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# Multiculturalism and Feminism for Hispanic Immigrant Women Accused of Drug Crimes

## I. INTRODUCTION

A Laotian man kidnaps and rapes a woman in keeping with the Hmong custom of marriage-by-capture.<sup>1</sup> An Iraqi father forces his minor daughters to marry adult Iraqi men.<sup>2</sup> A Chinese immigrant kills his wife for infidelity.<sup>3</sup> A Japanese woman kills her children in the honorable Japanese tradition of mother-child suicide.<sup>4</sup> Cases such as these, which all took place in the United States, demonstrate the tension between multiculturalism and feminism: multiculturalism supports leniency for the offender, arguing that he acted according to accepted norms of his culture,<sup>5</sup> while feminism objects that such leniency comes at the expense of the victims, who are often women and children, effectively denying them the protection of the law.<sup>6</sup> These victims are victims of crime, but they are also victims of cultural norms.

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1. Doriane Lambelet Coleman, *Individualizing Justice Through Multiculturalism: The Liberals' Dilemma*, 96 COLUM. L. REV. 1093, 1105–06 (1996) (citing Record of Court Proceedings, *People v. Moua*, No. 315972-0 (Super. Ct. Fresno County Feb. 7, 1985)).

2. Leti Volpp, *Blaming Culture for Bad Behavior*, 12 YALE J.L. & HUMAN. 89, 103 (2000) [hereinafter Volpp, *Blaming Culture for Bad Behavior*].

3. Leti Volpp, *(Mis)Identifying Culture: Asian Women and the "Cultural Defense,"* 17 HARV. WOMEN'S L.J. 57, 64–65 (1994) [hereinafter Volpp, *(Mis)Identifying Culture*] (citing *People v. Chen*, No. 87-7774 (N.Y. Sup. Ct. Dec. 2, 1988)).

4. Gabriel Hallevy, *Culture-Based Crimes Against Women in Societies Absorbing Immigrants—Rejecting the "Mistake of Law" Defense and Imposing Harsher Sentencing*, 16 CARDOZO J.L. & GENDER 439, 444 (2010) (citing *People v. Kimura*, No. A-091133 (L.A. Sup. Ct. 1985)).

5. Neal A. Gordon, *The Implications of Memetics for the Cultural Defense*, 50 DUKE L.J. 1809, 1810 (2001) ("The cultural defense concludes that because a defendant acted in a 'culturally motivated manner,' he is not morally blameworthy and hence should be partially excused." (quoting Alison Dundes Renteln, *A Justification of the Cultural Defense as Partial Excuse*, 2 S. CAL. REV. L. & WOMEN'S STUD. 437, 488 (1993))).

6. See Coleman, *supra* note 1, at 1095; Holly Maguigan, *Cultural Evidence and Male Violence: Are Feminist and Multiculturalist Reformers on a Collision Course in Criminal Courts?*, 70 N.Y.U. L. REV. 36, 46–47 (1995) (noting "the feminist goal of vigilant protection of a value only recently and tentatively recognized by this criminal justice system: the right of women to be free from physical violence at the hands of men").

Scholars have often discussed the situations mentioned above.<sup>7</sup> However, one situation that has not been given much consideration in the multiculturalism and feminism debate is the case of minority women who are accused of drug crimes. When a woman uses culture as a defense to a drug crime, she generally argues that her husband (or another closely related male figure) told her to commit the crime and that she obeyed him because her culture teaches women to be submissive to men.<sup>8</sup> Such an argument is strongest for minority immigrant women, as their culture is presumably a stronger influence on them than it is for non-immigrant women who are more familiar with the dominant culture. The situation of minority immigrant women accused of drug crimes is different from those usually discussed in the multiculturalism and feminism debate. Feminists are generally concerned with crimes that leave victims. Drug crimes do not require victims for the purpose of prosecution—thus, for the purpose of this Comment, I refer to drug crimes as being victimless or as having no direct victims.<sup>9</sup> Accordingly, the feminist concern for protecting victims does not necessarily arise here. Thus, it might appear that multiculturalism and feminism need not conflict in this case. However, there is a victim of cultural norms, and in this case, the perpetrator is that victim. This is very different from the cases usually discussed in which the perpetrator acts according to cultural norms, and the victim of the perpetrator's crime is also the victim of cultural norms. Different tensions arise in minority women drug

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7. See, e.g., Nilda Rimonte, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense*, 43 STAN. L. REV. 1311, 1311 (1991) (discussing marriage-by-capture and wife killing); Gordon, *supra* note 5, at 1812–14 (discussing marriage-by-capture, wife killing, and parent-child suicide); Michaël Fischer, *The Human Rights Implications of a "Cultural Defense"*, 6 S. CAL. INTERDISC. L.J. 663, 664–65 (1998) (discussing Chinese parent-child suicide); Volpp, *Blaming Culture for Bad Behavior*, *supra* note 2, at 103 (discussing forced marriage of minor girls); Yehiel S. Kaplan, *A Father's Consent to the Marriage of his Minor Daughter: Feminism and Multiculturalism in Jewish Law*, 18 S. CAL. REV. L. & SOC. JUST. 393, 393 (2009) (discussing marriage of minor girls).

8. See, e.g., *United States v. Natal-Rivera*, 879 F.2d 391, 392 (noting that the defendant, an immigrant woman from Puerto Rico charged with distributing cocaine, argues that "her cultural background socialized her since childhood to follow her husband's every command").

9. While drug crimes certainly involve victims in a general sense of the word—for example, even society could be considered a victim of drug crimes—I specifically use a more narrow definition for the purpose of this Comment. I accordingly refer to drug crimes as being victimless, or as having no direct victim, because a conviction for such a crime does not require showing that any person was harmed by the crime.

crime cases as we consider feminist values of equality and autonomy in contrast with multiculturalism's implication that people must act in accordance with their culture.<sup>10</sup>

This Comment considers the tension between multiculturalism and feminism that arises in the case of Hispanic immigrant women accused of drug crimes. I suggest that drug crime cases present a better backdrop for analyzing this tension because they clearly demonstrate that the root of the tension is female autonomy. In Part II, I begin by describing multiculturalism and feminism and showing their similarities. Then I discuss how tension arises between the two concepts when cases involve a cultural defense. In this Part, I also review the common cases discussed in the multiculturalism and feminism debate, explaining further the examples mentioned at the beginning of this Comment, and showing how, in this context, multiculturalism and feminism are generally perceived to be in direct conflict. I also review how scholars suggest solving this conflict.

Part III reviews specific cases of Hispanic immigrant women accused of drug crimes, addressing how the courts treat cultural evidence and analyzing the cases from first a multiculturalist and then a feminist perspective. This will demonstrate how Hispanic immigrant women drug cases differ from the cases commonly discussed in the multiculturalism and feminism debate. In this Part, I show that multiculturalism and feminism are still in conflict, but that the conflict here is different. Here, multiculturalism defends the female perpetrator because she acted according to cultural norms. This defense, however, often compels the perpetrator to argue that she is weak, dependent, unable to make her own choices, and submissive to men. As this portrayal of women contradicts feminist values, feminism opposes the use of a cultural defense even in this situation where the perpetrator is a woman, where she is a victim of cultural norms, and where there is no direct crime victim. Part IV concludes that using drug cases to illustrate the tension between multiculturalism and feminism will help us see that the main issue in this tension is female autonomy, how we value it, and how we apply it.

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10. Gordon, *supra* note 5, at 1810 ("By seeking to exculpate a defendant for culturally influenced behavior, the volitional cultural defense denies the defendant's ability to resist the compulsions of his culture.") (footnote omitted).

## II. BACKGROUND: MULTICULTURALISM VS. FEMINISM

The tension between multiculturalism and feminism has been the subject of much scholarly debate. In this Part, I give a brief description of both multiculturalist and feminist theories. I then set out several cultural defense cases to illustrate the examples commonly used in discussing multiculturalism and feminism, followed by a summary of some scholars' conclusions on the subject. Most important for the purpose of this Comment are Leti Volpp's writings, questioning our application of the word "culture,"<sup>11</sup> and Isabelle Gunning's writings, explaining how multiculturalism can defend cultural practices that are viewed negatively.<sup>12</sup>

*A. Defining Multiculturalism and Feminism*

Multiculturalism seeks for understanding and protection of all cultures in a country such as the United States, where people with many different cultural backgrounds reside.<sup>13</sup> Multiculturalism values cultural diversity, working on the assumption "that the desire of immigrants and minorities to retain aspects of their cultures is reasonable, and that cultural diversity is itself desirable and benefits the nation in a variety of ways."<sup>14</sup> Multiculturalism also values equal opportunities, seeking to "redress[] the inequalities between majorities and minorities."<sup>15</sup>

These values lead to the use of the "cultural defense" in criminal cases, in which the defendant uses evidence of his cultural background to excuse his actions.<sup>16</sup> The problem with such a defense

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11. *See infra* Part II.C.1.

12. *See infra* Part II.C.2.

13. Coleman, *supra* note 1, at 1119 ("In its purest incarnation, multiculturalism is premised upon the belief that all cultures are of equal value, that no one culture is better than another."); Hallevy, *supra* note 4, at 442 ("Modern law and international human rights recognize immigrants' rights to cultural diversity. This is the right to live in accordance with their cultural customs, to maintain a social and community life based on that culture, and to pass that cultural heritage on to their descendants.").

14. ALI RATTANSI, MULTICULTURALISM: A VERY SHORT INTRODUCTION 8 (2011).

15. *Id.* at 12.

16. Coleman, *supra* note 1, at 1094 ("[O]fficial decisions appear to reflect the notion that the moral culpability of an immigrant defendant should be judged according to his or her own cultural standards, rather than those of the relevant jurisdiction. Although no state has formally recognized the use of exonerating cultural evidence, some commentators and judges have labeled this strategy the 'cultural defense.'"); Volpp, (*Mis*)*Identifying Culture*, *supra* note 3, at 57 ("The 'cultural defense' is a legal strategy that defendants use in attempts to excuse

is that it works at the expense of the victim, who is often a woman or a child.<sup>17</sup> This violates feminist values of equality<sup>18</sup> and choice.<sup>19</sup>

Feminism operates on the assumption “that women and men are inherently of equal worth.”<sup>20</sup> Feminism values female autonomy and speaks out against male subordination of women.<sup>21</sup> It places emphasis on the female experience, “[l]istening to women and believing their stories.”<sup>22</sup> It opposes male bias that “ignor[es] harms that only occur to women.”<sup>23</sup>

Feminism and multiculturalism are similar in many ways. Both emphasize equality. Both are concerned with issues of oppression: feminists, with oppression of women by men, and multiculturalists, with oppression of minority cultures by the majority culture. However, the use of the cultural defense in drug crimes introduces conflict between the two.

criminal behavior or to mitigate culpability based on a lack of requisite mens rea.” (footnote omitted); Gordon, *supra* note 5, at 1811 (“The cultural defense has not been formalized—an attorney cannot walk into a courtroom and plead ‘the cultural defense.’ . . . A true cultural defense is closely parallel to the insanity defense—both seek to excuse a defendant because he either did not know his actions were wrong or could not control them.”).

17. Coleman, *supra* note 1, at 1095 (stating that such victims are “denied the protection of the criminal laws” and “have no hope of relief in the future” if the courts choose “to adopt a different, discriminatory standard of criminality for immigrant defendants”).

18. Kaplan, *supra* note 7, at 405 (noting that tensions arise between feminism and multiculturalism because feminists seek for equal treatment of women and multiculturalists seek to preserve traditions, which may include male control over females); Coleman, *supra* note 1, at 1136 (“[P]ermitting cultural evidence to be dispositive in criminal cases violates both the fundamental principle that society has a right to government protection against crime, and the equal protection doctrine that holds that whatever protections are provided by government must be provided to all equally, without regard to race, gender, or national origin.”).

19. Karen Knop et al., *From Multiculturalism to Technique: Feminism, Culture, and Conflict of Laws Style*, 64 STAN. L. REV. 589, 600 (2012) (“[S]elf-reflexive feminists reject the assumption that we can make choices about our lives because our culture is just something we *have*, whereas others’ lives are determined by their culture (they are its victims) because culture is what they *are*.”).

20. ESTELLE B. FREEDMAN, NO TURNING BACK: THE HISTORY OF FEMINISM AND THE FUTURE OF WOMEN 7 (2002) (noting that rather than “assum[ing] that men’s historical experience . . . is the standard to which women should aspire[, t]he concept of equal worth values traditional female tasks, such as childbearing and child care, as highly as other kinds of work historically performed by men”).

21. JUNE HANNAM, FEMINISM 3–4 (2007).

22. Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, in FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER 263 (Katharine T. Bartlett & Rosanne Kennedy eds., 1991).

23. *Id.* at 264.

*B. Cases*

Common examples used to illustrate the tension between multiculturalism and feminism are child marriages, marriage-by-capture, the murder of unfaithful wives, and female genital mutilation.<sup>24</sup>

In Nebraska in 1996, an Iraqi immigrant father forced his two daughters, ages thirteen and fourteen, to marry two Iraqi men, ages twenty-eight and thirty-four.<sup>25</sup> The father was charged with child abuse and the husbands were charged with first-degree sexual assault of a child.<sup>26</sup> As a defense, attorneys for the husbands said that their clients had acted in accordance with their religion and their culture.<sup>27</sup> While it is unclear what weight the court gave to this cultural defense, the husbands, who faced a potential fifty years in prison, were only sentenced to four to six years in prison.<sup>28</sup>

In *People v. Moua*, a California case in 1985, Moua, a Laotian man, kidnapped and raped a Laotian woman, who was employed at Fresno City College campus.<sup>29</sup> Moua explained that his actions were consistent with the Hmong ritual of marriage-by-capture, where a man chooses a wife by forcefully taking a woman to his home and having sexual intercourse with her.<sup>30</sup> The custom also includes the idea that the woman is supposed to protest.<sup>31</sup> Because of this cultural evidence, Moua was sentenced to a mere 120 days in jail and a \$1,000 fine for false imprisonment alone.<sup>32</sup> He received no sentence for kidnapping or for rape.<sup>33</sup>

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24. See, e.g., SUSAN OKIN, IS MULTICULTURALISM BAD FOR WOMEN? 9–10, 18 (Joshua Cohen et al. eds., 1999) (discussing all four examples); Coleman, *supra* note 1, at 1093–94 (discussing marriage-by-capture, wife-murder, and female circumcision); Kaplan, *supra* note 7, at 393 (discussing marriage of minor girls); Gordon, *supra* note 5, at 1812 (discussing marriage-by-capture and wife-murder); Isabelle R. Gunning, *Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189, 189 (1991–1992) (discussing female circumcision).

25. Volpp, *Blaming Culture for Bad Behavior*, *supra* note 2, at 103.

26. *Id.*

27. *Id.*

28. *Id.*

29. Coleman, *supra* note 1, at 1106 (citing Record of Court Proceedings, *People v. Moua*, No. 315972-0 (Super. Ct. Fresno County Feb. 7, 1985)).

30. *Id.* at 1105–06.

31. *Id.* at 1105.

32. *Id.* at 1106.

33. *Id.*

In *People v. Chen*, a 1988 New York case, Chen, a Chinese immigrant, killed his wife by smashing her skull with a hammer.<sup>34</sup> Chen's wife had been unfaithful, and Chen argued that his cultural background led him to respond violently.<sup>35</sup> In China, a wife's infidelity is interpreted as the husband's weakness.<sup>36</sup> The Court found Chen guilty of second-degree manslaughter and sentenced him to five years of probation.<sup>37</sup> He didn't serve any time in jail.<sup>38</sup>

In Georgia in 1986, a Somali nurse was charged with child abuse for performing a clitoridectomy on her two-year-old niece.<sup>39</sup> Female circumcision is a tradition practiced in some cultures to ensure chastity in women.<sup>40</sup> In the United States, it is particularly prevalent in Atlanta, Georgia, where many Ethiopian and Nigerian immigrants reside.<sup>41</sup> Although it is child abuse by U.S. law, it is not always prosecuted because of the strong cultural background for the practice.<sup>42</sup> In this particular case, the State was unable to convict the nurse.<sup>43</sup>

The crime victims in these cases were all women, and the victims in these types of cases will probably always be women. The aggressors in three of these four cases were men. In all of these cases, the cultural defense works in favor of the aggressor, and at the expense of the victim. One more scenario is commonly used<sup>44</sup> in discussing multiculturalism and feminism: mother-child suicide.<sup>45</sup> In this situation, the aggressor is a woman, and the victim may be male or female.

34. Volpp, *(Mis)Identifying Culture*, *supra* note 3, at 64 (citing *People v. Chen*, No. 87-7774 (N.Y. Sup. Ct. Dec. 2, 1988)).

35. *Id.* at 64–65.

36. Coleman, *supra* note 1, at 1109.

37. *Id.*

38. *Id.*

39. *Id.* at 1113.

40. *Id.* at 1111–12.

41. *Id.* at 1112–13.

42. *Id.*

43. This was partly because it was not certain that it was the nurse who had performed the circumcision. *Id.* at 1113.

44. *See, e.g.*, OKIN, *supra* note 24, at 1182; Coleman, *supra* note 1, at 1109–10; Gordon, *supra* note 5, at 1814.

45. Coleman, *supra* note 1, at 1109 n.78 (noting that while this practice is generally referred to as “parent-child suicide,” “mother-child suicide” is a better name because most if not all cases involve mothers rather than fathers, and a father in this scenario would be inconsistent with the tradition, which involves the wife feeling shame for the husband's infidelity).

For example, in *People v. Kimura*, a Japanese woman living in California drowned her two children in the Pacific Ocean.<sup>46</sup> She tried to drown herself as well, but was rescued. She was subsequently accused of murder.<sup>47</sup> She argued at trial that she committed the murders and the attempted suicide because her husband had been unfaithful.<sup>48</sup> The honorable response for her, according to Japanese tradition, was to commit suicide.<sup>49</sup> However, it was dishonorable for her to leave her children behind, so, to maintain honor, she had to kill her children before she killed herself.<sup>50</sup> Because of this cultural evidence, Kimura was convicted of involuntary manslaughter, and was in jail for only the year she spent waiting for trial.<sup>51</sup>

In each of the cases discussed in this section, the perpetrator acted according to cultural norms when he or she committed the crime. The perpetrator's victim was both a victim of crime and a victim of cultural norms (in other words, a victim injured by culturally-motivated expectations and actions). Multiculturalism, with its concern for respecting different cultures, works in favor of the perpetrators to protect them by defending their culture-based actions. Feminism, on the other hand, which values equal worth of men and women, would protect the victim from both crime and cultural norms. Feminism would protect the victim of crime by subjecting her assailant to the same force of law that would apply to anyone else who committed the same crime. Feminism would protect the victim of cultural norms by denouncing culture-based actions that subjugate woman and children, and by refusing to allow culture to excuse such actions. Thus, in cases like these, multiculturalism and feminism are directly in conflict.

### C. Suggested Solutions

Some scholars argue that in a conflict between multiculturalism and feminism, feminism should always prevail.<sup>52</sup> Gabriel Hallevy goes

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46. Hallevy, *supra* note 4, at 444 (citing *People v. Kimura*, No. A-091133 (L.A. Sup. Ct. 1985)).

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 444–45.

51. *Id.* at 445.

52. *See, e.g.*, OKIN, *supra* note 24, at 9; Coleman, *supra* note 1, at 1097; Ruth Halperin-

so far as to argue that not only should a person's culture not be a mitigating factor in sentencing, but that it should actually be an aggravating factor in punishing culture-based crimes against women.<sup>53</sup> Yehiel Kaplan, in contrast, argues that even controversial values held by minority groups should be safeguarded to further "the basic goal of the liberal democratic society: equal recognition and representation for all members of society."<sup>54</sup>

More moderate solutions advocate for balancing between competing interests, searching for "[a] reasonable balance between multiculturalism and feminism in each case."<sup>55</sup> Another solution suggests only protecting cultures if they are "at risk of extinction."<sup>56</sup> In short, scholars have proposed a wide variety of solutions for how to respond to the competing interests of feminism and multiculturalism.

### *1. Leti Volpp: challenging the cultural label*

Leti Volpp questions the logic and helpfulness of pitting multiculturalism and feminism against each other.<sup>57</sup> However, much of her observations and reasoning lead to questioning whether the use of the word "culture" is even legitimate. Volpp asks, "When do we call behavior 'cultural'? And when do we not?"<sup>58</sup> She suggests that we tend to label behavior we do not approve of as cultural "when the actor is perceived to 'have' culture."<sup>59</sup> On the other hand, white Americans are not perceived as having culture, and so we do not use culture to explain their actions.<sup>60</sup> Volpp notes that many

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Kaddari, *Women, Religion and Multiculturalism in Israel*, 5 UCLA J. INT'L L. & FOREIGN AFF. 339, 365 (2000) ("[T]he imposition of patriarchal religious norms over unwilling individuals cannot be justified on any legal grounds, and no multicultural arguments are relevant here.").

53. Hallevy, *supra* note 4, at 466 ("Culture-based crimes against women, especially those committed for ideological reasons, deserve harsher punishments . . . . The social harm caused by culture-based crimes against women is tremendous since the oppression of women damages the social image of all women in that society.").

54. Kaplan, *supra* note 7, at 404.

55. *Id.* at 406.

56. *Id.* at 405.

57. Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181, 1183 (2011) [hereinafter Volpp, *Feminism Versus Multiculturalism*].

58. Volpp, *Blaming Culture for Bad Behavior*, *supra* note 2, at 89.

59. *Id.*

60. *Id.*

times the behavior labeled as “cultural” either exists in Western culture but is labeled as aberrational rather than cultural, or is not actually a prevalent practice in the defendant’s culture.<sup>61</sup> Volpp gives examples of minor girls getting married in the United States: one, a white girl (age thirteen); one, an undocumented Mexican girl (age fourteen); and two Iraqi girls (ages thirteen and fourteen).<sup>62</sup> The minority actors were presumed to be acting according to their culture, when in fact their actions were not typical of their culture<sup>63</sup> (or at least not more typical of their culture than of white culture).<sup>64</sup> The white girl was presumed to be an atypical case, not a demonstration of white culture.<sup>65</sup> Thus, perhaps the initial question in dealing with a multicultural/feminist problem is to ask whether the behavior defended as cultural is in fact a result of culture.

## 2. *Isabelle Gunning: when cultural practices are “bad”*

When we look at certain cultural practices, we may wonder how multiculturalism could defend such obvious wrong-doing. Importantly, multiculturalism does not necessarily claim that all cultural practices are “good.” Rather, multiculturalism asks us not to demonize these practices before we understand their cultural context. Isabelle Gunning, in addressing the difficult topic of female circumcision, discusses how easy it is to view this practice through our own “arrogant perception.”<sup>66</sup> Gunning states that “[a] key

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61. *Id.* at 90 (“Thus, we consider early marriage by a Mexican immigrant to reflect ‘Mexican culture.’ In contrast, when a white person commits a similar act, we view it as an isolated instance of aberrant behavior, and not as reflective of a racialized culture.”); Volpp, *Feminism Versus Multiculturalism*, *supra* note 57, at 1186–87 (“Part of the reason many believe the cultures of the Third World or immigrant communities are so much more sexist than Western ones is that incidents of sexual violence in the West are frequently thought to reflect the behavior of a few deviants—rather than as part of our culture. In contrast, incidents of violence in the Third World or immigrant communities are thought to characterize the cultures of entire nations.”).

62. Volpp, *Blaming Culture for Bad Behavior*, *supra* note 2, at 91–93, 103–04.

63. *Id.* at 103 (noting in the case of the Iraqi girls that “while Islamic law does not set a minimum age for marriage, women in contemporary Iraq typically marry at seventeen or eighteen,” and that “while thirty years ago marriages of young teenage girls were not uncommon in Iraq, especially in the rural areas, today such practices are rare”).

64. *Id.* at 93 (noting that in Texas, where the case with the Mexican girl took place, an average of 470 girls fourteen and under get married every year, and that “Mexican law actually provides stricter age requirements for marriage than Texas law”).

65. *Id.* at 91–92.

66. Gunning, *supra* note 24, at 198.

aspect of arrogant perception is the distance between ‘me’ and ‘the other.’”<sup>67</sup> We see ourselves as the “good and enlightened,” and we see the cultural other as “ignorant and barbaric.”<sup>68</sup> When we view cultural practices from our own Western perspective, we can quickly and easily conclude that female circumcision is harmful and wrong. But that is an oversimplification.<sup>69</sup> “Whatever the good intentions of Western feminists in expressing solidarity or ‘helping’ their sisters of color, Western articulations of concern over the contemporary practice of genital surgery in third world nations are often perceived as only thinly disguised expressions of racial and cultural superiority and imperialism.”<sup>70</sup> Tellingly, some feminists in countries where female circumcision is common are opposed to the practice, yet they “have rejected any interference by Westerners”<sup>71</sup> because of Westerners’ inability to deal sensitively with the topic in a cultural context. Thus, rather than claiming that all culturally-motivated conduct is equally worthy of defense, multiculturalism instead asks us to remove our arrogant perception and view cultural practices within the context of their culture.

### III. A DIFFERENT TENSION

Drug crimes committed by minority women give us the interesting example of a case where women are both the victims of cultural norms and potential beneficiaries of a cultural defense. This situation is different from those generally discussed in the multiculturalism versus feminism debate, and it presents a better backdrop for analyzing the resulting tensions. Here, unlike the cases discussed above, the perpetrator of the crime is the only victim.<sup>72</sup> She is the victim of cultural norms, and there is no direct crime victim. She is also the one asking for culture-based protection of her actions. Therefore, it would seem that both multiculturalism and feminism would work in her favor. However, a different sort of tension is at play here. When minority women bring up their culture as a defense to a drug crime, their claim is generally that they acted under the

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67. *Id.* at 199.

68. *Id.*

69. *Id.* (“The arrogant perceiver falsifies and oversimplifies.”).

70. *Id.* at 212.

71. *Id.* at 226.

72. *See supra* note 9 and accompanying text.

direction of an important male figure in their lives (such as a husband, boyfriend, or father), and that their culture led them to be submissive to such figures. Therefore, recognition of multiculturalism would be helpful to such women as multiculturalism seeks to protect culturally-motivated actions. However, in order to accept a cultural defense, feminist principles such as equality and female autonomy must be stifled.

Minority women in the United States come from many different cultures that cannot all be addressed here. This Comment focuses on Hispanic women, as many of the cases in which a cultural defense is used for a drug crime involve Hispanic women. This Comment specifically focuses on Hispanic immigrant women. First, the cultural defense is strongest for immigrants, as it is easier for them than for non-immigrants to argue that either (1) they did not know the dominant culture would condemn their actions, or (2) their culture was a strong enough influence on them to compel them to act even though such an action violated the law of the dominant culture. Non-immigrants are presumably more acculturated into the dominant culture. Second, many of the drug crime cases in which a cultural defense is used involve women who are immigrants as well as Hispanic. Third, a cultural defense is especially important for an immigrant woman as a drug crime can render her deportable. In a drug crime involving an immigrant woman, the woman's ability to remain in the United States is at stake. Additionally, her family structure may also be at stake; if she is deported, she may be separated from her U.S. citizen children and her U.S. citizen husband.

This Part sets out some of the cases where Hispanic immigrant women have used a cultural defense after being accused of a drug crime. Afterwards, I analyze these cases first from a multiculturalist perspective, and then from a feminist perspective.

### *A. Hispanic Immigrant Women and Drug Crimes*

The use of the cultural defense in situations where immigrant women are accused of drug crimes has been largely ignored by scholars in the multiculturalism versus feminism debate, perhaps because these cases are not as dramatic as, for example, marriage-by-capture, or mother-child suicide. However, drug crimes involving

immigrant women are likely far more common than the more dramatic examples, and so they present a very real problem.

Hispanic women involved in drug dealing usually work as drug couriers, or drug mules, at the bottom rung of the drug-dealing hierarchy, transporting drugs or smuggling them into the United States.<sup>73</sup> They are paid little, and take much of the risk.<sup>74</sup> They are generally the ones punished despite their minimal involvement, while the higher-level drug dealers often go free.<sup>75</sup>

This Section describes some of the cases involving Hispanic immigrant women who have raised a cultural defense after being accused of a drug crime. The cultural defense is successful in only one of these cases, and even then it only serves to lower the defendant's sentence by a small amount. I then consider the manner in which the courts analyze these cases, showing how traditional legal defenses such as duress and coercion do not apply. Last, I discuss how the Sentencing Guidelines lead judges to avoid considering cultural information.

### *1. Cases*

Maria Gaviria grew up in a poverty-stricken area of Colombia.<sup>76</sup> Her father left when she was four, and she was continually abused by her mother's boyfriend, her babysitter, and her aunt.<sup>77</sup> She stopped attending school after the fifth grade, and she married at age sixteen.<sup>78</sup> Her husband continually abused her physically and sexually.<sup>79</sup> Once, when she was pregnant, he stabbed her leg with a knife.<sup>80</sup> Another time he punched her hard enough to leave her unconscious.<sup>81</sup> Eventually the two of them came to the United States illegally, where Gaviria's husband became a drug dealer.<sup>82</sup> He told

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73. Tracy Huling, *Women Drug Couriers*, 9 CRIM. JUST. 15, 59 (1995).

74. *Id.*

75. *Id.* at 60, 62 (“[W]e should face squarely the likelihood that our drug-war strategies, adopted by many other nations, have so far resulted only in the re-victimization of many people already suffering under grinding poverty and corrupt political regimes.”).

76. *United States v. Gaviria*, 804 F. Supp. 476, 477 (E.D.N.Y. 1992).

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

Gaviria to help him, and she did.<sup>83</sup> She did not speak English, she had no money, and she was afraid her husband would kill her if she did not help him.<sup>84</sup> Gaviria was arrested when Drug Enforcement Administration agents saw her throw a brown bag from a balcony.<sup>85</sup> The agents found 22.2 grams of cocaine base in the bag, and an additional 45.5 grams in Gaviria's jacket.<sup>86</sup>

The court considered evidence of the subservient status of women in Latin American cultures and the prevalence of male domination, including domestic abuse.<sup>87</sup> In sentencing, the court decided that “[a] downward departure from the Guideline range is warranted when a woman’s status as a victim or systematic physical and emotional abuse substantially lessens her blameworthiness, notwithstanding her legal guilt.”<sup>88</sup> Sentencing Guidelines indicated that Gaviria’s sentence should be between seventy and eighty-seven months.<sup>89</sup> The court used Gaviria’s cultural defense to grant her a downward departure to the mandatory minimum sentence of five years in prison.<sup>90</sup> This case illustrates one of the few examples of a successful cultural defense for a woman charged with a drug crime. Even so, the “success” was limited; Gaviria still received a five-year sentence, which stands in stark contrast to the examples of Kimura and Chen, who spent no time in prison after their trials for murder.<sup>91</sup>

In most drug crime cases, the cultural defense is much more likely to fail. Dolores Contreras participated in her father’s extensive drug business from the time she was seventeen until she was arrested at age twenty-four.<sup>92</sup> Her participation consisted mostly of storing drugs in her home and using profits from drug sales.<sup>93</sup> Contreras argued that she was particularly susceptible to her father’s influence because of her culture and her religion: “[P]arental subservience is . . . fundamental to traditional Hispanic/Mexican-American

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83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* at 479–80.

88. *Id.* at 480.

89. *Id.* at 476.

90. *Id.* at 481.

91. *See supra* Part II.A.

92. *United States v. Contreras*, 180 F.3d 1204, 1207 (10th Cir. 1999).

93. *Id.*

culture. Its basis goes beyond mere cultural norms and principles, however, with its genesis in the very heart of Catholic/Christian Religion, specifically in the 5th Commandment's dictate "[h]onor your father and your mother."<sup>94</sup> The court rejected this cultural information, holding that as Contreras' father never threatened her with physical harm, whatever influence he had over her was not enough to justify a downward departure in sentencing, despite Contreras's youth.<sup>95</sup>

Another example is that of Carmen Palma. Born in the U.S. but raised in Mexico, Palma was arrested for delivering cocaine and for collecting drug proceeds on behalf of her uncle.<sup>96</sup> She argued that because of her cultural background, she had "an exceptionally submissive personality, especially susceptible to an older relative's manipulation."<sup>97</sup> Growing up, her mother taught her strict obedience by beating her often.<sup>98</sup> When the unmarried Palma became pregnant, her mother sent her to live with her uncle in the United States to avoid the shame of the unwanted baby.<sup>99</sup> Palma said she delivered packages for her uncle "as a favor to him out of a sense of indebtedness for his kindness towards her and out of a sense of duty."<sup>100</sup> She was not paid for this work.<sup>101</sup> Her cultural heritage and her uncle's parental influence were "exacerbated by a history of severe punishment if she failed to comply with adult family members' wishes,"<sup>102</sup> and they were also certainly exacerbated by the dependent and vulnerable position Palma was in, living with and financially dependent on her uncle as a young unwed mother in a foreign country.<sup>103</sup> The court decided Palma's situation was not

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94. *Id.* at 1212 n.4.

95. *Id.* at 1211–12.

96. *United States v. Palma*, 376 F. Supp. 2d 1203, 1206–07 (D.N.M. 2005).

97. *Id.* at 1207.

98. Defendant Carmen Palma's Motion for Downward Departure & Sentencing Memorandum, *United States v. Palma*, 376 F. Supp. 2d 1203 (D.N.M. 2005) (No. 03–CR–1890).

99. *Id.*

100. *Palma*, 376 F. Supp. at 1207.

101. *Id.*

102. *Id.* at 1219.

103. Defendant Carmen Palma's Motion for Downward Departure & Sentencing Memorandum, *supra* note 95.

extraordinary enough to merit a downward departure from the sentencing guidelines.<sup>104</sup>

Another case is that of Aurora Natal-Rivera. Natal-Rivera, originally from Puerto Rico, was arrested with her boyfriend in the United States for selling cocaine.<sup>105</sup> She and her boyfriend had lived together for six years, and she considered him her husband.<sup>106</sup> Natal-Rivera wanted the court to consider her cultural background, which taught her “to follow her husband’s every command,”<sup>107</sup> but the court decided not to use this evidence, noting that Natal-Rivera’s participation in the crime had not been minor.<sup>108</sup>

Last, Maria Guzman was a Mexican immigrant living with her boyfriend contrary to her family’s wishes.<sup>109</sup> She was arrested for helping her boyfriend sell methamphetamine.<sup>110</sup> She argued that her culture “dictated submission to her boyfriend’s will,” especially as she was pregnant with their child, and it would have been humiliating for her to leave him and return to her family.<sup>111</sup> The court, concerned that recognizing cultural heritage as a basis for downward departure in sentencing would “strip . . . whole classes of potential crime victim[s] of the full protection of the law,” decided to disregard Guzman’s cultural background.<sup>112</sup>

## 2. *The courts’ analysis*

*United States v. Gaviria* is one of the few cases that recognize a cultural defense in drug crimes, and the court presents an outline for considering future drug-crime cases.<sup>113</sup> The court in *Gaviria* uses three different levels to analyze situations where a person commits a crime under compulsion, showing reduced free will and therefore reduced mens rea.<sup>114</sup> The highest level is duress, which completely

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104. *Id.*

105. *United States v. Natal-Rivera*, 879 F.2d 391, 392 (8th Cir. 1989).

106. *Id.*

107. *Id.*

108. *Id.* at 393.

109. *United States v. Guzman*, 236 F.3d 830, 831–32 (7th Cir. 2001).

110. *Id.* at 831.

111. *Id.* at 831–32.

112. *Id.* at 833.

113. 804 F. Supp. 476, 479 (E.D.N.Y. 1992).

114. *See, e.g., id.* at 478.

negates mens rea and thus is a complete defense to a crime.<sup>115</sup> The second level is coercion, which allows for a lowered sentence, but is not enough for a complete defense to a crime.<sup>116</sup> The lowest level is subservience.<sup>117</sup> While many courts use duress and coercion to analyze cases,<sup>118</sup> *Gaviria* is one of the few cases that recognize subservience as a defense that can warrant a lowered sentence.<sup>119</sup>

The court explained that a defendant can use the defense of duress if he can show three things:

(a) at the time of his conduct he was subjected to actual or threatened force, (b) the force or threat was of such a nature as to induce a well-founded fear of impending death or serious bodily harm, and (c) there was no reasonable opportunity to escape from the force or threat other than by engaging in the otherwise unlawful activity.<sup>120</sup>

“Only the extraordinary case will meet [the] demanding test [for duress]. . . . The defendant must be presented with an immediate and clear choice between commission of the crime charged or of serious harm to himself or another without reasonable means to escape.”<sup>121</sup> The defense of duress does not generally work in the case of a woman who has committed a drug crime for her husband, because even if she has suffered terrible abuse at the hands of her husband, and even if she commits the crime at his insistence because she reasonably believes he will kill her or seriously injure her if she disobeys, she will probably transport or deliver the drugs on her own. Her husband will not be standing over her pointing a gun to her head while she commits the crime, and so the woman cannot say that, at the time of her conduct, she was subjected to force. Also, as critics are quick to point out, the woman had a reasonable

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115. *Id.*

116. *Id.* at 478–79.

117. *Id.* at 479.

118. *See, e.g.*, *United States v. Contreras*, 180 F.3d 1204, 1211 (10th Cir. 1999); *United States v. Palma*, 376 F. Supp. 2d 1203, 1214 (D.N.M. 2005).

119. *Gaviria*, 804 F. Supp. at 479 (“A woman living in a relationship of complete subservience to a man deserves less punishment than the usual defendant when that man orders her to commit a crime and she obeys.”).

120. *United States v. Villegas*, 899 F.2d 1324, 1344 (2d Cir. 1990).

121. *Gaviria*, 804 F. Supp. at 478.

opportunity to escape: she could have left her husband at any time.<sup>122</sup>

Coercion, on the other hand, can be used as a defense when “the abuse of a defendant is not severe enough nor is it connected directly enough with the defendant’s crime to support a duress defense,” but the abuse is still enough to reduce “the defendant’s blameworthiness.”<sup>123</sup> In *Contreras*, the Tenth Circuit rejected financial and emotional dependence on a father as arguments for coercion, and stated that coercion would usually require “a threat of physical injury, [or] substantial damage to property . . . .”<sup>124</sup> The Tenth Circuit has also required a causal connection between the threat and the criminal activity.<sup>125</sup> Women who commit drug crimes and use a cultural defense often have a difficult time showing such a connection, as they tend to exhibit general submissive behavior that leads them to follow a man’s instruction to commit a drug crime rather than submitting because of a specific threat. The courts rejected the argument for coercion in all the cases discussed above, including *Gaviria*, where the defendant suffered severe spousal abuse.<sup>126</sup>

Describing subservience, the court in *Gaviria* stated that a defendant who cannot show coercion or duress might still be able to show “a pattern of dependence that would be relevant to blameworthiness and her sentence.”<sup>127</sup> Such dependence could be a result of “a combination of physical and psychological abuse, cultural norms, economic dependence and other factors.”<sup>128</sup> It appears that the court in *Gaviria* relied on this theory of subservience, which includes cultural considerations, to grant *Gaviria* a lowered sentence.<sup>129</sup> *Gaviria* has, however, been interpreted in subsequent cases as exclusively requiring “systematic physical and emotional

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122. See *id.* at 481 (“While it would have been an act of extraordinary courage and perhaps recklessness, she could have left her husband.”).

123. *Id.* at 478–79.

124. *United States v. Contreras*, 180 F.3d 1204, 1211(10th Cir. 1999) (quoting U.S. SENTENCING GUIDELINES MANUAL §5K2.12 (1998) (policy statement)).

125. *United States v. Gallegos*, 129 F.3d 1140, 1145 (10th Cir. 1997).

126. See *supra* Part III.A.

127. *Gaviria*, 804 F. Supp. at 479.

128. *Id.*

129. *Id.* at 481 (“Her actions were legally ‘voluntary,’ but they were not the result of free rational decisionmaking. Her life is a classic example of the plight of a subservient, abused woman.”).

abuse,” rather than relying on arguments about cultural background.<sup>130</sup> For example, the court in *United States v. Ezeiruaku* rejected a cultural defense, stating that culture alone is insufficient: “almost any non-Western culture, and many Western cultures, may be characterized as one where women are traditionally subservient to men.”<sup>131</sup> Thus, unless a woman can show extreme abuse, a cultural background of submission will probably not be enough for her to claim subservience as a defense.

It seems that courts’ main difficulty in accepting a cultural defense in this area is that the Sentencing Guidelines state that “[r]ace, [s]ex, [n]ational [o]rigin, [c]reed, [r]eligion, and [s]ocio-economic status . . . are not relevant in the determination of a sentence.”<sup>132</sup> Many courts have interpreted this to mean that cultural information may not be used in sentencing, as the definition of culture overlaps definitions of race, national origin, and religion.<sup>133</sup> However, in the case of American Indians, sentencing courts may consider the “unusual mitigating circumstances of life on the Indian reservation,”<sup>134</sup> which appears to be a consideration of cultural background. In addition, Judge Ripple argued that “cultural heritage encompasses a set of beliefs and a manner of behavior that exist conceptually and practically quite apart from that individual’s immutable sex, race or national origin.”<sup>135</sup> Chief Judge Becker said, “[I]t seems plain to me that cultural and national origin distinctions are not the same. Many Chicanos are American-born but have a

130. See *United States v. Ezeiruaku*, Crim. A. No. 94-42 (JEI), 1995 WL 263983, at \*8 (D.N.J. May 3, 1995) (internal quotation marks omitted) (quoting *Gaviria*, 804 F. Supp. at 480); see also *United States v. Coleman*, No. 95 CR 729, 1997 WL 666512, at \*2, \*5 (N.D. Ill. Oct. 22, 1997) (requiring a high level of physical abuse to establish a subservient relationship, and finding it insufficient that the defendant’s boyfriend beat her occasionally, even though he beat her whenever she would not do what he told her to do).

131. *Ezeiruaku*, 1995 WL 263983, at \*8.

132. U.S. SENTENCING GUIDELINES MANUAL § 5H1.10 (2012).

133. See, e.g., *United States v. Contreras*, 180 F.3d 1204, 1212 n.4 (10th Cir. 1999); *United States v. Natal-Rivera*, 879 F.2d 391, 393 (8th Cir. 1989) (affirming a sentencing judge’s decision to not consider cultural background in sentencing); *United States v. Guzman*, 236 F.3d 830, 833 (7th Cir. 2001) (deciding not to consider cultural heritage in sentencing while not ruling out the possibility that it might be appropriate in a different case, though such a case would be unlikely). But see, e.g., *United States v. Yu*, 954 F.2d 951, 954 (3rd Cir. 1992) (declining to decide whether national origin includes cultural differences).

134. *United States v. Decora*, 177 F.3d 676, 679 (8th Cir. 1999); see *United States v. One Star*, 9 F.3d 60, 61 (8th Cir. 1993).

135. *Guzman*, 236 F.3d at 838 (Ripple, J., dissenting).

distinct culture. A foreign-born person may have moved here as a child and have no noticeable cultural differences.”<sup>136</sup>

### *B. Multiculturalism*

Having discussed several of the cases where Hispanic immigrant women raised a cultural defense after being accused of a drug crime, I now turn to the multiculturalist lens to analyze these cases. In this Section, I first consider evidence to decide whether it would be valid to assert that female subservience to males is a part of Hispanic culture, and subsequently, that Hispanic immigrant women are influenced by their culture when they commit drug crimes out of subservience to men. Then, I discuss how multiculturalism would defend women who commit these types of crimes.

Hispanic women in the United States come from many different countries and may have vastly different personal backgrounds. Thus, a generalized definition of “culture” cannot cover the variety of factors that may influence their lives.<sup>137</sup> However, “[d]espite the distinctions found among immigrant Latinos, there are some commonalities in cultural values and beliefs that make it possible to make prudent, inclusive references to this diverse community.”<sup>138</sup>

#### *1. Is this behavior cultural?*

Latin American gender roles have often been described in terms of machismo and marianismo ideologies: “Machismo emphasizes male power over women, masculine strength and sexuality, and male violence or aggression, and marianismo emphasizes female piety, sacrifice, and virtue.”<sup>139</sup> Machismo “has been associated . . . with virility, drinking, and violence toward women.”<sup>140</sup> Marianismo,

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136. *Yu*, 954 F.2d at 958 (Becker, J., dissenting).

137. Sandra Bibiana Adames, *Immigrant Latinas' Conceptualizations of Intimate Partner Violence*, 11 VIOLENCE AGAINST WOMEN 1341, 1343 (2005) (“It is important to recognize that because of their socioeconomic, ethnic, linguistic, legal, geographic, and acculturative heterogeneity, there is not just a single community of immigrant Latinos.”).

138. *Id.* at 1343–44.

139. Amanda B. Diekman et al., *Dynamic Stereotypes about Women and Men in Latin America and the United States*, 36 J. CROSS-CULTURAL PSYCHOL. 209, 212–13 (2005) (citations omitted).

140. John Baldwin & Eros DeSouza, *Modelo de Maria and Machismo: The Social Construction of Gender in Brazil*, 35 INTERAMERICAN J. PSYCHOL. 9, 11 (2001).

which comes from archetypal perceptions about the Virgin Mary, encourages women to dedicate themselves to their families and to be “submissive to males.”<sup>141</sup>

In a study on intimate partner violence, Sandra Bibiana Adames interviewed a Hispanic woman who explained that one part of machismo is that men want their wives to stay at home and be dependent on them, and so many Hispanic men keep control over their wives by not allowing them to work.<sup>142</sup> This makes the woman afraid to leave her husband because she doesn’t have the experience or the skills to provide for herself.<sup>143</sup> Two of the participants in the study talked about the cultural background for intimate partner violence:

[Y]ou come with very . . . closed or antiquated customs. . . . The men since childhood [are] educated that he’s the one who gives orders . . . . And we as women have to be submissive, obey everything he says. Withstand until God says so. . . . Like me, I was raised to not forget that it’s your cross, and the man, well, he gives orders.<sup>144</sup>

Adames noted that “each of the immigrant Latinas in this study understood the circumstances of her intimate relationship not solely as a unique experience rooted in individual characteristics but more as a collective experience originating from systematic gender inequality.”<sup>145</sup>

Machismo also promotes sexual double-standards. While women are expected to be pure and virtuous, male infidelity is considered natural.<sup>146</sup> This cultural background can lead men to believe they can do whatever they want when it comes to women.<sup>147</sup>

141. *Id.*

142. Adames, *supra* note 137, at 1351–52. Another woman in this study said, “I think men have a gift for controlling you . . . who knows why.” *Id.* at 1355 (internal quotation marks omitted).

143. *Id.* at 1355.

144. *Id.* at 1358.

145. *Id.* at 1352.

146. Baldwin & DeSouza, *supra* note 140, at 21 (“These views have changed little from the colonial times, in which female adulterers were punished by death, while men had little punishment for relations with single women, prostitutes, or slaves.”).

147. *Id.* at 22 (discussing sexual harassment in the Brazilian workplace and noting that “the cultural ethos is that, for men at least, sin does not exist, everything is permitted, and nothing is forbidden”).

Studies indicate that women in traditional Latin American cultures are taught to be submissive to men, and are often victims of domestic violence,<sup>148</sup> supporting the idea that Latin American culture places women in a subservient role and men in a dominant role. Surveys show high rates of domestic abuse in Latin America: an estimated six in ten Peruvian women have been physically or psychologically abused,<sup>149</sup> between thirty-four and forty-six percent of women in Mexico have experienced domestic violence,<sup>150</sup> and sixty-five percent of Colombian women in marriage-type relationships have been physically, sexually, or psychologically abused.<sup>151</sup> Women in Nicaragua “experience a high degree of subordination . . . . The use of violence by husbands against wives for the purpose of punishment or ‘correction’ is widely accepted, and many women view violence as an expected part of life, referring to it as yet another ‘cross to bear.’”<sup>152</sup>

One study indicated that fifty-two percent of married Nicaraguan women of childbearing age had been abused at least once by a spouse or intimate partner, and seventy percent of those abused had suffered severe abuse, such as kicking, punching, getting hit with an object, threats, or use of a weapon.<sup>153</sup> In *United States v. Palma*, Felipe Gonzales, Ph.D., a professor of sociology at the University of New Mexico, wrote a report for the court and testified as an expert witness that in Mexican culture, children, and especially daughters, “are subservient and subject to strict discipline,” often involving “domestic abuse and corporal punishment.”<sup>154</sup>

Domestic abuse continues for Hispanic women who immigrate to the United States. One study found that almost fifty percent of

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148. See Evelyn P. Stevens, *Marianismo: The Other Face of Machismo in Latin America*, in *FEMALE AND MALE IN LATIN AMERICA* 89, 95 (Ann Pescatello ed., 1973).

149. Eugene Robinson, *Women in Latin America Advance Amid Stereotypes; Path to Equality Avoids Direct Challenge to Old Roles*, WASH. POST, Mar. 29, 1992, at A26.

150. Meredyth Goldberg Edelson et al., *Differences in Effects of Domestic Violence Between Latina and Non-Latina Women*, 22 J. FAM. VIOLENCE 1, 1 (2007).

151. *United States v. Gaviria*, 804 F. Supp. 476, 480 (1992) (citing Erika Harding, *Violence Against Women in Colombia*, NOTISUR: S. AM. & CARIBBEAN POL. AFF. (Jan. 8, 1992)).

152. Mary Ellsberg et al., *Domestic Violence and Emotional Distress Among Nicaraguan Women: Results from a Population-Based Study*, 54 AM. PSYCHOL. 30, 31 (1999).

153. *Id.* at 32.

154. Defendant Carmen Palma’s Motion for Downward Departure and Sentencing Memorandum, *supra* note 98.

Hispanic immigrant women have suffered physical abuse.<sup>155</sup> Another study showed that between urban Hispanic American battered women and non-Hispanic, white battered women, “Hispanic women stayed in abusive relationships longer and were more tolerant of the abuse . . . .”<sup>156</sup> Hispanic women made up thirty percent of the abused women in Texas shelters in 1991.<sup>157</sup> A study on sheltered women found that Mexican-American women were the only ones to report having been hit frequently in front of relatives.<sup>158</sup> This seems to support a conclusion that domestic violence is cultural for Hispanic people, as no social stigma kept batterers from abusing in front of relatives.

Fear of deportation is an additional problem for battered immigrant women, and an additional barrier to their willingness to leave their abuser and seek help.<sup>159</sup> Their abusers may threaten them with deportation, or they may be afraid that authorities who could help them could also deport them.<sup>160</sup>

Discussing women drug couriers as victims of drug lords, Tracy Huling believes that “[t]he backward position of women in the third world makes it impossible for them to refuse the exploitation, pressure or even blackmail they are confronted with.”<sup>161</sup>

Of course, domestic abuse may be the result of many factors other than culture. For example, domestic violence is more prevalent

155. Giselle Aguilar Hass et al., *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL RESPONSES 93, 103 (Edna Erez & Kathy Laster eds., 2000) (“Of the 280 immigrant women respondents, 49.3 percent reported having experienced physical abuse and 11.4 percent, sexual abuse by an intimate partner during their lifetime.”). *But see* Edelson et al., *supra* note 150 (“[A]pproximately 61% of Anglo Americans reported experiencing partner violence in the past compared with 36.5% of Latina women in the U.S.”).

156. Jane Dimmitt Champion, *Woman Abuse, Assimilation, and Self-Concept in a Rural Mexican American Community*, 18 HISP. J. BEHAV. SCI. 508, 509 (1996) (citing S. Torres, *Hispanic-American Battered Women: Why Consider Cultural Differences?*, 10 RESPONSE TO THE VICTIMIZATION OF WOMEN & CHILD: J. CENTER FOR WOMEN’S POL’Y STUD. 20 (1987)).

157. *Id.* at 511.

158. Hass, *supra* note 155, at 95.

159. *Id.* at 105 (“Immigration-related abuse is a critical way in which batterers of immigrant women exert power and control; it is a key element of extreme cruelty, dominance and isolation. Immigration-related abuse can be very powerful for women who depend on their partners for legal status, are undocumented or with vulnerable non-permanent immigration status.”).

160. *Id.*

161. Huling, *supra* note 73, at 60.

in rural areas than in urban areas, and it is more likely when the batterers are unemployed.<sup>162</sup> Hispanics in the United States have “higher unemployment rates, poorer housing, poorer nutrition, a higher incidence of poverty, higher morbidity and mortality, and lower educational attainment when compared with non-Hispanic whites.”<sup>163</sup> Additionally, Machismo and Marianismo may have a positive as well as a negative side: “Machismo requires that men provide for their families,” and Marianismo “demonstrates that women do have bases of power, beginning in the private sphere.”<sup>164</sup>

However, enough data exists to show a prevalence of female subordination in Hispanic culture and to support the argument that Hispanic immigrant women are influenced by their culture when they commit drug crimes out of subservience to men.

## *2. The cultural defense for Hispanic immigrant women accused of drug crimes*

Having concluded that a valid argument exists to support finding that Hispanic women are culturally motivated when they commit drug crimes under the direction of men, I now turn to the implications of multiculturalism for the drug cases discussed above.<sup>165</sup>

Multiculturalism values cultural diversity and believes immigrants should be able to “retain and express their ethnic identities.”<sup>166</sup> Thus, multiculturalism supports policies that “plac[e] an obligation on the part of public institutions . . . to accommodate these ethnic identities.”<sup>167</sup> In the case of immigrant women accused of drug crimes, multiculturalism would consider it very important that these women were acting in accordance with cultural norms. Punishing people for following their culture would repress cultural diversity. It would involve oppression of the minority by the majority, with the

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162. Champion, *supra* note 156, at 510 (noting “a high rate of unemployment among batterers”).

163. Hass, *supra* note 155, at 94.

164. Baldwin & DeSouza, *supra* note 140, at 24.

165. *See supra* Part III.A.1.

166. RATTANSI, *supra* note 14, at 16.

167. *Id.*; *see also* MICHAEL MURPHY, MULTICULTURALISM: A CRITICAL INTRODUCTION 6 (2012) (“At the risk of oversimplification, multiculturalism advocates *policies* which seek to accommodate the different identities, values and practices of both dominant and non-dominant cultural groups in culturally diverse society.”).

majority making a judgment call based on its own culture, reflecting a belief that the majority's culture is superior to the minority's. In other words, when we rush to condemn these women for committing drug crimes, we view the issue from our own arrogant perception.<sup>168</sup> The multiculturalist view would not ask us to conclude that these women have acted correctly. Rather, it would ask us to consider the issue within the context of culture.

Multiculturalism values equal opportunities for all, regardless of culture.<sup>169</sup> One very important opportunity at stake for immigrant women accused of drug crimes is the ability to stay in the United States, as a drug conviction can lead to deportation.<sup>170</sup> Tracy Huling interviewed women who were in prison on Riker's Island for transporting drugs into the United States.<sup>171</sup> She relates the following story:

Sonia, a legal immigrant living in Miami with her husband and children, visited a brother in Haiti who had been stabbed. When she was told during her visit that her family in Haiti would be killed if she did not transport drugs back to the United States with her, she complied, she said, because "Haiti is a very violent country."

After her arrest, Sonia faced the prospect of being separated from her children for a minimum of fifteen to twenty-five years if she went to trial and lost, so she explored a plea bargain. She was told that the alternative to going to trial was deportation to Haiti after a shortened prison sentence. Either way her case ended up, Sonia figured she would never see her children again, and she suffered a nervous breakdown.<sup>172</sup>

Many immigrant women, like Sonia, may have husbands and children who are U.S. citizens. From 1998 to 2007, an estimated 100,000 parents of U.S. citizen children were deported from the United States.<sup>173</sup> For them, deportation meant not only a loss of

168. *See supra* Part II.B.2.

169. RATTANSI, *supra* note 14, at 8 (noting multiculturalism's "equal opportunities and anti-discriminatory strand").

170. 8 U.S.C. § 1227 (2008) ("Any alien who at any time after admission has been convicted of a violation of . . . any law . . . relating to a controlled substance . . . other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.").

171. Huling, *supra* note 73, at 15.

172. *Id.* at 16.

173. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPORTATION OF PARENTS OF

economic opportunities, but a loss of their family as well. Multiculturalism would oppose taking away the opportunity to stay in the United States from an immigrant who had only acted in accordance with her culture by obeying the orders of a close male relative.

Thus, multiculturalism, through the cultural defense, would defend Hispanic immigrant women who commit drug crimes out of subservience to a close male figure, such as a husband, boyfriend, or father. Multiculturalism seeks to protect even aspects of diverse cultures that the dominant culture would reject, such as the female subservience to men that is part of Hispanic culture.

### *C. How Does Feminism Come into Play?*

In this Section, I now turn to the feminist lens to consider the cases involving Hispanic immigrant women accused of drug crimes and the cultural defense. Here, the tension in these cases between multiculturalism and feminism becomes apparent, though the tension is different from that usually discussed in the multiculturalism and feminism debate. Ultimately, I find that drug crime cases present a better backdrop for this debate because they clearly illustrate the root of the tension: female autonomy.

In the situations usually described in the multiculturalism and feminism debate, multiculturalism defends the perpetrator of the crime, while feminism defends the victim of the crime, who is also a victim of cultural norms.<sup>174</sup> However, in immigrant women drug cases, there is no direct victim of crime.<sup>175</sup> Multiculturalism still defends the perpetrator of the crime, but as the perpetrator is a woman, and as the perpetrator is the victim of cultural norms in this case, one might assume that feminism would defend her as well. The perpetrator is the victim of cultural norms because she suffers the oppression of male subjugation that is strong enough to compel her to commit crimes. Generally, feminism defends victims of cultural norms. Thus, it would seem that the tension between multiculturalism and feminism would disappear in this situation. However, the use of multiculturalism for immigrant women accused of drug crimes still challenges important feminist values, such as equality, autonomy, and opposition to male subordination of

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U.S.-BORN CITIZENS: FISCAL YEAR 2011 REPORT TO CONGRESS SECOND SEMI-ANNUAL REPORT I (2012).

174. *See supra* Part II.A.

175. *See supra* note 9 and accompanying text.

women,<sup>176</sup> but the tension is different here than it is for situations traditionally discussed where there is a direct victim of crime.<sup>177</sup>

Feminism values female autonomy: a woman's independence of will and ability to make her own choices.<sup>178</sup> In contrast, to use a cultural defense, a woman must claim that her culture deprived her of the ability to choose.<sup>179</sup> Leti Volpp wrote, "[C]ultural determinism [is] inherent in the use of a 'cultural defense': the defense rests on the notion that one's behavior is determined by one's identity."<sup>180</sup> The Seventh Circuit, in rejecting Guzman's cultural defense, stated, "Women such as the defendant in this case are not acknowledged to possess autonomy equal to that of men when their cultural heritage is used to deny their power of free choice."<sup>181</sup> All of the women in the drug cases discussed above were in essence arguing that they were not to blame because they "had to" do what they did.<sup>182</sup> They "had to" commit drug crimes because their husband or boyfriend or father or uncle told them to, and their culture "made them" submit to men. In other words, they argue that they were unable to make their own choices.

Interestingly, while Sandra Adames' study<sup>183</sup> supports the notion that male control over women is a result of culture, Adames noted that the immigrant Latinas who participated in her study "do not condone the status quo, and they are seeking alternative perspectives and lifestyles."<sup>184</sup> It seems that the women in this study recognized suppression of women in their culture, but they also recognized their ability to direct their own lives and make their own choices despite cultural traditions. It is possible that the women in the drug cases

176. See *supra* text accompanying notes 17–18.

177. See *supra* Part II.A.

178. HANNAM, *supra* note 21, at 4.

179. Volpp, *Blaming Culture for Bad Behavior*, *supra* note 2, at 96 ("The notion that non-Western people are governed by culture suggests they have a limited capacity for agency, will, or rational thought.")

180. Volpp, *(Mis)Identifying Culture*, *supra* note 3, at 63.

181. *United States v. Guzman*, 236 F.3d 830, 833 (7th Cir. 2001).

182. See *supra* Part III.A.1.

183. See *supra* text accompanying note 137.

184. Adames, *supra* note 137, at 1361. One woman stated, "I struggle a lot so that [my son] isn't violent tomorrow. . . . What I want him to see is the damage done to women. I want him to respect women . . . because women . . . are worth a lot, she is not to be mistreated or hit." *Id.* at 1358.

discussed above<sup>185</sup> would agree with such a view, but in order to put forth a cultural defense, they would have to ignore it and pretend they had no autonomy.

Additionally, when multiculturalism asks us to dismiss our own arrogant perception and view a defendant's conduct within the context of culture, we subsequently view the defendant as having less culpability. If a woman who has committed a drug crime is less culpable because her crime was culturally-motivated, then there is less incentive for her to assert her autonomy.

Feminism emphasizes women's equality with men.<sup>186</sup> However, the use of the cultural defense ignores ideals of female equality and instead emphasizes female weakness. In sentencing a Colombian woman who was bullied by her creditors into carrying heroin into the United States, the court in *United States v. Delgado* said, "The fragility of defendant, both physically and emotionally, may also be considered in determining an appropriate departure. Defendant's diminutive size, and lachrymose and meek demeanor will make her life in prison particularly difficult."<sup>187</sup> Palma's attorney also emphasized her fragility: "Carmen Palma's physical and emotional frailty support . . . a [sentencing] departure because serving a lengthy prison sentence will be difficult for her. Her frailty also adds support to her parental influence argument."<sup>188</sup>

Additionally, the woman's complete dependence on her husband is often emphasized. In one case, Mildred Akiagba, a Nigerian immigrant woman, was "indicted for conspiracy to distribute and to possess with the intent to distribute heroin."<sup>189</sup> She argued that she had acted under duress from her abusive husband.<sup>190</sup> Expert witnesses portrayed her as dependent and fearful of her husband, in keeping with her culture, where husbands are dominant in marriage and often abuse their wives.<sup>191</sup> However, Akiagba's actions were not consistent with the experts' descriptions of her culture:

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185. *See supra* Part III.A.1.

186. FREEDMAN, *supra* note 20, at 7.

187. 994 F. Supp. 143, 144-45 (E.D.N.Y. 1998).

188. Defendant Carmen Palma's Motion for Downward Departure & Sentencing Memorandum, *supra* note 98, at 21.

189. *United States v. Ezeiruaku*, Crim. A. No. 94-42 (JEI), 1995 WL 263983, at \*1 (D.N.J. May 3, 1995).

190. *Id.* at \*4-6.

191. *Id.*

[B]y the age of 25, she had defied both her father and her cultural upbringing by becoming pregnant out of wedlock, had moved to a foreign country with her first husband, defied that husband and moved out on her own, obtained a job, and then remarried and defied that husband by having an affair. These are hardly the earmarks of a dependent and easily manipulated woman.<sup>192</sup>

Her second husband testified that she was “‘vivacious,’ . . . had ‘a mind of her own[,]’ and decided to leave him on her own accord.”<sup>193</sup> Evidence indicates that Akiagba was a strong woman who was perfectly capable of making her own choices and exercising independent thought, yet in order to use a cultural defense, she had to portray herself as weak and dependent.

Similarly, Contreras emphasized her “financial dependence and . . . emotional dependence” on her father, the leader of the drug ring in which Contreras participated.<sup>194</sup> Palma also spoke of “her emotional and financial dependence on her uncle who opened his home up to her and from whom she needed emotional support during [that] vulnerable time.”<sup>195</sup> The court in *Gaviria* felt it was important to point out that Gaviria was “dependent on her husband,” and noted that a psychiatrist had also described her using the word “dependent.”<sup>196</sup>

Feminism opposes male subordination of women.<sup>197</sup> In contrast, the use of the cultural defense in drug cases results in encouraging women to argue that they are submissive to men, going so far as to argue that they have no choice but to always be submissive to men. If they admit that they have a choice, then they cannot blame their crime on their submissiveness. Palma argued that she had “an exceptionally submissive personality.”<sup>198</sup> Contreras argued that she acted out of subservience to her father because such subservience was

192. *Id.* at \*6 (“[I]n a memorable moment of testimony, when asked by the court whether marital infidelity is common in Igbo marriages, Dr. Ugorji responded: ‘On the part of the woman? Hell, No!’”).

193. *Id.*

194. *United States v. Contreras*, 180 F.3d 1204, 1207, 1211 (10th Cir. 1999).

195. Defendant Carmen Palma’s Motion for Downward Departure & Sentencing Memorandum, *supra* note 98, at 24.

196. *United States v. Gaviria*, 804 F. Supp. 476, 477 (E.D.N.Y. 1992).

197. *See* HANNAM, *supra* note 21, at 3–4.

198. Defendant Carmen Palma’s Motion for Downward Departure & Sentencing Memorandum, *supra* note 98, at 11.

part of her culture.<sup>199</sup> Guzman argued that “Mexican cultural norms dictated submission to her boyfriend’s will.”<sup>200</sup> Natal-Rivera argued that “her cultural background socialized her since childhood to follow her husband’s every command.”<sup>201</sup> The court in *Gaviria* suggested that it could not impose too light a sentence, as that would encourage drug dealers to employ subservient women.<sup>202</sup> The court noted a case of drug smugglers who had used pregnant women as couriers, hoping that the courts would be lenient with them.<sup>203</sup> Thus, feminism might argue that the cultural defense actually encourages male subjugation of women because it leads to the conclusion that if a woman is submissive to men, she will not have responsibility for her crimes.

On the other hand, feminism supports giving attention to the female experience. Perhaps we judge with a male bias when we say that Gaviria did not have to help her husband deal in drugs because she “should have” left him when he started abusing her. Or that Palma “should have” known better than to trust her uncle by doing whatever he asked her to do. Or that Guzman and Natal-Rivera “should have” been able to refuse to help their drug-dealing boyfriends, whom they each lived with. Patricia Cain writes, “Listening to women and believing their stories is central to feminist method. If we are careful to listen to women when they describe the harms they experience as women, we are likely to get the legal theory right (i.e., perceive the problem correctly and propose the right solutions).”<sup>204</sup>

Feminist values are generally in opposition to the use of a cultural defense for Hispanic immigrant women accused of drug crimes. The use of a cultural defense in such cases promotes portraying women as weak, dependent, without the ability to choose, and submissive to men. This goes contrary to feminist values of female equality and autonomy, and opposition to male subjugation of women.

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199. *Contreras*, 180 F.3d at 1212 n.4.

200. *United States v. Guzman*, 236 F.3d 830, 831–32 (7th Cir. 2001).

201. *United States v. Natal-Rivera*, 879 F.2d 391, 392 (8th Cir. 1989).

202. 804 F. Supp. 476, 481 (E.D.N.Y. 1992).

203. *United States v. Arize*, 792 F. Supp. 920, 921 (E.D.N.Y. 1992).

204. Cain, *supra* note 22, at 263.

## IV. CONCLUSION

This Comment finds that drug crimes committed by immigrant women give us a better backdrop for considering the tension between multiculturalism and feminism. Here the tensions are clearly juxtaposed as they arise in the embodiment of a single person: the female defendant. When we consider the different arguments of multiculturalism and feminism as applied to the female defendant, it becomes clear that the center of this debate is autonomy. The success of either multiculturalism or feminism hinges on the weight and the interpretation we give to autonomy. Is a woman's autonomy something we must protect? Or, in other words, must we protect a woman from her abusive husband (and her own resulting actions) so that she can have autonomy? Or do we expect a woman to use her autonomy to protect herself, i.e. choose to leave her husband if he tries to make her commit a crime? Furthermore, having concluded that drug crimes are a better backdrop for considering the tension between multiculturalism and feminism, where does that leave us? Does this suggest that there are more differences between multiculturalism and feminism than we readily recognize?

Additionally, why have drug crimes involving immigrant women been overlooked in favor of topics such as wife-murder, mother-child suicide, and marriage-by-capture in the multiculturalism and feminism debate? One reason may be that these commonly discussed topics are more dramatic and sensational. They play into stereotypical assumptions that view the cultural "other" as exotic, far removed from "us," violent, sexist, and barbaric.<sup>205</sup> In comparison, drug crimes and domestic violence are simply too mundane, too much a part (unfortunately) of daily life in the United States to allow for special cultural consideration. Also, the cultural defense has been dramatically successful in some of these cases, while it has not had much effect on drug crime cases. Even in *Gaviria*, where the cultural defense for a drug crime was successful, Gaviria was still sentenced to five years in prison.<sup>206</sup> In contrast, Chen and Kimura essentially got

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205. See Volpp, *Feminism Versus Multiculturalism*, *supra* note 57, at 1186 ("Since the vision of the suffering immigrant or Third World woman and the liberated Western one has so strong hold on the American imagination, I attempt to demonstrate that the presumption of Western women's liberation depends upon the notion that immigrant and Third World communities are sites of aberrant violence.").

206. See Part III.A.1.

away with murder, walking free after the conclusion of their trials.<sup>207</sup> Moua received no punishment for kidnapping and rape, and was sentenced to only four months in jail for false imprisonment.<sup>208</sup> This difference is due to the fact that crimes like murder require a criminal state of mind, which can be negated by a cultural defense.<sup>209</sup> Drug crimes, on the other hand, can require only knowing possession, which cannot be negated by a cultural defense.<sup>210</sup> Thus, for drug crimes, the cultural defense has only been considered in sentencing, after the defendant has already been pronounced guilty.<sup>211</sup> This raises more questions: are our sentencing guidelines inadequate? Or should our law governing controlled substances be changed to accommodate a cultural defense?

This Comment does not attempt to answer the questions I pose here. I leave them for future scholars. However, the answers to these questions are not merely theoretical. For the very reason that drug crimes and domestic violence are so common, drug crime cases involving Hispanic immigrant women are important for the multiculturalism and feminism debate. These cases affect many people, and the consequences can be harsh. Legal immigrant women may lose the ability to stay in the United States. If they are deported, their family structure may be permanently shattered as they leave behind U.S. citizen children and husbands. Thus, the questions this Comment raises are questions that should be answered.

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207. See Part II.B.

208. *Id.*

209. See 18 U.S.C.A. § 1111 (2003) (“Murder is the unlawful killing of a human being with malice aforethought.”).

210. See 21 U.S.C.A. § 844 (2010) (“It shall be unlawful for any person knowingly or intentionally to possess a controlled substance . . .”).

211. See, e.g., *United States v. Gavia*, 804 F. Supp. 476, 479–80 (E.D.N.Y. 1992) (showing the Court considering cultural evidence in sentencing for a drug crime).

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