Las Olvidadas -- Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law

Berta E. Hernández-Truyol

University of Florida Levin College of Law, hernandez@law.ufl.edu

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Las Olvidadas—Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law

*Berta Esperanza Hernández-Truyol*

Ever since I can remember, I have always been ashamed of who I am. I was ashamed of being poor, I was ashamed of being on welfare, I was ashamed of being a spic (Puerto Rican) with all the prejudices and connotations that go along with a society that does not honor the individual as a spiritual being who is unique and deserves every opportunity afforded all individuals not like me!

Law's hidden face is its power to silence and exclude those, who, for one reason or another, are not full legal subjects, whilst effecting the discursive trick of including them in the apparently universal definition of the legal subject... The ultimate mark of full subject status, has been culturally marked as masculine in both the modern and the ancient world.

* Professor of Law, St. John's University School of Law. Many thanks to Kimberly Johns (SJU '97) and Christina Gleason (SJU '98) (the most terrific research assistants for whom anyone could hope) for their outstanding work. Thanks are also due to John Woods and Leana Nussbaum for their research assistance. Many thanks to Alice Cardona who has dedicated herself to Latinos/as. Through her bountiful generosity and abundance of knowledge she made much of the information on Latinas available for this work.

It has been a pleasure and an honor to participate in this historic occasion of the launching of a new publication at The University of Iowa College of Law, The Journal of Gender, Race & Justice. The live symposium was a truly inspiring, quite extraordinary, and transformative event that addressed the concepts of attaining justice by various persons and communities in the United States. Many thanks to The University of Iowa for hosting such an event, to Dean William Hines without whose support such a gathering is an impossibility, and to Pat Cain, Jean Love and Adrien Wing who I am sure have done much work behind the scenes because their fingerprints are all over the program. Last, but not least, thanks to the students—editorial board and staff—whose indefatigable, collaborative and inspirational work and careful organization made this exquisite program a tremendous success. I particularly want to thank Fauzia Zaman, Sr. Symposium Editor, for having the kindness to invite me to participate in this project.

1. Dorca Gómez, Learning Autobiography (unpublished manuscript) (on file with author). Dorca Gómez is one of three commissioners at the Massachusetts Commission Against Discrimination, the civil rights law enforcement agency for the commonwealth. She is Puerto Rican and was born in New York.

2. Nicola Lacey, Community, Identity, and Power: Some Thoughts on Women and Law in Central and Eastern Europe, 5 UCLA WOMEN'S L.J. 15, 17, 25 (1994). I chose this particular quote on the gendered nature of legal normativity to underscore that it is not a Western phenomenon.
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I. INTRODUCTION

Es sinceramente un inmenso placer compartir en este evento histórico que nos permite colectivamente discutir, en varias fases y contextos, el concepto de la justicia en los estados unidos de américa. Más que nada, y hoy en día más que nunca, es imperativo analizar el concepto de la injusticia en la distribución de la justicia en este país el cual esta formado, firmado y fundado en el principio de igualdad de y justicia para todas personas. Pero lo que es obvio cuando se considera la situación de las Latinas en este país, y lo que intento enfatizar en este ensayo, es que la igualdad como concepto constitucional es solamente una meta, ya que en lo cotidiano el concepto es poco mas que fantasía. Now imagine also being poor, uneducated and scared, seeking refuge from a spouse or partner who beats you up, an employer who threatens to report you to the authorities, harasses you, rapes you, or simply refuses to pay you. Imagine a government

3. Translation (in substance) in the following paragraph of main text.
that wants to ship you and your children off, deprive them of an education and even health care. But I’m getting ahead of myself.

It is significant and symbolic to be part of a re/consideration and re/evaluation of the notions of justice, especially when distributive justice and the sacrosanct rights to equality and justice for all are becoming increasingly shrinking if not degenerating concepts, enjoyed by an “all” that has become a narrower group of persons. Indeed, in this cyber-age it would seem appropriate to think of virtual equality as the constitutional reality.

In the context of the theme of this conference—Penalties, Prohibitions & Punishment: Who Can Get Justice in the United States?—this Article focuses on a class of persons that, although neither small nor unimportant, has been wholly ignored and marginalized in the legal discourse: Latinas.4 The title of this Article Las Olvidadas means “the forgotten ones” (women), a female gender-specific meaning that can be conveyed in the gendered Spanish language by the mere use of two words rather than the three needed in English. And although the gendered nature of the language could be another story altogether, to be explored in another space, it is really symbolic of Latina invisibility. In Spanish every word is gendered, and the “neutral” or global is male. This grammatical rule renders the normativity of the male, everyday Spanish-speak emblematic of Latinas’ plight; we are simply languaged out of existence in the public world of speech.

The dearth of information on Latinas, regardless of the fields one researches, ranging from law to psychology and from education to poverty, is evidence that Latinas are olvidadas.5 The Latina consistently is lost in the

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4. At this juncture it is appropriate to explain my choice of language. Significantly, ongoing (and often heated) discourse exists within the comunidad Latina concerning the appropriate “naming” for the group: the Hispanic versus Latina/o debate. As a Latina I opt for this term; it is one I am comfortable with because one simple word explains both my gender and ethnicity. The problem with the term as commonly used—Latino—is its gendered nature, following the gendered nature of the Spanish language. Because I reject the notion of male-as-normative (and thus inclusive of the female), I then, although cumbersome, use both the male and female gendered words in speaking about the group. I do not use the term Hispanic because it is a label that was imposed on the group by outsiders as opposed to being a self-selected label. Nonetheless, it is noteworthy that many organizations use (and some even prefer) the term Hispanic; notably, the largest national legal organization of Latinas/os is called the Hispanic National Bar Association. For literature on the naming issue, see GERARDO MARIN & BARBARA VAN OSS MARIN, RESEARCH WITH HISPANIC POPULATIONS (1991); David E. Hayes-Bautista, Identifying “Hispanic” Populations: The Influence of Research Methodology upon Public Policy, 70 AM. J. PUB. HEALTH 353, 355 (1980) (arguing that Hispanic is a misleading and stereotypical term); Alfred Yankauer, Hispanic/Latino—What’s in a Name?, 77 AM. J. PUB. HEALTH 15 (1987); The Politics of Ethnic Construction: Hispanic, Chicano, Latino?, 19 LATIN AM. PERSP. (1992) (providing a comprehensive, entire-volume analysis and critique of the various labels).

statistical reporting maze. She either falls under the general category of Latino, the male-gendered ethnic descriptive, or in the catch-all of “minority” women where the Latina is undifferentiated from the Black, Asian, American Indian, and other women of color. Yet, as this piece will show, some aspects of Latinas’ lives such as language, family and culture are not shared with all other women of color. These differences merit disaggregated consideration, evaluation, and reporting on Latinas to permit an understanding of Latinas’ particular needs, conditions and positions.

This Article will study Latinas in the United States and develop a framework that aims to eradicate injustices Latinas experience by importing the voices of las olvidadas into the heart of rights-talk, thus placing Latinas in justice. First, the piece will identify who the olvidadas are—unseen, unheard, and virtually non-existent in the world of law as well as in the myriad other worlds they inhabit. Parts III and IV consider structural roadblocks—first external and then internal—that conspire to perpetuate Latina invisibility and disempowerment, keeping Latinas from justice. Part V presents the locations and positions of Latinas who suffer intimate violence and of Latinas in the legal professions as examples of the formidable fronteras, effected by the conflation of external and internal structural barriers, that obstruct Latinas’ travel to justice. Finally, the work proposes a discursive model that places multidimensionality at the center of any inquiry and promotes respect for differences (including sex, race, ethnicity, sexuality, culture, language, class, religion, education, ability, national origin) yet eliminates marginalization and facilitates participation of Latinas in all spheres of life.

II. DEMOGRAPHICS: LAS OLVIDADAS—QUIENES SOMOS

Initially, in any attempt to provide general demographics of the comunidad Latina, a word of caution is in order. Although Latinas/os share some aspects of culture and language, Latinas/os in the United States are a

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6. Author’s Translation: Las Olvidadas—Who Are We.
very diverse peoples of all colors and races, ethnicities, national origins, ancestries, religions, cultures and sexualities. Thus, despite the homogenizing effect of the single term Latina/o to describe a group, it is important to bear in mind the great heterogeneity of the individuals comprising the group. Indeed, Latinas'/os’ panethnicity raises questions about the ability, viability or practicality of studying Latinas/os qua Latinas/os.

Latinas themselves are a heterogeneous group. Some are citizens, and some not; some are recent arrivals and some have been here for generations; some speak Spanish, some English, some both. Depending on the country of origin/ancestry, colloquialisms in the Spanish language differ. Yet notwithstanding these differences, their burdens are similar: Latinas face major obstacles in every road of life due to the experience of multi-layered discrimination. For Latinas, universal gender concerns are exacerbated and compounded by discrimination based on national origin, ethnicity, language, culture and race. In addition to the same challenges women face globally, Latinas also confront distinct issues, including an increased likelihood of raising children alone, rising poverty, poor educational status and a disproportionate threat from domestic violence and the AIDS virus.


9. UNTAPPED POTENTIAL, supra note 5, at Foreword.

10. Id.
These multiple boundaries erect formidable obstacles to Latinas’ attainment of justice.

Latinas are at the bottom of the pile regardless of what demographic factor one analyzes: education, work or income. Latinas/os are the least educated of all ethnic and racial groups in the United States. Significantly, the denial to Latinas of access to justice in education is particularly harmful as data suggests that the “biggest barrier for [Latinas’ progress in society] is education.”

In addition to the injustice confronted in the area of education, Latinas do not enjoy economic justice. Marginalized in the labor market, regardless of job distribution—whether we have glass-ceiling or sticky floor jobs—Latinas consistently are the lowest wage earners among all workers, including Non-Latina White Women (NLaw) and Black women. While in the 1980s the wages of women of color as a whole rose relative to the income of NLaw, Latinas’ wages declined. Today, Latinas are twice as likely as NLaw to be in the lowest paying jobs.

Although the feminization of poverty phenomenon is global, it disproportionately affects women of color and, in particular, Latinas.

11. Id. at 9 (noting only 51.3% of Latinas/os complete a high school education).
12. Bonilla-Santiago, supra note 5, at i, 9; see infra notes 38-50 for a discussion of the possible reasons for such educational injustice.
15. Untapped Potential, supra note 5, at 19 (“By 1988 Hispanic women’s median earnings were only 83% of Whites’ and 84% of Blacks’.”) (citing Cordelia W. Reimers, Hispanic Earnings and Employment in the 1980s, in Hispanics in the Workplace (Stephen B. Knouse et al. eds., 1992)). The median weekly earnings for Latinas is $305, while for Black women it was $346 and for NLaw it was $408. Id.
16. Untapped Potential, supra note 5, at 19 (16.5% of Latinas earn less than $10,000; only 26.9% of Latinas earn more than $25,000). Only 8.3% of NLaw earn less than $10,000; 41.4% earn more than $25,000. Id.
Las Olvidadas

Latinas, heads of households in 23% of families as compared with only 16% of non-Latina/o families, have the lowest median income of any group.\textsuperscript{19} Predictably, therefore, Latinas are also the least likely of all workers to have pension\textsuperscript{20} or health benefits.\textsuperscript{21} Moreover, given the income and poverty information on Latinas, it should not come as a surprise that many receive public assistance.\textsuperscript{22} Certainly, these demographics set Latinas up for being disproportionately affected by the recent welfare reform\textsuperscript{23} and immigration reform\textsuperscript{24} laws. Interestingly, it seems that fewer Latinas receive public assistance, such as housing subsidies, than are so entitled.\textsuperscript{25}

Even when employed outside of the home for pay, over a quarter of working Latinas are employed in the service industry. Of these jobs, one is prone to find Latinas working as maids, private household cleaners and servants, janitors, nursing aids and orderlies, cooks and child care takers\textsuperscript{26}—all very low paying jobs with little, if any, hope for advancement.

\textsuperscript{18} See generally Symposium on the Feminization of Poverty: The Hispanic Perspective (June 1986) (co-sponsored by The New York State Division for Women and the National Conference of Puerto Rican Women, Inc.) [hereinafter Hispanic Perspective] (on file with author) (providing data that Latinas are the poorest, with the lowest socio-economic indicators in the U.S.).

\textsuperscript{19} UNTAPPED POTENTIAL, \textit{supra} note 5, at 31 (noting that in 1993, Latinas’ median income of $8100 was 72% of NLAW’s ($11,266) and 85% of Black women’s ($9508)).

\textsuperscript{20} \textit{Id.} at 31.

\textsuperscript{21} BONILLA-SANTIAGO, \textit{supra} note 5, at 14; MUJERES EN ACCIÓN PRO SALUD REPRODUCTIVA, PUERTORRIQUEÑAS: REPRODUCTIVE HEALTH AND SOCIODEMOGRAPHICS AMONG PUERTORICAN WOMEN IN THE U.S.: A FACT HANDBOOK 9 (1991) (on file with author) [hereinafter SOCIODEMOGRAPHICS] (noting that one-fifth of Latina/o adults lack health insurance; Latinas/os are the ethnic group least likely to have health insurance with 33% of Latinas/os lacking either private insurance or Medicare/Medicaid compared to 11% of the general population; structural barriers include a lack of Spanish speaking physicians and Latina/o medical doctors. Latina/os only constitute 4.9% of medical school entrants).

\textsuperscript{22} UNTAPPED POTENTIAL, \textit{supra} note 5, at 31 (stating that 12.3% of all Latinas/os receive AFDC, that 17.4% of all AFDC recipients are Latina/o; in 1991, Latinas/os constituted 14.5% of households receiving food stamps).


\textsuperscript{25} UNTAPPED POTENTIAL, \textit{supra} note 5, at 31 (finding that as of 1990, 9.5% of families receiving AFDC lived in public housing, while only 7.3% of Latina/o families received any housing subsidy).

\textsuperscript{26} RUTH BURGOS SASSCER & FRANCISCA HERNÁNDEZ GILES, LA MUJER MARGINADA POR LA HISTORIA: GUÍA DE ESTUDIO 89-90 (1978) (noting that women’s work is “subaltern”; maids, laundresses, seamstresses, garment workers, nurses, secretaries and teachers); UNTAPPED POTENTIAL, \textit{supra} note 5, at 17-18.
Conversely, few Latinas hold managerial and professional positions. Moreover, data on Latina presence in management reveals that even these successful workers are concentrated in lower and middle management positions. Although disaggregated data for Latinas does not exist, it is logical to project that the combination of sex and ethnicity, each of which alone would effect invisibility in high ranks of management, results in the number of Latinas in senior management posts being infinitesimally small.

Sadly for Latinas, working full time does not ensure a "living wage" or even a non-poverty level wage. The latest figures available establish that a Latina earns $.54 for each dollar a NLaw earns. This 30-40% gap can be attributed to the multiple employment discriminations Latinas encounter as sex, race and ethnic "others." Adding insult to injury, a Latina with a college degree earns less than a NLaw with only a high school diploma.

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27. UNTAPPED POTENTIAL, supra note 5, at 18 (noting that 27.5% of NLaw hold managerial and professional positions, while only 13.4% of Latinas do).

28. SHEILAGH MYLOTT & CATHERINE M. PINO, OCCUPATIONAL SEGREGATION AND DEMOGRAPHIC DETERMINANTS OF LABOR FORCE PARTICIPATION AMONG PUERTO RICAN WOMEN IN NEW YORK CITY 35 (1993) ("Puerto Rican women in professional and other White-collar jobs tend to be at the lowest paid echelons, which include such workers as teachers, librarians, and health, personnel, and recreational professionals.").

29. CITIZENS' COMM'N OF CIVIL RIGHTS, THE RESOURCE: AN AFFIRMATIVE ACTION GUIDE 23 (Corrine M. Yu & William Taylor eds.) [hereinafter THE RESOURCE] (showing figures that only 0.4% of senior managers are Latina/o, and women hold only 3-5% of top jobs in major corporations, the majority of whom are NLaw).

30. UNTAPPED POTENTIAL, supra note 5, at 22-23 ("In 1990, more than one-third (37.0%) of Latinas who worked full-time, year-round had earnings below the poverty level which for that year was $12,195 for a family of four, or $6.10 per hour. Data on Latino[a] married-couple families show that, in 1993, 32.5% of such families with one year-round full-time worker were poor.").

31. Id. at 19 (citing Network News, 18 NATIONAL NETWORK FOR WOMEN'S EMPLOYMENT, Spring 1995). Earnings by subgroups differ with puertorriqueñas showing the highest median earnings as $14,200 "probably as a result of their concentration in the Northeast, which has high wages relative to other parts of the country." Furthermore the report indicated:

Cuban women workers follow closely with median earnings of $14,117. Mexican women had the lowest earnings ($10,098), due in part to the areas of the country in which they are concentrated. In addition, Mexican women's earnings may be adversely affected by their relatively large proportion of new immigrants and related factors like limited English proficiency. These same factors may also influence the low median earnings of Central and South American women ($10,249).

Id.

32. Puerto Rican Legal Defense and Education Fund, Inc., AFFIRMATIVE ACTION STRATEGY, in THE RESOURCE, supra note 29, at 3 ("[T]he percentage of the income gap between Latina females and White males that is attributable to employment discrimination falls within a 30%-40% range.") (citing NATIONAL COUNCIL OF LA RAZA, STATE OF HISPANIC AMERICA 1991: AN OVERVIEW 27 (1992)).

Thus, as the previous discussion shows, regardless of classification, ranging from education to employment, from poverty to management, Latinas are truly *mujeres marginadas*—outsiders who define the margins. The following section explores structural bases of Latina marginalization.

III. INJUSTICE—*FRONTERAS/EXTERNAL BARRIERS: SOCIAL, ECONOMIC AND LEGAL*

Rights are meaningless to the population that cannot exercise them. Women’s exclusion from participation in the public (indeed even the private) sphere:

is a direct result of their systematic exclusion, by custom and by law, from access to key elements of empowerment: education, physical and social freedom of movement, and mentorship by those already in power. It is evidence of structural inequality that cannot be addressed effectively by refinement of theoretical concepts or discourse on rights.

Structural inequality results in the perpetuation of injustice and ignorance despite all efforts to enact and enforce legal rights. The term “structural inequality” refers to the essential power imbalance between women and men, in which men have held most of the power to make decisions that affect women, families, and society. This imbalance results in fundamental injustice.\(^{34}\)

Significantly, the same “imbalance” is true in this country on the basis of race/ethnicity. Latinas have a third degree of subordination because of their culture. This triple crown of gendered, racialized/ethnicized, and cultured injustice requires a total re/construction to integrate the faces of Latinas in justice.

That discrimination against Latinas exists in all aspects of life resulting in the marginalization of Latinas in public discourse is patent. One simply needs to point to the lack of data on Latinas to confirm that they have not been the objects or subjects of social scientific concern. Latinas’ plight is compounded by their multiple differences from the *normativo*. One major factor for Latinas’ invisibility lies in the nature of the system.

In general, external barriers to women’s advancement include elements of “organizational culture” as well as factors of “organizational structure.”\(^{35}\)

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35. HARLAN & BERHEIDE, supra note 13, at ii.
Organizational culture refers to the internalized normative institutional ideas (prejudices) concerning the appropriate race, class, sex, ethnicity of persons in certain positions. Organizational structure, on the other hand, concerns:

[social norms, cultural stereotypes and power and privilege in organizations [that] provide the "invisible foundation" for organizational decisions about which jobs and how much opportunity are suitable for certain types of workers. These decisions determine the ways that complex organizations structure work, creating barriers for women and keeping them from advancing in organizational "pipelines." 37

As the discussion below unveils, the conflation of these intangible and invisible barriers work to disadvantage Latinas in education and in the economic sector as well as in the justice system.

A. Social and Economic Injustice

1. Fronteras in Education

Latinas/os face structural barriers in education. Indeed, some deeply troubling educational studies suggest bias might be at the root of Latina/o children’s non-performance in school. For example, a report of the United States Commission on Civil Rights stated with respect to one study of Mexican-American educational attainment “that Anglo teachers tended to favor Anglo children over Mexican Americans in their praise, encouragement, attention and approval. Predictably, it was also found that Mexican American students participated in class less than Anglo students.”

36. See id. ("Although hiring and promotion decisions in organizations are supposed to be based on rational and universalistic criteria, they often express informal and socially acceptable expectations about the gender, race, and class of the people best suited for particular positions."). As will be discussed, see infra notes 64-71 and accompanying text, Latinas' culture in the ethnographic sense also creates barriers to justice.

37. HARLAN & BERHEIDE, supra note 13, at ii. In noting the structural problems women face, the authors discuss that the low-paying jobs with greatest numbers of women are not connected to a job ladder in the organization; recruitment and hiring practices tend to place women in positions without job ladders; women who can make the jump from a job without an advancement ladder to one with an advancement ladder still go to the bottom of that ladder because of various factors including seniority rights; and lack of family sensitive policies, which require an employee to marry a job, work to the detriment of women.

38. U.S. COMM’N ON CIVIL RIGHTS, PUERTO RICANS IN THE CONTINENTAL UNITED STATES: AN UNCERTAIN FUTURE 103 (1976) [hereinafter UNCERTAIN FUTURE] (citing U.S. COMM’N ON CIVIL RIGHTS, REPORT V: MEXICAN AMERICAN EDUCATION STUDY, TEACHERS AND STUDENTS 43 (1973)). The report continues thus: “No similar study of Puerto Rican students has been carried out, but it is reasonable to assume that the results would be the same.” Id.; see also CLARA E. RODRÍGUEZ, PUERTO RICANS BORN IN THE U.S. 130 (1989) (“[T]here appears to be selective receptivity for Hispanic elementary students on the part of teachers.”). “[T]eachers directed praise or
These teacher attitudes and interactions diminish the quality of the educational experience for Latina/o children, particularly when it becomes a reflection of teachers’ lower academic expectations. Such inferior expectations consequently result in the lower self-esteem found in Latina/o students as compared with NLW students. This data, considered together with studies that show similar classroom biases against girls, results in the erection of a doubly thick educational success barrier for Latinas.

Stories of lower expectations, as well as direction into less ambitious routes abound. One researcher “cites lower teacher expectations and a lack of socially and culturally relevant curricula as factors that discourage the overwhelming majority of Black and Puerto Rican students in New York City.” I personally experienced such attitudes for the first time (that I can recall) my senior year of college when I went to my career counselor at Cornell University to explore applying to law school. Rather than providing me the guidance I sought, he spent the entire meeting suggesting that my desire to be (fantasy about being?) a lawyer was misdirected. Instead, he insisted that I really wanted to be a teacher, after all my bilingualism (he assumed I spoke only Spanish and English, not bothering to learn from my resume that I am also fluent in French) would let me help my people. Now, in retrospect, he was right—I am (and love being) a teacher, a law professor, but somehow I think this level of teaching is not quite what he had in mind.

Encouragement at Anglo students 36% more often than at Mexican-American students, built on the spoken contributions of Anglo students 40% more often, and asked Anglo students 20% more questions than they asked Mexican-American students.” Id. Rodríguez notes that another study “found Mexican-American children ages 7 to 11 to be more attuned to praise from teachers, and to have higher self-esteem, when teachers asked a lot of questions and listened well.” Id. But see THE RESOURCE, supra note 29, at 10 (showing an increase of Hispanic females age 25 or older who have completed four years of college or more from less than 5% in 1975 to approximately 8% in 1993; interestingly, although the table includes years 1970-93, data for 1970 was not available for any Hispanics or for Black females).

39. AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, SHORT CHANGING GIRLS, SHORTCHANGING AMERICA 14 (1994) [hereinafter AAUW STUDY].

40. UNCERTAIN FUTURE, supra note 38, at 108. The report provides stories of students relating teachers’ attitudes including one “Puerto Rican student [who] told the Pennsylvania Advisory Committee of her efforts to be admitted to an academic course and of the repeated warnings of guidance counselors that ‘I should not aim too high because I would probably be disappointed at the end result.’” Id. (quoting testimony of Llydia Corcino in Pennsylvania SAC, Transcript of Open Meeting at 570).

41. RODRIGUEZ, supra note 38, at 130-31.

Low teacher expectations with respect to educational achievement compound the problem [of differing linguistic styles], leading to loss of self-confidence and, ultimately, internalization by students of the belief that they cannot succeed in school . . . . It is essential that schools create an educational environment where success and self-esteem, not failure, is the expectation for our children.

Id. (citation omitted).
This was the first time in my life that I recall it ever being insinuated that I—either because of my gender or my race/ethnicity (I really do not know what drove him but I suspect it was the Shakespearean combination of both)—should not or could not do something. I was born in Cuba and raised in Puerto Rico. My ethnicity was never an issue. In the course of my elementary and secondary education being Latina/o was the norm; of course being a girl was another matter.

In fact, the two school years I spent in Miami (third and fourth grades) I was lucky to have Mrs. Armand, Cuban by birth and married to an “American,” as a teacher. Upon the arrival in the U.S. of a number of Cuban children whose families were fleeing the Castro regime, she took it upon herself to teach us English after school. She provided the reinforcement of “you can achieve,” the attention and understanding that sent the same positive message, and the role model that rendered all this information credible. I cannot help but wonder how different my life might be if Mrs. Armand had not been there; if I had not been raised in an environment where the Latina/o ethnicity was the norm; if my mami (herself a lawyer) and papi had not told me I could do anything I wanted to do; if instead of being encouraged to reach for the stars, I’d had the Cornell counselor, whose subliminal but potent message was not to aim too high, (mis)guiding me from day one.

That teachers have a great impact on the learning ability of students based upon the environment they create in the classroom is beyond peradventure. Thus, teachers who come to classes with attitudes of bias and stereotyping that prevent Latinas/os from achieving their full potential, effect and compound the daily educational injustices Latinas/os encounter. These educational complexities and difficulties are exacerbated for the poor and those who, because of linguistic barriers, are further perceived as “disadvantaged.” As one report states:

Despite their better judgment, people of another background often feel that disadvantaged children are by nature perverse, vulgar, or lazy. Children sense quickly the attitudes of school people toward

42. RODRIGUEZ, supra note 38, at 129-30; UNCERTAIN FUTURE, supra note 38, at 103.

43. RODRiGUEZ, supra note 38, at 129-31; UNCERTAIN FUTURE, supra note 38, at 103; Wayne Slater, Black, Hispanic Legislators Says UT Professor Should Resign over Remarks, DALLAS MORNING NEWS, Sept. 12, 1997, at 28A (reporting legislators’ reactions to the statement of University of Texas School of Law Professor Lino Graglia that “Blacks and Mexican-Americans are not academically competitive with Whites in selective institutions. They have a culture that seems not to encourage achievement. Failure is not looked upon with disgrace.”). It is not beyond credibility to surmise that Professor Graglia’s attitude of bias towards Mexican-American and Black students might prevent Latinas/os in his classes (constitutional law, no less) from achieving their full potential.
them, and they retaliate against condescension or intolerance with hostility, absenteeism, and failure.\textsuperscript{44}

One researcher explains these students' reactions as a "self-fulfilling prophesy," noting the "attitude problem within the schools, that the attitudes of teachers and staff lead to self-fulfilling prophecies of failure (for themselves and for students) . . . [which] feed student attitudes of resistance, alienation, and underachievement."\textsuperscript{45} The findings establish that "[t]eachers, parents and peers all play a role in determining educational expectations" and that the correlation between expectations and success in student achievement was "especially true for Hispanic women."\textsuperscript{46} Thus for all children, but especially for Latinas, diminished or negative expectations are a sure formula for failure.

Such reduced educational expectations of Latinas/os influence teachers in other ways. One researcher suggests that the net effect of race, class and/or gender bias may be a \textit{de facto} "tracking" of Latina/o students into lower educational tracks,\textsuperscript{47} thus creating compounded problems as the student navigates the educational system. This tracking data is disturbing if one adds the language problems to the mix. One psychologist noted a consistent underestimation of IQ by twenty points when Latina/o children were tested in English, a gap that was immediately overcome when the test was conducted in Spanish.\textsuperscript{48}

Considering this information and adding the gender element to the mix, Latinas' underachievement in education is not surprising but predictable. Latina students suffering from the ethnic, cultural and racial biases imbued in the system also must manage the established gender biases that show that teachers systematically ignore girls in classrooms, fail to call on them, do not follow up with their answers and, overall, prefer to spend their time with and expend their efforts/energy on boy students.\textsuperscript{49} For the Latina student, young and older alike, absent systemic re/construction, the structural biases in the classroom will continue to rally against their success, indeed will be

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\textsuperscript{44} UNCERTAIN FUTURE, supra note 38, at 103 (quoting National Education Association and American Association of School Administrators, Educational Policies Commission, \textit{Education and the Disadvantaged American} 19 (as cited by Clarence Senior in Schreiber, \textit{The School Dropout} 112)); see also RODRIGUEZ, supra note 38, at 130.
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\textsuperscript{45} RODRIGUEZ, supra note 38, at 129.
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\textsuperscript{46} \textit{Id.} at 130.
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\textsuperscript{47} \textit{Id.} at 132 (noting that the \textit{de facto} tracking is "indistinguishable from the systematic ordering of Hispanic students into nonacademic, nondemanding, or special educational tracks").
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\textsuperscript{48} UNCERTAIN FUTURE, supra note 38, at 99 ("In my clinic, the average underestimation of IQ for a Puerto Rican kid is 20 points. We go through this again and again. When we test in Spanish, there's a 20 point leap immediately—20 points higher than when he's tested in English.").
\end{flushright}

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\textsuperscript{49} AAUW STUDY, supra note 39, at 14.
\end{flushright}
signposts for failure. Successful Latinas must overcome race, sex, ethnic and cultural barriers; yet as Part V(B) exposes, not even Latinas who have reached the hallowed halls of law school escape injustice.  

2. Economic Fronteras

Structural barriers also account for Latinas' failure to enjoy economic justice. Researchers attribute the earning gap of Latinas to a variety of factors including: Latinas' low educational levels (limiting them to low-skill jobs); Latinas' concentration in low-wage service jobs; and employment discrimination, which affects both employment and pay levels.  

In addition, Latinas' opportunities may be hampered by their lack of English language fluency and literacy. Even when one accounts for language, skill level and low educational attainment, Latinas' aggregated racial, ethnic and sex

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50. Latinas'/os' educational failings, reflected partly in high dropout rates from high school to college, create barriers for Latinas/os to enter the ranks of law school. THE HISPANIC-AMERICAN ALMANAC 239 (Nicolás Kanellos ed., 1993) [hereinafter HISPANIC ALMANAC]. In addition to educational barriers, Latinas/os are hampered in their pursuit of a legal education due to financial considerations. Id. These financial difficulties may be a significant reason for high dropout rates. Over half of Hispanic women law students received no family support to pay for their legal education. LINDA F. WIGHTMAN, WOMEN IN LEGAL EDUCATION: A COMPARISON OF THE LAW SCHOOL PERFORMANCE AND LAW SCHOOL EXPERIENCES OF WOMEN AND MEN 70 (1996). Hispanic women primarily financed their legal education through loans and earnings from summer employment and employment during law school. Id. at 70-71. See infra notes 147-190 and accompanying text for a discussion of cultural and structural barriers Latinas in the legal professions face. For a full discussion of structural barriers in law, see infra Part III(B).

51. UNTAPPED POTENTIAL, supra note 5, at 19-20, 26.

Several labor market studies have demonstrated that Latinos/as in general and Hispanic women in particular experience substantial levels of employment discrimination. In a recent study of the economic status of Latinos/as, analysts determined that the percentage of the Hispanic female-non-Hispanic White male income gap attributable to discrimination falls within a 30%-40% range. This same study indicated that "discrimination has actually increased for Latino [sic] women compared to White women" over the last 20 years. Other research findings confirm that employment discrimination is a major factor in the status of Hispanic female workers. For example, an analysis of women workers in New York City found that discrimination represents between one-fifth and one-half of the wage gap for Hispanic women. Similarly, other research has found that "if Hispanic women had the same characteristics as their non-Hispanic white counterparts, only between 27%, and 57% of the gap in occupational status would be closed," suggesting that a substantial part of these disparities may be attributable to discrimination.  

Id. at 26 (citations omitted). Moreover, the overall decline in wages of entry level, non-college educated, young workers has been disproportionately affected—all the positions in which Latinas are disproportionately represented. Id. at 20.

52. MYLOTT & PINO, supra note 28, at 1.
discriminations erect multiple barriers to Latinas' job opportunities and attainment of economic justice. 

If one looks at working Latinas between the ages of eighteen and sixty-four, approximately half are immigrants, “a factor which has implications for education, language training, and overall socioeconomic status.” For undocumented Latinas, the available jobs are only in the low-skill, low-pay categories. Furthermore, due to their undocumented status, Latinas are often concentrated in the underground economy—housecleaning, child-care and the garment industry—where they lack even basic protections. While all domestic workers, particularly live-ins, suffer the plight of undefined roles and indeterminate hours, the vulnerability to abuse for undocumented workers is greater. 

Undocumented workers report very high levels of sexual harassment and abuse, some labeling the employers’ approach as a “lay down or layoff policy.” Latinas do not report the prevalence of physical abuse because they fear being turned in to the authorities. This pattern of abuse remains true in instances where the violence is economic (even beyond the poverty wages they get paid). Many employers, taking advantage of the limited

53. Bonilla-Santiago, supra note 5, at 18 (noting Latina job concentration in low-wage jobs); Untapped Potential, supra note 5, at 17 (“Of the 4.2 million Hispanic women who held jobs in 1994, two-thirds (39.1%) were concentrated in technical, sales, and administrative support occupations . . .”). Across the board, evidence shows gender segregation in jobs. Thus, Latinas’ rate of participation in these low paying jobs simply reflects the rate of women’s presence in these jobs. For example, of NLaw in the labor force, 42.4% are in low-paying positions. Id.

54. See, e.g., Uncertain Future, supra note 38, at 61; Mylott & Pino, supra note 28, at 32, 33, 35 (noting low-wage, low-skill jobs into which puertorriqueñas were drawn, including file clerks, typists, cashiers, teachers aids and sales clerks).

55. Untapped Potential, supra note 5, at 7.


58. Id. at 128-29.


60. Hogeland & Rosen, supra note 56, at 6.

61. Id. at 10.

62. Undocumented workers get even lower wages than their documented counterparts. Id. Significantly, the income of Latina undocumented workers is reported to be the lowest among undocumented workers. Id. at 11.
avenues for redress of undocumented workers, simply refuse to pay them for their work.63

B. Fronteras in the Law

1. Legal Paradigms—The Conflation of Race, Ethnicity and Nationality

It is no surprise that in the justice system, structural barriers for Latinas exist, both in its theoretical foundation and in its practical, tangible manifestations. The normative legal paradigm in the United States presents an omnibus barrier for Latinas as many-layered others. For example, the system was created in the image of the founding fathers. Consequently, the system’s image of what is normal is the white, Anglo/Western European, Judeo/Christian, English-speaking, educated, moneyed, propriety, heterosexual, physically and mentally able man—the quintessential “reasonable man.” Pursuant to this structure, Latinas are a very different “other.” Gender, race and ethnicity are three deviations from the norm all Latinas share.64 In addition, in light of the demographic information provided above, religion, class, language, culture, education and propriety status often add to the Latinas’ differences from what has been constituted as normative.

In the United States, the dominant legal construct is ruled by a dichotomous black/white racial paradigm into which Latinas/os simply do not fit neatly. In this country, the rule of hypodescent, the so-called one-drop rule, defines as “Black” anyone who has one drop of Black blood, regardless of phenotype.65 Moreover, the construction of race in the United States conflates race with ethnicity. Indeed Latinas/os in this country are considered not white and also not black because they are Latinas/os—regardless of phenotype or taxonomy. To be sure, this presents an absurd conflict as race and ethnicity are different categories.

63. Id. at 10.

64. As I discussed earlier, infra Part III(A)(1), being born in Cuba and raised in Puerto Rico, my otherness was my sex; I never knew that race, ethnicity and language would render me an “other.” As a girl, I was not supposed to like sports like I did or to want to be a professional. Yet any teasing or questioning of my choices was from the outside. At home I was always encouraged to excel in any interests I pursued—be it “traditional” or not. To this end, it helped that my mami had broken the professional woman barrier, and even her mother before her. My abuela on mom’s side was a midwife; my mami is a Cuban trained lawyer and doctor of diplomacy. She was my first and most influential role model. As a four year old in Cuba I remember the Cuban State Department bringing work to her at home when she was on maternity leave after the birth of my brother. I also recall the stories of her training in the diplomatic service.

This paradigm is in sharp contrast with Latinas/os’ (at least caribeñas/os’) perspectives on race. While in the United States the one-drop rule operates to render Black anyone who has one drop of Black blood, the obverse is true in the Caribbean. There, the rule is *blanqueamiento* ("whitening") where one drop of white blood starts you en route to desirable whiteness. No doubt, both cultures (structures) favor the “white” (colonizer’s) *tez* (complexion), but the approaches are dramatically different.  

Thus, the result of the foundational black-white paradigm is to racialize ethnicity (and ethnicize race) with sometimes interesting, ironic, incoherent results. Existing race/ethnic categories of “white, not of Hispanic origin,” “black, not of Hispanic origin,” Hispanic, Asian, and American Indian are both under- and over-inclusive because, as they are race and ethnic categories, the de-racialization of ethnicity and the de-ethnicizing of race is wholly inappropriate. For example, an Afro-Cuban is both Black and Cuban, meaning s/he is *both* Black *and* of Hispanic origin, a dual classification that results in bias in both worlds. Interestingly, more recent categories’ specific notations that Hispanics can be of any race still fail to recognize the realities and possibilities of the multiple discriminations to which Latinas/os are subjected on a daily basis.

These varied perspectives of race and the conflation/confusion of race and ethnicity, which also often become interchangeable and confused with national origin, stand in the way of Latinas’ attaining justice and generate nativistic feelings. One manifestation is the rendering of all Latinas/os within the United States, regardless of citizenship, as “alien” — outsiders,

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68. See MARN & MARÍN, supra note 4, at 20 (stating that the label “Hispanic” attaches to persons regardless of their race); *Hispanics Aren’t of One Racial Group*, MILWAUKEE J. SENTINEL, Aug. 8, 1997, at 17 (commenting that while forms usually list Hispanic as a race, forms have recently emerged which designate that Hispanics can be of any race).


others, different looking—a status that is compounded by the otherness effected by Spanish speaking and Spanish names.\textsuperscript{71}

The overarching racist/nativistic impetus behind recent immigration reform resulting from the confusion of the varied categories of race, ethnicity and nationality has even affected puertorriqueñas/os who are U.S. citizens by birth. Data show that even though the Immigration Reform and Control Act of 1986\textsuperscript{72} (IRCA) does not apply to native-born citizens, IRCA's employer sanction provisions have had a negative impact on puertorriqueñas/os simply because they are\textit{perceived} to be foreign because they "look" or "sound" different.\textsuperscript{73} One reported egregious rejection of a citizen's application (for an unskilled watch packer job) entailed a company's refusing the applicant's offer of a Puerto Rican birth certificate,

\textsuperscript{71} Interestingly, the pretexts underlying these nativistic feelings are unfounded in fact. Although undocumented foreigners in the United States have been vilified as veritable gonjfs of social services, available data shows that not only do they put more into the system than they take, for numerous reasons there is "virtually no participation in welfare programs by the undocumented." Michael A. Olivas, \textit{Storytelling out of School: Undocumented College Residency, Race, and Reaction}, 22 HASTINGS CONST. L.Q. 1019, 1076 (1995); see also id. at 1073-80 (reviewing data on immigrants not "milking" the public assistance system); HONDAGNEU-SOTELO, supra note 57, at 164, 170-72 (stating that undocumented workers underutilize health services, especially preventative health care, including maternal and child health services; immigrants underutilize public services, including services from funds into which they have made payments).

The single largest reason for not seeking social services is the fear of deportation; other reasons include lack of knowledge about the existence of services, lack of language ability to communicate with service providers, and a feeling of discrimination. HOGELAND & ROSEN, supra note 56, at 49-50 (reporting that 61% of Latinas noted fear of deportation as a barrier to seeking social services; other reasons for not seeking services were lack of knowledge of existing services and that service providers did not speak their language). Even those eligible for certain services because they are mothers of children born in the U.S. appear reluctant to seek them, id. at 50, and at most, use the services sparingly. HONDAGNEU-SOTELO, supra note 57, at 170-71.

In all events, denial of benefits to undocumented foreigners is far from laudable as their need for social services may go largely unmet. HOGELAND & ROSEN, supra note 56, at 3. This issue is significant in this essay because "women constitute a majority of the undocumented already in the U.S. as well as those who are newly arriving." Id. at 4. In fact, some of the reports of nativistic abuse go to "point of entry" at the border where border guards have been reported to put women in jail where "they made me take off all my clothes, and searched me naked, then they put their fingers inside me." Id. at 9. The abusers are the normativos, the representatives of the structure. Thus Latina undocumented workers, at the bottom of the bottom of socio-economic demographics of Latinas, aptly reflect the consequences of structural impediments to justice.


\textsuperscript{73} MYLOTr & PiNO, supra note 28, at 42, 43. Citing to a GAO report, this account continues:

As a result of IRCA, ten percent of a pool of 4.6 million employers surveyed by the GAO discriminate based on "foreign" appearance or accent; \([0]\) if this total pool, eight percent applied the law's verification system only to persons who appear or sound "foreign"; \([a]\) hiring audit illustrated that U.S. citizen Hispanics were three times more likely to encounter unfavorable treatment by employers than Anglos and Anglos received 52% more job offers than equally qualified Hispanics.

\textit{Id.} at 43.
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social security card, and voter registration card as evidence of legal status and instead insisting on a "green card." The company lost the case, of course, and was chastised by the court for requesting from a citizen a document—the green card—that only foreigners can obtain. Nonetheless, this occurrence reveals the consequence of the dominant paradigm's conflation of race, ethnicity and nationality.

Thus, the philosophical underpinnings of the legal system, with the black-white paradigm as a foundation, and the othering of differences, which can render even citizens "alien," are wholly inadequate to examine the condition of Latinas in the United States. It is not surprising, then, that the system built on such an infrastructure—one that constructs and mandates analysis as a one-layered phenomenon—is deficient in addressing, accommodating and resolving the problems, needs and rights of this population—a population that by its characteristics is three layers removed from the most conventional of Latinas' sex, race and ethnic realities.

2. Fronteras in the Justice System

Beyond its theoretical underpinnings, other structural aspects of the justice system interfere with Latinas' attainment of justice. Latinas/os in the justice system who either provide or use services list the courts, police, social service agencies, governmental and welfare centers and the English-language media as discriminators.

a. Court facilities

Latinas seeking access to the system of justice, like other persons of color, encounter varied systemic borders and experience the resulting injustice. The condition of court facilities frequented by litigants of

74. Id. at 45.

75. In New York City, 69% of Latinas/os believe the police mistreat Latinas/os—a perception that increases with schooling and income. HISPANIC FEDERATION OF NEW YORK CITY, HISPANIC NEW YORKERS ON NUEVA YORK: SECOND ANNUAL SURVEY 22 (Douglas Muzzio & Luis A. Miranda, Jr. eds., 1994) [hereinafter HFNYC SURVEY]. Of all Latinas/os, 19% cited a "great" deal of abuse and 38% noted "some" abuse. Yet, 78% of college graduates perceived mistreatment from police while only 45% of those with an eighth grade education (or less) shared the perception. Similarly, while 79% of Latinas/os earning over $40,000 perceive the police as abusive, only 62% of those who make under $10,000 share this view. Id. at 22-23. Ironically, at least for those of us who have not yet disassociated the notions of law from the notions of justice, 57% of Latinas/os view the courts as dispensing injustice to Latinas/os. Id. at 22. Of the 57%, 19% said that courts greatly mistreat Latinas/os and 38% said that Latinas/os face "some mistreatment" in the courts. Id. Finally, and particularly significant in light of the data on Latinas' poverty, lack of education, economic disadvantages and domestic violence, over 56% of Latinas/os also report a perception that government, social service and welfare centers mistreat Latinas/os. Id.
color—often referred to as “ghetto courts”\textsuperscript{76}—are dismal: dilapidated,\textsuperscript{77} overcrowded, filthy and in disrepair.\textsuperscript{78} In addition, often these courts are geographically located in generally deteriorated, economically deprived areas.

Parallel to the physical deterioration of the facilities is the justice dispensed therein, often referred to as “assembly line justice”\textsuperscript{79} with many litigants receiving less than five minutes of the court’s time.\textsuperscript{80} Because of the large case volume and the small number of judges in these courts, litigants’ “day in court” consists of treatment as nameless and faceless entities. Yet, while the structural powers recognize the need to mend both the physical conditions of the courthouse and the less-than-full justice dispensed therein, fiscal pretexts result in maintaining the status quo.\textsuperscript{81}

Other physical barriers to justice are the architecture of, and lack of information concerning, the physical facilities. Any courthouse, even a new, modern, model building, is a confusing and overwhelming maze.\textsuperscript{82} Litigants unfamiliar with the legal process or the judicial system are particularly disadvantaged in navigating such space and quickly get the message that they “don’t belong”—simply because they cannot find their way around. This problem is further compounded when the only information that is available is in a language that the traveler does not understand,\textsuperscript{83} a problem

\begin{itemize}
\item \textsuperscript{76} NEW YORK STATE JUDICIAL COMM’N ON MINORITIES, 1 EXECUTIVE SUMMARY 12 (1991) [hereinafter N.Y. COMM’N ON MINORITIES].
\item \textsuperscript{77} The New York Commission described the “ghetto courts”:
\begin{quote}
The disrepair, and often, unhealthiness, of our court facilities is a monument to racial bias. It takes no in-depth examination to see the vast discrepancy between the facilities in Civil Court in which most minority litigants appear—namely Housing and Small Claims Court—and the better facilities maintained for those litigants, usually white and/or of financial means, in the same courthouse.
\end{quote}
\textit{Id.} at 16.
\item \textsuperscript{78} The Commission noted:
\begin{quote}
What message is sent when these courts have facilities that are totally inadequate? A waiting room for 3 or 4 housing parts that has seating for 15 people and a calendar of 150 people? No public water fountains. No hand towels or toilet tissue in the bathrooms. There are no doors on the commodes at the Bronx Family Court. Would this be tolerated at the Appellate Division? It sends a message to the people in these courts that they aren’t worth much.
\end{quote}
\textit{Id.} at 13.
\item \textsuperscript{79} \textit{Id.} at 12.
\item \textsuperscript{80} \textit{Id.} at 20.
\item \textsuperscript{81} \textit{Id.} at 13.
\item \textsuperscript{82} See \textit{id.} at 12 ("[T]he litigant often encounters ‘informational barriers’ created by the virtual absence of information explaining where to go in order to negotiate the system.”).
\item \textsuperscript{83} \textit{Id.}
especially acute for Latinas/os who are recent immigrants and who do not speak English as well as for other Latinas/os whose English skills may be limited. Numerous courts have recognized that the absence of signs and diagrams explaining the facilities are structural barriers to all persons. The few signs that exist, however, are completely useless to non-English speakers. This lack-of-information phenomenon, of course, is also true in the “ghetto courts”—a matter that compounds this alienating atmosphere.

The incomprehensible language, lack of information and haphazard signs reinforce the message of “you don’t belong in the halls of justice.” Even when Latinas/os manage to overcome the physical conditions of the courthouse, they must face the reality of a nearly all NLoW institution where, on the basis of race/ethnicity, not to mention language, nationality and education, they are clearly outsiders. Latinas face the additional barrier of the gendered nature of these hallowed halls of justice.

b. The jury system

In addition to the courthouse facilities and courtroom environments, Latinas/os face other structural impediments to justice. One significant roadblock is the jury system. Persons of color, and particularly Latinas/os, are significantly underrepresented as jurors. Yet, studies have shown that the ethnic makeup of a jury is critical to the outcome. Thus, under-representation of persons of color on juries may result in skewed or simply unfair or uninformed court decisions. For example, inherent racial/ethnic prejudices are more likely to affect the outcome of a case decision when none or only a few persons of color are on the jury to quash the bias.

84. Id. at 18; DRAFT FINAL REPORT OF THE SPECIAL COMMITTEE ON RACE AND ETHNICITY TO THE D.C. CIRCUIT TASK FORCE ON GENDER, RACE, AND ETHNIC BIAS 123 (1995) [hereinafter D.C. TASK FORCE].

85. N.Y. COMM’N ON MINORITIES, supra note 76, at 18. These courts often have handwritten signs that provide little information and convey the sense of a lack of concern.

86. Id. at 12 (“[T]he minority litigant may be faced with a virtually white courtroom.”). “More often than not, ... the court clerks and the judges will all be nonminority. It is clear that white folks are in charge, and this justice means, 'just us.'” Id. at 19. “Racial bias against litigants is sometimes compounded by gender bias.” Id. at 22. See also infra notes 155-177 and accompanying text (noting that even Latina legal professionals are viewed as not belonging).

87. See infra Part IV(B).

88. One survey found that only 2.8% of jurors were Hispanic men and only 0.9% were Hispanic women. D.C. TASK FORCE, supra note 84, at Appendix E.

89. N.Y. COMM’N ON MINORITIES, supra note 76, at 58.

90. Id. at 57.

91. Id.
In this regard, it is important to note that *Batson v. Kentucky*\(^9\) forbids use of race in jury selection and *J.E.B. v. Alabama ex rel. T.B.*\(^9\) similarly provides that “[g]ender, like race, is an unconstitutional proxy for juror competence and impartiality.” However, in *Hernández v. New York*\(^9\) the Court refused to apply these rationales to language.\(^9\) This conclusion can have devastating effects in excluding Latinas/os from juries as it is at least possible, if not probable (although the Court rejected this position), that language as a proxy for ethnicity or national origin effectively can be used to keep Latinas/os from receiving or delivering justice. This is especially true because the bilingual Latina/o can be thrown off a case if s/he honestly states that s/he would be unable wholly to disregard original Spanish testimony in favor of the English translation. Structural silencing could not get any clearer.

c. Court personnel and language services

Interaction with the court personnel often determines if one will understand and manage to maneuver the system to achieve justice. Thus, the shortage of Latinas/os in the justice professions\(^9\) results in injustice when Latinas/os can not find adequate legal counsel or can not obtain justice from someone who does not understand the clients’ cultural background, baggage and language. Studies show that this injustice is exacerbated by the virtual absence of any Latina/o court or support personnel who could provide culturally and linguistically sensitive assistance to Latinas/os seeking or needing to navigate the legal—physical and doctrinal—maze.\(^9\)

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96. See infra notes 148-57, 175 and accompanying text (discussing small numbers of Latinas/os who are lawyers, judges, law professors).
97. Although the demographic data is available, studies are again not disaggregated by sex and ethnicity. D.C. TASK FORCE, supra note 84, at 65 (“Demographic data, to the extent they have been collected at all, generally provide separate information about ‘minorities’ and ‘women,’ without identifying the number or proportion of the population that fits both categories or without differentiating among different minority groups.”). The D.C. Circuit Task Force on Gender, Race and Ethnic Bias study revealed a startling absence of Latina/o court employees. In 1981 in D.C., there was a complete absence of any Latina/o employees in either the District Court or the Court of Appeals. Id. at 30. While these numbers have improved slightly, there is still significant under-representation of the Latina/o population. Id. at 30.
A study of the New York state courts similarly shows a significant absence of personnel of color. N.Y. COMM’N ON MINORITIES, supra note 76, at 81. The New York data also reveal a lack of women among court personnel. This absence is partially attributed to employment requirements, such as height and weight, which have virtually precluded women from court jobs. UNIFIED COURT
An analysis of the data paints a grim picture for Latinas at two levels. First, it suggests that very few Latinas are (or will be) employed in the court system. Second, and a consequence of the first, Latinas who seek to navigate the legal labyrinth will lack culturally and linguistically sensitive personnel—usually the first persons who, as litigants, Latinas are likely to encounter in the hallways and offices of the courts—to aid them in traveling in/justice.

The barriers of gender, race and language combine to place Latinas at a disadvantage in trying to utilize court services and are further compounded by the lack of interpreters, through or with whose assistance Latinas could have a voice in justice. In the absence of such services, Latina/o litigants are forced to seek the aid of a friend or family member—persons who have no knowledge of either the legal system, process or substantive rights being discussed—to translate court proceedings and testimony. Even in the instances when interpreters are available, there are no guarantees with respect to the level of the interpretation skills provided, as there usually is no certification process or procedural guidelines to ensure accurate translations or compatibility of regional colloquialisms. Such inability to communicate in the context of the legal system effects invisibility, isolation and injustice. Finally, the lack of linguistic and cultural sensitivity of services related to the dispensing of justice—such as police or shelter support—created additional barriers to Latinas’ attainment of justice.

IV. INJUSTICE—INTERNAL FRONTERAS/CULTURAL BARRIERS: GENDER AND LANGUAGE

Culture, in the ethnographic sense, plays a major role in defining the status of Latinas, erecting a multi-faceted frontera that traps Latinas’ progress in varied spheres of their lives, constructing and entrenching both internal and external barriers. Particularly significant are the gendered cultural barriers—existing both in the majority culture and in the cultura Latina—that are so deeply ingrained in both men and women.

System of the State of New York, Five Year Report of the New York Judicial Committee on Women in the Courts 19 (1991). At the highest levels in the court system, the lack of Latinas/os, female or male, is especially striking. Of the 1129 judges in New York state courts, only 19 are Hispanic. N.Y. COMM’N ON MINORITIES, supra note 76, at 94. Reviewing only the data for these two geographic locations, where the population of Latinas/os is actually quite large, the under-representation of Latinas/os in the court system is rather dramatic.
A. Latina Gender Roles

Traditionally, in the cultura Latina the Latina’s role is reproductive and domestic: child-raising and home-making. In addition, Latinas’ identity is founded on a vision of the “ideal woman,” fantasized in the image of the Virgin Mary. This ideal, “marianismo,” “glorifie[s] [Latinas] as strong, long-suffering women who have endured and kept Latino culture and the family intact.” Throughout history, and in the literature, Latinas are simultaneous and conflicting stereotypes: sentimental, gentle, passive, modest, docile, faithful, submissive, dependent, maternal and timid; at the same time they are pretty, seductive, flirtatious and impulsive.

The pervasiveness of such perverse gender role stereotyping is plainly and devastatingly evident in The Maria Paradox, a recent book whose subtitle “How Latinas Can Merge Old World Traditions with New World Self-Esteem” reveals what it purports to achieve. The authors are two Latinas, one Cuban and the other Dominican; one a D.S.W. and the other a Ph.D.; both are professors and psychotherapists in New York City, particularly within the comunidad Latina.

Before reading the book I was enthusiastic about its great possibilities. Latinas would, from their standpoint epistemology, analyze and deconstruct the gendered nature of Latina/o culture and community. The critique and formula for reform would come from insiders in the comunidad Latina, persons who fully participate in and understand the community’s traditions.

98. SASSCER & GILES, supra note 26, at 83.
100. Significantly, 85% of Latinas consider themselves Catholic and thus are influenced/guided by religious doctrine. BONILLA-SANTIAGO, supra note 5, at 15. The imagery of the Virgin Mary as the female ideal is firmly rooted in and praised by culture: “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 husband and to nurture and teach her children. Thus, may she gain fulfillment as a woman.” Id. at 11.
101. BONILLA-SANTIAGO, supra note 5, at 11; see also HONDAGNEU-SOTELO, supra note 57, 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.”); ROSA MARIA GIL & CARMEN INOA VÁZQUEZ, THE MARIA PARADOX 7 (1996).
102. SASSCER & GILES, supra note 26, at 84.
103. The Maria Paradox was recommended to me by various persons whom I called in my desperate search for information on Latinas.
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language, aspirations, strengths and flaws. The book interspersed Latinas' case histories (stories) with advice on how (allegedly) to shed old world constraints for a new, self-esteem based world. In striving for such a goal, the authors—super-educated, successful, professional Latinas—unabashedly and, given their psychotherapist status, presumably knowingly, simply reinforced gender-based cultural stereotypes and norms rather than deconstructing misplaced gender-based expectations. For example, the authors urge the recognition of the positiveness of the "light side" of machismo—what the authors call el caballero (the "gentleman"). They state:

    El caballero protects his wife and family from all dangers. He offers the best seat at the movies to his dama, stands up to give a woman his seat on the subway, carries heavy packages, always opens the door for a lady, and helps with the heavy household chores. While he is still afflicted by machismo, el caballero personifies the sensitive side of a man who deifies rather than denigrates his wife.

    One of our purposes in this book is to show you how to bring out la caballerosidad in your man.104

In the quoted paragraph the writers, rather than debunk the macho and its marianista opposite roles, support the view of male as the stronger caretaker and the woman as fragile, holy, needy, weak, submissive, flirtatious and manipulative. That stereotypical, male oppressive conduct should be praised as good "macho lite" is a travesty. That it is imposed upon and ingrained in Latinas by Latinas is unspeakable.

    And while one is considering the unspeakable, it is also beyond comprehension that the word "lesbian" appeared only once in the book, in the context of a woman's (the authors' client) rejection of her boss's sexual advances—a story of sexual harassment. The following is the authors' description of the incident:

        I thought all Spanish girls were hot, he [the boss] told her [the woman in therapy], and when that didn't work, he went so far as to accuse her of being a lesbian.105

The authors' choice of language is telling. In their world view, lesbianism must be such an abomination or aberration that a suggestion of status becomes an accusation of deviance—a suggestion of criminality. To be sure, the wording makes it patent that the authors not only do not embrace/approve of lesbianism, but also condemn such sexuality. In one brief sentence, two Latina psychotherapists succeed in othering, indeed

104. Gil & Vázquez, supra note 101, at 5.

105. Id. at 117 (emphasis added).
rendering invisible Latina lesbians who, because they are also sexual minorities, are even more marginalized than those who can claim straight privilege. Indeed, this passage’s outlook confirms that outsiders evaluating “themselves”—here Latinas evaluating Latinas—can and do internalize normative, majority hierarchies to the detriment and exclusion of some in their own comunidad. Thus, the colonized’s internalization of the colonizer’s rule effectively “others” some within their communities.

The inner cultural conflict of Latinas’ insinuating (if not downright mandating) that they remain in the home (private sphere) has labor market consequences. On the one hand, it results in their pursuit of jobs in the public sphere that replicate their “appropriate” conduct—those “feminine” occupations as care-takers: nannies, cooks, maids, at the bottom of the pay scale (probably because they so well replicate the natural woman’s role as wife, mother, housewife). On the other hand, when Latinas pursue non-traditional jobs, the cultural mandates of respeto, self-abjection, passivity and insecurity ill-prepare Latinas for success.

To be sure, this mythical marianista model, in all its aspects, causes grave conflicts when girls are also expected to excel at, for example, math or law. As one writer has noted:

[Cultural values suggest [that] power is unfeminine and is viewed as a negative quality. The culture has socialized and trained Latinas to eliminate conflict instead of facing it. They learned early not to take risks, thereby placing a high value on security. They desire to create stability and do not understand the necessity for change in the corporate world. They often do not grasp the vision or mission of the organizations for which they work. They value loyalty and expect loyalty from their subordinates. They do not value the power of bargaining. If something does not feel right they back out instead of negotiating.]

Consider such statement in juxtaposition to the persona of a successful Latina litigator who must be firm, articulate, calm and strong. There is great dissonance.

Gender-role caricatures are myths so deeply embedded in culture and tradition that they have taken the stature of truths, reality. These myths, however, present great obstacles to the deconstruction of cultural gender

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106. The danger of the internalization of the oppressor’s oppression is discussed in Montoya, supra note 8.

107. See Bonilla-Santiago, supra note 5, at 8 (“Many [Latinas] still tend to pursue the more feminine occupations as a way to enter the work setting because they do not understand the organizational cultures.”).

108. Id. at 7.
roles that is needed to facilitate Latinas’ progress in areas where they are now marginalized or fully excluded. In this context, any suggestion that “machismo” can include positive traits or that its “light side” is desirable is a tragic misapprehension. In any event, to deconstruct these chimerical truths it is imperative to understand the culture, race, class and gender underpinnings of the oppression.

**B. The Role of Language**

One perpetrator of Latinas’ marginalization at myriad dimensions is language. For example, the gendered nature of Spanish, where the male gender is the norm in both the spoken and written forms, renders Latinas non-existent, foreign, alien, non-belonging in their own tongue. This characteristic of Spanish-speak facilitates the male norm’s obliteration of Latinas in their own ambiente—home, work and church—and is Latinas’ ghost wherever they travel.

Similarly, Spanish-accented English speech, unlike most other accented versions, be it Midwestern, Southern or Northeastern, results in a qualitative judgment about the speaker. The Latina is unintelligent, uneducated and illiterate. Spanish-accented English becomes code for the negative, undesirable other and not for the exotic other that an Australian or French accent would invoke.

In addition, a Latina is affected by language if she does not speak English. Lack of English language skills immediately renders Latinas foreign, though we may be native-born citizens whose jurisdiction has Spanish as the native, official tongue. For example, anyone born in Puerto Rico is a native-born, Spanish-speaking citizen. Nothing in the Jones Act requires forsaking one’s native tongue. Yet one’s birthright citizenship is questioned because of speaking a language that is seen as a foreign tongue. All of these realities combine to marginalize, exclude and silence Latinas in virtually every aspect of their lives.

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109. See id. at 12 (Latina/Hispana feminists reject the “cultural nationalist view that machismo could be a positive value within a Latino cultural value system” and reject the notion that machismo is “a form of cultural resistance to . . . discrimination [from the] dominant society”). But see Gil & Vázquez, supra note 101, at 5 (“So much has been written about machismo both within and outside the Latino community that the word has entered the English language as a synonym for oppressive male supremacy. However, it’s important to be aware that machismo has positive aspects, too. We’ll be referring to this light side when we feel you can use it to your advantage in improving things with the men in your life.”) (final emphasis added). The very notion of a “machismo light” to be used to “gain female advantage” effects the reinforcement of traditional sex-role stereotypes that are deleterious to Latinas’ advancement in education, economics and dignity.

110. Puerto Rican Federal Relations (Jones) Act, ch. 145, 39 Stat. 953 (1917). Section five of the Jones Act declared and deemed all citizens and natives of Puerto Rico citizens of the United States unless within six months of the effective date of the Act they opted to retain their “present political status.” Id. at § 5; see Hernández-Truyol, supra note 7, at 390.
Moreover, the intersection of internal cultural barriers with external barriers reveals another critical, albeit more figurative, way in which language affects Latinas: the isolating effect of having to traverse and navigate language worlds. Speaking a foreign tongue forces, mandates and implies certain presumptions about life, society, relationships, church, perspectives; it is a standpoint epistemology. Language is but a proxy or a metaphor for identity, regardless of the Supreme Court’s inability to accept that idea.

Language is a multi-layered empowerment tool for Latinas. For one, if they talk back, if they “hablan p’atrás,” the Latina becomes visible, raising her voice within her culture. Similarly, use of language also empoder, empowers, Latinas vis à vis the majority culture by becoming visible there too. Finally, speech opens the door of the family closet and places Latinas in the public forum, claiming a place at the table in the comunidad.

In juxtaposition, the inability to communicate in one’s own language is silencing, destabilizing and marginalizing. The Latinas’ world views, if presented in a foreign tongue, will not be painted through their eyes, expressed with their words, constructed through their palette. One’s other-lingualism becomes alienating, depriving one of membership, full citizenship, in English monolingual society.

The dominance, indeed exclusivity, of the English language and the resulting presumptions, assumptions and conclusions about cultural borderlands simultaneously grant power to the powerful and take life from the subordinated. They prevent collective dialogue because the NLW does not know and does not need to “know the text” of the alien. This English-only vernacular results in the entrenchment of the “in-crowd’s” perspective and mind-set. Its linguistic limitation, however, translates to a patois that is untuned, limiting, stilted and tone-deaf. Such a single/off-key approach prevents understanding others. Yet it is the dominant and accepted speak,

111. Gloria Anzaldúa, *Haciendo caras, una entrada*, in *MAKING FACE, MAKING SOUL/HACIENDO CARAS* xxii (Gloria Anzaldúa ed., 1990) [hereinafter *HACIENDO CARAS*] (“To speak English is to think in that language, to adopt the ideology of the people whose language it is and to be ‘inhabited’ by their discourses.”).

112. *Hernandez v. New York*, 500 U.S. 352 (1991) (allowing peremptory exclusion of bilingual Latino jurors); *Garcia v. Gloor*, 609 F.2d 156 (5th Cir. 1980), withdrawn and substituted, 618 F.2d 264 (5th Cir. 1980); *see also Perea*, supra note 95 (arguing that the Court failed to understand the connection between national origin traits and race).


114. *See Norma Alarcón, The Theoretical Subject(s) of This Bridge Called My Back and Anglo-American Feminism*, in *HACIENDO CARAS*, supra note 111, at 363; *see also Kit Yuen Quan, The Girl Who Wouldn’t Sing*, in *HACIENDO CARAS*, supra note 111, at 214-15 (describing how her parents insisted she “master” English to fulfill the “Chinese American dream,” how she “was lonely
no matter how narrow and provincial, and results in the exclusion of Latinas’
worlds.

Silencing, lingual exclusion in whatever version underscores Latinas’
multiple alien nations. As the section below will show, these cultural
roadblocks, particularly when combined with mainstream race, ethnic and
gender biases, are an immense impediment to Latinas’ attainment of equality
in all facets of their lives, ranging from their physical integrity at home to the
success of Latinas in the justice professions. This tension is the foundation
of a proposed solution, the creation of a space where Latinas will have a
voice and be visible.

V. THE CONVERGENCE OF EXTERNAL AND INTERNAL FRONTERAS

The combination of internal and external fronteras conspires to deny
Latinas justice in all spheres of life—ranging from the most private to the
most public. Two case studies below bring to life the impact of these
multiple barriers on Latinas’ everyday lives. First, this Article presents an
eexample of a grave injustice at home—the problem of intimate violence for
Latinas. Second, it studies the impact of the internal and external fronteras
on women in the legal profession.

A. Injustice at Home: Intimate Violence

One jurisdiction where Latinas do not enjoy justice is at home. Studies
show that domestic violence is an issue that seriously affects Latinas,115
although precise figures are impossible to obtain. As a recent Department of
Justice report plainly notes, “Estimating rates of violence against women,
particularly sexual assault and other incidents that are perpetrated by
intimate offenders, continues to be a difficult task.”116 This is particularly
true for Latinas who, as a matter of cultural mandates, maintain all family
matters private and shielded from public scrutiny.

for someone to talk to who could understand how I felt, but I didn’t even have the words to
communicate what I felt,” and how, in an attempt to effect that communication, she “had to learn
feminist rhetoric” which, while providing words to express oppression, “still reflects the same racist,
classist standards of the dominant society” making the author feel she is “being put down for what
I’m saying or how I talk”).

115. UNTAPPED POTENTIAL, supra note 5, at 36 (finding that at least 6.5% of Latinas were
victims of domestic abuse between 1979 and 1987). See generally Jenny Rivera, Domestic Violence
Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials,

116. RONET BACHMAN & LINDA SALTZMAN, U.S. DEP’T OF JUSTICE, NATIONAL CRIME
VICTIMIZATION SURVEY—VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY
While women of all races, Latinas and non-Latinas alike, are equally susceptible to physical violence by an intimate, research on risk factors reveals Latinas' added vulnerabilities. Data shows that younger women (19-29) and poor women (incomes under $10,000) are more likely to be victims of violence committed by an intimate. As Latinas constitute a younger and poorer population, they appear to be particularly exposed to domestic abuse. Similarly, data suggests that women with lower education and family income levels are more vulnerable to violence by an intimate. Because Latinas are poor and poorly educated, there is cause for concern about the exposure of Latinas to such intrusion. Indeed, a correlation to education suggests that Latinas, the least educated of any group of women in the United States, are in a high-risk domestic violence category.

Notwithstanding the law's de jure rendering of domestic violence a public act subject to sanction, the de facto attitudes that view such conduct as part of the private domain have not been as quick to change. Such closeting of violence is a factor of great significance for Latinas because cultural norms reinforce maintaining domestic issues in the private realm—en la casa. Moreover, in the comunidad Latina, cultural differences account for more tolerance by Latinas/os of wife abuse, resulting in more Latinas than NLAW believing "there are times when it might be legitimate for a husband to hit his wife." Finally, for culturally dependent reasons,

117. Id.

118. Id. at 1, 4; Torres, supra note 5, at 31-32, 33 (noting association between younger age and higher levels of abuse; noting that some report a higher incidence of wife abuse in lower socioeconomic status families, but that some argue it simply reflects that lower class women are more likely to seek assistance; some findings show abuse at every socioeconomic level); see also supra notes 13-33 and accompanying text.

119. See sources cited supra note 18 (noting Latinas are poorest); see also supra notes 13-33 (noting economic factors for Latinas).

120. RONET BACHMAN, U.S. DEP'T OF JUSTICE, VIOLENCE AGAINST WOMEN—A NATIONAL CRIME VICTIMIZATION SURVEY REPORT (1994). But see Torres, supra note 5, at 32 (finding "no evidence to indicate that less educated women were abused more than higher educated women").

121. See supra notes 11-12 and accompanying text; OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SELECTED FINDINGS, DOMESTIC VIOLENCE—VIOLENCE BETWEEN INTIMATES (1994) (reporting that women college graduates had the lowest rates of intimate violence (3 out of 1000) juxtaposed to those with less than a high school education (5 out of 1000)).

122. See Torres, supra note 5, at 44.

123. Id. at 181 (noting Mexican-Americans' attitudes towards wife abuse are more tolerant than the attitudes of Anglo-Americans; some acts were considered serious by Anglo-Americans but not so serious by Mexican-Americans).

124. Id. at 52.
Latinas appear more likely to stay in an abusive relation than NLaW.\footnote{125} One study found that Mexican-American women stay with their abusive husbands for their children—to protect the family unit—while NLaW stay because of love.\footnote{126}

For immigrant Latinas, and particularly for undocumented Latinas, domestic violence is a major threat. Immigrant Latinas arrive with "cultural and ideological baggage"\footnote{127} that conflates the multiple oppressions of race, class, language and sex,\footnote{128} including the patriarchal notions of \textit{machismo} and \textit{marianismo} that existed in the comunidad Latina before their arrival. This world view, through the lens of la cultura Latina, intensifies the inability of Latinas to seek or obtain justice at home.

The conflation of cultural identity and undocumented status shackles over half of Latina domestic violence victims, a reported thirty four percent of Latina participants in a study, to their abusive partner. One common reason undocumented women refuse to seek help, like their documented counterparts, is the cultural environment, where such violence is perceived to be in the private realm and mediated exclusively by church and family.\footnote{129} A fear unique to the undocumented Latina is that seeking outside assistance will result in deportation of the partner on whom she is financially dependent.\footnote{130} The combination of these cultural factors are major roadblocks for undocumented and documented Latinas alike to attain justice in the home.

Domestic violence is one stark example of how Latinas are virtually lost in the legal delivery system, including related services. Structural problems such as personal\footnote{131} and institutional\footnote{132} acceptance of gender roles, blame-the-victim mentality, and patriarchal family norms have impeded effective programmatic eradication or diminution of domestic abuse. Language,
culture and immigration borders play a role in Latinas' under-reporting domestic abuse.

Inadequate resources, including inadequate support services for family violence, exacerbate Latinas' barriers to justice.133 Related services such as shelters and police support, often the primary threshold for women even to begin legal proceedings, have disregarded Latinas' needs such as language services and culture-specific training in social and legal fora. Evidence of this void in services lies in a study reporting that a lower number of Latinas (Mexican-American women) rate available services as effective than their NLaw counterparts.134

Immigrant Latinas who are victims of domestic violence doubly suffer from such lack of services. For example, language difficulties or undocumented status can interfere with obtaining information about services or gaining access to services that is compounded by the additional obstacles of a possible inability to communicate with service providers, fear of deportation for themselves or the abuser, and cultural barriers that direct women to keep such problems within la familia—the private sphere.135 The inefficacy and insensitivity of the social and legal service system with respect to Latinas—ranging from lack of language-specific education and information to lack of cultural sensitivity—play a major role in rendering such services inaccessible to immigrant Latinas. Shelters, hotlines and courts, without the appropriate counselors possessing both linguistic and culturally sensitive training, are useless to a woman lost, physically hurt, economically deprived, and afraid in a foreign land.136

In addition to these overall concerns, Latinas encounter other structural/institutional problems in dealing with domestic violence. An overwhelming hurdle facing a Latina who wishes to report domestic violence is the police.137 Police intervention is extremely limited, especially with respect to Latinas, due to a number of complicating factors. Latinas who are victims of domestic violence typically live in poor neighborhoods of color. Police, as a general rule, are reluctant and slow to respond to complaints in such neighborhoods.138 Even when the police respond, many

133. UNTAPPED POTENTIAL, supra note 5, at 37.
134. Torres, supra note 5, at 197.
135. UNTAPPED POTENTIAL, supra note 5, at 37.
136. See generally id.
137. D.C. TASK FORCE, supra note 84, at 107. For many minorities, the police are their first contact with the judicial process.
138. Latinas and Domestic Violence, Panel Presentation at “Under Represented Women and the Law,” 5 (Nov. 5-6, 1994) (sponsored by Berkeley Women’s Law Journal). Latinas also may fear the police because in many of their countries of origin police are corrupt and violent. See Rivera, supra note 5, at 245.
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believe that domestic violence is a private matter and that, consequently, they should not interfere.\textsuperscript{139} In addition, Latinas’ cultural baggage adds to a reluctance to seek police involvement, as they—especially recent immigrants—fear that if they call the police they and their family could be deported.\textsuperscript{140}

Another barrier that Latinas face are rules and regulations governing access to shelters. Shelters for battered women often welcome only English-speaking women\textsuperscript{141}—a practice justified by the lack of Spanish-speaking personnel. Another obstacle for Latinas seeking to escape domestic violence is shelters’ limitations regarding the number, age and/or sex of the children the victim may have with her at the shelters. Such rules leave many Latinas without any place to go even if they were to muster the courage to leave an abusive home. The lack of available shelters is a startling problem when viewed in concert with the fact that Latinas who suffer domestic violence are less likely than other women to contact friends, family or clergy.\textsuperscript{142} The result is complete isolation that prevents Latinas from escaping abuse and receiving help.

Structural problems with services are especially profound for Latinas and provide a basis upon which to scrutinize the internal cultural barriers they confront in navigating everyday life. For cultural reasons, Latinas who are victims of domestic violence typically endure the abuse longer than other women.\textsuperscript{143} Latinas are also less likely to leave their abusive homes due to the added disadvantages of lower economic status, less education, and a “loyal motherhood” norm.\textsuperscript{144} This sense of duty to the family means that Latinas are married younger, stay with their husbands longer, and have larger families,\textsuperscript{145} all of which combine to keep a Latina bound to stay with her family out of a sense of duty. These cultural boundaries, which reign in both

\textsuperscript{139.} Latinas and Domestic Violence, \textit{supra} note 138, at 5-6; Torres, \textit{supra} note 5, at 42. In this regard, VAWA should be extremely helpful. \textit{See infra} notes 215-21 and accompanying text (discussing hope in VAWA).

\textsuperscript{140.} Latinas and Domestic Violence, \textit{supra} note 138, at 7.

\textsuperscript{141.} \textit{Id.} at 8; \textit{see also} Rivera, \textit{supra} note 5, at 481. Shelters that accept only English-speaking women claim that because they lack bilingual personnel, women who do not speak English would be unable to benefit from their services, such as group counseling.


\textsuperscript{143.} \textit{See} Gondolf et al., \textit{supra} note 142, at 44 (noting 32% of Hispanic women stay in abusive relationships for more than five years); Montoya, \textit{supra} note 8, at 104 (indicating that Mexican-Americans are more tolerant of wife abuse). \textit{See generally} Latinas and Domestic Violence, \textit{supra} note 138, at 11-12.

\textsuperscript{144.} Gondolf et al., \textit{supra} note 142, at 48.

\textsuperscript{145.} \textit{Id.}
the public and private spheres, are shared by all Latinas and are not endemic only to poor Latinas in abusive relationships at home; they reach highly-educated, economically well-off Latinas at work.

B. Injustice at Work: Latinas in Justice

Even the super-educated, economically successful Latina faces the economic gendered, structural and cultural wall. In the context of examining who attains justice in this society, it is relevant and instructive (although certainly not inspirational) to examine the microcosm of Latinas in the justice professions. Latinas in the legal field, while educational and professional super-achievers (in the community context), confront the multi-layered “other” issues that, as shown above, plague the general Latina population. The environment that exists for Latinas in legal professions is imbued with bias and stereotypes based on race, sex, ethnicity and culture. Even in justice professions, the combination of race/ethnic and sex discrimination barriers not only keep Latinas out of the profession, but those who get there are subjected to hostile reception—from the classroom (on both sides of the podium), to the boardroom, to the courtroom.

The fronteras Latinas in the justice professions encounter are not only cultural; they are mainstream—ethnicized, racialized and gendered. For instance, many women feel that simply because of their gender they must work harder than male counterparts. This feeling is certainly borne out by the facts.

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146. See, e.g., BURDENS, supra note 5, at 16 ("[A] perception exists among some majority attorneys that minority women are incompetent in their knowledge of the law and that they provide 'shoddy' representation for their clients." (citation omitted)).

147. NINTH CIRCUIT GENDER BIAS TASK FORCE, FINAL REPORT, THE EFFECTS OF GENDER IN THE FEDERAL COURTS 196 (1993) [hereinafter NINTH CIRCUIT TASK FORCE]. An interesting report plainly notes, “Multicultural women attorneys are the most invisible and disadvantaged group in the national debate defined by the forceful demographic patterns rapidly changing the complexion of American society and the legal profession.” BURDENS, supra note 5, at 5. The report, prepared in response to the recognition “that certain unique concerns of multicultural women attorneys were not receiving sufficient attention,” encountered the problem “that precious little data and information exist that reveal any detail about women lawyers of color” beyond the total number of 23,000 multicultural women lawyers. Id. at 6, 7. Some of the findings are instructive:

- The combination of being an attorney of color and a woman is a double negative in the legal marketplace, regardless of the type of practice or geographic region involved;
- Multicultural women attorneys perceive they are “ghettoized” into certain practice areas and other options are closed or implicitly unavailable;
- Multicultural women attorneys must repeatedly establish their competence to professors, peers and judges;
An appropriate place to start the analysis of Latinas in the law is in the legal academy. After all, it is the law schools that train the future lawyers, judges, practitioners and academicians. The latest available data—from the 1996-97 academic year—reveals a total of 117 Latinas/os, of whom 43 are Latinas, in full-time, non-clinical, tenure-track positions in law schools in the United States. Thus Latinas constitute approximately one-third of the Latina/o law professors, a ratio that is better than the overall female to male ratio in the academy. Another surprisingly positive figure is that of the 43 non-clinical, tenure-track Latinas, fourteen, or 32.56% are tenured, which compares favorably to the ratio in the academy as a whole.

The use of percentages, however, is deceptive. At a count of 117, Latinas/os are a small comunidad. Latinas/os are members of faculties in only sixty-seven of the more than 175 law schools in the country. Latinas are represented in only thirty-five faculties, leaving over 140 schools without a single Latina. To be sure, this is an improvement from the time when I started teaching in 1982: there were a total of 22 tenure-track Latinas/os in 15 law schools in the entire country, with only two Latinas, and five of us Latinas/os (one Latina) were at the University of New Mexico. Yet such

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- As evidenced by continuing attitudes and negative stereotypes, multicultural women attorneys are invisible to the profession and have more difficulty achieving prominence and rewards within the legal field;
- To succeed, multicultural women attorneys must choose between race and gender;
- Minority women lawyers face barriers of gender discrimination in minority bar associations and race discrimination in majority bar associations.

*Id.* at 9.


149. E-mail from Professor Michael Olivas, William B. Bates Professor, University of Houston Law Center (on file with author). Latinas constitute 36.8% of the Latina/o law professors; the overall female to male ratio is 28%.


151. Of course, some schools have more than one Latina on the faculty. For example, University of New Mexico has three Latinas; St. John's, CUNY, University of Texas, South Texas, Cal Western, and Oklahoma have two Latinas each.

152. The findings of a recent study analyzing law school hiring data from fall 1986 until spring 1991 are disheartening. Deborah Merritt & Barbara Reskin, *The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women*, 65 S. CAL. L. REV. 2299 (1992). This study did not disaggregate data by ethnicity. Thus, although it includes the experience of Latinas, the same is reflected together with the experience of other women of color. First, of the 1105 professors hired during the study period, only 181 (or 16.4%) self-identified as a member of a racial or ethnic minority. *Id.* at 2315. Because over 70% of those 181 responded to the survey, the basis of the analysis is deemed reliable. *Id.* Certainly, while these numbers are very small, it is an
improvements show that Latinas constitute only about three-fourths of one percent of the law teachers in the United States.\textsuperscript{153} The silver lining in these small numbers is that we are an inclusive, friendly and supportive comunidad.\textsuperscript{154}

Yet because of the minuscule number of Latinas and the structural alien nature of the process, even Latinas who manage to enter the legal academy report emotional and psychological burdens attached to being, as Rachel Moran names it, a “society of one.”\textsuperscript{155} The burden includes the expectations of students and colleagues alike that she be “all things to all peoples.” The Latina law professor encounters all the barriers attributable to multiple discrimination: she is perceived as either the stereotyped “unqualified improvement over the 1985-86 academic year when the ABA reported that only 301 of 4881 full-time law professors were members of a racial minority. \textit{A Review of Legal Education in the United States, Fall 1985, 1987 A.B.A. SEC. LEGAL EDUC. & B. ADMISSIONS} 66. Of these 181, 16.2\% were Latina/o. Merritt & Reskin, \textit{supra}, at 2316. Ninety-seven were men (53.6\%) and 84 were women (46.4\%). \textit{Id.}

Second, the study showed that women of color entered teaching at lower ranks than their male counterparts and obtained jobs at institutions considered less prestigious than the men’s institutions. \textit{Id.} While almost seven of every ten women of color obtained an initial appointment at the “assistant” level (69\%) and approximately six of ten men of color (59.8\%) were appointed at that level, only 31\% of the women’s, but 40.2\% of the men’s initial appointments were at the associate level. \textit{Id.} at 2319. None started as full professors, although the different distribution in ranking disappeared over the five years with women closing these gaps during the years studied. \textit{Id.} By the fall of 1990 both men and women of color were virtually evenly distributed among the ranks: assistant professors—51.2\% women, 51.6\% men; associate professors—41.7\% women, 42.3\% men; full professors—2.4\% women, 2.1\% men. \textit{Id.} The institutional prestige gap remained and even widened. \textit{Id.} Finally, women of color lagged behind their male counterparts in course assignments. \textit{Id.} at 2321. Within the traditional academic curriculum, the authors found that women of color are significantly more likely than their male counterparts to teach trusts and estates, a course many academics avoid (8.3\% as compared to 1\%). \textit{Id.} The study also showed that only 18.6\% of the men of color, but twice as many women listed teaching courses such as legal writing and research, clinical topics and trial and appellate advocacy that carry less prestige than the traditional curricular offerings (34.5\% of women but only 18.6\% men of color). \textit{Id.}

The available data for 1996-97 shows that Latinas fall into this pattern. Beyond the 117 Latinas/os in tenure-track, non-clinical positions, there are 10 Latinas/os teaching in the clinics or working as instructor/lecturer. Olivas, \textit{supra} note 148. Of these 10, 3 (all Latinas) are tenured, 5 are on tenure-track (4 Latinas and 1 Latino), and 2 (both Latinas) are on non-tenure-tracks. Of the 10 Latinas/os in the clinical/instructor/lecturer categories, 9 are Latinas. Telephone Interview with Michael A. Olivas, William B. Bates Professor, University of Houston Law Center (Sept. 27, 1996).


154. Interestingly, there appears to be little correlation between density of Latina/o population and representation in law schools. For example, in New York City, where 24.3\% of the population is Latina/o, only three schools have a Latina on the faculty: Brooklyn (one), CUNY and St. John’s (each with two). Neither of the “national” law schools (Columbia and NYU) counts a Latina/o among their faculty members, although Rachel Moran visited at NYU during the fall of 1997.

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minority” who can not overcome the negative assumptions or as the superwoman who, in reality, will be unable to meet exaggerated expectations.

The plight of practitioners and judges (and Latina law students) follows the patterns confronted by Latina law professors—few in numbers and concentrated in the lower paying levels. Latina lawyers disproportionately work for the government or with public interest groups—jobs that pay less than the law firm jobs where the normativos are concentrated.

A 1995 study of New York firms shows that the only group of persons of color that did not have one single partner among the surveyed firms was Latinas. While Latinas found more representation in the associate ranks, a total of nine, they were the least represented of all groups.

The gender bias typically felt by female lawyers is exacerbated by racial bias, leaving female lawyers of color with a double burden. Research

156. The situation of Latinas must be considered in the context of the total numbers of women in the profession. In 1990 nationwide there were 182,745 female lawyers, accounting for 24.5% of lawyers. D.C. TASK FORCE, supra note 84, at D-1. In 1990 there were 6282 Hispanic female lawyers, accounting for 0.84% of lawyers nationwide. Id.; see also id. at 66.

157. BURDENS, supra note 5, at 15. While 61.7% of NLoW, 55% of NLaw and 53.2% of multicultural men are in private practice, only 44.7% of multicultural women are. Similarly (and conversely), while 20.8% and 6.3% of multicultural women are in government and public interest positions respectively, the figures for multicultural men are 19.25% in government and 4% in public interest. On the other hand, for NLaw the figures are 12.4% in government and 2.8% in public interest and for NLoW they are 11.4% in government and 1.2% in public interest.


159. NATIONAL ASS’N OF LAW PLACEMENT, EMPLOYMENT REPORT AND SALARY SURVEY 7 (1992) (reporting public interest representation for Latinas/os—4.2%, Blacks—5.5%, American Indians—7.2%, NLoW or Asian—1.6%).

160. A survey of 1991 law graduates showed that men’s median starting salaries increased with age, whereas women graduated received starting salaries below the median and women over 40 received the lowest median salaries of those surveyed. Id.


162. Id. at 324. Otherwise, the sample showed 58 NLaW and 490 NLoW partners, one Black male and one Latino partner, three Latino partners, one Asian female and three Asian male partners. Id.

163. Id. There were 281 NLaw and 482 NLoW associates, 24 Black female and 25 Black male associates, 12 Latino associates, 13 Asian female and 15 Asian male associates. Id.

164. BURDENS, supra note 5, at 25-26. Problems facing Hispanic female lawyers include a perception of working in limited practice areas, having to repeatedly establish one’s ability, struggling to achieve prominence, choosing between identification with one’s race or gender, and facing race discrimination in gender organizations and gender discrimination in race organizations. Id. at 9.
confirms these suspicions. Findings show that female attorneys of color are treated like inferiors by judges, fellow attorneys, and court personnel. Reports reveal that:

disrespect toward multicultural women lawyers [is prevalent] in the courts. From judges to court personnel, multicultural women lawyers are treated like inferiors rather than officers of the court. . . . Study findings all indicate that multicultural attorneys strongly believe that judicial discretion is usually exercised against them, that gender-biased conduct or racial/ethnic discrimination is exhibited by opposing counsel on a regular basis, and these differences in treatment or attitude have an effect on the outcome of the litigation.

Other reports conclude that female attorneys of color "are more likely than white women to be subjected to inappropriate sexual comments or touching by court employees. In addition, multicultural women are more likely than any other group of attorneys to be berated by a judge for no apparent reason." Other subtle discriminations also plague female attorneys of color, including the disrespect reflected by being addressed on a first-name basis or with endearments or diminutives. On the other hand, ardent advocacy by multicultural female attorneys who manage to break free from the cultural (submitive) model will be critiqued as pushy rather than lauded as zealously pursuing a client's interest.

Female attorneys of color are marginalized in other ways. For example, regardless of being in lawyer "uniform," they are likely to be constructed as something other than a lawyer, ranging from janitors to clients or mothers. In fact, I recall that early in my career, while working as a government attorney—in my uniform and carrying the litigation briefcase—a judge did not allow me to sit at counsel's table or to explain who I was. However, the judge seated an unadmitted young(er) man whom I was training at counsel's table, directed me to the court reporter's table, and placed an older NLoW (who turned out to be the court reporter) at counsel's table (next to the trainee). This might have been the beginning of my road to

165. Id. at 25.
166. Id.
167. Id. at 26.
168. Id.
169. See id.
170. See id.
171. Id.
shedding the proverbial uniform, but it also was an interesting lesson for me and the judge. Of course, when he asked for opening statements I stood up from the court reporter’s table. In the meantime the court reporter was uncomfortably trying to figure out a way to set up his recording equipment from counsel’s table. In retrospect I can laugh, but such attitudes from and by the judiciary and other court personnel towards women attorneys of color causes grave concern regarding how they might treat the Latinas going through the system who lack the education and possibly language skills to navigate this unfriendly maze.

A presidential appointee described the source of these unfounded beliefs/myths about the competence of female attorneys of color in plain normative speak: “Multicultural women do not fit the central casting image of a lawyer . . . . [I]t’s easier to take advice from a person who [is perceived as] an authority figure. As a result, multicultural women are subjected to much greater scrutiny in selection and review.” The founding fathers’ image of law and lawyer remains firmly entrenched, creating clear borders that Latinas, with their multiple deviations from the normative mold, experience in manifold permutations. These systemic biases in law conspire with Latinas’ cultural barriers to isolate them in/justice. This is normativity run amuck.

Not surprisingly, female judges, including Latinas, encounter *fronteras* in their work. Despite recent increases in the number of women who are judges there is still under-representation of women in the judiciary. The small numbers of judges is significant in light of the disrespect that exists toward multicultural women lawyers in the courts. Female judges, despite their position of authority, are often subject to criticism, especially concerning their demeanor and decisiveness; one would/could not expect Latinas to experience anything different.

Latinas/os are disproportionately absent from the ranks of the judiciary, with Latinas’ numbers being the lowest. Out of a total of 1700 federal judicial officers in 1995, only seven Latinas served on the federal bench:

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172. Id. at 16. Of course these presumptions are connected to both sex and race stereotypes and biases. Id.

173. COMMISSION ON WOMEN AND THE PROFESSION, AMERICAN BAR ASS’N, A REPORT OF THE STATUS OF WOMEN IN THE LEGAL PROFESSION, UNFINISHED BUSINESS, OVERCOMING THE SISYPHUS FACTOR 16-17 (1995) [hereinafter UNFINISHED BUSINESS] (noting the percentage of women sitting on the federal bench: Supreme Court, 22%; U.S. Circuit Court of Appeals, 13%; District Courts, 12%; the total percentage of women on the bench is 12%).

174. BURDENS, supra note 5, at 25.

175. UNFINISHED BUSINESS, supra note 173, at 17.

176. In 1990, out of a total of 32,394 U.S. judges, 1098 or 3.3% were Latina/o. BUREAU OF CENSUS, U.S. DEP’T OF COMMERCE, 1990 CENSUS OF POPULATION (1991); N.Y. COMM’N ON MINORITIES, supra note 76, at 81.
five in district courts, one in bankruptcy court and one as a full-time magistrate. For Latinas, the ethnic and gender invisibility resulting from the small numbers of Latinas/os and women in the judiciary exacerbates the structural and cultural barriers in education, creating a large roadblock in attaining a position where they can dispense justice.

In light of the experience of Latinas in the legal professions, it is not surprising that Latinas in the law school educational environment encounter the barriers that practitioners, judges, lawyers and law professors encounter in their jobs. A recent study concluded that "[l]aw school is not a hospitable place for multicultural women; rather, the law school environment is hostile, alienating and abusive. It is in academia that the difficulties multicultural women encounter in the legal profession first surface."

The plight of Latina law students is exacerbated by the lack of Latinas in positions of authority in the law school. Without Latina professors or deans, Latina students lack role models or mentors to provide support or encouragement, and feel isolated and alone when facing the rigors of law school. The continued practices of race and gender bias in the classroom through presentation, choice of language, course materials, and faculty-student interaction affect Latinas at myriad levels. Indeed many women feel that professors both discourage Latina students' classroom participation and openly criticize their performance. There are countless stories about comments from faculty that are at best outrageous in terms of race and gender bias. One of my students, who was the only Latina in her section, reported being called on in class for every case with a Spanish name. In the criminal law class where it happened, that was a lot of cases.

177. EQUAL EMPLOYMENT OPPORTUNITY AND SPECIAL PROJECTS OFFICE OF THE U.S. COURTS, Table 1, (describing federal judicial officers as of Sept. 30, 1995); HISPANIC ALMANAC, supra note 50, at 246. Of the total, only 55 (3.2%) were Latina/o, meaning there were 42 Latinos on the bench. At that time, no Latina served on the Circuit Court. No Latina/o has ever served on the Supreme Court. Id. at 245.

178. BURDENS, supra note 5, at 11.

179. See supra notes 149-54 (noting only 43 Latina law professors in 31 law schools in the United States).

180. BURDENS, supra note 5, at 12.


182. UNFINISHED BUSINESS, supra note 173, at 6-7 ("In one class I held my hand up for 45 minutes without being called on. When I approached the professor afterwards and asked why, I was told to "get use[d] to it, you're a woman." (quoting a female law student)).

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Latina law students, like Latina law professors, encounter the "credibility problem, which encompasses both the phenomenon of invisibility and the presumption of incompetence." One study notes that "[I]ayered on top of that [race/ethnic] prejudice is the generic gender bias in the profession, as exhibited by white male professors and classmates [resulting in] a profoundly demoralizing and dehumanizing climate for multicultural women."

Women of color and Latinas in particular are less likely to volunteer in class and are less likely to tout their own accomplishments. These characteristics make Latinas virtually invisible in the law school environment. Latinas in law additionally struggle with the internal cultural barrier that discourages confrontation, self-promotion and assertive conduct. Such cultural dissonance with the classroom's reliance on Socratic exchange, together with the triple whammy of race/ethnicity and sex-bias, makes law school a less-than friendly place for Latina law students.

This brief case study of Latinas in justice confirms that even highly educated, skilled professional Latinas, like their uneducated, low-skill counterparts, are far from achieving equality in employment or education, even legal employment and education which some might view as a gateway to, if not a symbol of, justice. In sum, the law, where one seeks justice, is not a friendly, hospitable or just profession for Latinas at any level. Latina students, faculty, lawyers and judges must battle against the stereotyping that challenges their ability or qualification to be the law. For all Latinas in law, external structural and internal cultural barriers converge to create massive fronteras. Significantly, in/justice Latinas even lose the support of their Latino counterparts and families as they, too, are socialized to believe (and accept) that Latinas are not only subordinate to, but also less competent than

184. BURDENS, supra note 5, at 11. The study notes that the low number of women of color in academia explains the invisibility problem. Id. It further notes that a second burden for women of color is "the oft-repeated suggestion that the academic qualifications of people of color are immediately suspect . . . [consequently] . . . multicultural women are assumed to be ‘affirmative action babies’ who would not have been admitted but for that status." Id. at 12.

185. Id.

186. Id. at 13 (citing Susanne Homer & Lois Schwartz, Admitted But Not Accepted: Outsiders Take an Inside Look at Law School, 5 BERKELEY WOMEN’S L.J. 1, 37-38, 50 (1989-90)).

187. BURDENS, supra note 5, at 13.

188. Id.; see also supra Part IV(A) (discussing Latina cultural expectations).

These uppity mujeres (women) go against both the mainstream and against their culture in their aspirations to do and receive justice. However, as this Part has shown, the fronteras for Latinas restrain us all—educated and illiterate, rich and poor, dark and light—everywhere we travel, including home, work and church.

VI. TOWARDS REAL EQUALITY—A DISCURSIVE MODEL

Latinas/os in the United States are foreign “others” notwithstanding citizenship—analyzed, defined, constructed by a system they did not make, in a language not theirs (that many do not speak or understand), in a context often-times wholly alien. One of the salient problems in locating the barriers and ascertaining their impact on Latinas is that existing research and research methodologies are imbued with the normative presumptions that construct the researchers’—Latinas’/os’ and majority’s alike—perspective, analysis, and information-gathering processes. Consequently, any model designed here, to be successful, must be discursive and must reject the existing monocular, monochromatic, monolingual approach. This proffer of a new, discursive paradigm behooves input both from persons within the formal structures conducting the studies as well as those outside the establishment—often the studied subjects, recipients as well as providers of services. The suggested prototype must examine the various pertinent policies, programs and institutions to identify their internal and external validity and to ascertain with respect to the relevant group, the source of its marginalization, the level and nature of its needs, and the schisms in the existing arrangements.

Data acquired through research conducted in this fashion, unlike many of the data-gathering approaches to date, will permit the identification of pertinent issues and the implementation of necessary infra-, micro- and macro-structural adjustments required to accommodate the needs of the group and its individual members. For example, while the mental health field recognizes and embraces the value of culturally-sensitive approaches, there is a dearth of information regarding the role of culture...
in education, employment, or the design and implementation of social services. Clearly, the appeal of *The María Paradox* and the authors' professional success with Latinas is largely attributed to their knowledge of the culture.

Similarly, studies have revealed cultural/ethnic bias in education which, together with established gender biases in the classroom, multiply the borders that isolate and marginalize Latinas. Researchers thus have suggested that the educational system incorporate a socially, culturally, and gender relevant curricula, and acknowledge respectful inclusion of diverse values and experiences in the educational system. It is plausible, if not downright likely, that such an approach, together with the education of the service providers as well as a diversified pool of teachers that could serve as role models, would result in greater success rates in education, employment, and training programs for Latinas/os and other groups viewed as subaltern by the majority.

Related both to cultural sensitivity and to Latina participation and inclusion is the concept of critical-masses. Performance is facilitated and enhanced when an "other" is not alone in an educational, employment, training or correctional setting. When an outsider is a "society of one," feelings of isolation and apprehension may interfere with educational, employment or training results. This is true at both the receiving and providing end of services—professionals who perform with a critical mass are more productive than those who work alone and children who are not "the only one in the classroom" perform better than those who are "different" and alone.

In investigations conducted pursuant to such a discursive model, the inquirers as well as the inquired must be sensitive to, and knowledgeable about, cultural and language implications of the existing issues and proposed solutions. Before Latinas can present, enhance and develop their object and subject positions with respect to matters of health, education, housing, welfare and employment (including law), for example, issues of gender, class, language, race/ethnicity, culture, ability and sexuality must be fully captured—not in isolation but how the issues work in combination to affect Latinas' lives. The institutions with which Latinas interact must be analyzed,

194. *Id.* at 137.

195. *Id.* at 131.

196. *Id.* at 138 (noting that "immigrants have tended to do better in U.S. schools than have 'indigenous' minorities" and that data show "unique cultural differences between Hispanics and Anglos [and that a]cknowledging Hispanic culture in a positive and direct way appears to be important in the treatment of the mentally ill, in enhancing the self-concept of children, and in predicting academic success [but that i]ts absence leads to more negative self-concepts and negative attitudes toward one's group"). Additionally, the value of role models further supports such an approach.
understood and reconstructed so as to render them aware, understanding of and responsive to the needs of Latinas.

In this regard, for initiatives and programs aimed at Latinas to be effective, it is particularly important for Latinas to participate in their formulation and development. However, Latinas/os have been systematically excluded from participation in policy-making endeavors.\footnote{Miguelina Maldonado, Systematic Barriers to Hispanic Community Based Organization's Access to State Funding: The Request for Proposal Process a Case in Point, in Hispanic Perspective, supra note 18 (papers on file with author) ("[T]he problems of New York State Hispanics can be solved only when the choices and decisions to be made are made by those affected. Indeed, the absence of this kind of decision making has rendered well intentioned policy ineffective and counter-productive." (quoting GOVERNOR’S ADVISORY COMMITTEE FOR HISPANIC AFFAIRS, NEW YORK STATE HISPANICS: A CHALLENGING MINORITY vii)).}

Indeed, in the real world it would appear at best implausible, at worst impossible, to craft a “culturally relevant” program without the cooperation and partnership of the cultural insiders whose communities’ problems are being studied and whose understanding, knowledge of and commitment to the culture and community comes from real life experience and involvement rather than textbooks. In order effectively to identify, scrutinize and understand possible origins of and bases for Latinas’ social, educational and economic conditions, data gathering procedures, including the disaggregation of data by gender, ethnicity and race, for example, must be developed and implemented. It is impossible to engage Latinas without understanding the society in which they live, the language they speak, the needs they have.

Nonetheless, the actuality is one of Latinas’ systematic exclusion that results in many of the existing studies being fatally flawed because they assume, promote and perpetuate majority-constructed stereotypical images of and myths about Latinas. These caricatures, formed without first-hand knowledge about or authentic comprehension of the investigated group, fail to take into account underlying assumptions—the cultural mandates, rigors, expectations and models—pursuant to which Latinas lead their lives. Any analysis or research must recognize that the “special conditions of Latina women [sic] are integrally related to historical and cultural determinants.”\footnote{GOVERNOR’S ADVISORY COMMITTEE FOR HISPANIC AFFAIRS, supra note 197, at xii ("The study of Latina women [sic] has unfortunately been restricted to an examination of their roles and/or problems within the United States without an understanding of the role of women in the country of origin."). Author’s note: Latina women is a redundancy; there is no such thing as Latina men.}

Beyond the inclusion of Latinas at every stage in planning, evaluation, design and implementation of a program, policy or initiative, the next phase in crafting a discursive model is the articulation, promotion/advancement, and incorporation of a multidimensional perspective that identifies, understands, accounts for, recognizes and incorporates Latinas’ values and
identities rather than imbuing the analysis with the perspective of the majoritarian "normative" mold. Such methodology ensures the requisite cultural sensitivity and enhances the credibility of the program/policy.

The real (formidable) task constituted by this multidimensionality paradigm is its consideration of Latinas as the multi-layered entities we are, rather than as an isolated, divisible part of any (or all) of us. Consequently, at the core of the application of this framework is the insistence upon the indivisibility and interdependence of Latina identities as the appropriate vehicle to reconstruct the exclusive, inadequate mold of normativity.

The existing analytical framework in law and much of the social sciences—one constrained within the parameters of a black-white, either-or paradigm—is wholly inadequate for Latinas. Such dualistic framework, one that is this country's foundation for the equality construct, causes the legal system's confusion about and conflation of race, ethnicity/national origin and culture. Any bipolar paradigm excludes from consideration issues of language, culture, and immigration status—matters of critical importance to an analysis of Latinas' condition.

Even the most "normativa" among Latinas deviates from the neutral, legal, founding-father-look-alike ideal in sex (meaning gender), race/ethnicity, and culture—not to mention that statistically speaking most Latinas will also deviate in terms of language, religion, class and education. For example, even the assimilated/acculturated Latinas who are citizens, who are educated, and who speak English (even those who do so without a trace of a Spanish accent), remain ethnic/racial "others." In the current bipolar, single-trait analytical structure Latinas' multiple layers constitute far too many deviations from the norm to be recognized, counted and evaluated as pertinent to legal discourse. The traditional approach will continue to effect Latinas' othering, marginalizations and exclusions. Atomization of identity simply makes no sense to Latinas/os whose self identification is ethnicity rather than race and whose multiple identities are interdependent and indivisible parts of the whole.


200. Ethnicity and national origin are two different characteristics often used interchangeably. See, e.g., Hernández v. Texas, 347 U.S. 475, 479 (1954) (finding Mexicans a different class from Whites); see also Gary A. Greenfield & Don B. Kates, Mexican Americans, Racial Discrimination and the Civil Rights Act of 1866, 63 CAL. L. REV. 662, 670-76 (1975) (discussing legislative history and congressional discussions on meaning of race and color); id. at 678-80 (discussing scientific racial classifications); id. at 683, 670 n.197 (discussing inclusion of Mexicans as non-white in a 1930 census and their inclusion as whites after the Mexican government protested the non-white designation); id. at 694-710 (discussing generally where references were made to Mexicans as "little brown persons" and as members of a different race).

201. See Hernández-Truyol, supra note 66 (discussing Latina/o ethnic identification). See generally Alexander Y. Aleinikoff, A Case for Race Consciousness, 91 COLUM. L. REV. 1060 (1991) (rejecting the ability of law to achieve neutrality because perceptions are dependent on
A striking example illustrates the importance of a culture and class sensitive multidimensional paradigm to make possible and promote Latinas' equality. Take, for instance, the stigmatization that flows from the conflation of gender, color and class. Latina experts have recognized that to overcome Latinas' poverty requires taking into consideration the roles that gender and class play in the culture. In order effectively to manage Latinas out of poverty and to have them succeed in education and employment environments, prejudices, presumptions and biases grounded on sex/gender, race, culture, class, religion and ethnicity must be identified, isolated and managed.

Thus, for Latinas, the existing cultural sex role stereotypes are compounded by prevailing stereotypes about poor women of color. Popular myth has such women lacking a work ethic and chronically dependent on welfare, a system that they supposedly further abuse by having many children with the goal of increasing their benefits. Yet such analysis is flawed, particularly for Latinas, as it takes place in a vacuum and does not account for the reality of their experience. For one, it fails to consider that the majority of Latinas are Catholic and that religious tenets prohibit limiting the number of children by any artificial means. In addition, it wholly ignores cultural norms that dictate that a Latina stay at home and be a buena mujer by being a buena madre, esposa, e hija.

Furthermore, the stereotype fails to contextualize Latinas' economic distress, a matter compounded by social, political and economic systems that value only employment outside of the home for pay. Simultaneously,
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Cultural and structural systems tell women they must stay at home and care for their husbands and children and other family, yet discount, disregard and marginalize much of women's work which traditionally occurs in the home without compensation. Such a construct ignores, obscures and eviscerates the value of all women's, and in particular, Latinas' work contributions that often take place in this otherwise sacrosanct forum.

Indeed, a terrible paradox arises when one reviews the cultural demands in the context of Latinas' economic abjection. Culture in general, and the cultura Latina in particular, structures the female ideal as the stay-at-home wife and mother. This socialization does not have class barriers. The gender role of the female as child-rearer and home-maker at once demands, pressures and lauds women to stay home to take care of the family including husbands, children and elderly parents. Yet poor women without financial resources who, in order to fulfill their roles as mothers and guardians of the family, accept public assistance, become demonized as welfare queens and criminals who steal from the state. Ironically, this mythical "welfare queen" is, in reality, the poor-woman's version of the glorified, aspirational, middle-class, majoritarian model of the stay-at-home wife and mother.

205. Id. at 21. Speaking of the study on Puertorriqueñas in the barrio, the researchers noted:

The women we interviewed expressed reluctance to sacrifice what they perceived as the needs of their children and families by taking on a minimum wage or unstable job. At play here was a dual sense of responsibility. They assumed their roles and obligations as mothers, which included picking up children from school, supervising them in the home, and making sure they did not get into 'trouble' on the streets. However, they also asserted a larger cultural sense of gender responsibility that went beyond motherhood—that of women's pivotal role in cohering and maintaining the family unit, however it was comprised. This was considered as their primary job. This commitment sometimes extended beyond childbearing into the grandparenting years, as the women continually negotiated changes that might threaten the family's unity and existence, frequently sacrificing their own personal desires, needs, and workforce participation in the process.

Id. at 23.

The move from wage work to welfare was governed by other factors as well. An understanding of the limited economic options together with cultural and gender priorities played a prominent part in these women's disconnection from the labor force. The commitment to motherhood and family was fundamental in shaping the decisions they made with regard to work. If they grew up expecting to work outside the home, they first grew up expecting to marry and become mothers. They viewed raising their children as their primary work and responsibility as women.

Id. (footnote omitted).

206. Id. at 30-31 (in working to fulfill gender role as mother and to hold the family together, fulfilling the dictated social (gender-based) division of labor, women without financial resource turned to the state for financial or economic assistance).

207. See id. at 15-16, 29 ("Ironically, the values that governed [a welfare recipient's] affirmation of her responsibilities as a mother and a woman hardly differed from those for which white middle class women were praised. In fact, public assistance and welfare were instituted under the premises of a patriarchal ideology that expected women to stay home to raise their children. Poor
Women world-wide perform these roles to receive the approbation of family, society and church. Nonetheless, rather than being seen as responsible in child-rearing and house-keeping, poor women who play and obey their assigned roles are stigmatized as irresponsible, unmotivated and parasitic.

One could go far in eradicating the stigmatization of poor women if the prevalent definition of work as outside the home and for pay were to change. A redefinition that looks at women’s work inside the home and without pay would not only enhance women’s rate of participation in the labor force but it would value the role imposed on women. Alternatively, if society synchronized its economic theory with its so-called family values and compensated women’s work in the home raising children, caring for elderly parents, and taking care of their spouses—all work with clear economic worth—women would rise from the underclass and would be viewed as productive members of society. In light of these concepts, the current approach to poverty that systematically ignores the plight of Latinas’ poverty is preposterous and provides the perfect reason to abandon the existing normative legal paradigms and embrace the proposed multidimensional model.

It is such an analysis that underscores why feminism’s one-dimensional gender-based approach to inequality has failed Latinas in a fashion similar to the failure of the normative mold. Gender essentialism has dominated the discourse in feminists’ arduous work to eradicate sexism, thereby marginalizing issues of class, ethnicity, race and culture—issues of critical importance to Latinas. At the center of the implausibility and fallibility of a sex/gender-essentialist feminist analysis for Latinas is the different ways in which Latinas and NLaw experience discrimination: to the NLaw it is the isolated (though by no means simple) perversity of sexism; to Latinas it is their multiple oppression as gender, ethnic, class, racial, and frequently linguistic “others” sometimes further compounded by sexuality and correlative homophobia. women of color, however, have had to fight for the right to hold and realize these values: “While patriarchal society protected white middle-class women as wives and mothers, women of color received little recognition, respect or support for these roles.” Moreover, the stigmatization (and consequent stereotyping) of welfare recipients depends on the worthiness of the status: a single mother is unworthy (whether she attained the position by divorce or having children out of wedlock); a widow or wife of one disabled at work is a different story.

208. See id. at 20-21, 23, 29.

209. Interestingly, the Family and Medical Leave Act, 29 U.S.C. § 2601, appears to reinforce the cultural notion of staying at home and raising children.

210. BONILLA-SANTIAGO, supra note 5, at 23, 27.

211. Id. at 21, 24, 44. In a study conducted from 1989-1991 with women from a barrio in NYC, the researchers found that class and gender positions were the issues of greatest concern to
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Because of the failings of mainstream (meaning NLaw) feminism for women of color, feminists of color are developing inter-disciplinary theoretical constructs that can serve to liberate Latinas from their multiple oppressions. A prominent Latina writer has noted, "In our literature, social issues such as race, class and sexual difference are intertwined with the narrative and poetic elements of a text, elements in which theory is embedded. In our mestizaje theories we create new categories for those of us left out or pushed out of the existing ones." A multidimensional discursive model provides the structure and context to address and remedy these voids and needs. This paradigm is cognizant of, sensitive to, and inclusive of the conflation of the multidimensional factors constructing Latinas' identities. Thus, this discursive model urges that Latina voices be heard in order to render Latinas' needs, wants, interests and concerns a central part of analysis. The multidimensional strategy looks at the barriers created by the conflation of identities rather than at isolated aspects of identity to deny the existence of barriers. In order to transmogrify Latinas' status from invisible olvidadas, to active participants in both public and private life, given Latinas' diversity with respect to citizenship, language, class, race, ethnicity/ancestry, sexuality and religion, any study of Latinas, regardless of the analytical focus—be it class, education, work or economics—needs to consider their varied positions, locations and spaces. Such a multidimensional discursive model embraces a critical Latina-feminist analysis, a broader perspective that will move las olvidadas from the margins to the center of legal discourse.

Latinas' multiple-layered identities require a method, afforded by this multidimensional discursive model, that expands and transforms legal theoretical constructs into an inclusive whole. This prototype would recognize the indivisible and interdependent nature of Latinas' multiple otherness. Such a construct—rather than the normative myopic, inadequate

women "with education as a potentially empowering strategy." Benmayor et al., supra note 204, at 10.

212. Bonilla-Santiago, supra note 5, at 32; Anzaldúa, supra note 113, at 19-20.

213. See Anzaldúa, supra note 113; Anzaldúa, supra note 111, at xxvi ("Theorists-of-color are in the process of trying to formulate 'marginal' theories that are partially outside and partially inside the Western frame of reference (if that is possible), theories that overlap many 'worlds.'"); see also Bonilla-Santiago, supra note 5, at 30 (finding that the feminist movement has failed women of color because such women were considered tokens and because the theoretical construct was not appropriate for the Latina experience); Critical Race Theory, supra note 70 (focusing on critical race feminism which explores subjects such as women as outlaws, social construction of women of color, and women's reproductive rights); Angela P. Harris, Race and Essentialism in Feminist Legal Theory, in Critical Race Theory, supra note 70, at 253; Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. Chi. Legal F. 139.

214. Anzaldúa, supra note 111, at xxvi.
and unrealistic single-trait analysis that perpetuates Latinas’ unjust, unequal status—effects a paradigm shift and focuses on the holistic reality of Latina existence and experience.

The Violence Against Women Act215 (VAWA) takes an interesting new approach that is consonant with this multidimensional paradigm and thus presents a source of hope for Latinas. VAWA takes a major step in removing violence against women from the protected, private realm by placing it squarely in the public domain as a matter of federal law. The law permits victims of domestic violence to seek traditional criminal and civil law remedies against their abusers and thus elevates every woman’s right to be free from violence to the level of a civil right. There is little doubt that the process of educating Latinas and the formal justice system’s personnel that gender-motivated violence is neither “business as usual” nor culturally acceptable will be long and bumpy. 216 Given Latinas’/os’ acculturation, the education of the entire family (including not only the spouse, children and extended family, but the battered spouse herself) about the inappropriateness and illegality of domestic violence will be a particularly difficult task.

One extremely significant element of VAWA for Latinas is its mandate about cultural sensitivity. For example, it makes grants available to “develop[] or improv[e] delivery of victim services to racial, cultural, ethnic, and language minorities . . . ”217 Such grant availability is the first step towards remedying the structural barriers Latinas encounter from shelters to courtrooms.218 Indeed, it marks the start of the construction of a different cultural structure that, once firmly in place, will replace the one that has been a major roadblock for Latinas to achieve justice.

Another aspect of VAWA that will work in favor of Latinas is that in grant applications states must provide demographic information such as “race, ethnicity and language background” of the service population.219 Such information, together with the aim of developing and improving victims’ services to diverse populations, is likely to enhance the opportunities of Latinas in the delivery and receipt of services. Indeed, these requirements pave the way for linguistically and culturally sensitive programs that Latinas have for so long been lacking.


216. See Elizabeth M. Schneider, VAWA Panel Discussion, 4 J.L. & POL’Y 427, 431 (1996) (“But in order for judges to understand and interpret the meaning of the phrase ‘motivated by gender’ consistently with this radical vision [of the notion of intimate violence involving more than ‘private’ concerns], there will have to be an extraordinary amount of public and judicial education.”).


218. See supra Part III(B) (addressing structural barriers).

VAWA also protects immigrant Latinas by authorizing women and children who are victims of intimate violence separately and independently to petition for legal status.\(^{220}\) Such provision allows Latinas who are victims of domestic violence to seek help without fear of deportation. This protection is significant because one third of Latinas in the United States are foreign born.\(^{221}\) Of course, culturally sensitive and linguistically friendly services—at all levels—are still predicated to Latinas’ ability to access needed support. And, as no person will be able to take advantage of a service about which she does not know, it is imperative that Latinas be informed of the law and its provisions. In this regard, VAWA, with the implementation of appropriate educational programs, will create a safety net to protect all Latinas, including non-English speaking Latinas, from the plight of domestic violence.

This VAWA example simply supports the thesis that forms the foundation of the proposed multidimensional discursive model. Not all women are alike. In order to solve the problems of women, society needs to ascertain the problems and their causes prior to the identification, establishment and implementation of effective solutions. To study Latinas, attention must be given to their history, religion, language and culture.

In the case of Latinas, their poverty, lack of education, inability to detach from the sticky-floor jobs, and general economic depression are not only grave and real problems, but also consequences of structural problems at home, work, church, and society as a whole. At the root of Latinas’ predicaments lie underlying presumptions about and demands and oppressions based upon ethnicity, race, sex/gender, culture, religion, language and class that effect Latina subordination in everyday life. The proposed scheme would go far in placing Latinas squarely in justice.

\section*{VII. Conclusion}

The discursive model is a starting point for the identification, understanding and deconstruction of sources of the injustices that today are unnoticed, and therefore invisible, architectural features of Latinas’ marginalization. The model is structured on two basic premises. One, it mandates the debunking of normative presumptions about Latinas by exhorting Latina participation in policy-making, program design and implementation not only as the inquired but also as inquirers.

Latinas must participate in the formulation and development aspects of programmatic change. Research to identify the structural and personal


\(^{221}\) Untapped Potential, supra note 5, at 7. Of course, being foreign born is not tantamount to illegal immigration status.
The second basic premise of any inquiry, pursuant to the proposed paradigm, is the indivisibility and interdependence of the myriad facets of Latinas’ identity. It is the conflation of Latinas’ many dimensions that establishes their social position as objects and subjects of policies and programs. To be sure, this may sound like a social scientist’s, legislator’s, judge’s or lawyer’s nightmare. But it is time to admit that the “isolate-a-single-trait” monolingualism of the popular/traditional approach is fatally flawed in its efficacy/validity for studying certain populations or groups, such as Latinas. It is indispensable to develop, expand and transform new and existing methodologies if we are to engage the reality of peoples’—including Latinas’—lives.

Ironically, because of the pan-ethnic, multiracial, diverse religious, varied cultural, other/multi-lingual nature of Latina-ness, the group qua group can, through the proposed paradigm, supplant diversity for the single-trait, monochromatic approach as the center of legal theory. The very diversity of Latinas—lesbian and straight; black, white, brown, Asian, and Indian; Catholic, Protestant, Jew, Santera, Buddhist, Hindu; differently abled; rich and poor; educated and not; speaking Spanish, English, Spanglish and indigenous tongues—is a microcosm of the world. Thus, such a discursive model is a universal model of inclusion and fairness. The paradigm looks at and uncovers, eschews and crumbles the fronteras created by the conflation of identities. Rather than look at isolated aspects of identity to deny the existence of, or fail to understand the impediments created by, multiple barriers, a multidimensional strategy will move las olvidadas from the margins to the center of legal discourse.