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Jordi Cerdà Serrano *

Francoist Repression Through a Legal Lens

* Universitat Pompeu Fabra, Barcelona, jordi.cerda.upf@gmail.com

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Jordi Cerdà Serrano

Francoist Repression Through a Legal Lens*

With the new momentum towards recognition and reparation for those who suffered persecution and violence during the Spanish Civil War and Franco's dictatorship following the 2022 Spanish Democratic Memory Law, the constitutional scholar Marc Carrillo has published a monograph on the history of Franco's repressive legal system. In *El Derecho represivo de Franco (1936–1975)*, he analyses the legal framework of the dictatorship to suppress those defeated during the war and in the post-war period and, when the regime was consolidated, to target dissent and organised opposition.

In recent years, numerous studies have appeared on Francoist repression, including local studies on persecution, concentration camps and forced labour. The former 2007 Historical Memory Law and the current Democratic Memory Law have paved the way for fostering the field of research in academic circles and public debate. Carrillo's monograph systematising Francoist repression through a legal lens is an expression of that democratic memory wave.

Carrillo's work begins with the legitimising function of jurists in the construction and consolidation of the Francoist State and its repressive legal system. Such a state would be characterised by the absence of both the separation of powers and the legal recognition of rights and freedoms, along with its corresponding guarantees system to exercise them. Starting from the constituent notes of the Francoist legal order, Carrillo establishes a periodisation of the dictatorship's repressive law: a phase of terror-driven repression during the Civil War (1936–1939), a period of generalised repression (1939–1959) and a period of selective repression (1959–1975).

The first of these waves of repression was characterised by extreme violence that allowed the rebel side led by Franco to win the war and, in turn, secure the rearguard. To this end, from the beginning of the war, Franco's regime created a criminal law of the enemy through special jurisdictions and military courts with summary trials. While the »New State« constituted new special jurisdictions depending on the opponent to be repressed – most notably, the courts of political responsibilities, and for the repression of Freemasonry and Communism – military jurisdiction displaced ordinary jurisdiction, violating the principle of jurisdictional unity. In any case, repression was not confined to judicial or administrative proceedings alone; its nature and scope were much broader: the outlawing of political parties, the purge of judges and officials, the purge of education and control of the press, among other measures.

In the generalised repression of the 1940s and 1950s, the dictatorship operated along three lines of action. The first was the development of the Courts of Political Responsibilities during the post-war period to administratively sanction all those who had supported the Republic. (The sanctions of these courts were compatible with criminal sanctions.) With the need for a foreign whitewashing narrative shortly after the defeat of Nazi Germany, the Courts of Political Responsibilities were abolished in April 1945. The second line of action was the formalisation of an authoritarian criminal law for the New State, specifically, the approval of the 1941 State Security Law and 1944 Criminal Code. The third and last line was to repeal the Republican civil and labour law for the sake of a new, authoritarian socio-economic model characterised by a single, state-controlled trade union, the absence of the right to strike and the suppression of freedom of association.

Finally, the selective repression of the 1960s and 1970s resulted from the socio-economic changes of the late 1950s (economic and social liberalisation, newly organised opposition), which demanded the creation of a new special court, the Court of Public Order (*Tribunal de Orden Público*, TOP) – which led the repression of the last decades of the dictatorship – as well as the approval of new repressive laws in matters such as freedom of expression, right to

* Marc Carrillo, El Derecho represivo de Franco (1936–1975), Madrid: Editorial Trotta 2023, 488 p., ISBN 978-84-1364-103-4

information and labour relations. In any case, the military jurisdiction, as a reserve clause (the army as the last bastion of the dictatorship), continued operating. However, it played a secondary role in contrast to the »civilian« jurisdiction (the TOP and, as the second instance of its decisions, the Supreme Court).

A common feature of the three periods of repressive law identified by Carrillo was the dictatorship's ability to creatively produce, develop and implement repressive mechanisms in response to the political and social changes in Spain. Together with this chameleon-like adaptability demanded by the country's socio-economic evolution, another constant of Franco's repressive legal system was its legal-institutional framework, characterized by the overlap of special jurisdictions and military courts. Military officers, professional judges and political actors were interwoven to comply with the dictatorship's repression mission.

Carrillo devotes an important part of his work to the analysis of the role of defence lawyers during the dictatorship (in the three repressive periods identified by him) and of their technical intervention in all phases of the criminal judicial process or the sanctioning procedures: from arrest to prison, through the corresponding written and oral procedures, and the collection of evidence.

The study of Franco's repressive law concludes with a comparative analysis of the repressive laws of other countries, such as Nazi Germany, Fascist Italy, Vichy France, the Greek Regime of the Colonels and Salazar's Portugal. From these dictatorships of different historical coordinates but with the same authoritarian pattern, Carrillo extracts common standards in their respective repressions (together with the Francoist one): the absence of guarantees, the combination of special and military jurisdictions, the impunity and authoritarianism of the police and other security forces, and the prominent role of the police in repression and criminal trials.

Carrillo's research offers a solid theoretical framework and analytical rigour to understand, in historical terms, the role of law in repression during Franco's dictatorship. To this end, he takes a broad approach to both law and repression. Regarding the law, he does not consider only primary legal sources, such as laws or other normative provisions, but also secondary sources (ministerial orders, prosecutors' reports), as well as the scholarship and the experience of defence lawyers in trials. Carrillo's concept of repression encompasses not only the sanctions taking place in the criminal or administrative spheres but also in areas such as private relations, education, inheritance or the labour market, etc.

The research methodology used by Carrillo does not focus on the mere description of repressive norms; instead, it places them within a historical context in terms of their application and political and social implications. His study is very original for two reasons. The first is his effort to systematise and offer a periodisation of Franco's repressive law. Considering Carrillo's broad vision of repressive law, his understanding of this law goes beyond the punitive perspective. The second reason is his commitment to a more empirical or social knowledge of law through a wide sample of interviews with defence lawyers during the years of the dictatorship.

In these strengths of Carrillo's research, however, two weaknesses flourish: one methodological and another analytical. The former is that interviews with defence lawyers can be a double-edged sword as sources because, even though they are valid research sources, their consistency can be weak over the years to understand facts historically. In this regard, some historians are reluctant to use protagonists' or witnesses' versions of certain historical events as these are, on occasions, seasoned with self-interested modulations for self-justification or self-legitimation. The second weakness is that the work lacks a section of conclusions or final reflection in which the author, with his desire to systematise or order, could have put together a thesis or main ideas on the origin, development and decline of Franco's repressive law.

These weaknesses, however, are far outweighed by the contribution of the work to the field of the history of repression in Francoist Spain and, more specifically, of the legal history that provided formal cover for such repression. This work will be an indispensable starting point for researchers or scholars who wants to immerse themselves in the mechanisms of repression under the dictatorship and the legal instruments used by it for this purpose. A theoretical and practical framework such as the one outlined by Carillo will be very useful for historians and legal historians studying the repression in Francoist Spain.

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