

Is He a “Social Danger”? The Franco Regime’s Judicial Prosecution of Homosexuality in Málaga under the Ley de Vagos y Maleantes

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IN FEBRUARY 1961 A MAN named Robert was indicted by the Juzgado de Instrucción Especial de Vagos y Maleantes (Special Court of Vagrants and Thugs) in Málaga for socially dangerous behavior. He testified that although “he was born homosexual, he had been dealing with his defect with as much dissimulation as possible.”¹ Robert’s lawyer argued that his homosexuality was not a social danger given his overall normative social behavior. This attention to the defendant’s integration in his social environment was a common theme in trials for homosexuality in Málaga. Although most of these trials ended in acquittals, the judge found that Robert was a social danger and should be subject to “security measures” because his sexual relations had included minors.² This article will investigate how state and social institutions, legal arguments about social danger and homosexuality, and the perceived relationship between accusations of homosexuality and other antisocial behaviors affected these trials and their judicial decisions.

According to Francisco Vázquez García and Richard Cleminson, the history of homosexuality under Franco’s regime remained a relatively unexplored field of research well into the current millennium. More recently, scholarship by Geoffroy Huard, Arturo Arnalte, Oscar Guasch, Alberto Mira

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¹ “Defendant’s Deposition,” 15 February 1961, file 13, box 8891, Juzgado Especial de Vagos y Maleantes de Málaga, Archivo Histórico Provincial de Sevilla, Sevilla, Spain (cited hereafter as AHPSE). All translations are my own.

² The Special Court of Vagrants and Thugs of Málaga was created on 26 July 1958. See *Boletín Oficial del Estado*, 28 August 1958, 7621.

Nouselles, Fernando Olmeda, Gema Pérez Sánchez, Lucas Jurado Marín, Raquel (Lucas) Platero, and Javier Ugarte Pérez, among others, indicates that there is an increasing academic interest in this topic. This article builds on these works and relies on original sources that have not been studied until now: the files of the Juzgado de Instrucción Especial de Vagos y Maleantes of Málaga, an Andalusian province located on the southeastern Mediterranean coast. These records can only be consulted under restricted conditions: with the implicated individuals' explicit consent or when fifty years have passed from the closing date of the file, in which case private information is protected unless there is evidence of the defendant's death.³ For this reason, the names used in this article are pseudonyms.

As Vázquez and Cleminson point out, these court proceedings are of particular relevance for a historical approach to the "construction of official and public attitudes toward homosexuality" during this period.⁴ These sources provide new insight into the relationship between Francoist state ideology and repressive practices while underlining the contrast between scientific sexual categories and everyday practice. Unlike previous accounts that have concentrated on analyzing legal text and commentaries, I will focus on the law's application and on how the attitudes of social actors and government officials influenced court verdicts. This perspective is methodologically informed by the work of historians currently investigating how the harsh repression of the civil war and its aftermath gave way in subsequent decades to different political attitudes toward the regime, from active opposition to passive compliance and the "non-resistance of millions of Spaniards."⁵ Ángela Cenarro and Oscar Rodríguez Barreira have urged other historians to draw on the insights of social and cultural history to explore how everyday forms of resistance confronted the influence of social networks of collaborators with state repression.⁶ This approach aims to understand how the Francoist regime was able to perpetuate itself by repressing opposition while achieving the compliance of a large sector of the population. Along these same lines, the revision of the antihomosexual law in the mid-1950s provides one example of how the regime's complex balancing act between various economic, social, and religious influences accounts for its longevity. In the midst of trying to promote economic modernization and cope with

³ Access to these files is regulated in the Ley 16/1985 de 25 de junio del Patrimonio Histórico Español, art. 57 and the Ley Orgánica 15/1999 de 13 de diciembre de Protección de Datos de Carácter Personal, Disposición adicional tercera.

⁴ Richard Cleminson and Francisco Vázquez García, *Los Invisibles: A History of Male Homosexuality in Spain, 1850–1939* (Cardiff: University of Wales Press, 2007), 20.

⁵ Julián Casanova and Carlos Gil Andrés, *Twentieth-Century Spain: A History* (Cambridge: Cambridge University Press, 2014), 285.

⁶ See Oscar Rodríguez Barreira, "Vivir y narrar el franquismo desde los márgenes," in *El franquismo desde los márgenes: Campesinos, mujeres, delatores, menores*, ed. Oscar Rodríguez Barreira (Almería: Editorial Universidad de Almería, 2013), 12–25 Ángela Cenarro, "La historia desde abajo del Franquismo," in *ibid.*, 29–44.

its effects, the official discourse of National Catholicism allowed the regime to ambivalently distance itself from the totalitarian rhetoric that marked its first years in power and its alliance with Fascist Italy and Nazi Germany. It is in this intersection between a program of economic modernization and the endorsement of traditional Catholic morality that we have to situate these cases. An analysis of this one aspect of the state's campaign to prosecute "vagrants and thugs," along with an investigation of the social attitudes that both reinforced and resisted Francoist policies toward homosexuality, thus contributes to new lines of research into the interactions between "common people" and the state.

To develop this analysis, I will deal with cases that best reveal the complexities of the treatment of nonnormative sexual behavior in this era. In this article, I focus exclusively on men, because all the cases from the court of Málaga were related to male homosexuality. The state prioritized the prosecution of male homosexuality over lesbianism and relied on the Catholic Church and psychiatrists to deal with lesbians.⁷ After examining the legal framework of the repression of homosexuality during Franco's regime and the specific power structures and socioeconomic changes taking place in Málaga in this period, I will move to an examination of several case studies, revealing how the prosecution of homosexuality was influenced by political and social networking and cronyism, attitudes toward male prostitution and the corruption of minors, and definitions of antisocial behavior.

THE LEGAL FRAMEWORK

Javier Ugarte Pérez has argued that from the first decades of the nineteenth century to the beginning of the twentieth century there was a certain degree of legal and social tolerance toward homosexuality in Spain, partly due to firm understandings of sexual roles (inserter and receptor) in terms of gender binaries.⁸ However, pronatalist policies and the influence of international psychiatric theories changed this situation, leading to the criminalization of homosexuality under Primo de Rivera's dictatorship in 1928.⁹ The 1931 municipal elections put an end to the monarchy when a majority of republican councilmen were elected in the largest cities, and in 1932 the newly emerged Second Republic (1931–39) eliminated any reference to homosexuality in the Criminal Code. Although this government drafted and enacted the *Ley de Vagos y Maleantes* (Law of Vagrants and Thugs) in

⁷ Raquel (Lucas) Platero, "Lesboerotismo y la masculinidad de las mujeres en la España franquista," *Bagoas* 3 (2009): 15–38, 25–32.

⁸ Javier Ugarte Pérez, *Las circunstancias obligaban: Homoerotismo, identidad y resistencia* (Barcelona: Egales Editorial, 2011), 201–3.

⁹ *Ibid.*

1933, this law initially paid no attention to homosexuality.¹⁰ Luis Jiménez de Asúa, reputed jurist and member of the Spanish Socialist Workers' Party who would become the president of the republic in exile in 1962, was one of the main proponents of the new law. To justify its enactment he presented a radical reinterpretation of liberal legal principles by insisting that in order to "guarantee human freedom" against arbitrary and anticonstitutional police and governmental practices it would be necessary to more carefully regulate the fight against vagrancy. While concerned about keeping the arbitrary powers of the police in check, he argued: "Every society has the right to defend itself against fearsome subjects, even before they commit any crime."¹¹

The Law of Vagrants and Thugs was based on the new concept of precriminal dangerousness, which was defined as "antisocial, immoral, and harmful activity" that revealed an "inclination to crime."¹² As Juan Terradillos Basoco points out, including the proclivity to commit a crime in the legal codes opened the door to the persecution of what the authorities considered to be marginal lifestyles. This is reflected in the kinds of individuals and conduct typified as dangerous under the new law: vagrants, beggars, pimps, illegal gaming, the sale of alcohol to minors, currency speculation, habitual drunkenness, and impersonation, among others. Furthermore, the rules of procedure for the law (*reglamento*) emphasized the notion of social dangerousness (antisocial behavior) over that of criminal dangerousness—inclination to commit a crime, which was Jiménez de Asúa's main concern. In theory, the dangerous individuals were not considered "culprits" in the usual sense; instead, they were described as "unfortunate." Yet in practice those who fell into that category were subject to imprisonment. Jiménez de Asúa's intent was to protect individuals' freedoms and the liberal system by clearly categorizing conduct that the police had been arbitrarily repressing. However, in the end even Jiménez de Asúa recognized that the concept of precriminal dangerousness could contribute to abuses of power by the state when the latter did not act in accordance with the democratic tradition.¹³ His insistence that the state should control and sanction these repressive practices to prevent further violations of civil rights by the police proved problematic, as the law ended up providing a legal framework for the repression of marginal lifestyles, particularly under Franco's regime. The Law of Vagrants and Thugs was revised in 1954 to include homosexuality (first as both condition and acts, and subsequently just as recurrent homosexual acts,

¹⁰ Platero, "Lesboerotismo," 18–25.

¹¹ Luis Jiménez de Asúa, "Ley de vagos y maleantes: Un ensayo legislativo sobre peligrosidad sin delito," *Revista genrl. de Legislación y Jurisprudencia* 58 (1933): 577–635, 635.

¹² Mariano Ruiz-Funes García, foreword to the report on the Law of Vagrants and Thugs presented to the Cortes by the commission of presidency, included in *ibid.*, 603–8.

¹³ Juan Terradillos Basoco, *Peligrosidad social y estado de derecho* (Madrid: Akal, 1981), 54–60.

following a decision by the Special Tribunal of Appeals and Revisions).¹⁴ The revisions made in the law of 1933 are italicized in the following translation of the first article of the law of 1954:

First article. The second and eleventh sections of the second article and the second section of the sixth article of the Law of Vagrants and Thugs, of 4 August 1933, are now written in the following way:

Article second. Second section. The *homosexuals* [*sic*], ruffians, and pimps.

Article second. *Eleventh section. Likewise, they can be declared dangerous as antisocial those who, in their activities and propaganda, repeatedly incite to the execution of crimes of terrorism or robbery and those who publicly justify those crimes.*

They can be as well the object of the same declaration those who, in any way, disturb with their conduct or endanger the social peace or the public tranquility.

Article sixth. Second section. To *homosexuals* [*sic*], ruffians, and pimps, to professional beggars, and to those who live on someone else's begging, exploit minors, the mentally ill, or the disabled, the following measures will be applied so they fulfill them in succession:

- a) Confinement to a work camp or Agricultural Colony. *Homosexuals* [*sic*] *subject to this security measure must be interned in special Institutions and, at all cost, with absolute separation from everyone else.*
- b) Prohibition from residing in designated places or territories, and obligation to declare their domicile.
- c) Submission to the surveillance of Delegates.¹⁵

The text of the 1954 revision of the law claimed that its aim was “not to punish but to protect and reform” while preventing “acts that offend the healthy morality of our country because they are an affront to the traditional heritage of good customs, faithfully maintained in Spanish society.” The law implemented “security measures” with the goal of reforming those who had

¹⁴ Jordi Terrasa Mateu, “La legislación represiva,” in *Una discriminación universal: La homosexualidad bajo el franquismo y la transición*, ed. Javier Ugarte Pérez (Madrid: Editorial Egales, 2008), 96.

¹⁵ “LEY DE 15 DE JULIO DE 1954 por la que se modifican los artículos 2º y 6º de la Ley de Vagos y Maleantes, de 4 de agosto de 1933,” *Boletín Oficial del Estado*, 17 July 1954, 4862.

“fallen to the lowest moral level” and protecting “social peace and public tranquility.”¹⁶ The “security measures” applied to those defendants declared a “social danger” included confinement in an agricultural colony or work camp for a maximum of three years, although in practice the convicts were often sent to common prisons. There were also prohibitions against residing in a particular place, usually the province where the defendant had resided until being arrested, and subjection to the surveillance of delegates—state agents who supervised the convicts’ behavior after they were released.¹⁷

The wording of the law was ambiguous insofar as its main focus was the “social danger” implied in the activities of certain individuals, even if these activities did not constitute a crime or their criminality could not be “immediately proved.” The law’s ambiguities meant that judges’ interpretations varied greatly both in terms of the circumstances under which certain practices were considered to constitute a “social danger” and in terms of the evidence that was required to condemn the suspects. In Málaga, for example, the judges did not seem to think that homosexuality alone (whether as an inclination or as a sexual practice) was enough evidence of a “social danger” to warrant punishment, especially if there was supporting evidence that the defendant was otherwise a respectable member of his community. Apart from the vagrancy law, the regime made use of other “legal instruments” to repress homosexuality. Under the Penal Code of 1944 homosexuality was repressed under the categories of “public scandal, dishonest abuses, and [crimes] against honesty.”¹⁸ Furthermore, the Military Justice Code of 1945 established that members of the armed forces who committed “dishonest acts” with individuals of their same sex would be sentenced to military imprisonment for a maximum of six years. Finally, in 1970 the *Ley de Peligrosidad y Rehabilitación Social* (Law of Dangerousness and Social Rehabilitation) replaced the *Ley de Vagos y Maleantes* and remained in force until 1978.¹⁹

Javier Ugarte Pérez claims that the 1954 revision of the law provoked a fundamental change in the repression of homosexuality in Franco’s Spain: from that moment, individuals were prosecuted on the basis of their sexual orientation rather than because of a specific sexual act or gender performance (although the Special Tribunal of Appeals and Revisions subsequently limited the application of the law to those individuals who were considered to be habitually engaged in homosexual acts).²⁰ In this way, the law also targeted those homosexual individuals whose behavior was otherwise in accordance with their gender and who until then had enjoyed a certain degree of social

¹⁶ Ibid.

¹⁷ Terrasa Mateu, “La legislación represiva,” 97–98.

¹⁸ Ibid., 89.

¹⁹ Ibid.

²⁰ Ibid.

tolerance.²¹ Based on his analysis of the jurisprudential thought of Antonio Sabater Tomás, judge of vagrants and thugs in Barcelona and one of the main Francoist theoreticians of homosexuality as a social danger, Alberto Mira argues that Sabater Tomás's primary concern (and indeed the main motivation for the 1954 reform) was to prevent the spread of homosexuality, which he saw as a result of the corrupting effect of modernization and the influence of foreign and upper-class homosexuals who could pay to satisfy their sexual instincts.²² Gema Pérez-Sánchez, on the other hand, claims that "Francoism's obsession with criminalizing and containing homosexuality" reveals the anxieties of the regime about the sexual connotations of "fascism's glorification of male camaraderie" and the peripheral position of Spain with respect to other Western powers.²³ While all of these arguments have some merit, I will demonstrate that the status and normative social behavior of the defendants were as relevant to judges as the sexual acts committed and that legal rhetoric was not always reflected in everyday practice. Up until 1962, less than 1 percent of the cases judged by the Special Courts of Vagrants and Thugs of Sevilla and Málaga were classified as homosexuality cases, which demonstrates that the regime's "obsession" with homosexual conduct was not always reflected in the practices of the judicial system. This article focuses on the court proceedings involving accusations of homosexual behavior in Málaga, where there were at least six defendants found to be a social danger and twenty-nine who were acquitted between 1958 and 1962 (17 and 83 percent of the cases prosecuted under the vagrancy law).

POWER STRUCTURES AND SOCIOECONOMIC CHANGE IN MÁLAGA

The Andalusian city of Málaga, capital of the province of the same name, is located on the southeastern Mediterranean coast. It is the sixth most populous Spanish city, experiencing a rapid demographic expansion between the sixties and the eighties, from around three hundred thousand to five hundred thousand inhabitants.²⁴ It enjoys one of the warmest winter climates in Europe, and as a result the tourist season lasts almost the entire year. In the nineteenth century, Málaga was one of the pioneering centers of industrialization in the country and a stronghold of the Liberals. However, beginning in the 1880s a strong economic crisis and a period of deindustrialization weakened the local elite, contributing to the expansion of republicanism and the growth of workers' movements in the first decades of the twentieth century. Given this radical past, when the military

²¹ Ugarte Pérez, *Las circunstancias obligaban*, 201–3.

²² Alberto Mira, *De Sodoma a Chueca: Una historia cultural de la homosexualidad en España en el siglo XX* (Madrid: Editorial Egales, 2004), 320–21.

²³ Gema Pérez-Sánchez, *Queer Transitions in Contemporary Spanish Culture: From Franco to la Movida* (New York: State University of New York Press, 2007), 13.

²⁴ "Municipalities in the Population Censuses since 1842," INEbase, Instituto Nacional de Estadística (Spanish Statistical Office), 2015, <http://www.ine.es>.

forces that had joined the coup d'état against the Second Republic took the city in 1937, repression was particularly brutal. During the postwar period, Málaga was an underdeveloped region in every sense, mostly as a consequence of the war and Franco's policies of economic isolationism. However, the small coastal towns close to Málaga, such as Torremolinos and Marbella, experienced a radical transformation in the late fifties and early sixties, becoming "international tourist centers" and growing rapidly under the sponsorship of national policies of economic development that supported tourism.²⁵

Despite these economic and demographic changes, the institutions through which the regime maintained its control over the province remained quite stable throughout the Francoist period. The *gobernador civil* (civilian governor), so called from the creation of the institution in the nineteenth century to oversee the provincial administration, was the highest representative of the regime in the province. The minister of governance recommended candidates for this position, and Franco himself appointed the governor. The latter was in charge of applying national laws and maintaining public order, morality, and obedience to the regime. In May 1958 the government appointed Antonio J. García Rodríguez-Acosta as the civilian governor of the province of Málaga. He was behind both the development of tourism in the region and the prevention of the spread of indecent acts offensive to Catholic morality. One month before he assumed his new position, he moved to the city of Málaga so that he could visit the public houses of the city incognito to identify prostitutes and homosexuals. Once in power he organized raids to arrest the individuals he had met. Indeed, there is evidence that the civilian government frequently sanctioned individuals suspected of having participated in homosexual acts or who looked "effeminate," adding an extra layer of repression beyond the application of the vagrancy law.²⁶ In October of that same year, the civilian government produced a report concluding that the spread of homosexuality and prostitution and the rising rate of property crimes in the province were the consequence of unemployment rates that tourism could help to decrease. Thus, the governor linked his economic plans with his morality campaign. This approach gained him the sympathies of the central government, and in 1962 he was appointed the general director of tourism.²⁷

The two main law enforcement agencies, the police and the Guardia Civil (Civil Guard), were under the orders of the civilian governor.²⁸ The police's jurisdiction was limited to urban areas, where mayors had a certain

²⁵ Cristian Matías Cerón Torreblanca, "Consolidación y evolución del Franquismo en Málaga: 1943–1959" (PhD diss., University of Málaga, 2005), 23.

²⁶ See, for instance, file 44, box 8924, and file 131, box 8934, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

²⁷ Torreblanca, "Consolidación y evolución," 72–73.

²⁸ Ibid., 63–64.

degree of control over police officers. The Guardia Civil, in contrast, was associated from its very foundation in 1844 with the defense of order and property in rural areas, and it followed a military model of organization. Under Franco, this militarized police force "was instrumental in carrying out the general's repression of nationalist Basques and Catalans, leftists, and others who didn't toe the government line."²⁹ Finally, the minister of governance directly appointed the mayors of Málaga (as was the case with each provincial capital) and of the cities of more than ten thousand inhabitants, while the civilian governor appointed mayors in smaller communities. Given that mayors did not receive any salary, appointees were very likely to be upper-class individuals.³⁰

The regime's governance structure was based on entrenched hierarchical social relations and the centralized control of local communities through state institutions and agencies: the civilian government, the mayors, the Guardia Civil, and the police. This state apparatus collaborated with other local influential figures, mostly the propertied classes, the Catholic Church, and the educated minority, in order to maintain public order, morality, and obedience to the regime. This context of cooperation is necessary to understand the role of these state institutions and of certain influential figures in the court proceedings regarding homosexuality. The reports and testimonies they produced do more than just provide information about the defendants' sexuality; they also reveal a complex evaluation of the defendants' social status, relationship with members of the community, and job performance. The objective of these court proceedings was not just to decide if the defendants were homosexuals but also to understand their positions in their communities and their overall social behavior. Defense lawyers therefore tried to present their clients as respectable and well-connected members of their communities, while judges were less likely to issue guilty verdicts for homosexual behavior if they believed that the defendants had otherwise behaved normally. In other words, Málaga judges decided on defendants' potential future criminality based on their past normalcy.

TOURISM AND THE MODERNIZATION OF SOCIAL MORES

Oral sources and court records alike suggest that one of the reasons why Málaga judges had a lenient attitude toward homosexuality might have been that socioeconomic changes and tourism had provoked a relaxation of traditional mores in some coastal towns of the province, although most of the villages and towns of the interior remained alien to this development. As the gay activist Serafin Fernández Rodríguez, who participated in the lively gay social life of Torremolinos (a coastal town in the province

²⁹ Benjamin Jones, "Madrid: Guardia Civil," *Europe* 413 (2002): 44.

³⁰ Torreblanca, "Consolidación y evolución," 115.

of Málaga) in the last decades of Franco's dictatorship, points out, violent police repression did not easily discourage gays from enjoying their vacations there, since corrupt security officials sometimes made it possible for tourists to escape the police raids:

In the 60s and 70s, in the midst of the Francoist dictatorship, [Torremolinos] was the most "cosmopolitan" and gay-friendly place in all of Spain and even the neighboring countries. In the summer, homosexuals from all over the world came to Torremolinos to "go wild" and enjoy sex. . . . Actually, the situation was quite grotesque and hypocritical because, although the dictatorship was also present there and carried out raids in gay bars, tourists and Spaniards alike kept coming every year; it was a phenomenon really difficult to understand. . . . I slept every night in a different apartment. I was 18 or 19 years old and an attraction to the tourists, so to say. I had several fights with the police. I was even in the police station once when they raided a bar where I was, and I did not have time to escape. If you were a friend of the owner and he "worked together" with the police (there were some of those), he opened the window of the "back room" [*trastienda*] and let you escape. Even so, we came back the next day as if nothing had happened: those were different times.³¹

Similarly, a 1960 police report presents a similar scenario from a very different perspective:

The fame Torremolinos has acquired, not just within the country but also abroad, is due not only to its fantastic geographical situation and its benevolent climate but also to the creation of an environment of libertinage, vice, corruption, and immorality. . . . On several occasions, foreigners—sexual inverters—have been identified who have chosen as the object of their preference young men whom they have induced into exotic lubrications [possibly a euphemism for homosexuality]. The recurrence of these events and the contact between the inhabitants and the foreigner have produced a psychological phenomenon, specifically, the disappearance of the sense of morality.³²

This excerpt epitomizes the tension between the socioeconomic changes of this period and an extremely conservative state ideology, which together influenced the prosecution of homosexuals under the Law of Vagrants and Thugs. The Francoist regime prioritized tourism as one of the sectors that could provide it with foreign currency and promote economic development, and yet local authorities did not know how to react to the customs of the newcomers. The 1960 Torremolinos police report identifies the purchasing

³¹ Serafín Fernández Rodríguez, e-mail message to the author, 29 June 2015.

³² "Informative note" submitted by the police department, unspecified date, file 10, box 8937, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

power of wealthy women and “inverts” as important factors in encouraging the perversion of young local men. The authorities saw their role as protecting young Spanish men from the noxious influence of perverts (sexually liberated men and women), whether foreign or not.

When we compare the conviction rates for homosexuality in Málaga and Sevilla (the other case for which we have comparable records), we might speculate that the lenient judicial decisions in Málaga were connected to the growth of tourism in the region, one of the main causes of the modernization of lifestyles in Spain in this period. That there was almost double the number of cases in Sevilla is only partly explained by the fact that Sevilla had jurisdiction over other provinces (Huelva, Badajoz, Cádiz, Córdoba, and the African cities of Ceuta and Melilla). More striking is the fact that in the ninety-five cases of homosexuality charges being laid in these two jurisdictions up to 1962 (thirty-five in Málaga and sixty in Sevilla), the rate of conviction was more than four times higher in Sevilla than in Málaga (73 percent compared to 17 percent of the cases tried).³³ These figures indicate that in this period all three judges who served in the Special Court of Málaga were consistently much more reluctant to convict a defendant for homosexuality than the sole judge who served in Sevilla. Further research will have to clarify which was the typical pattern in the rest of the country and how factors such as economic development, judges' personal positions, or homosexuals' visibility in the community might have produced this striking regional variation.

PUBLIC REPUTATION AND SOCIAL HIERARCHIES

Public rumor played a fundamental role in these trials, often triggering the initial investigation into the sexual behavior of specific individuals. In 1959 a corporal of the Guardia Civil's station in a small village of Málaga reported hearing that “some neighbors of this locality go to the . . . creek to commit acts of PEDERASTY.”³⁴ He interrogated one eighteen-year-old man (José) who supposedly had been involved in these acts. According to José, a neighbor (Feliciano) had asked him to meet at the creek to talk, and once there “he opened his trousers, taking out his ‘parts,’ fondling them. He [Feliciano] told him that it was very beautiful and very white, and once the youth [José] was ready, another individual called ‘MARCOS’ arrived

³³ While there were forty-four condemnations and sixteen absolutions in Sevilla (73 and 27 percent of the cases, respectively), in Málaga there were six condemnations and twenty-nine acquittals (17 and 83 percent of the cases, respectively). The figures provided in this article are based on the files classified as homosexuality cases in the Provincial Historical Archives of Sevilla and Málaga. There might have been other cases of homosexuality that were not classified as such (especially if the defendant was also accused of another antisocial behavior), and there is also the possibility that some files were lost or are kept in other archives.

³⁴ Report from the corporal of the Guardia Civil, 22 March 1959, file 85, box 8863, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

. . . who wanted him [José] to fuck his ass.”³⁵ After this testimony, the Guardia Civil interrogated Marcos, a forty-four-year-old married land laborer, and Feliciano, a single forty-five-year-old land laborer. The transcripts show three completely incompatible versions of the same events: according to José, both Feliciano and Marcos had tried to seduce him; according to Marcos, he had found the other two individuals committing inappropriate acts and rejected José’s propositions; and according to Feliciano, he had merely organized the meeting between José and Marcos. We cannot know who was lying and who was telling the truth, but apparently only Marcos was charged under the vagrancy law. He was eventually acquitted, and we can infer from these records how local social networks came into play during the trial. One factor that helped Marcos’s cause was the favorable report that the Guardia Civil provided to the court: “He does not have a political criminal record, and there are no rumors about him committing or taking part in criminal acts, with the exception of his moral conduct. This leaves much to be desired when he is drunk, because then he meets young people with dishonest intentions and other people who share his vice. However, when he is in a normal state he is considered a good person, hardworking, and possessing a good heart. He takes care of his wife and three young daughters.”³⁶ This support for Marcus despite his homosexual inclinations was an exception; the Guardia Civil usually took a harshly critical view of the defendants. The reference to his clean “political criminal record” was very relevant, given that in this period the authorities often associated homosexuality with political dissidence. The Spanish former police officer turned writer Mauricio Carlavilla published a book in 1956 titled *Sodomitas* in which he defended the thesis that there was “an unquestionable objective affinity between the sodomite and the communist, insofar as they are both aberrations contrary to the family, although of a different type. The communist is contrary to the family because the latter is the natural origin of private property. And the sodomite is its adversary as well because his sexuality is antigenetic, sterile; [this is] suicide of the species, in the same way that communism is the suicide of society.”³⁷

In the same report, authorities described Feliciano in very different terms, as being “born in effeminate condition. . . . [H]e does not have to be drunk or under any other circumstance to desire acts like the ones which happened, he is of a low moral comportment.”³⁸ In the case of Feliciano, the report equated gender deviation and sexual transgression, while in the case of Marcos the Guardia Civil had instead minimized the relevance of his sexual acts in light of his overall masculine behavior (his family life) and the effects

³⁵ Ibid.

³⁶ Report from the corporal hearing the case, 11 April 1959, file 85, box 8863, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

³⁷ Mauricio Carlavilla del Barrio, *Sodomitas* (Madrid: Editorial Nos, 1956), 13.

³⁸ Report by the corporal hearing the case.

that alcohol had on him. The popular understanding that homosexuality could either be an innate condition associated with effeminacy or a temporary vice permeated the Guardia Civil's report about these two individuals.

Historians have disagreed about whether the "masculine" partner in a homosexual relationship was the one more despised by society; Oscar Guasch has insisted that this was the case, while Javier Ugarte Pérez disagrees and argues that the "effeminate" partner experienced more persecution. But my analysis of the case of Marcos reveals that such a binary categorization fails to reflect the fluidity of daily sexual practices. According to Guasch, Spanish popular understandings of male homosexuality during the Francoist period were based on two categories: *marica* and *maricón*. Although today both slang expressions have a similar meaning, broadly equivalent to English words like "faggot" and "pansy," Guasch affirms that they used to indicate a distinction between the innate condition that led some men (*maricas*) to behave as women—to become "domestic" and take on a sexually passive (bottom) role—and men who chose homosexual relationships despite their otherwise masculine demeanor (*maricones*). While *maricas*, or effeminate homosexuals, were visible and could elicit feelings of compassion for their condition, *maricones* were assumed to be sexually active (top) and considered more threatening to heterosexual males and children because they could hide their perversions behind otherwise normative comportment.³⁹ Javier Ugarte Pérez takes a different position and claims that until the 1960s, *maricones* enjoyed a certain degree of social tolerance, especially among the lower classes. Their masculine behavior and appearance distanced them from the *maricas* and allowed them to characterize their homosexual conduct as circumstantial or occasional; they could blame it on alcohol or the seduction strategies of the *maricas*.⁴⁰ However, for the state, *maricones'* masculine behavior posed a greater menace, insofar as they were more difficult to identify and prosecute (Ugarte and Guasch agree on this point).⁴¹ Richard Cleminson and Francisco Vázquez suggest that this "Mediterranean model of sexuality" could have coexisted with the definition of homosexuality as a medical condition and that "it is possible that the old model of the active/passive sodomite held strong in Spain well into the twentieth century." In their interpretation, the *marica* and the *maricón* "could be considered as figures who have some correspondence with the 'invert' and the 'homosexual,' respectively. . . . Their characteristics were incorporated

³⁹ Oscar Guasch, "Social Stereotypes and Masculine Homosexualities: The Spanish Case," *Sexualities* 14 (2011): 526–43, 527–32.

⁴⁰ Similarly, Olmeda emphasizes the "organic machismo" of the Francoist regime and argues that this machismo accounts for the fact that all homosexual relationships were increasingly stigmatized in this period, while in previous years a man could have sex with another man without being considered homosexual as long as he demonstrated masculine behavior and played the "active" (inserter) sexual role. Fernando Olmeda, *El látigo y la pluma: Homosexuales en la España de Franco* (Madrid: Oberon, 2004), 34.

⁴¹ Ugarte Pérez, *Las circunstancias obligaban*, 127–58.

into new medical and psychiatric typologies in Spain.”⁴² Beyond these complex studies of the intersection between popular, scientific, and legal categories in deciding what kind of homosexual was to be less tolerated, the court documents show that local relations of power could be more influential in this respect, especially since sexual practices did not always correspond to the system of binary categories presented above.

In the case we are analyzing, the Guardia Civil’s report was more critical of Feliciano than of Marcos, who was described in terms consistent with the ideal type of the “masculine” partner or maricón. However, according to José, Marcos wanted to be penetrated. This shows how daily practices challenged the established social models of homosexual relations. While we might view the Guardia Civil’s support for Marcos as based on the fact that he was closer to the stereotype of the maricón, his preferred sexual role did not fit within that stereotype. Furthermore, this would undermine Guasch’s and Ugarte’s argument that maricones were considered more threatening for state authorities and points out that other factors apart from sexual acts could influence the authorities’ opinion of individuals. Marcos’s other reported personality traits (“a good person, hardworking, and possessing a good heart”) and his family situation worked in his favor, as did his relationships with members of the propertied class of the village. Besides, José decided to change his testimony, affirming that his initial accusation had been a mistake, which led the public prosecutor and the judge to agree on acquitting Marcos. The different status, age, and family situation of the defendants weighed more in other people’s opinions about them than whether or not they completely conformed to a certain stereotype of the homosexual, at the same time that these stereotypes failed to reflect the fluidity of sexual practices.

Also as a result of the differences in age and social status between the defendants, the pattern of accusations made and withdrawn often repeated itself in the records of these court proceedings. Quite frequently, one of the individuals involved in the events that were being judged presented himself as the victim of a seduction by an older man or group of older men, who usually were also of a higher social status. In this situation, the accuser often ended up retracting his first testimony. This is indicative of certain patterns in these court proceedings: the hierarchies of age and social status placed certain individuals in a more vulnerable situation; these individuals then tended to renounce their original claims to be truthfully describing events. Differences of age and status played such a fundamental role in these trials because these hierarchies also shaped homosexual relations themselves, which often involved some kind of relation of patronage between a middle-aged man and a youth or adolescent.

Marcos also counted on the support of the Guardia Civil, his employers, and the mayor of the city, whose positive reports were referred to by

⁴² Cleminson and Vázquez García, *Los Invisibles*, 9–10.

the defense attorney. One of the employers wrote to the court to say he was interested in hiring Marcos as a laborer, "given that he is loyal and reliable."⁴³ This employer was part of the group of landowners who, along with other local influential figures, such as the priest, the doctor, and the mayor, constituted the *fuerzas vivas*—the driving forces of the village who monopolized economic and political power and more closely collaborated with the state. In cases prosecuted under this law, judgments of sexual conduct took into consideration the defendants' domestic situation, their job performance, their attitudes toward authority, and their connections with the propertied classes. Thus, the repression of homosexuality was interconnected with other mechanisms of control aimed at the individual's subordination to social hierarchies and the Francoist regime. This view slightly revises Nathan Baidez Aparicio's argument that it was the strong social controls over the individual in rural communities and the Catholic Church's role in policing morality that account for the fact that the regime did not classify homosexuality as a social danger until 1954.⁴⁴ It is certainly true that these factors might well have made it unnecessary to reform the legislation until the fifties, when economic modernization began to undermine these traditional social structures. But as I have shown through the case of Marcos, acquitted after receiving the support of the local government and influential members of the community (the landowners), those traditional social structures remained prevalent in many areas of the country, collaborating in the application of the law but also limiting its scope when it affected well-connected individuals.

IS MALE PROSTITUTION A SOCIAL DANGER?

Apart from the focus on reputation and social hierarchies, many defendants thought that if they had received any compensation for sex, their responsibility would be reduced in the eyes of the court. These beliefs were related to the legal status of prostitution in this period. While the Second Republic had prohibited prostitution in 1935, Franco's regime abandoned this policy in 1941. Brothels flourished until 1956 (two years after the reform of the Law of Vagrants and Thugs), when prostitution was once again made illegal under pressures from the United Nations and Catholic newspapers and organizations. Jean-Louis Guereña argues that in this period it was socially acceptable for men to frequently use the services of prostitutes, especially as a rite of sexual initiation. Late marriage, the valorization of women's virginity, and a strict sexual morality contributed to the acceptance of prostitution, and difficult economic conditions

⁴³ Letter by an employer, 5 June 1959, file 85, box 8863, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁴⁴ Nathan Baidez Aparicio, *Vagos, maleantes y homosexuales: La represión a los homosexuales durante el franquismo* (La Garriga: Malhivern, 2007), 28.

produced a supply of women willing to prostitute themselves. Before 1956 the regime tolerated prostitution as an essential element of the moral order that made it easier to distinguish between respectable and nonrespectable women while providing a form of sexual relief for men that did not threaten Christian families and female chastity. On the other hand, tolerance toward prostitution was always accompanied by the social stigmatization of prostitutes.⁴⁵ Although the prohibition of prostitution in 1956 likely influenced social attitudes in the long term, the fact that men accused of homosexuality pointed to compensation as an exonerating factor indicates lingering social acceptance of the practice.

The second factor that helps us to understand the belief that compensation was a mitigating circumstance is the prevailing belief that a masculine man who occasionally engaged in homosexual sex was less condemnable than an effeminate man who felt exclusively attracted to other men. This belief led many defendants to argue that they had only occasionally resorted to homosexual prostitution out of economic necessity; they hoped, in other words, that the court would be more tolerant toward them than toward their clients, who had acted out of sexual desire. In practice, the judges do not seem to have taken this distinction into account. Unlike the judges, the Guardia Civil's reports did generally show a condemnatory attitude regarding adult male prostitutes and their clients, which suggests that this militarized force maintained a broader definition of the sexual practices that constituted a social danger. There were exceptions to this rule, however. In the case of Jorge, accused by his wife of being a male prostitute, the Guardia Civil supported the defendant: "He is a person of good conduct in every sense. He is considered to be a supporter of the National Cause, insofar as his father died while serving as a Lieutenant of the Army and two of his sisters are married to Captains, while another sister has a position in the Female Section of Falange [the Francoist movement]. . . . He enjoys great esteem among his neighbors, who say that since he married his current wife, they don't get along well, fighting frequently and even using physical violence."⁴⁶ This report emphasized that many of Jorge's closest relatives were members of the military or the Francoist movement, two main institutions of the regime. However, the chief of police submitted a report that sustained the accusation against Jorge: "He is a person of bad conduct in every sense, with no known occupation or job. He is frequently seen drunk in the taverns. He does not have property and is publicly considered lazy and a troublemaker. There is a public rumor according to which he lives on the money he receives from inverters with whom he maintains lavishly paid sexual relationships. He does not generate public scandal, so no person

⁴⁵ Jean-Louis Guereña, *La prostitución en la España contemporánea* (Madrid: Marcial Pons, 2003), 167–83.

⁴⁶ Report from the Guardia Civil lieutenant colonel, 18 February 1960, file 20, box 8887, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

has been found who can reliably confirm this, his wife being one of the persons that affirms that he earns money in this way.”⁴⁷ While the police described Jorge as a drunk, lazy, and a troublemaking male prostitute, the Guardia Civil portrayed him as a good neighbor and hardworking person. How can we account for these conflicting reports? It seems clear that even though the Guardia Civil usually produced the harshest reports, it was not totally immune to considerations of status, and military honors and service to the “National Cause” (referring both to the side that won the Spanish Civil War and to the political regime that was established afterward) were at least as important as social class to them. (In Jorge’s case, his family connections afforded him status he himself did not possess.)

The Guardia Civil’s attitude toward status is also evident in another case of male prostitution that came to the attention of the court in February 1959. A retired Guardia Civil officer reported a case of fraud and brought three individuals who had visited his aunt to ask her for money on behalf of another of her nephews to a Guardia Civil station.⁴⁸ The first interrogated individual, Jaime, was a twenty-seven-year-old unmarried sailor. He affirmed that he had met Fernando (the nephew) seven years earlier, when Fernando had confessed to being a “sexual invert” and paid Jaime to spend the night together. They had met again the previous March, and Fernando had invited Jaime to spend a few days at Fernando’s *finca* (estate), where they had committed “every kind of dishonest abuses,” for which Jaime had been paid. This happened “relatively frequently” from that point on. Jaime stated that he only committed these acts because of “his family’s distressing economic situation . . . but he considers himself a totally normal man, as proved by the fact that he has a girlfriend in Málaga.”⁴⁹ Fernando, a forty-eight-year-old single landowner, declared that Jaime visited his finca several times, staying for the night and once for two or three days. Fernando also admitted that they had slept in the same bed and that one night when Jaime was a little tipsy “they committed dishonest acts consisting of touching, but nothing else.”⁵⁰ After these testimonies, the sergeant of the Guardia Civil ordered the arrest of Jaime and Fernando, accusing both “of committing a crime of pederasty, of which there was already suspicion insofar as Fernando’s condition of sexual invert was known by public rumor.”⁵¹ Despite Fernando’s social status as a landowner, he did not have the kinds of connections to the regime that had protected Jorge, and the Guardia Civil displayed their abhorrence of sexual transgression by seeking his conviction.

⁴⁷ Report from the chief of police, 12 February 1960, file 20, box 8887, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁴⁸ Files 25 and 26, box 8903, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁴⁹ Interrogation of the defendants, 1 February 1959, file 25, box 8903, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁵⁰ Ibid.

⁵¹ Proceedings record signed by the Guardia Civil sergeant, 1 February 1959, file 25, box 8903, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

This judgment contrasted with the reaction of the mayor of the town, who reported that Fernando had maintained “good conduct in every sense, dedicating himself to the farming and exploitation of the fincas he owns.”⁵² The mayor’s estimation of Fernando’s character was thus closely tied to the defendant’s behavior as a landowner. Fernando’s lawyer deployed a similar strategy, citing several neighbors who could testify in favor of his defendant: three “owners,” two land laborers, one priest, one “instructor” of the Francoist youth organization, and two other individuals, whose professions were not specified.⁵³ Thus, influential figures of the village (the *fuerzas vivas*) contradicted the Guardia Civil’s report, which shows that Fernando was able to mobilize his social capital against the moral judgment of the Guardia Civil.

On 4 March 1959 both defendants met to try to reach a settlement. The two men confronted each other, and Jaime renounced his version of the events. Fernando’s higher status and older age were likely among the factors that influenced Jaime’s decision.⁵⁴ Following Michel Foucault’s insistence that processes of confessing one’s sexual transgressions in Western societies have been “thoroughly imbued with relations of power” that have changed their form over time, we can view Fernando’s defense as a remnant of an older system of the production of truth. It was his social status—what Foucault referred to as “ties to the commonweal”—rather than “procedures of individualization” and medicalized definitions of homosexual identity that helped produce the discourse of truth that Jaime felt obliged to pronounce.⁵⁵ That social hierarchy still held some sway in Fernando’s lawyer’s passionate defense of his client on 28 April 1959. The lawyer first argued that the Law of Vagrants and Thugs was inapplicable in this case because it applied only to “antisocial activity.” In this way, he relied on the principles that had informed the original justification of the Law of Vagrants and Thugs in 1933, implicitly claiming that homosexuality, like all other forms of behavior detailed in the law, was only liable to prosecution when it became demonstrative of an inclination to crime or antisocial behavior. The lawyer claimed that Fernando did not meet this criterion because he was a landowner, as the mayor and the Guardia Civil had confirmed. Thus, the

⁵² Report from the mayor, 6 February 1959, file 25, box 8903, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁵³ Request by the lawyer, 11 March 1959, file 25, box 8903, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁵⁴ Report about the settlement meeting signed by the district court judge, 5 March 1959, file 25, box 8903, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁵⁵ Foucault describes the transition from a system of social hierarchies to a system of individualization in these words: “For a long time, the individual was vouched for by the reference of others and the demonstration of his ties to the commonweal (family, allegiance, protection); then he was authenticated by the discourse of truth he was able or obliged to pronounce concerning himself. The truthful confession was inscribed at the heart of the procedures of individualization by power” (*The History of Sexuality* [New York: Pantheon Books, 1978], 58–59).

lawyer framed the question of Fernando's innocence in terms of his social class and profession; his sexual preferences were secondary, according to the lawyer.⁵⁶ This argument was successful, and both Fernando and Jaime were acquitted.⁵⁷ In the battle between the Guardia Civil and the lawyers to establish whether or not male prostitution constituted a social danger, the judges seemed to take sides with the latter, accepting the principle that security measures should only be applied if homosexuality indicated an inclination to commit crimes.

THE CORRUPTION OF MINORS

The Special Court of Málaga seemed reluctant to apply the security measures that the law allowed and took other factors apart from the defendants' alleged homosexuality into consideration before deciding who was a "social danger." However, the judges consistently found that such an act represented a social danger when sexual relations occurred with minors. Of the six cases between 1958 and 1962 in which the judges decided to apply security measures to the defendants, three involved allegations of sexual relations with adolescents, and unsupported accusations that the defendant was a potential danger to minors were made in a fourth. This is not to suggest that all accusations of the abuse of minors led to convictions. What it does suggest is that judges clearly distinguished between homosexual acts and the abuse of minors even if both were classified as homosexuality cases and even though homosexuality and pederasty were often treated as synonymous in court discourse. This association had been legally sanctioned by the Penal Code of 1928, which apart from including "corruption of minors" as a crime for the first time also established more severe penalties for "dishonest abuses" involving a victim of the same sex as the perpetrator.⁵⁸ The Francoist Penal Code of 1944 did not maintain the harsher treatment of crimes committed against victims of the same sex and instead established penalties for those who abused anyone—male or female—younger than twenty-three years old.⁵⁹ Given that under the Franco regime the age of majority was twenty-one for males and twenty-five for females and that those older than eighteen years old could be held criminally responsible for their actions, the judges faced a dilemma: when someone between eighteen and twenty-one years old was involved in homosexual acts, should he be treated as a perpetrator (given that he had criminal responsibility) or as a victim (given

⁵⁶ Lawyer's defense statement, 28 April 1959, file 25, box 8903, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁵⁷ Sentence, 7 May 1959, file 25, and sentence, 18 April 1959, file 26, box 8903, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁵⁸ Cleminson and Vázquez García, *Los Invisibles*, 137.

⁵⁹ "DECRETO de 23 de diciembre de 1944 por el que se aprueba y promulga el 'Código Penal, texto refundido de 1944,' según la autorización otorgada por la Ley de 19 de julio de 1944," *Boletín Oficial del Estado*, 23 December 1944, 427.

that the law mostly treated him as a minor)? The court documents reveal that in practice, the judges of Málaga established that eighteen years old was the dividing line between victims and perpetrators. Therefore, any man older than eighteen who had relations with a man younger than eighteen was likely to be considered a social danger. This section focuses on a particularly complex case from 1961 that revealed the existence of a social network that facilitated sexual contact between adolescents and adults and provides evidence for conflicting social attitudes toward adolescent homosexual behavior.

The case involved a group of adults who were accused of regularly meeting in a shoe store to organize homosexual relations and to entice adolescents and youths to join them by offering them drinks and money in exchange for sexual favors. The police reports indicate that the adults were usually middle-class men whose professions granted them certain economic independence, while the adolescents tended to belong to lower-class families. One of the arrested persons was Alfredo, an eighteen-year-old unmarried construction worker. In February 1961 he declared in the police station that around fourteen months earlier he had met the owner of the shoe store on the beach, where the latter made advances toward him and finally masturbated him. From that point on, they had met around thirty times, mostly in the store, where they sometimes masturbated each other simultaneously and where the store owner sometimes “introduced his penis in [Alfredo’s] anus.” On other occasions, the store owner “sucked [Alfredo’s] genital organs,” which Alfredo suggested had caused him certain headaches. In exchange for these acts, Alfredo received money, wine, and tobacco. Alfredo ended his testimony by affirming that the store owner had maintained sexual relationships with another adolescent, and he gave the names of two other adult men who frequented the store with similar intentions.⁶⁰ Although Alfredo was younger than eighteen years old when he had met the store owner, he was older by the time the accusations were made. In the eyes of the court, he was therefore responsible for his actions and was brought to trial to establish if he was a social danger. The other adolescents who had been involved in these events were all younger than Alfredo and were therefore automatically exculpated.

Alfredo was interrogated again once in prison while he was awaiting his trial, and he denied being an “invert.” He attributed the acts he had committed with the store owner to the effects of alcohol, which had a particularly strong effect on him as a consequence of the “tuberculous meningitis” he had suffered when he was twelve years old.⁶¹ Alfredo’s decision to argue that meningitis had influenced his participation in these

⁶⁰ Deposition by the defendant, 7 February 1961, file 8, box 8891, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁶¹ Deposition by the defendant, 24 February 1961, file 8, box 8891, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

events gave rise to an unexpected course of events. His doctor linked this meningitis with a behavioral disorder, and a forensic doctor and a psychiatrist subsequently concluded that "he suffers a disorder in his conduct, consisting in a sexual psychopathy and a lethargy of affectivity that makes him indifferent to moral and social problems. His psychopathy attenuates his responsibility."⁶² Once Alfredo's acts were pathologized, his lawyer argued that the law was aimed at protecting society but not the defendant's own welfare (although in theory the law had also established the "reform" of socially dangerous individuals as one of its aims). The judge accepted this argument and put the case under the jurisdiction of the civilian governor, who had Alfredo committed to the Provincial Asylum.⁶³

In all these recorded debates, the underlying assumption was that individuals who decided to participate in homosexual acts were more dangerous than those who did so because of a pathological condition, although the latter, as in the case of Alfredo, were more likely to suffer repression in the form of forced hospitalization. This certainly complicates previous analyses of Francoist antihomosexual laws. Arturo Arnalte, for instance, argues that the collaboration between medical and legal specialists shaped the goals of these laws, which were aimed at isolating those individuals whose sexual orientation posed a menace to public health and morality.⁶⁴ However, the predominant argument in this case was that the defendant's pathological condition was not a social threat; it was only relevant to his own social welfare and was thus beyond the scope of the law.

The fact that Alfredo was not treated as a "social danger" but was rather committed to the asylum on the grounds of his "pathology" was related to his age and the fact that he presented himself as the victim of older men. In the first decades of the twentieth century, Gregorio Marañón's endocrinological theories and Sigmund Freud's works on psychoanalysis had offered new ideas about how the lack of sexual definition marked the earliest stages of life, hence reinforcing the notion that minors and adolescents were particularly vulnerable to the corrupting effects of having any kind of sexual contact with individuals of their same sex.⁶⁵ In the thirties, the works of Spanish sexologists such as Javier Bugallo Sánchez and José de Eleizegui showed how these authors had absorbed Freud's and Marañón's theories to explain the development of sexual difference.⁶⁶ Masturbation and the influence of classmates and adult men were considered threats to the normal transition of childhood sexuality from a malleable stage to a

⁶² Medical certificates issued on 28 February and 9 March 1961, file 8, box 8891, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁶³ Letter from the civilian governor, 14 April 1961, file 8, box 8891, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁶⁴ Arturo Arnalte, *Redada de violetas: La represión de los homosexuales durante el franquismo* (Madrid: Esfera de los Libros, 2003).

⁶⁵ Cleminson and Vázquez García, *Los Invisibles*, 140–43.

⁶⁶ Ibid.

well-defined sexual identity. In other words, there was a consensus among specialists in the field of childhood sexuality, such as Gonzalo Rodríguez Lafora and César Juarros, that early homosexual acts could produce or reinforce homosexual desires and that the best way of preventing the spread of homosexuality was to protect adolescents from each other and from adult men.⁶⁷ Beginning in the late nineteenth century, it had also been common among Spanish experts in social hygiene or criminal anthropology, such as Constancio Bernaldo de Quirós, to portray lower-class minors as particularly malicious, inclined to vice, likely to prostitute themselves, and consequently more vulnerable to seduction by adult males.⁶⁸ These ideas persisted during the dictatorship. In 1959 doctor Valentín Pérez Argilés argued that among the causes of homosexuality was adolescents' weak awareness of their sexual identity and their consequent vulnerability to seduction by older pederasts.⁶⁹

These attitudes toward adolescence meant that adult and mature men were more likely to be classified as social dangers than younger men. This pattern is also evident in a case against a salesman named Robert who was accused of having sexual relations with minors.⁷⁰ According to the reports, Robert declared to the Second Magistrate's Court of Málaga that he had joined a friend called Ramón and two adolescents called Fabián and Jacinto one night but that his intention was to separate Ramón from the minors and dissuade him to "drop this issue." He claimed not to have made any indecent propositions, although he admitted to having possibly touched one of the adolescents unintentionally when he shifted gears in his very small car. According to the transcript, Robert also admitted to being homosexual:

The defendant admits that, although he was born homosexual, he has been dealing with his defect with as much dissimulation as possible. While it is true that sometimes he has gone for a walk with minors it is because he finds it satisfying, but he has never fondled them, or any other minor. He has always respected them, and he has always found relief with other men. He insists that he has always dealt with his defect with as much dissimulation as possible, and the fact that when he meets his male friends he has even partied with women is a proof of that. He has always committed the acts with men outside this capital [Málaga], so his friends never knew about it.⁷¹

However, Robert later recanted the original content of this testimony: "The defendant was not born homosexual, as indicated, but was referring to Ramón, and he has never committed any act of homosexuality [*sic*]

⁶⁷ Ibid., 150–53.

⁶⁸ Ibid., 161–69.

⁶⁹ Arnalte, *Redada de violetas*, 88–104.

⁷⁰ File 13, box 8891, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁷¹ Deposition by the defendant, 15 February 1961, file 13, box 8891, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

with either adults or minors.”⁷² The defense lawyer argued that Robert was neither homosexual nor in a “dangerous state.” On the contrary, he “enjoys an excellent social position. He belongs to a family of well-respected morality.” The references to the defendant’s social class and his family’s reputation point to the fact that not only his sexual orientation but also his possible status as a social danger was being judged. The lawyer’s argument was permeated with the underlying assumption that it was not homosexuality alone that should be considered dangerous but only homosexuality in association with other antisocial conduct. The lawyer also pointed out that the positive reports provided by Robert’s priest, the principal of the Catholic vocational school he attended, and the companies for which he had worked confirmed his impeccable conduct (the priest and the principal had even portrayed him as devout).⁷³ At this point, Robert’s lawyer adopted a dramatic tone to convey the harm an unfavorable sentence would do to his defendant:

Everything will be over for him. The Association of Commercial Agents will undoubtedly agree on his expulsion. The pharmaceutical companies he represents will determine to do without his services, his clients will avoid him, and his circle of friends and acquaintances will sever their good relations with him. Then we will have an individual who had been carrying out his mission in society . . . and who would now ipso facto be without job, honor, and possibilities of regeneration, given the enormous gravity of the facts imputed to him. This would create a grave problem . . . that would even reach society, at least the small society formed by the circle of his clients and relatives. Then we undoubtedly could have an individual dangerous to society.⁷⁴

According to his lawyer’s argument, Robert would only become dangerous to society if an unfavorable sentence were to exclude him from his social circle. The emphasis was not so much on homosexuality per se as on its consequences for an individual’s reputation. Indeed, the lawyer went on to point out that only Fabián, a “kid of aberrant intelligence and corrupted customs,” had testified that Robert had tried to do something illicit with him. This accusation could be attributed to Fabián’s attempt to “dilute” responsibility by implicating other people or “probably to his corrupt mind, which cannot conceive that an individual can sit beside him without any lascivious intentions.”⁷⁵ Implying that Fabián’s perverse character disqualified him as a valid witness, the lawyer insisted that there was no proof to support

⁷² Deposition by the defendant, 25 February 1961, file 13, box 8891, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁷³ Lawyer’s defense statement, 28 March 1961, file 13, box 8891, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁷⁴ Ibid.

⁷⁵ Ibid.

the accusations against the defendant. The claim, in other words, was that sexuality defined Fabián's character but not Robert's. The underlying idea was again that the concern of the court should not be sexuality by itself but the moral corruption it produced in certain individuals.⁷⁶

The lawyer then addressed Robert's apparent confession of his homosexuality, arguing that human tribunals could not judge the "feelings" derived from a homosexual condition, as these were under divine jurisdiction. In the lawyer's view, if the judge considered homosexual desires independently of their hypothetical realization, then he should conclude that they are part of the individual's spiritual life and do not necessarily affect the performance of an individual's duties as a member of society. However, the lawyer recognized that the police and the Guardia Civil considered Robert to be a member of a gang of homosexual adults who were attempting to foster relationships with adolescents, that they tended to take the harshest possible position regarding the prosecution of homosexuality, and that they therefore simply assumed that Robert's "refined manners allowed him to act in an underhanded way."⁷⁷ He accused the authorities of misreading the significance of these refined manners, which, far from being indicative of his belonging to a gang of homosexuals, were actually just appropriate for his social status. In other words, in claiming that the law enforcement agencies were unfairly persecuting Robert in part because of his "refined manners," which marked him as a member of the same social class to which the judge and the lawyer also belonged, the defense was clearly deploying the codes of class solidarity.⁷⁸ In the end, the judge disregarded the lawyer's arguments and concluded that Robert was "born homosexual, enjoy[ed] the company of minors, and [often met] with other individuals of his same condition."⁷⁹ The judge's verdict declared Robert to be a social danger, but it did so in a way that made it clear that the danger stemmed not only from his homosexual condition but also from his attraction to minors and his participation in a network of men who shared this attraction.

Robert later appealed to the Tribunal Central de Apelación y Revisión de Vagos y Maleantes (Central Tribunal of Appeals and Revisions of Vagrants and Thugs) in Madrid, the highest judicial authority in the country for these cases. In the absence of other sources, we can consider this tribunal's decision as at least somewhat indicative of the parameters under which the law was applied at a national level. This tribunal established that, given the "gravity" of the crime and since the punishment of these acts carried exceptionally harmful consequences for an individual's reputation, the evidence necessary to secure a conviction needed to be particularly strong in order to protect

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Sentence, 29 March 1961, file 13, box 8891, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

the defendant. The tribunal considered the official reports and Robert's testimonies to be insufficient proof of his "condition" or that he had committed homosexual acts. Thus, the tribunal advocated for an even more circumscribed application of the law, relying on the established precedent that the law targeted sexual "material acts" and not the defendant's sexual condition.⁸⁰ For all these reasons, his original sentence was overturned, and he was acquitted.

FROM COMMUNITY INSIDER TO OUTSIDER

The court proceedings aimed at producing an overarching portrait of the defendant's character to evaluate if he was a social danger. In most cases, this all-encompassing approach benefited the defendants, insofar as they were able to present themselves as well-respected insiders in their communities, despite their alleged homosexuality. How complicated such arguments could be, however, is demonstrated by the case of a doctor, Joaquín, who was accused of homosexual acts in 1961. The evidence for and against the court's categorization of the defendant as a social danger was so contradictory that it was difficult to reconcile all his behaviors into a coherent image. Raised in Castile, Joaquín won awards for his performance as a premedical undergraduate and later as a PhD candidate. He also had a central role in the Francoist students' trade union, earned a second bachelor's degree, received the regime's recognition for his research, published works on diverse literary and scientific topics, and was a Falange member.⁸¹ However, once he moved to a city on the coast of Málaga he apparently often got drunk and acted in inappropriate ways, including exhibiting homosexual behavior. In March 1962 the court concluded that he was a social danger.

In this case, the report by the Guardia Civil documented both positive and negative aspects of the doctor's behavior. He was cultured and professional, treating the poor generously. However, under the influence of alcohol he neglected his professional duties and became "brash, inattentive, satyr-like, and poorly spoken."⁸² According to public rumor, he was a sexual invert. A report by the chief of the local police department emphasized the doctor's aggressiveness toward his neighbors, his neglect of his professional duties, and his practice of taking advantage "of being alone with some of his patients in the surgical office, committing immoral acts with them" (the report did not specify the age of these patients). The police chief also argued that the presence of the doctor in the city was a danger to the community

⁸⁰ Sentence revision by the Central Tribunal of Appeals and Revisions of Vagrants and Thugs, 8 May 1961, file 13, box 8891, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁸¹ Biography and criminal background, submitted to the court by the Guardia Civil sergeant major, 7 October 1961, file 90, box 8902, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁸² *Ibid.*

“because he was immoral and pernicious for the youth he was trying to corrupt physically and morally,” allegedly taking minors to his own house to abuse them.⁸³ In this case, it was members of the police rather than of the Guardia Civil who formulated the harshest accusations. This was likely due to a combination of the Guardia Civil’s awareness of the doctor’s connections to the National Cause and the political apparatus that supported the regime and his confrontational attitude toward the police.

On 16 October 1961 Joaquín defended himself in front of the Málaga Special Court; he acknowledged his heavy drinking but not his homosexual tendencies.⁸⁴ Therefore, the police introduced a new report to the court about the doctor’s sexual practices and extreme personality changes while recognizing that there was neither evidence nor testimony to support the gravest accusation of an abuse of minors.⁸⁵ After a lapse of several months during which the court had to appoint a public defender, the latter presented a plea on 17 March 1962, explaining that the contrast between the doctor’s behavior before moving to Málaga and the “creature” he had become in this province under the effects of alcohol could be the consequence of a personality disorder produced by a brain trauma.⁸⁶ In this way, the lawyer relied on the medical theories that circulated in Spain at the time to justify the fundamental irreconcilability between different portrayals of the doctor’s behavior. Valentín Pérez Argilés had argued in 1959 that encephalitis, an inflammation of the brain, was among the possible causes of homosexuality, and the well-known Spanish psychiatrist Juan José López Ibor similarly affirmed in a conference in San Remo in 1973 that a homosexual patient who had undergone a lobotomy had experienced a certain improvement.⁸⁷ These theories seem to have had no impact on the judge, however, who disregarded the lawyer’s petition to subject the defendant to psychiatric examination and concluded that the doctor “was in a dangerous state” and should be interned in a rehabilitation center for alcoholism. In describing the various antisocial behaviors that led to this judgment, however, the judge did not mention the doctor’s alleged homosexuality.⁸⁸ Once again, sexuality was one among several factors taken into account in the determination of social danger. In this case, it seems to have been the doctor’s confrontational

⁸³ Report from the police chief to the mayor, n.d., file 90, box 8902, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁸⁴ Affidavit by the defendant, 16 October 1961, file 90, box 8902, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁸⁵ Report from the police chief to the court, 24 October 1961, file 90, box 8902, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁸⁶ Plea from the public defender, 17 March 1962, file 90, box 8902, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁸⁷ Arnalte, *Redada de violetas*, 88–104.

⁸⁸ Sentence, 21 March 1962, file 90, box 8902, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

attitude toward the local community and the authorities even more than his sexuality that caused him to become an outsider to the sociopolitical system. Subsequent reports describe his imprisonment in Madrid, from where he was finally released in June 1962 after a favorable report from the prison medical officer.⁸⁹ In those cases that ended in the application of security measures, the defendants were often sent to common prisons, which betrays the unstated punitive intentions of the law. Joaquín's case thus provides an instructive example of the contradictions between the law's intent and how it was actually implemented. Although initially justified with the aim of rehabilitating dangerous individuals who were not, strictly speaking, criminals, in practice the Law of Vagrants and Thugs provided the legal framework for the prosecution and punishment of those individuals. The punitive aims of the law became particularly evident in the case of Joaquín, since he had behaved as an exemplary follower of the regime for most of his life, while his confrontations with the local authorities in Málaga led the latter to look for retaliation and a punishment that would restore order.

CONCLUSION

One of the most widely shared views on the legal prosecution of homosexuality under the Franco regime is that the state's main goal was to stigmatize homosexuals, relying on and encouraging the already prevalent social intolerance toward sexual deviance. Historians have argued that in the relationship between state and society, the former had the upper hand in shaping majority social attitudes, even though family connections and friendship might have created pockets of tolerance that produced more acceptance for the actions of the accused.⁹⁰ Although the limited data on which this article relies do not provide enough evidence to present more general arguments about the Franco regime and how it operated, future studies of the application of the Law of Vagrants and Thugs by different courts would provide insight into the workings of the law and its effects on homosexuals on a national scale. This will provide new perspectives on the regime and its legacies, adding to the works that have approached this topic from other perspectives. Cultural analyses have demonstrated that a definition of national identity that was dependent upon a binary understanding of gender immediately implied the exclusion of homosexuals and lesbians.⁹¹ As we know from the testimonies collected by Lucas Jurado Marín, Fernando Olmeda, and Arturo Arnalte, among others, for many homosexuals, especially those with an "effeminate" appearance, the

⁸⁹ Judicial order, 4 June 1962, file 90, box 8902, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁹⁰ See Ugarte Pérez, introducción to *Una discriminación universal*, 13–49.

⁹¹ Pérez-Sánchez, *Queer Transitions*, 11–13.

Francoist period was a time of extrajudicial police repression, prison penalties, community exile, and public humiliation.⁹² These same testimonies also provide further evidence for some of the central arguments of this article: that social hierarchies, local authorities' attitudes, and relations of patronage shaped the application of the law, that protecting public morality was one of the authorities' main concerns with respect to homosexuality, and that homosexuals did not relinquish their sexual and emotional lives in the face of state repression. Finally, these testimonies show that neighbors' attitudes ranged from the endorsement of Francoist homophobic discourse to certain forms of limited tolerance based upon long-established folk traditions of acceptance of "effeminate" homosexuals, especially in the south of the country. Men involved in homosexual relationships had to navigate these social attitudes along with the state policies that made their relationships illegal.

The court proceedings in Málaga during the Francoist period also demonstrate that the state and society were not two monolithic and rigidly separated entities: state institutions relied on public rumor and information collected in the communities; mayors were usually appointed from the local elite; many priests closely collaborated with the local government; and if defendants accused of homosexuality were able to demonstrate that they were insiders of the local sociopolitical system, their chances of being declared a social danger were considerably reduced. Besides, lawyers could often rely on reports by mayors, priests, and employers to challenge the legal definition of homosexuality as a social danger. My point here is not to deny the extremely repressive character of the Franco regime but rather to emphasize that power penetrated social relations through the collaboration of influential groups and individuals. In these court proceedings, the privileged access to the state common to the upper classes and key institutions, particularly the Catholic Church, the Francoist movement, and the military, could be mobilized in favor of the more socially fortunate and connected defendants. As Geoffroy Huard has argued with respect to Barcelona, the repression of homosexuality in Francoist Spain mostly targeted "popular class inverts if their lifestyle was associated with delinquency, vagrancy, or prostitution," while "upper- and middle-class homosexuals who could demonstrate a job and honest incomes" were unlikely to be condemned.⁹³ The arbitrariness and corruption of the application of antihomosexual laws in Málaga provide considerable evidence for what Huard has called the "classist justice" of Franco's regime.⁹⁴ Thus, similar to historical research on other regimes with totalitarian aspirations, the evidence about the Spanish repression of

⁹² See Lucas Jurado Marín, *Identidad: Represión hacia los homosexuales en el franquismo* (Antequera: La Calle, 2014), 72–125; Olmeda, *El látigo y la pluma*, 19–53, 135–43; Arnalte, *Redada de violetas*, 1–19, 102–5, 257–62.

⁹³ Geoffroy Huard, *Los antisociales: Historia de la homosexualidad en Barcelona y París, 1945–1975* (Madrid: Marcial Pons Historia, 2014), 186.

⁹⁴ *Ibid.*, 33–34.

homosexuality investigated here reveals that the Francoist state depended on traditionally hegemonic social sectors and institutions, such as the upper and middle classes, the Catholic Church, and the military.⁹⁵

Officials in the various state institutions in the province of Málaga had quite different attitudes toward homosexuality, and they focused on quite different factors to establish if the defendant was a social danger. The Guardia Civil was consistently one of the harshest enemies of sexual transgression. The reports by this militarized force referred to homosexuals with particularly derogatory language and rarely included allusions to the defendant's social class among the factors they considered most relevant to determining his potential danger to the community.⁹⁶ This does not mean that these reports completely ignored considerations of status, which was mostly defined in terms of normative masculinity and connections to the National Cause. After all, the Guardia Civil had a military structure, was closely identified with the ideological program of the regime (which maintained a militant, warlike portrayal of its opponents), and was directly under the centralized control of the government (through the civilian governor). Therefore, links to the National Cause and normative masculinity were more significant for them than the defendant's position in local social hierarchies. Furthermore, members of the Guardia Civil were themselves under the jurisdiction of the Military Justice Code of 1945, which established harsh penalties for homosexual relations. This likely influenced their views on sexual transgression.⁹⁷

⁹⁵ Much recent research on "totalitarianism" has indicated that these societies were not as uniform as once assumed. It was possible for individuals to navigate them in some ways, and past social relations mediated how the regime's power was manifested. Lorenzo Benadussi argues, for instance, that "the idea . . . of totalitarian regimes as reigns of repression should be reconsidered, in particular in relation to the impulses toward greater openness that were inevitable in a period of such rapid social and economic change. Also, in regard to sexuality, Fascism and Nazism tr[ie]d to balance the destructive and the conservative impulses" (*The Enemy of the New Man: Homosexuality in Fascist Italy* [Madison: University of Wisconsin Press, 2012], 6). Regarding Francoist Spain, recent articles on the social history of "marginal" groups reveal that relations of patronage played a fundamental role in this period, that the state emerged out of the civil war in a situation of weakness, and that there were many significant continuities with traditional social policies, such as reliance on the Catholic Church's charity system and the regulation of prostitution. See Conxita Mir, Carme Agustí, and Josep Gelonch, eds., *Pobreza, marginación, delincuencia y políticas sociales bajo el franquismo* (Lleida: Edicions de la Universitat de Lleida, 2005).

⁹⁶ The Guardia Civil used particularly homophobic expressions in their reports. See, for instance, the description of defendants as "amigo de mariconear" (fond of acting like a faggot) in files 131 and 132, box 8934, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁹⁷ Article 352 of this code established that "the soldier who commits dishonest acts with an individual of his same sex" would be imprisoned between six months and a day and six years and discharged from service. See "LEY DE 17 DE JULIO DE 1945 por la que se aprueba y promulga el Código de Justicia Militar," *Boletín Oficial del Estado*, 20 July 1945, 728.

Mayors, on the other hand, who usually came from an upper-class background, were more inclined to take social class and integration into the local community into account as exonerating factors for those charged under the terms of the revised law, though police reports also influenced their views. Even priests and clergymen who closely collaborated with the state apparatus sometimes spoke in favor of the defendants, particularly when the latter were active members of the Catholic community and had previously demonstrated their respect for the church.⁹⁸ Similarly, employers often cited the defendants' excellent job performance to intercede on their behalf, while relatives, friends, and neighbors commonly signed affidavits certifying moral character. The reaction of the local police was more ambivalent: while sometimes focusing on the defendants' normative behavior, at other times the police expressed particular concern about the dangers that homosexuality represented for public order and the peaceful life of the community.

These conflicting reactions show that local structures of power and social dynamics shaped the application of the Law of Vagrants and Thugs and played an important role in establishing whether or not homosexuality would lead to a determination of an individual's social danger. The courts, the police, the Guardia Civil all had different understandings of how the law should be applied, but in all cases arguments for leniency were defended with arguments about the social status of the accused. In many cases, individuals charged with homosexuality were more likely to be convicted in cases where there was also prostitution, corruption of minors, a lack of respect for the authorities, or other "antisocial" behaviors, including excessive drinking and professional neglect.

Judges had the last word in these trials.⁹⁹ Although they did not make explicit their criteria for identifying socially dangerous individuals, their sentences provide some hints. Apparently, they were not particularly concerned about consensual homosexual relations between adult men, even when these were associated with some form of economic exchange or patronage. Instead, they defined social danger primarily as a corruption of minors. That corrupting minors was punished under the terms of the Law of Vagrants and Thugs instead of under the Penal Code reveals the tendency in this period to equate homosexuality with pedophilia. Although judges were less consistent when it came to other types of offenses, defendants were more likely to receive a sentence of security measures when they disturbed public order or scandalized the community than when they were reported to be living quiet lives in the community. How the Law of Vagrants and Thugs

⁹⁸ See, for instance, file 13, box 8891, file 105, box 8898, and file 179, box 8875, Juzgado Especial de Vagos y Maleantes de Málaga, AHPSE.

⁹⁹ Juan Cano Bueso emphasizes that under Franco's regime the government was exclusively responsible for the appointment of judges. Juan Cano Bueso, *La política judicial del régimen de Franco, 1936–1945* (Madrid: Centro de Publicaciones, Secretaría General Técnica, Ministerio de Justicia, 1985), 129–35.

was applied in Málaga in the early fifties and early sixties thus depended upon three overlapping factors: the influence of legal definitions that equated homosexuality with the sexual abuse of minors; local assessments of the defendant's relationship to the existing sociopolitical order; and the widespread conviction that homosexuality alone was not enough to mark an individual as a complete outsider.

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