

Chapter 1

Franco's Spain and the Self-Loathing Homosexual Model

That Spanish fascism operated through the model of binary categorization by which one item in a pair is always marked as superior to the other needs little proof. In fact, the fascist understanding of the categories of gender and sexuality provides a particularly striking and well-studied model of such binary thinking. The oppositional pairs male/female, heterosexual/homosexual must remain well-defined and carefully contained for fascism to successfully carry out its ideological and political programs. However, Spanish fascism's quasi-paranoid policing of homosexual behaviors, particularly towards the end of the Francoist regime, requires a much more complex study in its own right. First, however, it is necessary to survey the role of gender segregation in fascist movements in general.

In his foundational work, *The Fascist Revolution: Towards a General Theory of Fascism*, historian George L. Mosse theorizes the centrality of manly stereotypes and homosocial male bonds to the definition of European fascism:

Fascism was born in the aftermath of the First World War, and everywhere it claimed to continue the war experience into peacetime, with its male camaraderie and its emphasis upon struggle and triumph. . . . Emphasizing wartime camaraderie meant that fascism everywhere saw itself as a coterie of men, while women were stereotyped not as inferior but as largely passive in their role as wives and mothers. The virile man was considered the driving force of history and one of the principal symbols representing the nation's strength and harmony. (xvi)

Fascism represented itself not only as a young movement (particularly in its beginnings at the turn of the twentieth century), but also as a political force primarily composed of young men. In fascism, “[y]outh symbolized vigor and action,” characteristics associated with a classical ideal of beauty—an ideal “which had become the manly stereotype” (Mosse 13–14). The appropriate counterpoint to this youthful masculinity was, of course, a passive, equally virtuous femininity. As Spain’s fascist ideologue José Antonio Primo de Rivera famously put it:

We do not understand why respect for woman should consist of removing her from her magnificent destiny and of delivering her to masculine functions. . . . True feminism should not consist of wanting for women those functions that are nowadays considered superior, but of increasingly surrounding feminine functions with more human and social dignity.¹ (Scanlon 323)

Hence, from its very beginnings, Spanish fascism actively sought to fix essentializing notions of gender roles and gendered tasks. Reading between the lines of Mosse’s argument, one might discern the possibility that fascism’s drive to congeal rigid gender binaries may stem, in part, from its interest in guaranteeing the careful segregation of homosocial spaces, particularly those of men—spaces where, as Mosse emphasizes, camaraderie, and the strong bonding experiences of men at war could solidify (13–14). Within fascism’s very fascination with the beauty of the vigorous, youthful male body and with male bonding lay the fantasmatic possibility of a slippage from homosocial acts to homosexual acts. The fear of the degeneration of spaces of camaraderie among men, coupled with fascism’s more obvious fixation on violent masculinity and its “glorification of war and struggle” (Mosse 42), necessitated the creation of internal enemies, particularly when there were no obvious external ones. Mosse explains that:

Racism . . . focused upon tangible enemies like the Jews or Gypsies, but fascism in general also provided a category of “asocials,” men and women who were said to be without any sense of community. The so-called asocials were homeless people like the beggars or vagabonds, the mentally impaired and so-called sexual deviants. They were not usually of an inferior race, but . . . were thought to undermine the nation or race, to lead it into degeneration. (42–43)

Through its juridical apparatus, Francoism sought to define and to contain what it considered dangerous social behavior, especially homosexuality (the main "asocial" group). Francoism's obsession with criminalizing and containing homosexuality betrays two key anxieties of the dictatorship. On the one hand, male homosexuality literalized the underlying sexual potential at the heart of fascism's glorification of male camaraderie. On the other hand, Francoism's particular fixation with containing male homosexuality suggests that the regime perceived its own position within the Western international community as one of marginality and deviance. In addition, as Alberto Mira has recently claimed, the intensity of institutional homophobia in the last years of the regime responds to a fear of social disintegration of the monolithic Francoist system (321). These anxieties expose how narrowly the regime understood the workings of gender and sexuality within the constraining dichotomies of heterosexuality/homosexuality and masculinity/femininity. In the Francoist imaginary, being marginalized, segregated to a passive role, meant that the nation was being placed in the same position as women, because, as Óscar Guasch points out, in Spain, there are clearly defined gendered behaviors, attitudes, and appearances:

Man is associated with characteristics such as valor, strength, initiative, and with being the *active* subject in a sexual relationship; whereas woman is expected to be delicate, tender, amusing, subtle, and to act as the *passive* subject in a sexual relationship. . . .

Saint Paul places *mollities* (passivity) at third place in the scale of sins of the flesh. The sin of passivity in a man happens when he allows his body to be used by another person (man or woman) to obtain pleasure. (49–50)

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 came into conflict over establishing a harmonious understanding of homosexual identity. At the theoretical level in particular, I am concerned with tracing not only how the state apparatus exerted hegemonic control over definitions of gender and sexuality but also, how nonhegemonic sexual minorities subverted that control. In other words, I want to privilege resistance to the state's seemingly absolute power from the perspective of grassroots, underground gay activism. Following Judith Butler's theories on gender performativity, 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.

In what follows 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 transgender 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? What does Francoism's obsession with normativizing gender and sexuality reveal about the way the regime imagined the nation?

In order to respond productively to these questions, I disengage my analysis from an oversimplified view of state power as exclusively producing repressive effects and concentrate instead on the dialectical tensions (what Althusser calls the "teeth-gritting harmony" [150]) 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.

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" (140). He further distinguishes between state power and state apparatus. The latter is often unaffected by struggles to seize or maintain state power (140). This particular characteristic of the state apparatus is exemplified by Spain's transition into democracy (1975–1982), during which a democratic parliamentary structure coexisted with the old, full-fledged repressive and ideological Francoist 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 Francoist institutions. (Malefakis 215–16)

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" (Malefakis 225). Likewise, Francoist laws persecuting homosexual practices were applied until 1981 (Mira 13).

To this theory of the state, Althusser adds his well-known distinction between the repressive state apparatus and the ideological state apparatuses (142). The former includes the government, the administration, the army, the police, the judicial and penal systems, et cetera. The latter include educational, religious, and familial institutions; political parties; and communications and cultural systems, et cetera. 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, psychological coercion (142–43). 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. (150)

Closely following 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.” 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” (12).

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 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 150). 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 extensively argues, 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” (*Discipline and Punish* 27).

We might find, nevertheless, a productive moment—a locus for agency—in one of Althusser’s significant parenthetical commentaries. Althusser employs a promising metaphor when he assigns an intermediary role between the repressive state apparatus and the ideological state apparatuses to the ruling ideology; he calls the relationship attained between these two “a (sometimes teeth-gritting) ‘harmony’” (150). 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 Roman Catholic Church, education, culture in general) that contradictions arise, where a battle over attaining the power to signify differently from hegemonic semantics emerges.

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 towards its 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 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, were 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 merit a detailed explanation.

In summary, this chapter argues that, towards the end of the dictatorship, homosexuality became a complex node of definitional power relations: a locus in which the repressive state apparatus (the law and the police) and the ideological state apparatuses (culture) sometimes grit teeth over establishing a harmonious understanding of homosexual identity. To this end, the first part of this chapter 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. The second part of the chapter maps the main juridical sites of struggle for Spanish lesbian, gay, bisexual, and transgender people during the difficult transitional political period that preceded the stabilization of the contemporary Spanish democracy.

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 changed significantly throughout its existence, evolving from the ironclad fascist regime of the 1940s and 1950s to the more open and modernized *dictablanda* (soft dictatorship) of the 1960s and early 1970s.² 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 into three distinct phases of the economic development of the dictatorship. 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, “when the [assassination] of [Prime Minister] Carrero Blanco . . . is combined with the first impact of the previous decade's economic crisis” (García Delgado 171). These three phases and their respective social implications will help to illuminate my discussion of Francoism's preoccupation with criminalizing homosexuality and normativizing gender along binary lines.

Until the early 1950s, Francoist Spain struggled to reconstruct a devastated country and a crashed economy through the imposition of an autarchic system, in other words a “self-sufficient, self-capitalizing economy protected from outside competition by tariffs and administrative controls regulated by state intervention” (Carr and Fusi 50). The results of this self-absorption were detrimental at all levels, but were especially damaging at the economic level. Suffice it to say, 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: “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” (García Delgado 173–74). 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.³ 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)” launched by the United States (Harrison 19). 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” (Carr and Fusi 52). The only country that came to Spain’s aid between 1947 and 1949 was Perón’s Argentina, but that aid was soon cut when Argentina began to experience economic difficulties of its own (Harrison 19).

During the 1950s and due to a severe crisis,⁴ 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 (Harrison 23). 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. This U.S. 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” (Harrison 20).

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 only matched by Japan at the time (Malefakis 217). 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” (Harrison 23). The social and political implications of this rapid economic growth and the massive exchange of people 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 (Malefakis 218). 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:

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. (217–18)

Particularly ironic, in the context of my discussion of Francoism's obsession with containing homosexuality, is the fact that, as Mira points out, “Spain was part of the ‘sexual tourism’ route for industrialized nations, in the same manner that Spaniards now consider Cuba a sort of sexual paradise where ‘every one is queer’” (303).

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” (Malefakis 219). The sense that Spain was largely in the hands of foreign capital and the country was still treated as a lesser relative must have weighed heavily in the imaginary⁵ 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” (Harrison 26). To make things worse, Spain was deeply affected by the oil crisis of 1973 to 1974. All of these troubling signs of economic crisis, compounded by increasing civil unrest (student demonstrations and Basque nationalist terrorism) that was brutally suppressed by the police, made the 1970s a highly restless and uncertain period. The much anticipated death of Franco opened the country up to the long process of transition to democracy.

The implications of Spain’s economic lag behind the rest of Western Europe are important: in spite of the rapid development of the 1960s, Spain, since the 1940s, had already come to occupy an isolated and marginalized position with respect to the European democracies. In the sexist, dichotomous imaginary of Franco’s regime, Spain’s marginality vis-à-vis Europe must have been perceived as a passive, feminized position far from the self-aggrandizing version of the regime as a hypervirile, legitimate government. Because the regime was not as normative and central as it wanted itself to be perceived as, the mere existence of nonheterosexual practices must have threatened Francoist legitimacy to its core. 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. (133)

Furthermore, as Mira suggests, homosexuality was doubly threatening because it always connoted sexual activity—already a taboo for the regime—and it was considered, particularly by the Catholic Church, as an antinatural and despicable behavior that made it the exact negative to the positive of the pillars that sustained Francoism (288).

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 institutional 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*⁶ and of reducing women to a subservient position: the *Sección Femenina*.⁷

Karen Van Dyck's study of women's writing under the colonels' dictatorship in Greece illuminates the conditions of Spain under Francoism. Although the Greek dictatorship does not exactly parallel Franco's, it produced strikingly similar effects.⁸ 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. (46)

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.⁹

Francoist political, religious, social, and cultural institutions attempted to reconstruct 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, "[w]omen of the 'New Spain' would be surprisingly similar to those of the old Spain" (320), and so would the men revert to conservative ideas of masculinity. 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 (201). The fascist regime was particularly interested in defining women's roles because "women represented a very useful tool for Fascism . . . [due to] the role they performed in the family—a privileged site of socialization" (14). The complement to

this fascist construction of femininity, as I discussed at the beginning of this chapter, was a masculinity modeled on the Catholic, aggressively heterosexual *macho*, a stereotype reinforced through institutions such as the military service and upheld by compliant, conservative women. 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.¹⁰

As the power of Francoism and its institutions waned towards 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 transgender 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 the rest of the Western world, as I have demonstrated 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 were perceived—from a simplistic, heterosexual view—to allow themselves to be sodomized, that is, who 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 with respect to the rest of Europe. Indeed, as Guasch explains, the anxieties surrounding masculinity not only in the Francoist context but also in Mediterranean cultures of the time period in general, revolve precisely around those fears of feminization that reinscribe dichotomous notions of gender:

The Mediterranean principles of honor forbid any sort of sensuality in interactions among men, because these principles are deeply related to a type of phallic aggressiveness through which men subjugate and compete for women, and attempt to subjugate (more symbolically than actually) other men. Idiomatic expressions such

as “*tomar por culo*” (“get fucked in the ass”) and “*bajarse los pantalones*” (“pull down one’s pants”) illustrate such subjugation. Symbolic constructions are transferred to the arena of social relations to denounce, for example, different socio-economic hierarchies: “fuck the workers” or “pull down the workers’ pants.” Any sensuality in male relationships (even in friendships) is unthinkable, because it implies the emasculation and consequent feminization of these relationships. The heterosexual definition of sexual relationships among men is not based on virility or in a relationship among equals. The heterosexual perspective presupposes that one of the actors gives up active sexual roles to identify with the feminine. Such is the cultural origin of the *marica*, *mariquita* [faggot], or effeminate homosexual. (51)

In addition, Francoism may have feared the emergence of male homosexuality within the very core of segregated male spaces so favored by fascist ideology. As Mira documents, “the possibility of homoeroticism in the Armed Forces encouraged a homophobia literalized through rituals and norms. Thus, homosexual treason developed on three distinct fronts, covering the range of Francoism’s enemies: reds, atheists, and ‘decadents’” (288). Through their mere existence, homosexual, lesbian, and transgender people alike challenged the heterosexual gender roles imposed by fascism. Thus, homosexuality, as simplistically understood by the regime, became a site in which a complex battle between hegemonic and antihegemonic discourses on gender and sexuality took place. In order to demonstrate this argument, in what follows I focus on the legal discourses that criminalized homosexual practices, homophobic juridical commentaries on the law, and gay activists’ perceptions of the implications of the law.

The psycho-medical constructions of homosexuality contained in Francoist judge Antonio Sabater’s homophobic *Gamberros, homosexuales, vagos y maleantes: estudio jurídico-sociológico* (1962) 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 “characterized by a deviation, an anomaly of the sexual instinct” (176). Furthermore, in order to justify stricter measures against homosexuals, Sabater carefully constructs them in his text as primitive beings, with “an intense instinctual life that has no room in civilization” and who must be domesticated because they are “highly dangerous [to] ethical, cultural, and juridical barriers, and to the progress of humanity” (180). In

conclusion, for Sabater, gay men possess a “feminoid nature” and a “strong link with their mother” (195), they often work as “dancers” and wear “women’s clothes” or are “imitators of women” (204).

On the other hand, lesbians often don “manly shoes and clothes” and display “manly ways of behavior” (209). 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 “the impolite way in which many female employees or women in leadership positions at companies and businesses treat their male personnel” (209). 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.¹¹

Homosexuality became a site of crisis and disruption of the regime. Consequently, from the early 1970s to the mid-1980s, Spain witnessed a flurry of publications on the subject of homosexuality. 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.¹² After a ten-year lull, the victory of the socialist party in 1982 increased gay activists’ hopes of further liberalizing of society’s attitudes towards homosexuality, and it triggered a new wave of publications discussing homosexuality from a progressive point of view.¹³ 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 letter to U.S. gay activist Robert Roth¹⁴ dated November 16, 1973, Armand de Fluvià, founder of the first underground homosexual organization in Spain,¹⁵ urgently requested 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,

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.

In spite of another U.S. gay activist's characterization of de Fluvia's letter as "slightly panicky," the Spanish activist's fears were well-founded.¹⁶ By codifying homosexuals as *peligrosos sociales* (socially dangerous persons), Francoist laws were free to impose severe and arbitrary *medidas de seguridad*. These security measures included:

- a) Confinement in a re-education institution [for a period no less than four months and no longer than five 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]. (Franco 12551; 12553)

These security measures, as a 1976 manifesto of the *Front d'Alliberament Gai de Catalunya* (FAGC) explains, "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." (22).

While the Francoist regime had paid little attention to homosexuality in the immediate post-Civil War years, from the 1950s on it developed an inexplicable concern with codifying, pathologizing, and containing the activities of homosexuals.¹⁷ In what follows, I consider the codification of the homosexual according to the discourse of the law and its juridical interpretations. To this effect, I examine the text of the Law of Social Danger and Rehabilitation of August 4, 1970, its antecedents—the Law of Vagrants and Thugs (*Ley relativa a Vagos y Maleantes*) of August 4, 1933 (which did not include homosexuality as a dangerous state) and its modifications of July 14, 1954—and its homophobic interpretations.¹⁸

The Law of July 14, 1954, "modifying articles 2nd and 6th of the [Law of Vagrants and Thugs of August 4, 1933], declared homosexuals subjected to security measures" (Sabater 216). This was a measure that Sabater celebrates as "a legislative success" (216). In the early sixties, jurists were apparently unhappy with the inefficiency of the Spanish penal system. Jurists' concern with tightening laws significantly coincides with the modifications in social mores brought about by the economic expansion of the 1960s. Perhaps in the face of economic transformations, social modernization, and the unprecedented numbers of foreign visitors, jurists and legislators were particularly concerned with prosecuting crime and presenting a civilized vision of Spain. Mira argues that the motives for the hardening of the law towards homosexuals may have stemmed from the exacerbation of Francoism's paranoia—a regime that, after fifteen triumphant years, was

witnessing the demise of its terrible yet stabilizing autarkic system (320). Likewise, this law may respond to a fear of the country's inexorable modernization and its social consequences in the form of more relaxed sexual mores (Mira 321).

In accordance with the 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," and to this purpose he proclaims that:

it 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. (8)

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

Foucault observes how, from the eighteenth century on, the penal system in France moves away from "the body as the major target of penal repression" and towards a concern with punishment as "an economy of suspended rights" (11). 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, "The 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 (16). 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" (23). 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" (163). 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)" (163). This liberal attitude is reflected in later reforms of the penal code 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" (164). 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 (164).

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

[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. (J .A. M. 11–13)

What López Muñiz fails to indicate in this interview is that homosexuality was among those others that Franco codified as dangerous in his revision of this Republican law. Hence, criminalization of homosexuality was a specific concern of the fascist regime.

As in France, Spanish judges gradually became concerned with "something other than crimes, namely, the 'soul' of the criminal" (Foucault 19). 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? . . . 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?" (Foucault 19). In the same manner, Sabater seeks to prevent

future 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. (Sabater 18)

Unlike lawmakers in democratic European societies at the time, Sabater identifies with “a current of opinion among penalists [from Spain and other nations] who ask that the sentences dictated in court against homosexuals be longer, so that we may influence them” (216–17).¹⁹ Certainly, his justification for these tighter measures—that is, to influence or cure homosexuals—works as a mechanism of disavowal of the actual repression.

As Foucault indicates, “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” (22). In other words, the modern practice of the law in Europe resorts to other disciplines (psychiatry, psychoanalysis, and medicine) to “supervise the individual, to neutralize his dangerous state of mind, to alter his criminal tendencies” (18). 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 always defining an individual,” and conforming him or her to the dominant society (18).

As a direct consequence of Sabater’s and other judges’ requests for stricter measures against homosexuals, Franco issued the Law of Social Danger and Rehabilitation of August 4, 1970, which was dreaded by lesbians and gays but celebrated by reactionary jurists.²⁰ This law 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:

To homoxesuals [*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. Homoxesuals [*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. (Cuello Calón 704–05).

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 ("Confinement to . . . an agricultural colony"). This measure would force them to become useful members of society, thus reforming their evil ways through hard labor—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 substantially modify the contents of the 1933 and 1954 laws, it elicited a flurry of gay activism. Homosexuals were afraid of the insidious way this new law hypocritically adapted "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" (Franco 12552; emphasis added). Following the trend that Foucault historicizes for France, the main goal of the Law of Social Danger was "to reeducate and return man to a fuller social life" (Franco 12552)—that is, to mold dangerous subjects according to a dominant notion of normality. Furthermore, the law sought to acquire "the most perfect possible knowledge of the biopscho-pathological character of the presumed dangerous subject" (Franco 12552). As Foucault reminds us, this knowledge is directed towards controlling "the heart, the thoughts, the will, the inclinations" (16) of the alleged dangerous subject. This desire for knowledge of the soul, as it were, is also aimed not so much towards judging criminal acts—since this law intended to prevent "diverse states of danger *prior* to crime" (Franco 12551; emphasis added)—but towards controlling "the passions, instincts, anomalies, infirmities, maladjustments, effects of environment or heredity" (Foucault 17). Insofar as the law was concerned with the "anthropological, psychical, and pathological conditions" that led the individual to a state of social dangerousness, it anticipated "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" (Franco 12552). Therefore, while the 1954 law merely called for a separation of homosexuals from other socially dangerous subjects, the 1970 law implemented sophisticated centers, which, "staffed with the needed ideal personnel, [would] guarantee the social reform and rehabilitation of the dangerous subject through the most purified technique" (Franco 12552). 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.²¹

On June 1, 1971, a 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” (Mirabet i Mullol 165). The reeducation measures practiced in Huelva included electroshock and the aversion therapy that de Fluvià refers to in his panicked letter. The Huelva center was dedicated to active homosexuals and the one in Badajoz to passive ones. But, in actuality, these centers were insufficient to accommodate the great number of detainees that poured into prison as a result of the arbitrary implementation of the law. Consequently, many homosexuals were interned instead in regular prisons, thus being subjected to the brutal attacks and sexual abuses of other inmates and guards (de Fluvià, cited in Mira 327; see also Olmeda 71–84 and Arnalte 14–23). The so-called aversion therapies included two main types:

. . . emetic and electric. The former forced the patient to regurgitate by injecting him with or forcing him to ingest substances that would induce vomiting (apomorphine or emetine) at the same time that he was exposed to homosexual stimuli, such as pornographic magazines. (Arnalte 100)

Electroshock therapy, which some Spanish psychologists such as José Santacreu were still endorsing in 1987, consisted of electrical charges at the bottom of the subject’s feet. The feet were favored because burnt marks would not be as clearly seen there as they would if the charge had been applied to more visible areas of the body (Arnalte 100). 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 “*homosexuales*” (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 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 (*homoxesuales*), the penal code's misspelling elicits contradictory interpretations. At first, it may appear to cross sexuality itself out of same-sex relationships, while the law simultaneously seeks to erase homosexuals from society. Thus, 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 well into 1981 for the new Spanish democracy to eliminate homosexuality as a category of social danger subject to security measures (as a matter of fact, between 1975 and 1979, 181 people were processed under this law [Mira 327]). At a deeper level, however, this comic misspelling, which figuratively reverses or presents homosexuality as a mirror image of heterosexuality, also inscribes homosexuality as a practice of sodomitical rear-entrance, as if the word "*sexo*" penetrated the word "homosexual" from behind, thus leaving its permanent, subversive homographetic mark (Edelman) on the law.

De Fluvià's retort to Roth's complaint that in the United States of the 1960s and early 1970s gay activists were still in the ghetto stage underscores Francoism's active silencing of homosexuality:

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. (1)

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 as early Christians in Rome had to hide and fear for their lives.²² As Mira, Arnalte, and Olmeda have separately documented, "fear was imposed by quotidian means" (Mira 297). Thus, the law was arbitrarily and erratically applied and the police made frequent use of regular citizens as *informadores* (informants) that would spy on

their neighbors and sometimes abuse their power to settle unrelated vendettas (Mira 297). The police would conduct random raids on bars suspected of serving as cruising locales for men and would proceed to inform the detainees' families and employers the reason for their detention, thus ruining their reputation and their hopes or maintaining a job (Mira 297). These police interventions often had very little to do with legal or ideological zeal and more to do with economic interest, as they would seek bribes from bar owners not to conduct raids (Mira 299). We must not forget, however, that other dissidents, such as communists, union organizers, "or any other alternative that the regime may consider dangerous" would also suffer persecution (Mira 324).

Doubly marginalized—as sexual and political dissidents—queer activists clearly delineated their course of action. In his letter to Roth, de Fluvia indicates a sharp awareness of the mechanisms of oppression and of the grassroots actions needed to counteract them:

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. (2)

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

Faced with the triple task of having to raise consciousness among closeted gays and lesbians and beginning a productive dialogue with progressive heterosexuals while outmaneuvering censorship, queer activists felt dismay at such a "huge and very unrewarding" task. Furthermore, these pioneer activists soon realized the limitations of associating homosexuality with marginality: "[it] would trap individuals in the closet, hindering their normal socialization, forcing a sexual element into any type of relationship, often mediating these with monetary exchange" (Mira 310).

Significantly, lesbians are neglected in all these discourses, even if Judge Sabater lamented in his homophobic work that "criminologists, so far, have not paid enough attention [to lesbianism]" (207). The reason, he

believes, “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” (177). 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,²³ women’s independent sexuality was difficult to conceptualize. As Carmen Alcalde explained to U. S. feminists in the early 1970s, in Spain,

there 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 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. (Levine and Waldman 36)

Although some extremely homophobic, paranoid legislators thought that “this lesbian passion must be an object of special concern” (Sabater 208), 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. In fact, as Mira documents, out of the total four thousand official cases opened up in Spain throughout the active life of the Law of Social Danger and Rehabilitation (the actual, unofficial number of detainees and registered homosexuals reached fifty thousand), only two of the detainees were women. Unable to conceive of female sexual pleasure independent of male heterosexual pleasure, lesbianism was erased from the sexual horizon of late Francoism. This process of erasure comes to the fore in 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.