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## Building Bridges V--Cubans Without Borders: Mujeres Unidas Por Su Historia

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**BUILDING BRIDGES V—CUBANS WITHOUT BORDERS:  
MUJERES UNIDAS POR SU HISTORIA<sup>1</sup>**

*Berta Esperanza Hernández-Truyol*

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I. INTRODUCTION

Since the Castro revolution, it is impossible not to think of the existence of two Cubas—radically different politically, socially, and economically from each

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1. Author's translation: "Women united by their history."

\* Levin, Mabie & Levin Professor of Law, University of Florida Levin College of Law. Many thanks to Florida Law Review for their help with, and publication of, this Symposium. *Mil gracias* to Shelbi Day (University of Florida, May 2002), Rebecca DeConcilio (University of Florida, May 2002), and Veronica Díaz (University of Florida, May 2002) for their research assistance on this project. Since the writing of this Essay, I have gone on my first trip to Cuba. I mention this because it effectively changes the representation in this work that I have yet to return to my birth-land. Many of the questions I raise in this Essay, however, remain unanswered. Nonetheless, I can say that during my visit, the purpose of which was to attend the Second Annual Cuba/U.S. Legal Forum, I felt both at home and a stranger. There is, to be sure, a paper to be written about that experience, but that project is in the hopefully not too distant future.

other. One is the post-revolutionary society created in the actual physical island, a mere ninety miles from the southernmost tip of the United States. This Cuba—Castro’s Cuba—has existed for the last forty-two years under a socialist, communist regime imposed by the revolution, whose objectives have been to develop a social and an economic rights agenda and reject capitalism, imperialism, and colonialism.<sup>2</sup> In this society, much as in other socialist/communist societies, individual freedoms are sacrificed for the good of, and subordinated to, the collective interests. It is the government’s business to provide healthcare, education, welfare, food, and work for its citizens, even if it is at the expense of the personal freedom to choose a field of work or education.

The other Cuba is purposely dramatically different. Quintessentially represented by the Miami-Cuban exile community, this Cuba views Castro’s revolution as a travesty that robbed *cubanas/os* of a beautiful, enchanted island and stalled economic progress to the detriment of the country and its people.<sup>3</sup> This Cuba embraces capitalism, democracy, and personal freedoms above all else, and it condemns Castro’s denial of these rights to those on the island. Freedoms of movement, speech, and association, as well as the rights to privacy, to vote, and to travel—all rights denied in Castro’s Cuba—are rights and freedoms to be protected at all costs.

Notwithstanding these incontrovertible political, philosophical, and ideological divergences, for years I have interrogated whether the distinctions were, or could be, defining of authentic *cubanidad*. I often have wondered whether the Cuban people on the island would be really different from those in exile. In other words, I questioned whether the revolution had succeeded in changing the *cultura cubana* and thus truly created a different Cuban society. After all, save for the Castro period, one is still engaging in a society with shared roots of conquest and dependency, colonialism and independence.<sup>4</sup>

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2. See generally FIDEL CASTRO & ERNESTO CHE GUEVARA, *TO SPEAK THE TRUTH: WHY WASHINGTON’S ‘COLD WAR’ AGAINST CUBA DOESN’T WORK* (Mary-Alice Waters ed., 1992).

3. See Berta Esperanza Hernández-Truyol, *Out in Left Field: Cuba’s Post-Cold War Strikeout*, 18 *FORDHAM INT’L L.J.* 15, 32-35 (1994) (providing an analysis of economic well-being in pre-Castro Cuba; assessing Castro’s impact on “development” through regulation of radio stations, telephones, etc.).

4. If indeed the revolution resulted in different Cuban peoples, the issue of authenticity—of true *cubanidad*—would then lead to further interrogations as to whether territorial ties could, alone,

I suspected that the history and cultural ties, binding *cubanas/os* across the ninety-mile span of sea, would be stronger than the dividing force of the political regimes under which we live. My initial explorations into the *situación cubana* focused on the existing political, economic, and governmental system and how it fit into the human rights model.<sup>5</sup> As that intellectual exercise ceded to cultural considerations and a desire to explore similarities between the two Cubas, I started longing to visit the actual physical place that was driving my studies—the place of my birth.

My first planned trip to Cuba since my family left in 1960 was in 1999. Because I am a naturalized U.S. citizen, my passport plainly indicates my place of birth as Havana, Cuba. Castro does not recognize naturalizations, making me a Cuban subject in his eyes. Thus, while I had anxiously desired to return to my birth-land for some time, I was not willing to risk falling outside the realm of the protections afforded by my U.S. passport by taking popular, but unauthorized routes through either Canada, Nassau, or Mexico to *mi isla*.

In 1999, the perfect opportunity to visit Cuba arose: I was offered a position as a representative of a nongovernmental organization (NGO), *Madre*, to attend a human rights conference that was taking place in Havana. *Madre's* focus is on helping mothers and children; so the mission of the organization would not be controversial and would not imbue me with any sort of political baggage in the eyes of *mi familia en el exilio*. I happily submitted my paperwork to *Madre* for the NGO to procure the requisite U.S. and Cuban visas.

Once I completed my part of the paperwork, my emotions started to make their way into my consciousness—emotions that vividly reflected the existence of the two Cubas. How would I *feel* about visiting my birth country? Would I be considered a *real* Cuban and warmly welcomed and accepted—an interrogation that in a very personal context raised the issue of the authenticity of one form or another of *cubanidad*? Or, would I find myself as an “other” in Cuba—a stranger in an unfamiliar, yet at the same time familiar, territory, much the same as (but at the same time different from) the way I am an “other” within the U.S. borderlands because of my *cubanidad*? Would the accents, music, and food be those to which I was accustomed or would they be foreign and strange? Could I bond with the family I planned to visit even though I barely knew them, or would we live the deep and cavernous divide that separates *cubanas/os* inside and out of the *fronteras* that constitute Cuba's sovereign margins?

In order to problematize these complicated geographies, I recruited *mami y papi* to construct a genealogical tree that would enable me to locate my perch in the family history—a concrete location that might provide a sense of

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ascribe authenticity. That is, however, a question for another work.

5. See generally Hernández-Truyol, *supra* note 3.

my elusive niche. *Mami y papi* spent hours pasting together sheet after sheet of paper creating a map of our shared histories. They also spent hours (literally hours as the telecommunications routes with Cuba are less than efficient) calling relatives to arrange for meetings during my stay. They contacted first cousins with whom they were raised and the aunts and uncles who had assisted in raising them to alert *la familia* about my upcoming visit. All relatives were poised to welcome me with open arms. One of *mami*'s cousins, Adigio Benitez Gimeno—a well-known artist whose work is considered cultural patrimony—was having an art opening on the date of my arrival. He planned to pick me up at the hotel to take me to the event—one that I much anticipated as I would have the unique opportunity to meet the local artists and their friends. One of *papi*'s cousins—interestingly the part of the family who lives in what used to be our family home in Havana—was equally welcoming, even referring to the place at which they have lived for almost forty years as *my house*.

Feeling more grounded because I had firm plans with *la familia*, my sense of belonging on both sides of the Cuban borderlands was starting to take hold as a reality. I planned my journey so that I would spend a few days with my parents—in *this* Cuba—before going to *la isla—that* Cuba. Visiting home would allow much needed time in this Cuba for me to start getting to know *la familia* in that Cuba. *Mami y papi* showed me pictures and shared stories that allowed me to start my travels without leaving familiar territory. Those days were the start of the process of weaving connections that would traverse geographic, economic, and political boundaries; cultural threads that provided unity in distance. *Sangre llamando a sangre*.<sup>6</sup>

Only one week before my projected departure date, I received a call alerting me that the paperwork necessary for the issuance of my Cuban visa was incomplete. Specifically, the NGO working on processing my application had failed to state that I was born in Cuba, a reality that triggers different information and reporting requirements than for native-born *estado unidenses*. Thus, merely days prior to the anticipated starting date for my anxiously awaited journey, I found myself scrambling to secure details concerning a past about which I had no actual knowledge and an unknown future—my history in, and my future plans while visiting *that* Cuba. Fortunately, *mami y papi*

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6. Jeanette Rodriguez, *Sangre Llama a Sangre, Cultural Memory as a Source of Theological Insight*, in *HISPANIC/LATINO THEOLOGY: CHALLENGE AND PROMISE* 117-18 (Ada María Isasi-Díaz & Fernando F. Segovia eds., 1996); Guadalupe T. Luna, *Gold, Souls, and Wandering Clerics: California Missions, Native Californians, and LatCrit Theory*, 33 U.C. DAVIS L. REV. 921, 954 (2000) (translating this reference as *blood cries out to blood*; explaining that the expression “connotes something in the blood that allows one to access the affective, ‘intuitive level’”); see also PAULA GUNN ALLEN, *THE SACRED HOOP: RECOVERING THE FEMININE IN AMERICAN INDIAN TRADITIONS* 209 (1992) (explaining that to her, this phrase refers to knowing our mothers). To me, this phrase is a combination of Allen’s approach and our LatCritical goals of creating and practicing community and building coalitions.

again jumped in to help. They located documents and compiled required data such as the address of the hospital where I was born, the addresses where I resided when I lived in Cuba, and the names and addresses—including cross-streets—of any relatives or family friends with whom I intended to be in contact during my stay.

Sadly, there was not enough time to resolve all the deficiencies in my application. I still visited my folks, learned about *la familia*, studied the genealogical tree *mami y papi* had meticulously prepared, and looked at pictures of those *familiares* I would have visited. But I never traversed the physical borders to the land of my birth. I failed to savor Adigio's art; I did not meet any artists. I missed the opportunity to visit the wheelchair-bound, eighty-year-old daughter of an uncle of mom's who I remember well—he raised chickens and was thus, popular with the kids in the family. He is the very same uncle who was an early victim of the revolution. My desires and careful planning notwithstanding, I would not cross the geographic boundaries of my cubanness; I would not explore the cultural (dis)connections. I was committed to observe the rule of law governing my travel to Cuba and, this time, I was unable to meet its requirements. Being determined to have a visa in hand before I touched Cuban soil, this voyage could not become a reality.

Not much more than a year after my failed attempt to go to *mi tierra*, the social, political, and geographic distance between Castro's Cuba and the Cuba of Miami's exiles was boldly underscored. Elian happened. The ninety-mile stretch I never crossed emerged as the light years that separate *la isla y el exilio*.

I have never forgotten the exact date on which my family left Cuba: November 10, 1960. I was Elian's age. During the Elian controversy, I—sometimes unconsciously, sometimes knowingly—kept placing myself in the little boy's shoes. What I remembered in 2000 about what I felt in 1960 was that I remembered nothing. Well, nothing other than hugging my doll Alicia, a doll that still sits tall, if a little weathered, at my parents' home in Miami, sharing space with my high school, college, and law school diplomas; my reprints; my volleyball, basketball, and softball letters; and my picture albums. I also remember going through (what I now realize was) customs with *mami*, *papi*, and Ernesto, my three-year-old little brother, and feeling lost.

In hindsight, those reluctant memories, albeit limited, are safe because *mami y papi* were there with us, holding our hands. As a young child, my brother and I did not have to worry about being little kids in a new place with unknown persons—strangers if not strange, speaking an alien tongue, looking different, eating unfamiliar foods. I could not help but invoke those memories as I thought about Elian and his plight.

To be sure, *cubanas/os* on both sides of the ninety-mile divide may hold widely different opinions, as individuals, on the Elian affair.<sup>7</sup> Such reality notwithstanding, dramatically divergent group narratives emerged. Those collective narratives were bounded by geography, and resulted in a new location in which to study the tragedy of the commons.<sup>8</sup>

The *cubanas/os en el exilio* adopted a hard-core, anti-Castro master narrative. That storyline insisted that Elian, just like any child, would be better off being raised in a free country that follows the rule of law, a country in which he would pursue his own (American) dreams, free from meddling by the government.<sup>9</sup> This script exhorted that civil liberties were more important than economic rights, capitalism superior to communism, and freedom more meaningful than family if that family was in Cuba—arguing that a dead mother's (and distant uncle's) apparent wishes were more significant than those of a living, caring, and involved father.

The *cubanas/os* in Cuba, on the other hand, insisted that the rule of law was on their side: a child—particularly a minor child—belongs with his/her parents. They challenged the exiles' anti-Castro's fanaticism that would separate father and son, simply based on their political ideology and the U.S.'s imperialistic power. They observed that the boy was healthy and well-adjusted, was receiving a good education, and had a good home.<sup>10</sup>

Plainly, the divergent positions were ideologically, philosophically, and emotionally driven. The debate made me rethink whether there could exist a Cuban society that was culturally cohesive, whether *cubanidad* was dependent on territorial borders and political ideology, and whether there could be a singular narrative on *cubanidad*. I suspected that, while social, political, and economic differences might result in some insurmountable divides, cultural tropes might unite us, even if not always through desirable traditions.

7. Berta Esperanza Hernández-Truyol, *On Becoming the Other: Cubans, Castro, and Elian—A LatCritical Analysis*, 78 DENV. U. L. REV. 687 (2002) (discussing the facts of the Elian Gonzalez affair; analyzing the legal principles; engaging in a critical analysis of varying views of several Cuban-American law professors concerning the outcome of the case, specifically noting that the law is used just as effectively by those holding different positions to justify and substantiate their respective positions).

8. Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243, 1244 (1968) (describing dilemma about use of a common field by individuals each of whom positively benefits from adding one more animal to his stock with the result of an over-grazed field; noting that care for public goods necessitates either public regulation or an understanding of proper levels of use). In the Cuba analogy, Cubanness is at risk because culture, like the field, is being indiscriminately loaded with tropes in an unregulated context in which there is no common ground for cultural conversations.

9. See generally *Gonzalez v. Reno*, 212 F.3d 1338, 1344-45 (11th Cir. 2000); Hernández-Truyol, *supra* note 7 (presenting the sentiments expressed by those Cuban Americans who felt that Elian should be allowed to stay in the U.S.).

10. *Gonzalez*, 212 F.3d at 1345.

To test this thesis, as this Essay will set out, I undertook to study the role of *cubanas* in society. Part I traces the role of women in Cuban society throughout history. It includes a review of the development of Cuban laws concerning women, and women's role in developing them. This Part also addresses laws pertaining to women that were adopted by the present revolutionary regime. Part II sets out laws, beyond the laws of Cuba, that address the issue of gender/sex equality. It focuses on international norms that protect sex equality pertinent to women in Cuba as well as to Cuban women outside of Cuba. It also reviews U.S. laws on equality as they affect Cuban women within U.S. borders. Part III turns to look at culture and its function in defining the reality of Cuban women on the island as well as in the U.S. The work concludes that culture trumps law: cultural assumptions about sex roles have persisted in Cuban societies whether within the island or in the Cuban community within the U.S.; further study is likely to reveal additional commonalities with respect to attitudes in matters such as family, race, and sexuality.<sup>11</sup>

## II. A BRIEF HISTORY OF WOMEN IN CUBA

This Part will chronicle the role of women in developing Cuban law and society. Significantly, women throughout Cuba's history have played key roles in the evolution of the island's society. Although their participation has directly triggered and effected change, they have not always been full beneficiaries—at least in the public manifestations of change. In the early periods as well as today—both inside and outside the island's *fronteras*—they seldom hold public office or belong to the elite political, civic, or corporate spheres.

### A. *Mambisas: The First Women's Movement in Cuban Society*

Cuban feminism emerged, and throughout history re-emerged, in times of revolution. The first Cuban women to break from the mold established by society, church, and state which dictates that women are to be weak, dependent, and submissive—the first Cuban feminists—were the *mambisas*, woman warriors.<sup>12</sup> The *mambisas* were in their apogee when Cubans were seeking independence from Spain and challenging the Catholic Church, Spanish laws, patriarchal privilege, slavery, social ordering, and a plantation-centered

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11. See, e.g., Lillian Manzor-Coats, *Performative Identities: Scenes Between Two Cubas*, in BRIDGES TO CUBA/PUNTES A CUBA 253, 256 (Ruth Behar ed., 1995) [hereinafter BRIDGES TO CUBA]. See generally Alejandro la Fuente, *The Resurgence of Racism in Cuba*, NACLA REPORT ON THE AMERICAS, May 1, 2001, at 29; G. Derrick Hodge, *Colonization of the Cuban Body: The Growth of Male Sex Work in Havana*, NACLA REPORT ON THE AMERICAS, Mar. 1, 2001, at 20.

12. See K. LYNN STONER, FROM THE HOUSE TO THE STREETS: THE CUBAN WOMAN'S MOVEMENT FOR LEGAL REFORM, 1898-1940, at 5-6, 13 (1991).



economy.<sup>13</sup> The *mambisas*, feminist pioneers who were wives and mothers, redefined the borders of womanhood by leaving the safety of their *hogares* to join in the fight for Cuban independence from Spain in two wars.<sup>14</sup> First, they took part in the Ten Years War of 1868-1878, and then in the War of 1895, when Martí called the rebel armies to arms and reminded them of their dreams of an independent Cuba.<sup>15</sup> Through their participation in war, the *mambisas* challenged the traditional female spaces of weakness and submissiveness and embraced the male spaces of strength and leadership.

Considering their active role in battle as well as their continued domestic duties, the *mambisas* may well have been the precursors of today's superwoman: they worked full time both inside and outside the home. Interestingly, even their role in battle was appreciated in the context of their exalted natural role as mothers. Indeed, Mariana Grajales—*La Leona*, the mother of ten soldiers, including Antonio Maceo, one of Cuba's best-known, loved, and respected heroes—fought alongside her sons in war and thus, became the archetype and exemplar of motherhood.<sup>16</sup> Such an image of the *madre patriota* became an emblem of Cuban sacrifice and endurance—traits that are demanded of all women by the culture in its *marianista* outlook.<sup>17</sup> Yet, the *mambisas* were the first women in Cuba to own their own property, once again challenging the whole notion of male authority over family property, and establishing a woman's right to control her own property without a pre-nuptial agreement.<sup>18</sup>

The “legal” changes effected by the *mambisas* constituted a blueprint for the legal changes that would take place in Cuba pursuant to women's initiatives. Significantly, however, the social changes—or lack thereof—as

13. See *id.* at 5-6. Early Cuban feminists struggled within, rather than against society; rather than being an autonomous movement, Cuban feminism sought to work with men for change. See *id.* at 13. Pre-revolution feminists tended to be white, upper-middle class women in a society that was based on race and class distinctions. See *id.* After the revolution, however, feminism became part of the movement, and it was government sponsored and supported. See *id.* at 6-7. Within the context of the socialist revolution that eradicated both class and race distinctions, feminists became much more representative of Cuban society as a whole. See *id.* at 5-6.

14. *Id.* at 13.

15. *Id.* at 28.

16. ISABEL HOLGADO FERNÁNDEZ, ¡NO ES FÁCIL! MUJERES CUBANAS Y LA CRISIS REVOLUCIONARIA 261 (Icaria Antrazyt 2000).

17. See *infra* note 209 and accompanying text; see also BONILLA-SANTIAGO, BREAKING GROUND AND BARRIERS: HISPANIC WOMEN DEVELOPING EFFECTIVE LEADERSHIP 11 (1992); PIERRETTE HONDAGNEU-SOTELO, GENDERED TRANSITIONS: MEXICAN EXPERIENCES OF IMMIGRATION 9 (1994) (explaining that “[t]he ideological corollary [to machismo] for women, . . . *marianismo* (marianism), is modeled on the Catholic Virgin Madonna, and prescribes dependence, subordination, responsibility for all domestic chores, and selfless devotion to family and children”).

18. See STONER, *supra* note 12, at 22.

manifested by the *mambisas'* *marianismo* also foretell the laws' lack of social impact.

### B. *Early Legal Changes Favoring Women*

The war of independence ended in 1898 with the defeat of Spain—a Cuban victory that could not have been possible without the revolutionary participation of women.<sup>19</sup> Interestingly, these women had to protest the 1901 Cuban Constitution because it ignored women's rights.<sup>20</sup> After the war, female independence fighters returned home and fell back into their societally defined roles.<sup>21</sup> Although the women warriors were hopeful of social change based on Jose Martí's pronouncements of social justice, this hope quickly fizzled.<sup>22</sup> Martí did not emphasize women's positions in the new society nor did he prosecute social injustices affecting women; he only recognized their wartime contributions.<sup>23</sup>

Between 1902 and 1940, women's organizations—some called feminist and some called feminine, thus underscoring the cultural tensions inherent in women's rights struggle in Cuba—formed and worked to influence the direction of the legal protections.<sup>24</sup> Indeed, as is detailed below, women were central to effecting myriad legal changes for women and their condition. Never, however, did women put aside their focus on morality and the sanctity of motherhood; rather, these were the causes of the movement.<sup>25</sup>

#### 1. Property and Family Rights

The property rights for which the *mambisas* fought became law in 1917, with the passing of a bill that granted married women the right to administer their dowries and their property.<sup>26</sup> Ironically, the passage of this bill depended on the arguments of two male senators who maintained that giving women this small right would prevent a revolution and the dissolution of the family.<sup>27</sup> They illustrated the latter point by noting that allowing women the right to control their own property would protect a man's fortune and prevent it from passing to another family line when a family only had daughters.<sup>28</sup> In addition to granting married women control over their dowries and family properties, this

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19. *See id.* at 24.

20. *See id.* at 33.

21. *See id.*

22. *See id.* at 28-29.

23. *See id.* at 29.

24. *See id.* at 25-39.

25. *See id.*

26. *See id.* at 45.

27. *See id.* at 44-45.

28. *See id.* at 45.

1917 bill also granted women the right to sue and be sued and gave women authority over their children from previous marriages.<sup>29</sup>

Following this property rights bill, other laws that expanded women's rights quickly followed. Even before obtaining the right to vote, women received protection from the 1918 divorce law, which separated church and state and lessened the church's influence over Cuban women.<sup>30</sup> This law passed without women's advocacy or even their expression of the law's desirability.<sup>31</sup> The divorce law was revised in 1930 and again in 1934, resulting in one of the most progressive divorce laws in the world.<sup>32</sup> Grounds for divorce were expanded to include separation of spouses for five years or more, corruption of one marriage partner by the other, use of drugs, bigamy, and abandonment of six months.<sup>33</sup> In addition, under the law, husbands and wives were charged with equal responsibility for the stability of the family and the support of the children.<sup>34</sup> Custody was awarded on the basis of ability to support, rather than gender of the parent.<sup>35</sup> Unfortunately, this meant that women who were less financially solvent than men often lost custody of their children.<sup>36</sup>

The new divorce law also entitled women to either liquidate or assume control of their husband's estate in the event that the husband could not meet his alimony payments.<sup>37</sup> However, alimony was not need-based and, following the *marianista* notion of women's purity, it was only awarded to innocent wives.<sup>38</sup>

In 1928, ten years after the passage of the first divorce law, women were freed from the adultery law—a law that gave men complete authority over their wives and daughters and basically sanctioned violence against women.<sup>39</sup> This adultery law, Article 437 of the Spanish penal code, allowed a husband who discovered his wife in the act of adultery, or who encountered his minor daughter with a lover, to kill his wife or daughter and the offending lover, without being tried for homicide; the maximum penalty was exile.<sup>40</sup> Indeed, the

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29. *See id.*

30. *Id.* at 51-52.

31. *See id.* at 51.

32. *See id.* at 52 (indicating that issues stemming from earlier laws prompted the involvement of feminists in the 1930 and 1934 processes).

33. *See id.* at 159.

34. *See id.*

35. *See id.*

36. *See id.*

37. *See id.*

38. *See id.*

39. *See id.* at 148.

40. *Id.*

husband suffered no penalty at all if he only wounded the wife or daughter, or her lover.<sup>41</sup>

Women's groups made it a priority to change the adultery law, and turned adultery from a tool of violence against women into grounds for divorce for either party.<sup>42</sup> Notwithstanding the legal change effected by the 1928 bill that abolished the adultery law, the societal underpinnings of the law failed to change.<sup>43</sup> Interestingly, evidence of the lack of change in mores is found in the circumstances of the enactment of the law, which passed without presidential signature because President Machado did not want to be associated with "the loosening of sexual standards"<sup>44</sup> that presumptively would take place if men could not put or keep "their" women in women's proper place.

In 1934, only a few years after the dramatic changes in the adultery law, Cuba's legislature passed the first national maternity law, which included a grant of twelve weeks leave for maternity (six weeks before and six weeks after giving birth); payment of subsistence pension to mothers while absent from work on maternity leave; and a requirement that all public and private industrial factories that employed more than fifty women maintain a nursery for children under two years of age.<sup>45</sup> In 1937, provisions were added to the maternity law, which included giving nursing mothers half an hour in the morning and half an hour in the afternoon to breast-feed the children until they reached one year of age, and made it illegal for employers to fire female employees when they married.<sup>46</sup> Although these maternity laws represented a great legal advance for many women, their tragic flaw was that domestic servants, who made up 32% of the population, were excluded from coverage.<sup>47</sup> Moreover, while the paper rights existed, in reality, many women failed to receive the services formally guaranteed.<sup>48</sup>

Significantly, women obtained these broad legal rights without any acknowledgment of, or demand for, women's equality. Indeed, the Cuban feminists who fought for these rights were far from representative of Cuban society as a whole.<sup>49</sup> The Cuban feminists were white, middle to upper class, and educated, about 40% were mothers, 42% were married, 60% had, at some time, been employed, 75% had graduated from a university, 33% had post-

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41. *Id.*

42. *See id.* at 151.

43. *See id.* at 155.

44. *See id.*

45. *Id.* at 177-78. However, agricultural workers, who made up about 10% of the female labor force, did not have access to the nurseries. *Id.* at 178.

46. *Id.*

47. *See id.*

48. *See id.*

49. *See generally id.* ch. 4 (providing a detailed background for, and demographics of, the feminists).

graduate degrees, and every single one had at least one servant.<sup>50</sup> These women were the product of a Cuban culture that reflected many years of Spanish influence. That traditional culture dictated the proper sphere of women's participation in society: women were not to work, but were supposed to stay at home and prepare for marriage. Even if a woman did work, it was understood that it was temporary, and once she married, she would give up her job.

However, these cultural aspirations and expectations were different for black, mulata, and poor white women who had no option but to leave home and work.<sup>51</sup> So, although only a small number of women were employed during the early years of Cuban independence, approximately three-quarters of the employed women were black and most were engaged as domestics—some of whom were serving the feminists as laundresses—and tobacco plantation workers.<sup>52</sup> These women, in contrast to the educated feminists, faced poverty, ill health, sexual exploitation, and disrespect for their race and/or class.<sup>53</sup> They were shamed and considered inferior, and they were expected to be at the sexual service of the men with whom they worked.<sup>54</sup>

## 2. The Rights to Vote and to Equality

Another one of the main goals of the early feminist movement was to secure the right to vote for women. Although President Ramón Grau San Martín granted women the right to vote in the provisional Constitution of 1934, that right, together with the right to be elected to public office, became a confirmed reality in the Constitution of 1940, one of the most progressive constitutions in the world as far as rights for women were concerned.<sup>55</sup> Like the right to own property, however, neither the constitutional right to vote nor the express constitutional provisions regarding gender equality translated into any recognition or acknowledgment of women's equality, nor did they effect gender equality in Cuban society.

Grau San Martín's 1934 Decree-Law 589 was the precursor to some of the 1940 Constitution's equality provisions.<sup>56</sup> This law mandated that salary should correspond to the nature of the work, not the sex of the worker, and assured women equal access to work, except for protective legislation preventing them from working in dangerous environments—which effectively

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50. *Id.* at 78.

51. *See id.* at 3.

52. *See* MARGARET E. LEAHY, DEVELOPMENT STRATEGIES AND THE STATUS OF WOMEN: A COMPARATIVE STUDY OF THE UNITED STATES, MEXICO, THE SOVIET UNION, AND CUBA 93 (1986).

53. *See* STONER, *supra* note 12, at 3, 85-86.

54. *See id.*

55. *See id.* at 124-25, 181-82.

56. *See id.* at 124-26, 179-83.

restricted women from some 400 job categories.<sup>57</sup> In addition, Article 8 of the Decree-Law 589 sought to protect domestic servants by requiring them to register their employers' names and their salaries with the Secretary of Labor so that officials could detect underpayment and domestics would have access to national insurance.<sup>58</sup>

Notwithstanding the reality of the inequality of women, the 1940 Constitution had several noteworthy provisions regarding technical legal rights to equality. For example, Article 23 provided that "[a]ll Cubans are equal before the law. The state does not recognize special privileges or status. It is illegal and punishable by law to discriminate based on sex, race, color, class, and any other prejudice against human dignity."<sup>59</sup> In addition, Article 62 provided equal pay for equal work, regardless of sex, race, or nationality; Article 68 made it illegal to distinguish between married and single women in the workplace; and Article 66 mandated an eight-hour workday while restricting night work for women.<sup>60</sup> Once these extensive gender-based legal rights were realized, the feminist movement in Cuba basically died.<sup>61</sup>

Unfortunately, although Cuba's Constitution was one of the most progressive in the world, especially with respect to its treatment of women, these praiseworthy paper rights did not result in real changes in women's lives. Rather, the legal advances in the Constitution did not alleviate the profound economic and political subordination of women. In 1953, while Cuba ranked third highest in Latin America for its literacy rate, with 78.8% of the female population literate,<sup>62</sup> women fared worse than men. In higher education, only 1.6% of women had received some secondary education, as compared to 2.4% of men, and only 0.8% of women received some university education, compared to 1.6% of men.<sup>63</sup>

Similarly, women did not fare well in employment. Women comprised only 17% of the work force, and those working women were concentrated in the "pink ghetto."<sup>64</sup> While one-third of the labor force was unemployed or partially

57. *See id.* at 179-80.

58. *Id.* at 179.

59. CONSTITUCIÓN DE LA REPÚBLICA DE CUBA art. 20 (1940), in *CONSTITUCIONES CUBANAS: DESDE 1812 HASTA NUESTROS DÍAS* 246 (1974).

60. *See id.* at 255, 256, 257; *see also* STONER, *supra* note 12, at 181 (citing Cuban Constitutional provisions).

61. *See* STONER, *supra* note 12, at 181-83.

62. *See* Susan Kaufman Purcell, *Modernizing Women for a Modern Society: The Cuban Case*, in *FEMALE AND MALE IN LATIN AMERICA* 257, 260 (Ann Pescatello ed., 1973).

63. *See id.* at 261.

64. *WOMEN: CHALLENGES TO THE YEAR 2000*, at 45 (United Nations Report 1991). The United Nations has reported that "[w]hereas under socialist systems women are relatively less confined to low level, pink ghetto jobs, they are still predominant in occupations that are poorly paid and do not require educational or technical qualifications." *Id.*; *see also* Purcell, *supra* note 62, at 261.

employed between 1956 and 1958,<sup>65</sup> women had less opportunity than men, with an economy allowing few options for support other than marriage, and a culture that, despite broad legal pronouncements on women's equality, reinforced the view of a woman's place being in the home.<sup>66</sup> Even when women entered the work force, they did so in fields which were deemed "appropriate" and "acceptable" for women.<sup>67</sup> Traditionally, these "pink collar" jobs were low-paying and low-status. For example, before the revolution, between one-quarter and one-third of Cuban women worked as domestics, and over 60% of female professionals were school teachers in the lower grades while a majority of the teachers at the secondary level and above were men.<sup>68</sup>

Finally, women may have had a constitutionally dictated equal right to hold public office, but women rarely ran for such office and few who ran were elected.<sup>69</sup> Thus, although women apparently had very strong paper legal rights, these were merely aspirational, as the social, everyday reality did not comport to the technical rules.

### C. *The Castro Revolution and Beyond*

In 1952, after Batista's overthrow of the government, the feminists dispersed to various political groups to fight against the dictator.<sup>70</sup> Fidel urged women's groups to consolidate and form a united women's front—which they did, and in so doing, played a fundamental role in the positioning of the revolution.<sup>71</sup> They raised funds, acted as teachers, recruited and created sympathy for the guerilla movement, took care of the wounded, transported arms and documents, and organized revolutionary groups.<sup>72</sup> Once the guerilla armies were established on the *Sierra de Escambray*, the women continued their support; they transported weapons and messages, made uniforms, placed bombs, gathered medicines, visited the guerillas in jail, and took care of the wounded.<sup>73</sup>

Castro's revolution was founded on the concept of egalitarianism. In fact, in his first address to the nation, Castro noted the need to end discrimination against women's participation in the labor force. Shortly thereafter, the Labor

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65. WORKING WOMEN IN SOCIALIST COUNTRIES: THE FERTILITY CONNECTION 201 (Valentina Bodrova & Richard Anker eds., 1985).

66. See LEAHY, *supra* note 52, at 93.

67. See Purcell, *supra* note 62, at 261.

68. See LEAHY, *supra* note 52, at 92-93.

69. See *id.* at 92.

70. FERNÁNDEZ, *supra* note 16, at 265.

71. Berta Esperanza Hernández-Truyol, *Women in Contemporary Cuba*, in WOMEN IN THE THIRD WORLD: AN ENCYCLOPEDIA OF CONTEMPORARY ISSUES 618, 620-23 (Nelly P. Stromquist & Karen Monkman eds., 1998).

72. *Id.* at 621.

73. See, e.g., FERNÁNDEZ, *supra* note 16, at 266-67.

Ministry started to enforce labor legislation regarding women more strictly and to pass new regulations addressing the right of pregnant women to their jobs. Similarly, in Castro's September 26, 1960 address to the United Nations General Assembly, he clearly stated that one of the aims of the revolution was to eradicate inequality and discrimination specifically against blacks, Indians, and women.<sup>74</sup> Castro designated this move toward equality for women as "a revolution within [a] Revolution."<sup>75</sup> The 1976 Constitution encoded this right to equality into law, with Chapter Five expressly providing that "all citizens [enjoy] equal rights and are subject to equal duties."<sup>76</sup>

### 1. Women Join the Fight for Independence

Just as they had done in the war to free Cuba from Spanish domination, in the revolution of 1959, women fought alongside men.<sup>77</sup> Women were involved in every aspect of the revolution, including producing rebel uniforms, participating actively in sabotage units, transporting arms, and hiding in the mountains.<sup>78</sup> In fact, by 1958 about one-twentieth of the rebel army's 3,000 soldiers were women.<sup>79</sup> Although some men opposed female platoons, Castro fully supported them, noting that "there are men who ran, M-1 and all, but we don't have a single example of one of the *Mariana Grajales* women who ran from combat."<sup>80</sup>

In order to institutionalize the women's place in the revolution, Castro created the *Federación de Mujeres Cubanas* (Federation of Cuban Women) (FMC) in August 1960.<sup>81</sup> Although initial membership was less than 100,000, by 1968, membership had swelled to almost one million women; by 1970, membership numbered 1,343,098, or 54% of the Cuban women over the age of 14.<sup>82</sup> As of 1995, close to 3,600,000 or 82.4% of Cuban women were

74. Fidel Castro, *The Case of Cuba Is the Case of All Underdeveloped Countries*, Address to General Assembly (Sept. 26, 1960), in *TO SPEAK THE TRUTH*, *supra* note 2, at 31, 91-92 [hereinafter *The Case of Cuba*].

75. See Purcell, *supra* note 62, at 258.

76. CONSTITUCIÓN DE LA REPÚBLICA DE CUBA (1976), in *THE CONSTITUTIONS OF THE COMMUNIST WORLD* 99, 111 (William B. Simons ed., 1980). Significantly, Chapter 5 provides for equal access to employment, services, military rank, salary for equal work, education (primarily through university), medical assistance, housing, restaurants, transportation, beaches and other public places. *Id.* at 111-12.

77. See MARGARET RANDALL, *WOMEN IN CUBA: TWENTY YEARS LATER* 22 (1981).

78. See *id.*

79. See Diana M. Riveira, *Women's Legal Advances in Cuba*, ch.II, 9 (1989) (unpublished Masters Thesis, University of Miami) (on file with author).

80. See *id.* (emphasis added) (explaining that the Mariana Grajales troops saw action in about twenty important battles, and once the enemy surrendered, they took on peace-time tasks).

81. See Purcell, *supra* note 62, at 262.

82. See *id.* at 263.



members of the FMC.<sup>83</sup> The goals of the FMC have been to “[prepare] women educationally, politically and socially to participate in the Revolution,” as well as to incorporate women into the work force and raise their educational consciousness.<sup>84</sup> Significantly, the head of the FMC was Vilma Espín, Castro’s sister-in-law and the only woman to serve in the *Politburo*, albeit for a very short time.<sup>85</sup>

## 2. Women’s Participation in Education, Labor, and Politics<sup>86</sup>

One of Castro’s first revolutionary campaigns was to abolish illiteracy.<sup>87</sup> His campaign succeeded in reducing illiteracy from 23.9% to 3.9% of the population, making approximately three-quarters of a million persons, 56% of whom were women, literate.<sup>88</sup> Volunteers, among which many were Cuban youths, carried out the literacy campaign.<sup>89</sup> The FMC figured prominently in this campaign, mobilizing women for the volunteer work, which resulted in 55% of the volunteers—*brigadistas*—being young women.<sup>90</sup>

Another major undertaking of the revolution in which the FMC played a major role was the re-education or re-training of domestic servants and prostitutes, a goal consistent with the revolutionary aim of ending gender, class, and race-based distinctions in society.<sup>91</sup> Under specially designed programs run by the FMC, domestics—most of whom were women—were allowed to leave their employment and study full-time or stay at their posts and take courses at night.<sup>92</sup>

Women as a whole have fared well in formal education.<sup>93</sup> In fact, figures show that females are on par with, if not ahead of, males in formal educational attainments. Not only were women well-represented in enrollment, they were also well-represented in most fields, including some fields traditionally viewed as “male”<sup>94</sup>—by 1975, women comprised 30% of all engineering students and 35% of all agricultural science students.<sup>95</sup>

83. FERNÁNDEZ, *supra* note 16, at 270. This membership figure breaks down, by occupation, as follows: 42.5% homemakers, 38.9% salaried employees, and 10.5% students. *Id.*

84. *See* Purcell, *supra* note 62, at 263 (alteration in original).

85. *See id.* at 262.

86. This Part draws largely from one of my previous pieces, *Women in Contemporary Cuba*, *supra* note 71.

87. *See* RANDALL, *supra* note 77, at 54.

88. *See id.* at 55; *see also* Purcell, *supra* note 62, at 264.

89. *See* RANDALL, *supra* note 77, at 55.

90. *See* Riveira, *supra* note 79, ch.II, 13, 18; *see also* Purcell, *supra* note 62, at 264.

91. *See* Riveira, *supra* note 79, ch.II, 22-25; *see also* Purcell, *supra* note 62, at 264.

92. *See* Purcell, *supra* note 62, at 264.

93. *See* FERNÁNDEZ, *supra* note 16, at 83, 86.

94. *Id.* at 86; *see also* LEAHY, *supra* note 52; Hernández-Truyol, *supra* note 71, at 621.

95. Hernández-Truyol, *supra* note 71, at 622.

Despite such incontrovertible progress, in 1974, at an FMC Congress, Castro recognized that women's equality was not yet a reality.<sup>96</sup> Ironically, a decade later, the government imposed quotas specifically designed to limit the number of women allowed to attend medical school.<sup>97</sup> The government's twofold explanation for the quota was seemingly based on the critical role played by civilian medical assistance in Cuba's foreign policy.<sup>98</sup> Incidentally, both of the government's proffered rationales "revealed the status of women as one of inequality."<sup>99</sup>

Most interestingly, the rationales were based upon and ceded to traditionalist gender stereotypes—a proposition wholly inapposite to the equality rhetoric of the regime and the legally mandated equality norms. The government's first explanation was that the substantial responsibilities that women had to their families would make it difficult for necessary extended overseas travel to render medical assistance.<sup>100</sup> Secondly, the government rationalized that because many of the countries which needed assistance had not yet recognized (as Cuba purportedly had) the changing role of women in society, male doctors were necessary to render such assistance.<sup>101</sup>

Certainly, through the medical school quota, the government effectively denied women the right to decide for themselves whether to travel and put up with sexist attitudes. Thus, Castro's supposed notion of equality—the heart of his revolution—"ceded to the governmental policy to deliver aid."<sup>102</sup> Significantly, the FMC, despite its agenda to promote and ensure gender equality, failed to challenge this discriminatory policy.<sup>103</sup>

Notwithstanding such contradictions, progress for women is evident in the employment figures—another area in which the FMC has made great efforts to achieve equality for women. In fact, the changes in employment figures regarding women in the labor force is telling. In 1964, only 282,000 women were gainfully employed; by 1970, the number of women in the labor force had reached 600,000.<sup>104</sup> By the end of the 1970s, nearly 31% of the work force was female.<sup>105</sup> In 1990, women comprised 32% of the labor force, about average for all developing countries but below the 42% figure for industrial states.<sup>106</sup>

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96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. See Purcell, *supra* note 62, at 266.

105. See LEAHY, *supra* note 52, at 104.

106. See *Human Development Report 1993*, UNITED NATIONS HUMAN DEVELOPMENT PROGRAMME 150-51, 195, 214 (1993) [hereinafter UNHDR 1993]. This figure is not consistently

Aside from increasing their numbers, women also have broadened their role in the labor force. While women now hold many jobs that exclusively had been held by men—women work as cane cutters, citrus fruit packers, auto mechanics, dentists, doctors, engineers, and traffic police—female participation in the labor force still mostly follows traditional patterns.<sup>107</sup> For example, the most common occupational group for women is in the classification of “other intellectual activities,” a classification that includes clerical and secretarial jobs.<sup>108</sup> Notwithstanding their concentration in traditionally female jobs, women also make up the majority in some “non-traditional female” fields such as medicine<sup>109</sup> and, increasingly, in law.<sup>110</sup> One last indicia of the lasting difference between men and women in the labor force is noteworthy: retirement age is fifty-five for women but sixty for men,<sup>111</sup> which reflects the cultural expectation that men are presumed to be the “breadwinners” and to provide for their families.

Thus, in Cuba today, as in other cultures, women are considered a supply of labor when there are shortages.<sup>112</sup> When the state, however, found it necessary to tinker with employment figures because of the economic climate, it did not hesitate to take measures to discourage female employment, including the very unequal step of classifying some jobs as male only.<sup>113</sup> In fact, there are still some job categories from which women are excluded, although the list now only includes approximately 25 jobs, whereas in the 1970s it included about 300 jobs.<sup>114</sup> These government regulations themselves limit women’s access to certain jobs—a patently discriminatory policy—although

reported. Riveira, in her work, noted that as of 1985, women comprised 48% of the work force. Riveira, *supra* note 79, ch.II, 42.

107. See Sergio Diaz-Briquets, *The Cuban Labor Force in 1981 and Beyond*, in *THE CUBAN ECONOMY: DEPENDENCY AND DEVELOPMENT* 99, 107 (Antonio Jorge & Jaime Suchlicki eds., 1989).

108. *Id.*

109. See Sarah M. Santana, *Whither Cuban Medicine? Challenges for the Next Generation*, in *TRANSFORMATION AND STRUGGLE: CUBA FACES THE 1990S* 251, 253 (Sandor Halesbsky & John M. Kirk eds., 1990) [hereinafter *TRANSFORMATION AND STRUGGLE*].

110. See Debra Evenson, *The Changing Role of Law in Revolutionary Cuba*, in *TRANSFORMATION AND STRUGGLE*, *supra* note 109, at 53, 63.

111. FERNÁNDEZ, *supra* note 16, at 85 n.3.

112. For example, during WWII, advertising executives created the character “Rosie the Riveter” to encourage women to work during the war. See David Rohde, *From Film Auteur to Advertising Man, in a Campaign for Indonesian Democracy*, *N.Y. TIMES*, Dec. 28, 2000, at E3; see also Diaz-Briquets, *supra* note 107, at 102 (explaining that a good example of this in Cuba was the “agricultural push of the late 1960s . . . [when] [w]omen were . . . called to replace male urban workers that had gone to labor in the fields, and also to directly contribute their input to the sugar harvest”).

113. Diaz-Briquets, *supra* note 107, at 102-03.

114. FERNÁNDEZ, *supra* note 16, at 89-90; see also Hernández-Truyol, *supra* note 71, at 623. See generally Diaz-Briquets, *supra* note 107, at 102-03 (explaining that in the late 1970s, “several measures were introduced to discourage female employment”).

the government has facially explained the restrictions as aimed at protecting women's health.<sup>115</sup> Moreover, the over-representation of women in "pink collar" jobs reflects the preservation of traditional gender roles, including one that presumes work outside the home is more important for men.

To be sure, the FMC has objected to the work restrictions imposed on women as violative of principles of gender equality.<sup>116</sup> In its 1990 Congress, the FMC also noted that one of the obstacles to achieving gender equality is women's double burden of work and home.<sup>117</sup> The FMC also recognized the continued discrimination in job promotions, the lack of women receiving promotions to leadership positions, and the significantly lower earnings of women as compared to men, even when women were better educated.<sup>118</sup>

Women in Cuba also have made some strides in parliamentary representation. In 1999, the percentage of parliamentary seats occupied by women in Cuba was 27.67%, down from 34% in 1991, which was then behind only Norway, Romania, and the Soviet Union. Now, Cuba is behind many more.<sup>119</sup> This figure, however, places the number of seats occupied by women in Parliament in Cuba at more than two times the 12.5% figure for the United States in 1999.<sup>120</sup>

However, women lag far behind in the "more powerful and prestigious occupational levels in revolutionary Cuba."<sup>121</sup> It was not until 1986 that a woman became a full *Politburo* member, a position from which she was excluded in 1991 when that body again was all male.

Although one out of every three workers is a woman, less than one in five directors of state, political, and economic organizations [are] female. This female under-representation in the pinnacles of political and economic power . . . remains puzzling if one is to accept the official rhetoric calling for equality between the sexes.<sup>122</sup>

115. FERNÁNDEZ, *supra* note 16, at 91-92.

116. *See id.* at 94.

117. *Id.*

118. *See id.* at 83, 86.

119. *See Human Development Report 1999*, UNITED NATIONS HUMAN DEVELOPMENT PROGRAMME 142-45 (1999) [hereinafter UNHDR 1999]; UNHDR 1993, *supra* note 106, at 150-52, *see also* THE WORLD'S WOMEN 2000: TRENDS AND STATISTICS 172 (United Nations 2000) [hereinafter WORLD'S WOMEN 2000].

120. UNHDR 1999, *supra* note 119, at 142-45; *see also* WORLD'S WOMEN 2000, *supra* note 119, at 175; *Human Development Report 1995*, UNITED NATIONS HUMAN DEVELOPMENT PROGRAMME 60-61 (1995) [hereinafter UNHDR 1995] (reporting that in 1994, women held only 10% of the parliamentary seats in the United States and 23% of the parliamentary seats in Cuba).

121. Diaz-Briquets, *supra* note 107, at 109.

122. *Id.* Similarly, women are under-represented in industrial groupings, including agriculture and manufacturing—the leading activities for males—as well as construction and transportation. *Id.* at 109-10.

### 3. El Período Especial

The burdens that formal government policies and cultural traditions place on women were exacerbated in Cuba with *el periodo especial*, in which the shortages of resources fell mostly on women who, therefore, had to run their homes with less. As in past epochs, with *necesidad* the *mujeres* got loud, and the women began to dissent—thus eliciting a gendered revolution within the Castro revolutionary regime. This women's movement resulted in the birth of the *Magin*, whose objective was to demonstrate that socialist politics are insufficient to modify the relations between the sexes. The goal of this movement was to realize women's autonomy and equality in the context of socialism.

The *magineras* are women who used to belong to the *partido comunista*, but when the promise of equality did not become a reality they organized a new group and protested. Women disproportionately suffered because their unchanging primary roles as mothers, wives, and homemakers became more onerous due to the difficulties in finding everyday needs such as food; they also suffered because, although many had college degrees, they were forced to sell trinkets on the streets because it enhanced the possibility of earning dollars.<sup>123</sup>

This internal revolutionary struggle for women's equality follows the pattern established by Cuban women throughout history but with a more purely feminist twist. Here, the aim was to fix the revolution's failing in the arena of sex equality.<sup>124</sup> The women involved have paid dearly for their non-traditional acts. The anti-revolutionary reputation of the organization has caused its members many hardships.<sup>125</sup> For example, María Angeles Gonzalez Amaro, a journalist, now receives very little pay from overseas for her articles and lost her job in Cuba because of her association with *Magin*.<sup>126</sup> She has been arrested repeatedly and *milicianos* regularly search her house.<sup>127</sup> Her two daughters were kicked out of the university and lost their jobs.<sup>128</sup> Interestingly, she wants to stay in Cuba and make women's dreams of equality a reality.<sup>129</sup> One of her favorite sayings is "*no hay mal que dure cien años ni cuerpo que lo resista.*"<sup>130</sup>

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123. See generally *id.* (explaining the trend throughout Cuba's economic history of denying women employment).

124. FERNÁNDEZ, *supra* note 16, at 13.

125. See *id.* at 282.

126. *Id.* at 285.

127. *Id.*

128. *Id.* at 286.

129. *Id.*

130. *Id.* Author's translation: "there is no evil that lasts for a 100 years nor body that can resist it."

### III. OTHER RELEVANT EQUALITY LAWS

As this is a study on whether *mujeres cubanas* have ties that bind them beyond the island's territorial boundaries, it is important to explore whether the *mujeres cubanas* that left Cuba are bound by the same, or at least similar, rules of law as the women in Castro's Cuba. There are two sets of rules that will be discussed below. The first is the set of international human rights norms that mandate sex equality. These norms are equally applicable to all Cuban women—both inside and outside the island. The second is the sex-equality norms that evolved in the United States as these govern the rights of Cuban women *en el exilio*.

#### A. *International Laws*

International human rights are those rights vital to individuals' existence—they are fundamental, inviolable, interdependent, indivisible, and inalienable rights, and predicates to life as human beings.<sup>131</sup> Human rights are moral, social, religious, legal, and political rights that concern respect and dignity associated with personhood, with a human being's identity.<sup>132</sup> Human rights' origins are traced to religion, "natural law, [and] contemporary moral values."<sup>133</sup> The concept of human rights is a relatively recent, modern concept that is universally applicable, at least in principle.

World War II marked a turning point in international law with respect to the status of individuals.<sup>134</sup> Indeed, international criminal tribunals were established at Nuremberg and Tokyo to punish war participants for criminal atrocities.<sup>135</sup> These newly established standards spawned from the overwhelming public desire to avoid the recurrence of such crimes against humanity and the resultant need to protect human rights.<sup>136</sup> The individual, however, was "recognized in the global setting prior to the Second World War."<sup>137</sup>

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131. See generally Berta Esperanza Hernández-Truyol, *To Bear or Not to Bear: Reproductive Freedom as an International Human Right*, 17 BROOK. J. INT'L L. 309 (1991); see also REBECCA M.M. WALLACE, INTERNATIONAL LAW: A STUDENT INTRODUCTION 175, 175 (1986) (explaining that "[h]uman rights . . . are regarded as those fundamental and inalienable rights which are essential for life as a human being").

132. See generally WALLACE, *supra* note 131; Hernández-Truyol, *supra* note 131.

133. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 701 cmt. b (1987).

134. Berta Esperanza Hernández-Truyol, *Human Rights Through a Gendered Lens: Emergence, Evolution, Revolution*, in 1 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 3, 10 (Kelly D. Askin & Doreen M. Koenig eds., 1999).

135. *Id.*

136. *Id.*

137. *Id.*

It was not until after the signing of the United Nations Charter (U.N. Charter) in 1945<sup>138</sup> that international action concentrated on providing comprehensive protection for all individuals against various forms of injustice. Such protections now exist regardless of whether the abuse or injustice was committed by a foreign sovereign or the individuals' own state of nationality and, for the most part, irrespective of the presence of a war.<sup>139</sup>

The U.N. Charter embraces the natural law notion of these as "rights to which all human beings have been entitled since time immemorial and to which they will continue to be entitled as long as humanity survives."<sup>140</sup> As such, these rights are inalienable—permanent and universal—and are ingrained as one of the purposes of the U.N. Charter to "promot[e] and encourag[e] respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>141</sup> Thus, for the first time in the international realm, the U.N. Charter articulated the formal notion of sex equality as a core human rights tenet by "reaffirm[ing] . . . the equal rights of men and women."<sup>142</sup>

Following the U.N. Charter's lead, the Universal Declaration of Human Rights (Universal Declaration),<sup>143</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>144</sup> and the International Covenant on Economic, Social, and Cultural Rights (Economic Covenant),<sup>145</sup> all expressly include equality based on "sex." These documents insist that "[e]veryone is entitled to all the rights and freedoms . . . without distinction of any kind, such as race,

138. U.N. CHARTER STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, *as amended*, June 26, 1945, 59 Stat. 1031, U.N.T.S. 993, *available at* 1945 WL26967 (entered into force Oct. 24, 1945) [hereinafter U.N. CHARTER].

139. See MICHAEL AKEHURST, *A MODERN INTRODUCTION TO INTERNATIONAL LAW* 75-76 (5th ed., 1984). Two other post-World War II events are noteworthy. First, economic development of states has been polarized. Programs of aid that were envisioned without an understanding of the various cultures and problems in various countries failed and led to schisms in theory and practice. More recently, post-Cold War discord and its attendant results of increased nationalism, ethnic strife, civil war, and human rights abuses for which the community of nations was not prepared, have presented a grave challenge to the development of human rights law.

140. Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather Than States*, 32 AM. U. L. REV. 1, 17 (1982).

141. U.N. CHARTER, *supra* note 138, art. 1, ¶ 3.

142. *Id.* Preamble.

143. *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. GAOR, 3rd Sess., Supp. No. 127, at art. 2, U.N. Doc. A/810 (1948) [hereinafter *Universal Declaration*].

144. *International Covenant on Civil and Political Rights*, G.A. Res. 2200A(XXI), 21 U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976; ratified by the United States June 8, 1992) [hereinafter *ICCPR*].

145. *International Covenant on Economic, Social, and Cultural Rights*, G.A. Res. 2200A(XXI), 21 U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976) [hereinafter *Economic Covenant*].

colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>146</sup>

Moreover, the thematic and regional human rights instruments that have expanded and strengthened human rights foundations also expressly provide for sex and gender equality. The three regional instruments aimed at the protection of human rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention),<sup>147</sup> the American Convention on Human Rights (American Convention),<sup>148</sup> and the African Charter on Human and Peoples’ Rights (African Charter),<sup>149</sup> all explicitly incorporate sex equality, as do other international human rights instruments.<sup>150</sup>

Notwithstanding the international prohibition against sex-based discrimination as confirmed in human rights documents, women are far from attaining equality. As the short history of human rights jurisprudence has shown, the “trickle-down theory of human rights does not serve any population

146. *Universal Declaration*, *supra* note 143, art. 2 (emphasis added). Similarly, the ICCPR provides that

[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*ICCPR*, *supra* note 144, art. 2, para. 1 (emphasis added). In addition, in art. 26, the ICCPR provides that, with respect to the nondiscrimination provisions, “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as . . . sex . . . .” *Id.* art. 26 (emphasis added). Finally, the Economic Covenant also provides for non-discrimination on the part of the basis of sex. *Economic Covenant*, *supra* note 145, art. 2, para. 2. In addition, the Economic Covenant provides that parties will “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.” *Id.* art. 3.

147. *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Nov. 4, 1950, 312 U.N.T.S. 221, art. 14 (1950), *signed in Rome* Nov. 4, 1950 (entered into force Sept. 3, 1953), in *INTERNATIONAL LAW: SELECTED DOCUMENTS 2001-2002*, at 462 (Barry E. Carter & Phillip R. Trimble eds., 2001) [hereinafter *European Convention*]. The *European Convention* was amended by Protocols 3, 5, 8, and 11, which entered into force on Sept. 21, 1970, Dec. 20, 1971, Jan. 1, 1990, and Nov. 1, 1998, respectively. *Id.*

148. *American Convention on Human Rights*, Nov. 22, 1969, 1144 U.N.T.S. 123, art. 1 (1970), *opened for signature* Nov. 22, 1969 (entered into force July 18, 1978), in *INTERNATIONAL LAW: SELECTED DOCUMENTS 2001-2002*, *supra* note 147, at 479 [hereinafter *American Convention*].

149. *African Charter on Human and Peoples’ Rights*, June 27, 1981, 21 I.L.M. 58, art. 2 (1981), *adopted by the Organization of African Unity at Nairobi, Kenya*, June 27, 1981 (entered into force Oct. 21, 1986), in *INTERNATIONAL LAW: SELECTED DOCUMENTS 2001-2002*, *supra* note 147, at 500 [hereinafter *African Charter*].

150. See generally *supra* notes 147-49.



other than [the] relatively privileged males.”<sup>151</sup> These distinctions based on status are not surprising if one considers that in the domestic movements on which the human rights ideal are based all women, regardless of race, were property, and nonwhite men and women could be slaves.

Thus, the notion of international human rights that emerged was normative, rather than universal as the U.N. Charter aspired. Sociologist Rhoda Howard made the following observation:

The easiest and clearest social distinction to make is between men and women; in many societies, as our own language reflects, the male is the standard of humanness and the female is the deviation. As Simone de Beauvoir put it in her classic feminist meditation, to be female is to be the existential “Other.” . . . The female possessed of knowledge threatens the orderly acquisition and delimitation of society’s cognitive symbols created—in most cultures—by her male status superiors; thus from Eve to medieval wise-women and beyond, Judeo-Christian culture has punished the woman who exercises the *human* capacity for self-reflection with its attendant threat of making claims upon society.<sup>152</sup>

Women’s real entry into the human rights discourse occurred in 1975, which was proclaimed International Women’s Year. That year, the first World Conference on Women took place in Mexico City. It was followed by the United Nations Decade for Women (1976-1985),<sup>153</sup> and the second World Conference on Women, held in Copenhagen in the middle of the decade (1980). All these events focused on women and their condition with the goal of bettering women’s lives.

Progress for women continued with the 1979 U.N. General Assembly’s adoption of the Women’s Convention in 1979, which entered into force in 1981.<sup>154</sup> For the first time in the international human rights discourse, an international instrument was devoted exclusively to protecting and enhancing

151. Marsha A. Freeman & Arvonne S. Fraser, *Women’s Human Rights: Making the Theory a Reality*, in HUMAN RIGHTS: AN AGENDA FOR THE NEXT CENTURY 103, 105 (Louis Henkin & John Lawrence Hargrove eds., 1994).

152. Rhoda E. Howard, *Dignity, Community, and Human Rights*, in HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS 81, 88 (Abdullahi Ahmed An-Na’im ed., 1992) (footnotes omitted) (emphasis in original).

153. For a thorough discussion of the impact of the U.N. Decade for Women on women’s international human rights, see HILKKA PIETILA & JEANNE VICKERS, MAKING WOMEN MATTER: THE ROLE OF THE UNITED NATIONS 75-83 (1994) (discussing, in part, the women’s movement of 1972-1974, which resulted in the Decade for Women).

154. Convention on the Elimination of all Forms of Discrimination Against Women, Dec. 18, 1979, 19 I.L.M. 33 (1980) (entered into force Sept. 3, 1981), in INTERNATIONAL LAW: SELECTED DOCUMENTS 2001-2002, *supra* note 147, at 432.

women's rights. The third World Conference on Women, again seeking to improve women's condition, took place in Nairobi in 1985.<sup>155</sup>

A series of U.N. conferences held in the 1990s solidified the momentum and force of the international women's rights movement. Starting with the Rio Conference in 1992 (Earth Summit),<sup>156</sup> and continuing with the 1993 World Conference on Human Rights (Vienna Conference),<sup>157</sup> the 1994 International Conference on Population and Development (Cairo Conference),<sup>158</sup> the 1995 World Summit for Social Development (Social Summit),<sup>159</sup> the 1995 United Nations Fourth World Conference on Women (Women's Conference),<sup>160</sup> and the 1996 United Nations Conference on Human Settlements (Habitat II),<sup>161</sup> the international community witnessed the firm inclusion and participation of women at the nucleus of the human rights discourse.

Together with the Women's Convention,

[t]he consensus documents that comprise this blueprint [for women's equality and] address issues ranging from the environment to education; from universality of rights to respect for cultural traditions; from population to sustained economic growth and sustainable development; from gender equity and equality to the empowerment of women; from the role of the family to the role of the government; from health to migration; from equity among generations to the placing of people at the center of development; from the recognition that social development is both a national and international concern to the recognition of the need to integrate economic, cultural, and social

155. See generally PIETILA & VICKERS, *supra* note 153 (providing information on the evolution of the international women's movement, beginning in the early 1970s).

156. United Nations Conference on Environment and Development, Rio De Janeiro, Brazil, U.N. Doc. E/CN.6/1995/5, Ch. 24 (endorsing Agenda 21, which extensively incorporated activities for strengthening the role of women in sustainable development, including a separate chapter on women). Agenda 21, at chapter 24, is entitled "Global Action For Women Towards Sustainable and Equitable Development." *Id.* ¶ 24.11 (providing that all entities in the implementation of Agenda 21, "should ensure that gender considerations are fully integrated into all the policies, programmes and activities"). See also Report of the United Nations Conference on Environment and Development, Agenda 21: Program of Action for Sustainable Development, U.N. GAOR, 46th Sess., Agenda Item 21, U.N. Doc. A/CONF.151/26 (1992) [hereinafter Agenda 21].

157. *Vienna Declaration and Programme of Action*, June 25, 1993, U.N. Doc. A/CONF.157/23.

158. *Report of the International Conference on Population and Development*, Oct. 18, 1994, U.N. Doc. A/CONF.171/13.

159. *Report of the World Summit for Social Development*, Apr. 19, 1995, U.N. Doc. A/CONF.166/9.

160. *Beijing Declaration and Platform for Action, Fourth World Conference on Women*, Sept. 15, 1995, U.N. Doc. A/CONF.177/20 (1995) & A/CONF.177/20/Add.1.

161. *Statement of Principles and Commitments in Global Plan of Action: The Habitat Agenda*, U.N. Doc. A/CONF.165/PC.3/4 (1996).

policies to achieve desired ends; [and] from education to employment to respect for women to the need for affordable housing so that the health, education, and welfare goals of individuals, of families, of governments, and of the global community can be met.<sup>162</sup>

Significantly, women have played a critical role in the drafting, acceptance, and implementation of all of these instruments.

As was the case with the laws of Cuba, however, women's international legal rights are dramatically different from women's lived reality everywhere around the world.<sup>163</sup> As the U.N. Report provides, women are still far from attaining equality in any aspect of their lives in any country in the world.<sup>164</sup>

### B. *United States Laws*

The basic right to equality in the United States is found in the Fourteenth Amendment of the U.S. Constitution.<sup>165</sup> Significantly, the fact that it is an amendment indicates that the original Constitution did not contemplate a concept of equality. To be sure, this is not surprising, as the framers were representative of the elite and privileged.<sup>166</sup> They were married men at a time when women were chattel; they were slaveowners<sup>167</sup> as well. As far as sex equality is concerned, the sentiment embodied in the Declaration of Independence was intentionally gendered, with "all *men* [being] created equal."<sup>168</sup>

The Fourteenth Amendment itself, on which sex and gender equality rights are now grounded, was intended to eliminate race, not sex, discrimination. In fact, in the late 1800s, the Supreme Court held that the Fourteenth Amendment did not grant women the right to vote<sup>169</sup>—a right women did not enjoy until 1920 when the Nineteenth Amendment to the Constitution was passed.<sup>170</sup> Obtaining the right to vote did not, however, confer on women all

162. Hernández-Truyol, *supra* note 134, at 5.

163. *See id.* at 34-35.

164. *See id.* at 24; UNHDR 1995, *supra* note 120, at 29.

165. U.S. CONST. amend. XIV.

166. *See* JOE R. FEAGIN, RACIST AMERICA: ROOTS, CURRENT REALITIES, AND FUTURE REPARATIONS 9 (2000). *See generally* LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW (1985).

167. *See* FEAGIN, *supra* note 166, at 9-14, 41 (suggesting that at least half of the signatories to the Declaration of Independence were slave owners and involved in the slave trade); *see also* Ursula Vogel, *Marriage and the Boundaries of Citizenship*, in *THE CONDITION OF CITIZENSHIP* 76, 79 (Bart van Steenberg ed., 1994).

168. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (emphasis added).

169. *Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 178 (1874).

170. U.S. CONST. amend. XIX (stating that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex").

the rights of full citizenship, such as the right to serve in the military, sit on juries, or work at the employment of their choice.

Another late 1800s case, while not a constitutional sex equality case, vividly presents the gendered view of women's proper location in U.S. society.<sup>171</sup> In *Bradwell v. Illinois*,<sup>172</sup> the Supreme Court upheld Illinois's rejection of Myra Bradwell's application to practice law.<sup>173</sup> In her first attempt, she was denied because, "as a married woman [she] would be bound neither by her express contracts nor by those implied contracts which it is the policy of the law to create between attorney and client."<sup>174</sup> When she challenged that conclusion, the state court said that women were ineligible to practice law.<sup>175</sup> In her appeal to the federal system, she claimed that her "privileges or immunities" as a United States citizen were being abridged by the prohibition.<sup>176</sup> The Court, holding that the right to practice law was not a protected right under the federal system, but rather a right to be regulated by the states,<sup>177</sup> concluded that there was no violation of the Fourteenth Amendment.<sup>178</sup>

Most revealing is the Court's honest, albeit disturbing, attribution of the proper sphere for women. The Court quoted at length from the state court:

That God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply and execute the laws, was regarded as an . . . axiomatic truth. In view of these facts, we are certainly warranted in saying that when the legislature gave to this court the power of granting licenses to practice law, it was with not the slightest expectation that this privilege would be extended [equally to men and] women.<sup>179</sup>

The Supreme Court's opinion itself then embraces the separate spheres ideology:

[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family

171. See generally *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1872).

172. 83 U.S. (16 Wall.) 130 (1872).

173. *Id.* at 138-39.

174. *In re Bradwell*, 55 Ill. 535, 535-36 (Ill. 1876).

175. *Id.* at 539.

176. *Bradwell*, 83 U.S. at 138.

177. *Id.* at 138-39.

178. *Id.* at 139.

179. *Id.* at 132-33 (quotation marks omitted).

organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interest and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. So firmly fixed was this sentiment in the founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband, who was regarded as her head and representative in the social state . . . a married woman is incapable, without her husband's consent, of making contracts which shall be binding on her or him.<sup>180</sup>

It was not until 1971 that the Fourteenth Amendment was interpreted to prohibit state laws that created different rights for men and women.<sup>181</sup> Since then, the Fourteenth Amendment has served to extend sex equality rights. However, these are not necessarily rights of full equality in all cases.

For example, the level of scrutiny required for an analysis of sex equality, while not the lowest level of "rational basis,"<sup>182</sup> also is not the highest level of strict scrutiny as it is in cases of race discrimination.<sup>183</sup> Rather, some middle ground has evolved so that an "intermediate" scrutiny level has been created for these sex-based classifications.<sup>184</sup> Actually, in *Frontiero v. Richardson*,<sup>185</sup> four Justices proposed that the strict scrutiny standard would be the proper level of review for sex discrimination cases.<sup>186</sup> However, such a suggestion, to date, has not been adopted.

180. *Id.* at 141 (Bradley, J., concurring).

181. *Reed v. Reed*, 404 U.S. 71, 76 (1971).

182. *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 366-67 (2001) (articulating the rational basis review standard as State activity that serves a rational purpose to further a legitimate government interest); see also Richard B. Saphire, *Equal Protection, Rational Basis Review, and the Impact of Cleburne Living Center, Inc.*, 88 KY. L.J. 591, 597 (1999-2000) (stating that "[a]rguably, rational basis (or 'rationality') review represents the first and oldest strand of modern equal protection analysis"). See, e.g., *id.* at 597 n.24.

183. See *Korematsu v. United States*, 323 U.S. 214, 216 (1944) (establishing that "all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny.").

184. See *Craig v. Boren*, 429 U.S. 190, 197 (1976) (establishing an intermediate level of scrutiny for sex equality, requiring a sex-based classification to "serve important governmental objectives and . . . be substantially related to achievement of those objectives").

185. 411 U.S. 677 (1973).

186. *Id.* at 682 (reasoning that sex-based classifications are inherently suspect and should receive strict scrutiny review).

Moreover, there are cases where it becomes patent that women are still seen as belonging in a separate sphere. In *Rostker v. Goldberg*,<sup>187</sup> men challenged the male-only draft based on equal protection principles.<sup>188</sup> The Court found that such a male-only category did not constitute sex discrimination, as men and women were not similarly situated.<sup>189</sup> The sexes' different situations were based on the prohibition of women from positions of combat.<sup>190</sup> Hence, the male-only registration was said to make sense, as it was a list from which to call persons who were combat-ready (or more accurately, combat-able).<sup>191</sup>

Similarly, in *Geduldig v. Aiello*,<sup>192</sup> the Court considered whether exclusion of pregnancy and childbirth benefits from an insurance plan constituted sex discrimination as prohibited by the Constitution.<sup>193</sup> The Court, finding no equal protection violation and noting that not all disabilities must be covered, concluded that there was no discrimination as the proper categories for comparison were pregnant persons and non-pregnant persons.<sup>194</sup> Because the latter category included both men and women, there was no sex discrimination.<sup>195</sup>

This brief overview of U.S. law shows both that there is no consistency in the treatment of sex under the Constitution, and that women's separate sphere is still a reality today. Indeed, a recent study confirms such separateness by reporting that attitudes toward working mothers have not changed—notwithstanding the reality that 56% of women with infants and two-thirds of women with preschool children work outside the home.<sup>196</sup> Sixty-eight percent of fathers and 69% of mothers agreed with the following statement: "It is much better for the family if the father works outside the home and the mother takes care of the children."<sup>197</sup> Echoes of *Bradwell* resonate two centuries later. These are the equality laws governing Cuban women living in the United States. As with the laws in Cuba and the international laws on equality, legal and lived realities are vastly different.

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187. 453 U.S. 57 (1981).

188. *See id.* at 78.

189. *Id.*

190. *Id.* at 79.

191. *Id.*

192. 417 U.S. 484 (1974).

193. *Id.* at 492.

194. *Id.* at 497.

195. *See id.*

196. *See Tamar Lewin, Study Finds Little Change in Working Mothers Debate*, N.Y. TIMES, Sept. 10, 2001, at A26.

197. *Id.* (quotation marks omitted).

## IV. CULTURE INSIDE AND OUT

The concept of Cuban culture is foundational to understanding the paradoxes that emerge in Cuban law and society, both inside and outside the island's territorial borders—paradoxes underscored by the disjunction that exists between the reality of gender and sex equality and the law's equality mandate. Other social structures—the family, work, and politics, to name but three—also reflect gendered inequities. Indeed, the subordinating legal and social consequences of gender are manifested daily in Cuban women's lives—both in *this* and *that* Cuba.

Octavio Paz, in *El Laberinto de la Soledad*, presented the popular image of womanhood that prevails in the Latina/o mind.<sup>198</sup> This Nobel prize-winning author wrote as follows:

Como casi todos los pueblos, los mexicanos consideran a la mujer como un instrumento, ya de los deseos del hombre, ya de los fines que le asignan la ley, la sociedad o la moral. Fines, hay que decirlo, sobre los que nunca se le ha pedido su consentimiento y en cuya realización participa sólo pasivamente, en tanto que “depositaria” de ciertos valores. Prostituta, diosa, gran señora, amante, la mujer transmite o conserva, pero no crea, los valores y energías que le confían la naturaleza o la sociedad. En un mundo hecho a la imagen de los hombres, la mujer es sólo un reflejo de la voluntad y querer masculinos. Pasiva, se convierte en diosa, amada, ser que encarna los elementos estables y antiguos del universo: la tierra, madre y virgen; activa, es siempre función, medio, canal. La feminidad nunca es un fin en sí mismo, como lo es la hombría.<sup>199</sup>

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198. See OCTAVIO PAZ, *EL LABERINTO DE LA SOLEDAD* (1997).

199. *Id.* at 57. Author's translation:

Like almost all other peoples, Mexicans consider woman as an instrument, object of masculine desires, object of the ends assigned to her by morality, society and the law. It must be admitted that she has never been asked to consent to these ends and that she participates in their realization only passively, as a “repository” of certain values. Whether as prostitute, goddess, *grande dame* or mistress, woman transmits or preserves—but does not create the values and energies entrusted to her by nature or society. In a world made of man's image, woman is only a reflection of masculine will and desire. When passive, a woman becomes a goddess, a beloved one, a being who embodies the ancient, stable elements of the universe: the earth, motherhood, virginity; when active, she is always a function, a means to an end, a vehicle. Femininity, unlike manhood, is never an end in itself.

*Id.*

Beyond the parameters of any discussion with respect to what should be the proper location of women in society generally, or of women *en las sociedades cubanas* more specifically—in the context of family, home, work, or the public sector—Paz’s proffered description is not one that even remotely centers on, or even recognizes, the concept of sex equality.<sup>200</sup> Rather, women’s role as presented by Paz is one of expectations and stereotypes—expectations and stereotypes that nevertheless constitute reality for women who are *cubanas*.<sup>201</sup>

As the quoted passage reveals, the *Latina* is defined by the *Latino* in his dominant position in the family, church, and state.<sup>202</sup> The *Latina* did not participate in, or consent to, the definition that determines her identity. She is fabricated and sculpted in the image, desire, and fantasy of the *Latino*.<sup>203</sup> The *Latina* is a vessel relegated to be the repository of values that she did not create but that she is responsible to preserve and transmit.

The cultural expectations and interpretations of *Latinas*, simply because of their sex, within the *cultura Latina* tracks the dominant paradigm’s construction of sex. Like all girls, *Latinas* are socialized to be feminine, to be mothers and wives. Society mandates that their most important aspiration is to get married, have children, and serve their families. Our playthings—*muñequitas, juegos de cocina y de casa*<sup>204</sup>—are to prepare us for our adult life: home-making and child and husband care-taking.

The feminist critique of such male-defined, female-role normativity is extensive. Sociologists, philosophers, and legal scholars alike have identified the male as the standard of humanness and the female as less than the standard.<sup>205</sup>

The *cultura Latina*, including its predominantly Catholic religious mandates, intrudes to aggravate *Latinas*’ gender subordination. The *Latina* identity is developed in the context of the “ideal woman” fabricated in the mold of the Virgin Mary,<sup>206</sup> a construct called *marianismo* that “glorifie[s]

200. See generally *id.*

201. See generally *id.*

202. See *id.*; see also generally Berta Esperanza Hernández-Truyol, *Borders (En)Gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 N.Y.U. L. REV. 882 (1997).

203. See RUTH BURGOS SASSCER & FRANCISCA HERNÁNDEZ GILES, *LA MUJER MARGINADA POR LA HISTORIA: GUIA DE ESTUDIO 83* (1978) (noting that the role of *Latinas* is traditionally reproductive, domestic, one of homemaking and child raising, and subordinate to men).

204. Author’s translation: dolls, kitchen sets, and homemaker games.

205. See Howard, *supra* note 152, at 88. See also generally SIMONE DE BEAUVOIR, *THE SECOND SEX* (1989); SANDRA LIPSITZ BEM, *THE LENSES OF GENDER: TRANSFORMING THE DEBATE ON SEXUAL INEQUALITY* (1993). See, e.g., CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987).

206. Significantly, 85% of *Latinas* consider themselves Catholic, and many hold political and social views that are influenced by religious doctrine. See BONILLA-SANTIAGO, *supra* note 17, at 15. The imagery of the Virgin Mary as the female ideal is firmly rooted in and praised by culture. As one author stated, “Some Chicanas are praised as they emulate the sanctified example set by [the Virgin] Mary. The woman par excellence is mother and wife. She is to love and support her



[Latinas] as strong, long-suffering women who ha[ve] endured and kept Latino culture and the family intact."<sup>207</sup>

*[M]arianismo* defines the ideal role of woman. And what an ambitious role it is, taking as its model of perfection the Virgin Mary herself. *Marianismo* is about sacred duty, self-sacrifice, and chastity. About dispensing care and pleasure, not receiving them. About living in the shadows, literally and figuratively, of your men—father, boyfriend, husband, son—your kids, and your family. Aside from bearing children, the *marianista* has much in common with *una monja de convento*, a cloistered nun—but the order she enters is marriage, and her groom is not Christ but an all too human male who instantly becomes the single object of her devotion for a lifetime.

....

*[M]arianismo* insists you live in a world which no longer exists and which perpetuates a value system equating perfection with submission. Veneration may be the reward tendered to *la mujer buena*, but in actuality you end up feeling more like a servant than a subject for adoration. Indeed, the noble sacrifice of self (the ultimate expression of *marianismo*) is the force which has for generations prevented Hispanic women from even entertaining the notion of personal validation. Yet such female subjugation is not only practiced today, it is—ironically—enforced by women, handed down as written in stone by our mothers, grandmothers, and aunts! We have reduced the mandates of *marianismo* to a set of iron-clad rules of behavior, ten commandments if you will.<sup>208</sup>

Culture teaches us to be *pulcra* (pure) and passive; we are discouraged from activity and aggressiveness. We also are taught early, and severely, the meaning of *respeto* (respect): we must be deferential to our elders, and to all the men in our lives—fathers, brothers, husbands, uncles, cousins—and ask permission for everything.<sup>209</sup> In sum, the Latina is supposed to be a self-

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husband and to nurture and teach her children. Thus, may she gain fulfillment as a woman." *Id.* at 11 (quotation marks omitted).

207. *Id.* (emphasis added); see also HONDAGNEU-SOTELO, *supra* note 17, at 9. "The ideological corollary [to machismo] for women, . . . *marianismo* (marianism), is modeled on the Catholic Virgin Madonna, and prescribes dependence, subordination, responsibility for all domestic chores, and selfless devotion to family and children." *Id.* (citation omitted).

208. ROSA MARIA GIL & CARMEN INOA VAZQUEZ, *THE MARIA PARADOX: HOW LATINAS CAN MERGE OLD WORLD TRADITIONS WITH NEW WORLD SELF-ESTEEM* 7-8 (1996).

209. See BURGOS SASSCER & GILES, *supra* note 203, at 85 (observing that woman's most important function is to marry and serve her family).

sacrificing, virgin mother, a saint, super-human. She is deemed a failure, however, if in her humanness she falls short of this super- and supra-human religious ideal.

This marianista—the mythical ideal Latina—sharply contrasts with its better known counterpart: *machismo*, which molds men as “cold, intellectual, rational, profound, strong, authoritarian, independent, and brave.”<sup>210</sup> One recent book describes *machismo* and characterizes it as having a “dark side:”

*[M]achismo* mandates that men have options, and women have duties. It means that a man’s place *en el mundo*, in the world, and a woman’s place is *en la casa*, in the home. It means that your brother is praised for being ambitious, while you are discouraged for that same quality. And it means that first your father, then your brothers, then your husband give the orders and you obey them.<sup>211</sup>

Lest anyone think that these descriptions of social and familial expectations and roles are not realistic today and are from *el tiempo de las nanas* (from the dark ages), they appear in a book *The Maria Paradox*,<sup>212</sup> written in 1996 by two Latinas—one Cuban and one Dominican, both of whom hold doctorates and practice in the mental health field in New York City.<sup>213</sup>

Having engaged in this brief exploration of cultural gender tropes it is proper to ask whether *this* and *that* Cuba are geographies that still feel as Octavio Paz so colorfully captured. Significantly, it is important to look at each Cuba separately to explore whether the political and legal norms prevalent in each society make a difference with respect to the role of women as ascribed by the guardians of normativity. To be sure, before *el exilio*, with Cuba in one place, the cultural norms described by Paz were uniformly accepted. With the post-revolutionary separation into two Cubas, and the location of women inside the island within a socialist society and women in exile in a society with non-Latina/o roots, an interrogation of whether the political and legal conceptions of equality have an impact on cultural norms is appropriate.

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210. BONILLA-SANTIAGO, *supra* note 17, at 11-12 (citation omitted) (explaining that “many Latin males are expected to show their manhood by behaving in a strong fashion, by demonstrating sexual powers, and by asserting their authority over women”). The author notes that both gender role descriptives are a socio-cultural phenomena. *Id.* at 11.

211. GIL & VAZQUEZ, *supra* note 208, at 6; *see also* HONDAGNEU-SOTELO, *supra* note 17, at 9 (“Machismo calls for men to be sexually assertive, independent, and emotionally restrained, to wield absolute authority over their wives and children, and to serve as family breadwinners.” (footnote omitted)).

212. GIL & VAZQUEZ, *supra* note 208, at 11.

213. *See generally id.*

### A. *The Myth of Women's Equality in Castro's Cuba*

The revolutionary equality notions, mostly encoded in law, were noble and perhaps partly realized insofar as one considers the improvements in health, education, and welfare discussed above. In reality, gender equality remains aspirational. As the disparities in employment and government policies discussed reveal, the reality is that sex equality is a persistent myth.

As detailed, the revolutionary messages regarding equality are often inconsistent. Beyond the double standard evident in its employment policies, and contrary to the "rule of law," the revolution actively reinforced traditional domestic arrangements by paying for honeymoons.<sup>214</sup> The revolutionary government encouraged women to join the labor force because it considered housewives "un-integrated" and thought that they would raise children that also would be un-integrated.<sup>215</sup> Also, engaging in paid employment was deemed to be a key to women's emancipation.<sup>216</sup> Yet, when family emergencies arise, it is only women's, not men's, time at work that becomes dispensable. In short, the revolutionary government's policies giving women, but not men, time off work to care for family or to stand in food lines, simply and actively reinstated and reinforced gendered roles.<sup>217</sup>

Moreover, while domestic tasks are seen as unproductive and unpleasant, the state has failed to provide the means to relieve women of their double burden<sup>218</sup>—working outside of the home all day, and then working at the home and caring for their children and husbands at night. To be sure, the law requires men's equal participation in housework and child care.<sup>219</sup> The reality, as studies have shown, is vastly different. Working women have an average of only two hours and fifty-nine minutes of free time a day.<sup>220</sup> Women spend six hours and twenty-nine minutes at their job, and then four hours and four minutes in domestic chores.<sup>221</sup> In contrast, men, on the average, spend seven hours and forty-eight minutes working at their jobs, and then only thirty-two minutes on housework.<sup>222</sup>

The result of the persistence of traditional roles is that cultural tropes trump legal "paper" rights. "[M]en are viewed as inherently unreliable regarding family responsibilities" and women continue to be seen primarily as mothers,

214. Lois M. Smith & Alfredo Padula, *The Cuban Family in the 1980s*, in TRANSFORMATION AND STRUGGLE, *supra* note 109, at 175, 177.

215. *See id.*

216. *Id.*

217. *Id.* at 179.

218. *See id.* at 177.

219. *See id.* at 177-78.

220. Riveira, *supra* note 79, ch.II, 34.

221. *Id.*

222. *Id.*

wives, and homemakers.<sup>223</sup> Indeed, formal government policies have actually reinforced traditional gender roles and placed primary family care burdens on women.<sup>224</sup>

For example, during the 1960s and 1970s, the government promulgated three major legal changes designed to lift the double burden of work and home-making on women.<sup>225</sup> While the goal was accomplished to a degree, the traditional views behind the perpetuation of the burden on women remained stubbornly unchanged as the laws and policies behind them were based on the assumption that a *cubana's* place is in the home.<sup>226</sup>

One such legal change was the 1975 Family Code, which purported to create a new equality between men and women in marriage.<sup>227</sup> It has been interpreted to require an equal division of housework and child rearing,<sup>228</sup> a vision that is even incorporated into the marriage ceremony. But these legal entitlements are virtually impossible to enforce, as they rely on women taking their husbands to court, with the result of the child- and house-care obligations remaining firmly planted on women's shoulders.

The second major legal change that has, nonetheless, not effected real change is the 1974 Maternity Law, which gives women an eighteen-week paid maternity leave—six weeks prior to and twelve weeks subsequent to delivery; paid days off for doctors' visits; an optional nine-month unpaid leave for new mothers; and a six-month unpaid leave for women with children under age sixteen to attend to family matters.<sup>229</sup> To be sure, such provisions are beneficial to, and thus, desirable for women and children. As there exists no paternity leave, however, the law serves to entrench women's location as being in the home.<sup>230</sup> In fact, in Cuba, work is an obligation from which women with small children, but not similarly situated men, are exempt.<sup>231</sup>

A third major legal reform aimed at enabling women's workforce participation is the child-care facilities called children's circles. These cooperatives take in children from forty-five days of age (an age that essentially corresponds to the end of the paid maternity leave) until age six, which is the age at which children begin school. A child can stay for the

223. See Smith & Padula, *supra* note 214, at 178.

224. *Id.* at 179.

225. See *id.* at 178-79.

226. See *id.* at 178.

227. See FAMILY CODE (Cuba), Law No. 1289, Feb. 14, 1975, art. 24, 26 (providing that marriage partners have equal rights and duties and that they both must care for the family); see also *id.* art. 27 (stating that both spouses must contribute to the needs of the family by sharing household duties and childcare, regardless of whether only one or both partners work outside the home); *id.* art. 28 (stating that both partners have the right to practice their profession or skill).

228. See, e.g., Smith & Padula, *supra* note 214, at 179.

229. See *id.*

230. See *id.*

231. See *id.*

average workday or until Saturday afternoon. The children get three meals a day, snacks, a bath, naps, and learning and play time. There is a sliding scale fee for the circles. Like the Family Code and Maternity Law, these circles may facilitate women's labor force participation, but the underlying basis of the accommodations is that it is *women's* obligation to provide these services.<sup>232</sup>

In sum, notwithstanding the post-Castro revolutionary philosophy of gender equality, the reality is persistent inequality. This inequality can be traced to the cultural tropes guiding women's roles in society—being the homemakers, and child- and family-caretakers. The condition of women only worsened during the “special period”—the economically depressed post-Soviet-support era.<sup>233</sup>

A recent book, *¡No Es Fácil! Mujeres Cubanas y la Crisis Revolucionaria*, written by a Spanish anthropologist, Isabel Holgado Fernández, who has spent long periods of time living in Cuba, chronicles much of the life of women in Cuba today.<sup>234</sup> She confirms that women bear the brunt of the economically difficult times by doing the double duty of engaging in productive work outside the home and keeping the home and society together.<sup>235</sup> This duty is based upon the inability of the revolution to eradicate discriminatory sex roles notwithstanding the gains attained by women. Rather, the socialist regime has enabled the reproduction of cultural patterns that consider women the only ones responsible for the care of the home and children by its ideological privileging of economic issues and dictating, but not enforcing, sex equality.<sup>236</sup>

Indeed, the revolution did nothing to change the focus on family or the structures of extended families, all the responsibility of women. Women's labor force participation was not free of persistent sexism<sup>237</sup> notwithstanding their increased presence in “male” jobs.<sup>238</sup> In fact, even after the revolution, laws prohibited women from holding certain jobs considered dangerous, and hundreds of jobs were listed as exclusively women's work.<sup>239</sup> Castro himself justified the exclusion of women from some productive work assignments by noting that women had other obligations in society, particularly as the ones who raise human beings.<sup>240</sup> Specialists justified the sex-based limitations for

232. See FERNÁNDEZ, *supra* note 16, at 92-94.

233. See *id.* at 46 (describing one woman's experience having to work outside the home and care for the home while her husband just goes to the beach and returns home expecting food on the table). This book consists of not only text but narratives of the experiences of over sixty Cuban women. See generally *id.*

234. See generally *id.*

235. See *id.* at 12, 94.

236. See *id.* at 13.

237. See *id.* at 83.

238. See *id.* at 86.

239. See *id.*

240. See *id.* at 91.

women in the work force because the feminine organism has limitations and women suffer constant changes during menstruation and during maternity.<sup>241</sup>

Concerning sex equality, Article 43 of the 1976 Constitution paradoxically provides that women have equal rights in the economic, political, social, and familial realms, and that to guarantee these rights, consideration must be given to grant women jobs that are compatible with their physical makeup.<sup>242</sup> As these attitudes make patent, *machista* prejudices and attitudes prevail in socialist Cuba—both at home and at work.<sup>243</sup> Women's roles and appropriate locations in the social structure remain as mothers and wives, caretakers and homemakers, and givers and sacrificers.<sup>244</sup>

### B. *Inequality en el Exilio*

Initially, it is important to note that there is a dearth of information about the condition of Cuban women in exile. We know that Cuban men and women together have higher earnings and levels of education than other Latina/o groups in the United States.<sup>245</sup> We also know that Latinas have lower earnings and education than Latinos.<sup>246</sup> It is thus not surprising that *cubanas* earn less and attain lower levels of education than *cubanos*, although more recent numbers show that women are surpassing men in some areas of education, such as the conferral of masters degrees.<sup>247</sup> These results, of course, are predictable if the cultural sex-role mandates are in place as women must devote their primary attention to home and family at the expense of work and individualism.

The available data also allows the conclusion that, based on a majority of society's gender role expectations, the economic and educational shortcomings of Latinas in the United States is, at least in part, due to their sex, based on a majority of society's gender role expectations.<sup>248</sup> Beyond the sex-based discriminations that Latinas experience because of their sex, Latinas

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241. See *id.* (stating "e[st] necesario limitar la libertad de acceso a algunos trabajos 'porque el organismo femenino no tiene sus limitantes y la mujer sufre constantes cambios durante la menstruación y la maternidad'" (footnote omitted)).

242. See *id.* at 93.

243. See *id.* at 95, 123.

244. See *id.* at 123, 125, 127, 131, 133, 136, 138, 146, 160, 178, 186, 190, 192, 194, 198, 199, 250, 255, 281.

245. Berta Esperanza Hernández-Truyol, *Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369, 394-95 (1994); see also Uva de Aragón, *La Mujer Cubana: Historia e Infrahistoria (El Exilio)*, in LA MUJER CUBANA: HISTORIA E INFRAHISTORIA 79, 81-83 (2000).

246. Berta Esperanza Hernández-Truyol, *Las Olvidadas—Gendered in Justice/Gendered Injustice: Latinas, Fronterás and the Law*, 1 J. GENDER RACE & JUST. 353, 358-59 (1998).

247. Aragón, *supra* note 245, at 83, 85.

248. See generally Hernández-Truyol, *supra* note 202, at 911-20.

further encounter the barriers erected by their multiple otherness<sup>249</sup>—their race, ethnicity and possibly language, religion, and sexuality.<sup>250</sup>

A significant factor that distinguishes between *cubanas en Cuba* and *cubanas en el exilio* is the migration experience. Consequently, it is appropriate to explore the impact of migration on sex roles. It is well established that migration has an impact on gender roles and sexuality as “the crossing of borders through migration provides the space and ‘permission’ to cross boundaries and transform their sexuality and sex roles.”<sup>251</sup> Thus, *cubanas* emerging from a society burdened by traditional Spanish sex roles might find different options in a modern society. Such changes are often difficult, however, because “[t]he internalization of cultural and familial norms has deep roots in the psychology and identity of all human beings.”<sup>252</sup>

It is important to note that with migration and the stresses that migration effects, communities often rely on the enforcement of traditional gender roles for continuity of their life experience. Significantly,

sexual and gender-role[s] . . . of women serve a larger social function beyond the personal. They are used by enemies and friends alike as proof of the morality—or decay—of social groups or nations. In most societies, women’s sexual behavior and their conformity to traditional gender roles signify the family’s value system.<sup>253</sup>

People who feel a need to maintain old values in a new setting become the guardians of morality and tradition.

....

Women’s roles become the “bastion” of tradition, and women’s bodies become the site for struggles concerning disorienting cultural differences. . . . While men are allowed and

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249. *Id.* at 892. It should be noted that *cubanas* in Cuba will be “others” only if racially different and/or if lesbians, while *cubanas* in the United States will be others simply *because* of their *cubanidad*; their color and sexuality as well as their language and religion are additional deviations from the *estado unidense* normativity. *See id.*

250. *Id.* at 892, 914; *see also* Hernández-Truyol, *supra* note 246, at 400. While it is beyond the scope of this Essay, it is noteworthy that inequality based on the combined otherness of sex and race persist both inside and outside of Cuba, with these realities being complicated and exacerbated by minority sexuality. *See generally* FERNÁNDEZ, *supra* note 16; Manzor-Coats, *supra* note 11; OLIVA M. ESPÍN, *WOMEN CROSSING BOUNDARIES: A PSYCHOLOGY OF IMMIGRATION AND TRANSFORMATIONS OF SEXUALITY* (1999). Those explorations, however, are a separate project.

251. ESPÍN, *supra* note 250, at 5.

252. *Id.*

253. *Id.* at 6.

encouraged to develop new identities in the new country, girls and women are expected to continue living as if they were still in the old country. . . . They are often forced to embody cultural continuity amid cultural dislocation.<sup>254</sup>

Frequently, as has happened with Cubans, the home culture becomes idealized, with its values, characteristics and customs—including strictly defined and ascribed gender roles—being representative of something better that was left behind.<sup>255</sup> This phenomenon is humorously captured in a short story, *In Cuba I Was a German Shepherd*, written by a contemporary *cubana en el exilio* author.<sup>256</sup> The story is told by an older *exilado cubano*, Máximo, who regularly tells stories to his cohorts as they play dominoes in Little Havana.<sup>257</sup> The story really is about Máximo, the storyteller, and the impact of exile on lives as well as about sex roles.<sup>258</sup> But as told by Máximo, the story is ostensibly about

Juanito the little dog . . . .

. . . .

[Juanito] is just off the boat from Cuba. He is walking down Brickell Avenue. And he is trying to steady himself, see, because he still has his sea legs and all the buildings are so tall they are making him dizzy. He doesn't know what to expect. He's maybe a little afraid. And he's thinking about a pretty little dog he knew once and he's wondering where she is now and he wishes he were back home.

. . . .

He's not a depressive kind of dog, though. . . . He's very feisty. And when he sees an elegant white poodle striding toward him, he forgets all his worries and exclaims, 'O Madre de Dios, si cocinas como caminas . . .' [oh mother of god if you cook like you walk. . . .]

. . . .

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254. *Id.* at 6-7 (citation omitted); see also ANA MENÉNDEZ, *IN CUBA I WAS A GERMAN SHEPHERD* 73, 89, 145-46, 201 (2001).

255. ESPÍN, *supra* note 250, at 23; MENÉNDEZ, *supra* note 254, at 102.

256. MENÉNDEZ, *supra* note 254.

257. See generally *id.*

258. See generally *id.*



[B]ut the white poodle interrupts and says, 'I beg your pardon? This is America—kindly speak English.' So Juanito pauses for a moment to consider and says in his broken English, 'Mamita, you are one hot doggie, yes? I would like to take you to movies and fancy dinners.'

....

So Juanito says, 'I would like to marry you, my love, and have gorgeous puppies with you and live in a castle.' Well, all this time the white poodle has her snout in the air. She looks at Juanito and says, 'Do you have any idea who you're talking to? I am a refined breed of considerable class and you are nothing but a short, insignificant mutt.' Juanito is stunned for a moment, but he rallies for the final shot. He's a proud dog, you see, and he's afraid of his pain. 'Pardon me, your highness,' Juanito the mangy dog says. 'Here in America, I may be a short, insignificant mutt, but in Cuba I was a German shepherd.'<sup>259</sup>

This story reflects the strong pull against loss of cultural identity effected by migration and the desire to keep traditions in its wake.<sup>260</sup> As discussed, these are primarily preserved by women who are seen, as Paz's quote confirms, as the vessels for the transmission of culture.<sup>261</sup>

An interesting fact concerning *cubanas en el exilio* is that their rate of participation in the work force is higher than other Latinas and higher than their *Angla* and African-American women counterparts.<sup>262</sup> In part, this labor force participation is made possible because of the traditional family patterns which signify that older family members—typically grandmothers—are present in the household and take over the child care and home-making obligations such as cooking and cleaning.<sup>263</sup> Thus, while *cubanas* in exile have turned to work outside the home, the traditional lifestyle of multiple generations under one roof has enabled the preservation of cultural gender roles.

To be sure, *cubanas*' increased participation in the labor force defied the norm, dictating that married women should not work outside the home because it constitutes a show of independence which is an affront to male authority.<sup>264</sup> Tradition translates women's dependence and male authority to respect and family honor; to the proper location of men's and women's lives:

259. *Id.* at 27-28.

260. *See generally id.*

261. *See supra* note 199 and accompanying text; *see also* ESPÍN, *supra* note 250, at 146, 149 ("Because women are expected to preserve culture and traditions, immigrant women who are mothers are expected to be the carriers of culture for their children in the new country.").

262. Aragón, *supra* note 245, at 82.

263. *Id.*

264. *Id.* at 85.

the man labors outside the home to provide for his family and the woman dedicates herself—engages in *her* labor—to home and family.<sup>265</sup>

Notwithstanding these cultural mandates, *cubanas en el exilio* justified their labor outside the home based on the economic exigencies of exile. Thus, acts that would have been outlawed became befitting of, and respectable for, the female sex because they were contextualized within their proper sphere. Employment outside the home was viewed as mothers' and wives' fulfillment of their proper obligation to their families.<sup>266</sup> This perspective eradicated the conflict generated by the competing cultural requirements; on the one hand defining women's primary obligations as caring for their families, and on the other hand viewing employment outside the home as disrespectful and impugning family honor.

This ability to render coherent competing cultural gendered norms, however, did not translate into shifting expectations inside the home. Much like their counterparts in Castro's Cuba, the changed conditions with respect to participation in productive labor did not alter the gendered expectations inside the home. When a woman arrived home after a long day's work, she still was responsible for the duties in her "proper" sphere: preparing dinner, doing laundry, helping schoolchildren with homework, caring for the older members of the extended-family household, and serving *cafecito* to her husband and his friends "who in the living room would discuss how to topple Castro."<sup>267</sup> There are some indications that the influence of U.S. society has seeped into younger generations. However, *las mujeres cubanas en el exilio*, much like their counterparts in Castro's Cuba, remain bound by the *marianista* canon. *Marianismo* still today dictates that women in both Cubas take care of all in the home (parents, in-laws, husband, children, dogs, cats, and plants) and transmit cultural values as well as work in the productive labor market.<sup>268</sup>

The need to engage in productive labor has not translated to equal access in the public sector. *Cubanas en el exilio*, just as their *estado unidense* sisters, are limited by the glass ceiling; few attain high executive posts. Also, while the *cubanas en el exilio* do carry out their civic duties by participating in charitable works, few are represented on the executive boards of these civic and political organizations, nor are they represented in the circle of powerful elite exile leaders.<sup>269</sup> Thus, here, too, the cultural patterns of gendered locations of power are reproduced.

Although not much formal information is available, one can find confirmation of the permanence of cultural dictates in works of fiction.

265. *Id.*

266. *Id.* at 86.

267. *Id.* at 86. English in quote is author's translation of: "que discutía en la sala con los amigos cómo tumbar a Castro." See *id.*

268. See *id.* at 87; ESPÍN, *supra* note 250, at 5-9; PAZ, *supra* note 198, at 57.

269. Aragón, *supra* note 245, at 88.

Carolina García-Aguilera is a Cuban-born author of five Lupe Solano mysteries.<sup>270</sup> Lupe Solano is a Cuban-American private eye who works in Miami.<sup>271</sup> Lupe and her family reveal much about the contemporary exile community. Her mom passed away. She has two sisters, one divorced with two children, and the other a very hip nun. The divorced sister lives, with her children, at her father's home—a luxurious villa in Coco-plum, with a yacht moored in the backyard. The sister who is a nun nominally lives in a convent, but spends most of her time at *papi's* where she still has her childhood bedroom. Lupe herself is a rather thoroughly modern working woman with her own apartment, but mostly stays at her *papi's* home, using her own place mostly as cover for romantic encounters. The rest of the household is comprised of an elderly couple who were the parents' live-in domestic help in Cuba and who came to *el exilio* with them. Notwithstanding their advanced age, the wife cooks and cleans, and the husband gardens and cares for the cars and the yacht. The daughters take care of the father, particularly in his unrelenting quest to topple Castro—the reason for the well-stocked, well-fueled yacht in the backyard—and make sure to maintain a cohesive *familia*. *Plus ça change. . . .*

Similarly, Cristina García, acclaimed Cuban-born contemporary author,<sup>272</sup> weaves the flavor of *cubanidad* throughout her writings—as do others. The cultural tropes invoked by writers include the problems women confront when in non-traditional occupations;<sup>273</sup> the importance of family and the mother figure;<sup>274</sup> Cuban men's *machista* view of themselves as alluring and irresistible to women (no matter how unattractive in reality) and their infidelity;<sup>275</sup> persistent *machismo*, sex roles, and separate spheres ideology;<sup>276</sup> and the

270. CAROLINA GARCÍA-AGUILERA, *HAVANA HEAT* (2000); CAROLINA GARCÍA-AGUILERA, *A MIRACLE IN PARADISE* (1999); CAROLINA GARCÍA-AGUILERA, *BLOODY SECRETS* (1998); CAROLINA GARCÍA-AGUILERA, *BLOODY SHAME* (1997); CAROLINA GARCÍA-AGUILERA, *BLOODY WATERS* (1996).

271. See generally *supra* note 270. Interestingly, the author—Lupe's creator—was a private investigator before she turned to writing full time.

272. CRISTINA GARCÍA, *THE AGÜERO SISTERS* (1997) [hereinafter *SISTERS*]; CRISTINA GARCÍA, *DREAMING IN CUBAN* (1992) [hereinafter *DREAMING*].

273. See, e.g., *SISTERS*, *supra* note 272, *passim*.

274. See, e.g., *id.* at 15, 27; *DREAMING*, *supra* note 272, at 176-77. See also, e.g., Ruth Behar & Lucía Suárez, *Two Conversations with Nancy Morejón*, in *BRIDGES TO CUBA*, *supra* note 11, at 129, 133-34.

275. See, e.g., *SISTERS*, *supra* note 272, at 15; *DREAMING*, *supra* note 272, at 26, 113.

276. See, e.g., *SISTERS*, *supra* note 272, at 126, 223, 225; *DREAMING*, *supra* note 272, at 42, 112, 113, 129-30, 162. See also, e.g., Iraida H. López, ". . . And There is Only My Imagination Where Our History Should Be": An Interview with Cristina García, in *BRIDGES TO CUBA*, *supra* note 11, at 102, 112; Patricia Boero, *Cubans Inside and Outside: Dialogue Among the Deaf*, in *BRIDGES TO CUBA*, *supra* note 11, at 189, 190; Elena M. Martínez & René Vázquez Díaz, *Contradictions, Pluralism, and Dialogue: An Interview with René Vázquez Díaz*, in *BRIDGES TO CUBA*, *supra* note 11, at 232, 235-36.

*marianista* image of the *mujer cubana* as “passionate, self-sacrificing, and deserving of every luxury,”<sup>277</sup> and at the same time virginal.<sup>278</sup>

## V. CONCLUSION: EQUALITY AND CULTURE

As the above sections reveal, *both* Cubas retain and embrace cultural tropes that render the Cuban world a gendered place. In both instances, the consequences are double standards and double duties for women. These results fly in the face of the “rule of law” regardless of where one looks. In Castro’s Cuba, equality as a constitutional mandate is effectively a double-edged sword—requiring accommodation for women’s “special needs” and hence, enabling unequal and inequitable treatment. In the United States, the equality laws do not yet view sex as an issue to which strict scrutiny applies, thus allowing gendered views to pass as normative. In the international realm, protections for sex equality and prohibitions against discrimination are often tempered by alluding to the protections of culture, which often is the veil behind which discrimination and inequality lurk.

To be sure, the rule of law ought not be used by a majority culture to eviscerate minority cultural norms, but neither should culture be used by a minority culture to eviscerate the rule of law’s application to its vulnerable members. In this regard, and specifically with respect to women, the two Cubas are more alike than they are different. Notwithstanding the laws, women still remain bound by cultural tropes not of their making, but for which they must take responsibility and even pride. This is not to suggest that cultural norms should always be eradicated. Rather, it is to note a location of commonality between persons in the two Cubas which may allow for exploration of conversations. Notwithstanding the political and economic differences, we are still one in our *cubanidad*.

Cuban women have played key roles in every revolutionary movement and global initiative on the island—including the struggles to obtain independence from Spain, fighting Castro’s revolution challenging its gender-inequalitarian policies, and being economic caretakers *en el exilio*. In the historical process, *las mujeres Cubanas* have been instrumental to changing the governing laws—ranging from property law, to family law, including marriage, divorce, maternity, and childcare, as well as from laws on enfranchisement to labor laws.

Notwithstanding their prominent roles and the legal changes in which their participation resulted, the social reality for women remains largely unchanged. Women’s social roles remain defined and circumscribed by the mandates of *marianismo*, which insists on women deferring to men and being primarily mothers and homemakers. This model has traveled the borders of the island’s

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277. See, e.g., SISTERS, *supra* note 272, at 131.

278. See, e.g., DREAMING, *supra* note 272, at 168-69.

myriad governments, including the narrative of Cubans in exile. Most recently in Cuba, the *magineras* have repeated the rich Cuban history by rebelling against the maleness of the public revolutionary discourse.<sup>279</sup> Within the revolution and after the onset of the special period, women are again taking the lead in the battle for a better Cuba.

Women, throughout Cuban history, have stepped outside their *marianista* designated roles and fought for freedom and equality. At the end of every revolution, however, they have retreated to their traditional roles. In exile, these cultural patterns have been replicated. The struggle for real rather than legal equality is ongoing, difficult, and arduous. We should contemplate finding locations where we can both protect our precious *cubanidad* while recognizing full citizenship and dignity for the *cubanas que siguen unidas por su historia*.<sup>280</sup>

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279. Lois M. Smith & Alfredo Padula, *The Cuban Family in the 1980s*, in TRANSFORMATION AND STRUGGLE, *supra* note 109, at 175, 181.

280. Author's translation: Women united by their history.