

## Literature, Society and Law: a Three-sided Mirror. The Basque Case. How Contemporary Literature Reflects Identity, Conflict And Memory In The 'Spanish' Basque Country: A Tridimensional Mirror

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### Abstract

The aim in this thesis is to show how the Basque-culture identity struggles are reflected within the Basque literature and how their actions, behaviour, traditions, culture, memory, language, etcetera, define them as a community or minority. In order to show the reflection of the law in five chosen novels written in Basque, firstly I will try to explain the link between law and literature, and afterwards, a double analytical construction will take place: on the first hand, a descriptive and historical explanation to provide the audience with the meaning of the three basic concepts which constitute the Basque culture -identity, conflict and memory-, and with a socio-historical context; on the second hand, this analysis will be based on the content analysis of the five novels that have been chosen, and contextualized or in relation to the period that goes from the Civil War (1936-1939) to the post-war and nowadays, with special insistences in the decade of the 1980s and 1990s.

### Key words

Basque Country-Spain; collective identity; collective memory; conflict; living law; positive law; Basque; Euskara; literature; ETA; Twist; tradition; transition

### Resumen

El objetivo de esta tesis es mostrar cómo los conflictos identitarios de la cultura vasca se reflejan en la literatura, y cómo sus acciones, comportamiento, tradiciones, cultura, memoria, lengua, etc., lo definen como comunidad o minoría. Para mostrar la manera en que se refleja lo jurídico en cinco novelas seleccionadas

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escritas en lengua vasca, primero intentaré explicar la relación entre derecho y literatura, y después, llevaré a cabo una doble construcción analítica: de un lado, una explicación descriptiva e histórica, para proporcionar tanto un significado de los tres conceptos básicos que constituyen la cultura vasca -identidad, conflicto y memoria- como un contexto sociohistórico; y, por otro lado, este análisis se basa en el análisis de contenido de las cinco novelas seleccionadas y contextualizadas en, o en relación con el período entre la Guerra civil (1936-1939) y posguerra, y la actualidad, con especial insistencia en la década de los 80 y los 90.

**Palabras clave**

País Vasco-España; identidad colectiva; memoria colectiva; conflicto; derecho vivo; derecho positivo; euskera; literatura; ETA; Twist; tradición; transición

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## 1. Introduction

Basque culture is more alive than ever. After General Francisco Franco's dictatorship, 1939-1975, the Basque culture and language that had been slowly dying was able to return to life, protected by a strong social conscience and a legal and judicial body that was getting stronger little by little.<sup>1</sup> That is to say, that in the Basque case the Ehrlich's concept of living law, turned into hard law when entering the democracy in Spain, articulated by what was called the Transition.<sup>2</sup> Living law, as Ehrlich (cited in Nelken 2008) called it, comes not primarily from official legal structures, but instead from the normative arrangements that govern everyday social life, whose essence is not but self-defence and cooperation in order to keep alive their roots. In the concrete case I am dealing with, because of the Spanish repression, new rules of conduct arose in Basque Country, within a different framework –the Spanish norms of decision framework<sup>3</sup>– for the structuring routine of social relationships.

During the decades of the 1960s and 1970s, the inner order of associations,<sup>4</sup> in Basque Country, became the primary source of normative regularities and problem-solving, by which people orient their lives (Nelken 2008). The counter-dictatorial movements in Franco's regime (between which the principal one was ETA),<sup>5</sup> as well as the underground activities of the engaged Jesuits<sup>6</sup> and artists (sculptors as Jorge Oteiza, poets as Gabriel Aresti or *bertsolaris* as Amuriza)<sup>7</sup> were really significant boosters to create and implement this Basque living law until the Spanish democracy was achieved.

In this framework, it deserves to be underlined, that the kelsenian conception of law is obsolete, given that the social support is as important as the legal one in order to obtain an efficient and effective law. Therefore, the law has to open itself to the different fields of the social sphere (economy, religion, art-literature, etc.), driving us in this way, to the building of the bridge that joins law and these diverse social areas, highlighting such as the law and literature.

<sup>1</sup> This refers to the Spanish side of the Basque Country (B.C.), to the Autonomous Community of the B.C., being excluded Navarre and Iparralde, where the legal achievements have been much fewer.

<sup>2</sup> The Spanish Transition is the process that goes from the end of Franco's regime to the instauration of the Democracy, i.e., from 1976 to 1981.

<sup>3</sup> According to Ehrlich (cited in Nelken 2008 and in van Schooten and Verschuuren 2008), there are various types of rules of conduct, such as rules of law, of morals, of religion, of ethical custom, of honour, of decorum, of tact, of etiquette, of fashion. These rules are an ever-present part of society and emanate from the social forces that are operative in society. These rules of conduct guide everyday social behaviour as living law. But not all laws can develop into rules of conduct. For Ehrlich, there are other type of laws, those that are applied and effective only in very rare cases of legal controversy, those to which we can refer as a mere doctrine, dogma, theory or as norms of decision.

<sup>4</sup> By *the inner order of associations*, Ehrlich means the society's reflexive web of expectations that gives power and meaning to norms. Ehrlich stressed that law might grow up gradually out of people's associations rather than descend peremptorily from official imposition. (van Schooten and Verschuuren 2008).

<sup>5</sup> Armed Basque nationalist and separatist organization. The group was founded in 1959 and has since evolved from a group promoting traditional Basque culture to a paramilitary group with the goal of gaining independence for the Basque Country. ETA is the main organisation of the Basque National Liberation Movement and is the most important participant in the Basque conflict. Since 1968, ETA has been held responsible for killing 829 people, injuring thousands and undertaking dozens of kidnappings. The group is proscribed as a terrorist organization by the Spanish, British, French and American authorities, and by the European Union as a whole. This convention is followed by a plurality of domestic and international media, which also refer to the group as *terrorists*. There are more than 400 imprisoned members of the organization in Spain, France, and other countries. ETA declared ceasefires in 1989, 1996, 1998 and 2006, and subsequently broke them. On 5 September 2010, ETA declared a new ceasefire and on 20 October 2011 ETA announced a *definitive cessation of its armed activity*. On 24 November 2012, it was reported that the group was ready to negotiate a *definitive end* to its operations and disband completely. ETA's motto is *Bietan jarrai-Keep up on both-*, referring to the two figures in its symbol, a snake (representing politics) wrapped around an axe (representing armed struggle).

<sup>6</sup> The Church was a very important institution in the Basque society at that time.

<sup>7</sup> Bertsolari is the person who practices the *bertsolarismo* and this is a competition where two people have to improvise about a random subject and do it in a witty and sharp way in order to win.

In order to show the reflection of the law in five chosen Basque novels, firstly I will try to explain the link between law and literature, and afterwards, a double analytical construction will take place: on the first hand a descriptive and historical explanation will take part to provide the audience with the meaning of the three basic concepts, which constitute the Basque culture (identity, conflict and memory), and also to give a socio-historical context to the reader; and on the second hand, this analysis will be based on the content analysis of the five novels that have been chosen, all of them written in Basque language (Euskara or Euskera) and contextualized or in relation to the period that goes from the Civil War (1936-1939) to the post-war and nowadays, with special insistences in the decade of the 1980s and 1990s.

Although all the actors of this Basque historical story have been socialized in the same juridical paradigm, their different ideological-political orientation will drive them to diverse ways of understanding this process. Nevertheless, all these different perspectives would agree when pointing out the following:

The effectiveness of the literature reflecting the society and its law.

The strategic use of the law by the organizations and institutions, on their own interest, and the importance of not losing the starting point: who has to serve whom –the law to the society, or the other way around?

The complexity of the Spanish-Basque case, which is necessary for a socio-juridical referential framework of the phenomenon. This complexity, shown within the concept of moral individualism and also in the endless debate between living law and positive law, nationalism and Marxism, nationalism and liberalism, the right to decide as a democratic implementation of the autonomy right or as an unconstitutional right, the uniqueness (offered by the pluralism) versus the unity, the equality versus the equity, is reflected in the diverse levels (local, national, international) and types of conflict (political, military, social), in the articulation of the non-separate powers of the state and in the different actors and different understandings of the conflict, its causes, its ways of trying to solve it and its consequences.

## 2. Theoretical Framework

The theoretical framework I would use in this article can be split into two parts:

- The *how*, which is related to the main methodological tool that has been chosen to carry out this article, that is to say, law and literature.
- The *what*, focusing on the body of my article: the concept of living law brought by Eugen Ehrlich. Referring to my concrete case, I would like to insist on the step given in Basque Country from living law (Franco's period)<sup>8</sup> to a status of living with the law (acquired during the democracy)<sup>9</sup> articulated by what was called the Transition.

In both parts there are two points in common:

The need of the law to leave behind the old Kelsenian conception of law.

The need of the law to open itself to the different fields of the social sphere (economy, religion, art-literature, etc...).

<sup>8</sup> Franco's dictatorship was ruling Spain from 1939 to 1975, until Franco's death.

<sup>9</sup> Spanish Democracy was achieved in 1981 after the failure of the coup d'état carried out by Antonio Tejero.

## 2.1. The How

‘Thro’ seas where never prior vessel came,  
 Who further yet than Taprobana bore,  
 In danger valiant and in wars the same,  
 Exceeding what was pledged of human store,  
 And, among people of a distant clime  
 New kingdom built and rendered so sublime”<sup>10</sup>  
*Os Lusíadas*. Luis de Camões.<sup>11</sup>

(Schwartz 2011)

There is a kind of agreement between the modern sociologists that the current world differs from other eras by a feeling of uncertainty and insecurity unseen before. The law, if it wants to fulfill its role, must be open to those factors that have generated those effects, uncertainty and insecurity. Therefore, the law has to open to its environment, without losing its autonomy, going into the unknown, and returning later to itself. That is the challenge of the law, not very dissimilar to be sailing through seas that have never been sailed before, as Camões describes in his poem above.

To carry out its purpose, the law must abandon the old perceptions of law as a separate phenomenon from other sciences (stated by the purity of Kelsen law; see van Klink 2006), towards the notion of a law connected with the social sphere. A law that every day is self-created and that is linked to a biological notion of connecting networks (Capra 1996), interconnected in such a way that everything is built from its part, and vice-versa.

In that sense, the autopoietic system theory of Niklas Luhmann (2000) and the reflective right of Gunther Teubner (Graber and Teubner 1998) fit our goal. They both state that the law is a simultaneously open-closed system<sup>12</sup> preserving the autonomy of the legal system without being removed from the necessity of contact with other social systems, such as in the case of art. Hence, the requirements of this new conception of law (i.e., self-creation and interconnection) are met with these mentioned theories.

The link between social systems (Law and Arts-Literature in this case)<sup>13</sup> is possible because of the communication in its most varied forms. In this regard, both law and art, are pure communication, and in the specific case, law and literature, are communication via language (Schwartz 2011). Both law and literature are texts and are built in a similar social situation.

Once explained the theoretical framework surrounding the *how* of this article, I am going to draw the theoretical framework that specifies the content of it.

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<sup>10</sup> Translated by the author of this article. The original: *Por mares nunca de antes navegados / passaram ainda além da Taprobana, / emperigos e guerras esforçados / mais do que prometia a força humana, / e entre gente remota edificaram / Novo Reino, que tanto sublimaram.*

<sup>11</sup> One of the better-known writers and poets in Portuguese language.

<sup>12</sup> It means that the law starts in itself, goes towards the environment to come back again towards itself.

<sup>13</sup> Art manifestations are considered, also, as autonomous social systems. The literature can be regarded as part of the art social system. See: Luhmann 2000.

## 2.2. *The What*

The center of gravity of legal development from time immemorial has not lain in the activity of the state, but in society itself, and must be sought there at the present time.

Eugen Ehrlich (cited in Schwartz 2011)

*Living law*, as Ehrlich calls it, comes not primarily from official legal structures where it has become conventional to locate them, but instead from the normative arrangements that govern everyday social life.

Ehrlich presents three major concepts in relation with living law: rules of conduct,<sup>14</sup> norms for decision<sup>15</sup> and the inner order of associations.

According to this author, there are various types of rules of conduct, such as rules of law, morals, religion, ethical custom, honour, decorum, tact, etiquette and fashion. These rules are an ever-present part of society and emanate from the social forces that are operative in society. These rules of conduct guide everyday social behaviour as living law.

But not all laws can develop into rules of conduct. For Ehrlich, there are other type of laws, those that are applied and effective only in very rare cases of legal controversy, those to which we can refer to as a mere doctrine, dogma, theory or as norms of decision.

He also claims that the living law is not directly linked to the state or its legal system, but rather to the inner order of various social groups or associations. By inner order of associations, Ehrlich means the society's reflexive web of expectations that gives power and meaning to the norms. It is not state coercion, but this inner order of associations that makes law work and brings about social order. Ehrlich stressed that law might grow up gradually out of people's associations rather than descend peremptorily from official imposition (van Schooten and Verschuuren 2008).

Several authors agree with Ehrlich's understanding of living law. Selznick with his incipient or emergent law, Fuller with his implicit law and Petrazycki (cited in van Schooten and Verschuuren 2008, introduction and Part 1; see also Krygier, M., 2008)<sup>16</sup> with his intuitive law, all seem to support it. The reason why so many

<sup>14</sup> Also called *lebendes Recht* or living law.

<sup>15</sup> Also called *geltendes Recht* or valid law.

<sup>16</sup> Selznick (cited in van Schooten and Verschuuren 2008) accepts that legal potential, if it exists, is to be found in the social dynamics. He suggests sociologists must be alert to the possibility of finding within associations what he called incipient, inchoate, emergent forms of law, generated in response to internal pressures, dynamics and demands. His ambition is to extend our understanding of law to encompass both official and non-official settings. Indeed he said that law often can be found outside the state, but inside it too. As Ehrlich, he affirms that rather than always start with official legal institutions and end up with individual recipients of legal directives, law spurred by sociological realities within human associations will often come to be taken up by official legal organs. Therefore, according to him, "incipient law is emergent positive law, responsive to, and made possible by, particular social circumstances". Fuller (*Ibid.*) distinguished between implicit law (natural law) and made law (positive law). The first one, equivalent to Ehrlich's living law includes custom and certain other forms of human interaction having normative significance, though these may not be reduced to authoritative textual statement. The second concept, made law, consists of explicitly stated rules and other prescriptions, and includes statutes and explicit contract terms. Made law can create law in the form of contract terms and may also bring custom and other forms of implicit law into being. Petrazycki (*Ibid.*) expresses the latter consequence of his psychological jurisprudence by dividing law into positive law and intuitive law. Positive law in his usage must not be taken to mean what it means for Ehrlich or for legal positivists such as Austin or Kelsen; instead, positive law in Petrazycki's sense is any bilateral blanket impulsion which, in any person's psychological experience of it, finds the justification for its action idea in some authority or reason outside that experience itself. Official positive law is but one small portion of such bilateral blanket impulsions. Intuitive law, on the other hand, comparable to Ehrlich's living law, is a bilateral imperative blanket impulsion, whose action idea finds its justification solely in the immediate present experience of the impulsion itself. Intuitive law, according to Petrazycki, may be ethically inferior to positive law. This occurs frequently when the person is insensitive morally and legally or is less

authors share with Ehrlich the same point of view in this field could be attributed to the historical moment (end of 20<sup>th</sup> century) they lived in, a changing period where the wings were not favourable anymore to the traditional legal methods.

In the concrete case I am dealing with, this concept of living law can be applied to the social phenomena I will explain in this article. When Franco (1939-1975) was still ruling in Spain throughout the 1960s and 1970s, the Basque people realized that they should fight for their culture, customs, values and language if they wanted to keep them alive (Bengoetxea 2013, Bullain 2014, Zallo 2014). As a result, new rules of conduct arose in Basque Country, within a different framework (in comparison with the Spanish norms of decision framework).

But there were also contrasting, tough perspectives to the one that Ehrlich defended during that time. Indeed, Hans Kelsen was a theorist who plead for the positive notion of law and between them it raised an endless debate. Ehrlich's experience of the Bukowina's<sup>17</sup> legal culture, where Austrian law and sharply contrasting local custom seemed to co-exist, caused him to question the hierarchical notions of law propounded by Kelsen. The latter criticizes Ehrlich for not distinguishing between *sein* (what it is) and *sollen* (what it should be), and for confusing the juridical science, strictly speaking, with the explanatory and inductive science of sociology of law. Kelsen considers that the sociology of law is an observation science, the reason why it cannot neither establish duties, nor give any valoration about what it should be, but just valoration about the usual human behaviour. This lack of consideration towards what the society thinks and how the society acts, that can be grasped from Kelsen's words, can be translated to our case, where Spain's positive law ignored, and still ignores, the Basque living law, not just during the dictatorship, but also during the Transition and, although in totally different way and level, nowadays.

As the Professor A. Febbrajo [at a lecture at the International Institute for the Sociology of Law (IISL) 2014/2015 Socio-Legal Master] <sup>18</sup> claims, one thing that Kelsen did not understand is that the sociology of law just wants to open possible lines of investigation, but it does not want to supply a conceptual legal apparatus or establish clear limits between the different conceptions of law. Not even today, with many more and better methodological instruments, it is easy to establish these boundaries.

Summing up, I will defend that both perspectives of law are necessary in order to build a legal body to serve society. The turning point between Ehrlich and Kelsen is the degree of importance conferred to the concepts of living law and positive law. For Ehrlich, society is the source of information in order to construct the law, while for Kelsen, just information that, perhaps or sometimes, could orientate the law creation.

### 3. Law and Literature

#### 3.1. Introduction

The Law & Literature movement can be considered a move that goes together with the evolution of the 20<sup>th</sup> century history. It focuses on the interdisciplinary connection between these two disciplines. It supposes a crossroad between law and literature, and builds a critical space through which it is possible to question assumptions, basis, legitimacy, performances, etc.

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reflective with respect to the action ideas of his impulsions than the general run of people in his community or in other communities.

<sup>17</sup> Bukowina is the place where Ehrlich was born, located in the Austro-Hungarian Empire at that moment. Nowadays, that territory is placed in Ukraine.

<sup>18</sup> Very well-known Italian law scholar and sociologist. Professor at the 2014/2015 Socio-Legal Master, IISL, Oñati.



They both are texts, communication via language, and they both are built in similar social situations, as we have said before. The law is an open-closed system, what means that it starts in itself, goes towards the environment to come back again to itself. Hence, when the law makes contact with the environment, with the social sphere -where the literature is located-, the latter can influence on it and provoke the creation of a new law, suitable to the transformation of the social system, as indicated Benjamin Cardozo, judge of the Supreme Court of the United States in the early twentieth century (Schwartz 2011).

On the one hand, for the academy of law, it will be a real challenge to go out from its state of *rigor mortis*. On the other side, when considering the deconstructive and critical nature of the literary work, opposite to the legal one, it should be noted that literature is a piece of art. The artwork produces, through its imagination, a shift in the look, a fusion of horizons, so that everything happens as if what was real enabled the emergence of worlds and situations that had not been thought before. This is why the literary critics, despite their distrust of lawyers, will be able to join these two disciplines.

### 3.2. Why Law and Literature Movement in this article?

“We are far from the law and without any reason...

I remember those times with emotion,  
when other was its value  
and higher our concept.

Lucky and golden that beautiful age.”

*Faust*. Johann Wolfgang von Goethe.

I will answer this question through another two sub-questions that will give us a broader and holistic answer:

- What is the principal task of the chosen method?
- Why do I choose literature to reflect society and law?

#### 3.2.1. What is the principal task of the chosen method?

By one hand, the nostalgic aim of the law and literature movement is to rescue, if it still exists, the sense of a time where the justice was poetic, when the academic and social discussions took place in a passionate environment, today abandoned due to the bureaucratization played by the researchers at the universities and the law operators in the juridical praxis.

By the other side, the hopeful aim of this movement is to start using the imagination in its proper way. I am not speaking about a fantasy, the tool to avoid the reality, but instead about imagination, the tool to create new worlds, new realities, which are necessary to solve or transform the conflicts of the society. With creating new worlds, what I mean it is to open our horizons in order to see new perspectives, new points of view and new practical ways to face the *same* reality.

#### 3.2.2. Why do I choose literature as a method to reflect law and society?

I choose this method because of the multiple functions of literature in the society and in the human condition. Let us see the possibilities that literature offers us.

**LITERATURE AS PUBLIC SERVICE.** As Martha Nussbaum (1997)<sup>19</sup> mentions in her book *Poetic Justice*, we are used to think about literature as if it would be something optative, something magnificent, valuable, enjoyable and excellent, but something that exists outside the political, economic and legal thinking. But

<sup>19</sup> American philosopher (1947) whose interests are grounded on ancient and political philosophy, and philosophy of law and ethics.

literature is not just a simple ornament, it has the potential to make a clear contribution to our public life.

**LITERATURE'S EMPATHY.** Other factors that push me to use literature to study the law is the power of empathy of the first one. Literature, through its narratives and its characters, sends the reader to live other people's lives and to extend, in such a way, the horizons of their understanding.

**LITERATURE AS SOURCE OF KNOWLEDGE OF LAW** being that the literature addresses some legal dimensions that are not touched by the traditional pedagogical methods of the juridical phenomenon.

**CREATION OF NEW LAW.** Law and literature are both communication via language, as I mentioned previously. They both are texts and built in similar social situations. The law is an open-closed system, what means that it starts in itself, goes towards the environment to come back again to itself. Hence, when the law makes contact with the environment, with the social sphere where the literature is located, the latter can influence it and provoke the creation of a new law, suitable to the transformation of the social system, as indicated by Benjamin Cardozo (cited in Schwartz 2011), judge of the Supreme Court of the United States in the early twentieth century.

**THE LOSS OF THE DEIFICATION OF LAW.** One of the senses that is necessary to recover from law is humanity, lost in the process of the rationalization of the law. As Luis Alberto Warat (cited in Schwartz 2011)<sup>20</sup> would say, "the love denied by the technicality". The positive law created the deification of the juridical norm and the procedural formalism, although, in its origin, its aim was precisely to remove the divine character from the judge.

**REDUCING THE DISTANCE BETWEEN LAW AND LITERATURE.** From the law, the command is expected; from the literature, the beauty. To reduce this distance, allowing the coupling between the juridical and art systems, can restore the essence of the things, seen that the laws are born from the letters. In order to achieve this, it is necessary to remove the legislative base from the science of the law (Boyd White 1985).

**PREDICTION OF FUTURE.** The law is always focused on the past. When a judge dictates a sentence, this is always based on past facts. When politicians create a law, this is always based on previous experiences. The art, instead, is always predicting the future, is free to create a new path to be walked. If there is any space in the world where the human being is free, where he feels the sense of being connected with something else (transcendence), then that is art (music, poetry, literature). Therefore, art complements law also in this sense.

Now, going from general to concretion, the next question would be: Why Basque literature written in Basque language to reflect Basque society? This question will be answered in the following lines.

### *3.3. Why do Law and Basque literature reflect Basque society and law?*

Taking into account that the language creates reality (Wolff 2001) and adding to this that the Basque language is the value (Joxerramon Bengoetxea, in a lecture within the IISL 2014/2015 Socio-legal Master's programme) within the Basque identity, we will understand better the narrow link existing between the Basque literature and society. Thereby, I can assert that the Basque living law, the Basque-culture identity struggles, the Basque people behaviour, traditions, culture, memory, etcetera, are reflected within the Basque literature. At this point, someone could be wondering: "But why are you using novels written just in Basque language, in order to reflect the Basque society, when only 1/3 of its population is

<sup>20</sup> Very well-known law scholar in Portuguese language.

able to manage properly in their language?" From my point of view, the Basque language is the *Dasein*<sup>21</sup> of the Basque culture, the main feature that defines these people as Basques.

It is possible to think that this work does not represent the whole Basque population and that is true, but it is not the aim here. The aim is to show the reflection of the Basque society in the mirror of the Basque literature, using for that something as endogenous to the Basque identity as it is the Basque language. The consideration of the Euskera as the *Dasein* is not either an extended opinion between the Basque population but it is my opinion, and as Unamuno<sup>22</sup> said "forgive me for just speaking of myself but it is me the one I have at hand the most".

And having the literature as the tool: What can work, as a mirror of a society, better than something as endogenous to their identity as their own language?

Basque literature history, can be divided in four periods, taking into account its relationship (or the lack of it) with society and law:

- 1 Basque literature and church and *fueros*.
- 2 Basque literature and nationalism.
- 3 Basque literature and/in silence.
- 4 Basque literature after silence.

#### 3.3.1. Basque literature and church and *fueros*<sup>23</sup>

In 1545 the first book in Euskara, *Linguae Vasconum Primitiae*, was published by Bernart Etxepare, who expressed one wish: "*Euskara, jalgi hadi mundura*"- (Euskara, go forth into the world).

While the origins of Basque literature in Euskara were linked to the ecclesiastical world and religious education, from the nineteenth century on, it began to change with the introduction of new genres such as the novel. Although only five novels were written in the Basque language during that century, this was still a groundbreaking development because it paved the way for other tendencies to emerge. Still, literature in Euskara did not become an autonomous activity until the mid-twentieth century.

One of the forerunners of the novel in Euskara was Juan Antonio Mogel (1745-1804) with his book *Peru Abarka*, not published until 1880. This work is based on a dialogue between Peru Abarka himself and *Maisu Juan*, and is written with a clear goal in mind: to convince enlightened Basque scholars of the value of Euskara.

During the last third of the nineteenth century, following the Second Carlist War (1873-1876), the Spanish Prime Minister Antonio Cánovasdel Castillo abolished the *fueros*. Numerous Basque authors had connected the present and future of Euskara to the *fueros*. One of them, Juan Ignazio Iztueta (1767-1845), declared in his *Guipuzcoaco provinciaren condaira edo historia* (1847) that "if Euskara dies, the *fueros* will not live; but if Euskara lives, the *fueros* will be resurrected" (Iztueta, cited in Ezkerra 2006).

<sup>21</sup> German word which means *being there* or *presence* often translated in English with the word *existence*. It is a fundamental concept in the existential philosophy of Martin Heidegger, particularly in his magnum opus, *Being and Time* (1926). Heidegger uses the expression *Dasein* to refer to the experience of being that is peculiar to human beings. Thus, it is a form of being that is aware of and must confront such issues as personhood, mortality and the dilemma or paradox of living in relationship with other humans while being ultimately alone with oneself.

<sup>22</sup> Basque-Spanish philosopher, writer and politician. He belonged to the Generation of 98.

<sup>23</sup> Legal statutes, whose purpose was, in general, regulate local life, establishing a set of rules, rights and privileges granted by the king, the lord of the land or the council itself. It was a local law system used in the Iberian Peninsula from the Middle Ages and was the most important source of medieval Spanish law. It was also used in certain areas of France.

In this regard, it is hardly surprising that in 1876 a pro-Euskara and Basque culture movement known as *Pizkundea* emerged, in a similar way to that of the Catalan *Renaixença* and the Galician *Rexurdimento*. Following the Romantic spirit of the German idealists, literature written in Euskara came to be considered as representative of the Basque soul, and its goal was to protect and promote the language. For that reason, different literary acts were organised, such as the so-called *Euskal Jaiak* (Basque Festivals) held for the first time in Donostia-San Sebastián in 1883.

Meanwhile, at the same time all kind of publications emerged, steps were taken towards the institutionalisation of schooling in Euskara, the provincial council of Bizkaia created the first Chair in the Basque Language (1888), and the first *ikastolas* (schools where instruction is in Euskara) opened their doors (Ezkerra 2006).

### 3.3.2. Basque literature and nationalism

At the close of the nineteenth century a concept emerged that would have a major influence in transforming Basque politics: Basque nationalism, which replaced foralism (the movement to seek reinstatement of the *fueros*).

In 1893 Sabino Arana Goiri (1865-1903), the father of the Basque nationalism, declared that "the homeland of the Basques is Euzkadi". From this moment on, the main function of Basque literature would be to secure and promote the foundations of the Basque nation.

The concept of Basque nationalism was influenced greatly by several events which took place during the early twentieth century: industrialisation (mainly in Bizkaia and Gipuzkoa), population growth and the founding of the Spanish Socialist Workers' Party (PSOE) in Bilbao (1879). The positive impact of rapid industrialisation of the Basque economy resulted in a flourishing of Basque culture in many aspects (philology, music, archaeology and ethnography, between others). However, this economic situation contributed to reduce the Euskera to a feature associated, basically, only to the rural areas. Meanwhile, in urban and industrialised areas Spanish became the dominant language. Some intellectuals, like Miguel de Unamuno, ignored the economic factors which had caused the decline of Euskara and even argued that it was a language unsuited to the demands of the modern world.

Nationalism itself understood how to make the most of the polarisation created by industrialisation (rural areas vs. urban areas, Basque vs. Spanish, tradition vs. modernity). The customary novels<sup>24</sup> of Domingo Agirre,<sup>25</sup> *Kresala* and *Garoa*, are good examples of the nationalist discourse at that time: with spaces symbolic of a pure Basque way of life (the sea and the farm, respectively) contrasted against spaces considered pernicious and contaminated (such as the cities of Bilbo or Donostia) (Ezkerra 2006).

### 3.3.3. Basque literature and/in silence (in the Iberian Peninsula)

The Spanish Civil War (1936-39) had a devastating effect on Basque letters: just one novel was published during the conflict. Many survivors of the war went into exile and it was in exile that literature in Euskara received a significant boost. Meanwhile, in the peninsula, it was forbidden to publish in Euskara because of state repression.

<sup>24</sup> Literature related to the habits and costumes of a group. In this case, we would say that this type of literature reflects the living law of Ehrlich, the soft law that consists in norms coming from the society.

<sup>25</sup> Domingo Aguirre Badiola, Txomin Agirre in Basque (1864-1920) was a priest and writer in Basque language. His more important works are the historical novel *Auñemendiko Lorea* (*The flower of the Pyrenees*, 1898), and customary novels as *Kresala* (*Water of sea*, 1906), which facts happen in the environment of the sea, and *Garoa* (*The fern*, 1912), that it happens in the environment of the caserío, the typical Basque house. This author stands out for his realism and his moralizer zeal.

The first novels of the post-Spanish Civil War era reflect the prevalent feelings of the early twentieth century. In other words, they reflect an essentialist ideology which emphasised tradition and a religious sentiment. One example of that could be the book *Ekaitzpean* (1948) by Jose Eizagirre (1881-1948), a ground-breaking work that shows the contradictions on both sides: that of the Carlists (a traditionalist faction which supported the military insurgents against the Spanish Republic) and the nationalists (who supported the Republic).

In the 1950s Basque literature became an autonomous activity within the socio-cultural life of the Basque Country, with its own laws, functioning mechanisms and objectives, as opposed to other linguistic and cultural activities. Basque literature took note of the main European literary movements of the time, and as a result, translation into Euskara of works written in other languages raised much interest in the Basque literary system. During this decade, the Basque novel left customary<sup>26</sup> behind to embrace existentialism (Ezkerra 2006).

#### 3.3.4. Basque literature after the silence

In the decade of the 1960s, even if Franco was still ruling Spain, Basque people awoke and a strong Basque movement arose, in order to maintain their culture and language.

At an international level, the 1960s witnessed the emergence of new social and revolutionary movements originating in so-called Third World countries. In the peninsular Basque Country, the right-wing Basque Nationalist Party (PNV/EAJ) and ETA remained popular among the nationalist community.

Meanwhile, the industrial and economic growth allowed for new cultural initiatives to come to the fore. These had as a basic goal promoting modern Basque culture and art. Three of the most relevant figures of this era were the poet Gabriel Aresti (1933-1975), the sculptor Jorge Oteiza (1908-2003) and the linguist Koldo Mitxelena (1915-1987). Oteiza, together with other artists founded the Basque School in 1966. Mitxelena led the process to create Euskara Batua (Unified or Standard Basque).

Together with the social novel, another genre appeared on the Basque literary scene. This was a kind of novel one might term allegorical, in an attempt to evade censorship, and that embraced the main features of Latin American magic realism. These novels were about themes such as the suffering of the town's inhabitants following some floods and also the political repression in the peninsular Basque Country.

During the 1970s, Bernardo Atxaga<sup>27</sup> and Koldo Izagirre<sup>28</sup> were, together with Saizarbitoria,<sup>29</sup> the main exponents of experimental models. In 1975 Atxaga and Izagirre published a public manifesto where the authors criticised the situation of Basque literature and advocated radical change.

After the ratification of the Spanish Constitution in 1978, Euskara became a co-official language with Spanish in the two peninsular Basque communities (the Basque Autonomous Community and the Foral Community of Navarre). This allowed for bilingual educational models to be offered and grants to aid production in Euskara. Meanwhile, in 1981 university studies in Basque Philology were offered for the first time, encouraging literary research at an academic level.

<sup>26</sup> Literature related to the habits and costumes of a group. In this case, we would say that this type of literature reflect the *living law* of Ehrlich, the *soft law* that consists in norms coming from the society.

<sup>27</sup> One of the authors, whose work, *Soinujolearen Semea* it will be analyzed in this article. He is one the best-known Basque writers, in a national and international level.

<sup>28</sup> Translator, scriptwriter and writer of all kinds of literary genres: novels, essays, short stories and also poetry. He took part, together with Atxaga and Saizarbitoria, among others, in the Basque cultural movements during last years of Franco's dictatorship.

<sup>29</sup> He is considered the father of the modern Basque literature and one of his novels, *Martutene*, has been chosen for the analysis that takes place in this article.

Therefore, in the 1980s thanks to the recovery of the Basque autonomy and the institutionalization process, the requirements which allow the reinforcement of the Basque literature, were already created.

In the next decade (1990), the Basque literature started to work on seriously, to insist and to face the political-historical reality.

Nowadays, a new approach to the Basque issue is taking place: from the beginning of the XX-century, Basque literature has been linked to the nationalism, as we have seen. But today, the will of releasing Basque culture and language from ideology has strongly appeared.

Is nationalism a burden for the Basque language or something to be proud of? Basque nationalism was a really good booster for the Basque language in the XIX and XX century, but Basque language is something that all Basque speakers need, not only the nationalist ones, if the aim is not only to make it survive but to spread it.

Xabier Lizardi,<sup>30</sup> in his poem called *The garden of the old ancestors* sings to the continuation and renovation of the Basque language (as something dynamics). The Basque culture would be the new fruit from the old garden, fruit created by all the writers after the Transition. It is a bet on Basque language and culture over ideologies.

After having exposed why this method of Law and Literature is going to be used, I would continue with the analytical construction related to the descriptive and historical definition of its axis, formed by such concepts as: Identity, Memory and Conflict (Ezkerra 2006).

#### 4. Analytical Construction

##### 4.1. Descriptive and Historical Explanation

The first thing to note is that we are talking about a construction that begins in the social field and then moves to the political and legal one. This can happen due to the particular features of this case, whose **agents come from the social world** and they strategically use the law as a mechanism to institutionalize their claims.

In order to diminish the complexity of this case, I will reduce it to the interrelation of three terms, three key concepts in such phenomenon: collective identity, conflict and collective memory. In other words: the cause, the fact and the consequence.

A wide concept of identity can be considered the original cause the Basque Country fought and still fights for; the conflict, the result of the disagreement of the parts; and the memory; what comes *afterwards*, whatever the situation is, dressed as memory as such, or disguised as forgetfulness or forgiveness.

##### 4.1.1. Collective Identity

The collective identity implies a sense of recognition and refers to a person's sense of belonging to a group. The identity of the group or the collective, becomes a part of the person's individual identity and can even go beyond the person. This sense of belonging can become so powerful that it takes over other pieces of the person's identity. Regarding our particular case, I would highlight the importance of the Basque language in the Basque collective identity.

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<sup>30</sup> Basque poet and singer, whose poem called *Asaba zaharraren baratza-The garden of the old ancestors*- (used as the inspiration of the Saizarbitoria's novel *Gorde nazazu lurpean*), sings to the continuation and renovation of the Basque language, as something dynamic. According to him, the Basque culture would be the new fruit from the old garden, a fruit created by all the writers after the transition

I can apply Canetti's<sup>31</sup> philosophy of language to Euskera: Basque language, for Basque people, is their home. According to Martin Krygier's<sup>32</sup> definition of rule of law,<sup>33</sup> I also could state that Euskera is the rule of law of the Basque identity: it is the most worthy of mention between all the overlapping values (as territoriality, nationalism, genealogical tree, Basquism feeling, etc.) that characterizes the Basque culture; it claims the outstanding character and proper role of the language in the Basque collective identity. Basque language is not just a value but also *the* value within the Basque identity concept (Joxerramon Bengoetxea, at a lecture in the IISL 2014/2015 Socio-legal Master's programme).

#### 4.1.2. Collective Memory

According to the memory subject, I will address the issue using Maurice Halbwachs' words<sup>34</sup> as a reference. French sociologist Maurice Halbwachs (1968), in his book *The collective Memory*, discusses society's relation to time and the past and introduces the concept of collective memory. Halbwachs (1968) analyzes how we remember the past, finding out how the past is represented in an individual's and society's consciousness, and what are the mechanisms which shape memory.

He claims first, that together with a strict conception of history, there is alive version, which is being perpetuated or renovated throughout the time and where it is possible to find a huge number of those old trends that just apparently had disappeared. Second, that History is not the whole past and neither is it only our take of what we remember of the past.

At that point, I wonder: Does it exist in Basque Country and Spain a collective memory? Or is it all just made up of individual memories?

According to Professor Adam Czarnota,<sup>35</sup> "it seems that law tries to more effectively control the present and the future expanding itself to the past through an attempt to, if not regulate collective memories, at least, provide a legal framework for the modification of them. An interesting problem is to find out not only why this is taking place but also what the features are of legal institutions that try to change the past. The recent phenomenon I perceive is that rather than adopting the dominant historical narrative, law is attempting to reconstruct and recreate it. In order to fulfill its role, as regulator of the present and future, law is changing the past and, thus, including the past within its realm. It is a striking development, with implications both practical and theoretical, and through the disciplines of law, sociology, and political science" (Adam Czarnota, at a lecture in the IISL 2014/2015 Socio-legal Master's programme). Applying everything all of this to the Basque case, we can be wondering: "Are the Basque and Spanish people aware of this manipulation of the memory by the different groups of interests? Do they want to forget or are they just forced to do it (in a conscious or unconscious way)?"

##### 4.1.2.1. Conflict

Carl Schmitt was one of the principal ideologists of the Revolutionary Conservative Movement of Germany during the XX century. His conservative definition of

<sup>31</sup> German writer and thinker, who affirms that the German language is his home, the land where he lives. Canetti has a huge linguistic sensibility and claims that "he lives in his language". The territorial displacements, throughout his life, do not remove Canetti from living in his language, but they reaffirm his belief.

<sup>32</sup> Australian legal scholar. Professor in the Master of Sociology of law. Oñati, 2014/2015.

<sup>33</sup> According to Martin Krygier (2015), the rule of law is a small phrase that points to large values centrally focused on the ways the power is exercised. It emphasises the need to temper power, moderate its exercise, so that it cannot be practiced at the will and caprice of power-welders. Therefore, it is required to take into account the views, interests, defences and explanations of those whose power might be harmed. The extent to which such tempering, moderation, channeling, constraint occurs is, in the last instance, the test of the strength of the rule of law.

<sup>34</sup> A very well-known French sociologist of the late 19<sup>th</sup> century and early 20<sup>th</sup>. He is one of Emile Durkheim's most notable students and also very influenced by his Professor, Henry Bergson, a French philosopher and Nobel Prize for Literature in 1927.

<sup>35</sup> Polish-Australian legal scholar and the Scientific Director of the IISL (2013-2016).

sovereign power is based on decision-making in a state of emergency and his political theory is based on the need to establish a suitable power of decision, which ends up with the internal war, in order to achieve the desired unity.

In a modern sense, Niklas Luhmann's understanding of sovereignty is based on difference, not on unity, unacceptable for autocrats since it destabilises authority. According to him, it is not possible to justify the exigency of the sacrifice of life in favor of the political unit. From his point of view, a political power that is unwilling to accept such a structural destabilisation of the political system by the difference between government and opposition must necessarily re-moralised politics. It must then explain precisely why this power has the moral right to stay in power (Thornhill 2007).

The type of conflict we find in our concrete case, as we can observe and as it is subscribed in different papers and works (Bengoetxea 2013, Bullain 2014), is the one Carl Schmitt would embrace. This author considers the opposition not an adversary but instead an enemy to beat. Otherwise, Luhmann (cited in Thornhill 2007) states that the government needs the opposition (not the enemy) and vice versa. Little by little, Spain, Basque Country, their actors, their conflict and all this paraphernalia are given steps to change Schmitt's model by the one of Niklas Luhmann. From a Luhmannian point of view, even if the enemy does not exist, the opposition and the democracy were and still are not yet completely developed in Spain.

#### 4.1.3. Contextualization of the conflict

Modern Basque nationalism was invented in the late XIX century (Corcuera Atienza 1980, Conversi 2000). To a remarkable extent it originated in the work of one man, Sabino Arana y Goiri,<sup>36</sup> from a Carlist family in Bilbao. Arana was impelled by a sense of the imminent destruction of Basque culture and traditions as a consequence of the loss of the three Carlist Wars,<sup>37</sup> the abolition of the Basque fueros<sup>38</sup> in 1876 (at the end of the third Carlist War) and the industrialization, which, during that time, quickly took hold.

The Spanish loss of its colonial territories in Puerto Rico, the Philippines and Cuba in 1898 shattered the country's identity as an imperial power. It introduced a pervasive sense of national inferiority in comparison to its more successful Western European neighbours and inspired a whole generation of intellectuals, the Generation of 1898, to question the essence of Spain.

The dictatorship of Primo de Rivera, during 1923-1930, moved promptly to repress nationalistic tendencies in Spain's regions and banned Euskera and Catalan. However, the terrain for the rise of Basque nationalism was being prepared, in essence, through the Basque cultural proliferation.

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<sup>36</sup> Arana launched the first political articulation of Basque nationalism in his 1892 pamphlet *Bizcaya por su independencia–Vizcaya for its Independence*. Within a few years he pursued a revival of Euskera-neglected and little spoken at the time-and founded the Basque Nationalist Party; invented the term *Euzkadi* (later modified to *Euskadi*) to refer to the Basque nation, and the red, white and green ikurriña, the Basque nationalist flag; and composed a Basque nationalist anthem that is still used by PNV (Basque independent right wing party). Beyond these external symbols and expressions, he successfully established the ideological basis for Basque nationalism as both a social movement and a political party, deeply embedded in his mythologised vision of Basque history and in direct opposition to all Spanish things.

<sup>37</sup> The Carlist Wars had been fought in the name of Don Carlos, the pretender to the Spanish crown, for the cause of rural and catholic tradition against the liberalism, first codified in Spain's 1812 constitution. The Basque provinces fiercely defended what Basque nationalists would later refer to as the *old laws* and became a Carlist stronghold, albeit with divisions between the traditional interior and more liberal Basques from Bilbao and San Sebastián. In this respect, as Antonio Elorza has observed, "the geography of the Carlist Wars foreshadowed the Sabinian construct of the traditional *Euskadi* (Basque Country) against a liberal and atheistic Spain".

<sup>38</sup> Special and historical laws for Basque Country. For more information, see footnote 29.



The Basque statute was achieved the 1st of October 1936. José Antonio Agirre became the first *lehendakari* (president) of the provisional Basque government, which formed a few days later. In January 1936 socialists, communists, Catalan and Madrid-based republicans joined together and won the elections; violence soon escalated. On 18 July 1936, General Francisco Franco launched a military rebellion against the new government. Forces, loyal to the republic, resisted and the Civil War began.

The relentless pursuit continued into Franco's rule. His national Catholicism, God and the unity of the Spanish state (*España, una, grande y libre-Spain one, great and free* was his slogan) were the basis of his politics. Franco embarked on a determined effort to destroy all evidence of Basque culture and political organizations. His regime prohibited the use of Euskera in public and in religious activities, he raided libraries and burned books. It banned the use of Basque names and persecuted all those who had supported the Basque nationalist cause. But the Francoism in Basque Country was not only shown in the most painful expressions (torture, jail, misery), but in many other ways<sup>39</sup> as well (Núñez *et al.* 1993).

This is the environment where ETA<sup>40</sup> takes shape in 1959. Until that moment Basque population had been submitted and in silence, perhaps afraid of the possible consequences if they acted. However, in the 1960s something eminent happened: the Basque people awoke in order to recover their language and culture. The first Ikastolas<sup>41</sup> were opened and, thus, the Basque children could study in their own language. During the 1960s and 1970s, the intellectuals, artists and the Church of Basque Country contributed to the general speech of the society, providing new motives of hope.

Franco died in 1975 and the Spanish democratic process started after the elections of 15th of June 1977. It consisted of a bridge (we now would say that it was a dubious based bridge), called Transition, which went from 1976 to 1981 and from a dictatorship to a democracy.

There has been a mystification at this period, being referred to as an intelligent model for Transitions in other parts of the world. Indeed, it was not a Transition, but a semi-agreed reform. We can see, now, that this process had too many waterways. The democracy that was implemented was based on forgetfulness and non-reparation for the defeated in the civil war, and also, on amnesia, regarding the Francoist executioners converted into democrats by the magic of the Amnesty-Law<sup>42</sup> and the model of Transition, which cancelled the state apparatus. Democratization was left to the generational renewal, as well as to the future laws that never reached the roots of democracy. Low quality democracy was established without deepening democratic values beyond the formal ones and the electoral processes. All of these facts served as a justification to reinforce and justify the actions of ETA.

What would have been the real break? A memory with reparation; institutional debugging; an *ex novo* constitutional process without the constraints imposed in the Constitution of 78 by both the government and the army; the right of self-determination of the communities that asked for it; the attention to social claims to

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<sup>39</sup> Some examples can be the ridiculing of the Basque flag and the Basque flute -*txistu*-, the abolishment of any printing except from the ones in Latin or Spanish language and the consecration of the fascist teaching.

<sup>40</sup> Armed Basque nationalist and separatist organization. See footnote 7 for a longer explanation.

<sup>41</sup> Educational centers where the language used for teaching is the Basque. During the 1960's, Basque language was not present in the educational public systems, however, it was used and taught in these centers.

<sup>42</sup> The Spanish Amnesty Law (Ley 46/1977) is a law promulgated in 1977, two years after the death of the dictator Francisco Franco, that shields any Franco era crime from being put under trial. The law is still in force, and has been used as a reason for not investigating and prosecuting Francoist human rights violations.

standardize the European welfare and a democratic system with open lists (Ezkerra 2006, Whitfield 2014).

#### 4.2. Analysis

The five novels are considered masterpieces of the Basque literature because of their content and the authors they are written by. Indeed, Ramon Saizarbitoria (*Martutene [M]*) and Bernardo Atxaga (*Soinujolearen semea [SS]*) are very well-known, in a local, national and even international level, because of the high quality work they produce. Joseba Sarrionandia (*Ni ez naiz hemengoa [NH]*) is one of the more eminent and prolific contemporary writers in Basque language. In 1980 he was arrested for being a member of ETA and went to prison until 1985 when he escaped inside the loudspeakers of the musician Imanol Larzabal, who had just given a concert in the jail. The multilingual writer and also poet, Harkaitz Cano (*Twist [T]*), represents the new generation. This *frustrated musician* as he calls himself, shows in his writings a style close to *dirty realism*.<sup>43</sup> Arantza Urretabizkaia (*Zuri-beltzeko argazkiak [ZBA]*), our feminine point of view, became one of the first figures of Basque narrative during the Civil Spanish postwar period. She has also worked for newspapers, radio and television and she is one of the members of the Royal Academy of the Basque Language (Euskaltzaindia).

The content analysis of these novels will be structured through the three pillar concepts that comprise the axis of the Basque issue, as I had mentioned above: identity, conflict and memory. This content analysis within a discourse frame, underlines the importance of some key terms as language, ideology, intertextuality, figurative use of terms and silences.

This period of time in which the Spanish Constitution (1978) was created, where the bridge from Basque living law to living with the law was built, this period referred to as Transition, is the one that is going to be analyzed through the five chosen novels.

In the following lines, I will present firstly a summary of the novels, and secondly, their content analysis around the three basic concepts (identity, memory and conflict). It will go from one novel to another and from one concept to another, testing in each of them the diverse ways of understanding, thinking and acting regarding the Basque struggle and underlining the differences and similarities among the various perspectives.

##### 4.2.1. Summary of The Novels and Content Analysis

###### 4.2.1.1. Soinujolearen Semea (SS), The Accordeonist's Son



The story narrates the events between 1957 and 1999, beginning with the school time when David and Joseba met each other, to the end upon which David's death in the United States occurs. The course of time is marked by decisive experiences: the first studies, adolescent friendships, first love surprises, the shy first collaboration with independentist armed groups, the exile, etc. David ends up running a ranch in California, married to an American woman and obsessed by the idea that his original world, which includes the people, the friends, the customs, the old language, is all disappearing rapidly. For years he had been composing in his Californian retreat, his memoirs, a testimony of his life, written in Basque language. The writing appears to safeguard the memory, creating the perishable to be everlasting.

<sup>43</sup> American literary movement developed especially in 1970, which aims to reduce the narrative (especially the short story) to its basic elements. The dirty realism is characterized by its tendency to sobriety, precision and extreme frugality in the use of words in all that relates to description.

#### 4.2.1.1.1. Collective identity

In *SS*, the novelist proposes a new model of the Basque identity for the XXI century, a model that distances itself from romantic notions of identification linked to language, land, and ethnicity. David, the protagonist of the novel, is immersed into a long process of self and collective discovery, a process that at first puts him on the road to political violence in the name of Basque identity, but ends with him discovering, through the power of writing, a more tranquil cultural identity.

In opposition to the identity conception of the 19<sup>th</sup> century that was based on a closed community with no intention of being influenced by the exterior, here it is offered a new concept, a concept that it is more dynamic, open, independent and always under construction.<sup>44</sup>

In other words, the Basque local identity, proposed by this author, has a taste of land, language and ethnicity, but none of them, not even together, fulfil it completely. Moreover, against the preponderance of any of the three, against the reduction of that triad to any of its elements, the identity remains independent.

Therefore, in Atxaga's book, a certain amount of what is given to us, combined with what is already occurring throughout our own lives, had been added to us both voluntarily at time as well as sometimes not. The goal is not to discover what we already are but to discover and build what we *want* to be. The Basque identity should find a place from where it can deal with the pain and suffering from the past, without being trapped on it. This text proposes an identity for the life in peace, instead of the millstone of offenses and violence without redemption (Aguado 2007).

#### 4.2.1.1.2. Conflict

The growth of the character of David, in *SS*, is parallel to the discovery of the reality of the civil war. At the same time his emotional development takes place, he discovers the violence in the idyllic world of Obaba, his birthplace, by the fascists in general, and by his father in particular. David does not only react against his father, the accordionist, or against Berlino, a friend of his father as well as the fascist who takes over the hotel of Obaba. His discomfort comprises the cowardice of Martin, son of Berlino, evading his guilt when David is accused of bringing to school pornographic magazines, or the sexuality of Teresa, sister of Martin, unable to admit her physical disability due to the polio. It also covers the death of his childhood friend, Lubis, under very suspicious circumstances, in the hands of the police, most likely tortured and killed by them and with the involvement of Berlino. It includes the need to adopt a political position in relation to the pedagogues who go to Obaba to study butterflies and end up being members of ETA.

All of these characters and events disrupt the idyllic world of David. The first temptation facing this situation of unresolved hatred is the attempt to recover the lost happiness, all through the violence.

Atxaga makes use of the symbols to capture the contradiction of violence. He mentions the incoherence between the study of the butterflies and the violence and the irony of the *zulo*, hideout, of Uncle Juan, a symbol of freedom that ends up turning into a prison. Questions come into play: What has happened? Which part of the path has been chosen leading to the wrong ways? The voice of Juan, the uncle of David, the internal and external messenger of Obaba, will point out the problem of David and his friends. He accuses them of not having been able to master their

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<sup>44</sup> It is worth noting that, according to Atxaga, not even the language is a key to define the Basque identity, but, obviously, this does not mean, that it is an irrelevant element. In the book, where more or less literal testimonies of participants in *Basque ball* (2003) film -made by Julio Medem-, are given, Atxaga says that the Basque condition "it is a roof made with many tiles. A tile would be the language, but I do not think, (in this sense I am nothing extremist), I do not consider that this has to be the main thread." (Bernardo Atxaga, in *The Basque Ball: Skin Against Stone* 2003).

feelings. The feeling, plain and simple, according to Juan, devotes too much attention to itself at the expense of the suffering of others. David realizes that he has made a huge mistake ignoring the simple truth: the life is the greatest thing and it has to be taken seriously. David has decided to leave the armed struggle, falsely accused of being a traitor by his coreligionists, he goes to the farm of his Uncle Juan in California once he is out of jail.

Where is the way, then, after admitting the irreparable loss and the impossibility of the violent restoration? David finds his path through his language, however there is something else in writing: it is the exercise of the dissident. David and Joseba decide to end violence surrendering to the police; the first one only thinks about it, the second actually does it. The doubts of both find their place in writing, where his dissidence fits with the illusion<sup>45</sup> of the narration. Yet Joseba, the writer, refers to himself as the traitor, but the traitor to an organization. He does not betray anything but a violent technology of power, whose loyalty demands exceed what he is willing to give. This bad understatement of loyalty overrides the personal point of view. It was necessary for him to betray the organization, in order not to betray himself (Aguado 2007).

#### 4.2.1.1.3. Collective Memory

The writing of *SS* consists of a version of memory free of melancholia. In that memory, in its reflection and recreation, in its transmission, through the writing (useful exercise to recount the past and resolve dilemmas), the identity is built.

The Basque identity that this author proposes is that, by entering the 21<sup>st</sup> century, there will be a place, a memory, from which, effectively, will deal with the pain and suffering of the past without getting bogged down inside of them. The main characters of this novel (David and Joseba) recognize themselves in this quiet identity.

To create this type of identity, Atxaga recreates a world where the central character of David will have to learn to live with the loss of his own language, with the unsolved violence of the Spanish civil war and with the noise that poisons his memory. In this attempt to appease those noises, he returns once and again, to his past, to his idyllic childhood.

*SS* is structured around flashbacks, whose purpose is to open the memory of David and dilute his pain. The author also uses the intertextuality (often related to his previous works) and symbolism (translated into a cord and butterflies) reflecting the musings that have lead us to build this identity Atxaga underlines (Aguado 2007).

To sum it up, and agreeing with Txetxu Aguado (2007), we can state that in *SS*, David's writing is the story of how the feeling, if it is alone or plain, can lead us nowhere. In the construction of the possible Basque identity, the memory becomes detached from excessive sentiment and looks toward the present to live as best as it can.

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<sup>45</sup> Bourdieu's concept of *illusio*: the power of a written text to provokes a social change.

#### 4.2.1.2. Twist (T)



This book recreates the disappearance of Lasa and Zabala in 1983 (Soto and Zeberio in the novel), the first of a series of killings, tortures and kidnappings carried out by the GAL (Antiterrorist Liberal Group)<sup>46</sup> and with full acquiescence from the Spanish state. The author uses the fictional story to tell the truth about what happened.

The dirty war coming from the GAL; the murders, the kidnappings and the extortion committed by ETA; all together with the guilt, the friendship and the construction of antiheroes, to face that searing pain, are the elements that offers us, in this book, the omniscient narrator.

Fact and fiction go hand in hand and are juxtaposed when the reality may be more grotesque than fiction.

##### 4.2.1.2.1. Collective Identity

The author of *Twist* (T), Harkaitz Cano, shows, in the play, both understandings of the identity concept, the ones that Atxaga has pointed out previously: the static one, through Soto and Zeberio (the alter egos of Lasa and Zabala), two members of ETA, trapped in an old conception of recognition; and the dynamic one, always under construction, through the character of Gloria (a friend of the latter's and also of Diego, the narrator) who decides to go out from her world and restart. The novel also shows, through some of the other characters, as *La Bella* Inés or Diego Lazcano, how difficult it can be to rebuild your own identity when the weight of life is being carried (as in the case of Diego, whose guilt for having betrayed his friends does not allow him to look forward) or when everything is left to the decision of destiny (as in the case of the second).

Harkaitz Cano, as Atxaga, does not circumscribe the identity concept just into language, land or ethnicity, even if they are very important elements of it. It can be grasped, among the lines of his novel, in the very poetic definition of this concept (definition taken from the sociologist Zygmunt Bauman)<sup>47</sup> as something liquid, confirming the Latino adagio *in vino veritas*, which means: in the wine rests the truth. It can also be deduced that both sides of the identity conception are clearly alive in the society: the static one, based on the irremediable past and the dynamic one, looking forward.

Two things Cano considers that have impacted changes from the concept of identity in the 1980s:

<sup>46</sup> The Anti-Terrorist Liberation Groups (GAL) were illegal paramilitary organizations who practiced what is called state terrorism or *dirty war* against the Basque terrorist organization Euskadi Ta Askatasuna (ETA) and its environment. They remain active between 1983 and 1987, during the early years of Felipe González (general secretary of the Spanish Socialist labour party-PSOE- from 1974 until 1997 and the third prime minister of Spain from the reestablishment of the democracy, between 1982 and 1996) government. During the trial of this organization was tested that it was funded by senior officials of the Interior Ministry. PP (Partido Popular-People's Party, centre-right mainstream, conservative, Catholic and economically liberal party) and PSOE (Partido Socialista Obrero Español, Spanish Socialist Workers' Party, centre-left mainstream, social democratic party), main political parties of Spanish state, have governed in alternation from 1982. Their attitude against the terrorism exercised by ETA has been similar, that is to say, attitude of not negotiation with a terrorist group and of finishing with this problematic, only, for the police route. They have both signed up several agreements against the terrorism: in 1987 the so called Agreement of Madrid, in 1998 Lizarra Agreement and in 2000 the Antiterrorist Agreement. In the first two, other parties took part as well, such as PNV, the centre-right wing Basque Nationalist Party. The left-wing Basque separatist party, the political support of the terrorist band, never accepted to be part of this kind of agreements. The third agreement took place only between the two main parties.

<sup>47</sup> Zygmunt Bauman (Poznan, Poland, 19 November 1925-Leeds, UK, 9 January 2017) was a sociologist, philosopher and a Polish essayist of Jewish origin. His work, which began in the 1950s, deals with, issues such as social classes, socialism, holocaust, hermeneutics, modernity and post-modernity, consumerism, globalization and the new poverty, between other things,. Along with his fellow sociologist Alain Touraine, Bauman received the 2010 Prince of Asturias Award for Communication and Humanities.

- The melting, in Basque Country, among tradition and modernity: Even if it still prevails an image of this country as a green landscape, full of sheep and farms and clean air, the reality shows that the majority of the people in Basque Country lives nowadays, in polluted, smoky cities, where Basque language, culture and traditions are being kept and developed (when this just happened in the countryside).
- The concept of solidarity, which was a remarkable feature in the 80s, the proudness of being a working class individual does not exist anymore. Nowadays, the liberalism combined with a strong individualism has killed this concept in Basque society.

Perhaps due to this reason, Cano mentions (between many others) the artist Joseph Beuys, who belongs to the Ready made stream,<sup>48</sup> and whose biggest achievement was the socialization of the art, approaching it to all different kinds of public (the feature that Cano is missing in nowadays Basque society).

Cano considers that the Basque's true identity is based on the disagreement, this is the only point where all the Basques agree upon. For some people, the feeling of being Basque is that they are related to a country that appears in the news but not in the maps. For others, this feeling interacts with other diverse criteria that construct the Basque identity. Others just live their lives in the Basqueness without speaking too much about it, while others consider it liquid.

#### 4.2.1.2.2. Conflict

In *SS*, David understood that the life should be taken seriously. In *Twist*, depending on whose life we are speaking about, this can have worthy consideration or the complete opposite. This is an affirmation made not just due to what is told in the novel but, also, due to what happened in the real trial of this case, where none of the defendants rested in prison more than very few years even if the conviction was from seventy-one to seventy-five years.

To understand the symbolism of the word *twist*, it is necessary to explain the conflictive period we are relating. In Harkaitz Cano's novel, the Transition period, from 1976 to 1981, becomes crucial because it concentrates multiple twists: twists from the past to the future, from the revenge to the forgiveness, from living in the past to amnesia, from the Traditional Justice to the Transitional Justice. In the novel, we observe also twists in space, from Mexico to Donostia passing through France, in time, flashbacks from the present to the past, and in roles, from being victim to becoming perpetrator or the other way around.

As it is clearly shown in this novel, and in the reality as well, the Transition period cannot be called as such. It was not a transition what was lived in Spain, but an agreed reform. In the same way that the crimes perpetrated by Franco were an strategy for a nation-building, i.e. a necessary strategy to safeguard the unity and indivisibility of the Spanish nation, the treatment of the ETA violence and its human rights violations, both during the Transition and afterwards, respond to another strategy, based on the application of the criminal justice system. In the same line, the fact of criminalizing not just ETA but its socio-political environment was also a necessary attitude within a spiral of violence, repression and reaction (Bengoetxea 2013).

All of this brought dangerous consequences, as the deterioration of the democracy and the rule of law; the creation of different types of victims and the manipulation of the truth, not just by the government but also by the mass media. These three negative effects can be seen in the novel.

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<sup>48</sup> Art stream that builds art with any element, even if it is far away from being something artistic.

#### 4.2.1.2.3. Collective Memory

In the same way as David in *SS*, Diego Lazkano, in *T*, also deals with the pain from his past, in his case dressed as guilt. He feels he has betrayed his friends, as he confessed under torture, and they were brutally mistreated and killed. He tries to live their lives, while also trying to reopen the case, prosecute the responsible ones for the crimes and rebuild himself. However, he succumbs to bribery at the last moment.

Here, I observe two types of memory:

The first based on the noise of silence concerning those who left us too soon, as well as those ideas and ideals that we left. It is the memory that refers to relationships, old loves and people who are gone, the memory based on guilt and absence, the memory of the forgotten. Indeed, in the main argument of this book (based on real facts) twelve years of silence passed from the disappearance of these two men to the finding of their bodies.

We can also include on this paragraph the disappearance of Diego Lazkano's father, who pretending he was dead, went to Mexico to restart a new life so he could forget his old one.

The other type is the memory of the past, something mobile, not fixed. The past comes back, it is sinuous and elusive. The movement of this second kind is already shown in the title *Twist*, which involves movement from space, time and roles.

The sparkling and poetic prose that Harkaitz Cano used in his novel, *T*, to relate with journalistic accuracy and creative real facts embedded on the historical memory of the 1980s, takes a polyhedral dimension. In order to transmit all this information, Cano, as Atxaga in *SS* did, uses the techniques of flashback and intertextuality, mentioning not only other writers but also other artists and various disciplines, such as poetry or music.

The function performed by art in life is the axis where the narrative thread that the author proposes bifurcates: the life lived and the life that could have been lived, with the literature as the only lifeline to the ignominy of the oblivion. Thanks to this literature, this story should not fall into the traps of lime<sup>49</sup> or indifference (as fell the real story for many years).

Cano in *T*, as well as Saizarbitoria in *M*, coincides in the necessity not only of literature but also of art and fiction when telling the truth and dealing with the past. They state that the fiction becomes speakable what it was not speakable. Indeed, *Twist* results in a distorting mirror, based on real facts, very hard facts, without using, however, the morbidity by the author.

But the use of art and literature to face the past and tell the truth of the reality does not only have benefits, but risks as well. The idea of walking through the secret territory of pain, where killers, victims and families of both, can still be alive (as it happens in the Basque case), is the first risk that appears in the literature. Another one is the confusion between the suffering and being in possession of the truth. The first one does not imply the second; an artist or a writer should deal with it, the artist is not only an entertainer. When there is pain, the writer (or the artist) has the opportunity, as well as the moral obligation to provoke a catharsis, the necessary step before turning to the usual situation.

From these scraps of memory, from the fiction, the trap and the lie, a small voice emerges and a shared story arises from many shorter stories. This would lead us to the building of an inclusive memory, i.e., to the creation of the possibility, for the whole society, to engage in an ideal rational discourse on memory: what, how and

<sup>49</sup> The bodies of Lasa and Zabala were found with lime in order to delete the signals of the violence these bodies had suffered (El País 1995).

why it happened. However, does facing up to the past rule out amnesty and amnesia? Amnesty is already a problem, but amnesty plus amnesia can be a direct affront to victims. Reconciliation then seems impossible.

In the case shown in this book (*T*), Spanish society and justice granted immediately the amnesia, and the amnesty thereafter. Related to the case reported in this book, there was amnesia of twelve years (1983-1995) followed by a kind of amnesty, if we take into account the fulfillment of the convictions of the defendants.<sup>50</sup>

#### 4.2.1.3. Martutene (M)



*Martutene* is, as the name suggests, a novel linked to a space: a neighborhood of Donostia, called Martutene. Two couples, that intertwine in various ways, live in it: Martin (an egocentric and ridiculous writer, as usually are the writers in Saizarbitoria's novels) and Julia (a translator), on the one hand; Iñaki Abaitua (a gynecologist) and Pilar (a neurosurgeon) on the other. The lives of these two couples are shaken by the arrival of Lynn, a young American sociologist who lives with Martin and Julia and begins a passionate affair with Iñaki Abaitua.

The narrator puts us in the position of *voyeurs*, constantly snooping in the most intimate attitudes between couples and within each of the characters. We discover their cowardice acts, fears, disappointments, frustrations, duplicity and hypocrisy.

##### 4.2.1.3.1. Collective Identity

Ramon Saizarbitoria, the author of *M*, as the two other authors, makes the distinction between the old and the new types of identity. Indeed, *Martutene* is a symbol of how a rich neighborhood of the XIX century came down. It can be understood as an allegory of the Basque nationalism during the XIX century, whose concept has evolved and mutated into a new one.

In this neighborhood of Donostia, called Martutene, there is the house of Martin and Julia, the spatial axis where each of the characters goes at one point or another, during the story.

Abaitua, both the main character and the narrator (together with Julia), defines his Basque identity as a stone he has to support. He feels proud of being Basque, but cannot avoid the weight of expectations of his Basqueness. This character suggests to get rid of the loneliness and guilt and instead claim the Basque culture with its unique language.<sup>51</sup> Most people in Basque Country stick firmly to the identity they already know and have, perhaps, due to their incapacity to conceive any other reality and difficulties in communication.

In this novel we can also observe the apparent contradiction in the principal political thought of the main characters, Abaitua, Pilar, Julia, Martin, Harri and Kepa. More or less, they all handle themselves in Basque language, they all have Basque roots and nearly all of them have flirted with ETA. At the present moment of the novel, they belong to the upper-middle class but still have nationalist

<sup>50</sup> The defendants, in the *Lasa-Zabala* case, were as follows: the former Civil Governor of Gipuzkoa Julen Elgorriaga, the former General of the *Guardia Civil* Enrique Rodríguez Galindo and the former guardias civiles Enrique Dorado y Felipe Bayo. They were all condemned between 71 and 75 years in jail. Elgorriaga just served one year and nine months until he was released because of health reasons. Likewise, Galindo was sent home due to health reasons, after having spent only three years in jail (Europa Press 2004 and 2013). Dorado and Bayo served in jail six years instead of the 71 that their sentence stated. Rafael Vera, former Secretary of State for Security; José Barrionuevo, former Interior Minister; Julian Sancristóbal, former Civil Governor of Bizkaia; and Miguel Planchuelo, former head of the police in Bilbao, convicted also of belonging to the GAL, and other matters, were indulted by Aznar, the president of Spain at that moment, just a few months after having gone to prison. See: SAN 2804/2000, STS 6461/2001, STC 155/2002.

<sup>51</sup> One good example of this loan of being Basque, explained by the author, is the anecdote of a Basque priest, who affirmed that it was easier for him telling the family he was going to abandon the community of Jesuits, than saying to his friends he did not feel himself as a nationalist.



feelings. The apparent paradox would exist between their bourgeois *habitus* and their apology of nationalism. Some could say that the principles of liberalism go against the principles of nationalism when we refer to the XIX century concept of Basque nationalism. As we have seen, the content of this concept has evolved and two types or versions are offered. If we stick to the dynamics and open version, based on communication and recognition, we will agree with Yael Tamir, who talks about liberal nationalism (Tamir 1995), a new theory which allows each set of values, in accordance with each concept separately considered (liberalism on one side and nationalism on the other), to accommodate the other. This type of nationalism is the one that could fit in with the characters of this book.

Saizarbitoria also highlights, in a very subtle way, the differences between social classes and how the money can buy identities. He distinguishes Basque rural people on one hand, and the cosmopolitan ones (or those who think they are cosmopolitan) on the other. Those, whose first language was the Basque language, and those that used this language just to speak with dogs and servants due to their very basic vocabulary. It still remains, among certain people in Basque Country and even more in the rest of the Spanish State, the concept of Euskera as something folk.

#### 4.2.1.3.2. Conflict

Saizarbitoria repeats the subject related to the infidelity (subject that Atxaga also uses), taking it to a personal relationship, and adds three key points: the incommunication, the jealousy and the forgiveness. The first two can be causes of conflict, the last one being an important part of the solution.

The author explains, through personal relationships, how difficult the communication is in Basque Country. The incommunication within the two couples presented, Julia and Martin, Abaitua and Pilar, is an allegory of the lack of dialog in this country. This shortage leads the protagonists to search for affection out from home and commit infidelities, which can be interpreted as the attitude of a dissident, who does not conform to the present situation and changes his path.

What is also remarked in this book is the need to go back to origins, to the root of the conflict in order to transform it. This perspective of transformation of the conflict sees the clashes as something inherent to human relationships and considers that the confrontations make people's and context's changes possible.

Martin, is a very insecure and jealous character; always worried about himself. He has constant nightmares about a woman in a red nightgown and a man with an eye patch, both in a room next to a bed. One day, a family member reveals to him that this nightmare could be related to something that happened in the past between their parents. Once the origin is discovered, Julia thinks Martin will start sleeping better and also writing again. But his attitude does not change, so he just swaps from one nightmare to another. Now, he dreams about a drain through where his words disappear. Therefore, in order to provoke a change in reality, first the source of the problem has to be discovered and afterwards, the strategy (in the book, it would be a change of attitude) needs to be shifted, if we seek different results.

In the Basque Country, this necessity of finding the source of the problem could be applied to those that do not see the Basque conflict as a political-social one, and just consider the military side of the conflict. ETA, at the beginning, at least, had a strong support from society, support that could not be ignored. But Spanish institutions did. It is possible to use make-up, but the spot will still remain there.

Forgiveness is a hard task to work on. In the Basque society, it is necessary to articulate a way of defending the Basque identity or the Basque cause in an ethical way. The social solution is as close or as far as the peoples' will to forgive, accept the mistakes, the cowardice and manipulations over us and, perhaps, made by us;

the Basque and Spanish population and politicians should take out their ideological glasses to watch the movie in a different way.

The fact of having suffered so much because of Franco and ETA afterwards, provoked a reaction, in the Basque society, of taking the law into their own hands. There are always reasons that turn some acts into understandable behaviour, but these reasons are not justifications of that behaviour, at least, they are not when any kind of violence is involved. This is an endless circle otherwise.

#### 4.2.1.3.3. Collective Memory

In *SS David* suffers the weight of the guilt for having chosen the violence instead of the life, as well as Lazkano in *Twist* for having betrayed his friends. Abaitua, in *M*, experiences also the pain due to the responsibility of his Basqueness; he speaks us about the memory in two senses:

- As a feeling of gratefulness towards the generation of his father (those born around 1925).
- As a feeling of guilt related to his generation (those born around 1950).

Saizarbitoria considers that the generation of his father really did things well. They transmit to the next generations a heritage to be proud of. They lost the war<sup>52</sup> but they never left anyone lying in the gutter. His generation, otherwise, is the generation of guilt; they did not act the way they were supposed to. The following 30 years after Franco, already in a democracy, ETA continued killing, not only members of the state security forces and policemen, but also politicians, judges, professors or entrepreneurs that did not agree with them or did not give up to their blackmail. During all these years, the Basque society and the Basque writers remained in silence. ETA stopped killing on 20 October 2011. From that date on, is the time to check, ask, forgive or ask for forgiveness, reparation and restoration. It is a time to hold accountable those responsible for the actions made, and reflect on what has been done.

Saizarbitoria agrees with the other two former authors, Atxaga and Cano, on the vital importance of writing. He insists on the need of writing to remember what happened in order to forget it again once it has been written. He considers the act of writing as a therapeutical one, as medicine that cures him, as something that allows undo the knots of the past. As Ferreira Gullar, the Cuban poet says, art is something invented by the human being due to the cruelty of the existence. In his writing he uses the intertextuality as well as some symbolisms.

**INTERTEXTUALITY.** The principal play Saizarbitoria mentions constantly in his novel and that is the common thread among all the characters is the book called *Montauk* by Max Frisch.

First of all, the titles of both books suggest a place (Martutene in Donostia, Basque Country; Montauk in New York, USA). Secondly, in both of novels one of the main characters is a young girl called Lynn. And thirdly, in both, the young girl establishes a relationship with an older man.

Another two roles of a book written by Martin (who has no surname in the novel, perhaps to liberate himself from the load of the past), called Flora Ugalde and Faustino Iturbe, also play the game of mirrors reflecting not only the couple formed by Martin (himself) and Julia (his girlfriend), but also their lives. The communication through those fictitious characters instead of having to face his own reality, it is much easier for Martin.

**SYMBOLISM.** The principal symbolisms that I would like to underline are the statute of the angel holding the fallen soldier and the homebirth. Abaitua took a photo of Lynn next to this statute. It seems to imply what Lynn has been in

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<sup>52</sup> Basque fighters, called *gudaris*, fought with the republicans in the civil war and lost against Franco.

Abaitua's life as an angel pretending to help that ends up losing her wings, as a victim who does not want to blame anyone, as an angel who awakes him first and becomes herself as a fallen soldier, since she loses her ability to walk after a surgery.

The homebirth of Peru, the son of a Basque father and Peruvian mother, in *Sagastizabal*, a typical Basque house, seems to identify the new birth of Abaitua, who after much suffering and some painful lessons of life, seems to have recovered himself.

#### 4.2.1.4. Zuri-beltzeko argazkiak (ZBA), Black & White Photographs



This book's beginning point is in 1947, precisely the year the author was born. It explains the life of a Basque, Basque language user, Basque culture lover, Christian, hard-working and anti-Francoist family from a suburb of Donostia (San Sebastián). This family is the author's family, however she does not want to go too deep to become intimate, which is why she avoid telling a lot of things she remembers. Her goal is shown by using the tools from her childhood to make photographs to the past and with their help to tell the readers how the childhood of the generation is now at the door of the older age, how their life was at that time, in a peripheral and simple neighborhood for a family with the features I described above.

This book is divided in two parts, the first one being *Notario batek egiaztatuko lukeena-What a notarian would guarantee*, which is an attempt at an objective description. The second part referred to as *Argazkiak-Photographs*, which talks about her memories related to such subjects as Franco, the Basque language, Church, clothes, food and games, all between others. She went to the newspaper library to find certain data, but almost everything in this part is based on her memories. The author does not directly mean that the things were the same as what she describes, but just as she remembers them. At the end, we all remember things in our own way, according to our willingness.

##### 4.2.1.4.1. Collective Identity

Arantza Urretabizkaia, in her book *ZBA*, describes the Basque identity as the identity based on features such as loyalty, nostalgia, strength, lack of drama, non-emotional demonstrations, people keeping their word, hard work, discretion, strong values with the family always coming first, machismo (even if Basque traditional society comes from a really strong patriarchy), the importance of the nature, the love for their country, the influence of the church, being a good friend, having a closed mind and having a great ability of cooking.

Urretabizkaia, as Saizarbitoria does, refers to the differences of classes (Urretabizkaia's book's time period is in the 40s-60s approximately; Saizarbitoria speaks about a present time) as well and the different identities and memories that the difference of classes provokes.

Usually people of the city spoke only Spanish; Basque language was in the category of folklore. However, for the author of this novel, with a different *habitus* and symbolic capital of those of the city, Basque language was her country. She knew, thanks to her father, that the Basque people had neither a country nor a flag at that time; therefore, the Basque language became her home. The emotional link was very alive, most likely because of the repression at that moment and she remembers the excitement she felt when she heard someone speaking in Basque language in the street, the feeling of recognizing one of ours.

##### 4.2.1.4.2. Conflict

Arantza Urretabizkaia, in her *ZBA*, remembers silence, submission and fear during the dictatorship, even if not in a traumatic way for her, probably due to her early

age at that time. The silence and submission were the Basque's weapons during the first years of the dictatorship.

Franco's presence was everywhere: in the school, in the games, in the songs. The first thing arriving at the school was to sing *Cara al sol*,<sup>53</sup> as a tribute to the *caudillo*.<sup>54</sup> Arantza Urretabizkaia's book finishes in the 1960s, the same decade when the awakening of Basque Country started in order to protect their culture and language.

#### 4.2.1.4.3. Collective Memory

Related to the fourth book, *ZBA*, and the author, Arantza Urretabizkaia, I believe that the whole book revolves around a feminine figure: herself. She treats her memories in the most serious way, describing how the society was at that time. She neither interprets nor analyzes, she just describes the facts. What she really remembers with pain is the fact of being a woman; during a long period of time, she thought that the masculine condition was much easier.

Likewise the other three aforementioned authors, Atxaga, Cano, and Saizarbitoria, and unlike Sarrionandia (the next author I will mention in fifth position), Urretabizkaia also felt freedom while writing and completely believed in the therapeutical function of doing it. Indeed in this book, *ZBA*, that we are referring here, she wrote it when her mother died; thus, writing helped her pass the battle. If she writes in Basque language, that is the climax for her: being at home, using Basque language, while feeling free with her writing.

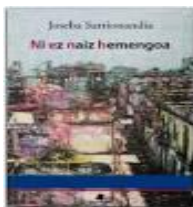
Arantza, as Saizarbitoria in *M*, distinguishes classes in society. It is possible, also, to observe the influence of belonging to one class or the other, in the way of perceiving the world, the own identity and the memories.

She remembers some anecdotes related to being ridiculed for speaking Basque or mixing words in both languages. Yet she does not remember this season in a traumatic way (as I have mentioned above), but quite unconscious, unconscious of her identity and of what was happening.

In any case, the fear was present: the Church which was an important threat, and also Meliton Manzanas, the Spanish/Basque policeman considered as a torturer who violated all sorts of human rights. However, she does not remember being educated in fear or hatred toward the Spanish state or culture. Indeed, her parents insisted on the importance of learning Spanish.

The fears, and also the silence, were constant elements at that time; perhaps out of fear, perhaps to avoid complications, perhaps as a way of staying alive, Basque people seemed totally under control until the 1960s, a decade where the Basque cultural explosion took place.

#### 4.2.1.5. Ni ez naiz hemengoa (NH), I am not from here



*Ni ez naiz hemengoa-I am not from here* is an essay written by the Basque writer Joseba Sarrionandia, published in 1985. This book is structured as an intimate newspaper, a short story written in the loneliness of a prison and with reflections of many topics.

This story offers an interesting dimension of the thoughts of the author that helps to understand the complexity of his literary world.

It is a labyrinthine diary written from inside the jail, where facts of the everyday prison life are combined with reflections of the author. Beatings and hunger strikes are interspersed with memories and artistic interests of the writer. Subjects as

<sup>53</sup> It is the anthem of the Spanish Falange, a Spanish Fascist movement that merged with traditional right-wing elements in 1937 to form the ruling party, the Falange Española Tradicionalista, under General Franco. This movement was formally abolished in 1977.

<sup>54</sup> Spanish translation of German word *Führer* or Italian *Duce*.

egalitarianism, democracy, war, freedom, minority cultures, Basque language, etc., are present all along the book. Almost all the reflections are based on the language, time and space and they are all questions that he asks to his people, to the people of his country, a country that still needs to be built. We are not in front of the typical book that some poets write when they are in prison, but instead in front of a real series of essays that accredits the literary and intellectual magnitude of its author.

#### 4.2.1.5.1. Collective Identity

Sarrionandia, more conscious of what was happening than Arantza was (Arantza speaks about her childhood and adolescence, an innocent period protected by her parents; Sarrionandia, however, focuses about his youth as a political militant) also describes, in *NH*, the Basque language as his homeland, however he continues saying that the homeland is not just the language but also the tradition that the language pushes out.

He considers that Basque identity has been usurped and retracted for generations, that Basque Country has been subjected, humiliated and has been imposed with a language and a culture that were not theirs. The consequence of such a brutal oppression is the difficulty, for Basque people, of achieving a *natural* relationship with their own language. Thus, to express themselves in the Basque language represents, from the perspective of the writer, a choice and a political and cultural action. According to the socio-linguism, languages are tools of communication and have always had identity and political connotations. Language, love for a country and politics, go together hand in hand, at least, from the perspective of this author at that time.

#### 4.2.1.5.2. Conflict

Joseba Sarrionandia, in jail at the moment of writing his book (*NH*), perceives the conflict as completely linked to culture. Indeed, the conflict started when the Basque people awoke to fight for their culture and language, which had been exterminated from the Spanish dictatorship.

From the Burgos trial<sup>55</sup> in 1970 and onwards, Sarrionandia's memories are just related to repression. In fact, the reason why he started to study Basque again, after completely forgetting by the age of 13, was to speak out against the institutions and to show solidarity towards the Basque prisoners that already existed by then. That was an unconscious act of rebellion; later on, he would act in a rebellious and conscious way. From his perspective, the process of learning again the Basque language went together with the armed struggle. To study Basque language was just another aspect of the fight.

In his opinion, as I have explained previously, the literature could not change the society; but militancy could. The reality was decided in political terms.

He also describes very briefly, with few brushstrokes, the other conflict: the conflict of the conflict, the jail. He states that Basque prisoners were submitted to vexations, humiliations, bad treatment, etc. in these Spanish extermination jails, called as such due to the numerous Basque prisoners who died inside them.

For Sarrionandia fighting for his culture was a need, not even an option. Gabriel Aresti, the Basque poet, explained that Euskera was also a need for him, the same way bread could be. In the same way, Sarrionandia feels that, given that situation

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<sup>55</sup> The Process of Burgos, also known as The Judgment of Burgos and The Council of War of Burgos, was a summary trial started on the 3<sup>rd</sup> of December 1970 in the Spanish city of Burgos against sixteen members of the Basque nationalist armed group, Euskadi Ta Askatasuna (ETA), charged with the murders of three people during the dictatorship of General Franco. Popular protests and international pressure ensured that the death sentences imposed on six of the defendants were commuted to imprisonment.

of repression and flattening, the illogical decision would have been not to do anything.

#### 4.2.1.5.3. Collective Memory

Unlike the other authors, and following Barthes's<sup>56</sup> words cited in the novel, Sarrionandia (*NH*) does not consider that the literature has therapeutical skills or the power to change the reality. This author describes the literature as something always under construction, as a way of knowing the reality but not a way of changing it. The reality, for him, is decided in political terms, and, if someone wants to change something, this person would take the option of the militancy, rebellion or even revolution.

From his perspective the literature is not an innocent ingredient either. Indeed, he states that the writing, not the writers, is dogmatic and fossilizes what is mobile.

Despite what has been said, Sarrionandia also affirms that the historic literary, for example, is necessary to keep the memory. The concept of *history* means to be remembered, recuperated and invented. Nevertheless if the writing or language of the writer does not match with the one of the readers, a gap is created between both and the reader can abandon the text.

### 4.3. Conclusions of The Content Analysis

#### 4.3.1. Collective Identity

To sum up this point, I would insist on the importance of the Basque language within the Basque identity. All the chosen authors consider it as a basic element (with different nuances) for the Basque identity but they do not reduce to it. They consider that Euskera is not a bucket to be filled but instead a fire to be lighted, from love and not from imposition.

Another thing that joins them is the bilingualism and plurilinguism. Literature can be a mirror of what happens in the society. Basque society is a bilingual society, so is the literature of these authors. All of them introduce sentences and words in other languages, not just in Spanish, but also in English and French. All of them are bi-or multilingual writers who have exercised self-translation, which is a creative continuum between two languages. The knowledge of other languages can foster the literary creativity, as it is tested in these five novels.

We can conclude by saying that all the writers of this analysis would agree when stating that the Basque language is another victim of the Basque conflict. Basque language is something that all the Basque speakers need, not just the nationalist individuals, if the aim is not only to make it survive but to continue to spread it. Natalia Ginzburg<sup>57</sup> stated, "I am a small artist with the difficulties of the big ones". The Basque language is a small language with the difficulties of the big one.

#### 4.3.2. Conflict

It deserves to be observed the key point of this struggle: the positive law ruling the Spanish state, first within a dictatorship and afterwards through a weak democracy, that considered and still continues to consider the legal sphere apart from any other social reality. The social deafness by the authorities may cause social discontent at the beginning, but while remaining unsolved, this dissatisfaction would be radicalized as it happened in the Basque case.

#### 4.3.3. Collective Memory

In this paragraph, I would underline the two types of memory that can be distinguished according to Cano's book:

<sup>56</sup> Roland Barthes (Cherbourg, 12 November 1915-Paris, 25 March 1980) was a French philosopher, writer and essayist.

<sup>57</sup> An Italian novelist, essayist, playwright and politician of the 20<sup>th</sup> century.

The first, poisoned with noisy silence, honouring all kind of early disappearances.

The second, the one looking at the past just to live a better present.

The way of carrying out the second can be in writing or any other type of art. The writing has therapeutical skills; the process would be remembering to write in order to forget again.

However, unlike the other authors, Sarrionandia sees the writing as a tool to describe and know the reality but not to change it. For this author any change in society must pass through politics, revolution or rebellion. We have to take into account that he is talking about the 1980s, which was a very convulsive period just after Franco, and also the reality he experiences in jail, full of humiliations, vexations and tortures on behalf of Spanish police force.

## 5. Conclusions

Throughout my article I have analyzed and developed the Basque case from the perspective of the literature written in Basque language.

We can state that during the Spanish Transition period, 1975-1981, which went from the end of the dictatorship to the achievement of the democracy, Basque Country experimented many twists. It went from a living law society to a living with the law society; from having been considered the Basque culture just as folklore to being considered worthy and even admirable; from hiding the practice in Basque language to showing it, with pride.

The twists are not just helpful, but necessary and vital as well. We confirm the importance of dynamism in all aspects of life, such as social, legal, personal, or cultural. Atxaga distinguished in *SS* and Cano confirms in *Twist*, a static, outdated concept of identity, the typicality of the 19<sup>th</sup> century facing a new dynamic and continuously evolving, always under construction. Saizarbitoria incorporates the twist to the memory and insists on the importance of its move from remembering to forget to returning to the first one again. He explains that in order to live in the present it is necessary to face the past, and in order not to get stuck in those past memories, to forget them again. But how do we channel this process? Through literature or art in all its versions, these are the options given here. Sarrionandia, thirty years ago, would have answered us, saying "through the militancy". Nowadays, I doubt he would answer the same.

The legal sphere also is vulnerable to these twists, although regarding the Spanish Constitution, we could say that it is closer to the movement of the oak of Gernika<sup>58</sup> than to the twist-dance. By that, I mean any twist in the Spanish Constitution is a very hard task, as difficult as the dancing of an oak trunk. Harkaitz Cano, in his novel, refers to the twists as something taking place in Justice, going from a Traditional one to a Transitional one, in order to facilitate the process to democracy and to gain humanity. The traditional justice is based on retribution and punishment; the Transitional one tries to balance fair treatment of perpetrators with their penalty. Transitional justice also seeks to enlarge the focus to capture larger societal and institutional responses to wide-scale abuses; it tries to take into account the suffering of all types of victims, without exclusion, but the needs of the communities as well. Transitional justice attempts to achieve all of this through the tools of reparation, restoration and reconciliation. From today's perspective and from the Basque side, the Transition was not successful, not for the lack of tools but for the lack of transition, for the lack of twists precisely; what happened at that period was a pacted reform, not a transition (Bengoetxea 2013, 30–58).

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<sup>58</sup> I am using the irony, even the sarcasm, to allude the inflexibility and rigidity of the current Spanish Constitution, comparing it with the movement (no-movement) of a symbol in Basque Country, the oak of Gernika. It symbolizes traditional freedoms for the Biscayan people, and by extension for the Basque people as a whole.

Leaving the twists to one side, I would like to finish with a small reflection related to the three big themes that have accompanied us in these lines: collective identity, memory and conflict. Starting with identity and completely agreeing with the distinction of Atxaga between its static and dynamic version, I would go even further. Bacon and eggs, pig and chicken, the chicken is involved but the pig is committed.<sup>59</sup> Some people are merely involved, not just with their identity, but also with their life; other's bet is larger, and they feel committed, as simple as that. Some people, even if they are from our same *habitus*, even if we share with them what Bourdieu called symbolic capital,<sup>60</sup> they do not feel and practice the Basqueness as we do. And this fact does not make us just different but also distant. To be empathic, perhaps, is to ask too much; at least, let's practice the respect, the respect to the difference. We will discover, then, many things. For example, we will find out that radicals are as conservative as the conservatives; because, what does conservative mean? Keep the established order, no changes, no twists. Neither the radicals nor the conservatives, in the Basque example at least, want any twist from their positions. Before getting stocked in our perfect acceptance of collective identity, we should try, first, the continuously rebuilding, opening it to the most diverse spectrum. The same we request to the law, we should request to our conception of identity.

However, if the concept of identity is already complex, it gets worse when confusing terms. Two questions are mixed in one in the Basque case when asking for the national identity. The identity feeling would be one thing, and the desire of a national project building another. They can be linked, they are in a lot of senses, but not necessarily. To separate how we feel from what we want or what we do, extends the answer with possibilities, which implies a more extended common space among Basques.

Regarding the memory, we will affirm that this is an element that is always poisoned: from the present or from the past; by the current expectations and ways of thinking or by the original sources. Therefore the only way to build a fair collective memory would be to compare the different versions, and analyze the results; the element that appears repeated in different versions will be selected and added to the collectivity.

Novels, as the one of Arantza, *ZBA*, are necessary. They are necessary not only because she describes stories that some of us we have not lived, and that constitute a part of the history, but also due to the way she does it. She claims in the book: "the memories of this book could be certified by a notary". She has reflected them in a very strict way, without unnecessary condiments. She has just described, not interpreted or analyzed. These types of novels keep the memory alive, and the memory of a society cannot forget, unlike the one of an individual that can.

Referring the conflict, I would state that, without forgetting the sectarianism that supposes to turn a human being into an object which has to be removed in order to achieve a goal, one big mistake of the Spanish state is that they proclaimed the Basque conflict as just military and not as a social issue, while ETA has always had a (higher or lower) social support. In order to face the *real* conflict, it should be necessary, to find the version of the situation that is more adjusted to the real truth, instead of the one the ruling class is interested in. Due to this awful understanding of the conflict, in Spain a lot of legal decisions have been adopted as political ones; and amnesties have been granted to terrorists of GAL, as if they were heroes instead of terrorists.<sup>61</sup>

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<sup>59</sup> The chicken lays eggs without not irreparable damage to her; the pig has to die in order for us to be able to obtain the bacon from it. The first is involved; the second is committed.

<sup>60</sup> Concept used by Bourdieu, which means the values that someone holds within a culture.

<sup>61</sup> During the trial of the murders of Lasa and Zabala (regarding the novel *Twist*), four of them were condemned among 71 and 75 years. The one who spent the maximum time in jail was six years. See:



Summing up, I would state that three things, at least, should always be remembered: that the law must serve the people and not the other way around; that the strategic use of the law cannot be a privilege to the ruling class uniquely, but the whole society; and which are the functions of the law, is it a social control tool? Object of desire? Limitation?

As it is also shown in many works (see Bengoetxea 2013, 30–58), the negative use of the jurisprudence during the Spanish Transition brought a lot of negative consequences that the Spanish society, and also the Basque one, are still paying. The weakness of the democratic model was shown, subsequently, with the degradation of the human rights, the birth of the GAL in the 80s commissioned by the domes of the PSOE (the party in the government), the consensual silence by the judiciary about torture, the application of a restrictive law on political parties, the Parot doctrine or penal code reforms, the use of prison policy as a political tool, the closure of several mass media, etc. People from ETA justified their activity arguing all the injustices I have just mentioned. This situation allowed them to continue with the halo of romanticism that surrounded left-wing separatist terrorism in this epoch.

Regarding the different functions of law that we are seeing through this article, as a way of controlling the society through normative expectations or also through the reconstruction of the past, I would like to insist on Sousa Santos's perception of the law (Ramstead, at a lecture in the IISL 2014/2015 Socio-Legal Master's programme), not just as a means of controlling, but also as the desired object to fight for, as it was in the Basque case. He explains that the emancipatory function of law is based on its power to generate social changes. The popular Spanish judge, Baltasar Garzón,<sup>62</sup> goes even further: the law should be not just a conflict solution tool, but also a limitation. The function of law from his perspective is to prioritize, determine what is the essence and what is the contingency, in order to compose the discourse, the dialog, the effects and the causes (Garzón 2006, 381-384).

However, I consider that the limitation is a way of controlling, which does not mean to solve. Firstly, to control a conflict can be a way of turning it into a not-so-bothersome one and a way of hiding the real problem behind an apparent solution. Secondly, to establish priorities is a very dangerous topic, specifically because this prioritization is given always by a group of interests, the ruling class, not by the whole heterogenous community.

To finalize, I would like to point out that the law without the social consciousness is as unworthy as the social consciousness without the ratification of the law. The law reflects, or should reflect, the society, and so does the literature. Collective identity involves collective memories and the latter influences in the construction of the first; the conflict will depend on the intensity of those memories that build this dynamic identity. Luhmann spoke about the communication between the social systems. I also request for communication, firstly, among social systems, the same way Luhmann did with society, law and literature; and secondly, among the past, present and future of the society, in this case, of the Basque society, in order to achieve the necessary harmonic environment to build a peaceful whole.

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<sup>62</sup> Spanish jurist, very well-known due to his persecution and prosecution to members of the terrorist group ETA and also his dismissal when fighting in favor of the Historical Memory Law.

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