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# Explaining Prolonged Silences in Transitional Justice: the disappeared in Cyprus and Spain

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## Abstract

The article examines why some post-conflict societies defer the recovery of those who forcibly disappeared as a result of political violence, even after a fully-fledged democratic regime is consolidated. The prolonged silences in Cyprus and Spain contradict the experience of other countries such as Bosnia, Guatemala and South Africa, where truth recovery for disappeared/missing persons was a central element of the transition to peace and democracy. Exhumations of mass graves containing the victims from the two periods of violence in Cyprus (1963-1974) and the Spanish civil war (1936-1939) was delayed up until the early 2000s. Cyprus and Spain are well suited to explain both prolonged silences in transitional justice and the puzzling decision to become belated truth seekers. The article shows that in negotiated transitions, a subtle elite agreement links the non-instrumental use of the past with the imminent needs for political stability and nascent democratization. As time passes, selective silence becomes an entrenched feature of the political discourse and democratic institutions, acquiring a hegemonic status and prolonging the silencing of violence.

**Keywords:** Transitional Justice; Cyprus Conflict; Spain; Enforced Disappearances; Negotiated Transitions; Post-Transitional Justice; Politics of Memory

## Introduction

Although Federico García Lorca is a famous *desaparecido* (disappeared) of the Spanish civil war, he and approximately 30,000 ‘forgotten’ Republican victims are still lying in mass graves.<sup>1</sup> Lorca’s fate epitomizes a central debate in contemporary Spanish society: should the country ‘unearth’ the truth about the civil war (and search for the bodies of the disappeared) or is it better to continue to ‘silence’ the divisive past? Spain is not the only Mediterranean country dealing with the past. During the two waves of violence in Cyprus, namely, the inter-communal violence (1963-1974) and the subsequent Turkish invasion (1974), approximately 2,000 Greek-Cypriots and

Turkish-Cypriots went missing. Disappearances were political acts deployed by both communities to cleanse the island of the presence of the ethnic ‘Other’ an effort to fulfil official political objectives. Until quite recently, there has been little effort to recover the bodies – or the truth.

Since the 1970s, the phenomenon of enforced disappearances and the ensuing demand by relatives to acknowledge the truth have shaped the development of transitional justice<sup>2</sup> in societies emerging from conflict or authoritarianism. The unprecedented grassroots mobilization in several South American countries of the relatives of *desaparecidos* seeking the acknowledgment of truth resulted in the first official bodies mandated to establish an authoritative version of human rights abuses in the mid-1980s (Neier 1999:40). For example, the strenuous efforts of the ‘*Madres de Plaza de Mayo*’ in Argentina led to the establishment of CONADEP, a body much like a truth commission with specific emphasis on the *desaparecidos*; similar coordinated efforts by relatives culminated in truth commissions in Bolivia, Chile and Guatemala, to name only a few. Since then, truth commissions have become a central tool of transitional justice (Hayner 2002).

Moreover, the persistent efforts of the relatives’ associations led to landmark legal decisions, gradually constructing an international normative context which reserves a central position for ‘truth’ and enforced disappearances. The most significant recent development is the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (Scovazzi and Citroni 2007). The Convention is the first universal instrument of its kind and represents a breakthrough; it ascribes the inalienable right of the relatives of a missing persons to ‘know the truth’ (art. 24, par. 2)<sup>3</sup> regarding the fate of the disappeared and the conditions of their disappearance. Hence, although the right to truth is still emerging in international law

and is not explicitly stated in international treaties (Mallinder 2008:163), the crime of enforced disappearances creates specific rights to truth for victims' relatives in several treaties.

It is in this revised normative context that such concepts as transitional justice, reconciliation and truth recovery have become central components of the policy-making agenda. Note, for example, the recent decisions by international organizations, most importantly the UN, to draw from a standard transitional justice toolbox in their peace-building initiatives (UN 2004). Given this, it is not surprising that a growing number of post-conflict countries choose human rights trials and other policies of accountability to comprehensively address the violent past, leading to a 'justice cascade' (Lutz and Sikkink 2001). Even more interestingly, these normative pressures encourage societies to overturn prolonged silences, even several decades after transition, a phenomenon called post-transitional justice (Aguilar 2008; Collins 2010).

In the midst of this burgeoning change, Cyprus and Spain pose a complex dilemma. Contrary to the experience of other countries with disappeared/missing persons, such as Bosnia, Chile and Guatemala, where the mobilization of (civil) society to recover the missing persons was a central element of the transition to democracy, Cyprus and Spain remained (selectively) silent for a remarkably long period after their respective democratic governments were consolidated and are only now unearthing bodies and truths. Interestingly, although Latin American societies had limited access to legal and institutional tools, they mobilized earlier and more effectively to address the demand for truth than did Spain and Cyprus, even though the latter were members of influential international organisations. One would expect

societies with advanced legal instruments to be more proactive and effective in resolving human rights issues but this was not the case.

Why do certain societies defer the acknowledgment of human rights problems even when democracy has been fully consolidated? How is this silence constructed, maintained and perpetuated? How (if at all) do transitional justice settlements persist over time? Finally, what explains the recent efforts of a growing number of countries like Spain and Cyprus to establish the truth and overturn prolonged silences, even several decades after the transition?

It is argued that an early elite consensus, frequently informed by political learning from past experiences, links the non-instrumental use of the past with the political and security priorities of the nascent regime. Ultimately, this leads to strong institutionalization. As time passes, a 'linkage trap' is constructed, whereby selective silence becomes a well-entrenched and hegemonic feature of the political discourse and democratic institutions. Eventually, this hegemonic linkage narrows the variety of alternative policies and sidelines dissenting voices. Paradoxically, this linkage frequently provides the necessary tools for domestic truth seekers to acknowledge past human rights abuses, albeit in the long term.

The article contributes to the growing (post)transitional justice debates, by highlighting the importance of domestic political actors in shaping or limiting external normative pressures. The decision of political elites to overturn prolonged silences is often informed by electoral, security symbolic and other domestic political considerations rather than driven by normative adaptation to external pressures. This is a gradual and often reversible process, influenced by the structure of domestic politics. The article also notes that the phenomenon of post-transitional justice is enhanced by unprecedented developments in forensic science. Uncontested forensic

evidence legitimizes previously excluded voices, thereby encouraging truth-seeking initiatives to mobilize, even belatedly.

The article begins with a critical review of the literature of transitional justice, focusing on the absence of an analytically rigorous presentation of central working concepts. Drawing on the innovative tools of ‘elite framing’, it then explains the above-mentioned puzzles in Cyprus and Spain and sheds light on the causal mechanism through which silence over past humanitarian issues is constructed and perpetuated. It concludes with insights relevant to the study of (post)transitional justice.

### **Enforced Disappearances and Truth Recovery in Transitional Justice**

Although the concept of truth recovery in transitional settings has gained currency over recent decades, it has been used to refer to a wide range of different – even contradictory – phenomena. It remains contested whether truth recovery constitutes a *means to a higher end* (i.e. reconciliation) or *an end/value in itself*. It is equally undetermined if truth refers to *a process* (i.e. truth-telling) or *an outcome* (i.e. report of a truth commission). Nor have scholars determined whether the *scope of truth is individual* (micro-truth) or *social* (macro-truth).

In essence, the literature fails to address a number of ontological, epistemological and political problems. To get around this problem, this article adopts a bifurcated view of truth recovery. On the one hand, *narrow truth recovery* is used to refer to a minimalist conception of truth, more precisely, to forensic evidence related to the whereabouts of the disappeared/missing persons. Since the early 1990s forensic exhumations have become a conventional tool of international institutions in addressing the individual (narrow) demand for truth (Stover et al 2003:663-664). On

the other hand, *wider truth recovery*, indicates the official and unofficial efforts of societies emerging from conflict or authoritarian regimes to democratize the process of dealing with the past (Smyth 2007), by broadening the accessibility to the public discourse of previously excluded voices. These range from truth commissions, to tribunals, traditional justice, community-story-telling initiatives and official apologies. Needless to say, these conceptions of truth are not contradictory and frequently overlap.

Based on the ‘Peace Accord Matrix’ of Kroc Institute, Table 1 identifies a number of countries as truth-seeking or non-truth seeking, relating this to the type of settlement reached – negotiated or non-negotiated. A careful examination of the table reveals the explanatory strengths and limitations of transitional justice literature. Three main groups of countries emerge from the table.

[Insert Table 1 about here]

In the first group, shown in the bottom boxes, the absence of a comprehensive peace settlement, as in the case of Eritrea-Ethiopia, can explain the decision to abstain from addressing the past. Elsewhere the *total victory (or collapse)* of one of the parties in conflict, as in the Philippines, creates conducive conditions for the winning side to decide whether to address the past. Meanwhile, in places like Cambodia or Timor-Leste where *international involvement* constitutes a central feature of transition/peace-building initiatives, transition is followed by some form of (narrow or wide) official acknowledgment of the problem of disappearances, most significantly through the establishment of retributive models of accountability. The proactive involvement of international institutions includes the contribution of material resources, as well as logistic support to undertake exhumations or establish war

crimes tribunals and truth commissions (Sriram 2004:25; UN 2004) and reflects an entrenched commitment to the normative principles of transitional justice. A normative thread seems to be linking a growing number of scholars who insist that societies in transition who address human rights violations, such as enforced disappearances, are more likely to strengthen the rule of law, prevent recourse to self-help justice, develop respect for human rights culture and educate citizenry in democratic practices (Elster 2004; Méndez 2001:32; Minow 2002). The growing use of the tool of human rights trials in most societies where international organizations are engaged in peace-building, bolsters the argument that the norm of accountability for grave human rights violations has created the ‘justice cascade’ mentioned above (Sikkink and Walling 2007; Lutz and Sikkink 2001).

A second group, at the top left of the table, involves cases of *negotiated transitions/peace settlements*, where the transition was followed by some sort of acknowledgment of the problem of the disappeared.<sup>4</sup> It seems that a significant number of countries have opted to acknowledge human rights abuses despite the fragility of the peace/democratization processes. In fact, certain landmark cases that have shaped contemporary debates on transitional justice, such as Argentina and Chile, could have been included in this box. It is revealing that all societies who experienced a pacted transition and decided to come to terms with their past – with the exception of Croatia – chose the establishment of a truth commission over measures of retributive justice. In essence, this column reaffirms the view of a growing number of scholars who include truth commissions as novel and superior tools in the transitional justice toolbox (Hayner 2002). Truth commissions have historically been seen as ‘second-best’ alternatives, located somewhere between the impossibility of retributive justice prohibited by the pacted nature of the transitions



and the growing demand for truth in societies with missing persons (Neier 1999:40). More recently, truth commissions have been transformed; their functions include the ability to restore the dignity of victims, to uproot long-standing myths that bolster violence and cultures of victimhood (Rotberg 2000) and to break the cycles of violence (Minow 2002), thereby becoming a central instrument of transitional justice (Brahm 2007;Hirsch 2007).

But that is not the whole story. One would expect that in the post-1989 period, when the tools (including binding legal instruments, the centrality of human rights on the international agenda and DNA testing) were available to recover the (narrow or wider) truth about missing persons, more societies in transition would have acknowledged the truth and provided societal closure. But as the third group, shown at the top right of the table reveals, more than half the countries who experienced a negotiated transition have resisted – for the time being – these external pressures. In fact, as the experiences of Mozambique and Northern Ireland indicate, they have primarily designed policies based on amnesties and silence. A number of realist scholars subscribing to the ‘logic of consequences’ (Snyder and Vinjamiri 2003) have long argued that because transitions/peace agreements are fragile processes, any effort to comprehensively address the past may upset ‘spoilers’ who perceive truth recovery initiatives to be blatant scapegoating and thus endanger the transition (Vinjamuri and Snyder 2004:225). In essence, these scholars insist that scrutinizing the past is not a normative decision but a political one and, as such, any measure that could contribute to the stability and consolidation of the regime could legitimately be used, even if this requires the adoption of amnesties, impunity, forgetting and silence (Cobban 2006; Mallinder 2008; Mendeloff 2004).

Spain and Cyprus are outlier cases and do not fit well into the table. Spain would have initially been included in the top right quadrant. During the transition to democracy (1975), Spanish society and political elites decided to establish a ‘pact of silence’ and literally and figuratively bury these complex issues. Still, in a remarkable *volte face*, 70 years after the conclusion of the civil war and almost 30 years after the consolidation of democracy, Spain started digging into its past (Aguilar 2008), moving it to the top left box. For its part, Cyprus is the only case where despite the absence of a political settlement of the conflict, a successful mechanism has been established to address the demand for (narrow) truth recovery of Turkish-Cypriot and Greek-Cypriot missing. It therefore makes sense to use these two societies to comprehensively test the central arguments of transitional justice literature.

With the exception of Northern Ireland, the literature of transitional justice has focused on ‘success stories’ (i.e. where truth recovery is central in the transition) such as South Africa, the former Yugoslavia and Guatemala (Thoms et al 2008). Little notice has been taken of cases where the truth recovery for missing persons and transitional justice has been absent, such as Cyprus and Spain. Moreover, by focusing explicitly on the period of transition, or immediately following it, the literature has failed to notice that although societies during transition may decide to defer the solution of human rights issues this does not necessarily mean that a demand to acknowledge this will not emerge in the future.

Furthermore, the transition in Spain and the cessation of hostilities in Cyprus took place well before the above mentioned normative turn in the 1990s. Rather, they occurred at a time when foreign intervention for human rights was minimal, thereby making these two countries instructive examples on how societies can manage humanitarian problems in the absence of the ‘international factor’. Finally, the time-

lag permits us to draw safer conclusions, test alternative hypotheses and examine causal patterns of silence/non-silence over human rights abuses, than if we use more recent cases. For all these reasons, Cyprus and Spain are well suited to explain both prolonged silences in transitional justice and the decision to become belated truth seekers.

### **Political learning, negotiated transitions and silences**

In societies emerging from conflict, the guidelines for what will be remembered and what will be excluded from public discourse are drawn up during the transitional period. Therefore, the study of transitions provides useful insights into the (non)solution of human rights problems and the long term effects of transitions. As Diagram 1 indicates below, elite consensus is significantly facilitated – often dictated - by transitions that result from a pact between the major political forces. In cases of pacted transitions, there is a need to set a least common ideological denominator upon which to build the consensus for the new political regime.

[Diagram 1 here]

A decision to silence contentious incidents of the past, such as the Spanish Civil War, or to ‘selectively remember’ the past in a way that accentuates a culture of victimhood, as in Cyprus, is frequently identified as the most appropriate basis for consensus in transitions to democracy. More than politics is at stake here. The burgeoning field of ‘memory studies’ has shown that a common feature of post-traumatic societies is the conscious decision to forget certain painful aspects of the past (Brewer 2010:147;Connerton 2008:60). In a notable case-study commonly used in transitional justice literature, post-World War II (West) Germany’s transition in the

1950s is characterized by the social amnesia of Germans – forgetting what they did and also what was done to them (Misztal 2005:1327).

A subtle agreement is frequently reached between parties previously in conflict to ‘link’ the non-use of the bitter past to the political arena in exchange for a commitment to the new democratic political regime. Since negotiated transitions are perceived to be second-best alternatives for all parties, contentious issues like truth recovery are often excluded; public debate raises the issue of responsibilities and might easily become a ‘blame game’, endangering the whole agreement. For example, in Northern Ireland, the IRA remains sceptical of opening a formal truth recovery process on the issue of the disappeared, as this would raise the thorny issue of responsibilities (Guelke 2007:285). In this way, silence or selective memories become ingrained in political discourse. As noted, eventually, the elite framing becomes institutionalized and hegemonic; this may be the most effective path to peace, stability and democratic consolidation, but it decreases the prospect and scope of truth recovery.

The process of consensus-building described here is often facilitated, even dictated, by the painful experiences of the past which act as political lessons at crucial historical junctures, such as transitions.<sup>5</sup> According to Bermeo, ‘crises often force people to re-evaluate the ideas that they have used as guides to action in the past. The changed ideas may relate to tactics, parties, allies, enemies, or institutions’ (1992:274). As Bermeo sees it, a lesson can be learned by considering similar experiences of other countries in the international arena (horizontal lesson) or considering a similar preceding period in a society’s history (vertical lesson) (ibid).

Elite settlements, although providing a conducive environment for promoting democracy and peace, not to mention the ideal environment for resolving urgent

problems (economy, reconstruction, institution-building), are achieved at the expense of the quality of the emerging democracy. Negotiated transitions tend to concentrate power in the hands of a few political elites and inhibit open democratic procedures; they restrain the development of a vibrant civil society and slow the development of political and civil rights (Encarnación 2003; Licklider 1995:685; Linz and Stepan 1996:56).

The most significant side-effect of ‘pacted transitions’ is the demobilization of civil society. Main sources of truth-seeking in post-conflict/post-authoritarian regimes are vocal civil society groups associated with the victims; in negotiated transitions, like Cyprus and Spain, these remained silent. As noted above, in both Cyprus and Spain an early elite consensus to link the non-instrumental use of the past with the need for political stability led to the creation of a hegemonic discourse. Once a frame becomes hegemonic, inconvenient questions that contravene or challenge it are excluded from public debate. As Ian Lustick says, hegemonic discourses ‘exclude outcomes, options or questions from public consideration’ (1993:121). This does not mean that frames are permanent or immutable: new legal, scientific, economic or political developments may force elites to slightly revise their proffered frame to sustain its hegemonic role and prevent its crumbling. However, if the intensity and significance of the new developments outshine the ability of frame-makers to incorporate them smoothly in the existent frame, then the hegemonic frame loses its explanatory value and collapses.

## **Methodology**

Elite framing is a useful tool to study the policy outcomes that prevent truth recovery. The framing process has two analytical components. The first stems from the need to

identify the source(s) of the problematic situation and attribute responsibility: this could be termed ‘legitimizing framing’ (Benford and Snow 2000). It presumes that the present situation is unjust, and grievances are due to the actions of another agent or conditions outside the control of the ‘in-group’ (Gamson 1992; Klandermans 1997). The second, ‘motivational framing’, derives from the need to change the problematic situation; it leads to the creation of a strategy to accomplish change (Benford and Snow 2000).

Framing ‘select[s] some aspects of a perceived reality and make[s] them more salient in a communicating text, in such a way as to promote a particular problem, definition, causal interpretation, moral evaluation, and/or treatment recommendations’ (Entman 1993:52). The primary function of frames is to ‘organize experience and guide action’ (Snow et al 1986:464); thus, a core element of the framing process is the degree of instrumentalization in the definition of an issue. The framing process determines ‘reality’ because of its ability to highlight certain aspects of reality while ignoring others (Benford and Snow 2000). As Entman aptly notes, ‘The frame determines whether most people notice and how they understand and remember a problem, as well as how they evaluate and choose to act upon it’ (1993:54). Because policy-makers and ordinary people deploy these simplified mental images to interpret social events and choose among alternative courses of action (Tetlock 1998:876), framing is a useful tool for analyzing certain aspects of a conflict, in this case, truth recovery for missing persons.<sup>6</sup>

In this article, I employ an innovative, multi-method approach to ‘elite framing’ (Benford and Snow 2000), drawing on an extensive and comprehensive study of parliamentary speeches in two countries over the last three decades. This analysis is coupled with process tracing to identify the causal mechanism by which

the specific elite framing adopted during transition prevented the scope of truth recovery in Cyprus and Spain (George and Bennett 2005:215). In the wide-ranging archival work that preceded the analysis, I read parliamentary debates, seeking to trace the construction of elite discourse(s). I also had limited access to classified documents from the Cyprus House of Representatives and memos prepared for the Ministry of Foreign Affairs of the Republic of Cyprus. Finally, I examined party documents, such as electoral programmes and party memoranda. All these helped me to determine the development of the political discourse. The interviews I conducted with politicians shed light on why certain policies were chosen over others at specific junctures; and my interviews with individuals with privileged information allowed me to ‘triangulate’ my hypotheses.

The study of parliamentary debates has several advantages. For one thing, it allows the analyst to pinpoint a certain framing which is adopted at a very specific time; actors cannot retrospectively change their positions to suit temporal changes in context (Loizides 2009). For another, it facilitates process-tracing, or the construction and maintenance of elite discourse over the long-term.

### **Spain: Disappeared and *El pacto de silencio***

What becomes apparent from the Spanish parliamentary debates<sup>7</sup> is that the issue of the *desaparecidos* was not raised until the early 2000s.<sup>8</sup> This prolonged silence poses a methodological problem in the elaboration of the elite framing. To overcome it, I pursue two complementary paths. First, I analyze the debates on other victims’ groups: those mutilated in the civil war, the widows and children of the fallen and ex-prisoners. I consider the difference between the treatment of their demands and the silence over the issue of *desaparecidos* and relate this to elite framing. Second, I

examine the debates on the Amnesty Law (1977), generally perceived to be the founding tenet of the transition. The two sets of analyses, coupled with my interviews of members of the designated parliamentary commission and my study of electoral programs overcome this methodological concern.

The debate on the Amnesty Law of 1977 is revelatory of ‘legitimizing framing’. In it, the civil war is presented as a period of ‘collective madness’ where both sides committed heinous crimes. The attribution of responsibility is strictly avoided: clearly, there is no ‘rational’ actor to blame for the immense tragedy (Aguilar 2002). An example of this diagnostic framing appears in the words of the spokesperson of the governing party, *Unión de Centro Democrático* (UCD); in a 1978 reference to the debated law on pensions for widows and orphans, Bravo de Laguna Bermudez says:

[T]hose widows and orphans that today we talk about....are not merely widows or orphans of the communists, of the socialists, or anarchists, but widows and orphans of the tragic Spain ... We can give different explanations about what happened between 1936 and 1939, but in any case, it was a national tragedy. (Parliamentary Debates Num.141, 23/11/78:5576-8)

He goes on to proffer strategies to alter the situation (‘motivational framing’). In effect, two central framing strategies link the silence on humanitarian issues with the legitimacy of the transition: the establishment of a wide political consensus to bury the divisive past and achieve reconciliation – seen as a precondition for democratic consolidation; and the adoption of an instrumental rationale for redressing victims groups’ (material) needs for closure.

The element of learning from past experiences is evident in the speeches on the Amnesty Law and the Draft Law. The former Law is framed as the *symbolic*



*closure* of a prolonged period of divisions and the beginning of a new democratic era. During its debate, a representative of the Socialist Party insisted: ‘Today is the date, in which finally, the civil war is buried’ (Parliamentary Debates Num.24, 14/10/77:965-8). Throughout the Parliamentary records, the need to bury the past is seen as the distilled experience of painful lessons, even by the representatives of the ‘defeated’, most notably communist leader Santiago Carillo (Parliamentary Debates Num.5, 27/7/77:73-76). In the interviews I conducted with members of the Designated Parliamentary Committee for drafting the Law on Historical Memory, in 2004, almost all still subscribed to this prognostic framing, saying that an agreement to bury the past was mandatory at the time (Anonymous Interviews, 6 May 2009 and 18 May 2009).

The other tenet of motivational framing highlights the *instrumental rationale* of accommodating the victims groups’ demands. More specifically, reparations are granted to certain groups not as an acknowledgment of their suffering or their contribution to a noble cause but to comfort the disaffected, including reparations to widows and orphans (Parliamentary Debates Num.141, 23/11/78:5575-6) and military pensions (Royal Decree 6/1978). In part, these are acts of benevolence – not justice. They are perceived as solving problems not covered by the Amnesty Law; therefore, they are treated as solutions that will enable closure (*punto final*) and accelerate the processes of national reconciliation and democratic consolidation (Aguilar 2008:420).

Still, *desaparecidos* are excluded from this framing. Oddly enough, at approximately the same time as the amnesty debates, unofficial exhumations were carried out in Spain. My archival research shows that from 1977 and throughout this first step towards democracy, exhumations took place around the country. In fact, a popular magazine of the time, *Interviú*,<sup>9</sup> featured detailed coverage of the efforts of

the relatives of *desaparecidos* to exhume the graves and provide their loved ones with a decent burial (Interviú 21/12/1978; 3/01/1980). Although in other transitional places (Latin America), these grassroots processes have led to strong social movements, in Spain, they lost momentum and succumbed to the overriding hegemonic discourse.

Why was the issue of *desaparecidos* silenced when the demands of other victims groups were accommodated? I have two overlapping responses, the first focusing on the top echelons and the second on the grassroots, both related to the side-effects of the specific elite framing.

First, political exhumations ('narrow truth') or policies of acknowledgment ('wider truth') for the *desaparecidos* and the political violence would have raised questions of political responsibility. Asking and answering the question 'who did what to whom?' had the potential to derail democratic consolidation. Therefore, any truth-seeking initiative was out of the question because it contradicted the *raison d'être* of the proffered framing, namely, to abstain from using the past as a political argument in debates.

A second overlapping explanation considers the meagre participation of Spaniards in civic associations, a phenomenon described by Omar Encarnación as 'civic anemia' (2001:63). More than 20 years after the consolidation of democracy, only one in three Spaniards belongs to any voluntary association, levels similar to the post-communist regimes of Eastern Europe (ibid). For one thing, the legacy of the (pacted) transition led to the demobilization of the civil society, thereby hindering truth-seeking. For another, an endemic feature of Spanish political culture is the penetration/control of all sorts of civic associations by political parties, primarily through financial means (Encarnación 2003). To some extent, political parties have determined the agenda of the associations and defined their scope. As the early elite

framing became institutionalized and ‘hegemonic’, it narrowed the conception of national interest at the top and silenced grassroots practices that could contravene it. An indication of the hegemonic status of the discourse is its institutionalization in legislation and legal decisions. Ryan says that in 1979, an individual involved in an unofficial exhumation was reprimanded for carrying out ‘illegal exhumations’ (Ryan 2009:123). The legal institutionalization of this hegemonic belief is even obvious in the contemporary wave of exhumations. In a recent motion, Judge Baltázar Garzón argued that the systematic nature of the crime constitutes a crime against humanity, and therefore the 1977 Amnesty Law is inapplicable to cases of enforced disappearances (Motion 399/2006). The possibility of overturning the founding tenet of the transition, namely, the Amnesty Law, sparked heated political debate and opened up the prospect of Garzón’s expulsion.

The case of Garzón can be fully understood only within the wider post-transitional justice context in Spain (Aguilar 2008). More precisely, since the early 2000s, several grassroots organizations of relatives have mobilized to unearth their *desaparecido* ancestors, provide them with a decent burial, clear their reputation and acknowledge the corresponding (republican or democratic) version of truth about the Spanish civil war (Gálvez-Biesca 2006; Ferrándiz 2009).<sup>10</sup> The mobilization of the generation of the grandchildren of the disappeared exerted bottom-up pressure on the Socialist government, leading to the passage of the above-mentioned Law on Historical Memory which addressed central issues of transitional justice: denouncing Franco’s regime; banning public symbols that commemorate Franco or his allies; mandating local governments to finance exhumations of mass graves; declaring ‘illegitimate’ the summary military trials held during the civil war and Francoist

dictatorship; opening up military archives; and offering other measures of moral, symbolic and economic repair to all victims of the war (Law 53/2007).

In other words, more than three decades after the consolidation of democracy in Spain, a specific framing was ingrained in political institutions, the political system and legislation. Simply stated, its hegemonic status prevented truth recovery. Surprisingly, however, the prolonged silence was finally broken. Proof of this is the passage of the Law on Historical Memory and its fuelling of media and public debates.

### **Cyprus: selective memory and missing frames**

Tracing the elite framing of the problem in the RoC over the past decades reveals a number of downplayed or silenced issues. Take, for example, the official definition of the missing. Until 2003, a missing person was considered to be a ‘Greek-Cypriot who is still missing since the July 20th 1974, due to the Turkish invasion...and the state has no positive information that s/he died’ (Law Number 77/1979). Two interesting features of motivational framing are evident in this definition. First, the beginning of the problem of missing persons coincides with the Turkish invasion (20/7/1974), thereby indicating a conscious decision to causally link the issue of the missing with the invasion. Since 1974, 12 resolutions by the House of Representatives have assigned sole responsibility to Turkey; all were adopted unanimously (Resolutions Number 37/1975; N.46/1978; N.58/1980; N.113/1992;N.124/1997). Second, the Turkish-Cypriots who went missing as a result of the atrocities of Greek-Cypriot paramilitaries in the 1960s (Patrick 1976) are excluded, even though they are citizens of the Republic.

In other words, *selective memory* (or selective oblivion) became a founding tenet of the pact that facilitated the transition to peace and democracy in the RoC after the 1974 invasion. References to cases of missing persons, either Greek-Cypriots or Turkish-Cypriots preceding the Turkish invasion, would have seriously delegitimized the predominant discourse which identifies the Turkish invasion as the cause of the problem.

Motivational framing can explain the tactics of political elites in the addressing of the problem of the missing. They used two overlapping framing strategies: one emphasizing national unity and reconciliation by strengthening the institutions of the Republic as the only way to overcome the legacy of intra-communal division of the past within the Greek-Cypriot community and restore credibility to the RoC; the other using the symbol of wounds opened by the Turkish invasion to accentuate a ‘culture of victimhood’ and enable the construction of a new common basis of ‘unity’ for the Greek-Cypriot community.

Although the Turkish invasion is used as the focal point of the framing, it was preceded by growing intra-communal violence within the Greek-Cypriot community culminating in a short coup ousting President Makarios.<sup>11</sup> Leftists, frequently treated as traitors, were the targets of violent attacks during the anti-colonial struggle of EOKA (*Εθνική Οργάνωση Κυπρίων Αγωνιστών* - National Organization of Cypriot Fighters);<sup>12</sup> these peaked during the coup (Papadakis 1993). A number of civil society initiatives representing the relatives of those killed have recently emerged demanding that the state apologize for the human rights violations of leftists (Ireton and Kovras 2011). The legacy of intra-communal violence was so traumatic that it continues to create political cleavages within the Greek-Cypriot community. Nevertheless, in the overall ‘Cyprus problem’, even left-wing parties who suffered from nationalist

violence have subscribed to the frame prioritizing ‘national unity’. For example, on the first anniversary of the coup, when the memories of the intra-communal violence were still fresh, the leader of communist party AKEL officially declared that his party would ‘keep the flag of patriotic unity high’ (Parliamentary Debates 15/7/1975: 581). The Cypriot Communist party echoed PCE’s conciliatory tone in Spain, mentioning the need for concessions (‘silences’) to pave the way for democracy.

The Turkish invasion led to a revised framing, one focusing on unity and the traumas of the invasion. The missing became the central symbol of ongoing suffering, and political elites invested political capital in this framing. The official name of the designated parliamentary committee on missing persons (established in 1981), the Committee on Refugees-Enclaved-Missing and Adversely Affected Persons (discussed in greater detail below), underscores this political strategy. By linking all aspects of victimhood triggered by the Turkish invasion, it was expected to frame the problem in human rights terms, thereby enhancing international sympathy for the Greek-Cypriot negotiating position in the search for a political settlement to reunify the island.

As might be expected, the elite framing, in combination with the (*de facto*) division of the island in Cyprus facilitated the creation of a ‘highly censorious environment’, one ‘marked by taboos, intolerance and vilification of views deviating from the predominant governmental discourse and the official views of history’ (Faustman 2009:34). As in Spain, this culture has fettered the development of a vibrant and vocal civil society (Mavratsas 2003) which, as noted above, is a source of truth-seeking. Even the official organization of the relatives of the missing has interpreted human rights through the lens of national interests. In other countries with disappeared or missing persons, such organizations are the main sources of truth

seeking; but in the Greek-Cypriot community, they blocked truth recovery (Kovras and Loizides 2011). For example, in the mid-1990s, the relatives' association objected to the government's intention to exhume common graves in two Greek-Cypriot cemeteries on the grounds that this would lead to a 'cover-up' of the problem (ibid).

Despite the absence of a political settlement, in 2004 a bi-communal agreement was reached to resume the activities of the hitherto ineffective Committee on Missing Persons (CMP). 'De-linking' humanitarian issues like the missing – where the Republic of Cyprus had a moral advantage – was previously considered likely to weaken the overarching Greek-Cypriot political strategy for the reunification of the island. However, lessons learned from past policy failures by chief policy-makers, technological advancements that supported a revised policy and the domestication of new (legal and human rights) norms,<sup>13</sup> all contributed to the resumption of the CMP. It has now become the most successful bi-communal project on the island (UN 2007). By August 2010, 690 bodies had been exhumed and 248 identified (CMP 2010).

In addition, although the elite framing retained its founding tenets, it became less rigid and began to acknowledge the victimization of Turkish-Cypriots. Paradoxically, a dual framing process has facilitated the exhumations and the demand for (narrow) truth recovery. On the one hand, although the wave of exhumations is seen to reaffirm the dominant discourse of victimhood – i.e. every exhumation is an evidence of the Turkish aggression – there is strong incentive to encourage the effective working of the CMP. At the same time, the slightly revised framing that encompasses the Turkish-Cypriot missing, has led to institutional measures that introduce the (relatives of the) Turkish-Cypriot missing as legitimate political actors. This development has transformed the normative context within which domestic actors interact, leading to the support of the CMP even by actors or politicians who

previously had reservations. Despite the remaining political stalemate, the developments on the missing have instilled in the public and political discourse critical re-evaluation over responsibilities for the past – an element previously ‘missing’.

### **Lessons for (post)transitional justice**

The study finds that an early elite consensus and its institutionalized discourse is a double-edged sword in negotiated transitions. On the one hand, the deep institutionalization of the consensus excludes dissenting voices and prevents early truth recovery. On the other hand, it may be a necessary evil to achieve a minimum level of democratic consolidation and peace. Labelling this a ‘linkage trap’, I note that in negotiated transitions, a subtle elite agreement links the non-instrumental use of the past with the imminent needs for political stability and nascent democratization. Gradually, this silence is ingrained in the political institutions and the political culture; ultimately, this framing acquires a hegemonic status that is hard to challenge. But in the long term, this silence may be a necessary precondition for democratic consolidation. Alternatively put, there is an inherent paradox in consensual institutions: they are oriented towards reproducing the consensus (hegemonic belief) which silences the victims and civil society at large, but at the same time, they cultivate democratic institutions which provide the tools necessary for domestic truth seekers (such as civil society groups) to promote truth recovery and (post)transitional justice, albeit, in the long term.

Given this logic of consequences, political parties representing or affiliated with victims’ groups frequently hesitate to deal with the past, even if they assume power in the nascent democratic regime. The cases of PSOE and AKEL, in Spain and



Cyprus respectively are not exceptional. The consecutive Socialist governments (1981-1989 and 1993-2004) in Greece, while representing a significant number of those defeated in the Greek civil war have abstained from addressing the past. The same applies to Chile. In the aftermath of the 1989 referendum that ousted Pinochet, the centre-left *Concertación* coalition governed for four terms but made only marginal moves towards official acknowledgment of the past (Sandbu 2010). Political parties representing the defeated or past victims may prefer to disappoint their electoral constituents rather than trigger instability and endanger overarching objectives (i.e. democratic consolidation, economic development or reconstruction of state infrastructures).

However, this is just one part of the story, since at different post-transition periods, these same parties may decide to break the silence and campaign in the interests of victims groups. For example, during his Presidency in Argentina (2003-2007), Néstor Kirchner introduced measures calling for greater scrutiny of the past, most notably by declaring the ‘full-stop’ and ‘due obedience’ laws as null and void, as well as reopening trials for human rights abuses – including disappearances (*Economist* 2003). Similarly, in Uruguay, despite two referendums that rejected the annulment of the amnesties for human rights abuses during the military from 1973 to 1985, President Vázquez campaigned to abolish the amnesty law, arguing that it violated Uruguay’s obligations under international human rights treaties (*Economist* 2010a).

Hence, silence is not an irreversible feature of national politics and collective memories. In fact, there is a growing trend in post-traumatic societies to revise the pacts of silence, even after a considerable delay, which reflects the broader normative turn in international politics. In the period preceding the end of the Cold War the

overarching priorities of maintaining global order and stability made amnesties and silence over human rights abuses constitutive elements of peace agreements (Newman et al. 2009). Since then, though, the global diffusion of human rights norms (Risse and Sikking 1999) has increasingly dictated the inclusion of human rights provisions into peace settlements. As Christine Bell's systematic study of more than 600 peace agreements since 1990 has shown, the emerging normative consensus perceives amnesties as an exception to the norm of accountability (2008:243). New normative requirements on the content of peace settlements are explained by the proactive role of the most influential international institutions in combination with the emergence of vocal transnational advocacy networks which exert pressure for their implementation (ibid). In essence, these external normative pressures have rendered blanket amnesties obsolete, changing the nature and the content of elite bargaining in peace processes and democratic transitions (Lutz and Sikking 2001). The growing deployment of normative tools to address the past in peace agreements is also evident by the decision of an increasing number of countries undergoing negotiated transitions to deal with their violent past, a phenomenon reflected in increased number of truth commissions (Hirsch 2007).

This revised normative framework not only informs the content of pact-making, but, as the experience of several South American societies has indicated, it legitimizes domestic truth-seeking actors to exert bottom-up pressure in a way that overturns enduring amnesty laws and challenges decades' long silences (Collins 2010). In other words, the agenda of international politics (and law) has considerably changed since the historical examples of Cyprus and Spain. The new norms prevent silence from being institutionalized and bring an end to oblivion and denial in societies with well-entrenched cultures of silence. In the period preceding the

normative turn of 1990s, it would have been unimaginable for any Spanish government to pass a law that would address several (post)transitional justice measures or challenge the legitimacy of the Amnesty Law of 1977 – perceived as the founding tenet of the post-Francoist Spanish democracy.

The landmark memory law in Spain should not be attributed exclusively to external influences. It also resulted from the sustained efforts of a number of grassroots groups who had been trying since the early 2000s to unearth the bodies of the *desaparecidos* of the civil war. These efforts were ultimately embraced by influential domestic allies, including political parties, judicial authorities and media, and resulted in officially implemented measures of (post)transitional justice (Ferrándiz 2009). Similarly in Cyprus, the resumption of the CMP was preceded by the strenuous efforts of bureaucrats within the Ministry of Foreign Affairs who perceived the external influences as an opportunity to implement a policy of (narrow) truth recovery. However, this policy has not led (yet) to the crumbling of the hegemonic silence – only its substantial revision.

The experiences of Cyprus and Spain reveal that the role of domestic actors is crucial in taking advantage of (or resisting) external influences; even when a decision to overturn silence is made, this is not a linear or predetermined process, but gradual progress with many pauses and backward steps. Brazil verifies this; 25 years after the end of the dictatorship, the proposal of the popular President Lula to establish a truth commission on the disappeared triggered a fierce reaction from the military and was subsequently withdrawn (*Economist* 2010b). This is a central feature of other post-transitional justice societies, such as Chile and El Salvador (Collins 2010).

External opportunities depend on domestic politics and *vice versa*. This point echoes Putnam's 'two-level game' theory: international pressure 'expands domestic

win-sets', and as such constitutes a necessary condition for a policy shift, but 'without domestic resonance' this is insufficient (1988:430). The decision of political elites to revise a well-entrenched framing is often shaped by electoral, security, symbolic and other political considerations, rather than explained exclusively by normative adaptation. Drawing on the same theoretical framework, Martin and Sikkink have highlighted the importance of domestic constituencies in filtering external pressures in several Latin American countries (1993). Although the study acknowledges the power of external normative pressures in bringing about post-transitional justice and the erosion of prolonged silences, it also highlights the pivotal role of domestic politics in utilizing or resisting these normative influences, a point frequently disregarded by the prescriptive orientation of the literature. Most importantly, the study fits in with a broader trend towards bridging the gap between the international and comparative politics (Caporaso 1997); it shows how international norms have come to revise the nature of pact-making, while highlighting the importance of domestic actors and institutions.

Another issue raised by the comparative analysis of Cyprus and Spain relates to the nature of truth in transitional settings. Even the most celebrated venues for screening the past, such as truth commissions or trials, analyze/incorporate individual 'truths' through a kaleidoscopic view of the past which seeks to establish a new mental framework to make sense of complex and confusing past events (Wilson 2003:370). Frequently, the mandates of truth commissions delimit the scope of enquiry, either by focusing exclusively on the study of specific human rights violations or by considering a very specific period of violence (Chapman and Ball 2001:4). For example, some transitional states have mandated truth-finding mechanisms to investigate only disappearances, excluding other crimes, such as

torture, arbitrary detention or sexual abuses of women, as the cases of Argentina and Uruguay reveal (ibid). In this way, truth-seeking initiatives contribute to a narrative construction which privileges certain memories, victims' groups or political parties at the expense of others. Trials and truth commissions frequently exclude, obscure or marginalize other accounts that contravene this overarching framework. Therefore, it is important to highlight that while truth seekers challenge hegemony, they also construct a new one, and this new hegemony may be full of blind spots.

In Cyprus and Spain, the advancement of forensic sciences has made an important contribution to truth discovery. On the one hand, forensic evidence establishes hard facts about the past violence that legitimizes previously excluded voices. On the other hand, forensic evidence from exhumations creates more (discursive) space for multiple – but equally legitimate -- truths to enter public debates. The ability to unearth the (narrow) truth about the past in a scientifically sound way paved the way for the acknowledgment of the suffering of the Turkish-Cypriot missing. Forensic truth coupled with the global normative context encourages the emergence of multiple versions of truth about the past. This enhances the prospects of (narrow or wider) truth recovery in post-conflict settings and suggests the need for overturning prolonged silences.

## **Conclusion**

In negotiated transitions, a subtle elite agreement linking the non-instrumental use of the past with the political and security priorities of the transitional society is often achieved. As time passes, a 'linkage trap' is constructed, where selective silence over the past becomes a well-entrenched feature of the political discourse and democratic institutions. As soon as this framing becomes hegemonic, dissenting voices are

silenced; it also narrows the conception of national interest and inhibits the solution of human rights issues, even when new windows of opportunity open. At first glance, we conclude that this situation leads to a deadlock. However, as the hypothesis of ‘linkage paradox’ shows, in the long term, the linkage of (i.e. the silence on) human rights issues to the elite pact that serves as the founding tenet of transition becomes the most efficient way to unearth the truth. More precisely, this silence enables the consolidation of strong democratic institutions which, in turn, provide the institutional tools to (domestic) truth-seekers to put forward a comprehensive truth recovery, when such a societal demand emerges.

A policy of reviewing the past cannot be implemented without societal consensus that this is a priority. The fascinating transformation of an inoperative humanitarian body for more than two decades into the most successful bi-communal project in Cyprus, and the vocal demand of the generation of the grandchildren of the *desaparecidos*, in Spain to unearth the remains of their grandparents 70 years after the conclusion of the civil war reflect the emergence of a new societal consensus. In both countries, domestic actors challenged the long-standing hegemonic silence, reaffirming the growing phenomenon of post-transitional justice in international politics and reflecting the new normative turn seen round the globe.<sup>14</sup>

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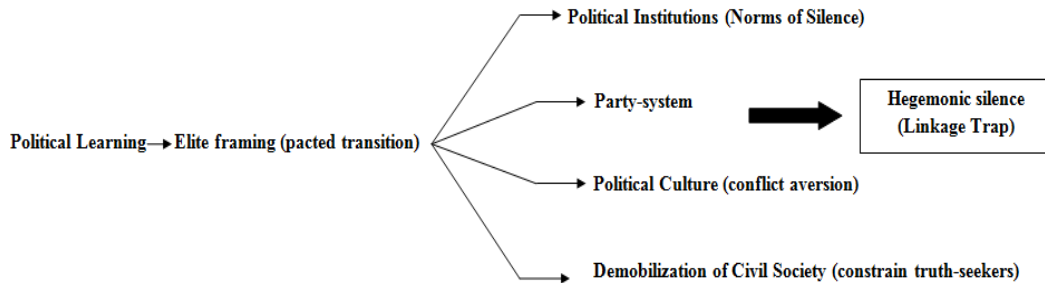
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	<b>Truth</b>	<b>Non-Truth</b>
<b>Negotiated Settlement</b>	Croatia (1995-2002) Guatemala (1996-1997) El Salvador (1991-1992) South Africa (1994-1996)	Burundi (2005) Indonesia (2005) Mozambique (1992) N. Ireland (1998) Tajikistan (1997)
<b>Non-negotiated Settlement</b>	Cambodia (1991-2003) Philippines (1986-1986) Timor-Leste (1999-2002)	Eritrea-Ethiopia

**Table 1:** Type of transition/settlement and truth recovery for disappeared/missing persons<sup>1</sup>

**Sources:** Peace Accords Matrix, Kroc Institute (<http://peaceaccords.org>), last accessed 2 April 2011) the Physical Integrity Rights Cingarelli and Richards Human Rights Data Set (<http://ciri.binghamton.edu/>) and the annual ‘Country Reports on Human Rights Practices’ of the US State Department. The first date in parentheses refers to the transition/peace agreement, the second to the implementation of the official truth seeking mechanism.



**Diagram 1:** Schematic presentation of the construction and maintenance of (hegemonic) silence

<sup>1</sup> The estimated number of remains still lying in unmarked mass graves ranges from 30,000 to 100,000 (Ferrándiz 2009)

<sup>2</sup> This has been defined as ‘the array of processes designed to address systematic or widespread human rights violations committed during periods of state repression or armed conflict, where human rights violations are defined as extrajudicial killings, disappearances, torture, and arbitrary arrest and imprisonment’ (Olsen, Payne & Reiter 2010:805).

<sup>3</sup> ‘Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and the results of the investigation and the fate of the disappeared person’.

<sup>4</sup> Assisted by the International Commission on Missing Persons (ICMP), Croatia has established a mechanism to exhume, identify and return the disappeared to their relatives.

<sup>5</sup> Peter Hall provides an interesting definition of learning: ‘a deliberate attempt to adjust the goals or techniques of policy in response to past experience and new information. Learning is indicated when policy changes as the result of such a process’ (Hall 1993:278).

<sup>6</sup> It should be mentioned that framing is not an epiphenomenon. It is not merely a reflection of reality, *but a simplification of a ‘perceived reality’* (Loizides 2009). In essence, framing is the deliberate effort of different social actors to produce, guide and maintain meaning, and, as such, it is important to examine how specific political problems are framed (Benford and Snow 2000:613). By examining the framing strategies of different actors, we can establish cause and effect relationships.

<sup>7</sup> This includes research on the parliamentary debates, questions and laws related to the issue of *desaparecidos* in the Spanish *Congreso de los Diputados* (Lower House); interviews with members of the designated inter-ministerial commission that prepared the law on the Recovery of Historical Memory in 2007; and analysis of the electoral programmes of the major nation-wide political parties since the first democratic elections after transition in 1977.

<sup>8</sup> Although there are scattered references in the 1970s and 1980s, there are only marginal provisions for the reparations of relatives.

<sup>9</sup> I am grateful to Professor Santos Juliá for bringing this source of information to my attention.

<sup>10</sup> Association for the Recovery of Historical Memory.

<sup>11</sup> 15 July 1974.

<sup>12</sup> The most important Cypriot anti-colonial armed group active in the 1955-1959 period.

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<sup>13</sup> The ruling of the European Court of Human Rights in the fourth Interstate application of *Cyprus v. Turkey* (27581/94), 10 May 2001, constituted a landmark decision that influenced the policies of both Turkey and the RoC.