

De los controles disciplinarios a los controles securitarios



Pedro Oliver Olmo
M.^a Carmen Cubero Izquierdo
(coords.)



Ediciones de la Universidad
de Castilla-La Mancha

**De los controles disciplinarios a los controles securitarios.
Actas del II Congreso Internacional sobre la Historia de
la Prisión y las Instituciones Punitivas**

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Unimaginable Criminals: The Disappearance of “Political Prisoners” in Spain and the West after 1945

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RESUMEN

Este capítulo aborda los debates sobre la existencia “presos políticos” en España en relación con los cambios penitenciarios y los intentos de modernización de las cárceles y la criminología después de la Segunda Guerra Mundial. En este contexto se estableció la idea de que en un Estado de derecho (de modelo occidental) no podía haber “presos políticos”. Partiendo del caso español, y de que el régimen franquista, desde los años 50, intentaba presentarse hacia el extranjero como Estado de derecho, el texto explica primero cómo diferentes expertos extranjeros (Comité de la Cruz Roja Internacional, Amnistía Internacional) intentaron probar que sí que existían “presos políticos” en las cárceles franquistas. Además, se analiza cómo, en los años 70, estos actores participaron en intentos de (re-)introducir una categoría de “preso políticos” a nivel nacional e internacional, hasta el punto de promover una Convención internacional para la protección de “presos políticos”, que al final nunca se llegó a materializar. Hablar de “presos políticos” se había convertido en una crítica política tan importante que ya no fue posible imaginarlo como categoría legal.

Palabras claves: presos políticos, Estado de derecho, derechos humanos, España, Amnistía Internacional, Cruz Roja

ABSTRACT

The paper analyses debates about the existence of “political prisoners” in Spain in relation to changes in the area of imprisonment and attempts to modernize penal systems after the Second World War. In this context, the idea that a Western state founded on the rule of law could legitimately imprison “political prisoners” was no longer deemed justifiable. As a result, pointing towards the existence of “political prisoners” became an important critique of a state’s legitimacy. Starting with the case of 1950s Spain, where the Francoist regime increasingly tried to represent itself as a state founded on the rule of law, the paper first explains how different international organisations (International Committee of the Red Cross, Amnesty International) tried to prove that “political prisoners” actually existed; it then reviews a number of failed attempts to (re-)introduce the “political prisoner” as a legal category at national and interna-

tional levels in the 1970s—up to the point of creating an international convention. But talking about “political prisoners” had become such a potent political critique that arriving at a legal category for such prisoners was no longer possible.

Keywords: Political Prisoners, Rule of Law, Human Rights, Spain, Amnesty International, Red Cross.

INTRODUCTION

In 1952 the International Committee of the Red Cross (ICRC) faced a problem.¹ At its headquarters in Geneva, the Committee had received letters from political prisoners in Spain asking the humanitarian organization to check on their miserable situation in Spanish prisons and to intervene on their behalf. As the ICRC still had a permanent delegate stationed in Madrid, he was instructed to investigate the matter. The delegate subsequently reported back to Geneva that he had been confronted with difficulties in fulfilling the task. First of all, he explained, the Spanish authorities did not recognize “political prisoners” as a category. And secondly, they refused to give the ICRC access to Spanish prisons. After all, the ICRC’s mandate of action was restricted to times of war and internal conflict, and neither requirement still applied to the political situation in Spain.

This brief episode from the early 1950s points to two interrelated changes that I want to discuss in this paper. The first change was that states such as Spain no longer recognized the category of the “political prisoner” for their own prison systems (VOGLIS, 2002). While still incarcerating a relatively high number of political opponents, the Spanish regime became increasingly careful about avoiding the label of “political” and instead referring to prisoners merely as “criminals”. This discursive shift occurred both on a rhetorical and legal level. But why did the “political prisoner” cease to exist as an official category? The second and somewhat interrelated change was a growing *international* interest in the topic of “political imprisonment” (FORSYTHE, 1976). Whereas states no longer spoke of “political prisoners”, established and newly founded nongovernmental organizations (NGOs) increasingly framed their scope of action around this exact issue. These actors were then confronted with the aforementioned problem: How were they supposed to investigate the situation of a category of prisoners when that category was not officially recognised? And how could they justify their interest without being accused of interfering in Spanish national sovereignty?

The case of Francoist Spain provides a good example with which to discuss this change of rhetoric and its implications as of the early 1950s. Of course, seen from today’s perspective, Franco’s dictatorship did not constitute a Western-style democracy. But at the time the regime was changing its international image from one marked by autocracy and isolation to one claiming to be part of the “West” (at least in theory). Francoist propaganda presented the Spanish political system as an exemplary “democratic” state based on the rule of law. Such claims, however, remained disputed and therefore make Spain an interesting case through which to analyse altered perceptions of “political imprisonment” in the so-called “free world”. The argument I want to make is that in the context of the Cold War, the “political prisoner” became a powerful figure that embodied a situation of injustice. As a counterpart to the “common prisoner”, this figure called into question a new ideal of imprisonment centred on concepts such as individual treatment and resocialization. Debates about “political imprisonment” thus allowed various

1 This paper is based on research for my dissertation at the University of Zurich (working title: “Spaniens Politische Gefangene als internationales Problem. Debatten über die rechtlichen Grenzen staatlicher Gewalt im ‘Westen’ (1950-1980)”). I would like to thank Bernard Heise for proofreading the paper.

actors to explore the limits of legitimate state power in the West and ultimately formulate a strong critique against unlawful state actions in the area of penal justice. At the same time, those who tried to stay out of politics were forced to find new ways to justify their work.

The paper first briefly relates how the "political prisoner" as an official category disappeared from prison regulations after the Second World War. It then reviews how two different international nongovernmental organizations—Amnesty International and the ICRC—responded to this situation and asks how they justified their engagement on behalf of Spanish prisoners within this altered context. The last section deals with attempts in the 1960s and 1970s to (re-)introduce the "political prisoner" as a legal category at national and international levels and explains why these efforts were ultimately abandoned.

1. DISAPPEARANCE OF A PRISONER CATEGORY

The idea that "political criminals" were a specific type of "criminal" that could be appropriately punished by imprisonment seems to have been rather common in various European countries until the mid-twentieth century. Many governments and experts felt that assigning special status to those imprisoned for political reasons was both necessary and legitimate. Accordingly, in 1936 an American observer recalled that "the majority of penologists agree that political prisoners should receive differentiated treatment. Most of the European criminal codes and penal laws provide for such special treatment of the political prisoners" (CANTOR, 1936: 11-12). Of course, the fact that "political criminals" were treated differently did not necessarily bear any relation to the quality of this treatment. Such treatment could be more benevolent than that afforded to ordinary prisoners, as in the case of France at the turn of the century, or much more severe and brutal, as under fascist rule in Germany during the 1930s and 1940s (VIMONT, 1993: 458-463; INGRAHAM, 1979: 256-265). But the point I want to stress is that there was a general consensus regarding the specificity of a type of criminal and prisoner that was labelled "political" in order to distinguish such persons from "common prisoners".

In the second half of the twentieth century this consensus disappeared and the existence of "political prisoners" was increasingly seen as incompatible with the contemporary ideal of imprisonment. Of course, this shift did not happen all at once and varied depending on national contexts. Even so, by 1955 when a UN conference on the Prevention of Crime and the Treatment of Offenders in Geneva defined a set of UN Standard Minimum Rules for the Treatment of Prisoners (SMR), "political imprisonment" was not on the agenda. Instead, the newly created international forum focused on issues such as work in penal institutions and juvenile delinquency. Worth noting is that one of the regional working groups contributing to the creation of the SMR had actually argued for an additional clause regarding "political offences" or "offences of opinion". According to a later report by the conference's secretariat, this proposal was dismissed on the grounds that it had not been possible to define "political offences". The concept was considered "too controversial". Furthermore, the report recalled that under "modern rules of law" the expression of opinions was not to be regarded as an offence (FIRST UNITED NATIONS CONGRESS, 1955: 20-21). Both arguments point to the fact that questions related to "political crime" were no longer thought to fall within the purview of imprisonment or criminological treatment. Rather, such questions were now defined by politics and law.

This general trend was further accompanied by specific connotations of Cold War propaganda. The historian Polymeris Voglis has concluded that, after the Second World War, Western-style democracies increasingly viewed the "political prisoner" per se as an alien concept. Based on a study of political imprisonment during the Greek Civil War, Voglis argues that this

category of prisoners disappeared from official Greek rhetoric because it was no longer seen as compatible with the idealized relationship between states and citizens (VOGLIS, 2002) in the so-called Free World. According to this argument, Western states were now expected to punish and imprison only criminals, but not political opponents. If “political prisoners” existed, they existed only behind the Iron Curtain.

A similar change seems to have happened in Spain around that time. It is noticeable that two pro-Francoist publications dedicated to the topic of Spanish prisons and published in 1948 and 1951 still included certain explicit paragraphs on “political prisoners”—even though on the whole they did not pay great attention to the issue (OFICINA INFORMATIVA ESPAÑOLA, 1948, AYLAGAS, 1951). Such literature aimed to characterize Spain’s penal system as extraordinarily “humane” and “progressive”. When mentioned, “political prisoners” were described in a clearly pejorative way (broadly branding them as dangerous communists). Nevertheless, the authors did not dispute that such a category existed in Spain.

Gutmaro Gómez Bravo and César Lorenzo Rubio have pointed to the fact that a specific status of “prisoners on political and social grounds” did in fact exist until the mid-1950s in Spain. The 1948 decree on prison regulations had explicitly determined that “political and social prisoners” were supposed to be housed in institutions separate from “common prisoners”. This changed only in 1956 with the introduction of a new set of national prison regulations that no longer made such an explicit distinction (GÓMEZ BRAVO/ LORENZO RUBIO, 2013). Gómez Bravo and Lorenzo Rubio relate this shift in the legal sphere to Spain’s admission to the United Nations at the end of 1955 and the abovementioned UN SMR. According to both historians, Spain’s adjusted prison regulations represented an attempt to demonstrate that the country’s treatment of prisoners conformed to the new international standard. This adjustment found its expression in a new framing of the rules, which emphasized the importance of penitentiary sciences and focused on prisoners’ individuality—and also omitted the specific category of the “political prisoner”.

For the Franco regime in Spain, a rapprochement with the West and its “modern rules of law” as expressed in the concept of the “rule of law” became an increasingly important point of reference during the 1950s (SESMA LANDRÍN, 2006). Thus the disappearance in Spain—as in Greece—of the “political prisoner” as a category from official rhetoric and law comes as no surprise. When in 1964 the Spanish Ministry of Justice again published a book on detention and penal justice in Spain, on its very first page it tackled the question: “Are there any political prisoners in Spain?”. In contrast to earlier propaganda publications, the authors now stressed that no such category of prisoners existed in the country and they defended their position by comparing the Spanish penal system to those of other European countries that also made no mention of “political prisoners” (MINISTERIO DE JUSTICIA, 1963). This type of prisoner had become a potential image problem for the Spanish government and thus no longer officially existed.

2. CHALLENGING STATE LEGITIMACY

While Francisco Franco publicly declared that Spanish prisons only housed “criminals”, a growing number of imprisoned persons in Spain—such as members of the opposition, students, workers, and intellectuals—resisted this claim. They refused to be labelled as “common prisoners” and publicly fought for official recognition as “political prisoners”. They were supported in their struggle by relatives, lawyers, and political groups who helped spread the prisoners’ message beyond the prison walls and even across the Spanish border to the rest of Western Europe and to the United States. The struggle of these prisoners for recognition as “political prisoners” was of great symbolic and political relevance for groups opposing the regime. They constantly referred

to the existence of "political prisoners" in Spain to illustrate Franco's lack of legitimacy. Thus evidence of "political prisoners" in Spain in and of itself constituted an important critique of the state's practice of incarceration and, more generally, of the Franco regime.

This form of protest resembled earlier campaigns on behalf of "political prisoners" in Spain and elsewhere. The most famous example is the International Red Aid movement, which had supported imprisoned leftists around the world during the 1920s and 1930s (BRANCIFORTE: 2011). And again in the 1950s and 1960s, many activists campaigning in support of "political prisoners" in Spain came from the political left. The Spanish Communist Party (Partido Comunista de España, PCE), in cooperation with other communist parties in Europe, coordinated a broadly constituted amnesty movement for Spain's "political prisoners" in the late 1950s. At its Western European Amnesty Conference for Spanish Political Prisoners and Exiles in Paris in March 1961, several hundred people from various countries convened to discuss the topic and show their support. But the Cold War context made this campaign very different from earlier amnesty campaigns during the interwar years. While amnesty campaigns in the 1920s had been presented as part of a political struggle against fascism or capitalism, now any reference to politics was markedly absent. It comes as no surprise that the PCE's involvement in the 1961 amnesty campaign was not publicly mentioned. Instead, the campaign for Spain's "political prisoners" was framed as a "humanitarian" and "legal" struggle (SECRÉTARIAT DE LA CONFÉRENCE, 1961).

There was an obvious tension: an ostensibly apolitical campaign for "political prisoners" touched on a highly sensitive topic for the regime. In addition, not all members of the Spanish opposition even agreed on the campaign's goals. Although the amnesty campaign would eventually unite different strands of anti-Francoist opposition during the 1970s (MOLINERO, 2009), it was still highly disputed in the 1950s and early 1960s. It was not yet possible to isolate the issue from its political background.

Meanwhile a new international NGO—Amnesty International—picked up on the issue at the same time, with the intent on viewing "political imprisonment" both as a matter of *international* concern and in an explicitly *non-partisan* way. Amnesty International emerged out the "Appeal for Amnesty" campaign launched by British barrister Peter Benenson in May 1961, which sought to generate public awareness of the plight of imprisoned individuals all over the world. Tom Buchanan has convincingly shown how Benenson's appeal had been influenced by his knowledge of contemporary campaigns for amnesty in Spain. In fact, apart from being well aware of the situation of imprisoned dissidents in Spain, Benenson had also worked for the Spanish Democrats' Defence Fund Committee, a solidarity organization with ties to the British Labour Party, and had been present in Spain as an observer of political trials. Benenson knew full well that, for his new movement to have an impact, he needed to distance it from contemporary and older amnesty campaigns on the left (BUCHANAN, 2002).

Benenson laid down the new movement's priorities in an early publication entitled *Persecution 61*. The booklet assembled a selection of nine stories about incarcerated persons in various places around the world. To describe these prisoners, Benenson introduced the new category of "prisoners of conscience". According to Benenson, these prisoners had been incarcerated solely because of their opinions or religious beliefs. One of the individuals portrayed in the publication was the Spanish socialist Antonio Amat, whom Benenson had probably met during his earlier work for the British Labour Party. According to Benenson, Amat was a man who "by the standards recognized in practically every country in the world, has committed no criminal offence at all." (BENENSON, 1961: 134).

In contrast to the Western European amnesty campaign, which focused on one specific form of government (Francisco Franco's dictatorship), Amnesty International described political

imprisonment as a globally shared experience that did not result from any specific form of government or political system. Benenson wanted to “show that there is no area of the world where people are not suffering for their beliefs, and no ideology which is blameless.” (BENENSON, 1961: 9). The solution to the problem of “political imprisonment” was not regime change, but the prisoners’ release and a strengthening of the right for political asylum. This did not mean that Benenson’s appeal was uncritical towards the states responsible for imprisoning “prisoners of conscience”. The story about Antonio Amat also enumerated many of the Franco regime’s wrongdoings. But while Amnesty International’s early campaigns also questioned the legitimacy of certain state actions, they did not focus on a specific form of government or political system. In order to stress its impartiality, Amnesty International introduced a policy that the NGO should always campaign for prisoners in the West, the East, and the so-called Third World (BUCHANAN, 2002). The new organization’s focus centred on cases of individual suffering, which were portrayed as embodying a universally shared desire for freedom and liberty.

3. A “PRACTICAL” APPROACH: THE ICRC IN SPAIN

Another international organization that became interested in the topic of “political prisoners” was the aforementioned ICRC. But in contrast to Amnesty International, it refrained from any public critique of government action. Originally founded in the second half of the nineteenth century as a Swiss association dedicated to creating, promoting, and monitoring humanitarian rules in times of war, the ICRC gradually expanded its mission during the twentieth century. During the Russian and Hungarian revolutions it first began to be concerned with the fate of persons imprisoned not as a result of *interstate* conflict (prisoners-of-war) but due to internal conflicts *within* states. Yet not until two decades later—in 1949—did the Geneva Conventions establish a legal basis for this kind of work (LOWE, 2014; ARMSTRONG, 1985). According to Common Article 3 of the Conventions, the ICRC was competent to act in situations of “internal conflicts” too. However, while this new rule resolved questions of competence with regard to civil wars, it did not provide a basis for ICRC activity on behalf of prisoners in times of peace (BOISSIER, 1958: 6–7).

Nevertheless, during the following years the organization became increasingly interested in the topic of “political detention”, not least because it was being asked to intervene in a growing number of cases involving prisoners (ARMSTRONG, 1985). With regard to Spain, during the 1950s the ICRC repeatedly received requests from Spaniards abroad and from within the country asking the organization to act on behalf of imprisoned dissidents. Since the management of prison systems came under national sovereignty, the ICRC as an international body had to seek the government’s permission before it could engage in any such work. But because the Spanish government did not recognize “political prisoners” per se, and because the ICRC was very cautious not to overstep its mandate and interfere in national politics, it could not simply request to see these prisoners. In order to circumvent this delicate situation, in 1952 the ICRC proposed a “practical approach” to the problem. During a conversation at the headquarters in Geneva, an exiled Spanish unionist had mentioned cases of typhus in Spanish prisons. After the meeting the ICRC considered offering medical aid to these prisoners. In this way the organization hoped to get access to Spanish prisons on strictly humanitarian grounds.² However, the Spanish Red Cross refused to cooperate in this matter and the ICRC was prevented from any form of intervention.³

2 “Procès Verbal d’Entretien, Mme de Ribaupierre avec Widmann-Pena, Colombo au siège du C.I.C.R.”, 17.04.1952, Archives du Comité International de la Croix-Rouge (ACICR), Geneva, B AG 225 069_004.

3 “Note pour la Délégation du C.I.C.R. à Madrid”, 02.05.1952, ACICR, Geneva, B AG 225 069_004.

Unsatisfied with this situation, in 1953 and 1955 the ICRC invited a group of internationally renowned legal experts to Geneva and asked them to discuss a future course of action regarding the problem of "political prisoners". The experts agreed that the organization was in fact competent to act, but they underlined that the ICRC had to remain in its strictly humanitarian role. The ICRC's mission, they argued, was supposed to reduce human suffering, but by no means should the organization comment on any legal and political matters or investigate the motives behind a person's incarceration. In this way, they affirmed the ICRC's earlier approach in Spain. Interestingly, these experts explicitly refrained from defining the nature of a "political prisoner". The ICRC, they concluded, should decide from case to case whether action was necessary (BOISSIER, 1958: 12–16).

By the late 1950s, letters written by Spanish prisoners and Western European appeals for amnesty in Spain reached the ICRC in Geneva as well. The organization tried again to access Spanish prisons and this time its delegate in Madrid received permission. In his letters to the headquarters in Geneva, he reminded his colleagues not to mention the term "political prisoners" in their correspondence with the authorities in Madrid, fearing that any reference to "political prisoners" might embarrass his Spanish counterparts.⁴ Overall the ICRC delegate in Madrid appears to have been very cautious with—not to say sympathetic to—the Spanish prison administration. After visiting several prisons in 1959, he reported back to Geneva that all the facilities he had seen were in very good condition. Regarding the problem of "political prisoners", the delegate downplayed the fact that such a problem even existed. In his opinion, the ICRC was not to further force the issue.⁵ Even though his colleagues in Geneva were highly sceptical about the delegate's overwhelmingly positive report, there was not much more they could do. But they did not abandon the issue and stayed in contact with exiled Spaniards, trying to assemble more and more evidence.

4. RETURN OF A SPECIAL STATUS?

By the late 1960s various actors who energetically supported and campaigned on behalf of incarcerated opponents of the Franco regime grew increasingly frustrated by the limited outcome of their actions. After all, amnesty campaigns did not change the everyday lives of their imprisoned friends, colleagues, and relatives. It was one thing to denounce an unjust situation in Spain, but quite another to try to change it. By that time both the ICRC and Amnesty International were in contact with the Spanish government in an effort to gain regular access to Spanish prisons, but these negotiations were lengthy and rarely bore fruit.⁶ In this context, it is interesting to note that several attempts were being made simultaneously to (re-)introduce the "political prisoner" as a legal category, both at national and international levels. Without getting into details, I would like to briefly mention some of these efforts and their rationales.

The first one focused on Spain. Lawyers in Barcelona and Madrid with expertise in defending incarcerated dissidents called for the creation of a special "statute for political prisoners" (CABRERO et. Al., 2016). In their daily work they had come to understand that the government was not going to end its practice of detaining political opponents and therefore they sought to at least improve these persons' lives while they were in prison. The proposed "statute" contained a set of rules guaranteeing that "political and social prisoners" were granted specific rights and privileges, such as the right to study or the right to choose their own doctors. Without providing a conclusive definition of a "political and social prisoner", the statute argued that such priso-

4 "Note à l'attention de Madame Mathez", 21.04.1959, ACICR, Geneva, B AG 225 069-001.

5 "Rapports sur visites de prisons", ACICR, Geneva, B AG 225 069-003.

6 "Correspondence générale concernant les détenus politiques", ACICR, Geneva, B AG 225 069-008/-009;

ners were fundamentally different from “common prisoners”, that prison routines designed to correct or reform inmates were not appropriate for them, and that they therefore needed special treatment. Within the prisons, many members of the opposition were indeed already treated differently from other prisoners when it came to work, housing, or forms of punishment. But the adoption of an explicit prisoner category was supposed to prevent this differentiated treatment from becoming a form of harsher repression. In defence of such a special status, reference was made to an older Spanish law from 1873 that had provided for this status. According to one lawyer, this law was in fact still in force because it had never been properly abrogated (RATO, 1969).

In the early 1970s discussions also took place at the international level about introducing better legal protections for “political prisoners”. Both of the nongovernmental organizations discussed in this paper were involved in these efforts. In preparation for the 1970 UN Congress on the Prevention of Crime, Amnesty International discussed whether or not it would be possible to add a paragraph on “political prisoners” to the existing Standard Minimum Rules—as mentioned above, the SMR did not contain any reference to “political prisoners”. Amnesty International had already decided in 1968 that it wanted to assume a “leadership role with regard to the treatment of political prisoners and prisoners of conscience throughout the world.”⁷ Thereafter, several experts were consulted on the issue. Some argued on the basis of international human rights protection that it was necessary to create such a special status, because all those whose rights had been unlawfully restricted needed protection while they were imprisoned. Others rejected the special status on the same grounds, arguing that, if human rights were indeed granted to everyone, it was hard to explain why only some but not all prisoners should receive privileges.⁸ Overall, the experts struggled with finding an acceptable definition of “political prisoners”. While they all agreed that “political prisoners” differed from “common prisoners”, the precise nature of the “political prisoner” proved to be very difficult to explain. Was such a prisoner supposed to be the same as a “prisoner of conscience”—a category that itself had changed over the years (KAUFMANN, 1991)? And what about the issue of violence? In accordance with the idea that the existence of “political prisoners” was incompatible with a state founded on the rule of law, one expert even argued that it was impossible to regulate something that was in fact illegal. Unable to find a conclusive definition, Amnesty International gave up on the proposal a few weeks before the UN congress.

The last example I want to mention is a 1974 study on the creation of an international convention for the protection of “political prisoners”. In 1972 the Swiss government had charged the Henry Dunant Institute—a Geneva-based research institute with close ties to the ICRC—with researching options for such an international convention. Although the final report remained unpublished, it constitutes an important historical source that pooled the expertise on “political prisoners” at the time. The report found that even though such a category had historically existed in various countries and even though everyone knew what they were talking about when discussing “political prisoners”, it was impossible to define the “political prisoner” as a universally valid legal category. The authors came to the conclusion that the whole issue represented more of a political than a juridical problem.⁹

7 “Minutes of the fifteenth Meeting of the International Executive Committee, London, 30.11.-01.12.1968”, Internationaal Instituut voor Sociale Geschiedenis (IISG), Amsterdam, Amnesty International, International Secretariat Papers, Minutes of the IEC 412.

8 “Amnesty International: Report of the Working Group of the 2nd International Council Meeting to discuss the Standard Minimum Rules and proposals to be put forward by Amnesty International at the U.N. Kyoto Conference in 1970. Held at the International Commission of Jurists, 15th September 1969”, IISG, Amsterdam, Amnesty International, International Secretariat Papers, International Council Meetings 9, 1969.

9 “Étude relative à la protection des détenus politiques, Institut Henry-Dunant”, 01.01.1974–31.12.1974, ACICR, Geneva, B AG 225 000-035.

These three attempts to (re-)introduce a special status for "political prisoners" reveal a shared awareness that the detention and treatment of political opponents posed an increasingly urgent problem, both in Spain and internationally. However, none of these attempts were further pursued. One reason for this was that talking about "political prisoners" had become such a powerful political tool for delegitimizing state actions that the term could no longer possibly be defined as a neutral legal category. With regard to Spain, during the last years of the Franco dictatorship the demand for a special status for "political prisoners" was never implemented, but the demand for a general amnesty for all "political prisoners" turned into the main argument unifying the anti-Francoist opposition (MOLINERO, 2009). Once the 1976 and 1977 amnesty laws allowed for the release of most of the imprisoned dissidents and the transition to democracy was under way, the problem of "political prisoners" seemed to have been resolved. The project of creating a special status within Spanish prisons, so urgently pursued only a couple of years before, was abandoned once Spain officially became a democratic state. By the late 1970s when the Spanish prison system was reformed, prison authorities were busy dealing with violent prison revolts (LORENZO RUBIO, 2013). The problem of "political prisoners" was generally perceived as connected to the Franco regime and thus belonging to the past.

Moreover, two discursive shifts in the 1970s further complicated the basic idea that "political prisoners" differed fundamentally from "common prisoners". First, the conception of "common crime" came under criticism from activists who fought for prisoners' rights in general and fundamentally challenged prisons as an institution. New questions gained importance: If all forms of imprisonment constituted an unjust use of state power then why should only one group receive privileged treatment? Were not all prisoners "political" in some way? Those who previously fought specifically for "political prisoners" now had to explain why they fought only for the rights of some inmates and not for the rights of all of them (HERRMANN, 2018). Second, the increasing scrutiny of politically motivated violent crimes, commonly discussed under the rubric of "terrorism", called into question the previously compelling image of the "political prisoner" as an embodiment of the abuse of state power. If certain persons posed a (real or ostensible) threat to the public, it was argued, why should they be treated differently from other criminals? In order to avoid questions on definitions, Amnesty International and the ICRC shifted their attention from creating a special status for "political prisoners" to regulating more specific issues such as the prevention of torture and cruel treatment and the abolition of the death penalty.

CONCLUSION

The questions I have discussed in this paper did not concern whether or how many political prisoners existed in Spain during the Franco dictatorship—other historians have done important work in this area and recovered many of the long-silenced voices of former prisoners. Rather, my analysis has focused on Spain's "political prisoners" as a politically charged conceptual problem of the times that was disputed, discussed, and challenged across national borders. By adopting such an analytical focus, we can see that for a certain period of time this problem enabled a debate over the legitimate use of state power.

The fact that the category of "political prisoners" generally disappeared as a legal category in Western European penal systems had two important effects. The first effect was that the category itself became a strong political symbol that allowed for a critique of incarceration practices. Thus during the 1950s and 1960s various actors both within and outside Spain leveraged the problem of "political prisoners" in order to question the Franco government's use of power. The figure of the "political prisoner" was so powerful because, first, it combined a twofold criti-

que—one focusing on government actions and the other on specific imprisoned persons—and, second, because it was of international interest. Members of the Spanish opposition in exile and inside the country sought the attention of or even cooperated with international organizations in order to improve the situation of their imprisoned friends, colleagues, and relatives, and to strengthen their critique of Franco.

The second effect was that anyone wanting to assist or get in touch with certain imprisoned dissidents without confronting the Spanish government had to invent strategies in order to be able to tackle a problem that could not be named. Thus the ICRC's "practical" approach avoided any openly political debates about its subject of interest and in fact any definition of who or what a "political prisoner" was. Nevertheless, although this approach mainly sought to act directly towards the goal of reducing certain prisoners' suffering without criticising the government, it also limited the organization's actions in several ways. As the Spanish case shows, the ICRC remained highly dependent on its delegate's ability (and willingness) to persuade the Spanish government and on that government's cooperation.

Various attempts to (re-)introduce a "political prisoner" category at both the national and international levels failed in the 1970s. With regard to Spain, once the transition to democracy was under way, the recognition of the "political prisoner" as a category no longer seemed necessary or even conceivable. Regulating the status of "political prisoners" in a democratic state founded on the rule of law proved to be unfeasible. On an international level, it was not possible to reach an agreement on a positive definition of the "political prisoner"; meanwhile the negative definition that had been so prominent in the past—defining "political prisoners" in contrast to "common prisoners"—was seen as increasingly problematic. Instead, the focus shifted to introducing better legal protections against human rights abuses in prisons. The exploitation of the term "political prisoners" as a form of denunciation and critique, however, remains forceful even today.

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