

ABSTRACT

Title of Thesis: Managing Histories of Human Rights Abuses: Democratic Transitions and the Manifestation of Transitional Justice in Post-Dictatorship Spain and Chile.

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During the 20th century, Spain and Chile witnessed the rise of brutal dictatorships. Under the direction of dictators Francisco Franco and Augusto Pinochet, the Spanish and Chilean regimes engaged in human rights abuses to achieve their political, social, and economic goals. When the dictatorships ended, both countries transitioned into democracy. This thesis analyzes how the democratic transitions affected the extent of transitional justice achieved in post-dictatorship Spanish and Chilean society. This study argues that Chile attained a greater degree of transitional justice compared to Spain. Chile achieved increased transitional justice in post-dictatorship society because of its strong democratic legacy, the democratic and human rights friendly context of the region and time, the transition of governmental power to the left, and the establishment of a truth commission. In Spain and Chile, transitional justice was restricted by the need for negotiations between political ideologies, fear of instability, and amnesty laws. Transitional justice was increasingly limited in Spain because of the continuation of conservative governmental control, policies that suppressed transitional justice (the *Pacto de olvido* and 1977 Amnesty Law), and greater fear from democratic uncertainty, military violence, and terrorism. This research gives historical context to the complicated natures of Spain's and Chile's democratic transitions and attempts at transitional justice. Examining the past enhances understanding of how Spain and Chile currently manage their histories of human rights abuses.

Managing Histories of Human Rights Abuses:
Democratic Transitions and the Manifestation of Transitional Justice in Post-Dictatorship Spain
and Chile

By

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Discussion of Translation:

All translations were completed by the author, Aliza Sitrin.

Chapter 1: Democratic Transitions and Transitional Justice

I. Introduction:

In the twentieth century, Spain and Chile witnessed the rise and fall of dictatorships that engaged in large-scale human rights violations to achieve their political, societal, and economic goals. Francisco Franco and Augusto Pinochet came to power through violent means and maintained their control by utilizing fear, violence, and tight top-down restrictions on the population. When the dictatorships ended in the late twentieth century, democracy rose in Spain and Chile. Each country managed their democratic transitions differently, resulting in varying degrees of transitional justice achieved.

This thesis asks: how did the democratic transitions affect the extent of transitional justice achieved in post-dictatorship Spain and Chile? The study will analyze how historical contexts, types of democratic transitions and resulting power dynamics, fear, amnesty laws, and truth commissions affected the manifestation of transitional justice in Spain and Chile. I will contextualize the relevant political, social, cultural, and economic environments of the transitions to study why Spain and Chile underwent their democratic transitions as they did. The context and decisions made by each country affected the extent of transitional justice achieved throughout the transitional process. I argue that Chile achieved a higher degree of transitional justice compared to Spain. Chile obtained increased transitional justice because of its strong history with democracy, the democratic and human rights friendly context, the governmental transition of power to the left, and the establishment of a truth commission. In Spain and Chile, transitional justice was limited by the need to negotiate between the political sides, the fear of instability, and amnesty laws. In Spain, modernization laid the foundation for democracy and transitional justice, but transitional justice was heavily restricted by the continuation of conservative governmental

control and increased fear from democratic uncertainty, military violence, and terrorism. The *Pacto de olvido* (Pact of Forgetting) and 1977 Amnesty Law effectively prohibited political efforts to acknowledge crimes and recognize victims in Spain, which deeply constrained transitional justice.

While Chile obtained a higher degree of transitional justice compared to Spain, neither country fully managed their history of human rights abuses in the immediate transitional and post-transitional phase. Modern day Spain and Chile are still dealing with the ramifications of the dictatorships. The dictatorships remain controversial, and efforts to achieve transitional justice vary per government administration and advocacy from victims, families of victims, the press, intergovernmental organizations (IGOs), and non-governmental organizations (NGOs). This thesis contributes to the understanding of current transitional justice in Spain and Chile by analyzing the extent of transitional justice achieved during the democratic transitions. Understanding the history of transitional justice in Spain and Chile is necessary to understand their present struggles with the past. I begin this chapter by discussing the concept of transitional justice. Next, I provide background information on the Spanish and Chilean dictatorships. After, I analyze the relevant literature on public shaming, rising interest in human rights, the relationship between transitional justice and stability, and critiques of transitional justice. Lastly, this chapter discusses the methodology used for this thesis.

II. Transitional justice:

Transitional justice is concerned with the aftermath of conflicts and instances of human rights abuses. It has roots in philosophy, politics, and law (Eisikovits, 2014). The concept of transitional justice emerged in the 1990's when American academics used the term to describe

the ways that governments approached problems related to human rights violations perpetrated by their predecessors (International Center for Transitional Justice [ICTJ], n.d.). The term stuck and transitional justice evolved into a practice that primarily attempts to recognize the dignity of individuals, redress and acknowledge violations, and prevent abuses from happening again (ICTJ, n.d.).

According to the International Center for Transitional Justice (ICTJ), complementary goals of transitional justice include creating trustworthy and accountable institutions, ensuring access to justice for all, ensuring women and marginalized groups play a role in the creation of the new society, establishing respect for the rule of law, fostering a lasting resolution to the conflict, facilitating the peace process, establishing a foundation to address causes of the conflict and marginalization, and advancing reconciliation (ICTJ, n.d.). Common ways to attain transitional justice involve criminal prosecutions, truth-seeking, reparations, and political reform (ICTJ, n.d.). Efforts to attain transitional justice can occur during a conflict, during post-conflict transitions, during post-authoritarian transitions, and during the post-transitional period (Duthie & Seils, 2017).

Transitional justice is difficult to achieve and efforts to obtain transitional justice vary per context. Understanding the context of a transitioning society is critical to recognizing the constraints that it faces. Factors such as distribution of power, polarization, instability, institutional weaknesses, fear, unsafety, and censorship among others must be taken into consideration when creating transitional justice approaches. Focusing on the needs, desires, and capabilities of a society is important when seeking to understand why a country approaches transitional justice as it does. Strategies for transitional justice are not uniform, but rather vary depending on societal context. Countries can tailor transitional justice to fit the needs and

limitations imposed by society. Transitional justice is often a slow process and requires careful planning. The history of Spain's and Chile's dictatorships influenced their approaches to transitional justice (IJTC, n,d).

III. Background:

a. Spain:

Francisco Franco was a fast-rising career soldier who joined the right-leaning rebel movement in Spain in the mid-1930's due to the violent political and social unrest of the Second Republic, the democratic government of Spain between 1931 and 1939. Growing divisions between the left (Republicans) and the right (Nationalists) escalated, with the military supporting the right. Because of the divisiveness and instability of the era, Nationalists staged a coup to end Republican rule. Because Nationalists anticipated quick success, they named Franco the new head of government and commander in chief of the military. The Republicans prevented the coup, but the violence spiraled into a civil war ("Franco Biography," 2016).

The Spanish Civil War between Republicans and Nationalists transpired between October 1936 and April 1939. Reports on casualties from the war vary, but are estimated around 500,000 deaths, with around 200,000 of those deaths resulting from executions by the Nationalists ("Franco Biography," 2016). Known as "El Caudillo" (The Leader), Franco built the Spanish dictatorship and governed with fear, violence, and repression after winning the Civil War. The dictatorship imprisoned tens of thousands of Spaniards for their ideological opposition ("Franco Biography," 2016). Networks of secret police inspired fear, censorship persisted, and unions were forbidden ("Franco Biography," 2016). Franco prohibited regional languages and the

practice of religions other than Catholicism (Solsten & Meditz, 1988). Citizens lived with tight restrictions and widespread fear.

Franco ruled Spain between 1939 and his death in 1975, but in the years following 1959 the dictatorship witnessed loosening restrictions to accommodate economic development and growing dissent to government repression (Bernecker, 2007). This period politically, economically, and socially prepared the country for democracy (Bernecker, 2007). When Franco died, the ultra-conservative right lacked support from the Spanish population and the democratic transition ensued (Carias, 2017).

b. *Chile:*

General Augusto Pinochet was also a fast-rising career soldier (Kandell, 2006). President Salvador Allende promoted Pinochet to the position of commander in chief of the military on August 23, 1973 because he believed that Pinochet was trustworthy and neutral (Kandell, 2006). President Allende faced intense civil and political divides as he sought to bring socialism to Chile. Societal chaos persisted due to poor economic performance, strikes, and protests (Kandell, 2006). Pinochet was supposed to support President Allende in his efforts to maintain stability and quell unrest, however, the armed-forces led by Pinochet instigated a coup d'état against Allende on September 11, 1973. La Moneda (the presidential palace) was bombed and President Allende broadcasted a final speech praising good, hard-working Chileans, as well as denouncing fascism and the betrayal of the armed forces to Chile's long history with democracy (Furuhashi, 2006). Before committing suicide rather than surrender, President Allende expressed his faith in Chile's ability to recover from this dark moment and rebuild a better society (Furuhashi, 2006).

After the successful coup d'état, Pinochet governed Chile through a four-person military junta dictatorship. Throughout the dictatorship, approximately 3,200 were killed or disappeared, and tens of thousands more were persecuted, imprisoned, tortured, and exiled based on their perceived threat to the dictatorship for their left-leaning opinions (Kandell, 2006). Across Chile, military personnel obtained positions in various towns, cities, and universities. The secret police and National Intelligence Directorate (DINA) created a culture of fear in Chile due to their excessive perpetration of human rights abuses (*Truth Commission*, 1990). Pinochet censored the press, prohibited strikes and protests, banned political parties and unions, dissolved Congress, and disregarded the Constitution (Kandell, 2006). In 1974, Pinochet named himself president and changed the role of the junta members to consultative positions (Kandell, 2006).

In 1980, Pinochet's regime ratified a new constitution through a national referendum that institutionalized the new government. The document called for a national plebiscite in 1988 for citizens to vote on the political future of the country. Citizens would vote either YES or NO to the continuation of the military junta and Pinochet's presidency for an additional eight years. The NO's won the vote and Pinochet stepped down. The regime's loss in the plebiscite prompted Chile's democratic transition (*International Commission*, 1989).

IV. Literature review:

The democratic transitions affect modern day Spanish and Chilean society. While Chile and Spain utilized differing tactics to transition from dictatorship, neither country fully appeased their entire population because managing past human rights violations is a complicated, complex task. This paper is not a critique of the lack of transitional justice in these countries, but rather gives historical context to the complicated nature of the transitions. Countries should be held to

the highest of standards to continually encourage positive development, but commentary and critique without addressing historical complexities and the impossibility of instant transitional justice is nonsensical. The goal of this research paper is to analyze the relevant political, social, cultural, and economic contexts of Spain and Chile throughout the democratic transitions to understand how the countries acknowledged or did not acknowledge their history of human rights abuses. The paper is not arguing that transitional justice fully exists or does not exist, nor is it proposing solutions for better attempts to achieve justice in transitioning or transitioned societies. This paper serves the purpose of analyzing phenomena and their consequences to understand how actions affect the extent of transitional justice. Current literature critiques Spain and Chile, analyzes the international factors that influence transitional justice, examines the complexities between transitional justice and stability, and questions transitional justice; however, the scholarship does not fully address how the democratic transitions influenced the extent of transitional justice achieved in post-dictatorship Spain and Chile.

a. *Public shaming of Spain and Chile:*

Public shaming is a tool that NGOs, INGOs, and governments can use to influence the spread of human rights. When a country is shamed for poor adherence to human rights norms, it feels pressure to improve its human rights treatment to better its international standing. Margaret Keck and Kathryn Sikkink (1998) argued that public shaming by human rights organizations is a central aspect of theoretical models to achieve human rights improvements because shaming develops transitional advocacy. Amanda Murdie and David Davis (2012) demonstrated that public shaming correlates with the betterment of human rights practices in the country that was

shamed. Public shaming is a powerful way to advance human rights in countries that do not adhere to international human rights standards.

Prominent human rights organizations such as Amnesty International and the United Nations have critiqued Chile's and Spain's management of their history of human rights violations. The Deputy Director of Amnesty International has encouraged Chile to "come face-to-face with its troubled past and finally send the message that the abuses of the Pinochet era will not be tolerated again" (Marengo, 2015). The United Nations Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence released a 2014 report on Spain to pressure the country to further acknowledge victims, create an official mechanism to address actions taken after the beginning of the Civil War, and reflect upon the abuses that transpired ("Proposal for Spain," 2018). In 2013 and again in 2017, the Working Group on Enforced or Involuntary Disappearances critiqued Spain's lack of efforts to search for missing persons and exhume graves ("Proposal for Spain," 2018). These organizations publicly published their opinion to pressure Chile and Spain to improve their human rights standards.

While critiques are effective tools for human rights organizations to shame countries into correcting past human rights violations, this paper seeks to look beyond critiques and delve into the reasons why Spain and Chile approached transitional justice as they did. The political, social, cultural, and economic contexts of the era should be taken into consideration to understand current and past faults in transitional justice. This paper seeks to understand how transitional justice was influenced by Spain's and Chile's differing approaches to their democratic transitions. The purpose of this paper is not to argue that transitional justice has not been fully accomplished, but rather seeks to understand why the extent (or lack thereof) of transitional justice manifested as it did. This thesis will contribute to the understanding of transitional justice

and human rights policies, which will allow scholars to better understand why Spain and Chile have or have not addressed their history of human rights abuses.

b. *Rising interest in human rights:*

Scholars have sought to understand why recognition of human rights and instances of their abuse have received amplified attention in recent decades. Ellen Lutz and Kathryn Sikkink (2000) argued that increased recognition of human rights in Latin America developed in the last two decades of the 20th century, which motivated many Latin American countries to address their history of human rights violations, as well as build legal frameworks to safeguard rights. They entitled this international phenomenon the “human rights norms cascade,” arguing that regional shifts in the importance of human rights have increased the desirability of human rights protections and related law compliance in Latin America (Lutz and Sikkink, 2000). These human rights trends fit with Finnemore and Sikkink’s (1998) coined term “norms cascade,” which refers to quick, extreme shifts in the legitimacy of norms and actions on behalf of those norms. Lutz and Sikkink credit activists for drawing attention to human rights, but also claim that countries are motivated to address human rights because it projects an outward appearance of sophistication and development to the international community (Lutz and Sikkink, 2001).

While international pressure and the desire to appear developed play a role in why some countries recognize their history of human rights abuses, countries may struggle to acknowledge their past with human rights violations based on the immediate needs and desires of their transitioning societies. Countries typically manage their history of human rights abuses based on domestic factors in addition to positive international appearance. This paper seeks to study how Spain’s and Chile’s approach to their democratic transitions influenced their acknowledgement

(or lack of acknowledgment) of human rights abuses. This thesis will analyze the foreign and domestic factors that influenced the way Spain and Chile transitioned, as well as examine how those factors affected the ability of society to attain transitional justice.

c. *Transitional justice versus stability:*

Justice in post-authoritarian and post-conflict countries is difficult to achieve. Gary Bass' (2004) research on *jus post bellum* (justice after war) analyzed how it is morally important for countries to reconstruct stability and peace in societies that transition out of war or dictatorship. In post-dictatorship societies, the rise of new governments and their political beliefs determine the extent of governmental actions taken towards transitional justice. This study will analyze how the rise of new governments in Spain and Chile influenced the extent of transitional justice achieved in post-dictatorship society. Specifically, this thesis will analyze how the continuation of conservative rule in Spain versus the rise of leftist governance in Chile influenced governmental desires to achieve transitional justice. I argue that the transition to leftist rule in Chile augmented efforts to attain transitional justice. Balancing between transitional justice and stability is an important task for new governments.

Scholars agree that immediate efforts to attain transitional justice may be undesirable in post-authoritarian or post-conflict countries. In her 2017 study examining the interconnectedness of truth, justice, and reparations in post-dictatorship Chile, Cath Collins concluded that “the loading of simultaneous truth, justice and reparations responsibilities and expectations onto any particular point of a post-authoritarian or post-conflict process may prove not only impractical but sometimes undesirable.” She argued that overloading unrealistic transitional justice efforts onto new, fragile, or resource-poor states may inhibit forward progress (Collins, 2017). Omar

Encarnación (2008) argued that the conflation of democracy and transitional justice is problematic because the processes of reconciliation and democratization are fundamentally different. He uses Spain's democratic transition as evidence, citing that Spain chose to completely ignore its history of human rights abuses, yet the country still successfully transitioned to democracy (Encarnación, 2008). Collins (2017) and Encarnación (2008) recognized that post-dictatorship societies are not always capable of surviving large-scale transitional justice efforts due to the fraught, unstable political and social climate of many transitions. This study examines how the necessity of stability affects the extent of transitional justice achieved in post-dictatorship Spain and Chile. The decision of Spain and Chile to transition as they did is critical to the way transitional justice manifested.

d. *Critiques of transitional justice:*

Transitional justice has a variety of goals, which can be addressed through varying methods. Nir Eisikovits (2014) argued that the goals of transitional justice are politically important, but stated that they are often contradictory. He noted that criminal prosecutions can harm stability, conflict with the need to "cement" the rule of law, leave out important information that does not meet the evidence requirements, and focus on defendants rather than providing uninterrupted time for the victims to speak. He also discussed how the desire to purge former officials from the government may clash with the need to establish a functioning government. Criminalizing or ridding of former officials can result in a competence gap because experienced professionals are needed to build the new government (Eisikovits, 2014).

Eisikovits made valid points about the complexities of transitional justice, but he did not discuss that transitional justice can be multifaceted. Approaches to transitional justice vary per

country, and countries cannot always completely mend the wounds of human rights abuses. The expectation for perfection is unrealistic because no approach to justice can completely resolve conflicts. Differing approaches to post-dictatorship justice have advantages and drawbacks, but carefully thought through attempts to achieve peace and justice should still be utilized.

Transitions are complex, which suggests that approaches to transitional justice are also complex. This paper does not seek to examine the validity of Spain's and Chile's approaches to transitional justice, but rather seeks to understand how the democratic transitions affected the extent of transitional justice achieved.

Makau Mutua (2015) examined the universality of transitional justice. He argued that the concept of transitional justice promotes a westernized notion of justice (Mutua, 2015). He believes that transitional justice is another tool utilized by the West to ascertain the dominance of westernized ideas of human rights, which value the acknowledgement of the past, retributive justice, the importance of the individual over the collective, and the superiority of civil and political rights compared to economic, social, and cultural rights (Mutua, 2015). Westernized notions of human rights may not be relevant across the globe, but transitional justice holds merit in the cases of Spain and Chile. Spain is a European country that is considered part of the "Western World," thus westernized concepts of human rights and transitional justice are relevant. Chile is a Latin American country whose status as a "Western Country" is more complicated than its physical location in the Western Hemisphere, but transitional justice is relevant because Chile utilized principles of transitional justice throughout its transition. Chile acknowledged crimes, recognized victims, and sought to prevent human rights abuses from happening again by increasing civil and political rights for individuals. This study does not seek to prove or disprove the universality of transitional justice and Western notions of human rights,

but rather seeks to understand how the Spanish and Chilean democratic transitions influenced the extent of transitional justice achieved in post-dictatorship society.

V. Methodology:

In this study, I analyze how the Spanish and Chilean democratic transitions influenced the extent of transitional justice achieved in post-dictatorship society. Analysis occurs through examinations of laws, public statements, reports, and polls from national governments, IGOs, NGOs, universities, academic journals and books, the press, and citizens. Information from these sources are evaluated to determine the relevant political, social, cultural, and economic contexts of the era. These contexts are then analyzed to understand why actors in Spain and Chile acted as they did throughout the democratic transition and rise of new governments, as well as how that affects the extent of transitional justice achieved.

Qualitative data will be examined in this thesis because the influences and extent of transitional justice achieved are better measured through the study of social phenomena. Given the complex nature and variance present in transitional justice, a qualitative approach to understanding the extent of transitional justice will be used to accommodate for political, social, and economic nuance within each case study. Qualitative data will provide more details about how and why decisions and events occurred, as well as what their effects were. Primary and secondary sources will be examined.

The practice of transitional justice outlined by the International Center for Transitional Justice will be utilized to measure transitional justice in Spain and Chile. This study will measure transitional justice according to the degree in which Spain and Chile attained the primary aims of transitional justice: recognize the dignity of individuals, redress and acknowledge violations, and

prevent abuses from happening again (ICTJ, n.d.). This paper will place significant focus upon recognizing victims and acknowledging crimes because preventing the recurrence of abuses in Spain and Chile came with institutionalizing democracy and basic rights. Complementary aims of transitional justice such as creating reliable institutions, ensuring access to justice, granting women and marginalized groups a role in the new democracy, developing respect for the rule of law, cultivating a permanent resolution to the conflict, aiding the peace process, addressing causes of the conflict and marginalization, and furthering reconciliation will also be utilized to measure transitional justice.

VI. Conclusion:

In the following chapters I will analyze how the democratic transitions affected the extent of transitional justice achieved in post-dictatorship Spain and Chile. Chapter 2 will focus on Spain. It will provide an outline of the economic, social, and political changes in the Late-Franco dictatorship, which resulted in evolving morals, values, and attitudes towards human rights-based principles. This chapter will also discuss the politics surrounding the end of the Spanish dictatorship, the intricacies of the democratic transition, and the rise of Prime Minister Suárez's new government. Chapter 3 serves as an analysis of events described in Chapter 2. Chapter 3 will discuss the moral foundation for transitional justice and democracy, as well as analyze how the nature of Spain's transition and fear influenced the extent of transitional justice achieved. Chapter 4 will focus on Chile. This chapter will discuss the end of Pinochet's regime, the constitutional reform process, and the rise of President Aylwin's new government. Chapter 5 will analyze the events described in Chapter 4 by exploring how the significance of the regional and historical context, the nature of the democratic transition, the establishment of a truth

commission, and the existence of amnesty laws contributed to the extent of transitional justice achieved in Chile. Chapter 5 will also compare the Spanish and Chilean cases to demonstrate how Chile attained increased transitional justice compared to Spain. Chapter 6 will summarize the variances in transitional justice achieved in Spain and Chile, as well as note the implications of the findings and discuss future points of interest.

Chapter 2: Understanding Spain

I. Introduction:

Beginning in 1959, Spanish governmental changes combined with pressure from citizens instigated policy shifts that built momentum for the democratic transition. Modernization altered the relationship between the dictatorship's power and citizens' freedoms. When Franco died in 1975, the transformations from previous decades revealed a strong desire for democracy among a significant portion of the population. Leftist and rightists who were at odds for decades negotiated to restructure the government and create a new constitution. The left and right established policies of forgetting and amnesty through the *Pacto de olvido* and related 1977 Amnesty Law. The dictatorship's history of violence was ignored rather than confronted because the relationship between the right and the left was new and both sides wanted to prevent renewed violence. Spain successfully transitioned into a parliamentary monarchy, which has lasted through the modern day. This chapter will examine significant factors and events that structured Spain's democratic transition to provide background information on how Spain's democratic transition affected the extent of transitional justice achieved in post-dictatorship society. Firstly, this chapter will discuss modernization and reforms between 1959 and 1975. Secondly, the chapter will discuss the politics at play after Franco died. Thirdly, the chapter will examine the rise of the new democratic Spanish government and reforms.

II. Changes during the Late-Franco dictatorship (1959-1975):

Economic distress leading up to 1959 prompted leaders to instigate economic reforms, which correlated with changes in the social and political spheres of society. Economic, social, and political modifications loosened restrictions, increased freedoms, and reduced top-down

control. These changes opened Spanish society to liberal ideas for the first time since the Second Republic.

Economic success began with the 1959 Stabilization Plan, which stressed liberalization and economic reform. New capitalist policies and structural adjustments contributed to economic growth, inflation control, elimination of the public deficit, rise in labor productivity, technological advancements, reduction of domestic market restrictions, and integration into the international economy. While the state still restricted political and social freedoms, these initial economic modifications permitted the country to take advantage of booming Western markets. Between 1959 and 1974, the country witnessed significant industrial growth, which transformed Spain from being a largely agrarian-based economy to a modernized, industrial economy (Aceña & Ruíz, 2007).

Major factors in the “economic miracle” were foreign investment, emigration, and tourism (Aceña & Ruíz, 2007). The U.S. and successful Western European economies engaged in large-scale foreign investment in Spain, which provided resources and technology for growth. Because over 1.5 million Spaniards emigrated abroad between 1960 and 1972, domestic unemployment was reduced, workers obtained increased bargaining power, and remittances sent from family members outside of Spain covered 50% of the foreign debt (Santos, 1999). The rise of tourism provided the country with increased revenue from visitors, as well as served as a direct source for foreign and domestic investment.

The “economic miracle” contributed to changing living standards. Poverty and inequality shrank compared to previous decades, however, wealth disparities across regions within Spain persisted (Aceña & Ruíz, 2007). Economic success and industrial development contributed to urbanization as Spaniards left the countryside for cities searching for better opportunities and

jobs outside of agriculture (Aceña & Ruíz, 2007). Between 1960 and 1978, the rural population went from 4.8 million to 2.4 million (Palomares, 2007).

The economic value of tourism increased the desire of the Spanish state to portray the country as modernized to the international community. The desire to portray a modernized image of Spain increased the promotion of liberal and pluralistic values compared to the conservativeness of previous decades (Pack, 2007). Citizens developed new attitudes regarding social relations, gender roles, leisure, consumerism, efficiency, tolerance, religion, subversion to the state, family, Europe, and morality (Bernecker, 2007; Pack, 2007). Internal migration and foreign tourists diffused democratic values, while the emigration of Spanish workers to Western European countries also exposed Spaniards to democracy and anti-Franco sentiments (Bernecker, 2007). Tourism within Spain also permitted interaction between Spaniards and foreigners who brought varying international perspectives (Pack, 2007). While conservatives such as technocrats and clergyman resented these changes for their decadence and shift from old ways, the country continually moved in this modernized direction (Pack, 2007).

Increased freedoms of expression and decreased censorship were major developments that contributed to the growth of modernized values and attitudes. While state repression and restrictions were still in effect, the government decreased complete top-down control and violence in accordance with the development of ideals on tolerance. The increased accessibility of telephones, movies, radios, televisions, and the media to larger sectors of the population furthered the spread of varying opinions, including those that did not align with the dictatorship (Sánchez, 2007). The 1966 Press Law, while still maintaining censorship policies, permitted increased public discussion of politics (Palomares, 2007). This law allowed a greater dispersion of domestic and foreign opinions, particularly thoughts on democracy.

Economic development and changing aspirations resulted in larger percentages of the population receiving secondary education and university degrees. The literacy rate dropped from 19% in 1940 to 9% by 1970 as increased educational opportunities were sought by Spaniards to raise social status, obtain greater professional opportunities, and improve material conditions. Education increased the number of Spaniards learning about global opinions and perspectives (Bernecker, 2007).

The dictatorship prohibited political parties and entities, but political ideas were still discussed. New political perspectives were disseminated through private gatherings, clubs, seminars, research centers, publications, and economic and cultural associations. Nonconformists who began questioning the dictatorship could be divided into “aperturistas” and “reformistas.” “Aperturistas” desired the slow opening of the government from the inside out, while “reformistas” wanted to completely replace the Franco regime with a new democratic government. These nonconformists played a critical role in the future democratic transition by providing open spaces to discuss politics, normalizing public debate, and effectively channeling demands for change. Their efforts helped ensure democracy upon Franco’s death (Palomares, 2007).

Increased freedoms, education, and political awareness prompted citizens to seek increased political representation to solve their problems. Because Spaniards advocated for a greater economic and political voice, the Spanish state permitted increased citizen engagement through the 1964 Law of Associations. This concession decreased protests and reduced dissatisfaction. The law allowed the creation of voluntary organizations that utilized democratic principles. Though the dictatorship carefully monitored the associations, the latter stressed tolerance, negotiation, fair representation, and lobbying. The associations created a civil society

that valued participation and pluralism. This “pre-democratic civil society” contributed to a liberal political culture over authoritarianism. Increased exposure to democratic principles laid a foundation for the future democracy (Radcliff, 2007).

A critical aspect of the dictatorship’s claim to legitimacy was its connection to the Catholic Church. Catholicism was the official religion of Spain under the dictatorship, with an overwhelmingly large portion of the population identifying as Catholic despite variances in the degree of practice (Solsten & Meditz, 1988). The validity of the Spanish dictatorship was questioned after the Second Vatican Council of 1962-1965, which modified the Church’s teachings to meet the standards and desires of the modern world (Callahan, 2007). The Vatican began to stress human rights, religious freedom, and equality (Callahan, 2007). The Vatican’s changes instigated a debate within the Spanish Catholic Church between conservatives who were wary of reforms and liberals who encouraged democracy and change. Significant pressure from the lower-ranking clergymen ultimately pushed the Spanish Catholic Church in favor of the Vatican’s reforms (Callahan, 2007). This decision symbolized a break between the dictatorship and the Spanish Church, which was particularly significant because the Spanish Church was traditionally a conservative segment of society that had backed the dictatorship for decades (Callahan, 2007). While the Spanish Church began to stress the need for political change, it desired changes from inside the regime and maintained a general wariness of the left (Callahan, 2007).

III. Politics surrounding the end of the Spanish dictatorship:

Loosening governmental control and changing attitudes prior to 1975 laid the groundwork for a democratic Spain. Decades of modernization resulted in the desire for

democracy among a significant percentage of the population. After Franco's death in 1975, the country had to mitigate between leftists who desired democracy and rightists who favored the continuation of the dictatorship. Before his death, Franco tried to ensure the longevity of the dictatorship by selecting successors.

In 1947 the passage of the Law of Succession in the Leadership of the State effectively reinstated the monarchy, as well as granted Franco the positions of Regent for Life and Head of State. The law also gave Franco the right to select his successor (Owens, 1947). In 1969, Franco selected Juan Carlos of Bourbon, to serve as his Head of State successor, signifying that Juan Carlos would become king upon Franco's death or retirement (Giniger, 1972). Juan Carlos was the grandson of Alfonso XIII, the last Spanish king before the abolition of the monarchy during the establishment of the democratic Second Republic. In June 1973, due to old age, Franco sought to lessen his political responsibilities (Carias, 2017). While he remained Head of State, he chose Admiral Luis Carrero Blanco to become Prime Minister ("Franco Biography," 2016). On December 20, 1973, after only holding power for half a year, Carrero Blanco was assassinated by the Euskadi Ta Askatasuna (ETA), a leftist Basque separatist organization that utilized terrorist tactics to fight for regional independence. In order to fill Carrero Blanco's newly vacated position, Franco selected Carlos Arias Navarro to become the new prime minister. Arias Navarro was previously the Minister of Governance and a Franco supporter. Upon Franco's death on November 20, 1975, Juan Carlos was installed as king to fill the position of Head of State, and after 36 years of Franco's rule, the country moved into the hands of Prime Minister Arias Navarro and King Juan Carlos.

Arias Navarro and the ultra-conservative right favored the continuation of authoritarian rule, while the King and a large portion of the populace and leftist press advocated for

democratic reforms. Arias Navarro was unlikely to instigate democratic reforms such as free elections and the legalization of political parties (Preston, 2004). The leftist media repeatedly critiqued Arias Navarro and his desire to continue Francoist policies, while the rightist media defended Franco's legacy and those who sought to continue and protect it (Carias, 2017).

Cambio 16, a leftist Spanish news magazine, coined the popular term "bunker" to refer to the powerful, ultra-conservative politicians who sought to uphold Franco's governmental structure. *Cambio 16* perceived this "bunker" to be the last defense against democracy, and the magazine called for democratic reforms to dismantle the "bunker" (Carias, 2017). Members of the "bunker" needed to be overruled to create a democratic Spain, but these elites sought to maintain their political status and policies. Spaniards were increasingly impatient with the "bunker," but the residual power of Franco's officials made the path to democracy unclear.

King Juan Carlos recognized the rising desire for reforms among a significant portion of the population and knew that the continuation of the monarchy would require distancing himself from the Franco regime (Eder, 1970). The King discussed his concerns with *Newsweek* upon visiting the United States in 1976. The paper reported, "Spain's new ruler is gravely concerned about right-wing resistance to political change. The time for reform has come, he believes, but Prime Minister Carlos Arias Navarro, a holdover from Franco's days, has demonstrated more immobility than mobility. In the King's opinion, Arias is an unmitigated disaster, for he has become the standard-bearer of that powerful band of Franco loyalists known as 'the bunker'" (Carias, 2017). Even though Franco selected both King Juan Carlos and Arias Navarro to serve as his successors, the King openly critiqued Arias Navarro and the conservative right. King Juan Carlos advocated for democratic changes over the continuation of Francoist restrictions. He desired forward "mobility," and believed that political reforms would be necessary in the new

post-Franco society. The King steered Spain towards democracy by supporting the left over the right. The powerful position from which he championed his perspectives on political change gave greater voices to individuals that critiqued Franco officials. Arias Navarro resigned on July 1, 1976 in response to rising domestic pressure from the King and leftists who continually criticized the lack of representation, reforms, and freedoms (Carias, 2017).

IV. Spain's democratic transition and reforms:

The Law of Succession in the Leadership of the State granted the King the power to choose the new prime minister after Arias Navarro's resignation. King Juan Carlos selected Adolfo Suárez to occupy the position. During Franco's dictatorship, Suárez held various high-ranking positions, including the Vice Secretary General of the Movimiento Nacional, a Francoist institution that backed the regime. Because Suárez achieved political importance through his support of Franco, opposition members questioned the King's decision to grant Suárez the premiership (Carias, 2017).

Despite his past, Adolfo Suárez proved to be dedicated to democratic reforms. He played an active role in the passage of landmark legislation that ensured the feasibility of democracy. After ascending to office, Prime Minister Suárez reformed the Penal Code, which began the process of legalizing political parties, beginning with the Socialist Party (PSOE) (Casanova & Gil Andrés, 2014). He passed amnesty decrees for political prisoners and individuals that were considered dangerous under the dictatorship for their political ideals (Carias, 2017). In 1977, because of negotiations and concessions between Suárez and the Communist Party (PCE), the government legalized the long-oppressed PCE (Carias, 2017). This action signified the freedom of all political perspectives, including those that Franco

previously persecuted. Despite past violence and high tensions, these democratic reforms born out of inter-party negotiation built a foundation for future compromise and stability. The changes served as a vital first step towards reconciliation between Suárez and the political left.

The *Pacto de olvido* augmented the ability of the left and the right to coexist in the political sphere. The *Pacto de olvido* was an informal agreement between politicians on the left and right that altered the discussion of the Civil War and the dictatorship. The basic goal of the pact was to forget or “move-on” from the violence that transpired between the beginning of the Civil War and Franco’s death (Aguilar, 2012; Encarnación, 2014). Both sides of the political spectrum agreed to the pact to satiate the fear of instability. Neither the political left nor the right desired renewed violence. Both sides wanted to avoid the persecution or prosecution of those who shared their political ideals, and the *Pacto de olvido* prevented either side from condemning the other (Encarnación, 2014). Because of its informal nature, the *Pacto de olvido* did not originally have a legal basis, but it permitted leftists and rightists to set aside fear and negotiate during the early transitional phase. While extremist members from the left and the right preferred domination of their political opinions over negotiation and cooperation, moderates agreed that forgetting was essential to build a democracy given the split nature of the country.

The Law of Political Reform, which was passed in a national referendum, effectively guaranteed democracy through the promise of future free elections. Soon after, on June 15, 1977, Spain held its first election since the governance of the Second Republic. The full *Cortes Generales*, comprised by the Congress of Deputies and the Senate, needed to be elected to form a complete parliament. Over 6,000 candidates sought election and 156 political parties participated. Because of the multi-party system, many parties formed national and regional

coalitions and alliances. Suárez's party, the Union of the Democratic Center (UCD), was the main winner of the election with 165 seats in the Congress of Deputies and 105 seats in the Senate. Suárez remained prime minister, but the party was just short of obtaining an absolute majority in the *Cortes Generales* (*Spain Date of Elections, 1977*).

Soon after the election, the *Pacto de olvido* was given legal basis through the 1977 Amnesty Law. Rather than seek truth and justice, the Amnesty Law continued the *Pacto de olvido*'s emphasis on "desmemoria" (disremembering), which was designed to avoid all discussion of subjects that caused memory of the Civil War and dictatorship (Encarnación, 2014). From the perspective of the right, the law circumnavigated prosecutions and accountability for the crimes they committed under Franco, including murder, kidnapping, forced exile, and torture (Encarnación, 2014). On the left, the law released leftist perpetrators of violence from responsibility for their crimes, but also permitted liberals to become equal members of society (Aguilar, 2012). Leftists could publicly voice their opinions, return from exile, and obtain freedom from jail, which included receiving pensions for their time spent in jail and the expungement of their criminal records (Aguilar, 2012).

The *Pacto de olvido* and 1977 Amnesty Law aimed to transition the country into democracy through cooperation rather than renewed violence. Preventing renewed violence was the priority of many Spanish citizens due to the deadly consequences of the Civil War and resulting dictatorship (Aguilar, 2012). Spaniards anticipated a strenuous transition and did not want to jeopardize democratic success (Humlebæk, 2007). Mitigating tensions between the left and the right was necessary because while increased numbers of the population wanted democracy, the path to democracy was uncertain and complex. The law inhibited the creation of a truth commission, prohibited the observation of anniversaries of events that occurred during the

Civil War and dictatorship, and prevented the government from granting significant recognition to victims and their families. The government was also unable to partake in the exhumation of mass graves (Encarnación, 2014). A vast majority of the *Cortes Generales* passed the Amnesty Law, with 296 votes in favor, 18 abstentions (all by members of the far-right), 2 votes opposed, and 1 invalid vote (Aguilar, 2012). Politicians from both the left and the right believed this was the best way for Spain to move forward.

In order to officially establish the democratic nature of the state, a new constitution was needed to outline the rights and responsibilities of citizens and the government. After negotiation between leftist and rightist parties in the Congress of Deputies and the Senate, the *Cortes Generales* passed a new constitution on October 31, 1978. The Constitution was subsequently ratified through a national referendum on December 7, 1978, and then formally sanctioned by the King on December 27, 1978. The Constitution granted universal suffrage to Spaniards over 18 years of age, as well as stressed the principal of equality for all (*Spanish Constitution*, 1978). Citizens were granted civil, political, and socio-economic rights, including freedom from unwarranted search and seizure and the right to a fair trial. Political parties and trade unions were permitted as long as they abided by democratic procedures (*Spanish Constitution*, 1978). Citizens were granted the right to work, strike, and receive pensions if they were elderly, disabled, or unable to take care of their families (*Spanish Constitution*, 1978). The army was charged with protecting the independence and sovereignty of Spain, but the Constitution specified that the government held ultimate responsibility for Spain's protection to prevent the army from obtaining too much power (Solsten & Meditz, 1988).

Regional autonomy has continuously been a contentious topic in Spain, and politicians hotly debated the subject throughout the constitutional drafting process. Leftists in

regions like Basque Country and Catalonia held desires ranging between wanting increased regional autonomy to aspiring for complete independence from Spain. Rightists desired the continuation of Franco's policies of Spanish national unity, homogeneity, and centralism. Ultimately, the new constitution stressed national unity to demonstrate the unitary nature of the country, but also granted significant self-governing powers to regions like Basque Country and Catalonia. Culturally, these areas were also permitted to speak their own language and use their own flags, which was previously prohibited under Franco. The final constitutional decision was designed to balance the desires of the right and the left, but the far-right and the regional separatists remained unsatisfied because both groups preferred a more extreme decision in their favor (Solsten & Meditz, 1988).

The dissatisfied ETA continued using violent tactics to fight for Basque independence. They utilized bombings, assassinations, and kidnappings to fight for their goals. The organization was deemed a terrorist organization and their victims included civilians, government officials, and military personnel. ETA terrorism began prior to the end of the dictatorship, but violence increased dramatically during the transitional years. Between 1976 and 1980, 267 people were killed and thousands more were injured or living under threat of attack. Spaniards feared the unpredictability of extremist groups and the threat that they produced (Ceberio Belaza, 2018).

A failed coup d'état in 1981 demonstrated the unpredictability of Spain's transition. The coup d'état, known as *El Tejerazo*, was instigated on February 23, 1981 by Lieutenant General Antonio Tejero Molina, who led 200 armed officers of the Civil Guard into the Congress of Deputies during a vote deciding on the next prime minister. The coup d'état stemmed from resistance to the new democratic order and frustration over ETA violence and demands

(McLean, 2006). Those in the room were held hostage for 18 hours, but Tejero and his forces ultimately surrendered without killing anyone. Tejero expected support from the rest of the military, but the armed forces did not come to his aid (Koven, 1981). The King received significant credit for restoring order because he personally called all nine of the country's major regional military commanders to persuade them not to join the coup (Koven, 1981). The King also participated in a televised national appeal for the country to maintain constitutional order (Koven, 1981). The coup d'état was largely and publicly condemned by members of the *Cortes Generales* and the press who perceived the attempted coup as a shameful stain on the new Spanish democracy (Koven, 1981). In the aftermath of the attempted coup, Spaniards were uncertain about the stability of their new democracy.

V. Conclusion:

This chapter outlined relevant background information regarding Spain's democratic transition to provide context for the following chapter's analysis of how Spain's democratic transition affected the extent of transitional justice achieved in post-dictatorship society. Spain's transition to democracy was shaped by economic, social, and political changes that began in the fifteen years prior to the end of the dictatorship. Through industrialization and modernization, the country adopted ideals that increased the desirability of democracy. Franco's death marked a turning point in the dictatorship's longevity, and the resignation of Arias Navarro and the rise of Adolfo Suárez demonstrated the desire for democratic reforms. The *Pacto de olvido* and subsequent 1977 Amnesty Law established political coexistence and permitted the left and right to negotiate throughout the democratic transition and constitutional drafting process. Democratization was complicated by fear of terrorism and renewed violence.

Spain's democratic transition suppressed transitional justice because the country chose to ignore their history of human rights abuses rather than confront their past.

Chapter 3: Transitional Justice in Spain

I. Introduction:

Transitional justice was not a priority during the democratic transition in Spain due to the political and societal context of the transition. Spain's democratic transition produced a limited degree of transitional justice because primary aims of transitional justice, such as acknowledging crimes and recognizing victims, were actively suppressed. Transitional justice was restricted to governmental reforms that built democratic institutional strength. While modernization and the establishment of democracy fostered the foundation for transitional justice, the need for negotiations combined with wide-spread fear prevented the manifestation of primary aims of transitional justice. The political right held greater authority than the left throughout the transition process, but both sides negotiated and made concessions. The right used their power to avoid responsibility for human rights violations and inhibit transitional justice. The fear of instability prompted policies of forgetting and amnesty rather than risk renewed fighting. The primary aims of transitional justice were impeded because society prioritized safety and security. This chapter will analyze how the aspects of Spain's democratic transition discussed in the previous chapter affected the extent of transitional justice achieved in post-dictatorship society. First, this chapter will examine how the foundation for democracy established before 1975 opened the door for transitional justice. Second, this chapter will study how power dynamics throughout the democratic transition limited the feasibility of transitional justice. Third, this chapter will analyze how fear of instability motivated the country to seek stability over transitional justice.

II. Foundation for democracy and transitional justice in pre-1975 Spain:

Modernization is conducive to democracy. As Ronald Inglehart and Christian Welzel (2009) argued, economic development brings predictable changes to society, culture, and politics. Their evidence suggests that postindustrial societies develop cultural changes that emphasize individual autonomy and self-expression values over bureaucratization and centralization. These altering values bring a growing desire for emancipation from authority. Free choice, freedom of expression, political involvement and activism, and growing tolerance are increasingly desired. Rising education rates are central to this trend because independent thinking makes people better equipped and more likely to voice opinions on politics. These individuals are increasingly likely to question hierarchical authority. While modernization does not guarantee democracy, the changing values that accompany modernization increase the probability of democracy in a society (Inglehart & Welzel, 2009).

Inglehart's and Welzel's theory on modernization is highly applicable to the changes seen in Spain between 1959 and 1975. Economic development and the rise of a postindustrial society brought changing social and political mentalities, which shifted the tolerance that Spaniards had for lack of freedoms and human rights. Leftists began advocating for democracy. The increasingly educated Spanish population was less inclined to accept the ways of the old dictatorship. In universities, students were exposed to philosophy, sociology, and new ideologies like Marxism (Bernecker, 2007). Learning about principles such as equality, human nature, human rights, and free will increased intolerance for the dictatorship among the student population (Bernecker, 2007). Violence previously perpetrated by the regime faced growing intolerance. Advocacy for a better way of life soared, and students joined ranks with other intellectuals, workers, and members of society that disagreed with the dictatorship to form opposition movements (Bernecker, 2007). These groups fought for civil liberties despite the

threat of exile and prison (Bernecker, 2007). Opposition trends were magnified and dispersed through growing media outlets and willingness to critique the regime, which demonstrated disdain for violence and human rights abuses (Palomares, 2007).

Liberalizing notions of politics and governance fostered a greater expectation and desire for democracy among a large percentage of the population upon Franco's death. According to the International Center for Transitional Justice, a goal of transitional justice is to reform laws and institutions, including the judiciary and military, to establish accountability and trust (ICTJ, n.d.). Pre-1975 advocates ensured that these democratic goals were clear and enacted upon in the form of governmental and institutional reforms once the transition began. While Spain's transition to democracy valued economic and political stability over transitional justice, the shift to democracy represented the growing liberal population's desire and successful ability to advocate for an end to the aspects of the dictatorship that would later inspire the need for transitional justice. While ultra-conservatives wanted to retain authoritarian structure, moderate conservatives recognized the need to adopt democratic reforms to appease the liberal population.

While actual efforts to attain key elements of transitional justice were not made during the democratic transition, the moral basis for transitional justice was rooted in the large-scale mindset changes among the growing liberal population during the 1960's and 1970's. While Spaniards still lived under dictatorship, this period represented a shift towards the desire for human rights. Transitional justice requires the end of the source of violence and repression, and this period marked growing dissatisfaction with negative government actions, as well as the desire for better governance and more freedoms. Greater knowledge and dispersal of opposition ideas and democratic values about representation, equality, and freedoms contributed to the foundation of transitional justice because a wider-range of anti-dictatorship perspectives were

spread among the population (Palomares, 2007). While the acknowledgment of crimes and recognition of victims were not present during Spain's democratic transition because of fear and the need for stability, this theoretical foundation existed for supporters of transitional justice to expand upon in the mid-2000's when the desire for transitional justice was increasingly popular and feasible. In the 2000's, rising numbers of Spaniards felt politically and economically secure enough to advocate for transitional justice. Spain's strong democratic system of governance permitted them to safely and securely voice their opinions. The path to democracy was developed through economic, social, and political reforms between 1959 and 1975; built between 1975 and 1978; and consolidated and stabilized through the 2000's.

The Spanish dictatorship was losing legitimacy to rising desires for democratic reforms, and changes adopted by the Spanish Catholic Church after the Second Vatican Council of 1962-1965 further decreased the dictatorship's validity. High-ranking members of the Spanish Church's hierarchy had supported the repressive dictatorship for decades, which alienated the Spanish public from the Church (Bernecker, 2007). The Church's lack of respect for human rights and the resulting alienation increased secularization in Spanish society, which was placing a higher value on freedoms and rights (Bernecker, 2007). Even though secularization decreased the number of fully practicing Catholics, Catholicism remained a popular religion in Spain with 82% of Spaniards still identifying with Catholicism by 1980. While these individuals considered themselves Catholics, they identified with the religion to varying levels of practice and commitment (Solsten & Meditz, 1988). Because of the Vatican's value to Catholic Spaniards, the Second Vatican Council's promotion of democracy and human rights resulted in social ramifications in Spanish society (Callahan, 2007). Pressure from progressive and reformist lower-ranking clergymen pushed the small, high-ranking Spanish Church elite who traditionally

backed the dictatorship to adopt the Second Vatican Council's reforms. This religious modification publicly cost the dictatorship a major source of its legitimacy to concepts that better aligned with democracy and transitional justice (Callahan, 2007).

The Second Vatican Council stripped the dictatorship of the legitimacy it claimed through its connection with Catholicism. Loss of legitimacy is detrimental to a regime's longevity because governments need legitimacy to maintain their power over citizens (Mainwaring, 1989). The Spanish dictatorship faced weakening authority after the Spanish Catholic Church adopted the Second Vatican Council's liberal reforms. While many Catholic Spaniards already shared the opinions of the lower-ranking clergymen who swayed the Spanish Church's decision to change, the value of human rights, religious freedom, and equality increased among the population (Callahan, 2007). This change made the Spanish Church a player in the path to democracy, and continued the process of laying the groundwork for future transitional justice by demonstrating growing intolerance for violence and repression.

III. Nature of the democratic transition in Spain:

Franco's death served as a catalyst for democratic change in Spain. The expectation and desire for democracy grew during previous decades, and Franco's death provided Spain with an opportunity to transition from dictatorship to democracy. Critiques of Arias Navarro and the ultra-conservative right demonstrated that many Spaniards no longer wanted to live under dictatorship, but rather desired democratic reforms and freedoms. King Juan Carlos and Prime Minister Adolfo Suárez were advocates of reform and sought to remake the governmental structure.

The end of dictatorships and resulting power dynamics shape the way a country can transition into democracy. Scott Mainwaring (1989) argued that dictatorships can transition into democracy through a major defeat of the regime followed by the establishment of a new democratic government by the winners; through the breakdown of the regime due to internal schisms or delegitimization; or through internal steps taken by the dictatorship to liberalize aspects of the government and obtain democracy. This final form of transition is known as a transition through transaction, and it involves members of the regime remaining important actors throughout the transition. A transition through transaction can include participation by the opposition. Mainwaring also discusses transitions through extrication as a middle ground. A transition through extrication is when an authoritarian government is weakened, but not fully defeated. Former authorities can negotiate throughout the democratic transition, but not from a position of great strength (Mainwaring, 1989).

The Spanish dictatorship was never defeated, but rather the dictatorship ended when Franco died and democratic reforms were adopted. The democratic transition in Spain fits best into the transition through transaction category of Mainwaring's (1989) model because former Franco authorities guided the transition. Suárez and the political right led the democratic reformation process between the death of Franco in 1975 and the 1977 election, as well as after the 1977 election until the 1982 elections in which the PSOE obtained power. The right and left both made concessions throughout the reformation process, but the right came from a position of power since they held more seats in the *Cortes Generales* while the left came from a weaker position due to its recent history with oppression and lack of parliamentary majority. While neither side had a complete majority in the *Cortes Generales*, the right held more seats and occupied the premiership.

The left, including the PSOE and PCE, entered negotiations with Prime Minister Suárez and the right. Concessions by the right involved loosening control and restrictions, while the left conceded opinions and desired reforms to obtain acceptance into the new democratic fold. The right permitted the existence of opposition parties, releases from jails, return from exile, and increased regional autonomy in exchange for leftist recognition and support for the new constitutional monarchy (Carias, 2017). While the right needed to bargain due to decreased legitimacy following the end of the dictatorship, the right maintained more bargaining power as they came from a position of political authority.

The long oppressed PCE, which was considered an “enemy of the state” under Franco, was not accepted into society until 1977. Santiago Carillo, the leader of the PCE, and Suárez entered secret negotiations in which Carillo accepted the monarchy in exchange for the legality of the PCE and the promise that the monarch would have limited powers in the new government (Carias, 2017). While many on the right argued against the legalization of the Communist Party and many communists opposed recognizing the legitimacy of the monarchy, Carillo accepted the terms. It was the only way to obtain full political freedoms for the PCE. The communists were negotiating to reobtain their place in society. The right was negotiating because Suárez believed that the legalization of all perspectives, even those that were previously harshly repressed, was necessary to legitimize the new democracy (Carias, 2017). The dominant power relationship of the right is evident because the communists were negotiating for basic freedoms and the right was negotiating to establish a positive perception of the new democracy. The right never needed to negotiate for basic freedoms for their partisans as they quickly attained those rights after the democratic transition. Leftists often had to make concessions to obtain acceptance into society and were therefore increasingly likely to make larger concessions during political negotiations.

Rightists were able to focus on other goals during the transition, such as avoiding prosecution for their human rights abuses.

The transition through transaction nature of the democratic transition was evident in the *Pacto de olvido* and 1977 Amnesty Law. Both sides agreed to “forget” the past and eliminate all discussion of the Civil War and dictatorship (Encarnación, 2008). For the right, forgetting signified freedom from prosecution and the ability to avoid responsibility for serious human rights violations (Encarnación, 2008). Crimes committed on the left, although they were lesser compared to the crimes of the right, were also ignored (Encarnación, 2008). While the right was responsible for systematically murdering around 200,000 Republicans during the Civil War, the left was also responsible for atrocities including the death of around 50,000 Nationalists, although casualty estimates vary per scholar (Greenspan, 2016). The Amnesty Law granted pensions to Republican Civil War veterans and permitted dismissed civil servants to return to their jobs (Encarnación, 2008). While the *Pacto de olvido* and 1977 Amnesty Law had benefits for both sides, the benefits were greater for the right. The right escaped responsibility for large-scale human rights abuses during the Civil War and dictatorship, and a new norm inhibited acknowledgement and discussion of the Civil War and Franco regime (Encarnación, 2008). Since the right had more governmental authority and control, they were able to obtain favorable terms that limited accountability for their crimes.

The transition through transaction nature of the democratic transition inhibited transitional justice. Transitions through transactions are less conducive to transitional justice compared to transitions through defeat or a breakdown because former authoritarian officials maintain the most bargaining power. In Spain, the transition through transaction granted the political right greater power than the political left, which permitted the right to negotiate from a

better position. This power dynamic allowed the political right to avoid responsibility for their crimes. While the Spanish democratic transition was aimed at preventing renewed violence, crimes were not addressed and victims received no official recognition or reparations (Govan, 2008). Acknowledging violations and recognizing victims would have required the right to address their wrong-doings. The right did not want to address their wrong-doings because taking responsibility for their crimes was not in their best interest. Acknowledging crimes and recognizing victims could have opened the doors to mass leftist critique of the right, as well as instigated disunity and instability in the country.

The Spanish democratic transition inhibited elements of transitional justice that acknowledged crimes and recognized victims, but included supplemental aspects of transitional justice such as returning order and trust to society. Restoring order and trust occurred through a series of government reforms. Creating accountable and trustworthy institutions, improving the justice system, maintaining respect for the rule of law, and facilitating a durable resolution to the conflict are complementary aims of transitional justice that were present in Spain. The democratic transition focused on building a successful democracy over transitional justice.

IV. The fear element:

Fear of renewed violence and instability inhibited transitional justice in Spain. Spaniards wanted their blossoming democracy to succeed, and fear served as motivation to negotiate and make concessions. Societal desire for stability contributed to the creation of the *Pacto de olvido* and 1977 Amnesty Law. Spaniards were motivated to ignore the country's history of violence given the tumultuous unpredictability of ETA violence and the military coup d'état. Transitional justice was not a priority because the democratic future of the country was unclear.

Spaniards anticipated a “harsh and frightful” democratic transition due to the country’s unstable history with changes in political power (Humlebæk, 2007). Change in political authority had not occurred since the Second Republic, and the governance of the Second Republic was rocked by political polarization, the Revolution of 1934, and Franco’s military uprising, which culminated in the Spanish Civil War. Despite briefly experiencing democracy during the Second Republic, the volatility of this period did not produce a strong democratic legacy for politicians and citizens to look towards when structuring the new democracy. While the populace desired democratic reforms, transitioning into democracy after the instability of the Second Republic and the authoritarianism of Franco’s dictatorship made citizens wary of the feasibility of democracy (Encarnación, 2008). After suffering under dictatorship for 39 years, actions that threatened democratic success were undesirable. Stability and safety were priorities over transitional justice.

The right and left instituted the *Pacto de olvido* and 1977 Amnesty Law to keep the peace between them. The agreement was made to improve the transition to democracy and to ensure stability. Political elites from both ideological perspectives feared that “opening old wounds” would inhibit the democratization of Spain by instigating another civil war or dictatorship. Fear of democratic failure based on Spain’s violent history with transitions combined with ETA terrorism and the military coup d’état contributed to the emphasis on peace and stability throughout the democratic transition instead of accountability and justice (Encarnación, 2008).

Political elites instituted policies of forgetting based on the opinions of citizens. According to opinion polls, 61% of the population approved of complete amnesty after Franco’s death (Ortega, 1985). Political elites created policies of forgetting without fear of criticism from the population because there was a lack of social demand to acknowledge the past. Politicians, the populace, and the media desired stability and forgetting over transitional justice.

(Encarnación, 2008). Support for forgetting and amnesty arose among citizens who feared responsibility for complicity in Franco's regime and victims who felt shamed and silenced (Encarnación, 2008). New political leaders struggled to fully grasp the magnitude of the human rights abuses because decades had passed since the Civil War and early, violent years of the dictatorship. These political leaders were not actual fighters or direct victims of human rights abuses. (Encarnación, 2008). There was a "memory gap" between "those who actually lived the war and those who experienced its consequences," which was further complicated as facts about violence were unclear and suffered from regime distortion (Encarnación, 2008). Political elites perceived policies of forgetting and amnesty to be quick solutions to the complex and violent context of the transitional period. Striving for transitional justice could have instigated more disunity and trouble.

The threat of terrorism fostered a culture of fear among citizens who craved stability throughout the transitional period. The ETA was founded in 1959, and before Franco's death in 1975, the ETA had already killed 44 people (Ceberio Belaza, 2018). The assassination of Carrero Blanco represented the ETA's potential for violence (Aizpeolea, 2013). When ETA violence increased dramatically during the transitional years, the culture of fear grew. While most attacks were located in Basque Country and were aimed at government officials or security personnel, attacks also occurred in neighboring northern Spanish regions, Madrid, and Barcelona, as well as frequently injured civilians who were in the wrong place at the wrong time. Spaniards feared terrorism and violence instigated by the ETA, and desired stability and comfort (Ceberio Belaza, 2018). Transitional justice was not the priority because feeling secure was more important to the population.

El Tejerazo, the failed military coup led by Lieutenant Colonel Antonio Tejero Molina, was instigated over frustration with ETA terrorism and their demands for greater regional autonomy (McLean, 2006). Tejero and his ultra-conservative supporters desired a unified, centralized Spain instead of regional autonomy (McLean, 2006). The threat of terrorism, which was often directed at police and military personnel, likely increased the desire of Tejero to act (McLean, 2006). While the military coup was unsuccessful, it served as a reminder of the fragility of democracy to all Spaniards. It also demonstrated how fear and terrorism could shake the stability of the democracy, and proved that persistence was required to maintain the democracy. It added to the value politicians and citizens placed upon stability over transitional justice because democracy was truly threatened.

Before El Tejerazo, between the years of 1979 and 1980, a couple of leftist controlled local governments boldly began exhuming and reburying Republican graves. These exhumations were direct violations of the *Pacto de olvido*. The most notable case was in Torremejía, a village in which 33 Republicans killed by Franco's forces were exhumed in 1979. The mayor of the village was brought to court for authorizing public funds for the exhumation. While the case was eventually dropped, exhumation of Republican graves came to a screeching halt after Tejero's attempted coup (Encarnación, 2008). The failed coup reminded citizens of the fragility of the new democracy and no more exhumations occurred between 1981 and 2000 (Encarnación, 2008). While some leftist Spaniards may have desired the acknowledgement of crimes and recognition of victims, the fear of upsetting the democracy prevailed, particularly after democracy was directly threatened by General Tejero. The attempted coup increased feelings of uncertainty and fear among Spaniards, which paused transitional justice for decades.

Fear inhibited transitional justice because Spaniards were more concerned with stability and safety instead of accountability. Transitional justice becomes less of a concern when individuals feel like their lives or futures are threatened. Spaniards were less inclined to seek increased transitional justice as they did not want to upset the new, fragile democracy (Encarnación, 2008). The lack of a desire to approach transitional justice was maintained by most of the public until the 2000's when greater demands for transitional justice were brought to popular attention through human rights organizations (Encarnación, 2008).

V. Conclusion:

The Spanish democratic transition resulted in limited transitional justice because key elements of transitional justice such as the redress and acknowledgement of violations, as well as the recognition of the dignity of individuals were actively prevented. Even though the foundation for transitional justice was established through changing morals, values, and attitudes, the country was more concerned with creating a stable, safe democracy over transitional justice. The nature of the transition through transaction and fear inhibited the approach of primary aims of transitional justice. Efforts to attain transitional justice in the 2000's were more successful given the greater base of support, passage of time, decreased fear, and political and physical stability.

Chapter 4: Understanding Chile

I. Introduction:

The democratic transition in Chile manifested differently than the democratic transition in Spain. The 1988 Chilean national plebiscite, in which citizens voted on the continuation of the military dictatorship, instigated the democratic transition in Chile. The population voted against the continuation of the regime, leading to constitutional reforms and the election of a leftist president in 1989. Chile transitioned to democracy after a collective vote, while Spain transitioned after Franco's death upended the longevity of the dictatorship. A leftist government attained power in Chile, while the right maintained governing power in Spain. In Chile, a truth commission was created in 1990 to report on incidences of human rights abuses, however, perpetrators of violence escaped prosecution because of protection from amnesty laws. Amnesty laws protected perpetrators in both Spain and Chile, but Spaniards strove to forget their past while the Chilean truth commission acknowledged crimes and recognized victims. This chapter will discuss the democratic transition process in Chile, which will serve as context in the following chapter's analysis of how Chile's democratic transition influenced the extent of transitional justice in post-dictatorship society. It will serve as evidence for how increased transitional justice manifested in Chile compared to Spain. Firstly, this chapter will outline the defeat of the Chilean dictatorship in the national plebiscite. Secondly, this chapter will discuss the process of transferring power between Pinochet's regime and the left. Thirdly, this chapter will examine the rise of President Aylwin's government and policies.

II. Downfall of the Chilean dictatorship:

After assuming control of the country on September 11, 1973, the military junta in Chile sought to consolidate power. On September 11, 1980, the junta authorized a constitutional referendum to replace the 1925 Constitution with a new, more authoritarian document. According to the junta, 67% of the population voted in favor of the constitutional change, however, a lack of voting safeguards signified that the actual percentage of the population that supported the new form of government may differ from the official number (*International Commission*, 1989). The 1980 Constitution institutionalized Pinochet's military junta and granted significant powers to the president while weakening Congress (Kandell, 2006). Military power was augmented through the establishment of a National Security Council, which gave the military a tutelary role over all state institutions (Malinarich, 2000). The council had the right to interject on matters that they believed influenced the safety of the country (Malinarich, 2000). The junta was established as Chile's governing body, but the document called for a national plebiscite in 1988 to determine the political future of the country. Citizens would vote either YES or NO to the continuation of the military junta and Pinochet's presidency for an additional eight years.

As the plebiscite approached, politically-minded individuals split into a YES faction and a NO faction. The YES side was supported by Pinochet, the armed forces, property owners, and business groups. The YES campaign stressed order, national security, and political and economic stability and progress. The NO faction was dominated by the "Command for the No," which brought 16 different political parties together into a coalition. The Christian Democrats (DC) were the largest party in the group, and thus became the leaders of the coalition. The DC's president, Patricio Aylwin, served as the coalition's spokesperson. The socialist faction, Communist Party, union leaders, intellectuals, students, human rights organizations, and the

international community backed the NO side. The NO campaign used its limited allotted television time to advertise for a happy future with hope and reconciliation. These advertisements helped convince the public that they should not fear voting NO (*International Commission*, 1989).

Leading up to the 1988 plebiscite, the junta prepared for winning re-election. In the weeks prior to the plebiscite, the junta utilized authoritative measures to restrict the opposition and enhance the odds of electoral success. The regime registered their partisans to vote before others in the country, as well as pressured members of the armed forces, public employees, and poor people dependent on government subsidies to vote YES. Private business owners also pressured their workers to vote YES. The junta used government resources and their control of the media to advocate for a YES victory. Small concessions were made to the NO side, such as permitting limited use of the media, prolonging the voter registration period, loosening restrictions on public meetings and rallies, and allowing exiles to return to Chile (*International Commission*, 1989).

The actual voting process was increasingly democratic compared to the authoritative measures utilized by the regime to ensure a YES win. Counter-fraud measures were employed to ensure voting integrity. While the junta objected to a truly free plebiscite, they wanted the domestic and international community to see the plebiscite as “a valid expression of public opinion.” The junta wanted to win the plebiscite validly to boost the legitimacy of the regime, uphold the laws of their 1980 Constitution, avoid the discontent that follows rigged elections, appease the international community, and encourage the NO side to participate. NO participation was considered important because the YES side believed that the YES faction would win. The military junta wanted to maintain the purity of their victory by objectively beating the NO side.

The regime felt external pressure to act democratically from neighboring countries that had transitioned to democracy, as well as from the United States, which no longer supported Pinochet. The regional spread of democracy and human rights norms resulted in a poor international perception of Chile, and holding a valid plebiscite would help recuperate the regime's image. The military junta was also overconfident. The regime believed that they would succeed because they had won previous plebiscites, maintained control over voting procedures, perceived the opposition as fractured, utilized government resources and personnel for support, maintained backing from economic elites, and offered continuity and stability compared to a NO victory, which would result in a restructuring of the political system (*International Commission, 1989*).

The plebiscite was held on October 5, 1988 and 90% of the voting population cast their opinion. The NO alliance won the plebiscite with 54.71% of the vote compared to the YES side which obtained 43.01% of the vote. The results signified that Pinochet and the military junta would leave power on May 11, 1990 (*International Commission, 1989*).

III. Chile's democratic transition:

Following their victory, the NO alliance recognized that Pinochet still received 43% of the vote, which represented a large portion of society. The NO side decided against complete condemnation of the regime since they did not want to provoke the military. Because the 1980 Constitution was rigid and difficult to alter by nature, the NO supporters predicted difficulties in modifying the document after the transition of power to the left. Reforming the Constitution democratically after the transition would be challenging due to structural provisions that were intrinsically biased towards the right. The NO camp sought to negotiate with the junta to obtain

constitutional reforms before ascending to office. Negotiating before officially obtaining power would help the left amend the Constitution in ways that would otherwise be too difficult to change democratically. The left desired constitutional reforms that would reduce the right-leaning bias, which allowed the right to obtain a disproportionate number of seats in Congress. Before the transition, the junta had the authority and capability to work with the left to make these changes (Hudson, 1994).

Moderate members of the junta were willing to discuss potential reforms to the 1980 Constitution. These moderates worried that if the left was not placated through small constitutional reforms, then the left would completely disregard the Constitution in favor of something new. Disregarding the 1980 Constitution would decimate the political and economic “progress” that the right had made throughout the 16 years of military rule. Negotiations would protect aspects of the Constitution and solidify it as the legitimate successor to the 1925 Constitution. The military also desired constitutional reforms to ensure the autonomy of the military on internal matters. Anticipating the election of a new leftist government, the military wanted these reforms to protect their independence. The right and the left understood the value of cooperating over fighting, especially because the results of the plebiscite revealed the politically divided nature of the country (Hudson, 1994).

Ultimately, the reformed Constitution passed in a referendum on July 30, 1989. Fifty-four amendments were approved by 85.7% of voters, with both sides viewing the results as a relative success (Hudson, 1994). While the right had to relinquish some power, they celebrated that the basic design of their original constitution was upheld and ratified, which officially legitimized the document as the replacement of the 1925 Constitution (Hudson, 1994). The military also obtained the self-governing autonomy that it desired (Hudson, 1994). The left obtained moderate

democratic reforms, although they perceived these amendments as the first step to additional future reforms (Hudson, 1994). Successful modifications to the Constitution achieved by the left included punishing groups based on threatening actions rather than opinions, permitting labor and association leaders to join political parties, requiring the court to consider habeas corpus in all cases, and prohibiting exile as a form of punishment (Hudson, 1994). The National Security Council's mandate was modified to make it an advisory body instead of an enforcement body (Hudson, 1994). The comptroller general was given a seat on the council to prevent a military majority within the body and diminish military power (Hudson, 1994). Compared to the original 1980 Constitution, the new Constitution augmented the powers of Congress and decreased the powers of the president (Hudson, 1994). The finalized document altered the constitutional amendment process to make it easier to pass future democratic reforms, but the document still held right-leaning bias. Pinochet maintained the right to appoint a significant number of senators and the military retained a role in governance (*Chile*, 1992). The left insisted that more reforms would be necessary in the future to create a more balanced governmental system (Hudson, 1994).

IV. Rise of the new Chilean government:

On December 14, 1989, Chile officially elected Patricio Aylwin to serve as the next president. Aylwin ran as the leader of the Coalition of Parties for Democracy (CPD), which was comprised of the parties that voted NO during the plebiscite. Aylwin obtained 55.2% of the vote, representing a clear victory over his opponents. Hernán Büchi Buc, who was backed by the Democracy and Progress coalition composed of far-right individuals through the Independent Democratic Union and center-right individuals through the National Renewal, received 29.4% of the votes. Francisco Javier Errázuriz Talavera, who ran on a populist platform backed by small

parties that unified in the Unity for Democracy coalition, received 15.4% of the votes (Hudson, 1994).

The CPD obtained the most available seats in both the Chamber of Deputies and the Senate, but failed to obtain a majority in either house due to constitutional provisions that still favored the right. Obtaining a CPD majority was difficult because Pinochet appointed a minority of designated senators. In order to pass legislation or amendments the new leftist government needed to compromise either with Pinochet's designated senators or senators that were elected on a right-leaning platform. The need to negotiate limited Aylwin's ability to institute human right policies since human rights initiatives were frequently blocked or diluted by conservatives (*Chile, 1992*).

Political disagreement between the right and the left was evident in the case of still imprisoned political prisoners from the Pinochet regime. The left sought leniency for political prisoners who committed acts of political violence, but rightist legislators drastically weakened leftist proposals for legal reform. Conservatives maintained their beliefs that these political prisoners posed a security threat to the country. Congress was unable to grant the political prisoners mercy, but the government utilized other tactics, such as presidential pardons and acquittals, to secure the release of some prisoners (*Chile, 1992*).

President Aylwin's government promised to establish the truth about the regime's crimes, but the new administration was also wary of upsetting the military and citizens who supported the right (Christian, 1990). Aylwin quickly established the National Commission on Truth and Reconciliation to "document human rights abuses resulting in death or disappearance during the years of military rule, from September 11, 1973 to March 11, 1990" (*Truth Commission, 1990*). The commission's mandate did not include torture and other forms of abuse that did not

conclude with death. The body, known as the Rettig Commission because it was chaired by Raúl Rettig, operated between May 1990 and February 1991. The commission was comprised of eight commissioners, two women and six men, chosen by President Aylwin. Four commissioners were former Pinochet supporters and the other four had opposed the regime (Fletcher, 2014). The commission issued an 1,800-page report upon completion, which President Aylwin presented to the public. The report concluded that 3,438 individuals were disappeared, tortured, and killed as a result of a “planned and coordinated strategy of the government” (*Truth Commission*, 1990). A large portion of the responsibility for governmental oppression was given to the National Intelligence Directorate (DINA) (*Truth Commission*, 1990). The report recommended reparations for victims, which included “symbolic measures” as well as “significant legal, financial, medical, and administrative assistance” (*Truth Commission*, 1990). The commission also advised the adoption of human rights laws, the strengthening of Chilean civilian authority in society and the justice system, and the creation of an ombudsman's office (*Truth Commission*, 1990).

President Aylwin fully endorsed the report and publicly asked victims, families of victims, and the Chilean people to forgive the state for its crimes. Congress quickly passed a unanimous resolution to praise the commission and its report. The Aylwin administration created the National Corporation for Reparation and Reconciliation, which provided continual financial support to families of victims listed in the report. This body was also charged with continuing investigations that the original commission failed to finish (*Truth Commission*, 1990). Reparations were limited to families of victims that met the mandate of the commission, therefore victims of torture and other abuses that did not result in disappearance or death were not compensated (*Truth Commission*, 1990). Aylwin and the report advocated for crimes to be

investigated, despite the inability to prosecute perpetrators due to amnesty laws (*Chilean National Commission*, 1993). The commission did not name individual perpetrators of violence in the report, but it sent the courts incriminating evidence. The commission felt that naming specific perpetrators was a violation of due process because it was the court's responsibility to determine guilt or innocence (*Chile*, 1992).

While the Rettig Commission uncovered incidences of human rights violations, Pinochet and members of his regime were protected from prosecution. Upon transition to democracy Pinochet stepped down as president, but he retained power by maintaining his position as commander in chief of the armed forces. As commander in chief, Pinochet protected the military from punishment for abuses perpetuated throughout the dictatorship (Christian, 1990). The 1978 Amnesty Law passed by the junta also prevented members of the regime from being prosecuted for human rights abuses committed before 1978 (Marengo, 2015). The Rettig Report discovered that most crimes committed by the dictatorship occurred between 1974 and 1977, thus they were covered by the Amnesty Law (*Truth Commission*, 1990). President Aylwin's administration was incapable of repealing the law without a legislative majority in Congress. The Supreme Court, surrounded by significant controversy, also granted the military courts jurisdiction over crimes committed after 1978 (*Chile*, 1992). The military courts lapsed in their investigation of human rights abuses, leaving perpetrators of violence unaccountable for their crimes (*Chile*, 1992). Numerous human rights violators maintained their positions in the military throughout the transition (*Chile*, 1992). Prosecutions were absent throughout the democratic transition.

The Chilean population had mixed reactions towards the Rettig Report. On the left, numerous Chileans and human rights activists criticized the Rettig Report for its limited scope. They believed that more "truth" needed to be uncovered and lamented the commission's inability

to identify perpetrators or locate missing bodies (*Chile*, 1992). On the right, the military outwardly rejected the report (*Chilean National Commission*, 1993). The military perceived itself as the institution that saved Chile from the instability of the Allende administration and the threat of socialism. While the military did not explicitly deny the report, they stressed the historical context and necessity of the coup d'état (*Chile*, 1992).

President Aylwin was concerned with bringing light to the human rights violations that transpired, but he was also responsible for ensuring stability. President Aylwin halted efforts to implement the recommendations of the Rettig Report soon after its release due to an upsurge in attacks instigated by armed leftist groups (Fletcher, 2014). These attacks notably resulted in the assassination of Jaime Guzmán, a right-wing leader and Pinochet advisor (Fletcher, 2014). Conservative politicians proposed the creation of a strong anti-terrorism campaign to counteract bombings, shootings, and robberies by extreme leftist groups (*Chile*, 1992). Aylwin had to balance between recognizing crimes and acknowledging victims, while maintaining stability and fostering reconciliation between society and the military.

V. Conclusion:

After seizing power through a coup d'état against President Salvador Allende, Pinochet and the armed forces installed a military junta to govern Chile. The junta used repressive tactics to maintain power, but sought to legitimize their governance through a new constitution and a national plebiscite to determine the continuation of the regime. The plebiscite's voting process involved authoritarian and democratic measures, but the population ultimately voted against the continuation of Pinochet and his regime. The left and right negotiated to reform the Constitution and governmental structure. Patricio Aylwin was elected president, and he used his authority to

create a truth commission. Incidences of human rights violations were reported, however, perpetrators of abuse escaped prosecution due to amnesty laws. Chile's democratic transition required the need to balance peace, truth, and justice. This delicate balance affected the extent of transitional justice achieved in post-dictatorship Chile.

Chapter 5: Transitional Justice in Chile

I. Introduction:

Chile's democratic transition resulted in more transitional justice as compared to Spain, but transitional justice still faced restrictions. Chile acknowledged crimes and recognized victims within the constraints they faced, while Spain ignored their history of human rights abuses. Chile's history with democracy, the spread of human rights norms throughout Latin America, and changing U.S. foreign policy created a climate that set the stage for democracy and human rights-based policies. While Chile's decision to transition happened democratically and the election of the left to the presidency increased the ability of the country to attain transitional justice, the need to negotiate between the right and the left limited transitional justice. Leftist political authority permitted the creation of a truth commission, which dramatically increased the extent of transitional justice possible, however, limits were imposed based on the commission's structure and the need to maintain peace. Durable amnesty laws inhibited perpetrators of human rights abuses from being brought to justice, and efforts to reverse amnesty laws risked provoking the military.

This chapter will analyze how the aspects of Chile's democratic transition discussed in the previous chapter affected the extent of transitional justice achieved in post-dictatorship society. Comparisons will periodically be made between the Spanish case and the Chilean case to demonstrate how Chile obtained increased transitional justice compared to Spain. First, this chapter will analyze how historical context laid the foundation for democracy and human rights policies. Second, this chapter will examine how the type of transition in Chile limited the extent of transitional justice. Third, this chapter will discuss how the truth commission augmented the

acknowledgement of crimes and recognition of victims. Lastly, this chapter will analyze how amnesty laws impeded the ability to hold perpetrators of violence accountable.

II. Setting the stage for a successful democratic transition:

Prior to Pinochet's 1973 coup d'état, Chile had a strong history with democracy. Chile maintained a democratic system of governance in the decades leading up to 1973. The country's long history with democracy was a source of pride for many Chileans considering the tumultuous nature of other Latin American and European countries. Chile viewed its democratic transition as a return to democracy rather than the creation of a new democracy. Chileans had knowledge on how to run an effective democracy, and over half of the population evidently desired to return to democracy based on their successful vote against the regime's continued rule (Constable & Valenzuela, 1989).

Anibal Perez-Linan and Scott Mainwaring (2013) studied regime legacies and their correlation with levels of democracy in Latin American countries. The study focused on Latin American countries that transitioned during and after the third wave of democratization. The research demonstrated that countries with stronger democratic legacies were more successful in creating durable democracies after their transition from authoritarian rule. Countries with a democratic history can reproduce democracy easier as they can recreate memories of political parties and legal institutions. Perez-Linan and Mainwaring list Chile as an example of a country whose strong democratic history helped them rebuild a stable democracy after their transition. Because Chile lived under dictatorship for 16 years, political elites, such as Patricio Aylwin, who emerged as leaders before the coup d'état were still alive and capable of participating in the reinstatement of democracy (Perez-Linan & Mainwaring, 2013).

Chile's history with democracy allowed it to transition to democracy with more confidence. Confidence rather than fear regarding the ability to successfully transition to democracy permitted limited steps towards transitional justice. Elements of transitional justice that aligned with creating a stable democracy were prevalent in Chile. Complementary aims of transitional justice such as creating accountable and trustworthy institutions, improving the justice system, maintaining respect for the rule of law, and facilitating a durable resolution to the conflict were immediate goals of Chilean politicians. Increased confidence of leftist Chileans in the stability of the democracy also permitted primary goals of transitional justice to make headway. Chile's faith in their democracy permitted President Aylwin's government to publicly report crimes and support victims since politicians and citizens were not paralyzed by fear as they were in Spain. Spain's short-lived democratic Second Republic was rocked by instability and violence, while Chile's decades of democracy prior to the coup d'état established a foundation of knowledge regarding how to operate a democracy. This knowledge helped Chilean politicians confidently restructure Pinochet's dictatorship into democracy, and thus permitted transitional justice to be part of the transition. Additionally, democratic memories and leaders were still alive in Chile but not in Spain because the dictatorship lasted 16 years in Chile and 36 years in Spain. Spaniards lived under dictatorship for more than twice as long as Chileans. While modernization steered Spain towards democracy, Spaniards preceded less confidently towards democracy than Chile because Chile's strong democratic legacy permitted increased confidence in democratic success. Chile thus pursued increased transitional justice during their transition because they were more confident in their new democracy and did not face as much fear as Spain.

Chile's transition to democracy occurred during a significant period in Latin American history. During the late twentieth century, most Latin American countries had transitioned or were transitioning into democracy (Lutz and Sikkink, 2000). These new Latin American democracies passed laws to comply with international human rights norms (Lutz & Sikkink, 2000). Lutz and Sikkink (2000) found that the growing emphasis on human rights norms could be explained by "a broad norms shift between the late 1970s and the mid-1990s that led to increased regional consensus concerning an interconnected bundle of human rights norms, including the norms against torture and disappearance and the norm for democratic governance." These norms were given legal and political support to enhance their legitimacy and ensure compliance by the transitioning governments (Lutz & Sikkink, 2000). Within this "human rights norms cascade," Lutz and Sikkink (2001) noted the existence of the "justice cascade." The "justice cascade" was made possible through transitional justice advocacy by human rights activists who sought to hold perpetrators of human rights abuses accountable in foreign or domestic courts (Lutz & Sikkink, 2001).

The United States, which previously backed Latin American dictators who utilized human rights abuses to maintain control, reduced their staunch anti-communist foreign policies that shaped the early Cold War era (McMahon, 2009). While preventing communism in Latin America remained important to the U.S., promoting democracy and human rights also became a central aspect of foreign policy (Constable & Valenzuela, 1989). This policy shift began with the Carter administration's advocacy for democracy, human rights, and peace on an international scale (McMahon, 2009). The U.S. specifically reversed its support for the Pinochet regime twice. First, in 1976 when Orlando Letelier, a former foreign minister for Allende, was murdered by Chilean security forces in Washington, D.C. This incident prompted the United States to sever

U.S.-Chilean military ties completely (Constable & Valenzuela, 1989). Second, Ronald Reagan's election to the presidency brought policies that were more sympathetic to anticommunist dictators and their worth as allies, however, by 1985 policymakers determined that military rule in Chile was only strengthening communist groups (Constable & Valenzuela, 1989). Additionally, the Reagan administration wanted to legitimize its fight against the leftist government in Nicaragua by publicly condemning human rights abuses by Chile, a rightist ally of the U.S. (Constable & Valenzuela, 1989). In 1988, the U.S. Ambassador to Chile promoted fair voting procedures in the plebiscite determining the future of Pinochet's regime (Constable & Valenzuela, 1989).

The "human rights norms cascade" and changing U.S. policies in favor of democracy and human rights pushed Chile to transition into democracy. Pressure from foreign and domestic human rights activists, NGOs, IGOs, and governments served as motivators to implement human rights norms (Lutz & Sikkink, 2001). Implementing human rights norms satiated the desires of liberal citizens and legitimized the new Chilean democracy to the international community, which was watching and willing to critique injustices. The growing prominence of human rights increased the extent of transitional justice achieved in post-dictatorship Chilean society because the implementation of human rights policies permitted Chile to address the three major goals of transitional justice: "the recognition of the dignity of individuals, the redress and acknowledgment of violations, and the aim to prevent them from happening again" (ICTJ, n.d.). The country initially recognized the dignity of individuals and attempted to redress and acknowledge crimes through the establishment of the truth and reparations commissions. Additionally, governmental reforms granting Chileans more freedoms and rights diminished the capacity for future human rights abuses. Chile adopted foreign and domestic human rights laws

against torture, forced disappearance, and murder. While the value of human rights was spreading through Europe, Spain was unable to take great steps towards transitional justice due to fear of instability. Spain granted citizens more civil and political rights to protect human rights, but did little to recognize past abuses. Truth commissions were not common during the years of Spain's transition, and the *Pacto de olvido* and 1977 Amnesty Law prevented discussion of abuses. Since the mid-2000s, Spain has begun to address previous human rights violations due to domestic and international pressure, but that is a more recent development in Spain compared to Chile where recognition of abuses began during the democratic transition.

Despite changing attitudes towards the value of human rights, transitional justice remained limited. President Aylwin halted the implementation of the Rettig Report's recommendations due to an increase in violence by the far-left against the political right (Fletcher, 2014). The 1978 Amnesty Law prevented prosecution of Pinochet and other perpetrators of human rights abuses until Pinochet's 1998 arrest and extradition request (*Truth Commission*, 1990). Transitional justice faced restrictions due to the realities and possibilities of the period. The immediate post-dictatorship Chilean society witnessed the recognition of crimes and support for victims, but transitional justice was paused when it proved too dangerous or unfeasible. The extent of transitional justice achieved in immediate post-dictatorship Chilean society was affected by the nature of the democratic transition, the truth commission, and amnesty.

III. Nature of the democratic transition in Chile:

In Chile, Pinochet stepped down after losing the national plebiscite, which permitted constitutional negotiations and democratic elections. The death of Franco served as a catalyst for Spain to end Francoism, while the national referendum instigated the changes in Chile. In Chile, the referendum was significant because citizens voted for the future of their country, rather than waiting until Pinochet died or the regime crumbled. By democratically voting NO in the plebiscite, over half of Chileans demonstrated their interest in democratic reforms. Voting NO implied that an individual desired the end of the military junta and hoped for the liberalization of society. While both the YES and NO side were wary of the other rioting or refusing to accept the outcome of the plebiscite, political leaders on both sides stressed the importance of peace (*International Commission*, 1989). Chile proceeded more confidently towards democracy than Spain because both sides of the political spectrum agreed to abide by the results of the plebiscite. The fear of renewed violence existed in Chile, but it was lessened since the democratic nature of the decision to end the dictatorship legitimized the need to transition from authoritarianism.

The democratic nature of the decision to transition increased trust that the transition would happen. If Pinochet's forces decided to forcibly maintain the dictatorship, then they would have been acting in violation of their own constitution. They would have destroyed their legitimacy with the international community, which desired democratic changes in Chile (*International Commission*, 1989). Because Chileans decided to transition collectively through a democratic practice, they had more faith that the transition would occur. While fear existed, transitional justice was augmented because Chileans and the new government were increasingly confident that democracy would come. Since Spain transitioned after Franco's death, the prospects of democracy were unclear. Franco had prepared successors to continue his legacy and

the dictatorship, but increasingly vocal leftists and the King decided to break with Franco's desires. Leftists in both countries desired democracy, but democracy was expected in Chile after Pinochet conceded, while the path to democracy was uncertain in Spain. Chile needed to balance divides between conservatives and liberals when discussing human rights violations, but Chileans felt that transitional justice could be addressed without fear that the democracy would crumble. Spain lacked assurance of democratic success and fear of instability halted transitional justice efforts.

Chile's democratic transition can be categorized using Scott Mainwaring's (1989) theory on transitions through defeat, transitions through breakdown, transitions through transaction, and transitions through extrication. While Pinochet's regime was defeated in the polls, they were not defeated militarily and a significant portion of the population still supported the dictatorship. Chile's democratic transition resides between the transition through extrication segment and the transition through transaction segment of Mainwaring's (1989) model. Chile resides in the middle of these segments of Mainwaring's (1989) model because the authoritarian government was significantly weakened (demonstrated by their loss in the plebiscite), but the junta still negotiated with the opposition (the left) from a position of strength. Their position of strength came from the necessity of the left and right to negotiate reforms to the 1980 Constitution before the transition of power to the left, as well as the right's control of the armed forces. While many former members of the dictatorship were replaced when President Aylwin took power, members of the right were important figures in the constitutional negotiations and Pinochet remained the commander in chief of the military. Pinochet's command of the military permitted him to maintain significant power after the transition, and amnesty rendered former members of the junta untouchable through the justice system.

The placement of Chile's democratic transition on Mainwaring's (1989) model is comparable to political sociologists Juan Linz's and T. González de la fé's (1990) interpretation of Chile's transition as a "transición pactada" (a transition through agreement) rather than a "transición por ruptura" (a transition through rupture with the previous government). Linz and González de la fé (1990) noted that the democratic transition occurred through negotiations between the left and the right rather than a decisive break with the junta. No single side had all the power to make decisions. The opposing sides had to cooperate to create a solution on which both ends of the political spectrum could agree. In Chile, this manifested through the constitutional reform process. The 1980 Constitution included changes that the right and left desired, but the right was still dismayed by reforms that weakened their authority and changed their precedents, while the left still desired increased democratic reforms (*International Commission*, 1989). Neither side was completely pleased, but both sides recognized the need to negotiate and make concessions for the sake of a successful transition.

The nature of Chile's democratic transition affected the extent of transitional justice achieved in post-dictatorship society. The classification of Chile's democratic transition as a transition that heavily involved negotiations is significant because transitions that require negotiations limit transitional justice. The left and the right wanted to maintain peace to ensure the survival of the country. The necessity of agreement during the transition limited the ability of Chile to manage their history of human rights abuses, and thus inhibited transitional justice. The left wanted increased transitional justice, but they initially had to restrict their goals due to the necessity of keeping the military tranquil.

Transitional justice was limited due to the need for agreement and negotiation, but Chile's democratic transition involved a different power dynamic than Spain's democratic

transition. In Chile the left ascended to power. The left was elected to the presidency and obtained the most seats in Congress compared to other parties. The new government was increasingly capable of discussing the truth of human rights abuses because Aylwin ran on a platform that promised support to victims of human rights abuses. Creating a truth commission and making democratic reforms was expected by and appealed to Aylwin's base. Aylwin had more flexibility in obtaining truth and reconciliation compared to the newly elected conservative government in Spain since President Aylwin and his base had the power to pursue transitional justice. Changing leadership from the right to the left in Chile was significant because, while former Franco officials maintained most of the power in Spain, the Chilean balance of power shifted to the left. The left in Chile was limited due to its lack of an absolute majority in Congress, but it could take increased steps towards transitional justice given its growing governmental authority. In Spain, the continuing power of the right inhibited transitional justice because the right did not want to take responsibility for their human rights violations throughout the Civil War and dictatorship.

IV. Truth Commission:

Soon after Chile's return to democracy, President Aylwin created a truth commission to investigate human rights violations perpetrated by the dictatorship. The truth commission was able to be established given the national confidence in democracy and the transitional justice friendly context of Aylwin's administration and political base. The truth commission allowed the country to obtain increased aspects of transitional justice since the truth of the violence committed by the dictatorship was publicly exposed. Because Chile transitioned into democracy with truth telling, the possibilities of transitional justice were augmented compared to Spain,

which prohibited talk of the past through the *Pacto de olvido* and 1977 Amnesty Law. Rather than ignore the past, the new Chilean government confronted the country's history. Past violence was discussed, which permitted citizens to begin the process of reconciliation. Truth telling is a vital aspect of transitional justice, thus Chile's increased dissemination of the truth allowed them to achieve a higher degree of transitional justice.

The truth commission recommended the establishment of a reparations commission to support victims and their families, as well as advised the adoption of human rights laws, the strengthening of Chilean civilian authority, and the creation of an ombudsman's office. The establishment of the truth commission and the recommendations that followed permitted victims to testify about the truth of their experiences and granted victims and their families validation and recognition from the state. This recognition was critical to the growth of transitional justice in Chile because two of the three central aims of transitional justice are "the recognition of the dignity of individuals" and the "redress and acknowledgement of violations" (ICTJ, n.d.). The aim to prevent human rights violations from happening again is the third goal of transitional justice, and the truth commission's recommendations regarding human rights laws, civilian authority, and an ombudsman's office reveal interest in preventing future human rights violations. The establishment of the truth commission during Chile's democratic transition drastically increased the extent of transitional justice achieved in post-dictatorship Chile.

The truth commission was a major step in the direction of transitional justice in Chile, but the limited mandate of the commission and the need to avoid the provocation of the right capped the growth of transitional justice. The commission's mandate did not include torture and other forms of abuse that did not conclude with death, which excluded a large portion of victims from receiving recognition and support (Collins, 2017). Transitional justice was thus restricted

because not all victims of violence were acknowledged. While human rights activists critiqued the report for its limited scope, President Aylwin and Congress fully endorsed the report and asked the population to forgive the state.

President Aylwin established the truth commission and sought to implement its recommendations, however, as president, Aylwin was also tasked with maintaining the stability of the new democracy. Aylwin was wary of provoking the military, which outwardly rejected the Rettig Report. The United States Institute of Peace, which was tasked with translating the Rettig Report to English, commented on President Aylwin's major considerations when determining how to shape his human rights policies. They noted that the goals of a new human rights policy were to "repair the damage caused by human rights violations both to individual victims and to the society as a whole; and to prevent such atrocities from ever happening again" (*Chilean National Commission*, 1993). Obtaining those goals was complicated for President Aylwin due to the political environment of the transition. Aylwin had to consider "the nature and extent of the human rights violations committed and the measure of investigation of the truth and justice for which they called; the restrictions imposed by the existing laws and institutions and by the likely reaction of the Chilean armed forces; the relevant experience of other countries; and the duties dictated by international human rights norms, as well as the position adopted on these issues by the international human rights community" (*Chilean National Commission*, 1993). All of these factors complicated the job of Aylwin, who had to work within the constitutional framework that existed while striving for transitional justice and maintaining stability. Transitional justice was a goal, but its growth was limited due to the realities of the transition.

After the Rettig Report was released, efforts to continue the implementation of its recommendations were paused due attacks by armed leftist groups against right-wing politicians

(Fletcher, 2014). These attacks caused fear and uncertainty, which inhibited transitional justice because safety became a greater priority. These incidences of violence perpetrated by the armed left halted actions that could have furthered transitional justice. The cessation of efforts after armed leftist attacks demonstrates how fear of violence conflicts with the goals of transitional justice.

V. Amnesty:

The 1978 Amnesty Law was passed during the reign of the military junta to prevent the prosecution of all crimes that were committed before the passage of the law. This law covered most of the crimes committed. Additionally, the Supreme Court ruled that crimes committed after 1978 fell into the jurisdiction of military courts rather than civil courts. Despite the inability to prosecute human rights violators, Aylwin and the Rettig Report advocated for crimes to be investigated. While Aylwin was willing to support truth and investigation, he understood that prosecutions may have been risky given the strength of the military. The military strove to avoid accountability, and prosecutions may have resulted in instability. Furthermore, President Aylwin's party did not enjoy a complete majority in Congress given the biased structure of the body. Because he did not have a majority, Aylwin was incapable of repealing the 1978 Amnesty Law (*Chilean National Commission*, 1993).

The inability to prosecute perpetrators of human rights abuses limited transitional justice in Chile. The four most common approaches to transitional justice are criminal prosecutions, truth seeking, reparations, and reform (ICTJ, n.d.). Chile utilized truth-seeking, reparations, and reform, but did not engage in criminal prosecutions. Prosecuting criminals is often difficult in post-authoritarian and post-conflict societies that are still divided (ICTJ, n.d.). In Chile,

prosecuting human rights abuses was neither feasible given legal restrictions nor heavily desired by a large portion of the population due to the threat of instability.

In Spain and Chile, the threat of military provocation if prosecutions were utilized was a major concern. If either country pushed for immediate prosecutions to obtain justice for victims, the military may have reacted and instigated renewed violence or destabilization. A military reaction endangered the survival of the new democracies. In Chile, the military maintained significant powers under the Constitution, and Pinochet's position as commander in chief made the institution unappealing to provoke. The military was strong and unified, while the newly elected government was still learning how to govern. Neither country defeated their dictatorship through military might, therefore neither was in the position to defend itself against military retaliation. Maintaining peace was essential to secure the stability of the democracy.

VI. Conclusion:

As a transitioning society, Chile worked with the nature of its situation to build democracy and human rights policies that valued transitional justice. Chile's democratic legacy, Latin America's strengthening human rights norms, and the international community's pressure fostered the creation of democracy and human rights-based policies in Chile. Chile's democratic decision to transition and the rise of the left in politics permitted the country to pursue the primary aims of transitional justice. Transitional justice was constrained by fear, the need to negotiate, and the maintenance of stability, however, Chile strove to balance transitional justice with factors that opposed it. Chile's truth commission permitted the recognition of human rights abuses and support for victims and their families, although efforts to attain transitional justice were halted when it became dangerous. Amnesty laws allowed perpetrators of human rights

violations to avoid responsibility and accountability for their crimes, and efforts to undue amnesty laws risked provoking the military. Chile's democratic transition permitted a greater extent of transitional justice in post-dictatorship society compared to Spain despite the restrictions it faced.

Chapter 6: Conclusion

I. Introduction:

This study examined how the democratic transitions affected the extent of transitional justice achieved in post-dictatorship Spain and Chile. Chile achieved greater transitional justice compared to Spain because of its history with democracy, international advocacy for human rights, the rise of President Aylwin's leftist government, and the creation of a truth commission. Transitional justice was limited in both Spain and Chile due to the need for political negotiations, fear of instability, and amnesty laws. While modernization contributed to democracy and human rights, Spain faced increased limitations on transitional justice because of the continuity of conservative governance under Prime Minister Suárez and increased fear of instability from democratic uncertainty, the attempted coup d'état, and ETA terrorism. The *Pacto de olvido* and 1977 Amnesty Law inhibited the prosecution of human rights abusers and effectively prohibited efforts to acknowledge crimes and recognize victims in Spain by instituting a legal basis for "forgetting" history.

This chapter will conclude my research. First, this chapter will discuss how Chile's democratic transition resulted in increased transitional justice compared to Spain. Next, this chapter will examine the implications of my findings. Lastly, this chapter will discuss future points of interest regarding transitional justice in Spain and Chile.

II. Summary of findings:

Spain and Chile produced varying degrees of transitional justice due to the context of each democratic transition. The prospects of a successful democratic transition were uncertain in

Spain since Spaniards were unsure of democratic success. The primary aims of transitional justice, such as acknowledging crimes and recognizing victims, were not addressed during Spain's transition because creating a successful democracy was the priority. In Chile, the democratic nature of the dictatorship's end produced greater odds of democratic success. Chile's democratic transition resulted in increased transitional justice compared to Spain because Chile could seek transitional justice without threatening the stability of the country.

In Spain, the path to democracy was uncertain since democracy was never guaranteed. Spain's previous attempt at democracy was during the Second Republic, which was a period rocked by conflict and instability. The Second Republic did not produce a strong democratic legacy to later assist Spain transition to democracy after Franco's dictatorship. Transitioning to democracy was thus difficult because the country needed to learn how to build a stable, strong democracy. Between 1959 and 1975, modernization contributed to the desire for democracy as economic, social, cultural, and political changes contributed to a rising liberal population (Bernecker, 2007). This liberal population advocated for democratic reforms over authoritarianism, however, despite attitudinal shifts among growing leftists, Franco sought to ensure the regime's longevity after his death by selecting successors who he thought would uphold his legacy (Carias, 2017). Prime Minister Carlos Arias Navarro and King Juan Carlos were tasked with maintaining the dictatorship after Franco's death in 1975, but democratic pressure from the mounting liberal population motivated King Juan Carlos to openly critique Arias Navarro and the ultra-conservative right, which refused to adopt democratic reforms (Eder, 1970). When Arias Navarro resigned in 1976 and the King selected Adolfo Suárez to serve as the next prime minister, the path to democratic reforms was opened for the first time in the 36 years.

Chile was increasingly confident in their democratic transition compared to Spain. Before Pinochet's coup d'état, Chile enjoyed a strong democratic past. Chile's history with democracy permitted the country to perceive their democratic transition as a return to democracy rather than as the creation of a new democracy (Constable & Valenzuela, 1989). Memories and knowledge of how to operate a successful democracy facilitated the democratic transition (Constable & Valenzuela, 1989). The spread of democracy and human rights norms throughout Latin America, as well as pressure from the international community made the adoption of democratic reforms and human rights-based policies increasingly likely (Lutz & Sikkink, 2000; McMahon, 2009). Most importantly, Chile's transition was instigated by the military regime's loss in the democratic, national plebiscite. The NO victory symbolized the desire for democratic reforms, as well as secured democratic change by ushering in new elections, which granted the left governmental control. While Chileans feared that the military would refuse to accept the plebiscite's results, peace was stressed by both sides of the political spectrum (*International Commission*, 1989). The regime recognized that using military might to reassert control would be perceived as illegitimate by the international and domestic community (*International Commission*, 1989).

Spain's and Chile's democratic transitions resulted in varying power dynamics. Spain's democratic transition was a transition through transaction. The right continued governmental authority and negotiated from a position of power compared to the left. Chile's democratic transition was a mix between a transition through transaction and a transition through extrication because the right maintained bargaining power and residual authority from right-leaning bias in the Constitution, but the left obtained governmental control. The opposing political perspectives

needed to negotiate in both countries, but the differing power dynamics between the right and left affected the pursuance of transitional justice.

In Spain, the continuation of conservative control allowed the right to avoid responsibility for human rights abuses perpetrated throughout the Civil War. While both sides agreed to the *Pacto de olvido* and 1977 Amnesty Law to maintain democratic stability and foster political negotiations, the pact and law were more beneficial to the right since they engaged in greater human rights abuses. While the left was responsible for human rights violations during the Civil War, the left committed less crimes than the right and there were significantly more liberal victims (Greenspan, 2016). The left was negotiating to obtain reacceptance into society, while the right could focus on more complex goals because conservatives were automatically granted basic freedoms upon the advent of democracy. Transitional justice would have required conservatives to take responsibility for their crimes, which was not in their best interest. Conservatives used their authority to inhibit transitional justice by refusing to acknowledge crimes and recognize victims.

In Chile, the transition of governmental power to the left allowed liberals to take increased steps towards transitional justice, but transitional justice was still limited due to the residual power of the right. Right-leaning constitutional bias prevented the left from obtaining a majority in Congress, which signified that the differing political ideologies needed to negotiate to pass legislation (Hudson, 1994). Additionally, the left did not want to provoke the military, which remained strong under Pinochet's conservative control (Hudson, 1994). Despite, limitations imposed by the right, President Aylwin's leftist government strove to take steps towards transitional justice to appease its liberal base. President Aylwin's authority allowed the

left to establish a truth commission, which was a major step towards transitional justice because the commission acknowledged crimes, as well as sought the recognition and redress of victims.

Chile's democratic transition resulted in increased transitional justice compared to Spain, but both countries were limited due to amnesty laws and fear of instability. Fear existed in Spain and Chile, but Spain faced increased fear because of greater historical uncertainty, the attempted coup d'état, and ETA terrorism. Transitional justice was actively repressed in Spain. In Chile, fear and limitations on transitional justice existed, but a basis of transitional justice still endured.

Fear served as a major inhibitor of transitional justice in Spain. During the initial transitional phase, Spain lacked a stable historical precedent with democracy and the path to democracy was unclear, which left many Spaniards wary of the feasibility of democracy (Encarnación, 2008). The *Pacto de olvido* and 1977 Amnesty also prevented discussion of all sensitive matters from the Civil War and dictatorship. The aim was to "forget" the past and create a stable democracy in which the political sides could coexist and negotiate without opening "old wounds" that could reinitiate conflict (Encarnación, 2008). The *Pacto de olvido* and 1977 Amnesty Law inhibited the primary aims of transitional justice since they prevented the acknowledgement of crimes and recognition and redress of victims. ETA terrorism and the attempted coup d'état by General Tejero augmented fear of instability because these unpredictable instances of violence demonstrated the fragility of the new democracy and the lack of stability (Ceberio Belaza, 2018). Maintaining peace and fostering democratic success was more important than transitional justice. Uncertainty of democratic success and safety inhibited transitional justice efforts until the 2000's. The democratic stability of the 2000's permitted Spaniards to feel confident in their ability to address their past of human rights abuses without fear of destabilizing the country.

While fear limited the extent of transitional justice, leftist Chilean politicians pursued the primary aims of transitional justice within the constraints that the government faced. Chile's truth commission was a major step towards transitional justice, but the commission was limited due to its restricted mandate. Not all victims of the dictatorship were recognized or received reparations (Collins, 2017). Additionally, efforts to implement recommendations from the truth commission were halted after far-left violence against conservatives provoked fear of instability (Fletcher, 2014). Amnesty laws created while the dictatorship was in power prevented the prosecution of human rights abusers, and the residual power of the military made provoking the armed forces unappealing because new leaders did not want to risk a violent rebuke (*Chilean National Commission*, 1993). Fear combined with the need to negotiate with conservatives prevented leftist Chileans from instituting all of their transitional justice goals, but the transition still allowed them to achieve a greater extent of transitional justice due to their confidence in democratic success and the transition of power to the left.

III. Implications of findings:

This thesis determined that Chile's democratic transition achieved a greater extent of transitional justice compared to Spain's transition by analyzing how specific aspects of each transition affected transitional justice. The analysis in this thesis thus demonstrates how specific factors of a transition can impede or support transitional justice. Fear, instability, uncertainty, and amnesty laws have immense power to prevent transitional justice. Political power dynamics during and after a democratic transition influence the ability of a government to pursue transitional justice. If conservatives maintain most of the power then transitional justice is restricted, but if the left attains power then there are greater opportunities for transitional justice.

When no single political ideology obtains the majority of power, the need to negotiate frequently limits transitional justice because concessions must be made by both sides. Strong democratic legacies, desire for democracy and human rights, international pressure for human rights-based policies, and truth commissions increase the likelihood of obtaining greater transitional justice.

While Chile achieved increased transitional justice compared to Spain, both countries faced limitations that inhibited transitional justice. This correlates with the current literature on the subject that suggests that modern day Spain and Chile must continue pursuing transitional justice (Collins, 2017; Escudero, 2014; Marengo, 2015; “Proposal for Spain,” 2018). Neither Spain nor Chile fully obtained transitional justice during or after their democratic transitions, thus scholars, the press, citizens, NGOs, and IGOs still advocate for Spain and Chile to continually pursue transitional justice. Understanding why Spain and Chile transitioned as they did, as well as how the transitions affected transitional justice helps give context to Spain’s and Chile’s current management of their histories of human rights abuses.

Spain acknowledged crimes and recognized victims for the first time in 2007 with the passage of the Historical Memory Law. The law was created and passed by the Spanish Socialist Worker’s Party under Prime Minister José Luis Rodríguez Zapatero, but harsh opposition from the Popular Party weakened the law before ratification, which left human rights activists and victims unsatisfied (Hancox, 2016). While leftists want open discussion of the Civil War and dictatorship, rightists repeatedly shut down or weaken efforts by arguing that opening old wounds will harm society and that the past should stay in the past (Hancox, 2016). The international community has pushed Spain to acknowledge its past and treat victims better, but because Spain suppressed transitional justice for decades, Spain has not come to terms with its

history and is now struggling to balance between rising advocacy for justice and residual efforts to “forget.”

Efforts to hold Chilean human rights abusers accountable began when Pinochet was arrested in London in 1998. Spain requested Pinochet’s extradition, but he was ultimately released back to Chile where he was stripped of his parliamentary immunity, questioned, indicted for his crimes, and placed under house arrest (Jordan, 2007). Pinochet died before being convicted of any crimes, which left victims frustrated over the lack of justice (Jordan, 2007). Some members of Pinochet’s military regime have been prosecuted for their crimes, but getting around amnesty laws is difficult for judges (Slattery, 2015). While increased prosecutions and the establishment of a second truth commission in 2003 helped Chile pursue increased transitional justice, the country still faces international critique for permitting numerous human rights abusers to live freely without accountability (Marengo, 2015). Chilean politicians have been unsuccessful in passing legislation to nullify amnesty laws. The residual institutional rigidity and greater Congressional representation of the right over the left continues to limit the ability of politicians to overturn durable amnesty laws (Siavelis, 2016).

IV. Points of future interest:

Examining how rising scholarship and attention to the field of transitional justice has affected the development of transitional justice in Spain and Chile could give insight into the increasing value placed upon transitional justice in both countries. Transitional justice as a field of study, as well as a way to move out of conflict and authoritarianism, gained prominence during the late twentieth century and is continually expanding. Analyzing how the growth of

transitional justice aligned with the processes of transitional justice in Spain and Chile through the modern day may be insightful.

In order to develop a holistic perspective of the extent of transitional justice achieved in post-dictatorship Spain and Chile, scholars should examine changes in transitional justice that occurred after the democratic transition. Decades have passed since Spain and Chile transitioned to democracy, and varying governmental administrations have taken steps towards and away from transitional justice. Both countries continued instituting democratic reforms and have established stable democracies. Evolving policies and levels of advocacy have altered the transitional justice landscape. Advocacy for transitional justice by leftists has continued to increase in Spain and Chile. Liberal citizens feel increasingly confident to voice their opinions without destabilizing the country or risking personal harm. Studying how actions taken after the democratic transition influenced the extent of transitional justice in a post-dictatorship society will continue to give scholars a greater understanding of Spain's and Chile's current management of their histories of human rights abuses.

The effect of the Spanish and Chilean democratic transitions on the extent of transitional justice achieved in post-dictatorship society can be further compared to additional countries transitioning out of authoritarian governments. Chile's case study can be compared to Latin American countries that underwent democratic transitions to understand the effect of democratic transitions on transitional justice within the same regional and time context. While many former-authoritarian European countries transitioned to democracy after the Allied victory in World War II or following the fall of the Soviet Union, Spain's case study can be compared in a European context to enhance understanding of the processes of democratization and transitional justice in Europe. The extent of transitional justice achieved from the Spanish and Chilean democratic

transitions can be compared to the democratic transitions of Asian and African countries to further understand the extent of transitional justice achieved from democratic transitions in a cross-cultural context.

V. Conclusion:

Spain and Chile suffered through repressive dictatorships under Francisco Franco and Augusto Pinochet. These abusive regimes utilized human rights abuses to maintain control and achieve their political, societal, and economic goals. In the late twentieth century, the fall of the dictatorships paved the way for democratic transitions and steps towards transitional justice. This thesis asked the question, how did the Spanish and Chilean democratic transitions influence the extent of transitional justice achieved in post-dictatorship society? This study contextualized the relevant political, social, cultural, and economic environments of the transitions to study how historical contexts, types of democratic transitions and resulting power dynamics, fear, amnesty laws, and truth commissions affected the manifestation of transitional justice. Evidence suggests that Chile achieved a higher degree of transitional justice compared to Spain due to its strong history with democracy, international pressure for better human rights, President Aylwin's liberal government, and the establishment of the truth commission. In Spain, transitional justice was limited because of Prime Minister Suárez's conservative government, the *Pacto de olvido* and 1977 Amnesty Law, and high levels of fear from democratic uncertainty, ETA terrorism, and General Tejero's attempted coup d'état. Spain and Chile both faced limitations on transitional justice due to the need for political negotiations, fear of destabilization, and amnesty laws. This research contributes to the understanding of why Spain and Chile currently manage their histories of human rights violations as they do.

Transitional justice should be a goal of post-authoritarian societies because it helps countries properly manage their histories of human rights violations. Tailored transitional justice measures can account for the needs, desires, and limitations present in transitioning or transitioned countries that are balancing growing democracies and human rights policies. Transitional justice is difficult to achieve and implementation strategies are never perfect, but striving for transitional justice is important for countries that seek internal reconciliation.

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