

**RE-IMAGINING JUSTICE: A STUDY OF ETHICS, POLITICS, AND LAW IN
CONTEMPORARY SPAIN**

by

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To my parents Ricardo and Pilar

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INTRODUCTION

It would not be an exaggeration to say that modern Spain has been built upon two myths: partly around the myth of national reconciliation and the consensus of the transition, and partly around the myth of Europe.¹ First, the transition to democracy was thought to have left behind the sharp ideological divisions that led to the Civil War (1936-1939), and the repressive dictatorship of Francisco Franco (1939-1975). Second, Europe and the European Community (EC)² represented the principles of liberty, pluralism, and economic progress to which Spain should aspire in order to break with the dictatorial past, to recover national self-respect, and to reinvent itself.³ After the Spanish Constitution of 1978, which defines Spain as a Social and Democratic State (*Estado Social y Democrático de Derecho*), the arrival of Felipe González's socialist party (*Partido Socialista Obrero Español*, PSOE) to the government in 1982 led the country into a frantic attempt to reach the socio-economic levels of its European neighbors.

¹ See Carlos Closa, *The Domestic Basis of Spanish European Policy and the 2002 Presidency*, tr. Stephen J. Wilkins, 16 *Notre Europe*, European Studies (2001), <http://www.notre-europe.eu>; Pablo Jáuregui, "National Pride and the Meaning of 'Europe': a Comparative Study of Britain and Spain," in *Whose Europe? The Turns Towards Democracy*, eds. Dennis Smith and Sue Wright, (Oxford: Blackwell, 1999), pp. 275-287; Antonio Moreno Juste, "Del 'problema de España' a la 'España europeizada': excepcionalidad y normalización en la posición de España en Europa," in *La política exterior de España 1800-2003*, ed. Juan Carlos Pereira (Barcelona: Ariel, 2003), pp. 295-317.

² The term EC refers to the period before the Treaty on European Union, popularly known as the Maastricht Treaty, which came into force on 1 November 1993. The treaty created the current European Union (EU) and led to the establishment of the European Economic and Monetary Union (EMU).

³ Jáuregui, *supra* at 274.

Democracy thus became synonymous with Europeanization, progress, and modernization. When Spain finally entered the EC in 1986, the fact was celebrated as the culmination of both modernity and democracy.⁴

In spite of this dominant narrative, Spain is said to have undergone two other transitions since. The first, under the government of *Partido Popular* (PP), was led by Prime Minister José María Aznar (1996-2004), the second, under the current socialist government of José Luis Rodríguez Zapatero (2004-present). In a book published in 1994, Aznar nicknamed his legislature “the second transition,” as a way of saying that the earlier government had failed to complete the process of economic modernization and corresponding democratization.⁵ To this end, his government established as its main priority the integration into the European Economic and European Union (EMU, achieved in 1999), and implemented neoliberal economic policies of privatization and deregulation towards the consolidation of a free market economy.

Nevertheless, Aznar’s years in office coincided with the emergence of grass roots organizations for the recovery of the memory of the victims of Franco’s dictatorship, such as the *Asociación para la Recuperación de la Memoria Histórica* (Association for the Recuperation of Historical Memory). During the Spanish transition no trials were conducted to judge those responsible for the crimes committed during Franco’s regime, and, unlike in other countries, no truth commissions were created to investigate them. The ARMH revealed that about 30.000 people had been executed under Francoism, and that their bodies remained buried in unmarked mass graves in different parts of Spain.

⁴ For some political observers, Spanish democracy was consolidated after the democratic general elections of 1982, after the failed coup d’état of 1981.

⁵ Aznar, José María, *España. La segunda transición* (Madrid: Espasa Calpe, 1994).

They demanded to locate and exhume the bodies in order to give them a proper burial, honor their memory, and repair their dignity. Aznar refused to support the work of this Association concerning the recovery of the past, on the basis that doing so would shatter the unwritten consensus of the transition and endanger democracy. Certainly, his attitude was in tune with the hegemonic discourse of the transition and the idea that leaving the past untouched had helped to overcome the political in-fighting that resulted in the Civil War. One of the aims of this dissertation is to challenge this hegemonic discourse by locating Spain's wounds not in the past, but in the present of a society that claims to have overcome them.⁶

After Aznar's (government) downfall in 2004, three days after the tragic Madrid bombings of March 11, Rodríguez Zapatero's coming to power was, like his predecessor, also nicknamed a "second transition." This time, however, the label referred not to an incomplete economic reform but to "a new phase of democratic development."⁷ In contrast to Aznar, the current Prime Minister Zapatero undertook the task of what he called the "unfinished business" of Spain's transition, and addressed for the first time the debt the State owed Franco's victims. During his first term (2004-2008), the socialist government passed significant laws to recognize the rights of oppressed minorities and victims who suffered persecution or imprisonment under Francoist laws. These include the Same-sex Marriage Law (*Ley 13/2005*), granting the status of and all the rights of

⁶ For an excellent analysis of the notion of a "wounded culture" see Moreiras-Menor Cristina, *Cultura Herida: Literatura y Cine en la España Democrática* (Madrid: Libertarias, 2002).

⁷ Grimond, J. *The Second Transition*, *The Economist*, (June 26, 2004). See also: Encarnación, Omar G., *Spanish Politics. Democracy After Dictatorship* (Cambridge, UK: Polity Press, 2008); Powell, Charles, *A Second Transition, or More of the Same?* *Spanish Foreign Policy under Zapatero* Vol. 14 *South European Society and Politics* 4, (December, 2009), pp. 519-536; Woodworth, Paddy, *Spain's "Second Transition" Reforming Zeal and Dire Omens* *World Policy Journal* 3 (Fall 2005), pp. 69-80.

married couples to same-sex partners;⁸ and the Law of Historical Memory (Ley 52/2007), which condemns the Francoist uprising as illegitimate, grants some economic compensations to the victims, and bans symbols and monuments that glorify Franco and his regime from public spaces.⁹

One could argue that, if Aznar's government saw the post-Franco democratic settlement as the final destination for the nation, Zapatero's government saw it as a point of departure.¹⁰ Indeed, the laws that have been mentioned are a good point of departure towards a more democratic and egalitarian state, but more remains to be done: for example, as I will argue in chapter 2, the Law of Historical Memory fails to challenge the hegemonic discourse of the transition and connect itself with the antecedent democratic regime of the Second Republic (1931-1936), all of which undermines its declared goal of closing the wounds and create a so-called "democratic memory." Therefore, this dissertation wishes to intervene in contemporary debates concerning the quality, challenges, and gaps of the Spanish democracy.

Re-Imagining Justice: A Study of Ethics, Politics, and Law in Contemporary Spain wishes to unearth some of these democratic deficits through a comparative analysis of contemporary Spanish novels and films vis-à-vis legal texts that reflect on this time period. I argue that these cultural texts have the capacity not only of subverting prevailing notions of community, memory, identity, gender, responsibility, truth, and justice that dominate and structure the legal and economic systems, but they also help us

⁸ Ley 13/2005, de 1 de julio, por la que se modifica el Código Civil en materia de derecho a contraer matrimonio (BOE n. 157).

⁹ Ley 52/2007, de 26 de diciembre, por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura. (BOE n. 310).

¹⁰ Encarnación, *supra* at 151.

to visualize alternative or unrealized possibilities to reformulate all those notions. More concretely, I analyze Alex de la Iglesia's film *La Comunidad* (*Common Wealth*, 2000) as a way of showing how both neoliberal economic policies and a politics of consensus lead (against what the proponents of these policies claim) to alienation, exclusion, and ultimately to an enfeebled concept of democracy. From a different perspective, Antonio Muñoz Molina's novel *Beltenebros* (*Prince of Shadows*, 1989) tries to give voice to the traumatic or "unclaimed experience" of its protagonist, who undergoes a process of confronting his past and taking responsibility for it. In this way, the novel confronts the ghosts of the past in a way that the Law of Historical Memory (2007) fails to do properly. Finally, Pedro Almodóvar's film *Tacones Lejanos* (*High Heels*, 1991) calls attention to the need of the law (embodied in the film by the figure of the judge) to recognize and respect the singularity of the Other as *other*. This entails in the film a conception of justice based on an ethics of alterity that does not reduce the heterogeneity and difference of the other in the name of moral universals. Through the critical examination of these deficits in law, democracy, politics, and ethics, I aim to show alternative images, and thus to re-imagine all these notions concerning the Spanish and the larger European contexts.

Re-Imagining Justice is situated in the cross-disciplinary context of *Law and Humanities*, which places law within the humanities rather than within the more traditional context of the social or empirical sciences. In a foundational text, James Boyd White suggests that law should be regarded not as a system of rules or a set of social policies, but rather as a culture of argument and meaning-formation, by which he means all resources for expression, definition, and action that form and maintain a given legal

community.¹¹ The examination of law's "meaning-making" processes (for example, the use of certain language, metaphors, and legal rhetoric) can reveal that law operates under forms of gender bias, structures of domination, and inequality, which is essential for any practice of law. Thus, legal scholars have increasingly turned to the humanities looking for new ways of understanding and rethinking law and legal practice, leading to an explosion of movements such as Law and Literature¹², Law and Film¹³, Law and Theater¹⁴, Law and Music¹⁵, Law and Culture¹⁶, and Feminist and Critical Race Theory.¹⁷

¹¹ White, James Boyd, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* (Chicago: The University of Chicago Press, 1973). See also, among others: *Heracles' Bow Essays on the Rhetoric and Poetics of the Law* (University of Wisconsin Press, 1985); *Justice as Translation: an Essay in Cultural and Legal Criticism* (The University of Chicago Press, 1990); *From Expectation to Experience: Essays on Law and Legal Education* (Ann Arbor: The Univ. of Michigan Press, 1999); *Living Speech. Resisting the Empire of Force* (Princeton, N.J.: Princeton University Press, 2006).

¹² See, among many others: Aristodemou, Maria, *Law & Literature: Journeys from Her to Eternity*, (Oxford University Press, 2000); Nussbaum, Martha, *Poetic Justice. The Literary Imagination and Public Life* (Bacon Press Boston, 1995); Weisberg, Richard, *Poetics, and other strategies of Law and Literature*, (New York: Columbia University Press, 1992); West, Robin, *Narrative, Authority and Law* (Ann Arbor: The University of Michigan Press, 1996) and *Caring for Justice*, (New York University Press, 1997).

¹³ See, for instance, Fludernik, Monika and Greta Olson, *In the grip of the law: trials, prisons, and the space between*, eds. (Frankfurt am main; New York : P. Lang, 2004); Kamir, Orit, *Framed: Women in Law and Film* (Durham: Duke UP, 2006); Leslie J. Moran et al., *Law's Moving Image* eds. (London ; Portland, Or.: Cavendish Publishing, 2004); Machura, Stefan & Peter Robson *Law and Film: Introduction*, eds., (Oxford: Blackwell Publishers, 2001); Sarat, Austin et al. *Law on the Screen*, eds., (Calif.: Stanford University Press, 2005).

¹⁴ See: Hibbitts, Bernard, "Coming to Our Senses: Communication and Legal Expression in Performance Cultures," *Emory Law Journal* 41 (fall 1992), pp. 875–6, and "Making Motions: The Embodiment of Law in Gesture," *Journal of Contemporary Legal Issues* 6 (1995), pp. 51–81; Nielsen, Lara D. "Institutionalizing Ensembles: Thinking Theatre, Performance, and 'the Law'" *Law, Culture and the Humanities* 2008; 4; 156; Stone Peters, Julie, "Legal Performance Good and Bad" *Law, Culture and the Humanities* 2008.

¹⁵ See: Balkin, J.M., and Sanford Levinson, *Law, Music, and Other Performing Arts* University of Pennsylvania Law Review 139 (1991), pp. 1597–1658, and *Interpreting Law and Music: Performance Notes on 'The Banjo Serenader' and 'The Lying Crowd of Jews,'* Cardozo Law Review 20 (May/July, 1999), p. 1513.

¹⁶ See: Post, Robert ed., *Law and the Order of Culture* (Berkeley: University of California Press, 1991); Sarat, Austin and Thomas R. Kearns, *Law in the Domains of Culture* (Ann Arbor: University of Michigan Press, 1998); Ewick, Patricia and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998); and Young, Alison, *Imagining Crime* (London: Sage, 1996).

Despite the diversity of their research methods and analysis, these movements share the view that law is both ingrained in a specialized culture, with its own technical way of seeing and understanding the world, and additionally part of broader political, social, and cultural forces that must also be taken into account. As Robin West suggests, “[a] full understanding of law requires a general knowledge of the culture from which the law emerged.”¹⁸

Alongside legal texts, then, I analyze literary and visual texts that offer a jurisprudential examination and commentary on democracy and political action (chapter 1), memory and responsibility (chapter 2), and legal performance and ethics of otherness (chapter 3). However, there is an overarching idea that connects them all, which is the idea of justice as individual and social aspiration. The texts that I have chosen all fall under Linda Hutcheon’s rubric of “postmodern fiction:”¹⁹

1) They are self-reflexive and they self-consciously “acknowledge their existence as representation—that is, as interpreting (indeed as creating) its referent, not as offering direct and immediate access to it.”²⁰ By highlighting the meaning-making process as constructed and mediated, these texts de-naturalize some of the categories that structure and frame social relations (i.e., market economy, liberal democracy, national community, gender).²¹ For example, *La Comunidad* invites us to reflect about how the so-called

¹⁷ See, among others: Delgado, Richard, *Critical Race Theory: The Cutting Edge* ed. (Philadelphia: Temple University Press, 1995); Henderson, Lynne, *Legality and Empathy* 85 *Michigan Law Review* 6 (June 1987), pp.1574–1653; Minow, Martha, *Foreword [to the Supreme Court 1986 Term]: Justice Engendered*, 101 *Harvard Law Review* (1987): 10-95. Minow, Martha L., and Elizabeth V. Spelman, *Passion for Justice*, 10 *Cardozo Law Review* 37 (1988): 37-76.

¹⁸ West, *Caring for Justice*, *supra* at 183.

¹⁹ Hutcheon, Linda, *Politics of Postmodernism* (New Accents, New York: Routledge, 1989).

²⁰ *Id.*, at 34.

²¹ *Id.*, at 1-2.

“consensus democracy” hides mechanisms of exclusion that undermine the concepts both of consensus and of democracy.

2) They emphasize the narrative and discursive construction of reality and invite us to consider the intervention (and distortions) of memory, perception, and imagination as fundamental components in this construction. For instance, *Beltenebros* presents a subjective and chaotic narrative of the memories of its protagonist in order to explore the part of his life which is absent or repressed. The novel foregrounds the processes of interpretation, selection, and creation behind the act of narrating and creating a given version of history. The same questions can be asked about the Law of Historical Memory: how and in what ways the Law “remembers” (or “forgets”), that is, what kind of narratives of the past it validates, and which ones it doesn’t consider or leaves out.

3) These texts acknowledge and draw attention to the process of subject-formation, representing it “as something in process, never fixed and never as autonomous, outside history. It is always a gendered subjectivity, rooted also in class, race, ethnicity, and sexual orientation.”²² By exposing the politics behind the dominant representations of the self and the other in law, these texts de-naturalize and challenge the assumption that subjectivity is coherent, self-sufficient and the source of meaning and action.²³ For example, *Tacones Lejanos* presents a judge whose “identity” is constructed through multiple performances, in which he adopts different roles and perspectives in order to respond to the ethical call and the needs of the other.

The narrative construction of truth, the contingency of meaning, the social and cultural mediation of subjectivity, and so forth, can all be considered part of postmodern

²² Hutcheon, *supra* at 40.

²³ *Id.*

view of the world.²⁴ As applied to law, the traditional legal standards of neutrality, objectivity, rationality, stability, and autonomy are replaced by the postmodern values of anti-essentialism, fragmentation, plurality, fluidity, contextuality, contingency, and loss of fixed foundations. However, I will try to show that these texts do not deny but rather call for emancipation, ethical responsibility, and judgment, and hence distance themselves from the more negative attributes associated with postmodernism.²⁵ Instead, they come closer to what Richard Sherwin has labeled “postmodern narratives of justice.”²⁶

The dissertation is structured in three chapters. The first chapter rethinks the notions of political community and democracy in Alex de la Iglesia’s film *La Comunidad*

²⁴ The debates about postmodernism(s) have been discussed extensively elsewhere. See, for instance: Anderson, P. *The Origins of Postmodernity* (London: Verso, 1998); Barker Francis, Peter Hulme, and Margaret Iveson, eds *Postmodernism and the Re-reading of Modernity* (Manchester: Manchester UP, 1992); Bauman, Z. *Intimations of Postmodernity* (London : Routledge, 1992); Degli-Esposti, Cristina, *Postmodernism in the Cinema*. Ed. Cristina Degli-Esposti (NY: Berghahn Books, 1998); Denzin, Norman K., *The Cinematic Society. The Voyeur’s Gaze* (London: Sage Publications, 1995); Docherty, Thomas, ed *Postmodernism: A Reader* (Brighton: Harvester Wheatsheaf 1993); Eagleton, Terry, *The Illusions of Postmodernism* (Oxford: Blackwell, 1989); Harvey, David *The Condition of Postmodernism* (Oxford: Blackwell, 1990); Jameson, Fredric, *Postmodernism, or, the Cultural Logic of Late Capitalism* (Durham: Duke UP, 1991); Herrero-Olaizola, Alejandro, *Narrativas híbridas: parodia y postmodernismo en la ficción contemporánea de las Américas* (Madrid : Editorial Verbum, 2000); Rosenau, Pauline Marie, *Post-Modernism and the Social Sciences: Insights, Inroads, and Intrusions*, (Princeton NJ: Princeton University Press, 1992).

²⁵ As Costas Douzinas and Ronnie Warrington indicate, “the allegations against alternative readings are well known: postmodernism and deconstruction are at least indifferent and at worst destructive of ethics and politics; they have shown knowledge to be so many facets of value, thus, undermining the ability to found the ethical response; they have tediously repeated that texts accept an infinite number of interpretations, thus, disqualifying any promise of a politics based on hermeneutical consensus; they have attacked the dialectic of subject and object, original and copy, inside and outside, thus weakening the claim of the sovereign self to stand in judgment in a community of reason. And as all reality has been reduced to the playful ruses of an aberrant and undecidable textuality, a night of reason in which ‘all cows are black,’ responsibility has allegedly gone on permanent retirement.” *Justice Miscarried: Ethics, Aesthetics and the Law* (Hemel Hempstead: Harvester Wheatsheaf, 1995), at 7.

²⁶ Sherwin, Richard K., *When Law Goes Pop: The Vanishing Line Between Law and Popular Culture* (University of Chicago Press, 2000).

(2000), and places it in the context of the anxieties generated by Spain's integration in the European Monetary Union (EMU) in 1999. Taking as a point of departure Jean Baudrillard's critique of the consumer society and Jacques Rancière's critical account of neoliberal "politics of consensus," I explore the shortcomings of both market economy and of liberal democracy. By exposing the (neo)liberal promises of equality, freedom, and economic growth as fallacies, and unmasking the market and State's mechanisms of depoliticization (alienation, exclusion, and the logics of "us" vs. "the others"), the film undermines the equation of market economy = freedom = equality = democracy. In its place, the film proposes a model of democracy that is contingent, and open, and operates not as a mechanism of institutionalization, but rather as a force of destabilization. In this view, democracy can never be fully consolidated, for it relies on episodic disruptions of the established order and the continual renewal of the actors and the forms of democratic actions. Going beyond Rancière's political thought, I articulate an ethics of political action that combines the respect for the singularity of the other with the democratic demand for equality and emancipation.

The second chapter addresses the recovery of the historical memory of the victims of Franco's dictatorship, in light of the recent Spanish "Law of Historical Memory" (2007) and Antonio Muñoz Molina's novel *Beltenebros* (1989). This chapter focuses on the ethico-political relationship between memory and justice in the sense proposed by Walter Benjamin and Jacques Derrida. By the recovery of the historical memory, I refer to the act of interrupting the official version of history, in which the memories of the crimes and injustices suffered by the victims of Franco's repression have no place. The vindication of their stories transforms a series of private and silenced traumas into a

public and collective experience—the shared memory of their victimization. Molina’s novel addresses the “injustice” of forgetting, by bringing to light the “specters” that have been doubly victimized, first by Franco’s repressive regime, and then by the *Pacto del Olvido* (Pact of Forgetfulness) of the transition, of which even the current law of historical memory does not take proper notice. Focusing on the law’s “rhetorical strategies,” i.e., a series of recurring words, images, and expressions, I argue that, contrary to its declared purposes, the law becomes a “site of commemoration” for the Spanish transition, and hence reproduces an official version of history which has been particularly insensitive to the memory of the victims. The law’s re-appropriation of the “spirit of the Transition” reveals Spain’s deep fear of confronting the ghosts of the past, a fear that continues still today.

In the third and final chapter, I read Pedro Almodóvar’s film *Tacones Lejanos* as a postmodern jurisprudential text that rethinks law, judgment, and justice through an ethics of otherness rather than through an ethics of care.²⁷ In contrast to Orit Kamir’s feminist reading of the film, I argue that *High Heels*’ embodiment of law (in the figure of the on-screen Judge) proposes an understanding of “law as a queer performance,” which responds effectively to the ethical demands of those marginal subjects who have been traditionally excluded from the law—for example, the Francoist *Ley de Vagabundos y Maleantes* (Vagrancy Act) declared homosexuality illegal in 1953. By re-imagining law from a queer perspective, the film undermines the hierarchy that privileges masculinity,

²⁷ Postmodern jurisprudence turns to Nietzsche, Foucault, Lacan, Lyotard, Levinas, Derrida, and Rorty. Even though to call some of these thinkers postmodern is not accurate, legal scholars have included their work within the framework of postmodern jurisprudence. Contemporary legal scholars writing about law and justice from a postmodern perspective include, among others: J.M. Balkin, Pierre Schlag, Richard Sherwin, Drucilla Cornell, Peter Goodrich, and Stephen M. Feldman.

heterosexuality and patriarchy upon which legal episteme is grounded and recognizes and includes new subjectivities. *High Heels* integrates the actions of the on-screen judge within the aesthetic realm of the viewer, and, in so doing, forces the viewer to respect and be responsive to the call of the other. The chapter closes with a brief reference to the recent legal changes in favor of the recognition of rights of the LGBT community in Spain despite the fierce opposition of *Partido Popular* and the Catholic Church.

CHAPTER 1

Politics and Democracy in Alex de la Iglesia's *La Comunidad*

We are said to be living through the end of political divisions, of social antagonisms and utopian projects; entering into an age of common productive effort and free circulation, of national consensus and international competition. Instead of utopian islands and millenarian dreams, the belated wisdom of our times offers more accessible earthly paradises and more imminent deadlines: Europe or the Centre, 1993 or the year 2000.

Jacques Rancière—*On the Shores of Politics*

There is no democracy without respect for irreducible singularity or alterity, but there is no democracy without the 'community of friends,' . . . without the calculation of majorities, without identifiable, stabilizable, representable subjects, all equal.

Jacques Derrida—*The Politics of Friendship*

INTRODUCTION

Taking as points of departure Jean Baudrillard's critique of consumer society and Jacques Rancière's critical account on the European "politics of consensus," this chapter looks at the ways in which Alex de la Iglesia's film *La Comunidad* (*Common Wealth*, 2000) rethinks the notions of democracy and politics within the context of Spain's integration into the European Monetary Union (EMU).¹ The film establishes the system of neoliberal economic policies as the basic grid of Spanish government and examines

¹ Alex de la Iglesia's *La Comunidad* was a Spanish box-office hit in 2000. The film received fifteen Goya nominations and won in three categories: Best Actress (Carmen Maura), Best Supporting Actor (Emilio Gutiérrez Caba), and Best Special Effects (Félix Bergés, Raúl Romanillos, Pau Costa, and Julio Navarro).

the ways the intersection between market economy and politics and the reduction of the decision-making process to an oligarchy raise questions about the quality of the resulting democracy.² In a combination of black comedy, thriller, and horror film, *La Comunidad* tells the story of temporary real estate agent Julia (Carmen Maura), who, tempted by the luxury of the apartment she is trying to sell, decides to spend a night there with her husband Ricardo (Jesús Bonilla). Her building is inhabited by a community of neighbors who have agreed to patiently wait for one of them to die in order to steal his money won in the *quiniela* (soccer pools), which has been stashed somewhere in his apartment for decades. Julia finds the money serendipitously, and decides to keep it for herself. In turn, the community decides it will go to any lengths (including murder) to prevent her from doing so. I interpret this greedy and violent community as an allegory for what Rancière has called “consensus democracy.” Opposing this community, I believe, is an alternative “political community” constituted in the bond, based on trust, which is formed between Julia and Charlie (Eduardo Antuña), who appears as a mentally challenged young neighbor. This odd and improbable couple ends up confronting the old community and escaping unscathed, whereupon the rest of the neighbors kill each other. In this way, the film places the possibility for political emancipation in the action of ordinary people, which opens up a democratic space based on both equality and difference.

My analysis is divided into five sections. I begin with a brief overview of the Spanish neoliberal politics of the nineties in relation to Rancière’s critical account of the European “politics of consensus.” In the second and third sections, I examine the film’s exposure of the false promises of (neo-) liberalism and the shortcomings of liberal

² See Paul M. Heywood, “Corruption, Democracy, and Governance in Spain,” in *The Politics of Contemporary Spain*, ed. Sebastian Balfour (New York: Routledge, 2005).

democracy. In so doing, the film unmasks the mechanisms by which both the power of wealth and the State's power come together to prevent political action.³ In the fourth section, I take Rancière's political thought a step further and examine the relationship between an ethics of otherness (in the Levinasian sense) and a politics of emancipation. My goal is to articulate an ethics of political action that combines respect for the singularity of the other with the democratic demand for equality.⁴ In the final section, I analyze the community of working-class *madrileños* shown in the film's last scene, arguing that this is not in fact a return to the former consensus democracy. By placing this community in the horizon of a forthcoming European Monetary Integration, the film suggests that democracy can only be sporadic, and never fully consolidated.

I. THE NEOLIBERAL "POLITICS OF CONSENSUS"

Spain's accession into the European Community in 1986 took place the same year that the EC signed the Single European Act (SEA), aiming at achieving an internal single market by 31 December 1992. The SEA established that all member states were expected to have removed all internal trade frontiers and to assure "the free movement of goods, persons, services and capital" before the established deadline (art. 13).⁵ For the next six years, the PSOE's (*Partido Socialista Obrero Español*) new challenge became to fulfill the EC requirements of market liberalization. In 1992, when the deadline came to a

³ For an interesting analysis of Rancière's political thought in relation to Alain Badiou's and Etienne Balibar's politics of emancipation, see: Nick Hewlett, *Badiou, Balibar, Rancière Re-thinking Emancipation* (London: Continuum, 2007).

⁴ Cf. Michel Hardt and Antonio Negri, *Commonwealth*, Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2009).

⁵ Single European Act (SEA), No L169/2, Official Journal of the European Communities (29.6.1987) <http://www.unizar.es/euroconstitucion/library/historic%20documents/SEA/Single%20European%20Act.pdf>

term, very high rates of unemployment, economic recession, police scandals, and governmental corruption hit Spain's politics and economy. Among the PSOE's large list of corruption scandals were: the so-called "Juan Guerra case" at the beginning of the 1990s, in which the then-deputy prime minister's brother had abused his official authority to obtain private economic gains; and also the government's alleged link to the illegal dirty war against the Basque terrorist group ETA (*Euskadi ta Askatasuna*, meaning Country and Liberty) from 1983-87, led by the GAL (anti-terrorist liberation groups).⁶ In addition, this political and economic crisis coincided with a rise of "Euro-skepticism," triggered by the rejection of the Maastricht Treaty in Denmark that very same year. For the first time after Franco's death, the image of the celebrated Spanish democracy was in question, and the erstwhile political discourse concerning Spain's position within the EU started being reassessed.⁷ After losing the absolute majority in the general elections of 1993, partly because of the economic and political crisis, the Socialists' discourse towards European integration took a more utilitarian stance: the material efforts made by Spain to meet the now Maastricht Convergence Criteria (inflation rates, government deficit and debt, etc.), in order to gain entry into the European Economic and Monetary Union (EMU), were now viewed as deserving economic compensation.⁸

⁶ In 1994, Mariano Rubio, former governor of the bank of Spain accused of tax fraud, and Luis Roldán, head of the Civil Guard, were arrested for misappropriations of funds. See Paul M. Heywood, *Corruption, Democracy, and Governance in Spain*, *supra*. After one decade of Socialist government, 1992 also marked the peak of Spain's economic modernization; at least, that was the image Spain presented to the rest of the world: with the Barcelona Olympic Games, the World Exhibition in Seville, the Fifth Centenary of the Discovery, the completion of the Single Market, and the declaration of Madrid as the cultural capital of Europe.

⁷ Carlos Closa, *The Domestic Basis of Spanish European Policy and the 2002 Presidency*, tr. Stephen J. Wilkins, 16 *Notre Europe*, *European Studies* (2001), <http://www.notre-europe.eu> at 14. See, for instance: J. Sinova and J. Tussell, *El secuestro de la democracia* (Barcelona: Plaza y Janés, 1990); Richard Gillespie, *The Continuing Debate on Democratization in Spain* 46 *Parliamentary Affairs* 4 (1993), pp. 534-548.

⁸ Closa, *supra* at 14-17.

This utilitarian discourse hardened when, in 1996, after 20 years in the opposition, the conservative Popular Party (*Partido Popular*, PP), led by Prime Minister José María Aznar, came to power.⁹ Aznar established the defense of the national interests and the incorporation of Spain into the EMU as his main priorities. The emergence of Aznar coincided with the resurgence of a Spanish nationalist discourse that was said to have disappeared with the end of Franco's regime and the consolidation of democracy.¹⁰ In Aznar's view, the sovereignty of the nation state was the basis for the European integration process. For him, Spain is "one of the most ancient nations of Europe" (a nation forged in the fifteenth century under the Catholic Kings' monarchy) and the European project should always remain compatible with respect to the (Spanish) national identity.¹¹ This compatibility could only be achieved by both the establishment of common rules that protect the national interests of all state members, and by obtaining agreement among all members. "The rule of consensus" (*la regla del consenso*) thus

⁹ As Balfour points out, under Aznar's government, the PP was hierarchically organized and highly specialized. Aznar constructed a centralized, presidentialist party, concentrating all the party's resources in his own hands. Balfour, Sebastian, "The Reinvention of Spanish Conservatism. The Popular Party Since 1989," ed. Sebastian Balfour, *The Politics of Contemporary Spain* (New York, Routledge, 2005), pp. 146-168, at 149-150.

¹⁰ As Xosé-Manoel Núñez Seixas observes, "[a]s every state nationalism which develops within the frontiers of a political community . . . , Spanish nationalism does not always act as such, under the form of a political organization or a social movement ascribed to a visible nationalist creed. On the contrary, it may be identified as a political ideology which permeates the agency of diverse socio-political actors, as well as a social sentiment of identity which is shared by the population, as an imagined community. The presence of state nationalism may be diluted, but it is persistent, while the intensity of its expression varies according to the presence of external and internal enemies." Xosé-Manoel Núñez Seixas, *What is Spanish nationalism today? From legitimacy crisis to unfulfilled renovation (1975-2000)* Vol. 24, *Ethnic and Racial Studies* No. 5 (September 2001), pp. 719-752 at 720.

¹¹ José María Aznar, *España. La segunda transición* (Madrid, Espasa Calpe, 1994) at 29 and 162-163, 193. See also: Closa, *supra* 23-32.

“should be the basic criterion for the adoption of the fundamental decisions that affect the common politics.”¹²

It is important to mention that Aznar sees Spain as a single (no matter how pluralistic, multicultural, diverse, multilingual, and heterogeneous) nation.¹³ In his view, the National State requires some basic unity among all Spaniards: a common history, language, and project. Hence, the peripheral nationalisms (Catalan, Basque, and Galician) contradict the idea of a Spanish national community, thereby threatening the integrity and unity of the nation.¹⁴ Ironically, after the elections of 1996, Aznar had to negotiate the parliamentary support of two peripheral nationalist parties, *Catalan Convergència I Unió* (CIU) and the Basque *Partido Nacionalista Vasco* (PNV), in order to become prime minister. The political discourse of solidarity, respect, and diversity that characterized his electoral campaign was transformed after he won the 2000 elections by an absolute majority, acquiring a stronger Spanish nationalist tone, as he no longer needed the support of his earlier allies.

In the economic sphere, the PP government accelerated the European policies of economic liberalization, already initiated under the PSOE government, in order to fulfill both the Maastricht Convergence Criteria and the conditions established by the 1997 Growth and Stability Pact. The incorporation of Spain into the EMU was achieved in 1999, which led to the introduction of the Euro in 2002.¹⁵ The defining feature of Aznar’s

¹² Aznar, *supra*, 168.

¹³ *Id.*, at 29.

¹⁴ *Id.*, at 31-39.

¹⁵ See, for instance: Farrell, Mary, *Spain in the E. U.: The Road to Economic Convergence*. (Gordonsville, VA, USA: Palgrave Macmillan, 2000); Sofía A Pérez, “Constraint or Motor? Monetary Integration and a Social Model in Spain” in *Euros and Europeans. Monetary Integration and European Model of Society*, eds. Andrew Martin and George Ross (Cambridge, UK: Cambridge University Press, 2004), pp. 150-173.

government was its neoliberal perspective on European integration:¹⁶ To strengthen economic growth, the European Union should be based on market liberalization and competitive economy.¹⁷ Aznar's neoliberal program is best reflected in a joint proposal, presented with Tony Blair in the Lisbon Summit of 2000, in which both prime ministers established as the "main objective for Europe: higher growth, higher employment, modernization of the economies."¹⁸ In this joint proposal, Aznar and Blair claimed that the role of governments has changed: their new role is to create the conditions for business to boost job creation and combat social exclusion, without imposing rigid economic and social regulations to the market. On the contrary, governments should avoid any interference in market decisions, on the premise that the liberation of the European economy (free market, deregulation, open competition, privatization) will benefit a greater proportion of the population. Both prime ministers conclude, in a populist tone, that European leaders "will be judged by their ability to manage the intense changes that run Europe." For this reason, if governments are to succeed, they "must do everything possible to explain these changes and seek the support of the real rulers of Europe: the citizens themselves."¹⁹ Aznar identifies economic growth and free market as synonymous with social well-being and democracy. As mentioned in the introduction, his legislature (1996-2004) was nicknamed "the second transition" (the title of a book he

¹⁶ Closa, *supra* at 27.

¹⁷ See: "Primera iniciativa común de un presidente español y un primer ministro británico. Aznar y Blair harán hoy una propuesta conjunta para crear empleo en la UE. A través de una carta firmada por ambos y dirigida a los demás gobernantes europeos." *El Mundo*, Monday, 30 November 1998, <http://www.ucm.es/cgi-bin/show-prensa?mes=11&ano=1998&dia=30&art=1&tit=b>

¹⁸ José María Aznar and Tony Blair, "El crecimiento, objetivo esencial para Europa," *El Mundo* Tuesday, 13 June 2000, <http://www.elmundo.es/2000/06/13/opinion/13N0025.html>

¹⁹ *Id.*

published in 1994) as a way of saying that the PSOE government had failed to complete the process of economic modernization, and, therefore, to consolidate democracy.²⁰

In *Disagreement*, Jacques Rancière refers to the European neoliberalism of the 1990s as “the end of politics,” as the reduction of politics (as a set of practices) to the [idea of] management and administration of economic interests and necessities.²¹

Rancière observes that the collapse of the Soviet system in the 1990s provoked an “internal weakening” of the very same liberal democracy that was proclaimed to have triumphed over so-called totalitarian systems. The end of the socialist project made possible the establishment of an agreed-upon vision (at the core of the so-called Western democracies) that viewed the global market economy and “the unlimited power of wealth” as inevitable historical necessities for our world and its future.²² The neoliberal vision, as Brett Levinson puts it, “naturally” established the market as “the destiny of man: inevitable and necessary.”²³ Faced with this incontrovertible logic, the government’s task is to create the adequate conditions for ensuring the optimization of interests and gains for all.²⁴ In this way, Rancière points out, Marx’s once-scandalous observation that governments are mere servants of international capital “is no longer the shameful secret hidden behind the ‘forms’ of democracy; it is the openly declared truth by which our governments acquire legitimacy.”²⁵

²⁰ Balfour, *supra* at 154.

²¹ Jacques Rancière, *Disagreement: Politics and Philosophy*, 1995, tr. Julie Rose (Minneapolis: University of Minnesota Press, 1999) at 86.

²² Jacques Rancière, *Hatred of Democracy*, 2005, tr. Steve Corcoran (New York: Verso, 2006) at 77.

²³ Brett Levinson, *Market and Thought. Meditations on the Political and Biopolitical* (New York: Fordham University Press, 2004) at 2.

²⁴ Rancière, *Hatred*, *supra* at 77.

²⁵ Rancière, *Disagreement*, *supra* at 113.

In this process of legitimization, Rancière further argues, the demonstration that governments only ever do what is required by strict necessity in a world dominated by the constraints and caprices of the global market depends on a demonstration of powerlessness: maximizing the pleasure of individuals is only possible on the basis of their acknowledged incapacity to manage themselves.²⁶ Put differently, the State's authority lies in the depoliticization of the people. Those who deny this necessity or protest against it are, according to this logic, representative of an obsolete ideology and therefore against progress.²⁷ The removal of conflict and dispute serves as proof of the State's capacity to solve problems and manage the interests of the population, understood as "a single, objectivizable totality."²⁸ Rancière concludes that, rather than ensuring the institutional mechanisms that guarantee the sovereignty of the people, politics became a matter of coming into agreement on the proper "management of the local consequences of global economic necessity."²⁹

Rancière distinguishes the same process of depoliticization in the European Union. In his view, the emergence of transnational institutions such as the EMU or European Council distances the people, as the former and their leaders are not accountable to the latter. The French referendum held in May 2005 to decide whether France should ratify the European Constitutional Treaty illustrates this unaccountability well. When the majority voted "no" to the treaty, the oligarchs and their experts attributed the rejection to

²⁶ *Id.*

²⁷ Rancière, *Hatred*, *supra* at 86.

²⁸ *Id.* at 78.

²⁹ Jacques Rancière, *Introducing Disagreement*, 9 *Angelaki: Journal of Theoretical Humanities* 3 (2004), pp. 3-9 at 4. For Rancière, the "ineluctable economic necessity is comprised of nothing but the collusion of two specific necessities: 'the limitless growth of wealth; and the growth of oligarchic power.'" *Hatred*, *supra* at 82.

the ignorance of the people.³⁰ People's dissent was conveniently labeled "populism." According to Rancière, populism is nothing other than "the convenient name under which is dissimulated the exacerbated contradiction between popular legitimacy and expert legitimacy, that is, the difficulty the government of science has in adapting itself to manifestations of democracy and even to the mixed form of representative system."³¹ As a result of this, the European Lisbon Treaty was signed by the state members on 13 December 2007 and entered into force on 1 December 2009 without contemplating the option of a new referendum.³²

My aim in what follows is to examine critically the neoliberal politics of consensus of the nineties in light of *La Comunidad*, as well as the reemergence of the Spanish nationalism that is said to have disappeared with the end of Franco's regime and the consolidation of democracy.

II. THE POWER OF THE MARKET: CONSUMPTION AND ALIENATION

In the opening credits sequence, a tracking-along shot of the pavement in close-up is followed by a tilt-up shot (reminiscent of the flight of a bird) that shows a majestic building with a cat in one of its windows. The camera then follows the cat into the interior of a dark room with piles of trash, filthy water, and finally a decomposed corpse

³⁰ Rancière, *supra* at 79.

³¹ *Id.* at 80.

³² The European Lisbon Treaty amends both the Treaty on European Union (Maastricht, 1992) and the Treaty establishing the European Community (Rome, 1957). The Treaty needed to be ratified by all state members, but not by its citizens (of the 27 EU members, only Ireland is required by its constitution to hold a referendum). The Treaty was initially rejected by Ireland in referendum, after which a second referendum was held reversing the result. See Treaty of Lisbon, Official Journal of the European Journal C306 Vol. 50, 17 December 2007. Read 19 May 2010, <http://eurlex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>

on which the cat starts nibbling. The sequence closes with an image of the cat dissolving into a spiral, at the center of which appears a face that, as the credits indicate, belongs to the film protagonist actress Carmen Maura. The camera isolates her face at the left of the frame and reveals the object of her terrorized look: fifteen people that, as the title of the film points out, are *La Comunidad* (The Community). This sequence marks the centrality of the building in the film, and it anticipates a series of contrasts between exterior and interior, outside and inside, community and individual, as well as the restriction, claustrophobia, and stalking that run throughout.

After the credits sequence, the film opens with an image of Julia talking on her cell phone with her husband. She is wearing a white raincoat and umbrella that visually single her out against any other passersby. Julia is in front of the majestic building, and she plans to sell one of its apartments. As she approaches the building to meet her new clients, she finds the card of a joker (with binocular) on top of a sewer with the name Madrid written on it (as shown by a close-up). The moment Julia opens the building's door, as if she were opening the entrails of the city of Madrid, she finds a dirty foyer with filthy walls, damp stains, and a trash container with the name of the street: "Carrera de San Jerónimo 14"—purposely the same street of the *Congreso de los Diputados* (Spanish parliament). Located at the heart of the city (and of Spain), the building's majestic façade masquerades the "dark" reality, which, as implied by the dead body and the images of the sewer and trash, pervades Spanish society.³³ Despite the poor conditions of the interior of the building, Julia focuses on the "superb advantages" of its location: "You can go anywhere from here," she tells her clients.

³³ See Mercedes Maroto Camino, 'Madrid me Mata': Killing the Husband in Alex de la Iglesia's *La Comunidad* (2000) and Pedro Almodóvar's *¿Qué he Hecho yo para Merecer Esto?* (1984), Vol. 41 Forum for Modern Languages Studies 3 (2005), pp. 332-341.

The film begins by offering a rather bleak image of Spain. In a way that echoes Baudrillard's vision of the "consumer society," the film portrays a society immersed in the logic of the market: its inhabitants, whether real estate agents, middle class clients, or petty workers, equate prestige, power, and happiness with acquisition and consumption, without realizing that, in so doing, they are contributing instead to their own alienation.³⁴ In *The Consumer Society*, Baudrillard argues that consumption "is an active, collective behavior: it is something enforced, a morality, an institution."³⁵ It is a whole system of values that has become naturalized, not by fulfilling individuals' desires for comfort, satisfaction and social status, he argues, but rather,

*by training them in the unconscious discipline of a code, and competitive cooperation at the level of that code; it is not by creating more creature comforts, but getting them [to] play by the rules of the game. [. . .] The consumer defines himself by his choice within a 'game' played between different models or, in other words, by his combinatorial involvement in that game. It is in this sense that consumption is ludic and that the ludic dimension of consumption has gradually supplanted the tragic dimension of identity.*³⁶

Through TV advertising and mass media, "the logic of consumption" confers commodities not merely a use-value and economic exchange-value, but, most

³⁴ Jean Baudrillard, *The Consumer Society. Myths and Structures*, [La Société de Consommation, 1970] (London: Sage publications, 1998) at 191. As Gabriel and Lang remark, the word "consumerism" can acquire different meanings to different people in different contexts. They discern five different meanings: 1) consumerism as a moral doctrine. It is the essence of the good life and a vehicle for freedom, power and happiness. 2) Consumerism as the ideology of conspicuous consumption. It supplants religion, work, and politics as the mechanism by which social position and prestige are achieved. 3) Consumerism as an economic ideology for global development. It is seen as the pursuit of ever higher standards of living and therefore as a key feature of international trade and aid to foreign policy. 4) Consumerism as a political ideology. The modern state appears as both a guarantor of consumer rights and as a provider of goods and services. And finally, 5) Consumerism as a social movement seeking to promote and protect the rights of consumers. Yiannis Gabriel and Tim Lang, *The Unmanageable Consumer. Contemporary Consumption and its Fragmentations* (London: Sage Publications, 1995), at 8-9. Throughout this chapter, I use the term "consumerism" in all these different meanings but the last one.

³⁵ Baudrillard, *supra* at 81.

³⁶ *Id.* at 94, 192.

significantly, a sign-value: a sign of status differentiation.³⁷ By acquiring and displaying material goods, individuals attempt to differentiate themselves from others, that is, to gain prestige, status, and identity. For instance, the man who drives a Mercedes in the film (Antonio Pesadas) differentiates himself by his style, his way of consuming. This process of differentiation is experienced as one of freedom and choice, rather than as “*one of being forced to be different, of obeying a code.*”³⁸ In their competition for social status, individuals contribute to maintaining a hierarchical social structure of privilege and domination: they condemn themselves to occupy a relative position within the order of differentiation.³⁹ By keeping everyone in his or her place, the market system makes sure that individuals do not question their role as consumers: “[m]otives, desires, encounters, stimuli, the endless judgments of others, continual eroticization, information, [and] the appeals of advertising . . . make up a kind of abstract destiny of collective participation, set against a real background of generalized competition.”⁴⁰ This is the double strategy of the growth society: an ideological logic based on social homogenization and a concrete social logic based on structural differentiation.⁴¹ For Baudrillard, then, alienation cannot be overcome because “it is the very structure of market society.”⁴²

The first part of the film illustrates these processes of alienation and social homogenization, while undermining the myths of the consumer society. That is, it shows the ways in which the logic of consumption governs individuals’ values and attitudes,

³⁷ *Id.* at 61.

³⁸ *Id.*

³⁹ *Id.* at 53-54.

⁴⁰ Baudrillard, *supra* at 65.

⁴¹ *Id.* at 66, 50.

⁴² *Id.* at 190.

fantasies and drives, as well as their social relations, and transforms them into “alienated consumers.” The first compelling example in the film comes from its protagonist Julia and her husband, Ricardo. Their problems begin when Julia finds the apartment she is trying to sell so luxurious that she decides to spend a night there with her husband. The apartment, with a TV, leather sofa, king-sized waterbed, and even a Jacuzzi and a Finnish sauna, symbolizes everything she lacks and desires to possess: prestige, luxury, and social standing. The inaccessible apartment holds the promise of bridging the distance between what Julia is, and the fantasy of what she would like to be. Its fancy decoration and material comforts, its central location, and the overwhelming perfection it radiates “are thinly disguised narcissistic delusions transferred onto the idealized commodity.”⁴³ Thus, in the next scene, Julia is seen wearing an elegant pink suit and happily cooking dinner in the kitchen of the luxurious apartment, hoping to fulfill, at least momentarily, her fantasy of social status.

Julia’s delusions are interrupted with the arrival of her husband. Ricardo complains that, when he was getting a cab after work, he met Antonio Pesadas—a former co-worker of the insurance company that made them redundant following its downsizing four years earlier. Ricardo says that Pesadas is now a taxi driver, whereas he is a mere bouncer in a disco. His encounter with Pesadas has made him aware of his precarious employment and economic situation: amidst a society where people compete to reaffirm their social status, Ricardo creates a sense of who he is by comparing his lifestyle and social standing with that of Pesadas, and having drawn the shorter stick, the comparison

⁴³ Gabriel and Lang, *supra* at 95. As Baudrillard puts it: “Consumer society reflects itself narcissistically in its image. . . . The narcissism of the individual in consumer society is not an enjoyment of singularity; it is a refraction of collective features. However it is always presented as narcissistic investment of ‘oneself’ through smallest marginal differences.” Baudrillard, *supra* at 95.

makes him feel inferior, envious, and frustrated. With his self-esteem and pride hurt, he is unable to share Julia's excitement about the apartment. To make things worse, their romantic night is utterly ruined when cockroaches start falling down on his face from a crack in the ceiling while he is attempting to use the waterbed with Julia. A cutaway from the bedroom to the outside shows viewers that someone dressed in Darth Vader apparel and with heavy breathing is spying on them with binoculars. Ricardo's suspicions that they are not alone are confirmed. The apparent perfection of the apartment is as false as the promises that Julia, as a real estate agent, sells her clients and pretends to live herself.

The film does not offer any lesser negative image of the inhabitants of the wrecked building. The first time they appear on screen is when the fire department enters into the building, alerted by Julia's last couple of clients about the water leak from the apartment above. Their first appearance is visually linked to a series of images previously shown on a TV program that Ricardo and Julia are watching after their experience with the cockroaches. The TV shows a couple of vultures in close-up, looking for prey from a tree [Picture 1], while a voice-over coming from the TV program comments on the images: "The vulture, nature's gravedigger, devours the dead. When one vulture finds a carcass, twenty more appear to share it. A voracious jackal joins them. The somber party continues until nothing's left." *Mise-en-scène* and cinematography connect these TV images with the entrance of the neighbors on the screen as follows: First, in a low angle shot that echoes the image of the two vultures looking for prey from a tree, Encarna (María Asquerino) and Paquita (Marta Fernández Muro) are seen wearing dark housecoats and standing in the old stairwell of the community. A zoom-in brings them

closer to viewers so that their excitement can be noticed when they look towards the old man's apartment, hoping he is finally dead [Picture 2].



Picture 1.1



Picture 1.2

Then, eager to know that it is not a false alarm, the rest of the neighbors gather around, like vultures before a carcass, in front of the old man's apartment: Ramona (Terele Pávez); Charlie, who turns out to be the heavy-breathing character dressed in Darth Vader apparel, and his controlling mother Dolores (Kiti Manver), who slaps him on the face for coming out "dressed like a drag queen!"; Julián Chueca (Manuel Tejada); and Hortensia (Paca Gabaldón). The old man is on the other side of the door and they want to be the first to know whether he is dead or alive. It is only after a fireman mistakes Julia for the community's administrator (on vacation in EuroDisney, Paris) that the neighbors shift their attention from the old man's apartment to Julia. Then, they begin to question her in a medium close-up [Pictures 3 and 4]:



Picture 1.3



Picture 1.4

The importance of the scene goes in two opposite but connected directions: on the one hand, it visually highlights the contrast between community and individual. The neighbors position Julia as the intruder (the jackal), who does not belong to the community—they assume she is the new owner of the apartment that is for sale—and threaten to seize their common wealth (the carcass—I will return to this later). This draws attention to their similarity: the neighbors' values and attitudes, their drives and desires, are governed by the same logic of consumerism as Julia's. These similarities are made apparent after the discovery of the old man's decomposed body inside the reeking apartment, along with piles of garbage, rats, flies, a broken pipe, and an abandoned cat. Thrilled, Domínguez (Enrique Villén), one of the neighbors, digs through the old man's garbage, while singing a pirate song: "Fifteen men on a dead man's chest. . . ." In a similar fashion, shortly after, Julia stealthily takes the old man's "lost" wallet, which has fallen from the corpse while the paramedics remove it. Inside it she finds a mysterious encrypted map that, with the help of a TV advertisement, she is able to decipher; it leads her back to the old man's apartment. Inside, while she sings the same pirate song as Domínguez, she finds 300 million pesetas in garbage bags stashed under the tiles. Evocative of the pirate song, the fifteen neighbors of the community and Julia, the vultures and the jackal, share the same monetary ambition. Finding the money marks a turning point in everyone's lives and will trigger a progressive intra-communal war that will lead to its disintegration as we shall later on this chapter.

But before that, the money also provokes a domestic dispute that leads to the rupture of Julia and Ricardo's marriage. After an unsuccessful attempt to escape with the money, Julia returns to the apartment and starts counting the money and dreaming about

the possibilities it could grant her (“I could live off the interest and never work again. I could go around the world as many times as I can take.”) [Pictures 5 and 6].



Picture 1.5



Picture 1.6

Julia’s materialistic dreams are interrupted once again with the arrival of her husband. This time, Ricardo enters with his tuxedo torn apart and with his face wounded. He complains that he has quit the disco because he has been beaten and humiliated. Julia tries to tell him about her stroke of luck, but Ricardo shuts her off and replies that, since he has nothing, he prefers not to imagine anything. At this precise moment, a TV advertisement with the catchphrase, “The strongest drug isn’t speed. It’s MONEY,” displays a series of images of expensive cars and beautiful women, forcing him to imagine, precisely, the things he cannot afford. Then, Julia asks Ricardo whether he prefers a Rover or a Mercedes. Ricardo responds:

In this life, we’ll never put our asses in one of those. Unless, we catch Pesadas’ taxi. . . . You always say I have no character . . . Always looking over my shoulder . . . Always saying people can’t put up with me . . . [I’ve] kept our thing afloat. . . . Our relationship, the bills, the rent, everything! . . . We used to live off of my salary, but now you have to work, too, and never stop rubbing my face in it so that I know you’re in charge now. . . . I can’t buy an Audi or Mercedes . . . I don’t want to stay in this flat because it’s what we’ll never have! You don’t realize that. I’ll never have this flat or that car or a girl like the one in the ad! . . . At least I recognize my limitations and don’t expect strokes of luck.

[En esta vida tu y yo no vamos a poner el culo en un asiento de esos ni de coña, al menos que cojamos el taxi de Pesadas. El mamón tenía un Mercedes. . . . Yo no tengo carácter, tú lo dices siempre. . . . Todo el día mirándome por encima del hombro. . . . Durante años aquí el ‘borde’ ha sido el que ha sacado nuestra historia

a flote. . . . Lo nuestro, nuestra relación, las facturas, el alquiler, ¡todo! Antes vivíamos de mi sueldo y no había ningún problema, pero ahora . . . tú te pones a trabajar en la inmobiliaria y aprovechas cualquier oportunidad para restregarme la mierda para que quede bien claro que tú eres la que manda ahora. . . . Yo no puedo comprarme ni un Audi ni un Mercedes. . . . Sabes porque no quiero quedarme en este piso ¡porque es exactamente lo que no vamos a tener nunca! Y tú no te das cuenta. Yo no puedo ni soñar con un piso como este ni con un coche como ese ni con una tía como la del anuncio. . . . Por lo menos reconozco mis límites, no me paso la vida esperando un golpe de suerte como tú.]

The TV advertising's promise that prestige, beauty, and power lie in money produces contradictory effects: while, on the one hand, it increases Ricardo's frustration and discontent, on the other hand, it frees Julia's aspirations and ambitions. This double effect reveals that "[t]he very process of production of aspirations is inegalitarian, since resignation at the bottom end of the social scale and freer aspirations at the top compound the inequality of objective possibilities of satisfaction."⁴⁴ After his encounter with Pesadas, Ricardo has resigned himself to his precarious social and economic position, assuming that he cannot achieve what he thinks is beyond his reach. His resignation (provoked by his humiliation) prevents his sharing Julia's materialistic dreams, for he doesn't have the money to make them come true, and such hopelessness makes him feel inferior, inadequate, and useless. In contrast, the moment Ricardo leaves the apartment and she has all the money for herself, Julia's individualism runs amok. She gets rid of everyone and everything, including her husband, her clients and, therefore, her job. For instance, when confronted about her absent husband, she first explains that twenty soccer

⁴⁴ Baudrillard, *supra* at 63. According to Baudrillard, "the strategic value of advertising . . . is precisely this: that it targets everyone *in their relation to others*, in their hankerings after reified social prestige. It is never addressed to a lone individual, but it is aimed at human beings in their differential relations and, even when it seems to gap into their 'deep' motivations, it always does so in *spectacular* fashion. That is to say, it always calls in their friends and relations, the group, and society, all hierarchical ordered within the process of reading and interpretation, the process of 'setting-off' or 'showing-off' [*faire-valoir*] which it sets in train." *Id.* at 64.

hooligans with metal bats have beaten him; then, she concocts a tall tale about an accident involving a truck full of chemicals that has left his face disfigured; and finally, she lies and says that he has died of a heart attack. Julia, in other words, sets herself free to pursue her own interests and pleasures without the interference of others.

The first part of the film undermines the mythical market equation of growth=affluence= equality=democracy by unmasking a darker social reality: inflated housing prices that individuals cannot afford (i.e., Julia's first couple of clients run away after discovering the high price of the apartment), downsizing, unemployment, inequality (of wealth, status, aspirations, opportunities, etc.), and dissatisfaction.⁴⁵ The logic of consumption (i.e., through real estate agencies, TV advertising) confers on individuals the illusion of freedom, choice, and sovereignty, while concurrently imposing its own social imperatives of privilege and competition oblivious of any other ethical concerns.⁴⁶ In this way, the market system shapes society in its own image. It reduces democracy to economy and consumption, and, as Iris M. Young points out, encourages individuals "to think of themselves primarily as consumers."⁴⁷ In a society where money is the "strongest drug," individuals like Julia become, like "addicts," "unable to live without self-delusions, mediated by material goods, which ultimately aggravate [their] condition."⁴⁸ In devoting their daily life to consumption, individuals are trapped in a market system that produces their own alienation.

⁴⁵ See Burkhard Pohl, "El Lado Oscuro de la Nación:" *La Comunidad* (Alex de la Iglesia, 2000) in *Miradas Glociales: Cine Español en el Cambio de Milenio*, eds. Burkhard Pohl and Jörg Türschmann (Madrid: Iberoamerica, 2007), pp. 119-138 at 128-129.

⁴⁶ Baudrillard, *supra* at 82.

⁴⁷ Iris M. Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990) at 71.

⁴⁸ Gabriel and Lang, *supra* at 98.

As Julia is about to leave the apartment with the money, Cuban dancer and charmer Oswaldo (Roberto Perdomo), another neighbor from the community, invites her to a party at his house (a party organized by the neighbors with the sole purpose of obtaining information about the money). Lured by Oswaldo's charms, Julia accepts the invitation and postpones her escape plans. As she happily takes a shower, the camera shows Charlie dressed in Darth Vader costume spying on her with his binocular and masturbating while he repeats the words "La fuerza ... la fuerza" ("The Force"). Little does she suspect that the fancy apartment will become her prison and the community of neighbors, her jailers—determined to do anything to prevent her from getting away with "their" money.⁴⁹

III. THE POWER OF THE STATE: CONSENSUS AND EXCLUSION

In *Disagreement*, Rancière refers to the contemporary politics of consensus or consensus democracy as "postdemocracy." He uses this term to denote the state practice that precludes democratic action— paradoxically, in the name of democracy.⁵⁰ Ideally, consensus democracy "is a reasonable agreement between individuals and social groups . . . [that is] a way for each party to obtain the optimal share that the objective givens of the situation allow them to hope for and which is preferable to conflict."⁵¹ However, according to Rancière, its actual meaning can be rephrased as "a democracy that has

⁴⁹ Peter Buse, Núria Triana-Toribio, Andrew Willis, *The Cinema of Alex de la Iglesia* (Manchester: Manchester University Press, 2007) at 132.

⁵⁰ Rancière, *Disagreement*, *supra* at 101-102.

⁵¹ *Id.* at 102. This reflects John Rawls's notion of "distributive justice," according to which, "[t]he justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society." *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971) at 7.

eliminated the appearance, miscount, and dispute of the people and is thereby reducible to the sole interplay of state mechanisms and combinations of social energies and interests.”⁵² Consensus democracy provides a totalizing and objectifying account of the population and presupposes the inclusion of all parties with their corresponding problems, claims, and opinions. By creating the illusion of completeness, consensus democracy masks the effacement of the *demos*—those who are outside the count, the part of those who have no part.⁵³ Consensual democracy—“the government practice and conceptual legitimization of a democracy *after* the *demos*”⁵⁴—eliminates the traces of (social) dissensus, conflict, and division by projecting a totalizing image of what can be perceived and expressed. This organization or “regime of the perceptible” is what Rancière calls *the police*, or *the police order*.⁵⁵

For Rancière, the “order of the police” is a given configuration of the sensible that defines ways of being, thinking, doing, seeing, saying, arguing, feeling, and having within the community. At the same time, it produces policing norms that determine who is included or excluded, who is counted or not counted, whose words are significant or insignificant, who is entitled to govern or not, and what is normal or abnormal.⁵⁶ In this police order, everyone has an assigned place, identity, and function. Thus, consensus

⁵² *Id.*

⁵³ Rancière, *Introducing Disagreement*, *supra* at 5.

⁵⁴ Rancière, *Disagreement*, *supra* at 102.

⁵⁵ By the term *police*, Rancière does not refer to the petty police, the representative agent of law and order. Neither does he use it in Michel Foucault’s sense of the term, for whom the police are a matter of governmentality, that is to say, “the art of government.” See Foucault, “Governmentality” in *Michel Foucault. Power. The Essential Works of Foucault 1954-1984*, ed. James D. Faubion, trans. Robert Hurley et al, Volume 3. (New York: The New Press, 2000), pp. 201-222.

⁵⁶ Rancière, *Disagreement*, *supra* at 29. For Rancière, “[b]efore signifying a norm or morality, the word *ethos* signifies two things: *ethos* is the dwelling and the way of being, the way of life corresponding to this dwelling.” *The Ethical Turn of Aesthetics and Politics*, Vol. 7 Critical Horizons 1 (2006), pp. 1-20 at 2.

does not mean, according to Rancière, a reasonable agreement in which parties discuss their problems, build up their interests, and allocate their shares; rather, it is the contemporary strategy of reducing politics to the activity of policing, a “set of procedures whereby the aggregation and consent of collectivities is achieved, the organization of powers, the distribution of places and roles, and the systems for legitimizing this distribution.”⁵⁷ The underlying police order maintains and is predicated upon such consensus, but this entails, inevitably, according to Rancière, the disappearance or effacement of “politics.”⁵⁸ Politics “ceases . . . wherever the whole of the community is reduced to the sum of its parts with nothing left over.”⁵⁹ Rancière defines *politics* as antagonistic to the police. Politics occurs whenever the fixed distribution of the sensible and the counting of the parts and parties of society are disrupted by those who have no part in that distribution, that is, in the existing order of domination.⁶⁰

The community of neighbors of *La Comunidad* can be read as an allegory of this contemporary state of affairs that Rancière calls postdemocracy. In examining the formation of this community and the ties that bind it, its forms of domination and structure, the kind of individuals and power relations it produces, I distinguish two contrasting perspectives: the first is perceived in the rhetoric of the community, which is the language the community creates to present itself to the outer world, and symbolizes the way it would like to be perceived. The second is the perspective the film invites viewers to adopt. This view will reveal that behind the idyllic image that the community

⁵⁷ *Id.* at 28.

⁵⁸ Rancière, *Disagreement*, *supra* at 102.

⁵⁹ *Id.* at 123.

⁶⁰ *Id.* at 11-12, 29-30.

presents lies a hierarchical community based on inequality and injustice that prevents any ethical relations among its members.

A. The Idyllic Community: the Commitment to the “Common Good”

At the fake welcome party, Julia is introduced for the first time to the community’s administrator, Emilio (Emilio Gutiérrez Caba), who has cancelled his vacation after the discovery of the old man’s body. Their conversation takes place in a medium close-up, while the rest of the neighbors pretend to dance around them. When Julia asks if all the people at the party are neighbors, Oswaldo responds proudly that they are a very tight community, and that they all are interested in the common good. Emilio confirms that they have known each other for many years, as most of them have lived there all their lives (Ramona was born there, and Emilio moved there when he was a child). The only one who did not share an interest in the common good, Paquita and Encarna remark, was the old man: they tell Julia that that the old man went crazy after winning the lottery and was always alone in his apartment, seemingly because he was too afraid to go out. As if to dispel these fears, Oswaldo says that the neighbors are all like a family, and that he feels lucky to live in the building. The scene closes with an image of the whole community pretending cheerfully to sing and dance together around Oswaldo and Julia.

After the party, Julia invites Oswaldo to her apartment longing to satisfy the desires her husband has left unfinished. They go to the bedroom and begin to kiss, when Julia suddenly hears some noises coming from the living room. She comes out of the bedroom to find that all neighbors have entered the apartment to search for the money, like so many cockroaches dropping from the ceiling [Pictures 7 and 8]. She also realizes that the

only reason for Oswald's interest in her was so that he could unlock the door for them. Angered, Julia throws them out, and holds on to the suitcase with the money.



Picture 1.7



Picture 1.8

As demonstrated by this incident, the neighbors will try to prevent Julia's leaving the building by any means necessary, while at the same time offering her a series of rhetorical arguments legitimizing their "right" to the money." However, the true intentions of the community are soon discovered. Domínguez enters the elevator with Julia and warns her that the neighbors are trying to kill him because she had told them he had the money—in fact Julia had only told them, during the party, that Domínguez was with her in the old man's apartment—but it is clear that the community does not trust him. Domínguez explains in close-up—while holding a knife to her neck—that the neighbors had agreed to share the old man's money after his death. Each one shared in the duty of watching the old man day and night to make sure he did not escape with the money. Domínguez reveals that the engineer, the former resident of Julia's apartment, did not want to accept the rules of the community and suddenly "disappeared." He explains that the community was held together by the dream of sharing the money one day, but now that Julia has it, the community is doomed. As they try to exit the elevator in order to escape, Julia insists on taking the suitcase first. Domínguez complains that "greed will send [all of them] to hell." While trying to get out of the elevator, the body gets stuck

between floors and is brutally cut in half. Julia is able to save the suitcase, but is faced by Hortensia, another neighbor who also tries to stop her. In an extreme close-up, Hortensia tells Julia that everything was Emilio's idea. She explains that the old man didn't enjoy his money and that they just didn't want it to revert to the tax administration after his death. If they worked together patiently, Emilio convinced them, they would eventually get the money without hurting anyone. Hortensia explains that they signed an agreement whereby each party had the right to an equal share of the old man's money. "Emilio is an accountant, he understands it," she adds.

The neighbors appointed Emilio as their administrator to protect and maintain their common interests. Emilio's expertise as an accountant qualified him as the person most capable of managing everyone's interests and distributing shares and roles. Since the beginning, the neighbors have relied on his managerial ability in order to satisfy their expectations and maximize their wealth (without cheating anyone). Emilio's authority thereby rests upon his expert knowledge to rule the community along with the neighbors' disposition to be ruled by him.⁶¹ This "elitist" order of domination, in which the members of the community follow the decisions of the leader, is clearly seen when the neighbors, who have joined Julia and Hortensia in the staircase, turn to Emilio after trying unsuccessfully to convince Julia to give them the money. In his role as their leader, Emilio takes action and forces Julia into the engineer's apartment to prevent her escape.⁶²

⁶¹ Rancière, *Hatred*, *supra* at 52. In Book III of *The Laws*, as Rancière observes, Plato enumerates six necessary qualifications for the exercising of power: Age, birth, virtue, knowledge, strength, and wealth. These qualifications establish a natural difference between rulers and the ruled –who are, conversely, young, of low birth, ignorant, etc. These qualifications function as an *arkhè* of the community. *Id.* at 39-40.

⁶² In the precedent scene, two policemen arrive (later viewers learn that Charlie has called them) to the crime scene, where Domínguez's body lies dead. Julia tries all sorts of tricks to leave the building with the police, but every time the neighbors frustrate her attempts. Julia explains to the

In a sort of long monologue, Emilio proudly explains the *ethos* of the community and blames Julia for its current state of disarray and chaos. Emilio is seen from a low camera angle, visually highlighting his authority, while Julia, seen from Emilio's superior point of view, appears visually smaller and inferior:

We wanted you to be one of us, to share the luck of living in this building. We even threw you a party. And how do you thank us? Laughing at us and what's worse, trying to run off, playing dirty. Domínguez died because you double-crossed him! . . . Domínguez didn't deserve to end up like that! God! Do you know how many years I've been behind this project, getting these people together? I've turned down jobs, well-paying jobs, just to stay here. I knew things would fall apart without me. . . . A treat for the kids. My first vacation in 20 years, and you appear and fuck everything up! Who do you think you are? I'll tell you. You're a lying whore who hasn't a penny! This isn't even your flat! But that doesn't matter. I feel sorry for your kind. . . . You people think only of yourselves. You probably don't have a family, either. You people don't want responsibilities. You just want to live in the present. . . . Well, we are different here. This is a community. García's hip is bad and he eats lunch at his daughter's house. He needs a little car to get around town. Paquita, on the 5th floor, is 40 years old and still single. Know why? Her mouth is disgusting and she's never been kissed. She needs to get her teeth fixed. It's all here on this list, corrected year after year. Know what I'm talking about? About solidarity, respect. We believe in respecting others. You don't know what that means.

[Nosotros queríamos que fuéramos uno más. Que compartieras la suerte de vivir en esta casa. Hasta te hicimos una fiesta de bienvenida. ¿Y cómo nos lo pagas? Riéndote de nosotros, y lo que es peor, echando balones fuera que es lo más sucio que se puede hacer. Domínguez no hubiera muerto si tú no le hubieras traicionado. ¿Qué le dijiste? ¿Mitad y mitad, no . . . ?! Pobre Domínguez no se merecía este final! ¿Sabes cuántos años llevo detrás de este proyecto? ¿Sabes el esfuerzo que he tenido que hacer para poner de acuerdo a toda esta gente? He rechazado trabajos, trabajos muy bien pagados, sólo por no alejarme de esta casa. Sabía que si yo no estaba todo esto se vendría abajo. ¿Ves lo que pasa? Sólo por darles un capricho a los chicos, las únicas vacaciones que me he permitido en 20 años, y de pronto ¡llegas tú y lo jodes todo! ¿Quién te has creído que eres?! Yo te lo voy a decir! Eres una puta mentirosa que no tiene donde caerse muerta! Ni siquiera eres la dueña de este piso. ¡Pero eso qué más da! La gente como tú me da pena. . . . Sois todos iguales. Sólo pensáis en vosotros mismos. Seguro que

police that “they,” the neighbors of the community, want to kill her because she has found “something” they have been looking for, for years. But, when asked what is this “something,” unable to tell them the truth, she responds that she has found the luxurious apartment and “people can be very envious.” The policemen think she is crazy and leaves the building without her.

tampoco tienes familia, que también eso es mentira. ¡Claro! Vosotros no queréis responsabilidades, sólo vivir el presente, disfrutar de la vida a lo loco . . . Bueno, pues aquí no. Aquí somos una comunidad. García tiene mal la cadera y va todos los días a comer a casa de su hija que vive en Atocha. Necesita un coche . . . para conducir por la ciudad. Paquita, la del quinto, tiene 40 años y sigue soltera. ¿Sabes por qué? Porque su boca da asco y nadie la ha besado. Necesita una dentadura nueva. Está aquí todo, en esta lista, corregida año tras año. ¿Sabes de qué te estoy hablando? De solidaridad, de respeto. Nosotros creemos en el respeto a los demás. Pero claro tú no sabes lo que quiere decir esa palabra.]

For Emilio, Julia embodies everything the community is not. Even though the community gave her the chance to “share the luck” of living in the building, she has chosen instead to pursue her own pleasures and interests. She is an ingrate for having rejected everything the community offered. The selfishness, individualism and hedonism of which Emilio accuses her clash with the collective values of sacrifice, family, responsibility, solidarity, and respect upon which the community is allegedly grounded. Her refusal to share the values and the commitment to the common good goes against the community’s way of life. This commitment to the common good requires effort and sacrifice from each of its members, and Julia has failed to play her part. Emilio accuses Julia of mocking these values and everything the community stands for, and blames her for double-crossing Domínguez and causing his death.

In the name of the common good, Emilio has allocated power (the most capable), wealth (equal shares to the old man’s money), rights (individual and collective), rules (to prevent people from damaging others in the pursuit of their interests), and duties (to follow the rules of the community), all of which serves as a yardstick for the community’s sense of equality and justice. Furthermore, the prosperity of the community can only be achieved if the neighbors abide by the common rules (i.e., to watch the old man a few hours each day). Following these rules gives each the right to share equally in

the old man's wealth. Emilio positions himself as the catalyst and embodiment of such commitment: he has worked tirelessly to make the agreement possible and has sacrificed better job offers for the sake of the common good. Indeed, the chaos produced during his absence—forcing him to interrupt his first vacation in twenty years—reaffirms the fact that his leadership and management are the glue that keeps the community together. Emilio assures her that all the problems, interests, and needs of each member are heard and taken into account. Thus, the list of each member's demands is amended year by year: for instance, García's hip is bad, and he needs a little car to get around town; Paquita needs to get her teeth fixed. The equality of everyone in the community thereby seems equal to the sum of its parts and their problems with nothing left over.⁶³ The community, according to Emilio, exists in a higher ethical order where its being together entails solidarity, respect, sacrifice, and sharing. Emilio presents the values of the community as the embodiment of a democratic regime, and criticizes Julia's selfishness, consumerism, and hedonism (people thinking only of themselves, devoid of responsibilities, who enjoy living the present life day by day without knowing the value of solidarity, family, and respect) as a threat to the community and the common good.⁶⁴

⁶³ Rancière, *Disagreement*, *supra* at 123.

⁶⁴ In *Hatred of Democracy*, Rancière identifies a contemporary intellectual tendency "to dismiss the political signification of democracy." This tendency asserts that democracy is internally threatened by a greedy and insatiable consumer of televisual spectacles and commodities. *Hatred*, *supra* at 7, 88. This antidemocratic discourse claims that the laws of capitalist accumulation rule the world because democratic man (and woman) is a "being of excesses." Thus, democratic individuals are "not victims of a system of global domination. They are the ones responsible for it, the ones who impose the 'democratic tyranny' of consumption."⁶⁴ Democracy is, according to this tendency Rancière criticizes, a form of society governed by the limitless desire of consuming individuals. This limitlessness ruins the search for the common good embodied in the State and must therefore be repressed by it. *Id.* 1, 8, 17. For Rancière, this is the paradox of the dominant usage of the word democracy today: "good democratic government means a form of government which can master the excess threatening good policy. This excess can be named, its name is *democracy*." "Does Democracy Means Something?" in *Adieu Derrida*, ed. Costas Douzinas (New York: Palgrave Macmillan, 2007), pp. 84-100 at 86.

B. Postdemocracy: Exclusion and Powerlessness

To be sure, Emilio's idyllic description of the community is closer to what Rancière has called "consensus democracy" or "postdemocracy." Behind Emilio's rhetoric of consensus, solidarity, hospitality, sacrifice, and equality, the film unmasks an order of domination based on hierarchy, exclusion, greed, and hatred. This is most apparent in the scene of the fake party, which Emilio adduces as evidence of the welcoming nature of the community and the good will it harbors towards Julia. The scene begins by visually positioning Emilio as an authoritarian figure whom everyone obeys. It opens with a close-up of an arm wearing a gold watch with a Spanish flag on it. Then, the camera introduces Emilio as the owner of the watch, wearing a shirt with a Spanish flag collar. When Oswaldo announces Julia's arrival, everybody looks at Emilio and waits for instructions [Picture 9]. Emilio orders everyone to get ready, and as the music begins, he directs the moves of the neighbors like the conductor of an orchestra [Picture 10]. This image links the harmonious configuration of the bodies, places, and functions of the community to the mechanisms of a clock and a well-directed orchestra.



Picture 1.9



Picture 1.10

However, a series of conversations between the neighbors call into question the harmony residing in the community and the legitimacy of Emilio's rule. The first

conversation takes place between Castro (Sancho Gracia) and Ramona in close-up: Ramona complains that she cannot stand Emilio's ideas any more. Castro agrees with Ramona and observes that the problem is that "no one listens" because Emilio has "brainwashed them." Ramona then warns him that no one can do anything without Emilio's finding out. Fear and manipulation, rather than duty to and respect for Emilio's authority, seem to guide the neighbors' behavior.

In another conversation between Charlie and his mother, Charlie asks her permission to leave the party. His mother replies that he has to stay because Emilio said so. Charlie then complains that he did not want to be part of it, and that they forced him to sign the agreement ("You made me sign it," he says). Moreover, his mother says that if he leaves, he may end up like the engineer. Under the pretext of agreement, the consensual community masquerades the fact that there are individuals who, like Charlie, are not willing partners in the consensual system. Charlie's attempt to leave the party signals the violent dynamics of the community. His mother denies him the permission to leave (because Emilio says so), and reminds him of what happened to the engineer when he refused to follow the rules of the community. This dialogue shows that the community functions as a police order which does not allow the possibility of dissent, and that it has powerful sanction mechanisms (including the death threat) to assure compliance among its members.

At the same time, Charlie's own inclusion in the community and role are questioned. Throughout the film, Charlie is treated as an inferior being (a "retard," as Castro calls him) whom no one in the community takes seriously. He is portrayed as a dependent under his mother's care, incapable of independent will and thought. By

relegating Charlie to the domestic sphere, the community excludes him from the public space of collective negotiation and the process of decision making. As an inferior being, Charlie's words cannot be recognized as speech (*logos*), that is, he is denied the capacity to enunciate what is just or wrong, and regarded as a mere noise (*phōn*) that need not be taken into account. Nevertheless, in order to maintain the appearance of consensus, Charlie *must* still sign the agreement. By his signature, Charlie is *included in the community without being part of the community*—he is “the part of those who have no part.” Charlie “consents” to the given distribution of parts and functions without being allowed to participate in that distribution. Through Charlie's “inclusion,” the community effaces any trace of the false count or exclusion, that is, it eliminates the internal conflict and creates the illusion of a seamless totality. By these mechanisms, the consensus community prescribes a given “regime of the perceptible,” a particular way of perceiving that establishes at one and the same time what is common to the community and the delimitations that define the respective parties, their places, and functions.⁶⁵

By keeping everyone in his place, the logic of consensus dismisses any possible criticism of the configuration of the common and reduces any space for emancipation. There are only two options for those who question the consensus community: either they are made to accept its common project, values, and rules and become members, like Charlie, but not participants of the community; or, if they refuse to accept them (like the engineer) or are perceived to have violated them (like Domínguez), they become a threat and are treated like the enemy. In the latter case, the community responds with sheer

⁶⁵ Rancière, *The Politics of Aesthetics*, with an afterword by Slavoj Žižek, tr. Gabriel Rockhill (London & New York: Continuum, 2004) at 12.

violence.⁶⁶ When Julia asks Emilio if he killed the engineer, Emilio justifies the murder by asserting that “[h]e was destroying the community.” The engineer did not want to follow the common rules and his refusal to cooperate became a threat to the survival of the community. To preserve the community’s way of life he had to be eliminated. According to Emilio, Julia represents a similar threat, and as such, must experience the same “luck” as the engineer.

By presenting a visible and identifiable enemy, the community “conveniently establishes an inside and an outside.”⁶⁷ Whereas Charlie is an internal problem towards whom the community must “stretch its hand” in order to maintain the illusion of consensus, Julia is the external other who does not share the identity of the community and therefore needs to be excluded to preserve its common project. The community’s perceived risk of dissolution produces the effect of unity through inclusion. Moreover, this unity is maintained through exclusion and hatred towards those who are deemed selfish and unsupportive. Rather than a “being together” as an act of solidarity and of respect for the other, as Emilio claims, this is “a coming together in order to exclude”.⁶⁸

C. The Foundation of the Consensus Community

Julia sees through Emilio’s rhetoric and replies to his long “monologue”: “You are a fraud and a thief, like me, like everybody.” Emilio defends himself, asserting that he is entitled to the money because the old man guessed the scores of the soccer lottery thanks to him. Emilio tells Julia: “He asked for advice. He said, ‘Sporting against Real

⁶⁶ See Carl Schmitt, *The Concept of the Political*, tr. George Schwab (Chicago & London: The University of Chicago Press, 1996).

⁶⁷ Rancière, *Disagreement*, *supra* at 116.

⁶⁸ Rancière, *On the Shores of Politics*, 1992, tr. Liz Heron (New York, NY: Verso, 1995) at 23.

Sociedad,' and I said, 'Tie'. I don't know, it just came out of my mouth. No one else in Spain marked 'Tie'. Just me." According to Emilio, this gives him the right to a share of the profits. He explains that the old man became greedy and decided to keep the winnings for himself instead of sharing it with him and with the community. "As if we didn't exist," he complains. "We were neighbors. A lifetime together, meeting in the elevator, in the bar. It meant nothing to him. He could have given us a part, or just gifts." As Emilio tells the story, the neighbors had a prior claim to the money that the old man had denied them when refusing to share what was their due.

Despite Emilio's myth about the origins of the community, the community he is talking about is founded precisely at the moment in which the neighbors conspire to steal the money from the old man. The previous "being together" of the community, which the old man had supposedly infringed on when refusing to share the winnings of the lottery, does not give them the right to a share of the profits. The idea of "coming together" arises at the moment the old man wins the lottery. What brings about the consensus community is therefore, as Cristina Moreiras-Menor points out, not the sharing of experiences, values, or space by all its members, but rather their materialist dreams and desires.⁶⁹ Around these dreams and desires, Emilio has fabricated a sense of community which serves his own interests. Now that Julia threatens to destroy his plans, as the engineer did before her, she must be eliminated.

Julia understands that Emilio's rhetoric hides the same selfishness and individualism of which he accuses her and the old man, and accuses him of using the neighbors: "You needed the neighbors. You couldn't guard the old man by yourself."

⁶⁹ See Cristina Moreiras-Menor, *Nuevas fundaciones: Temporalidad e historia en La comunidad de Álex de la Iglesia*, Vol. 123 MLN (Hispanic Issue) 2 (March 2008), pp. 374-395, at 388.

After realizing Emilio's hypocrisy, Julia stands up from the floor and confronts Emilio face-to-face for the first time. Julia asks: "Now you don't need them. Will you kill them all?" Emilio violently beats her again. Julia responds (ironically, with words that recall her earlier fight with her husband): "You've had 20 years to think about it. And about getting rid of your beloved wife and kids. . . . She must be a good woman to have gone without vacations. But with money, you can get something better. . . . Someone who doesn't know, who matches your new house and pool, your new convertible. Have you thought about it?" A cutaway from Julia's apartment shows that Charlie is witnessing everything with his binocular [Pictures 11 and 12].



Picture 1.11



Picture 1.12

Emilio tries to kill Julia, but she defends herself and, in a sudden move, Emilio slips and hits the bathtub with his head and begins to bleed profusely. Julia tries to clean the blood stains from her hands and face, when she receives a call from the real estate agency, telling her that new clients are about to arrive to visit the apartment. Julia hides Emilio's body in the bedroom, thinking he is dead, and tries to get rid of the clients. After they leave, Julia lies side by side with Emilio. Suddenly, he wakes up and attacks Julia, after which she kills him with a lamp. When she thinks she is finally safe, the neighbors enter Julia's apartment, but she is able to hide in the balcony with the suitcase. Like the cat of the credit sequence, she jumps in the old man's apartment, falling in the exact same

spot as the body of the old man when found. Visually, Julia's materialistic dreams put her in the same exact position as the dead old man, afraid of the neighbors and in danger of ending like him [Pictures 13 and 14].



Picture 1.13



Picture 1.14

By reading the consumer society in Baudrillardian terms,¹ and the consensual community of neighbors as an allegory of what Rancière calls postdemocracy, I have attempted to unmask how the interplay of the power of the market and the power of the State confine individuals to a depoliticized place, the market system through its order of differentiation, the consensus community through its police order of distribution.² Both transform society into a homogeneous and objectifiable police-like order, which, in the name of inclusion and difference, produces, paradoxically, exclusion and sameness. Both confer on individuals the illusion of sovereignty, while imposing codes of conduct that determine their behaviors and attitudes and discourage people's questioning their roles as consumers. Democracy is thereby reduced to a form of government that enables economic and state powers to rule in the name of the sovereignty of the people, and

¹ Rancière, *Hatred*, *supra* at 95. This Baudrillardian cinematic account of democracy and the alienated consumer contrasts with the contemporary European intellectual tendency to blame individuals for the power of consumption. Contrary to this anti-democratic tendency, the Baudrillardian reading of the film denounces not an *excess* of democracy but its *absence*. Baudrillard, *supra* at 50.

² Brett Levinson defines the interplay of these two powers as a "duopoly": "[a] state/market dyad in which relativism and absolutism, contingency and necessity, deregulation and law, circulation (a key topos of the market) and production (a fundament of the state form), unfixity and fixity, work together to form our social, political, cultural, and intellectual domains." *Market and Thought*, *supra* at 15.

relegates politics to the consensual administration and management of economic interests and allocation of power and resources within the State.

IV. THE POWER OF THE DEMOS

The central question I am exploring now is whether the film engenders any possibility for political emancipation. Rancière defines the politics of emancipation as a set of practices guided by the presupposition of equality for anyone and everyone, and by the attempt to verify this presupposition through action.³ Through the act of political emancipation, the demos—those who have no part in the distribution of the sensible—dissent from the identity, role, and place the police order has assigned them and, enacting their equality, are able to reconfigure the political realm. As he puts it, “politics exists because those who have no right to be counted as speaking beings make themselves of some account.”⁴ Politics is not, according to Rancière, a discussion or negotiation between parties about their interests, values, or opinions. Neither is it a quarrel over the solutions to be applied to a problematic situation. It is a disagreement over what the police order has established as the “common” of the community;⁵ it is a dispute over the configuration of the perceptible itself, that is, over the frame within which one sees something as given.⁶ Politics is, in this sense, an aesthetic act that reconfigures the perceptible partitions that define the sum of the parts and their

³ Rancière, “Politics, Identification, and Subjectivization” in *The Identity in Question*, ed. John Rajchman (New York: Routledge, 1995) at 63.

⁴ *Disagreement*, *supra* at 26-27.

⁵ As Gabriel Rockhill notes, the “common” is “what makes or produces a community and not simply an attribute shared by all its members.” In *The Politics of Aesthetics*, *supra* at 102-103.

⁶ Rancière, *Introducing Disagreement*, *supra* at 6. Cf. Jürgen Habermas, *The Philosophical Discourses of Modernity: Twelve Lectures*, tr. F. Lawrence (Cambridge: Polity Press, 1987).

capacities.⁷ This acting out or demonstration is not the act of a subject who has an identity prior to the conflict in which it is named as a party. Rather, the political act occurs through a process of *subjectification*, by which those not previously identifiable within the given field of experience are able to appear and inscribe “subject names” on it.⁸ This moment of inscription—which coincides with the political act—reveals the existence of a *wrong*, which is an inequality and miscount of the parts of the community.⁹ For Rancière, politics is synonymous with democracy, which “is neither a form of government that enables oligarchies to rule in the name of the people, nor it is a form of society that governs the power of commodities. It is the action that constantly wrests the monopoly of public life from oligarchic governments, and the omnipotence over lives from the power of wealth.”¹⁰ Democracy is thus “a way for politics to be.”¹¹

The last part of the film offers an example of such political emancipation. The sequence begins with an image of Julia trapped in the old man’s apartment and the neighbors trying to get inside by breaking the door. At this point, Charlie unexpectedly enters the apartment from a hole in the ceiling. “Where is the suitcase?” he asks. Julia tells him to forget the money, but Charlie insists that, in order to escape, the suitcase has to go with the two of them. In their way out to the rooftop, Charlie exchanges the suitcase

⁷ For Rancière, aesthetics is “what allows separate regimes of expression to be pooled.” *Disagreement, supra* at 57.

⁸ *Id.* at 35 and 37.

⁹ Rancière defines “wrong” as “the mode of subjectification in which the assertion of equality takes its political shape.” He distinguishes wrong from the lawsuit: “objectifiable as the relationship between specific parties that can be adjusted through appropriate legal procedures. Quite simply, parties do not exist prior to the declaration of wrong. . . . What is more, the wrong it exposes cannot be regulated by way of some accord between the parties. It cannot be regulated since the subjects a political wrong sets in motion are not entities to whom such and such has happened by accident, but subjects whose very existence is the mode of manifestation of the wrong.” *Disagreement, supra* at 39.

¹⁰ Rancière, *Hatred, supra* at 96.

¹¹ Rancière, *Disagreement, supra* at 99.

with the money inside it for another behind Julia's back. Once there, the following dialogue takes place:

Charlie: "This is my plan. You escape. I'll create a distraction, like in the Death Star."

Julia: "What Star?"

Charlie: "Han Solo distracted the Stormtroopers while Luke and the Princess fled, remember?"

Julia: "This isn't 'Star Wars.'"

Charlie: (he kisses her in the mouth and says) "The Force is with me."

Julia: "They could kill you."

Charlie: "Don't worry, nothing will happen. I'll play dumb as always. Trust me."

[Charlie: Este es mi plan. Tú huyes mientras yo los distraigo, como en la Estrella de la Muerte.

Julia: ¿Pero qué Estrella?

Charlie: Hans Solo distrae a los soldados imperiales mientras Luke y la Princesa huyen. Pero vamos a ver, ¿cómo no te puedes acordar?

Julia: Por favor, ¿esto no es la Guerra de las Galaxias!

Charlie: La Fuerza esta conmigo.

Julia: ¿Pero no te das cuenta de que te pueden matar?

Charlie: Tranquila mujer, que no pasa nada. Me haré el tonto como siempre. Confía en mí, ¿vale?]

Julia finally trusts Charlie and starts running. When the neighbors arrive on the rooftop, Charlie, dressed in Darth Vader apparel, confronts them with a fake plastic sword and says: "Too late. The princess is gone. The rebellion will triumph. Long live the Republic!" [Pictures 15 and 16]. Oswald and Castro beat him up, while commenting with derision: "Republic! What fucking Republic? Why is this retard here?" Charlie's mother recriminates him: "I told you to stay at home." Charlie replies that Julia had told him that she loved him and she would marry him. His mother reproaches: "Your father was right. We should've drowned you at birth."



Picture 1.15



Picture 1.16

Before analyzing the political character of Charlie's confrontation with the community, it is crucial to remark that Charlie's action arises from his ethical encounter with Julia's vulnerable face after he witnesses the violent scene between Emilio and Julia with his binocular.¹² As I will explain in chapter 3, according to Levinas' ethics, in the face-to-face encounter between the self and other, the other appears in the uniqueness of her face, and expresses an ethical demand, "Consider me before you act!," which needs to be acted upon immediately.¹³ In Julia's vulnerable face, brought closer with the help of the binocular, Charlie reads a concrete and personal ethical request—help me!—addressed to him. Charlie responds to Julia's call by helping her escape from the old man's apartment, and his unconditional responsibility towards her manifests itself when he confronts the community of neighbors in order to create a diversion for her.

In the quoted conversation between Charlie and Julia, Charlie uses the fictional world of *Star Wars* (in particular, *Star Wars Episode IV: A New Hope*, 1977) to explain his plan of escape to Julia.¹⁴ When Julia warns him that he does not live in a fictional

¹² Charlie is seen several times spying on Julia with his binocular, but he takes action only this time. In a figurative way, Charlie is the joker with binocular that Julia finds at the beginning of the film.

¹³ This ethical obligation towards the other is not part of moral principles or categories that reduce the other to the same. This other is always unfathomable, irreducible to the categorical imperatives of the self.

¹⁴ Charlie refers to the scene where Han Solo, a smuggler that joins the Rebel Alliance against the authoritarian Galactic Empire, helps Princess Leia and Luke Skywalker (the hero of the saga, and

world (“This is not *Star Wars*”) but in one where he could get killed, Charlie tells her to trust him, and assures her that, since he will “play dumb as always,” nothing will happen. Charlie uses the marginal role that the police order has assigned him (the role of the “retard”) in order to distract the neighbors and facilitate Julia’s escape. By playing “dumb,” Charlie manages also to protect himself (had the community realized his true plans, he would have been most likely killed). At the same time, Charlie’s confession that he will play dumb “as always” reveals this playing dumb as a deliberate and willful strategy that makes him smarter than what he looks like, demonstrating that “dumb” is not a category to which he belongs. Behind the role the community has assigned him—and he playfully has adopted—lies an intelligent person capable of deceiving and outsmarting the community. For the first time, he stands against the community and imposes himself as an actor: he dissents from the identity, role, and place he had been assigned and inscribes himself as an equal.

By making it apparent that his role as a “retard” is undeserved, Charlie also dissents from the identity and role imposed by (the community of) viewers. Charlie’s action reconfigures the regime of the perceptible for the viewer, who had, up to that point, underestimated him—like the rest of neighbors.¹⁵ What appears at first as a utopian fantasy—the escapist fantasy of a freak dressed in Darth Vader apparel imagining rescuing Princess Leia from the Imperial Stormtroopers—becomes the narrative framework for what is actually happening. The fantasy materializes and Charlie becomes Han Solo, able to defy the Galactic Empire (the community) in order to help Princess

whose father was killed by cyborg Darth Vader, commander of the Empire) to escape from the Imperial Stormtroopers. The Death Star is the ultimate Imperial weapon. With the help of the Force (a metaphysical power), Luke destroys the Death Star.

¹⁵ Throughout the film, viewers are invited to share the community’s diminishing way of seeing Charlie, as a “retard” who cannot be taken seriously.

Leia (Julia). Likewise, his words “The Force is with me,” earlier used in the context of masturbation, undergo a transformation. They become representative of Charlie’s real strength, forcing viewers to recast Charlie as a political actor, not as a freak or pervert.

Through this political act of emancipation, Charlie brings the wrong, the inequality and injustice on which the consensus community is grounded, into the open, and confronts the community with a contradiction. On the one hand, the community claims to be founded upon the principle of equality among all its members (the “agreement” between the neighbors) with which it supposedly operates (the equal distribution of shares, roles, and positions). On the other hand, the community is committed to inequality: Charlie is treated as an inferior being, who is beaten, humiliated, and treated with contempt by the neighbors. Even his own mother expresses the wish that he had better been drowned at birth, denying his fundamental right to exist. Charlie’s act performs this contradiction, which shows the community’s failure to act in ways consistent with the principles they claim to hold. As Todd May argues, the consensus community is in contradiction with itself, that is, there is a tension between “what it says and what it does.”¹⁶ By acting out the presupposition of equality, Charlie verifies his equality, putting himself retroactively on equal footing with the neighbors who would deny it.

Equality, according to Rancière, “is not a value to which one appeals.”¹⁷ Neither is it “a given that politics then presses into service . . . a goal politics sets itself the task of attaining. It is a mere assumption that needs to be discerned within the practices

¹⁶ Todd May, *The Political Thought of Jacques Rancière. Creating Equality* (University Park: The Pennsylvania State University Press, 2008) at 108-109. Furthermore, the community’s violent refusal to hear him contradicts its claim that all members’ needs and demands are equally heard and counted.

¹⁷ Rancière, *Politics, Identification, and Subjectivization, supra* at 65.

implementing it.”¹⁸ There is therefore no need for an explicit invocation of the term *equality*, or for recognition of the presupposition of equality by the community, in order for it to be effective or discerned. It is rather those who interpret the action, “a third people” as Rancière calls them,¹⁹ “whether participants or not, that will recognize the equality out of which people act.”²⁰ The inability of the community to recognize Charlie’s equality (for its only response is sheer violence) is no obstacle to recognizing his act as political, nor to marking this political action as a failure. Charlie’s success lies in staging for the viewer 1) the act of subjectification that makes him emerge as an equal (political) subject²¹; and 2) the wrong that disrupts the seamless order of the police. Charlie’s dissent uncovers the existence of two opposing worlds in a single world: the world of the consensus community, which presents itself, through distribution, classification, and exclusion, as a homogenous totality; and the world created by Charlie’s political act of subjectification, which presents the community, through declassification, disidentification, and inclusion as different from itself.²² This reconfiguration of the given order of classification and identification demonstrates the

¹⁸ Rancière, *Disagreement*, *supra* at 33.

¹⁹ *Id.* at 88.

²⁰ Todd May, *There are no Queers: Jacques Rancière and Post-Identity Politics*, Vol. 8 *Borderland 2* (2009), pp. 1-17 at 6. See also *The Political Thought*, *supra* at 58-59.

²¹ For Rancière, “[a] political subject is not a group that ‘becomes aware’ of itself, finds its voice, imposes its weight on society. It is an operator that connects and disconnects different areas, regions, identities, functions, and capacities existing in the configuration of a given experience—that is, in the nexus of distributions of the police order and whatever equality is already inscribed there, however fragile and fleeting such inscriptions may be.” *Disagreement*, *supra* at 40.

²² For Rancière, “Any act of subjectification is a disidentification, removal from the naturalness of a place.” *Id.* at 36. Subjectification “is the formation of a one that is not a self but is the relation of a self to an other” (*Politics, Identification, and Subjectivization*, *supra* at 66).

power of the demos—symbolized in Charlie’s figure—the power to undermine the prevailing forms of domination that structure society.²³

What kind of community does Charlie create among those alongside whom he acts?

Rancière objects that the ethical obligation to respond to the call of the other in need creates a hierarchical and unequal relation between self and other, between master and victim, that goes against equality and the politics of emancipation.²⁴ I have demonstrated that the fact that Charlie does not act in the name of equality, but out of his ethical obligation to respond to Julia’s demand, does not prevent politics in Rancière’s sense occurring.²⁵ Now, I want to suggest that the community between Charlie and Julia

²³ Rancière observes that among the necessary qualifications that Plato lists as the sources of legitimate authority there is a “seventh title” called the “drawing of lots,” “the law of chance.” This title shows that “the condition under which a government is political is that it is founded on the absence of any title to govern.” Rancière, *Hatred, supra* at 44. The power of the demos lies precisely in the rupture of all logics that purport to found domination on some entitlement or in some specific qualification to dominate: Charlie’s political action breaks the correspondence between the capacity for ruling and the capacity for being ruled, and exposes the contingency of the consensual logic of domination (the entitlement or qualification to govern). See also *Ten Theses on Politics*, Vol. 5 Theory and Event 3 (2001).

²⁴ Rancière explicitly rejects Jean-François Lyotard’s interpretation of the rights of the Other. For Lyotard, the Levinasian “‘infinite respect for the Other’ means obedience to the power of the Other, . . . to which the human is a hostage or a slave.” *Does Democracy Means Something, supra* at 98. This way of understanding ethics, according to Rancière, may lead to what he calls “the contemporary ethical turn”: “a growing indistinction between fact and law, what is and what ought to be,” which “brings about an unprecedented dramaturgy of infinite evil, justice and redemption,” as it serves to justify the military campaigns against the axis of Evil (i.e., the War on Terror). *The Ethical Turn, supra* at 2. But it may also lead to what is called the “right to humanitarian interference”: if those who suffer inhuman repression are unable to protect themselves, somebody else has to protect them (i.e., humanitarian interventions in the 1990s in Bosnia). By placing them as victims, it becomes simultaneously a “right that some nations assume to the supposed benefit of victimized populations” and the “rights of the absolute victim. The absolute victim is the victim of the absolute evil”. *Who is the Subject of the Rights of Man*, 103 *South Atlantic Quarterly* 2/3 (2004), pp. 297-310 at 304, and 308-309.

²⁵ Rancière, however, rejects giving the Other a gaze and giving to her/his voice the power of an “ethical injunction,” because, in his view, it may lead to a substantialization of the Other. In particular, he objects that, while deconstructing identity, Derrida is always on the brink of reinstating it by overstating the “identity of alterity” or the presence of the absent—what, in *Specters of Marx*, Derrida calls “the ghost.” Instead of speaking of ghosts, Rancière prefers to

is not based on a hierarchical and unequal relation. The fact that Julia is in need of Charlie does not mean that she is, for that reason, a helpless victim and deprived of all agency, nor that Charlie is a god or a master that would come to save Julia. Once Julia receives Charlie's initial impulse, she is able to assert her own difference and confront the community, enacting her own emancipation. The beginning of Julia's liberation visually coincides with the moment the two of them reach the rooftop and the frame shifts from the claustrophobic and constricted atmosphere of the interior of the building to an open view of the same majestic Madrid that is shown at the beginning of the film.

The neighbors run after Julia and begin a long chase across the rooftop, during which the neighbors start killing each other (Castro kills Oswaldo and Ramona kills Castro). Finally, Julia and Ramona confront each other under gigantic equestrian sculptures on the roof:²⁶

Ramona: "You wanted to cut in line. You wanted it all for yourself. You pig! . . . What did you do to Emilio? . . . You want to keep the suitcase. . . . You hypocrite! You hold that suitcase like your soul was inside! You're just like us, like everyone!"

Julia: "No, I won't be like you!"

Ramona: "You can't help it. You were born that way, it's in your blood! You ran over everyone. Say you're like me! Say it!"

Julia: "No, Ramona. You'd never do this!"

[Ramona: ¡Querías saltarte la cola! ¡Querías llevarte todo el 'pescao'!
¡Desgraciada! ¿Qué le has hecho a Emilio? . . . ¡Qué mentirosa eres! Mira cómo te agarras a la maleta, ¡cómo si llevaras el alma dentro! Tú eres como nosotros, ¡como todos!

Julia: No, yo no puedo ser como vosotros.

speak of fictions. For him, the "inexistent" is, first of all, "words, texts, fictions, narratives, characters—a paper life' instead of a life of ghosts. It is a poetic framing of specific appearances rather than a phenomenology of the unapparent." *The Thinking of Dissensus: Politics and Aesthetics*, Fidelity to the Disagreement: Jacques Rancière and the Political, conference organized by the Post-Structuralism and Radical Politics and Marxism Specialist Groups of the Political Studies Association of the UK, Goldsmiths College, London, 2003, pp. 1-15 at 12-13.

²⁶ Not by chance, the building headquarters of a bank (Banco Bilbao Vizcaya Argentaria, BBVA).

Ramona: Eso no se elige, se nace con ello. Tú lo llevas en la sangre. Te has llevado a todos por delante. ¡Di que eres como yo! ¡Dilo!
Julia: No, Ramona. Tú no harías esto.]

This dialogue replicates Julia's own words to Emilio but it inverts them (then, it was Julia who asserted that all of them were alike: "You are a fraud and a thief, like me, like everybody"). Ramona now asks Julia to recognize that she too, like Ramona and the rest of the neighbors, is driven by greed and self-interest. This time, however, Julia rejects this identification and realizes that she does not want to be like them.²⁷ To assert her difference from the community, Julia throws the suitcase with the money at Ramona, who, caught by surprise, falls to her death in the middle of the building's courtyard. By renouncing the money, she dissents, like Charlie, from the identity that she has been assigned by the community and sets herself free from the constraints and values of the economic order that had previously alienated her.²⁸ Her triumph over the power of wealth is visually reinforced when a low angle shot shows her looking down at Ramona's body from the rooftop [Picture 17]. Ramona is seen the same way viewers saw Julia moments earlier, when she lay on the floor of the old man's apartment [Picture 18]. This image suggests that Julia could be the one lying dead on the ground, if it were not for her renouncing the money.



Picture 1.17



Picture 1.18

²⁷ Maroto, *supra* at 338.

²⁸ In so doing, Julia demonstrates, against Baudrillard's claim, that alienation can be overcome.

The moment Ramona lies dead on the ground, the rest of the neighbors arrive and start fighting amongst themselves, like vultures over a corpse, for the money inside the suitcase. Viewers learn about the community's fate from a newspaper headline shown in close-up in the next scene: "Neighbors kill each other for money that doesn't exist." The neighbors have killed each other for the fake Monopoly money that Charlie had put in the suitcase. Greed, as Domínguez had predicted, has led the community to its own destruction and death.

Several days after the incident with the neighbors, Julia sees a message from Charlie addressed to her in the newspaper: "Darth Vader seeks Princess Julia to meet him at the bar 'El Oso y el Madroño'" (The Bear and the Strawberry Tree, symbol of Madrid). When Julia meets up with Charlie at the bar, she questions him directly: "Why didn't you tell me you switched suitcases? They almost killed me." Charlie explains that if he had told her, the neighbors would have guessed it and she would not have been able to escape. "That's it?" Julia insists. Charlie admits that he also wanted to see if she was like his mom. Charlie invites her to dance and they start dancing together with joy. Charlie and Julia's bond creates a community of equals based on mutual trust:²⁹ on the one hand,

²⁹ In *The Politics of Friendship*, through a deconstructive reading of canonical texts in political theory and friendship (from Plato and Aristotle to Nietzsche, Blanchot, Nancy, Schmitt, etc.), Derrida (very roughly) points to and questions a canonical "*familial, fraternalist* and thus *androcentric* configuration of politics" that excludes friendship between a man and a woman, and also between women. *The Politics of Friendship*, tr. George Collins (London & New York: Verso, 1997) at viii (*italics* in the original) and at 279. He observes that, from the beginning, the concept of politics rarely announces itself without some sort of linkage of the State to the family, a "*schematic* of filiation," and in particular to fraternity or brotherhood; that "any republican motto almost always associates fraternity with equality and freedom;" and that democracy has seldom represented itself without the possibility of *fraternization*. *Id.* at viii. Since all the concepts which are fundamental in politics—democracy, sovereignty, power, representation, community, the nation-state—share this phallogocentric, exclusive, and inegalitarian concept of the social bond as friendship, Derrida considers it necessary "[t]o think, interpret and implement another politics, another democracy"—that is, "to think and live a politics, a friendship, a justice which *begin* by breaking with their naturalness or their homogeneity, with their alleged place of

Julia trusts Charlie, when she follows his escape plan and runs away while he distracts the community; on the other hand, Charlie trusts Julia, when he asks her to meet him and tells her the truth about the money. Charlie's response to Julia's ethical call, which in turn becomes Charlie's political act of emancipation, allows Julia to assert her difference from the greedy and self-interested community, which in turn becomes her act of political emancipation. Together as equals, Julia and Charlie are able to overcome both the power of wealth and of the consensus democracy that had previously excluded them, and to create a democratic community based on trust and respect for the singularity of each other. The film thus creates a space where the singularity of the other is reconciled with the demand for democratic equality.³⁰

V. THE REEMERGENCE OF SPANISH NATIONALISM

The scene at the bar "El Oso y el Madroño" presents a *castizo* group of male working-class customers dressed in *chulo* outfits (traditional Madrilenian clothes with flat cap, waistcoat and neckerchief) who join Charlie and Julia in dancing at the sound of the *organillo* (barrel organ) [Picture 21]. While they sing a *tuna* (traditional song sung by University student groups), its lyrics expressing their love for Portugal, Charlie shares

origin." *Id.* at 105. The bond between Charlie and Julia, between a man and a woman, offers the possibility of "*an alterity without hierarchical difference at the root of democracy*"; for it frees "*a certain interpretation of equality by removing it from the phallogentric schema of fraternity.*" *Id.* 232 (italics in the original).

³⁰ Cf. Derrida: "There is no democracy without respect for irreducible singularity or alterity, but there is no democracy without the 'community of friends,' . . . without the calculation of majorities, without identifiable, stabilizable, representable subjects, all equal. These two laws are irreducible one to the other. Tragically irreconcilable . . ." *Politics of Friendship, supra* at 22.

5,000-pesetas bills with everyone.³¹ According to Buse, Triana-Toribio, and Willis, the *castizo* version of Madrid presented at the bar is “just as anachronistic and antiquated as the murderous elevator which creaks up the centre of the block of flats.” Hence, the scene of the dancing *chulos* “is not really a departure from the temporal isolation of the *comunidad*, but a return to it.”³² Although the joyful and cheerful community at the bar [Picture 19] may visually remind one of the community of neighbors at the fake party [Picture 20], the scene is best understood not as a return to the former police order, but rather as a departure from it (the staging of all the differences separating one from the other). By reducing the community at “El Oso y el Madroño” to the Francoist *castizo* community of neighbors, Buse, Triana-Toribio, and Willis neglect the anti-national character of the former and, with it, the critical character of the film’s finish.

Before analyzing the scene, it is important to shed some light on the different meanings of the term *castizo*. As Deborah Parsons explains, the adjective *castizo* was used in mid-nineteenth century *costumbrista* literature to describe the customs, lifestyle, and habits of the lower classes of Madrid, in particular, the social identity of the working-class inhabitants of the low-lying *barrios* (neighborhoods) of Lavapiés, La Latina, and Embajadores.³³ The lively urban street culture, *verbenas* (street parties), and arrogant public attitude of this social group soon came to dominate the cultural identity of the city

³¹ The *Tunas estudiantiles* are thought to have their origins in the Medieval Ages (13th century). *Tunos* was the name given to poor students who sang on the streets in order to collect money to pay their University costs. During Franco’s dictatorship, the *Tunas* were considered dangerous to the regime and, although allowed, were subject to strict control (*Dirección General de Seguridad*, 10 March 1955).

³² Buse, Triana-Toribio, and Willis, *supra* at 135.

³³ Deborah L. Parson, *A Cultural History of Madrid. Modernism and the Urban Spectacle* (Oxford, New York: Berg, 2003) at 10. See also: Deborah L. Parsons, “Fiesta Culture in Madrid Posters, 1934-1955,” in *Constructing Identity in Contemporary Spain. Theoretical Debates and Cultural Practice*, ed. Jo Labanyi (Oxford: University Press, 2002), pp. 178-205 at 184

(referred to as *lo castizo*). As a particularly localized identity, “*lo castizo* contrasted with both the national and imperial symbolism of the city on the one hand, and its burgeoning European modernity on the other.”³⁴ The term *castizo*, however, was constantly appropriated and redefined over the years. At the beginning of the 20th century, writers of the “Generation of 1898,” such as Azorín and Unamuno, in reaction against urban modernity, used the term to refer to “the representative values” of a fantasized rural Castile. Later, Franco appropriated this meaning for his nationalist, Castilian discourse. Under his dictatorship, *castizo* lost its local and marginal connotations, and was naturalized into a “genuine” and “authentic” expression of Spanish national cultural identity.³⁵ The *castizo verbenas* as an expression of the Madrilenian local identity and tradition were banned for the sake of a more homogenous national community. Franco declared Madrid the “symbolic capital of his own vision of a centralized imperial regime, its local urban identity submerged under a myth of universal ‘Spanishness.’”³⁶ After Franco’s death, with the electoral victory in 1979 of the Socialist Mayor of Madrid Enrique Tierno Galván, the local and traditional verbenas were reinstated.

Buse, Triana-Toribio, and Willis observe that the Francoist nationalist *castizo* character of the community of neighbors is apparent throughout the film: e.g., the casting of all the actors that play the neighbors in the community (except for, conspicuously, Eduardo Antuña [Charlie]), “whose personas are steeped in ‘Spanishness,’” thanks to their longstanding presence in all sorts of Spanish drama: cinematic, televisual and theatrical”; and whose presence expresses “a nagging persistence of the past in the

³⁴ Parsons, *A Cultural History*, *supra* at 10.

³⁵ Parsons, *Fiesta Culture*, *supra* at 183.

³⁶ Parsons, *A Cultural History*, *supra* 1.

present.”³⁷ The film self-consciously invokes the Spanish tradition of the *sainete costumbrista* of the 1950s and 1960s.³⁸ The old furniture and wallpaper of the interior of the building, the neighbors’ old-fashioned clothes and the *guateque* (party in a house) with a record player playing music of the fifties (in particular, “Why Wait” by Pérez Prado and his Orchestra)—all of these project the nationalist values of Spanishness (rejection of the outsider, homogeneity, and unity) embodied by the community.



Picture 1.19



Picture 1.20



Picture 1.21



Picture 1.22

In contrast, Charlie and Julia are visually and narratively located within the post-Franco democratic Spain. The actors playing Charlie (Eduardo Antuña) and Julia (Carmen Maura) are not traditional actors of the *sainete costumbrista* (Carmen Maura is particularly well known for her collaborations with Pedro Almodóvar in the eighties). This post-Francoist timeframe is further reinforced through Charlie’s fictional world of

³⁷ Buse, Triana-Toribio, and Willis, *supra* at 122 and 125.

³⁸ For example the dark comedies of directors such as Fernando Fernán-Gómez’s *La vida por delante* (1958) and *El Extraño viaje* (1963), Marco Ferreri’s *El Pisito* (1958) and *El Cochecito* (1960), and Luís García Berlanga’s *El Verdugo* (1963). See Buse, Triana-Toribio, *supra* at 126.

Star Wars, which premiered in 1977, the year of the first general elections after Franco's death.³⁹ At the same time, Julia's modern pink suit contrasts with the old-fashioned clothes of the neighbors, visually dissociating her from them. Charlie and Julia are not merely representative of the democratic Spain, but *act against* the Francoist *castizo* ethos that the community of neighbors represents. Moreover, Charlie is not a freak "autistically trapped in 1977 with his Darth Vader outfit,"⁴⁰ but an intelligent person that consciously uses his Darth Vader persona to outsmart the community. Charlie's fictional world metaphorically alludes to the triumph of the Republic ("Long Live the Republic") over the forces of the Empire (Franco's dictatorship).

Charlie's political act of emancipation can be read as a collective act for the memory of the Republican victims, symbolized in the film by the 88-year-old man's body. The film situates the foundation of the community of neighbors in the year 1981, the year that Real Sociedad won the Spanish title for the first time against Real Sporting de Gijón,⁴¹ and the discovery of the old man's body around 2000 or 2001 (since almost twenty years have passed since the old man won the lottery). As Moreiras-Menor remarks, this timeframe allegorically locates the (national) project of the community between the year of the failed attempt of the coup d'état against democracy, led by Lieutenant Colonel Antonio Tejero, and the year 2000, in which the *Asociación para la Recuperación de la Memoria Histórica* (ARMH) initiated the exhumation of Republican

³⁹ Other contemporary cinematic references in the film are: Hitchcock's *Psycho* (1960), Polanski's *The Tenant* (1976), Marc Caro's and Jean-Pierre Jeunet's *Delicatessen* (1991), and Andy and Lana Wachowski's *The Matrix* (1999).

⁴⁰ Buse, Triana-Toribio, and Willis, *supra* at 134.

⁴¹ In 1981, Real Sociedad of San Sebastián (Basque Country) won, for its first time, the Spanish football league championship against Real Madrid (itself the team representative of Franco's dictatorship). This could be read as symbolizing the fight of the periphery against the center.

mass graves.⁴² The film, as Moreiras-Menor further argues, opens with the image of the dead body inviting us to question Spain's politics of memory concerning the victims of Franco's dictatorship and, particularly, Aznar's rejection of the work of the ARMH, claiming that this would unnecessarily reopen old wounds in the Spanish society.⁴³ By inscribing himself as equal while claiming "Long Live the Republic," Charlie includes himself as a "conflictual actor" carrying a right not yet recognized by Spain (The Law of Historical Memory passed by Congress in 2007).⁴⁴

After shattering the Francoist community of neighbors and freeing themselves from their claustrophobic and repressive interiors, it can hardly be taken as a sign of a return to their pasts that Charlie and Julia are at ease amongst a bunch of local working-class *madrileños* freely celebrating their local festivities and expressing "their love" for Portugal in a public bar. Divorced both of Francoist exclusive nationalism and the neoliberal politics of consensus, this joyful and cheerful community in which Charlie and Julia participate is 1) more "authentic" (than the fake party); 2) welcoming and open to the other (rather than hatred driven); and 3) generous (rather than greedy and self-interested). By presenting all these distinctive features in the Madrilenian *chulo* outfit, the scene ridicules the *castizo* Spanishness of the community of neighbors and shows that "among those who know how to share with anybody and everybody [their equality], [democracy] can conversely inspire courage, and hence joy."⁴⁵

The closing scene of the film suggests, however, that the elimination of the consensus and national order of domination does not guarantee a permanent democracy.

⁴² Moreiras-Menor, *supra*, at 379.

⁴³ *Id.*

⁴⁴ Rancière, *The Ethical Turn*, *supra* at 6.

⁴⁵ Rancière, *Hatred*, *supra* at 97.

The scene begins with a close-up of the suitcase containing the fake monopoly money in the bloodied courtyard with the silhouette of Ramona's body painted on the floor. The camera then shows an image of the monopoly money flying over the Madrilenian skyline between the Vitalicio building and the equestrian sculptures, while the music from the bar "El Oso y el Madroño" continues to play extra-diegetically [Picture 22]. The opening scene of the film brought viewers inside the interiors of the wrecked building of La Calle San Jerónimo to expose the bleak reality hidden behind a European façade. The closing scene reverses this move and suggests that, although freed from the logic of national consensus, the new community remains subordinated to the requirements of European economic and banking policies. The community at the bar "El Oso y el Madroño" is left with the same old pesetas for which the neighbors have killed each other, which have the same value as the fake monopoly money, until they are changed into Euros. The fact that Charlie and Julia disrupt the prevailing police order does not mean that other forms of domination are not likely to be created or already exist. Rather, this suggests that democracy can never be fully consolidated, for it relies on episodic disruptions of the established order and the continual renewal of the actors and the forms of their actions.⁴⁶

⁴⁶ May, *The Political Thought*, *supra* at 178. In Rancière's words: "The guarantee of permanent democracy is not the filling up of all the dead times and empty spaces by the forms of participation or of counterpower; it is the continual renewal of the actors and of the forms of their actions, the ever-open possibility of the fresh emergence of this fleeting subject. The test of democracy must ever be in democracy's own image: versatile, sporadic—and founded on trust." *On the Shores*, *supra* at 61.

CHAPTER 2

Justice and Historical Memory: Re-Imagining the Spanish Past

The true picture of the past flits by. The past can be seized only as an image which flashes up at the instant when it can be recognized and is never seen again. . . . To articulate the past historically does not mean to recognize 'the way it really was' . . . It means to seize hold of a memory as it flashes up at a moment of danger.

Walter Benjamin—*Theses on the Philosophy of History*

No justice seems possible or thinkable without the principle of some responsibility, beyond all living present, within that which disjoins the living present, before the ghosts of those who are not yet born or who are already dead, be they victims of war, political or other kind of violence.

Jacques Derrida—*Specters of Marx*

INTRODUCTION

In his *Theses on the Philosophy of History*, Walter Benjamin offers a critical vision of history through an interpretation of Paul Klee's painting *Angelus Novus*.¹ In Klee's painting, Benjamin sees an angel looking as though he is about to move away from the present to the future while keeping his face turned toward the past. There the angel, looking horrified, sees not the uninterrupted historical progress, but rather a single catastrophe that keeps piling ruins at his feet. The angel would like to stop, awaken the dead, and rebuild the ruins, but he cannot. The power of a storm blowing from Paradise

¹ Walter Benjamin, "Theses on the Philosophy of History," tr. Harry Zohn, *Illuminations* (New York: Schocken Books, 1968), pp. 253-264.

prevents him from going back. The storm propels him forward, toward the future to which his back is turned, while the pile of wreckage grows skyward.² For Benjamin, Paradise represents the historicist conception of history, which always reproduces the past in accordance with the official version of the dominant classes. The storm, in turn, is the ideology of progress that hides the barbarism upon which Paradise stands. The Angel of History, on the other hand, perceives the reality of a past excluded from the historicist discourse and is able to “brush history against the grain.”³ This dialectical relationship between the present and the past gives a new and hopeful meaning to the present.⁴ According to Benjamin, it is necessary to look back and reveal the barbarism of the past in order to avoid repeating it in the future.



Picture 2.1 Paul Klee’s *Angelus Novus*.

Drawing on this Benjaminian critical image, this chapter addresses the recovery of the historical memory of the victims of Francisco Franco’s dictatorship (1939–1975) by

² Walter Benjamin (1842–1940) was a German-Jewish Marxist philosopher, who, after Adolf Hitler’s election as Chancellor, had to leave Germany. Years later, he was incarcerated by the French authorities for three months. During his return to Paris in 1940, Benjamin wrote his *Theses of the Philosophy of History*. However, shortly after the Nazi takeover of France in 1940, fearing that he would fall into the hands of the Gestapo, he committed suicide at the Spanish border.

³ Benjamin, *supra* at 257.

⁴ *Id.*, at 261.

contrasting Antonio Muñoz Molina's novel *Beltenebros* (better known as *Prince of Shadows*, 1989) and the recent Spanish "Law of Historical Memory" (*Ley 52/2007*).⁵ In juxtaposing the novel and the current law, I aim to trace in each text a series of recurring representational practices (words, images, expressions, and figures) that seek justice for the victims with unequal success. The novel uses a series of images and recurring expressions (i.e., shadows, the repressed, eternal return, ghosts, and blindness) which stress the importance of coming to terms with the "ghosts of the past." The law focuses instead on words and images (i.e., foundation, reconciliation, concord, and closure) that allude to the idea of historical progress without proper acknowledgment of the injustices of the past. In doing so, the law becomes a commemorative site for the Spanish Transition, not for the recovery of the memory of the victims. In other words, the law becomes another instance of the Benjaminian paradise: a reproduction of the official version of history that ignores and hides the ruins of the past.

This study is not, and does not claim to be, a critical analysis of the Spanish Transition or of its "politics of memory."⁶ Rather, I focus on Spain's current attempts to

⁵ For discussions about the relationship between history and memory see, among others: Halbwachs, Maurice, and Jeanne (Halbwachs) Alexandre. *La Mémoire Collective*. [1. éd.] (Paris: Presses universitaires de France, 1950); Nora, Pierre, *Between Memory and History: Les Lieux de Mémoire* 26 Representations (1989), pp. 7-24. Within the Spanish context, see: Juliá, Santos, *Bajo el imperio de la memoria* 302-303 *Revista de Occidente* (2006), pp. 7-19; Ruiz Vargas, José María, *¿De qué hablamos cuando hablamos de 'memoria histórica'?* *Reflexiones desde la Psicología cognitiva*, 7 *Entelequia. Revista Interdisciplinar* (2008), pp. 53-76; Erice Sebares, Francisco, *Memoria histórica y deber de memoria: las dimensiones mundanas de un debate académico*, 7 *Entelequia. Revista Interdisciplinar* (2008), p. 96.

⁶ The Spanish Transition is generally said to have begun in 1975, after Franco's death. There is no consensus however over its completion: the promulgation of the Spanish Constitution 1978, the PSOE (*Partido Socialista Obrero Español*) electoral victory in 1982, or the accession of Spain into the European Economic Community (EEC) in 1986. For a critical study of the politics of memory during the Spanish Transition, see, among others, Morán, Gregorio, *El Precio de la Transición* (Madrid: Planeta, 1991); Vilarós, Teresa M., *El mono del desencanto. Una crítica cultural de la transición española (1975-1993)* (Madrid: Siglo XXI, 1998); Resina, Joan Ramón, *Disremembering the Dictatorship: The Politics of Memory in the Spanish Transition to*

cope with its traumatic past by examining the first legal document explicitly designed to deal with it. In my analysis of the law, I am not concerned with its concrete or positive legal measures, but with its justificatory and self-legitimizing strategies, and for what these can reveal (or conceal) about the memory of the victims. These rhetorical strategies are best found in the law's "Preamble" (Exposición de Motivos, in Spanish), the part of the law that precedes the concrete body of measures and tries to justify its own existence and goals. This is so because the Preamble *narrates* the law's own version of the history that precedes it and makes it necessary, *describes* the social reality and context that it wants to affect, and *depicts* the kind of society it imagines and wishes to establish for the future. My argument is that a critical reading of these representational practices yields a far less satisfactory outcome than what the law is set to accomplish. Contrary to its declared objectives (i.e., recovering the memory of the victims), the law actually fails to address their memory. In contrast, the novel's dark and ghostly representations unveil in the Angel of History the ghosts that return to claim justice, and which the law's commemorative act renders invisible. As a result, and in a way that the current law is unable to accomplish, the language of the novel engenders the principle of responsibility without which "no justice seems possible or thinkable."⁷

My analysis is divided into four sections. The first section provides a historical overview of the repression during the dictatorship and the politics of memory during the ensuing democracy. The second section turns to Muñoz Molina's *Beltenebros* to explore

Democracy (Amsterdam: Ediciones Rodopi, 2000); Moreiras Menor, Cristina, *Cultura herida: Literatura y cine en la España democrática* (Madrid: Libertarias, 2002); Gallego Ferrán, *El mito de la transición. La crisis del Franquismo y los orígenes de la democracia (1973–1977)* (Madrid: Crítica, 2008).

⁷ Derrida, Jacques, *Specters of Marx: The State of Debt, the Work of Mourning, and the New International* (New York: Routledge, 1994), at xviii.

the language with which the novel takes responsibility for these ruins and comes to terms with the traumatic past. The third section looks at the ways in which the “Law of Historical Memory” fails to achieve responsibility for the memory of the victims. The fourth and final section concludes with the proceedings against Judge of the *Audiencia Nacional* Baltasar Garzón, who in 2008 tried to open a criminal investigation into Franco’s crimes. My comparative analysis of the law and the novel offers an alternative vision of history and justice that can be used as a constructive platform to critique contemporary Spain.

I. ANTECEDENTS: PERVERSIONS OF HISTORY

On July 18, 1936, Franco’s coup d’état put an end to the democratic and constitutional government of the Spanish Second Republic (1931–1936).⁸ Its aftermath was three years of bloody Civil War (1936–1939) and almost forty years of a repressive dictatorship. According to the Francoist version of history, the Civil War was necessary and justified, as Franco “liberated” Spain from the public chaos of an illegitimate Republic led by “evil and degenerate Marxists.” Franco’s hegemonic nationalist discourse centered on eradicating the values and institutions of the Second Republic (i.e., secularization, democracy, federalism, etc), which were considered as a disease for the Spanish nation. To do so, Franco’s regime focused on the restoration of traditional catholic values (*National-Catholicism*), the exaltation of the myth of the Spanish Empire in Latin America (*Hispanity*), the assertion of Spain as one and indivisible territorial

⁸ See, for instance: Paul Preston, *La destrucción de la democracia en España: reforma, reacción y revolución en la segunda República* (Barcelona, Spain: Grijalbo Mondadori, 2001); Stanley G. Payne, *Spain’s First Democracy The Second Republic, 1931–1936* (Madison: The University of Wisconsin Press, 1993).

integrity, and the rejection of communism (what was called the “New Crusade”).⁹ Franco himself defined his military uprising against the Second Republic as a “national crusade” to protect *la patria* from what he called “the bastardized, Frenchified, Europeanizing” doctrines of modern liberalism.¹⁰ Franco distanced Spain from modern and democratic Europe and promoted a homogenizing and single national identity.¹¹ Thus, any mention of democratic pluralism was considered as a dangerous conspiracy of “reds” and “masons.” Franco proclaimed himself *Generalísimo* of the Spanish army, as well as *Caudillo de España por la Gracia de Dios* (Head of State of Spain by the “grace of God”). Furthermore, he divided Spanish society into victors (*vencedores*), who represented the heroes and liberators of the true Spain and vanquished (*vencidos*), who represented the enemies and traitors.

During the years of the dictatorship, the military uprising of July 18 came to be commemorated as the “glorious uprising” (*glorioso alzamiento*), and April 1st, the end of the war, as the “Day of Victory” (*El Día de la Victoria*). Monumental sites such as the Valley of the Fallen (*El Valle de los Caídos*, built by the forced labor of Republican prisoners) or the Madrilenian Arch of Triumph (*Arco del Triunfo*) were built to honor the

⁹ Closa, Carlos, *The Domestic Basis of Spanish European Policy and the 2002 Presidency*, Tr. Stephen J. Wilkins, 16 *Notre Europe*, European Studies (2001), <https://www.notre-europe.eu>, at 3-4.

¹⁰ Pablo Jáuregui, “National Pride and the Meaning of ‘Europe’: a Comparative Study of Britain and Spain,” in *Whose Europe? The Turns Towards Democracy*, eds. Dennis Smith and Sue Wright, (Oxford: Balckwell, 1999), pp. 275-287, at 274.

¹¹ Franco’s nationalist discourse was defensive, autarkic and anti-European until the end of WWII. However, with the failure of the autarkic economic policy, Franco was forced to open Spain to Europe (to the influence of the international markets) and therefore, to change the previous anti-Europeanist discourse. In 1962, Spain expressed its desire to enter into the European Economic Community [ECC], but “[t]here was no question of admission to the EC so long as Spain remained a nondemocratic country.” In the 1960s and 1970s, Franco moderated the nationalist tone. The regime’s slogan *España es diferente* (Spain is different) “symbolized efforts by Spanish political and cultural elites to justify the Spanish political institutions and resist European values.” Díez-Medrano, Juan and Paula Gutiérrez, *Nested Identities: National and European Identity in Spain* Vol. 24 *Ethnic and Racial Studies* 5 (2001), pp. 753-778, at 762-764.

memory of those who “died for God and Spain.” Political propaganda such as the newsreel No-Do—News, and Documentaries (*Noticiarios y Documentales Cinematográficos*)—were created to transmit Franco’s ideological discourses and to establish absolute control over education and the media, helped to promote the image of Franco as a national hero and to legitimize the repression of his ideological opponents. In the last decades of the regime, the exaltation of the war became the exaltation of the years of peace, which Franco contrasted with the “violent” and “chaotic” period of the Second Republic.

In contrast, the History of the vanquished Republicans was deemed unworthy of recounting. Their memories and suffering were severely repressed, and no memorials or mourning for their dead were allowed. Fear, humiliation, imprisonment, and threats of being punished or killed, became institutionalized mechanisms to censure any vision of the past that contradicted the Francoist version of history. A series of laws were enacted to persecute those who fought on the Republican side or were suspected of having collaborated with it.¹² The Law of Political Responsibilities (February 9, 1939) was enacted against those who supported the Republican cause and anyone who was considered an enemy of the new Regime; the Law for the Repression of Masonry and Communism (March 1, 1940) was passed against those who, according to the law, represented the evils of Spain—they were the cause, among others, of the loss of the remnants of the Spanish Empire, the Civil Wars of the nineteenth century, the fall of the Constitutional Monarchy prior to the Republic, and the Civil War. To purify Spain from Republican evils, thousands of children were removed from Republican families and sent

¹² See Carrillo, Marc, “El marco legal en la represión en la dictadura franquista durante el periodo 1939–1959,” ed. Felipe Gómez Isa, in *El derecho a la memoria* (Bilbao: Alberdania, 2006), pp. 501-527.

to state institutions, or adopted by families that could “adequately” raise them.¹³ In March, 29, 1941, the Law of the Security of the State was passed to reinforce the Law for the Repression of Masonry and Communism. This law allowed the prosecution of those suspected of opposing the regime without any procedural guarantee. On the other hand, the Law of Public Order (July, 30, 1959) was used to legalize torture and to repress and execute any person suspected of opposing the ideology of the regime. Women were not an exception. In the name of the Francoist concept of redemption, women were imprisoned, raped, and executed because of the behavior of a son or husband.¹⁴ As a result, at the end of Franco’s regime, hundreds of thousands of people had been illegally detained, imprisoned, tortured, executed, and forced into labor, exile, or “disappeared.”¹⁵ During almost forty years of dictatorship, the stories and memories of the vanquished were condemned to silence.

Franco’s death in 1975 might have provided Spain the opportunity to seek justice for the victims of the regime and to honor their memory. Instead, the prominent political forces of the Transition agreed that securing a successful and peaceful transition to democracy required leaving the past behind—what has been referred to as the “pact of forgetfulness” (*Pacto del Olvido*). During the Transition (and to this day), no “truth

¹³ Brincat Report (Informe Brincat), Parliamentary Assembly of Council of Europe, *Need for International Condemnation of the Franco Regime*, Doc. 10737, November 4, 2005; Read May 1, 2009, URL: <http://www.assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc05/EDOC10737.htm>, at 72-75. In 2006, Maltese Socialist politician Leo Brincat presented a report to the Council of the European Union that demanded Spain to formally condemn the human rights violations committed during the dictatorship.

¹⁴ *Id.*, at 56.

¹⁵ *Id.* These were the objectives of Antonio Vallejo Nágera, Director of the Military Psychiatric Services and of the Psychological Investigations Cabinet during the dictatorship. He claimed to have demonstrated through psychological experiments the inhuman, dangerous, and evil condition of the Republican enemies. Ruiz Vargas, José María, *Trauma y memoria de la Guerra Civil y la dictadura franquista*, 6 Hispana Nova. Revista de Historia Contemporánea (2006), pp. 299-336, at 325-328.

commission” or trials to investigate and judge those responsible for Francoist crimes were (or have been) set up. In the name of national reconciliation, a parliamentary majority passed the Amnesty Law of 1977 (Amnesty Law/1977, 15 October, B.O.E. no. 248).¹⁶ The law exonerated “the authorities, officers and agents of public order who, prior to December of 1976, committed crimes and misdemeanors against the exercise of people’s rights” (article 2). The law excused the newly created democratic State from the obligation to investigate, judge, and punish those responsible for the disappearances, illegal detentions, tortures, and murders committed under Franco’s regime.¹⁷ This amnesty “for all” was praised by almost all political groups, including communists who fought against Franco and his sympathizers, “because it was an instrument of ‘national reconciliation,’ intended to ‘close the past,’ ‘forget,’ and start a new phase.”¹⁸

It is important to mention that few months before approving the Amnesty Law, Spain signed in September 28, 1976, the United Nations Treaty of International Covenant on Civil and Political Rights (PIDCP), which took effect in July 27, 1977 (B.O.E. 30 April

¹⁶ See Appendix 1.

¹⁷ Javier Chinchón Álvarez, *Transición española y justicia transicional: qué papel juega el ordenamiento jurídico internacional en un proceso de transición? A propósito de la coherencia, buena fe y otros principios de derecho internacional postergados en la transición política de España* 7 Entelequia. Revista Interdisciplinar (2008), pp. 247-254, at 247. As Aguilar explains, “[i]n exchange, regime reformists accepted the liberation of all political prisoners, the legalization of the Spanish Communist Party (PCE), and truly free elections in June 1977.” Paloma Aguilar, “Justice, Politics, and Memory in the Spanish Transition,” eds. Alexandra Barahona de Brito, Carmen González Enríquez, and Paloma Aguilar, in *The Politics of Memory. Transitional Justice in Democratizing Societies* (Oxford, Oxford University Press, 2001), pp. 92-118, at 96.

¹⁸ Aguilar, *supra* at 103. Other than the radical Basque nationalists, the Spanish Socialist and Worker Party (PSOE), the Spanish Communist Party (PCE), Center Democratic Union (UCD), and the Basque Nationalist Party (PNV) voted in favor; the right-wing party, Popular Alliance (AP), abstained from voting.

1977) and declared the protection of human rights.¹⁹ Article 2. 3 states that each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

As Chinchón-Alvarez observes, “the obligation to article 2.3 seemed to be completely and simply forgotten by Spain, whose legislator, perhaps suffering a severe amnesic attack, only five months after consenting to be obligated to the treaty, had no qualms about approving the célèbre and celebrated Amnesty Law . . . which violated the Covenant in its letter and spirit.”²⁰ But the PIDCP was not the only treaty Spain was obligated, since a number of international treaties and laws in defense of the human rights were in force long before, such as the Geneva Conventions of 1864 and 1949 or the First Conference of The Hague in 1899.²¹ Most importantly, the Spanish Republican Constitution of 1931 included the obligation of the State of Spain to respect the International Law. The crimes against humanity of the Francoist dictatorship were (and are), therefore, part of the European context and the types of offences that are determined

¹⁹ Adopted by the United Nations General Assembly on December 16, 1966 and took effect in 1976.

²⁰ Chinchón-Álvarez, *supra* at 346-347, my own translation.

²¹ Also: The European Convention of Human Rights (1950); American Convention of Human Rights (1969), The Convention for the Protection of Human Rights and Fundamental Freedoms (1979).

by the Nuremberg doctrine.²² The State of Spain had the obligation to apply the Charter of Nuremberg and its principles (1945), which recognized and condemned war crimes, crimes against peace and against humanity (i.e., murder, torture, deportation, persecution based on political, racial or religious grounds) and conferred jurisdiction to the International Military Tribunal of Nuremberg to judge and punish those responsible for those crimes.²³ Despite the obligation of the State of Spain to respect the International law, Spain did not ensure or provide remedies to defend and protect the rights of the victims of the Francoist repression, neither provided full reparation for the victims nor facilitated access to justice. As a result, individual human rights and international law were “sacrificed” in the service of national reconciliation.

In the mind of many Spaniards, there was a direct link between the Republicans’ political “excesses” (as they were called by Francoist sympathizers) and the Civil War (not least because of persistent Francoist propaganda). This perceived link between the Republic and the Civil War made many weary of bringing back the ghosts of the Second Republic.²⁴ There was a reluctance to relate the emerging democracy with the constitutional Republic, as it was feared that to do so could revive the conflict between the “two Spains.” In fact, the democratic regime chose not to restore the Republican tricolor flag (red/yellow/purple) and the national anthem (*Himno de Riego*). Instead, the

²² See International Amnesty report: “España: poner fin al silencio y a la injusticia. La deuda pendiente con las víctimas de la Guerra Civil Española y del régimen franquista.” 18 July 2005 read April 30, 2009 <http://www.derechos.org/nizkor/espana/doc/aifranq.html>; and also “The question of impunity in Spain and crimes under Franco.” Equipo Nizkor 14 April 2004 read April 30 2009 <http://www.derechos.org/nizkor/espana/doc/impuspa.html>

²³ The applicability of the “Principles of Nuremberg” in Spain was recognized in August 12 1949 (BOE 5 September 1952 and 31 July 1979) at the ratification of the Geneva Convention to the Treatment of Prisoners of War. Nizkor, *supra*.

²⁴ Paloma Aguilar, *Políticas de la memoria y memorias de la política. El caso español en perspectiva comparada* (Madrid: Alianza Editorial, 2008), at 234-235.

Constitution of 1978 preserved the traditional red/yellow/red tricolor flag and the *Marcha Real* anthem (both used also under Franco). As Francisco Erice Sebares points out, “[t]he hypothetic *consensus* of pre-transitional memory could be judged, rather than like a meeting point, like a triumph of the re-elaboration of the Francoist ideology of memory over a possible alternative interpretation of the heirs of the Republican tradition.”²⁵ After Franco’s death, Spain became the constitutional democratic monarchy of King Juan Carlos I—before his death, Franco designated the young prince as his successor with a view to continuing the regime.

The failed attempted coup d’état of Lieutenant Colonel Antonio Tejero on February 23, 1981 (known as the “tejerazo”), although a shocking reminder of Spain’s dictatorial past, reinforced the “politics of forgetting” of the Transition. In this regard, the arrival of Felipe González’s Spanish Socialist and Workers Party (*Partido Socialista Obrero Español*, PSOE) to the government on October 28, 1982 did not change things in this respect. The post-Franco collective desires of becoming European and turning against the country’s dictatorial past were capitalized by the Socialist government of Felipe González and well captured in its 1982 campaign slogan for “El cambio” (“Change”). However, in its attempt to break with the past, the Socialist government (1982–1996) did not confront or challenge the official history fabricated by Franco’s regime, nor condemn publicly its crimes against human rights. Only some economic pensions or symbolic reparations (i.e., monuments to honor the Republican memory, pensions to Republican veterans) were granted to the victims. These limited reparations did not take into account the nature and gravity of the offenses, and in most cases they

²⁵ Erice, Francisco, *Generalizaciones y memoria de la represión franquista: un balance de los movimientos por la memoria* 6 *Hispana Nova. Revista de Historia Contemporánea* (2006), pp. 337-365, at 359, my own translation.

came too late or were insufficient.²⁶ The Socialist government's priority was to reach the socioeconomic levels of its European neighbors, where modernization and Europeanization were tantamount to democratization. Incorporation into the European Common Market in 1986 was considered the culmination of Spain's political and economic process of modernization. Despite its frenetic attempt to break with the Francoist past, the Socialist government had not undone but appropriated and adjusted much of the institutional machinery of the old regime, such as the justice system, police forces, etc. As a result, the victims of the dictatorship were doubly victimized, first by Franco, and then by the emerging democracy.

II. FROM TRAUMA TO JUSTICE: THE RETURN OF THE DEAD IN *BELTENEHBROS*

[I]t was as if the entire building had risen up again from the ruins, emerging in the night and reality of the present. . . I was walking towards the Universal Cinema as if I were alone on a stage-set from the past . . . From the distance, the building seemed intact: a pioneering cinema from the thirties, arrogant like a schooner or a light-house, set there on a Madrid street corner like a gleaming sculpture of black basalt. But the whole lower part of the façade was covered by successive layers of ripped posters discolored by sun and rain and a closer look revealed large cracks on the smooth surface.²⁷

Beltenebros

²⁶ International Amnesty, *España: poner fin al silencio y a la injusticia. Supra.*

²⁷ “[E]ra como si el edificio entero volviera a erguirse desde los escombros, emergiendo a la noche y a la realidad del presente igual que un barco levantado de las profundidades del mar por poderosas grúas y cables de acero. . . . Estaba acercándome al Universal Cinema como en una solitaria escenificación del pasado . . . Desde lejos, el edificio parecía intacto: un cine temerario de los años treinta, con una arrogancia de navío o de faro, plantado como una reluciente escultura de basalto negro en una esquina de Madrid. Pero toda la parte inferior de la fachada estaba cubierta por varias capas sucesivas de carteles desgarrados y descoloridos por el sol y la lluvia, y más de cerca se veían largas grietas en la superficie lisa” (202-203).

Antonio Muñoz Molina's novel *Beltenebros* copes with the ghosts and wounds that, after almost twenty years of Franco's dead (the novel was written in 1989), haunt and hurt democratic Spain deeply.²⁸ Muñoz-Molina describes the post-Francoist years in which the novel was written as the years in which "the rushed socialist catechism of modernity added a new nuance to the abolition of the past and its memory."²⁹ Disenchanted with the leftist political ideals of change and revolution, Molina argues that "the left that does democracy does not do democracy, but instead it plays the game of democracy founded by the heirs of the dictatorship. This left, rather than restoring the best of its own tradition, it assumes the moral indignity of the dictatorship."³⁰ In *Beltenebros*, he uses the perceptions of his protagonist to critically bring to light the ghosts, the traces of the victims of Francoism, and to offer strategies for undertaking responsible historical memory.

Beltenebros is a political *thriller* that explores the crimes and injustices of the Francoist dictatorship from the traumatic perspective of the victims. Inspired by real events, the novel sheds light on two critical events in the history of the communist resistance:³¹ 1) the torture and execution of communist leader Heriberto Quiñones by the Francoist police in the 1940s, and 2) the case of Julián Grimau, an exiled anti-Francoist communist leader who was ambushed in mysterious circumstances, put on trial by a

²⁸ According to Cathy Caruth, trauma "is understood as a wound inflicted not upon the body but upon the mind ... [T]he breach in the mind's experience of time, self, and the world." Caruth, Cathy, *Unclaimed Experience: Trauma, Narrative, and History* (Baltimore: The Johns Hopkins University Press, 1996), at 3.

²⁹ Antonio Muñoz Molina, "La historia y el olvido," *El País*. 1997, my own translation.

³⁰ Muñoz Molina, in Rich, Lawrence, *The Narrative of Antonio Munoz Molina: Self-Conscious Realism and 'El Desencanto'*, (New York: Peter Lang, 1999), my own translation.

³¹ In an edition of *Beltenebros* edited by Circulo de Lectores in 1990, in the "Epílogo y arqueología de un libro," Muñoz Molina indicates Gregorio Morán's book "Miseria y Grandeza del Partido Comunista de España" as one of the books on which he drew on his main inspiration.

military court, sentenced to death, and consequently executed in the 1960s.³² *Beltenebros* presents three different but interconnected historical periods: 1945, the European and Spanish postwar years, 1965, the last era of Franco's dictatorship (1939-1975), and 1989, the democratic Spain, in which the novel is written. It tells the story of Darman, an ex-Republican survivor of the Spanish Civil War, who, at the time of the dramatic action, works as an exiled professional killer for the clandestine Communist Party. Told in flashback by its non-omniscient protagonist, the narrative does not follow a chronological order. The narrator pieces together what he experienced and partially witnessed as he imagines the events at which he was not actually present. This chaotic and subjective narrative of thoughts and past events is allegorical of traumatic memory—i.e., its disconnected fragments from the stream of consciousness that cannot be integrated into a totalizing history or account of the protagonist's traumatic experience.³³ Since, as Caruth notes, “trauma is always the story of a wound that cries out . . . in the attempt to tell us of a reality or truth that is not otherwise available,”³⁴ the novel does provide language with which to overcome the traumatic experience by way of acknowledging the principle of responsibility, which makes “justice thinkable.” Psychologist proponents of the Narrative Exposure Therapy claim that victims of torture, terror, or war can only overcome the

³² In 2004, the Military Division of Spain's Supreme Court refused to revise 72 death sentences issued by Francoist courts, among them Julián Grimau's, because they “were legal.” See: “El Supremo rechaza revisar 72 ejecuciones del franquismo al estimar que no fueron ilegales,” 19 June 2004, *El País*.

³³ Ruiz Vargas, *Trauma y memoria*, *supra* at 331. Lawrence Rich reads *Beltenebros* as a “novel of memory” that challenges the foundations of Francoist historiography: “Muñoz Molina questions what is generally accepted as historical “fact” by foregrounding the very process of history-making as his characters attempt to recover the past.” Rich, Lawrence, *The Narrative of Antonio Muñoz Molina: Self-Conscious Realism and 'El Desencanto'* (New York: Peter Lang, 1990), at 39. I would add that it is a novel of “traumatic memory” that reflects the contemporary Spanish difficulty of dealing with its violent past.

³⁴ Caruth, *supra* at 4.

traumas if they have the chance to narrate what happened to them. By transforming the trauma into words, they recuperate their dignity, and discover the truth.³⁵ In his retrospective account, Darman engages in a political critique of the power structures that have shaped his reality and consciousness, and through this, he becomes not only the narrator but also the critic of Spain's political past and present.

Paradoxically, the words "Franco," "Francoism," and "dictatorship" are never mentioned in the novel. Their ontological absence grants them a spectral presence in the text and reveals a "past/present" time haunted by ghosts. Both the title itself (*Bel)tenebro[u]s* and the name of its protagonist, Dar[k]man,³⁶ allude to something shadowy, gloomy, and sinister, and anticipate the novel's dark physical world and the specters that haunt the text.³⁷ *Beltenebros* presents two different types of specters: the "malignant" specters of totalitarian power structures, and the "benign" specters of the victims within these structures. *Beltenebros'* "hauntology" stresses that "[w]e inherit not 'what really happened' to the dead but what lives on from that happening, what is conjured from it, how past generations and events occupy the force fields of the present, how they claim us, and how they haunt, plague, and inspire our imaginations and visions for the future."³⁸ The question to be asked here is not what happened, but rather how the

³⁵ Ruiz Vargas, *Trauma y memoria*, *supra* at 332. See also: Phelps, Teresa Godwin, *Shattered Voices. Language, Violence, and the Work of Truth Commissions* (Pennsylvania: University of Pennsylvania Press, 2004).

³⁶ The name of *Beltenebros* pays tribute to *El Quijote* where in chapter 25 of the first volume there is a character called *Beltenebros*.

³⁷ With the terms specter and ghost, Derrida refers to the paradoxical condition of the "the non-present present," that is, the "being-there of an absent or departed." Derrida, *Specters of Marx*, *supra* at 5. In turn, "[t]o be haunted is at once to experience the profundity or significance of something from the past and not to know what that something was. . . . So haunting takes place between history and memory; it is simultaneously an achievement of memory and a failure of memory with regard to some significant historical effect." Wendy Brown, *Politics Out of History* (New York: Princeton University Press, 2001), at 152.

³⁸ Brown, *supra* at 150.

past in the form of ghosts interrupts, constrains, and shapes the present and the future. The novel accomplishes this by focusing on its recurring representational practices— shadows, the repressed, eternal return, ghosts, and blindness. While denouncing the violation of human rights during Franco’s regime, the novel’s dark and ghostly representations of the past take responsibility for the ghosts that return to claim justice.

Shadows. At the novel’s opening, Darman lives in exile in Brighton (England), where he has moved shortly after the end of the Spanish Civil War. There, he manages a shop of antiquarian books that has the virtue of granting him “a feeling of immersion in the remoteness of other worlds and in a time not entirely of the living” (5).³⁹ Darman’s aspirations are disrupted when in 1965, Bernal, the leader of the clandestine organization, sends him back to Madrid to seek out and kill a traitor called Andrade— allegedly, an informer of Inspector Ugarte, who is in charge of the *Dirección General de Seguridad* (Bureau of National Security) in Madrid. Ugarte, aka the Prince of Shadows, is not a torturer like the rest, Bernal tells Darman, but a hunter with no past and no face and who has the ability to see in the dark.⁴⁰ Andrade, on the other hand, has the cunning of an invisible man who hides like a shadow. This mission reminds Darman of another one he

³⁹ “la virtud de otorgar[le] una serenidad más bien sonámbula, un sentimiento de inmersión en la lejanía de otros mundos y de un tiempo que no era del todo el de los vivos” (15).

⁴⁰ “un catálogo de desconocidos cuyas fotografías había ido quemando o perdiendo como se deshace un asesino de su pasado culpable, como un traidor abjura de su lealtad y su memoria” (33). Derrida ascribes to the police the power to exercise a phantom-like violence. They “are present or represented everywhere that there is force of law. They are present, sometimes invisible but always effective . . . they are . . . the faceless figure, a violence without a form . . . The police become hallucinatory and spectral because they haunt everything.” Derrida, “Force of Law: The ‘Mystical Foundation of Authority,’” trans. Mary Quaintance, eds., Drucilla Cornell, Michael Rosenfeld, and David Gray Carlson, in *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992), pp. 3-67, at 44–45. During the dictatorship, the *Dirección General de Seguridad* was synonymous with repression and torture.

undertook in 1945, when he had to kill a traitor named Walter, and which he has spent the rest of his life trying to forget.

Despite the parallels of the two missions, Darman is not the same man that killed Walter. Now he is “someone else, a catalogue of strangers whose photographs [he]’d been burning or losing like a murderer getting rid of his guilty past, like a traitor who forswears his loyalty and memory” (6).⁴¹ This is nowhere more evident than when Luque, a young member of the organization, expresses his admiration for him. Rather than being flattered, Darman expresses his disgust for once having been similar to him. When Bernal shows him the photograph of Andrade, his next target, Darman does not see a traitor, but a person like himself, a man who is prematurely dead, and still does not know he is a shadow.⁴² Darman accepts the new mission because he feels a strong desire to know not the reasons behind Andrade’s treachery but the reasons behind his sadness. He is drawn into the crying wound of the man in the photograph, “not as the story in relation to the events of his own past, but as the story of the way in which one’s own trauma is tied up with the trauma of another, the way in which trauma may lead, therefore, to the encounter with another.”⁴³ Andrade’s photograph is to Darman the first manifestation of consciousness of his own condition as living dead; to know Andrade’s story may mean knowing his own. The novel’s struggle against oblivion is illustrated in Darman’s journey

⁴¹ “la virtud de otorgar[le] una serenidad más bien sonámbula, un sentimiento de inmersión en la lejanía de otros mundos y de un tiempo que no era del todo el de los vivos” (15).

⁴² The photograph, using Eduardo Cadava’s words, announces Andrade’s death. “Photographs bring death to the photographed. The conjunction of death and the photograph is in fact the very principle of photographic certitude: the photograph is a cemetery. . . [It] is a grave for the living dead. It tells their history—a history of ghosts and shadows—and it does so because it *is* this history.” Cadava, *Words of Light. Theses on the Photography of History* (Princeton: Princeton University Press, 1997), at 8–10.

⁴³ Caruth, *supra* at 8.

back to Madrid—to the “interior” as he calls it. His return to Madrid becomes both a process of a recovery of memory (individual and collective) and of a search for justice.

The Repressed. As soon as Darman arrives in Madrid, a hostile and intrusive waiving flag in the streets of the capital reminds him that the reality of Francoist Spain is not his reality anymore. He is a member of the defeated group and his country is now at hand of the enemy. Darman is even worried that the rottenness of the enemy may end up contaminating him. At the train station, he hurries to leave it, smelling his own clothing, looking at himself in the shop-windows to ensure he has not been polluted. Darman does not want to fight for something that he no longer feels as his own. But moved by inertia, he continues playing the role he has been assigned: “[E]ver since I’d agreed to go to Madrid, I’d been a hesitant specter pretending I was going to kill a man . . . I was being swept along by a current more powerful than my will” (42).⁴⁴

In Madrid, he encounters people and places, recognizes names from the past that take him back in time, making him relive the repressed details of “Walter’s case.” He remembers that, in 1945, Walter ran a theater called Universal Cinema, where he lived with his lover, Rebeca Osorio, a writer of romance novels who introduced codes and messages through her writings, and Valdivia, another member of the organization. He also remembers that he shot Walter knowing that doing so would shatter Rebeca’s life (she was in love with Walter). After the assassination, Darman escaped to England, Valdivia was supposedly killed by the police, Rebeca disappeared, and the Universal Cinema was closed. Twenty years later, Darman faces an almost identical situation: He encounters a second Rebeca Osorio, who not only looks exactly like the first one, but is

⁴⁴ “desde que acepté viajar a Madrid yo era un lento fantasma que fingía que iba a matar a un hombre y se internaba en la mentira como una selva de espejismo” (59).

also the lover of his target, Andrade. (Later, Darman will also discover that she is the daughter of Walter and the first Rebeca Osorio).⁴⁵ This new encounter makes him realize that he never regretted killing Walter, “but it cost [him] years of sleepless nights not to keep seeing Rebeca Osorio’s eyes everywhere” (113).⁴⁶ Darman’s return to Madrid is “like shedding the skin of indifference and oblivion time had added to memory, and everything hurt[s] as if it had happened yesterday” (45).⁴⁷

Caruth’s conception of trauma may shed light on Darman’s situation here. In her view, trauma is an “unclaimed experience” that is “not locatable in the simple violent or original event in an individual’s past, but rather in the way that its very unassimilated nature—the way it was precisely *not known* in the first instance—returns to haunt the survivor later on.”⁴⁸ The traumatic event is never contained in a single moment; it must be first internalized and afterwards revived in a second scene that echoes the original traumatic one.⁴⁹ Darman’s twenty years of exile in England are the “latency period” of a trauma, the period during which the effects of the experience are not apparent, because the traumatic effects have been repressed and forgotten.⁵⁰ In Madrid, the juxtaposition of

⁴⁵ Rebeca Osorio works as a singer in a clandestine club called *Boîte Tabú* and she signs for inspector Ugarte, who always hides behind the curtains while looking at her performance.

⁴⁶ “pero [le] costó años de insomnio no seguir viendo en todas partes los ojos de Rebeca Osorio” (147).

⁴⁷ “como si perdiese la piel de indiferencia y olvido que el tiempo había agregado a la memoria, y todas las cosas me herían como recién sucedidas” (62).

⁴⁸ Caruth, *supra* at 4.

⁴⁹ As Jean Laplanche puts it: [O]n the one hand, the repressed scene, an unpleasant memory, on the other, an apparently subordinate, concomitant memory, a circumstance contingent to the traumatic event, which unlike that event, has remained in memory as a symptom or ‘symbol’ of the first scene, which itself cannot be brought to consciousness. The connection between the two cannot be consciously maintained. . . . Every new perception which irritates the unconscious memory of the traumatizing event, and every new trauma which may echo it, results in the emergence into consciousness not of the scene itself but of the symbol of the scene, and of the symbol alone.” *Life and Death in Psychoanalysis* (Baltimore: The Johns Hopkins University Press, 1976), at 35.

⁵⁰ Caruth, *supra* at 17.

past (1945) and present (1965) triggers the memories of the original traumatic scene that Darman had forgotten. The relationship between the second Rebeca Osorio and Andrade, his new victim (second scene) surfaces as the “symbol” of Darman’s repressed love for the first Rebeca Osorio and his old victim Walter (the primary scene). Darman goes from shadows (his condition of living dead) to consciousness (life), from forgetfulness to memory, as he comes to terms with his traumatic past.

The recovery of the traumatic memory enables Darman to realize that Andrade’s sadness is part of the reality of his (Darman’s) present:

I know who you are, . . . I know what you’ve seen and what you’ve lost, your life and country, your own history sacrificed in the name of a sterile heroism that no one will ever thank you for, . . . because what you paid is much more valuable than everything you imagined you would receive and that no one will give you (143).

[Sé quién eres, . . . sé lo que has visto y lo que has perdido, tu vida y tu país, tu biografía inmolada en nombre de una estéril heroicidad que nadie te agradecerá nunca, . . . porque lo que pagaste es mucho más valioso que todo lo que imaginaste que recibirías y nadie te dará (186)].

Darman is, like Andrade, part of the Republican vanquished, whom it is impossible to tell their story, mourn for their dead, and recover their dignity, making them feel like the living dead, like shadows. His understanding of both his own trauma and that of the rest of the victims transforms Darman from executioner to victim’s savior: now, he wants to save Andrade, both from Inspector Ugarte and from the organization.⁵¹

Eternal return. However, Andrade’s fate seems predestined. As if following a script written by someone else that leaves no room for agency, Andrade is ultimately killed by Luque, Darman’s unconditional admirer and follower: Andrade’s death is the repetition of Walter’s; Luque is the duplication of Darman; the love between Andrade

⁵¹ Cf. Navajas, Gonzalo, *Más allá de la posmodernidad. Estética de la nueva novela y cine españoles* (Barcelona: Ediciones Universitarias de Barcelona, 1996).

and the new Rebeca replays the love between Walter and the old Rebeca Osorio; and so on, endlessly. Such a stance echoes Nietzsche's idea of the "eternal recurrence:" everything has already happened in the past, and will continue to happen repeatedly in the future. It is precisely the distressing thought that everything is destined to be and thus is *predestined*—for if everything recurs, his actions could have been determined in advance— which makes Darman realize he might have been deceived into killing an innocent man. Darman thus faces a new challenge: Is it possible to break the eternal cycle of violence?

As Gustavo Martínez remarks, the duplication technique reveals the deadlock of abstract categories of ideology. It is the result of an uncritical application of the same ideological structures to different ideological situations.⁵² In *Beltenebros*, this is exemplified with Bernal, the dogmatic and fanatic ideologue for whom "everything is defined, explained and judged beforehand."⁵³ Bernal is depicted as judging and condemning the accused of treason without knowing anything about them, without questioning who they really are, and without hesitating about his own conclusions. For him, the truth is established with an unemotional and mathematical precision: "Shut up in a room with a bunch of papers . . . Bernal had found this all as solitarily as a mathematician solves a hitherto unformulated puzzle" (38).⁵⁴ As Darman says, "he conceded only a secondary importance to reality" (38).⁵⁵ It is not surprising then that the

⁵² Martínez, Gustavo, *Duplicidad, duplicación y desdoblamiento en Beltenebros*. Espéculo. Revista de estudios literarios. Universidad Complutense de Madrid (2005) URL: <http://www.ucm.es/info/especulo/numero29/duplicid.html>, at 11.

⁵³ *Id.*, at 2.

⁵⁴ "Encerrado en una habitación frente a un puñado de papeles . . . Bernal lo había averiguado todo tan solitariamente como resuelve un matemático un enigma no formulado hasta entonces" (53).

⁵⁵ "es posible que sólo concediera a las realidad una importancia secundaria" (53).

organization he represents keeps making the same mistakes repeatedly; that is, the condemnation of innocent people and correlative praise of the real traitors. Operating from the exile, Bernal remains indifferent to the passing of time, namely, to the transformations that men suffer because of their personal history. For him, nobody and nothing change, as he replies when Darman claims that he is not the same person he used to be: “Nobody changes. Neither they nor we have changed” (35). Unable to see the Spanish shifting reality from his distant office in Florence, he is trapped within his obsolete convictions.

Ghosts. After Andrade’s death, all the dead and phantoms from past and present, the two Rebecas and Valdivia, follow in Darman’s wake. Yet when “the dead return, . . . return more stubbornly than the living, . . . the dead return and mask their shadows in the features of the living and walk slowly through the places from the past” (143).⁵⁶ These are, in Derrida’s language, the *revenants*, the specters, the victims of violence who always return to claim their debt from the living, and one cannot control their comings and goings because they “begin” by coming back.⁵⁷ The coming of the ghosts pushes Darman to take responsibility not only for the dead, but also for the living; for those who yet have a life to live. This responsibility, which began with Darman’s acceptance of the new mission, takes shape during his expedition through the tunnel that connects the Boîte Tabú (the present), where Ugarte keeps the new Rebeca, with the old Universal Cinema (the past), where he fell in love with the old Rebeca. Twenty years earlier, Walter used the same tunnel to escape from Darman but from back to front. Now, Darmam goes the

⁵⁶ “los muertos vuelven, vuelven con más tenacidad que los vivos, obstinados y leales como aquellas ánimas del purgatorio a las que les rezaban oraciones al atardecer, los muertos vuelven y enmascaran sus sombras con las facciones de los vivos y caminan despacio por los lugares del pasado” (185).

⁵⁷ Derrida, *Specters of Marx*, *supra* at 11.

other way round out of loyalty to the dead and to the living. He rebels against the game of duplicity to which he has been subjected and rushes to confront the author of this duplicity: “I felt an intolerable need to look at that man face to face with the lights on . . . Inspector Ugarte, Beltenebros, prince of shadows, living and watching in the dark, his only light the cigarettes which glowed like eyes” (153).⁵⁸ Darman wants to respond to the ghosts’ claim for justice, that is to say, to their memory.

Blindness. Darman advances into the darkness of the Universal Cinema, into the “kingdom of dead, to the dark subsoil where infamy thrived, because [he] realized each step was moving [him] close to the source of guilt and corruption” (172).⁵⁹ In the cinema, he can hear two sounds from his past—the wheels of the projector (whirring slowly and mechanically)—and Rebeca Osorio’s typing. Hidden in an upper room of the Universal Cinema, Darman finds the original Rebeca Osorio alive, devoid of reason, and furiously typing, paperless, at her old Remington typewriter. Hoping she will remember him, Darman struggles to wake her from her trance; he knows that her hatred of him remains in her consciousness. When Rebeca finally recognizes his face, she angrily throws her typewriter at him, breaking it into pieces. The creative artifact that helped her to write novels and introduce secret codes is destroyed, and, with it, the sound from Darman’s

⁵⁸ [S]entí una intolerable necesidad de mirar cara a cara a ese hombre, a plena luz, . . . el comisario Ugarte, Beltenebros, el príncipe de la tinieblas, el que habita y mira en la oscuridad, sin más luz que la de los cigarrillos que resplandecen como ojos” (199).

⁵⁹ “al oscuro subsuelo donde alentaba la infamia, porque me daba cuenta de que paso a paso estaba acercándome a la raíz de la culpa y de la corrupción” (222). The darkness of the narrative can be read as an allegory of trauma, because trauma is “something normally hidden from sight, something whose obscure depth (or whose end) cannot be fathomed and whose *bottom* (or whose starting point) *cannot be seen*.” Felman, Shoshana, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge: Harvard University Press, 2002), at 89. Darman’s expedition to the Universal Cinema may be read as an immersion into darkness, that is, into the unconscious. Pérès, Christine, *Le nouveau roman espagnol et la quête d’identité: Antonio Muñoz Molina* (Paris: L’Harmattan, 2000), at 249.

guilty conscience is symbolically removed. After comprehending that she has been kept locked there by the faceless Ugarte/Beltenebros all these years, Darman rushes back to the darkness of the theater in order to find and kill him.

In the uppermost seats of the cinema, Darman finds the new Rebeca still alive, blindfolded, and terrified. He also sees a red pupil in the dark that dulls and brightens like a reptilian eye. Ugarte goes on smoking “on the other side of the abyss, the one separating . . . his power of sight and [Darman’s] blindness” (188).⁶⁰ But when a torch suddenly illuminates Ugarte’s face, like a flash of lightning, it reveals him as Valdivia, the member of the organization who twenty years earlier had been allegedly killed by the police. Meanwhile, Rebeca had “torn the bandage from her eyes, and slid down the rows without him seeing her till she was sure that when she switched on the torch it would be right in his face” (194-195).⁶¹ The torch steadily advances until Ugarte can neither see nor retreat further. He ultimately falls into the dark void, looking up at Darman for the last time.

At the end of the novel, blindness and sight are reversed. Once the Prince of Shadows is blinded, Darman recovers his sight and, just then, he realizes that Valdivia, Ugarte, and Beltenebros are all the same person. Valdivia/Ugarte/Beltenebros is the malignant specter that observes everyone without being seen and strategically sets its enemies one against the other.⁶² Under its spectral machination, Walter and Andrade are

⁶⁰ “al otro lado de un abismo, el que separaba . . . su potestad de ver y [su] ceguera” (242).

⁶¹ “arrancado en silencio el esparadrapo de los ojos, se había deslizado por las gradas sin que él la viera hasta que estuvo segura de que cuando encendiera la linterna le acertaría en la cara” (251–252).

⁶² As Michel Foucault explains, “[a] central point would be both the source of light illuminating everything, and a locus of convergence for everything that must be known: a perfect eye that nothing would escape.” Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan, French original, 1975 (New York: Vintage, 1997), at 173). In *Beltenebros*, the “ability

falsely accused of treason, tortured, and executed; Darman is forced into exile, transformed into the living dead, and contrived to repeat the same mistakes of the past, and the two Rebecas are deprived of identity.⁶³ The space of the Universal Cinema functions as the ideological apparatus through which Ugarte weaves the web of predestination and the repetition of violence.

In this way, if the adjective “universal” suggests the overarching ideals that encouraged all members to believe and fight for the organization’s cause, “Cinema,” on the other hand, implies the space of fiction where reality is replaced by the simulacra of images and where its power-mechanisms are concealed.⁶⁴ Such a vision is reminiscent of Jean-Louis Baudry’s conception of cinema: as “an apparatus destined to obtain a precise ideological effect, necessary to the dominant ideology: creating a phantasmaticization of the subject, it collaborates with a marked efficacy in the maintenance of idealism.”⁶⁵ Put

or inability to see defines the various characters, and determines their subject position as seers or objects of contemplation.” Olga Lopez-Valero Colbert, *The Gaze on the Past. Popular Culture and History in Antonio Muñoz Molina’s Novels* (Lewisburg: Bucknell University Press, 2007), at 89.

⁶³ The long confinement of political activist Rebeca Osorio in the prisonlike space of the Universal Cinema and the humiliating abuse at which Beltenebros subjects her double (her daughter) expose “the silencing and/or disciplining mechanisms practiced against women, both within and beyond prison walls.” Vosburg, Nancy, *Prisons With/out Walls: Women’s Prison Writings In Franco’s Spain*, 11 Monographic Review (1995), pp. 121–133, at 121. During Franco’s dictatorship laws such as the marital permission (“permiso marital”) were passed, with the support of the Catholic Church, to maintain a conservative and patriarchal society. Women were not allowed to sign contracts, pursue a career, apply for a job or take a trip without the permission of their fathers or husbands. Women’s only role was to be model housewives and mothers. Radcliff, P. B., 2001, “Imagining female citizenship in the ‘New Spain’: Gendering the democratic transition, 1975–1978,” *Gender and History*, 13(3): 498–523, at 505. The fact that it is Rebeca’s torchlight instead of Darman himself what eventually kills Beltenebros can be read as the symbolic elimination of a patriarchal system. See Silvia Bermúdez, *Negro que te Quiero Rosa: la Femenización de la Novela de Espías en Beltenebros*, 7 España Contemporánea 2 (1994), pp. 7-25.

⁶⁴ Martínez, *supra* at 20.

⁶⁵ Baudry, Jean-Louis., “Ideological Effects of the Basic Cinematographic Apparatus,” eds. Gerald Mast, Marshall Cohen, Leo Braudy, in *Film Theory and Criticism*, (Oxford: Oxford University Press, 2004), pp. 355-365, at 364.

differently, the darkened and closed ideological space of the Universal Cinema functions, like the Platonic cave, as a *mirror-screen* that “reflects *images* but not ‘reality.’”⁶⁶ In this sense, the Universal Cinema may be regarded as the origin of the total simulacrum, where those remaining within find themselves caught by an illusory reality that manipulates, controls, and shapes their thinking and actions. The cinematic space thus appears as the totalizing ideological apparatus that erases memory and projects idealized images of the present (the official version of history), perpetuating the barbarism and injustice of the past.⁶⁷

The Madrilenian spatial interiors of the warehouse and the *Boîte Tabú*, where the action takes place, may be read as a reproduction of the Universal Cinema. As soon as Darman arrives in Madrid, he ends up at the warehouse where Luque instructed him to find Andrade. Instead, he encounters a man whose face he cannot see, but whose “uncanny” familiarity frightens him.⁶⁸ In the darkness of the warehouse, shadows move from one place to another and only the red light of the man’s cigarette (Ugarte’s), as the light of the projector, illuminates and guides their movements.⁶⁹ In the *Boîte Tabú*, the nightclub where the new Rebeca sings for Ugarte, everything replicates the movie theater. The tickets Darman uses to enter look like movie stubs. The double of Rebeca, whose name itself is a Hollywood name (Hitchcock’s *Rebecca*, 1940), imitates, in turn,

⁶⁶ Baudry, *supra* at 362.

⁶⁷ For an interesting analysis of the cinematic techniques and influences of the novel, see Richardson, Nathan E., *A Kingdom of Shadows: Muñoz Molina’s Beltenebros, film theory, and Spain, 1944–1989*, 29 *Anales de la Literatura Española Contemporánea* (2004). For a film-adaptation of the novel see Pilar Miró’s *Beltenebros* (1991).

⁶⁸ I use the term “uncanny” in Freud’s sense, that is, as “nothing new or strange, but something that was familiar to the psyche and was estranged from it only through being repressed.” Freud, Sigmund, “The Uncanny”: 123-162, trans. David McLintock, in *The Uncanny* (New York: Penguin Books, 2003), at 148.

⁶⁹ Richardson, *supra*.

the *femme fatale* Rita Hayworth, moving her hips to the rhythm of a bongo on the stage, as a reenactment of Charles Vidor's famous "Gilda" (1946). All of this seems projected from behind the curtains, through the light of the cigarette of the same mysterious man Darman saw in the warehouse. Rebeca is in this way another image coming from the projector—the light of the Prince of Shadow's cigarette—of the Universal Cinema. This explains Darman's first vision of her on the *Boîte Tabú*: "her face was pallid like the images in the cinema" (69).⁷⁰ Even Darman himself becomes a cinematic image inside the darkness of the nightclub: "my identity was becoming blurred like the faces in the welcoming shadows, pale and unknown above the blue lamps" (72).⁷¹

The only way to resist and break through the repressive effects of the *mirror-screen* is to travel to the other side of the mirror and make its deceptive mechanisms visible. In the novel, this is materialized when Darman appears behind the screen of the Universal Cinema:

I'd reached the Universal Cinema, was behind the screen, and was getting a close-up of the enormous characters in a film without sound. . . . I was bewildered by the sudden bursts of darkness and light that broke up the space as if nothing was a really solid mass, not even myself, that dark silhouette mixed up with the others, lost among them, sliding over a dirty brick wall, over the great white canvas where the film was being projected. . . . As I went down into the cinema I felt I was pulling myself away from the unreality of the film, that once again I was recovering the shape of my body and the sovereignty of my consciousness, aroused by the recognition of things that had survived (174).

[Había llegado al Universal Cinema, estaba detrás de la pantalla, mirando desde muy cerca las desmedidas figuras de una película despojada de sonido. . . . Me aturdían los sobresaltos de claridad y de sombra que disgregaban el espacio como si nada tuviera un volumen firme de verdad, ni yo mismo, una silueta oscura y confundida con las otras y perdida entre ellas, deslizándose sobre una sucia pared de ladrillo, sobre el gran lienzo blanco donde se proyectaba la película. . . . Al

⁷⁰ "su cara tenía la misma palidez que las imágenes de cine, la misma consistencia tenue de breves claridades y fugaces penumbras" (91).

⁷¹ "mi identidad se me desdibujaba como uno cualquiera de aquellos rostros acogidos a la sombra, desconocidos y pálidos sobre las lámpara azules" (95).

bajar a la sala sentí que me desprendía de la irrealidad de la película, que recobraba otra vez la forma de mi cuerpo, y la soberanía de mi conciencia, incitada por el reconocimiento de todas las cosas perduradas (224).]

By figuratively traveling to the other side of the mirror, Darman confronts the unknown past and reveals the present reality as an illusion created by the spectral forces of the ideological apparatus. In the darkness of the Universal Cinema, he finally has access, with the help of Rebeca's flashlight, to the invisible, to the uncanny, that is, to trauma. He goes from shadows (his condition of living dead) to consciousness (life), from forgetfulness to memory, coming to terms with the traumatic past. Rebeca's flashlight finally allows Darman to access the hidden "truth"—the violence, manipulation, and injustice that Ugarte, as representative of Francoist repression, has inflicted on everyone. Benjamin links this moment of revelation to a political action in the fight for the oppressed past and the transformation of the present.⁷² Darman and Rebeca embody this possibility. They are able, in the end, to uncover the impenetrable logic of repetition and deception and to destroy its point of origin. Having regained their sight, a new future opens to them, one in which they can reclaim their agency and eventually their (lost) dignity. Only by confronting the cycle of violence and deception created by Beltenebros, and by acknowledging the ruins left in its wake, can Darman and Rebeca do justice to the memory of the victims—one that necessarily implies an ethical responsibility for the ruins of the past not only on behalf of the dead, but of the living and their future.

⁷² Benjamin, *supra* at 263.

III. REMEMBERING TO FORGET: THE “LAW OF HISTORICAL MEMORY”

While fictional worlds like *Beltenebros* attempt to recover the historical memory of the victims of Franco’s regime, many years would pass until the Spanish State would give a legal answer to the victims’ claim for justice. At the end of the nineties, grass roots organizations such as the *Asociación para la Recuperación de la Memoria Histórica* (Association for the Recovery of Historical Memory ARMH) mobilized themselves to demand the debt the Spanish State owed Franco’s victims, and to assert their right to know the truth, and to regain appropriate reparations and historical recognition (or “historical memory”).⁷³ Their claims finally broke the almost 70 years of silence, challenging in so doing the so-called Pact of Forgetfulness. They sought justice without revenge. They wanted to recover the (around 30.000) bodies of those buried in unmarked common graves, honor their memory, and repair their dignity. They also demanded the formal declaration of Franco’s uprising and regime as illegal. To them its laws, trials, and legal proceedings should be declared null and void. In the absence of national policies that addressed the memory of the victims, the ARMH based their demands in the existing Human Rights and International Law.

The conservative government of *Partido Popular* (Popular party, PP), led by Prime Minister Jose María Aznar (1996–2004), opposed any debate regarding the recovery of historical memory in order to avoid opening old scars. This is not at all surprising considering that many of *Partido Popular*’s leading members come from Francoist

⁷³ The response in the international community to Truth Commissions, such as in South Africa and Latin America, and the charging of Pinochet for crimes against humanity in Spain in 1998, influenced the creation of different civic associations. Among others: Forum for Memory; Association for the Creation of Archives of the Civil War; International Brigades; the Children of War; the Spanish Resistance and Exile (AGE); and Association of Families and Friends of Republicans oppressed during Francoism (AFARIIR).

families (Aznar's grandfather, for instance, was Franco's collaborator) or, like Manuel Fraga Iribarne, were ministers under the dictatorship.⁷⁴ Aznar's government, however, finance the cost of the exhumation and repatriation from Russia of the corpses of Spanish members of Franco's *División Azul* (the Blue Division) that fought during World War II alongside Adolf Hitler.⁷⁵ In addition, Aznar's government awarded the Francisco Franco Foundation, whose president is Franco's daughter, one of the highest annual state subsidies to non-profit-making private Spanish organizations.⁷⁶ The Foundation intends "to increase awareness of the figure of Francisco Franco in its human dimensions, political and military, as well as the achievements and projects carried out by his regime."⁷⁷ In a public declaration, Aznar put Pío Moa's book *Los Mitos de la Guerra Civil Española* (2006) as his bedside book, a way of showing his public support to Moa's version of history, according to which, Franco saved Spain from the chaos of the Second Republic and established the foundations for the current Spanish democracy.

With the coming to power of the Socialist government of Jose Luis Rodríguez Zapatero in 2004 the demands of the ARMH and other associations were officially addressed for the first time. This same year the socialist government created the Interministerial Commission for the Study of the Situation of the Victims of the Civil War and Francoism (*Comisión Interministerial para el Estudio de las Víctimas de la Guerra Civil y del Franquismo*) chaired by the Vice-President of the Government María Teresa Fernández de la Vega. Only in 2006, partly in response to the ARHM's demands,

⁷⁴ Sebastian Balfour, "The Reinvention of Spanish Conservatism. The Popular Party Since 1989," ed. Sebastian Balfour, in *The Politics of Contemporary Spain* (New York: Routledge, 2005), pp. 146-168.

⁷⁵ Omar G. Encarnación, *Spanish Politics. Democracy After Dictatorship* (Cambridge, UK: Polity Press, 2008), at 143.

⁷⁶ Balfour, *supra* at 151.

⁷⁷ See *Fundación Nacional Francisco Franco*, <http://www.fnff.es/datos.htm>

did Zapatero newly elected government present a bill to recognize and extend these rights in favor of those who suffered persecution or violence during the Civil War and the dictatorship.⁷⁸ The bill was approved by Congress on October 31, 2007. Its full and verbose name is “Ley 52/2007, de 26 de diciembre, por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura,” but is popularly known as the “Law of Historical Memory.”⁷⁹

The 52/2007 law also addressed a non-binding majority resolution by the Constitutional Commission of Congress of November 20, 2002 (the 27th anniversary of Franco’s death), stating that: “No one is entitled to use violence, as it has occurred in our past, for the purpose of imposing political ideology or totalitarian regimes that are contrary to our liberty and our dignity, and that deserve the condemnation and rejection of the democratic society.”⁸⁰ The “Law of Historical Memory” reproduces this condemnation verbatim, and also incorporates the Resolution of the Parliamentary Assembly of the Council of Europe of March 17, 2006, which condemns the “severe violations of human rights” that occurred in Spain from 1939 to 1975.

This law establishes some economic, legal, and symbolic measures: the declaration of the illegitimacy of Franco’s courts and legal sentences (article 3); economic compensation for different categories of victims (articles 5–10); assistance to private citizens for locating and identifying the bodies that remain in unidentified graves (articles

⁷⁸ José Luis Rodríguez Zapatero’s grandfather was shot while on Franco’s side in 1936. For an analysis of the use of the Law of Historical Memory as a political strategy to win the elections of 2004, see Blakeley, Georgina, *La política de siempre? Los desafíos y cavilaciones de la Ley de la Memoria Histórica en España*, 7 Entelequia. Revista Interdisciplinar (2008), pp. 315-330.

⁷⁹ See Appendix 2.

⁸⁰ All translations of the law are my own.

11–14); banning of symbols, monuments, and the glorification of Franco and his regime from buildings and public spaces (articles 15–16); the creation of the Center of Documentation of Historical Memory in Salamanca; and maintaining and developing the General Archives of the Civil War and the private right to access them (articles 20–22).

Despite these undeniably positive contributions, I want to focus on the rhetorical strategies found in the law’s Preamble. I inquire how and in what ways the law “remembers,” or “forgets,” that is, what kind of narratives of the past it validates, and which ones it doesn’t consider or excludes. I explore, in other words, how the law “stands in relation to the past, the present, and the future.”⁸¹ Through these acts of remembering (and forgetting), the law becomes an active participant in the process through which history and collective memory are being constructed.

The Preamble of the Law of Historical Memory states that “the spirit of reconciliation and concord and of respect to pluralism and peaceful defense of all ideas” that guided the Transition resulted in the Constitution of 1978, “the best constitutional model of coexistence in Spain’s history” (Law 52/2007). Appealing to this “foundational spirit of concord,” the law says it is time for Spain’s democracy and for the living generations to honor and to recover the memory, once and for all, of all the people who directly suffered injustices and offenses for political, ideological, or religious reasons. The law cautions us that “it is not the task of the legislator to impose a specific collective memory.” Rather, it reaffirms the “obligation to protect each citizen’s right to his or her personal and family memory as an expression of democratic citizenship.” Likewise, it establishes the commitment “to promote the constitutional values” and “the knowledge

⁸¹ Austin Sarat and Thomas R. Kearns, *History, Memory, and the Law* eds. Sarat, Austin and Thomas R. Kearns (Ann Arbor: University of Michigan Press, 1999), at 12.

and reflection of [the] past to avoid the repetition of situations of intolerance and violation of human rights.” Thus, the law lays the grounds for public policies aimed at “the knowledge of Spain’s history and the promotion of the democratic memory.” The final goal of the law is to contribute to “healing the wounds [that are] still open.” To do so, it appeals to the Transition’s “spirit of reconciliation and concord.” Despite the law’s attempt to recover the “historical memory”—first by protecting the citizens’ rights to personal and family memory, and then by establishing public policies aimed at the promotion of “democratic memory”—an analysis of the law’s own representational practices may yield a more debatable result than what was intended.

Foundation. The law begins by situating the Transition, and the Constitution of 1978 as the points of origin of contemporary Spanish democracy. In choosing the Transition as the foundational moment of democracy (and by marking this period as the origin and cause of the law as well), the law neglects the antecedent democratic government of the Second Republic, to which Franco’s uprising put an end in 1936.⁸² The Second republic represents precisely the democratic values for which Republicans fought against Franco and the reason for which they were killed, tortured, or disappeared under his regime. The exclusion of this memory from the law contradicts its expressed goal of recuperating the memory of the Republican victims of Francoism.

By omitting any reference to the democratic and constitutional heritage of the Republic, the law “forgets” that the fundamental rights were not born with the Constitution of 1978—the Constitution of 1931 recognized, among others, the rights of religious and political pluralism, freedom of speech, the right to a fair trial, the separation

⁸² Moreno Díaz, José Antonio, *Perspectivas sobre la Ley de Memoria Histórica* 7 Entelequia. Revista Interdisciplinar (2008), pp. 247-254, at 252.

of Church and State, the right to divorce, and women's right to vote, and included the obligation of the State to respect International Law. Reclaiming the "democratic memory" of the Second Republic would have meant emphasizing the fact that Francoism was a post-constitutional illegal regime established by military force against an elected government.⁸³ In this sense, the law's declaration of Francoist legal framework and legislation as "illegitimate" instead of "illegal, null, and void" (as the Associations of victims had demanded) seems to validate retroactively the legality of Franco's regime, even when it seeks to denounce its immorality.⁸⁴

If words such as "Franco," "Francoism," and "dictatorship" were absent from the novel, the word "Republic" is never mentioned in the legal text. Its ontological absence grants the Republic a spectral presence in the law and reveals a present time haunted by the same ghosts that haunted the Transition. Like the Transition, the law is reluctant to link the contemporary democracy with the democracy of the Republic: to revive its memory may break the spirit of reconciliation and concord of the Transition in which the law is founded. By casting out the ghosts of the Second Republic, the law leaves unquestioned the Francoist version of Republican evils and the direct link between their actions and the Civil War.

In contrast to the law, *Beltenebros* begins by reclaiming the legality of the Republican constitutional order: "Now, as then, we were united by the need to defeat treachery and it didn't matter that we no longer wore uniforms or that the law we swore

⁸³ Moreno Díaz, *supra* at 250.

⁸⁴ According to Equipo Nizkor, which represents more than twenty civic associations, the law "implies the legality of the Franco regime and evidences an intention to defend this 'legality' by placing on equal footing victims and criminals (those responsible for the crimes under international law)." *An Aberrant Law*. 30 Oct 2007, Read May 22, 2009, URL: <http://www.derechos.org/nizkor/espana/doc/hmlpress.html>

to obey had been abolished by our conquerors: the law survived within us, as intact as our pride, re-established by our determination to abide by it” (97).⁸⁵ To recover the democratic memory of the Second Republic would mean to restore the memory and dignity of the victims of Francoism.

Reconciliation and Concord. The law praises the spirit of reconciliation and concord that guided the Transition as being the same spirit that now guides the current law. This identification between the spirit of the Transition and the spirit of the current law is problematic because, as it has been explained, the reconciliation and concord brought by the Spanish Transition was achieved precisely at the cost of forgetting, rather than by making peace with the past. Thirty years later, the law’s commemorative act reproduces the same ideological “forgetfulness” that characterized the former period: in the name of a new sense of national reconciliation, once again the law suppresses an open and honest debate about the Transition’s lack of accountability regarding those responsible for past crimes. And it does so, paradoxically, contrary to the principle of memory that the law wishes to vindicate. This apparent contradiction between what the law claims to do for the victims and what it does through its rhetorical choices of self-legitimation casts doubts on its ability to provide any sense of reparation and justice to the victims. The law, unlike the novel, looks at the past from the point of view of the State and uses an idealized version of history to justify itself.

Furthermore, despite its claim to the kind of consensus that made possible the Constitution of 1978 and the transition to democracy, the law conceals the fact that it

⁸⁵ “Ahora, como entonces, nos aliaba la tarea de desbaratar una traición, y no importaba que ya no vistiéramos uniformes ni que la ley que juramos obedecer hubiera sido abolida por quienes nos vencieron: la ley sobrevivía en nosotros, intacta como nuestro orgullo, restablecida por nuestra determinación a cumplirla” (127).

passed amidst fierce controversy and a lengthy legislative process. For instance, mainstream political forces and the outgoing government of the right-wing Popular Party (PP, 1996–2004) disagreed with the law, claiming that it would split the country, revive the conflict between the two Spains, and endanger the spirit of the Transition. PP voted only in favor of some aspects of the law, such as providing financial support to the victims and the banning of commemorative services in the Valley of the Fallen by Franco’s supporters.⁸⁶ Leftist parties such as United Left-Initiative for Catalonia Greens (IU–ICV), and regionalist parties such as the Catalan Convergence and Union (CIU) presented alternative texts which demanded, among other things, that the Franco regime’s legal sentences ought to be declared null and void, and voted in favor of the law only after having added several amendments to the final bill.⁸⁷ Republican Left of Catalonia (ERC) voted against the law, claiming that it was insufficient and did not do justice to the victims. The law’s re-appropriation of “the spirit of the Transition” hides the difficult political context of its own existence, ignoring that acknowledgement of dissent and conflict becomes both necessary and possible as a part of the functioning of democratic politics.⁸⁸ According to John R. Gillis, “[c]ommemorative activity is by definition social and political, for it involves the coordination of individual and group memories, whose results may appear consensual when they are in fact the product of processes of intense

⁸⁶ Laura Robertson, *Breaking the Silence, Rewriting History* 14 *The Journal* (Sunday 23, November 2008) <http://www.journal-online.co.uk/article/5098-breaking-the-silence-rewriting-history>. See also: “Rajoy acusa al PSOE de romper el espíritu de la transición al retirar la estatua de Franco” *El País* 19 March 2005.

⁸⁷ The final draft of the bill, however, declares Francoist sentences “illegitimate” and “unjust.” Blakeley, *supra* at 321-322.

⁸⁸ *Id.*, at 317.

contest, struggle, and in some instances, annihilation.”⁸⁹ This is why the law does not embody true reconciliation, but the *commemoration* of reconciliation. The law’s re-appropriation of the spirit of the Transition may function rhetorically as a charm to guard against reproducing the conditions that led to the Civil War, and reveals Spain’s deep fears of confronting the ghosts of the past.

Closure. Even though the law includes the Resolution of the Parliamentary Assembly of the Council of Europe of March 17, 2006, that condemns Francoism, it does not follow the Council’s main recommendation “to set up a national commission to inquire into violations of human rights committed under the Franco dictatorship” with a mandate to establish “the truth regarding repression under Franco.”⁹⁰ The Law of Historical Memory obligates the Spanish administration only to “provide assistance” to individuals and families for the identification of corpses in unidentified graves. However, the law leaves the State’s task of location and exhumation of bodies in the hands of private citizens and their families, making it particularly hard to recover the remains and therefore to reveal the truth surrounding individual deaths.⁹¹

Indeed, the right to know cannot be merely a private matter but rather a “collective right” that the State must guarantee:

The right to know is not simply the right of any individual victim or closely related person to know what happened—a right to the truth. The right to know is also a

⁸⁹ John R. Gillis, “Memory and Identity: The History of a Relationship,” ed. John R. Gillis, in *Commemorations: The Politics of National Identity* (Princeton: Princeton University Press, 1994), pp. 3-24, at 5.

⁹⁰ Giulia Tamayo, *Los derechos de las víctimas de la Guerra Civil española y el franquismo en el contexto de la experiencia mundial y las obligaciones internacionales sobre la verdad, justicia y reparación* 7 Entelequia. Revista Interdisciplinar (2008), pp. 255-271, at 271. See: *Draft Recommendation* unanimously adopted by the Committee on 04.10.05 par 94-95 doc 10078 ref 2926, March 2, 2004; Read May 1, 2009, URL: www.coe.int.

⁹¹ See “El Estado no asumirá las exhumaciones de las fosas franquistas,” D. Barcala and L. Calvo, March 11, 2009, *Publico.es*

collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is a “duty to remember,” which the State must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of a people’s national heritage and as such must be preserved.⁹²

The law cautiously states that it does not want to impose a concrete “collective memory,” but in its goal scrupulously to avoid it. This, the law relegates the democratic regime of the Second Republic and the memory of those victimized by Franco to a threshold beyond public recognition. In doing so, it constructs another version of the Benjaminian Paradise, in which words such as foundation, reconciliation, concord, and closure, serve to hide the barbarism upon which it stands. The law’s inability to assume the ruins of the past may ultimately prevent it from healing the wounds as intended; and it may keep them barely covered in ways that will continue to cause pain in the future.

IV. AFTER THE LAW OF HISTORICAL MEMORY

In October of 2008, in response to an official request of more than fifteen associations for the recovery of historical memory, the Judge of the *Audiencia Nacional* Baltasar Garzón opened a criminal investigation against Franco and more than 30 generals and other officials who served under the dictatorial regime and committed “crimes against

⁹² The collective right to know was expressed in a United Nations’ report by M. Joinet, *Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political)*, E/CN.4/Sub.2/1997/20/Rev.1, October 2, 1997; Read April 30, 2009, URL: <http://www.derechos.org/nizkor/impu/joinet2.html> In 2005, Diane Orentlicher updated the set of principles elaborated by Joinet in *Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, Diane Orentlicher E/CN.4/2005/102/Add. 1, February 8, 2005; Read April 30, 2009, URL: <http://www.derechos.org/nizkor/impu/principles.html>

humanity.”⁹³ In the indictment, he described Francoism as a “preconceived and systematic plan of extermination of political opponents through mass killings, torture, exile, and forced disappearances.”⁹⁴ He argued that the Spanish Amnesty Law of 1977 did not extinguish the State’s obligation to investigate these kind of crimes and eventually punished those responsible for them.⁹⁵ The State’s duty to investigate and prosecute those responsible for gross violations of human rights has been reaffirmed by the United Nations Commission for Human Rights, in the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.” These principles “do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms.”⁹⁶ For instance, Principle 4 states that:

In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him.

According to this principle (that Garzón evoked), the State has not only the *duty* to investigate, but also to prosecute and punish those responsible for the violation of human rights, and these include the crimes that occurred during the Franco dictatorship.

⁹³ Auto del juez Garzón DILIGENCIAS PREVIAS 399 /2006 V sobre los desapariciones forzadas por el franquismo.

⁹⁴ Garzón, *supra* at 3, my own translation.

⁹⁵ *Id.* at 47.

⁹⁶ These principles were adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, Read April 28, 2009, URL: <http://www2.ohchr.org/english/law/remedy.htm>

Accordingly, impunity is a violation of both the International Law of Human Rights and the victims' rights to truth, reparation, and justice.⁹⁷ Furthermore, for Garzón, the recent Law of Historical Memory “does not exhaust the requirement of accountability and is fully compatible . . . with the exercise of rights and access to ordinary and extraordinary proceedings established in the laws and international treaties and agreements ratified by Spain.”⁹⁸ On these grounds, Garzón declared his court competent to investigate the circumstances surrounding the forced disappearance of more than a hundred thousand people during the Civil War and the early years of the dictatorship. He also proposed to create a map of the mass graves, and the exhumation and the identification of victims still buried in nineteen unmarked mass graves, including the one believed to hold the remains of the famous poet and playwright Federico García Lorca.⁹⁹

Garzón's initiative to open a criminal investigation into Franco's crimes caused fierce critical reactions. A week later, Javier Zaragoza, Spain's chief prosecutor, filed a motion to dismiss Garzón's proceedings. According to Zaragoza, Garzón's initiative “breaks the most elementary rules of criminal procedure and leads to a general inquisition prohibited by the Constitution,” which is “hardly compatible with the scope, limits, and

⁹⁷ Garzón, *supra* at 56.

⁹⁸ *Id.*, at 57.

⁹⁹ Garzón's order of exhuming Federico García Lorca's remains was hardly free of controversy. Lorca's own relatives—a group of nephews and nieces—opposed the exhumation of the poet's remains because they wanted them to “rest forever where they are.” Jon Lee Anderson, *Letter from Andalusia. Lorca's Bones. Can Spain Finally Confront its Civil-War Past?* (The New Yorker, June 22, 2009), pp. 44-48, at 45. Families' victims whose corpses are thought to be buried with Lorca requested their exhumation and identification. At first instance, the judge assigned to the case refused to order the exhumation. Later, despite the objections of Lorca's relatives, and under the request of the ARMH, the gravesite was declared by the Socialist government of Andalucía a matter of “archeological interest” and the excavations began. After two months of work, the poet's remain were not found.

purposes of the criminal proceedings in a ‘Estado de Derecho.’”¹⁰⁰ Zaragoza argued that under the Spanish criminal code in force before the Civil War (passed in 1932), those offences were not punishable as crimes against humanity but as ordinary crimes, which are ordinarily prescribed after a 20 years period. Or, in its default, they were covered by the 1977 Amnesty Law.¹⁰¹ Moreover Zaragoza argued that the recovery of the memory and dignity of the victims could be satisfied through the mechanisms established by the Law of Historical Memory, and would not depend “solely on whether the courts can continue with the criminal investigation.”¹⁰² In any case, he argued that the investigation “did not fall under the jurisdiction of the *Audiencia Nacional* but under the various territorial courts where the crimes were committed.”¹⁰³

On November 18th, Garzón withdrew his investigation and recused himself in favor of Spain’s provincial courts, hoping that the investigation would continue. Instead, Garzón soon found himself in the midst of a criminal investigation in the opposite direction. On April 7th 2010, the Spanish Supreme Court Judge Luciano Varela admitted a complaint filed by three extreme right wing organizations (*Manos Limpias, Libertad y Identidad*, and *Falange Española y de las JONS*) accusing Garzón of deliberately overstepping his jurisdiction (and hence committing the crime of *prevaricación* or “abuse of power.” Varela argued that even though he was “aware of his lack of jurisdiction and that the crimes reported lacked penal relevance when the proceedings began, [Garzón] built a contrived argument to justify his control of the proceedings he had initiated.”¹⁰⁴ If

¹⁰⁰ Javier-Alberto Zaragoza Aguado, “Recurso de apelación ante la Sala de lo Penal de la Audiencia Nacional” October 20, 2008, at 12, 8.

¹⁰¹ Zaragoza, *supra* at 32.

¹⁰² *Id.*, at 7.

¹⁰³ *Id.*, at 35.

¹⁰⁴ Luciano Varela Castro, Auto, n: 20048/2009, Tribunal Supremo. Sala de lo Penal.

found guilty, Garzón faces disbarment for 10 to 20 years, which would mean the end of his career as a judge, and incidentally, the triumph of the heirs of Francoism against the only judge who officially tried to open a criminal investigation against its crimes.

For Garzón's supporters (he enjoys the support, among others, of the associations for the recovery of memory, The International Commission of Jurists (ICJ), and human rights activists), he has become "the last victim of Francoism."¹⁰⁵ Garzón's supporters also believe that his prosecution is politically motivated, since it coincides with an investigation of a case of political corruption (the so-called Gürtel case, in which several *Partido Popular* (PP) politicians were accused of bribery and receiving expensive gifts). The PP has fiercely demonstrated its stand against Garzón. María Dolores Cospedal, the Secretary General of the PP, described the demonstrations in support of Garzón in Spain organized by left wing parties as "an attack against democracy."¹⁰⁶ Cospedal told Prime Minister José Luis Rodríguez Zapatero that "instead of keeping silent and encouraging such actions, [the prime minister] should act in defense of democracy, separation of powers, equality of all Spanish people and in defense of Spanish institutions."¹⁰⁷ She also urged Zapatero to worry "for the real problems of the Spanish people, which are unemployment [and] lack of economic options" and the wounds that should not be reopened.

Regardless of what María Dolores Cospedal says, the comparative analysis between the novel and the Law of Historical Memory shows that these wounds still

¹⁰⁵ See *International lawyers support the Garzon's cause against Franco's regime*, September 19, 2009, <http://zikipediq.wordpress.com/2009/09/10/international-lawyers-support-the-garzon%e2%80%99s-cause-against-franco%e2%80%99s-regime/>

¹⁰⁶ *Las Marchas de Apoyo a Garzón Atizan la Bronca PP-PSOE*, El País, April 25, 2010 http://www.elpais.com/articulo/espana/marchas/apoyo/Garzon/atizan/bronca/PP-PSOE/elpepuesp/20100425elpepunac_6/Tes

¹⁰⁷ *Id.*

remain open, and that only by taking responsibility for the perversions of history can the cycle of violence and injustice be broken and give the victims and their families the recognition and dignity they have been denied until now.

APPENDIX 1

Ley 46/1977, de 15 de octubre, de Amnistía. Jefatura de Estado (BOE n. 248 de 17/10/1977)

De conformidad con la Ley aprobada por las Cortes, vengo en sancionar:

ARTÍCULO PRIMERO.

I. Quedan amnistiados:

A) Todos los actos de intencionalidad política, cualquiera que fuese su resultado, tipificados como delitos y faltas realizados con anterioridad al día quince de diciembre de mil novecientos setenta y seis.

B) Todos los actos de la misma naturaleza realizados entre el quince de diciembre de mil novecientos setenta y seis y el quince de junio de mil novecientos setenta y siete, cuando en la intencionalidad política se aprecie además un móvil de restablecimiento de las libertades públicas o de reivindicación de autonomías de los pueblos de España.

C) Todos los actos de idéntica naturaleza e intencionalidad a los contemplados en el párrafo anterior realizados hasta el seis de octubre de mil novecientos setenta y siete, siempre que no hayan supuesto violencia grave contra la vida o la integridad de las personas.

II. A los meros efectos de subsunción en cada uno de los párrafos del apartado anterior, se entenderá por momento de realización del acto aquél en que se inició la actividad criminal.

La amnistía también comprenderá los delitos y faltas conexos con los del apartado anterior.

ARTÍCULO SEGUNDO.

En todo caso están comprendidos en la amnistía:

A) Los delitos de rebelión y sedición, así como los delitos y faltas cometidos con ocasión o motivo de ello, tipificados en el Código de Justicia Militar.

B) La objeción de conciencia a la prestación del servicio militar, por motivos éticos o religiosos.

C) Los delitos de denegación de auxilio a la justicia por la negativa a revelar hechos de naturaleza política, conocidos en el ejercicio profesional.

D) Los actos de expresión de opinión, realizados a través de prensa, imprenta o cualquier otro medio de comunicación.

E) Los delitos y faltas que pudieran haber cometido las autoridades, funcionarios y agentes del orden público, con motivo u ocasión de la investigación y persecución de los actos incluidos en esta ley.

F) Los delitos cometidos por los funcionarios y agentes del orden público contra el ejercicio de los derechos de las personas.

ARTÍCULO TERCERO.

Los beneficios de esta ley se extienden a los quebrantamientos de condenas impuestas por delitos amnistiados, a los de extrañamiento acordados por conmutación de otras penas y al incumplimiento de condiciones establecidas en indultos particulares.

ARTÍCULO CUARTO.

Quedan también amnistiadas las faltas disciplinarias judiciales e infracciones administrativas o gubernativas realizadas con intencionalidad política, con la sola exclusión de la tributarias.

ARTÍCULO QUINTO.

Están comprendidas en esta ley las infracciones de naturaleza laboral y sindical consistentes en actos que supongan el ejercicio de derechos reconocidos a los trabajadores en normas y convenios internacionales vigentes en la actualidad.

ARTÍCULO SEXTO.

La amnistía determinará en general la extinción de la responsabilidad criminal derivada de las penas impuestas o que se pudieran imponer con carácter principal o accesorio.

Respecto del personal militar al que se le hubiere impuesto, o pudiera imponérsele como consecuencia de causas pendientes, la pena accesoria de separación del servicio o pérdida de empleo, la amnistía determinará la extinción de las penas principales y el reconocimiento, en las condiciones más beneficiosas, de los derechos pasivos que les correspondan en su situación.

ARTÍCULO SÉPTIMO.

Los efectos y beneficios de la amnistía a que se refieren los cuatro primeros artículos serán en cada caso los siguientes:

A) La reintegración en la plenitud de sus derechos activos y pasivos de los funcionarios civiles sancionados, así como la reincorporación de los mismos a sus respectivos cuerpos, si hubiesen sido separados. Los funcionarios repuestos no tendrán derecho al percibo de haberes por el tiempo en que no hubieren prestado servicios efectivos, pero se les reconocerá la antigüedad que les corresponda como si no hubiera habido interrupción en la prestación de los servicios.

B) El reconocimiento a los herederos de los fallecidos del derecho a percibir las prestaciones debidas.

C) La eliminación de los antecedentes penales y notas desfavorables en expedientes personales, aun cuando el sancionado hubiese fallecido.

D) La percepción de haber pasivo que corresponda, en el caso de los militares profesionales, con arreglo al empleo que tuvieren en la fecha del acto amnistiado.

E) La percepción del haber pasivo que corresponda a los miembros de las fuerzas de orden público, incluso los que hubiesen pertenecido a cuerpos extinguidos.

ARTÍCULO OCTAVO.

La amnistía deja sin efecto las resoluciones judiciales y actos administrativos o gubernativos que hayan producido despidos, sanciones, limitaciones o suspensiones de los derechos activos o pasivos de los trabajadores por cuenta ajena, derivados de los hechos contemplados en los artículos primero y quinto de la presente ley, restituyendo a los afectados todos los derechos que tendrían en el momento de aplicación de la misma de no haberse producido aquellas medidas, incluidas las cotizaciones de la seguridad social y mutualismo laboral que, como situación de asimiladas al alta, serán de cargo del Estado.

ARTÍCULO NOVENO.

La aplicación de la amnistía, en cada caso, corresponderá con exclusividad a los jueces, tribunales y autoridades judiciales correspondientes, quienes adoptarán, de acuerdo con las leyes procesales en vigor y con carácter de urgencia, las decisiones pertinentes en cumplimiento de esta ley, cualquiera que sea el estado de tramitación del proceso y la jurisdicción de que se trate.

La decisión se adoptará en el plazo máximo de tres meses, sin perjuicio de los ulteriores recursos, que no tendrán efectos suspensivos.

La amnistía se aplicará de oficio o a instancia de parte con audiencia, en todo caso, del Ministerio Fiscal. La acción para solicitarla será pública.

ARTÍCULO DIEZ.

La autoridad judicial competente ordenará la inmediata libertad de los beneficiados por la amnistía que se hallaren en prisión y dejará sin efecto las órdenes de busca y captura de los que estuviesen declarados en rebeldía.

ARTÍCULO ONCE.

No obstante lo dispuesto en el artículo noveno, la administración aplicará la amnistía de oficio en los procedimientos administrativos en tramitación y a instancia de parte, en cualquier caso.

ARTÍCULO DOCE.

La presente ley entrará en vigor el mismo día de su publicación en el "Boletín Oficial del Estado".

Dada en Madrid a quince de octubre de mil novecientos setenta y siete.-Juan Carlos.-el Presidente de las Cortes, Antonio Hernández Gil.

APPENDIX 2

53410 Jueves 27 diciembre 2007 BOE núm. 310

22296 *LEY 52/2007, de 26 de diciembre, por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura.*

JUAN CARLOS I REY DE ESPAÑA

A todos los que la presente vieren y entendieren. Sabed: Que las Cortes Generales han aprobado y Yo vengo en sancionar la siguiente ley.

EXPOSICIÓN DE MOTIVOS

El espíritu de reconciliación y concordia, y de respeto al pluralismo y a la defensa pacífica de todas las ideas, que guió la Transición, nos permitió dotarnos de una Constitución, la de 1978, que tradujo jurídicamente esa voluntad de reencuentro de los españoles, articulando un Estado social y democrático de derecho con clara vocación integradora. El espíritu de la Transición da sentido al modelo constitucional de convivencia más fecundo que hayamos disfrutado nunca y explica las diversas medidas y derechos que se han ido reconociendo, desde el origen mismo de todo el período democrático, en favor de las personas que, durante los decenios anteriores a la Constitución, sufrieron las consecuencias de la guerra civil y del régimen dictatorial que la sucedió.

Pese a ese esfuerzo legislativo, quedan aún iniciativas por adoptar para dar cumplida y definitiva respuesta a las demandas de esos ciudadanos, planteadas tanto en el ámbito parlamentario como por distintas asociaciones cívicas. Se trata de peticiones legítimas y justas, que nuestra democracia, apelando de nuevo a su espíritu fundacional de concordia, y en el marco de la Constitución, no puede dejar de atender.

Por ello mismo, esta Ley atiende a lo manifestado por la Comisión Constitucional del Congreso de los Diputados que el 20 de noviembre de 2002 aprobó por unanimidad una Proposición no de Ley en la que el órgano de representación de la ciudadanía reiteraba que «nadie puede sentirse legitimado, como ocurrió en el pasado, para utilizar la violencia con la finalidad de imponer sus convicciones políticas y establecer regímenes totalitarios contrarios a la libertad y dignidad de todos los ciudadanos, lo que merece la condena y repulsa de nuestra sociedad democrática». La presente Ley asume esta Declaración así como la condena del franquismo contenida en el Informe de la Asamblea Parlamentaria del Consejo de Europa firmado en París el 17 de marzo de 2006 en el que se denunciaron las graves violaciones de Derechos Humanos cometidas en España entre los años 1939 y 1975.

Es la hora, así, de que la democracia española y las generaciones vivas que hoy disfrutan de ella honren y recuperen para siempre a todos los que directamente padecieron las injusticias y agravios producidos, por unos u otros motivos políticos o

ideológicos o de creencias religiosas, en aquellos dolorosos períodos de nuestra historia. Desde luego, a quienes perdieron la vida. Con ellos, a sus familias. También a quienes perdieron su libertad, al padecer prisión, deportación, confiscación de sus bienes, trabajos forzosos o internamientos en campos de concentración dentro o fuera de nuestras fronteras. También, en fin, a quienes perdieron la patria al ser empujados a un largo, desgarrador y, en tantos casos, irreversible exilio. Y, por último, a quienes en distintos momentos lucharon por la defensa de los valores democráticos, como los integrantes del Cuerpo de Carabineros, los brigadistas internacionales, los combatientes guerrilleros, cuya rehabilitación fue unánimemente solicitada por el Pleno del Congreso de los Diputados de 16 de mayo de 2001, o los miembros de la Unión Militar Democrática, que se autodisolvió con la celebración de las primeras elecciones democráticas.

En este sentido, la Ley sienta las bases para que los poderes públicos lleven a cabo políticas públicas dirigidas al conocimiento de nuestra historia y al fomento de la memoria democrática.

La presente Ley parte de la consideración de que los diversos aspectos relacionados con la memoria personal y familiar, especialmente cuando se han visto afectados por conflictos de carácter público, forman parte del estatuto jurídico de la ciudadanía democrática, y como tales son abordados en el texto. Se reconoce, en este sentido, un derecho individual a la memoria personal y familiar de cada ciudadano, que encuentra su primera manifestación en la Ley en el reconocimiento general que en la misma se proclama en su artículo 2.

En efecto, en dicho precepto se hace una proclamación general del carácter injusto de todas las condenas, sanciones y expresiones de violencia personal producidas, por motivos inequívocamente políticos o ideológicos, durante la Guerra Civil, así como las que, por las mismas razones, tuvieron lugar en la Dictadura posterior.

Esta declaración general, contenida en el artículo 2, se complementa con la previsión de un procedimiento específico para obtener una Declaración personal, de contenido rehabilitador y reparador, que se abre como un derecho a todos los perjudicados, y que podrán ejercer ellos mismos o sus familiares.

En el artículo 3 de la Ley se declara la ilegitimidad de los tribunales, jurados u órganos de cualquier naturaleza administrativa creados con vulneración de las más elementales garantías del derecho a un proceso justo, así como la ilegitimidad de las sanciones y condenas de carácter personal impuestas por motivos políticos, ideológicos o de creencias religiosas. Se subraya, así, de forma inequívoca, la carencia actual de vigencia jurídica de aquellas disposiciones y resoluciones contrarias a los derechos humanos y se contribuye a la rehabilitación moral de quienes sufrieron tan injustas sanciones y condenas.

En este sentido, la Ley incluye una disposición derogatoria que, de forma expresa, priva de vigencia jurídica a aquellas normas dictadas bajo la Dictadura manifiestamente represoras y contrarias a los derechos fundamentales con el doble objetivo de proclamar su formal expulsión del ordenamiento jurídico e impedir su invocación por cualquier autoridad administrativa y judicial.

En los artículos 5 a 9 se establece el reconocimiento de diversas mejoras de derechos económicos ya recogidos en nuestro Ordenamiento. En esta misma dirección, se prevé el derecho a una indemnización en favor de todas aquellas personas que perdieron

la vida en defensa de la democracia, de la democracia que hoy todos disfrutamos, y que no habían recibido hasta ahora la compensación debida (art. 10).

Se recogen diversos preceptos (arts. 11 a 14) que, atendiendo también en este ámbito una muy legítima demanda de no pocos ciudadanos, que ignoran el paradero de sus familiares, algunos aún en fosas comunes, prevén medidas e instrumentos para que las Administraciones públicas faciliten, a los interesados que lo soliciten, las tareas de localización, y, en su caso, identificación de los desaparecidos, como una última prueba de respeto hacia ellos.

Se establecen, asimismo, una serie de medidas (arts. 15 y 16) en relación con los símbolos y monumentos conmemorativos de la Guerra Civil o de la Dictadura, sustentadas en el principio de evitar toda exaltación de la sublevación militar, de la Guerra Civil y de la represión de la Dictadura, en el convencimiento de que los ciudadanos tienen derecho a que así sea, a que los símbolos públicos sean ocasión de encuentro y no de enfrentamiento, ofensa o agravio.

El legislador considera de justicia hacer un doble reconocimiento singularizado. En primer lugar, a los voluntarios integrantes de las Brigadas internacionales, a los que se les permitirá acceder a la nacionalidad española sin necesidad de que renuncien a la que ostenten hasta este momento (art. 18); y, también, a las asociaciones ciudadanas que se hayan significado en la defensa de la dignidad de las víctimas de la violencia política a que se refiere esta Ley (art. 19).

Con el fin de facilitar la recopilación y el derecho de acceso a la información histórica sobre la Guerra Civil, la Ley refuerza el papel del actual Archivo General de la Guerra Civil Española, con sede en Salamanca, integrándolo en el Centro Documental de la Memoria Histórica también con sede en la ciudad de Salamanca, y estableciendo que se le dé traslado de toda la documentación existente en otros centros estatales (arts. 20 a 22).

La presente ley amplía la posibilidad de adquisición de la nacionalidad española a los descendientes hasta el primer grado de quienes hubiesen sido originariamente españoles. Con ello se satisface una legítima pretensión de la emigración española, que incluye singularmente a los descendientes de quienes perdieron la nacionalidad española por el exilio a consecuencia de la Guerra Civil o la Dictadura.

En definitiva, la presente Ley quiere contribuir a cerrar heridas todavía abiertas en los españoles y a dar satisfacción a los ciudadanos que sufrieron, directamente o en la persona de sus familiares, las consecuencias de la tragedia de la Guerra Civil o de la represión de la Dictadura.

Quiere contribuir a ello desde el pleno convencimiento de que, profundizando de este modo en el espíritu del reencuentro y de la concordia de la Transición, no son sólo esos ciudadanos los que resultan reconocidos y honrados sino también la Democracia española en su conjunto. No es tarea del legislador implantar una determinada memoria colectiva. Pero sí es deber del legislador, y cometido de la ley, reparar a las víctimas, consagrar y proteger, con el máximo vigor normativo, el derecho a la memoria personal y familiar como expresión de plena ciudadanía democrática, fomentar los valores constitucionales y promover el conocimiento y la reflexión sobre nuestro pasado, para evitar que se repitan situaciones de intolerancia y violación de derechos humanos como las entonces vividas.

Este es el compromiso al que el texto legal y sus consecuencias jurídicas responden.

Artículo 1. *Objeto de la Ley.*

1. La presente Ley tiene por objeto reconocer y ampliar derechos a favor de quienes padecieron persecución o violencia, por razones políticas, ideológicas, o de creencia religiosa, durante la Guerra Civil y la Dictadura, promover su reparación moral y la recuperación de su memoria personal y familiar, y adoptar medidas complementarias destinadas a suprimir elementos de división entre los ciudadanos, todo ello con el fin de fomentar la cohesión y solidaridad entre las diversas generaciones de españoles en torno a los principios, valores y libertades constitucionales.

2. Mediante la presente Ley, como política pública, se pretende el fomento de los valores y principios democráticos, facilitando el conocimiento de los hechos y circunstancias acaecidos durante la Guerra civil y la Dictadura, y asegurando la preservación de los documentos relacionados con ese período histórico y depositados en archivos públicos.

Artículo 2. *Reconocimiento general.*

1. Como expresión del derecho de todos los ciudadanos a la reparación moral y a la recuperación de su memoria personal y familiar, se reconoce y declara el carácter radicalmente injusto de todas las condenas, sanciones y cualesquiera formas de violencia personal producidas por razones políticas, ideológicas o de creencia religiosa, durante la Guerra Civil, así como las sufridas por las mismas causas durante la Dictadura.

2. Las razones a que se refiere el apartado anterior incluyen la pertenencia, colaboración o relación con partidos políticos, sindicatos, organizaciones religiosas o militares, minorías étnicas, sociedades secretas, logias masónicas y grupos de resistencia, así como el ejercicio de conductas vinculadas con opciones culturales, lingüísticas o de orientación sexual.

3. Asimismo, se reconoce y declara la injusticia que supuso el exilio de muchos españoles durante la Guerra Civil y la Dictadura.

Artículo 3. *Declaración de ilegitimidad.*

1. Se declara la ilegitimidad de los tribunales, jurados y cualesquiera otros órganos penales o administrativos que, durante la Guerra Civil, se hubieran constituido para imponer, por motivos políticos, ideológicos o de creencia religiosa, condenas o sanciones de carácter personal, así como la de sus resoluciones.

2. Por ser contrarios a Derecho y vulnerar las más elementales exigencias del derecho a un juicio justo, se declara en todo caso la ilegitimidad del Tribunal de Represión de la Masonería y el Comunismo, el Tribunal de Orden Público, así como los Tribunales de Responsabilidades Políticas y Consejos de Guerra constituidos por motivos políticos, ideológicos o de creencia religiosa de acuerdo con lo dispuesto en el artículo 2 de la presente Ley.

3. Igualmente, se declaran ilegítimas, por vicios de forma y fondo, las condenas y sanciones dictadas por motivos políticos, ideológicos o de creencia por cualesquiera

tribunales u órganos penales o administrativos durante la Dictadura contra quienes defendieron la legalidad institucional anterior, pretendieron el restablecimiento de un régimen democrático en España o intentaron vivir conforme a opciones amparadas por derechos y libertades hoy reconocidos por la Constitución.

Artículo 4. Declaración de reparación y reconocimiento personal.

1. Se reconoce el derecho a obtener una Declaración de reparación y reconocimiento personal a quienes durante la Guerra Civil y la Dictadura padecieron los efectos de las resoluciones a que se refieren los artículos anteriores. Este derecho es plenamente compatible con los demás derechos y medidas reparadoras reconocidas en normas anteriores, así como con el ejercicio de las acciones a que hubiere lugar ante los tribunales de justicia.

2. Tendrá derecho a solicitar la Declaración las personas afectadas y, en caso de que las mismas hubieran fallecido, el cónyuge o persona ligada por análoga relación de afectividad, sus ascendientes, sus descendientes y sus colaterales hasta el segundo grado.

3. Asimismo, podrán solicitar la Declaración las instituciones públicas, previo acuerdo de su órgano colegiado de gobierno, respecto de quienes, careciendo de cónyuge o de los familiares mencionados en el apartado anterior, hubiesen desempeñado cargo o actividad relevante en las mismas.

4. Las personas o instituciones previstas en los apartados anteriores podrán interesar del Ministerio de Justicia la expedición de la Declaración. A tal fin, podrán aportar toda la documentación que sobre los hechos o el procedimiento obre en su poder, así como todos aquellos antecedentes que se consideren oportunos.

5. La Declaración a que se refiere esta Ley será compatible con cualquier otra fórmula de reparación prevista en el ordenamiento jurídico y no constituirá título para el reconocimiento de responsabilidad patrimonial del Estado ni de cualquier Administración Pública, ni dará lugar a efecto, reparación o indemnización de índole económica o profesional. El Ministerio de Justicia denegará la expedición de la Declaración cuando no se ajuste a lo dispuesto en esta Ley.

Artículo 5. Mejora de las prestaciones reconocidas por la Ley 5/1979, de 18 de septiembre, de reconocimiento de pensiones, asistencia médico-farmacéutica y asistencia social a favor de las viudas, hijos y demás familiares de los españoles fallecidos como consecuencia o con ocasión de la pasada Guerra Civil.

1. Con el fin de completar la acción protectora establecida por la Ley 5/1979, de 18 de septiembre, de reconocimiento de pensiones, asistencia médico-farmacéutica y asistencia social a favor de las viudas, hijos y demás familiares de los españoles fallecidos como consecuencia o con ocasión de la pasada Guerra Civil, se modifican las letras a) y c) del número 2 de su artículo primero, que quedan redactadas como sigue: «a) Por heridas, enfermedad o lesión accidental originadas como consecuencia de la guerra. c) Como consecuencia de actuaciones u opiniones políticas y sindicales, cuando pueda establecerse asimismo una relación de causalidad personal y directa entre la Guerra Civil y el fallecimiento.»

2. Las pensiones que se reconozcan al amparo de lo dispuesto en el apartado anterior tendrán efectos económicos desde el primer día del mes siguiente a la fecha de entrada en vigor de la presente Ley, siendo de aplicación, en su caso, las normas que regulan la caducidad de efectos en el Régimen de Clases Pasivas del Estado.

Artículo 6. Importe de determinadas pensiones de orfandad.

1. La cuantía de las pensiones de orfandad a favor de huérfanos no incapacitados mayores de veintiún años causadas por personal no funcionario al amparo de las Leyes 5/1979, de 18 de septiembre, y 35/1980, de 26 de junio, se establece en 132,86 euros mensuales.

2. A las pensiones de orfandad a que se refiere el presente artículo les será de aplicación el sistema de complementos económicos vigentes y experimentarán las revalorizaciones que establezcan las Leyes de Presupuestos Generales del Estado para cada año.

3. Lo dispuesto en los dos apartados anteriores tendrá efectividad económica desde el primer día del mes siguiente a la fecha de entrada en vigor de la presente Ley, sin perjuicio de las normas que sobre caducidad de efectos rigen en el Régimen de Clases Pasivas del Estado.

Artículo 7. Modificación del ámbito de aplicación de las indemnizaciones a favor de quienes sufrieron prisión como consecuencia de los supuestos contemplados en la Ley 46/1977, de 15 de octubre, de Amnistía.

1. Con el fin de incorporar supuestos en su día excluidos de la concesión de indemnizaciones por tiempos de estancia en prisión durante la Dictadura, se modifican los apartados uno y dos de la disposición adicional decimoctava de la Ley 4/1990, de 29 de junio, de Presupuestos Generales del Estado para el año 1990, que quedan redactados como sigue:

«Uno. Quienes acrediten haber sufrido privación de libertad en establecimientos penitenciarios o en Batallones Disciplinarios, en cualquiera de sus modalidades, durante tres o más años, como consecuencia de los supuestos contemplados en la Ley 46/1977, de 15 de octubre, y tuvieran cumplida la edad de sesenta años en 31 de diciembre de 1990, tendrán derecho a percibir por una sola vez una indemnización de acuerdo con la siguiente escala: Tres o más años de prisión: 6.010,12 € Por cada tres años completos adicionales: 1.202,02 €

Dos. Si el causante del derecho a esta indemnización hubiese fallecido, y en 31 de diciembre de 1990 hubiera podido tener cumplidos sesenta años de edad tendrá derecho a la misma el cónyuge superviviente, que sea pensionista de viudedad por tal causa o que, aun no teniendo esta condición, acredite ser cónyuge viudo del causante.»

2. Se añaden un apartado dos bis y un apartado siete a la Disposición adicional decimoctava de la Ley 4/1990, de 29 de junio de Presupuestos del Estado con la siguiente redacción: «Dos bis. Una indemnización de 9.616,18 € se reconocerá al cónyuge superviviente de quien, habiendo sufrido privación de libertad por tiempo inferior a tres años como consecuencia de los supuestos contemplados en la Ley 46/1977, de 15 de octubre, hubiese sido condenado por ellos a pena de muerte efectivamente ejecutada y no haya

visto reconocida en su favor, por esta circunstancia, pensión o indemnización con cargo a alguno de los sistemas públicos de protección social.» «Siete. Quienes se consideren con derecho a los beneficios establecidos en los apartados uno y dos anteriores, ya sean los propios causantes o sus cónyuges supervivientes o pensionistas de viudedad por tal causa, deberán solicitarlos expresamente ante la citada Dirección General de Costes de Personal y Pensiones Públicas.»

Artículo 8. Tributación en el Impuesto sobre la Renta de las Personas Físicas de las indemnizaciones a favor de quienes sufrieron privación de libertad como consecuencia de los supuestos contemplados en la Ley 46/1977, de 15 de octubre, de Amnistía.

Con efectos desde el 1 de enero de 2005, se añade una nueva letra u) al artículo 7 del texto refundido de la Ley del Impuesto sobre la Renta de las Personas Físicas, aprobado por el Real Decreto Legislativo 3/2004, de 5 de marzo, que quedará redactada de la siguiente manera: «u) Las indemnizaciones previstas en la legislación del Estado y de las Comunidades Autónomas para compensar la privación de libertad en establecimientos penitenciarios como consecuencia de los supuestos contemplados en la Ley 46/1977, de 15 de octubre, de Amnistía.»

Artículo 9. Ayudas para compensar la carga tributaria de las indemnizaciones percibidas desde el 1 de enero de 1999 por privación de libertad como consecuencia de los supuestos contemplados en la Ley 46/1977, de 15 de octubre, de Amnistía.

1. Las personas que hubieran percibido desde el 1 de enero de 1999 hasta la fecha de entrada en vigor de la presente Ley las indemnizaciones previstas en la legislación del Estado y de las Comunidades Autónomas para compensar la privación de libertad en establecimientos penitenciarios como consecuencia de los supuestos contemplados en la Ley 46/1977, de 15 de octubre, de Amnistía, podrán solicitar, en la forma y plazos que se determinen, el abono de una ayuda cuantificada en el 15 por ciento de las cantidades que, por tal concepto, hubieran consignado en la declaración del Impuesto sobre la Renta de las Personas Físicas de cada uno de dichos períodos impositivos.

2. Si las personas a que se refiere el apartado 1 anterior hubieran fallecido, el derecho a la ayuda corresponderá a sus herederos, quienes podrán solicitarla.

3. Las ayudas percibidas en virtud de lo dispuesto en el presente artículo estarán exentas del Impuesto sobre la Renta de las Personas Físicas.

4. Por Orden del Ministro de Economía y Hacienda se determinará el procedimiento, las condiciones para su obtención y el órgano competente para el reconocimiento y abono de esta ayuda.

Artículo 10. Reconocimiento en favor de personas fallecidas en defensa de la democracia durante el período comprendido entre 1 de enero de 1968 y 6 de octubre de 1977.

1. En atención a las circunstancias excepcionales que concurrieron en su muerte, se reconoce el derecho a una indemnización, por una cuantía de 135.000 € a los beneficiarios de quienes fallecieron durante el período comprendido entre el 1 de enero

de 1968 y el 6 de octubre de 1977, en defensa y reivindicación de las libertades y derechos democráticos.

2. Serán beneficiarios de la indemnización a que se refiere el apartado primero de este artículo los hijos y el cónyuge de la persona fallecida, si no estuviere separado legalmente ni en proceso de separación o nulidad matrimonial, o la persona que hubiere venido conviviendo con ella de forma permanente con análoga relación de afectividad a la del cónyuge durante, al menos, los dos años inmediatamente anteriores al momento del fallecimiento, salvo que hubieren tenido descendencia en común, en cuyo caso bastará la mera convivencia.

Subsidiariamente, si no existieran los anteriores, serán beneficiarios, por orden sucesivo y excluyente, los padres, nietos, los hermanos de la persona fallecida y los hijos de la persona conviviente, cuando dependieren económicamente del fallecido. Cuando se produzca la concurrencia de diversas personas que pertenezcan a un grupo de los que tienen derecho a la indemnización, la cuantía total máxima se repartirá por partes iguales entre todos los que tengan derecho por la misma condición, excepto cuando concurren el cónyuge o persona con análoga relación afectiva y los hijos del fallecido, en cuyo caso la ayuda se distribuirá al 50 por ciento entre el cónyuge o la persona con análoga relación de afectividad y el conjunto de los hijos.

3. Procederá el abono de la indemnización siempre que por los mismos hechos no se haya recibido indemnización o compensación económica alguna o, habiéndose recibido, sea de cuantía inferior a la determinada en este artículo.

4. El Gobierno, mediante Real Decreto, determinará las condiciones y el procedimiento para la concesión de la indemnización prevista en este artículo.

5. Los beneficiarios de la indemnización establecida en este artículo dispondrán del plazo de un año, a contar desde la entrada en vigor del Real Decreto a que se refiere el apartado anterior, para presentar su solicitud ante la Comisión en él mencionada.

Artículo 11. Colaboración de las Administraciones públicas con los particulares para la localización e identificación de víctimas.

1. Las Administraciones públicas, en el marco de sus competencias, facilitarán a los descendientes directos de las víctimas que así lo soliciten las actividades de indagación, localización e identificación de las personas desaparecidas violentamente durante la Guerra Civil o la represión política posterior y cuyo paradero se ignore. Lo previsto en el párrafo anterior podrá aplicarse respecto de las entidades que, constituidas antes de 1 de junio de 2004, incluyan el desarrollo de tales actividades entre sus fines.

2. La Administración General del Estado elaborará planes de trabajo y establecerá subvenciones para sufragar gastos derivados de las actividades contempladas en este artículo.

Artículo 12. Medidas para la identificación y localización de víctimas.

1. El Gobierno, en colaboración con todas las Administraciones públicas, elaborará un protocolo de actuación científica y multidisciplinar que asegure la colaboración institucional y una adecuada intervención en las exhumaciones. Asimismo,

celebrará los oportunos convenios de colaboración para subvencionar a las entidades sociales que participen en los trabajos.

2. Las Administraciones públicas elaborarán y pondrán a disposición de todos los interesados, dentro de su respectivo ámbito territorial, mapas en los que consten los terrenos en que se localicen los restos de las personas a que se refiere el artículo anterior, incluyendo toda la información complementaria disponible sobre los mismos. El Gobierno determinará el procedimiento y confeccionará un mapa integrado que comprenda todo el territorio español, que será accesible para todos los ciudadanos interesados y al que se incorporarán los datos que deberán ser remitidos por las distintas Administraciones públicas competentes.

Las áreas incluidas en los mapas serán objeto de especial preservación por sus titulares, en los términos que reglamentariamente se establezcan. Asimismo, los poderes públicos competentes adoptarán medidas orientadas a su adecuada preservación.

Artículo 13. Autorizaciones administrativas para actividades de localización e identificación.

1. Las Administraciones públicas competentes autorizarán las tareas de prospección encaminadas a la localización de restos de las víctimas referidas en el apartado 1 del artículo 11, de acuerdo con la normativa sobre patrimonio histórico y el protocolo de actuación que se apruebe por el Gobierno. Los hallazgos se pondrán inmediatamente en conocimiento de las autoridades administrativas y judiciales competentes.

2. Las Administraciones públicas, en el ejercicio de sus competencias, establecerán el procedimiento y las condiciones en que los descendientes directos de las víctimas referidas en el apartado 1 del artículo 11, o las entidades que actúen en su nombre, puedan recuperar los restos enterrados en las fosas correspondientes, para su identificación y eventual traslado a otro lugar.

3. En cualquier caso, la exhumación se someterá a autorización administrativa por parte de la autoridad competente, en la que deberá ponderarse la existencia de oposición por cualquiera de los descendientes directos de las personas cuyos restos deban ser trasladados. A tales efectos, y con carácter previo a la correspondiente resolución, la administración competente deberá dar adecuada publicidad a las solicitudes presentadas, comunicando en todo caso su existencia a la Administración General del Estado para su inclusión en el mapa referido en el apartado primero del artículo anterior.

4. Los restos que hayan sido objeto de traslado y no fuesen reclamados serán inhumados en el cementerio correspondiente al término municipal en que se encontraran.

Artículo 14. Acceso a los terrenos afectados por trabajos de localización e identificación.

1. La realización de las actividades de localización y eventual identificación o traslado de los restos de las personas referidas en el apartado 1 del artículo 13 se constituye en fin de utilidad pública e interés social, a los efectos de permitir, en su caso y de acuerdo con los artículos 108 a 119 de la Ley de Expropiación Forzosa, la ocupación temporal de los terrenos donde deban realizarse.

2. Para las actividades determinadas en el apartado anterior, las autoridades competentes autorizarán, salvo causa justificada de interés público, la ocupación temporal de los terrenos de titularidad pública.

3. En el caso de terrenos de titularidad privada, los descendientes, o las organizaciones legitimadas de acuerdo con el apartado anterior, deberán solicitar el consentimiento de los titulares de derechos afectados sobre los terrenos en que se hallen los restos. Si no se obtuviere dicho consentimiento, las Administraciones públicas podrán autorizar la ocupación temporal, siempre tras audiencia de los titulares de derechos afectados, con consideración de sus alegaciones, y fijando la correspondiente indemnización a cargo de los ocupantes.

Artículo 15. *Símbolos y monumentos públicos.*

1. Las Administraciones públicas, en el ejercicio de sus competencias, tomarán las medidas oportunas para la retirada de escudos, insignias, placas y otros objetos o menciones conmemorativas de exaltación, personal o colectiva, de la sublevación militar, de la Guerra Civil y de la represión de la Dictadura. Entre estas medidas podrá incluirse la retirada de subvenciones o ayudas públicas.

2. Lo previsto en el apartado anterior no será de aplicación cuando las menciones sean de estricto recuerdo privado, sin exaltación de los enfrentados, o cuando concurren razones artísticas, arquitectónicas o artístico-religiosas protegidas por la ley.

3. El Gobierno colaborará con las Comunidades Autónomas y las Entidades Locales en la elaboración de un catálogo de vestigios relativos a la Guerra Civil y la Dictadura a los efectos previstos en el apartado anterior.

4. Las Administraciones públicas podrán retirar subvenciones o ayudas a los propietarios privados que no actúen del modo previsto en el apartado 1 de este artículo.

Artículo 16. *Valle de los Caídos.*

1. El Valle de los Caídos se regirá estrictamente por las normas aplicables con carácter general a los lugares de culto y a los cementerios públicos.

2. En ningún lugar del recinto podrán llevarse a cabo actos de naturaleza política ni exaltadores de la Guerra Civil, de sus protagonistas, o del franquismo.

Artículo 17. *Edificaciones y obras realizadas mediante trabajos forzosos.*

El Gobierno, en colaboración con las demás Administraciones públicas confeccionará un censo de edificaciones y obras realizadas por miembros de los Batallones Disciplinarios de Soldados Trabajadores, así como por prisioneros en campos de concentración, Batallones de Trabajadores y prisioneros en Colonias Penitenciarias Militarizadas.

Artículo 18. *Concesión de la nacionalidad española a los voluntarios integrantes de las Brigadas Internacionales.*

1. Con el fin de hacer efectivo el derecho que reconoció el Real Decreto 39/1996, de 19 de enero, a los voluntarios integrantes de las Brigadas Internacionales que participaron en la Guerra Civil de 1936 a 1939, no les será de aplicación la exigencia de renuncia a su anterior nacionalidad requerida en el artículo 23, letra b, del Código Civil, en lo que se refiere a la adquisición por carta de naturaleza de la nacionalidad española.

2. Mediante Real Decreto aprobado por el Consejo de Ministros, se determinarán los requisitos y el procedimiento a seguir para la adquisición de la nacionalidad española por parte de las personas mencionadas en el apartado anterior.

Artículo 19. Reconocimiento a las asociaciones de víctimas.

Se reconoce la labor de las asociaciones, fundaciones y organizaciones que hayan destacado en la defensa de la dignidad de todas las víctimas de la violencia política a la que se refiere esta Ley. El Gobierno podrá conceder, mediante Real Decreto, las distinciones que considere oportunas a las referidas entidades.

Artículo 20. Creación del Centro Documental de la Memoria Histórica y Archivo General de la Guerra Civil.

1. De conformidad con lo previsto en la Ley 21/2005, de 17 de noviembre, se constituye el Centro Documental de la Memoria Histórica, con sede en la ciudad de Salamanca.

2. Son funciones del Centro Documental de la Memoria Histórica:

- a) Mantener y desarrollar el Archivo General de la Guerra Civil Española creado por Real Decreto 426/1999, de 12 de marzo. A tal fin, y mediante el procedimiento que reglamentariamente se determine, se integrarán en este Archivo todos los documentos originales o copias fidedignas de los mismos referidos a la Guerra Civil de 1936-1939 y la represión política subsiguiente sitos en museos, bibliotecas o archivos de titularidad estatal, en los cuales, quedará una copia digitalizada de los mencionados documentos. Asimismo, la Administración General del Estado procederá a la recopilación de los testimonios orales relevantes vinculados al indicado período histórico para su remisión e integración en el Archivo General.
- b) Recuperar, reunir, organizar y poner a disposición de los interesados los fondos documentales y las fuentes secundarias que puedan resultar de interés para el estudio de la Guerra Civil, la Dictadura franquista, la resistencia guerrillera contra ella, el exilio, el internamiento de españoles en campos de concentración durante la Segunda Guerra Mundial y la transición.
- c) Fomentar la investigación histórica sobre la Guerra Civil, el franquismo, el exilio y la Transición, y contribuir a la difusión de sus resultados.
- d) Impulsar la difusión de los fondos del Centro, y facilitar la participación activa de los usuarios y de sus organizaciones representativas.
- e) Otorgar ayudas a los investigadores, mediante premios y becas, para que continúen desarrollando su labor académica y de investigación sobre la Guerra Civil y la Dictadura.
- f) Reunir y poner a disposición de los interesados información y documentación sobre procesos similares habidos en otros países.

3. La estructura y funcionamiento del Centro Documental de la Memoria Histórica se establecerá mediante Real Decreto acordado en Consejo de Ministros.

Artículo 21. *Adquisición y protección de documentos sobre la Guerra Civil y la Dictadura.*

1. La Administración General del Estado aprobará, con carácter anual y con la dotación que en cada caso se establezca en los Presupuestos Generales del Estado, un programa de convenios para la adquisición de documentos referidos a la Guerra Civil o a la represión política subsiguiente que obren en archivos públicos o privados, nacionales o extranjeros, ya sean en versión original o a través de cualquier instrumento que permita archivar, conocer o reproducir palabras, datos o cifras con fidelidad al original. Los mencionados fondos documentales se incorporarán al Archivo General de la Guerra Civil Española.

2. De conformidad con lo dispuesto en la Ley 16/1985, de 25 de junio, de Patrimonio Histórico Español, los documentos obrantes en archivos privados y públicos relativos a la Guerra Civil y la Dictadura se declaran constitutivos del Patrimonio Documental y Bibliográfico, sin perjuicio de lo dispuesto en el artículo 22.

Artículo 22. *Derecho de acceso a los fondos de los archivos públicos y privados.*

1. A los efectos de lo previsto en esta Ley, se garantiza el derecho de acceso a los fondos documentales depositados en los archivos públicos y la obtención de las copias que se soliciten.

2. Lo previsto en el apartado anterior será de aplicación, en sus propios términos, a los archivos privados sostenidos, total o parcialmente, con fondos públicos.

3. Los poderes públicos adoptarán las medidas necesarias para la protección, la integridad y catalogación de estos documentos, en particular en los casos de mayor deterioro o riesgo de degradación

Disposición adicional primera. *Adecuación del Archivo General de la Guerra Civil Española.*

Se autoriza al Gobierno a que lleve a cabo las acciones necesarias en orden a organizar y reestructurar el Archivo General de la Guerra Civil Española.

Disposición adicional segunda.

Las previsiones contenidas en la presente Ley son compatibles con el ejercicio de las acciones y el acceso a los procedimientos judiciales ordinarios y extraordinarios establecidos en las leyes o en los tratados y convenios internacionales suscritos por España.

Disposición adicional tercera. *Marco institucional.*

En el plazo de un año a partir de la entrada en vigor de esta Ley, el Gobierno establecerá el marco institucional que impulse las políticas públicas relativas a la conservación y fomento de la memoria democrática.

Disposición adicional cuarta. *Habilitación al Gobierno para el reconocimiento de indemnizaciones extraordinarias.*

1. Se autoriza al Gobierno a que, en el plazo de 6 meses, mediante Real Decreto, determine el alcance, condiciones y procedimiento para la concesión de indemnizaciones extraordinarias en favor de quienes hubiesen sufrido lesiones incapacitantes por hechos y en las circunstancias y con las condiciones a que se refiere el apartado uno del artículo 10 de la presente Ley.

2. Procederá el reconocimiento de las indemnizaciones previstas en esta disposición siempre que por los mismos hechos no se haya recibido indemnización o compensación económica con cargo a alguno de los sistemas públicos de protección social.

3. Las indemnizaciones establecidas en esta disposición se abonarán directamente a los propios incapacitados y serán intransferibles.

Disposición adicional quinta.

A los efectos de la aplicación de la Ley 37/1984, de 22 de octubre, el personal de la Marina Mercante que fue incorporado al Ejército Republicano desde el 18 de julio de 1936 se considerará incluido en el Decreto de 13 de marzo de 1937 que establecía la incorporación a la reserva naval, el Decreto de 12 de junio de 1937 que aplicaba el anterior fijando el ingreso y escalafonamiento en la citada reserva y la orden circular de 10 de octubre de 1937 que aprueba el reglamento del citado escalafonamiento en desarrollo de los anteriores. Procederá el abono de la pensión correspondiente siempre que, por el mismo supuesto, no se haya recibido compensación económica alguna, o, habiéndose recibido, sea de cuantía inferior a lo determinado en las mencionadas disposiciones.

Disposición adicional sexta.

La fundación gestora del Valle de los Caídos incluirá entre sus objetivos honrar y rehabilitar la memoria de todas las personas fallecidas a consecuencia de la Guerra Civil de 1936-1939 y de la represión política que la siguió con objeto de profundizar en el conocimiento de este período histórico y de los valores constitucionales. Asimismo, fomentará las aspiraciones de reconciliación y convivencia que hay en nuestra sociedad. Todo ello con plena sujeción a lo dispuesto en el artículo 16.

Disposición adicional séptima. *Adquisición de la nacionalidad española.*

1. Las personas cuyo padre o madre hubiese sido originariamente español podrán optar a la nacionalidad española de origen si formalizan su declaración en el plazo de dos años desde la entrada en vigor de la presente

Disposición adicional. Dicho plazo podrá ser prorrogado por acuerdo de Consejo de Ministros hasta el límite de un año.

2. Este derecho también se reconocerá a los nietos de quienes perdieron o tuvieron que renunciar a la nacionalidad española como consecuencia del exilio.

Disposición adicional octava. *Acceso a la consulta de los libros de actas de defunciones de los Registros Civiles.*

El Gobierno, a través del Ministerio de Justicia, en cuanto sea preciso para dar cumplimiento a las previsiones de esta Ley, dictará las disposiciones necesarias para facilitar el acceso a la consulta de los libros de las actas de defunciones de los Registros Civiles dependientes de la Dirección General de los Registros y del Notariado.

Disposición derogatoria.

En congruencia con lo establecido en el punto 3 de la Disposición Derogatoria de la Constitución, se declaran expresamente derogados el Bando de Guerra de 28 de julio de 1936, de la Junta de Defensa Nacional aprobado por Decreto número 79, el Bando de 31 de agosto de 1936 y, especialmente, el Decreto del general Franco, número 55, de 1 de noviembre de 1936: las Leyes de Seguridad del Estado, de 12 de julio de 1940 y 29 de marzo de 1941, de reforma del Código penal de los delitos contra la seguridad del Estado; la Ley de 2 de marzo de 1943 de modificación del delito de Rebelión Militar; el Decreto-Ley de 18 de abril de 1947, sobre Rebelión militar y bandidaje y terrorismo y las Leyes 42/1971 y 44/1971 de reforma del Código de Justicia Militar; las Leyes de 9 de febrero de 1939 y la de 19 de febrero de 1942 sobre responsabilidades políticas y la Ley de 1 de marzo de 1940 sobre represión de la masonería y el comunismo, la Ley de 30 de julio de 1959, de Orden Público y la Ley 15/1963, creadora del Tribunal de Orden Público.

Disposición final primera. *Habilitación para el desarrollo.*

Se habilita al Gobierno y a sus miembros, en el ámbito de sus respectivas competencias, para dictar cuantas disposiciones sean necesarias para el desarrollo y aplicación de lo establecido en esta Ley.

Disposición final segunda. *Entrada en vigor.*

La presente Ley entrará en vigor al día siguiente de su publicación en el Boletín Oficial del Estado, con excepción de la Disposición Adicional Séptima que lo hará al año de su publicación. Por tanto, Mando a todos los españoles, particulares y autoridades, que guarden y hagan guardar esta ley.

Madrid, 26 de diciembre de 2007.

JUAN CARLOS R.

El Presidente del Gobierno,

JOSÉ LUIS RODRÍGUEZ ZAPATERO

CHAPTER 3

Judging Law, Performing Justice: Pedro Almodóvar's *High Heels*

[I]t is always starting out from the Face, from the responsibility for the other that justice appears, which calls for judgment and comparison, a comparison of what is in principle incomparable, for every being is unique; every other is unique.

Emmanuel Levinas—*Entre Nous. Thinking of the Other*

INTRODUCTION

Pedro Almodóvar's *High Heels* (the original Spanish title *Tacones Lejanos*, literally means "Distant Heels," 1991) is a postmodern film that celebrates performance, fluidity, and fragmentation, as ways of being in and understanding the world.¹ In a generic combination of melodrama, comedy, musical, and film noir, *High Heels* tells the story of a turbulent mother/daughter relationship. Following the murder of the daughter's husband (who happens to be the mother's former lover), there is an ensuing criminal investigation by a judge, who, in turn, impersonates the mother in a drag-show. In recent years, Almodóvar's film has received the attention of law-and-film feminist scholar Orit Kamir, who opens up a refreshing line of inquiry. Kamir uses the film as a powerful means to

¹ It is beyond the scope of this paper to outline the abundant debates on the concepts of postmodernity and postmodernism, which have been extensively discussed elsewhere. Yet, if only to clarify my use of such terms, I rely on Linda Hutcheon's distinction between postmodernity and postmodernism. In her view, postmodernity means "the designation of a social and philosophical period or 'condition'" [*Politics of Postmodernism* (New Accents, New York: Routledge, 1989), at 23]. Postmodernism (-ist), in contrast, is the cultural production of this period: "architecture, literature, photography, film, painting, video, dance, music." *Id.* at 1.

explore alternative feminist images of law, judgment, and justice.² In this chapter, I provide new insights into Kamir's feminist jurisprudential reading of the film by placing it within the framework of postmodern jurisprudence, performativity, and queer aesthetics. My aim is to re-conceptualize law through an ethics of alterity, and to go further in the theoretical developments of postmodern accounts of judgment, ethics, and justice. My main argument is that the film's embodiment of law (in the multiple performances of the on-screen Judge) proposes an understanding of "law as a queer performance" that responds effectively to the ethical demands of those marginal subjects who have been traditionally excluded from the law.

In order to explore the legal questions posed by Almodóvar's *High Heels*, I propose five sections for my analysis. I begin with a historical contextualization of the repression of homosexuality under Franco's dictatorship and the radical shift towards sexual liberation in the ensuing democracy. Secondly, after a short summary of the plot of the film, I focus on Kamir's image of caring or motherly law and the reason for its failure to bring justice to the singularity of the Other. I explore the ethical implications of thinking about law as performance rather than as caring mother. In section three, I turn to the cinematic image and explore how it calls upon the viewer for an ethics of response to alterity. In section four, I analyze the camp aesthetics in the film, how they affect the viewers, and the kind of law and judgment produced by this relation. Finally, I close with a brief reference to the recent legal changes in favor of the recognition of same-sex marriage in Spain.

² Orit Kamir, *Framed: Women in Law and Film* (Durham: Duke UP, 2006).

I. LGBT AND LAW UNDER FRANCO AND DEMOCRACY

As shown in the preceding chapter, hundred of thousands of Republicans were illegally detained, imprisoned, tortured, forced into labor, exiled, or “disappeared” during the years of Franco’s dictatorship. Another group of victims of Franco’s repression is that of the lesbians, gays, bisexuals, and transsexuals (LGBT) whose suffering and memory have been silenced until recently. Franco promoted his regime as strong and virile, proclaiming (heterosexual) masculinity, represented in the *macho ibérico* as the figure of Spanish national identity.³ Homosexuality was considered an embarrassment to the nation and a danger to the values of the regime: fatherland, family, and God.⁴ Franco used the traditional values of the Catholic Church, medical pseudo-science, and the media to promote and justify his homophobic ideology and morality.⁵ Whereas the Catholic Church condemned homosexuality as a sin against nature, psychiatrist, Antonio Vallejo Nágera, appointed by Franco as Director of the Military Psychiatric Services and of the Psychological Research Cabinet, claimed that homosexuality was a sexual perversion that should be punished by law.⁶ Culture and media (journals, No-Do, books, films, etc)

³ Tsinonis, Nikolaos, “Memoria y Homosexualidad: Sufrimiento, Olvido y Dignidad” ed. Felipe Gómez Isa, in *El derecho a la memoria* (Bilbao: Alberdania, 2006), pp. 461-496, at 479.

⁴ Gutiérrez-Dorado, Antonio, “La Voz de la Memoria” in *Una Discriminación Universal. La Homosexualidad bajo el Franquismo y la Transición*, ed. Ugarte-Pérez, Javier (Barcelona-Madrid: Editorial Egales, 2008), pp. 247-256, at 248.

⁵ Arnalte, Arturo, “Gays en la Picota. Su Representación en los Medios de Comunicación” in *Una Discriminación Universal. La Homosexualidad bajo el Franquismo y la Transición*, ed. Ugarte-Pérez, Javier (Barcelona-Madrid: Editorial Egales, 2008), pp. 139-170, at 141.

⁶ Adam Donat, Antoni, and Alvar Martínez Vidal, “‘Infanticidas, Violadores, Homosexuales y Perversos de todas las Categorías.’ La Homosexualidad en la Psiquiatría del Franquismo” in *Una Discriminación Universal. La Homosexualidad bajo el Franquismo y la Transición*, ed. Ugarte-Pérez, Javier (Barcelona-Madrid: Editorial Egales, 2008), pp. 109-138.

dehumanized and ridiculed homosexuals, helping to generate an accepted environment of homophobic social attitudes.⁷

Accordingly, a series of discriminatory laws were enacted to prohibit and repress homosexuality.⁸ For instance, Article 431 of the Penal Code of 1944 criminalized acts causing “public scandal,” which was often used by the police to arrest homosexuals. In 1954, Franco reformed the *Ley de Vagos y Maleantes* (Vagrancy Act) of 1933 in order to include homosexuals and declare homosexuality illegal. The law’s stated goal was to protect and correct, rather than to punish, “those subjects who had fallen to the lowest levels of morality.”⁹ Once arrested by the police, homosexuals could be sent to prison or correction camps up to three years. In 1970, the *Ley de Peligrosidad y Rehabilitación Social* (Dangerousness and Social Rehabilitation Law) replaced the Vagrancy Act to declare homosexuals socially dangerous subjects. The word “rehabilitation” was included to emphasize that the law’s goal was to integrate them within the society. To this end, special prisons called *galerías de invertidos* (galleries of deviants) were established, where homosexuals were given psychiatric treatment (usually electric shock therapy) to cure their “deviant” sexual desires.¹⁰ Francoist police used the law to arrest those who appeared to be homosexual. Many homosexuals who were sent to prison were often raped by other inmates and tortured by officials in order to get more information about other homosexuals or just to humiliate them.¹¹ The Church, medicine, media, and law, helped to promote the Francoist vision of homosexuals as sinful, deviant, and criminal subjects,

⁷ Arnalte, *supra* 140.

⁸ See Terrasa Mateu, Jordi, “La Legislación Represiva” in *Una Discriminación Universal. La Homosexualidad bajo el Franquismo y la Transición*, ed. Ugarte-Pérez, Javier (Barcelona-Madrid: Editorial Egales, 2008), pp. 79-107.

⁹ Ley de Vagos y Maleantes, BOE n 198, July 17, 1954.

¹⁰ Terrasa-Mateu, *supra* at 100.

¹¹ Tsinonis, *supra* at 483-484.

and therefore to justify their discrimination, ill-treatment, punishment, and even death. At the end of Franco's dictatorship, thousands of homosexuals had been tortured, imprisoned, locked up in "rehabilitation" centers and mental institutions, or forced into exile.¹²

It is important to note that under the Francoist patriarchal social structure, sexual pleasure was only associated with men; women were relegated to their role of mothers and wives (expected to satisfy their husbands).¹³ The Penal code condemned adultery, abortion, and the use of contraceptives. Educational texts, elaborated by *La Sección Femenina de Falange Española y de las JONS* (the Feminine Section), the only women's organization allowed by the regime, were used to teach children this equation: sexuality = heterosexuality = maternity. Protected by the false idea that women did not enjoy sex, but preferred love and affection, lesbians did not suffer the same repression as gays. The fact that two women kissed or hugged in public or lived together was not considered a public scandal or a sexual perversion as it would be if they were two men, rather it was seen as a way of expressing friendship between women. This made lesbians almost socially "invisible."¹⁴

Although clandestine LGBT organizations such as *Movimiento Español de Liberación Homosexual* (Spanish Gay Liberation Movement) were created at the beginning of the 70s as a reaction to the repressive policies, they only began to acquire

¹² See Brincat Report (Informe Brincat), Parliamentary Assembly of Council of Europe, *Need for International Condemnation of the Franco Regime*, Doc. 10737, November 4, 2005; Read May 1, 2009, URL:

<http://www.assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc05/EDOC10737.htm>,

¹³ Petit, Jordi, and Empar Pineda, "El Movimiento de Liberación de Gays y Lesbianas durante la Transición (1975-1981)" in *Una Discriminación Universal. La Homosexualidad bajo el Franquismo y la Transición*, ed. Ugarte-Pérez, Javier (Barcelona-Madrid: Editorial Egales, 2008), pp. 171-197, at 172.

¹⁴ *Id.* at 174.

social relevance after Franco's death in 1975. On June 26th, 1977, Spain witnessed the first LGBT pride parade on the streets of Barcelona led by transvestites (which ended with a strong police repression) and the emergence of the first openly LGBT organizations (i.e., *Front d'Alliberament Gai de Catalunya*, *Frente Homosexual de Acción Revolucionaria*, or *Col.lectiu de Lesbianes de Barcelona*). Democratic political parties, however, were reluctant to include the recognition of rights for homosexuals in their political programs, afraid that society would not take them seriously.¹⁵ The persecution of homosexuals and transsexuals lasted far beyond 1978. The reformation of the Dangerousness and Social Rehabilitation Law of 1970 in 1978 (Ley 77/1978, December 26) was insufficient, for it left intact the discriminatory measures of the law until 1995, when the law of 1970 and its later reformations were finally repealed (the *Ley Orgánica* 10/1995, November, 23). Furthermore, the late reformation of the Dangerousness and Social Rehabilitation Law prevented the LGBT prisoners from benefiting from the 1977 Amnesty Law. Their court files and police records remained active in the *Dirección General de la Seguridad* until 2000.¹⁶

With the 80s came the years of sexual liberation, embodied in the emblematic scene of *La Movida*—a socio-cultural urban movement led by a group of eccentric and extravagant young artists (among others, Pedro Almodóvar, Alaska, Kaka de Lux, Ouka Lele, etc) who challenged all values inherited from the earlier Francoist Spain. At the beginning of the nineties, LGBT activists began to mobilize demanding the legal recognition of same-sex marriage and partnership. These demands, however, were not answered until 2005 as I will discuss later in the chapter.

¹⁵ Arnalte, *supra* at 166.

¹⁶ Gutiérrez-Dorado, *supra* at 256.

Among the most well-known and openly gay directors, Pedro Almodóvar's films construct a positive image of the LGBT Spanish community.¹⁷ His films are known, among other things, for deconstructing the *macho ibérico*, exploring and challenging Spanish heterosexual sexuality. In addition, Almodóvar makes a parodican often stylized—recycling of Francoist folklore (i.e., Flamenco dancers or toreadors) in order to unearth and deconstruct its ideological function of cultural homogenization, to break with patriarchal and traditional family structures, or to revise and subvert Francoist institutions of the Church and the police.¹⁸ Although *High Heels* meets most of these subversive characteristics, I focus on the film's reconceptualization of law as a queer performance.

Plot Summary

High Heels narrates the love-hate relationship between Rebecca (Victoria Abril) and her mother, the artist known as Becky del Páramo (Marisa Paredes), who abandoned her as a child to pursue her acting and singing career in Mexico. The film opens with a scene at Barajas airport where Rebecca awaits the return of her mother, whom she has not seen for fifteen years. While waiting, Rebecca remembers a family vacation incident in the Caribbean in 1972. Then her mother buys her a pair of earrings and accidentally loses one, Rebecca gets lost looking for it. When her stepfather Alberto (Pedro Díez del Corral)

¹⁷ Among others, *Pepi Luci Bom y Otras Chicas del Montón* (1980), *Laberinto de Pasiones* (1982), *Entre Tinieblas* (1983), and *La Ley del Deseo* (1986).

¹⁸ See among others: Acevedo-Muñoz, Ernesto, *Pedro Almodóvar* (London: British Film Institute, 2007). Yarza, Alejandro, *Un canibal en Madrid: la sensibilidad camp y el reciclaje de la historia en el cine de Pedro Almodóvar* (Madrid: Libertarias, 1999); D'Lugo, Marvin, *Pedro Almodóvar* (Chicago: University of Illinois Press, 2006); Kinder, Marsha, *Blood Cinema. The Reconstruction of National Identity in Spain* (Berkeley: The University of California Press, 1993); Smith, Paul Julian, *Desire Unlimited: The Cinema of Pedro Almodóvar* (London: Verso, 1994).

and her mother finally find her, Alberto pretends to sell her to the islanders and her mother laughs at his joke. Then, she recalls another incident that occurred two years later in Madrid. When Becky reveals her intention to leave for Mexico to pursue her acting career, Alberto opposes her plans. Rebecca then switches Alberto's stimulants with sleeping pills, apparently causing his death in a car accident. With Alberto dead, she expects her mother would freely travel to Mexico and take her with her. Rebecca's expectations, however, do not pan out when Becky announces that she will travel alone and that Rebecca will stay with her father. On Becky's return to Madrid, her ex-lover, Manuel (Feodor Atkine), who did not know about their family ties, has become Rebecca's husband. That same night, Becky, Rebecca, and Manuel go to see *Femme Letal* (Miguel Bosé), a female impersonator of Becky, whom Rebecca has been coming to see whenever she misses her mother. After the performance, Rebecca follows Letal to his dressing room, and while helping him remove his costume, a sexual encounter takes place.

One month later, Manuel is found shot in his country house. The film then centers on Judge Domínguez's investigation of this crime. Three different women, Isabel (Miriam Díaz Aroca), Becky, and Rebecca, saw Manuel alive the night of his murder, but they deny having killed him when interrogated. After learning that Manuel was not only involved with Isabel but also with her mother, Rebecca unexpectedly confesses to the crime during a live television broadcast. Judge Domínguez orders her immediate arrest and sends her to prison. There, Rebecca befriends Paula (Cristina Marcos), a heartbroken social worker who has been abandoned by her boyfriend Hugo (Miguel Bosé). When Paula shows Rebecca a nude picture of Hugo, Rebecca realizes that Letal and Hugo are

the same person. Immediately after finding out that she is pregnant, Rebecca is suddenly released from prison on the basis of insufficient evidence.

Towards the end of the film, Judge Domínguez reveals his “secret” to Rebecca (Letal, Hugo, and the judge are the same man) and proposes marriage to her as Eduardo, his real name. They find out on the news that Becky suffers a terminal illness and has been hospitalized. Rebecca rushes to the hospital where she confesses that she did, in fact, murder Manuel. Becky forgives Rebecca, and takes the blame for the murder in order to save her. When Becky is brought home to die, Rebecca gives her the gun she used to kill Manuel and Becky leaves her fingerprints on it. Judge Domínguez accepts the incriminating evidence that establishes Becky as the murderer.

II. POSTMODERN RE-IMAGININGS

In “*High Heels: Almodóvar’s Postmodern Transgression*,” Kamir concurs with Robin West’s suggestion that care and compassion have been rooted out from the constitutive elements of what James Boyd White calls the “legal imagination.”¹⁹ This is worrisome, they say, because the “pursuit of justice, if neglectful of the ethic of care, will fail not just as a matter of overall virtue, but more specifically, it will fail *as a matter of justice*.”²⁰ In order to re-conceptualize law and justice as well as to reconstitute the legal

¹⁹ James Boyd White, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* (Chicago: The University of Chicago Press, 1973); *From Expectation to Experience: Essays on Law and Legal Education* (Ann Arbor: The University of Michigan Press, 1999).

²⁰ West, cited by Kamir, at 267. In *Caring for Justice*, West argues that “while ‘justice’ is typically associated with universal rules, consistency, reason, rights, the public sphere, and masculine virtues, ‘care’ is typically associated with particularity, context, affect, relationship, the private sphere, and femininity.” Furthermore, while the work of judges often shows evidence of their respect for the constraints of the ethic of justice, it hardly exhibits any sign of constraint by an ethics of care (Robin West, *Caring for Justice* [New York: New York University Press, 1997]

imagination in terms of not merely an ethic of justice, but of care, West and Kamir call for new cultural images. These are as powerful and memorable as traditional ones: “the plumb line, the cupped hands, the blindfolded judge and the scales of justice, as well as the values of consistency, integrity, and impartiality that they represent.”²¹ Kamir thinks that *High Heels* “offers a radical and feminist alternative to the patriarchal image of Solomonic justice, which dominates our Judeo-Christian heritage, and the notion of good judging in particular. The traditional imagery is replaced by imagery that links ethics of justice with ethics of care.”²²

Through an in-depth observation of *High Heels*, Kamir attempts to overcome the well-known feminist skepticism towards postmodernism.²³ On the one hand, she claims that feminists should embrace and celebrate the postmodern skepticism “toward particular claims of objective truth, a particular account of the self, and any particular account of gender, sexuality, biology, or what is or is not natural.”²⁴ But on the other hand, she is taken aback by the postmodern “unwillingness to entertain descriptions of subjective and intersubjective authenticity . . . [and] promises of a nurturant or caring morality.”²⁵ According to Kamir, *High Heels* provides a brilliant example of how to combine the best tenets of postmodernism with feminism.²⁶ In her view, Almodóvar’s

at 23-24). However, “‘justice,’ as it is generally understood, and ‘care,’ as it is widely practiced are “each *necessary conditions of the other*. The pursuit of justice, when successful, *must* also be caring, and the activity of caring, when successful, must be mindful of the demands of justice.” *Id.* at 24.

²¹ West, *supra* at 30.

²² Kamir, *supra* at 268.

²³ See, among others, Catharine MacKinnon, *Points Against Postmodernism*, 75 *Chicago-Kent Law Review* 687 (2000).

²⁴ West, cited by Kamir, *supra* at 266.

²⁵ *Id.*

²⁶ Kamir, *supra* at 267. This reading is by no means uncontroversial: while some critics have praised the way it portrays strong and independent women (Barry Jordan & Morgan-Tamosunas, *Contemporary Spanish Cinema*, (New York: Manchester University Press, 1998)) and expresses

postmodern imagery transcends the apparent dichotomy between two versions of feminism: one that focuses on the traits of care and compassion, and another that denounces patriarchal oppression and dominance. By combining these two perspectives, Kamir suggests that the film not only undermines an oppressive, patriarchal social reality, but promotes a conception of law and justice closely related to the virtues of compassion and care.²⁷

The justice of care is most apparent in the symbolic representative figure of the law in the film, the on-screen investigating Judge Domínguez, who guides the investigation of the murder of Manuel, Rebecca's husband.²⁸ Contrary to ingrained habits and perception of how judges ought to conduct their affairs, in his criminal investigation, Judge Domínguez is deeply and emotionally involved in the lives of the characters, particularly in that of Rebecca—the prime suspect for the murder. Kamir argues that the judge's caring, compassionate, and loving attributes ensure that the just outcome is reached in this case, i.e., not to prosecute Rebecca for the murder.²⁹ Furthermore, by enacting a parallel cinematic off-screen process, *High Heels* engages the viewer as a

feminist attitudes (Marsha Kinder, *supra*); Deborah Shaw, *Men in High Heels: The Feminine Man and Performances of Femininity in Tacones lejanos by Pedro Almodóvar*, vol. 6, no. 1 *Tesserae: Journal of Iberian and Latin American Studies*, (2000)), others have attacked the way it conveys misogynistic (Caryn James, *Almodovar, Adrift in Sexism*, *New York Times*, 12 January 1992) and antifeminist messages (Paul Julian Smith, "Tacones Lejanos (*High Heels*, 1991): Imitations of Life" in *Desire Unlimited: The Cinema of Pedro Almodóvar* (London: Verso, 1994); Lucy Fischer, "Modernity and Postmaternity: *High Heels* and *Imitation of Life*" in *Play it Again, Sam: Retakes on Remakes*, eds. Andrew Horton and Stuart Y. McDougal (Berkeley: University of California Press, 1998)).

²⁷ *Id.*

²⁸ Faithful to its Continental roots, as Kamir notes, *High Heels* depicts an inquisitorial legal system with focus on the judiciary, rather than on lawyers as the Anglo-American adversarial system (*Id.* at 268). While in the latter lawyers are responsible for gathering the evidence, in the former the judge is in charge of the search for truth and justice. Accordingly, Judge Domínguez is directly and actively involved in the criminal investigation, looking for evidence, determining the facts, and questioning witnesses and defendants.

²⁹ *Id.*, at 279.

compassionate judge who adopts a nonjudgmental point of view of Rebecca's criminal act, and reaches the same just legal outcome.³⁰ Kamir concludes that the film, by constructing a caring, compassionate, and nonjudgmental cinematic judgment, invites the viewer to enact its alternative vision of justice of care, while symbolically punishing the patriarchal order represented by Manuel in the film.³¹

In an attempt to contribute to the task of expanding the legal imagination and re-conceptualization of law and justice, my study offers an alternative to Kamir's imagery of caring law and justice of care. Drawing on Costas Douzinas' and Ronnie Warrington's postmodern jurisprudence, I suggest that *High Heels* re-imagines law, judgment, and justice through an ethics of otherness rather than through an ethics of care.³² As explained

³⁰ *Id.*

³¹ Kamir grounds her approach to the intersection of law and film in three different premises: "film as paralleling law," "film as judgment," and "film as jurisprudence." According to the first premise, film and law are two related discourses that reflect and refract the multiple fundamental values, images, identities, and lifestyles of their societies and cultures, and two dominant players in the construction of concepts such as community, identity, memory, gender roles, justice, and truth. The second premise is that some films perform "legal indoctrination," training audiences in the act of judging. The third and last premise is that films can offer jurisprudential commentary in topics such as perceptions of gender roles, familial structures, human relations, and truth; *Id.* at 1-4.

³² See: Costas Douzinas and Ronnie Warrington, *Justice Miscarried: Ethics, Aesthetics and the Law* (Hemel Hempstead: Harvester Wheatsheaf, 1995). Postmodern jurisprudence turns to Nietzsche, Foucault, Lacan, Lyotard, Levinas, Derrida, and Rorty. Even though to call some of these thinkers postmodern is not accurate, legal scholars have included their work within the framework of postmodern jurisprudence. For an overview on postmodern legal movements see: Gary Minda, *Postmodern Legal Movements: Law and Jurisprudence at Century's End* (New York: New York University Press, 1995). For a critique to postmodern jurisprudence in general see: Douglas E. Litowitz, *Postmodern Philosophy and Law* (Lawrence: University Press of Kansas, 1997). For a philosophy of otherness see: Emmanuel Levinas, *Otherwise Than Being, or Beyond Essence*, tr. Alphonso Lingis (Pittsburgh: Duquesne University Press, 1998); Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority'" tr. Mary Quaintance, in *Deconstruction and the Possibility of Justice*, eds. Drucilla Cornell, Michael Rosenfeld, and David Gray Carlson (New York: Routledge, 1992), pp. 3-67 (hereinafter, "The Force of Law"). See also: Jean-Francois Lyotard, *The Differend: Phrases in Dispute* (Minneapolis: University of Minnesota Press, 1988); Drucilla Cornell, *The Philosophy of the Limit* (New York, Routledge, 1995). In relation to the ethics of postmodernism see: Zygmunt Bauman, *Postmodern Ethics* (Cambridge, MA: Blackwell, 1993); Robert Eagleston, "Postmodernism and Ethics Against the

by Douzinas and Warrington, this other who “is neither the self’s *alter ego*, nor its reflection or extension,” but an unfathomable other, always calls upon us to consider him or her before the ethical or legal decisions are taken.³³ Therefore, the ethics of otherness “always starts with the other and challenges the various ways in which the other has been reduced to the same.”³⁴ Most importantly, while the other can never be comprehended, “a failure to strive towards the recognition of otherness is the greatest injustice and the most violent oppression of the law. Justice miscarries when it denies the other.”³⁵

By using such an approach, I contend that Kamir’s feminist jurisprudential interpretation of *High Heels* risks a return to a moral philosophy reductive of difference into sameness, endangering the advances of postmodern critiques to the totalizing tendencies of modernity. To better respect the singularity of the other, I replace Kamir’s image of a caring law with an image of “law as performance,” in which ethics starts with the demand of the other in need.³⁶ In this work, I use the term performance in three ways:

Metaphysics of Comprehension” in *The Cambridge Companion to Postmodernism*, edited by Steven Connor (Cambridge: Cambridge University Press, 2004).

³³ Douzinas and Warrington, *supra* at 19 (emphasis in the original).

³⁴ *Id.*, at 163. Taking as a starting point Jacques Derrida’s political ethical work, together with Emmanuel Levinas’ philosophy of otherness, Douzinas and Warrington seek to articulate a theory of ethical action upon which a practice of justice can be built without reproducing the totalizing tendencies of Enlightenment. Such postmodern jurisprudence stands in contrast both to positivism—which grounds the legitimacy of law on the formal legality deprived of ethics—and hermeneutical jurisprudence, which emphasizes the interpretative and ethical character of the law but neglects its violent side. For positivism, see H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon, 1961) and H. Kelsen, *The Pure Theory of Law* (Berkeley, Los Angeles and London: University of California Press, 1967). For hermeneutical jurisprudence, see, for instance, Ronald Dworkin, *Law as interpretation* 60 *Texas Law Revue* 527 (1982); *Law’s Empire* (Cambridge: Harvard University Press, 1986).

³⁵ *Id.*, at 309.

³⁶ As Philip Auslander indicates, whereas critical discussions of specific performance practices usually draw on ideas of postmodernism (which has been referred to as skeptical, apolitical, relativist, and nihilistic), a variety of humanistic and social scientific scholars have appropriated the idea of performance and begun to view their disciplines and objects of study accordingly. “Postmodernism and Performance” in *The Cambridge Companion to Postmodernism*, ed. Steven Connor (Cambridge: Cambridge University Press, 2004) at 99. Historians, sociologists,

1) as an action that is performed; 2) as an action that has constitutive and transformative effects on the world;³⁷ and 3) as an action that is enacted in front of an audience. In the film, the image of law as performance is represented by Judge Domínguez and his multiple metamorphoses (as lover, judge, drag performer, and father-to-be). This interpretation is not incompatible with the overall feminist task of ending patriarchy, but it relocates it in the context of queer.³⁸ By doing so, my goal is to examine and question those cultural and normative assumptions that oppress not only women, but also all people: gays, lesbians, transvestites, transsexuals, straights, and so on.

The significance of performance for the viewer

High Heels' opening credits appear over two drawings depicting high heels and guns. They are followed by a collage of fragmented and duplicated drawings of the

anthropologists and many other scholars from different fields “have come to see their respective discourses as contingent rather than absolute; as engaged with specific audiences rather than autonomous; as existing primarily in a specific, time-bounded context; and as characterized by particular processes rather than by the products they generate (*Id.*) This “postmodern turn” has taken place in the context of legal studies as well. See: J.M. Balkin and Sanford Levinson, *Law, Music, and Other Performing Arts* 139 *University of Pennsylvania Law Review* (1991), pp. 1597–1658. See also: Bernard Hibbitts, *Coming to Our Senses: Communication and Legal Expression in Performance Cultures* 41 *Emory Law Journal* (fall 1992), pp. 875–6, and *Making Motions: The Embodiment of Law in Gesture* 6 *Journal of Contemporary Legal Issues* (1995), pp. 51–81; Lara D. Nielsen, *Institutionalizing Ensembles: Thinking Theatre, Performance, and ‘the Law’* 4 *Law, Culture and the Humanities* 156 (2008). For an overview on the different discussions on legal performance see: Julie Stone Peters, *Legal Performance Good and Bad Law, Culture and the Humanities* (2008).

³⁷ See J.L. Austin, *How to Do Things with Words* (Oxford: Oxford University Press, 1965). For discussions on performativity and performance see, for instance: Andrew Parker and Eve Kosofsky Sedgwick, *Performativity and Performance*, ed. Parker and Sedgwick (New York: Routledge, 1995); W.B. Worthen, *Drama, Performativity, and Performance* 113 *PMLA* 5 (October 1998), pp. 1093–107; Marvin Carlson, *Performance: A Critical Introduction* (New York: Routledge, 1996).

³⁸ I use the term “queer” in Fabio Cleto’s inclusive sense. For Cleto, queer “claims to inscribe all subordinations (of class, gender and ethnicity) into a common design while apparently respecting each subordination . . . in its historical and cultural specificity.” “Introduction: Queering the Camp” in *Camp. Queer Aesthetics and the Performing Subject—A Reader*, ed. Fabio Cleto (The University of Michigan Press, 1999). at 15.

characters that anticipate their roles in the film.³⁹ All characters in the film are interrelated in their roles as performers: Manuel is the director of a TV network where Rebecca works as the news anchor; Isabel, Manuel's lover and Rebecca's co-worker, signs her newscast; and Becky del Páramo, Rebecca's mother, is a singer and actress. Performance defines their everyday life. Furthermore, two drawings of Almodóvar filming with his camera encircle the drawings of his characters. The introduction of this cinematic device makes us realize that everything we are about to see is a part of a performance. This artifice is further emphasized by the film's constant references to television, theater, magazines, photography, radio, and musical shows. Media often takes precedence over personal communication, particularly when Almodóvar seeks highly dramatic effect: Rebecca learns about her mother's terminal sickness on TV, as does Becky about her daughter's involvement in Manuel's murder. Also, Judge Domínguez learns about Becky and Manuel's previous affair from his mother's magazine clippings and uses them as evidence.

However, *High Heels'* overwhelming display of media apparatuses does not degenerate into Jean Baudrillard's world of simulation.⁴⁰ These various performances have performative, i.e., constitutive effects on various audiences, which underscore the ethical responsibility towards them. These performative aspects of the film produce an

³⁹ Auslander identifies certain postmodern trends in performance: plurality, diversity, and interculturality, as well as characters with fragmented, flowing, and uncertain identities. *Supra*, at 102-103.

⁴⁰ For Hutcheon, postmodernism "cannot but be political, at least in the sense that its representations—its images and stories—are anything but neutral, however 'aestheticized' they may appear to be in their parodic self-reflexivity." *Supra*, at 3. For an opposite view see: Jean Baudrillard, "The Evil Demon of Images and the Precession of Simulacra," in Thomas Docherty, ed., *Postmodernism: A Reader* (New York: Columbia Univ. Press, 1993). Along this line of thought see also: Guy Debord, *The Society of Spectacle* (Detroit: Black & Red, 1983); Fredric Jameson, "Postmodernism and Consumer Society," in *The Cultural Turn: Selected Writings on the Postmodern, 1983-1998* (New York: Verso, 1998), pp. 1-20.

ethical relation between the cinematic performance and the viewer. Furthermore, *High Heels* does not invite the viewer to become a compassionate judge, with respect to the characters in terms established by Kamir, but a viewer/judge who responds to an ethics of alterity, i.e., to the call of the other. I use the term viewer not as the real (physical) viewer who can resist or respond differently to what is projected in the film, but as an “ideal viewer” who is able to discern, react, and distinguish the cinematic mechanisms as described above.

In presenting law under the light of performance and performativity, I also emphasize the ways in which *High Heels* integrates the actions of the on-screen judge and his sense of justice within the aesthetic realm of the viewer. For these purposes, I focus on the aesthetics of exaggeration, style, excess, artificiality, parody, and incongruity, which play a key part in Judge Domínguez’s performance as a female impersonator, and place him, and thus the law, in the realm of camp aesthetics.⁴¹ In particular, I argue that Judge Domínguez’s campy performance invites viewers to see the law from a queer perspective: to challenge “the manifold binarisms (masculine/feminine, original/copy, identity/difference, natural/artificial, private/public, etc.) on which [legal]

⁴¹ There has been disagreement about the meaning of camp. For Susan Sontag, camp is an apolitical and ahistorical aesthetic, a sensibility that emphasizes artifice, style, and extravagance over content; for Esther Newton and Jack Babuscio, camp is style, irony, incongruity, humor, and theatricality that only exists in the eye of the homosexual beholder; Jonathan Dollimore sees it as “a weapon of attack, an oppressive identity inherited *as* subordination, and hollowing out dominant formations responsible for that identity ... camp is an invasion and subversion of other sensibilities [besides gay sensibility], and works via parody, pastiche, and exaggeration” (in Cleto, *supra* at 224-225); David Bergman sees camp as “a form of historicism viewed histrionically;” and while Mark Booth argues that camp celebrates patriarchal oppression, Pamela Robertson sees it as a feminist practice: “a female form of aestheticism, related to female masquerade and rooted in burlesque, that articulates and subverts the ‘image- and culture-making processes’ to which women have traditionally been given access” (*Id.* at 271). In this study, although I rely on Newton and Babuscio’s notion of camp, I do not see it as an exclusively gay sensibility, but, following Robertson, as a “queer discourse” that includes gay- and lesbian-specific positions, as well as non-gay and non-lesbian ones (*Id.*).

epistemic and ontological order arranges and perpetuates itself.”⁴² The camp aesthetics displayed in Judge Domínguez’s performance may lead viewers to reconceptualize “law as queer performance,” that is, to examine and question those legal assumptions about identity, subjectivity, and judgment.

III. LAW AS MOTHER: ETHICS AND JUSTICE OF CARE

According to Kamir, *High Heels* goes a long way to position Letal/Judge Domínguez as Rebecca’s surrogate mother.⁴³ Letal is first mentioned when Becky sees Letal’s poster announcing his impersonation of Becky as “the real Becky.” But, “[a]ren’t I the real Becky?” she asks in dismay, and Rebecca answers that she used to go to see Letal’s performance whenever she longed for her. That night, Rebecca takes Becky to watch the performance at the Villa Rosa, where Letal imitates Becky’s appearance, gestures, voice, and style with great success. Kamir notes that, when the camera cuts to a reverse shot of the spectators, “Becky looks at him as a person would at her own distant reflection [and] Rebecca looks at him with longing and joy that she cannot express towards her mother.”⁴⁴ After the performance, Letal comes to their table, and Becky and Letal perform what Kamir identifies as a bonding ritual—they exchange “body parts” (her earrings for one of his fake breasts).

In turn, Rebecca herself is portrayed as a woman-child: “Our first and lasting impression of her, in a long flashback recounting her childhood memories, as she awaits

⁴² Cleto, *supra* at 15. As Cleto observes, camp and queer share a common investment: “questioning deviations from (and of) the straightness of orthodoxy, . . . *devoiding* the subject of its fullness, and permanence—in other words, of its transcendent immanence.” *Id.* at 16.

⁴³ Kamir, *supra* at 275.

⁴⁴ *Id.*

her mother in the airport, is as a little girl: receiving earrings from her mother, degraded by her, worrying over her mother, and deserted by her.”⁴⁵ Moreover, throughout the film we see Rebecca “in reference to her mother: imitating her (through her choices of a performing career and of Manuel as a partner), seeking her company (through both Manuel and Letal), helping her (by killing Becky’s oppressive husband), and above all feeling abandoned, neglected, and rejected by her.”⁴⁶ Letal/Judge Domínguez is a surrogate mother, Kamir argues, “because Rebecca’s need for a mother is so deep.” Likewise, their relationship is like a mother-child one: “because she transfers her love for her mother to him, he reciprocates and loves her in return;” and “[b]ecause she loves him as a child, he sees and bonds with the child in her.”⁴⁷

However, things are far more complicated. Kamir remarks that Becky, the “original” mother whom Letal imitates, is an uncaring, self-centered, and irresponsible “bad” mother. Hence, “[if] Letal were an imitation of *this* mother, s/he would hardly be a good, caring one her/himself, and yet s/he is.”⁴⁸ Through her relationship with Judge Domínguez, Becky undergoes a transformation: she becomes a caring, compassionate, and responsible mother. In a sense, “she imitates her double, Letal, the judge, absorbing the caring qualities s/he developed earlier while performing Becky’s motherly role. It seems that when the law performs a mother’s role, a bad mother can become good.”⁴⁹

In a fundamental way, Kamir sees Becky and Letal as adversaries. They are two mothers competing “for the child’s love, a love that can only be obtained through

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 276.

motherly love and devotion.”⁵⁰ They each attempt to protect and save her from the other—Becky from the law (represented by Judge Domínguez), and Judge Domínguez from her painful existence in the shadow of her indifferent mother. The competition becomes evident after the bonding ritual between the “two mothers,” when Letal asks Rebecca to follow him to his dressing room, where a sexual encounter takes place. In Kamir’s view, Letal first consummates his sexual desire for Rebecca, because this is one thing that the real Becky cannot offer Rebecca, but he can (Rebecca will get pregnant out of this sexual encounter).

When Judge Domínguez arrests Rebecca and sends her to prison, Becky dedicates the song “Think of Me” (“Piensa en mí”) and sings “my life is yours” to her daughter, because “such complete support and self-sacrifice only she, not the law, can offer.”⁵¹ In turn, Judge Domínguez releases Rebecca from jail and, as Letal, promises his life to her by singing the same song. In addition, he reveals himself to Rebecca as the father of her unborn child and proposes marriage. Thus, he becomes the supportive partner and future father of her baby that Becky cannot be.⁵² Furthermore, by revealing his secret to her (Letal and Judge Domínguez are the same man), he offers Rebecca “truth, sincerity, and trust.”⁵³ Not surprisingly, following Letal’s revelation as the father of Rebecca’s child, Becky offers Rebecca forgiveness and an ultimate sacrifice—she takes responsibility for Manuel’s murder. Throughout this competition, Kamir observes that “both mothers

⁵⁰ *Id.* at 277.

⁵¹ *Id.* at 276.

⁵² *Id.*

⁵³ *Id.*

improve in response to the needs of the child by becoming more caring and compassionate. They also become closer to each other, less readily distinguishable.”⁵⁴

Furthermore, Kamir points out that neither the law nor compassion in *High Heels* is portrayed as exclusively maternal. She distinguishes four other roles of Letal/Judge Domínguez—as his mother’s son, as Paula’s deserting boyfriend Hugo, and as Rebecca’s lover and expectant father. All these complex and different characters are inseparable from Judge Domínguez’s role as judge, his criminal investigation, and his quest for truth and justice. “His insights, intuition, and emotional responses to characters and situations are relevant professional tools and sources of information. They assist him in collecting data, assessing it, and arriving at conclusions.”⁵⁵ For instance, Judge Domínguez compares Becky with his own mother who has neglected him for 10 years. Like Rebecca, he is protective of his neglectful mother, as well as hurt and angry. Through his relationship with his mother, he can recognize Rebecca as a hurt child and understand her pain.

Less positively, in his role as Hugo (a drug addict and police informant), the judge treats his girlfriend Paula as an object, to be used and abandoned without explanation. As he explains to Rebecca, Paula fell in love with Hugo and tried to help him while he was investigating a case. When the case was closed, he simply disappeared. This aspect of Judge Domínguez’s character, which is also a part of the law, allows him to recognize Manuel’s inhumanity from his own experience.⁵⁶ Finally, as Rebecca’s lover and expectant father, Judge Domínguez is deeply concerned about her well-being, rendering

⁵⁴ *Id.* at 277.

⁵⁵ *Id.* at 279.

⁵⁶ *Id.* at 278.

him incapable of seeing her guilt. This loving blindness is portrayed as being legitimate and helpful in his search for justice.

According to Kamir, all the conclusions that Judge Domínguez reaches through his different impersonations are “true, right, and just precisely *because* they rely on his personal experience as mother, son, man, and father-to-be.”⁵⁷ Judge Domínguez’s loving and compassionate attributes confer in him the ability to fully understand the needs of each individual who comes before the law. They “ensure that every person will receive equal, compassionate treatment . . . Equality before the law means that each individual deserves to be seen, understood, and treated for who s/he is.”⁵⁸ Kamir remarks that Judge Domínguez’s advocacy for a justice of care promotes a feminine worldview that is highly subversive in two significant ways: first, care and compassion are portrayed as neither biologically female nor male. Second, the justice of care is practiced on a woman who has murdered a man. In our patriarchal culture, she observes that judges sometimes feel compassion for men who abuse women but they hardly sympathize with women who kill men.⁵⁹ *High Heels*’ feminism is a one that not only understands Rebecca’s need to kill an abusive man (and abused women’s needs in general), but also condones it.

Kamir argues that *High Heels* invites the viewer to practice a “participatory identification” with Rebecca, and it does so in several connected ways: “by giving Rebecca a point of view, by closely aligning the viewer’s point of view with hers, by positioning her as the dominant, sympathetic on-screen character, by continuously

⁵⁷ *Id.*

⁵⁸ *Id.* at 276-279. In contrast, Kamir notes that Manuel “is the only character not allowed a childhood, a point of view, or remorse.” (*Id.* at 281.) After their encounter at the Villa Rosa, Letal refers to Manuel as a “monster.” However, his personal antipathy towards the victim does not disqualify him as a judge. On the contrary, Kamir argues that this helped him to reach the just legal outcome of not prosecuting Rebecca for the murder.

⁵⁹ *Id.* at 281.

presenting the child within her, and by looking at her through the eyes of the two mothers who love her and seek her love in return.”⁶⁰ In fact, according to Kamir, the film invites us to judge each of the characters (Becky, Eduardo/Letal/Hugo/Judge Domínguez) in the same compassionate way. However, this identification with Rebecca is not complete until she reveals the truth to her mother—until that moment the viewer does not know whether or not she murdered Manuel. In this way, the viewer learns about Rebecca’s crime along with Becky, who, at last, remorsefully takes on the role of a good mother.⁶¹ In constructing a non-judgmental and compassionate cinematic judgment, the film invites the viewer to support the legal outcome of not prosecuting Rebecca.

* * *

Despite Kamir’s insistence on the law’s necessity to care for and respect each person with regard to his or her singularity in order to reach justice, her image of mother and compassionate judge remains open to question. It seems that the judge’s ethical responsibility to respect the singularity of the other is possible, provided that the other is similar to the self, but *only to that extent*. For instance, in his different roles as a surrogate mother, son, Hugo, lover, and father, Judge Domínguez understands what the other feels, because of his own similar experiences. In other words, to make sense of the concerns and needs of the other, he must first understand the other’s similarity to himself. However, what Kamir does not address or explain is what happens when the judge encounters a radical other, i.e., an other that is different from the self and whose experiences have not been felt (and maybe will not be felt). Thus, by grounding the ethical responsibility of the mother judge in what the self and the other share, rather than

⁶⁰ *Id.* at 280.

⁶¹ To be exact, we learn of Rebecca’s guilt earlier, when she takes the gun from the television set.

focusing on their differences, Kamir privileges sameness over difference and selfness over alterity. By not distinguishing between the self and the other, Kamir's mother judge fails to ethically respond to the uniqueness that makes the other different from the self—the other becomes a reflection of the self.

Likewise, in constituting a compassionate viewer parallel to the mother judge, Kamir imagines a viewer-judge who also fails to respect the singularity of the on-screen characters, and consequently to provide justice to them. This is particularly evident in the way she interprets the relationship between the characters and the viewer. Kamir sees Becky as the imitation of Letal, Letal as the imitation of Becky (being similar to Rebecca), Rebecca as the imitation of Becky, and so on. Within this chain of similarities, the viewer is also a participant, as he or she is considered an imitation of the on-screen mother judge—for instance, the viewer, like Judge Domínguez, may see Rebecca as a woman-child and may feel the urge to protect her as a mother would. Yet, it is important to note that if Rebecca was the reflection of Becky or Letal/Judge Domínguez (and therefore of the viewer), her otherness and singularity would be denied, and the conditions for an ethical relation between Rebecca and the viewer would not be possible. In addition, in revealing the truth to the viewer (and not to the on-screen judge), the film places the viewer in several judging positions that challenge the one-dimensional, motherly cinematic judgment that Kamir suggests (a detailed note about this is provided in the third section).

Subsequently, I will explore how the respect of each person in his or her singularity is better accomplished by imagining a “performer judge,” whose ethical

performances arise from the demand of the other in need, rather than from his/her loving and compassionate attributes.

IV. LAW AS PERFORMANCE: ETHICS AND JUSTICE OF OTHERNESS

Unlike Kamir's mother judge, whose actions are based on competition (between two mothers) and reward (Rebecca's love), the performer judge acts unconditionally upon Rebecca's specific demands, and morphs himself to satisfy them (rather than to collect data and life experiences). Focusing on the shifts in the relationship between Judge Domínguez and Rebecca will help us to examine the ethical relation between law and the vulnerable other, and the kind of justice produced by their interaction. I take Levinas' work on ethics and the face as my starting point in exploring how ethics arise from face-to-face encounters between Letal/Judge Domínguez and Rebecca. I am particularly interested in reading how Letal shifts identities (from lover to judge to father-to-be), and performs each according to Rebecca's direct demand for an ethical response.

A. Letal As Lover

Becky's arrival underscores Manuel's indifference towards Rebecca. When Becky and Manuel first reunite, the film shows them in a flashback, passionately kissing on a beach. This image then dissolves into the present with a blue background that replicates this idyllic scenery, a view that foreshadows the re-emergence of their past relationship. That same night, Rebecca overhears a conversation between the two of them, in which Manuel refuses to tell Becky that he loves Rebecca. In spite of it, Rebecca

invites her husband and mother to the Villa Rosa nightclub to watch Letal's impersonation of Becky. The mother agrees to attend so that her daughter is not disappointed; the husband joins too, but complains that the Villa Rosa is not a place for Becky because a transvestite was murdered there (and so he takes a gun with him).

The scene opens with Letal's female impersonation of Becky on the stage. When the camera cuts to a reverse shot of the three of them, it shows Becky watching the performance with narcissism, Rebecca with joy, and Manuel with indifference.⁶² At one point, Rebecca looks to her mother, who is captivated by Letal's impersonation, but does not reciprocate. Rebecca then turns her look towards her husband and notices that Manuel is looking at Becky with sexual desire, as is Becky. Rebecca looks at Manuel with pain and anger; Manuel looks back at her with disdain and rapidly turns his desiring look towards Becky again. In this game of looks, Rebecca's sexual desires are excluded. The emotional intensity of the scene is heightened by the sound of Letal's lip-synched song, "A Year of Love" ("Un año de amor," by Spanish pop star Luz Casal):⁶³

Have you ever thought
what will happen.
All that we'll miss?
How much will you suffer?
If you go now
Never again will you find
Happy times
You lived with me

[Te has parado a pensar
Lo que sucederá
Todo lo que perderemos
Y lo que sufrirás
Si ahora tú te vas
No recuperarás

⁶² Cf. Kinder, *supra* at 258. Kinder reads the scene as showing Rebecca's homoerotic desire for her mother.

⁶³ The song "A Year of Love" was originally composed by Nino Ferrer.

Los momentos felices
que te hice vivir]

The song brings back the memory of Manuel and Becky's past together, as it recounts—in a typical bolero style—the story of a breakup and the longing for the happy days they shared. At the same time, it alludes to Rebecca's fears that Manuel and Becky rekindle their love affair. Feeling isolated and excluded, Rebecca's only option is to look back at Letal, who perceives everything from the stage. In Rebecca's face, we may read a direct, concrete, and personal request: "Comfort me!" addressed to Letal.

In Levinas' ethics, the sign of otherness is the face (*visage*). The face is neither the assemblage of brow, nose, eyes, and mouth, nor the representation of the soul, self, or subjectivity: "The face eludes every category. It brings together speech and glance, saying and seeing, in a unity that escapes the conflict of senses and the arrangement of the organs."⁶⁴ In the face-to-face encounter between the self and other, the other appears in the nakedness and uniqueness of her face and expresses an irreducible, sometimes inexpressible, ethical demand: "consider me before you act!" The consideration required by her demand is "always to be accounted for prior to any thought of self or own."⁶⁵ In Levinasian terms, Rebecca's demand for a specific performance is a demand that "needs no excuse or justification;"⁶⁶ it obliges Letal to answer it and to act upon it immediately.

After exchanging mementos with Becky (I will come back to this in the last section), Letal acts upon Rebecca's call when he asks her to follow him to the dressing room. Inside, while Rebecca takes out Letal's feminine garments, Letal tells her that he would like to be "more than a mother" to her and initiates a sexual encounter. The sexual

⁶⁴ Douzinas and Warrington, *supra* at 164.

⁶⁵ *Id.* at 18.

⁶⁶ *Id.* at 170.

intercourse begins with an acrobatic cunnilingus (Rebecca is swinging from an overhead pipe) and ends in penetration that leads to Rebecca's pregnancy. She finds the sexual encounter shocking at first, but ends up thoroughly enjoying and admitting *her need* for it. Letal initiates the sexual encounter not with the purpose of "scor[ing] a victory" over Becky, but rather to recognize and assert Rebecca's sexual desires and fill Rebecca's marital void.

B. Letal as Judge

Rebecca's isolation from her mother and husband is further emphasized in the next scene. Letal, now wearing a beard and acting as Eduardo, is seen at home with his bedridden mother. His mother sees in the newspaper a headline about Becky's first night in Madrid and shows it to her son. A close-up of the picture of them calls attention to the moment in which Rebecca's desires are excluded: seated between Becky and Manuel, Rebecca looks at Manuel with a face that denotes pain and anger; at the right of the frame and facing us, Manuel ignores her. The scene closes with two close-ups: Becky and Rebecca back-to-back (a sign of their emotional distance), and Letal noticing Manuel's gun. After this last shot, an extreme close-up of the gun cuts to an inter-title that informs the viewers that a month has passed; in the background, we see the image of a house, and then a shot is heard. This cut ties together the scene at the Villa Rosa with the criminal investigation that follows the gunshot: Rebecca's face reminds Letal/Judge Domínguez of his duty towards her: "consider me before you act!" This demand will guide his investigation from then on.

After Manuel's murder, we learn that Letal is also Judge Domínguez. A medium-long shot shows him with two policemen at the scene where Manuel's body lies. This time, he wears a black suit, dark glasses, and a beard; he is not singing love songs, but speaking in forensic terms, in an exaggerated manner: "Mr. Manuel Sancho's body lies in a prone decubitus position and show signs of rigidity." Domínguez is shown from a low camera angle, which creates an impression of height, visually highlighting his role as a legal authority. The narrative level, however, subverts this illusion of authority as his own assistants repeatedly contest his descriptions of the crime scene. This subversive narrative underscores the film's challenge to the traditional image of the judge who possesses uncontested authority and knowledge.

The purpose of the criminal investigation is at odds with what one might expect; Judge Domínguez appears more intent on proving Rebecca's innocence than on investigating what actually happened. For instance, after Rebecca publicly confesses to the crime on national TV, the judge persuades her in his office to recant the public confession. Judge Domínguez tellingly says: "I want to help you but you must cooperate." Try as he might to persuade Rebecca to recant, he fails and has no other option but to imprison her. Rebecca's arrival at the prison is cross-cut with Becky's successful debut at the theater. The images and sounds of the two contrasting locations, prison and theater, are superimposed in the scene: as the prison gates close behind Rebecca, which replicate the closing doors of a theater, we hear the audience's applause for Becky's appearance on the center of the stage of a full theater [Pictures 1 and 2].⁶⁷

⁶⁷ In a later musical sequence, several inmates dance in the prison yard, led by lesbian Cimarrona (played by well-known Spanish male-to-female transsexual Bibi Andersen, now Bibiana Fernández), who has committed a crime just to be closer to her jailed girlfriend. The prison

Interestingly, Judge Domínguez watches Becky's performances (he is seen among the audience). Becky dedicates her first song, "Think of me" ("Piensa en mí") to her daughter, who is forced to listen to it on the radio of one of the inmates. At the most dramatic moment of the performance, one tear falls in the same exact spot where she left a red-lip kiss on the floor at the beginning of the show.



Picture 3.1



Picture 3.2

The theatricality of all these gestures makes it difficult to interpret whether Becky's support for Rebecca is genuine or fake. It is far more complicated than what Kamir seems to acknowledge (in her view, Becky's act of dedicating her song and lyrics symbolizes complete support for her daughter). From the outset, the film presents Becky as a diva who is attracted by media and audience appreciation.⁶⁸ She abandons her daughter to pursue her singing career. Upon her return, she is more eager to face the media than to see her daughter. Her personal assistant Marga is writing her autobiography, and when Judge Domínguez interrogates Becky about her alibi on the night of the murder, she

becomes a performative space where those marginalized subjects (i.e., women, lesbians, transsexuals, blacks, gypsies) express themselves despite the efforts to silence them.

⁶⁸ See Williams, Bruce, *The Text in the Third Degree: Gay Camp Recoupment in What Ever Happened To ...? and High Heels*, vol. 2 *New Review of Film and Television Studies* 2 (2004): pp. 161-79, and *Playgrounds of Desire: Almodóvar, Fetishism, and the Male Ideal Ego* Vol 52 *Journal of Film and Video* no. 2, (2000): pp. 28-40.

answers: “I didn’t kill him. You don’t do that two days before an opening.” Discerning between Becky’s on-stage and off-stage performances as well as her theatricality and real emotions becomes more complicated when Judge Domínguez suggests that Becky talk to Rebecca, to which Becky replies: “When I wake up all I want is to live until 10 p.m. and do the only thing I know: perform.”⁶⁹

Letal/Judge Domínguez is the legal figure who can create the conditions for an honest relationship between the mother and daughter. This is nowhere more evident than when Judge Domínguez uses the empty and solemn courtroom (which visually contrasts with the earlier image of the glamorous and crowded theater) to bring Becky face-to-face with Rebecca. Within the emptiness of the courtroom, Becky can stop pretending (acting), and directly ask her daughter for forgiveness. The scene opens with Rebecca, who has not been informed about the reason why she has been summoned, entering an imposing courtroom. Becky enters next and soon finds her way to the judge’s bench. Positioned in the place of the judge and powerfully looking from above, she interrogates a visually smaller and powerless Rebecca [Picture 3].

Becky: “Why did you do it?”

Rebecca: “I didn’t kill him, Mom!”

Becky: “But you confessed it yourself.”

Rebecca: “I should have killed him, but I didn’t even get that. My only revenge was to say I did it.”

Becky: “Why do you torture me? Because I slept with him? Is that why?”

Rebecca: “Don’t be silly. You weren’t the only one.”

Becky: “Well, then?”

[Becky: “¿Por qué lo hiciste?”

Rebecca: “¡Yo no lo maté, mamá!”

Becky: “Pero tú misma lo confesaste. Nadie te obligó.”

⁶⁹ Furthermore, at one point, when Rebecca wears the earrings Becky bought her as a child, hoping she will notice them, Becky pretends to recognize them. Rebecca tells her to stop acting. Becky’s theatricality is further emphasized by her artistic name Becky del Páramo—Becky, diminutive of Rebecca.

Rebecca: “Matarle hubiera sido lo legítimo, pero no me permitisteis ni eso. Mi única venganza ha sido confesarlo, aunque fuera mentira.”

Becky: “¿Por qué me martirizas, Rebeca? ¿Es por haberme acostado con él? ¿Es por eso?”

Rebecca: “No digas tonterías. Tú no fuiste la única.”

Becky: “¿Entonces?”]

Rebecca replies, indirectly, with a question of her own: “Did you see ‘Autumn Sonata’?

It’s about a great pianist and her mediocre daughter. A story like ours.” In a long

reference to Ingmar Bergman’s film, Rebecca explains that she has spent all her life

competing with her mother in everything, but she could win only by marrying Manuel.⁷⁰

“We both lost with Manuel,” Becky defends. “Yes, but I married him. You had to prove you could take him from me! I knew it, but you had to prove it to me.” The competition

is not between two mothers, but between mother and daughter. However, something

unexpected happens at this point. As Becky gets off the judge’s bench, she admits her

guilt and asks her daughter for forgiveness: “Forgive me, Rebecca. I behaved very badly,

but what can I do now?” Rebecca replies: “You can only listen.” Rebecca gradually shifts

positions, visually suggesting that what started as Rebecca’s “trial” is now Becky’s—

Rebecca stands in front of her mother, who now sits as a defendant in front of her.

Rebecca confesses that she switched her stepfather Alberto’s sleeping pills, seemingly

causing his death, but she assures her mother that she did it out of her love for her.

Rebecca makes her way to the judge’s bench and now, from this position, accuses Becky

of abandoning her: “I wanted you to live your life. You promised me we’d have fun

together, that we’d never separate. But you lied. And that’s something I’ll never forgive”

⁷⁰ For Rebecca, as Morgan Rikki notes, “the absence of her mother and her consequent desire for affection and attention motivate an emotional attachment which oscillates between obsession . . . and psychotic rivalry.” *Dress to Kill* 1 Sight and Sound 12 (April, 1992): 28-29, at 29.

[Picture 4]. The scene closes with Rebecca leaving a profoundly upset Becky in the empty courtroom.



Picture 3.3



Picture 3.4

This scene draws the attention to some of the performative aspects of the law in three significant ways: first, by leaving the mother and daughter on their own to discuss their differences, Judge Domínguez transforms the courtroom into an informal performative space of conflict resolution. With the sanction of the law, this performative space points to Becky's assumption of responsibility: she becomes vulnerable, acknowledges her (moral) guilt, and for the first time asks Rebecca for forgiveness. In turn, Becky's transformation enables Rebecca to finally confront her mother and to demand to be heard—she confesses that she killed Alberto (although she denies having killed Manuel) and blames Becky for it. Second, Judge Domínguez's absence ensures that Rebecca's specific demand is brought before the law and is satisfied—Rebecca's particular motive, history, and need are fully heard by her mother in the legitimizing space of the court of law. By giving Rebecca a hearing (i.e., letting her speak), Judge Domínguez, the law, indirectly responds to his duty to act upon Rebecca's call to be considered before a judgment or legal decision is taken. The empty courtroom is the place of a symbolic trial, not only of Becky being judged by Rebecca, but of this whole

process by the viewer. In this scene, cinematic devices such as the camera angle, *mise-en-scène*, etc., and reference to Bergman's film position the viewer to become the judge of the mother's and daughter's actions. Rebecca is found "legally" innocent of killing Alberto, and Becky is found morally guilty of Rebecca's criminal acts. The legal function of the empty courtroom is to legitimize this symbolic verdict.

C. Judging Law, Performing Justice

It can be no coincidence that, after Rebecca has been declared (symbolically) innocent in the court of law, Judge Domínguez releases her from prison on the grounds of insufficient evidence. Judge Domínguez and Rebecca have this conversation shortly after her release:

Judge: "Letal wants you to go to see him tonight."
Rebecca: "What for?"
Judge: "To speak with you, I suppose. You probably have things to tell him, too."
Rebecca: "Wrong. I've nothing to tell him, he doesn't interest me." [...]
Judge: "Why are you so aggressive? Without me, you'd be rotting in jail!"
Rebecca: . . . "If you freed me because you believe I'm innocent you're only doing your job."
Judge: "I wonder. You never said you were innocent."
Rebecca: "I'm innocent."
Judge: "Why confess on TV then?"
Rebecca: "I was desperate and felt guilty."
Judge: "A psychiatrist can use that, but I can't."
Rebecca: "You can feel guilty without being guilty, can't you?"
Judge: "Of course, but I still don't understand you."
Rebecca: "I don't understand you."
Judge: "That's called reciprocity."
Rebecca: "Why do you help me? Why do you free me, if you're not sure?"
Judge: "I know you're innocent."
Rebecca: "That should be enough."
Judge: "But it isn't. There are so many things I'd like to ask. But I have no right to, even if I'm the judge."
Rebecca: "For once, we agree."

[Judge: “Letal quiere que vaya a verle esta noche al Villa Rosa.”
 Rebecca: “¿Para qué?”
 Judge: “Supongo que querrá hablar con usted y me imagino que usted tendrá también cosas que contarle.”
 Rebecca: “Pues imagina mal. Yo ya no tengo nada que contarle. Todo lo que él pueda decirme no me interesa.” [...]
 Judge: “¿Pero por qué es tan agresiva conmigo? ¡Sino fuera por mí todavía estaría pudriéndose en la cárcel!”
 Rebecca: . . . “Supuse que si me ha puesto en libertad es porque pensaba que soy inocente, en cuyo caso solo está cumpliendo con su deber.”
 Judge: “A veces tengo dudas. Todavía no he oído de sus labios que sea inocente”
 Rebecca: “Soy inocente.”
 Judge: “¿Entonces, por qué confesó en televisión?”
 Rebecca: “Estaba desesperada, me sentía culpable.”
 Judge: “Esa explicación es válida para un psiquiatra, pero a mi no me sirve.”
 Rebecca: “Para sentirse culpable no hace falta ser culpable. ¿Entiende eso?”
 Judge: “¡Claro que lo entiendo! Es a usted a quien no acabo de entender”
 Rebecca: “Yo tampoco le entiendo a usted.”
 Judge: “Eso se llama reciprocidad”
 Rebecca: “¿Por qué me ha ayudado desde el primer momento? ¿Por qué me ha dejado en libertad si tiene tantas dudas?”
 Judge: “No dudo de su inocencia.”
 Rebecca: “Con eso debería bastar.”
 Judge: “Pues no me basta. Hay tantas cosas que no sé y que me gustaría preguntarle. Pero no tengo derecho a hacerlo aunque sea el Juez de Instrucción.”
 Rebecca: “En eso estamos de acuerdo”]

This conversation reveals the shifting point of the relationship between Rebecca and Letal/Judge Domínguez. This time, he is the one who wants to be heard, and pleads with Rebecca to go to see what Letal has to tell her. This positions them as equals: Letal is not only a respondent to the demands of the other in need; he is also, like Rebecca, a legitimate claimant for the other's performance.⁷¹ Judge Domínguez frees Rebecca not because he thinks she is innocent, but because there is no proof of her being guilty. Although he wants to know whether Rebecca is legally innocent, he recognizes the limits of legal cognition, which prevent him from fully understanding Rebecca (at any rate, not as a psychiatrist would). In turn, Rebecca also recognizes and accepts that she does not

⁷¹ Douzinas and Warrington, *supra* at 178.

understand him fully. Significantly, their mutual (“reciprocal,” as Judge Domínguez calls it) incomprehension is the cause not of conflict but of agreement. In acknowledging the other as unfathomable, they establish a non-totalizing asymmetrical relationship between each other—the recognition that the other always contains an aspect that cannot be grasped in its totality is necessary to an ethics of alterity.⁷²

In his ethical task, Judge Domínguez’s professional role imposes certain limits on his way of responding to the call of the other. As he explains to Rebecca, to believe in her innocence is not enough; he still needs to determine her guilt or innocence according to the logic of the system. He recognizes that he has no right to ask some questions, *even if he is the judge*. While the judge remains ethically responsible to respond to the request of the other, it appears that, to be just, his response cannot breach the limits of legality. This dilemma refers to what Derrida calls the *aporia of justice*: “to act justly you must treat the other both as equal and as entitled to the symmetrical treatment of norms and as a totally unique person who commands the response of ethical asymmetry.”⁷³ (I will explain later whether this reconciliation between the legal and the ethical is possible).

⁷² As Douzinas and Warrington put it, “[a]n awareness of otherness cannot determine the attributes of the other, but it recognizes that there will always be aspects of every other that we cannot know.” (*Id.* at 20.) To understand fully any other’s position is to appropriate that other’s position as one’s own, and therefore to deny that other her otherness, difference, and singularity.

⁷³ *Id.* at 178. In “Force of Law,” Derrida challenges the correspondence between law and justice. By the law (*droit, loi*) Derrida means a system of rules, norms, and principles to be applied to particular cases. By justice, by contrast, he means the “infinite, incalculable, rebellious to rule and foreign to symmetry, heterogeneous and heterotropic.” *Supra* at 22. This idea of justice, he says, “is infinite because it is irreducible, irreducible because owed to the other, owed to the other, before any contract, because it has come, the other’s coming as the singularity that is always other.” (*Id.* at 25.) It is in his distinction between law and justice that Derrida identifies what he calls the “aporia of justice.” It foregrounds the impossibility of reducing the experience of justice to the (positive) system of rules. For him, justice is an experience of the impossible, an experience that we are not able to experience: “the experience of absolute alterity.” (*Id.* at 27.) In response to Derrida’s aporia of justice, Douzinas and Warrington turn to an eclectic adaptation by law of principles from the Aristotelian tradition of practical wisdom and from the Kantian tradition of reflective judgment. (*Supra* at 79.) They propose an aesthetic reflective judgment that

Despite Rebecca saying that she was not interested, she finally decides to hear what Letal has to tell her. In the same dressing room where they had their first sexual encounter, Letal confesses that he and Judge Domínguez are the same person, and proposes marriage to Rebecca.⁷⁴ Perplexed, Rebecca asks: “To marry whom? Hugo, Letal, the Judge?” “All of us,” he answers. Next, he takes Rebecca to his hideout, a garage where his mother keeps her old stuff. On the way there, he explains how he created his multiple identities to infiltrate and investigate criminal cases. He also admits that she is the first person he has ever brought there and that not even his own mother knows about his impersonations. Rebecca then confronts him and judges his misconduct:

Rebecca: “How can you lie to everyone?”

Judge: “But not to you or to me.”

Rebecca: “What about the people you leave behind? Paula fell in love with one of your characters.”

Judge: “There won’t be more characters. Now there’s only me. I brought Letal back to explain. The Judge couldn’t.

[Rebecca: “¿No sé cómo puedes vivir así, mintiéndole a todo el mundo?”

Judge: “A todo el mundo menos a tí y a mí mismo.”

Rebecca: “¿Y tú nunca piensas en la gente que vas dejando atrás? ¿Gente como Paula que se enamoró de uno de tus personajes?”

Judge: “Ya no habrá más personajes. Si yo he vuelto a Letal ha sido para explicártelo todo, desde el juez era muy difícil pero eso se acabó.”]

After being scrutinized by Rebecca, Letal/Judge Domínguez promises that “there won’t be more characters, only me.” However, Judge Domínguez continues to perform,

gives the other her due, yet under the auspices of an undetermined universal and a sense of “community in a continuous state of formation and dissolution; it is the precondition and horizon of judgment but each judgment passed marks the community’s end.” (*Id.* at 182.) According to them, the act of judging in law “must move between the norm and the event in the same way that reflective judgments find in each particular the mark of an undetermined universal.” (*Id.*) Justice is therefore “the bringing together of the limited calculability and determinacy of law with the infinite openness and contingency of alterity.” (*Id.* at 179.)

⁷⁴ Although for most of the film’s spectators it is obvious from the very beginning that they are the same person, Rebecca along with the rest of the characters seems to ignore his secret multiple identities.

demonstrating that he “exists only through [his] in(de)finite performing roles, the ideal sum of which correspond to his own performative ‘identity.’”⁷⁵ After he tells Rebecca that he brought Letal back to explain, because the Judge couldn’t, Rebecca and the viewers witness yet another metamorphosis: he once again dons the fake beard, dark glasses, and the judge’s clothes [Picture 5] and introduces himself as Eduardo, the father of her unborn child [Picture 6]. In doing so, Judge Domínguez does not cease in his performance: he adds another layer of meaning to it. Judge Domínguez, the law, is the sum of all his characters—Letal, the Judge, Eduardo, and father-to-be.



Picture 3.5



Picture 3.6

This visual metamorphosis reflects the law’s actual transformation: before encountering Rebecca, Judge Domínguez had impersonated different characters with the mere purpose of gathering information and experiences for the criminal investigations. His impersonations, Rebecca reminds him, did not lead to justice but to abuse: people, like Paula, who were unwillingly used as informants and therefore as a means to his end,

⁷⁵ Cleto, *supra* at 25. This affirmation is related to camp’s perception of “life as theater” and of “being as playing role”: “Depth-anchored subjectivity is dissolved and replaced by . . . depthless foundation of subjectivity as actor (in itself, non-existent without an audience) on the world as stage. And as object of camp decoding, the actor exists only through its in(de)finite performing roles, the ideal sum of which correspond to his own performative ‘identity,’ personality being equal to a co-existence of *personae* on the stage of Being.” (*Id.*) The camp notion of life as performance is a central aspect in *High Heels*, which focuses on the dynamics of role playing: from gender roles, people’s identities, motherhood, and everyday life to law.

rather than as concrete and unique persons. In contrast, after the face-to-face encounter with Rebecca, Letal/Judge Domínguez starts performing not according to his investigative interests but to Rebecca's direct and concrete demand, and morphs himself accordingly. It is precisely this situated encounter with the unrepeatable, unique demand of the other, which makes Judge Domínguez an ethical subject.⁷⁶ This ethical responsibility does not depend on the attributes and experiences of the self, but arises out of and from the demand of the vulnerable other.

Just as Judge Domínguez's performances have constitutive effects upon Rebecca—they enable her personal growth—Rebecca's performances also have constitutive effects upon the judge, and open him up to a parallel transformation. The reciprocal yet asymmetrical transformation between the judge and Rebecca lead us to reconceptualize law in terms of that very *performative medium* that makes it possible for self and other to respond to one another, and to be transformed by this encounter.

After introducing himself as Eduardo, Judge Domínguez and Rebecca rush into the hospital where Becky is in intensive care. At the hospital, Becky's image is framed between the bed curtains, which give the impression that she still is on a stage. When Rebecca enters Becky's room, she closes the curtains for a private conversation behind the scenes. Becky asks Rebecca to tell her the truth and Rebecca confesses that she did, in fact, kill Manuel. The judge enters the scene and Becky, in what could be considered "the performance of a lifetime," takes the blame for Manuel's murder. Judge Domínguez replies that a confession is not enough, because he needs physical evidence. In a final scene, and behind the judge's back, the film shows mother and daughter conspiring together to manipulate the evidence. The viewers (but not the judge) are shown how

⁷⁶ Douzinas and Warrington, *supra* at 165.

Rebecca gives Becky the gun she used to kill Manuel, and Becky plants her fingerprints on it. Eventually, Judge Domínguez relies on the physical evidence that “proves” Becky’s guilt and sets Rebecca free.

Judge Domínguez’s decision not to prosecute Rebecca is both legal and ethical (apparently reconciling the *aporia* of justice). By revealing to the viewer that this “truth” is the result of manipulating the system, the film raises the question of justice: is Judge Domínguez’s decision not to prosecute Rebecca just—and how are we to determine it? To reflect on this question leads us to explore the viewer’s judgment.

V. CINEMATIC JUDGMENT: ETHICS OF RESPONSE

According to Kamir, *High Heels* invites the viewer to practice a “participatory sympathetic identification” with Rebecca that mediates and shapes the viewer’s process of judging. Although each character is scrutinized and examined (i.e., Becky is accused of being self-centered and uncaring, and Eduardo of abusing Paula), Kamir argues that the film invites the viewer to accept their sincere remorse and to see all but Manuel in reference to Rebecca’s forgiving love and vulnerability.⁷⁷ In constituting a nonjudgmental, compassionate, and caring viewer-judge of Rebecca, Becky and Eduardo/Letal/Judge Domínguez, the film supports its fictional legal system. The viewer-judge, like Judge Domínguez, “judges two women through shifting personae and points of view, through identification with the involved parties, and through caring for them.”⁷⁸ Like the on-screen judge, the viewer investigates, determines relevant facts, and enacts the same alternative vision of justice of care—not prosecuting Rebecca for the murder.

⁷⁷ Kamir, *supra* at 280-281.

⁷⁸ *Id.* at 279.

In exploring the use of *mise-en-scène*, cinematography, editing, and sound, I argue that *High Heels* places the viewer in several judging positions that challenge the one-dimensional compassionate judgment proposed by Kamir. To illustrate my argument, I examine the use of two different cinematic techniques: on the one hand, the “direct address” (when a character looks directly into the camera, that is, at the viewers); and on the other hand, the visual contrast between Rebecca’s face and Becky’s “mask-face.” I demonstrate how these cinematic techniques elicit from the viewer an ethics of response to alterity, rather than an ethics of care.⁷⁹ Through the direct address, the film produces a face-to-face encounter between the viewer and Rebecca, parallel to the Levinasian face-to-face encounter between self and other that challenges the participatory sympathetic identification that Kamir suggests. The visual facial contrast between Rebecca and Becky breaks the mimetic relation between mother and daughter and, in doing so, establishes the conditions for an ethical relation between Rebecca and the viewer: If Rebecca were just the image or reflection of Becky, her otherness and singularity would be denied, and no ethical relation between Rebecca and the viewer would be possible. In the last part of this section, I argue that, by revealing what actually happened (Rebecca as the actual killer of

⁷⁹ In “Reality and its Shadow,” Levinas deprives art of ethics and responsibility. In his view, art consists in replacing the object with its image (a shadow, a caricature, a neutralizing vision of the object). (*La réalité et son Ombre* 1 *Revue des Sciences Humaines* 185 (1982): 103-117, at 106, 112, 111.) It is beyond the scope of this chapter to discuss the ethical or unethical nature of art. In accordance with Alex Gerbaz, I claim that, “If responsibility begins with the face-to-face encounter, perhaps in the age of the screen and mediated social encounters our sense of responsibility is changing. The ubiquity of screens does not mean the end of responsibility . . . ; rather, it makes the viewer responsible for reaching beyond the presence of images in order to ‘see’ and respect the conscious life of others.” (*Direct Address, Ethical Imagination, and Errol Morris’s Interrotron* 12 *Film-Philosophy* 2 (September 2008): 17-29, at 26.) For discussions on the ethical dimension of art from the Levinasian perspective see also Sarah Cooper, *Selfless Cinema? Ethics and French Documentary* (Oxford: Legenda, 2006).

Manuel) to the viewer and not to the on-screen judge, the film constructs a cinematic judging process that differs from the one presented in the diegesis.

A. Direct Address to the Viewer: Face-to-Face Encounter

High Heels opens with Rebecca's image reflected in a glass window of the airport where Becky's plane is about to arrive. The fleeting image cuts to an extreme close-up of the side of Rebecca's face. This is followed by another reflection of Rebecca: in the background, her image appears superimposed over people walking in the airport; in the foreground, she is seen looking at a small model of it. A low camera angle shows Rebecca looking for the arrival time of her mother's plane on a huge board. While sitting in the waiting room, a zoom-in brings her face closer to the viewer so that her expression can be seen and her thoughts heard. Rebecca's face in close-up dissolves into the first flashback of her traumatic memory from childhood in the Caribbean, when she lost one of the earrings her mother bought for her and Alberto pretended to sell her to the locals. The flashback closes with the image of a young Rebecca running away from Becky and Alberto. Then, the image dissolves to Rebecca's adult and suffering face, which directly addresses the camera [Picture 7]. Her direct address of the camera is held in close-up, while the off-screen voice of her mother still calls out Rebecca's name.



Picture 3.7

In the same shot, Rebecca is shown taking from her handbag those very same earrings and putting them on. Then, a close-up of her face dissolves into a second flashback. This time, she remembers how she tampered with Alberto's pills, causing his death, after which her mother abandoned her to pursue her acting career in Mexico. Once again, the image of a young Rebecca fades out, while the off-screen voice of her mother confirms that she is going to abandon her. The scene closes by cutting back to the airport, where a guitar case with the name of Becky del Páramo stuck to it slides along the baggage carousel and leads directly to the now star-and-diva, Becky.

The unusual shot of direct address to the viewer (for there is no other addressee in the diegesis) functions as the Levinasian face-to-face encounter between self and other, in two interconnected ways: First, by looking directly at the camera, Rebecca makes visible the concealed artifice of cinema, and challenges the viewer's temptation to identify with the gaze of the camera. The frontal facial breaks the illusion of the "mirror screen" through which the viewer identifies himself or herself as the origin and creator of meaning.⁸⁰ Rebecca's face, using Alex Gerbaz's words, expresses "her otherness, alterity, and ungraspable subjectivity."⁸¹ It "expresses something that cannot be accounted for

⁸⁰ According to Jean-Louis Baudry, the darkened and closed ideological space of the cinema functions, like the Platonic cave, as a *mirror-screen* that "reflects *images* but not 'reality'" (Baudry, Jean-Louis, "Ideological Effects of the Basic Cinematographic Apparatus," in *Film Theory and Criticism*, 6th ed. Gerald Mast, Marshall Cohen, Leo Braudy [Oxford: Oxford University Press, 2004]: 355-365. at 362). The projector appears as a sort of psychic apparatus that confers on the spectator the imaginary position of "transcendental subject," while at the same time it conceals such a position as constructed (*Id.* 360). For him, cinema is "an apparatus destined to obtain a precise ideological effect, necessary to the dominant ideology: creating a phantasmization of the subject, it collaborates with a marked efficacy in the maintenance of idealism." (*Id.* 364.) The only way to resist the ideological forces of the system and to break through their deceptive effects is to make the system's modes of production obvious (*Id.* 362-65).

⁸¹ Gerbaz, *supra* at 20

within the totality of the transcendental subject's intentions;" something irreducible that escapes identification.⁸² Second, by looking back at the viewer, Rebecca openly acknowledges the presence of the film viewers. The viewer is confronted with the fact that he or she is not only the subject of perception but also the *object* of perception. Rebecca's direct address confronts the viewer and puts his or her "all-perceiving" self in question.⁸³ That is, it challenges the illusory totality of the viewer's act of perception.⁸⁴

The direct shot of the face establishes the conditions for a face-to-face encounter between Rebecca and the viewer: it prevents both Rebecca's reduction to a mere image to be looked at, and the viewer's maintenance of a transcendental self. By reaching out from the diegesis of the film, Rebecca appears in the uniqueness and singularity of her face, and expresses a direct demand for an ethical response before any judgment is taken by the viewer.

⁸² *Id.* at 23-24. "Yet [as Gerbaz points out] acknowledgment of this failure to reach complete identification, to reduce to presence, is . . . fundamental to an ethics of alterity." (*Id.* at 24.)

⁸³ Christian Metz argues, following Lacan, that cinema offers the spectator the imaginary state of wholeness and completion, and that, in order to create such a state of completion cinema uses identification and voyeurism. Metz distinguishes what he calls "primary identification" from "secondary identification." He argues that the spectator, first of all, "*identifies with himself*, with himself as a pure act of perception (as a wakefulness, alertness): as the condition of possibility of the perceived and hence as a kind of transcendental subject, which comes before every *there is*." ("Identification, Mirror" in *Film Theory and Criticism*, 6th ed. Gerald Mast, Marshall Cohen, Leo Braudy [Oxford: Oxford University Press, 2004]: 820-836. at 823.) This primary identification makes possible the identification with the characters and the events on the screen (secondary identification). For Metz, [t]he practice of the cinema is only possible through the perceptual passions: the desire to see (= scopic drive, scopophilia, voyeurism)." (*Id.* 827.) The voyeur possesses the privileged position of looking without being noticed (the object of perception does not know that it is being watched).

⁸⁴ Finally, in presenting Rebecca as the bearer of the look, the direct address undermines the patriarchal cinematic tendency (in particular, classic Hollywood cinema) to position the woman as a passive object to be looked at by the active male gaze of the viewer. In *Visual Pleasure and Narrative Cinema*, Laura Mulvey recognizes three types of "gaze," each relating the desire for the images on the screen from different points of view: that of the camera, that of the characters looking at one another, and that of the spectator. For Mulvey, cinema constitutes its scopic spectator as masculine, and its object as feminine. In *Film Theory and Criticism*, 6th ed. Gerald Mast, Marshall Cohen, Leo Braudy (Oxford: Oxford University Press, 2004):837-848.

B. Face and Mask-face

The opening emphasis on Rebecca's face is contrasted with the contrary technique of depriving the viewer of a clear view of Becky's face. Becky is first seen (both in the first flashback and upon her arrival at the airport) wearing a large red hat, big sunglasses, and heavy makeup that barely allows the viewers to see her face. Immediately after encountering Rebecca, Becky takes a small mirror from her bag to touch up her makeup, and an extreme close-up shows a distorted reflection of her face at the same time that she inquires about the presence of the press [Picture 8]. The camera tilts up from Becky's grotesque facial reflection to Rebecca's face. Rebecca proudly replies that she kept it secret that Becky was coming back; a blurry image of Becky's red hat occupies half of the frame, pointing to Becky's incapacity to emotionally connect with her daughter. Becky complains she wanted "more expectation." Rebecca answers, with tears in her eyes, that she was full of expectation.

Becky's distorted facial reflection in the mirror visually reveals what Luce Irigaray calls a "masquerade of femininity," by which "the woman loses herself, and loses herself by playing on her femininity."⁸⁵ This idea of the masquerade becomes particularly apparent in the scene in which Becky appears, applying a facial mask in front of a mirror, and indifferently talks about her "successful" encounter with Rebecca with her personal assistant Margarita [Picture 9].

⁸⁵ Luce Irigaray, *This Sex Which is Not One*, Catherine Porter, trans. (Cornell UP, Ithaca, 1985, at 84). For a similar argument in another of Almodóvar's film, see Alejandro Yarza's brilliant analysis of Almodóvar's film *Entre Tinieblas* in *Un canibal en Madrid: la sensibilidad camp y el reciclaje de la historia en el cine de Pedro Almodóvar* (Madrid: Libertarias, 1999).

While this is happening, Rebecca appears on TV as the news anchor, but self-conscious of the fact that her mother is watching, she cannot contain her laughter while referring to the casualties of a terrorist attack. Embarrassed, Becky complains that she would have preferred not to have seen her daughter. The camera cuts from Becky's mask-face to a television screen where two Asian women appear, applying makeup on their faces in extreme close-up. Another shot reveals Manuel as the viewer of such images, while a voice-over coming from the television program comments on the images of the Asian women: "the music and the dance were at the monarchy's service for centuries. Most of the performers of the opera of the masks are women." Not surprisingly, at this precise point Becky arrives at Manuel's (and Rebecca's) house, and Manuel turns his gaze towards her. Thus, *mise-en-scène*, sound, and editing connect the two scenes: by applying the mask on her face (the masquerade of femininity) like the women at the service of the monarchy on the television screen, Becky appears subordinated to the patriarchal order represented by Manuel. Within the diegetic space, Becky epitomizes Laura Mulvey's idea of the woman's "to-be-looked-at-ness."



Picture 3.8



Picture 3.9

The visual contrast between Rebecca's face and Becky's mask-face throughout the film challenges the mimetic relation between mother and daughter, and establishes a

key difference between them: while Becky represents the celebration and naturalization of patriarchy, Rebecca appears as the victim of such patriarchy. This differentiation creates a different ethical relation for the viewer with Rebecca.

The facial contrast between Rebecca and Becky is reiterated in the last part of the film, significantly, when Rebecca explains the motives for killing her husband to her mother (and the viewer). The scene opens inside the ambulance where we see Becky with an oxygen mask on her face and Rebecca holding her hand at her side [Picture 10]. Becky asks Rebecca for the forensic details of the murder because the judge does not seem convinced by her confession. Rebecca then explains the motives of the killing: She asked Manuel if he wanted her to shoot herself or die of an overdose, and Manuel replied that he would not give a damn about how she died. Becky interrupts Rebecca and tells her to go directly to the “heavy part” because that is what the judge will want to know: “How far away were when you fired . . . did he fall forward or backward.” Rebecca puts the oxygen mask back into Becky’s face and explains that Manuel’s insensitivity to her threat of killing herself was the last straw for her: she explains how she pulled the trigger, shot, and killed Manuel. Throughout the entire scene, Becky is seen with her face covered by the mask, taking it off only to ask questions or make comments to Rebecca. The scene closes with Becky telling her daughter that she should find a better way than murder to solve her problems with men. Rebecca replies that her mother should teach her how.



Picture 3.10

Although Becky is sick and dying, the grotesque image of her face with the oxygen mask visually deprives her of vulnerability, and, therefore, of the potential for an ethical relation with the viewer. Becky's mask-face reminds the viewer that she is the cause of Rebecca's criminal acts and invites the viewer to detach and distance him/herself from her. This contradicts Kamir's reading of the scene, because for her, Becky's identification with her daughter's pain and humiliation influences the viewer to judge Rebecca accordingly (Kamir focuses exclusively on the narrative level of the scene). As she puts it, "[l]earning of the killing in this context, the viewer is influenced by the dying, remorseful mother's attitude. The viewer joins her in the impulse to protect Rebecca, save her, and compensate for all the emotional abuse she has suffered all her life."⁸⁶

To the viewer the visual technique of the mask-face deflects the view from Becky and directs it towards listening to Rebecca's particular motive, history, and pain for the murder without the mediation of her mother. Shifting the attention towards Rebecca, the film invites the viewer to fulfill his or her ethical obligation to respect Rebecca's specific history and motive before any judgment is taken. Like the on-screen performer-judge, the responsibility of the viewer towards Rebecca starts with her demand for an ethical response and concludes with its satisfaction.

C. Truth and Justice.

While *High Heels* calls upon the viewer to respect and fulfill Rebecca's ethical demand like the on-screen judge by revealing the "truth" to the viewer and not to the

⁸⁶ Kamir, *supra* at 280.

judge, the film constitutes a viewer-judge different from the one on-screen. However, the film invites them to reach the same decision, which is the non-prosecution of Rebecca for the murder. Richard Sherwin distinguishes, in regard to legal storytelling, three different forms of truth (factual, legal, and symbolic) that can help us to examine this issue.⁸⁷

According to Sherwin,

Factual truth tells us what actually happened as a matter of historical accuracy. Whose testimony can be believed, what the physical evidence shows, how the elements of proof add up in the course of establishing who is to blame. . . . Legal truth, however, . . . says that there are times when general concepts and abstract principles of law may be more important than particular facts. . . . Symbolic truth . . . has the power to transcend particular facts and even particular laws. In this way, like legal truth, symbolic truth may ask a decision maker to sacrifice particular facts for the sake of something larger. But like factual truth it also seeks to root the truth not in some counterintuitive generality but in a specific human reality—albeit a higher human reality than ordinary facts typically allow.⁸⁸

Unlike the on-screen judge who believes that Becky's guilt and Rebecca's innocence have been determined according to what the physical evidence shows (factual truth) as well as following the rules (legal truth), the viewer knows that justice has not been legally attained, because the evidence has been manipulated. By calling attention to Rebecca's motives for the killing of Manuel, *High Heels* encourages the viewer-judge to consciously sacrifice particular facts and laws for the more important sake of Rebecca. Put differently, it asks the viewer to judge Rebecca according to the symbolic and not to the factual and legal truth, which is to see her actions as (symbolically) destroying the oppressive patriarchal social and cultural order represented by Manuel. By asking the viewer to accept Becky's admission of guilt (as complicit in this order, and responsible for Rebecca's suffering), Manuel's death does not go unpunished.

⁸⁷ Richard K. Sherwin, *When Law Goes Pop: The Vanishing Line Between Law and Popular Culture* (University of Chicago Press, 2000).

⁸⁸ *Id.* at 50.

VI. CAMP AESTHETICS: LAW AS QUEER

In “Strange Encounters,” law and film scholars Ruth Buchanan and Rebecca Johnson suggest that focusing on the affective dimensions of thought produced through the combination of word, image, and sound in film opens up both critical and transformative possibilities for Law-and-Film scholarship.⁸⁹ Their interest is less “in understanding how film’s special *effects* are produced than in understanding how various cinematic techniques work through us to produce *affects*, be they terror, elation, confusion, or grief.”⁹⁰ In particular, they focus on the ways film might “challenge or destabilize dominant ‘structures of feeling,’ revealing new potential subjectivities and ways of being in the world.” And further, which is “the place of *affect* in the constitution of legal subjectivities”?⁹¹ Following Buchanan and Johnson’s suggestion, I explore how the camp aesthetics of Letal/Judge Domínguez’s female impersonations reveal new subjectivities that invite the viewer to examine and question the dominant assumptions about identity upon which traditional legal systems are grounded.⁹² I then show how the

⁸⁹ “Encounters: Exploring Law and Film in the Affective Register,” 46 *Studies in Law, Politics, and Society* (2009): 33-60. Buchanan and Johnson differentiate affect from emotion—our pre-cognitive responses to particular combinations of word/image/sound. For an overview of the law-and-film scholarship see, for instance: *Law and Film: Introduction*, Stefan Machura & Peter Robson, eds. (Oxford: Blackwell Publishers, 2001); *Law’s Moving Image* Leslie J. Moran et al., eds. (London; Portland, OR.: Cavendish Publishing, 2004); *In The Grip of The Law: Trials, Prisons, And The Space Between*, Monika Fludernik and Greta Olson, eds. (Frankfurt; New York: Peter Lang, 2004); *Law on the Screen*, Austin Sarat et al., eds. (Calif.: Stanford University Press, 2005).

⁹⁰ Buchanan and Johnson, *supra* at 39.

⁹¹ *Id.*

⁹² As Alejandro Yarza observes, “camp is situational, it emerges from the interrelation between two different elements in a concrete historical situation. Camp does not exist *a priori*, it emerges as *effect* of a specific situation that links an object with whom recreates it; that’s why it requires the active participation of the spectator.” *supra* at 20.

interaction between the camp aesthetics of the judge and the viewer reconceptualize law as queer performance.⁹³

Cultural anthropologist Esther Newton notes that “the role of the female impersonator is directly related to both the drag queen and camp roles in the homosexual subculture.”⁹⁴ As she explains, the main opposition around which the homosexual world revolves is masculine-feminine; and one way of presenting such opposition through one’s person is drag. Yet, Newton argues that while all female impersonators are drag queens in the context of the homosexual subculture, not all of them are camp: “Both the drag queen and the camp are expressive performing roles, and both specialize in transformation. But the drag queen is concerned with masculine-feminine transformation, while the camp is concerned with what might be called a philosophy of transformations and incongruity.”⁹⁵ Camp uses the incongruity as a creative “strategy for a situation.”⁹⁶ Taking Newton’s notion of camp a step further, Jack Babuscio and Judith Butler highlight its subversive aspect. For Babuscio, camp is subversive because it “forces the spectator to detach from the heterosexual viewpoint of conventional standards: masculinity (including sexual dominance over women) is “natural” and appropriate for men, and femininity (including sexual submissiveness toward men) is “natural” and appropriate for women.⁹⁷ For Butler, drag “fully subverts the distinction between inner and outer psychic space and effectively mocks both the expressive model of gender and the notion of a true gender identity . . .

⁹³ For queer in law see, for instance, *Sexuality in the Legal Arena*, eds. Carl Franklin Stychin and Didi Herman (London: The Athlone Press, 2000).

⁹⁴ In Cleto, *supra* at 98.

⁹⁵ *Id.* at 102.

⁹⁶ *Id.*

⁹⁷ In Cleto, *supra* at 123.

In imitating gender, drag implicitly reveals the imitative structure of gender itself.”⁹⁸

Letal’s drag impersonation of Becky is camp in the terms established above.

The first time Letal physically appears on the screen is at the Villa Rosa gay night club, performing an impersonation of Becky in drag. Letal’s performance is presented in two scenes: one takes place onstage, the other offstage. The first scene opens with Letal emerging from behind the curtains, followed by the camera in a long take as he moves to the center of the stage. Letal performs an old song of a younger Becky, while imitating in detail her gestures, style, and costume—he wears a red miniskirt, full make-up, long gloves, dangling earrings, a wig, and high heels [Picture 11]. With sexualized gestures and exaggerated expressions, he flaunts his femininity to the men he encounters on his way to the stage. In the stylized backdrop, traditional flamenco dancers contrast with Letal’s masculine features and big stature. A reverse shot shows Becky in close-up captivated and flattered by his impersonation. Then, an over-the-shoulder shot shows three other female impersonators singing along with Letal, imitating his moves and expressions from their front-row table. Another close-up of Becky’s face emphasizes her pleasure on seeing her imitation. The scene closes with a zoom-out of Letal at the center of the stage.



⁹⁸ In Cleto, *supra* at 363-364 (emphasis in the original).

Picture 3.11

The opening of the second scene reiterates that of the former, signaling to the viewer that what follows is part of the same performance. The scene opens with Letal, emerging from behind the curtains followed by the camera as he moves towards Becky's table and sits facing her. Then, the following conversation takes place:

Letal: "I hope you are not upset."

Becky: "Why?"

Letal: "You may not like the imitations."

Becky: "They flatter me. I feel so young, so absurd. Let me look at you. You don't look like me but the gestures are mine."

Letal: "I tried to copy your style. It made you unique."

Becky: "I still am. But you can't be a pop singer at my age. I've become a living legend."

Letal: "I'm more into your early years. Wigs, miniskirts, platform shoes. Your spirit, your style."

[Letal: "¿Espero que no te haya molestado?"

Becky: "¿Molestarme, por qué?"

Letal: "Hay gente que no le gusta nada que la imiten."

Becky: "A mí me halaga, me hace sentir tan joven y tan absurda. A ver, deja que te mire. De cerca no te me pareces mucho, pero los gestos son míos."

Letal: "He tratado de imitar tu espíritu, tu estilo. Eso que te hizo única."

Becky: "Todavía lo soy. Pero he cambiado, no se puede seguir siendo una cantante pop a mi edad, con el tiempo me he convertido en una gran dama de la canción."

Letal: "Pero a mí me va más lo antiguo. Los pelucones, la minifalda, el plataformón. Tu espíritu, tu estilo."]

Through Letal's drag impersonation, Becky becomes a camp icon in the homosexual subculture. Letal's drag performance, however, is not a misogynistic representation of Becky (or women in general), but a parodic stylized appropriation of her femininity (as Letal implies, when he tells Becky that he tries to copy the style that made her unique—wigs, miniskirts, and platform shoes). Letal's exaggerated and stagy style, gestures and expressions, and excessive makeup and feminine attire, in fact evoke a woman who is already a distortion or a masquerade of femininity; they exaggerate what

is already an exaggeration.⁹⁹ Letal's campy impersonation of Becky subverts the erotic scenario of woman-as-spectacle, of woman-to-be-looked-at, forcing the viewer to examine and critically detach from Becky's celebration of patriarchy.¹⁰⁰

After the above conversation, the camera moves to the right to shift the viewer's attention to Rebecca and Manuel, who are sitting on Becky's side. As soon as Rebecca introduces Manuel to Letal, they have a confrontational encounter: Manuel asks Letal what his real name is, while simultaneously staring at his crotch. The camera tilts up from Letal's crotch (the same crotch Rebecca will undress moments later backstage) to a close-up of Letal's face. Letal then replies that he is whatever he wants to call him, but that his friends call him (dropping his voice) "Letal." A close-up of his face shows him staring at Manuel's gun. Evoking the former shot, the camera tilts up from Manuel's gun (the same gun Rebecca will use to kill Manuel) to his face in close-up. In return, Manuel asks if Letal's name is male or female. Letal answers that it depends, but for him, he is a man. While Manuel demonstrates his "maleness" by showing his gun, Letal shows his by suddenly dropping the level of his voice.¹⁰¹ The comic incongruence produced by Letal's vocal dropping is Letal's campy strategy to deal with Manuel's homophobic attitude towards him.¹⁰² Camp, through its comic incongruity, forces the viewers to detach from

⁹⁹ Marcia Pally, *The Politics of Passion: Pedro Almodóvar and the Camp Aesthetic* 10 *Cineaste* 1 (1990), at 84.

¹⁰⁰ Andrew Ross, in Cleto, *supra* at 324.

¹⁰¹ The equation of penis and gun as a sign of masculinity is also parodied in the film—Manuel is killed by his own gun. See: Zorach, Rebecca, *'Tu imagen divina': The Fetishism of the Femme and Her Secret in Pedro Almodóvar's Tacones lejanos*, 10 *Torre de Papel* 1 (2000): 120-33. at 129.

¹⁰² As Babuscio observes, "in order for an incongruous contrast to be ironic it must, in addition to being comic, affect one as 'painful'—though not so painful as to neutralize the humor. . . . Humor constitutes the strategy of camp." (In Cleto, *supra* at 126).

and question Manuel's hostile position, and to reflect about and align with Letal's marginal one.

The scene closes with Becky and Letal exchanging mementos (one earring and a fake "breast"). As Newton remarks, one part of the performance of the female impersonator is to make the opposition between the female "appearance" and the male "reality" evident. One way to do this is to pull out one fake "breast" and show it to the audience. By showing his fake breast to the audience, Letal reveals that his appearance is an illusion; it says that sex role behavior is an appearance that can be manipulated at will.¹⁰³ In addition, by breaking the illusion of femininity, Letal frees himself from other impersonators as the immediate reference group (for instance, the anonymous female impersonators that imitated his performance) and, more specifically, from Becky. In so doing, he positions himself as *the* drag impersonator to the viewers.¹⁰⁴

The fact that Judge Domínguez is first seen in his role of drag performer within the context of the homosexual subculture is highly subversive. It replaces the dominant legal assumptions of a fixed and given identity (unity, unicity, stability, permanence, depth, and heterosexuality) with fluid and performative identities (multiplicity, diversity, instability, change, surface, and queerness).¹⁰⁵ This idea of fluidity and performativity is reinforced throughout the film through Judge Domínguez's multiple characters: he goes from Letal's exaggerated femininity (he wears full makeup, miniskirt, and high heels) to Eduardo's ambiguity (he is seen half in drag), and then to Domínguez's extreme masculinity (he wears sunglasses, a beard, and a suit).¹⁰⁶ This rejection of legal

¹⁰³ In Cleto, *supra* at 101.

¹⁰⁴ *Id.* at 105.

¹⁰⁵ Cleto, *supra* at 14.

¹⁰⁶ Judge Domínguez's excess of masculinity could be read as camp, as self-parody.

assumptions about identity challenges the exclusive categorical oppositions (masculine/feminine, original/copy, identity/difference, natural/artificial, private/public, heterosexual/homosexual, etc.) upon which the legal epistemic is grounded.

By re-imagining law from a queer perspective, the film opens up the possibility for an aesthetic judgment that takes seriously the call of those marginal subjects (such as lesbians, homosexuals, transvestites, transsexuals, women, etc.) that have been traditionally excluded from the law. It enables them to express and assert their otherness and difference, at the same time that it forces the viewer to respect and be responsive to their alterity. *High Heels*, in other words, transforms the law into a queer performance that recognizes and includes new subjectivities that disrupt the hierarchy that privileges masculinity, heterosexuality, and patriarchy.

VII. LGBT IN SPAIN TODAY

Since *High Heels* re-imagined law as queer in 1991, LGBT organizations have witnessed a profound transformation of Spanish society, from the repeal of Franco's discriminatory laws in 1995, to the official expunge of the police records of homosexuals imprisoned during Franco's dictatorship in 2001, to the declaration in 2004 of the Socialist government of José Luis Rodríguez Zapatero "in recognition of all persons who during Franco regime suffered persecution and imprisonment for their sexual orientation or identity." In addition, the rights of economic compensation and pension were granted to homosexuals, transsexuals, and other minorities (prostitutes) who had been persecuted

by the laws of Vagrancy and Dangerousness and the Social Rehabilitation Law.¹⁰⁷ At last, the Spanish Parliament passed the Same-sex Marriage Law (Ley 13/2005, July 1st), which amends the Civil Code in order to permit same-sex marriages.¹⁰⁸ The law provides same-sex married couples the same rights of inheritance, adoption, divorce, and tax benefits as heterosexual marriages. More recently, Congress passed the Law of Gender Identity (Ley 3/2007, March 15) allowing transgendered persons to change their legal name and gender in all public documents.¹⁰⁹ These dramatic changes in favor of the recognition of rights of the LGBT community have taken place despite the fierce opposition of the conservative political parties, such as *Partido Popular* (PP), and the head of Catholic hierarchy, for whom marriage is based on the unbreakable union of man and woman and same-sex marriage threatens to break the traditional and fundamental institution of family.¹¹⁰

¹⁰⁷ See “Indemnización para los presos homosexuales del franquismo” <http://www.gaybarcelona.net/actualidad/062005/5.htm>; “El Congreso pedirá una indemnización para los Gays, Lesbianas y Transexuales Presos del Franquismo,” EL País, 12 noviembre 2004

¹⁰⁸ See Appendix.

¹⁰⁹ LEY 3/2007, de 15 de marzo, reguladora de la rectificación registral de la mención relativa al sexo de las personas. (BOE no 65 March 16 2007 11253).

¹¹⁰ See, for example, the note by the Executive Committee of the Spanish Episcopal Conference *En favor del Verdadero Matrimonio* (In favor of true marriage), 15 July 2004: <http://www.conferenciaepiscopal.es/documentos/Conferencia/VerdaderoMatrimonio.htm>

APPENDIX

23632 Sábado 2 julio 2005 BOE núm. 157

I. Disposiciones generales

JEFATURA DEL ESTADO

11364 *LEY 13/2005, de 1 de julio, por la que se modifica el Código Civil en materia de derecho a contraer matrimonio.*

JUAN CARLOS I
REY DE ESPAÑA

A todos los que la presente vieren y entendieren.

Sabed: Que las Cortes Generales han aprobado y Yo vengo en sancionar la siguiente ley.

I

La relación y convivencia de pareja, basada en el afecto, es expresión genuina de la naturaleza humana y constituye cauce destacado para el desarrollo de la personalidad, que nuestra Constitución establece como uno de los fundamentos del orden político y la paz social. En consonancia con ello, una manifestación señalada de esta relación, como es el matrimonio, viene a ser recogida por la Constitución, en su artículo 32, y considerada, en términos de nuestra jurisprudencia constitucional, como una institución jurídica de relevancia social que permite realizar la vida en común de la pareja.

Esta garantía constitucional del matrimonio tiene como consecuencia que el legislador no podrá desconocer la institución, ni dejar de regularla de conformidad con los valores superiores del ordenamiento jurídico, y con su carácter de derecho de la persona con base en la Constitución. Será la ley que desarrolle este derecho, dentro del margen de opciones abierto por la Constitución, la que, en cada momento histórico y de acuerdo con sus valores dominantes, determinará la capacidad exigida para contraer matrimonio, así como su contenido y régimen jurídico.

La regulación del matrimonio en el derecho civil contemporáneo ha reflejado los modelos y valores dominantes en las sociedades europeas y occidentales. Su origen radica en el Código Civil francés de 1804, del que innegablemente trae causa el español de 1889. En este contexto, el matrimonio se ha configurado como una institución, pero también como una relación jurídica que tan sólo ha podido establecerse entre personas de distinto sexo; de hecho, en tal diferencia de sexo se ha encontrado tradicionalmente uno de los fundamentos del reconocimiento de la institución por el derecho del Estado y por el derecho canónico. Por ello, los códigos de los dos últimos siglos, reflejando la mentalidad dominante, no precisaban prohibir, ni siquiera referirse, al matrimonio entre personas del mismo sexo, pues la relación entre ellas en forma alguna se consideraba que pudiera dar lugar a una relación jurídica matrimonial.

Pero tampoco en forma alguna cabe al legislador ignorar lo evidente: que la sociedad evoluciona en el modo de conformar y reconocer los diversos modelos de

convivencia, y que, por ello, el legislador puede, incluso debe, actuar en consecuencia, y evitar toda quiebra entre el Derecho y los valores de la sociedad cuyas relaciones ha de regular. En este sentido, no cabe duda de que la realidad social española de nuestro tiempo deviene mucho más rica, plural y dinámica que la sociedad en que surge el Código Civil de 1889. La convivencia como pareja entre personas del mismo sexo basada en la afectividad ha sido objeto de reconocimiento y aceptación social creciente, y ha superado arraigados prejuicios y estigmatizaciones.

Se admite hoy sin dificultad que esta convivencia en pareja es un medio a través del cual se desarrolla la personalidad de un amplio número de personas, convivencia mediante la cual se prestan entre sí apoyo emocional y económico, sin más trascendencia que la que tiene lugar en una estricta relación privada, dada su, hasta ahora, falta de reconocimiento formal por el Derecho.

Esta percepción no sólo se produce en la sociedad española, sino también en ámbitos más amplios, como se refleja en la Resolución del Parlamento Europeo, de 8 de febrero de 1994, en la que expresamente se pide a la Comisión Europea que presente una propuesta de recomendación a los efectos de poner fin a la prohibición de contraer matrimonio a las parejas del mismo sexo, y garantizarles los plenos derechos y beneficios del matrimonio.

II

La Historia evidencia una larga trayectoria de discriminación basada en la orientación sexual, discriminación que el legislador ha decidido remover. El establecimiento de un marco de realización personal que permita que aquellos que libremente adoptan una opción sexual y afectiva por personas de su mismo sexo puedan desarrollar su personalidad y sus derechos en condiciones de igualdad se ha convertido en exigencia de los ciudadanos de nuestro tiempo, una exigencia a la que esta ley trata de dar respuesta.

Ciertamente, la Constitución, al encomendar al legislador la configuración normativa del matrimonio, no excluye en forma alguna una regulación que delimite las relaciones de pareja de una forma diferente a la que haya existido hasta el momento, regulación que dé cabida a las nuevas formas de relación afectiva. Pero, además, la opción reflejada en esta ley tiene unos fundamentos constitucionales que deben ser tenidos en cuenta por el legislador. Así, la promoción de la igualdad efectiva de los ciudadanos en el libre desarrollo de su personalidad (artículos 9.2 y 10.1 de la Constitución), la preservación de la libertad en lo que a las formas de convivencia se refiere (artículo 1.1 de la Constitución) y la instauración de un marco de igualdad real en el disfrute de los derechos sin discriminación alguna por razón de sexo, opinión o cualquier otra condición personal o social BOE núm. 157 Sábado 2 julio 2005 23633 (artículo 14 de la Constitución) son valores consagrados constitucionalmente cuya plasmación debe reflejarse en la regulación de las normas que delimitan el estatus del ciudadano, en una sociedad libre, pluralista y abierta.

Desde esta perspectiva amplia, la regulación del matrimonio que ahora se instaaura trata de dar satisfacción a una realidad palpable, cuyos cambios ha asumido la sociedad española con la contribución de los colectivos que han venido defendiendo la plena equiparación en derechos para todos con independencia de su orientación sexual, realidad

que requiere un marco que determine los derechos y obligaciones de todos cuantos formalizan sus relaciones de pareja.

En el contexto señalado, la ley permite que el matrimonio sea celebrado entre personas del mismo o distinto sexo, con plenitud e igualdad de derechos y obligaciones cualquiera que sea su composición. En consecuencia, los efectos del matrimonio, que se mantienen en su integridad respetando la configuración objetiva de la institución, serán únicos en todos los ámbitos con independencia del sexo de los contrayentes; entre otros, tanto los referidos a derechos y prestaciones sociales como la posibilidad de ser parte en procedimientos de adopción.

Asimismo, se ha procedido a una imprescindible adaptación terminológica de los distintos artículos del Código Civil que se refieren o traen causa del matrimonio, así como de una serie de normas del mismo Código que contienen referencias explícitas al sexo de sus integrantes.

En primer lugar, las referencias al marido y a la mujer se han sustituido por la mención a los cónyuges o a los consortes. En virtud de la nueva redacción del artículo 44 del Código Civil, la acepción jurídica de cónyuge o de consorte será la de persona casada con otra, con independencia de que ambas sean del mismo o de distinto sexo.

Subsiste no obstante la referencia al binomio formado por el marido y la mujer en los artículos 116, 117 y 118 del Código, dado que los supuestos de hecho a que se refieren estos artículos sólo pueden producirse en el caso de matrimonios heterosexuales.

Por otra parte, y como resultado de la disposición adicional primera de la presente ley, todas las referencias al matrimonio que se contienen en nuestro ordenamiento jurídico han de entenderse aplicables tanto al matrimonio de dos personas del mismo sexo como al integrado por dos personas de distinto sexo.

Artículo único. *Modificación del Código Civil en materia de derecho a contraer matrimonio.*

El Código Civil se modifica en los siguientes términos:

Uno. Se añade un segundo párrafo al artículo 44, con la siguiente redacción: «El matrimonio tendrá los mismos requisitos y efectos cuando ambos contrayentes sean del mismo o de diferente sexo.»

Dos. El artículo 66 queda redactado en los siguientes términos: «Artículo 66. Los cónyuges son iguales en derechos y deberes.»

Tres. El artículo 67 queda redactado en los siguientes términos: «Artículo 67. Los cónyuges deben respetarse y ayudarse mutuamente y actuar en interés de la familia.»

Cuatro. El primer párrafo del artículo 154 queda redactado en los siguientes términos: «Los hijos no emancipados están bajo la potestad de sus progenitores.»

Cinco. El primer párrafo del artículo 160 queda redactado en los siguientes términos: «Los progenitores, aunque no ejerzan la patria potestad, tienen el derecho de relacionarse con sus hijos menores, excepto con los adoptados por otro o conforme a lo dispuesto en resolución judicial.»

Seis. El párrafo 2.º del artículo 164 queda redactado en los siguientes términos: «2.º Los adquiridos por sucesión en que uno o ambos de los que ejerzan la patria potestad hubieran sido justamente desheredados o no hubieran podido heredar por causa de indignidad, que serán administrados por la persona designada por el causante y, en su

defecto y sucesivamente, por el otro progenitor o por un administrador judicial especialmente nombrado.»

Siete. El apartado 4 del artículo 175 queda redactado en los siguientes términos: «4. Nadie puede ser adoptado por más de una persona, salvo que la adopción se realice conjunta o sucesivamente por ambos cónyuges. El matrimonio celebrado con posterioridad a la adopción permite al cónyuge la adopción de los hijos de su consorte. En caso de muerte del adoptante, o cuando el adoptante sufra la exclusión prevista en el artículo 179, es posible una nueva adopción del adoptado.»

Ocho. El apartado 2 del artículo 178 queda redactado en los siguientes términos: «2. Por excepción subsistirán los vínculos jurídicos con la familia del progenitor que, según el caso, corresponda: 1.º Cuando el adoptado sea hijo del cónyuge del adoptante, aunque el consorte hubiere fallecido. 2.º Cuando sólo uno de los progenitores haya sido legalmente determinado, siempre que tal efecto hubiere sido solicitado por el adoptante, el adoptado mayor de doce años y el progenitor cuyo vínculo haya de persistir.»

Nueve. El párrafo segundo del artículo 637 queda redactado en los siguientes términos: «Se exceptúan de esta disposición las donaciones hechas conjuntamente a ambos cónyuges, entre los cuales tendrá lugar aquel derecho, si el donante no hubiese dispuesto lo contrario.»

Diez. El artículo 1.323 queda redactado en los siguientes términos: «Artículo 1.323. Los cónyuges podrán transmitirse por cualquier título bienes y derechos y celebrar entre sí toda clase de contratos.»

Once. El artículo 1.344 queda redactado en los siguientes términos: «Artículo 1.344. Mediante la sociedad de gananciales se hacen comunes para los cónyuges las ganancias o beneficios obtenidos indistintamente por cualquiera de ellos, que les serán atribuidos por mitad al disolverse aquella.»

Doce. El artículo 1.348 queda redactado en los siguientes términos: «Artículo 1.348. Siempre que pertenezca privativamente a uno de los cónyuges una cantidad o crédito pagadero en cierto número de años, no serán gananciales las sumas que se cobren en los plazos vencidos durante el matrimonio, sino que se estimarán capital de uno u otro cónyuge, según a quien pertenezca el crédito.»

Trece. El artículo 1.351 queda redactado en los siguientes términos: «Artículo 1.351. Las ganancias obtenidas por cualquiera de los cónyuges en el juego o las procedentes de otras causas que eximan de la restitución pertenecerán a la sociedad de gananciales.»

Catorce. El artículo 1.361 queda redactado en los siguientes términos: «Artículo 1.361. Se presumen gananciales los bienes existentes en el matrimonio mientras no se pruebe que pertenecen privativamente a uno de los dos cónyuges.»

Quince. El párrafo 2.º del artículo 1.365 queda redactado en los siguientes términos: «2.º En el ejercicio ordinario de la profesión, arte u oficio o en la administración ordinaria de los propios bienes. Si uno de los cónyuges fuera comerciante, se estará a lo dispuesto en el Código de Comercio.»

Dieciséis. El artículo 1.404 queda redactado en los siguientes términos: «Artículo 1.404. Hechas las deducciones en el caudal inventariado que prefijan los artículos anteriores, el remanente constituirá el haber de la sociedad de gananciales, que se dividirá por mitad entre los cónyuges o sus respectivos herederos.»

Diecisiete. El artículo 1.458 queda redactado en los siguientes términos:

«Artículo 1.458. Los cónyuges podrán venderse bienes recíprocamente.»

Disposición adicional primera. *Aplicación en el ordenamiento.*

Las disposiciones legales y reglamentarias que contengan alguna referencia al matrimonio se entenderán aplicables con independencia del sexo de sus integrantes.

Disposición adicional segunda. *Modificación de la Ley de 8 de junio de 1957, sobre el Registro Civil.*

Uno. El artículo 46 queda redactado en los siguientes términos:
«Artículo 46. La adopción, las modificaciones judiciales de capacidad, las declaraciones de concurso, ausencia o fallecimiento, los hechos relativos a la nacionalidad o vecindad y, en general, los demás inscribibles para los que no se establece especialmente que la inscripción se haga en otra Sección del Registro, se inscribirán al margen de la correspondiente inscripción de nacimiento. Cuantos hechos afectan a la patria potestad, salvo la muerte de los progenitores, se inscribirán al margen de la inscripción de nacimiento de los hijos.»

Dos. El artículo 48 queda redactado en los siguientes términos: «Artículo 48. La filiación paterna o materna constará en la inscripción de nacimiento a su margen, por referencia a la inscripción de matrimonio de los padres o por inscripción del reconocimiento.»

Tres. El artículo 53 queda redactado en los siguientes términos: «Artículo 53. Las personas son designadas por su nombre y apellidos, correspondientes a ambos progenitores, que la Ley ampara frente a todos.»

Disposición final primera. *Título competencial.*

Esta ley se dicta al amparo de la competencia exclusiva del Estado en materia de legislación civil reconocida por el artículo 149.1.8.^a de la Constitución española sin perjuicio de la conservación, modificación y desarrollo por las Comunidades Autónomas de los derechos civiles, forales o especiales, allí donde existan y de las normas aprobadas por éstas en desarrollo de sus competencias en Derecho Civil.

Disposición final segunda. *Entrada en vigor.*

La presente ley entrará en vigor el día siguiente al de su publicación en el «Boletín Oficial del Estado». Por tanto, Mando a todos los españoles, particulares y autoridades, que guarden y hagan guardar esta ley.

Valencia, 1 de julio de 2005.

JUAN CARLOS R.

El Presidente del Gobierno,

JOSÉ LUIS RODRÍGUEZ ZAPATERO

CONCLUSION

Through the analysis of legal, visual, and literary texts, this work has traced the limitations of democracy and law in contemporary Spain, and, by extension, in the larger European context. The aim has been to provide the tools to rethink and reconceptualize law and democracy in a way that promotes the rights of the marginal other. By analyzing Alex de la Iglesia's film *La Comunidad* in the context of Aznar's neoliberal economic policies and the European politics of consensus, I have shown how the interplay of the power of the State and the power of the market leads to the depoliticization of the people, and reduces democracy to the management and administration of economic interests. As an alternative, I have proposed a model of democracy that contingently opens a space for the political action of those who are excluded from the "consensus democracy."

Secondly, I have demonstrated, through a comparative analysis between *Beltenebros* and the recent Law of Historical Memory, that in order for Spain to achieve reconciliation and justice, there must be accountability and ethical responsibility towards the forgotten victims of Francoism. Despite the law's intentions, the law of historical memory becomes a commemorative site for the Spanish Transition, which was accomplished precisely at the cost of forgetting the past. The novel, by contrast, brings to light the traces of the victims of Francoism, and offers strategies for undertaking a responsible historical memory. Finally, through the analysis of Pedro Almodóvar's film *Tacones Lejanos*, I

have suggested to re-imagine law in a way that does justice to the difference and singularity of those marginal subjects that have been traditionally excluded from the law.

At the dawn of the 21st century, global economic crisis, terrorism, religious fanaticism, immigration, and multiculturalism bring new challenges for law, democracy, and justice. These challenges lead to other questions that are the natural extension of this dissertation: what are the implications of the financial and economic crisis for democracy? What is the political and legal impact of counter-terrorism policies and strategies? How does the rhetoric of counter terrorism affect the notion of justice? Which are the ethical and aesthetical dimensions of terror and violence? What do the current policies of immigration say about the European project of unification? How will the diversity of cultures and religious practices (i.e., the prohibition of wearing the Burka, the building of Mosques) affect the internal configuration of the EU's member states and their democratic principles? What kind of alternative notions and images of democracy, law, and justice do cultural works offer as a response to these news challenges?_These are the kind of questions I would like to explore in my next project.

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Ley 46/1977, de 15 de octubre, *de Amnistía. Jefatura de Estado* (BOE n. 248).

Ley 13/2005, de 1 de julio, *por la que se modifica el Código Civil en materia de derecho a contraer matrimonio* (BOE n. 157).

Ley 3/2007, de 15 de marzo, *reguladora de la rectificación registral de la mención relativa al sexo de las personas* (BOE n. 65).

Ley 52/2007, de 26 de diciembre, *por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura*. (BOE n. 310).

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