

Police powers in Spain during the Francoist regime and democracy: A comparative study from an institutional framework perspective



'Actuación policial contra manifestantes', Manel Armengol, 1976

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Elvira María González Salmón

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Utrecht University

*“Los cuerpos de seguridad protegiendo al Estado
se han olvidado de vigilar a los enamorados
que vagan desamparados de sus casas hasta el trabajo
y asustan con sus miradas a los niños y a los ancianos
¿dónde llegarán?”¹*

El Buen Hijo

¹ El Buen Hijo. La Fatalidad de las Cosas. Sonido Muchacho, 2018, Accessed June 16, 2021.
<https://open.spotify.com/track/5epVuiT9TU32s3VcfNbRxx?si=b95c5ccfed804a2e>

Abstract

This thesis investigates the changes on the Spanish National Police by trying to answer the research question “Did the institution of the Spanish police change after the transition to democracy (1975/8)?” and four subsequent sub-questions that focus on its rules, norms and practices and its preferred role. To do that, the thesis uses institutional change theory and the comparative-historical method. Focusing on policing concepts developed and studied by David H. Bayley, Velmer S. Burton and others, I make a small-N, process-oriented narrative comparison that systematically compares the Spanish police under the Francoist rule with the democratic one.

The results show a significant change in the formal rules and an intermediate/low change in both the informal rules and the public perception on the institution. The conclusion of this thesis is that some informal elements, most remarkably the maintenance of all the Francoist personnel under democracy, acted as lock-in mechanisms that slowed down the process of institutional change. Change, however, did happen, and the Spanish police after Franco managed to be fairly similar to the rest of its Western European neighbours.

Keywords: National Police, Spanish transition, Francoism, Spanish democracy, Institutional change, (in)formal rules.

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Introduction

‘Españoles, Franco ha muerto’² may be one of the most famous, repeated and commonly known quotes of the Spanish transition to democracy (1975/1978). After more than thirty years in power, the dictator died. What did this mean for Spaniards, the government, and one of the intermediaries between them, the police? A comparison between the police powers in the Franco era (*los grises*³) and the police in the democratic period will contribute to an understanding of whether the institution evolved and adapted to a new regime.

In this thesis, the Spanish context study will provide an avenue to explore the broader issue of conceptualising the police within an institutional theory framework. Literature about institutions has little to say about the police, perhaps because of the peculiarities of this institution – mainly the use of force. Moreover, the academic study of the police primarily focuses on the United States and the United Kingdom, hence a study of the Spanish context will help broaden the knowledge of this institution. This thesis will also contribute to the development of the debate on whether the Spanish transition to democracy resulted in a material change or whether there was in reality a significant degree of continuity.

Hence I will try to answer the following main research question: Did the institution of the Spanish police change after the transition to democracy (1975/8)? I will also try to answer three different groups of sub-questions. Firstly, did the institution of the Spanish police change its rules? Secondly, did it change its norms and practices? And lastly, has the way in which the police are experienced by the public changed? Has its preferred role changed? These questions and its answers will structure the rest of the thesis.

Theory

Firstly, it is important to define the concept of police. Institutional theory is instructive in doing so. Institutional theory has become a vast academic field, which encompasses a great number of different explanations as to how institutions work. When faced with an institutional change (or inertia), Kingston and Caballero identify three main groups of theories: collective-choice theories (which understand that institutions are designed in a centralized way), evolutionary institutional change theories (a category that comprises those theories that explain change in a decentralized way) and the equilibrium view (which is a mix of the two previously mentioned group of theories). Theories by North, Aoki, Ostrom, Veblen and Hayek will be used and further explained in the conclusion of the thesis. This framework was first used by police theorists and researchers in the

² RTVE, “Españoles... Franco ha muerto,” *Archivo RTVE*, November 20, 1975. <https://www.rtve.es/alacarta/videos/fue-noticia-en-el-archivo-de-rtve/espanoles-franco-muerto/336266/>, accessed on June 14, 2021.

³ Given their grey uniform, the *Policía Armada* under Francoism was commonly known as *los grises* (The grey ones).

1990s and it focuses on police rules, norms and practices, which are the concepts that will structure this thesis.⁴

In this way, the police can be defined as the institutional organization that is responsible for ensuring respect for the rules governing social relations through the eventual use, as a last resort, of physical force.⁵ Most authors emphasize this use of force as the specificity of this institution.⁶ To them, the police are an intermediary between the state and society, acting as the institutional repository of the use of legitimate force.⁷ The relationship between the state and its citizens is inherently political, making the police a political institution that works to maintain the social order agreed between those actors.

According to Innes, social order is inextricably linked to social control.⁸ This can be defined as ‘those organized responses to crime, delinquency and allied forms of deviant and/or socially problematic behaviour which are actually conceived as such.’⁹ The latter part of this definition is the key, as it highlights that what is considered as disorder fluctuates with places and time and so do the mechanisms used to fight them.

The police have always been a major contributor to the ‘modern order’, although it has changed throughout the years.¹⁰ As expressed by Manning, in spite of the fact that policing has changed since the 19th century, maintaining the order and the management of civility have remained at the core of its preoccupations.¹¹ Nevertheless, it is useful to have a quick overview of its history and other changes it has endured.

The police are a relatively new institution in the Anglo-American system. Before the 1820s some of its tasks were carried out by voluntary or informally organized night watches and private prosecutions. Given the rapid growth of cities, Sir Robert Peel created the Metropolitan police in London in 1829, a half military half civilian organization to control society. The United States replicated this model, which spread across the country to most cities between 1850 and 1880. The

⁴ John P. Crank, “Institutional theory of police: a review of the state of the art,” *Policing: An International Journal of Police Strategies & Management*, 26 (2003): 2, 189.

⁵ Jean-Louis Loubet Del Bayle, “Policía, sociedad y los nuevos problemas de relación,” *Cuadernos de Trabajo Social*, 7 (1994): 301.

⁶ Fabien Jobard, “Conceptualizing of Police,” *Encyclopedia of Criminology and Criminal Justice* (2014): 1.

⁷ Robert Reiner, “Police Research in the United Kingdom: A Critical Review,” *Modern policing, special issue, Crime and Justice* 15 (1992): 458.

⁸ Martin Innes, *Understanding Social Control: Deviance, Crime and Social Order*, (United Kingdom: McGraw-Hill Education, 2003), 2.

⁹ Stanley Cohen, *Visions of Social control*, (Cambridge: Polity Press, 1985), 3.

¹⁰ Mark Neocleous, *The Fabrication of Social Order: A Critical Theory of Police Power*, (London: Pluto Press, 2000), 114.

¹¹ Peter K. Manning, “Information technologies and the Police,” *Modern policing, special issue, Crime and Justice* 15 (1992): 354.

purpose was to control crime, but local elites also saw in the police a way to manage or control various ethnic European groups that were coming to Eastern American cities.¹²

However, as stated by Monkkonen, city police started to perform tasks unexpected by their creators. Apart from performing crime prevention and maintaining social order, police responded to the demands of citizens (finding lost children, taking annual censuses, enforcing sanitary laws, etc.).¹³ The police dispensed forms of welfare that the government did not provide in the 19th century, such that in practice they were city servants as well as crime-control officers.

Around the 1890s this changed, and the police started to focus more specifically in crime control. Monkkonen describes this as a shift of the criminal justice ‘from amateurs and part-timers towards full-time crime handlers.’¹⁴ With the start of the 20th century, Reiss explains how American police underwent two main changes: it transformed itself from a quasi-military bureaucracy to a legalistic bureaucracy, and it centralized territorially.¹⁵

After World War II there was an increased emphasis on police professionalization - in order to end crime and violence, which were considered an increasing problem.¹⁶ The development of modern democracies and of a human rights framework influenced the police’s functions and actions¹⁷ and the United Nations created a Code of Conduct for law enforcement officials in 1979. The ‘Democratic policing’, as Bayley calls it, means that its practices were based on responsiveness and accountability¹⁸ and they had to defend citizen’s rights even if that was against the state interests.¹⁹

Therefore, in a contemporary democracy, Burton identifies three main basic roles that the police can have: a) Peacekeeping/maintenance of order, b) service to the public and/or c) law enforcement. He also identifies the sources of conflicting role expectations and the varying dimensions of roles and creates three categories of conflict: 1) what do police agencies, officers, and community members want the police role to be? (Preferred role), 2) what role-related tasks do

¹² Eric H. Monkkonen, “History of Urban Police,” *Modern policing, special issue, Crime and Justice* 15 (1992): 553; Harlan D. Hahn and Judson L. Jeffries, *Urban America and Its Police: From the Postcolonial Era through the Turbulent 1960s*, (Boulder: University Press of Colorado, 2003), 1.

¹³ Monkkonen, “History of Urban Police,” 553-559.

¹⁴ *Ibid*, 556.

¹⁵ Albert J Reiss, Jr. “Organization in the Twentieth Century,” *Modern policing, special issue, Crime and Justice* 15 (1992): 57.

¹⁶ Hahn and Jeffries, *Urban America and Its Police*, 9.

¹⁷ Nadia Gerspacher, “The history of international police cooperation: a 150-year evolution in trends and approaches,” *Global Crime*, 9 (2008): 171.

¹⁸ Rachel Neild, “Democratic police reforms in war-torn societies,” *Conflict, Security & Development*, 1 (2006): 23.

¹⁹ Jesús Requena Hidalgo, “La legitimidad policial y la colaboración ciudadana con la policía,” *Revista para el análisis del derecho* (2016): 19.

police actually perform? (Enacted role) and 3) what tasks are police supposed to perform, according to the legislation? (Prescribed role) These ideas will be useful in answering the last sub-questions.²⁰

Moreover, the last sub-questions are related to the role of the police in society. It is therefore important to define 'role in society'. According to Biddle, role theory is about explaining the expectations that we hold for our own behaviour and those around us given the social position we are all in.²¹ This will not be the first time that role theory is applied to the police, as Cain uses it in her notable book *Society and the Policeman's Role* to understand the police in a more profound way.

To more deeply understand police theory, *Patterns of Policing: A Comparative International Analysis* by David H. Bayley will be cited several times in this thesis. Bayley's international analysis of policing is instructive on theoretical concepts necessary to developing the three chapters. His concepts of internal/external implicit/explicit accountability, proactive/reactive assignments, situations and outcomes will be used and explained throughout the thesis.

Lastly, I am using this theoretical framework in the context of Spain, comparing how the police institution changed – or did not change – after the transition to democracy. This comparison between Francoism (1936/9 – 1975/8) and the democratic period (1978 – present) falls within an historical debate that has recently developed in the recent years. The Spanish transition has often been perceived as a model of a peaceful and consensual regime transition during the so-called third wave of democratization.²²

However, new voices from inside and outside academia have begun to question the accuracy of this perception. The continuity of old political structures,²³ the impunity of the forces of public order,²⁴ and the violence of those years²⁵ are now being discussed in an attempt to create a counter-narrative that critically studies and analyses the official discourse.²⁶ Through this thesis I hope to

²⁰ Velmer S. Burton Jr, James Frank, Robert H. Langworthy and Troy A. Barker, "The Prescribed Roles of Police in a Free Society: Analyzing State Legal Codes," *Justice Quarterly*, 10 (1993): 4, 684.

²¹ Bruce J. Biddle, "Recent developments in role theory," *Annu. Rev. Sociol.*, 12 (1986): 68.

²² Carolyn P. Boyd, "The Politics of History and Memory in Democratic Spain," *The ANNALS of the American Academy of Political and Social Science*, 617 (2008): 1, 135.

²³ Oscar Jaime-Jiménez, "Orden público y cambio político en España," *Revista Internacional de Sociología*, 15 (1996): 151.

²⁴ Rafael Durán Muñoz, "El estado como explicación en el cambio de régimen. Contención de las movilizaciones durante la transición española," *Revista de Estudios Políticos*, 100 (1998): 225.

²⁵ Gaizka Fernández Soldevilla, "La violencia en la Transición" [Violence in the transition], *El País*, December 23, 2020.

²⁶ Some examples of this are *El mito de la transición pacífica: Violencia y política en España (1975-1982)* [The myth of the peaceful transition: Violence and politics in Spain (1975-1982)] by Sophie Baby or *La transición sangrienta. Una historia violenta del proceso democrático en España (1975-1983)* [The bloody transition: A violent history of the democratic process in Spain (1975-1983)] by Mariano Sánchez Soler.

contribute to this debate, whether it is to support the longstanding view of the transition as a peaceful 'example' or whether it is to support the new approach and critics to it.

Method

I will articulate this thesis using the comparative-historical method. It will be a small-N, process-oriented narrative comparison, given the descriptive insight into the characteristics of a phenomenon that this method offers.²⁷ This means that I will study the factors that led to similitudes and differences through a narrative analysis. Each within case (police under Francoism and police during the democratic period), I will study with historical methods and causal narrative (a description of the events). The thesis will not follow a chronological order, rather it will be divided in three sections, each of which will answer one set of the sub-questions.

The police in Spain are not uniform in the entire territory, and they are not the sole law enforcement agency in the country. There is a national branch, local branches and ever since the democratic period, autonomous ones. The latter branch was relevant and controversial in Catalonia, Navarra and the Basque Country. Moreover, The Guardia Civil is another important body that focuses on rural patrolling. To narrow the topic down and make it manageable, this thesis will mainly focus on the police at the national level.

To answer the questions I will use different sources and indicators. The first question regarding the rules of the police institution will be answered by studying the main legislation about the Franco era and the democratic period. For every document I will focus on the concepts of discretionary power, professionalization, democratization, centralization/decentralization, accountability, social order/control and more.

Francoist legislation studied includes the following:²⁸ the two Public Order Law (of 1933 and 1959), the Vagrancy Act (1933) and its reform from 1954, the Freemasonry and Communist Act (1940), the Police Act (1941), the Military Rebellion Act (1943), the Terrorist Act (1947) and the Police Regime Act (1975). The sources from the democratic period are the Moncloa Pacts (1977), the Constitution (1978), the Police Act (1978), the Organic Law on Security Forces and Corps (1986), the two different Disciplinary Regimes (1989 and 2010), the Citizen Security Acts (of 1992 and 2015) and the Police Regime Act (2015).

For the second sub-question about norms and practices I will analyse reports to ascertain methods used and how the police actually acted. Firstly, the Archivo Histórico del Partido

²⁷ Matthew Lange, *Comparative-Historical Methods*, (London: Sage, 2013), 4.

²⁸ Some of the laws I will be analysing were written during the Second Republic. After the Civil War, Franco made use of this legislation, and the police institution followed these rules for some years, before the dictator developed his own legislative body.

Comunista de España holds reports made by political enemies of the Franco government, especially left-wing organizers, sympathizers and defenders of the Basque and Catalan culture. More specifically, there are reports on ‘torturers’ (1949), War Councils reports (1958-1962), reports on the arrests of members of the Communist party (1957-1969), reports of the Catalan advocacy (1959-1970), reports on torture (1960-1977), about repression (from Catalonia and Euskadi in 1964-1965) and reports of the Police station in Astorga (Asturias) on the social and political activities of the area (1964).²⁹ Sources may not be entirely complete and unbiased, as they may highlight the more significant and landmark events over more commonplace or ubiquitous activities. For this reason, I endeavour to identify patterns, general actions and widespread attitudes.

To compare this with the democratic period, there are some reports made by international organizations – the United Nations special rapporteur (2004), Amnesty International (2007), the Basque Secretaría General para la paz y la Convivencia (2014), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2017) and the response by the Spanish government to the latter (2017). The indicators for both sets of sources will be defined by the 1979 United Nations Code of Conduct for Law Enforcement Officials and by the theoretical framework developed by Bayley in *Patterns of policing*.

Lastly, this thesis will answer ‘Has the way in which the police are experienced by the public changed?’ and ‘Has its preferred role changed?’ by looking at surveys from the Centre for Sociological Research (CIS).³⁰ The first survey was focused on victimization and drugs, it was carried out in 1980 and it had 6,032 respondents from all over Spain. The second survey was called *Crime, citizen security and police image*. It was conducted during April 1995 with 3,919 respondents from five specific cities (Madrid, Barcelona, Bilbao, Seville and Valencia) and from a national level. Although both surveys are from the democratic era they ask questions that reflect on the way the respondents see the police in the present in comparison with the Francoist past. Burton’s ideas about democratic policing will work as indicators to answer this question.

It is important to note that Franco’s regime was not always consistent. The beginning of Francoism was marked by the dictator’s use of totalitarian means to achieve his Catholic-Conservative dream state. In contrast, after the fall of some of its most prominent supporters – namely Hitler or Mussolini, – Francoism entered another phase, in which it softened its objectives and its language. Therefore, depending on the era where the legislation was written, the results can vary slightly.

²⁹ I did not expect to obtain records from the police in the archive of the Communist Party. I asked the archive how they got there but they were not able to answer my question.

³⁰ The CIS is a Spanish public research instituded focused on conducting surveys and polls to study the Spanish society.

Chapter 1: Rules

In this chapter I will try to answer the first sub-research question: Did the institution of the Spanish police change its rules? In order to do so I will look at the rules that did change, at some intermediate change elements and at continuity in the legislation. Lastly, I will analyse the reasons for change or continuity.

1.1 Elements that changed

1.1.1 Organization

The Spanish police was created in 1834, right after Fernando VII's death. It was a centralized body that had responsibility for administrative matters and dealt with all kinds of criminals. It was modernized in 1908 and later on, during the Second Republic (1931-1936/39) it was divided into two bodies: the *Cuerpo de Investigación y Vigilancia* – a small body responsible for the investigation of crime – and the *Cuerpo de Seguridad y Asalto* – responsible for the public order.³¹

During Francoism, the *Cuerpo de Investigación y Vigilancia* was renamed the *Cuerpo General de Policía* and the *Cuerpo de Investigación y Vigilancia* was renamed as *Policía Armada y de Tráfico*. The latter was named just *Policía Armada* after 1969. During the transition to democracy (1978-1986) the former became the *Cuerpo Superior de Policía* and the latter became the *Cuerpo de Policía Nacional*. After the 1986 Organic Law both bodies were merged into the *Cuerpo Nacional de Policía*.

Table 1: Organizational and name changes of the Spanish national police since the Second Republic

Period	Main focus	Crime	Public order
Second Republic (1933 – 1941)		Cuerpo de Investigación y Vigilancia	Cuerpos de Seguridad y Asalto
Francoism (1941 – 1969)		Cuerpo General de Policía	Policía Armada y de Tráfico
Francoism (1969 – 1978)		Cuerpo General de Policía	Policía Armada
Transition (1978 – 1986)		Cuerpo Superior de Policía	Cuerpo de Policía Nacional
Democracy (1986 – present)		Cuerpo Nacional de Policía	

³¹ Miguélez Rueda, José María, "Transformaciones y cambios en la policía española durante la II República," *Espacio, Tierra y Forma*, 10 (1997): 206-215.

Under Francoism, the *Policía Armada y de Tráfico*, in charge of public order, was a military body dependent on the Armed Forces. The 1941 Police Act stated that this body had ‘eminently military character and organisation, and its components are subject, in everything, to the Military Code.’³² The 1975 Police Regime Act, approved two months before Franco’s death, stated that they were essentially public workers, but that the character and organization of the *Policía Armada* was still military.³³

During the transition to democracy the *Cuerpo de Policía Nacional* remained a military body.³⁴ Then, during the democratic period, the 1986 Organic Law on Security Forces and Corps was approved and the police were explicitly defined as a civic body with two particularities: members of the police could not go on strike and their code of conduct was radically different to that of the rest of the public workers.³⁵ This organizational change was reflected in the uniform, which was grey under Francoism, brown during transition and dark blue from 1986.³⁶

1.1.2 Discretionary power

Under Francoism, the police had a lot of discretionary power. The 1933 Vagrancy Act, the 1940 Freemasonry and Communist Act, the 1943 Military Rebellion Act and the 1947 Terrorist Act created a legal framework in which anyone could be considered in breach of by the law just by ‘indicating an inclination to commit a criminal offence.’³⁷ Later on, the 1959 Public Order Act gathered all of these ideas and stated that almost any act could be considered to be against public order, including ‘those that in any other way not provided for in the preceding paragraphs fail to comply with the provisions of this law or disturb the public peace or social coexistence.’³⁸

A way to compare the discretionary power and capacity of responsiveness that the institution of the police had is by focussing on what they could do with regards to the alleged inviolability of the home. The 1959 Public Order Law stated they could enter and register someone’s home merely

³² Ley de 8 de marzo de 1941 por la que se reorganizan los servicios de *Policía*, *Boletín Oficial del Estado*, 98 (1941): Art. 18. “El *Cuerpo de Policía Armada y de Tráfico* tendrá carácter y organización eminentemente militar, y sus componentes quedan sujetos, en todo, al Código Castrense.” My translation.

³³ Decreto 2038/1975, de 17 de julio, por el que se aprueba el Reglamento orgánico de la *Policía Gubernamentativa*, *Boletín Oficial del Estado*, 211 (1975): Preamble.

³⁴ Ley 55/1978, de 4 de diciembre, de la *Policía*, *Boletín Oficial del Estado*, 293 (1978): Art. 12.

³⁵ Ley Orgánica 2/1986, de 13 de marzo, de Fuerzas y Cuerpos de Seguridad, *Boletín Oficial del Estado*, 63 (1986): Preamble II; Ley Orgánica 2/1986, Art. 6.

³⁶ Diego Palacios Cerezales, “Repressive Legacies and the Democratisation of Iberian Police Systems,” *South European Society and Politics*, 15 (2010): 439.

³⁷ Ley relativa a vagos y maleantes, *Gaceta de Madrid*. 217 (1933): Art. 2. “Conducta reveladora de inclinación al delito.” My translation.

³⁸ Ley 45/1959, de 30 de julio, de Orden Público, *Boletín Oficial del Estado*, 182 (1959): Art. 2. “Los que de cualquier otro modo no previsto en los párrafos anteriores faltaren a lo dispuesto en la presente Ley o alterasen la paz pública o la convivencia social.” My translation.

when disturbances that interrupt order are produced inside,³⁹ which could mean nearly anything. Later, the 1978 Constitution stated that only when a crime was being committed ‘in fragrant’ they could the police enter.⁴⁰

This change almost resembled continuity when the 1992 Citizen Security Act included a passage that stated that the security forces could enter a private domicile if they had well-founded knowledge that any of the offences relating to intoxicating drugs or psychotropic substances were or had just been committed.⁴¹ This was, however, declared anti-constitutional by the Supreme Court in 1993, after which the police could only enter your domicile when there could be damage to persons or property and in cases of disaster.⁴² The discretionary power of the police was therefore reduced after transition. This also demonstrates the ability of the Constitution, and legislative body more generally, to stop any attempt to increase discretion.

1.1.3 Professionalization

Another change to formal aspects of the police relates to the concept of professionalization, which was gaining relevance in some countries with regards to the police after World War II. This concept includes the ideas of merit recruitment, formal training, structured career advancement, systematic discipline and full-time service.⁴³ This notion was non-existent in the Francoist legislation. Although not explicitly, it started to gain shape in 1986, and in the 2015 Police Regime Act it was fully developed. Police required specific training to join the body, to get a promotion, to update their professional knowledge and to practice specific jobs.⁴⁴

1.1.4 Democratization

The police body started to be open to the democratic ideas that came from the rest of the Western world from the transition onwards. Laws began to make reference to international guidelines on policing standards, such as the ‘Declaration on the police’ of the Council of Europe and the ‘Code of Conduct for Law Enforcement Officials’, from the United Nations General Assembly. Moreover,

³⁹ Ibid, Art. 11.

⁴⁰ Constitución Española, Boletín Oficial del Estado, 311 (1978): Art. 18.

⁴¹ Ley Orgánica 1/1992, de 21 de febrero, sobre Protección de la Seguridad Ciudadana, Boletín Oficial del Estado, 46 (1992): Art. 21.

⁴² Sentencia 341/1993 de 18 de noviembre de 1993. Recursos de inconstitucionalidad 1.045/1992. 1.279/1992 y 1.314/1992 y cuestiones de inconstitucionalidad 2.810/1992 y 1.372/1993 (acumulados), Boletín Oficial del Estado, 295, (1993): 96-134.

⁴³ David H. Bayley, *Patterns of policing: A Comparative International Analysis*, (New Jersey: Rutgers University Press, 1985), 13.

⁴⁴ Ley Orgánica 9/2015, de 28 de julio, de Régimen de Personal de la Policía Nacional, Boletín Oficial del Estado, 180 (2015): Art. 29-39.

after the transition the police created the '*Consejo de Policía*', a democratic body to discuss internal matters.⁴⁵

1.1.5 Centralization – decentralization

The 1933 Public Order Law gave some power to regional legislatures to regulate their police forces as they wished.⁴⁶ However, when reading Francoist legislation, it is clear that Spain was a centralized state whose every decision was taken in Madrid. This was a basic tenet of Francoist policies, as one of the main goals of the dictatorship was to crack down on movements which made the country vulnerable to division – which included the communists and freemasons but also regional movements.

That changed after the transition, and the 1978 Constitution allowed the creation of police forces by the Autonomous Communities that would work alongside the national police.⁴⁷ This was made a reality in Catalonia, the Basque Country, Navarra, Galicia and the Canary Islands. The decentralization of the country was, therefore, also clear in the organization of the security forces.

1.1.6 Hierarchy

The idea of hierarchy and respect of authority was very present during Francoism. If a policeman received an order and was unclear about its legality, 'the official shall inform the superior giving the order and, if the latter insists, the official shall proceed to comply with the order.'⁴⁸ Although hierarchy remained important during the democratic period the 1986 Organic Law declares that a member of the security forces should not follow through with an illegal order.⁴⁹

1.2. Intermediate change

1.2.1 Main goal and principle

There was one intermediate change: the definition of the main goals of the police. Under Franco, it was a matter of 'social order' and total control. Security forces were supposed to maintain that order and the status quo as much as possible. This mainly meant keeping the state safe. For instance, the 1933 Public Order Law clearly mentioned how its main goal was to stop any kind of 'perturbation' of the institutions of the state.⁵⁰ The 1940 Freemasonry and Communism Act also included the

⁴⁵ Orden de 22 de julio de 1987 por la que se aprueba, con carácter provisional, el Reglamento de Organización y Funcionamiento Interno del Consejo de Policía, Boletín Oficial del Estado, 154 (1988): Art. 1.

⁴⁶ Ley del orden público y de los órganos de su conservación, Gaceta de Madrid, 211 (1933): Art. 6.

⁴⁷ Constitución Española, Art. 149.

⁴⁸ Decreto 2038/1975, Art. 194. "...deberá el funcionario advertirlo al superior que dé la orden y, si éste insistiera, procederá aquél a su cumplimiento." My translation.

⁴⁹ Ley Orgánica 2/1986, Art. 5.

⁵⁰ Ley del orden público, Art. 3.

concept of ‘social harmony.’⁵¹ The supremacy of this concept was such that the articles of the legislation were retroactive and non-retroactivity only entered the police legislation vocabulary in the 1959 Public Order Law.⁵²

In the 1977 Moncloa Pacts, public order was still mentioned. However, its definition was slightly different and it began to share the stage with another concept: the idea of ‘security’. This concept appeared seventeen times in the Constitution, while the concept of ‘public order’ was mentioned three times. The transition was a time of change and they merged both ideas, since it was important to both maintain and restore public order and public safety.⁵³ However, the new concept started to be used more frequently. This change – from focusing on ‘social order’ to do so on ‘citizen security’ – was explicitly described in the 1986 Organic Law on Security Forces and Corps, a law that tried to harmonize the principles and functions of the different security forces, and act as the cornerstone of the future legislation on public forces.

Therefore, during the democratic period the focus of the legislation was on ‘citizen security’. The name change is highly symbolic because it means that security forces are not asked to protect the state from its citizens but to protect its citizens from themselves or from the state itself as well. In the Citizen Security Act of 1992, the 1959 Social Order Law was explicitly repealed, which was so ‘emblematic of the previous political regime.’⁵⁴ The concept of ‘citizen security’ was finally defined in the 2015 Citizen Security Act as ‘the guarantee that the rights and freedoms recognised and protected by democratic constitutions can be freely exercised by citizens and are not mere formal declarations lacking in legal effectiveness. In this sense, citizen security is one of the essential elements of the rule of law.’⁵⁵

However, did this name change mean any real formal change? As described in the introduction, the main goal of the police, regardless of the name, is inherently political and connected to public order. Bayley mentions that ‘conceptually as well as functionally, government and order are related’⁵⁶. In other words, the maintenance of order is the government’s function par

⁵¹ Ley de 1 de marzo de 1940 sobre represión de la masonería y del comunismo, Boletín Oficial del Estado, 62 (1940): Art. 3.

⁵² Ley 45/1959, Preamble.

⁵³ Ley 55/1978, Art. 2.

⁵⁴ Ley Orgánica 1/1992, Preamble. “...viene a completarse, la derogación formal de la Ley de Orden Público, tan emblemática del régimen político anterior.” My translation.

⁵⁵ Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana, Boletín Oficial del Estado, 77 (2015): Preamble. “La seguridad ciudadana es la garantía de que los derechos y libertades reconocidos y amparados por las constituciones democráticas puedan ser ejercidos libremente por la ciudadanía y no meras declaraciones formales carentes de eficacia jurídica. En este sentido, la seguridad ciudadana se configura como uno de los elementos esenciales del Estado de Derecho.” My translation.

⁵⁶ Bayley, *Patterns of policing*, 5.

excellence, so even if the legislation changes the name, the main goal of the public police will always be the public order.

Moreover, although the discretionary power of the police was reduced, being a threat to the public order or to citizen security are both ambiguous and umbrella concepts that do not signal a shift in the paradigm. It is as easy to be a threat to citizen security as it was to be a threat to the public order, and this ability to interchange concepts makes it look as if the main objectives and principles of the security forces did not change much. Furthermore, the 2015 Citizen Security Law made it easier to be a threat to citizen security. While the 1992 Citizen Security Act enumerated twenty five possible offences, the 2015 update included forty four possible offences to citizen security.

1.2.2 Accountability

This sub-chapter will focus on internal explicit accountability. The police are controlled externally - outside its institutional walls, by, for instance, public opinion or citizens themselves. However, this was significantly less so during Francoism and it is not indicated in the legislation. According to police legislation, police officers have to take responsibility and to explain their actions and behaviour. Since under Franco they were a military body, the *Policía Armada* responded to the *Código Castrense* [Military justice] and the *Cuerpo General de Policía* had its own legislation.

The 1975 Police Regime Act described the possible offences that police members of the *Cuerpo General de Policía* could incur. Offences could be minor, grave or very grave, and police officers were punished accordingly. Most of the offences related to the internal organization of the police and tackled aspects such as subordination or professional secrets. Out of the thirty grave offences that were considered as such in the 1975 Police Regime Act, only three were directly related with how the police treat the civil population.⁵⁷

In other words, all of the offences that were considered very grave were related to the role of the police officer within the institution. This changed in the 1986 Organic Law on Security Forces and Corps, when failing to provide assistance to those civilians who requested it became a very grave offence and abuse of their powers. The practice of inhuman, degrading, discriminatory and humiliating treatment of persons in their custody was added to the list.⁵⁸ The 2010 Disciplinary Regime added two new very grave offences that concern the ways in which the police interact with the population.⁵⁹ There were still, however, only four out of sixteen very grave offences that were

⁵⁷ Decreto 2038/1975, Chapter VIII.

⁵⁸ Ley Orgánica 2/1986, Art. 5.

⁵⁹ Ley Orgánica 4/2010, de 20 de mayo, del Régimen disciplinario del Cuerpo Nacional de Policía, Boletín Oficial del Estado, 124 (2010), Art. 7.

related to the accountability of the police outside its internal hierarchy. Therefore, although the internal explicit accountability of the police did increase, this change was marginal and the democratic legislation perpetuated the same priorities with regards to how policemen acted internally within their own structure, as opposed to how they acted externally with citizens.

It is also important to mention external implicit control, which according to Bayley are mainly the media and the population. Police under Francoism did not have much to worry about. However, when the democratic period began, the police began to be held responsible for their actions by the citizens. This was a new front of accusations for the police body and it is also mentioned in the legislation.

Although this was a new front of accusation, it can still be considered continuity. The reason for this can be found in the 2015 Citizen Security Law, an act which restricted external implicit accountability and can be regarded as a step-back in change. By including that it is a grave offence to use images or personal data from members of the forces and security corps citizens have been deprived of a tool to protect themselves from arbitrariness.⁶⁰ The internal censorship that citizens suffer with this law is exacerbated when taking into account that the fine for recording them can range from 30,001€ to 600,000€.⁶¹ Moreover, there have been complaints about the uniforms in light of the fact that the font used makes it difficult to identify the number of the police officer, rendering citizen control over the police less possible.⁶² Therefore, although external implicit accountability somewhat increased, its impact is dubious.

1.3. Continuities

1.3.1 Formal recognition

The police are a kind of public servant who can be distinguished by the importance that is given to the individual recognition of the actions of its members. The 1975 Police Regime Act stated that police officers should get a reward where they ‘display exceptional qualities of courage, patriotism, loyalty to command, comradeship and self-sacrifice, humanitarian spirit and social solidarity.’⁶³ The 2015 Regime Police Act still mentions the prestige of the institution and the importance that individual courage, sacrifice and selflessness play in its maintenance.⁶⁴

⁶⁰ Ley Orgánica 4/2015, Art. 36.

⁶¹ *Ibid*, Art. 39.

⁶² Stéphane M. Grueso, “La falta de identificación de la Policía y su papel en la impunidad policial. Un problema que no se resuelve” [The lack of police identification and its role in police impunity. An unresolved problem], *Público*, October 17, 2019.

⁶³ Decreto 2038/1975, Art. 153. “Poner de manifiesto excepcionales cualidades de valor, patriotismo, lealtad al mando, compañerismo y abnegación, espíritu humanitario y solidaridad social.” My translation.

⁶⁴ Ley Orgánica 9/2015, Art. 83.

1.3.2 Isolation

Not only do policemen formally celebrate each other when they act in a way that is considered heroic or courageous, but they are isolated from regular citizens. Firstly, they are not allowed to join any union which was not created by the police itself. During Francoism, the mere idea of a union was not contemplated by legislation, and police officers were not allowed to organize themselves or join any other union. During democracy, members of the National Police could only join trade union organisations formed exclusively by members of the Corps itself.⁶⁵

Secondly, police officers use their uniforms during social events that take place outside of their working schedule. During Francoism, the 1975 Police Regime Act stated that the uniform may be used for those social events whose significance so required so.⁶⁶ The 1989 and 2010 disciplinary regime stated the same. During special acts, they have to be recognized as policemen. The National Police are still an institution that tries to distinguish and demarcate themselves from the citizens they work for. Moreover, the aforementioned difficulty to identify the numbers of the police officers in the uniforms protects them from external recognition.

1.3.3 Political enemies

The 1933 Vagrancy Act had two clear enemies: the ‘lazy’ and the ‘miscreant’. Not only this law did not change under Franco’s regime, but in 1954 he added a third element to the list: homosexuals.⁶⁷ In this sense the police before the transition were an explicit tool of the government to fight its internal enemies. They specifically wanted to get rid of secret societies and organizations that allegedly went against the social order.⁶⁸ Freemasons, communists, and other secret organisations were used as scapegoats by the regime for issues within the country.⁶⁹ The ambiguity of the legislation made it possible for anyone to be included in a criminal category and therefore be arrested.

When the 1941 Police Act was drafted, it clearly stated that the current climate imposed ‘the need for a rigorous and tense surveillance of all its enemies.’⁷⁰ The elements of this law were both defined as preventive and repressive. Moreover, in order to be part of this force you had to have an

⁶⁵ Ley Orgánica 2/1986, Preamble III.

⁶⁶ Decreto 2038/1975, Art. 95.

⁶⁷ Ley de 15 de julio de 1954 por la que se modifican los artículos 2º y 6º de la Ley de Vagos y Maleantes, de 4 de agosto de 1933, Boletín Oficial del Estado, 198 (1954): Art. 1.

⁶⁸ Ley de 1 de marzo de 1940, Preamble.

⁶⁹ Ibid, Preamble.

⁷⁰ Ley de 8 de marzo de 1941, Preamble. “Necesidad de una vigilancia rigurosa y tensa de todos sus enemigos.” My translation.

‘undoubted adherence to the National Cause.’⁷¹ The political objectives of the police made it a highly right-wing and repressive institution.

The Moncloa Pacts of 1977 demonstrate the idea of an internal enemy that needed to be fought did not disappear. It did, however, change form: now the enemy were the ‘terrorists’. Although the idea of terrorism had been in legislation since the 1947 Terrorist Act, it was not one of the most important concepts until the new democracy claimed that it needed to defend itself against ‘aggressions of all kinds and especially terrorists.’⁷² This remains the case up to the point of writing this thesis, and the former Brigada-Politico Social (BPS)⁷³ immediately became the Anti-Terrorist Brigade, as discussed in chapter 2. Moreover, the 2015 Police Regime Act changed a lot of aspects of prior legislation adding the idea of fighting against terrorism to previous laws.⁷⁴ Additionally, the 2015 Citizen Security Act also declares another enemy to which the security forces can use special legislation: North-African immigrants.⁷⁵

The difference between Francoism and the democratic period and its enemies is, however, that the democratic legislation does not claim to be political. In fact, it claims to be the opposite and police must act ‘with absolute political neutrality and impartiality, and consequently without discrimination of any kind as to race, religion or opinion.’⁷⁶ But to keep citizens safe means that there is something they have to be protected against. The nature of the threat during Francoism and during the democratic period has remained political.

1.4. Analysis

Following the ideas of this chapter, there have been some clear formal changes in the institution of the police but there have also been several continuities. Table 2 organizes them.

⁷¹ Ibid, Art.3. “...además de ser de indudable adhesión a la Causa Nacional.” My translation.

⁷² Los Pactos de la Moncloa, Capítulo 2, Acuerdo sobre el programa de actuación jurídica y política, 27 de octubre de 1977, Chapter VIII. “...y defensa frente a las agresiones de todo orden y especialmente las terroristas.” My translation.

⁷³ The Brigada de Investigación Social, commonly known as the Brigada Politico-Social (BPS) was a secret branch of the Cuerpo General de Policía and it was a key section on the Francoist repression. As useful as it would be to investigate this brigade in particular, most of its documents are not available and are locked away by the state.

⁷⁴ Ley Orgánica 9/2015, Fourth final provision–Sixth final provision.

⁷⁵ Ley Orgánica 4/2015, Tenth additional provision.

⁷⁶ Ley Orgánica 2/1986, Art. 5. “Actuar, en el cumplimiento de sus funciones, con absoluta neutralidad política e imparcialidad y, en consecuencia, sin discriminación alguna por razón de raza, religión u opinión.” My translation.

Table 2: Clear change, intermediate change and continuity of the different indicators of the legislation

Clear change	Intermediate change	Continuity
Organization (name, nature) Discretionary power Professionalization Democratization Centralization – decentralization Hierarchy	Main principle and goal Accountability	Formal recognition Isolation Existence of political enemies

Why did some things change, others marginally, and why did others remain the same? Firstly, aspects which changed are closely related to international influences of other political regimes. After Francoism, the political elite wanted to include Spain in the Western political structures – especially the European Union. Replicating policing behaviours in other countries was therefore helpful for this purpose. A pursuit of professionalization and the transformation to a civil body – which, according to Bayley, go hand in hand⁷⁷ – were necessary changes. As were the lesser importance given to hierarchy, the democratization of the body and the reduction of its discretionary power.

Another important change relates to the decentralization of the police. During transition, an important element was the consensus, for which the political elite required the assistance of regional separatist movements. The experience of Civil War led to caution among political actors, who made concessions, including a higher recognition of the regional problem. According to Maravall and Santamaría, the political elite knew this issue had to be handled with care and the final result was a mixed type of federal-regional state that created a common ground for a compromise among nationalist, leftist and conservative parties.⁷⁸

Why is there also some continuity in the legislation? Continuities of the formal elements of the police can be divided in two blocks. Firstly, there is an element that ensures the continuation of the old political structure, as the critical view on the transition insinuates: the continuity of political enemies. This aspect is related to the fact that during a regime change, elements from the previous

⁷⁷ Bayley, *Patterns of policing*, 46.

⁷⁸ José María Maravall and Julián Santamaría, “Political change in Spain and the prospects for democracy,” in *Transitions from Authoritarian Rule: Southern Europe*, ed. Guillermo O’Donnell, Philippe C. Schmitter, Laurence Whitehead and Abraham F. Lowenthal (Maryland: JHU Press, 1986), 87.

structure can either be completely erased or re-used,⁷⁹ and the Spanish transition did the latter on this particular point. The question arises: how long can the use of political enemies continue?

The other two aspects in which there are continuities are elements that ensure that the police remain a powerful body and an institution with authority: the formal recognition and the isolation. These elements of continuity allow police culture to remain intact and are the basis for other continuities analysed in chapter 2. Moreover, external accountability increased, but only slightly.

Lastly, there is an element whose change is dubious because it is inherent to the police itself: its focus on social order/control. As Bayley explains it, the police are inherently responsible for it and it is its main goal. Therefore, although the official name changed from ‘social order’ to ‘citizen security’, the explanation of both concepts remained fairly similar.

When weighing both the changes and the continuities, there were more changes than inertia and they were more crucial. However, what is the material impact of a change in formal rules? Do changes in norms and practices follow? I will analyse in chapter 2 whether this atmosphere of legislative change translated into a real change of daily practices.

⁷⁹ Neild, “Democratic police reforms in war-torn societies,” 26.

Chapter 2: Norms and practices

Emiliano Serra was a Catalan member of the clandestine Communist Party. In 1957 he was arrested twice: first after the police raided his office and second after this institution raided his house. Both actions were unauthorized. The second time he was locked up for 27 days. He could not contact anyone and he was tortured.⁸⁰

Sergio LD was arrested after attending an anti-globalization demonstration on the 16th March 2002. He was kicked and insulted on the way to the police station. He was tortured again during the interrogation and the police officers took him to the station duty doctor who examined him while the police were present in the room. When he was released, he reported the ill-treatment he had suffered, but his case was archived and considered just an offence.⁸¹

These two cases do not match the information studied in chapter 1. The law prohibited such acts, but they occurred nonetheless. That is why it is important to try to answer the second sub-question of the thesis: Did the police change its norms and practices? This requires going behind the veil of laws and regulations and looking at what the police actually did and do.

To make the comparison more straightforward, Bayley divides what the police do into three main kinds of actions: assignments, situations and outcomes. The former are ‘the organization’s description of what personnel are doing’⁸², situations consist of the processes in which the police get involved and outcomes are the actions taken by the institution in each situation. It can be argued that assignments are dependent on the elements of chapter 1 and that outcomes depend on the situation. Situations will therefore be the core element analysed here.

2.1. Assignments

With regard to assignments, it is important to make the distinction between reactive assignments, which depend on the situation that the police encounter on the street, and proactive assignments, where the police are commanded to do certain things beforehand. Since this has more to do with the orders the police have than with what policemen actually do, chapter 1 already alluded to the direction in which assignments have changed. In this sense, policing used to be extremely proactive and it appears to have become more reactive during the democratic period.

⁸⁰ *Biblioteca Histórica Universidad Complutense de Madrid, Archivo Histórico del Partido Comunista de España* (hereafter BHUCM, AHPCE), Box 48, Folder 1, Caídas, 1957, Informe de Serra.

⁸¹ Amnistía Internacional, *España. Sal en la herida: La impunidad efectiva de agentes de policía en casos de tortura y otros malos tratos*, (London: Amnstej Internacional, 2007), 27.

⁸² Bayley, *Patterns of Policing*, 104-105.

2.2. Situations

2.2.1 Rule Compliance

The first question that comes to mind when writing about what the police actually do is whether they follow the rules governing them. During Francoism, the legislation gave the police a significant margin of discretionary power. For instance, when they arrested people based on their political ideals or in retroactive grounds,⁸³ like Emiliano Serra, police officers were following orders and rules. However, regardless of the juridical insecurity and the freedom the police had, this institution did not always follow all of the rules.

According to a 1960 report from the Colegio de Abogados de Barcelona, policemen, especially those from the BPS, did not follow the rules specially in the following situations: arresting without a warrant, searching a house without a court order, failing to notify the investigating judge within the time limit stipulated by law, making an unlawful detention after seventy-two hours, abuse, ill-treatment, brutality and torture.⁸⁴ Moreover, the state of emergency was commonly used, which allowed policemen to ignore elements of due process in the legislation. In some cases it is not clear that the goal of arrests was to comply the law, the real reason may have been pure intimidation.⁸⁵

Keeping people in prison under preventive arrest for more than 72 hours – which was the legal limit – was common. Detainees could spend from 10 to 30 days in a police station, where they were frequently tortured. Emiliano Serra spent 27 days there and there are more extreme cases, such as that of P. Jesuita Aguirrezabal, who spent a year and a half in a police cell before his case came to trial.⁸⁶ Analysing reports from political victims of the police, torture, spending a long time in the police station and searching houses without a warrant were the main unlawful acts of the police.

During the democratic period, the police usually adhered to the rules more stringently. This does not mean, however, that they followed them entirely. There is one aspect of its work from which most complaints of breaking the law emerge: antiterrorist cases. The cases in which the police are thought to be acting against terrorism allow for the incommunicado practice, whereby a person can be isolated in a police station for ten days before anything is proven or any decision is made, allowing policemen to act as they did under the Franco rule. It does not mean they will, but it

⁸³ *BHUCM, AHPCE*, Box 48, Folder 1, Caídas, 1959, Informe de una DETENIDA – Madrid.

⁸⁴ *BHUCM, AHPCE*, Box 48, Folder 3.1, Informe de un grupo de juristas catalanes, July 4, 1960, Al presidente de la audiencia de Barcelona.

⁸⁵ *BHUCM, AHPCE*, Box 48, Folder 3.4, Informes sobre torturas, 29 June 1976, No a la tortura. Comisión Nacional “Justicia y Paz” (Para uso institucional).

⁸⁶ *BHUCM, AHPCE*, Box 48, Folder 3.1, Sobre la represión en Cataluña y Euskadi, 1967, Notas sobre la represión en Euskadi.

leaves the possibility open, since there is no way to know what happens inside the police station then.

2.2.2 Internal implicit accountability

The accountability discussed in chapter 1 was internal explicit and external implicit. This sub-chapter will now focus on the internal implicit accountability, which is related to associations, vocational sense, rewards and the ‘extensiveness of social contact encouraged between the police and the civilian community.’⁸⁷ These internal culture elements generate a control from colleague to colleague that is not stated explicitly in the legislation and it is difficult to observe. As far as the reports from detainees and international organizations tell us, this internal accountability was strong under Francoism and it is still fairly important under the democratic rule.

Instead of encouraging each other to follow the law and to treat citizens as their equals, policemen tended to protect each other against everything and everyone. For instance, before the transition, those policemen who had helped the police institution the most and who were well known to have carried out illegal practices could still get a reward from their peers (and sometimes from Franco himself).⁸⁸ The lack of internal accountability encouraged policemen to act as they did, with nearly no consequence at all for any of their acts.

After the transition to democracy, this has not changed to a great extent. According to Amnesty International, there are ‘structural deficiencies affecting all aspects of the prevention, investigation and punishment of ill-treatment.’⁸⁹ An internal investigation is not usually carried out when a policeman is accused of not doing what they should do. And when there is an investigation, it is usually a fast and inadequate one,⁹⁰ as the one of Sergio LD. Police officers still consider themselves as separate and above the regular citizen, and very much above those accused of terrorism. The police’s internal implicit accountability, although hard to measure and draw conclusions, does not seem to have changed nor improved radically.

2.2.3 Personnel

A very clear continuity that was reported by some policemen themselves was the fact that both higher and lower positions of the security forces were held by the same people before and after the regime change. This means that members of the police who were trained as policemen when the police was still a military force kept their ranks without any kind of renovation or re-education.

⁸⁷ Bayley, *Patterns of policing*, 169-170.

⁸⁸ *BHUCM, AHPCE*, Box 48, Folder 3.3, Listado de torturadores/Acusadores, April 14, 1949, Policías especialmente dedicados a la persecución contra el movimiento de resistencia antifranquista.

⁸⁹ Amnistía Internacional, *España*, 13. “...revelan deficiencias estructurales que afectan a todos los aspectos de la prevención, investigación y castigo de los malos tratos.” My translation.

⁹⁰ *Ibid*, 13.

According to a document written in 1977 by unsatisfied policemen, transition politicians were placing ‘the most fanatical men of Francoism’, who used to be the leaders of the BPS in high police rank. They mention how, very significantly, Roberto Conesa Escudero became the new Commissioner General of Information of the newly created Anti-Terrorist Brigade. They state that the new brigade was just as ‘repressive, Francoist and far right wing as it was during the worst Francoist years.’⁹¹ In the name of the defence of democracy and to fight against the new problems, repressive elements and policemen from the dictatorship, especially from the BPS, became the leaders of the antiterrorist fight.⁹² Young policemen, generally less radical than their mentors, were not listened to and forced to sit down and watch.⁹³

2.2.4 The police in political life and neutrality

According to Bayley, another indicator of what the police actually do consists in its connection with political life. Although policing is inherently political, there are six ways in which the relation between those two elements becomes more explicit: the police can determine who can participate in politics – for instance, by arresting or monitoring certain individuals; have explicit authority to regulate the political process; decide whether the government falls or not when it faces a new and violent opposition (as it can side itself with the rebels or the government); do clandestine activities; actually be in government; and have great power regarding all policies that require law enforcement⁹⁴. In a nutshell, not being as impartial as the police are supposed to be.

Determining who could participate in politics was one of the police’s main activities during the Franco era. It would focus on any political opposition that would be organized illegally, create propaganda, arrange demonstrations or carry out so-called subversive activities.⁹⁵ Citizens were not allowed to be part of any kind of political party and would be arrested for it, like Emiliano Serra. Moreover, the police were anything but neutral towards communists and left-wing groups, and also towards Catalan and Basque pro-independence groups. Anything slightly related to their activities – for instance, a concert in Catalan or putting up Catalan flags⁹⁶ – was targeted.

⁹¹ BHUCM, AHPCE, Box 48, Folder 3.4, Informes sobre torturas, Aug. 3, 1977, La policía denuncia. “...tan represiva, franquista y ultraderechista, como en la peor época de Franco.” My translation.

⁹² Sophie Baby, “Estado y violencia en la transición española: las violencias policiales,” in *Violencia y transiciones políticas a finales del siglo XX: Europa del Sur – América Latina*, ed. Sophie Baby, Olivier Compagnon and Eduardo González Calleja (Madrid: Casa de Velázquez, 2009), 197.

⁹³ BHUCM, AHPCE, Box 48, Folder 1, Caídas, Oct. 7, 1969, Informes de camaradas detenidos.

⁹⁴ Bayley, *Patterns of Policing*, 190-197.

⁹⁵ BHUCM, AHPCE, Box 48, Folder 3.1, Consejos de Guerra celebrados entre 1958 y 1962, March 1961, Resumen incompleto de los consejos de guerra celebrados en los años 1.958, 1.959 y 1.960 y condenas impuestas a los antifranquistas que se mencionan.

⁹⁶ BHUCM, AHPCE, Box 48, Folder 3.4, Informes sobre torturas, June 10, 1960, Sobre la lucha contra las torturas. Texto íntegro de las denuncias promovidas por los detenidos por la acción en el Palacio de la Música de Barcelona.

This biased behaviour was expected from the rules and it was carried out both legally and illegally. It is explicitly stated in documents created by the police itself. For instance, one biweekly report of the police station of Gijón from 1964 stated that ‘the necessary steps are being taken to try to locate the presence in this area of various individuals who carry out clandestine activities of a communist nature and other tendencies contrary to the current Spanish political regime.’⁹⁷ In other words, opposition was inherently illegal and the police acted to try to get rid of it.

In a democracy, opposition is not illegal. However, the new-born Spanish democracy encountered something unforeseen: the regional question, especially from the violent organization Euskadi Ta Askatasuna (ETA).⁹⁸ In order to reduce their threat, they were categorized as terrorists and there were other revolutionary and right-wing organizations that were also considered as such. This, especially since 1978,⁹⁹ created an atmosphere in which the police were not neutral at all. Álvaro Soto Carmona calls this a ‘tension strategy’ that allowed for a so-called Dirty War, threats and torture carried out by police officers.¹⁰⁰ The peak of this was the creation of the Grupos Antiterroristas de Liberación (GAL), an illegal clandestine armed organisation directed by police officials that mirrored and fought ETA.¹⁰¹

According to a report of the Basque Country government – with whom the Spanish government did not want to share information – between 1960 and 2014 ETA killed 927 people and counterterrorism actions killed 67. Those 67 victims were mostly killed by a far right-wing group linked to the police: The Batallón Vasco Español.¹⁰² Members of this group were the core of the GAL, which killed 27 people between 1983 and 1986 in the Basque Country, where most of its activities took place.¹⁰³

⁹⁷ BHUCM, AHPCE, Box 48, Folder 3.2, Informes policiales, Feb. 15, 1964, Información quincenal (Artº 80) de las instrucciones sobre organización de los servicios centrales y regionales. “...se practican las oportunas gestiones para tratar de localizar la presencia en esta zona de distintos individuos que realizan actividades clandestinas de matiz comunista y de otras tendencias contrarias al actual Régimen político español.” My translation.

⁹⁸ Euskadi Ta Askatasuna, commonly known as ETA, was a Basque nationalist and separatist organization created in 1958 and dissolved in 2018. Its first fatality was in 1968 and its last one in 2010.

⁹⁹ Ignacio Sánchez-Cuenca and Paloma Aguilar Fernández, “Violencia política y movilización social en la transición española,” in *Violencia y transiciones políticas a finales del siglo XX: Europa del Sur – América Latina*, ed. Sophie Baby, Olivier Compagnon and Eduardo González Calleja (Madrid: Casa de Velázquez, 2009), 100.

¹⁰⁰ Álvaro Soto Carmona, “Violencia política y transición a la democracia: Chile y España,” in *Violencia y transiciones políticas a finales del siglo XX: Europa del Sur – América Latina*, ed. Sophie Baby, Olivier Compagnon and Eduardo González Calleja (Madrid: Casa de Velázquez, 2009), 113.

¹⁰¹ Gemma Ubasart-González, “ETA and state action: the development of Spanish antiterrorism,” *Crime, law and social change*, 72 (2019): 576-7.

¹⁰² This group was also known as “Alianza Apostólica Anticomunista” (AAA), “Triple A”, “Antiterrorismo ETA” (ATE) and “Acción Nacional Española” (ANE).

¹⁰³ Carlos Fonseca, *Informe sobre la situación procesal de los atentados perpetrados por organizaciones terroristas con resultado de muerte entre 1960 y 2014*, (Caso vasco. País Vasco: Secretaría General para la Paz y la Convivencia, 2014), 21.

This lack of police neutrality in the name of fighting terrorism was allowed and continued happening even after the ETA threat disappeared in 2010. The Alsasua context shows how an average case can turn into an exceptional one in which normal rules are not applied when the word ‘terrorism’ appears. 15th October 2016 there was a bar fight in which eight young males and two off-duty Civil Guards in Alsasua (Navarre, Spain) were involved. The eight men were viewed as the legacy of ETA, they were targeted as terrorists by the media and the police and they were considered as such by the courts. This bar fight was re-classified as a terrorist attack and therefore the accused spent more time in pre-trial detention and actual detention than they would have had they not been falsely accused of having connections with ETA. After three years of discussions, terrorism was finally discarded and the event was judged as a hate crime.

It is also possible to find a lack of political neutrality when moving beyond terrorism. In the 2000s the police heavily targeted another group of civilians: foreigners and non-Caucasians. In 2006, the United Nations special rapporteur stated that the police did not act the same to ‘persons of non-Western European origin or by members of ethnic minorities, such as the Gypsies.’¹⁰⁴

Although ideological neutrality is way closer to be a reality during democracy than it was during Francoism, the concept of ‘terrorism’ is still a shield used to justify any illegal police action. There are still some cases of arrests at pride parade¹⁰⁵ or of race-targeted arrests that constitute ideologically affected police actions. Or, as the Sergio LD case shows, at anti-globalization protests.

2.2.5 Use of force: Firearms

The legal use of force is one of the characteristics of security forces. According to the Code of Conduct of the United Nations, it should be exceptional, proportionate and an extreme measure.¹⁰⁶ The use of firearms was common during Francoism and the transition. For instance, in 1967, before ETA started to use violence as a tool, the ‘police mistook the student J. Omeñaka for a member of ETA. Without warning and inside the university premises, four shots were fired at him, two of them reaching him and seriously wounding him.’¹⁰⁷

During the transition, thirty-two people were killed by the police in demonstrations through the use of firearms. Throughout this period, the police used firearms as they did during Francoism.

¹⁰⁴ Theo Van Boven, *Report of the Special Rapporteur on the Question of Torture*, (Geneva: United Nations, 2004), 12. “...personas no originarias de la Europa occidental o por miembros de minorías étnicas, como los gitanos.” My translation.

¹⁰⁵ Amnistía Internacional, *España*, 44.

¹⁰⁶ UN General Assembly, Code of conduct for law enforcement officials. A/RES/34/1695, (Office of the High Commissioner for Human Rights: 1979), Art. 3.

¹⁰⁷ *BHUCM, AHPCE*, Box 48, Folder 3.1, Sobre la represión en Cataluña y Euskadi, 1967, Notas sobre la represión en Euskadi. “La policía confunde al estudiantes J. Omeñaka con un miembro de ETA. Sin previo aviso y dentro del recinto universitario se le hizo cuatro disparos, alcanzándole dos de ellos e hiriéndole de gravedad.” My translation.

For instance, in 1976 the police evicted a workers assembly in Vitoria killing five and wounding fifty more. Moreover, in the San Fermines of 1978, the police tried to break up the crowd using 130 bullets, 4,153 rubber balls, 657 smoke canisters and 1,138 teargas grenades.¹⁰⁸ However, the transition witnessed a change concerning the bullets the police used: from regular bullets to rubber bullets.

These bullets were fairly used during the democratic period. Although portrayed as harmless, since 1990 thirty persons have lost an eye due to them¹⁰⁹ and an autopsy recognized that rubber bullets were the cause of death of Iñigo Cabacas in 2012.¹¹⁰ The autonomous Police of Catalonia cannot legally use them since 2014, but the National Police can still use them in that region and in the rest of the country. Moreover, they are commonly used in demonstrations and along the borders of Spain with North Africa.¹¹¹

No police agent has been convicted for their misuse, since it is very hard to gather the evidence for it.¹¹² Although less dangerous than regular bullets, rubber bullets are still very unsafe, and the accountability for their misuse is practically non-existent. In this regard, the instrument used has changed but not the way in which it is used: the use of arms is neither exceptional nor proportionate.

2.2.6 Use of force: Torture

There is a very specific use of force that the Code of Conduct analyses separately: torture.¹¹³ This was something that both Emiliano Serra and Sergio LD suffered. Under the Franco rule, torture was a regular practice. It would even be inflicted to people whose culpability was not certain and a large number of techniques were used to obtain declarations¹¹⁴. One victim described very precisely what

¹⁰⁸ Sophie Baby, "Estado y violencia," 184-190.

¹⁰⁹ Francesc Valls, "Balas de goma opacas" [Opaque rubber bullets], *El País*, October 18, 2018.

¹¹⁰ Esther Samper, "Escopetas de balas de goma: las armas "no letales" que pueden matar" [Rubber-bullet shotguns: the 'non-lethal' weapons that can kill], *eldiario.es*, October 20, 2019.

¹¹¹ Amnistía Internacional España, "España: La tragedia de los migrantes de Ceuta, lamentable menosprecio hacia la vida humana" [Spain: The tragedy of the migrants in Ceuta, deplorable disregard for human life], *Amnistía Internacional España Noticias*, February 6, 2015.

¹¹² Rosa Valls, Adriana Aubert, Lidia Pugvert and Ainhoa Flecha, "Leadership in Social Movements: The Case of Ojo con tu Ojo," *IJELM*, 5 (2017): 157.

¹¹³ The Code of Conduct defines it as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons.'

¹¹⁴ *BHUCM, AHPCE*, Box 48, Folder 1, Caídas, 1957, Carta de Antonia.

most reports expressed: ‘they presented me with something, I denied, they hit me hard and I accepted what they said. Sometimes I added something.’¹¹⁵

The use of torture was intensified in the 1960s and there is an astonishing consistency in the different kinds of torture they used from reports from all over Spain. Once arrested, the suspect was taken to a police station, where they would spend days being questioned and tortured. ‘The bicycle’, ‘the wheel’, ‘the bathtub’ and ‘the hanging’ were names that were repeated constantly in the reports. After a few days, some detainees tried to commit suicide.

The use of torture did not disappear after the transition to democracy but it did narrow down its targets to, yet again, terrorist suspects. In his 2003 report, Theo van Boven stated that ‘torture or ill-treatment is not systematic in Spain, but that, in practice, the system allows torture or ill-treatment to occur, in particular in the case of persons detained incommunicado for terrorist activities.’¹¹⁶ In 2007, Amnesty International also agrees that they are not isolated cases and that the use of torture is not sporadic in anti-terrorist activities.¹¹⁷ Moreover, the 2016 CPT report stated that ‘the delegation heard some credible allegations of excessive use of force at the time of arrest and cases of people who had been physically abused by police officers upon the arrival at the police station.’¹¹⁸

The absence of cameras inside the interrogation rooms lead to a lack of recordings of the questionings¹¹⁹. This situation allowed torture to happen. Torture is not systematic now and most people are not mistreated by law enforcement officials¹²⁰. However, torture is also not sporadic, since there are certain patterns that the use of torture follows: against alleged terrorism, against minorities and against foreigners. The way in which torture is used and the amount of times it is performed has changed radically, but torture has not disappeared.

¹¹⁵ BHUCM, AHPCE, Box 48, Folder 1, Caídas, 1969, Informes de camaradas detenidos en las jornadas del 30 de abril y 1 de mayo de 1969. “Ellos me presentaban algo, yo negaba, me pegaban fuerte y yo aceptaba lo que decían. A veces añadí yo algo.” My translation.

¹¹⁶ Van Boven, *Report of the Special Rapporteur*, 1. “La tortura o los malos tratos no son sistemáticos en España, pero que, en la práctica, el sistema permite la ocurrencia de tortura o malos tratos, en particular en el caso de personas detenidas en régimen de incomunicación por actividades terroristas.” My translation.

¹¹⁷ Amnistía Internacional, *España*, 5.

¹¹⁸ Comité Europeo para la Prevención de la Tortura y de las Penas o Tratos Inhumanos o Degradantes, *Informe para el Gobierno español sobre la visita llevada a cabo en España por el Comité Europeo para la Prevención de la Tortura y de las Penas o Tratos Inhumanos o Degradantes (CPT)*, (Strasbourg: Council of Europe, 2017), 5. “La gran mayoría de personas con las que se entrevistó la delegación afirmaron haber sido tratadas correctamente por parte de las fuerzas del orden. Sin embargo, la delegación tuvo conocimiento de ciertas denuncias creíbles de uso excesivo de la fuerza en el momento de la detención y de casos de personas que habían sido maltratadas físicamente por los agentes de policía en el momento de su llegada a comisaría.” My translation.

¹¹⁹ These recordings are only mandatory in the Basque Country.

¹²⁰ Comité Europeo para la Prevención de la Tortura y de las Penas o Tratos Inhumanos o Degradantes, *Informe para el Gobierno español sobre la visita llevada a cabo en España por el Comité Europeo para la Prevención de la Tortura y de las Penas o Tratos Inhumanos o Degradantes (CPT)*, (Strasbourg: Council of Europe, 2017), 5.

2.2.7 Medical attention

According to the Code of Conduct, ‘law enforcement officials shall ensure the full protection of the health of persons in their custody and shall take immediate action to secure medical attention whenever required.’¹²¹ During Francoism, the main reason why doctors were involved in the arresting process was to try to prove that the people were not tortured. The police were careful not to hit people in the face and to use refined methods in order to produce no more than internal injuries.¹²² Doctors from the police station or the courts used to state that nothing had happened.¹²³

Since torture has been extremely reduced and it is not a systematic practice anymore, medical attention at police stations has also changed and the *Consejo Médico* [Medical Council] recently created a new protocol.¹²⁴ However, when the arrested actually suffers ill-treatment, the medical examination is usually developed with a policeman in the room, which can intimidate the victim not to tell the doctor how they were wounded,¹²⁵ which is what happened to Sergio LD. This can lead to inadequate medical attention. According to the reports, his was not an isolated case. As with torture (2.2.6), poor medical attention is not systematic now, but also not sporadic.

2.3. Outcomes

As stated by Bayley, ‘a comparison of outcomes has no meaning unless the situations generating them are the same.’¹²⁶ Since, as mentioned, the sources have to be cautiously read, the analysis of situations informs us of everything that is possible to know for the time being. However, since a police style is represented ‘by the proportion of outcomes from similar situations that are different’,¹²⁷ it is conceivable that the Francoist Police had a quite more consistent style and outcomes.

2.4. Analysis

As found in chapter 1, it is not easy to determine whether the police have changed or whether there is continuity in its day-to-day activities. The truth is that some things have changed a lot, others have changed very little and other elements changed less than expected. Table 3 summarizes the findings.

¹²¹ UN General Assembly, *Code of conduct*, 3.

¹²² *BHUCM, AHPCE*, Box 48, Folder 3.4, Informes sobre torturas, 29 June 1976, No a la tortura. Comisión Nacional “Justicia y Paz” (Para uso institucional).

¹²³ *BHUCM, AHPCE*, Box 48, Folder 3.1, Informe de un grupo de juristas catalanes, 9 June 1959, Auto.

¹²⁴ Ministerio del Interior, *Respuesta del gobierno español al informe del Comité europeo para la prevención de la tortura y de las penas o tratos inhumanos o degradantes*, (Madrid: Ministerio del Interior, 2017), 5.

¹²⁵ Amnistía Internacional, *España*, 26.

¹²⁶ Bayley, *Patterns of policing*, 127.

¹²⁷ Bayley, *Patterns of policing*, 128.

Table 3: Indicators of norms and practices numbered according to their significant, intermediate or low change.

Assignments		2
Situations	Rule Compliance	1
	Internal implicit accountability	3
	Personnel	3
	The police in political life and neutrality	2/3
	Use of force: firearms	2
	Use of force: torture	2
	Medical attention	2
Outcomes		1

Change: 1 – Significant 2 – Intermediate 3 – Low

Taking everything into consideration, the main conclusion of this chapter is that norms and practices have not changed as much as the legislation did. The internal implicit accountability of the police is still weak, personnel from the BPS became the leaders of the Anti-Terrorist brigade, the institution still targets certain groups more than others, the use of arms is still disproportionate and the use of torture and a deficient medical attention are not infrequent. The violence of the transition, the terrorist threat and a strong anti-immigrant attitude have been used as a justification for continuity. In other words, normal rules and criteria disappeared when ‘terrorism’ entered the game.

Traditions can be stronger than the change that formal structures can produce. The fact that the law changed did not entail a change regarding the way the police behaved. According to Sophie Baby, the ideology of the winners, who considered subversion as an internal enemy that had to be eradicated, was more powerful than the changes the transition tried to impose.¹²⁸ A change in the normative and institutional framework is not incompatible with a functional and organic continuity. However, how was this change in formal rules and rather continuity in informal rules perceived by Spaniards?

¹²⁸ Sophie Baby, “Estado y violencia,” 190.

Chapter 3: Preferred role

In the conclusion of *Violencia y transiciones políticas a finales del siglo XX: Europa del Sur – América Latina*, Mercedes Yusta recalls some aspects of her childhood during the transition and describes her experience with physical violence as her mother and she were ‘locked in a shop ... to escape the tear gas canisters used by the *grises* to break up a demonstration.’¹²⁹ She also recalls the fear she felt and her asking her mother if there was a war going on. What would they think of the police? Would Yusta and her mother believe the democratic police was different from the Francoist one?

This chapter will focus on people’s thoughts regarding the police. That can be analysed systematically by using the two surveys from 1980 and 1995 mentioned in the introduction.¹³⁰ As previously explained, there are three police roles that can be analysed in the conflicting role expectations of the police. This chapter will focus on the preferred role, which refers to the society’s and police’s expectations regarding the police itself. Burton’s typology of policing will help with regards to the main goal of the institution. By focusing on this role this chapter will answer the sub-questions: has the way in which the police are experienced by the public changed? Has its preferred role changed? I will firstly analyse whether the popular conception of the police has changed over time, then some regional changes and lastly, I will analyse the results.

3.1. Changes over time

3.1.1 Strictness

First of all, people wanted the police to be stricter in the 1980 survey than in the 1995 one. For instance, 60% respondents of the 1980 survey did not think that those who break the law were ‘punished’ enough and 39% of the respondents believed the police had to be stricter than before [Question 36]. In 1995, though, when asked if crime would be solved with order and a firm hand or with education and jobs, most people agreed with the latter and about a quarter of the answers were in between those two options [Question 43b]. However, there were some offences that people believed could not be compatible with a reduction of prison years or a prison leave: rape, murders, kidnapping, drug trafficking, bloodshed terrorism and terrorism without bloodshed [Question 49].

¹²⁹ Mercedes Yusta, “Conclusiones,” in *Violencia y transiciones políticas a finales del siglo XX: Europa del Sur – América Latina*, ed. Sophie Baby, Olivier Compagnon and Eduardo González Calleja (Madrid: Casa de Velázquez, 2009), 257.

“...mi madre y yo encerradas en una tienda con las persianas bajadas, para escapar a los botes de gas lacrimógeno con los que los «grises» disolvían una manifestación.” My translation.

¹³⁰ Since those two surveys are the main sources of this chapter, I will not be quoting them in every paragraph. I will, however, add in brackets the number of the specific question I’m referring to.

In 1995 it was commonly believed that the most important principle to respect in a democracy was citizen security – followed by solidarity in Madrid, Barcelona and Seville and social equality in Bilbao [Question 2]. This was a change in the priorities of the Spanish population, which did not want ‘order’ and a hard hand anymore. This shift in their general priorities was reflected in what Spaniards expected from the police: people wanted the new legislation to become a material reality.

3.1.2 Trust

The 1980 survey shows how little the Spanish population trusted the authorities. A large proportion of the respondents were reluctant to answer many questions and chose the ‘Don’t know/No answer’ option. For instance, when asked if their contact with the police had been correct or not, 42% answered affirmatively, but an important 30% did not know what to say or did not want to answer the question [Question 37a]. When asked if they felt fear talking to a police officer, 48% of the respondents said no – and 29% did not answer [Question 37g]. The answers to this survey show a positive image of the police since either the respondents liked the police, or they rather not say.

Fifteen years later, the answers were also mostly positive, but there was a big change. Respondents were more willing to express their opinions and there is not the same inconclusiveness of some respondents that was found in the 1980 survey. Around 61-71% believed that the police would treat them properly if they had to go to a police station [Question 33]. When they saw a police officer, most of the respondents believed that ‘they exist in order to defend and protect me’ – with an astonishing 83% of such answers in Madrid [Question 40].

3.1.3 Political change

A very interesting and useful aspect of the 1980 survey is that it made the respondents compare the democratic police with the institution under Francoist rule. When asked how the police behaved that year in comparison with four or five years ago, 25% thought the police were better, 42% thought it had not changed, 13% believed they were worse in 1980 and 17% did not want to answer [Question 33].

Another question asked if the image and prestige of the police had improved, without any time framework. 26% believed that was the case, 23% did not believe that and 49% gave an inconclusive answer or no answer at all [Question 37e]. The number of people that did not want to answer ‘police officers have not been able to adapt to the political change’ was even higher. 57% of respondents did not answer that question and out of those who answered, 22% believed that was true and 20% did not [Question 37h].

In 1995, most respondents believed that the reason why people become police officers had nothing to do with the thrill, power and supposed ideology of the job, but with more practical reasons such as job stability and not finding any other occupation [Question 20]. It was not seen as a job that required a certain mind-set and ideals, but as any other public service activity. Most complaints the respondents held against the police were related to paperwork and efficiency in the response to their demands, not with police behaviour or bias towards the public [Question 32].

Although it is remarkable that the CIS has not done any other survey focusing mainly on police activity since 1995, there are some surveys in which this institution is briefly mentioned. For instance, a 2017 survey on National Defence and Armed Forces asked the respondents to rate different professions from 0 to 10. The police was one of the most valued one, with a grade of 7.96, only surpassed by teachers, doctors and firefighters.¹³¹

3.2. Regional changes

There are, however, some regional differences that cannot be ignored. The heterogeneity of the Spanish population and the importance of the regional question since the beginning of the 20th century make a purely national analysis incomplete without a mention of the regional differences. The second survey allows us to make a comment regarding regional variations on the image of the police. Although both the Basque Country and Catalonia have their own autonomous police, it is only in Bilbao¹³² where this made a big difference when it comes to the survey's answers.

Respondents from Bilbao tended not to trust the National Police and placed their faith in their autonomous police, called Ertzaintza. For instance, people from Madrid, Barcelona and Seville would turn to the National Police if necessary, unless they suffered abuse or coercion by law enforcement officials, in which case they would go to court. This is not the case in Bilbao. Even when they were abused by authority forces, the first body they would approach is the Ertzaintza [Question 12]. Bilbao is also the city in which the biggest percentage of people who fear the police could be found, with 27% of the answers. People there tried to avoid going to the police [Question 40]. While 70% of the respondents in Madrid and Barcelona and 91% in Seville said that they had been to a police station in order to use their services at least once in their lifetime, less than half of the respondents in Bilbao said they had done such [Question 27].

Moreover, in Bilbao respondents were less punitive with those who had committed a terrorist act without fatalities. The first part of this chapter explained how people believed that those charged with any kind of terrorism should not get a reduction of their prison years nor a permit to

¹³¹ Centro de Investigaciones Sociológicas, *La defensa nacional y las fuerzas armadas (XII). Estudio nº 3188*, (CIS: Madrid, 2017): Question 1.

¹³² Bilbao is the capital of the province of Biscay, in the Basque Country.

go out of the prison on certain occasions. But when examining the data from cities separately, Bilbao turns out to be the only city that believed that when no one is killed, someone who performed a terrorist act should get those concessions [Question 49].

Lastly, respondents were asked to express their thoughts on National Police, Guardia Civil, Municipal and local police – and on the Ertzaintza in the Bilbao case and the Mossos d'Esquadra in Barcelona. Respondents were given different criteria and they had to express their agreement from 0 to 10. According to respondents in Madrid, Seville and Barcelona, the worst rated institution was the municipal and local police, whereas Bilbao believes the Guardia Civil was the worst one. National Police was well valued in Madrid, Barcelona and Seville, whereas it failed to achieve most criteria in Bilbao. Both Barcelona and Bilbao believed their own regional forces were the best ones [Question 26].

3.3. Analysis

It is now possible to answer the questions ‘Has the way in which the police are experienced by the public changed?’ and ‘Has its preferred role changed?’ Since roles have to do with expectations, the answer to both questions is a weak yes. According to Mawby, this ambivalence is not strange, since given the high expectations, police reform after a transition to democracy is usually disappointing.¹³³

With regard to the second question, at the beginning of the democratic period people still expected the police to be a law and order maintenance organization. However, after experiencing democracy for nearly twenty years, they expected it to be more focused on its service to the public. That means that its preferred role had changed slowly but steadily, and people expected differently from the police, as the formal rules stated.

What about the way in which the police are perceived? The interpretation of the first survey only reveals a small change concerning the opinion that Spaniards have of the police. In the 1980 survey, not everyone was willing to answer direct questions regarding their opinions on the police. It seems as if they were still afraid and distrustful of both the police and the governmental institution carrying out the survey. In 1995, people were more willing to answer questions regarding their views on the police. However, their answers still do not support a radical shift in the public perception of the police. People tended to trust the police more and to see it as a more democratic body, but the percentages are still not conclusive. Spaniards wanted the norms and practices of the police to match the rules but they knew that was not the case yet.

¹³³ Robert I Mawby, “The Impact of Transition: A Comparison of Post-Communist Societies with Earlier ‘Societies in Transition,’” in *Police in Transition: Essays on the Police Forces in Transition Countries*, ed. Andras Kadar (Central European University Press, 2001), 31.

This undecided view on the change of the police can be complemented with the regional question. The answers given to the 1995 survey in the Basque Country are remarkable on their own. It is important to take into account that the survey was conducted in 1995, when ETA was still active and Spaniards were learning about the existence of the GAL. Certain features of the Francoist police entered the democratic period under the fight-against-terrorism umbrella. Since the GAL mainly acted and killed in the Basque Country, it makes sense that the Basque population was even more sceptical towards the activity of centralized authority forces in their region.

Justel analysed the 1980 survey extensively and declared that most left-leaning Spaniards did not feel the police were there for their protection while most of those with rightist leaning did. In addition, conservative supporters of the Basque and Catalan nationalist parties also had a very negative view of the police. People who suffered the actions of the Francoist police and its residues during the democratic period consider the democratic police to be quite similar to the authoritarian one.¹³⁴

In conclusion, there was a general slight tendency to consider that the police had changed, especially in the 90s. This tendency is, however, not conclusive and it varies regionally. Spaniards experienced what the police actually did (Chapter 2) more than what the police were supposed to do according to the law (Chapter 1), although that is what they wanted. Therefore, it makes sense that the results of this chapter align with those of the second chapter: the police did change to some degree, but not entirely or as much as expected.

¹³⁴ Manuel Justel, "Imagen pública de la policía," *Reis*, 18 (1982): 92.

Conclusion

In this last part of the thesis I will sort out all the information analysed in the previous three chapters. By comparing the answers to all the sub-questions, I will be able to answer the main research question: Did the institution of the Spanish Police change after the transition to democracy (1975/8)? After analysing the national legislation on police, the conclusion was that the Spanish police had changed. Although some elements remained almost untouched or changed very little, the main and more decisive legal elements had been transformed. This idea of change, however, was much less evident in the conclusions of chapters 2 and 3. Those chapters showed that the practices and behaviour of the police did not change in congruence with the legislation and that the public opinion supported the idea of continuity or ambiguous change mentioned in chapter 2.

Table 4: Results from the three chapters divided into significant changes, intermediate change and continuities.

	Significant changes	Intermediate change	Continuities
Legislation	Organization (name, nature) Discretionary power Professionalization Democratization Centralization – decentralization Hierarchy	Main principle and goal Accountability	Formal recognition Isolation Existence of political enemies
Norms and practices	Rule compliance Outcomes	Assignments Use of force (firearms) Use of force (torture) Medical attention	Internal implicit accountability Personnel Police in political life and neutrality
Preferred role		Trust Strictness Adaptation to political change	Basque Country

Table 4 summarizes the information from all the chapters. When looking at it, it is possible to see a diagonal line that goes from the top left corner to the bottom right corner. The aspects that

changed the most are those imposed as rules from above and those that can be considered as continuity are mostly related to the norms, practices and public perceptions of the police. Lastly, those elements under the ‘intermediate change’ are a combination of the two elements.

By understanding the legislation as formal rules and the norms, practices and perceptions of Spaniards as informal ones, it is possible to answer the research question under the theoretical framework of institutions: did the institution of the Spanish police change or not? From a collective-choice approach, North’s ideas are extremely enlightening. His theory provides a useful account on how institutions change because formal rules are modified through a conscious and premeditated political procedure.¹³⁵ Therefore, a formal change modifies the institution and its informal rules. Since the legislation did mostly change, the conclusion would be that the Spanish police changed under the influence of rule makers that wanted to alter the old structure of the country.

Moreover, Aoki’s theory on strategic linkages can also explain the evolution of the Spanish police. According to him, institutions are not isolated. Thus, for an institution to change it needs to be embedded in a system of institutions that is also changing: in this case, the police act within the Spanish government.¹³⁶ Moreover, the government itself wanted to change in order to have the possibility of entering the international arena and more specifically the European Union. Then, the police were required to meet certain international standards, as stated by the 1979 Code of Conduct of the Council of Europe. The Spanish code of conduct was based on this resolution and the legislative changes were usually justified on the basis of what was being done in other European policing institutions.¹³⁷

However, as much formal change as there was, some elements remained largely untouched, as shown in the table. To understand this inertia in the institution it is important to also take into account informal rules, which are the real life usage of formal rules. Informal rules are embodied in the personnel and not all of them evolved until they matched the formal rules, as seen in the continuities from Francoism during the democratic period.

North himself recognized the importance of informal rules. According to his theory, ‘although a wholesale change in the formal rules may take place, at the same time there will be many informal constraints that have great survival tenacity.’¹³⁸ Formal rules of the Spanish police did change, but some of said rules were only rules-in-form, which according to Ostrom are those

¹³⁵ Douglass North, *Institutions, Institutional Change and Economic Performance*, (Cambridge: Cambridge University Press, 2005), 47.

¹³⁶ Aoki, Masahiko, *Towards a Comparative Institutional Analysis*, (Cambridge, MA: MIT Press, 2001), 207.

¹³⁷ Council of Europe, *Declaration on the Police. Res. 690*, (Strasbourg: Council of Europe, 1979); Código de la Policía Nacional, Boletín Oficial del Estado, 126 (2013).

¹³⁸ North, *Institutions*, 91.

that are not actually followed in practice and do not affect the behaviour of the members of the institution.¹³⁹ The reason why these formal rules do not work can be found in the persistence of informal rules.

The greatest inertia factor in the institution that prevented formal rules from being successful was the fact that the personnel did not change. Veblen understands that for an institution to change there needs to be a change in the habits of thought. These habits of thought are part of the ‘character of any individual’¹⁴⁰, so for an institution to change it cannot only change the institution itself, but also those within it. In this case, the police personnel after the transition was the same as before and did not have to undergo any democratic adaptation process.

This does not mean that their habits of thought can never be changed. As seen throughout the thesis, those habits of thought can be (very) slowly modified and are not inherently immobile. Following the evolutionary theory of Hayek¹⁴¹ rules of conduct evolve because the groups that practice them are more efficient than those who do not, and they end up displacing them.¹⁴² In this sense, young policemen with fresh democratic ideas influenced by the new international environment in which Spain was entering started to displace the old ones that were used to Franco’s style.

In conclusion, the institution of the Spanish police did change and this was mainly produced by the change of formal rules. Informal rules acted as lock-in elements that slowed the process down, mainly because there was no change concerning the personnel. However, over time, informal rules started to change as well and to adapt to the new requirements of democracy and of the population, and nowadays they are still partaking in that process. The Spanish police context is an example of what North intends to say when he proclaims that institutional changes are usually produced by the change of formal rules and, overall, are gradual, slow and not revolutionary.¹⁴³

When comparing the Spanish police to other European forces, right now it is going through many of the same issues that the police from other European democratic countries are enduring. Although it can be more problematic than some European police systems, the Spanish institution is not the only one that has had to deal with an authoritarian past. In his essay on transition and police,

¹³⁹ Elinor Ostrom, *Understanding institutional diversity*, (Princeton, NJ: Princeton University Press, 2005), 138.

¹⁴⁰ Thorstein Veblen, *The Theory of the Leisure Class*, (Pennsylvania: The Pennsylvania State university, 2003), 192.

¹⁴¹ Hayek’s theory is based on selection at the social group level. Groups choose the most appropriate and effective rules, so only those rules survive and the end product is the most optimal institution. He states that this evolution of the mind ‘happens not through the selection of individuals’ but through the selection of ‘culturally transmitted institutions and practices.’ See Kingston and Caballero (2009: 162-164) for a detailed discussion of his theory.

¹⁴² Christopher Kingston and Gonzalo Caballero, “Comparing theories of institutional change,” *Journal of Institutional Economics*, 5 (2009): 2, 162.

¹⁴³ North, *Institutions*, 91.

Robert I. Mawby analyses the transition of some police systems to democracy. The changes of the police institution in, for instance, West Germany or Hungary, are quite similar in quality and pace to those that the Spanish police underwent.

However, those police reforms did focus on the removal of the personnel and changed a considerable proportion of its old staff. This was, in fact, one of their biggest and most radical changes.¹⁴⁴ Why did the formal rules of the Spanish police not address the issue concerning the renovation of personnel? Was it a choice to avoid as much risk as possible in the process of institutional change? Was it a way of making use of the old techniques in an unofficial way? Or was it a practical mode of re-using the resources that were already there? It is impossible to know their real intentions, but by not changing the personnel, Spanish politicians showed a risk-aversion that led to a long-lasting institutional inertia. These questions offer an interesting topic for further research.

Moreover, the lack of change in the personnel allowed the government to tackle the regional question in a more severe way than a democracy is allowed to do. It is common for an authoritarian regime to define all of its opponents as terrorists and therefore not respect any human rights on them, since opposition is unacceptable by nature in that context. In a democracy, however, the opposition is free to express their discontent with the government at the time, provided that democracy itself is respected, and police cannot break its own rules to fight them.

What happens when the opposition chooses violence, like ETA did during the transitional years? Can the government opt for violence as well? The answer is a theoretical no. However, neutrality can be expensive and the Spanish government found itself having to choose between following the law while a violent opposition did not and using old techniques to stop them but then betraying the democratic principles. It did the latter. Therefore, both the regionalist movement and the security forces showed continuity in their practices to achieve their goals. That Dirty War between ETA and the government and the GAL was a reiteration of the Francoist dynamics during the democratic period.

According to Mawby, the fact that a government acted this way is not strange. One of the main conclusions of his essay is that whether it was the 'communist threat' of the Cold War or a perceived escalation of crime, after a transition to democracy it is usual for a government to have a reason for prioritizing safety over democratic policing. Therefore, a move towards a democratic rule

¹⁴⁴ Mawby, "The Impact of Transition," 20.

does not necessarily guarantee a radical overhaul of the police, since some of the old techniques are useful for the new regime.¹⁴⁵

Since the end of the 20th century, however, regionalist and right-wing threats have changed their techniques. Then, it would seem there are no longer reasons to keep some of the old Franco mechanisms in place. In response, the Spanish police appear to be changing its informal rules more rapidly than before. It seems that some of the mechanisms that are in place will allow the Spanish police to change more radically within the next 2 or 3 generations – which it does not mean it will be perfect; it means it will have the problems of a democratic country instead of the problems of a country with an authoritarian past. The process of becoming part of the mainstream Western European police is almost complete.¹⁴⁶

On another note, these results can be connected to the debate over the Spanish transition. As mentioned in the introduction, there are two opposing views on the Spanish transition: the mainstream one, that claims it was a peaceful and exemplary political regime change, and a new one that criticizes the former and states that it was actually a bloody and tumultuous process. One view understands the transition as a radical critical juncture while the other one is more path-dependent.

However, neither of the approaches is entirely true when applied to our context on the Spanish police. Firstly, the mainstream view highly overlooks the influence and persistence of informal rules regardless of formal rules changes and the importance of the past in any institutional analysis. But the second approach is not entirely appropriate either. This critical approach is very path-dependent and does not admit that some changes did happen or the critical juncture that the transition represented. However slow or difficult they were, changes in policing did take place (and are still taking place nowadays). By neglecting any kind of black and white approach, I intend to overcome the issues of an analysis such as the one by Robert Putnam in *Making Democracy Work*.¹⁴⁷

When studying such a relevant and controversial topic such as the police, it becomes hard not to develop any personal opinions. This is not entirely academic but I believe that one's opinion on the evolution of the Spanish police depends on one's views concerning the concepts of reform and revolution. Those who seek revolution will most likely not feel content with the current

¹⁴⁵ Ibid, 31.

¹⁴⁶ Although not analysed in this thesis, the way in which the recent regional question on Catalonia is being handled by the police nowadays and the new 2015 legislation looks as a step back in this evolution.

¹⁴⁷ Robert D. Putnam, *Making Democracy Work: Civic Traditions in Modern Italy*, (Princeton: Princeton University Press, 1993).

situation; those who prefer reforms, however, can probably be optimistic about the present and the future of the Spanish police. It is impossible to know if a revolution would have achieved change more quickly but it is possible to say that the reform road has delivered what they were trying to achieve: to have a National Police like its Western European neighbours do.

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