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"Our real enemies": political foundations of the legality and legitimacy of the Spanish "New State," 1936-45

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ABSTRACT
The legality and political legitimacy of the Francoist New State in Spain during the Civil War and the immediate post-war period entailed the formulation of a doctrine and criminal legislation that enabled the regime to repress its political opponents, as well as to gain control over Spanish society as a whole. This article analyzes how this process of the social construction of the offender was based on the categorization of the other as a dangerous and morally and socially harmful enemy, mainly through the creation of a new offender-based criminal law.

KEYWORDS
Spain; Spanish Civil War; Francoist New State; enemy; criminal legislation; political repression

The events of the coup d'etat of 17 and 18 July 1936 in Spain, which a part of the Spanish army's officers provoked against the Republican democratic regime, broke the rule of law and the public order system without securing a hold on power. This led to a situation of civil war in which the military occupation of the capital, Madrid, continued to be the primary objective of the insurgents.

In this article, we shall focus on the cultural aspects of the civil war, which involved collective mobilization in a common representation that gave meaning to peoples' experiences. Accordingly, the symbolic dimension of politics is prioritized. The origin of the Spanish New State in the circumstances of a war made the political grouping in the face of the so-called enemy reach its maximum degree of political polarity. This phenomenon was not new, but the context of warfare exacerbated it. From the first moments of the war, the propaganda of the Francoist side used the image of the anti-Spain. This propaganda discourse had been used before to promote popular support for political conservatism in the climate of electoral competition and political confrontation during the Second Republic, especially in moments of collective turmoil such as the general election of February 1936.

This article explores how the abstract and general category of the enemy had an impact as a propaganda stereotype in those wartime circumstances. Furthermore, it is stated that the stereotype of the enemy influenced as a positive legal concept in what can be called the new criminal law of the Francoist New State in Spain.[1] Similarly, it establishes that the New State did not only base its legality as a legitimate regime on a discourse and legal practice against the enemy. The idea of the enemy also provided its political legitimacy by claiming the constitutional illegality of the Republican government

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and its lack of legitimate exercise. In order to establish the degree of accuracy of this interpretation, we need to explore to what extent the idea of the enemy was used as legal category in the totalitarian new criminal law during the Francoist dictatorship in Spain, and how the stereotype of the supposed internal enemy was used to highlight the illegitimacy of political action by Republican governments since 1931.

This particular approach has been adopted above all in the case of Germany with the regard to political violence and the repression of the political opposition and of certain social groups and racial minorities, especially Jews.[2] The application of the criminal law of the enemy has been examined mainly through the Nuremberg Laws which were enacted by the German Reichstag on 15 September 1935.[3] The influence of the new Nazi penal doctrine in Spain occurred mainly through the dissemination of Carl Smith's political and legal thought.[4] The importance of the enemy's image, and particularly the development of the criminal law of the enemy in the Francoist New State, has not been sufficiently highlighted in the extensive Spanish historiography on political repression, and qualifies an old thesis about the "militarization" of public order in Spain. Regarding this thesis, Manuel Ballbé affirmed that under the Spanish Restoration, military methods continued to be applied for the maintenance of social order, which contributed to the "denaturalization" of the Army.[5] In particular, following the political and social crisis of 1917 in Spain, the attribution of civil power to the armed forces intensified, and they acquired a strong awareness of their power vis-à-vis the political class. Accordingly, we should also emphasize the importance of the book that Carolyn P. Boyd dedicated to the "praetorian politics" of the period 1917–1923.[6] In this final period, the economic dislocation, the social and political upheaval, and the colonial war in the Spanish Moroccan protectorate exerted unprecedented pressures on the anachronistic political system of the Restoration. This led the rulers to reinforce their dependence on the Army, as had happened with the coup d'état of General Primo de Rivera on 13 September 1923.

In this article, the approach is rather that the repressive policy and the new penal order in the Francoist New State was not a simple continuity of the militarization of public order in Spain, but it implied a qualitative change. This was consistent with the broader centrality of decision-making in legal and political theory during the interwar period in Europe.[7] Secondly, we intend to establish a model from the Spanish case of how the exception of "criminal law of the enemy" in the interwar dictatorships became the political and legal norm through a broad process of criminal codification of the image of the enemy, and its importance in the concept of the political from the late twenties in interwar Europe. In this way, from an interdisciplinary point of view, the notion of political culture may allow for a rethinking of certain categories and practices of criminal law in inter-war dictatorships.[8]

Extraordinary jurisdiction for enemy repression[9]

Extending the declaration of the State of War to the entire Spanish national territory by the National Defence Council on 28 July 1936 expanded the special military jurisdiction and separated it from the ordinary jurisdiction.[10] This Army competence in defense of the political regime and the social order against internal enemies had been established in Article 2 of the Army Constitution of 29 November 1878.[11] By Decree from 25 August 1936, it was ordered that the commanders-in-chief of the operational armies

would exercise the jurisdiction of war, which could be delegated to the commanding generals of the divisions or brigades and to the superior commanders of the naval forces. The generals and commanders would assume jurisdiction in the territories that remained under their control.[12] At the same time, a Decree from 1 September established the rules to which the judicial procedures competing with the War and Navy jurisdictions had to be subjected.[13] The preamble justifying this provision emphasized the need for summary justice in order to achieve greater military effectiveness and civil movement. In Article 1 it was ordered that all the cases within the War and Navy jurisdictions should be dealt with by summary justice procedures, for which some modifications were introduced in the Code of Military Justice and the Naval Law of Military Prosecution, mainly reinforcing the procedural competences of military auditors. In the organization of the extraordinary military jurisdiction, Decree No 42 from 24 October created a High Court of Military Justice, for which Francisco Gómez Jordana Souza, Lieutenant General of the Army Reserve, was appointed as President.[14]

A key factor in penal procedure militarization was the urgent summary trial procedure, which was regulated by Decree No. 55 from 1 November. The application of this procedure was justified as necessary to ensure the speed and exemplary function of military justice before the military occupation of Madrid. These procedural rules were decreed to restore legal order in the capital and tackle the supposedly unnumbered crimes under the Republican government.[15] Eight War Councils were created to resolve the previous proceedings of sixteen military courts.[16] The prolongation of the war after the military offensive to occupy Madrid had failed, displacing the offensive to the Northern front, leading to the expansion of urgent summary trial procedures to all "liberated" places, or those "to be liberated" by Decree from 26 January 1937.[17] These places remained under the jurisdiction of the occupation army. The punishment framework was completed with the death penalty restoration by Law on 5 June 1938, which amended the Article 27 of the Penal Code of 1932. This was the punishment for ordinary crimes of robbery with homicide, parricide and murder.[18]

The application of criminal law in National Spain under the declaration of a state of emergency was legitimized mainly by the precepts of Catholic morality, which amended rationalist positivism. This led to the conception of punishment as a means of redeeming guilt. However, Decree No 281 from 28 May 1937 granted this right to prisoners of war and prisoners for extraordinary crimes, based on the national syndicalist doctrine of the right to work, according to point fifteen of the program of the single-party.[19]

Thus, punishment was regarded as a means of redeeming sentences through work, as sanctioned by the Order issued on 7 October 1938. As the preamble of this provision stated, the material dispensation of the subsidies had to be led by a vocation to apostolate, seeking the spiritual and political improvement of the prisoners and their families, tearing out "the poison of the ideas of hatred and unpatriotic attitudes, replacing them with those of mutual love and close solidarity among the Spanish people."[20] Crime was understood through the metaphor of moral illness, which could infect the healthy social body.

The Jesuit José A. Pérez del Pulgar, who was then a member of the Central Board for the Remission of Sentences through Work, highlighted the tradition and idiosyncrasy of remission in the Spanish penal system, which reformed the corrections' doctrine. As an act of submission and reparation on the part of the offender, remission work sought

spiritual, cultural, religious, patriotic and social growth to conquer spirits lost to God and the Country, and it established a union between the religious apostolate and the spiritual and social pacification of Spain, together with its material reconstruction.[21] Consequently, the system of sentences remission through work was linked to probation by the Decree of 9 June 1939.[22]

Along with the weight of the military jurisdiction in the judicial administration, another characteristic of the legal order of the New Spanish State was the generalization of the special jurisdictions in the postwar period. To this end, a series of courts were created, with hardly any procedural guarantees.[23] The implementation of special jurisdictions involved the extension of the actor-based criminal law in the Spanish criminal doctrine. The special jurisdiction of political responsibilities was constituted by the Law of Political Responsibilities of 8 February 1939, which retroactively declared the political responsibility of the persons who, from 1 October 1934 and up to 18 July 1936, contributed to create or worsen the situation of subversion, and who had opposed the "National Movement" with particular acts or with serious passivity from 18 July.[24] The Special Court for the Repression of Freemasonry and Communism was first constituted by the Decree of 4 June 1940. This law complied with the provisions of the Law of 1 March of that year, which also established retroactively that a special court could commission actions and proceedings to the judges of the ordinary and military jurisdictions for similar crimes.[25]

The normalization of military justice administration in the post-war period was followed by the Law of 12 July 1940, which reinstated the Code of Military Justice with the same wording it had on 14 April 1931.[26] In this process, the adaptation of the current criminal legislation to the needs of public order of the New State led to the approval of State Security Law of 29 March 1941. In its preamble, it was stated that the existing Code from 1932 was obsolete with regard to the imperatives and realities of the time. Thus, the Francoist government was concerned about the proclamation of a new Criminal Code that "gathering the essence of the current regime, knows how to apply the progress of criminal science and the fundamental principles of our legal traditions in appropriate formulas."[27] Meanwhile, the Law for State Security made up for those deficiencies in criminal legislation.

Extraordinary jurisdiction, both military and special, featured as a novelty the legal admission of the category of the enemy in the criminal law of Franco's New State. In particular, the application of actor-based criminal law preventively provided the offender with the category of deviant due to their moral qualities, convictions, personality or previous conduct. The essence of the crime lay in a characteristic of the perpetrator as a social entity within their political community, which explains the application of the punishment as a means of social defense. In the Spanish New State, the new law had to be a law of protection and defense of the values constituting the socio-political reality, and had to consider the human reality of the offender as a member of a political community.[28] The criminal action had two dimensions: the conduct of an individual, but within a particular historical community.[29] Criminal law should address the reality of the offender and the need of the State to defend itself from those who were its putative enemies. The law had to be a law of guilt,' which focused on the resolutions of the person's will, with a balance between the personal and social aspects of the offence, connecting the offender with the political idea of their community.[30]

Criminal responsibility was based on the innate dangerousness of the offender, and implied that the crime be defined solely by the fact that it could constitute a danger for legal right, that is, the offender was an enemy of the juridical good, and consequently their thoughts as well as their inner and private life were subject to punishment. The criminal law of the enemy optimized the protection of public goods, and therefore all criminalizations of what materially were preparatory acts fell within its framework.[31] Behind such preventive criminalization was the differentiation of the so-called enemy due to their alien status. The enemy was considered so especially because of their foreign, external association, such as Freemasons, Marxists and Jews. After the outbreak of the civil war, the anti-Masonic, anti-Jewish and anti-Marxist campaigns that had taken place in the political and electoral context of the Spanish Republic, were to be seen once again; now the war itself approved the specifically political distinction between friend and enemy.[32]

Legal reform was determined by the political activity of the New State, and it combined the national and social concepts in a new way of understanding and applying the essence of the basic concepts of criminal law. Crime was understood in a holistic way, that is, under the idea that within crime there was a human and social substance that can be explained by its political dimension. Beyond its limits, actor-based criminal law was conceived as will-based criminal law, whose substance was the conscience of the offender.[33] It was ostensibly about political justice, whose objective was to increase the sphere of political action. For this purpose, court services were recruited through a set of exceptional rules or by the denaturing of the judicial procedure. This justice was characterized by the submission of any individual and collective act to the scrutiny of the court in order to strengthen the own situation of society and weaken that of their political adversaries.[34]

The illegitimacy of republican powers

In the New State, the repressive system was justified solely on the basis of violence and the final victory achieved on 1 April. Various legal reports and successive criminal investigations were used by the Commission of Truth which demonstrated the legitimacy of the so-called national cause, and the guilt and illegitimacy of those who had not supported it. In advanced stages of the war, when the Republican government led by Juan Negrín had moved to Barcelona at the end of October 1937, an audit of the so-called Army of Occupation reported on what were termed the constitutional infractions committed by the Red Government. The report denounced the "suspicious legitimist ostentation" of the Republican government:

> In the same suspicious insistence with which the Red Government—yesterday, of Madrid and Valencia, and today, of Barcelona—proclaims the legitimacy and constitutionality of its national representation, is the first unequivocal sign of the cynical legal farce carried out by the people responsible for the dramatic situation in Spain.[35]

The report explained how this legal and judicial scam had occurred. It was argued that the Constitution of 1931 has been drawn up by the same individuals who had been behind the aborted revolution in Jaca in December 1930 and who, later, had perpetrated the revolutionary uprising of October 1934. This was regarded a contravention of the existing constitutional order:

> In October 1934, with no power and without governmental commitments, those same men mobilized their masses and openly exhibited their discrepancy with the Basic Law they had voted for, igniting the revolution in Asturias, which was fighting for communism and libertarian anarchism, and in Catalonia where on the night of the 5th to the 6th of the aforementioned month, the current President of the Autonomous Government of Catalonia declared the so-called 'Catalan State' thus positioning himself outside Spain, its Constitution and its laws.[36]

This was the path that had led to the triumph of subversion in February 1936. The final considerations of the report, which remained unpublished, included—in addition to the transgressions against constitutional legality—other transgressions committed against the rest of the legislation, not to mention the "immense list of crimes, the hundreds of thousands of horrendous murders, destructions, fires, violations … transgressions in short, not only of written state laws, but of all those that rule over the most primitive relationships between human beings" were left aside.[37] The conclusion was simple and categorical: "All divine and human laws having being dishonored, violated and left inoperative, the red territory can rightly be called 'The Lawless Land."[38]

After resuming its activity, the plenary session of the Royal Academy of Moral and Political Sciences, held on 1 March 1938 in San Sebastian, unanimously approved the report entitled *El Movimiento Nacional ante el Derecho y la Justicia*, whose academic speaker was the priest Juan Zaragüeta.[39] In his report, he answered four questions: what was the legality of the power that was raised against National Spain?; what was the legitimacy of said power?; what was the *de facto* and *de jure* situation with regard to the sovereignty of both areas in Spain at the time?; and finally, how was such sovereignty regarded abroad? The legality of the Republican regime created in February 1936 as a result of the parliamentary elections that led to the victory of the Popular Front, was questioned. If the origins of the electoral victory of the Popular Front were questionable, the legality of their actions was less clear with regard to the amnesty of those sentenced for the October 1934 revolution and the dismissal of the President of the Republic, with Manuel Azaña elected in his place.[40] After the National Uprising of 18 June 1936, the Republican government did not fully maintain the constitutional normality with regard to the summoning of Parliament, and did not respect the correct functioning of the permanent Council either. Likewise, they abused the prolongation of the state of alert and ruled by decree in legislative matters. Moreover, the Court of Constitutional Guarantees was ineffective in the exercise of its powers.[41]

But legitimacy was above legality, said Zaragüeta. If legality consisted of a system of legal facts and legal attributions of governors and the governed in mutual balance, legitimacy was evident in the use or abuse that they all made of their activity within their legal jurisdictions. Legitimacy was inspired by the postulates of law and natural law, and the supreme requirements of the ideal right for the progressive realization of human ends. Before constitutional legality, social reality was organized hierarchically in an organic way and full of a national tradition that struggled to break through. Then a reaction arose of the real over the legal, and of social life over political devices.[42] The Constitution of 1931 had not really satisfied any of the right-wing parties (due to its socializing tendencies and its aggressiveness against all religious matters), nor any of the left-wing parties. These considered it as a transaction with their rivals, or as a provisional regime of political revolution, which would be overthrown in a relatively short period of

time by the true and definitive social revolution. It was a matter of turning constitutional freedom into a dictatorship of the proletariat, and of imposing either a socialist or communist nationalization, subjecting national life to international life, or a new order based on libertarian anarchy or Anarcho-syndicalism. In any case, said Zaragüeta, the religious and Catholic spiritual tradition of Spain would be wiped clean.[43] Both the right- and left-wing parties aspired to reform or constitutional transformation. In any case, while the former did not hide it, although it opted mainly to do so by the legal use of suffrage, the latter—at least its most extreme and numerous sector—was not satisfied with it. Impatience induced them to violence, prompting further opposition, in the face of which public powers did not act in defense of justice. Neither the outbreak nor the spread of violence could be attributed to the *caudillos* of the National Movement. The latter's non-responsibility in this was the foundation for its justification in the face of illegitimacy of power, which did not effectively defend lives and property.[44] The legitimacy of the New State was therefore based upon the natural law of scholastic sources, on which counter-revolutionary thought had been formed in Spain. The legitimacy of positive laws ultimately depended on their agreement with natural law, which meant that the validity of the law depended on its justice. Revolutionary violence called the neutrality of the legislative State of the Republic into question; it was therefore not a Rule of Law.[45]

The foreseeable end of the conflict—after the Battle of the Ebro in September 1938 and the offensive on the Catalonian front—prompted the authorities of "National Spain" to reaffirm their political legality. This happened through the actions of a Commission, created by the Order of 21 December that year. Its mission was to fully demonstrate the acting powers' illegitimacy on 18 July 1936. The revision of such powers was necessary, because "One of the strategies that Marxist Spain has used with greatest perseverance in its huge propaganda campaign compensating for an effective force that it does not have and for a moral support devoid of cause, is that of constantly accusing National Spain of being factious, rebellious and anti-juridical."[46] Accordingly, it was stated that:

> In order for this [the truth] to be exposed, accompanied by the most rigorous tests, capable of satisfying the most demanding, National Spain is opening important proceedings, aimed at demonstrating to the world, in an incontrovertible and documented way, our accusatory thesis against the would-be legitimate powers, namely that the bodies and persons who held power on 18 July 1936, will suffer from such vices of illegitimacy in their titles and in the exercise thereof, that, when the Army and the people rose up against them, they did not perform any act of rebellion against the Authority or against the Law.[47]

The order would include "the authentic evidence of the great parliamentary fraud of the Popular Front."[48] It would reveal the falsification of suffrage against the counter-revolution and for the benefit of the Marxist forces to such a degree that it subverted the result of the electoral contest, the assault on command posts, the crimes and offences committed or sanctioned by the Government. The murder of Calvo Sotelo served as "an example for people, in whose criminal clutches more than four hundred thousand brothers of ours have been brutally slaughtered in prisons, in secret police committees and on the roads of red Spain."[49] After the extension of the deadline to publish the result of its proceedings, the judgement was approved by unanimous acclamation of the Plenary of the Commission held on 15 February 1939, and was immediately published

along with a comprehensive appendix with the demonstrative facts of each statement. The preliminary comments highlighted the unanimity of all the Commission members regarding a common conviction: that the powers acting in the Republic on 18 July were substantially and formally illegitimate. The legitimate right of Christian rebellion against tyranny was based on the faculty of resisting oppression.[50]

Tyranny or harm done to the innocent was a cause of fair war. This defense of fair war as the origin of the legitimacy of the New State coincided with the determination of the criminal responsibility of the vanquished in Spain. To this end, the judicial investigation of an order on criminal acts throughout national territory during the so-called red domination was decreed on 26 April 1940 by the Ministry of Justice. The work entrusted to the Public Prosecutor's Office specified:

> It is important that these investigations, under the name of 'General Cause,' acquire their true importance, encompassing the whole extent and intensity of the crimes committed, but reducing to a synthesis the set of inquiries that, due to their similarities and coincidences, reveal a preconceived plan, the result of the same inspirations at the service of the most perverse ideals.
>
> The Cause will intend to include the preparatory acts of subversion and the final conduct of the vanquished leaders, and investigate the elements concerning the crime, its causes and effects, procedures used in its execution, attribution of responsibilities, identification of victims and definition of the damages caused both in the material order and in the moral order, against people or against goods, as well as against the National Religion, Culture, Art and Heritage.

The decree granted special powers to the Prosecutor of the Supreme Court, who could delegate to the prosecutors of the provinces, and the authorities and the civil and military corporations were required to collaborate in their preparation. The decree of 19 June 1943 established the appointment of a Chief Prosecutor of the General Cause. The information, collected by provinces, was divided into eleven pieces: Main (list of acts against the life, security and freedom of the people committed in all the towns and cities of each province, indicating their perpetrators or suspects and their situation); National Uprising: background, Red Army and liberation; Jail and removal of prisoners to be executed; Secret police committees; Red justice; Press; Action of local government authorities; Crimes against property and reports of the Official Chambers of Commerce and Industry; Banking; Religious persecution; and Artistic treasure and red culture. These legal proceedings continued until 1946, although a preview of the information instructed by the Public Prosecutor's Office was published in 1944.[51] Justice Minister Eduardo Aunós commented that everything possible had been done to rehabilitate those who had not committed any serious crimes. This was proof of the rejection of cruelty by those who had fought for "National Spain": "The Christian 'Caudillo' who rules us knows that only love and clemency can strengthen governments. Cruelty is cowardice, and our liberating war was won by courage and heroism, virtues that can only coexist with greatness of heart."[52]

Conclusion

After the events that occurred following the military coup in Spain on 18 July 1936, political violence soon became a criminal action against those who did not support the National

Uprising. In a situation of war, the application of criminal justice meant a break with the previous legal order and positivist theory of law. Criminal justice was an instrument of terror under the declaration of the State of War, which legalized *ad hoc* the extralegal repression that insurgents exercised from the start of the military rebellion. This feature was due to the extension of the special military jurisdiction, the elimination of individual procedural guarantees, and the restoration of the death penalty, affecting both combatants and the civilian population. The action of military justice during the civil war and the immediate post-war period was not just one more chapter of the recurrent militarization of public order in previous periods in Spain. It was the application of military extremism in the use of violence in a context of total war, as had happened in the colonial wars and the areas occupied militarily during the Great War. From 1936, the Spanish war jurisdiction acted as so-called political justice, in the same way that the military jurisdiction of the Wehrmacht did in the countries occupied from 1939.[53]

This feature was a particularity of the Spanish case in the context of the inter-war period regarding what happened in other contemporary dictatorial regimes. In Italy, there was initially a continuity of the liberal rule of law, at least until 1927, in spite of the weakening of the guarantor principles of legal positivism and the use of some previous mechanisms to control the judicial apparatus.[54] In Germany, where the legal order of the Weimar Republic was radically transformed, the legal revolution of Nazism was not carried out by replacing the previous legal body. Under the suspension of the fundamental rights of the Weimar Constitution, the timely approval of a set of laws left the existing legislation intact in everything else.[55] In this case, the new idea of Law broke with the legal positivist doctrine through the principle of authority, the special law and the single party, which meant turning a whole legal system on its head through nothing more than interpretation.[56]

Fascism did not implement a *sui generis* unitary legal theory when it came to power in the liberal State. However, we should highlight a common element among the dictatorial regimes of the period: the extensive use of exceptional criminal justice. This happened in Italy through the creation of the *Tribunale speciale per la difesa dello Stato* by law 2008 of 1926, and in Germany, together with the enactment of racial laws, with the approval of the *Volksgerichtshof* (People's Court) on 24 April 1934.[57] In the Spanish New State, this happened with the extension of special jurisdictions in 1939 and 1940 through the Law of Political Responsibilities and the Law on the repression of Freemasonry and Communism, within the framework of a new Criminal Law, which culminated in the Penal Code of 1944. In general, it was a jurisprudence that entailed the legal admission of the category of the enemy in the definition of the crime through the application of actor-based criminal law. Together with the introduction of preventive detention for the first time in the Italian Code of Criminal Procedure of 1930, this transformed the dictatorial power into a Dual State (*der Doppelstaat*). In 1941, the German jurist Ernst Fraenkel highlighted the dual hybridization in dictatorships between the "normative state" (*der Normenstaat*), whose action is based on a positive legal regulation audited judicially, and the exceptional "state of measures" (*der Maßnahmenstaat*), governed by discretion according to the convenience or political opportunity of power.[58]

The rupture caused by this form of dictatorial power with the rule of law of the Spanish Republic made it particularly necessary not only to justify the legality of the New State, but also to legitimize the very fact of the military coup by demonstrating the illegitimacy of the Constitution of 1931 and the guilt of the Republican and left-wing

governments. Thus, the doctrine and practice of law was not only a technical task, but an essential element in the foundation and political action, which were framed and acquired meaning within a broader collective vision.[59] As in any mobilization, the civil war in Spain led to the exaltation of the spirit as an antithesis of the enemy, imbuing the propaganda with a sense of belonging to a common identity. The unifying and mobilizing force of the images used by the rhetoric of the fervent nationalist discourse of the rebels was war propaganda, but also something else when resorting to an imagined community.[60] As had happened in other European conflicts, the war in Spain was imbued with a sense of divine mission, pre-existing archetypes were reproduced and their spirit was exalted as an antithesis of the enemy. The extreme cruelty of violent actions in the war was interwoven with the dehumanization of the victims. This happened through the imaginary representation of the enemy in the form of cultural stereotypes: preconceived ideas that determine the process of perception, classifying objects as familiar or strange, and that emphasize, in doing so, their differences through a series of signs. The proper political distinction between friend and enemy constituted a fundamental pole of tension of the culture of war of the Spanish New State as an essential political community fighting against the anti-Spain—a collective representation that was deeply influenced by Catholic political theology and Spanish reactionary thought as a distinctive element.

Notes

1. A first version of part of this article was published in Francisco Sevillano, "Política y criminalidad en el 'nuevo Estado' franquista. La criminalización del 'enemigo' en el derecho penal de posguerra," *Historia y política* 35 (enero-junio 2016): 289-311.
2. The differentiation between friend and enemy as a genuinely political distinction was established by the German theorist Carl Schmitt in "Der Begriff des Politischen," *Archiv für Sozialwissenschaften und Sozialpolitik* 58 (1927): 1-33.
3. In particular on the Nuremberg laws, Lothar Gruchmann, "'Blutschutzgestz' und Justiz: Zur Entstehung und Auswirkung des Nürnberger Gesetzes von 15 September 1935," *Vierteljahrshefte für Zeitgeschichte* 31 (1983): 418-42; Cornelia Essner, *Die "Nürnberger Gesetze" oder Die Verwaltung des Rassenwahns 1933-1945* (München: Paderborn, 2002); James Q. Whitman, *Hitler's American Model: The United States and the Making of Nazi Race Law* (Princeton, NJ: Princeton University Press, 2017); and Magnus Brechtken, Hans-Christian Jash, Christoph Kreutzmüller and Niels Weise, eds., *Die Nürnberger Gesetze. 80 Jahre danach* (Göttingen: Wallstein Verlag, 2017). On the racial question in the thought of jurist Carl Schmitt, Raphael Gross, *Carl Schmitt und die Juden. Eine deutsche Rechtslehre* (Frankfurt a. M.: Suhrkamo Verlag, 2000), und Yves-Charles Zarka, *Detail nazi dans la pensée de Carl Schmitt: la justification des lois de Nuremberg du 15 septembre 1935* (Paris: PUF, 2005).
4. On the influence of C. Schmitt in Spain, José A. López García, *Estado y Derecho en el franquismo: el nacional-sindicalismo. Francisco Javier Conde y Luis Legaz Lacambra* (Madrid: Centro de Estudios Políticos y Constitucionales, 1996); Miguel Saralegui, *Carl Schmitt, pensador español* (Madrid: Trotta, 2016) y Gabriel Guillén Kalle, *Carl Schmitt en la segunda República española* (Madrid: Editorial Reus, 2018).
5. Manuel Ballbé, *Orden público y militarismo en la España constitucional 1812-1983* (Madrid: Alianza Editorial, 1983).
6. Carolyn P. Boyd, *La política pretoriana del reinado de Alfonso XIII* (Madrid: Alianza Editorial, 1990).

7. Christian Graf von Krockow, *Die Entscheidung. Eine Untersuchung über Ernst Jünger, Carl Schmitt, Martin Heidegger* (Stuttgart: Pleßner, 1958).
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9. In particular, Francisco Sevillano, "Política y criminalidad," 291-95.
10. *Boletín Oficial de la Junta de Defensa Nacional de España* (BOJDN) (30 August 1936). Military jurisdiction was administered in accordance with the provisions of the 1890 Code of Military Justice, approved by Law on 25 June (*Gaceta de Madrid*, 4 October 1890, being published in the successive issues from 4 to 11 October).
11. *Gaceta de Madrid* (30 November 1878). Article 2 established: "The first and most important mission of the Army is to sustain the independence of the country, and defend it from external and internal enemies."
12. BOJDN (27 August 1936).
13. BOJDN (4 September 1936).
14. Both decree and appointment were published in the BOE (1 November 1936).
15. BOE (5 November 1936).
16. Decree No. 56, of the same date of regulation, declared void and with no effect all the provisions ordered after 18 July 1936 that had not been issued by the military authorities under the command of the "Generalissimo," by the National Defense Council or by the organizations constituted by the Law from 1 October, which had established a State Technical Board as an administrative organization of the Spanish New State. Article 2 established that the State Technical Board's Commission of Justice would examine the laws, decrees, orders, regulations and notices prior to that date when it considered that they were contrary to national interests, proposing their immediate repeal.
17. BOE (27 January 1937).
18. BOE (7 July 1938).
19. BOE (1 June 1937).
20. BOE (11 October 1938).
21. José Agustín Pérez Del Pulgar, *La solución que España da al problema de sus presos políticos* (Valladolid: Librería Santarén, 1939).
22. BOE (13 July 1939).
23. On the first systematizations of the dictatorship's repressive legislation and on judicial policy, José Antón Oneca, "El Derecho penal de posguerra," in *Problemas actuales del Derecho penal y procesal* (Salamanca: Universidad de Salamanca, 1971), 161-74; Antonio Beristain Ipiña, "Política criminal y Derecho penal en la Guerra Civil y en la post-guerra (Violencia subversiva y represiva en España: 1936-1945)," *Revue International de Droit Pénal* 49^{e} année, 1 (1978): 91-104, and Ignacio Berdugo Gómez de la Torre, "Derecho represivo en España durante los períodos de guerra y posguerra (1936-1945)," *Revista de la Facultad de Derecho de la Universidad Complutense de Madrid* 3 (1981): 97-128. Juan Cano Bueso, *La política judicial del régimen de Franco* (Madrid: Ministerio de Justicia, 1985), and Mónica Lanero Táboas, *Una milicia de la justicia. La política judicial del franquismo (1936-1945)* (Madrid: Centro de Estudios Políticos y Constitucionales, 1996).
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Disclosure statement

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