión Socialista Libertaria, 1948), 165.

¹¹¹ Francisco Aylagas, *El régimen penitenciario español* (Madrid, 1951), 85, quoted by Vinyes, ‘El universo penitenciario’, 161.

¹¹² *BOE*, 26 Jan. 1940.

¹¹³ This annexe, despite its importance, remains unpublished. An abridged version can be found in José M. Sabín, *Prisión y muerte en la España de postguerra* (Madrid: Anaya & Mario Muchnik, 1996).

¹¹⁴ Group 3, No. 9.

¹¹⁵ Art. 3. The revision commissions would make their recommendations – based solely on an examination of the sentence – to the relevant higher juridical military authorities, which then took the final decision.

The judge advocate reduced this to twelve years and a day. By January 1944 Campeno was out of prison.¹¹⁶

Crucially, the January 1940 order also reduced the likelihood of executions. My work on death sentences in Madrid suggests that from after 1941 over 50 per cent ended with a commutation. In the vast majority of such cases, the judge advocate had previously recommended a commutation on the argument that, according to the criteria established in January 1940, the evidence of participation in 'blood crimes' was insufficient to warrant the death penalty.¹¹⁷ The sense that January 1940 marked a crucial turning point in the post-civil war repression can be seen in the following case from Madrid. In April 1939 Carmen Rodríguez was sentenced to death for being an agent of the Republican military security service, the SIM. The sentence was approved by Franco but suspended pending investigation into the SIM's activities against the clandestine fifth column. When her case was re-examined by the judge advocate in 1941, he recommended that the sentence be commuted on the basis of the January 1940 order. In January 1942 Rodríguez's sentence was revised to twenty years' imprisonment.¹¹⁸

It must be stressed that the January 1940 order marked the beginning and not the end of the process of winding up mass military justice. It would prove to be a protracted exercise. This was partly because of the severity of the crisis. On 29 October 1940 the director-general of prisons, Máximo Cuervo, informed Franco that Spanish prisons held 106,130 inmates convicted by military tribunals, including 8,340 condemned to death. However, there were 33,896 prisoners with unconfirmed sentences and 94,286 who were still awaiting trial.¹¹⁹ However, there was much bureaucratic inertia. Although the work of the sentence revision commissions was accorded the highest priority, the process of reducing sentences imposed in 1939 was painfully slow. Sometimes the delay was simply too long. The Republican poet Miguel Hernández, sentenced to death in January 1940 but reprieved the following June, had his sentence revised again to twenty years and a day by a revision commission in October 1944. Hernández had already died in Alicante jail, in March 1942.¹²⁰

It also appears that the revision commissions – composed of military lawyers – were slow to appreciate the objective of their work. On 15 March 1940, the Air Minister, General Yagüe, reported to Franco on the progress made by the commission dealing with sentences involving airmen.¹²¹ The person responsible for the massacre of militiamen in the Badajoz bullring in August 1936 complained that the Commission's recommendations were generally 'too harsh', and did not formulate its decisions on 'the necessity to resolve the general penitentiary problem in harmony with national needs'. These complaints about the failures of the military bureaucracy were echoed

¹¹⁶ AGA, J(RP) 1394.

¹¹⁷ Ruiz, 'Justicia Militar', 98.

¹¹⁸ AGA, J(RP) 1094. For the fifth column in Madrid see Cervera, *Madrid en guerra*.

¹¹⁹ *Documentos Inéditos para la Historia del Generalísimo Franco* (Madrid: Fundación Nacional Francisco Franco, 1992) (hereafter FNFF, *Documentos*), vol. 2(i), 386–7.

¹²⁰ Juan Guerrero Zamora, *Proceso a Miguel Hernández. El sumario 21.001* (Madrid: Dossat, 1990), 106.

¹²¹ AGA, P 4036.

by Cuervo in a report to Franco in May 1940. He admitted that 'the laws dictated in the last months . . . have been less effective than they should have been'. He held the Military Juridical Corps responsible, since it failed to recognise 'the extremely grave problem that it has in its hands and the pressing and serious need to bring to an end its liquidation'.¹²²

However, the period 1941–3 marks the decisive period of the Franco regime's policy of winding up mass military justice. In 1941 the process of shelving incomplete military investigations, begun in the spring of 1940, was accelerated.¹²³ Paroled inmates increasingly joined those who left prison without trial. Prisoners became eligible en masse following an April 1941 decree that ordered the release of anyone sentenced to twelve years' imprisonment or less for civil war offences.¹²⁴ This threshold was increased to twenty years in March 1943,¹²⁵ and finally in December 1943 extended to those prisoners with sentences up to and including the maximum, thirty years, providing that they were not authors or instigators of 'blood crimes'.¹²⁶ All individuals convicted of civil war offences, except those excluded for parole for 'blood crimes', were pardoned by decree in October 1945.¹²⁷

The effects of the regime's parole policy on the prison population can be seen in the following internal figures compiled by the Justice Ministry in the 1940s. In 1941, 47,234 prisoners had been paroled, in 1942, 29,353, and in 1943, 57,549. In 1944 and 1945 only 24,721 and 9,860 civil war prisoners respectively were released, suggesting the belated effectiveness of the revision commissions in reducing even the longest prison sentences issued in 1939.¹²⁸ Thus Allied victory in the Second World War marked not the beginning but essentially the end of the Franco regime's parole policy; by February 1952 only 829 were still serving sentences for civil war offences in Spain.¹²⁹

This is not to suggest that the ending of mass repression in the early 1940s was ever based on reconciliation. The last death sentence by a military tribunal for civil war 'crimes of blood' was issued as late as April 1963 against the Communist leader Julián Grimau.¹³⁰ The regime never substantially altered its ideological vision of the civil war presented by Serrano Suñer's commission in February 1939. In July 1965, Franco reminded his cousin, Franco Salgado, that the military rose in July 1936 to 'save Spain from chaos'.¹³¹ The preamble of the 1969 decree that finally proscribed all civil war offences still referred to the conflict as the *Guerra de Liberación*.¹³²

¹²² FNEF, *Documentos*, vol. 2(i), 176–7.

¹²³ For this see Ruiz, 'Justicia Militar', 134–5.

¹²⁴ BOE, 1 April 1941.

¹²⁵ BOE, 31 March 1943.

¹²⁶ BOE, 20 Dec. 1943.

¹²⁷ BOE, 20 Dec. 1945.

¹²⁸ AGA, J(RP) 456.

¹²⁹ AGA, J(RP) 174, 456.

¹³⁰ Payne, *Franco Regime*, 501.

¹³¹ Quoted in Juan Pablo Fusi, *Franco. Autoritarismo y poder personal* (Madrid: El País, 1985), 66.

¹³² BOE, 31 March. 1969.

The regime also continued to conflate political opposition with disorder and criminality. It would ruthlessly eliminate clandestine anti-Francoist political activity until the dictator's death in 1975. In response to the activities of the Communist-led guerrilla movement, the Maquis, the regime issued a law against 'banditry and terrorism' in April 1947.¹³³ The charge of 'military rebellion' would remain a favoured means of punishing political dissidence. In 1974–5, at least 305 civilians appeared before military tribunals accused of 'insulting' the armed forces, 'disobedience' towards a military authority or threatening the security of the state.¹³⁴ From December 1963 the work of military tribunals was buttressed by the creation of a special civil court, the Public Order Tribunal (TOP). Its task was to punish those who 'subvert the basic principles of the state, disturb public order or sow unease in the national conscience'.¹³⁵ In 1974–5, 2,291 cases were opened by the TOP.¹³⁶ So although from the early 1940s the regime no longer demanded that criminal and political 'responsibilities' arising from the civil war be punished, it expected passive, if not active, acquiescence.

The coexistence of mass parole of civil war prisoners and vigorous suppression of political opposition in 1940s Spain is not unique. It anticipated – on a much greater scale – the 'normalisation' that took place at the end of the Greek civil war in 1949. Following the defeat of the communist guerrillas by the US-backed right-wing government, a series of decrees reduced the number of political prisoners from 40–50,000 to 4,458 by 1955.¹³⁷ Yet the Greek authorities always denied that a civil war had taken place, preferring to see it as a 'bandit war'.¹³⁸

If the ending of mass repression after the Spanish civil war is not unique, neither is it meaningless. The release of tens of thousands of prisoners in the early 1940s fits ill with the argument that for the Franco regime 'the Spanish working classes became what the Jews were to that other, more notoriously renowned Volksgemeinschaft'.¹³⁹ In any case, one does not have to believe in Francoist 'plans' or 'blueprints' of extermination to argue that the military rebellion of July 1936 was concerned with protecting Spain from 'internal enemies' such as left-wing Popular Front organisations and Catalan and Basque nationalists. Given the established tradition of military intervention in civilian affairs, the military rebels saw themselves as re-establishing 'the principle of authority'. In the context of the failure of the rebels to take control of the Republican state, and the fragmentation of power in the Nationalist zone, the re-establishment of 'the principle of authority' often meant the physical elimination of 'internal

¹³³ Ballbé, *Orden*, 421. The best general account of the Maquis that makes use of recent research is Secundino Serrano, *Maquis. Historia de la guerra antifranquista* (Madrid: Temas de Hoy, 2001). Serrano estimates that a maximum of 7,500 guerrillas were part of the Maquis between 1939 and 1952, with perhaps 2,824 casualties.

¹³⁴ This figure includes five members of the Basque separatist group ETA and the revolutionary FRAP shot in September 1975 for the murder of three policemen. Ballbé, *Orden*, 452–3.

¹³⁵ *BOE*, 5 Dec. 1963.

¹³⁶ Juan José del Águila, *El TOP. La represión de la libertad (1963–1977)* (Barcelona: Planeta, 2001), 260.

¹³⁷ Voglis, *Becoming a Subject*, 223.

¹³⁸ *Ibid.*, 66–7.

¹³⁹ Helen Graham, *The Spanish Republic at War* (Cambridge: Cambridge University Press, 2002), 123.

enemies' in summer 1936. However, the institutionalisation of the Nationalist state from the winter of 1936–7 meant that the restoration of 'the principle of authority' increasingly acquired a different meaning. Instead of being arbitrarily murdered, 'internal enemies', especially those suspected of 'blood crimes' in the Republican zone, were punished by military tribunals for the crime of 'military rebellion'. By 1940, it was the crisis of mass military justice that challenged the 'principle of authority' and the regime opted to bring to an end the whole process of punishing civil war crimes. In other words, while the broad objective of the repression remained constant, the context in which it was pursued changed radically after July 1936. Exterminatory interpretations, based essentially on the bloody summer of 1936, distort our understanding of the dynamic nature of the repressive process.