Same sex marriage:
“remote and strange peoples” in a “decent society”

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Sexuality, culture and politics
A South American reader

Although mature and vibrant, Latin American scholarship on sexuality still remains largely invisible to a global readership. In this collection of articles translated from Portuguese and Spanish, South American scholars explore the values, practices, knowledge, moralities and politics of sexuality in a variety of local contexts. While conventionally read as an intellectual legacy of Modernity, Latin American social thinking and research has in fact brought singular forms of engagement with, and new ways of looking at, political processes. Contributors to this reader have produced fresh and situated understandings of the relations between gender, sexuality, culture and society across the region. Topics in this volume include sexual politics and rights, sexual identities and communities, eroticism, pornography and sexual consumerism, sexual health and well-being, intersectional approaches to sexual cultures and behavior, sexual knowledge, and sexuality research methodologies in Latin America.
Same sex marriage: “remote and strange peoples” in a “decent society”*

Miguel Vale de Almeida **

We are not making laws, ladies and gentlemen, for remote and strange peoples. We are advancing the possibilities of happiness for our neighbors, our work colleagues, our friends and our relatives; and simultaneously we are building a more decent country, because a decent society is one that does not humiliate its members.

Speech by the president of the Spanish Government in the Congress Plenary, on the day the reform of the Civil Code was approved, 30 June 2005.

In several contemporary liberal democratic societies, access to marriage and/or the adoption of children has emerged as the last barrier to formal equality between gays and lesbians and the wider population. In many countries, the debate around this topic highlights the underlying political and socio-anthropological debate about the meaning and function of institutions and constructs such as marriage, kinship, family, affiliation, parenthood, gender, sexuality, and reproduction. In the present article, same sex marriage (SSM) is seen as a contested arena. My analysis is based on the conviction that the demand for equality of access to marriage constitutes a unique case in the field of sexual politics. This demand for access to an institution seen as conservative and which reproduces heteronormativity and patriarchy creates transformative dynamics not because it lacks “revolutionary” radicalism—like, for example, the abolition of marriage—but rather because it appears to be “integrationist”. A comparative approach will be adopted to explore the cases of the USA and France. My primary interest, however, will be the Spanish case, drawing specifically on field-work carried out in Barcelona (Cataluña) in 2005.


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1. The debate about SSM in the public arena

1.1. Positions in favor of SSM

In the ruling on the case of Hillary Goodridge and others vs. the Department of Public Health, which marked the polemical debate around SSM in the state of Massachusetts, the judges stated civil marriage is a valued institution because it “satisfies the desire for security, shelter and relationships which are all expressions of our common humanity”; the decision to marry or not, and to whom, is “one of the most significant acts of self-definition”; and the “benefits one can access only through a marriage license are enormous and touch on virtually all aspects of life and death”. Although this ruling alters the meaning of the institution, it states that:

…it does not change the fundamental value of marriage in our society. The plaintiffs seek to marry and this does not undermine the institution of civil marriage. They do not seek the abolition of marriage. They are not attacking the binary nature of marriage or the rules of consanguinity. The fact that couples of the same sex wish to take on the solemn obligations of marriage referring to exclusivity, aid and mutual commitment is a testimony to the enduring place that marriage has in our laws and in the human spirit.

This position in support of SSM is based on a universalist perspective in which the institution of marriage as a social value is not called into question by the sex of the spouses themselves. Moreover, this perspective has an integrationist character: in Spain, the Spanish Civil Code was altered to include an egalitarian aim which demonstrated that it considered SSM to be part of a wider process of democratizing the institution of marriage. The Spanish law reads: “the relationship and conviviality of the couple, based on affection, is a genuine expression of human nature and constitutes a privileged route in the development of personhood”. An evolutionary, historical and sociological approach is given prominence here:

…society evolves…[and] conviviality, among the couple, among same sex people, based on affection, has been increasingly recognized and socially accepted, and it has overcome deeply rooted prejudice and stigmatization.

Furthermore, in its preamble, the Spanish law recognizes the “long trajectory of discrimination based on sexual orientation, a type of discrimination the law makers have

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2 The complainants were two women, 44 and 43 year old, living in a conjugal relationship for 13 years and who had a 5 year old daughter.
decided to remove” as part of the “promotion of effective equality among citizens”. The preamble even appreciates the “contribution of [LGBT] groups” in this process.3

Those who defend SSM argue that one of the consequences of the feminist struggle is the democratization of marriage and, therefore, gay and lesbian demands regarding the right to get married become the ultimate test to overcome homophobia. They argue against other forms of civil union(s) and types of marriage which are called by other names.4 In the Spanish debate, this position has been summarized in the phrase “dignity presupposes equality”. That is to say, the issue of marriage is seen here as going beyond people's needs and material problems: it is understood as playing a symbolic role in the definition of belonging to the polis. Solutions such as the French PaCS5 are initially rejected; and equal rights are seen as an inalienable demand, even though, once the law is changed, some of its defenders may not actually want to get married. This line of argumentation is also developed by those who are critical of the marriage institution per se, who postulate that the right to equality takes priority over the quest for legal and cultural alternatives to the institution of marriage. Sentences such as “we can't discuss the issue in a decent manner with people who don’t have the right to get married, when we have such a right” and “first we need to achieve equal rights, then we can discuss the value of marriage” exemplify this.6

1.2. Positions against same sex marriage

Although the pro-same sex marriage position (which has significant national variations when it comes to identity politics) fits within a liberal democratic legal framework of equality, this does not mean that in recognizing liberal democracy, gender and sexual orientation as sources of inequality are automatically upheld by the law.7 The secular conservative sector argues that although homosexual union should be seen as valid, it should not be given the same status as marriage, nor indeed named as such. This sector suggests that a separate juridical institution should be created, a position taken by the Popular Party in Spain as well by the socialist Lionel Jospin in France in 2004. This position usually focuses on the definition of marriage as a union between a man and a woman and the abstract notion that a child needs a father and a mother. It is also based on the assumption that there is not a strong social demand for SSM. In the case of the USA, mentioned above, the DHS produced three legal principles that justified the prohibition of SSM: to ensure an “environment favorable to procreation”; to

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3 Law 13/2005, 1 July: “by which the Civil Code is modified in the issue of right to marry.”
4 Positions maintained, in Spain, by people such as Pedro Zerolo, of PSOE, or Jordi Petit, of the Gay-Lesbian Coordinadora (Catalonia).
5 Civil Pact of Solidarity, a juridical measure half the way between unmarried partnership and marriage.
6 This position is taken by Jordi Casas, of the party Iniciativa per Catalunya – Els Verts and by its Women’s Sector.
7 Note the differences between “multiculturalism” in US, and the French “republican universalism” and/or what seems to me to be a hybrid model in development in Spain.
guarantee the optimal environment for the education of children, which the DHS defines as “a family with two parents, one of each sex”; and to preserve the scarce financial resources of the state and private persons. In Spain, a statement by the Consejo General del Poder Judicial (General Council of the Judicial Power)\(^8\) affirmed that “marriage is either heterosexual or it is not a marriage at all, since marriage is “…a heterosexual union, characterized by the idea of the complementarity of the sexes”. In a passage that would later be removed because of the generated dispute, “homosexual marriage” was defined as “the union of more than two persons or the marriage between a man and an animal”. (As an aside, there is a common argument in Spain and elsewhere which states that homosexuals are not barred from marriage so long as they marry someone of the opposite sex). The focus of contention is, once again, on children: “joint adoption by a homosexual couple is contrary to the integral protection that the public authorities… should exercise in safeguarding children”, as the maternal and paternal figures are absent and homosexual couples are supposedly less stable. The “complementarity of the heterosexual couple” does not correspond with “…an ideological position, but to the simple observation of an anthropological reality” in so far as homosexual unions are “sterile, incapable of reproducing themselves.”

However, it is in documents of the Roman Apostolic Catholic Church (RACC) that the background of this normative and dogmatic position is made explicit. A document of an episcopal commission for the family states that:

> In God’s plan, sexual difference is a determining factor in being a man or a woman, each person being at his or her core a man or a woman; […] when sexuality is reduced to a mere biological datum, we risk objectifying and turning it into an exterior extension of the person; following this wrong premise, people then speak of “sexual orientation”, which supposedly everyone can freely determine; […] Besides not being able to choose whether to be a man or a woman, God’s blessing resides in the commandment of “go forth and multiply”, meaning that it is in paternity and maternity that spouses find the greatest fulfillment of their persona being as man and woman; […] The existence of a new human being is only made worthy when it happens within marriage and as an expression of conjugal love […] Marriage is based on sexual difference and is in its essence a heterosexual institution […] Through the figures of the father and mother, boys and girls configure their personal and sexual identity as man and woman […] All this makes the family the basic unit of society (RACC).

> Hombre y Mujer los Creó\(^9\)

As we can see, this document does not hesitate to introduce an idea that the secular position refuses to address: homosexuality is a problem. The RACC presents homosexual inclination (sic) as a disorder and a trial for homosexuals. Homosexuals

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should be accepted with “respect, compassion and politeness” since they have the same rights as other people. However, as stated by the RACC, they have these rights “as human beings and not because of their sexual orientation [...] Although the homosexual inclination is not in itself sinful [...] homosexual behavior is always sinful [...] and the love that may develop between homosexuals should not be confused with genuine conjugal love” (RACC).

1.3. Radical positions on same sex marriage

In the fields of feminism, the radical left and the social sciences, a tension between a radical critique of the institution of marriage and the defense of equal rights can be found amongst some actors and authors. Although, as we have seen, it is possible to establish a defense for the right to get married, in postponing the discussion about the institution itself, some sectors prioritize this right, which weakens the political strength of arguments against marriage. It is common to find positions endorsing the right to marry while being simultaneously critical of marriage. These go hand in hand with praise for the supposed conjugal and affective experimentation being carried out by gays and lesbians, which will supposedly lead to new forms of relationships and types of families. They also express the fear of stigmatization of gays and lesbians who do not want to live as couples, as well as the risk of creating a tier of “first class gays” (married) and “second class gays” (unmarried and vulnerable to accusations of promiscuity). This critique appears within the framework of a broader political and economical critique of the marketization and objectification of gay and lesbian social experiences and identities, processes which would supposedly become integrated via marriage.10

Some views of lesbian feminism have subscribed to the notion that marriage and family are institutions which have historically subordinated women, claiming the state should not determine the parameters of the relationship between two adults, but instead focus on supporting caring relationships. These groups claim that by encouraging marriage, the state aims to cut social security costs, transferring these costs onto married couples and families. This concern with marriage attempts to fit gays and lesbians into the purported heterosexual logic of the marriage contract: that is to say, of mandatory cohabitation, faithfulness and economic duties.

2. Anthropology and same sex marriage

Both the “for” and “against” (or “yes, but”) camps appeal to experts working in specialized fields such as psychiatry, psychology or medicine for their opinions.

10 In the Catalan case, these positions were communicated by Eugeni Rodríguez of FAGC (Front d’Alliberament Gai de Catalunya) and Marta Estella do GLF (Grup of Lesbianes Feministes).
on the well-being of children who are brought up by homosexual parents. But what about anthropology? It is worth noting that, contrary to what may be assumed, there is nothing in anthropological knowledge which makes it automatically an ally of the defenders of SSM. Anthropology can postulate positions that reduce cultural diversity and historical dynamics to universal principles that verge on naturalizing determinism, or it may postulate positions that break any order and structural similarities into a myriad of particularistic inventions and experiences. Neither of these two extremes are adequate in terms of the present discussion. Societies change and so do cultural meanings, but they do not change as fast as those who are marginalized would like. Societies reproduce and perpetuate themselves, as do cultural meanings, but they do not do so in a straightforward manner, as those who benefit from hegemonic meanings would prefer. Within this tension between relative change and continuity, symbolic materials are re-defined. The American Anthropological Association declared it was in favor of marriage and adoption, drawing on comparative ethnographic data to introduce homosexual conjugality and homo-parenthood into its vision of the great fresco of human cultural-sexual variety. But this position, which is relativist in nature, would only be truly valid if it were to consider what I believe to be an ethnographic evidence: the actual existence of same sex couples and homo-parenthood, and empirically demonstrable changes in gender relations, conjugality, perceptions of sexuality and mechanisms of human reproduction, as well as notions of “property” and custody of and responsibility for—and in relation to—children. We are ethnographic material. Male couples exist, female couples exist; male couples and female couples with children from previous relationships, adopted, or as products of new reproductive technologies, exist. And now there are also nation-states in which these realities enjoy recognition by the state, apart from corresponding to practices and having meaning for their respective actors and actresses. This is what makes this topic so significant, since it is currently moving from the field of disparate practices to public space and the social contract. On this point, I disagree with the fear expressed by Judith Butler (2003): that gays and lesbians are delivering themselves into the guardianship of the state.

2.1. Cultures of relatedness: homoconjugality and homoparentality

State recognition does not imply the standardization of forms of conjugality or relatedness. In Spain, for example, Olga Viñuales (1999) found in her research on lesbians in Barcelona that the greatest family acceptance and integration of lesbians was of those who had biological children because this guaranteed “blood” related descent and the supposed continuation of traditional gender representations, such as the “maternity instinct” among lesbians of the “lesbian baby boom” in Cataluña. In a personal communication with Olga Vinuales, I observed that this situation risked generating the previously mentioned distinction between “first class gays” and “second class gays”, here with reference to lesbians. However, Olga did not find what Kath Weston (1991), in the context of the USA, termed “horizontal families”, constituted of
ex-lovers and friends. In Cataluña and Spain, a lover is one thing, and a novia (girlfriend) is something else. The lover—or ex-lover—does not remain in one’s personal network after separation, whereas the ex-novia does. (In the English language it is clear that the word "lover" covers both meanings.) Olga’s point is that people in general do not consider their social network to be their family. “Family is family”, that is to say, it is consanguine. Friends and lovers are precisely that—friends and lovers. A novia is someone with whom one has a stable and public relationship: someone who can enter the family through what is perceived as a simile of marriage. This does not necessarily imply co-residence, however. Co-residence applies only to getting married which, with or without legal marriage, means to share a residence. This is in keeping with the idea that the “home” is the cultural equivalent of the family. In young people’s “coming out” narratives, to be thrown out of the home means to be thrown out of and disowned by the family. Here we find that cultural forms of relationship management are articulated around the forms defined by the state.

In the context of the USA, Kath Weston (1991; 1998) is often cited because she emphasizes the notion of “choice” in the development of family and kinship ties in gay and lesbian communities. Her approach develops the contemporaneous anthropological position which separates kinship analysis from the idea that biological families can be socially extended via affective ties. The contribution of Janet Carsten and others to this discussion are among the most significant in so far as they substitute the notion of kinship with a broader category of “relatedness”:

... in any society there are types of social and emotional feelings of connectedness, of which biological relationships are only one part. The category of “relatedness” is obviously more capacious than the category of “kinship”, hence, it expands the analytical territory... relatedness opens the door to a broad contextualization of kinship. (Moore, 2004, in a review of Carsten, 2000).

How can we transform this anthropological approach into a social reality which is politically recognized? I contend that same sex couple’s access to legal marriage will be a step that confirms—paradoxically—the essential emptiness of marriage. This supports Fassin’s (2004) assertion that:

... in terms of legal consequences for same-sex couples, marriage means less in Belgium than registered partnership does in Sweden and the Netherlands; and in these last two countries, informal cohabitation means more, legally speaking, than registered partnership does, not only in Belgium, but also in France and Germany.

That is, marriage does not have meaning in and of itself, nor does it constitute a relationship. It is a contractual agreement that may or may not include relational content. Marriage, in the debate I have been exploring here, works more like a symbol of inclusion, citizenship and recognition; of the prosecution of modernity; of the attainment
of sexual citizenship (Cf. Jeffrey Weeks) or intimate citizenship (Cf. Ken Plummer); of the maintenance of social order and the traditional gender and sexual regime. Relational contents are found, instead, in realities such as those described by Viñuales or Weston.

In 1997, there was a short article in Cultural Anthropology by anthropologist David Schneider regarding the increase in gay and lesbian “marriage” (in quote marks in the original text). According to Schneider it was not a simple development in the direction neither of legitimizing homosexuality nor in terms of “assimilationist” strategies. His idea was that homosexuality does not present anything significantly different from heterosexuality with respect to kinship and family: “Gay and lesbian couples are formed by people in love. They create a domestic unit” (Schneider, 1997). In a nutshell, gays and lesbians aspire to belong to a culture and society whose values they share. “Culture” here means, in fact, “the hegemonic discourse”. In response to Schneider, British anthropologist Marilyn Strathern (1997) agreed that it would be absurd to expect gays and lesbians to challenge American culture. For her, “to say whether or not things have changed, whether there are new cultural forms or just old ones which are reworked, or nothing new at all, or everything new, amounts to a political decision” (Strathern, 1997). Heterosexuality was once central to notions of American kinship but not anymore. Strathern argues that it is no longer the icon it used to be because a homosexual union “will do just as well”.

2.2. Symbolic order or gender order?

A different issue arises when anthropologists and other social scientists try to provide ontologies in order to understand the abstract concept of “society”. In France, for example, some theorists (especially philosophers and psychoanalysts) took a position against same sex marriage and even against PaCS, based on what could be called a “symbolic order argument”. First of all, it is worth noting that, as Daniel Borrillo and Pierre Lascousmes (2002) claim, PaCS constitutes a situation of formal inequality, since it excludes homosexuals from the right to marriage and parenthood. According to Borrillo and Lascousmes, such a “symbolic order”, “similar to its predecessor (the natural order) should [for its defenders] remain unchanged and outside the political field” (2002). It is no longer theologically a priori, but rather an anthropological invariable. Note the following statement by Irène Théry (1997; see also Agacinski, 1998), one of the participants of the debate:

... [T]he juridical institution of difference boils down to the following, the enormity of which we haven’t quite measured yet: to recognize that each sex needs the other so that humanity may live and reproduce.

Nature, divine order, anthropological foundations and symbolic order seem to be equivalent in arguments “against” same sex marriage. These similarities, for these
authors (and in accordance with differentialist feminism, which is strong in France), are an adequate political translation of an anthropological fact: the difference between sexes (gender is here reduced to the arbitrariness of role distribution, and is not seen as constitutive of a certain idea of sexual difference).

According to Agacinski, homosexuality is the exception that confirms the rule, a way of remembering and consolidating the “symbolic order”. It is not by chance that she expresses preference for Genet or Mishima to the imaginary figures of homosexual couples (in other words, she praises representations of the “damned homosexual” or the “anti-system homosexual”).

This strange mixture of differentialist feminism and structuralism, when applied to the transformations of a reality, as ethnographic as any other (a contemporaneous Western society), results in the legitimization of the gender order as described by Connell (1987).

3. The Child as a phantom

Finally, we cannot ignore the “phantom” underlying this debate: the social figure of the child. According to Anne Cadoret, western societies have traditionally based kinship on the coincidence of social and biological kinship, the presumption that (social) parents and genitors are one and the same (Cadoret, n.d.). The exercise of kinship is not restricted to procreation, since it involves the production of the human person through nutrition, education, name attribution and transmission of status. These tasks are given to those who are considered genitors in our society, through our rules of affiliation: a child must have two parents who give the child a family and first names, exert parental authority and introduce the child to each one of their lineages (Cadoret, n.d.). This consignation is transmitted through various family forms, such as adoptive families (in which parents substitute genitors), or families who undertake artificial insemination by anonymous donation and homo-parental families. However:

If in some of these family modalities the parents may still represent themselves as the possible genitors of their children, and if, in the permutations, the affiliation fiction may sometimes work, this is not possible in the case of homo-parental families as the two parents of the same sex are not able to, by themselves, produce the child and pretend that they are the genitors […] They provide situations of reproduction which necessarily reveal the ways in which kinship is social. (Cadoret, n.d.).

For a long time sexuality, procreation, affiliation and alliance coincided, even if only ideally, and so did the production and reproduction of the family. It was not biology which produced affiliations, but marriage: the institution that provided the framework for procreation and sexuality (Cadoret, n.d.). Our sleight of hand, as Cadoret calls it (or our symbolic construction), was to make it credible that nature, the body’s truth,
creates affiliation, without recognizing that it was the groundwork of affiliation and the fabrication of the child within marriage that provided its validity. But now the separation between procreation and marriage has becomes obvious, even though both processes remain critical for the child to reach the adult stage of life (Cadoret, n.d.).

4. Ethnographic Vignettes: Close people who want to get married

I cannot finish this article in a “dry state”—the dryness of the analysis of “for” and “against” arguments within the public debate on SSM, or by invoking anthropological debates on the topic. Allow me to redeem the “wetness” of the testimonies of real people and their experiences of conjugality. So, just like that and without further analysis:

Montse and Núria are in their forties and met about 20 years ago. They adopted their first child eight years ago, the second two years ago, and the youngest last year. Two children are from Nicaragua and one from Morocco. When the Catalonian civil union partnership law was approved they registered immediately at a notary office, even though they had previously signed a contract to ensure that if one partner died, the other (the non-officially adoptive mother) could keep custody of the children. The couple’s strongest ties are with Montse’s brother and his partner, followed by Núria’s brother, his wife and three children, and thirdly, a lesbian couple who have also adopted and are members of the Association of Gay and Lesbian Families. They both want to get married as soon as possible and ideally on the day they celebrate their 20 year anniversary. Montse and Núria have different views on the ceremony itself. Núria wants a large public event, with all the people “one is supposed” to invite to a wedding. She says she wants to make a public statement. Montse, on the other hand, would like to have a small private ceremony, as she would like to only invite those who have always stood by them: “and when it comes to family, I think my brother and his partner would be invited”. Núria wants to be seen as a “person with all the rights and status marriage confers”, something she herself admits harmonizes with being “bourgeois”. She justifies this by saying that she comes from a family of five children and all her siblings have been married in church. Although she has been in the same relationship longer than any of them, she feels that they look down on her, as if she were of a lower class:

They won’t say it, but I can feel it. I was barred from marrying for twenty years. Maybe I used to say this because I wasn’t with a man: I can’t hold a neutral position and say I don’t believe in marriage. If I were with a man, I would probably not get married; I want to get married just to have the same rights. Respect, faithfulness, etc. are things one achieves in other ways, not through a piece of paper.

Enric is Montse’s brother and has lived with Andreu for 15 years. They are both pro-gay marriage and plan to get married soon. With a smile—as if saying “imagine that!”—they remark that they met in a sauna. “You know, you think you’re there just for a quickie,
an hour or so, but we ended up falling in love with each other.” They recall that at 2am that night, Andreu ended up frying chips for both of them in his flat. They haven’t yet decided what type of ceremony they want to have. The only thing Andreu is certain of is that he doesn’t want a “straight wedding, with lots of guests, loads of food, table arrangements, etc.” He would prefer a small ceremony for friends and family.

They’re both certain that Montse’s and Núria’s wedding will come first: they will “open the door”. They are very close to Montse and Núria: “Andreu sees my sister’s partner more often than he sees his own sisters”. They’re both godfathers to their nephews and, since they live in the same neighborhood, they spend a lot of time with the children. They have decided not to have children themselves because they feel that they are “too old for that” and it would be a “tremendous responsibility to bring children up, and to stop them being discriminated against […] We will just be uncles (tiets)¹¹—and what excellent uncles!”

The scene is a flower shop in the Gracia neighborhood. Joan and João are 61 and 54 respectively and own the shop. They arrange flowers and serve customers while we talk. They are close friends of Enric and Andreu and they also know Montse and Núria. They have been living together for 24 years. They met at the peak of what became known as the “transition”, after Franco’s death and whilst democracy was slowly being established. Being gay back then was truly living at the margins. Joan was married to a woman and had two daughters. João is Portuguese: he was born in a small village in the Alentejo region and says he has a love-hate relationship with Portugal. He misses it and says “no two or three days go by without my listening to a fado record”. They visit Portugal often. This year they don’t plan to go, but they’ll invite some nephews to Barcelona instead—“They have never been here. It would do them good to see a free society such as this”, says João. Now they want to get married, ideally next year when their relationship will be 25 years old. “Unless something happens and we have to bring it forward. But we will do it.” They are very positive about their wish to marry, and want a small event rather than a big ceremony, with close friends, Joan’s daughters and grandchildren and maybe some of João’s relatives from Portugal.

Montse and Núria got married in the Ajuntamento de Barcelona on 8th October last year. Their real names are Elisabet and Dolors. I hope I’m not abusing my position as an anthropologist in paraphrasing the anthropological and political references of Zapatero’s discourse by saying they no longer feel like remote and strange people, but members of a decent society.

¹¹ A term of endearment that can be literally translated as “little uncle.”
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