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Regulation or Proscription?: Comparing American and Philippine Proposals to Solve Problems Related to the International Marriage Broker Industry

Erin Elizabeth Chafin*

I. Introduction

The practice of trafficking in persons has a long, shameful, and shadowed past. For years, the covert nature of the activity prevented discovery of its grave consequences. However, the global impact of the practice has initiated an international dialogue about the problems it raises, as well as strategies for its elimination. The effort to curtail trafficking in persons has included attempts at formulating a working definition of the term “trafficking in persons.” Debate has surrounded what parameters should be placed on the definition—that is, how to determine which activities are atrocious enough to merit protection. Central to this debate is the subcategory of commercial sex work and whether to distinguish between consenting and non-consenting victims. This seemingly insignificant distinction has a critical impact upon certain classes of victims, particularly mail order brides.

Within the context of trafficking in persons, the international marriage broker (IMB) industry has attracted attention from scholars, human rights activists, and the media. The IMB business has exploded with the advent of the Internet,¹ which made the services cheaper to provide to a wider audience. In addition to its pervasiveness, the topic has garnered publicity because of the controversial issues it involves. The very idea of “purchasing” a mate offends modern sensibilities, especially considering the inequities caused by economic, racial, social,

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1. See Kye Leung, “Internet Spurs Growth of Mail Order Brides,” *available at* http://www.aamovement.net/immigrant_labor/mail_order_brides.html (last visited Sept. 14, 2003).

and gender differences between the parties. As a result, the motivations of the involved parties have been sharply questioned. For example: are the immigrant brides unwitting victims or consenting parties to a legitimate contract? Because the importance of consent is still in dispute, the answer to this and related questions has a direct bearing upon how the problem is approached in different countries. At present, affected nations unilaterally craft, propose, and implement solutions to the problem according to their diverse perceptions of it.

The IMB industry continues to boom despite these efforts because localized approaches are insufficient to solve this global problem. While the failure of such approaches has been widely acknowledged, a more effective solution remains elusive. This is due in large part to the variety of conflicting interests involved. These conflicting interests extend to various levels, from the general conflict among the countries involved to the more specific conflict between the interests of the individual husbands and wives. On the one hand, the brides are usually young, poor, and relatively uneducated. On the other hand, the husbands are usually middle-aged, economically and professionally successful, and well-educated. This imbalance seems but a microcosm of the larger disparity between the poverty and disadvantage of the countries sending the brides ("sender countries"), contrasted with the prosperity and advantage of the countries receiving them ("receiver countries"). To further complicate this conflicted landscape, IMB businesses protect their interests by insisting that the issue is one of freedom of contract and autonomy of the parties.

This comment will focus on the United States as a major receiver country² and the Philippines as a major sender country,³ comparing the recent legislative efforts of each with regard to the IMB industry. In the United States, a bill seeking to regulate the industry was introduced in the House of Representatives⁴ and the Senate.⁵ Meanwhile, in the

2. H. Patricia Hynes, *The United States: Migration and Trafficking in Women, A Comparative Study of Women Trafficked in the Migration Process* (Jan. 21, 2004) available at <http://action.web.ca/home/catw/attach/CATW%20Comparative%20Study%202002.pdf>. "[It is estimated] that 200 mail-order bride companies arrange between 2,000-5,000 marriages in the United States each year. [Another study] puts the estimate at 4,000-6,000 marriage per year, up to 4 percent of all immigrant female spouses." *Id.*

3. Aida F. Santos, *The Philippines: Migration and Trafficking in Women, A Comparative Study of Women Trafficked in the Migration Process* (Jan. 21, 2004) available at <http://action.web.ca/home/catw/attach/CATW%20Comparative%20Study%202002.pdf>. This study examines the causes and consequences of human trafficking from the perspectives of the United States and the Philippines, along with Indonesia, Thailand and Venezuela. "The Philippines is one of the major sources of women for marriage marketing." *Id.*

4. International Marriage Broker Regulation Act of 2003, H.R. 2949, 108th Cong.

Philippines, legislation completely proscribing the activity was signed into law by President Gloria Macapagal-Arroyo.⁶ The difference between these approaches is fundamental, and it likely underlies the persistence of problems related to the industry. It is likely that, from the American perspective, the issue is one of capitalism and party autonomy. Mail order brides are considered capable consenting parties who should be able to marry whomever they wish, and entrepreneurs are given freedom to establish businesses however they wish, subject to reasonable regulation. The issue seems much more serious from the Philippine perspective; it involves the cultural, gender, and economic subordination of its people.

This comment espouses the view that having a common, inclusive definition of trafficking in persons is instrumental in the resolution of its national and transnational ramifications. Furthermore, this universal definition should include mail order brides because the vast disparity in bargaining position between the mail order bride and her prospective husband renders her incapable of giving truly informed consent. Part II of this comment explores the anatomy of the IMB industry, its clients, and the problems it poses. Part III examines the debate over the importance of consenting versus non-consenting victims, using the United Nations (U.N.) Protocol as an example. Part IV discusses past legislative efforts regarding trafficking in persons and the IMB industry made by the United States and the Philippines. Part V evaluates current approaches of these countries—the regulation approach of the United States and the proscription approach of the Philippines.

II. Background Information

A. *The Industry*

The IMB industry is relatively new and has enjoyed a swell in popularity with the advent of the Internet.⁷ For entrepreneurs, the service

§ 1 *et seq.* (2003).

5. International Marriage Broker Regulation Act of 2003, S. 1455, 108th Cong. § 1 *et seq.* (2003).

6. National Commission on the Role of Filipino Women Press Release, *GMA Signs R.A. 9208 "Anti-Trafficking in Persons Act of 2003."* at http://www.ncrfw.gov.ph/whats_new/press_releases.htm (last visited Sept. 14, 2003).

7. World Class Service website, *Frequently Asked Questions* (last visited Oct. 29, 2003) at <http://www.filipina.com/FAQ.html>. The international availability of the internet facilitated the expansion of IMB clientele, while making the service easier and cheaper to provide. One entrepreneur testifies to the ideal match between the IMB industry and the internet: “[w]hen the World-Wide Web came along, I saw that it was a perfect venue for this kind of business. The paper catalogs were so expensive that the quality was usually very poor; but on the Web you can publish high resolution full-color photos which can be

is in demand, cheap to provide, and quite profitable.⁸ In general, the websites contain databases of the names, addresses, email addresses, telephone numbers, and photographs of prospective brides, or “pen-pals.” To be listed on a site, women are required to complete a form including personal information such as weight, height, age, marital status, number of children, and interests.⁹ Once the prospective bride sends the form via email or traditional mail, she is included, free of charge, among other prospective brides for the Western client’s perusal. Should the husband-to-be find one or more interesting prospects, he is encouraged to purchase the contact information for them. This service costs anywhere from \$4.00¹⁰ to \$15.00¹¹ per address, and bulk discount options are available.¹² Another pricing schedule offers all of the addresses in the existing database for \$39.99¹³ and all future publications for an extra \$10.00.¹⁴ In addition, tours to the Philippines are available for around \$2,000.00,¹⁵ with a nonrefundable deposit of \$400.00.¹⁶ The client travels with a group to Cebu City, where he has the option of joining group activities or embarking on private excursions with his “female friend.”¹⁷ After the “dating” phase, the client often chooses one woman to marry. Upon her acceptance of the proposal, immigration paperwork is completed and she is on her way to the U.S. as a mail-order bride.

B. *The Clients*

Common questions surrounding the mail order bride industry concern the characteristics and motives of the involved parties. A study conducted by Dr. Robert J. Scholes for the Immigration and

browsed by everyone in the WORLD.” *Id.*

8. *Id.*

9. Examples can be found at http://www.filipina.com/bio-data_form.html and <http://www.ladiesofthephilippines.com/mail.app.html>.

10. World Class Service website, *How to Order* at <http://www.filipina.com/howorder.html> (last visited Oct. 29, 2003).

11. Ladies of the Philippines website, *Address Prices* at <http://www.ladiesofthephilippines.com/prices.html> (last visited Oct. 29, 2003).

12. *Id.*

13. Asian Love Slave website at <http://www.asianloveslave.com> (last visited Nov. 23, 2003). Ironically, despite the offensive name of this site, its operator still insists that he is merely providing beautiful and sincere potential wives to marriage-minded men who will treat them well.

14. *Id.*

15. Ladies of the Philippines website, *Philippine Tours* at <http://www.ladiesofthephilippines.com/tours.html> (last visited Oct. 29, 2003).

16. *Id.*

17. *Id.*

Naturalization Service (INS)¹⁸ is illuminating in this regard. In general, male clients are Caucasian, highly educated, conservative, and economically and professionally successful.¹⁹ It is widely postulated that these men are motivated to seek foreign brides by dissatisfaction with American women.²⁰ Philippine women are believed to lack the ambition and independence of Western women.²¹ Patrons of IMB websites profess a desire for a quiet, loving, and traditional wife.²² However, contrary to what they claim, it has been noted that IMB patrons often “have control in mind more than a loving, enduring relationship.”²³ While their youth and unfamiliarity with American notions of gender equality make Filipina mail order brides more desirable to IMB customers, these characteristics also make them frighteningly vulnerable to domestic violence.²⁴

18. Robert J. Scholes, *The “Mail-Order Bride” Industry and Its Impact on U.S. Immigration* at <http://www.bcis.gov/graphics/aboutus/repssstudies/Mobappa.htm> (last visited Oct. 29, 2003). In this report, Scholes refers to surveys conducted by David Jedlicka; 607 American men were surveyed and 206 responded.

19. *Id.*

20. See World Class Service website, *Frequently Asked Questions* (last visited Oct. 29, 2003) at <http://www.filipina.com/FAQ.html>. The webmaster does a considerable amount of editorializing in his answers to the frequently asked questions. In response to one inquiry about what motivates Western men to choose foreign women over Western women, he wrote: “Western women do not appreciate men. They do not value family life. A recent study of Americans found that most married men are much happier than unmarried men . . . but the opposite is true for women. The goals of modern women are not sufficiently met by marriage. Marriage is not the right thing for them to do. It is not good for them. Men must learn not to try to make these women do what they do not like. I am helping modern Western Women to avoid what they despise.” *Id.*

21. See Filipina Sweethearts website, *Are Filipina Mail Order Brides Submissive?* at <http://filipinasweethearts.com/SubmissiveMailOrderBrides.html> (last visited Nov. 23, 2003). “[F]ilipina mail order brides do expect the man to be ‘the leader’ of the household, and when treated with love and respect, Filipina brides try very hard to please their man. These Filipinas understand that the man is ‘the man’ of the house. They seek to cooperate with their man for the sake of harmony, not challenge his every move for the sake of ego, doesn’t that sound refreshing? The ego of the Filipinas is more ‘us’ centered than western men and women.” *Id.*

22. This is the main selling point for the sites. See Ladies of the Philippines website at <http://www.ladiesofthephilippines.com> (last visited Oct. 29, 2003). The site assures its customers: “You don’t have to impress these girls. They are not looking for a rich man or a man with gorgeous looks. They want a man that will treat them well, be honest with them and keep them safe so that they can raise your family. These girls will do more for you and treat you better in life than most men can even imagine. They have been taught from childhood by their mother that their duty in life is to take care of their husband and their family. And this is exactly what they do.” *Id.*

23. Scholes, *supra* note 18.

24. This concern is based primarily on anecdotal evidence rather than definite statistics. This dearth of information is due in part to the fact that domestic violence studies typically do not differentiate between foreign spouses and American spouses. INS Report, “International Matchmaking Organizations: A Report to Congress” at <http://www.ins.usdoj.gov> (last visited Oct. 30, 2003).

Filipina brides are typically young,²⁵ poor,²⁶ and relatively uneducated. It is surmised that these women are driven by a combination of dissatisfaction with Filipino men and naiveté about American men.²⁷ Furthermore, it is very likely that the disparity between the Philippine economy and the American economy serves as a significant motivating factor for Filipina women to become mail order brides.²⁸ The Philippines historically has held few promising employment prospects for women. As a result, Filipina women have often been encouraged or even forced to immigrate to other countries for work, sending remittances to their estranged family members.²⁹ Factors propagating this practice include gender stereotyping of women, lack of employment opportunities for women, demand for Filipinas in more developed countries, and the booming economies of destination countries.³⁰ Finally, fiancée visas are a relatively quick and easy way to immigrate to

25. The Filipina still respects age as a repository of wisdom and stability so they are not averse to older men. Indeed, they often prefer older men who are more settled and reliable. Many 19 yr. up [sic] girls think a 20 yr. [sic] age gap desirable. A 40 yr. [sic] gap, or even more, is not unknown. So an older man may fulfil [sic] his fantasy for an "innocent," beautiful girl. This is normally only available to him in the West if he is rich, powerful or famous. Even then it is unlikely that he can marry a virgin in the marriageable age group. This is not unattainable in the Philippines.

This website is perhaps the most disturbing one of all; the top part advertises pictures and videos of "virgins before defloration" while the bottom half of the same page features an essay about "Why Western Men Like Philippine Women." The link made between these two topics is a testament to the true nature of the IMB industry at <http://www.hymen.ca> (last visited Nov. 23, 2003).

26. In fact, poverty is considered a desirable characteristic for potential brides. "Many gentlemen prefer a Filipina from a poor family. In general we agree. A lady from a poor family is more likely to have traditional values and will be even more appreciative of her lifestyle in America." Filipina Ladies International website, *Other Services* at <http://www.filipinaladies.com/new/otherservice.html> (last visited Nov. 2, 2003).

27. Scholes, *supra* note 18. Scholes notes that, while economic factors may be significant motivation for prospective brides, the women themselves indicate that they are more attracted to American men (they look like movie stars) and that they are dissatisfied with native men (they are unfaithful and cruel). *Id.*

28. "The Philippines are a source . . . for persons trafficked for labor and sexual exploitation. A strong tradition in the country of seeking economic opportunity outside the Philippines puts many Filipinos at risk of trafficking. . . . Traffickers lure . . . victims abroad with false promises of legitimate employment." United States Department of State, *Trafficking in Persons Report 2003: Philippines* (June 11, 2003) available at <http://www.humantrafficking.com/humantrafficking/client/view.aspx?ResourceID=4267>.

29. Mary Rose Fernandez, *Commodified Women*, PEACE REV. (1997) available at <http://www.humantrafficking.com/humantrafficking/client/view.aspx?ResourceID=2158>. This article reports the Philippines as a major exporter of female labor. The origins of this practice began as a quick solution to economic distress and became "a staple of the Philippine economic plan." Fernandez argues that the exportation of women, particularly for sex work (including mail order brides) commodifies and exploits them. *Id.*

30. Santos, *supra* note 3.

the United States.³¹

C. *The Problem*

Despite the obvious discrepancies in power and background of the involved parties, IMB entrepreneurs insist that the matter is one of freedom of contract and autonomy.³² The entrepreneur sees himself as merely acting as a liaison between two equal and independent parties. In fact, one website defensively criticizes the Philippine government for its efforts to protect its citizens.³³ The business is often characterized as an “opportunity” for Filipinas, and the entrepreneurs see themselves as benevolent saviors, finding love and happiness for everyone involved.³⁴

The problem with this assertion is that it fails to consider the underlying motivations, expectations, and circumstances of the people involved. The disparate bargaining positions of the parties make it practically impossible to execute a mutually fair contract. Even if the “success rates” are as high as sources represent,³⁵ the business is based on notions of domination and inequality. This inherent imbalance of power is exacerbated by the unrealistic expectations of both the Western husband and the foreign wife. The irresponsible marketing of IMB businesses causes the husband to expect a silent, obedient domestic servant and the foreign wife to expect a benevolent, caring Prince Charming. When these fantastic expectations are dashed in the banality of married life, the result is a recipe for domestic violence. Furthermore, mail order brides often consider domestic violence commonplace and are

31. “A report to Congress on marriage marketing states that fiance(e) visas are easily obtainable for immigrating into the United States, and that traffickers have determined that the fiancé(e) visa is an easy way to traffic women unnoticed.” Hynes, *supra* note 2, at 27.

32. See, e.g. World Class service website, *supra* note 16, at 28. This site fervently maintains that the Philippine government is doing its citizens a disservice by illegalizing the industry and that the Filipina alone should determine whether to participate in this activity.

33. “The crummy Philippine Government claims that a bureaucrat knows what is best for a Filipina more than she herself knows what is in her interest.” World Class website, *supra* note 20.

34. The only alternative is to leave the Filipinas with no opportunity to improve their situation, which I honestly judge to be a greater disservice. . . . I do not believe that being offered an OPPORTUNITY is harmful to anyone. On the contrary, it is lack of opportunity and of options that is most detrimental to human fulfillment. Even though some choices may turn out to be risky ones, overall your life is better if you are able to choose for yourself.

Id.

35. One website boasts that “90% of Cherry Blossoms clients who have gone on the tours have become engaged or have been married as a result of our introductions!” Cherry Blossoms website at <http://www.blossoms.com/asiantours.html> (last visited Oct. 30, 2003).

thus unaware of laws protecting against it.³⁶ In addition to the fear of bodily harm presented by their abusive husbands, these women frequently fear deportation in the event of divorce or separation.³⁷

III. Defining Trafficking: the Consent Debate

In general, the goal of eliminating trafficking in persons has received a great deal of legislative attention, both nationally and internationally. However, there has been considerable debate about what specific activity the term covers, particularly regarding commercial sex work.³⁸ The controversy that arose during the drafting stages of the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children³⁹ is illustrative in this regard. Initially, two definitions of trafficking were considered.⁴⁰ The first choice differentiated between consenting and non-consenting victims, requiring some level of force and/or coercion.⁴¹ The second alternative, on the other hand, was mindful of the subtly coercive circumstances under which "consent" is often obtained; this approach was advocated by human rights activists who argued that true consent is nearly impossible under such conditions.⁴² This approach ultimately prevailed. As of the adoption of the Protocol on November 15, 2000, the U.N. chose to define

36. "Many mail-order brides come to the United States unaware or ignorant of United States immigration law. Mail-order brides who are battered often think that if they flee an abusive marriage, they will be deported. Often the citizen spouse threatens to have them deported if they report the abuse." 8 U.S.C.A. § 1375(a)(4).

37. In her comments supporting the International Marriage Broker Regulation Act of 2003, Senator Cantwell observed,

The men who seek these more traditional wives typically control the household finances and make basic decisions like whether the wife will have a driver's license, get a job, or spend time with friends. Because these women often immigrate alone, they have no family or other support network and rely on their husbands for everything. Such dependency can make it difficult for a wife to report abuse without worrying that doing so is a surefire ticket to deportation. Researchers agree that isolation and dependency put these women at greater risk of domestic abuse.

149 Cong. Rec. S9960-01 (July 25, 2003).

38. Stop Violence Against Women website, *Trafficking in Women: Explore the Issue at* <http://www1.umn.edu/humanrts/svaw/trafficking/explore/1whatis.htm> (last visited Nov. 2, 2003).

39. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Annex II, art. 3(a), Dec. 12, 2000, G.A. Res. 55/25, U.N. Doc. A/55/383 (2000) [hereinafter "Protocol"]. The protocol is not yet in effect, having 117 signatories and 35 parties. Art. 17 states that the Protocol "shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. . . ." *Id.*

40. Stop Violence Against Women website, *supra* note 38.

41. *Id.*

42. *Id.*

trafficking in persons as follows:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery. . . .⁴³

After considerable debate about the issue,⁴⁴ the Protocol ultimately made consent moot, providing that “[t]he consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this Article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.”⁴⁵

This broad definition of trafficking easily encompasses the sex labor industry⁴⁶ and, more particularly, the IMB industry. Arguably, mail order brides “consent” to being marketed because they complete applications with IMBs, ostensibly of their own free will. However, the disparity between the economic hardship of the Philippines and the perceived promise of prosperity offered by the United States hardly puts the prospective bride in a strong bargaining position. The desire to improve her condition, combined with the pressure to support her family gives the immigrant bride little realistic opportunity to refuse.

IV. Pre-Protocol Attempts to Resolve IMB Problems

A. *The United States*

Prior to the enactment of the Immigration Marriage Fraud Amendments (IMFA) in 1986, the spouse of a U.S. citizen could become a resident with little difficulty.⁴⁷ However, consumer protectionist

43. Protocol, *supra* note 39.

44. See Kara Abramson, Note, *Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol*, 44 HARV. INT’L L.J. 473. Abramson argues that, through this “poorly worded compromise,” the drafters made consent irrelevant to avoid the debate of autonomy versus protectionism altogether.

45. Protocol, *supra* note 39.

46. This term includes prostitution and sexual exploitation, and an increasing number of scholars include the mail order bride industry. See Fernandez, *supra* note 30.

47. See Kate O’Rourke, *To Have and to Hold: A Postmodern Feminist Response to the Mail-Order Bride Industry*, 30 DENV. J. INT’L L. & POL’Y 476, 484-5. O’Rourke includes in her discussion a timeline of American responses to the problems posed by the IMB industry, noting the movement from consumer protectionism of the citizen spouse to

concerns about greedy immigrant brides seeking resident status rather than a long, committed marriage motivated changes that elongated and complicated the green card process.⁴⁸ Under the IMFA, an immigrant spouse was admitted on a "conditional" basis after her initial petition was approved, and this conditional status was contingent upon maintaining the marriage for two years.⁴⁹ If, at any time before the two year anniversary the marriage was determined to be an immigration scam, the status was subject to termination by the INS.⁵⁰ Within ninety days of their second anniversary, the parties were required to file a petition for removal of conditional status.⁵¹ Failure of the citizen spouse to file within the allotted time or to attend the personal interview with the INS could result in deportation of the alien spouse.⁵² After this process, it was left to the INS official to determine whether the marriage was bona fide, resulting in either the grant of resident status or annulment of the marriage followed by deportation proceedings.⁵³ In the event of deportation, the alien spouse's only way to remain in the United States was to request that the INS use its discretion to grant her a hardship waiver.⁵⁴ This waiver required the alien spouse to make one of two showings: (1) that extreme hardship would result from her deportation; or (2) that she entered the marriage in good faith, the marriage was terminated by her for good cause, and that she had not been at fault in failing to meet the requirements of the petition to remove the conditional status.⁵⁵

Since 1986, it seems that the focus of legislative efforts has made a slight shift from protecting the consumer to increasing protection of the immigrant spouse. In 1990, another amendment was passed that provided for a waiver of the citizen spouse's cooperation if the immigrant spouse could make a sufficient showing that the marriage had subjected her to battery and extreme cruelty.⁵⁶ In addition, the Immigration Act of 1990 eliminated the required showing that the

the present concern with domestic abuse of the immigrant spouse.

48. *Id.*

49. *Id.*

50. See James A. Jones, *The Immigration Marriage Fraud Amendments: Sham Marriages or Sham Legislation?* 24 FLA. ST. U. L. REV 679. Jones discusses the IMFA, asserting that the Act possessed "flaws and omissions that locked aliens into abusive homes for fear of deportation," which Congress tried to correct with subsequent legislation. Jones advocates repealing the Act, stating that "Congress' stead[y] attempt[s] to remedy the adverse effects of the IMFA . . . have fallen short." *Id.* at 701.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. O'Rourke, *supra* note 47.

56. *Id.*

marriage was ended by the immigrant spouse for good cause; however, the requirements that the marriage was entered into in good faith and that failure to file a timely petition was not the fault of the immigrant spouse remained.⁵⁷ The Violent Crime Control and Law Enforcement Act of 1994 went one step further, allowing immigrant spouses to self-petition for conditional permanent residency and suspending deportation proceedings against an immigrant spouse who was subjected to battery or extreme cruelty by a citizen spouse.⁵⁸

Two years later, legislation that appeared to recognize the specific link between the IMB industry and domestic violence was enacted.⁵⁹ The law required that IMBs provide immigrant spouses with access to information about mail-order marriage “including information regarding conditional permanent status and the battered spouse waiver under such status, permanent resident status, marriage fraud penalties [and] the unregulated nature of the business engaged in by such organizations.”⁶⁰ While the law successfully identified the existence of a serious problem, it failed to do more than tacitly condone the IMB industry in its existing state.

The Trafficking Victims Protection Act of 2000⁶¹ (TVPA) initially appeared more promising. In its findings, Congress recognized that women are primary victims of trafficking in persons and that they are targeted due to unemployment, discrimination, and lack of education.⁶² Perhaps even more important was the finding that described trafficking in persons as “a transnational crime with national implications:”

To deter international trafficking and bring its perpetrators to justice, nations including the United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses. The United States must work bilaterally and multilaterally to abolish the trafficking industry by taking steps to promote cooperation among countries linked together by international trafficking routes. The United States must also urge the international community to take strong action . . . to engage recalcitrant countries in serious and sustained efforts to eliminate trafficking and protect trafficking

57. Jones, *supra* note 50.

58. *Id.*

59. 8 U.S.C.A. § 1375(a)(3). “Although many . . . mail-order marriages work out, in many other cases, anecdotal evidence suggests that mail-order brides find themselves in abusive relationships.” *Id.*

60. 8 U.S.C.A. § 1375(b)(1).

61. Trafficking Victims Protection Act, 22 U.S.C.A. § 7101 et seq. (2000).

62. *Id.* § 7101(b)(4).

victims.⁶³

This legislation, enacted shortly before the adoption of the U.N. Protocol, seemed to take an unprecedented interest in the welfare of the foreign victims, admitting that they are often prosecuted more harshly than the trafficking offenders.⁶⁴ In addition to commissioning an annual report on trafficking in persons,⁶⁵ the law also set forth minimum standards for the elimination of trafficking in persons.⁶⁶ Those countries that did not comply with these standards or make significant efforts to do so were subject to sanctions.⁶⁷ However, the law's protections extend only to victims of "severe forms of trafficking in persons," a somewhat narrowly defined category.⁶⁸ Unlike the U.N. Protocol, the TVPA seems to favor making a distinction between consenting and non-consenting victims; this distinction limits those shielded by the act's provisions, excluding, for example, mail order brides.⁶⁹

B. *The Philippines*

The Philippines' position as a major exporter of human labor has a

63. 22 U.S.C.A. § 7701(b)(24).

64. "Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves." *Id.* § 7101(b)(17).

65. Trafficking Victims Protection Act, 22 U.S.C.A. § 7107(b)(1) (2000).

66. *Id.* § 7106(a).

67. "It is the policy of the United States not to provide non-humanitarian, non-trade-related foreign assistance to any government that does not comply with minimum standards for the elimination of trafficking and is not making significant efforts to bring itself into compliance with such standards." Trafficking Victims Protection Act, 22 U.S.C.A. § 7107(a) (2000).

68. The term "severe forms of trafficking in persons" means sex trafficking in which a commercial sex act is induced by force, fraud, coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Trafficking Victims Protection Act, 22 U.S.C.A. § 7102(8) (2000).

69. For a discussion of the Act, see Stacey Antimone, Note, *Sexual Trafficking: the United States' Response to a Growing International Problem*, 24 SUFFOLK TRANSNAT'L L. REV. 149

[t]he . . . narrow definition of sexual trafficking would result in some victims being overlooked. By narrowly defining trafficking, the legislation would not apply to victims who are unable to prove some type of deception or coercion. The legislation would also not apply to all victims because many women become victims due to circumstances that do not rise to the level of deception or coercion. Therefore, many women who should be afforded protection would be excluded because of the growing practices of trafficking that would not fit within the definition of the legislation, for example, mail order brides."

Id. at 176.

long history.⁷⁰ The practice of promoting overseas employment for Philippine citizens began as a temporary solution for unemployment under the Marcos administration.⁷¹ Migrant workers, sometimes referred to as “heroes” of the Philippine economy, supported remaining family members by sending remittances.⁷² Over the years, what began as a temporary fix has evolved into an integral part of the Philippine economy.⁷³ This trend affects Philippine women with alarming frequency and severity. These harsh effects are due to many factors, including the unavailability of skilled job opportunities for women at home and foreign demand for domestic or sex labor.⁷⁴

Realizing the threat that the IMB industry poses to its female citizens, not to mention to the economic health of the country, the Philippines has engaged in an effort to proscribe such activity completely. In 1990, the Philippine government passed a law illegalizing the IMB industry.⁷⁵ The Act made it unlawful to: (1) establish or carry on a matchmaking business involving Filipina women and foreign nationals,⁷⁶ (2) create or distribute material to advertise such matchmaking services,⁷⁷ and (3) solicit the participation of Filipina women in such matchmaking schemes.⁷⁸ The penalty for violation of the Act’s provisions included imprisonment of six to eight years and a fine of 8,000 to 20,000 pesos.⁷⁹ Foreigners who violated the Act would be deported and permanently barred from the country after being subjected to the provided imprisonment and fine.⁸⁰

Unfortunately, this stringent law has had little practical effect. There are two main reasons for this failure. First, the economic and social problems underlying the practice of seeking foreign employment have seen little improvement. Second, many of the businesses marketing Filipina brides as a commodity are located in places other than the

70. Santos, *supra* note 3.

71. *Id.*

72. *Id.*

73. Fernandez, *supra* note 29.

74. *Id.* Fernandez includes mail-order brides as part of the sex industry.

75. Republic Act No. 6955 (1990) (Phil.). The long title of the Act reads as follows: “AN ACT TO DECLARE UNLAWFUL THE PRACTICE OF MATCHING FILIPINO WOMEN FOR MARRIAGE TO FOREIGN NATIONALS ON A MAIL ORDER BASIS AND OTHER SIMILAR PRACTICES INCLUDING THE ADVERTISEMENT, PUBLICATION, PRINTING OR DISTRIBUTION OF BROCHURES, FLIERS AND OTHER PROPAGANDA MATERIALS IN FURTHERANCE THEREOF AND PROVIDING A PENALTY THEREFOR.”

76. *Id.* at § 2(a)(1).

77. *Id.* at § 2(a)(2).

78. *Id.* at § 2(a)(3).

79. *Id.* at § 4.

80. *Id.*

Philippines—the United States, for example.⁸¹ Therefore, the lack of jurisdictional basis to punish these entrepreneurs has rendered the law essentially toothless.⁸²

V. Current Approaches

A. *The United States: Is Regulation Enough?*

In late July 2003, Senator Maria Cantwell introduced the International Marriage Broker Regulation Act.⁸³ In her introductory speech, Cantwell expressed concern about mechanical inequities in the IMB industry, specifically focusing on the lack of information provided to mail order brides.⁸⁴ First, mail order brides are not given personal information about their prospective grooms.⁸⁵ Divulgence of such information is left entirely up to the client in his letter writing, which leaves ample room for fraud and misrepresentation. Second, mail order brides are frequently unaware of the protections against domestic abuse that are available to them once they enter the United States.⁸⁶

81. *2,000 Pinays Sign Up With Mail-Order Bride Agencies Yearly*, MANILA TIMES (Jan. 14, 2002) available at http://www.manilatimes.net/national/2002/jan/14/top_stories/20020114top6.html. This article reports that Senate Majority Leader Loren Legarda focused on two American-based IMB websites that “exclusively and boldly sell Filipino women as brides and sex commodities” and do so with “virtual impunity.”

82. Although it might be toothless with regard to prosecution, the law is not completely without effect. One website bemoans the existence of this law as an impediment to the proper operation of business, stating

[u]nfortunately, I will never be able to run this business correctly, which would involve my going [to the Philippines] to set up an office, etc. This is made impossible by the repressive Philippine Government, which is thwarting the wishes of, and working against, its own people by outlawing these services.”

World Class Service website, *supra* note 16, at 28.

83. International Marriage Broker Regulation Act of 2003, *supra* note 4.

84. Cantwell’s statements on the International Marriage Broker Regulation Act, 149 Cong. Rec. S9960-01 (July 25, 2003).

Unfortunately, women meeting their husbands [via an international marriage broker] frequently have little opportunity to get to know their prospective spouses or assess their potential for violence. They also have little knowledge of their rights as victims of domestic violence in our country even if they are not yet citizens or permanent residents.

Id.

85. “Congress finds [that] aliens seeking to enter the United States to marry citizens of the United States currently lack the ability to access and fully verify personal history information about their prospective American spouses.” International Marriage Broker Regulation Act of 2003, H.R. 2949, S. 1455, 108th Cong., § 3.

86. Congress finds [that] many individuals entering the United States on fiancé(e) visas for the purpose of marrying a person in the United States are unaware of United States laws regarding domestic violence, prohibitions on involuntary servitude, protections from automatic deportation, and the role of police and the courts in providing assistance to victims of domestic violence.”

Cantwell's legislation proposes to remedy these disadvantages in an attempt to even the playing field of the IMB industry.⁸⁷ First, the Act would require each IMB to collect personal information from the prospective husbands regarding the following: (1) arrests or convictions for homicide, rape, assault, sexual assault, kidnap, child abuse or neglect; (2) restraining orders; (3) marital history; (4) the ages of any children under 18; and (5) all States where the client has resided since the age of 18.⁸⁸ Second, the legislation would prohibit Americans from seeking fiancée visas for multiple fiancées by allowing only one fiancée visa per citizen, per year.⁸⁹ Third, it would require IMB agencies to obtain the permission of the foreign national client prior to releasing information such as her name, address, telephone number, or electronic mail address.⁹⁰ Fourth, it would obligate IMB agencies to provide the foreign national client information, published in her own language, on the rights of victims of domestic violence in the United States.⁹¹ Finally, it would require a U.S. citizen seeking a foreign fiancée visa to undergo a criminal background check; this background check is identical to the one the fiancées themselves submit to prior to entering the country.⁹²

Presently the bill has seventeen cosponsors in the House of Representatives⁹³ and none in the Senate.⁹⁴ In the House, the legislation has been most recently referred to the Subcommittee on Immigration, Border Security, and Claims.⁹⁵ In the Senate, the bill was referred to the Committee on the Judiciary on July 25, 2003.⁹⁶

Id.

87. Cantwell's statements on the International Marriage Broker Regulation Act, 149 Cong. Rec. S9960-01 (July 25, 2003).

88. International Marriage Broker Regulation Act of 2003, H.R. 2949, S. 1455, 108th Cong., § 3.

89. *Id.* § 2. The bill suggests amendment of § 214(d) of the Immigration Nationality Act, 8 U.S.C. 1184(d).

90. *Id.* at § 3. This portion of the bill suggests amendment of § 652 of the Omnibus Consolidated Appropriations Act, 8 U.S.C. § 1375.

91. *Id.*

92. *Id.*

93. These include Rep. Brian Baird (WA-3), Rep. Diana DeGette (CO-1), Rep. Norman D. Dicks (WA-6), Rep. Lane Evans (IL-17), Rep. Raul M. Grijalva (AZ-7), Jay Inslee (WA-1), Rep. Mark Steven Kirk (IL-10), Rep. Carolyn B. Maloney (NY-14), Rep. Jim McDermott (WA-7), Rep. James P. McGovern (MA-3), Rep. George Miller (CA-7), Rep. Joseph R. Pitts (PA-16), Rep. Adam Smith (WA-9), Rep. Edolphus Towns (NY-10), Rep. Curt Weldon (PA-7), Rep. Robert Wexler (FL-19), and Rep. Frank R. Wolf (VA-10). H.R. 2949 *Bill Summary & Status*. at <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HR02949> (last visited Dec. 23, 2004).

94. S.1455 *Bill Summary & Status*. at <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:s.01455> (last visited Jan. 19, 2004).

95. The bill was referred from the House Judiciary to the Subcommittee on September 4, 2003. H.R. 2949 *Bill Summary & Status*, *supra* note 93.

96. S.1455 *Bill Summary & Status*, *supra* note 94.

B. *The Philippines: Is Proscription Too Much?*

In response to the U.N. Protocol, Philippine President Gloria Macapagal-Arroyo signed Republic Act. No. 9208.⁹⁷ Like its predecessor, R.A. No. 9208 categorically criminalizes the IMB industry.⁹⁸ The new law takes its cue from the U.N. Protocol, making the victim's consent irrelevant.⁹⁹ Consequently, the law includes mail order brides in its definition of trafficking and extends its protections to that vulnerable, yet often overlooked group.¹⁰⁰

The act makes important provisions for the formation of programs to prevent trafficking and to assist victims by offering emergency shelter, counseling, free legal assistance, medical or psychological services, skills training, and health services.¹⁰¹ In addition, the law establishes harsher penalties for violators of its provisions. For example, any person found guilty of qualified trafficking is subject to life imprisonment and a fine of 3,000,000-5,000,000 pesos.¹⁰²

It is interesting to note the stark contrast between the stringent provisions of the Philippine law and the barely adequate reform proposed in the U.S. Which solution is correct? How much regulation is too much, or too little? Amid these questions, one thing seems clear: it is highly unlikely that the wildly disparate solutions developed by the U.S. and the Philippines evolved from a unified understanding of the same problem.

C. *A Bilateral Effort?*

Having vowed to "work bilaterally and multilaterally to abolish the

97. National Commission on the Role of Filipino Women Press Release, *GMA Signs R.A. 9208 "Anti-Trafficking in Persons Act of 2003"* at http://www.ncrfw.gov.ph/whats_new/press_releases.htm (last visited Sept. 14, 2003).

98. "It shall be unlawful for any person, natural or judicial to . . . introduce or match for money . . . any Filipino woman to a foreign national for marriage under a mail order bride scheme as provided under Republic Act No. 6955. . . ." Republic Act No. 9208 at §4(c) (2003) (Phil.) available at http://www.ncrfw.gov.ph/legis_agenda/la_at_bills_compare.htm (last visited Sept. 14, 2003).

99. "Trafficking in persons shall refer to the recruitment, transportation, transfer, provision, harboring, receipt or deployment of a person, done legally or illegally *with or without the victim's consent or knowledge*. . ." *Id.* at § 3(a). (emphasis added).

100. It shall be unlawful for any person, natural or judicial, to introduce or match for money . . . any Filipino woman to a foreign national for marriage under a mail order bride scheme . . . for purposes of offering, selling or trading her to engage in prostitution, pornography or to subject her to forced labor, slavery and slavery like practices, sexual exploitation, involuntary servitude, debt bondage, or physical and other forms of abuse. . . .

Id. at § 4(c).

101. *Id.* at § 19.

102. *Id.* at § 10(c).

trafficking industry,”¹⁰³ the United States issues a yearly report on the status of “severe forms”¹⁰⁴ of trafficking in persons. Based on the findings of this study, countries are evaluated on their efforts to eradicate trafficking in persons. This assessment includes two steps. First, it must be determined whether a country is “a country of origin, transit, or destination for a significant number of victims of severe forms of trafficking.”¹⁰⁵ Second, the country is placed in Tier 1, Tier 2, or Tier 3 based on its efforts to combat trafficking.¹⁰⁶ Tier 1 countries are in full compliance with the act’s minimum standards, Tier 2 countries are not yet in full compliance but are making significant efforts to do so, and Tier 3 countries do not fully comply with the minimum standards and are not making significant efforts to do so.¹⁰⁷

The minimum standards essentially require countries to (1) prohibit and sufficiently punish the commission of trafficking in persons, and (2) make “serious and sustained efforts to eliminate severe forms of trafficking in persons.”¹⁰⁸ To elucidate the latter requirement, several indicia are provided, including the following: (1) whether the government of the country in question “vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts;” (2) whether the country has taken measures to protect victims and to provide them with assistance; (3) whether the country has taken significant measures, such as public education, to prevent trafficking in persons; and (4) whether the government of the country cooperates with other countries to investigate and prosecute severe forms of trafficking in persons.¹⁰⁹

The U.S. Trafficking in Persons Report 2003¹¹⁰ has used these and other factors to evaluate the efforts made by the Philippines involving the elimination of trafficking in persons. The Philippines has been placed in Tier 2, meaning that it is not currently in compliance with the act’s minimum standards but is making significant efforts to do so. It seems ironic that the United States makes this evaluation while its own actions thwart the efficacy of the Philippine law. By allowing IMB entrepreneurs the freedom to market Philippine women as a commodity, the United States seriously undermines Philippine efforts to eliminate the

103. Trafficking Victims Protection Act, 22 U.S.C.A. § 7101(b)(24) (2000).

104. See *supra* note 64 for a definition of “severe forms” of trafficking in persons.

105. U.S. Department of State, *Trafficking in Persons Report 2003*: About the Report. (June 11, 2003) available at <http://www.humantrafficking.com/humantrafficking/client/view.aspx?ResourceID=4161> (last visited Sept. 14, 2003).

106. *Id.*

107. *Id.*

108. Trafficking Victims Protection Act, 22 U.S.C.A. § 7106(a) (2000).

109. *Id.* § 7106(b)(1)-(10).

110. Trafficking in Persons Report 2003, *supra* note 105.

activity for the welfare of its citizens. This interference makes the United States' pledges to work bilaterally at eliminating trafficking in persons seem unbelievable and even outrageous.

VI. Conclusion

The IMB industry is a critical, yet largely overlooked aspect of the international problem of trafficking in persons. The debate is largely definitional, hinging on whether mail order brides are able to give effective consent. There is vast disparity between the weak bargaining position of the prospective mail order bride and the relatively stronger positions of the prospective Western husband or the IMB, both of whom offer the promise of economic prosperity and domestic happiness. When such promises are made to a woman who is dissatisfied with the gender discrimination and lack of employment opportunities offered by her own country, they amount to subtle, yet still palpable, coercion. These circumstances make the immigrant bride's informed consent unlikely and the execution of a mutually fair contract nearly impossible.

Prior to arriving to the U.S., an immigrant bride is likely to be utterly unaware of any dangerous or unfavorable characteristics her husband may possess. She is likely to be similarly unaware of protections afforded to victims of domestic violence. It is probable that her husband-to-be is in search of a subservient foreign wife, leading him to the website on which she was found. Finally, immigrating without a supportive network of family and friends, she is likely to be lonely and frightened. These factors combine to create a scenario rich with possibility for domestic abuse.

If one considers the problem through the circumscribed lens of domestic abuse, the narrow solution proffered by the U.S. in the form of the International Marriage Broker Regulation Act of 2003 is sufficient. It takes steps to regulate a previously unregulated industry in the following ways: (1) the act requires IMB businesses to disseminate vital information about the husband-to-be to his potential bride; (2) it discourages "repeat players" by limiting the number of fiancée visas to one per citizen, per year; (3) it forces the husband-to-be to undergo the same criminal background check as his foreign fiancée. However, while this legislation would be a vast improvement to the presently unregulated industry, it tends to be a "band-aid" solution to the larger, more fundamental problems.

These problems involve economic, racial, gender and social disparities between the Western husband and the foreign wife, the receiver country and the sender country, and the financially-motivated IMB proponents and their humanitarian-motivated opponents. The fact

that the U.S. professes a dedication to the elimination of trafficking in persons while allowing such activity to proceed freely within its borders is illustrative of these problems. While claiming to recognize the international consequences of trafficking in persons, the U.S. has failed to realize the effects of its own actions in this regard.

The fate of the Philippine laws seeking to proscribe trafficking in persons in the form of the IMB industry is telling. Realizing the negative effects of allowing its female citizens to be purchased as mere products, the Philippines has made two attempts within the past fifteen years to eradicate the mail order bride industry. These efforts have been rendered ineffective because such businesses are permitted in other places, such as the United States. As a result, the IMB businesses operate from afar via the internet, but they still market Philippine women as their product. Consequently, the Philippines is adversely affected without hope of recourse, given the improbability of exercising jurisdiction over an American business.

The reasons that the United States permits IMB businesses to operate are somewhat unclear. Perhaps the reason involves party autonomy and freedom of contract, viewing the mail order bride as an equally sophisticated contracting party. However, this view is unpersuasive because, until Senator Cantwell's legislation is passed, the mail order bride is at an informational disadvantage compared to her potential husband. This deficiency, combined with the others discussed previously, makes it clear that the immigrant bride is not yet permitted to bargain from an equal position. Perhaps the reason involves the freedom of an entrepreneur to establish and run a business how he or she chooses. However, it is axiomatic that the freedoms we enjoy as Americans are subject to reasonable restrictions, which are imposed for the general welfare. Prostitution, for example, would likely be a profitable business venture, but the federal government has yet to condone it.

The most likely reason for the United States' tacit approval of this activity is that its dominant bargaining position has clouded its judgment. American citizens are profiting financially and socially from the exploitation of foreign women with virtual impunity. Under the guise of informed consent, the activity is able to pass as mildly undesirable, but acceptable, as opposed to "severe forms" of trafficking in persons. This distinction is as artificial as it is unsatisfactory. All forms of human trafficking are reprehensible and should be prevented with equal fervor.

The first step towards eradicating all forms of human trafficking is the collaborative development and implementation of a universal definition of the term. This definition should be inclusive, taking its cue from the U.N. Protocol, which declares that the victim's alleged "consent" is irrelevant. From there, true bilateral and multilateral efforts

to punish offenders, protect victims, and eliminate this form of modern slavery may begin in earnest.