

# The Knife that Still Divides: The Archive of Salamanca and the Heritage of Spain's Civil War in the 21<sup>st</sup> century

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## Abstract

From 1936 to 1939 a civil war ravaged Spain, resulting in the establishment of the dictatorship of General Francisco Franco and the beginning of decades of a totalitarian regime and the suspension of democracy in the country. As with any armed conflict, art and cultural heritage were victimized: even the deadly toll on human lives was considerable, the conflict affected the preservation of cultural heritage.

One of the most important attacks to cultural heritage during the war was the appropriation of the archives from the Generalitat (the government of Catalonia), seized by Franco's troops, among many other documents of people and institutions not akin to his regime. The archives created in the town of Salamanca stored an estimate of two hundred tons of confiscated documents with an important historical value; however, even though attempts have been made for their return to Catalonia (notably, through the passing of a law by the Spanish government in 2005), not much has been transferred to its legitimate owners.

The article presents the case of the archives of Salamanca and discusses how the impact of a 73 year old conflict is still being politically and legally felt in the relationship between Catalonia and Spain. Particularly, the theoretical framework used is Richard Quinney's conflict theory, which assumes that the organized state does not represent common interests, but rather the interests of those with sufficient power to control its operations, resulting in the powerful being legally freer to pursue their self-interests, than those less powerful.

The article concludes, based on both legal and political grounds, that Quinney's theoretical framework is a perfect tool for further research on the dynamics and conflicts of interest in both the relationship between the affected region and the country when it regards to the documentation seized during Spain's civil war, and how these conflicting interests are still active nowadays, decades after the conflict finished.

**Keywords:** Democracy; Art; Cultural heritage; Archives; Historical value; Documentation

## Introduction

The Spanish Civil war ravaged the country from 1936 to 1939, and divided regions, cities, neighborhoods and families. As with any armed conflict, art has also been victimized in a much broader scope: wars between nation-states or violent hostilities between social groups not only provoke a deadly toll on human lives, but can also affect the propagation and preservation of a culture. Artworks are especially vulnerable, as artillery, bombings and other forms of weaponry are constantly being perfected. It may be that the destruction is part of collateral damage, or it may be that the cultural heritage of a particular zone has been purposefully targeted for destruction. Another outcome of wars is the seizure of art and other culturally valuable items as 'booty'. The symbols of an ill-gotten booty are various: 'spoils of war' provide tangible evidence of victory; they can engender support for a government or an army among the populace; economic profits finance

parties and/or enrich individuals involved in the fighting; and it brings denigration and humiliation to the defeated culture.<sup>1</sup>

The main goal of the present paper is to present the case of study, seizure of a huge amount of documents, in a macro perspective, analyzing the ongoing conflict between regions in a same country, and how the shockwaves of a recent conflict are yet being felt after more than seven decades. This particular case is well unknown outside Spain, and even within the borders of the country there is not much where to gather information on the history of the archive. In this sense, The Dignity Commission<sup>2</sup> work is invaluable as a secondary source and remains the most important piece about the archive.

The layout follows a chronological order: the first section addresses the genesis of the case of study; following this section, it jumps to our times and explains the ongoing situation of the archive; a legal description of the case, which recently came to an end, ensues; and finally, Quinney's theoretical framework is analyzed in regards of the policies and repercussions at play, questioning why it would be possible to interpret that the Spanish government could have

<sup>1</sup> Thomas Bazley, Crimes of the art world (Praeger 2010) 83-84.

<sup>2</sup> An entity created as a platform for the study and to oversee the safe return of the seized documents to the geographical area of Catalonia.

transformed what is a booty of war into a legitimate historical archive with total disregard for the victims of the civil war, both deceased and survivors [1].

## The Genesis of the Archive

On 26 April 1938, Ramón Serrano Súñer,<sup>3</sup> signed the decree establishing the National Department for the Recovery of Documents (also known as DERD). This was the start for the ongoing confiscation of documents from any particular institution or individual whose political views would oppose the established regime. These institutions would include mostly Republican organizations, parties, trade unions and many other types of association. The goal was to achieve documents en masse in order to provide Franco's regime with information on the activities of its enemies. The processing center for all confiscated materials was set up in the city of Salamanca, the capital of the province of Salamanca, located in the autonomous community of Castile and León according to contemporary geopolitical organization of the country [2]. Salamanca was a desired location provided the archives were set up at war, and the city was the most important and safest. Once there, aficionado archivists extracted every useful bit of information that would provide the Francoists with details about the political and social activities of thousands of citizens. Police and military courts, among other institutional organisms, received the information in order to be able to carry out their infamous repressive operations.<sup>4</sup>

Even though the first batch of documentation came from northern Spain. The main target, however, would be Catalonia, for the following reasons: it had a Government and Parliament of its own; Barcelona, its capital city, was seat to both the Spanish Republican and Basque governments. Hence, two days after the occupation of Barcelona (on the 28<sup>th</sup> of January, 1939) six search teams seized sacks of documents, to an extent that required storage in no less than fourteen premises, occupied for the purpose. Until the 7<sup>th</sup> of June, 1939, approximately two thousand searches and confiscations were carried out. February would result into the most prolific month, even though most of the searches were carried out in March. The most valuable targets were newspapers, magazines, bookshops and printing presses, when it comes to private institutions. Public institutions would include both the Catalan government, and the Republican and Basque governments. Following the order of relevance, official buildings and the headquarters of the major parties and unions came next [3]. Finally, the personnel assigned to the task searched the homes of both political (councilors, members of the Parliament of Catalonia as well as the President of the Catalan Parliament himself) and union leaders, who were automatically suspected of concealing important documents (the seizure included private correspondence, correspondence between intellectuals or politicians or complete libraries).<sup>5</sup>

The processing of the documentation that took place in Catalonia would result in failure: a fact that forced the archivists to select which were the most significant documents that had a higher probability to supply them with the information to attack these enemy institutions and individuals [4]. An extra duty of the enemy was to confiscate books and journals that could be considered against the spirit of Franco's National Movement. The task would fall upon the Falangists' Department of Press and Publicity, an institution in charge of 'purging' public libraries, cultural institutions, publishers' offices and bookshops of noxious influences. In this respect, in international crimes it is often found that the official apparatus uses terms to justify these actions, like 'transfer' or 'purification'.<sup>6</sup>

It is estimated that the occupying force seized a total of one hundred and forty tons of documents were to be transported and over two hundred tons of documents were confiscated in Catalonia: they would depart to Salamanca between 21 June and 5 July 1939. As mentioned above, the huge amount of documentation would impede the proper functioning of the archive in Salamanca. Reorganizing the documents would prove to be a daunting task, provided there was not a classification process as such: the goal was to include only documents containing references to suspects' ideological leanings. Investigators, once the information was obtained, opened an information card with the name of the person attached to the particular document that was considered evidence of the illegal activities of the subject. As Andreu points out, 'The classification process was carried out to create a police record office and no professional archivist criteria were respected'. The processing operation is known to have lasted until 1958, resulting in the opening of nonetheless than three million personal cards. The next step was to compile political reports that were sent to both military courts, special 'political responsibility' courts and the courts for the purging of civil servants.<sup>7</sup> And even though these documents were the base for uncountable acts of politicized justice, estimates about the reminder of unprocessed data indicate the astounding amount of eight hundred tons of unclassified sacks.<sup>8</sup>

## The Many Shortcomings of the Archive

The institution of the previous section evolved in contemporary times into the General Civil War Archive of Salamanca. The chaotic distribution of the archive transitioned from war times into peace times. In 1940, authorities decided to move DERD to a site nearer to Madrid. In that sense, El Escorial was considered as the perfect location. The project, however, was abandoned after considering as an important factor the entire weight of the contents (circa one thousand tons), a factor that militated against the transfer [5]. Shockingly for an archival facility, not all the confiscated materials have been conserved (countless documents have been destroyed) and many others have been forwarded to other institutions: in fact, this factor invalidates the

<sup>3</sup> Ramón Serrano Súñer (1901-2003) was the initial ministry of the Interior in Franco's regime.

<sup>4</sup> La Comissió de la Dignitat, Volem els papers: La lluita de la Comissió de la Dignitat per la repatriació dels 'Papers de Salamanca' (Pàgès editors 2004).

<sup>5</sup> Among the many documents stored in this kind of archive, surprisingly an entire set of Catalan literature ranging from the end of the nineteenth century to 1939 was found. A more than possible hypothesis implies the fact that they are books written in Catalan, a language persecuted by the State at the time, and a micro-indicator of dangerousness of an individual.

<sup>6</sup> Itai Sneh, 'History of Genocide' in Mangai Natarajan (ed), *International Crime and Justice* (Cambridge University Press 2011) 271-8.

<sup>7</sup> The former, created to exert financial repression on individuals; the latter, created in order to rid the administration of those of its employees who had not shown 'leanings' towards the new regime.

<sup>8</sup> HR Dammer and J S Albanese, *Comparative Criminal Justice Systems* (4th edn, Wadsworth 2011) 9-10.

particular claim of those against the return of the documents to their rightful owners, who argue it would damage the principle of unity of the archive. Unfortunately for many owners of the seized documentation claiming its return, the estimates indicate that only ten percent remains of the originals. As indicated in the previous paragraph, the rest was either sent to other State archives or destroyed. As Andreu stated it, 'Twelve railway wagons full of documents left Barcelona in 1939. Today, what remains would barely fill one, however'.<sup>9</sup>

A principle in archival protocols was followed, albeit incompletely: in other words, even though geographical points guide the organization of the archive (based on the cities that became confiscation points), documents are also found among other cities. Therefore, this classification format contradicts the guiding principle of organizing the huge amount of documents according to the place where they had originally been confiscated. Two of the possible cause that Andreu indicates are either the fact that under qualified police agents and other agents of the regime composed the careless staff, or the above mentioned deficient filing system in the original confiscating points, that extended to the archive.<sup>10</sup>

## The Legal Aspects of the Case

One of the historical problems when looking the claims of repatriation of objects confiscated during armed conflicts is who is available to make them.<sup>11</sup> In this particular case, (parallel to other conflicts that erupted in the twentieth century) when the confiscations took place, many of the victims had already fled and those who had not were either in prison or were to act as passive on-lookers as their properties were seized. According to DERD regulations, its agents did not need to identify themselves or give any reason for the confiscations. Also, the State gave out no official information about the existence of the archive. It all provided for a void of information that had a huge impact in years to come for owners or heirs who had suffered confiscations.<sup>12</sup>

However, as Andreu points out, as the contents of the records office are increasingly made known, a growing number of descendants of

those who suffered confiscations are discovering that their documents are still kept in Salamanca [6]. In the case of political institutions such as the Government or Parliament of Catalonia no record was kept of the destinations of the documents confiscated from them. Even today, no pre-1939 Catalan Parliament document is held by Catalan institutions except for a very small number that were fortunately saved by Parliamentary officials<sup>13</sup>.

On 2005, however, looked like the tide turned: on the 17th of November, 2005, the Spanish Government took the decision of returning the Catalan papers to the Catalan government through the enactment of Spanish law 21/2005, named the law of restitution of the seized documents.<sup>14</sup> The law established two goals: on one hand, the restitution of the documents to their rightful owners or, subsequently, to their heirs; on the other, the creation of a center for the documentation of the events that took place during the civil war. Hence, a new archive was created in Salamanca two years later (owned and operated by the Spanish Government), with the purpose of documenting these historical memories coming from the Civil War.

However, immediately after the passing of the law (in February, 2006), the conservative party, Partido Popular (Popular Party), filed a motion of unconstitutionality, claiming that when voting for it, the ministers had not the required documentation to form their vote. The party also considered that returning the papers would be an immediate attack to the Spanish Constitution, as it establishes a clause against the spoliation of cultural heritage.<sup>15</sup> The autonomous community of Castile and León also challenged the constitutionality of the law, provided it denied the archive of a purpose. Because the Constitutional Court did not suspend the law, in that same year only part of the Catalan papers returned.<sup>16</sup> The Spanish Government informed the Catalan counterpart that the full process would have taken place in two years (provided that, in the meantime, the documents were still being catalogued). Up to this day, the agreement has not yet fulfilled, and there are 660 boxes containing documents pending to be returned: 225 have been properly studied while 435 are waiting to be properly examined.<sup>17</sup>

<sup>9</sup> La Comissió de la Dignitat (n 4).

<sup>10</sup> ibid.

<sup>11</sup> P Harclerode and B Pittaway, *The Lost Masters: World War II and the Looting of Europe's Treasurehouses* (Welcome Rain Publishers 1999) 332-3.

<sup>12</sup> La Comissió de la Dignitat (n 4).

<sup>13</sup> ibid.

<sup>14</sup> Ley 21/2005, de 17 de noviembre, de restitución a la Generalidad de Cataluña de los documentos incautados con motivo de la Guerra Civil custodiados en el Archivo General de la Guerra Civil Española y de creación del Centro Documental de la Memoria Histórica.

<sup>15</sup> Recurso de inconstitucionalidad 1278-2006. Interpuesto por más de cincuenta Senadores del Grupo Parlamentario Popular del Senado en relación con diversos preceptos de la Ley 21/2005, de restitución a la Generalidad de Cataluña de los documentos incautados con motivo de la guerra civil custodiados en el Archivo General de la Guerra Civil Española y de creación del Centro Documental de la Memoria Histórica (Appeal of Unconstitutionality filed by more than fifty Senators of the Popular Parliamentary Group of the Senate in relation with diverse precepts of the Law 21/2005, of restitution to the Generality of Catalonia of the documents confiscated with reason of the civil war custodiados in the General Archive of the Spanish Civil War and of creation of the Documentary Centre of the Historical Memory).

<sup>16</sup> Recurso de inconstitucionalidad 9007-2005. Interpuesto por la Junta de Castilla y León en relación con diversos preceptos de la Ley 21/2005, de 17 de noviembre, de restitución a la Generalitat de Cataluña de los documentos incautados con motivo de la guerra civil custodiados en el Archivo General de la Guerra Civil Española y de creación del Centro Documental de la Memoria Histórica (Appeal of unconstitutionality filed by the Government of Castile and Leon in relation with diverse precepts of the Law 21/2005, of 17 November, of restitution to the Generalitat of Catalonia of the documents confiscated with reason of the civil war guarded in the General Archive of the Spanish Civil War and of creation of the Documentary Centre of the Historical Memory).

<sup>17</sup> La Comissió de la Dignitat (n 4).

Nevertheless, there have been exceptions to the rule of opposing the return of the documents, though they are rarely found amongst leading political parties. Andreu mentions two very significant cases. On one case, the protests of city councilwoman Teresa Carvajal. In a letter that appeared in *La Vanguardia* (a Catalan based newspaper read nationwide) in October 2002, the politician lodged a complaint about the official boycott faced by a Catalan commission's visiting Salamanca on 14 October, 2002. In her letter, the councilor asked: 'How is it possible that local media failed to announce the dignified and democratic visit of a group of Catalans whose intention it was to inform the residents of Salamanca about why they want to recover part of their identity?'.<sup>18</sup> The previous letter would not be the only one to appear in the same newspaper: on the 26th of October, 2002, José A. Frías, the director of the Library Science Department of the University of Salamanca, also showed his sympathy towards the return of the documents.<sup>19</sup> Both cases are, as stated, particularly relevant, provided both have as a source either a political authority or a scholar in the topic of archival conservation.

Again, it is important to remark that claiming the repatriation of objects confiscated during armed conflicts is a complicated legal issue [7]. The difficulty in this particular case was to determine which documents each private individual, organization or institution can claim. The issue ranges from a collective claim (that would be unacceptable before the law) to a detailed petition, yet its creation would be practically impossible and, moreover, there is always the risk of incompleteness.<sup>20</sup>

2013 will be a decisive year in the return of the documents, provided on the 14<sup>th</sup> of March the Constitutional Court decided the law was not unconstitutional and therefore, the content of the archives had to be completely transferred to Catalonia.<sup>21</sup> Less than two months before, the motion of unconstitutionality of Castile and León was also dismissed.<sup>22</sup> The main point of the court to do so was, above all, that the goal of the law is to give back the documents to their legitimate owners, and therefore, it is a top priority to protect the interest of them or their heirs to get back the documents that were illegally seized from them. Besides this main point, other arguments establish that the social function of an archive does not depend of its location but rather on the use of the information stored. Because every document that leaves the archive will have an authenticated and digitalized copy, the Constitutional Court rendered the argument of the autonomous community (claiming the return would render the archive purposeless) ineffective.

## Quinney's Theoretical Framework Used to Analyze the Present Case

The core of conflict criminology implies that conflicts of interests are inherent to human societies: humans, therefore, will compete over such things as status, money and power. Moreover, when something

benefits someone, it is considered right, just and correct. Applied to a state, conflict theorists argue that it does not represent common interests of its citizens: on the contrary, people in power will see their interests enacted.<sup>23</sup>

Quinney, writing within the above mentioned theoretical framework, was worried like other authors about the social construction of crimes and how the most powerful social players used this feature in order to strengthen their position by the shaping of public policies.<sup>24</sup> Among some of Quinney's premises, he considered how the state is organized to serve the interests of the dominant economic class (which of course is firmly rooted in capitalism). In fact, the following statement encapsulates not only Quinney's theory but also the main essence of conflict criminology: 'The reality of crime that is constructed for all of us by those in a position of power is the reality we tend to accept as our own. By doing so, we grant those in power the authority to carry out the actions that best promote their interests. This is the politics of reality. The social reality of crime in a politically organized society is constructed as a political act'.<sup>25</sup> Hence, Quinney considers that crimes can also be committed by states in what he labels as 'crimes of domination', which include, among others, crimes of control (committed by police), crimes committed by a government or crimes of economic domination (like white collar or organized corporate crimes).<sup>26</sup>

## Discussion of the Case

The entire case, involving broadly a dispute on cultural heritage, revolves around the tense relationship between both the Spanish and Catalan governments that has been antagonistic for an endless list of issues. Hence, Quinney's framework explains better than any other theoretical model the unlawful appropriation by the Spanish state of cultural property seized during an armed conflict from their respective owners. The pivotal point to start with in this discussion is to be aware of which are the colliding interests in the particular dispute: opposite sides dispute the unity of an archive versus the devolution of the documents to the rightful owners or heirs, which logically implies its dispersion.

The conflict of interests can also be seen in the labeling and the perceptions of both opposing sides to the archive: what today is presented as the Archive of the Civil War is also perceived by others, according to Andreu, as a 'glorified police records office'.<sup>27</sup> It has been mentioned in previous sections how the distribution of documents, with an apparent lack of order, proves that the content of the archive has been classified according to the repressive aim towards which a particular organization worked (police, courts, etc). This particular feeling collides with proper scientific criteria regarding cultural heritage policies, or more particularly, archive science.

<sup>18</sup> Teresa Carvajal, 'Salamanca de nuevo' (Salamanca again) *La Vanguardia* (Barcelona, 20 October 2002) 20

<sup>19</sup> José A. Frías, 'Los archivos de Salamanca' (The archives of Salamanca) *La Vanguardia* (Barcelona, 26 October 2002) 32

<sup>20</sup> Harclerode and Pittaway (n 11) 332-3.

<sup>21</sup> Sentencia del Tribunal Constitucional (verdict of the Constitutional Court) 67/2013, de 14 de marzo de 2013.

<sup>22</sup> Sentencia del Tribunal Constitucional (verdict of the Constitutional Court) 20/2013, de 31 de enero de 2013.

<sup>23</sup> T J Bernard, J B Snipes and A L Gerould, *Vold's Theoretical Criminology* (6th edn, Oxford University Press 2010) 246-7.

<sup>24</sup> Richard Quinney, *The Social Reality of Crime* (Little Brown 1970) 17.

<sup>25</sup> Richard Quinney, *Critique of the Legal Order* (Little Brown 1974) 16.

<sup>26</sup> Richard Quinney, *Class, State and Crime* (Little Brown 1977).

<sup>27</sup> La Comissió de la Dignitat (n 4).

Another element that boosts the conflict of interests is the fact that Spanish politicians of all political tendencies (as seen below) have seen this controversy over the archive as a vote-winner in order to gain political leverage. As the reader can see in the discussion of the legal aspects of the case, it has not been a widespread practice in Spain to support Catalonia in its attempts to recover the documents withheld at Salamanca. The appeals to the judicial case now terminated (yet pending execution) present the legal arguments. Yet they omit the entirety of political arguments, which appear mostly in the media outlets.

On the issue of the archive, the political disagreement quickly developed into a full-scale dispute at State level. In 1978, Ricardo de la Cierva<sup>28</sup> stated that returning the Catalan archives would break up the history of Spain and a short step to breaking up Spain itself. In 1995, President Aznar<sup>29</sup> considered the very Spanish nation would be placed in jeopardy. That same year Torrente Ballester<sup>30</sup> stated to the people of Salamanca how he considered them the owners of the documentation provided the right of conquest seized it. Not only the conservative party (as stated before, seen as the democratic continuing tradition to Franco's regime) has been blocking the return of the contents of the archive, but also the actions of the main leftist party., despite the fact that it had suffered the confiscation of its documents after Franco's military coup in 1936<sup>31</sup>.

Traditional political attitudes and taboos are the best indicators of this clash of interests that Quinney was so eager to analyze. Even if the whole case has not been dealt as a criminal matter, it cannot be avoided that justice for those citizens who were persecuted by the Francoist regime has not been served, and it might even lead to question the democratic credentials of the Spanish State.

## Conclusions

The Civil War in Spain was a huge armed conflict that is still being felt in many layers of the country's society, in the twentieth century. In fact, it is the result and the continuity of this polarity still existing in several regions of the country.

One of the relationships where this polarity is most acute is between the central government and Catalonia, one of the historic regions of the country, as recognized by the Constitution, passed after Franco's death in 1978. Specially, the hardships endured by Catalonia during the Civil War (suppression of the Catalan, persecution of the Catalan

government, among others) are still out there. One good example of these hardships is all the documentation seized during the conflict from the Catalan government, and stored in Salamanca. The archives from Salamanca were transformed by democracy from an instrument of repression to a cultural institution housing all documentation pertaining to that dark period. However, the Catalan claim of returning the papers back home became, once in the democratic period, a pulse between Spain and Catalonia, and more precisely, between the role Catalonia has in Spain.

Even though attempts have been made to return the archives, not everything has been transferred to its legitimate owners. This situation, which happened five years ago, stirred yet even more troubled waters, and a piece of cultural heritage becomes a pawn in a bigger play, where macro identities are being perpetually challenged and contested, and the past is being fought between two opposite ends: either letting it rest or acknowledge fully the extent of the horror (the study of mass burial sites is another of the issues, for example, that make this dialogue so important to the whole nation).

How this case will end is yet to be seen. Until today, the State has still not returned all of the confiscated documents to those who demand them. At this point, the return of the illegally seized documents is an ongoing process with no end or deadline in sight. But the wound is still bleeding and the two brothers are yet opposed in a twenty-first century battle that still echoes of the decade of the thirties of the last one.

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<sup>28</sup> Ricardo de la Cierva (1926 - ) was Adolfo Suárez's (the first president in democratic Spain) Culture Minister.

<sup>29</sup> José María Aznar (1956 - ) was Spain's president from 1996 to 2004. He was the leader of the demo-christian conservative party, the Partido Popular.

<sup>30</sup> Gonzalo Torrente-Ballester (1910-1999) was a Spanish novelist, critic, journalist and playwright.

<sup>31</sup> La Comissió de la Dignitat (n 4).