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## FRANCO'S SPAIN, QUEER NATION?

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Gema Pérez-Sánchez\*

*This Article discusses how, through its juridical apparatus, the Spanish dictatorship of Francisco Franco sought to define and to contain homosexuality, followed by examples of how underground queer activism contested homophobic laws. The Article concludes by analyzing a literary work to illustrate the social impact of Francoism's homophobic law against homosexuality.*

### INTRODUCTION

In the introduction to *¿Entiendes?: Queer Readings, Hispanic Writings*,<sup>1</sup> Paul Julian Smith and Emilie L. Bergmann regret the lack of historical studies about Spanish-speaking lesbians, gays, bisexuals, and transgendered people “comparable to those which exist for Britain and the United States.”<sup>2</sup> Although they attempt minimally to fill this void by including at the end of their introduction “brief accounts of some aspects of lesbian and gay history in the Spanish-speaking world,”<sup>3</sup> the picture of Spain’s queer activism and cultural contributions remains incomplete.<sup>4</sup>

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1. Paul Julian Smith & Emilie L. Bergmann, *Introduction to ¿ENTIENDES?: QUEER READINGS, HISPANIC WRITINGS* 1, 1–14 (Emilie L. Bergmann & Paul Julian Smith eds., 1995).

2. *Id.* at 1.

3. *Id.*

4. However, the past few years have witnessed an increasing academic interest (especially in the fields of literary and cultural studies) in researching the lives and cultures

This Article, which focuses on the last years of Francisco Franco's fascist dictatorship and the early years of the young Spanish democracy (roughly from the late 1960s to the early 1980s), responds to Bergmann and Smith's observation. Specifically, it discusses how, through its juridical apparatus, Francoism sought to define and to contain what it considered dangerous social behavior, especially homosexuality. I am concerned, in particular, with tracing not only how the state apparatus exerted hegemonic control over definitions of gender and sexuality, but especially how non-hegemonic sexual minorities subverted that control. In other words, I want to privilege resistance to the state apparatus' seemingly absolute power from the perspective of grassroots, underground gay activism. Following Judith Butler's theories on gender performativity,<sup>5</sup> my analysis also assumes that an understanding of the materialization of gendered bodies cannot be separated from a study of the processes by which heterosexuality becomes legitimized.<sup>6</sup>

In this Article, I pose and attempt to answer the following questions: How did the Francoist state codify the homosexual? What mechanisms did it enforce to secure a strictly (hetero)sexist matrix? Given that the Franco regime was a particularly repressive state and that gays, lesbians, bisexuals, and transgendered people represent some of the most forgotten minorities in Spain, how and from what perspective can one recount the story of these minorities so as to accord them a modicum of agency? How and where can one find the cracks and fissures in the apparently hyper-normative state apparatus? And, finally, how might literature help

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of lesbians, gays, bisexuals, and transgendered peoples from Spain and Latin America. This interest is demonstrated by the publication of several groundbreaking works in the field of Spanish and Latin American Queer Studies, such as (in chronological order) DAVID W. FOSTER, *GAY AND LESBIAN THEMES IN LATIN AMERICAN WRITING* (1991); *LATIN AMERICAN WRITERS ON GAY AND LESBIAN THEMES: A BIO-CRITICAL SOURCEBOOK* (David William Foster ed., 1994); ¿ENTIENDES?: *QUEER READINGS, HISPANIC WRITINGS* (Emilie L. Bergmann & Paul Julian Smith eds., 1995); *BODIES AND BIASES: SEXUALITIES IN HISPANIC CULTURES AND LITERATURE* (David W. Foster & Roberto Reis eds., 1996); DAVID W. FOSTER, *SEXUAL TEXTUALITIES: ESSAYS ON QUEER/ING LATIN AMERICAN WRITING; HISPANISMS AND HOMOSEXUALITIES* (Sylvia Molloy & Robert Irwin eds., 1998); *SPANISH WRITERS ON GAY AND LESBIAN THEMES: A BIO-CRITICAL SOURCEBOOK* (David W. Foster ed., 1999). In spite of the crucial contributions of these works to the field of Spanish and Latin American queer studies, the field still lacks a monographic, book-length study specifically on Spain that would respond to Smith and Bergmann's request.

5. See generally JUDITH BUTLER, *BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF "SEX"* (1993) [hereinafter BUTLER, *BODIES THAT MATTER*]; JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990).

6. See generally BUTLER, *BODIES THAT MATTER*, *supra* note 5.

to assess the cultural and psychological legacy of these struggles over insubordinate sexual practices?

In order to respond productively to these questions, I disengage my analysis from an over-simplified view of state power as exclusively producing repressive effects. I concentrate, instead, on the dialectical tensions between the law (both a repressive and ideological state apparatus) and culture (an ideological state apparatus). Specifically, I focus on the tensions between the legal persecution and criminalization of homosexual practices during the Franco regime—a regime whose homophobic laws were operational well into the new democracy—and grassroots queer activism.<sup>7</sup>

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7. My concern with how power and ideology operate in a dictatorial regime and how they can be contested is informed by Althusserian and Gramscian notions of the modern state and its power operations. For Althusser, the state “has no meaning except as a function of *State power*,” by which he means “the possession, i.e. the seizure and conservation of State power.” LOUIS ALTHUSSER, *LENIN AND PHILOSOPHY AND OTHER ESSAYS* 134 (Ben Brewster trans., 1971). He further distinguishes between state power and the state apparatus. The latter is often unaffected by struggles to seize or maintain state power. *See id.* at 140. This particular characteristic of the state apparatus is exemplified in Spain’s transition into democracy (1975–1982), during which a democratic parliamentary structure coexisted with the old, full-fledged Francoist repressive and ideological state apparatuses. In fact, during the first years of democracy

state power remained completely in the hands of persons intimately involved with Francoism. Its legacy was liquidated not by outsiders but by some of the very persons entrusted with its preservation.

.... [T]he absence of a clean break permitted the much longer coexistence of democratic and undemocratic forms of government in Spain . . . . The new constitution did not take effect until December 1978, three years after Franco’s death. Local officials appointed or elected under Franco governed Spain’s municipalities until March 1979. The army was never systematically purged, continued occasionally to exercise judicial power over civilian critics even during the peak periods of democratic euphoria, and almost brought the democratic experiment to an abrupt end with the coup attempt of February 23, 1981. . . . Indeed, the only part of the Francoist state structure that was dismantled relatively quickly was the syndical organization, precisely the most moribund of the Francoist institutions.

Edward Malefakis, *Spain and its Francoist Heritage*, in *FROM DICTATORSHIP TO DEMOCRACY: COPING WITH THE LEGACIES OF AUTHORITARIANISM AND TOTALITARIANISM* 215, 216 (John H. Herz ed., 1982).

One of the Francoist arms of the repressive state apparatus that was effective well into the democracy was, significantly, the police: “The police were still capable of savage repression: At a March 1976 demonstration in Vitoria they killed five workers, more than in any single labor conflict during the Franco years.” *Id.* at 225.

To this theory of the state, Althusser adds the distinction between the repressive state apparatus and the ideological state apparatuses. *See* ALTHUSSER, *supra*, at 142. The former includes institutions such as the government, the administration, the army, the police, the judicial and penal systems. The latter includes educational, religious, and familial

The key to answering the two main questions of why Francoism was so concerned with containing and codifying homosexuality and what sort of threat homosexuality really posed to the regime lies in the fictional self-aggrandizing of Francoism. Although the Franco dictatorship was indeed normative, repressive, and violent toward its own citizens, and even though it strenuously worked to represent itself as a legitimate, widely endorsed, economically stable regime, Franco's Spain in fact occupied a marginalized

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institutions; political parties; and communications and cultural systems and the like. The repressive state apparatus operates mostly, but not exclusively, by direct, explicit, at times even physically violent control over the population, while the ideological state apparatuses function mostly, but not exclusively, by more abstract, psychic coercion. *See id.* at 142-43. The ideological state apparatuses

largely secure the reproduction specifically of the relations of production, behind a "shield" provided by the repressive State apparatus. It is here that the role of the ruling ideology is heavily concentrated, the ideology of the ruling class, which holds State power. It is the intermediation of the ruling ideology that ensures a (sometimes teeth-gritting) "harmony" between the repressive State apparatus and the Ideological State Apparatuses, and between the different State Ideological Apparatuses.

*Id.* at 142. Closely following the work of Antonio Gramsci, Althusser systematizes the Italian thinker's theory of the state by articulating more precisely his terminology. The Gramscian concepts of "political" and "civil society" correspond respectively to Althusser's "repressive State apparatus" and "ideological State apparatuses." Gramsci defines civil society as "the ensemble of organisms commonly called 'private,' " and political society as "the State." ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 12 (Quintin Hoare & Geoffrey Nowell Smith eds. & trans., 1995). For Gramsci, "[t]hese two levels correspond on the one hand to the function of 'hegemony' which the dominant group exercises throughout society and on the other hand to that of 'direct domination' or command exercised through the state and 'juridical' government." *Id.*

Unfortunately, the Gramscian/Althusserian theory of power is not devoid of problems. Although it provides a productive model for understanding the logic of a dictatorial regime and its ideological program, Althusser's theory of the state conceives of power as monolithic; even though the ideological state Apparatuses are diverse, they have a single, if shared, role: "the reproduction of the relations of production." ALTHUSSER, *supra*, at 142. In Althusser's vision, power is largely univocal; it emerges from a single source (the state apparatus) and it shares a common goal (maintaining state power). But, as Foucault has extensively argued, relations of power "are not univocal; they define innumerable points of confrontation, focuses of instability, each of which has its own risks of conflict, of struggles, and of an at least temporary inversion of the power relations." MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 27 (Alan Sheridan trans., 1979).

We might find, nevertheless, a productive locus for agency in one of Althusser's significant parenthetical commentaries. Althusser employs a promising metaphor when he assigns to "the ruling ideology" an intermediary role between the repressive state apparatus and the ideological state apparatuses; the relationship attained between these two he calls "a (sometimes teeth-gritting) 'harmony.'" ALTHUSSER, *supra*, at 142. We might focus on this strained "harmony" as the place where power can be contested. It is within some of the ideological state apparatuses (the Church, education, culture in general) that contradictions arise, where a battle over attaining the power to signify differently from hegemonic semantics emerges.

position in relation to the rest of the Western world for the duration of the dictatorship. This marginalization was due to a combination of political and economic factors. The former are obvious: on the one hand, the Allies, the victors of World War II, would have been logically reluctant to recognize the only fascist dictatorship that survived in Europe; on the other hand, Franco actively imposed political self-absorption and separation from the rest of Western Europe. The economic factors that contributed to Spain's marginalization are more complex, and they merit a longer explanation, which I undertake in Part I below.<sup>8</sup>

In summary, I argue that toward the end of the dictatorship homosexuality became a complex node of definitional power relations: a locus in which the repressive state apparatus (the law, the police) and the ideological state apparatuses (culture) sometimes gritted teeth over establishing a "harmonious" understanding of homosexual identity. To this end, Part I of this Article describes the historical context in which the laws regulating homosexual practices were implemented, and it discusses the economic factors that led to what I argue must have been Francoism's sense of marginalization from the rest of the Western world—a sense directly related to a possible fear of the nation being symbolically feminized. Part II maps the main juridical sites of struggle for Spanish lesbian, gay, bisexual, and transgendered peoples during the difficult transitional political period that preceded the stabilization of the contemporary Spanish democracy. Part III illustrates the social and cultural legacy of queer activism against Francoist laws on homosexuality through an analysis of Eduardo Mendicutti's novel *Una mala noche la tiene cualquiera* [*Anyone Can Have A Bad Night*]<sup>9</sup> and the young, urban culture, post-Franco context of supposed historical amnesia in which it was produced. Finally, the conclusion establishes a relation between my research and the field of LatCrit.

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8. See discussion *infra* Part I.

9. EDUARDO MENDICUTTI, *UNA MALA NOCHE LA TIENE CUALQUIERA* (1982). All translations of Spanish and Catalanian texts are the author's unless indicated otherwise.

## I. HISTORICAL CONTEXT AND ECONOMIC LANDMARKS OF THE FRANCO REGIME

Following the bloody Spanish Civil War of 1936–1939, *Generalísimo* Francisco Franco, leader (or *Caudillo*, as he called himself) of the winning Nationalist forces that had rebelled against a democratically elected republican government, imposed a strict dictatorship that was to last until his death on November 20, 1975. The nature of the dictatorship was to change significantly throughout its existence, evolving from the iron-clad fascist regime of the 1940s and 1950s to the more open and modernized “*dictablanda*” [soft dictatorship]<sup>10</sup> of the 1960s and early 1970s.<sup>11</sup> Because the political phases of the Francoist regime are intricately tied to its economic development, an overview of the economic landmarks of the dictatorship sheds light on its political development.

Spanish economist José Luis García Delgado proposes a division of the economic development of the dictatorship into three distinct phases.<sup>12</sup> A first phase would run from 1939 until the end of the 1940s; a second would span from the early 1950s to the summer of 1959, when the *plan de estabilización y liberalización* [stabilization and liberalization plan] was implemented; and a third would reach from the 1960s until the end of 1973, “cuando la muerte de Carrero Blanco . . . se combina con los primeros impactos de la crisis económica del último largo decenio” [when the [assassination] of [Prime Minister] Carrero Blanco . . . is combined with the first impact of the previous decade’s economic crisis].<sup>13</sup> These three phases and their respective social implications help illuminate my discussion of Francoism’s preoccupation with criminalizing homosexuality and normativizing gender along binary lines.

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10. See Malefakis, *supra* note 7, at 223.

11. For detailed accounts of the history and background of the Franco regime and the transition into democracy, see generally RAYMOND CARR & JUAN P. AIZPURUA, *SPAIN: DICTATORSHIP TO DEMOCRACY* (1979); JOSÉ R. DÍAZ GIJÓN ET AL., *HISTORIA DE LA ESPAÑA ACTUAL: 1936–1996 AUTORITARISMO Y DEMOCRACIA* (1998); *HISTORIA DE ESPAÑA* (Javier Tusell ed., 1998); STANLEY G. PAYNE, *FASCISM IN SPAIN: 1923–1977* (1999); Malefakis, *supra* note 7, at 215–30.

12. See José Luis García Delgado, *Estancamiento industrial e intervencionismo económico durante el primer franquismo*, in *ESPAÑA BAJO EL FRANQUISMO* [Spain Under Franco] 170, 170–91 (Josep Fontana ed., 1986).

13. *Id.* at 171.

Until the early 1950s, Francoist Spain struggled to reconstruct a devastated country and a crashed economy through the imposition of an autarchic system, i.e. a "self-sufficient, self-capitalizing economy protected from outside competition by tariffs and administrative controls . . . regulated by state intervention."<sup>14</sup> The results of this self-absorption were detrimental at all levels, but they were especially damaging at the economic level. Suffice it to say that this period is popularly known in Spain as *los años del hambre* [the years of hunger]. As economists have argued, the decade of the 1940s represents a dramatic standstill for Spanish industrial and economic development:

El estancamiento posbélico que conoce la economía española en los años cuarenta no tendrá parangón en la historia contemporánea de Europa, donde el período de reconstrucción, a partir de devastaciones y daños mayores causados por la guerra, es mucho más rápido, sobre todo desde 1948, con la puesta en marcha del plan Marshall.<sup>15</sup>

This stagnation created a dramatic gap between Spain and the rest of Europe not only in terms of economics but also in terms of social and cultural behaviors. This gap did not close until the early 1980s.<sup>16</sup> Much of the difference between the quick recovery of the other European post-world war economies and Spain's economy was that Spain "remained firmly excluded from the European Recovery Program (Marshall Aid)"<sup>17</sup> launched by the United States of America. Fascist Spain was therefore ostracized by the Western European democracies, and it remained isolated from the international money market. More than an economic plan, "autarky was a political choice."<sup>18</sup> The only country that came to Spain's aid

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14. CARR & AIZPURUA, *supra* note 11, at 52.

15. *García Delgado, supra* note 12, at 173–74 [Spain's 1940s, post-war, economic stagnation will remain unparalleled in contemporary European history, where the period of reconstruction following the devastation and major damage of the war is much faster, especially after 1948 with the beginning of the Marshall Plan.].

16. For more detailed analyses of the consequences of the autarchy, see CARR & AIZPURUA, *supra* note 11, at 49–78, and *García Delgado, supra* note 12. For other illuminating studies of the development of the Spanish economy from the early years of Francoism to the modern democracy, see generally JOSEPH HARRISON, *THE SPANISH ECONOMY: FROM THE CIVIL WAR TO THE EUROPEAN COMMUNITY* (1993); FRANCISCO MOCHÓN MORCILLO ET AL., *ECONOMÍA ESPAÑOLA 1964–1987: INTRODUCCIÓN AL ANÁLISIS ECONÓMICO* (1988); and UBALDO NIETO DE ALBA, *DE LA DICTADURA AL SOCIALISMO DEMOCRÁTICO: ANÁLISIS SOBRE EL CAMBIO DE MODELO SOCIOECONÓMICO EN ESPAÑA* (1984).

17. HARRISON, *supra* note 16, at 19.

18. CARR & AIZPURUA, *supra* note 11, at 52.



between 1947 and 1949 was Perón's Argentina, but that aid was soon cut when Argentina began to experience economic difficulties of its own.<sup>19</sup>

During the 1950s and due to a severe crisis,<sup>20</sup> the regime gradually abandoned its autarchic model and its interventionist internal economic policies. The following years witnessed a gradual climb to what the *triumfalista* [triumphalist] propaganda of the period would call *el milagro económico* [the economic miracle] of the 1960s.<sup>21</sup> Key among the factors that led to this "economic miracle" was the arrival of financial aid from America. The increase in Cold War tensions between 1951 and 1957 convinced the U.S. Congress to approve a number of loans to the dictatorship; these loans amounted to \$625 million in aid.<sup>22</sup> This aid was crucial to the maintenance of the regime; as it is now widely agreed, "America's generosity, while small by Marshall Aid standards, offered a vital breathing space to the Franco regime which might otherwise have succumbed."<sup>23</sup>

In spite of American aid, the 1950s were still marked by a certain economic instability. It was not until the 1960s that Spain experienced an economic growth matched only by Japan at the time.<sup>24</sup> This growth was due mostly to "three largely exogenous variables: a massive increase in the earnings from foreign tourism, emigrant remittances from over one million Spaniards forced to seek work abroad, and a renewal of foreign investment in the Spanish economy."<sup>25</sup> The social and political implications of this rapid economic growth and the massive exchange of peoples between Spain and the rest of Western Europe were crucial.

Many Spanish agricultural workers who had to seek jobs abroad served as vehicles of communication with the outside world. Emigrants brought news from abroad, including news from oppositional groups in exile.<sup>26</sup> Added to the migration of Spaniards to the rest of Europe, the "boom" in Western European tourism that started in the late 1950s was also a motor for change. As Edward Malefakis has amply documented:

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19. See HARRISON, *supra* note 16, at 19.

20. "[I]nflation was running at 16 percent and Spain's supply of foreign exchange was exhausted." CARR & AIZPURUA, *supra* note 11, at 53.

21. See HARRISON, *supra* note 16, at 23.

22. See *id.* at 20.

23. *Id.*

24. See Malefakis, *supra* note 7, at 217.

25. HARRISON, *supra* note 16, at 23.

26. See Malefakis, *supra* note 7, at 218.

The number of tourists entering the country equaled one-third of the indigenous population by 1963, exceeded one-half of that population by 1966, and surpassed the entire population by 1972, a level at which it remained for most of the rest of the 1970s. . . . [Tourists'] impact on Spanish life . . . was overwhelming. Sexual mores were undoubtedly the first to be affected by their example, but other social attitudes soon followed. Secularism, consumerism, and all other aspects of the "modern" life-styles that were so quickly adopted in Spain during the 1960s derived in part from the tourist invasion.

Nor were the political ramifications unimportant. Because of tourism, Spain was flooded with many kinds of foreign newspapers and periodicals, which provided at least for the educated elite uncensored sources of information long before the Spanish press won its freedom. With so many millions crossing the borders, personal contact between the internal opposition and the exiles in France became easier and more systematic.<sup>27</sup>

Notwithstanding the undoubtedly successful economic development of the period, it is important to emphasize that "an ever increasing portion of the Spanish economy came to be controlled by foreign based firms after 1960."<sup>28</sup> The sense that Spain was largely in the hands of foreign capital and that the country was still treated as a lesser relative must have weighed heavily in the imaginary<sup>29</sup> of the Francoist regime. Furthermore, the economic boom slowed down rapidly after 1971, when "Spanish authorities were presented with disturbing signs of rising inflation and a widening trade gap."<sup>30</sup> To make things worse, Spain was deeply affected by the oil crisis of 1973 to 1974.<sup>31</sup> All of these troubling signs of economic crisis, compounded by increasing civil unrest brutally suppressed by the police,<sup>32</sup> made the decade of the 1970s a highly

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27. *Id.*

28. *Id.* at 219.

29. I use the term "imaginary" in its psychoanalytic sense. See J. LAPLANCHE & J.B. PONTALIS, *THE LANGUAGE OF PSYCHO-ANALYSIS* 210 (Donald Nicholson-Smith trans., 1973).

30. HARRISON, *supra* note 16, at 26.

31. *See id.*

32. *See* Malefakis, *supra* note 7, at 223-25. The civil unrest during the period was demonstrated, for example, by student demonstrations and Basque nationalist terrorism. *See id.*

restless and uncertain period. The much anticipated death of the dictator opened up the country to the long process of transition to democracy, albeit amidst a serious economic crisis.

The precariously balanced period that followed is known as *la transición democrática* [the democratic transition]. It extended from Francisco Franco's death on November 20, 1975 to the ratification via popular referendum of the new Democratic Constitution on November 6, 1978. While the *transición democrática* proper covers only this three year span, the political disintegration of the Franco regime had started much earlier, during the 1960s, when the economic factors described above forced the regime to exercise less brutality and to loosen its censorship. Likewise, actual democratic stability and economic recovery did not come until after the coup attempt of February 23, 1981, and most significantly, with the electoral victory in 1982 of the *Partido Socialista Obrero Español* [The Spanish Socialist Workers' Party (PSOE)], which lost its power only in the 1996 elections.

The implications for my argument of Spain's economic lag behind the rest of Western Europe are important: in spite of the rapid development of the 1960s, since the 1940s Spain had already come to occupy an isolated and marginalized position with respect to the European democracies. I argue that, in the sexist imaginary of Franco's regime, Spain's marginality vis-à-vis Europe must have been perceived as a passive, feminized position—a position far from the self-aggrandizing version of the regime as a hyper-virile, legitimate government. Because the regime was not as normative and central as it wanted to be perceived as, the mere existence of non-heterosexual practices must have threatened Francoist legitimacy to its core.<sup>33</sup>

Following the Spanish Civil War, Franco's fascist regime confronted, at the practical level, the task of rebuilding a country devastated by war and, at the ideological level, the task of counteracting the social and institutional effects of the democratic republic it had just toppled. As Francoism saw it, the new regime would have to redefine the moral codes for Spain, a country "debased" by the "subversive," "perverted," and "immoral" dictates of the Republicans. Through the most diverse and effective institu-

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33. As Zillah Eisenstein indicates, "Constructions of masculinity and femininity build nations, and masculinity depends a great deal on silencing and excluding women . . . . Gender borders are fragile and cannot take too much shaking up. This fragility is why masculinity has to be continually positioned against homosexuality in the military, on the job, wherever." ZILLAH EISENSTEIN, HATREDS: RACIALIZED AND SEXUALIZED CONFLICTS IN THE 21ST CENTURY 133 (1996).

tional means—especially with the help of the Catholic Church—the winners of the war soon implemented aggressive measures to “rectify” the moral trajectory of the country. For example, they imposed strict cultural censorship, united state and church, made the laws of the preceding democratic republic more repressive and punitive, and increased the reach of what became the most successful means of indoctrinating Spaniards in the ideology of the *Movimiento*<sup>34</sup> and of reducing women to a subservient position: the *Sección Femenina*.

Karen Van Dyck's study of women's writing under dictatorship in Greece from 1967 to 1974 illuminates the conditions in Spain under Francoism.<sup>35</sup> Although the Greek dictatorship did not exactly parallel Franco's, it produced strikingly similar effects.<sup>36</sup> For example, as Van Dyck indicates: “According to many accounts the [Greek] dictatorship was a time in which the general population was ‘feminized’; for seven years the subaltern ‘experiences’ of women—claustrophobia, curfews, silencing and censorship, physical restraints—became those of both genders.”<sup>37</sup> Similarly, the Francoist imposition of silence, its restriction of movement, and its exertion of control over the population via the church, the *Sección Femenina*, and the state apparatus, could be said to have constrained Spaniards of both genders in a manner similar to the traditional repression of women by men.<sup>38</sup>

Francoist political, religious, social, and cultural institutions attempted to re-construct a dominant Spanish identity predicated on nineteenth century gender roles. Above all, they sought to undo the timidly feminist accomplishments of the Republic. As Geraldine M. Scanlon bitterly complains, “la mujer de la nueva España iba a parecerse, sorprendentemente, a mujer de la vieja España” [women of the ‘New Spain’ would be surprisingly similar to those

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34. Francoism referred to its military insurrection against the democratically elected Republic as *El Glorioso Movimiento Nacional* [The Glorious National Movement].

35. See Karen Van Dyck, *Reading between Worlds: Contemporary Greek Women's Writing and Censorship*, PMLA, Jan. 1994, at 45, 48–50.

36. See generally THE NEW MEDITERRANEAN DEMOCRACIES: REGIME TRANSITION IN SPAIN, GREECE AND PORTUGAL (Geoffrey Pridham ed., 1984) (providing a comparative study of the dictatorships of Spain and Greece).

37. Van Dyke, *supra* note 35, at 46.

38. This perception of being generally feminized becomes a crucial aspect of several canonical post civil war male novelists' reworkings of masculinity. For a thorough analysis of this topic within the discipline of literary studies, see Gema Pérez-Sánchez, *Gender and Sexuality in Transition: The Novel in Spain from the Early 1960s to the Late 1980s* 45–97 (1998) (unpublished Ph.D. dissertation, Cornell University) (on file with the Cornell University Library).

of the old Spain];<sup>39</sup> and so would the men revert to the conservative ideas of masculinity from the previous century. As María Teresa Gallego Méndez demonstrates in *Mujer, Falange y Franquismo*, the success of the *Sección Femenina* in indoctrinating several generations of Spanish women into a willing acceptance of a subservient position is astounding.<sup>40</sup> The fascist regime was particularly interested in defining women's roles because "al fascismo no le interesaba tanto el concurso de las mujeres en sí mismas como la labor que ellas realizaban en el seno de la familia, lugar privilegiado de la socialización" [women represented a very useful tool for Fascism . . . [due to] the role they performed in the family, a privileged site of socialization].<sup>41</sup> The complement to this fascist construction of femininity was a masculinity modeled on the Catholic, aggressively heterosexist *macho*, a stereotype reinforced through institutions such as the military service and upheld by compliant, conservative women.<sup>42</sup> Besides these official means of indoctrination, Francoism was aided in its task by less regularized vehicles, such as popular magazines for women, skillfully censored and dubbed Hollywood films, Spanish films, and newspapers sympathetic to the fascist ideology.<sup>43</sup>

As the power of Francoism and its institutions waned during the last years of the dictatorship, a proliferation of sites of resistance—such as the leftist opposition, underground and in exile (which never disappeared in the hard forty years of dictatorship but which experienced periods of increasingly severe weakness); the timid yet effective feminist challenges of the 1960s and 1970s; and the clandestine gay, lesbian, and transgendered movement of the 1970s and 1980s—attempted to subvert the dominant gendered identities and sexual practices.

During the 1970s, Francoism showed a strong concern with establishing a law that would contain homosexuality and other so-called "dangerous states." This concern seems related to a two-fold sense of the threat of "feminization:" on the one hand, the general population must have felt as if it were located in a "passive," "feminine" position, but on the other hand, the Francoist regime itself occupied a marginalized, subservient position with respect to

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39. GERALDINE M. SCANLON, LA POLÉMICA FEMINISTA EN LA ESPAÑA CONTEMPORÁNEA (1868–1974) 320 (1976).

40. See MARÍA TERESA GALLEGO MÉNDEZ, MUJER, FALANGE Y FRANQUISMO 201 (1983).

41. *Id.* at 14.

42. *See id.*

43. See SPANISH CULTURAL STUDIES: AN INTRODUCTION: THE STRUGGLE FOR MODERNITY 169–313 (Helen Graham & Jo Labanyi eds., 1995).

the rest of the Western world, as discussed at the beginning of this section. In a dictatorship so concerned with rigidly fixing "proper" gender roles and heterosexual practices, men who did not seem acceptably masculine, who allowed themselves to be sodomized, who, in the eyes of the dictatorship, willingly embraced what was considered the passive, "feminine" position in sexual intercourse, dangerously literalized both Francoism's feminization of the population and the regime's "position" vis-à-vis the rest of Europe. Furthermore, through their mere existence, homosexuals and lesbians alike challenged the heterosexual gender roles imposed by fascism. Thus, homosexuality became an issue over which a complex battle between hegemonic and anti-hegemonic discourses on homosexuality took place. To demonstrate this argument, I focus in Part II on the legal discourses that criminalized homosexual practices, homophobic juridical commentaries on the law, and gay activists' perceptions of the implications of the law.

## II. THE LAW AND QUEER INSUBORDINATION

### A. *Homophobic Jurisprudence versus Queer Activism*

The psycho-medical constructions of homosexuality contained in Francoist Judge Antonio Sabater's homophobic *Gamberros, homosexuales, vagos y maleantes: estudio jurídico-sociológico*<sup>44</sup> clearly codify homosexuals as transgressing gender roles and posing a threat to the heterosexual family, the foundation of Franco's regime. Partaking of homophobic medical and psychiatric discourses on homosexuality, Sabater sees homosexuality as a psychopathology "caracterizada por una desviación, una anomalía del instinto sexual" [characterized by a deviation, an anomaly of the sexual instinct].<sup>45</sup> Furthermore, in order to justify stricter measures against homosexuals, Sabater carefully constructs them in his text as primitive beings, with "una intensa vida instintiva que no tiene cabida en la civilización" [an intense instinctual life that has no room in civilization] and who must be domesticated because they are "altísimamente peligrosos" [highly dangerous] to "barreras éticas, culturales y jurídicas, y al progreso de la humanidad"

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44. ANTONIO SABATER, *GAMBERROS, HOMOSEXUALES, VAGOS Y MALEANTES: ESTUDIO JURÍDICO-SOCIOLÓGICO* 176 (1962).

45. *Id.* at 176.

[ethical, cultural, and juridical barriers, and to the progress of humanity].<sup>46</sup> Sabater concludes that gay men possess a “naturaleza feminoide” [feminoid nature] and establish a “fuerte vinculación con la madre” [strong link with their mother];<sup>47</sup> they often work as “bailarines” [dancers] and wear “vestidos de mujer” [women’s clothes] or are “imitadores de éstas” [imitators of women].<sup>48</sup>

On the other hand, lesbians often don “calzado y vestidos de corte varonile” [virile shoes and clothes] and display “modos viriles de desenvolverse” [virile ways of behavior].<sup>49</sup> Significantly, Sabater equates independent, economically self-sufficient women with lesbians, thus assuring the containment and repression of all women’s desires for professional and economic power by threatening to identify them as lesbians. Hence, for the Judge, a sure way to tell a lesbian from a straight woman is “la forma descortés con que muchas mujeres empleadas o que ocupan cargos directivos de empresas o comercios tratan al personal masculino” [the impolite way in which many female employees or women in leadership positions at companies and businesses treat their male personnel].<sup>50</sup> Sabater’s concern with typologizing and criminalizing lesbians and gay men betrays Francoism’s investment in securing firm gender roles that legitimized the heterosexual model. Any deviation from the norm was perceived as a “dangerous” political challenge to the dictatorship; homosexuals suffered a fate similar to that of political prisoners.

Homosexuality became a site of crisis and disruption for the regime. Consequently, from the early 1970s to the mid-1980s, Spain witnessed a flurry of publications on the subject of homosexuality.<sup>51</sup> This activity was most obviously prompted by the passing of *La Ley de Peligrosidad y Rehabilitación Social* [the Law of Social Danger and Rehabilitation] in 1970 and the ensuing debates for and against it until its derogation in 1978.<sup>52</sup> After a ten year lull, the victory of the

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46. *Id.* at 180.

47. *Id.* at 195.

48. *Id.* at 204.

49. *Id.* at 209.

50. *Id.*

51. *See infra* note 55.

52. For works sympathetic in varying degrees to homosexuality during that period, see HÉCTOR ANABITARTE RIVAS & RICARDO LORENZO SANZ, *HOMOSEXUALIDAD: EL ASUNTO ESTÁ CALIENTE* (1979); VICTORIANO DOMINGO LORÉN, *LOS HOMOSEXUALES FRENTE A LA LEY: LOS JURISTAS OPINAN* (1977); *FRENTE HOMOSEXUAL DE ACCIÓN REVOLUCIONARIA, DOCUMENTOS CONTRA LA NORMALIDAD* (1979); MIGUEL GÁMEZ QUINTANA, *APUNTES SOBRE EL HOMOSEXUAL* (1976); ALFONSO GARCÍA PÉREZ, *LA REBELIÓN DE LOS HOMOSEXUALES* (1976); ALBERTO GARCÍA VALDÉS, *HISTORIA Y PRESENTE DE LA HOMOSEXUALIDAD: ANÁLISIS CRÍTICO DE UN FENÓMENO CONFLICTIVO* (1981); *EL HOMOSEXUAL ANTE LA SOCIEDAD ENFERMA* (José

socialist party in 1982 increased gay activists' hopes of further liberalizing society's attitudes toward homosexuality, and it triggered a new wave of publications discussing homosexuality from a progressive point of view.<sup>53</sup> The most significant battle for Spanish gay activists, however, was the one fought around the passing of the Law of Social Danger and Rehabilitation.

In a desperate letter to U.S. gay activist Robert Roth<sup>54</sup> dated 16 November 1973, Armand de Fluvià, founder of the first underground homosexual organization in Spain,<sup>55</sup> urgently requested

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Ramón Enríquez ed., 1978); LOS MARGINADOS EN ESPAÑA: GITANOS, HOMOSEXUALES, TOXICÓMANOS, ENFERMOS MENTALES (Francisco Torres González ed., 1978); and MANUEL SORIANO GIL, HOMOSEXUALIDAD Y REPRESIÓN: INICIACIÓN AL ESTUDIO DE LA HOMOFILIA (1978). The only "domestic" text written on lesbianism during those years is VICTORIA SAU, MUJERES LESBIANAS (Anabel González ed., 1979), but there were several translations of foreign works on the subject. See e.g., BERTHA HARRIS, LA ALEGRÍA DEL AMOR LESBIANO (Alicia Gimeno trans., 1979); URSULA LINNHOF, LA HOMOSEXUALIDAD FEMENINA (Nuria Petit trans., 1978); MONIQUE WITTIG, BORRADOR PARA UN DICCIONARIO DE LAS AMANTES (Cristina Peri Rossi trans., 1981). To observe the increase in essays about homosexuality toward the end of Franco's regime and the period of the democratic transition, see also the magazines AJOBLANCO (Barcelona) and EL VIEJO TOPO (Barcelona).

53. See ÓSCAR GUASCH, LA SOCIEDAD ROSA (1991); ANTONI MIRABET I MULLOL, HOMOSEXUALIDAD HOY: ¿ACEPTADA O TODAVÍA CONDENADA? (Luisa Medrano trans., 1985); NICOLÁS PÉREZ CÁNOVAS, HOMOSEXUALIDAD: HOMOSEXUALES Y UNIONES HOMOSEXUALES EN EL DERECHO ESPAÑOL (Miguel Ángel del Arco Torres ed., 1996). Pérez Cánovas's work responded to contemporary debates about the possibility of passing a so-called *Ley de Parejas de Hecho* [Law of *de facto* couples], which would legalize same-sex unions.

54. A Cornell University alumnus (Class of 1971), Roth was the co-founder of the Cornell Student Homophile League in the late 1960s. Out of personal interest, he collected invaluable materials on international gay activist organizations that are now housed at the Human Sexuality Collection in the Kroch Library at Cornell University.

55. Agrupación Homófila para la Igualdad Social (AGHOIS)—whose name was soon changed to Movimiento Español de Liberación Homosexual (MELH), and in 1976 to Frente de Liberación Gay de Cataluña (FAGC)—published a clandestine newsletter in Paris and introduced it to Spain through the mail between January 1972 and November 1973. As de Fluvià explained in the same letter to Roth, however, "solo [sic] llegan a sus destinatarios un 40% de los ejemplares" [only 40% of the issues reach their destination], because the police managed to confiscate the remaining sixty percent. Letter from Armand de Fluvià to Robert Roth (Nov. 16, 1973) (Robert Roth Collection, Rare and Manuscript Collection, Kroch Library, Cornell University, Ithaca, New York). The Spanish government protested to the French government, "por permitir la edición de un boletín [sic] de homosexuales en español" [for allowing the publication of a Spanish newsletter for homosexuals] and, as a consequence, from November 1973 on, AGHOIS no longer published its clandestine newsletter. See *id.*

Armand de Fluvià, a.k.a. Roger de Gaimon and C. Benages de Escarsa, is a Catalan lawyer and expert in genealogy, a member of the Societat Catalana d'Estudis Històrics and of the Societat Catalana de Sexologia. During the dictatorship he participated actively in the opposition to the Franco regime, first on the liberal right within the liberal monarchic movement, and after the death of the dictator as a radical leftist Catalan nationalist. See Front d'Alliberament Gai de Catalunya, *Especial elecciones al Parlament de Catalunya*, INFOGAI, Mar. 30, 1982, at 1. Together with other members of FAGC, he founded the important Instituto Lambda of Barcelona in 1976.



Roth to take his name off the international list of gay contacts and organizations that Roth periodically mailed to queer activists and groups worldwide. As de Fluvià explained in painstaking detail, he feared police retaliation because:

En España [los homosexuales] somos ilegales y peligrosos sociales. Si la policia [sic] llegara a saber a lo que me dedico, me mandarían a la cárcel de Huelva y me harían la terapia de la aversión para “curarme” y arruinarían mi vida en todos los aspectos y, además [sic], se perdería toda la labor que vengo haciendo en pro de la liberación sexual y que tantos esfuerzos me cuesta.<sup>56</sup>

In spite of another U.S. gay activist's characterization of de Fluvià's letter as “slightly panicky,” the Spanish activist's fears were well founded.<sup>57</sup> By codifying homosexuals as “peligrosos sociales”

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For the most accurate account of early gay activism in Spain, see Armand de Fluvià's *El movimiento homosexual en el estado español*, in *EL HOMOSEXUAL ANTE LA SOCIEDAD ENFERMA*, 149–67 (José Ramón Enríquez ed., 1978). See also ANTONI MIRABET I MULLOL, *supra* note 53, at 244–55.

56. Letter from Armand de Fluvià to Robert Roth, *supra* note 55. As translated, the quotation reads:

In Spain, we [homosexuals] are illegal and considered socially dangerous. If the police were to find out what I do, they would send me to the prison at Huelva, and they would subject me to aversion therapy to “cure” me, and they would ruin my life in every aspect, and, besides, all the work I have been doing to support sexual liberation would be lost.

57. The same folder of the Robert Roth collection that contains several of de Fluvià's letters includes a December 18, 1973 letter from “Tom” of the New Jersey Gay Switchboard and Information Center, presumably accompanying de Fluvià's letter:

Dear Bob,

This is in regard to a listing in the Gay Directory published last spring:

We got in touch with a Armando de Fluvia in Barcelona (p.24, 1st col. of list #3) and received a slightly panicky letter back from them urgently requesting that we please not write to Armando de Fluvia, but rather to C. Benages de Escasa [a code name] at the same address. They also asked us to pass this information on to whomever we got the address and name from.

Incidentally, that's *all* we found out about them.

Letter from Tom to Bob (Dec. 18, 1973) (on file with the Robert Roth Collection, Rare and Manuscript Collection, Kroch Library, Cornell University, Ithaca, New York).

Later on, however, the correspondence between Robert Roth and Armand de Fluvià became quite abundant, and the activists seem to have met in person after Franco's death.

[socially dangerous persons], Francoist laws were free to impose severe and arbitrary “medidas de seguridad.” These security measures included:

- a) Internamiento en un establecimiento de reeducación por tiempo no inferior a cuatro meses ni superior a tres años.
- b) Prohibición de residir en el lugar o territorio que se designe y sumisión a la vigilancia de los delegados [por un tiempo máximo de cinco años].<sup>58</sup>

These security measures, as a 1976 manifesto of the Front d'Alliberament Gai de Catalunya (FAGC) explains, “van dirigides cap a la privació de llibertat (internament), la manipulació de conductes (internament en un establiment de reeducació), exercir un control (obligació de residir en un determinat lloc, submissió a la vigilància de delegats), etc.” [are directed to the deprivation of freedom (confinement), the manipulation of behavior (confinement to a re-education institution), the exercise of control (obligation to reside in a particular place, submission to the surveillance of delegates), etc.].<sup>59</sup>

While the Francoist regime had paid little attention to homosexuality in the immediate post-Civil War years, beginning in the 1950s, it developed an inexplicable concern with codifying, pathologizing, and containing the activities of homosexuals.<sup>60</sup> In what follows, I consider the codification of the homosexual according to the discourse of the law and its juridical interpretations. I examine the text of the Law of Social Danger and Rehabilitation of August 4, 1970, its antecedents—*Ley relativa a Vagos y Maleantes* [the Law of

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Thanks to this copious correspondence, the Robert Roth Collection now contains vital documents about the underground operations of de Fluvià's activist group.

58. Francisco Franco, *Ley de Peligrosidad y Rehabilitación Social*, in BOLETIN OFICIAL DEL ESTADO 12551, 12553 (Aug. 6, 1970). As translated, the quotation reads:

- a) Confinement in a re-education institution for a period no less than four months and no longer than three years.
- b) Prohibition from residing in a place or territory designated [by the court] and submission to the surveillance of the delegates [for a maximum of five years].

59. Front d'Alliberament Gai de Catalunya, Manifesto 22 (1976).

60. According to Judge Sabater, the first law to consider homosexuality as a dangerous state, that of 1954, was passed “as a consequence of the increase in homosexuality.” DOMINGO LORÉN, *supra* note 52, at 123–24. This fear of the “spread” of homosexuality betrays Francoism's characterization of it as a contagious disease.

Vagrants and Thugs] of August 4, 1933 (which did not include homosexuality as a dangerous state), and its modifications of July 14, 1954—and its homophobic interpretations.<sup>61</sup>

*B. The Law of Social Danger and Rehabilitation and Its Antecedents*

The Law of July 14, 1954, “modificando los artículos 2.º y 6.º de la ley de Vagos, declaró sujetos a medidas de seguridad a los homosexuales” [modifying articles 2nd and 6th of the [Law of Vagrants and Thugs of August 4, 1933], declared homosexuals subjected to security measures].<sup>62</sup> This was a measure that Sabater celebrates as “un acierto legislativo” [a legislative success].<sup>63</sup> In the early 1960s, jurists were apparently unhappy with the law enforcing inefficiency of the Spanish penal system. The jurists’ concern with tightening laws significantly coincides with the modifications in social mores brought about by the economic expansion of the 1960s.<sup>64</sup> Perhaps in the face of economic transformations, social modernization, and having to present a “new face” of the regime to the unprecedented large numbers of foreign visitors, jurists and legislators were particularly concerned with persecuting crime and presenting a “civilized” vision of Spain.

In accordance with this preoccupation with the effectiveness of laws, Octavio Pérez-Vitoria Moreno, in his preface to Sabater’s book, complains that “[f]requently, we trust too much in the excellence of the written word of the Law and we forget that putting it into practice . . . is what makes it possible to attain the end that the Law seeks.”<sup>65</sup> To this purpose he proclaims that

es necesario vitalizar nuestra Ley de Vagos y Maleantes, cuyas posibilidades y límites de aplicación magistralmente señala [Sabater], creando para las distintas categorías de sujetos en

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61. I have found a discrepancy in the actual date of the 1954 law. While Sabater gives 14 July 1954 as the issue date, the *Código Penal* of 1963 indicates in a footnote that the law was revised by the “ley de 15 julio 1954” [15 July 1954]. *CÓDIGO PENAL: TEXTO REVISADO 1963 Y LEYES PENALES ESPECIALES 705* (Eugenio Cuello Calón ed., 1963). Perhaps the law was issued on July 14 but did not go into effect until the following day.

62. SABATER, *supra* note 44, at 216.

63. *Id.*

64. *See supra* Part I.

65. SABATER, *supra* note 44, at 8.

estado peligroso establecimientos especialmente concebidos y realizados para la tarea de readaptarlos a la Sociedad.<sup>66</sup>

Pérez-Vitoria's call to mold these "dangerous subjects" to society—a society fashioned by fascist ideology—and his celebration of the building of special institutions designed to readapt these subjects to society, that is, to "cure" the "dangerous subjects," recalls Michel Foucault's genealogy of the penal system in France.<sup>67</sup>

Foucault observes how, from the eighteenth century on, the penal system in France moved away from "[t]he body as the major target of penal repression"<sup>68</sup> and toward a concern with punishment as "an economy of suspended rights."<sup>69</sup> He notes the gradual concern of the modern judicial system with hiding the mechanisms of punishment in order to absolve the judge of the responsibility of punishing. Consequently, "[t]he expiation that once rained down upon the body must be replaced by a punishment that acts in depth on the heart, the thoughts, the will, the inclinations," in other words, the "soul."<sup>70</sup> Surrounding the judge's job, then, a "corpus of knowledge, techniques, 'scientific' discourses is formed and becomes entangled with the practice of the power to punish."<sup>71</sup> Underlying this role of justice is the drive to explain and define individuals according to behaviorist discourses—a pathologizing of potential criminal states that leads to punishment through security measures.

As Mirabet i Mullol highlights, the first unified Spanish penal code of 1822 "is highly influenced by the French penal code of 1810, which reflected the new ideas of the French revolution."<sup>72</sup> This code, therefore, reflects more liberal tendencies than previous laws and removes all references to homosexuality "except in the army and the navy military codes, later reworked into one."<sup>73</sup> This liberal attitude is reflected in later reforms of the penal code

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66. *Id.* As translated, the quotation reads:

[I]t is necessary to revitalize our Law of Vagrants and Thugs, the possibilities and limits of application of which [Sabater] has so skillfully indicated, thus creating for each of the categories of subjects in dangerous states institutions that are especially conceived and carried out for the task of readapting those subjects to society.

67. See FOUCAULT, *supra* note 7, at 73–194, 231–56.

68. *Id.* at 8.

69. *Id.* at 11.

70. *Id.* at 16.

71. *Id.* at 23.

72. MIRABET I MULLOL, *supra* note 53, at 163.

73. *Id.*

in the years 1848, 1850, and 1870. In 1928, during the dictatorship of Primo de Rivera (1923–1931), the penal code included a direct reference to homosexuality within the section on “crimes against honesty and public scandal.”<sup>74</sup> With the beginning of the democratically elected Second Republic (1931–1936), however, the penal code was yet again reformed in 1932, and homosexuality as a crime against “honesty” and “public scandal” was deleted from the code.<sup>75</sup>

In 1978, Miguel López Muñiz, a judge specializing in implementing the Law of Social Danger and Rehabilitation, protested that

la ley [de Peligrosidad] en absoluto es un producto del régimen franquista. Franco apenas cambió nada de la primitiva Ley de Vagos y Maleantes, presentada a las Cortes republicanas en 1933 y redactada por Jiménez de Asúa. La actual lo que hizo es completarla añadiendo algunas figuras que por entonces la estructura social aún no había originado, como los robos de coches, el gamberrismo y otros.<sup>76</sup>

What López Muñiz failed to indicate in this interview was that homosexuality was among those “otros” [others] that Franco codified as “peligrosos” [dangerous] in his revision of this Republican law. Hence, criminalization of homosexuality was a specific concern of the fascist regime.

As in France previously, Spanish judges gradually became concerned with “something other than crimes, namely, the ‘soul’ of the criminal.”<sup>77</sup> The judicial system shifted from the questions of “Has the act been established and is it punishable? Who committed it? What law punishes this offence?” to the questions of “What is this act? How can we assign the causal process that produced it?”

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74. *Id.* at 164.

75. *See id.*

76. *Un juez habla sobre la Peligrosidad Social*, AJOBLANCO, Dec. 1978, at 11–13. As translated, the quotation reads:

[T]he Law [of Social Danger] is not a product of the Francoist regime at all. Franco hardly changed anything of the old Law of Vagrants and Thugs presented to the Republican *Cortes* [the Senate and the House of Representatives] in 1933 and written by Jiménez de Asúa. The current law just completed it by adding a few figures that had not yet been originated by the social structure of that time, such as car thefts, vandalism, and others.

77. FOUCAULT, *supra* note 7, at 19.

What would be the most appropriate measures to take? How do we see the future development of the offender? What would be the best way of rehabilitating him?"<sup>78</sup> In the same manner, Sabater sought to prevent "futuros delitos actuando sobre el sujeto peligroso, ya directamente, modificando los elementos psíquicos, morales o sociales de su personalidad (medidas educadoras o correccionales), ya segregándole del cuerpo social (medidas de protección en sentido estricto), y reservando a la pena la función retributiva."<sup>79</sup>

Unlike law-makers in democratic European societies at the time, Sabater identified with "una corriente de opinión entre los penalistas, que piden que las penas que se pronuncian por los Tribunales contra los homosexuales sean más largas, para poder influir sobre ellos" [a current of opinion among penalists [from Spain and other nations with totalitarian regimes] who ask that the sentences dictated in court against homosexuals be longer, so that we may influence them].<sup>80</sup> Certainly, his justification for these tighter measures—that is, to influence or "cure" homosexuals—worked as a mechanism of disavowal of the actual repression.

As Foucault has indicated, "what is odd about modern criminal justice is that, although it has taken on so many extra-judicial elements, it has done so . . . in order to exculpate the judge from being purely and simply he who punishes."<sup>81</sup> In other words, the modern practice of the law in Europe resorts to other disciplines (psychiatry, psychoanalysis, medicine) to "supervise the individual, to neutralize his dangerous state of mind, to alter his criminal tendencies."<sup>82</sup> Modern law, in this view, masks punishment as rehabilitation, as the "cure" of the deviant criminal, and thus attempts to reinsert him or her into "normal" society. These security measures, "behind the pretext of explaining an action, are ways of defining an individual" and conforming him or her to the dominant society.<sup>83</sup>

As a direct consequence of Sabater's and other judges' requests for stricter measures against homosexuals, Franco issued the Law

78. *Id.*

79. SABATER, *supra* note 44, at 18 [[F]uture crimes by acting upon the dangerous subject, whether directly, by modifying psychical, moral, or social elements of his personality (educational or correctional measures), or [indirectly, by] segregating him from the social body (protection measures in a strict sense), and by deferring punishment to the moment of sentencing.].

80. *Id.* at 216–17.

81. FOUCAULT, *supra* note 7, at 22.

82. *Id.* at 18.

83. *Id.*

of Social Danger and Rehabilitation of August 4, 1970, which was much dreaded by lesbians and gays but celebrated by reactionary jurists.<sup>84</sup> As indicated before, this law only reinforced and actualized its predecessor, the Law of Vagrants and Thugs, which was modified on July 14, 1954 to include homosexuals. The 1954 law already devised the following security measures:

A los homosexuales [sic], rufianes y proxenetas, a los mendigos profesionales y a los que vivan de la mendicidad ajena, exploten menores de edad, enfermos mentales o lisiados, se les aplicarán, para que las cumplan todas sucesivamente, las medidas siguientes:

- a) Internado en un establecimiento de trabajo o colonia agrícola. Los homosexuales [sic] sometidos a esta medida de seguridad deberán ser internados en instituciones especiales y, en todo caso, con absoluta separación de los demás.
- b) Prohibición de residir en determinado lugar o territorio, y obligación de declarar su domicilio.
- c) Sumisión a la vigilancia de delegados.<sup>85</sup>

The 1954 law's equivocal categorization of dangerous subjects allows for a parallel series of solutions for homosexuals that are separate and different from those provided for the other dangerous subjects. This early Francoist law envisions a future for ruffians, pimps, and professional beggars as productive, content farmers. This measure would force them to become useful members of society, thus reforming their "evil" ways through hard labor—

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84. Antonio Sabater Tomás was "Juez de Vagos y Maleantes" [Judge of Vagrants and Thugs] in Barcelona for many years and was one of the authors of the *Ley de Peligrosidad y Rehabilitación Social*. As he himself proudly explains in an interview with Victoriano Domingo, "In fact, I was the proponent of the Law; I wrote the articles, I discussed with the panel, and I was in charge of shaping its text." DOMINGO LORÉN, *supra* note 52, at 122.

85. CÓDIGO PENAL, *supra* note 61, at 704–05. Translated, the quotation reads:

To homosexuales [sic], ruffians, pimps, and professional beggars, and to those who live by the begging of others, exploit minors, or are mentally ill or handicapped, the following measures will be applied so that they fulfill them in succession:

- a) Confinement to a work camp or an agricultural colony. Homosexuales [sic] who are subject to this security measure must be confined to special institutions and, at all costs, with absolute separation from the rest.
- b) Prohibition from residing in certain designated places, and obligation to declare their domicile.
- c) Submission to the surveillance of delegates.

a measure that would serve the added function of benefiting capitalistic society at large. As if infected with a contagious disease, however, homosexuals require "absolute separation" from all other "dangerous" individuals and confinement in "special institutions." Homosexuals were thus perceived as carrying a particularly infectious brand of dangerousness.

Interestingly, although the text of the Law of Social Danger and Rehabilitation of 1970 does not modify substantially the contents of the 1933 and 1954 laws, it elicited a flurry of gay activism.<sup>86</sup> Homosexuals were perhaps afraid of the insidious way this new law hypocritically adapted "su contenido a las necesidades y realidades de hoy, en beneficio de los propios sujetos a quienes la Ley haya de aplicarse y de la sociedad que debe integrarlos" [its content to today's needs and realities, for the benefit of the very subjects to whom the law must be applied and to the society that must integrate them].<sup>87</sup> Following the trend that Foucault historicizes for France, the main goal of the Law of Social Danger was "reeducar y rescatar al hombre para la más plena vida social" [to reeducate and return man to a fuller social life]<sup>88</sup>—that is, to mold dangerous subjects according to a dominant notion of normality. Furthermore, the law sought to acquire "un conocimiento lo más perfecto posible de la personalidad biopsicopatológica del presunto peligroso y su probabilidad de delinquir" [the most perfect possible knowledge of the bio-psycho-pathological character of the presumed dangerous subject].<sup>89</sup> As Foucault reminds us, this knowledge is directed toward controlling "the heart, the thoughts, the will, the inclinations"<sup>90</sup> of the alleged dangerous subject. This desire for knowledge of the soul, as it were, is also aimed not so much toward judging criminal acts—since this law intended to prevent "diversos estados de peligrosidad anteriores al delito" [diverse states of danger prior to crime]<sup>91</sup>—but toward controlling "the passions, instincts, anomalies, infirmities, maladjustments, effects of environment or heredity".<sup>92</sup> Insofar as the law was concerned with the "anthropological, psychical, and pathological conditions"<sup>93</sup> that lead the individual to a state of social

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86. See *supra* notes 52, 55.

87. Franco, *supra* note 58, at 12552.

88. *Id.*

89. *Id.*

90. FOUCAULT, *supra* note 7, at 16.

91. Franco, *supra* note 58, at 12551.

92. FOUCAULT, *supra* note 7, at 17.

93. Franco, *supra* note 58, at 12552



dangerousness, it anticipated “la creación de nuevos establecimientos especializados donde se cumplan las medida de seguridad, ampliando los de la anterior legislación con los nuevos de reeducación para quienes realicen actos de homosexualidad” [the creation of new, specialized institutions where security measures are carried out, thus expanding the [institutions] from the previous legislation with those new institutions for the re-education of those who commit homosexual acts].<sup>94</sup> Therefore, while the 1954 law merely called for a separation of homosexuals from other socially dangerous subjects, the 1970 law implemented sophisticated centers, which, “dotados del personal idóneo necesario, garantizarán la reforma y rehabilitación social del peligroso, con medios de la más depurada técnica” [staffed with the needed, ideal personnel, [would] guarantee the social reform and rehabilitation of the dangerous subject through the most purified technique].<sup>95</sup> One cannot help noticing the blood-chilling connotations of the manner in which this reference to “purified technique” echoes the brutal repression Francoism had launched on its dissidents during the earlier years of the regime.<sup>96</sup>

On June 1, 1971, a new rule complemented the previous law by establishing “institutions for the incarceration of each type of ‘danger.’ The [institution] for homosexuals [was] ‘Huelva’s Center for Homosexuals,’ for the fulfillment of the reeducation measures imposed on dangerous, male homosexuals.”<sup>97</sup> The re-education measures practiced in Huelva included electro-shock and the aversion therapy that de Fluvià refers to in his “panicked” letter.<sup>98</sup> Thus, while the law was designed to protect society from subjects who were imagined to be “socially dangerous,” it ironically became a real danger for Spanish lesbians and gays who, like Armand de Fluvià and other activists, feared for their physical and psychological well-being.

Comically symptomatic of the homophobic attempt to erase homosexual sex is the penal code’s stubborn misspelling of homosexuals as “*homoxesuales*” (the word is misspelled every time the 1954 law mentions homosexuals or homosexuality and on many occasions in the 1970 law). Many Peninsular Spanish accents make little if no distinction between the pronunciation of the “x” and

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94. *Id.*

95. *Id.*

96. See DÍAZ GIJÓN ET AL., *supra* note 11, at 44–49.

97. MIRABET I MULLOL, *supra* note 53, at 165.

98. See Letter from Armand de Fluvià to Robert Roth, *supra* note 55.

the “s”: both are pronounced as /s/. Because the pronunciation of “*homosexuales*” and “*homoxesuales*” is virtually identical, this misspelling points to straight society’s anxiety in the face of same-sex relationships—relationships that are perceived as lacking the difference introduced by heterosexual sex. By substituting the “x” for the “s” so that the word “*sexo*” appears to be inverted, the penal code’s misspelling figuratively crosses sexuality itself out of same-sex relationships, while the law simultaneously seeks to erase homosexuals from society. In a gesture reminiscent of the actual incarceration of homosexuals, the law denies even graphic presence to the word “homosexuals,” while it also denies homosexuals access to the word—that is, to a written law that would specifically protect them from hate crimes. It would take until December 26, 1978 for a law directly derived from the new Spanish democratic constitution to eliminate homosexuality as a category of social danger subject to security measures.

De Fluvià’s retort to Roth’s complaint that in the U.S. of the 1960s and early 1970s gay activists were still in the ghetto stage underscores Francoism’s active silencing of homosexuality:

Vosotros os quejais porque estais [sic] en la etapa del “ghetto” pero nosotros aquí en España estamos en la etapa de las catacumbas. Desde la etapa del “ghetto” podeis [sic] alcanzar la etapa de la liberación porque podeis [sic] manifestaros en la calle y a través de los mass media [sic]. En España, en cambio, no existen, de hecho, la libertad de asociación, ni la de reunión, ni la de expresión. No lo olvidéis! [sic]. Por lo tanto, nuestra tarea es muchísimo mas [sic] difícil y arriesgada pues nos lo jugamos todo.<sup>99</sup>

De Fluvià’s characterization of Spanish gay activists as being in “the catacombs stage” is quite accurate; because of the strict censorship Francoism had imposed on Spanish society, any contestatory group or person had to operate underground, much

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99. *Id.* As translated, the quotation reads:

You complain because you are in the ghetto stage, but here in Spain we are in the catacombs stage. From the ghetto stage you can reach the liberation stage, because you can demonstrate on the streets and through the mass media. In Spain, on the other hand, freedom of association, of gathering, and of expression do not exist *de facto*. Don’t forget that! Consequently, our job is much more difficult and risky, for we gamble all.

as early Christians in Rome had to hide and fear for their lives.<sup>100</sup> Doubly marginalized—as sexual and political dissidents—queer activists clearly delineated their course of action. In his letter to Roth, de Fluvia indicated a sharp awareness of the mechanisms of oppression and of the grassroots actions needed to counteract them:

Nuestra tarea cara a nuestros camaradas homófilos es la de formar grupos de concienciación para que estén [sic] preparados para el día [sic] que pueda haber una acción hacia el exterior. Nuestra tarea cara a los heterosexuales es la de incidir y dialogar con las personas de mentalidad abierta del mundo de la iglesia, las artes, la medicina, la ley, la sociología [sic], la prensa, etc. para informarles dentro de lo que podemos, de lo que realmente somos y procurar que la ideología [sic] que tienen sobre la homosexualidad—totalmente estereotipada—y que el sistema les ha imbuido, la vayan cambiando poco a poco.

En España no existen mas [sic] grupos que los que hemos formado alrededor de “Aghois” y nuestra tarea es inmensa y muy desagradecida.<sup>101</sup>

Faced with the triple task of having to raise consciousness among closeted gays and lesbians and beginning a productive dialogue with progressive heterosexuals while out-maneuvering censorship, queer activists felt dismay at such a “huge and very unrewarding” task.

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100. In *Spain: Dictatorship to Democracy*, Raymond Carr and Juan Pablo Aizpurua indicate that “[a] censorship set up under wartime directives (1938) continued functioning for nearly thirty years of peace.” CARR & AIZPURUA, *supra* note 11, at 113.

101. Letter from Armand de Fluvia to Robert Roth, *supra* note 55, at 2. As translated, the quotation reads:

Our job with respect to our homophile comrades is to form consciousness-raising groups so that they are prepared for the day in which we can act publicly. Our job with respect to heterosexuals is to influence them and to establish a dialogue with open-minded people in the Church, the arts, medicine, law, sociology, the press, etc. to inform them, as far as we are able, of what we really are, and to attempt to change, little by little, the ideology they have about homosexuality—which is totally stereotyped—and into which the system has indoctrinated them.

In Spain, there are no other groups but the ones we have formed around “Aghois” and our task is huge and very unrewarding.

The lesbian is significantly neglected in the above discussion. Judge Sabater lamented in his homophobic work that “los criminalistas hasta hoy no le han prestado gran atención” [criminologists, so far, have not paid enough attention [to lesbianism]].<sup>102</sup> The reason, he believes, “se deba a la situación de desamparo amoroso por parte del hombre, de que son víctimas determinadas mujeres, que ven así insatisfechos sus naturales instintos eróticos” [might be due to the manner in which specific women are victimized by being abandoned by men and are thus left with their natural erotic instincts unsatisfied].<sup>103</sup> Beyond the fact that his commentary falls into the essentializing characterization of women as lustful, insatiable beings who would turn to anyone available, male or female, for sexual solace, Sabater clearly misses the point. In a highly *machista* society, where only men and heterosexuality are valorized and where women are trained to be passive, compliant, subservient mothers,<sup>104</sup> women's independent sexuality was difficult to conceptualize. As Carmen Alcalde explained to U.S. feminists in the early 1970s, in Spain,

no hay una penalización de lesbianismo, no está en ningún artículo. El lesbianismo no lo consideran, creen que no es nada, que son juegos, no se lo toman en serio. Si cogen a dos mujeres en lesbianismo, te aseguro que no les pasará nada porque lo primero que se les ocurre es decir que les faltaba un señor. No tienen identidad de lesbianismo aquí. Verdaderamente tú puedes ir abrazada por la calle con una mujer y, máximo, algún mal pensado te insultará, pero si te denuncian a la policía, la policía no sabrá qué hacer. No entienden, no entienden que una mujer guste a otra mujer. No cabe dentro de su yo, de su narcisismo.<sup>105</sup>

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102. SABATER, *supra* note 44, at 207.

103. *Id.* at 177.

104. For an extensive discussion on the construction of women's roles under Francoism, see generally GALLEGO MÉNDEZ, *supra* note 40.

105. LINDA GOULD LEVINE & GLORIA FEIMAN WALDMAN, *FEMINISMO ANTE EL FRANQUISMO: ENTREVISTAS CON FEMINISTAS DE ESPAÑA* 36 (1980). As translated, the quotation reads:

[T]here is no criminalization of lesbianism; it's not contained in any article [of the Penal Code]. They don't consider lesbianism, they think it's nothing, that it's a game, they don't take it seriously. If they catch two women in lesbianism [sic], I assure you that nothing will happen to them, because the first thing they'll think of is that a man was missing. They don't have a sense of identity for lesbianism here. In truth, you can walk arm-in-arm on the street with a woman and, at a maximum, some

Although some extremely homophobic, paranoid legislators thought that “esta pasión lesbiana debe ser objeto de especial preocupación” [this lesbian passion must be an object of special concern],<sup>106</sup> and although lesbianism was assumed to be included in the Law of Social Danger—subsumed under the general category “homosexual”—lesbianism in the Spain of the 1960s and 1970s was hard for homophobes to conceptualize. Unable to think female sexual pleasure independent of male heterosexual pleasure, lesbianism was erased from the sexual horizon of late Francoism. For all practical purposes, this sexual option did not exist.<sup>107</sup> And it was not only fascist law that sought to silence homosexuals by literally removing them from sight and confining them in special institutions and by seeking to “cure” them of their perversion. The whole cultural apparatus of the Francoist period was carefully designed to perpetuate gender dichotomies and traditional heterosexism.<sup>108</sup>

Fortunately, underground queer activists left a legacy of political, social, and cultural alternatives that flourished during the years of the transition into a fully democratic regime. In the next part of this Article, I analyze a literary work from 1982 that effectively dramatizes the dreadful possibilities for queers of returning to the days of Francoist persecution and that privileges gender and sexuality as the building blocks on which to erect an inclusive, truly egalitarian, Spanish democracy.

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ill-thinking man will insult you, but if he denounces you to the police, the police won't know what to do. They don't understand, they don't understand that a woman would like another woman. There is no room for this in their ego, in their narcissism.

106 SABATER, *supra* note 44, at 208.

107. This process of erasure comes to the fore in, for example, lesbian writer Ana María Moix's work *Julia*. To maneuver this homophobic erasure, Moix subversively redeploys silence, the ultimate Francoist censoring tool, to give voice to lesbian desire. For an extensive discussion of this work, see Gema Pérez-Sánchez, *Reading, Writing, and the Love that Dares Not Speak Its Name: Eloquent Silences*, in Ana María Moix's *Julia* (Lourdes Torres & Inmaculada Pertusa eds., 2001).

108. For an analysis of the effects on canonical Spanish literature that the imposition of dominant notions of gender and sexuality had on constructions of masculine identity, and the effects that these constructions had on representations of women in the works of Camilo José Cela, Luis Martín-Santos, and Juan Goytisolo see Pérez-Sánchez, *supra* note 38.

### III. ALLEGORICAL CROSS-DRESSINGS IN EDUARDO MENDICUTTI'S *Una mala noche la tiene cualquiera*

Although the Law of Social Danger and Rehabilitation ceased to be operational with the ratification of the democratic constitution of 1978, the memory of its effect and the cultural conditions that made it possible in the first place were still felt in 1982,<sup>109</sup> when Eduardo Mendicutti published his novel *Una mala noche la tiene cualquiera* [*Anyone Can Have a Bad Night*].<sup>110</sup> Although in 1968 he won the first of many prestigious literary prizes (the Sésamo and the Café Gijón, for instance), Mendicutti, born in 1948, received little critical attention until his novel *Siete Contra Georgia* [*Seven Against Georgia*] became one of the finalists in the 1987 edition of Tusquets's prestigious erotic fiction prize "La Sonrisa Vertical" [The Vertical Smile].<sup>111</sup>

After the success of *Siete contra Georgia*,<sup>112</sup> Mendicutti proceeded not only to make a bestseller out of every book he subsequently

109. See Malefakis, *supra* note 7, at 221–30 (discussing the endurance of Francoist institutions and practices well into the early years of the democracy).

110. MENDICUTTI, *supra* note 9.

111. Eduardo Mendicutti's *Siete contra Georgia* tells the story of seven Spanish men—five gays, one transvestite, and one transsexual—who, in response to the passing of anti-sodomy laws in parts of the South in the United States during the Reagan-Bush years, decide to record seven audio tapes with each of their erotic life stories and to send them to Georgia's Chief of Police. They hope that their erotic autobiographies will educate the Chief of Police in the pleasures of man-to-man oral and anal sex and that, consequently, he will not enforce the new sodomy laws.

Written in a hilariously fast-paced prose that uncannily imitates everyday speech, the novel became an instant success, putting Mendicutti at long last on the best-selling book lists. According to one critic, "[l]a obra de Mendicutti se singulariza sobre todo por la hábil trasposición que hace del habla coloquial andaluza en la escritura" [Mendicutti's work is characterized especially by its skillful transcription of the spoken colloquial Andalusian dialect into writing]. Fernando Valls, *El lugar del lenguaje*, EL MUNDO, Nov. 19, 1995, at 17. His faithful, well-crafted transcription of Andalusian speech patterns and his relentless sense of humor have earned Mendicutti comparisons with Chekhov, see Fernando Valls, *supra*, at 17, Cervantes, see Leopoldo Azancot, *Los aires del 23 de febrero: La larga noche de La Madelón*, EL PAÍS, Nov. 6 1988, at 16, and "la más genuina tradición literaria española" [the most genuine literary Spanish tradition], see Fernando Iwasaki, *Lo rosa siempre llama dos veces*, EDUARDO MENDICUTTI DIARIO, Sept. 23, 1995, at 38. One critic has even claimed that Mendicutti "[s]e trata . . . de uno de los escritores innegablemente más importantes de los últimos 15 años" [is undoubtedly one of the most important writers of the last fifteen years]. Leopoldo Azancot, *Los aires del 23 de febrero: La larga noche de La Madelón*, EL PAÍS, Nov. 6 1988, at 16.

112. Prior to 1987, Mendicutti wrote TATUAJE (1973), forbidden by the Francoist censors and unpublished to date; CENIZAS (1974); UNA MALA NOCHE LA TIENE CUALQUIERA (1982); ÚLTIMA CONVERSACIÓN (1984); and EL SALTO DEL ÁNGEL (1985). After 1987, and excluding SIETE CONTRA GEORGIA (1987) and the reissued UNA MALA NOCHE LA TIENE CUALQUIERA (1988), he has published TIEMPOS MEJORES (1989); EL PALOMO COJO (1991) (recently made into an eponymous film); LOS NOVIOS BÚLGAROS (1993); the collection of

published, but he also gained the much-needed validation of Spanish literary critics who, with the publication of his next novel, *Una mala noche la tiene cualquiera*, claimed that he “consiguió librarse de la molesta pero efectiva etiqueta de autor erótico heterodoxo” [managed to break free from the bothersome yet effective label of heterodox, erotic writer].<sup>113</sup> Mendicutti’s literary success also opened the world of journalism to him.<sup>114</sup> The popularity and success of such an unabashedly out gay man are quite surprising and new within the Spanish context,<sup>115</sup> and they attest to the rapid changes in sexual mores brought about by the stabilization of the democracy in the 1980s. Nevertheless, Mendicutti has yet to receive the academic attention he deserves.<sup>116</sup>

The first person narrator of *Una mala noche tiene cualquiera*<sup>117</sup> is la Madelón, a male-to-female, hormone-taking transvestite who, in a long monologue that constitutes the whole novel, tells her *historia* (i.e. her story and *history*) of the most disturbing night of her life (and of most Spaniards): February 23, 1981. This was the night that *Teniente Coronel* [Lieutenant Coronel] Antonio Tejero’s failed *coup d’état* threatened to reverse the fragile process of democratic transition that had started after the death of Francisco Franco in 1975. It is my contention that *Una mala noche* subversively intervenes in Spanish historiography by privileging gender and sexuality as the central issues through which to understand contemporary Spanish history. In addition, and of more importance for my argument, the novel provides an excellent fictionalized account of the real consequences a queer person could have

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short stories FUEGO DE MARZO (1995); and the novel YO NO TENGO LA CULPA DE HABER NACIDO TAN SEXY (1998).

113. Francisco J. Satué, *Triunfo de la ternura*, EL SIGLO DE EUROPA, Dec. 18, 1995, at Libros section.

114. He often writes an opinion column in the editorial pages of the daily newspaper EL MUNDO in which he comments, with a very “queer” sense of humor, on current events.

115. The other exception is, of course, world-renowned filmmaker Pedro Almodóvar, a contemporary of Mendicutti.

116. So far in the United States, only Yolanda Molina-Gavilán’s *Poéticas regionales ante la postmodernidad*, LUCERO, Spring 1994, at 106, 106–13, discusses Mendicutti, albeit not as a gay writer but within the context of regional, Andalusian literature. In Spain, in spite of the flurry of newspaper reviews and interviews Mendicutti has received, no scholarly publication has dedicated a full-fledged essay to his works. I thank Antonio Monegal for introducing me to this novel.

117. She is one of the characters/narrators in *Siete contra Georgia*. See MENDICUTTI, *supra* note 9. Although originally published in 1982, *Una mala noche la tiene cualquiera* was reissued in 1988 to capitalize on the success of *Siete*’s use of queer first-person narrators. In fact, *Siete* could be read as a spin-off of *Una mala noche*. However, the original composition and publication date of 1982 is crucial for an understanding of the cultural and political climate in which Mendicutti wrote, as I argue below.

endured had the fragile process of transition from Franco's dictatorship to King Juan Carlos I's monarchic democracy failed—a very real possibility for all Spaniards had Tejero been successful.<sup>118</sup>

Mendicutti's choice of a transvestite as the first person narrator of historical events so critical to the future of Spain's democracy is extremely significant and has been interpreted in a number of ways. According to critic Antonio Hernández, through Madelón's personal story, Mendicutti "consigue un fresco trepidante de los sótanos de un período histórico o, lo que es lo mismo, una crónica viva y delirante de la llamada transición, desde la óptica de una sociedad marginada con un solo objetivo: el gozo de la libertad, se considere o no su aspiración libertinaje."<sup>119</sup>

A closer look at Hernández's opinion exposes the contradictory levels at which Mendicutti's project has been read. On the one hand, the critic appropriately hails this novel not only as a great work of fiction, but also as "una crónica viva" [a real life chronicle] a bona fide chronicle or eye-witness account of important political events.<sup>120</sup> The qualifier "crónica" lends historical legitimacy to Mendicutti's project, a project that subversively privileges the perspective of La Madelón—to some an unlikely witness perhaps—through whose eyes the reader has access to a revisioning of the crucial *coup*.

On the other hand, Hernández reveals a subtle, yet generalized, bias against the transgendered—and, by extension, the queer—world that might invalidate La Madelón as a reliable witness. For this critic, La Madelón is a denizen from a "sociedad marginada" [a marginalized society], whose only object is "el gozo de la libertad" [the enjoyment of liberty].<sup>121</sup> However, Hernández perceives this interest in freedom as a desire for "libertinaje" [libertinism or debauchery].<sup>122</sup> Hence, this critic constructs the figure of the transvestite as only having an investment in democracy because it gives her the freedom to do as she pleases sexually. Her political commitment to the left comes only as a "producto de una persecución más que consecuencia de una conciencia analizadora" [product of

118. See DÍAZ GIJÓN, *supra* note 11, at 256–57 (providing a detailed account of the historical events of the night of February 23, 1981).

119. Antonio Hernández, *Monólogo de un travestí*, NUEVA ESTAFETA, Nov.–Dec. 1982, at 111 [[P]rovides a vibrant fresco of the netherworld of a historical period or, rather, a real life and delirious chronicle of the so-called transition, from the perspective of a marginalized society whose sole objective is the enjoyment of liberty, even if its aspiration might be considered to be libertinism.].

120. *Id.*

121. *Id.*

122. *Id.*



persecution rather than as the consequence of an analytical consciousness].<sup>123</sup> In fact, with this latter commentary, the critic belittles the gruelling persecution that queers suffered under Franco. Nonetheless, as Hernández must concede, La Madelón's "inclinación al cachondeo y la práctica de ejercicios sexuales poco ortodoxos no la apartan de una visión responsable de la vida ni de una ética personal abocada a las solidaridades" [leanings toward banter and toward the practice of unorthodox sexual exercises do not prevent her from having a responsible vision of life and a personal ethics of solidarity].<sup>124</sup> Although Hernández recognizes La Madelón's sense of ethic, he unfortunately characterizes her as a libertine. This construction locks the narrator/historiographer into a marginal position, making her account interesting yet subject to judgmental condescension; ultimately, Hernández denies the historical legitimacy of La Madelón's perspective.

As the novel underscores, however, La Madelón is painfully aware of such homophobic interpretations and resists being made into a side-show freak. This is illustrated in an incident in which a "mocito divino" [a divine lad]<sup>125</sup> convinces her and her roommate La Begum to take a personality test. Leading them to a dark apartment nearby, full of psychology students, he presents them to his classmates by offensively asking, "¿Os sirve *esto*?" [Is *this* of any use to you].<sup>126</sup> The students' reply not only echoes the tone of Hernández's review but may also explain the dubious reasons why this novel was a success among straight audiences: "Claro que sí; interesantísimo" [Of course, very interesting].<sup>127</sup> Refusing to become a spectacle, La Madelón reverses her, and La Begum's guinea-pig status first by recognizing the implication of the boys' exclamation—"Leñe, ni que fuéramos bichos raros" [Damn, as if we were freaks]<sup>128</sup>—and by referring to the students as "abortitos llenos de gafas" [little abortions with glasses].<sup>129</sup> Hence, she turns them—and any similarly condescending, homophobic readers—into the actual freaks.

Furthermore, in spite of Hernández's interpretation of La Madelón as lacking depth in her political analysis, Mendicutti succeeds in validating her as a responsible, democracy-loving citizen.

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123. *Id.* at 110.

124. *Id.*

125. MENDICUTTI, *supra* note 9, at 142.

126. *Id.* at 143 (emphasis added).

127. *Id.*

128. *Id.*

129. *Id.*

As La Madelón triumphantly claims at the end of the novel: "Servidora es así: independiente, liberada, moderna. Y más demócrata que nadie" [Your humble servant is thus: an independent, liberated, modern woman. And more of a democrat than anybody else].<sup>130</sup> La Madelón's strong solidarity with the political causes of women, sexual minorities, and the working class, and her firm understanding of democratic principles derive both from an informed militancy in the Spanish Communist Party (PCE) and, especially, from her past experiences as a working-class, Andalusian gay man who, prior to his transgenderism, had suffered fascist, homophobic persecution. Thus, in her narrative of the events of the night of February 23, 1981, La Madelón reminisces about how she spent most of the night wondering what would happen to her and others like her should Spain revert to a fascist dictatorship:

¿Qué sería de nosotras? Lo mismo les daba por volver a lo de antes. Qué sofoco. . . . ¿Y qué iba a pasar ahora con la libertad. . . . Qué espanto. Seguro que al final acabarían matando a La Madelón—ataúd forrado de raso granate, corona de nardos, hábito de las Arrepentidas—y habría que resucitar a Manolito García Rebollo, natural de Sanlúcar de Barrameda—tierra de los langostinos y de la manzanilla—, hijo de Manuel y de Caridad, soltero, de profesión artista. 'O sea, maricón,' se vio que pensaba el de la ventanilla de la Comisaría, la última vez que fui a renovar el carné de identidad. . . . Pues seguro que había que resucitarlo—a Manolito, quiero decir—, qué horror, con lo mal que lo pasaba el pobre. No lo quería ni pensar.

. . . [S]eguro que aquellos salían de allí como los nazis . . . organizando cacerías de maricas y unas orgías fenomenales, regando los geranios y los jazmines hasta achicharrarlos con la sangre hirviendo de los judíos, los gitanos y las reinas de toda España.<sup>131</sup>

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130. *Id.* at 162–63.

131. *Id.* at 16–17. As translated, the quotation reads:

What would happen to us? They might revert to the way it was before. How vexing. . . . And what would happen to liberty now? . . . How scary. They'll sure end up killing La Madelón—a coffin layered in garnet satin, a wreath of nards, [dressed in] the habit of the Repentant [nuns]—and one would have to resurrect Manolito García Rebollo, born in Sanlúcar de Barrameda—land of prawns and *manzanilla*-sherry—, son of Manuel and Caridad, single, profession: artist. 'That is, faggot,' one

Despite La Madelón's colorful and comic speculation about what might have happened if Tejero had been successful—we must remember that the first person narrator tells her story already with the knowledge that the *coup* was unsuccessful, thus allowing her to mock her own fears and to spice up her narrative for comic relief—the above passage conveys the sense of fear and urgency that queers must have experienced at that historical juncture. La Madelón would have had to stop cross-dressing and taking hormones: “al final seguro que tendría . . . que tirar a la alcantarilla todos los trajes y pamelas, y no habría más remedio que volver a ir por la vida de incógnito” [I would surely have . . . to throw to the sewer all my dresses and my broad-brimmed hats, and there would be no other choice but to go through life incognito].<sup>132</sup> Furthermore, she would have to erase her sense of identity, bury herself in life. Over any sort of detached, elitist theorization, Mendicutti prioritizes and legitimizes the political effectiveness and validity of those “marginal denizens” experiences of oppression.

In this seemingly superficial novel, Mendicutti vocally denounces sexual oppression; successfully vindicates gender and sexual freedom; and firmly validates the truly democratic respect of differences by counterpointing the gains of democracy with the potential losses for queers that a return to a Francoist-style dictatorship would bring. Moreover, despite Hernández's and other critics' characterization of the queer world as marginal,<sup>133</sup> Mendicutti's depiction of a transvestite as the most reliable witness of crucial historical events allows him to fulfill other subversive tasks: 1) he brings the supposed “sótanos de un período histórico” [netherworld of a historical period]<sup>134</sup> to the center of History (i.e. he privileges the margins over the center); 2) he effectively intervenes in the retelling of History;<sup>135</sup> and 3) he makes a creative

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could see that the guy at the Police Station window was thinking this the last time I went to renew my I.D. . . . Most likely he would have to be resurrected—Manolito, I mean—, how horrible, considering what a bad time he had. I didn't even want to think about it.

. . . [T]hey [the people performing the *coup*] would surely come out of there [Congress] like the Nazis . . . , organizing faggot hunts and phenomenal orgies, watering the geraniums and the jasmines until they were burnt down with the boiling blood of Jews, gypsies, and all the queens of Spain.

132. *Id.* at 79.

133. See Teresa Vilarós, *Los monos del desencanto español [The Withdrawal Syndrome of Spanish Disenchantment]*, MLN, March 1994, at 217.

134. MENDICUTTI, *supra* note 9.

135. *Id.*

critique of heterosexism and dualistic gender mores.<sup>136</sup> To qualify *Una mala noche's* construction of the transvestite further and to gauge its intervention in contemporary Spanish historiographic discourse appropriately, it is necessary first to discuss the cultural and political context in which Mendicutti wrote this novel.

In her brilliant essay, *Los monos del desencanto español*, [*The Withdrawal Syndrome of Spanish Disenchantment*], Teresa Vilarós attempts to explicate the circumstances that affected the political and literary development of the generation of intellectuals who, like herself and Mendicutti, were born approximately between 1950 and 1960.<sup>137</sup> For her, the death of Franco and the end of the dictatorship “enfrenta a los intelectuales con el problema de tener que reconocer que su antiguo papel histórico de conciencia crítica del país tiene que ser radicalmente revisado” [confronts intellectuals with the problem of having to recognize that their old historical role as the country's critical consciousness must be radically revised].<sup>138</sup> She claims that the death of the dictator coincided with and allowed the beginning of postmodernism in Spain, mostly because it ended the utopian dream that had inspired previous generations of leftist intellectuals. “El Desencanto” [the disenchantment] is the term given to the particular political and cultural effect caused by the end of the dictatorship. Comparing the anti-Francoist, utopian dream of the leftist intellectuals who lived, theorized, and wrote under the dictatorship to a hard drug that creates co-dependency, Vilarós labels the cultural explosion of postmodernist, frantic, yet apparently barren, cultural creativity as “el mono del desencanto,” where “mono” is the slang word for withdrawal syndrome.<sup>139</sup>

The cultural reaction to the death of the dictator, then, was not to follow the path of the older, politically *engagé* intellectuals, but to reject absolutely “las metanarrativas globalizadoras” [globalizing metanarratives]<sup>140</sup> and to embrace a decentering postmodernism. Hence

[e]n literatura los géneros desbordan. Las novelas de serie negra, eróticas, de ciencia ficción y la literatura de cómic inundan los kioscos y las librerías. Escritoras consideradas ‘serias’ . . . se pasan a la narración erótica y escritores y

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136. *Id.*

137. Vilarós, *supra* note 133, at 217–35.

138. *Id.* at 218.

139. *Id.* at 221.

140. *Id.* at 219.

escritoras noveles deslumbran con primeros libros y novelas, a caballo entre el subgénero popular y la 'gran literatura'.<sup>141</sup>

The most visible avant-garde movements associated with this postmodern culture emerge in the main cities: first in Barcelona and later, but more strongly, in Madrid. Formed by what Vilarós (reminiscent of Hernández) calls "minorías subterráneas, marginales, compuestas de gente joven que no estaba abrumada por ningún compromiso intelectual contraído previamente a la muerte de Franco" [underground, marginal minorities, composed of young people who weren't overwhelmed by any kind of intellectual compromise contracted prior to the death of Franco],<sup>142</sup> these movements coalesced around many gay artists, such as sado-masochistic comic-book draftsman Nazario in Barcelona, artistic team and partners Costus and filmmaker Pedro Almodóvar in Madrid, and many others. In the latter city, these young artists and intellectuals propelled what was later to be known as *la movida madrileña* [the Madrilenian movement]. Interpretations of the scope and aims of this urban, cultural movement vary drastically: from the most celebratory ones (Almodóvar), to nostalgic, pessimistic ones (Vilarós), to the most critical, condescending ones (those launched by older, leftist intellectuals like José Carlos Mainer).

For Almodóvar, *la movida*, which, strictly speaking, happened during the first half of the 1980's, "era una época alocada, lúdica, creativa, plena de noches febriles, donde Madrid supuso una explosión que dejó al mundo boquiabierto" [was a crazy, playful, creative time, full of feverish nights, where Madrid became an explosion that left the world with its jaw dropped].<sup>143</sup> He concedes that, in their relation to the immediate, Francoist past, the participants in *la movida* "had no memory. . . . There wasn't the slightest sense of solidarity, nor any political, social or generational feelings

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141. *Id.* As translated, the quotation reads:

In literature, genres overflow. Mystery, erotic, and science fiction novels and comic book literature inundate newsstands and bookstores. Women writers who are considered 'serious' move to erotic narrative, and young male and female writers dazzle with their first books and novels, halfway between the popular sub-genre and 'great literature.'

142. *Id.* at 220.

143. Pedro Almodóvar, *Vuelve entre tinieblas*, EL PAÍS, Aug. 8, 1996.

. . . . Drugs only showed their playful side and sex was something hygienic."<sup>144</sup>

Vilaros's retrospective analysis of *la movida*, although attempting to recuperate a traditional cultural value for it and wanting to echo Almodóvar's enthusiasm, betrays the sense of "desencanto" ("disenchantment") and failed utopia that permeates her essay:

La movida en el Madrid y la Barcelona de los años inmediatamente posteriores al franquismo, la movida del "mono," no tenía que ver con "construcción." Tenía que ver con el exceso, con la ruina, con la alucinación y con la muerte, con el espasmo del éxtasis y con la alegría del reconocimiento. El mono, naturalmente, no construye. La movida tampoco produce obras en el sentido tradicional. . . . Es un 'happening' que, como tal, no ofrece obras artísticas tradicionalmente identificables como tales. . . . [N]o han quedado tras [la movida] "grandes obras."<sup>145</sup>

The Spanish critic echoes here the older generation's complaint about the lack of "great works" during this period, but as she incisively indicates, the absence of traditional "works of art" during this period responds to an interpretation of *la movida* as a "fenómeno insertado en la posmodernidad, el cual, si se aferraba a algún principio, era precisamente el de huir de un corpus teórico, de toda 'teorización'" [phenomenon inserted in postmodernity, which, if it clung to any sort of principle, it was precisely to that of fleeing from a theoretical corpus, from all 'theorization'].<sup>146</sup> Surprised by what they saw as a hedonistic indulgence in apolitical excess, the older generation of liberal intellectuals irately criticized Spanish postmodernism.

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144. PEDRO ALMODÓVAR, PATTY DIPHUSA AND OTHER WRITINGS ix (Kirk Anderson trans., 1992).

145. Vilarós, *supra* note 133, at 226. As translated, the quotation reads:

*La movida* in the Madrid and Barcelona of the years immediately following Francoism, *la movida* of the withdrawal syndrome had nothing to do with "construction." It had to do with excess, ruin, hallucinations, and death, with the spasm of ecstasy and the happiness of recognition. The withdrawal syndrome, naturally, is not constructive. Neither does *la movida* produce works in the traditional sense of the word. . . . It's a happening that, as such, does not offer artistic works traditionally identifiable as such. . . . [A]fter [*la movida*] no "great works" were left.

146. *Id.* at 227.

Spanish literary critic José Carlos Mainer summarizes the opinions of this older generation. He identifies two artistic responses to the trauma of the democratic transition in Spain. The first response is that of an “identity crisis” resulting from the dismantling of the traditional oppositional role of the left in Spain under the dictatorship, what Mainer calls “the bankruptcy of the ‘leftist tradition’”<sup>147</sup> or “el desencanto” mentioned by Vilarós.<sup>148</sup> The second response to the death of Franco and the downfall of the dictatorial apparatus is what the critic calls “the search for lost vitality.”<sup>149</sup> His attitude toward the intellectuals and artists who responded in the second way is contemptuous at best. Launching what Vilarós would call “[un] ataque furibundo a la posmodernidad española” [[an] irate attack on Spanish postmodernity],<sup>150</sup> Mainer’s diatribe exposes the mis-recognition that separated the old, liberal intellectuals from the younger, postmodern generation:

[T]here are other forms of hedonism that are almost deliberately cynical when they talk about their historical innocence. I am referring to the *movida*, a vague and yet significant term for a phenomenon that has caused great excitement . . . [but] has also been a refuge for a number of disappointed, loose, and lost individuals who, in spite of their [age], have put a lot of imagination into this effort. They are the belated hangover of a 1968, which Spain did not experience directly, and they have a rare talent for commercializing their fantasies. They have managed to change Madrid and Barcelona—especially the former—into ‘fun’ cities. They continually generate musical groups with eccentric names and improvised yet sometimes aggressive, intelligent songs; they design useless objects, impossible decorations, and unlikely clothes that, nevertheless are sold all over Europe. The films of Pedro Almodóvar—which through their comic make-up exude a disquieting lack of morale—could serve as an emblem of this vitality that takes delight in the debasement of an urban subculture but deep down is a desperate search for lost innocence . . . the nostalgia for this innocence and the rejection of history; the selfish longing for beauty and emotion

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147. José Carlos Mainer, 1975–1985: *The Powers of The Past*, in LITERATURE, THE ARTS, AND DEMOCRACY: SPAIN IN THE EIGHTIES 16, 31 (Alma Amell trans. & Samuel Amell ed., 1990).

148. Vilarós, *supra* note 133, at 218.

149. Mainer, *supra* note 147, at 31.

150. *Id.* at 231.

rather than reason; apparently all symptoms of postmodernism.<sup>151</sup>

Mainer's worried response betrays, among other things, his fear of *la movida's* questioning of the elitist boundaries between "high" art and popular culture—a distinction that Spain's upper classes and intellectuals have always been at pains to legitimate.<sup>152</sup> Furthermore, Mainer's perception of a "disquieting lack of morale" in Almodóvar's films illustrates how Mendicutti's privileging of the stories of queer people might have similarly shaken older critics. The accusation of a "lack of morale," however, is the homophobic imposition of a generation of liberal critics who, because they are too entrenched in a modernist project, cannot appreciate the subversion couched beneath these apparent "forms of hedonism." What Mainer saw as "disappointed, loose, and lost individuals" were, for the most part, a group of queer artists, many from the working classes, who, because they had grown up under *La ley de Peligrosidad* [Law of Social Danger and Rehabilitation] and the complex Francoist apparatus of heterosexist normativity, were now more invested than anybody in the consolidation of a free, democratic society that would guarantee every citizen's right to difference. Appropriately contesting Mainer's complaints about *la movida's* lack of political commitment, Vilarós claims that "la antipolítica de la movida no se pretendía apolítica, sino que tenía un obvio sentido de respuesta a la visión de lo político entregada por la tradición" [the anti-politics of *la movida* did not pretend to be apolitical. Instead, it had an obvious sense that it was contesting the vision of what is political that has been traditionally handed down].<sup>153</sup>

When Mendicutti wrote *Una mala noche la tiene cualquiera* in 1982, he lived and experienced the Madrid of *la movida*. The novel fully participates in the postmodern projects of fragmenting and decentralizing the subject and rewriting history. Mendicutti, like Almodóvar in his medium of film, brings gender and sexuality to the center and makes them the legitimate grounds on which to build a larger political program. Because the older generation of

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151. *Id.*

152. Many Spanish writers, for example, past and present, have deliberately fluctuated between "high" art and popular culture. See, e.g., STEPHANIE SIEBURTH, *INVENTING HIGH AND LOW: LITERATURE, MASS CULTURE, AND UNEVEN MODERNITY IN SPAIN* (1994) (providing a book-length study of the ambivalent blending of "high" and "low" elements in some Spanish canonical authors).

153. Vilarós, *supra* note 133, at 233.



leftist intellectuals cannot accept gender and sexuality as “political” issues, they claim that the program is “apolitical.” Despite facile, superficial interpretations of *la movida*, Almodóvar’s included, many of its artists were engaged politically, as Mendicutti’s works illustrate.<sup>154</sup> Despite Mainer’s perception that the artists of *la movida* were “almost deliberately cynical when they talk[ed] about their historical innocence,”<sup>155</sup> Mendicutti’s intervention in history through La Madelón’s retelling of the moment that threatened to end democracy, to rob Spaniards of their newly acquired freedom, and to throw queers back to the judicial persecution of the last years of the dictatorship demonstrates a clear engagement with the political world and an awareness of the dangers of repeating past history.

Using the trope of cross-dressing to refer to contemporary political processes in Spain was not new to Mendicutti. During the late 1970s, prior to the coup, many perceived the incipient Spanish democracy as negotiating a precarious balance between the legacy of the dictatorship and the pull of europeanizing, democratic, economically expansionist forces.<sup>156</sup> In a critical editorial, a cultural and political publication called *Ajoblanco*, which traditionally serves as an intellectual forum for marxist, queer and feminist intellectuals, characterized the new democracy as a “dictadura que se traviste de democracia” [dictatorship that cross-dresses as a democracy].<sup>157</sup> In a later issue of *Ajoblanco* dedicated to transvestism, another writer claims that “[e]n el fondo todos somos travestís. Todos representamos” [deep inside, we are all transvestites. We all perform],<sup>158</sup> while he also makes the distinction that there is a kind of transvestism which, far from being playful and subversive, represents oppressive forces—the cross-dressing practiced by those who “encubiertos por el ropaje del nefasto travestismo del poder, nos encauzan hasta destruirnos. Hasta la impotencia” [covered up by the clothing of power’s nefarious transvestism, lead us to destruc-

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154. Another queer writer of significance whose most important novel was published during *la movida* is Cristina Peri Rossi. Although not active participants in *la movida*, both writers were surrounded by it: Mendicutti in Madrid and Peri Rossi in Barcelona. Taking part in the night life of either of these cities during the late 1970s and early 1980s meant that one was immersed in *la movida*. For a thorough discussion of Cristina Peri Rossi’s explorations of gender and sexuality in her novels, see Pérez-Sánchez, *supra* note 38, at 160–93.

155. Mainer, *supra* note 147, at 16.

156. See generally CARR & AIZPURUA, *supra* note 11, at 135–67; DÍAZ GIJÓN, *supra* note 11; Malefakis, *supra* note 7.

157. AJOBLANCO, July 15, 1976, at 1.

158. Toni Puig, *Yo también soy travesti*, AJOBLANCO, Feb. 19, 1977, at 13.

tion. To impotence].<sup>159</sup> *Una mala noche* disrobes this conservative, cross-dressed, democracy from its “nefasto travestismo del poder” [power’s nefarious transvestism] by vindicating instead a subversive, liberating transgenderism and mobilizing issues of gender and sexuality as the keys to a responsible democratic enterprise.<sup>160</sup>

Leopoldo Azancot celebrates Mendicutti’s choice of a transvestite “como portavoz de todos aquellos a los que les iba mucho en que el golpe fracasara” [as a spokesperson for all those who had much to win if the coup failed].<sup>161</sup> For him, the choice of La Madelón as witness to history,

permite distanciarse al lector de la, por así decir, versión oficial e ideológica de los hechos, forzándole a tomar contacto con el verdadero sentido de los mismos desde el punto de vista no comunitario, sino personal e individual—lo que estaba en juego, de manera prioritaria, era el derecho a ser distinto, de los más o de un pequeño grupo con poder, y en todos los ámbitos: sexual, político, etcétera—; le obliga a reconocer que la sociedad, por encima de toda otra consideración se divide primordialmente entre quienes afirman el derecho a la diferencia y quienes lo niegan, y que un travestido y un demócrata, por ejemplo, no difieren en nada de este punto de vista; y, en fin, le mueve . . . a desdramatizar lo ocurrido, viéndolo y viéndose con humor.<sup>162</sup>

Although this critic is right in his validation of the role of La Madelón, he inevitably makes the same objectifying gesture as Hernández: La Madelón’s story is humorous, endearing, but also laughable. This gesture strips of its seriousness Madelón’s personal

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159. *Id.*

160. MENDICUTTI, *supra* note 9.

161. Azancot, *supra* note 111, at 16.

162. *Id.* As translated, the quotation reads:

[I]t allows the reader to distance himself from the, so to speak, official and ideological version of the facts, forcing him to get in touch with the true meaning of the facts not from the non-communitarian point of view, but from the personal and individual one—the priority at stake was the right to be different from the majority or from a small group with power, in all areas: sexual, political, etc.—; it forces the reader to recognize that society, above any other consideration, is divided primordially between those who affirm the right to difference and those who deny it, and that, from this point of view, a transvestite and a democrat, for example, do not differ at all; and, finally, it moves [the reader] . . . to de-dramatize what happened, seeing it and himself with humor.

account of the coup. Furthermore, by comparing “un travestido y un demócrata” [a transvestite and a democrat], he implies that a person cannot be both.

However, *Una mala noche* intelligently undoes Azancot’s excluding dichotomy (a transvestite *or* a democrat) and “blends” (just as a transvestite supposedly blends genders)<sup>163</sup> democracy with queer-ness. In other words, Mendicutti queers democracy. Furthermore, *Una mala noche* emphasizes that the “derecho a la diferencia” [the right to difference] was not equally important for all those opposed to Francoism. As demonstrated in Part II of this Article and emphasized by La Madelón’s testimony of her fears during the night of the coup, it was queer Spaniards who had more to lose if Tejero was successful.

Finally, Mendicutti brilliantly turns transvestism into a metaphor for the newly democratic Spain. Unlike the editorial in *Ajoblanco*, *Una mala noche* does not claim that the regime that followed the death of Franco was a “dictadura que se traviste de democracia” [a dictatorship that cross-dresses as a democracy].<sup>164</sup> On the contrary, transvestism *is* the true condition of Spanish democracy. This is exemplified by La Madelón’s self-characterization of her and La Begum’s transgenderism. Having confronted the real, life-threatening implications of the potential success of the coup, which would mean a reversal to a fascist dictatorship, Madelón explains how it helped them realize “cómo somos todas. Del pasado tan chiquitísimo que tenemos, y de lo espantoso que eso es. De lo mal que nos encaja el medio cuerpo de cintura para arriba, con el medio cuerpo de cintura para abajo” [how we [transvestites] all are. Of the very small past that we have, and of how frightening it is. Of how the half-body from waist up fits badly with the half-body from waist down].<sup>165</sup> This representation of the transvestite functions as an allegorical representation of the incipient democracy of the late 1970s, a regime that had to negotiate the opposing forces of the old, modernist, conservative Spain (“el medio cuerpo de cintura para abajo” [the half-body from waist down]), and the new, postmodern, progressive Spain (“el medio cuerpo de cintura para

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163. Ekins and King use “gender blending” as “an umbrella term . . . to include cross-dressing and sex-changing and the various ways that such phenomena have been conceptualised.” BLENDING GENDERS: SOCIAL ASPECTS OF CROSS-DRESSING AND SEX-CHANGING 1 (Richard Ekins & Dave King eds., 1996). Their anthology thoroughly discusses the term, presenting the political pros and cons of using such a term.

164. *Editorial*, AJOBLANCO, *supra* note 157.

165. MENDICUTTI, *supra* note 9, at 102.

arriba" [the half-body from waist up].<sup>166</sup> These contending forces "encajan mal" [fit badly] yet must coexist within the same body politic. The "pasado tan chiquitísimo" [the very small past] of the transvestites echoes the very short and precarious past or history of the emergent democracy. This negotiation of contending political/sexual forces is often painful, jarring, and confusing. Yet, "cuando [La Madelón/Spain] todo lo ve muy negro, lo que se dice fatal, perdido del todo" [when [La Madelón/Spain] sees everything very dark, truly bad, completely lost],<sup>167</sup> she deals with her contradictions, assumes them, and festively (in the true spirit of *la movida*) concludes that "mejor pintarse el ojo, plantarse un clavel reventón en el canalillo de los pechos, hacerse la sorda y salir corriendo para los toros, que se hace tarde" [it's better to put on makeup, place a bursting carnation between your breasts, play dumb, and run to the bullfight, cause it's getting late].<sup>168</sup> Through the transvestite, Mendicutti thus delivers a brilliant lesson in peaceful, democratic coexistence. Just as "[e]l destino de [La Madelón] . . . es ser mitad y mitad; pero no en orden . . . a la rebujina" [it's [La Madelón's] destiny . . . to be half and half; but not in order . . . all jumbled up],<sup>169</sup> the goal of democratic Spain should be to accept and to live with its differences—be they political, sexual, socio-economic, or otherwise.

Mendicutti's negotiation of gender and sexuality in *Una mala noche* goes beyond his male predecessors' symbolic, misogynist construction of Spain as a castrating mother.<sup>170</sup> Subversively literalizing the concept of *La madre patria* [the mother nation/fatherland]—which etymologically mixes femininity and masculinity, mother and father in the symbolic construction of the nation, and thus reinscribes heterosexuality—Mendicutti makes democratic Spain into a "gender blender":<sup>171</sup> both female and male, *madre* and *padre*. The new Spain is no longer the "castrating bitch" that other Spanish writers had constructed,<sup>172</sup> but a glorious transvestite or, as La Madelón would say, a "mujer divina" [a divine woman].<sup>173</sup>

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166. *Id.*

167. *Id.* at 103.

168. *Id.*

169. *Id.* at 25.

170. For a thorough discussion of how several male canonical Spanish writers allegorically figure Spain as a castrating mother that must be killed, see Pérez-Sánchez, *supra* note 38, at 45–97.

171. *See id.* at 1.

172. *See id.*

173. MENDICUTTI, *supra* note 9, at 12.

## CONCLUSION

Commenting on what she considers to be an embarrassing display of tastelessness, La Madelón characterizes Tejeros's takeover of Congress thus: "Qué número, por Dios, como en Sudamérica: hala, a tiro limpio, todas al suelo, se acabó lo que se daba, guapos. Qué cosa más ordinaria" [What a number, for God's sake, like in South America: come on, shooting all over, everybody to the floor, no more of the good stuff, my pretty ones. What a rude thing].<sup>174</sup> I find this quotation very telling for the purpose of this Article and its connections with LatCrit concerns. To La Madelón (possibly speaking for a generalized Spanish popular opinion), the fact that the young Spanish democracy was undergoing a military coup brought the country closer not to the much desired civility of Europe, but to the perceived barbarism of Latin America. The quotation implies that only in South America would one witness such "rude" displays of force and anti-democratic sentiment. This problematic commentary neatly illustrates the anti-Latin American biases still underlying the Spanish imaginary. These biases relate to Spain's feelings of insecurity regarding its location vis-à-vis the Western world (U.S.A. and Europe) and its ambivalence toward its former colonies.

Elizabeth Iglesias has recently argued that "it should never be forgotten that today's Latina/o communities were spawned during Spain's colonial supremacy and through the physical and cultural impact of the Hispanic conquest on indigenous communities in Latin America and throughout much of the southwestern United States."<sup>175</sup> For this reason, she claims:

as LatCrit scholars continue to confront the consequences and to explore the implications of increasing globalization, Spain, its legal system, history, culture and current-day projects offer a relatively unexplored avenue through which to engage the critical insights of post-colonial theory and cultural studies, to grapple with the meaning and significance of Europe and Africa in the articulation of LatCrit theory and its social justice agendas, and to excavate these new insights in tandem with, and in relationship to, our critical analysis of in-

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174. *Id.* at 10.

175. Elizabeth M. Iglesias, *LatCrit Theory: Notes Toward a Transatlantic Dialogue*, U. MIAMI INT'L & COMP. L. REV. (forthcoming 2001).

ternational and comparative law, legal institutions and procedures. From this future oriented perspective, Spain offers a valuable point of reference for examining a host of pending issues that are especially germane to Latinas/os and to other political identity groups committed to the articulation of an expansive anti-subordination agenda without borders or boundaries. These issues include such matters as the continuing repercussions of Spanish colonialism and the future of democracy in Latin America, the configuration of interstate power relations within the European Union, and Spain's role in current-day projects to promote sustainable economic development, social justice and democratic freedom in the countries of Africa and Latin America.<sup>176</sup>

Following these recommendations, this Article offers a perspective of the Spanish legal system at a particular historical point—the late years of Franco's dictatorship and the transition into democracy. Also, it offers a perspective of the Spanish legal system regarding a specific set of issues—the competing discourses around homosexuality. I hope that the points of view of the fields of cultural studies and literary criticism from which I have spoken in this Article will be of use to legal scholars in general, and Lat-Crit scholars in particular.

I have argued for the need to focus on how homosexuality becomes a contested locus in which hegemonic and anti-hegemonic discourses converge at a time of historical crisis. Also, I would like to add, literature merits study in conjunction with the law because the former constitutes an important measurement of possible cultural subversion against a repressive regime at the same time that it may intervene to revise the faulty re-telling of history. Furthermore, literature constitutes an excellent example of a cultural product that resists and can ultimately help to change hegemonic ideology, even if such change only comes in the form of a vocal vindication of democracy and a citizen's right to difference.

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176. *Id.* at 5.

