

Melodrama and Law

Meanwhile, you and I will try to put
infinite shades of grey into black and white
(*Kavanagh QC*, 22 March 1999).¹

The title of this concluding chapter suggests a correlation between melodrama and law, and yet at first sight nothing could be more divergent: the former is a literary genre associated with the feminine because of its concern with the display of emotion, while the latter is a system of social control, using apparent rationality as its most crucial characteristic. Why would one want to compare such diametrically opposed fields? When writing the previous chapters it became increasingly apparent that an analysis of these dis/continuities would not only be pertinent but also mutually enriching to two disciplines with ostensibly unrelated aims. Both melodrama and law operate on binary oppositions and are decried for this reductionism. Both law and melodrama also converge in their potential for social change and their focus on the conflict of human relationships. It is these convergences, amongst other things, that this chapter examines. Using melodrama theory, in particular Peter Brooks' *The Melodramatic Imagination* (1985), and the law and literature debate as my theoretical framework, I will take the fiction of Burgos as a paradigmatic case to draw conclusions about the relation between law and melodrama. I will also draw on feminist critics as appropriate. It is my aim to show how two disciplines with disparate aims share important matters of common concern, and how transgressing the boundaries that separate them has a certain necessity. If law — supposedly the epitome of academic logic — is based on the same thought system as melodrama — purportedly the essence of emotional drivel — what does that tell us about the former's sophistication in argument? Does the very

¹ This quotation is taken from an episode of the court-room drama series on ITV television entitled *Kavanagh QC* in which the barrister Kavanagh talks to one of his colleagues complaining about law's simplifications.

comparison and the subsequent findings of continuities between the two diametrically opposed fields condemn the former and/or elevate the latter? It is these questions that the following chapter tries to shed light on.

In his seminal text *The Melodramatic Imagination* (1985), Peter Brooks argues that the origins of melodrama go back to the French Revolution, 'the moment that symbolically, and really, marks [...] the dissolution of an organic and hierarchically cohesive society, and the invalidation of the literary forms — tragedy and comedy of manners — that depended on such a society' (Brooks 1985: 14-15). Daniel Gerould, while admitting that melodrama of revolution is a minor sub-genre, argues that there is a distinct subversive potential intrinsic to the genre. Its focus on the disadvantaged meant that audiences suffering similar victimisation could identify with the heroes and heroines (Gerould 1994: 185). This has frequently been used by the theatrical left to express subversive ideas to the audience in an attempt to agitate the masses and incite rebellion. It is not surprising, then, that another peak period of melodrama came after the Russian Revolution. In the 1920s melodrama was politically promoted through funding by the Soviet state, while intellectually it was furthered by debate and theorizing by leading writers in the Soviet performing arts (Gerould 1994: 191). In 1919 Anatolii Lunacharsky, playwright and drama critic, wrote an influential article in which he argued that melodrama is a superior dramatic genre and, following his lead, other influential writers became interested in this genre which could best represent revolutionary ideology (Gerould 1994: 192). Writers and theorists, like Viktor Shklovsky and Adrian Piotrovsky, experimented with its themes and techniques in the 1920s and modelled their popular propaganda theatre on French melodrama, targetting a similarly radical new society and identifying many of the same opponents: the aristocracy, the clergy and former rulers (Gerould 1994: 191-194). In voicing the same need for heroes and villains conveying simplistic messages, this propaganda theatre simply replaced a Christian worldview with dialectical materialism to ensure the ultimate triumph of the working class (Gerould 1994: 191-192).²

However, the history of melodrama also includes its use in popular fiction of the mid-nineteenth century, and its recycling in classic Hollywood cinema of the 1940s. Both cases are generally interpreted as a means of instilling bourgeois values that underpin stereotypical female roles. In both cases the audiences were assumed to be largely female. In mid-nineteenth century fiction at least the dramatization of female virtue threatened but rewarded frequently articulated a class agenda aimed at empowering the middle classes or even the labour aristocracy by depicting the nobility as unscrupulous villains. The genre's denigration of the nobility through advocacy of superior middle-class virtues is

² For more details regarding melodrama in the Soviet theatre, see Gerould (1980).

empowering for the middle class (or artisanal) male, but imposes on the heroine the role of angel of the house confined to the private sphere. Melodrama's historical association with the rise of the bourgeoisie can thus, at this particular historical juncture, make it progressive in class terms while simultaneously disempowering women — whose role is often relegated to that of virtuous victim. Melodrama could thus serve the purposes of the late nineteenth-century novel of domesticity and of 1940s Hollywood films, articulating the anxieties about male disempowerment — the threat no longer comes from the aristocracy but from women — by reinforcing bourgeois gender roles. The point I am interested in here is that melodrama's radical potential in political terms has tended to be at odds with its representation of women.

The general debate over the revolutionary versus the conservative in melodrama is commonplace by now, as is the more specific question of whether it reinforces or subverts the patriarchal gender regimes. Burgos's fiction demonstrates that melodrama can also reveal an interpretative space that can work against the seemingly conservative textual surface. The point that needs stressing here is that it may precisely be this apparent conservatism which could conceivably convert it into a tool of social critique and change. Burgos appropriates the subversive potential of the genre for her feminist purposes and is acting in consonance with feminist demands of the time, namely that civil rights extended to male citizens by political liberalism should also be extended to women. Through women's daily-life narratives she illustrates the horrific consequences of the contemporaneous legal system and draws attention to the injustices of law. It appears then that melodrama functions either in a subversive or reactionary way relative to the socio-historical context and can be used as a cultural tool of social change as well as control. Equally, throughout the history of law we can trace the application of law as a tool of social transformation or manipulation. As elaborated in the introduction, the question of whether law changes society or, conversely, social change alters law is one of the major debates of legal thought. Some argue that law is determined by the morality of the population and legislation can only achieve change by staying relatively close to social norms. Others, however, perceive law as a tool of programmed social change (Vago 1997: 287). Both contentions are likely to be correct; the more interesting question is under what precise circumstances does law entail social change. More interestingly still for the discussion of this chapter is the question of how melodrama feeds into the change of cultural values that in turn inform legislative change. How effective is melodrama in guiding its readers to evaluate the moral climate of their time?

It seems pertinent here to examine the affective power of the melodramatic text. Burgos's use of emotionalism to turn affect into moral sentiment is particularly noteworthy in the case studies examined in the previous chapters. As already stated, Burgos, by turning to fiction as a vehicle, allows the reader to judge moral dilemmas in their contextual particularity, showing the causes and

consequences of women's moral reasoning. An ethic of care so strongly promoted by the heroines is matched by equal care on the part of the reader. The question of the emotional power of popular texts is particularly interesting in the realm of feminism. Excessive emotion is often used as a distinguishing factor between high and low culture, the latter being decried for its appeal to 'cheap emotionalism', seen as the response of those who are not educated enough to be capable of a detached, 'aesthetic' reading. Jane Shattuc suggests that this position should be taken to task. In her excellent article 'Having a good cry over *The color purple*' she argues that feminists have had a constant love/hate relationship with melodrama and advocates a different approach:

We too need to look to how 'the intellectual feminine voice' has served to undercut the political power of melodrama texts that invoke the pleasure of tears and political change, rather than the policing effect of intellectual distance. What is it that middle-class feminists fear that causes them to support intellectual distance over emotion? Is it fear of blacks and working-class women being 'out of control' and therefore outside 'our' control? [...] We need to begin to rewrite the terms of the debate where emotion can be reasoned and tears mean active involvement, not disregarded as trite responses (Shattuc 1994: 149, 154).

The linking of femininity (and tears) with a political agenda suggests why feminism might adopt a genre that gives a voice to women who have hitherto been silenced. As already stated, the relation between emotions and morality does not necessarily have to be a dispassionate one. In his discussion about moral positions Dworkin argues that moral positions must be distinct from emotional reactions, not because moral positions are supposed to be dispassionate, but because the moral position is supposed to justify the emotional reaction, and not vice versa (Dworkin 1978: 250). In other words, the reader is likely to be outraged by the glaring injustices depicted in Burgos's fiction, because their sense of justice is discriminatory and hence sides with the heroine, although the anthropological surface morality of most texts — *El hombre negro* is the notable exception — allows for a conservative conclusion ending in death, probable prison or misery for the deviating women.

The devices of melodrama — extremes of emotional experience, unlikely coincidences, a compression of time, the desire to express everything — have usually given rise to melodramatic works failing to be highly valued. Peter Brooks, however, argues that this attitude blocks an understanding of the very premises of the genre:

What we most retain from any consideration of melodramatic structures is the sense of fundamental bipolar contrast and clash. The world according to melodrama is built on an irreducible manichaeism, the conflict of good and evil as opposites not subject to compromise. Melodramatic dilemmas and choices are constructed on the either/or in its extreme form as the all-or-

nothing. Polarization is both horizontal and vertical: characters represent extremes, passing from heights to depths, or the reverse, almost instantaneously. The middle ground and the middle condition are excluded (Brooks 1985: 36).

Melodramatic dilemmas are constructed on the basis of an either/or dichotomy. Interestingly, so is law with its obligation to construct truth in categories of right and wrong. Melodrama, given that it focuses on the oppressed and disadvantaged, needs of necessity to portray heroes and heroines who are victimised. Law, in its principal function of dispute resolution, becomes — almost by definition — only operable if there is a victim and a conflict of good versus evil. In the classic legal scenario of a court case, these parties are not willing to compromise, which is why the legal system intervenes as a means of dispute resolution. The verdict of such a court case is invariably built on binary oppositions of right or wrong, guilty or not guilty. The middle ground at this stage of legal arbitration is excluded.

What is more, an analysis of the rhetorical features also shows continuities between melodrama and law. As Brooks rightly points out:

The fundamental manichaeism of melodrama [...] should alert us that further analysis must be directed to the bipolar relation of its signs and their presentation. We must attend to melodramatic rhetoric. This will have the advantage of permitting us to confront what much criticism has simply dismissed from embarrassment: the overstatement and overemphasis of melodrama, its rhetorical excess. These are not accidental but intrinsic to the form (Brooks 1985: 36).

Characters in melodrama say what they think, clearly, directly and explicitly. They launch into their moral judgements of the world and characterise themselves and others with moral epithets: people are honest and virtuous or false, terrible, cruel and tyrannical. Epithets testify to a concern to be clear and unambiguous and relate to an audience that is unused to subtleties (Brooks 1985: 36-37). Despite the simplicity of melodramatic manicheism, moral epithets become a useful means of easy recognition: the reader can take a side and accept its credo. The genre's very *raison d'être* is the possibility of saying everything, of expressing emotions that are almost overwhelming. Women in Burgos's melodrama are not silenced: they speak out with dramatic clarity, even though society (as portrayed in the texts in which these women occur) clearly wants to silence them. More importantly, the omniscient feminist narrator, by explicitly intervening to question phallocratic society's written or unwritten rules, makes the reader aware of its absurdities. Such interventions complement the emotionalism of the characters' rhetorical excess by requiring an intellectual response on the part of the reader. In *El artículo 438*, for example, in a kind of

summing-up³ the feminist narrator sits in judgement of the law:

Alfredo estaba incluido, por entero, en el artículo 438. Había matado para lavar su honor mancillado, en el paroxismo de la pasión y de los celos, exagerado al descubrir la traición de su mujer y de su amigo. Era un gesto gallardo y simpático en un país que conservaba el espíritu calderoniano. [...] La ley promulgada por hombres, favorecía siempre a los hombres y humillaba a las mujeres. Ningún artículo del Código les daba a ellas aquella facilidad de asesinar a los infieles; ni siquiera el funesto artículo 438 decía: “Cualquiera de los dos esposos que sorprendiera en adulterio al otro”, sino: “El marido que sorprendiese en adulterio a su mujer”. [...] Era sólo un privilegio masculino. Los jueces se cuidarían mucho de no quebrantar aquel principio de autoridad que era como su privilegio, la lección indirecta que daban ellos mismos a sus propias mujeres (55).

This preoccupation with clear messages stems from having an audience or readership that is unused to subtleties. Hence also the frequent use of rhetorical figures like hyperbole, antithesis and oxymoron; again a sign of the genre's denial of nuance and its determination to operate in bipolar relations stating unambiguous messages (Brooks 1985: 40). The melodramatic message is not only ‘cried out aloud’, but also communicated through music, gesture or the *mise en scène*. Although these means are less immediate in prose texts, the *mise en scène* can be described effectively by the narrator. In *El abogado* for example the courthouse is depicted in lugubrious terms:

[Manolita] volvía a sentir un escalofrío de temor y repugnancia al pisar de nuevo el pavimento de aquella “Casa de Canónigos”, en la que tanto había sufrido durante los crueles días de la prueba de su pleito hasta la notificación de la sentencia.

Sentía un ambiente de frío, de humedad, de algo desolado y amenazador en aquellos largos pasillos, entre el ir y venir de las gentes que pasaban casi siempre apresuradas, con un aspecto receloso, hablando en voz baja, como si todos estuviesen atemorizados y la casa de la Ley no fuese la casa de la Justicia (92).

After reading the above passage we are left with little doubt about the hopelessness of Manolita's case. The courthouse itself, which is supposed to be a temple of justice representing the virtues of law, a visual metaphor for social equality, is described as a place that inspires fright and terror to those who seek legal help. And if that was not bad enough, this description is closely followed by an equally critical description of the legal profession:

³ The ‘summing-up’ is ‘the judge's summary of a case made following the closing speeches. It usually includes a direction on points of law’ (Curzon 1994: 369-370).

[Manolita] se arrimó paciente a la pared como todos aquellos individuos que hacían sus largas esperas viendo pasar apresurados a los dependientes de las escribanías con los legajos de papel sellado bajo el brazo, y la mirada alta y perdida, como si no quisieran ver ni oír lo que pasaba a su alrededor. Del mismo modo pasaban los Jueces, revestidos de togas, tocados de birretes, con su aspecto de incomunicatividad de todo, y un aire fosco. Unos señores atrabiliarios y secos, que en nada se recuerdan a la plácida Temis, y que no sonríen jamás y se apartan de las pasiones humanas que tienen que comprender y juzgar; las pasiones en las que está la ley verdadera.

Los abogados y procuradores se distinguían por su aire de aplomo y lo familiar que les era el andar por aquel laberinto e introducirse en los despachos de los jueces, acompañados de clientes, casi siempre vacilantes y asustados.

De las salas en que se celebran juicios llegaban hasta ella ruido de voces, acaalladas por campanillazos. Más de una vez veía salir personas de aire amenazador, que se las juraban a jueces y abogados (92).

Again a metaphor is used to juxtapose law in theory and practice: Themis, the goddess of divine justice and law, is held up as an ideal that is to be aspired to. The juxtaposition of the legal profession and their clients is particularly noteworthy. The former appear to be the holders of the holy grail of legal power while the latter appear small, ignorant and insecure.

Rhetorical excess, so familiar to us in melodrama, is also to be found in law. This is not particularly surprising given that historically the classical tradition of rhetoric was not understood as something foreign to law, but seen as organically related to the practice of it. Yet while language in literature is overtly artificial, language in law has discursive power. Legal writer Maria Aristodemou compares literary and legal language and argues that:

While the artist, [...], admits, and sometimes draws attention to the contingency and artificiality of her constructions, legal language aims to conceal its artificial origins. While the artist confesses to the fact that his creations are arbitrary, incomplete, hypothetical, and provisional, the lawyer persists in pretending that they are natural, inevitable, and can provide not only all the answers, but also all the right answers. [...] Writing and reading, in law or literature, temporarily provide the illusion of anchors in a world devoid of foundations. [...] Theories of the origin and ends of law, theories of justice, freedom, rights, adjudication, and interpretation, all participate in the attempt to order our world, reducing its potential chaos into manageable categories. [...] Ideas, theories, myths have a special role to play in this search: they are the result of the human, (perhaps [...] *the male*), craving for order, generality, and origin and aim to reduce the chaotic, heterogeneous, and different to the known, one and identical (Aristodemou 2000: 2).

Thus as Aristodemou puts it, the male craving for (social) order manifests itself through the patriarchal tool of law, as, for example, in the male opposition to the legalisation of divorce or female suffrage. In law, unlike in literature, reading

— and hence interpretation — requires giving normative meaning to legal texts which has practical consequences for people's lives. Despite the aim of concealing artificiality that Maria Aristodemou attributes to legal language, an analysis of the legal writers contemporary to Burgos shows that their style of writing is in fact not necessarily more dispassionate than that of Burgos's essays (or even her fiction) and indeed at times it is positively melodramatic. Yet to say that law is always melodramatic is obviously a distortion. The more interesting question here is that of where we can find melodrama in legal writing. The legal codes themselves are unlikely to show any melodramatic mileage, since here the laws are laid down in neutral language. Looking at legal commentaries regarding adultery laws, however, we find an astonishing amount of rhetoric and emotionalism. Legal commentaries, that is legal analyses by legal practitioners, are usually published alongside the legal codes and hence have a lot of discursive power.⁴ This is closely followed by legal writers (be they practitioners or academics) engaging in debates of the utmost importance like divorce or suffrage. As demonstrated in the previous chapters, these debates show an alarming scarcity of a calm and reasoned discussion, attesting to the high stakes for patriarchy and its irrational anxieties of losing control over women. If we consider legal texts published in Spain between 1909 and 1920, we find that legal writers make full use of the power of the word and their rhetorical tools are often those of melodramatic excess. In a long introduction to his chapter *Derechos políticos de la mujer* Romera Navarro, for example, gives a melodramatic overview of the historical background to the status quo of women's (lack of) political rights. He situates the beginning of all evil within the French Revolution:

El siglo XIX vino a consolidar en los comienzos de su reinado, con todo el *brío de la juventud*, los derechos del hombre, que su antecesor había proclamado, y que por falta de vida no pudo conquistar. Y cuando sonó la *hora de saludable reacción* contra la monarquía patrimonial de derecho divino y contra todos los despotismos del viejo mundo político; cuando se proclamó la soberanía nacional, como fuente de donde emana el poder y la función gubernativa, y paralelamente a la teoría de los derechos innatos del hombre, fue desenvolviéndose la teoría de sus derechos políticos; cuando de ese *agitado mar de revoluciones sin fin*, brotó en el pasado siglo, un nuevo mundo, con su democracia ideal, con sus sentimientos de fraternidad y de progreso y libertad; cuando, finalmente, pasó la *tormenta revolucionaria*, pudo verse una cosa muy inexplicable y muy desconsoladora: se pudo ver entre *los escombros del viejo mundo desplomado*, destacarse *una figura monolítica colosal*, que subsistía a través del tiempo y de las revoluciones y de los progresos, y que el hombre no quería destruir. Y era ella *la encarnación de todos los prejuicios*,

⁴ The equivalent in literary studies would be a critical edition.

de todos los errores y de todas las injusticias que el hombre había acumulado contra su compañera. Lucharon juntos en la demolición de una sociedad, y juntos construyeron los cimientos de la moderna. Y la mujer, que no vaciló en derramar su sangre pura y generosa en la lucha por la libertad y la fraternidad humana, vióse excluida, negada como miembro social, escarnecida; continuó esclava, oprimida, y sin derechos, porque los políticos, únicos que sirven de garantía a los demás, le fueron negados (Romera Navarro 1910: 155-156, emphasis mine).⁵

Melodramatic rhetoric is achieved in this passage by repetition (“cuando...”, “todo...”, “junto...”) as well as various figures of speech (see my emphases), such as hyperbole, metaphor and bombastic language in general, all of which are emotively disproportionate to the subject matter. The indulgence in strong emotionalism and the rhetorical excess is employed to highlight the inequality of denying women the same political rights as men. Romera Navarro also ridicules the evident lack of logical consistency, and hence lack of rationality, in dominant male politics at a moment in history when mankind was striving for universal human rights. The recourse to melodramatic rhetoric is not particularly surprising in conjunction with law. In his foreword to *Reel Justice: The Courtroom Goes to the Movies*, Judge Alex Kozinski compares moviemakers to lawyers and comes to the conclusion that:

Both must capture, in a very short space, a slice of human existence, and make the audience see a story from their particular perspective. Both have to know which facts to include and which ones to leave out; when to appeal to emotion and when to reason; what to spoon-feed the audience and what to make them work out for themselves; when to do the expected and when the unexpected; when to script and when to improvise (Kozinski 1996: xi).

In the last few years critical legal studies has witnessed the advent of a new movement called ‘legal storytelling’. According to ‘storytellers’ the emotive and non-rational aspects of narratives are much more persuasive than rational argument. Storytelling, in the form of personalised accounts of plaintiffs, defendants or witnesses, is seen as a fundamental device to challenge racist, sexist and homophobic structures of society. Peter Brooks argues that:

Narrative has the unique ability to embody the concrete experience of individuals and communities, to make other voices heard, to contest the very assumptions of legal judgment. Narrative is thus a form of countermajoritarian argument, a genre for oppositionists intent on showing up the exclusions that

⁵ For other legal discourse of melodramatic proportions, see also Espinós (1915), González de Echávarri y Vivanco (1912), Góngora Echenique (1918), Francos Rodríguez (1920), Crehuet (1920), López Vives (1914), Romera Navarro (1909).

occur in legal business-as-usual — a way of saying, you cannot understand until you have listened to our story (Brooks 1996: 16).

Narratives are closer to concrete lived reality than an abstract system of thought such as law. Stories also often have a strong emotional effect and this is, of course, diametrically opposed to the legal faith in reason. Critics of legal storytelling indicate that personal stories might distort the legal debate, particularly if those stories are atypical, inaccurate or incomplete. Storytelling, they argue, can make no superior ethical claim, since it is not morally neutral. Some radical feminist scholars, however, have rejected the abstraction and scientific objectivity of rational argument and Catharine MacKinnon, in particular, has tried to rescue storytelling as method, arguing that it originated in powerlessness:

The systematically excluded accounts, the pervasively silenced voices have been of certain people: the unequal. [...] It is thus no coincidence that storytelling — bearing witness, giving account as we know and practice it — took shape within civil rights movements. Since 1968 the women's liberation movement has contributed distinctively to this tradition through its speakouts and consciousness-raising. Women produced their analysis of women's condition in this form because there was no choice. It was women's experience, most crucially of sexual abuse, that had been left out of account. [...] Women's accounts have been more commonly called anecdotes, impressions, although they are at the very least testimony and, as such, evidence (MacKinnon 1996: 233-234).

What interests me here is that melodrama insofar as it is a narrative genre has the capacity to represent marginalised experiences of daily lives. As already stated in Chapter 3 and in line with Gilligan's theory, Burgos reconstructs moral dilemmas in their contextual particularities and makes the reader understand cause and consequence of women's behaviour. Such narratives can in general be considered a vehicle of dissent from the discursive power textuality has in law, since it conveys meanings that are marginalised by mainstream legal thinking. Burgos tells stories of how the law, the legal system and the legal profession form an unholy alliance with men whose moral reasoning is — at best — egotistical.

The possibility of saying everything with almost overwhelming emotional expression (which according to Brooks is melodrama's very *raison d'être*), was used by Burgos in two different ways. Firstly, it allowed her to explain law to readers in a factual kind of way and, secondly, it gave her an opening for overt legal critique. In addition to this quality of narrative the rhetorical excess of melodrama is part of the advocate's (or writer's) art of persuasion that permits him or her to send out unambiguous messages to judge, jury and reader. In law it is the judge and jury who are the 'readers' of the lawyer's narrative of a particular case. In literature the reader is put equally into the position of judge

and jury and decides for her/himself what the verdict should be. In Burgos's novel *La malcasada* for example the heroine kills her husband in self-defence at the end of a long narrative of domestic violence and sexual abuse. The open ending of the novel invites the reader to sit in judgement on this woman who is arguably displaying some of the symptoms of Battered-Woman Syndrome.⁶ Battered Woman Syndrome (BWS) is a collection of psychological symptoms, often considered a subcategory of Post Traumatic Stress Disorder, recognised by the World Health Organisation in its classification of mental disorders. BWS is a psychological reaction that can occur when one is exposed to repeated trauma, such as domestic violence. According to the American Judges Association it includes at least three groups of symptoms, the most relevant of which in this context is the so-called "fight" response mode, in which:

the body and mind prepare to deal with danger by becoming hypervigilant to cues of potential violence, resulting in an exaggerated startle response. The automatic nervous system becomes operational and the individual becomes more focused on the single task of self defense.⁷

After the court case in which Dolores, the heroine, had filed for legal separation has failed, she has to return to her marital home. Shortly after she settles in, her husband resumes his physical advances. These she resists initially, provoking him to both rage and pleasure:

El sintió un placer brutal en la resistencia llegada a un extremo tan grande. Era mejor así. La tendría a fuerza. ¡La humillaría sin amor!

[...]

— No... no... no...

Volvió a enfurecerlo la resistencia.

— ¡No me hagas que te dé un golpe, Dolores!

— ¡Déjame!

— ¡Soy tu marido!

El había llegado al colmo de la rabia. Se lanzó contra ella, dispuesto a hacer valer el derecho de su fuerza y la cogió de los brazos, retorciéndoselos sin piedad. [...]

— ¡Socorro!

¿Socorro? ¿Se atrevía aquella mujer a gritar para que la defendiesen de su marido?

Se separó de ella, sujetándola brutalmente por el hombro con la mano izquierda, y la miró, queriendo influenciar con sus ojos coléricos.

[...]

⁶ For an extensive bibliography on the subject, see Sheila Noonan (1996).

⁷ American Judges Association at <http://aja.ncsc.dni.us/domviol/page6.html>, accessed January 2005.

— ¡No!

Entonces él la soltó y le descargó con la mano derecha un bofetón que le hizo tambalearse.

Antonio fué a sostenerla, quizás asustado de su brutalidad, pero ella tuvo aún fuerzas para repetir:

— ¡No!

Entonces perdió el freno, ciego, excitado, comenzó a golpearla gritándole injurias:

¡Perra! ¡Perdida! ¡Mala hembra!

[...]

Caían las sillas, las mesas, se rompían los vasos y los objetos de tocador. Perseguida, acosada, Dolores cogió el alabastrón, colocado en la mesilla de noche, y lo arrojó a la cabeza de su marido. Antonio, al sentir el dolor perdió por completo la razón. Alzó la silla de la costura para aplastarla con ella de un golpe. Dolores vió el peligro, se amagó, queriendo escapar; estaba allí la canastilla de los hilos... el dedal... las tijeras... No se dió cuenta de nada... Fué un segundo... aleteó el odio, el deseo de librarse del único modo que podía hacerlo... gracias al crimen...

[...]

Tuvo un grito de terror:

— ¡Lo he matado!

Lo veía allí, a sus pies, lívido, con los ojos vidriosos, [...], y no sentía piedad de él, ni arrepentimiento de lo que había hecho.

La habían obligado al crimen, negándole todo medio de separarse de aquel hombre. Pero tuvo la rápida intuición de que iban a venir a prenderla... La cárcel se le presentaba con todo su horror y toda su promiscuidad. Se veía vilipendiada, despreciada de todos. Nadie sería capaz de comprender el crimen pasional en una mujer. Nadie se daría cuenta jamás de que la mujer casada pudiese llegar al crimen para defender su castidad, el derecho a la posesión de sí misma, frente a su marido (267-271).

The reader asks her or himself if it was reasonable for Dolores to assume that Antonio, due to his history of domestic violence and his humiliation as a result of the court case, would lose his temper and try to kill her? Was her life really in danger, bearing in mind that self-defence, resulting in the death of the assailant, is only reasonable if the woman's own life is at stake? Given that Antonio's loss of self-control throughout the narrative increases in both frequency and venom, the reader is likely to absolve Dolores of her crime. What is more, the narrator, overtly sympathetic to feminist causes, can be considered the heroine's defence lawyer with the result that Burgos's fiction reads like case-studies. Burgos literally is a 'storyteller' who highlights the emotive aspects of personalised accounts of the powerless, in this case women. Burgos's work reveals her as engaged in such a consciousness-raising exercise: the events in her fiction encapsulate many of the ideas presented in her theoretical works, attesting to her aim to write fiction which combined her theoretical feminist ideas with narratives of the daily lives of women. Her stories are by no means

morally neutral, nor should they be considering the blatant legal and moral injustices women had to endure at that time.

Interestingly, reading real case-studies of the time shows that the difference between law and literature is virtually non-existent: law and melodrama become indistinguishable narratives of bipolar excess and outrageously unlikely plots. In *Cincuenta pleitos de divorcio fallados por la audiencia de Madrid* the lawyer José Luis Castillejo tells the following about a divorce case which he entitles “¿De quién era hijo?”:

Mientras el marido [...], decía que no era suyo, porque a la fecha de la concepción él no había estado con su mujer, ella, en cambio, contestaba muy resuelta que era suyo y muy suyo, pues lo que sucedía era que su marido cada día estaba peor de memoria. [...]

El marido se fundaba ahora para decir que su mujer era adúltera y observaba conducta inmoral, en que tenía relaciones amorosas con una persona muy conocida, que entraba en su casa en cuanto de ella salía el marido, y, sobre todo, por el hecho singular de haber quedado ella en estado interesante en época en que no había estado reunido el matrimonio.

La mujer se opuso a la demanda, diciendo que el adúltero era su marido, a quien por esta causa lo habían declarado divorciado los Tribunales eclesiásticos, y no ella, pues las relaciones de que hablaba con aquella persona conocida eran totalmente inexactas.

En período de prueba declaró, entre otros testigos, una criada que tuvo el matrimonio varios años, y la cual no dudó en afirmar que la señora tenía relaciones amorosas con aquel personaje, el cual entraba en la casa en cuanto el marido se iba a la oficina, y con el cual también hizo la señora un viaje a Barcelona, ocupando de día los dos juntos el mismo coche cama.

El médico encargado de dictaminar en la prueba pericial se vio negro para decir que no podía derivarse el adulterio del hecho de haber dado a luz la demandada, porque la concepción pudo tener lugar en época muy incierta.

Y cuando le llegó el turno al Juez, informó que no procedía la demanda por el adulterio, pero sí por la causa octava de la ley del Divorcio, o sea por la conducta inmoral de la esposa (Castillejo 1934: 75-76).⁸

Again it is not particularly astonishing that by the time the law intervenes in people's lives as a means of dispute resolution we find that narratives of human interaction, in particular those concerning family law, have invariably reached melodramatic proportions.

The morality of melodrama is another pertinent intersection between the genre and law, if the latter has any inherent moral value. For Brooks, morality in melodrama is unambiguous and assures the reader that:

⁸ For case-studies in general, see Clemente de Diego and Miñana y Villagrasa (1928).

the universe is in fact morally legible, [that] it possesses an ethical identity and significance. This assurance must be a central function of melodrama in the post-sacred universe: it relocates and rearticulates the most basic moral sentiments and celebrates the sign of the right. From its very inception during the Revolution — the moment when ethical symbols were patently, convulsively thrown into question — melodrama addressed itself to this relocation and rearticulation of an occulted morality (Brooks 1985: 43).

The celebration of right and condemnation of wrong, the binary constructions of virtue/villainy, justice/law and woman/man in its either/or exclusivity are intrinsic to the moral manicheisms of melodrama as well as to the law. One of the central functions of melodrama is to give an uncomplicated moral reading of the universe: it ought to assure us that ultimately there is a victory of good over evil; it ought to affirm that love and fair treatment are the proper human values that eventually succeed. However, exactly the opposite happens in the work of Carmen de Burgos: law at the time was so overtly gendered that her melodrama depicts the victory of evil over good and shows that an ethic of care is futile when faced with an overpowering legal system. Burgos not only subverts the conventions of melodrama, but also uses a genre based on manichean worldviews in order to criticise a legal system of melodramatic proportions, using the very construction of reality that is criticised. By using the genre of melodrama and its modes of excess she attempts to educate a readership that is not *au fait* with the intricacies of positive law.

In both *El artículo 438* (1921a) and *La malcasada* (1923d) law is explained to the reader by means of dialogues between the helpless heroines and their supposed saviours. In the former, for example, María de las Angustias exclaims: '¡Qué felices deben ser las naciones donde existe el divorcio!' to which her lover Jaime replies: 'Se cae en otros abusos; porque no hay ley mala si los hombres son buenos y viceversa. Pero en todo caso es mejor que entre nosotros' (38). 'There is no bad law amongst good men' is a shorthand condemnation of a legal system that defies logic and serves the egocentric values of a patriarchal society. According to legal theorist Nicola Lacey it is not particularly surprising that law succumbs to cultural engineering. By interpreting the law, and hence a text, one introduces the cultural context into the debate and it is this contextualisation which can be marked by stereotyped assumptions about sex differences (Lacey 1998: 6). Lacey's vantage point is the Anglo-American legal system of today, that is, she speaks from within an age of formal equality, in which the introduction of cultural values can only occur through the *interpretation* of legal texts, not the legal text itself. Women at the beginning of the twentieth century, however, were faced with the worst-case scenario: the lack of very basic human rights was codified, the legal text *itself* was phallocratic. In both cases, then and now, the claim of dominant legal discourse is that law is rational and objective. Yet this rationality, the most crucial characteristic of Western law, is itself a powerful marker of discourse. Susan Helman argues that in epistemology

difference has mainly been defined in terms of rationality. Women are labelled inferior, precisely because they are deemed incapable of rationally finding the truth that is easily accessible to the 'rational' man (Hekman 1999: 91). Using Max Weber's analysis, Hekman illustrates that it was the academisation of the law that resulted in the uniquely abstract character of our legal system, a notion that is echoed by the Spanish legal writer Romera Navarro. The hegemony of law lies in its blind desire for logical consistency, found both in its generalisability and systematisation. The hegemony of the ethic of rights is almost unquestioned and other legal practices, which would be more in line with an ethic of care, are marginalised and devalued (Hekman 1999: 102-103). It is this abstract character and seeming logic of law that Burgos's heroines struggle against. In these texts women appear naive, lack simple legal knowledge and are certainly emotional. Yet Burgos demonstrates that they possess a moral reasoning at any one time superior to that of their male counterparts and, more importantly, to that of the phallocratic legal system. Both law and melodrama use binary oppositions as their system of logic and their worldview, respectively. However, this 'black-and-white' view of the world is opposed by the infinite shades of grey of female moral reasoning. Women are able to see and act upon the complexity of moral dilemmas, not *despite* the fact that they are unversed in legal thinking, but precisely *because* of that fact. Their natural sense of justice has not been put through a legal education which would indoctrinate them with the logical system of binary oppositions.

Burgos can also be interpreted in the tradition of writers who understood melodrama as a mode of experience. Thomas Elsaesser aptly observes that:

These writers [Hugo, Balzac] understood melodrama as a form which carried its own values and already embodied its own significant content; it served as the literary equivalent of a particular, historically and socially conditioned *mode of experience*. Even if the situations and sentiments defied all categories of verisimilitude and were totally unlike anything in real life, the structure had a truth and a life of its own, which an artist could make part of his material. This meant that those who consciously adopted melodramatic techniques of presentation did not necessarily do so out of incompetence nor always from a cynical distance, but by turning a body of techniques into a stylistic principle that carried out distinct overtones of spiritual crisis, they could put the finger on the texture of their social and human material while still being free to shape this material. For there is little doubt that the whole conception of life in nineteenth-century Europe and England, [...] [was] often viewed in categories we would today call melodramatic — one can see this in painting, architecture, [...] the oratory in parliament, the tractarian rhetoric from the pulpit as well as the more private manifestations of religious sentiment (Elsaesser 1987: 49-50).

Two points are noteworthy here. Firstly, according to Elsaesser, melodrama is not a literary form used by incompetent writers, but by skilled ones who intentionally make full use of its codes of representation as a mode of social

criticism. Hence the criticism levelled at Burgos by literary historians like Eugenio de Nora is a fine example of misinterpretation and ignorance of the complexity of her work as well as a complete error of judgement when he claims that: 'La vigencia actual de una obra tan voluminosa (y tan útil en su momento) es desde luego escasa' (Nora 1973: 49). Secondly, and more importantly, melodrama can also be read as fitting the *Zeitgeist* of a particular period. As already mentioned, legal discourse at the time of Burgos displays an astonishing amount of melodramatic rhetoric. Burgos, as a proponent of first wave feminism, took legal discourse as a necessary point of reference in order to analyse and denounce the impediments that stopped women from leading as independent a life as men. She employed melodrama as a vehicle of propaganda of first wave feminism, precisely because of its potential to incite rebellion against patriarchal oppression. Burgos exploited the affective power of melodrama in two ways: firstly, given that melodrama very strongly activates an audience's participation, her texts were designed to anger readers so much that, as a result, they could not avoid engaging in the debate; secondly, she wrote about *private* moral dilemmas and could, by subverting the conventions of melodrama yet again, most poignantly illustrate the complexity of women's moral reasoning. More importantly, as Elsaesser pertinently argues:

The persistence of melodrama might indicate the ways in which popular culture has not only taken note of social crises [...], but has also resolutely refused to understand social change in other than private contexts and emotional terms. In this, there is obviously a healthy distrust of intellectualisation and abstract social theory — insisting that other structures of experience (those of suffering for instance) are more in keeping with reality. But it has also meant ignorance of the properly social and political dimensions of these changes and their causality, and consequently it has encouraged increasingly escapist forms of mass-entertainment (Elsaesser 1987: 47).

By no stretch of the imagination can Burgos's fiction be considered an escapist form of entertainment. The extent to which Burgos's fiction has been effective as an incitement to social change is, of course, equally debatable. Catharine MacKinnon provocatively argues that 'dominant narratives are not called stories. They are called reality' (MacKinnon 1996: 235). Dominant legal discourse is likely to exert much more social control over women than Burgos's stories could possibly counteract. As already mentioned, the question of whether the law changes society or whether social change leads to modifications in the law has been one of the most contested issues in legal history. According to legal writer Steven Vago, changes in law may be induced by a voluntary and gradual shift in society's morality. These shifts in social attitudes can be caused by a variety of factors such as changing social and economic conditions, politics and technology. In such cases, law is reactive and follows social change (Vago 1997: 287). Analysing both law and

melodrama as tools of social change, the following observations can be made: if changes in the law may be induced by society's changing morality, then literature can be instrumental in producing this shift in morality through its discussion of controversial issues. Indeed, Burgos's work illustrates that one of the crucial issues in legal discourse at the time was the prevalent morality that prohibited such 'revolutionary' behaviour as divorce, adultery, remarriage or single motherhood. In this sense her fiction can be interpreted as a consciousness-raising exercise. The point here is not that melodrama is as effective a means of social change as law. It is rather that literature can feed into a public debate and change public morality, which in turn has an influence on the law. In fact, in the law and literature debate this is one of the perennial questions: how much influence can literature possibly have on law? It seems therefore pertinent to end this study by pointing out that Burgos's efforts to work towards a modernisation of the divorce law were so acclaimed in her time that the legal expert Francisco Delgado commended her work in his official commentary on the law of 2 March 1932, when Spain finally adopted one of the most liberal divorce laws of the twentieth century (Delgado Iribarren 1932).

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