

**POLITICAL OPPORTUNITIES AND ELECTORAL INCENTIVES:
TRACING TRANSITIONAL JUSTICE POLICY IN SPAIN FROM 2004 TO
THE PRESENT**

by

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Abstract

What explains variation in Spanish transitional justice policy over time? Following decades of silence on this issue, the Spanish state began to implement transitional justice policies in the early 2000s. But these efforts have gone through periods of significant progress and regress over the past 20 years that prevailing explanations in the transitional justice literature do not fully explain. In this thesis, I argue that the key variable that best explains the path of post-transitional justice policy in Spain is the political opportunity structure (POS). To test this argument, I employ process-tracing to determine whether positive transitional justice policy events align with a favorable POS and negative transitional justice policy events align with an unfavorable POS. I also test this hypothesis against two alternative hypotheses based on the literature, namely that transitional justice policy implementation is best explained by international pressure or civil society mobilization. This thesis ultimately concludes that the POS has been a critical factor in shaping Spanish transitional justice policy over time. Periods of policy progress have resulted from electoral outcomes that forced more lukewarm supporters of transitional justice to negotiate with smaller parties that supported transitional justice in order to form a government, or that disrupted existing political structures and provided new incentives for parties to compete on and emphasize transitional justice issues for votes. Reversals in transitional justice policy occurred when parties opposed to transitional justice policies controlled the legislature with an absolute majority.

Lay Summary

What explains variation in Spanish transitional justice policy over time? Following decades of silence on this issue, the Spanish state began to implement transitional justice policies in the early 2000s. But these efforts have gone through periods of significant progress and regress over the past 20 years that prevailing explanations in the transitional justice literature do not fully explain. In this thesis, I argue that the key variable that best explains the path of post-transitional justice policy in Spain is the political opportunity structure. Periods of policy progress have resulted from electoral outcomes that forced more lukewarm supporters of transitional justice to negotiate with more supportive smaller parties to form a government, or that disrupted existing political structures and provided new incentives for parties to emphasize transitional justice issues for votes. Policy reversals occurred when parties opposed to transitional justice policies controlled the legislature with an absolute majority.

Preface

This thesis is original, unpublished, independent work by the author, Katherine Alexander.

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1. Introduction

In 2021, in the midst of the world's worst pandemic in a hundred years and nearly half a century after Spain's transition to democracy, the country is still trying to come to terms with its difficult past. With a new Law of Democratic Memory, introduced in parliament in September 2020, the government hopes to finally redress the human rights violations and persecution civilians suffered during the Spanish Civil War from 1936 to 1939 and subsequent dictatorship headed by General Francisco Franco from 1939 to 1975. The Civil War pitted supporters of the left-leaning elected government (Republicans) against Franco's pro-fascist, Catholic, and monarchist forces (Nationalists), which attempted to overthrow the government in 1936. The war alone resulted in the death of about 150,000 Republicans (Gilmartin 2020), including many civilians, but the end of the war brought still further terror, as Francoist troops kidnapped and executed tens of thousands of civilians in secret throughout areas that supported the Republican side (Davis 2005: 860) and established concentration camps for hundreds of thousands of political prisoners (Encarnación 2014: 37). The victims of this violence were often buried in mass, unmarked graves, nearly 112,000 of which¹ have yet to be exhumed (Gilmartin 2020).²

Transitions to democracy are often a prime setting for attempts to address such grievances through processes known as transitional justice, broadly defined as "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses" (Wahyuningroem 2019: 126). However, the Spanish transition that followed Franco's death in 1975 was characterized by a strong aversion to looking backwards at all. Rather, political elites came to an informal agreement known as the Pacto de Olvido (Pact of Forgetting) to let bygones be bygones and refrain from using the past as a political weapon (Humblebaek 2010: 417). Institutionalized in the Amnesty Law of 1977, this pact released all political prisoners and guaranteed immunity for human rights violations to all former military

and government officials of the Franco regime (Aguilar 2008: 420; Davis 2015: 671).

Traumatized by its own history and fearful of the outbreak of a new civil war, the public was only too happy to put the past behind it (Encarnación 2014). As such, the next 25 years passed with little attempt to address this legacy.³

In the early 2000s, however, a movement arose to change this. Led by the grandchildren of Republicans persecuted during the war and dictatorship, memory organizations mobilized to locate and exhume the graves of their relatives and bring new attention to this issue. Their advocacy efforts, in combination with some favorable political factors, led to the passage of the first piece of major transitional justice legislation in Spain: the 2007 Law of Historical Memory (Kovras 2014).

This remarkable development has been the subject of significant interest among scholars of transitional justice, particularly as one of a wave of incidents of states attempting to address these issues decades after their initial transition to democracy, which challenged the conventional wisdom that the immediate aftermath of the transition was both the optimal and the most likely time for states to pursue transitional justice measures⁴ (Roht-Arriaza and Popkin 1995; Encarnación 2014: 13; Golob 2008: 127). A small subsection of the field of transitional justice has emerged to focus on this particular phenomenon of “post-transitional justice” (Aguilar 2008; Collins 2010), but the phenomenon remains understudied. Furthermore, many of the explanations for the implementation of post-transitional justice policies put forward so far struggle to fully explain the case of Spain or address variability in transitional justice policy over time. For example, some internationally-oriented scholars have focused on the diffusion of norms around human rights prosecutions (Sikkink 2011; Kim 2012), while scholars of post-transitional justice in Latin American contexts (Collins 2010; Skaar 2011) have placed particular emphasis on judicial reform as a critical explanatory variable. In Spain, however, all major

advances in transitional justice policy have come through the legislature, not the judiciary. In fact, although victims of the Franco dictatorship and their families have repeatedly appealed to both national and international judicial bodies, very few of these initiatives have generated positive results (de la Cuesta and Odriozola 2018: 13).

Meanwhile, arguments that post-transitional justice is brought about precisely because of the effects of time, as human rights norms become more accepted and popular attitudes toward transitional justice become more favorable, provide some explanation for the reemergence of transitional justice issues but suggest a kind of path dependence in which the implementation of these policies are expected once these conditions have been met. However, as we will see in the Spanish case, post-transitional justice policy can be highly contested. Indeed, multiple parties are currently seeking to repeal or further expand these policies. As such, further explanations are needed to better explain why and when variations in transitional justice policy may take place.

Explanations that highlight the importance of civil society mobilization and international pressure can potentially provide some better insight into when we should expect to see progress or regress on transitional justice policy. However, any changes in policy must move through policymakers, who have their own interests and considerations. Thus, the extent to which domestic and international pressures shape policy may be fundamentally influenced by the composition of the government and both its political leeway and political will to respond to them. Parties that are firmly opposed to transitional justice may be able to simply ignore these pressures while more ambivalent parties may need to calibrate their support based on electoral considerations and the need to negotiate with other parties with opinions on this issue for power.

Given these considerations, I argue that the key variable that best explains the path of post-transitional justice policy in Spain is the political opportunity structure (POS), which encompasses (1) the degree of openness of institutions in a political system; (2) the presence or

absence of influential elite allies; and (3) the stability of elite alignments (Kovras 2014). More specifically, I argue that progress in transitional justice policy in Spain has resulted from a favorable POS while regress in such policy has taken place when the POS has been unfavorable. The initial 2007 Law of Historical Memory was the result of electoral outcomes that forced the mainstream center-left party, PSOE, to negotiate with smaller parties that supported transitional justice in order to form a government. More expansive recent developments, including the new Law of Democratic Memory currently being debated in parliament, are the result of a fracturing of the Spanish political system that decimated support for the two mainstream parties and ensured that no political party could gain control without the support of others, in combination with the entrance of a powerful new political party on the left, Podemos, that forced the PSOE to compete on and emphasize transitional justice issues for votes. Reversals in transitional justice policy occurred when the mainstream right party, PP, controlled the legislature with an absolute majority, and the PP's hostility towards these issues has increased still further since it has been forced to compete with Spain's first far-right party since the democratic transition, Vox.

In order to test these arguments, I will employ process-tracing to determine whether positive transitional justice policy events align with a favorable POS and negative transitional justice policy events align with an unfavorable POS. I will also test this hypothesis against two alternative hypotheses based on the literature, namely that transitional justice policy implementation is best explained by international pressure or civil society mobilization.

The rest of this paper is organized as follows: I will first lay out the arguments in the literature around the two alternative hypotheses (international pressure and civil society mobilization) and the main hypothesis (POS). Next, I will present my argument and describe the methodology this paper will follow, the observable implications I will test, and how the variables in this study will be conceptualized and measured. I will then test the two alternative hypotheses

as well as the main hypothesis. This paper will also include a secondary level of analysis to test whether the PSOE's adoption of more supportive transitional justice policy positions was, as my argument contends, a result of electoral competition with Podemos, or whether this could be attributed to more gradual internal changes, such as generational change within the party. Finally, I will present conclusions of the research, comment on the generalizability of these findings, and suggest areas for further study.

2. Literature Review:

Before testing any of these hypotheses, it is important to first lay out the basis of these arguments in the literature. With regard to international pressure, Subotic (2013) notes that states are increasingly facing pressure to conform to international human rights norms and “are now expected, encouraged and even coerced” (129) to implement transitional justice measures, and indeed many scholars have highlighted the importance of pressure from transnational advocacy networks (Keck and Sikkink 1998; Brahm 2007; Kim 2012) and international organizations (Grover 2019) in promoting such measures. However, these arguments have been criticized for failing to adequately consider the extent to which domestic conditions shape states’ compliance with these norms and expectations (Subotic 2013). More specifically, some argue that it is the interaction and competition between elites strongly opposed to transitional justice (‘justice resisters’), those who strongly support transitional justice for ideological or moral reasons (‘justice true believers’), and those who are willing to use transitional justice issues to strengthen their own political position (‘justice instrumentalists’), that determines how states respond to international pressure (Subotic 2013). In fact, Subotic (2013) argues that elite factions use international norms as “domestic wedge issues to score quite localized political points” (136), and that, “empirically...what happens under international pressure is a genuine domestic competition and contestation between different coalitions about how best to use international institutions to gain political advantage” (138). Though international pressure may play a role in transitional justice implementation, it may be more useful to examine domestic political dynamics and the relative strength of domestic elite factions to understand exactly why and when transitional justice policies are implemented.

One key domestic force often highlighted in the transitional justice literature is civil society mobilization, which can shape and moderate the way states respond to the international

norms and pressure discussed above: "When the domestic demand for justice is strong, States comply with international norms because these are the norms they already share or because strong domestic constituencies are able to put pressure on governments to change their behaviour in response to international demands" (Subotic 2013: 131). Indeed, there is a broad consensus that the efforts of civil society are instrumental to the implementation of transitional justice (Han 2008; Sikkink 2008; Barahona de Brito and Sznajder 2010; Fernandez Anderson 2011; Engstrom 2013; Ocantos 2014; van der Merwe and Schkolne 2017), in particular by drawing attention to the human rights violations committed by the old regime (Brahm 2007), organizing demonstrations to pressure politicians (Sikkink 2008; Fernandez Anderson 2011), and shaming states into complying with their demands (van der Merwe and Schkolne 2017: 230).⁵

However, while civil society actors can clearly mobilize in different ways to bring attention to the issue of transitional justice and put pressure on politicians to accede to their demands, their success in achieving policy change is not a foregone conclusion, but may depend on the political will or political constraints of the politicians who must actually pass the transitional justice legislation they desire: "Social movements do not operate in a vacuum. Their efforts, strategies, and tactics...are not the sole determining factors in a movement's ability to influence policymakers and create policy outcomes. Political contexts, processes, and structures all help shape the abilities of a movement to influence policy" (Nulman 2015: 87).

These "political contexts, processes, and structures" are best captured by the concept of political opportunity structures (POS), a term that emerged in the 1970s and became a critical element, sometimes even referred to as "the dominant paradigm" (Goodwin and Jasper 2004), in the contentious politics literature in the 1990s as a result of work by scholars like Tarrow (1991) and Kriesi (1995) (Rootes 1999: 5). Although there is considerable disagreement over what elements and variables the concept should include, scholars (McAdam et al 1996; Tarrow 1991;

Kriesi et al 1995; Giugni 2009; Kovras 2014) frequently reference four main dimensions of the POS: (1) the degree of openness of institutions in a political system (for example, an electoral system that allows more parties to participate can increase the number of social groups represented and their access to power); (2) the presence or absence of influential elite allies (usually political parties that take up the cause of a particular social group); (3) the stability of elite alignments (for example, electoral instability, polarization, or other factors that disrupt political equilibrium can provide opportunities for new alliances that allow grassroots groups to access power); and (4) the state's capacity and propensity for repression (Kovras 2014: 86-87).

The POS has been used as a key variable to explain the success and setbacks of transitional justice movements in several cases, including Argentina (Sikkink 2008), Peru (Root 2009), Greece, Cyprus, and Spain (Kovras 2014). Although Kovras (2014) has analyzed transitional justice processes in Spain through the lens of the POS, he focuses largely on the period of 2000-2007 to explain the re-eruption of memory that took place in Spain and the passage of the 2007 Law of Historical Memory. He largely ignores the period following the passage of this law, during which there was little to no progress on this issue (as well as some notable policy reversals) despite widespread criticism of the law from civil society groups and certain political parties that had initially advocated for it (Aguilar and Ramirez-Barat 2019: 216). Although understanding why this law was passed is highly important, it is also vital to understand why further progress was so difficult. Several scholars have noted a bias in the literature in studying successful movements rather than unsuccessful movements (McAdam and Boudet 2012), and thus it is important to study periods of policy stagnation and reversal as well as periods of progress to gain a more complete picture of what factors influence the policy process. Additionally, to the best of my knowledge, no scholars have attempted to use the POS framework to examine these issues in Spain in more recent years, during which there have been

several new developments, including the successful exhumation and reburial of Francisco Franco and the drafting of a new Law of Democratic Memory currently making its way through parliament. These developments demonstrate that there is clearly a need to revisit this subject in Spain to understand the timing and impetus behind them.

Furthermore, another important change has taken place over the past few years in Spain that has not yet been explained, and that is related to but not quite captured by POS arguments. Specifically, the mainstream center-left party, PSOE, has shifted from a very lukewarm transitional justice ally to a strong advocate for transitional justice policy, including multiple pages of more progressive policies in its electoral platforms since 2015. Though the importance of this change for promoting the implementation of transitional justice policy is captured by the POS arguments above, a full understanding of the dynamics of transitional justice in Spain and why more expansive policies on transitional justice are currently being advanced requires further investigation of these changes as well.

The literature offers some potential explanations for changes in political parties' support for certain policies, like transitional justice. One strain of explanations focuses more on whether or not politicians themselves have changed, such as if there has been a generational change within the party resulting in shifting priorities.⁶ Generational hypotheses have appeared numerous times in the study of transitional justice in Spain (Aguilar and Ramirez-Barat 2019; Aguilar 2008b) to explain why the search for justice has reemerged more than 25 years after the country's initial transition to democracy. Drawing on psychological understandings of intergenerational trauma, these arguments suggest that traumatic experiences like living through a civil war can be passed on to subsequent generations, leading the second generation born after the war to avoid seeking transitional justice measures because they do not want to relive painful experiences or, possibly, because they fear that addressing these issues could renew civil

conflict. However, the third and fourth generations after the war may be less tied to these fears and concerns, and may have even lived through periods of stable democracy that lessen their fears of conflict or increase their belief that victims have a right to truth and justice. Aguilar and Ramirez-Barat (2019: 217) have argued that the limitations of the 2007 historical memory law may have stemmed from the continued political and social power of the second-generation Spaniards, so an increase in the proportion of third- and fourth-generation politicians could account for PSOE's more committed support of historical memory and transitional justice.

Another possible explanation for change in political parties' support for transitional justice draws more on the literature of political maneuvering and party competition. Multiple scholars have noted that politicians sometimes use transitional justice issues for political gain, whether as a wedge issue to score political points against their opponents (Subotic 2013: 136) and target and embarrass their rivals, particularly before an election (Kiss 2006: 928; Rubli 2013), as a way to distinguish themselves from other political groups (Subotic 2013: 137), as a distraction from economic or social issues (Kiss 2006: 928), or, particularly in post-communist contexts, as a tool to remove rivals from power through lustration and criminal prosecution (Rozic SJ 2012; Popovski 2012). The literature also suggests several theories for how political competition can influence parties' policy choices. Spatial theories argue that political parties adjust their policy positions (along a left-right spectrum) in response to policy shifts by other parties (Adams and Somer-Topcu 2009; Laver 2005; Budge 1994), and depending on the parties' previous electoral performance, as parties that gained votes in the previous election may have little incentive to change their position (Abou-Chadi and Stoetzer 2020: 940).

Other scholars in the area of saliency theory suggest that parties do not compete on all issues in every election, shifting their entire policy platforms to the left or right, but rather can choose what issues they compete on, emphasizing certain issues they have an advantage in

(Budge et al 1987), accentuating new issues (Riker 1986), “trying to alter the policy reputations of themselves and others” (Meguid 2008: 35), and downplaying issues that are disadvantageous to them (Budge and Farlie 1983) or that divide their own supporters (van de Wardt 2014).

3. Main Argument:

As described in the literature above, scholars have advanced several plausible explanations for transitional justice policy progress, some more compelling than others. Though not all of these explanations are necessarily mutually exclusive, some appear to be more relevant and consequential for the Spanish case than others. As such, I propose two hypotheses based on this literature, as well as several alternative hypotheses based on competing explanations, in order to evaluate which independent variables played the most critical role in the development of transitional justice policy in Spain since 2004. I propose the following two hypotheses:

H₁: Progress in transitional justice policy is expected when the political opportunity structure (POS) is favorable to transitional justice issues; and

H₂: The PSOE increased its support for transitional justice issues over time as a result of electoral competition.

With regard to H₁, I will focus specifically on national transitional justice policy, including laws and decrees passed by the Spanish national legislature or issued by the executive that attempt to redress the legacy of the Civil War and Franco dictatorship. I also focus specifically on transitional justice policy enacted between 2004 and the present to focus the analysis, and because the period between the transition to democracy and passage of the 2007 Law of Historical Memory has been covered extensively by scholars. The POS, as described previously, includes four elements (the degree of openness of institutions in a political system; the presence of influential elite allies; the stability of elite alignments; and the state's capacity and propensity for repression), but I will only include the first three in this analysis given that while the post-transitional Spanish government has not always supported transitional justice efforts, it does not appear to have actively repressed them in any significant way.

If H_1 is true, we would expect to see policy progress when the political system includes elite allies, particularly political parties that support transitional justice issues, in positions of power, and when the stability of elite alignments is disrupted, such as through the entrance of new parties into the political system or inconclusive election results that require political bargaining, compromise, or shifting of allegiances to allow a government to form, providing new opportunities for non-bread-and-butter issues like transitional justice to make their way onto the political agenda. Policy stagnation may be expected when elite allies are present in the political system but do not have sufficient political power to pass transitional justice legislation or when political parties who might be potential allies to the movement but are not necessarily committed to transitional justice issues ('justice instrumentalists') have sufficient political standing that they do not need to negotiate for power with other parties that support transitional justice issues. Finally, policy reversal may be expected when elite allies are not present in the political system and political parties that are explicitly opposed to transitional justice issues gain sufficient legislative power to control the government, or when more ambivalent political parties need to negotiate for power with other parties that are committed to opposing this issue.

With regard to H_2 , I measure PSOE's support for transitional justice by its reference to to "historical memory" and the need to address the legacies of Francoism and the Civil War in its electoral platform over time. Party programs are a relatively consistent data point, as they are released by parties before every election and can provide a clear point of comparison for change in policy over time. Additionally, party platforms often take years and much discussion among the party leadership to develop (Adams and Somer-Topcu 2009: 832). As such, these programs are likely to reflect the parties' careful consideration of how they want to present themselves to the public and the policies they would like to embody rather than hasty responses to particular events or off-hand promises on which politicians have no intention of following through.

Based on the literature of party competition and policy shifting, H₂ suggests several observable implications: We would expect to see an increase in support for transitional justice policy when (1) PSOE lost its previous election and the party it lost the most voters to supported transitional justice policies, (2) a new party emerges that supports transitional justice issues and, as shown by regional electoral results or national polling, is poised to significantly threaten PSOE's electoral success at the next election, or (3) this same new party emerges with a voting base that is likely to support transitional justice issues, but the party itself is silent about transitional justice issues, giving PSOE an opportunity to take ownership of this issue and steal some of the new party's voters. By contrast, we would expect to see little change in PSOE's support for transitional justice policy when it won the previous election, or when the voters of its main electoral rivals are unlikely to strongly support transitional justice issues.

Additionally, this hypothesis suggests that changes in support for transitional justice policy are likely to be abrupt, remaining relatively stable when there is no incentive to change policy and shifting quickly, within the span of one election cycle, to address the failures of a previous election or potential challengers in an upcoming one.

Given these explanations, I suggest that only H₁ is truly necessary for transitional justice policy progress. H₂ is one path through which H₁ could be achieved, as electoral incentives can create new legislative allies, which is a key component of the POS. However, a favorable POS can still be achieved without H₂ if smaller parties that are ideologically committed to transitional justice hold sufficient power to force larger parties to compromise.

4. Alternative Explanations:

Each of the above hypotheses will be tested against two alternative hypotheses in this analysis. H₁ will be tested against the following:

H_{A1}: Progress in transitional justice policy is expected when there is international pressure to address transitional justice issues

H_{A2}: Progress in transitional justice policy is expected when there are high levels of civil society mobilization around transitional justice issues

With regard to H_{A1}, international pressure includes criticism or condemnation from other states, international bodies like the UN or the EU, or international media sources for failure to meet international human rights and transitional justice norms. International pressure can also include the imposition of sanctions, threats to exclude the offending state from participation in international bodies, or other forms of punishment for failure to adhere to these norms. Finally, international pressure can also include rulings by international courts or courts in other states that attempt to compel the offending state to comply with these norms. If H_{A1} is true, we would expect positive transitional justice policy change to correspond with incidents of international pressure. By contrast, we might expect policy stagnation and possibly reversal when international pressure is absent, allowing politicians to pursue whatever policies they desire with little risk of negative international attention.

With regard to H_{A2}, civil society mobilization refers to the extent to which domestic memory organizations and victims' associations⁷ are able to increase in number, attract media attention, or engage in efforts that bring attention to their issue, including holding large marches and participating in high-profile court cases. If this hypothesis is true, we would expect to see progress in transitional justice policy following periods of high levels of civil society mobilization and limited progress on such issues when there are low levels of mobilization that

are unable to gather many supporters or attract media attention. Finally, we might expect to see policy reversal when civil society groups opposed to transitional justice issues are able to gain significant support or attract more media attention than their pro-transitional justice counterparts.

H₂ will be tested against the following alternative hypothesis:

H_{A3}: The PSOE increased its support for transitional justice issues over time as a result of elite generational change within the party, as members of the third- and fourth-generation Spaniards have become more prevalent in the party.

Third- and fourth-generation Spaniards include legislators born in or after 1959, in alignment with previous research.⁸ If this hypothesis is true, we would expect to see greater commitment to these issues in the party platform when third- and fourth-generation members make up the majority of the party's legislative seats. In contrast to H₂, this alternative hypothesis also suggests that the change in PSOE's support would be gradual rather than abrupt, increasing slightly each legislative term as the party includes more third- and fourth-generation Spaniards.

5. Research Design:

In order to test the two main hypotheses, H_1 and H_2 , I will use the method of process tracing to examine how closely the evidence collected from the Spanish case fits with the observable implications of these hypotheses in comparison with those of the alternative hypotheses, both outlined above. This paper makes use of a variety of data, including analyses and secondary sources written by scholars in the field; newspapers and online articles; official publications like parties' electoral platforms; official government websites; and survey data from news media and the Spanish Center for Sociological Research (CIS).

6. The Path of Transitional Justice in Spain

Before examining how closely the independent variables of study correspond with periods of progress or regress in transitional justice policy, it is important to outline what specific transitional justice policies or anti-transitional justice policies have been enacted. A table with detailed information on such policies enacted in Spain since 2004 is included in Appendix A.

To provide a brief summary, between 2004 and 2008, when the government was controlled by PSOE, there was a moderate amount of progress in transitional justice legislation, culminating in the passage of the 2007 Law of Historical Memory, which advanced five major provisions: economic compensation, symbolic reparations, funding for grave exhumations, removal of Francoist symbols like street signs and monuments, and preservation and access to archives containing information about the Civil War and dictatorship (Aguilar and Ramirez-Barat 2016: 62-63). Though this was the most significant transitional justice legislation in Spanish history at the time, it suffered from several serious shortcomings. In particular, it was heavily criticized by victims' associations and human rights groups for failing to declare sentences made by tribunals under Franco on political, ideological, or religious bases null and void, and, more importantly, for failing to make the state assume responsibility for exhuming and identifying the remains of victims itself (ibid: 63). Rather, the burden fell on civil society organizations to apply for funds and carry these out themselves.⁹

Though PSOE continued to advance some transitional justice efforts during its next term from 2008-2011, the vast majority of these aimed merely to carry out the initiatives set out in the 2007 Law of Historical Memory rather than further extend or improve these policies, and did not address any of the substantial shortcomings of the 2007 law laid out above. More drastic provisions introduced during this time by parties further to the left, like the request to exclude

crimes against humanity from the Amnesty Law, were also rejected by both PSOE and PP (ibid: 66). As such, I characterize this period as one of limited progress in transitional justice policy.

Once PP assumed control of the government with an absolute majority in 2011, it was able to effectively nullify the main contributions of the 2007 Law of Historical Memory simply by removing any budgetary allocations for its provisions (Baquero 2019), including removing funding for exhumations and other transitional justice and memorialization processes. I thus characterize this period as one of significant negative progress in transitional justice policy.

No further progress on transitional justice issues was seen until 2018, when PSOE regained control of the government after a successful vote of no confidence against the governing PP and was able to pass a Royal Decree to exhume and relocate Francisco Franco's body from the Valley of the Fallen, a massive monument to Franco. Though this was an important step for the transitional justice movement, no other transitional justice policies were passed during this period, nor was any budgetary funding restored to support the activities of the 2007 Law of Historical Memory. As such, I characterize this period as one of limited progress in transitional justice policy.

Since the formation of the latest coalition government between PSOE and a newer leftist party, Podemos, more significant progress on transitional justice issues has been made. First, in December 2020, the government successfully passed a budget that included over 11 million euros for historical memory issues, double what had been allocated in the budget from 2008 to 2011 before PP removed budgetary allocations for these items (*Spain's News* 2020). In addition, in late 2020, the government introduced sweeping new transitional justice legislation in the form of the Law of Democratic Memory that is now being debated in the legislature. In addition to correcting the serious shortcomings of the 2007 law by making the state responsible for exhumations, nullifying rulings of Francoist courts, and establishing sanctions for violators of the

law, the law proposes several progressive new provisions, including the establishment of a special prosecutor to investigate crimes against humanity during the Civil War and dictatorship (Cue 2020; *The Economist* 2020; *Spain in English* 2020). Though the law has not yet been passed and it is unclear what it will look like in its final form, the fact that the government was able to successfully pass a budget with support from a wide spectrum of smaller parties, including parties that have traditionally supported transitional justice, bodes well for the passage of some significant transitional justice legislation under this government (Heller 2020).

7. Empirical Analysis Part 1: Explaining Transitional Justice in Spain (2004-present)

What explains the course of events described above? An analysis of the two alternative hypothesis (H_{A1} and H_{A2}) proposed earlier suggests that though international pressure and civil society mobilization were important forces in Spain's transitional justice movement, neither can fully explain the timing of progress or regress on this issue.

7.1 International Pressure

International pressure has been present in the Spanish case, to varying degrees, for several decades, including even before PSOE returned to control of the government in 2004. In November 2002, for example, the UN Working Group declared that Spain had an obligation to fulfill its duty to investigate the fate of its missing and disappeared persons, and in 2003 included Spain in its list of countries with missing persons (Kovras 2014: 89).¹⁰ However, the PSOE made no reference to historical memory issues in its campaign events leading up to the March 2004 general election and included almost nothing about these issues in its 2004 electoral program (Aguilar 2008b: 427), suggesting that it was not committed to these issues as a result of international pressure at this time.

Additionally, though international bodies continued to lobby the Spanish government to pursue transitional justice measures once PSOE took control of the government in 2004, it is not clear that these international interventions were directly responsible for the key advances in transitional justice policy that took place during this period.

At first glance, it appears that the timing of international interventions aligns with the timing of these policies. For example, Amnesty International published three reports between 2005 and 2006 calling on the government to adhere to its international obligations on transitional justice issues (Aguilar 2008b: 429), while the Permanent Commission of the Parliamentary

Assembly of the Council of Europe implored the government in March 2006 to honor the victims of the Franco regime and presented a number of recommendations for how it could accomplish this.¹¹ Additionally, in July 2006, the European Parliament officially condemned the Franco regime (Aguilar 2008b: 429).

It is possible that this heightened international scrutiny provided the pressure needed to successfully pass transitional justice legislation, but it is important to note that the Prime Minister had already taken key action on this issue before these incidents. In fact, in September 2004, only a few months after taking office, he established an inter-ministerial commission to examine the circumstances of the victims of Francoism and the Civil War, which produced the recommendations that ultimately served as the basis for the groundbreaking 2007 law (Aguilar 2008b: 425; Kovras 2014: 104). This rapid change of position, from avoiding discussion of transitional issues in the election only a few months prior, to taking a key step toward addressing this issue legislatively suggests that further factors beyond international pressure are needed to explain why progress was made during this period, and why the PSOE would fail to respond to subsequent periods of international pressure during its next term from 2008-2011.

After the passage of the Law of Historical Memory in 2007, for example, the international community continued to criticize Spain's approach to transitional justice issues, particularly its continued commitment to the 1977 Amnesty Law. In 2008, the UN Human Rights Committee urged Spain to repeal the amnesty law¹² and to make sure its own domestic courts did not apply statutes of limitations to crimes against humanity (Human Rights Watch 2010), both of which had been significant barriers to victims' search for truth and justice through the judicial system. The PSOE, however, has thus far refused to consider repealing this law, and even the new Law of Democratic Memory does not include this as a provision.¹³

Additionally, in April 2010, several victims' associations filed a complaint with a judge in Argentina under the principle of universal jurisdiction asking for an investigation into the crimes committed by Franco's forces during the Civil War and dictatorship (Calatrava 2010; Baquero 2020). Known as the Argentine Complaint ("Querrella Argentina"), this effort gained international media attention throughout 2010 and 2011, including in the U.S. and Canada (Calatrava 2010), Europe (Tremlett 2010; *Agence France Presse* 2010), Latin America (Palacios 2010; Valente 2010), and Pakistan (Amani 2010), among other countries, as well as across Spain (*El Correo* 2010; *El Periodico Extremadura* 2010; Irigaray 2010). Despite showcasing victims' and civil society's dissatisfaction with the extent of the transitional justice policies advanced by this point, including the 2007 Law of Historical Memory, and despite the fact that the same political party that had promoted some transitional justice policies in the previous term remained in control of the government, this development spurred little further progress.

Once the PP regained control of the government in November 2011 with an absolute majority, progress on transitional justice issues continued to stall despite ongoing international pressure in various forms. In September 2013, the judge from the Argentine Complaint requested the extradition of four former members of Franco's security forces for torture (Aguilar and Ramirez Barat 2016: 66), another move that gained significant international media attention. However, the PP strongly opposed compliance with these orders, and ultimately in April 2014 the Spanish National High Court rejected the extradition of two of these alleged perpetrators (ibid: 66). This period also corresponded with increased pressure from the UN, which sent a Working Group on Enforced or Involuntary Disappearances to the country in September 2013 and a Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence in January 2014, who released a report in February 2014 that urged the government to revise the Amnesty Law and establish formal mechanisms to address victims of the Civil War

and Francoism's demands for truth and justice (ibid: 61; OHCHR 2018). Rather than bending to these demands, the Spanish government officially defied them, refusing to allocate any funds to exhumations or other historical memory items from 2013 on (Baquero 2019).

The UN Working Group on Enforced or Involuntary Disappearances also released a follow-up report in September 2017 noting that, aside from some progress initiated by regional governments like Catalonia, most of the requirements and recommendations made after their previous visit had yet to be met (OHCHR 2018). However, the next significant development in transitional justice policy would not come until September 2018, after the PSOE initiated a successful no-confidence vote against the PP and assumed control of the government.

All of the above suggests that international pressure is not always sufficient to produce progress in transitional justice policy. In particular, it seems to have limited ability to coerce reluctant parties to comply with international norms, as the PP has rejected numerous transitional justice initiatives with few consequences. International pressure may be more compelling for parties that are inclined to support transitional justice measures – in this case, parties on the left like PSOE. Even so, such pressure may have limited effect without sufficient political will to pursue the policies these international forces demand. This can be seen in the limited support PSOE expressed for historical memory issues in its electoral platforms from 2004 to 2011, despite the existence of international pressure in various forms throughout this period, as well as its refusal to comply with calls to repeal the Amnesty Law. Finally, the change in PSOE's approach toward transitional justice between the election of March 2004 and September 2004 when it began the process that would culminate in the 2007 law, without an apparent corresponding and significant incident of international pressure during this time frame, suggests that other factors like political negotiations may better account for the implementation of transitional justice policies.

7.2 Civil Society Mobilization

There is widespread agreement that civil society organizations have been critical for bringing renewed attention to historical memory issues in Spain in the early 2000s after a long period of relative silence both during and after the transition to democracy (Encarnacion 2014; Aguilar 2008b; Hajji 2014; Boyd 2008). However, the rise of these organizations did not always necessarily correspond to progress in transitional justice policy and government accession to their demands. From 2000 to 2004, for example, when the government was controlled by the PP, their demands were resoundingly ignored.¹⁴ This shifted somewhat once the PSOE gained control of the government in 2004. At this point, the historical memory movement had continued to grow, expanding from 30 organizations to 170 organizations between 2003 and 2005 alone (Tamarit Sumalla 2013: 77), and to carry out public exhumations that attracted significant media attention. Numerous articles referencing the ARMH, the country's most prominent historical memory organization, and its work appeared in Spanish newspapers during this time, including 76 in 2002, 84 in 2003, and 66 in 2004 (*LexisNexis*).¹⁵

While these organizations certainly created an environment in which there was much more public knowledge, national attention, and pressure around these issues, the direct link between civil society mobilization and PSOE's subsequent promotion of these issues is not entirely clear. In particular, there is a disconnect between the fact that groups like the ARMH had been organizing and attracting attention for several years before 2004 and the fact that the PSOE made no official commitment to historical memory issues during its 2004 election campaign (Aguilar 2008b: 427). However, within a few months of taking office, the new PSOE Prime Minister supported several pro-transitional justice initiatives. There does not appear to have been a significant change in the level of civil society mobilization directly after the election that would account for this change, thus making other explanations like political maneuvering more likely.

This disconnect is also suggested by the skepticism some of the organizations showed toward the PSOE even after it began its term. For example, when asked about his optimism around historical memory issues in June 2004 given the new government, the founder of the ARMH said “Let’s not forget that the previous socialist government of Felipe Gonzalez did nothing” (Marina 2004, my translation).

Additionally, though the 2007 Law of Historical Memory this government ultimately passed was far more progressive than any previous transitional justice policies, it was extremely disappointing to these organizations, so much so that one of the smaller political parties that had been a champion of these issues, ERC, ultimately voted against it (Aguilar and Ramirez-Barat 2016: 62). This indicates that while organizations like the ARMH may have been influential enough to help put transitional justice on the political agenda, they were unable to pressure the Zapatero administration sufficiently to advance their particular desired policies.

Furthermore, very little was done to address these shortcomings in PSOE’s subsequent term from 2008 to 2011, despite the fact that historical memory and victims’ associations continued to mobilize and to form new organizations. The exact growth in the number of such organizations over time is very difficult to measure, but one indication of this can be seen in the fact that larger coalitions of these organizations that began to form in the 2010s to coordinate their efforts contained a number of newer organizations as well as older, more established ones. For example, the Coordinating Commission of Associations of Historical Memory and Victims of Francoism, which presented a number of demands to the government in October 2015, included over 70 organizations, at least a dozen of which were founded between 2008 and 2011.

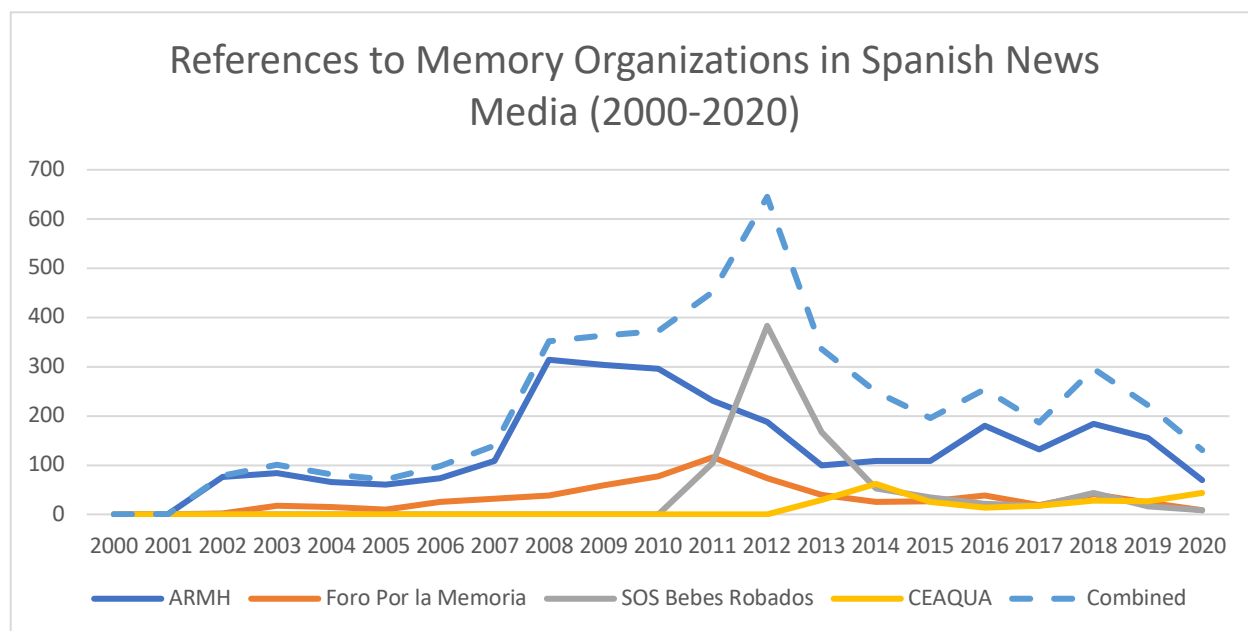
During this period, organizations continued to carry out exhumations, with the ARMH alone performing 52 and uncovering the bodies of 259 victims in this time (*ARMH*), and also pursued new tactics that gained media attention. In particular, and as further evidence of their

dissatisfaction with politicians' receptivity to their demands, these organizations began to turn toward judicial bodies for support. In 2008, following a petition filed with a Spanish high court by the ARMH and other associations, Judge Baltasar Garzón launched an investigation into the forced disappearances of the Franco regime¹⁶ (Urdillo 2011: 46), although this was immediately brought to a halt by an appeal from the Spanish National Court, which declared he did not have the jurisdiction to make such a decision (Chinchon Alvarez 2012: 146). Garzón himself was also temporarily suspended on charges of prevarication (Hilbink 2012: 22).¹⁷ Though supported by the PP, these actions triggered a significant response from the memory organizations, as well as from society more broadly, resulting in widespread demonstrations in over 20 cities in support of Garzón and the "first mass mobilization in homage to the victims of Francoism" (Aguilar and Ramirez-Barat 2016: 66). As discussed previously, the memory organizations also increased their activity during this period by filing a complaint in Argentina.

All of this activity corresponded with an eruption of media attention both at the national and international level. In Spanish newspapers alone, roughly 300 articles appeared referencing the ARMH each year between 2008 and 2010, with only a slight drop off to 231 in 2011 (See Figure 1).

Spanish media attention for another leading memory organization, Foro por la Memoria, also increased steadily during this time, from 38 articles in 2008 to 116 in 2011, while the newly-formed SOS Bebes Robados, focused on the forced disappearance and illegal adoption of babies that took place during the Franco regime, was referenced in 105 articles in 2011. However, all of this mobilization did not trigger a significant expansion of transitional justice policies to address the shortcomings of the 2007 Law of Historical Memory.

Figure 1: References to Memory Organizations in Spanish News Media (2000-2020)



Data collected from *LexisNexis*

Though media attention for some organizations waned once the PP took control of the government in 2011, the combined level of media attention for these organizations still continued to rise through 2012 (See Figure 1). Furthermore, for most of the 2011-2015 legislative session, the number of Spanish newspaper references to these organizations each year still equaled or exceeded the number of references they received in 2007, the year in which the most progressive transitional justice legislation to date was passed (See Figure 1). In fact, the ARMH only received fewer references than in 2007 for one year (2013) between 2011 and 2018, when the PSOE regained control of the legislature. The movement also continued to gain new members during this period, as the members list of the Coordinating Commission discussed above included at least 11 organizations founded between 2012 and 2015. These newer organizations also attracted media attention throughout this period: CEAQUA, which formed to help coordinate the lawsuit in Argentina, received 62 references in 2014, while SOS Bebes Robados appeared in an impressive 383 articles in 2012 alone (See Figure 1).

Furthermore, the connection between the level of civil society mobilization and the PP government's decision to effectively dismantle the 2007 Law of Historical Memory is dubious given that the party had been openly critical of historical memory issues in the past, as well as in the lead up to the November 2011 elections. The PP had voted against the law in 2007, and its leader, Mariano Rajoy made numerous statements before the 2011 elections that indicated his intentions to reform it and remove its power. In early 2011, he announced in a newspaper interview that he intended to modify the law "so that it cannot be used as a 'political circus'" (*Spanish Newswire Services* 2011). Additionally, in October 2011, he declared that his administration would only comply with the elements of the law that the PP supported (Martin 2011a), and that, upon winning the election, the PP anticipated that the subsidies and aid provided by the 2007 law to victims, including for exhumations, would be cut (Martin 2011c).¹⁸ All of this suggests that the PP came into government in 2011 predisposed to strip the 2007 law of its power and redirect the country's attention away from historical memory issues, regardless of whether or not the historical memory associations continued to mobilize.

It is also not clear that civil society mobilization can explain the next significant advancements in transitional justice policy, which came in 2018. As Figure 1 demonstrates, there is a slight increase in Spanish news references to each of the four organizations discussed above between 2017 and 2018, but the overall number of references was still lower in general than what these organizations received between 2008 and 2011 (excluding CEAQUA, which did not exist at that time) when PSOE was also in control of the government and enacted very limited improvements to transitional justice policy.

Ultimately, the data above demonstrates that civil society has been organizing continuously around transitional justice issues since the early 2000s, adding new organizations throughout the past 20 years focusing on a variety of activities, from recovering stolen babies to

coordinating a court case on the other side of the world. With some fluctuation, these organizations have also been able to sustain a fairly high level of media visibility. However, while it is clear that these organizations have played a pivotal role in creating and sustaining national interest in transitional justice issues, it is not clear that the level of their mobilization directly corresponds to the implementation of transitional justice policy. Their mobilization has, perhaps unsurprisingly, had particularly little impact during periods of governance by PP, but more unexpectedly, has also not always convinced PSOE to take action in their favor. The most notable example of this is the refusal to significantly advance the policies of the 2007 Law of Historical Memory even within an environment of heightened mobilization and visibility of memory organizations during PSOE's second term from 2008-2011. As such, the successful implementation of transitional justice policy may not only depend on how much pressure and issue saliency these organizations are able to produce, but also on other factors like which parties are in power and how much political will and electoral incentive they have to support this issue.

7.3 Political Opportunity Structures

While both international pressure and civil society mobilization have clearly been present in the Spanish case, their influence appears to be highly dependent on the willingness of politicians to respond to them, indicating that political factors may be the key explanatory variable for variations in transitional justice policy. The following analysis of the favorability of the political opportunity structure (POS) for transitional justice over time and whether a favorable POS corresponds with periods of policy progress appears to confirm this assertion. Specifically, periods of more significant policy progress have corresponded with periods of a favorable POS, in which parties that strongly support transitional justice issues (allies) control

the legislature, in which parties that both support transitional justice legislation must negotiate for or share power, or when parties that are more lukewarm supporters must negotiate with smaller parties that strongly support transitional justice for power. More limited policy progress has occurred when lukewarm allies do not need to negotiate with smaller parties for power, or when the legislature is so fractured that parties that strongly support transitional justice issues cannot amass enough votes to pass legislation. Finally, policy reversal has occurred when detractors of transitional justice have controlled the legislature without needing to negotiate with smaller parties for power. An overview of the POS of each legislative session since 2004 can be seen in Table 1.

Table 1. POS for Transitional Justice in Spain (2004-Present)

	2004-2008 PSOE	2008-2011 PSOE	2011-2016 PP	2016-2019 PP, PSOE (2018-)	2019-Present PSOE/Podemos
Overall POS	Somewhat favorable	Less favorable	Unfavorable	Slightly unfavorable/Slightly favorable (2018-)	Favorable
(1) Openness of political system	Somewhat open (11 parties, strongly favors 2 main)	Less open (least fragmented election since 1975)	More open (13 parties, but still de facto 2-party system)	More open (2 new major parties, end of 2-party system)	Open (13 parties, 5 with over 10% of vote)
(2) Elite allies	Some allies, not very powerful	Some allies, not very powerful	Few allies, not in power	Strong allies, but with limited power	Strong allies in power
(3) Stability of elite alignments	Unstable: PSOE must negotiate with smaller parties for power	Fairly stable: PSOE able to form government without support	Very stable: PP gained absolute majority of seats, no negotiation needed	Unstable: inconclusive election results, negotiations; vote of no confidence (2018)	Unstable: PSOE & Podemos negotiate to form coalition, still need support from smaller parties

A more detailed analysis of the POS of each legislative session follows below:

2004-2008: The national elections of 2004 produced a relatively favorable political opportunity structure. Although the political system was dominated by two political parties, PSOE and PP, which received over 80% of the vote and 89% of the parliamentary seats, a total of 11 different political parties entered parliament during this period (Alvarez-Rivera), providing significant opportunity for a variety of societal interests to have representation.

The memory movement certainly did have key allies and representation in the form of the IU (United Left, a coalition of leftist and green parties centered around the Spanish Communist Party), and ERC (Republican Left of Catalonia, a social-democratic pro-Catalan independence party). Both of these parties had shown themselves to be proactive advocates of historical memory, submitting multiple initiatives on this issue between 2000 and 2004 (Kovras 2014: 97).

By contrast, PSOE, which won the most seats in this election, was more ambivalent towards these issues. It had previously controlled the government for 14 years, with an absolute majority from 1982-1989, without making any substantial progress in transitional justice policy (Encarnacion 2012: 187). Furthermore, PSOE's 2004 electoral platform and its leader's campaign speeches that year made no reference to these issues (Aguilar 2008b: 427).

However, the 2004 election results produced a favorable opportunity for the memory movement by granting PSOE the most electoral seats of any party (164), but not enough for an absolute majority, which requires 176 seats. As such, PSOE needed to secure the support of other parties to form a government, including that of parties like the ERC and IU that were strong supporters of the memory movement, as noted above. The ERC in particular increased its parliamentary power in this election with an increase of 7 parliamentary seats, allowing it to form a separate parliamentary group for the first time (Field 2009) and become a critical negotiating partner. As Kovras (2014: 96-97) notes, "It was the insistence of parties such as IU

and ERC to trade the promotion of this specific cause for support to the government that eventually promoted the topic onto the political agenda”. The favorable POS resulting from these dynamics corresponded with the most significant progress in transitional justice policy in Spain’s history at the time – the passage of the 2007 Law of Historical Memory.

2008-2011: The political opportunity structure shifted slightly following the general elections in March 2008. Again, just two political parties collectively received over 92% of the parliamentary seats, representing a clear reaffirmation of two party domination in Spanish politics (Chari 2008), and again PSOE emerged with the most seats. However, the openness of the political system closed slightly, as the number of parties entering parliament decreased from 11 in 2004 to 10 in 2008 in the least fragmented election since Franco’s death (ibid.), while the presence and influence of elite allies to the memory movement also diminished. The IU, for example, lost 3 seats while the ERC lost 5 seats. As such, some of the most vocal advocates for transitional justice lost a considerable amount of bargaining power.

Moreover, even though PSOE played a critical role in guiding the Law of Historical Memory to its successful passage in 2007, the issue of historical memory is virtually absent in the party’s 2008 electoral platform.¹⁹ This is despite the numerous complaints both memory organizations and political parties like ERC expressed about the law’s failure to meet victims’ needs and their calls for further provisions (Aguilar and Ramirez-Barat 2016: 63).

The weakness of PSOE’s apparent commitment to this issue becomes even more significant given that the party received even more electoral seats than in the previous election, putting it only 7 seats short of an absolute majority. As a result, the party did not need to negotiate with other parties or make promises to support policies like transitional justice, but rather was able to form a government without the support of any other parties. All of this, in combination with allies like the IU and ERC’s loss of power, culminated in a political

opportunity structure less favorable to historical memory issues than in the previous legislative period. Correspondingly, this legislative period, which lasted from March 2008 to November 2011, was characterized by limited progress on transitional justice issues (See Appendix A).

2011-2016: The political opportunity structure established by the next general elections in November 2011 was distinctly unfavorable to transitional justice issues. The mainstream right-wing political party, PP, gained an absolute majority of seats (186) in the legislature. PP had previously voted against the passage of the Law of Historical Memory and frequently referred to PSOE's efforts to promote legislation on historical memory issues as divisive and a betrayal of agreements made at the time of the transition (Kovras 2014: 101).

Allies to the memory movement did still exist in the legislature in the form of the IU and, to some degree, PSOE, which included 2 very short paragraphs on historical memory issues in its 150-page program. However, PP's absolute majority ensured that it would not need to negotiate with any other parties or the left to achieve its policy goals, lessening the chance for compromise on transitional justice issues, and also made it possible for PP to unilaterally block any pro-transitional justice policies introduced during this time and remove funding for historical memory issues in the budget. As a result, this legislative period, lasting from November 2011 to December 2015, was characterized not only by a lack of progress on transitional justice issues, but by a marked reversal of the progress made under the PSOE-led government.

2016-2018: The POS shifted once again following the December 2015 elections, providing the memory movement with more allies in parliament but producing a legislature so fractured as to prevent the formation of a government and passage of any transitional justice legislation. These elections are widely recognized as marking the end of the two-party system that had dominated Spanish politics since the transition to democracy (Orriols and Cordero 2016: 469). PP again received the most votes of any party, but this time fell far short of a parliamentary

majority, losing an astounding 64 seats for a total of 123 seats. Additionally, two new parties, Podemos and Ciudadanos, entered parliament for this first time and were able to gain a significant number of seats (69 and 40, respectively). This represented the first time a party other than PSOE or PP achieved more than 10% of the vote since 1996, and the first time since the transition to democracy that four separate parties each achieved more than 10% of the vote.

The number of allies to the memory movement also significantly increased as a result of this election. In particular, one of the new parties, Podemos, included an extensive list of proposals in its 2015 electoral platform on the subject of historical memory²⁰ and recognized several prominent members of the memory movement as consultants and contributors to its platform (Podemos 2015).²¹ Additionally, 2015 is the first year in which PSOE included extensive provisions (several full pages) on historical memory in its platform, promising to give new impulse to the previous Law of Historical Memory and advance several more progressive policies, including creating a national DNA bank to assist individuals in locating their missing relatives and promoting the creation of a truth commission, among others (PSOE 2015a).

Despite the addition of new allies, the POS remained unfavorable to transitional justice policy because despite no longer holding an absolute majority in the Congress of Deputies, PP did continue to retain the most seats in the legislature (123) and an absolute majority in the Senate, making the passage of any legislation or budgets related to historical memory difficult. After two highly fractured elections within the span of a few months, PP formed a minority government with the support of Ciudadanos in October 2016 (Castillo-Manzano et al 2017: 160).²² In this environment, in which parties unsupportive of historical memory controlled the government – PP continued to refuse to allocate any funds to historical memory in its annual budget and both PP's and Ciudadanos' electoral platforms were completely silent about the issue (PP 2016; Ciudadanos 2016) – there was little opportunity for transitional justice progress.

2018-2019: These circumstances changed somewhat, becoming slightly more favorable to the memory movement, in the summer of 2018 when PSOE regained control of the government following a successful no confidence motion against the Prime Minister based on corruption scandals within the PP and deep dissatisfaction with its handling of the Catalan independence crisis in 2017 (Torres 2018).

Thus, in June 2018, the leader of PSOE became the new Prime Minister and head of a minority government. Importantly, however, the overall structure of the political system did not change in that the distribution of seats among parties in the legislature did not shift at all. PSOE itself remained in a highly precarious position with only 84 of the 350 parliamentary seats, “significantly hamstringing its ability to pass any meaningful legislation” (Politzer 2018). Furthermore, though PSOE and Podemos had shown a clear willingness to work together, collaborating to draft a budget that highlighted their agreement on key leftist issues²³ (Politzer 2018), the fact remained that the combined seats of the right/center right (PP and Ciudadanos) outnumbered the combined seats of the left/center left (PSOE and Podemos) 169 to 156.

Thus, the passage of the budget and nearly any other piece of legislation required the support of smaller parties, particularly pro-independence Catalan nationalist parties (Politzer 2018). Though PSOE was able to secure these parties’ support in the no-confidence vote against the PP by “promising to promote ‘dialogue’ between Madrid and the separatist regional government in Barcelona” (Torres 2018), PSOE remained strongly against independence, making the leveraging of these parties’ support for any of its initiatives difficult (Politzer 2018).

Unsurprisingly, this political opportunity structure was not conducive to the passage of transitional justice legislation or even budgetary proposals that returned funding to the historical memory movement. However, like many of the other initiatives PSOE pursued during this time due to the inability to gain sufficient support to pass legislation, the government was able to pass

a royal-decree law, which is effectively a “fast-track formula that avoids the lengthier process that regular bills undergo” (Diez 2018), on transitional justice issues. In August 2018, the Prime Minister introduced a decree via this method that included a government plan to exhume Francisco Franco’s body from the Valley of the Fallen and relocate it to an alternative site where it could not be glorified, which was approved in September 2018 (Diez 2018).

2019-present: The elections of April 2019 produced an even more fragmented political system, with the inclusion of 13 different parties in parliament (up from 9 in the previous election) and the ascension of a 5th political party (Vox, a populist far-right party) to gain more than 10% of the vote in one election. The PSOE did gain a significant number of seats from the previous election (rising from 85 to 123), but was unable to form a government following a breakdown in negotiations with Podemos. Motivated by polling that suggested PSOE was gaining seats while the three newer parties (Podemos, Ciudadanos, and Vox) were losing seats, the leader of PSOE called for new elections in November 2019 (Jannessari 2019).

The POS for transitional justice issues improved following the next election. In another highly fractured result, the PSOE again earned the most seats (120) but did not come close to having a majority of seats (176), while a significant vote share swung toward the right to PP and Vox. Although the previous legislative session was characterized by an inability of PSOE and Podemos to come to an agreement about forming a coalition government, the two parties were able to sign an outline agreement to form a coalition government within hours of receiving the election results, motivated by the knowledge that a third election would be wildly unpopular and possibly drive even more supporters to the far-right (*The Economist* 2019).

This was a favorable shift because it established Spain’s first ever coalition government, made up of two strong allies of the transitional justice movement. Both parties included extensive provisions on historical memory in their electoral programs, more so even than in

previous programs (PSOE 2015a; Podemos 2015). Additionally, Podemos historically had shown more support for the demands of the Catalan nationalist parties, whose support had been important for passing transitional justice legislation in the past and who had been withholding their support for various legislative items over the issue of Catalan independence (Castillo-Manzano et al 2017: 160). This new alliance between PSOE and Podemos thus provided potentially improved opportunities for the governing coalition to negotiate with and secure the support of these parties. Finally, the very nature of the coalition agreement ensured that both parties would have to negotiate to determine their policy agenda, and the easiest policies to pursue would be those on which they both agreed. Transitional justice was one such area.

As such, it is not surprising that within a month of forming a government in January 2020, PSOE registered the text of a new transitional justice policy plan, called the “Law of Historical and Democratic Memory” (*Progressive Spain* 2020). This has since morphed into the expansive Law of Democratic Memory currently being debated in the legislature.

Whether this law will ultimately be approved and the final form it will take is still unclear, as the PSOE-Podemos coalition does not have enough seats to pass such legislation without support from other parties (Cue 2020), and the process of moving the law through the necessary steps to approval may take several months (Parra 2020). The coalition government does have more seats than the combined forces of PP and Vox, who are almost certain to reject it (155 to 141), and has been able to cultivate the support of smaller parties recently in a way that bodes well for the passage of this bill. For example, it won its investiture vote in January 2020 with the support of multiple small parties, many of which entered the parliament for the first time in this election²⁴, as well as the abstentions of the pro-independence Catalan and Basque nationalist parties (ERC and EH Bildu). More recently, following further negotiations, the coalition was able to pass its 2021 budget with even more support, including the support of both

the ERC and EH Bildu, in a 188-154 vote (Reuters 2020). These coalitions are still extremely fragile, but these developments are highly promising for the passage of some form of progressive new transitional justice legislation.

8. Explaining PSOE's Changing Support for Transitional Justice

As the discussion of political opportunity structures above demonstrates, one of the key factors in the successful passage of transitional justice policy in Spain has been the presence of elite allies in positions of power in the legislature. As discussed, this can occur even when only small parties actively support the issue if they are in a position to force larger parties to negotiate for power, but can also occur when larger parties take up the issue themselves. A fundamental change in this area appears to have taken place in the last few years in Spain, where previously only small parties like the IU strongly and consistently advocated for transitional policy, while now two of the country's largest political parties, PSOE and Podemos, consistently include extensive historical memory policies in their electoral programs and are currently spearheading a new Law of Democratic Memory. Though the political opportunity structure framework can explain the current progress in transitional justice by pointing to the presence of favorable factors like these elite allies, a full understanding of the progression of transitional justice in Spain would be incomplete without an attempt to understand why these powerful new allies (particularly in PSOE) have emerged. The following section attempts to do this, proposing the argument that PSOE adopted more progressive policies as a result of a need to compete electorally with a new challenger on the left, Podemos. For comparison, I also test the alternative explanation that this was the result of an internal generational change within PSOE. I also test a second alternative hypothesis focused on internal changes within the party, namely that this change resulted from elites' embrace of human rights, which is included in Appendix C.

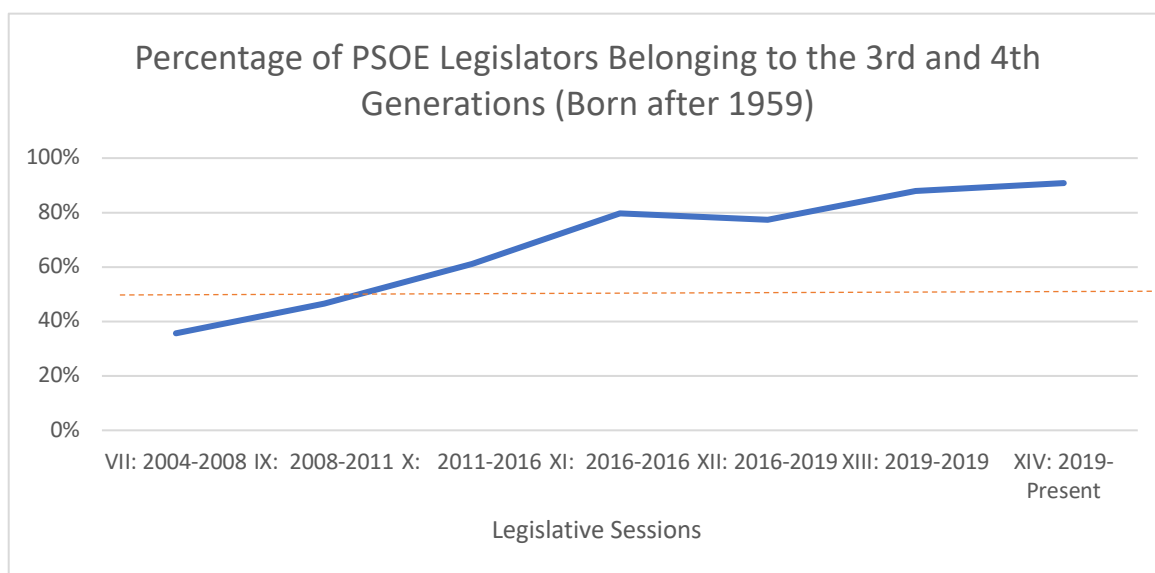
8.1 Alternative Explanation: Generational Change

The alternative explanation advanced here suggests that PSOE's support for transitional justice should increase gradually over time as the makeup of the party's elites change. However,

a review of PSOE's electoral platforms from 2004 to 2019 demonstrates that the party included very little mention of historical memory issues in 2004, 2008, and 2011, followed by a dramatic increase in the discussion of historical memory in the 2015 electoral platform, which calls this theory into question (See Appendix B for more detailed analyses of these platforms).

Furthermore, an examination of the percentage of third- and fourth-generation deputies in the legislature over time suggests that we might actually have expected to see more substantial support for transitional justice earlier in 2011, when these legislators outnumbered second-generation deputies for the first time, making up 61% of PSOE's deputies in the legislature (See Figure 2).

Figure 2: Percentage of PSOE Legislators Born After 1959



Legislators' birth dates collected from official Congress of Deputies website (*Congreso de los Diputados*)

However, this percentage also increased substantially between 2011 and 2015, with third- and fourth-generation deputies making up nearly 80% of the party's deputies in the subsequent legislative term. Though these legislators made up the majority of the party in 2011, it is possible

that they did not gain sufficient power within the party to influence the party's attitude toward transitional justice legislation until they achieved a more overwhelming majority of 80% in 2015.

It is also important to note, however, that just because younger legislators might be more likely to personally support the issue of transitional justice, that does not necessarily mean they will choose to make the issue a policy priority. As such, it is possible that this generational change helped to remove obstacles to the promotion of transitional justice legislation, but that other factors were necessary to ensure that the pursuit of more advanced transitional justice policy would be an electorally viable strategy.

8.2 Political Incentive:

The relatively abrupt change in PSOE's support for transitional justice issues between 2011 and 2015 provides some support for the main hypothesis (H₂) that support for transitional justice issues is strongly shaped by changing political and electoral incentives. Thus, if this hypothesis is true, we would expect to see some significant change in the structure of the political arena between 2011 and 2015 that could make supporting and emphasizing this issue an electorally favorable strategy, and indeed there is some compelling evidence to this effect.

To begin, PSOE suffered its worst electoral defeat in history in 2011, earning only 29% of the votes, down from 44% in the previous election (Alvarez-Rivera). As such, the party had a clear incentive to adjust its policies in the subsequent election to regain some of the votes it had lost. However, the exact direction in which PSOE would be inclined to move is less clear, as its former supporters split their votes: 16% of those who had voted for PSOE in 2008 moved to the right to support PP in 2011, while 7% shifted their support to the left to IU and 10% abstained from voting altogether, largely representing a disaffection of supporters further to the left who

felt betrayed by the harsh austerity measures the previous PSOE-led government had undertaken in response to the 2008 economic crisis (Martin and Urquizu-Sancho 2012: 353-354, 359).

In the wake of this widespread disaffection on the left arose yet another threat to PSOE's future electoral success in the form of a new populist leftist political party called Podemos. Formed in January 2014, Podemos emerged as effectively an institutionalization of the widespread social mobilization of the Indignados/15-M movements that criticized austerity measures and the party system as corrupt and anti-democratic. The new party quickly showed itself to be a significant electoral threat, gaining over 1.25 million votes in the European Parliament elections in May 2014 (Fominaya 2014). Though such success does not always translate to national elections, polling data consistently demonstrated that Podemos was likely to be a significant threat in the next general elections as well. As early as July 2014, a survey from the Sociological Research Center (CIS) reported that 17% of people who had voted for PSOE in the 2011 election planned to switch their votes to support Podemos in the next general election, a statistic that rose to 25% by October 2014. These numbers were even more drastic for the IU, with 28% and 45% of its previous voters planning to switch their votes in July and October 2014, respectively (*Europa Press* 2014; CIS 2014a; CIS 2014b). As such, it is clear that Podemos did pose a substantial threat to PSOE, and that PSOE saw it as such, as the European election results triggered a reckoning within the party, leading PSOE's leader to step down (Fominaya 2014).

It is also worth noting that another political party gained an unprecedented level of national prominence during this time: the centrist party Ciudadanos, which situated itself ideologically between the two major parties, to the right of PSOE and to the left of PP. Though formed in Catalonia in the mid-2000s, the party only began organizing in the rest of Spain in 2013. Polling data from Politico reports that 15% of the population planned to vote for this party as of March 2015 (*Politico* n.d.), with significant percentages of former PP supporters planning

to switch their votes to this new party – approximately 18-19% according to the April and October 2015 CIS surveys (CIS 2015a; CIS 2015b). As such, centrist voters who normally switched between PP and PSOE each election now had a new potential destination for their votes. Thus, to attract voters to the right, the PSOE would not only risk further alienating leftist voters, but would also largely be competing with Ciudadanos, which could actually ultimately help its main rivals, the PP, given that Ciudadanos was siphoning off many of PP's votes. Thus, the electoral environment before the 2015 general elections was fundamentally different from the two-party competition that had existed between PP and PSOE for the previous few decades, necessitating a change in electoral strategy to compete for voters on the left.

This is certainly a more favorable environment for the promotion of historical memory issues given that this is an issue that causes stark divisions along partisan lines in Spain. Polling data on public opinion around historical memory issues is unfortunately extremely sparse, so it is impossible to consistently track this over time. However, some insights can be gleaned from the few surveys available. The most recent comprehensive survey on this matter was a 2008 survey by CIS, which showed that over 70% of PSOE voters who were familiar with the 2007 Law of Historical Memory saw it as “Good” or “Very Good”, while, only 28% of PP voters thought the same (CIS 2008). Support for additional transitional justice measures also created stark divides, although interestingly the majority of PSOE supporters did not always support these initiatives either. For example, when asked if they would support the creation of a truth commission to investigate the violations of human rights that took place during the Civil War and Franco dictatorship, 47-50% of PSOE voters said they would while only 23-24% of PP voters did. By contrast, support among IU voters for these measures ranged from 66-70% (ibid.). Support for other kinds of measures also followed a similar pattern, with large divides between the PSOE and PP voters, and significantly more support by IU voters.²⁵ Thus, in an environment in which

PSOE needed to compete with PP on the right for votes, focusing on historical memory issues was unlikely to be a winning strategy.²⁶ By contrast, in an environment in which PSOE needed to compete on the left for votes, doing so had the potential to be effective given the substantial support expressed on this issue by IU voters, many of which switched to Podemos voters once the new party emerged as discussed above.²⁷

As the survey data on this topic is not consistently available, it is impossible to determine exactly how these patterns have held up over time, including during the 2011-2015 period when PSOE placed more focus on this issue. However, some more recent polls suggest that this pattern remains similar, though perhaps even more polarized. For example, one recent poll on the removal of Franco's remains from the Valley of the Fallen held in July 2018 showed that 63% of PSOE voters supported the removal, as did 78% of Podemos voters, while only 13% of PP voters did (SanMartin 2018). This also provides some corroboration to the argument that, like IU voters, Podemos voters are even more likely to support historical memory measures than PSOE voters, and thus focusing on these issues could be a useful strategy for PSOE to win them over.

This is not to say that historical memory issues are the only ones on which PSOE could compete with Podemos, but it should be noted that the very nature of Podemos as a party posed some difficulties in this area. Specifically, Podemos formed as a response to anti-system and anti-corruption movements that were highly critical of the party system, which is very difficult for mainstream parties like PSOE to respond to given that they are deeply associated with the political systems such parties are rebelling against (Meguid 2008: 35). Furthermore, before the release of its official party program in November 2015, Podemos was highly criticized for being ideologically ambiguous and amorphous with few concrete policy proposals that spanned a wide range of the political spectrum (Castro 2015), making it difficult for other parties to know how to shape their own policies in response. This position opened the party up to criticism on the left in

particular, as Podemos' leader frequently refused to place himself or his party squarely on the left or to prioritize traditionally leftist issues like historical memory (Castro 2015). Emphasizing such issues could thus provide an opportunity to steal frustrated leftist voters from Podemos, and historical memory would be a reasonable choice to focus on given that PSOE had promoted legislation on this issue in the past and has often seen historical memory issues as a "useful way to prove its progressive credentials" (Gilmartin 2020).

If this new multi-party environment did allow historical memory issues to become a more salient electoral issue, we would likely see one of two temporal pathways of events: (1) that Podemos emphasized this issue, forcing the PSOE to respond, or (2) that Podemos did not emphasize this issue, leading PSOE to attempt to take ownership of the issue to attract some of Podemos' voters, forcing Podemos to respond. The first scenario appears not to be true, as Podemos made no significant mention of these issues well into 2015. In fact, the party's electoral platform for the autonomous regional elections in May 2015 did not contain any mention of historical memory issues, while PSOE's platform promised to create municipal commissions of historical memory and IU went even further to promise autonomic memory laws and erase Francoist symbols (*El Pais* 2015b). The party continued to state by July 2015 that these issues were not among their priorities, focusing instead on economic regeneration (*ABC* 2015). However, after witnessing rapidly declining poll numbers²⁸ and facing significant and repeated criticism from IU and PSOE for the ambiguity of its platform, for ignoring traditional leftist issues like historical memory, and for moving towards the center to attract votes (Castro 2015; *El Pais* 2015a; *El Pais* 2015b; *El Correo* 2014), the party finally made an indication that it would include historical memory issues in its platform on October 31, 2015 (*Spanish Newswire Services* 2015c). Many of its promises were fairly tame, but there were two that went significantly beyond what PSOE had previously promised: the promise to apply universal

jurisdiction to cases involving victims of the Franco regime, and the promise to annul the sentences of the courts of the Civil War and dictatorship (*Spanish Newswire Services* 2015a).

All of this suggests that though Podemos did not initiate the fight over historical memory, the other two parties on the left viewed this issue as a useful way to disparage Podemos and potentially attract its supporters. Furthermore, it is interesting to note that although the leader of PSOE promised to apply and expand the 2007 Law of Historical Memory during his leadership contest in June 2014 and throughout 2014 and 2015 (*Spanish Newswire Services* 2014a; *Spanish Newswire Services* 2014b; *Spanish Newswire Services* 2015b), his specific policy promises were extremely vague and hardly reflective of the significant policy proposals that would be included in the December 2015 PSOE electoral platform. Even as late as November 4, 2015, the third-ranking PSOE party leader Antonio Pradas reaffirmed the party's commitment to giving new impetus to the Historical Memory Law, but only specifically promised policies the PSOE had already supported previously: to reallocate funding to exhumations in the budget, reopen the Office of Aid to Victims of the Civil War and Dictatorship, and carry out the recommendations toward the Valley of the Fallen laid out in the Law of Historical Memory. However, it may be significant that Pradas met with historical memory organizations on November 4, just days after Podemos announced its intention to include historical memory issues in its program, to hear their demands and include them in PSOE's own program (*PSOE* 2015b).

Only a few weeks later, on November 20, 2015, one month before the next general elections, PSOE announced much more significant policy proposals, including the creation of a truth commission and DNA banks to help locate the disappeared, as well as a promise to "study the invalidity of sentences" from Francoist criminal courts (*Spanish Newswire Services* 2015d), which, notably, is a policy Podemos had promised on October 31. Since then, both PSOE and Podemos have continued to include significant historical memory policies in their party

programs. The rapid progression of all of these policy developments, combined with their proximity to the general elections in December 2015, suggest a more calculated electoral strategy rather than a more gradual change of heart within the party.

It is also worth acknowledging the potential role of civil society organizations and international pressure in these developments. It is true that both parties met with historical memory organizations and that the policies in their programs were likely significantly shaped by the demands of these organizations and by the international community's recommendations, as the United Nations is referenced in both parties' 2015 program sections on historical memory. It is also quite probable that both of these entities helped to ensure that historical memory could be an effective issue for political parties to compete on by keeping this issue in the newspapers and in the public's attention. However, there do not appear to be any significant international or civil society incidents that directly match with the timing of the policy developments laid out above, suggesting that the parties may have turned to these entities for knowledge, support, and legitimacy once they had already decided to pursue more aggressive transitional justice agendas.

9. Conclusion and Suggestions for Future Research:

The results of this study support the two main hypotheses advanced in this thesis: that the key variable that best explains the path of post-transitional justice policy in Spain is the political opportunity structure (H_1), and that the increased support the mainstream left party, PSOE, has shown toward transitional justice issues in recent years, culminating in the introduction of the new Law of Democratic Memory, can be traced to electoral competition (H_2). More specifically, the fracturing of the Spanish political system decimated support for the two mainstream parties and ensured that no party could gain control without the support of others, combined with the entrance of a powerful new party on the left, Podemos, forced PSOE to compete on and emphasize transitional justice issues for votes.

Though electoral incentives have contributed to the favorable POS that has emerged in Spain in recent years, they may not be inherently necessary or sufficient to produce transitional justice policy progress. As we have seen in the Spanish case, a favorable POS can emerge even when larger parties effectively ignore the issue if smaller parties hold enough political leverage to force them to compromise. International pressure and civil society mobilization have also clearly been important for attracting and sustaining media attention around these issues, but the impact of these forces appears to be highly dependent on the presence and relative power of allies in the political system. As such, it is clear that a favorable POS is necessary for transitional justice progress. Whether it is independently sufficient for such progress, however, is less clear given that the other two variables were present throughout the period of study and so could not be isolated from the main independent variable.

Additionally, without elite interviews of the civil society organizations' leaders, as well as politicians, it is difficult to decisively determine how important civil society's role has been in creating allies in the political system and pushing them to adopt transitional justice policies. It is

also possible that civil society organizations have played a key role in shifting public opinion in favor of transitional justice policies, but the general lack of consistent and substantial public opinion data on these issues has made it extremely difficult to trace this.

Furthermore, though PSOE's increased support for transitional justice policy corresponds with generational change within the party, further research in the form of elite interviews is needed to determine whether this is a coincidence or whether the attitudes toward transitional justice of the politicians belonging to the third and fourth generations were fundamentally different to those belonging to politicians of the second generation.

Beyond these suggestions, the arguments presented in this thesis could be further tested through studies at the local level or in different country cases. In Spain, for example, several regional governments, frustrated by slow progress at the national level, have passed their own, progressive transitional justice policies (de la Cuesta and Odriozola 2018). A comparative study of these regions could be used to test the relative importance of civil society mobilization and the POS in the passage of such policies, as well as to examine whether shifting environments of electoral competition have affected regional parties' support for transitional justice policies.

As this study sought primarily to provide an in-depth understanding of the path of post-transitional justice policy progress in one particular country case, Spain, the generalizability of these findings to other country cases may be questionable. Indeed, there are some variables that have played a limited role in Spain but may be more significant in other countries. International pressure, for example, appears to have had limited direct effect on the pursuit of transitional justice policy in Spain, perhaps because the government did not face significant consequences for ignoring the demands of the international community. In countries for which adherence to international demands is a prerequisite for joining important economic or political bodies, or

sanctions or expulsion from such international bodies may reasonably be expected for noncompliance, international pressure may play a more significant role.

However, the results from the Spanish case do suggest some larger implications that could be explored in other cases. Primarily, they suggest that transitional justice can be an issue of ongoing political contention, rather than something to be dealt with only at the time of transition or an issue that will naturally be resolved with time. As the Spanish case has shown, time may help to remove some barriers to the pursuit of transitional justice, but may not substantially dull opposition to these policies. Indeed, with the rise of the far-right party Vox to hold the 3rd-most seats in the legislature, opposition to transitional justice and intent to overturn pro-transitional justice policies, even among the more moderate PP, has only increased, as has the mainstream left's commitment to supporting these issues.

The Spanish case also shows how the fragmentation of the political system and the entrance of new parties on the left can provide new opportunities for the advancement of policies like transitional justice as long-standing power balances are disrupted and mainstream political parties are forced to react to challengers. As there has been abundant literature on mainstream right parties' responses to the rise of far right parties²⁹, the findings of this study suggest that there is also need for a closer look at how mainstream center-left parties respond to new challengers from the left, particularly the populist left, and what opportunities this provides for the advancement of policy issues like transitional justice.

Ultimately, the issue of transitional justice in Spain remains highly politicized and polarizing, and it is unclear what the fate of the Law of Democratic Memory will be in subsequent legislatures if it is passed during this one. However, it is important to note that the transitional justice movement has significantly more, and more powerful, allies than ever before who have shown that they are committed to revisiting this issue as often as necessary (provided,

perhaps, that it remains electorally favorable) to provide redress and recognition for the victims of the Civil War and dictatorship. Though these efforts may face setbacks, they have demonstrated that drawing a veil over this dark period of history and moving on without reparation or reference to the past is simply no longer an option.

Notes

¹ This is an estimate (Gilmartin 2020).

² While the massive levels of repression that characterized the first two decades of the Franco regime diminished significantly in the second half of the dictatorship, it is important to note that Franco continued to engage in the torture, incarceration, and execution of political enemies throughout the course of the regime, albeit on a smaller scale in the later years (Tamarit Sumalla 2011: 733). This also included widespread child trafficking, as throughout the 1940s and 1950s, roughly 30,000 children were taken from imprisoned Republican women and placed in state orphanages by the state welfare agency in order to save them from destructive leftist ideologies (Encarnación 2012: 181). These children were often given to families loyal to the Franco regime (Escudero 2014: 128).

³ There were some small reparatory measures passed to provide some basic economic compensation and pensions to former political prisoners who had been removed from the army or civilian jobs. However, these benefits did not extend to former members of the Republican Army, did not restore the recipients to their previous positions, and paled in comparison to the pensions and privileges that had been awarded to those who had fought for Franco's National Army (Escudero 2014: 137).

⁴ Indeed, there has been considerable fear among scholars and practitioners alike that "the transition could well be the only opportunity for confronting the past," as "delaying or deferring justice can result in neglecting to confront the past by allowing other problems to crowd the political agenda (like fixing the economy or drafting a new constitution)" (Encarnación 2014: 13), especially given that human rights issues are generally considered 'non bread and butter issues' that may be under-prioritized by politicians relatively easily (Fernandez Anderson 2011: 3).

⁵ Civil society organizations can also play a key role in reshaping the historical narratives formed at the time of transition that may be constraining the pursuit of transitional justice measures. As van der Merwe and Schkolne (2017) note, "civil society-led commemorations of significant events in the past are seen to 'break the silence; and tell untold stories'" (239). In this way, civil society organizations can create spaces for victims and communities to share their experiences, allowing for the development of counternarratives against those that may have been put forward by previous regimes or authorities that human rights violations did not take place or were minimal, or that everyone should try to forget the past and move on. Such actions can be critical for changing public support for transitional justice measures. Some scholars also point to the importance of civil society activism directed toward the judicial branch, as innovative legal arguments and persistent pressing of the judicial system to investigate human rights abuses can be critical for making progress with regard to transitional justice, especially when such measures are blocked in the political sphere (Brahm 2007; Hilbink 2012; Ocantos 2014; Oprisko and Wolfe 2014).

⁶ Another strain of arguments focuses on whether political elites have embraced international human rights norms (Kovras 2014) leading them to become 'justice true believers' (to use the language of Subotic's (2013) framework) dedicated to achieving transitional justice,

⁷ These organizations are sometimes collectively referred to as the 'memory movement' (San Sabido 2019),

⁸ To create this measure, I compiled a database of politicians' ages from the information in their biographies on the official website of the Congress of Deputies and calculated the percentages of PSOE politicians that belonged to these generations in each legislative session from 2004 to the present. The exact cut-off year between these generations is somewhat unclear. In Aguilar and Ramirez-Barat (2019), they reference the "youngest generations" (presumably the fourth-generation) to include 18 to 24 year-olds or 18-34 year-olds (at the time of a survey run in 2008) at various points, while referencing "younger generations" (presumably the third-generation) to include 35-44 year-olds (again, in 2008). This suggests that the third-generation includes those born in and after 1964. However, the generational theory argues that one of the reasons third-generation Spaniards are more supportive of transitional justice is that they did not experience the dictatorship or transition during the 'critical period' of their development, between ages 17 to 25. Those who were 16 or younger at the time of Franco's death in 1975, and thus have limited memory of the dictatorship and transition to democracy, would be born in 1959 or later. Additionally, José Luis Rodríguez Zapatero, who became Prime Minister of Spain in 2004 and has been referred to as a member of the third-generation, was born in 1960 (ibid. 225). As such, I chose 1959 as the cut-off date to best capture all of this information.

⁹ The law was also heavily criticized for failing to include sanctions for noncompliance. As such, the removal of Francoist symbols from street signs and public squares has been highly irregular across the country because many municipalities have refused to comply and faced few consequences (Aguilar and Ramirez-Barat 2016: 64).

¹⁰ Though Spain faced virtually no material consequences for failing to comply with these obligations, these events did serve as an international embarrassment and quickly prompted the PP, which controlled the government at the time, to support a parliamentary resolution it had rejected just a few months before that “condemned, for the first time in Spanish history, the coup of Franco as illegitimate” (Kovras 2014: 89). However, less than a month later, in December 2002, the PP rejected a proposal much more in line with the UN’s recommendations to provide funding for the exhumations of the graves of the disappeared persons as part of its budget (*El Pais* 2002), suggesting that the impact of this international pressure was relatively fleeting and not especially widespread.

¹¹ Some examples included establishing days of remembrance and memorials, and conducting official inquiries into the crimes of the regime.

¹² Additionally, in 2009, the European Court of Human Rights even held that, as a general principle, an amnesty law is generally incompatible with states’ duty to investigate acts of torture or barbarity (*Human Rights Watch* 2010).

¹³ To this day, the former PSOE Prime Minister Zapatero continues to defend the Amnesty Law as critical for helping Spain’s successful transition to democracy (*EuropaPress* 2014).

¹⁴ Specifically, their demands for the establishment of a “commission of historical clarification to investigate the fate of the disappeared” (Davis 2005: 871-872) and for government assumption of responsibility for the exhumations and reburials of the victims of the old regime were firmly ignored. In addition to refusing to fund grave exhumations, the government also refused requests from these organizations to open military archives, give economic reparations to victims of Franco’s repression, or annul sentences handed down by Franco’s courts (Davis 2005: 877-878), while at the same time providing funding to the Francisco Franco Foundation, which was dedicated to promoting the memory and accomplishments of the former dictator (Encarnacion 2014: 153).

¹⁵ I calculated these numbers via a search in the LexisNexis online database of newspaper articles. I searched for references to the “ARMH” or “Asociacion por la Recuperacion de la Memoria Historica” in Spanish newspapers each year.

¹⁶ After hearing testimony from numerous victims, Garzón “charged Franco, together with 34 generals and ministers, with crimes against humanity and ordered the exhumation of graves located in 27 provinces” (Urdillo 2011: 57).

¹⁷ Specifically, these charges were brought in 2009 by an ultra-right trade union called Manos Limpias, which filed a complaint against Garzón with the Supreme Court, accusing him of the crime of prevarication, or “knowingly issuing an unjust [i.e., legally illegitimate] resolution” because he knew he did not have jurisdiction over the case (Hilbink 2012: 22).

¹⁸ Rajoy also declared in October 2011 that the Spanish people are not concerned about where Franco is buried and that moving Franco’s remains would not be a priority of his administration if he won the election (Martin 2011b).

¹⁹ All the program promises to do is develop a center of historical memory in Salamanca to include an Archive of the Civil War to gather and centralize all documentation related to this issue in one place (PSOE 2011), which is a provision that was already promised in the 2007 Law of Historical Memory.

²⁰ In particular, the 2015 Podemos platform highlights the need for memory, truth, and justice as “pillars of the culture of human rights” (Podemos 2015, my translation).

²¹ These included Emilio Silva, head of the ARMH, one of the founding organizations of the movement; Carlos Slepoy, a lawyer for the “Querella Argentina”; Francisco Exteberria, an anthropologist; and Francisco Ferrandiz, an anthropologist and co-author of the report of the Commission of Experts for the future of the Valley of the Fallen (Podemos 2015).

²² This followed months of unsuccessful negotiations that almost necessitated a third election, a highly unpopular prospect for an already frustrated public. Though it caused a tremendous amount of disagreement within the party, ultimately the PSOE agreed to abstain from the investiture vote in October 2016, allowing the PP to take control of the government.

²³ Other areas of agreement included gender equality and economic issues (Politzer 2018).

²⁴ These included Mas Pais, Nueva Canarias (NCa), the Galician Nationalist Bloc (BNG) and Teruel Existe (TE).

²⁵ These included: annulling the political judgments that took place under Francoism (PSOE: 55%, IU: 84%, PP: 41%), bringing authorities that violated human rights under Franco to justice (PSOE: 57%, IU: 74%, PP: 31%), and removing symbols that exalt Franco from public places (PSOE: 69%, IU: 88%, PP: 26%) (CIS 2008).

²⁶ Indeed, several have noted that historical memory issues in particular can scare a more moderate voter (*El Correo* 2014).

²⁷ It is also worth noting that Podemos was particularly popular with younger voters (Orriols and Cordero 2016: 485), which scholars have noted tend to have more favorable attitudes toward transitional justice issues (Aguilar and Ramirez-Barat 2019).

²⁸ Intention to vote for Podemos declined from 25% at the beginning of February 2015 to a low of 13% in the middle of October 2015 according to polling data from Politico (*POLITICO*, n.d.)

²⁸ See Abou-Chadi and Krause (2020), Abou-Chadi (2016), Han (2015) and van Spanje (2010) as some examples.

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Appendices

Appendix A: Transitional Justice Policy

Table 2. Transitional Justice Policy Developments in Spain (2004-Present)

	Positive Developments	Negative Developments
PSOE: 2004-2008 Moderate Progress	<ul style="list-style-type: none"> - May 2004: Approved non-law proposition to study the legal situation of the victims of the Civil war and the dictatorship's repression and to advance proposals for improving their economic condition - September 2004: Appointed an Inter-Ministerial Commission for the Study of the Situation of the Victims of the Civil War and Francoism - 2006: Approved a non-law-proposition declaring 2006 as the Year of Historical Memory - 2007: Passed the Law of Historical Memory, which included: <ul style="list-style-type: none"> 1) additional economic reparations and compensation 2) symbolic reparations <ul style="list-style-type: none"> - declared illegitimate all the tribunals that were created on political, ideological or religious grounds during the Civil War and dictatorship. - recognized victims' right to obtain a "declaration of reparation and personal recognition" issued by the Ministry of Justice. - granted Spanish nationality to the members of the International Brigades who fought on the Republican side during the war, and to the descendants of those who were forced into exile between 1936 and 1955 3) funding for exhumation of mass graves <ul style="list-style-type: none"> - committed to drafting a protocol for the exhumation of remains and developing a national map of mass graves - established a grant program to fund organizations engaging in exhumations, document compilation, and exhibitions and publications about the Civil War and dictatorship, but left the task of exhuming and identifying remains in the hands of civil society 4) removal of Francoist symbols commemorating the military rebellion or the Francoist repression <ul style="list-style-type: none"> - provided that the Valley of the Fallen, a monument to Franco in which Franco is buried, along with 33,847 victims of the 	

	Positive Developments	Negative Developments
	<p>Civil War, be used to honor and rehabilitate the memory of those who died during the Civil War and dictatorship</p> <p>5) guarantee of preservation and access to private and public archives that contain information about the war</p>	
<p>PSOE: 2008-2011</p> <p>Limited Progress</p>	<p>- 2011: Approved a disposition to include those who disappeared during the Civil War and the Dictatorship in the civil registry as deceased</p> <p>- Enacted several policy items to fulfill the initiatives set out in the 2007 Law:</p> <ul style="list-style-type: none"> - Supporting grave exhumations <ul style="list-style-type: none"> - December 2008: Established an Office of the Victims of the Civil War and Dictatorship to produce a protocol of grave exhumations - September 2011: Exhumation protocol approved - Increasing access to archives <ul style="list-style-type: none"> - 2008: Regulated access to death certificates from the civil registry - 2009: Passed a Royal Decree regulating the Military Judicial Archives - 2011: Passed a decree regulating access to the State Archives and promoted declassification of 10,000 documents from the Judicial Military Archives - Addressing the Valley of the Fallen <ul style="list-style-type: none"> - May 2011: Created an Expert Commission for the Future of the Valley of the Fallen, which submitted a report with recommendations for how to honor victims, none of which were carried out 	<p>- April 2010: Rejected a request that parliament modify the 1977 Amnesty Law to exclude crimes against humanity</p>
<p>PP: 2011-2016</p> <p>Negative Progress</p>		<p>- March 2012: Closed Office of Attention to Victims of the Civil War and Dictatorship</p> <p>- May 2012: Cancelled the process of declassifying Military Judicial Archives</p> <p>- 2012: Reduced budget allocations for the Law of Historical Memory by 60%</p> <p>- 2013: Eliminated all budgetary allocations for the Law of Historical Memory, effectively nullifying it</p>
<p>PP: 2016-2018</p> <p>No Progress</p>		<p>- Rejected multiple attempts to allocate funds for the Law of Historical Memory in the budget (Martinez 2017)</p>

	Positive Developments	Negative Developments
PSOE: 2018-2019 Limited Progress	<ul style="list-style-type: none"> - August 2018: Introduced a Royal Decree that included a government plan to exhume Francisco Franco's body from the Valley of the Fallen and relocate it to an alternative site where it could not be glorified, which was approved in September 2018 (172 votes for, 2 against, 164 abstentions) (Diez 2018) - October 2019: Exhumed and relocated Franco's body (BBC 2019) 	<ul style="list-style-type: none"> - February 2019: Rejected budget proposal that included 15 million euros for historical memory issues because PSOE was unable to secure the support of the Catalan nationalist parties and one Basque party over disagreements about Catalan independence (Baquero 2019; Jannessari 2019; Dallison and Anderson 2019)
PSOE/Podemos: 2019-Present Moderate Progress, with possibility for more Significant Progress	<ul style="list-style-type: none"> - January 2020: PSOE registered the text of a new "Law of Historical and Democratic Memory" (Progressive Spain 2020) - September 2020: Council of Ministers approved a draft bill of the Law of Democratic Memory, based on the text submitted in January and sent it to legislature for debate (Cue 2020). It includes the following: <ul style="list-style-type: none"> - Declares illegal organizations that glorify Franco's memory, including the Francisco Franco Foundation - Extends Spanish citizenship to the descendants of the International Brigades, who fought on the side of the republicans in the Civil War - Turns the Valley of the Fallen into a place of "collective memory" - Sets up a special prosecutor to investigate human rights abuses between 1936 and 1978 (<i>The Economist</i> 2020) - Creates a national DNA bank to assist in exhumations - Declares void all summary trials held during dictatorship - Includes more information about the Civil War and lessons about the repression of political opponents under Franco to primary and secondary school curricula - Establishes sanctions for violators of the law, as high as 150,000 euros - Assumes government responsibility for conducting the exhumation and identification of victims buried in mass graves (<i>Spain in English</i> 2020) - Establishes a Territorial Council for cooperation between the central and regional governments, and a Democratic Memory Council, including memory associations and relatives of victims, to advise the government (<i>La Moncloa</i> 2020) - Designate October 31 as a day to celebrate the commitment of Spanish society to democracy and May 8 as a day to remember Spaniards in exile and their fight against 	

	Positive Developments	Negative Developments
	fascism (<i>La Moncloa</i> 2020) - January 2021: Passed budget that includes over 11 million euros for historical memory issues (<i>Spain's News</i> 2020)	

Data from Aguilar and Ramirez-Barat (2016), unless otherwise noted.

Appendix B: PSOE Platform Details

This appendix contains additional details regarding the inclusion of transitional justice policies in PSOE's electoral platforms from 2004 to 2019. The 2004 platform contains only one very brief mention of issues related to historical memory, namely the pledge to create a state center of documentation about the Spanish Civil War and Francoism within the Historical Archive of Salamanca (PSOE 2004: 201). Despite being released after the passage of the 2007 Law of Historical Memory, the 2008 platform also contains only one very brief mention of historical memory and no reference to the 2007 law itself. This only includes a pledge to “fully develop the center of historical memory of Salamanca and include in it an Archive of the Civil War, a document fund that gathers digitally all the documentation available in the distinct centers now dispersed in Spain and across the world” (PSOE 2008: 257, my translation).

There is a slight increase in the discussion of these issues in the 2011 platform with the inclusion of two very small paragraphs. The first of these paragraphs, however, is dedicated simply to praising the 2007 law that had already been passed, while the second contains only highly vague language about how they plan to continue supporting historical memory issues: “We promise to promote the recognition and reparation for suffering illegitimate violence and make effective the guarantee to access of archives and background documents of historical memory” (PSOE 2011: 132, my translation). As the guarantee of access to archives on these issues had already been promised in the 2007 law, at least half of even this very vague declaration was effectively a repetition of policies already enacted.

By contrast, the 2015 electoral platform contains 2½ pages dedicated to the discussion of historical memory issues. Even taking into account that the 2015 program is more than twice as

long as the 2011 program, this still represents a significant increase. Furthermore, rather than vague promises to promote historical memory, this discussion includes 14 specific policy proposals, including several that represent a fairly significant departure from policies they had promised or enacted previously. Some of these include the promise to: create DNA data banks to help victims identify the remains of their family members; to promote the creation of a truth commission; to exclude from public subsidies or assistance any organizations that exalt or defend the dictatorship, Franco, Nazism, or xenophobia, or express any kind of discriminatory character toward their victims; to investigate the theft of thousands of babies in Spain between 1940 and 1990 as a problem of the state, including articulating the legal processes that allow for the investigation and knowledge of the truth about these crimes against humanity; to include in the education system information about historical memory and the findings that come from the work to investigate these issues; to establish November 11 as a day of remembrance and homage to the victims of Francoism; and to transform the Valley of the Fallen into a space for recognition of the victims of the civil war and dictatorship, democratic memory, and reconciliation (PSOE 2015a: 138-139). Importantly, this program represented the first in which the party explicitly recognized that the state should directly assume the conduct of policies and the performance of truth, justice, and reparation processes for the victims, rather than simply providing funding to organizations to carry out their own exhumation processes, which had been a significant shortcoming and heavily criticized aspect of the 2007 law.

The PSOE's subsequent electoral program in April 2019 (the 2016 program contains exactly the same language on historical memory as the 2015 one) reiterated these proposals, in addition to adding a few new ones, in a 3½ page-long section. All of this suggests that some

significant event(s) took place between 2011 and 2015 that led the party to rethink its policies toward this issue.

Appendix C: Another Alternative Hypothesis for H₂

This appendix proposes and tests an additional alternative hypothesis for H₂ drawn from arguments in the literature. Specifically, this hypothesis draws from Kovras (2014), who emphasizes the importance of political elites' embrace of international human rights norms as a critical factor in the passage of transitional justice legislation. As such, I propose the following alternative hypothesis:

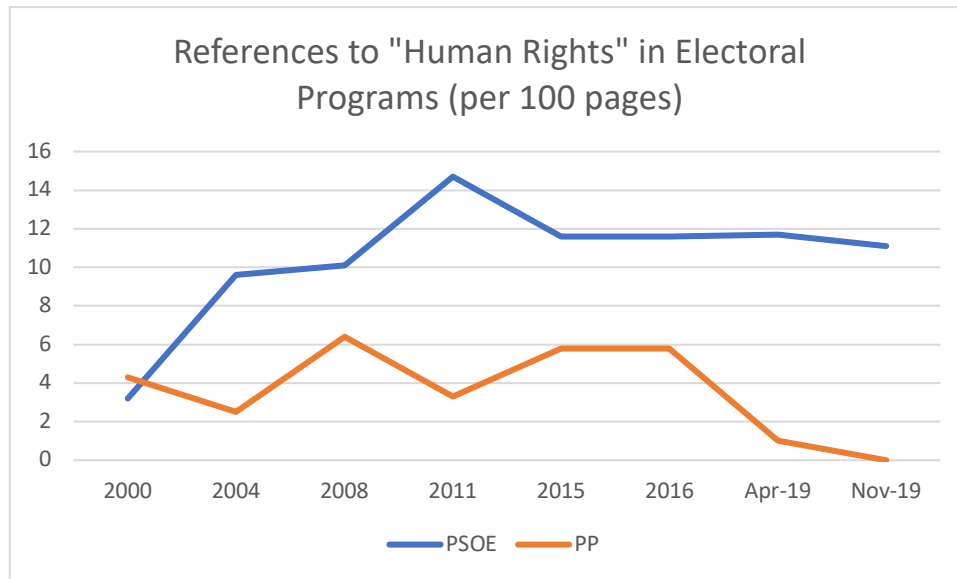
H_{A4}: The PSOE increased its support for transitional justice issues over time as a result of increased acceptance of international human rights norms among elites in the party.

In this context, embrace of human rights norms over time is measured by the number of times “human rights” is mentioned per 100 pages in PSOE’s electoral platforms from 2000 to the present. If this hypothesis is true, we would expect to see that increases in the use of human rights language in the party platform correspond with the inclusion of more language and policy on transitional justice issues. We would also expect references to historical memory issues in the platforms to include language about human rights.

The discussion in Appendix B demonstrates that a significant change in PSOE’s support for transitional justice policy took place between 2011 and 2015. However, a review of the number of references to “human rights” in PSOE’s platforms (per 100 pages) suggests that we might have expected to see such a significant change even earlier (See Figure 3).

In particular, there was a significant increase in references to human rights in the PSOE platform between 2008 and 2011, and such references actually decreased slightly between 2011 and 2015 (See Figure 3).

Figure 3: References to “Human Rights” in PSOE’s Electoral Programs



Data collected from party electoral programs

However, as discussed above, PSOE’s 2011 platform contained minimal language about historical memory issues, and connected human rights language to these issues only very slightly: “With the Socialist government, we have approved the law 52/2007, which recognizes and amplifies **the rights** and establishes measures in favor of those who suffered persecution or violence during the civil war and dictatorship” (PSOE 2011: 132, my translation, emphasis added).

By contrast, the 2015 platform, which contains fewer references to human rights overall (11.6/100 pages vs. 14.7/100 pages) contains extensive language about historical memory with explicit connections to international human rights and obligations to the international community. For example, it promises to promote the creation of a truth commission “in line with the recommendations of the United Nations” and references the theft of babies as “crimes against

humanity, as they have been classified by the United Nations” (PSOE 2015a: 139, my translation).

It is clear from this data that elites within the PSOE have increasingly embraced human rights norms over the past two decades, at least by this measure, and especially in comparison to the PP. However, the most substantial change in this level of support occurred between 2000 and 2004, and the difference in references to human rights in the most recent platform in November 2019 compared to the 2004 platform is actually quite small: only 1.5 more references per 100 pages (See Figure 3). It is certainly possible that PSOE elites’ increased embrace of human rights norms has helped to remove some of the barriers to pursuing more significant transitional justice policy within the party, but it seems unlikely that it has served as a strong catalyst for such a substantial change in party policy between 2011 and 2015.