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Body of Evidence: The Legislation of Female Desire in “El Artículo 438” by Carmen de Burgos

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Carmen de Burgos (1867-1932) is best known for her progressive social and political thought, her tireless promotion of the Republic, and for her dedication to discussing issues of social and political justice, in her literary and nonliterary writings alike. Long an advocate of women's rights in Spain, her work as a teacher and prominent journalist provided her with viable platforms from which to address the cause of women's rights in both word and deed. Her non-fiction publications examine such varied topics as divorce, travel, cooking, personal health, and universal suffrage. A legendary figure to the very end, those who recount her death tell that she even managed to use her last breaths to promote her political beliefs. It is clear from her literary, educational, political, and journalistic activities that Carmen de Burgos found ways to carry out her feminist agenda on several fronts. This essay focuses on her novella “El Artículo 438,” published in 1921 in *Prensa Gráfica*. My analysis examines the depiction of female sexuality and the expression of desire, both of which are mediated and problematized by an institution representative of the patriarchy, the out-of-date legal system.

Existing studies of the novella focus on its message about the dangerous double standard of sexual conduct as applied to women according to the law (here literally, the law of father or that of his successor, the husband). However, my reading posits a new perspective on the work.

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“El Artículo 438” is more than a melodramatic tale pressed into the service of graphically and unsubtly illustrating one woman’s victimization at the hands of an abusive husband and legal system. It also presents to us the dangerous consequences of that system’s programmatic use of women’s bodies as a page upon which to write itself. Just as inhibition may lead to prohibition, inscription leads to proscription. We see the female protagonist’s body as a text, literally a body of evidence upon which is written the story of her private and public victimization. As Michelle Fine points out in her study *Disruptive Voices*, “women’s bodies serve as a telling platform upon which social politics are choreographed, resisted, and negotiated” (27). While addressing the author’s representation of legal inscription on the female body, I also demonstrate how the body “talks back” to the legal system, exposing its flaws and inherent injustice.

Perhaps her most well known work of fiction, “El Artículo 438” is a strong condemnation of Article 438 of the 1870 Penal Code (amended in 1928 and finally repealed in 1932), which defined legal punishment for the civil crime of adultery. Burgos uses an excerpt from this Article as an epigraph at the opening of the novella:

El marido que, sorprendiendo en adulterio a su mujer, matase en el acto a ésta o al adúltero, o les causara alguna de las lesiones graves, será castigado con la pena de destierro.

Si les causara lesiones de segunda clase, quedará libre de pena. Estas reglas son aplicables a los padres en iguales circunstancias, respecto de sus hijas menores de veintitrés años y sus corruptores, mientras aquéllas viviesen en la casa paterna.

El beneficio de este artículo no aprovecha a los que hubieren promovido o facilitado la prostitución de sus mujeres o hijas. (Burgos 35)

This novella has generated a great deal of critical attention, focused mostly on the author’s condemnation of an antiquated law that allows for the murder of wives and daughters in order to avenge and restore lost familial honor. The inclusion of the last sentence of the excerpt indicates that there may have been cases of fathers or husbands forcing their wives or daughters into adulterous acts and situations akin to prostitution. Indeed, a similar set of circumstances arises in Burgos’s tale.

What is of most interest in this examination of the erotic elements in the novella is the author’s use of language, specifically, the contrast of

impressions created by the cold hard facts of the law versus the sensual vocabulary of the natural world. Even before we enter the fictional world of the novella, its title and the excerpt from an actual article of the Penal Code warn us that what we will read will ultimately be interpreted by a judicial system whose aims and procedures are expressed in direct and seemingly logical discourse. The narrator, sympathetic to the plight of María de las Angustias, trapped as she is in a loveless marriage, makes every effort to remind the reader that the legal system is man-made and designed to uphold patriarchal norms and codes of conduct. Likewise, whenever any mention of the legal status of women in marriage is made by a character in the work, it is always a male character. Either Jaime or Alfredo authoritatively explains the law and its consequences to María de las Angustias and the reader.

Our first contacts with the legal system and its associated language take place at the beginning of the work, when we read of Alfredo's nagging insistence at obtaining his wife's signature on a document. Once their heated conversation and the narrator's commentary make it clear that despite the fact that Alfredo considers himself to be head of the household, the home in which they live and the money that maintains them are his wife's, we begin to understand both the subject of their argument and the possible connection of the developing plot to the epigraph. The narrator explains why the signature is necessary by means of a reference to María's father, who had recognized early in his daughter's marriage that her inheritance and future assets needed protection from her husband, who during the first five years of their marriage, does indeed dip into those funds, greatly reducing their value. Alfredo's manner of circumventing the law's limits on his access to his wife's considerable fortune is first to attempt to involve her in his hedonistic lifestyle, then to bring male friends home in hopes of inspiring adulterous action on her part, and then finally, by insinuatingly threatening to rape her unless she signs over some property to him. He brings Jaime into the situation by asking him to look after his wife and daughter while he is abroad investigating business ventures. In resorting to threats of rape and other acts of physical and emotional violence, Alfredo gains and maintains control over his wife's finances, body and psyche. As Maryellen Bieder points out, "The female body is the site of struggle in the marriage plots of Burgos's more overtly feminist fictions" (252).

The narrator states plainly that "María de las Angustias era la víctima de las leyes y las costumbres españolas" (40). When she threatens to

denounce his many forms of abuse in an attempt to gain separation from him, Alfredo makes her perfectly aware of the fact that the law will always be on his side as the husband in the relationship. He leaves no physical evidence of his abuse, and his sexual demands are merely part of his rights as her husband and her obligations as his wife. She and Alfredo both are fully aware of the importance of her body and any marks on it as elements of any case that might be brought against him. For this reason, he is careful to never harm her in a way that might leave a visible trace or testimony of his abuse. Psychological abuse such as his threat of rape is harder to prove, as it would be her word against his. In the legal sphere María de las Angustias is nearly voiceless. Alfredo's unwillingness to leave his mark on his wife and provide her with any bodily, physical evidence perpetuates the direct confrontation of masculine discourse and the female body over which it exercises rights akin to property ownership. The need for visible, corporeal evidence of abuse demonstrates the legal system's tendency to use the female body as a site of inscription. Where a woman's word is insufficient, her body must speak for her. The repeated use of the word "derecho" by the narrator and main characters reinforces the traditional configuration of domestic power and submission, bringing together the culturally instilled notion of a husband's right to make demands of his wife (whether of a sexual nature or from another facet of married life), and the law that will support him if and when he takes action against the wife for refusing to meet his demands. When María de las Angustias in effect purchases some freedom and safety from the threats of her husband by signing over some property to him, the reader cannot help but suspect that this deal will come at a heavier cost than she can imagine.

María de las Angustias's and Jaime's love affair is introduced very abruptly, without any warning except for earlier signs of their mutual attraction, always mediated by respect. Our first glimpse of their sexual relationship takes place in one of the most famous sites in Granada, the Moorish palaces and grounds of the Alhambra. Despite its familiarity to the Spanish reading public, we should remember that its use as the setting for the presentation of their relationship is highly encoded with meaning. This complex of buildings, fountains, and gardens embodies oriental sensualism, at once satisfying the Modernist aesthetic taste for the exotic, and simultaneously taking advantage of the opportunity to evoke an atmosphere charged with passion. Whereas previous segments of the novella had taken place in the suffocating domestic sphere of María's

home and the chapel of her patron saint (places that should have represented comfort and safety within the institutions of family and Church), the budding relationship between Jaime and María de las Angustias develops before our eyes and all our senses as they stroll through the famous moonlit gardens, serenaded by nightingales, breathing in the heady perfumes of night-blooming jasmines. This place, teeming with couples, affords the lovers a degree of anonymity and intimacy unavailable to them in her home. Ironically, this very public space provides a safe haven in which they are free to express themselves both verbally and physically, without dealing with the limits of the law and its prohibitive associated vocabulary. The narrator's descriptions of María and Jaime's relationship and their verbal communication and physical interactions reflect the natural world around them, and vice versa: "Habían caído el uno en los brazos del otro de un modo natural" (50). By means of the bond between their love and the environment that surrounds them, Burgos's narrator is able to illustrate that, unlike the artificial man-made legal ties that bind María to Alfredo, the fondness and attraction shared by María and Jaime is natural.

Burgos's writings and speeches often focused on the flawed educational system of her time, a system that neglected to instruct women in matters of their limited roles in public society, politics and the law. Jaime's long explanation of the state of marriage laws in Spain, a subject about which María de las Angustias is woefully ignorant, coincides with sudden cold winds and other changes in the nocturnal environment of the Alhambra. The chilling wind mirrors the dread that fills her mind as she begins to think about the legal implications of their affair, and she tells Jaime that the next morning, she fears that she will find the ground littered with dead birds torn from the trees (52). The association of an article of the law that might potentially have a deadly effect on the lovers with the violent deaths of the free-flying nightingales that had been serenading them is a powerful one.

In what is perhaps the most erotically charged segment of the work, we again recognize the close link between the luxuriant abundance of the natural world and the couple's love for one another. Jaime and María de las Angustias, having grown accustomed to the freedom purchased at the expense of her dwindling fortune, live in her house as husband and wife. "Playing house" becomes a very dangerous game. In a long description of the house's Moorish architecture, the narrator informs us that the floor plan and careful layout of the protected inner gardens made it possible to

see that home as its own self-contained world, a world literally dripping with sensuality and sexual desire. The focus on interior spaces in this description of the house and garden highlights the importance of women's traditional domestic sphere, while also calling attention to the female sexual anatomy: "Aquella naturaleza fuerte, montañosa, incitaba a la pasión. Se respiraba una atmósfera de sensualidad en el olor de las flores, entre cuyos pétalos se incucaba la semilla reproductora" (59). Flowers reproduce by means of pollinated kisses, water lilies rise to the moonlit surface of the ponds to be fertilized, and heavy, over-ripened figs split open, oozing droplets of their syrup (59-60). Likewise, "se partían las granadas maduras, con sonrisa de coqueta... entre labios jugosos" (60). The erotic effects of the visual and olfactory imagery of blooming flowers and the full, exposed flesh of ripened fruits are further reinforced by the sound of the wind moaning among the reeds and stirring the leaves of the willows near the water's edge (60).

In the expression of María de las Angustias's sexual desire and pleasure, Carmen de Burgos turns to metaphors of the natural world, recognizing that the protagonist's body is unavailable to her for the verbalization of her own erotic discourse since it is in fact the text upon which the authoritative masculine discourse of the legal system is written. By sublimating the protagonist's expression and experience of arousal and desire into metaphor and figurative language not dominated by masculine logic and systems of communication, Burgos and her narrator provide an alternative discourse to that of the criminal justice system. Again, the artificiality of the man-made laws concerning sexuality and marriage stands in stark contrast to the sumptuous richness of the natural world that expresses the protagonist's sensuality and sexual pleasure.

The sensual landscape embodies female desire in particular and makes it impossible for the reader to ignore the importance of female sexuality in the text. In her study *Archetypal Patterns in Women's Fiction*, Annis Pratt discusses the frequent use of the outdoors and Nature as settings appropriate to a female protagonist's attempts to realize her fantasies of ideal love. Pratt applies the term "green-world lover" to the figure of Eros closely associated with the natural world in which the young female hero finds her authentic self and dares to express her true desires. Jaime is María's green-world lover, as evidenced by the following quote: "Jaime, hijo de labradores, acostumbrado al campo en su infancia, conocía todas las plantas y experimentaba la influencia del encanto de la Naturaleza,

con un deseo de quedar siempre allí, cerca de María de las Angustias, en el ambiente apacible y sano” (60).

Unfortunately, the potentially celebratory portion of this green-world archetype is balanced by the ending of Burgos’s novella, which also reflects one of the archetypes that Pratt examines in women’s fiction, namely the punishment for daring to cross the line drawn by patriarchal definitions of what is acceptable. Part of the success of this story lies in its melodramatic use of certain archetypal figures (Jaime, as the green-world lover and Alfredo as the abusive husband *par excellence*). María de las Angustias is no exception. The text makes a point of strongly identifying her with the Virgin Mary in the figure of Our Lady of Sorrows, the protagonist’s namesake and patron-protectress in whose chapel she becomes aware of Jaime’s presence in her life. In a patriarchal society, the flipside of the virgin archetype is of course that of the whore. Burgos’s protagonist is both, at different moments in the text and as seen from very distinct perspectives, but either way she is condemned to suffer. Her society’s concept of the ideal woman relegates her to the impossible life of the domestic angel, and punishes her for the transgression of sexual expression.

As they had in the gardens of the Alhambra, any allusions to sudden changes in season or temperature signal a change in the warm, sensual relationship between the lovers. The segment of the novella in which the adulterers are discovered and shot by Alfredo begins with this chilling and foreboding sentence: “La noche, blanda y apacible, era calurosa como noche de verano, sin que nada hiciese sospechar aún la dureza del invierno, con sus nieves y sus fríos” (61). The affair is discovered and duly punished within the limits of Article 438 of the Penal Code when Alfredo follows Jaime into María’s bedroom, where she had been awaiting the return of her lover. The last image that Jaime has of María is of her inert body on the bed “con el cabello revuelto y su hermoso cuerpo desnudo y blanco, apenas cubierto por la camisilla de encaje, y algo muy rojo en el pecho... un puñado de rosas rojas” (64).

At the end of the work, Alfredo does leave his mark on his wife’s body, literally inscribing a skewed (but sanctioned and protected) version of justice onto her body by killing her as she greets her lover in bed. Ironically, when the narrator describes Jaime’s last image of his dying (or dead) lover, the bloodstain on her breast as the result of multiple gunshot wounds is remembered as a bouquet of dark roses. This metaphor returns us to the natural world that had given voice to María’s sexual

desire and *jouissance*, but this return is a horrifying one, demonstrating the inescapable truth of legal favor toward men, even men who supposedly kill their wives in order to regain their lost or tainted familial honor. However, looking at the situation from another angle we might see this image as a last direct communication by María de las Angustias. Although the tale ends with the narrator reiterating the injustice of Article 438, Jaime's last image of his murdered lover and the dark roses of the bloodstain are the images that remain most strongly with the reader. In this way, Carmen de Burgos allows María de las Angustias to have "the last word," in the form of corporeal, nonverbal communication.

How are we to read the representation of female sexual desire in this novella? Is this a cautionary tale against passionate abandon, a criticism of the traditional literary image of the angel of the hearth, a condemnation of women's restricted roles in marriage? A careful reading with close attention to the language associated with María and her expressions of love for Jaime may confirm each of those interpretations, but not without complications. Carmen de Burgos may have championed women's rights, but she never rejected women's roles as wife and mother. In her study of three novellas by Carmen de Burgos, María Pilar Rodríguez points out that marriage itself is not condemned in this novella, but rather altered, in the transfer of wifely affection and the domestic role of husband from Alfredo to Jaime. In doing so, the author "más bien reemplaza un matrimonio infernal con otro satisfactorio pero que no es sino un simulacro de la realidad" (Rodríguez 391).

I would add to this observation by pointing to Burgos's further problematization of the husband-wife relationship when María says to Jaime (not her husband) "Maridito, maridito mío: guárdame tú escondidita dentro de tu corazón y no tendré miedo de nada" (52). Although the use of diminutives increases the sense of intimacy in the conversation, as might pet names, it also has the disturbing effect of infantilizing María's role in the relationship. To reiterate a point already raised in this study, Carmen de Burgos called repeatedly for reform in the education of women. Perhaps this childlike response to Jaime's explanation is at least partly due to María's lack of understanding of the law that will ultimately allow her murder to go nearly unpunished. In this particular work, Carmen de Burgos repeatedly emphasizes the fact that men have the first and last word because they both define and uphold the law. María's father had tried to protect her inheritance from Alfredo in his last will and testament, Jaime tries to educate her about the dire consequences of their extramarital

affair, and Alfredo demonstrates his ability to use the law to his benefit. The novella's tragic fictional example of what could happen when an unjust law is upheld teaches a clear lesson, conveying Carmen de Burgos's criticisms of deficiencies in women's education in a less than subtle way that is easy to grasp and digest, thanks to the work's melodramatic plot. Anja Louis rightly points out that *Prensa Gráfica* was a journal with a large number of subscribers interested in the melodramatic fiction mass-produced for women, a "medium aimed at a popular and largely uneducated readership" (103).

In the segments of this novella that take place in gardens or the outdoors, we see apparent free rein given to expressions of female sexual desire, usually through the use of the fertile vocabulary of Nature's own abundance. Sexuality and sexual desire are represented as simple, natural phenomena. However, the plant imagery used by the author is still very closely linked to reproduction, and it does not suggest an overt attempt to completely separate female sexual experience from maternity or marriage. María de las Angustias considers her lover Jaime to be a real husband, that is, the ideal husband that the law will not allow her to have. María dies as a direct result of flying in the face of patriarchal convention and the sacred and secular institution of marriage by allowing herself to more freely express her sexuality with her lover, rather than sublimate that desire into wifely and motherly devotion in her violent and unhappy marriage.

Another of Carmen de Burgos's favorite topics surfaces briefly when, at one point in the novella, María de las Angustias exclaims, "¡Qué felices deben ser las naciones donde existe el divorcio!" (54). Were it a possibility, legal divorce might be one answer to the problem, but we are reminded of the narrator's early observation that María is victimized not only by Spanish law but also by custom. The fact that female erotic pleasure is presented in terms of plant reproduction draws further attention to the impossibility of accepting women's sexuality on its own terms, separate from procreation. Even in a text that is so potentially subversive and celebratory, the one allowance for positive female sexual experience is still closely linked to motherhood and marriage. María de las Angustias laments this fact when she expresses her frustration over the psychosocial limitations on married women's desires once they have become mothers, asking, "¿Para qué ese absurdo de pretender que la maternidad borre nuestra ansia de amar?" (58). Perhaps by setting aside the overt messages conveyed by this novella's melodramatic marriage/adultery plot in order

to focus on that question, we can glimpse Carmen de Burgos's much more subtle attempt to illustrate the manner in which Article 438 of the Penal Code, in combination with the impossibility of legal divorce, in effect also legislated female sexual desire.

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