



## Gender, Migration, and the State: Filipino Women and Reproductive Labor in the United States

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**ABSTRACT.** This paper examines the relationship between the experiences of immigrant Filipino women in the United States and state practices managing immigration and immigrant labor. The main question that I pose here is: What are some of the effects that state policies have on the experience of Filipino caregivers and domestic workers in the United States? My tentative argument is that increasingly restrictive immigration policies and gaps in employment laws facilitate the exploitation and subordination of migrant Filipina domestic workers in the United States. Employment law often does not include caregivers and domestic workers in its protections, and immigration policy in the United States does not have any program regulating their entry and work. It is the intersection of both legal bodies which triggers situations of what I call here *legalized trafficking* and *normalization of irregularity*.

**KEYWORDS.** female migration · reproductive labor · gender · immigration policy · employment policy · United States · Filipino domestic workers

### INTRODUCTION

This paper examines the relationship between the experiences of immigrant Filipino women in the United States and state practices managing immigration and immigrant labor. The question that I pose here is: What are some of the effects that state policies have on the experience of Filipino caregivers and domestic workers in the United States (US)? My tentative argument is that increasingly restrictive immigration policies and gaps in employment laws facilitate the exploitation and subordination of Filipina domestic workers in the US. Employment law often does not include caregivers and domestic workers in its protections, and immigration policy in the US does not have any program regulating their entry and work. It is the intersection of both legal bodies which triggers situations of what I call here

*normalization of irregularity* and *legalized trafficking*. While the first term refers to a context where excessively rigid immigration laws contribute to the generalization of undocumented immigration into the US, *legalized trafficking* comprises situations that, although legally sanctioned by US immigration and employment law, resemble legal and working conditions that are formally classified as trafficking. In other words, although the recruitment or mode of entry to the receiving country have not been illegal, the formal relations between employers and migrant workers—designed by the state—have the potential to recreate situations of vulnerability, subordination, and exploitation often found in cases of (illegal) trafficking. The term *legalized* sheds light on the state's responsibility in this process. While illegal immigration, for example, refers to an action—usually individual—that fails to respect the law, *legalized trafficking* refers to a process that, although usually considered as negative and illegal, due to biased policy making, becomes both legal and socially acceptable. There is a shift, therefore, from the individual level to the state policymaking and enforcement arena.

As I will show, the US does not prioritize reproductive labor as a relevant sector of the economy in the demand for foreign workers. Furthermore, it does not recognize its inherent particularities, which often place domestic and care workers in vulnerable and exploitative working situations. Due to this double neglect, this receiving state fails to provide satisfactory legal mechanisms for the entry of Filipinas willing to undertake this activity, as well as protections for those already within US territory. The results are, among others, long waiting periods, lack of protection, and irregular immigration.

### **Overview of the study and respondents' profile**

Between January and September 2006, I carried out fifty-five in-depth interviews, conducted participant observation at the Filipino Community Center<sup>1</sup> in the Excelsior neighborhood in San Francisco. The in-depth interviews included conversations with Filipino caregivers and domestic workers, government officials, community activists, and immigration and employment lawyers. Additionally, I analyzed numerous immigration and employment policy documents, as well as Filipino newspapers published in the US. This paper presents preliminary findings from data collected during eight months of fieldwork in the San Francisco Bay Area.

Three of the women interviewees are between twenty and twenty-nine years old, three between thirty and thirty-nine, three between forty and forty-nine, six between fifty and fifty-nine; and six between sixty and sixty-nine. Out of the twenty-one caregivers and domestic workers, twelve are married, four are single, three are widowed, and two are separated. The latter are victims of domestic violence and thus are separated from their spouses. Seventeen of the interviewees have children. Eight of them have at least one of her children living in the Philippines. Two out of the twelve married interviewees have spouses living in the Philippines as well.

Regarding the immigration status of the interviewees, two of them are undocumented; one is on a work visa, ten are permanent residents, and eight are already US citizens. Regardless of current immigration status, six of them were undocumented when they first entered the country.

### **Research on migration and gender**

The last fifteen years have witnessed an important growth in migration and gender scholarship in the US, Europe, and Asia (Constable 1997; Hewison and Young 2006; Hondagneu-Sotelo 1999), and scholars have started to bring gender into migration research as a core analytical concept (Tyner 2000). However, studies of gender and migration have usually focused on micro- or macro-level units of analysis, such as the family or the community (Sassen 1984), and have only recently started to pay attention to state practices (Anderson 2000; Bhabha 1996; Fujiwara 2005; Goldring 2001; Pessar 2003; Pessar and Mahler 2003; Parreñas 2001). The emerging work on immigrant women and the state in the US has predominantly focused on the effects of the 1996 welfare and immigration reform on immigrant women and their children. For the past ten years, both bodies of legislation have targeted social services, following the logic that denial of social services to immigrants would reduce the incentives for immigration to the US (Chang 1996, 2000; Chavez 1997; Fujiwara 1999a, 1999b; Hill Collins 1999; Lindsley 2002; Martin 1995; Roberts 1997; Singer and Gilbertson 2003). While this body of scholarship provides explanations for how state policy has differential gender effects, its focus on social services may perpetuate the notion of women as mothers and reproducers of the labor force. It does not place their role as workers and income earners at the forefront.

My goal is to contribute to a growing scholarship that studies government regulation in the context of female migration. I do this by examining the regulation of Filipinas' arrival in the US and their labor as caregivers and domestic workers in the San Francisco Bay Area. Although work on the intersection of gender and the state is indeed growing, there is a great need to further analyze the gender components of migrant labor in the US (Goldring 2001), particularly regarding the ways in which immigration and employment laws converge to shape immigrant women's experiences. Female migration often differs from its male counterpart, and national and international legal bodies often fail to address these differences (see Mestre 2001). As Joan Fitzpatrick and Katrina Kelly argue (1998, 4):

Legal regulation of female-specific migration streams tends to be perverse, frequently increasing risks to participants' physical integrity and economic welfare. Measures to regulate distinctly female migration streams ... may assume forms that deprive these migrants of the liberating potentiality of the migration experience. Devising a role for legal norms and institutions to balance safety and freedom for female migrants remains an enormously difficult challenge. For migration regulation, the 'woman question' could not be more pressing.

Although the role of the state has started to take a more central stage in the studies of female migration in recent years, further work is necessary in order to shed light on some of the gendered factors, components, and consequences of migration control and regulation (see Chin 1998; Davies 2002; Goldring 2001; Piper 2004; 2006).

The past two decades have also seen a growing scholarship and public debate on labor and sex trafficking (Chin 1999; Taran and Moreno-Fontes 2002). However, these studies, more often than not, focus on the migrants themselves, the employers, or the recruiters. This emphasis has often resulted in a treatment of the "trafficked person" as perpetrator rather than as victim, as well as an explanation of the reality of trafficking by the existence of unscrupulous individuals (Wong 2006). Always insisting on the complexity of the migration phenomenon and the varying interaction of multiple factors, I want to shed light on the state as an actor that often goes unaddressed in the discussion of trafficking and/or illegal migration (see Garcés-Mascareñas 2006; Hayter 2000). As Jacqueline Bhabha (2005) argues, industrialized countries are increasingly placing legal obstacles for entry, therefore severely limiting legal immigration. Far from seeing the law and

illegality as two opposite realities—or where the law draws the line of what is legal and illegal, I view the state as inherently promoting illegal experiences (Johnson 2006) or situations that, although considered legal, may resemble irregular and/or exploitative ones (see Heyman 1999).

I argue that the US state is indirectly responsible for the trafficking of workers and irregular migration in general, due to its design of excessively rigid and hardly realistic immigration policies that do not respond and/or offer a solution to the actual migration process and the problems it presents. Although important, micro-level analysis of migration focusing on the migrant person, or recruiting/employing individuals, may favor a view of trafficking, exploitation and illegality as realities stemming from individual actions. In this view, the migration project does not work simply because someone fails or refuses to respect the law.

Without necessarily rejecting such a statement, I intend to introduce the possibility through an examination of the experiences of Filipino domestic workers in the US that trafficking, illegality, and exploitation, rather than stemming from exceptions to the rule (or failure to follow the law) are also responses to state action. I suggest the possibility that these experiences are structural and systematic in the sense that they are being promoted and/or facilitated by the law itself.

## INTERNATIONALIZATION OF REPRODUCTIVE WORK

The capitalist economy has historically relied on a gendered division of labor. Second wave feminism critiqued the lack of attention to reproductive labor typifying both neoliberal and Marxist perspectives<sup>2</sup>. According to feminist scholars, these theories focused on productive labor, without paying much attention to the household work that made possible the reproduction of the “productive” labor force.

Although this scholarship certainly raised important issues about the relationship between patriarchy and capitalism, it did not initially examine the ways in which race intersects with gender and class in the organization of paid reproductive work (see Glenn 1981, 1985, 1992, 2002; Anderson 2000). In addition to these factors, Misra, Merz, and Woodring (2006) discuss the important role that structures of class and nationality play in the global organization of reproductive and care work, or what Romero has called the “globalization of household labor and caregiving”(2003, 811). If paid reproductive work has historically

been done by poor women of color in the US, today it is increasingly being organized within an international system in which immigrant women of color from poor, peripheral countries provide care for families in the countries at the developed center (Hewison and Young 2006; Parreñas 2001, 2005). Reproductive work is treated as a non-economic activity performed by housewives for free, where no economic value is produced. Even when these tasks are remunerated, the traditional devaluation of the work depresses wages and working conditions (Fitzpatrick and Kelly 1998).

As the state retreats from many of its social responsibilities, immigrant women compensate for the void left in these areas. In the core countries, capital needs women's participation in the labor market, yet neither capital nor the state make up for the necessary reproductive labor lost at home. Due to the lack of public response to this situation, we have witnessed what I call a *privatization of the solution* in which middle-class families in countries at the center hire immigrant women from the periphery to do this work for them.

The US government facilitates this transaction in two different ways. First, through the design of immigration policies that creates different levels of citizenship or unequal access to rights between state- and foreign-born individuals. Second, through weak language within its employment and labor laws, the state leaves immigrant women doing reproductive labor in the receiving country unprotected. Although there is an increasing need for foreign female reproductive workers, the US does not have rational labor migration policies that allow for their regular and safe entry (Davies 2002). This responds, I argue, to a lack of political prioritization of gendered and racialized occupations, which are considered not productive or contributive or both to the national economy.

## FILIPINO IMMIGRATION TO THE UNITED STATES

Filipinos today compose the second largest immigrant group in the US (Espiritu 1995; Novas and Cao 2004; Parreñas 2001, 2005). Some authors argue that the great importance of the United States as the destination for Filipinos must be attributed to the former colonial connection between the two countries (Abella 1992; Choy 2003; Lowe 1999; Rodriguez 2005). For the past one hundred years, the Philippines has consistently functioned as a source of immigrant labor when local markets have faced shortages.

Family reunification and occupational immigration have led to most of the growth of the Philippine population in the US since 1965. In the twenty years following the passage of the 1965 Immigration Act, about forty percent of the legal immigration to the United States was from Asia. Filipinos constitute the largest portion at almost one-quarter of the total Asian immigration (Ancheta 1998; Espiritu 1995). In addition, during the 1960s two-thirds of all Philippine immigrants were female. Until now female migrants still outweigh the males. The gender composition of this flow can be explained by family reunification and the demand for health and care workers in the US, which has been greatly fulfilled by Filipino women (Tyner 1999).

During the 1970s, American firms relocated their factories to sites with cheaper labor and the administrative headquarters remained in key urban areas (Sassen 1984). Consequently, the labor market has become more polarized, marked by the expansion of high-wage, high-skilled occupations and low-wage, low-skill service jobs (Lowe 1999). The 1965 Immigration Act favored the entrance of foreign workers willing to fill these vacancies in the US labor market. The Philippine government organized labor export has been able to satisfy much of the demand within the professional sectors (Choy 2003; Espiritu 1995; Tyner 1999). In addition, both legal and illegal Philippine immigrants have occupied the poorly paid jobs in the service sector in the US.

The contemporary Filipino American community presents more class diversity than ever before. Although we find many professionals among the Filipino American community, 65 percent of the total are foreign born or what is commonly referred to as newcomers. Thirty-five percent of the community are not proficient in English and find themselves concentrated in low-wage jobs. Caregiving and domestic work has become common employment for Filipinas in California, specifically in the San Francisco Bay Area. The historical tendency to concentrate in low-wage jobs, often with servile aspects to them, continues within the Filipino American community today.

In contrast with Asian and Middle Eastern countries, where the transaction of Filipino labor is usually temporary and contract-based, Filipinos in the US tend to move there permanently. This distinction introduces the key difference between what constitutes a migrant (temporary, contract bound) and an immigrant (permanent, with residence permit). Although this differentiation is analytically useful, it is important to keep in mind that it responds to legal definitions of the migration flow rather than to personal ones. In fact, women may

use “migrant flows” to eventually become “immigrants.” For example, this paper describes the experiences of Filipino women who, although they entered the US on temporary visas, have always planned to stay indefinitely or somehow ended up doing so. Individual intention and outcome are not always clear and/or explicit, and other factors, such as the connection with the homeland throughout time, may also affect that definition of what constitutes a migrant or an immigrant. Therefore, although in this paper I tend to refer to permanent settlers as immigrants and temporary ones as migrants, their own experiences, dramatically shaped by immigration law in the receiving country, show that this distinction, although analytically effective, says little about the often contradictory life situations and projects that Filipino women face in the United States today. The same reflection applies to the often-made distinction between coercion and consent, which becomes essential to characterize a particular case as either trafficking or smuggling (see Bhabha 2005; Garcés-Masareñas and Doomernik 2007; International Labour Organization 2006; Wong 2006). As Bhabha (1996) argues, this distinction is often built upon a flawed conception of human agency that presupposes a clear divide between two motivational states. However, the actual difference between coercion and consent is often complex, and needs to include structural factors, such as unemployment and endemic poverty, as well as individual motivations.

## IMMIGRATION LEGISLATION AND REPRODUCTIVE LABOR

How do immigration and employment laws affect Filipino reproductive workers in the US? How do these two bodies of policy intersect? To answer these questions, I examine how the law does not include situations more common among immigrant women than among men. I analyze how existing legal concepts place immigrant women at a disadvantage and facilitate their exploitation and subordination.

Despite the high demand for care and domestic workers, as well as their importance for the maintenance of the capitalist economy,<sup>3</sup> the US government has not established an immigration program to regulate the entry of care workers and provide them with protections. An aging, baby boom generation is entering retirement, while simultaneously an increasing number of working and middle-class women are joining the workforce. This process increases the need for

paid workers to take care of the elderly and children as well as do the housework that “stay at home mothers” used to do for “free.”

Although the last decade has seen an increasing emphasis by US immigration policy on employment-based visas to cater to the needs of the economy, these programs have usually targeted sectors in technology and health care, as well as other professional occupations (Green 2002). No program regulates the entry of reproductive labor from overseas. This needs to be understood in the larger context of organized efforts to discourage low-income and unskilled immigration, both within family reunification and work-based immigration, which has a particularly dramatic impact on immigrants of color (Park and Park 2005).

A key factor behind the lack of an immigration program for care and domestic work has been the US Department of Labor’s (DOL) failure to recognize the shortage of local or state workers in this sector. This has taken place despite the publication of a report by the Health and Human Services Department in 2003, which indicated that by 2050 the US’s demand for caregivers would multiply by three: from 1.9 million workers in 2000 to 6.5 million fifty years later.

For an American employer to sponsor a worker for an employment-based visa, they need to obtain a labor certification from the DOL. The only immigration program for non-agricultural, non-skilled work is the H2B Visa. Although care and domestic work could fall under this category, they hardly ever do. In addition to evidencing a shortage of a state workforce willing to do this work, sponsoring employers are also expected to show that the work needed is seasonal or temporary or both. Given its nature, it is very difficult to prove this. In general, there is no legal recourse for people who seek to enter the US with an employment-based visa—either temporary or permanent—to work as a caregiver or a domestic worker.

Consequently, according to my research, Filipina care and domestic workers—whose goal is to permanently stay in the US—follow four main avenues for entry.<sup>4</sup>

### **Normalization of irregularity**

The first strategy is the fraudulent use of the H2B Visa. Due to the rigidities of the visa program and the fact that visas are rarely allocated for care and domestic work, agencies and workers in the Philippines work around its definition. Maria<sup>5</sup> found a job through an agency in

Manila to work in a vacation resort in Georgia in the United States. After obtaining a H2B Visa and spending PHP 250, 000.00 processing her papers, she traveled to the United States on December 2004. Upon her arrival, she found out that the job the agency promised her did not exist. She was sent instead to an elderly home in California run by relatives of the owners of the recruitment agency in the Philippines. She and the twelve other Filipinos in the same home were informed that they needed to hire a lawyer to “fix” their papers. The employers would take care of finding an attorney and they told the workers that they must stay in the nursing home working from three to five years in order to pay for the legal expenses. Maria escaped after two weeks, and has since then been an undocumented caretaker in different places in the San Francisco Bay Area.

Garcés-Mascreñas and Doomernik (2007) argue that, although undocumented migrants do not usually fall under the category of trafficked workers, they often face situations of deception and exploitation that resemble those of migrants legally defined as victims of trafficking. This is fundamental in shaping their migratory experience. The irony in Maria’s case is that after having fulfilled all requirements by the Philippine Overseas Employment Administration and the US Embassy in Manila, she became an undocumented worker as soon as she set her foot on US soil, since she never filled the job described on her visa. Although she did not know this back then, the only way to proceed “the right way” would have been to automatically return to the Philippines. This would have resulted in an inability to work in the United States and the resulting failure to pay the debts her family had acquired to send her overseas. Instead, she escaped from the nursing home and has spent the past two and a half years working as a caregiver and babysitter in different private households for low wages and no benefits. She is constantly scared of being arrested and deported. Although she has sought legal advise in order “to clean the mess” that her agency created, several attorneys have advised her to “stay under the radar.” In other words, to continue to work under the table and without entering in contact with US authorities in order to avoid detention and deportation.

There are two issues worth emphasizing from Maria’s case. Far from justifying illegal actions undertaken by Philippine recruitment agencies, it is important to acknowledge that the rigidities of the US immigration system force both workers and agencies to work around it (see Bhabha 2005). Despite the high demand for caregivers in the US

and the equally high supply of unemployed, underemployed, and underpaid women in the Philippines willing to do this job, there is no legal mechanism in place matching both ends of the process. Though Maria did not intend to violate immigration laws, she, as well as her “batchmates,” found themselves jobless and undocumented as soon as they entered the US. Ignoring her employers’ threats to report her to Immigration Services if she did not stay in the nursing home working for free, she escaped because she understood that there was no real intent to fix her situation. Although she was right to escape from unscrupulous recruiters and employers, she had no legal basis to obtain support from the local authorities and has spent the past two and a half years hiding from them. Because H2B visas bind the worker to the particular job and employer described on their passport, working for anyone else was not legally permitted. During the three month duration of her visa Maria stayed in legal limbo and, after the expiration, became another “average undocumented” worker in the country.

Although US immigration law did not directly place her in this situation, it facilitated the situation by failing to offer realistic migration options and further perpetuated it by classifying her as a perpetrator rather than as a victim. Indeed, treating people like Maria as victims is not politically appealing, since it may be perceived as encouraging undocumented migration. The lack of a labor migration program facilitating the legal entry of caregivers and domestic workers within the H2B or other non-skilled labor visas granting full rights results in stories like Maria’s, where difficulties to enter the country lead to the normalization of illegality and fraud. This also shows the lack of political will on the part of the US Congress to match supply and demand in the context of reproductive labor. Park and Park (2005) have suggested that the lack of political will may respond to the availability of between nine to twelve million undocumented workers already in the US willing to fill these jobs.

Besides offering a political solution to the large number of undocumented people in the US, I argue here that providing improved mobility and legal rights is a fundamental factor if the US Congress wants to promote legal migration and to stop a further *normalization of irregularity*. According to Davies (2002), this should be done by responding to the real needs of both migrant women and the labor market in the country of destination.

### **Family reunification**

The second and most common strategy is family reunification. Filipinos are petitioned by a relative already residing in the US, obtain a green card after a waiting period, and many of them eventually naturalize. However, the Philippines is one of the countries with the longest backlog for family reunification visas. Married sons and daughters of US citizens face a wait period of up to eighteen years, and brothers and sisters face up to twenty-three years from the moment they are petitioned by their relatives (US State Department 2006).

Blanca, a fifty-four-year-old caregiver, was petitioned by her sister when she was still single. The petition took twelve or thirteen years to be approved. She came to the US with her husband and her two children in 1994. Pilar, a forty-one-year-old caregiver who entered the US in 1994 cannot even remember when she was petitioned by her mother. However, after the interview, she showed me a letter from the American Embassy addressed to her mother, which indicated that Pilar had been petitioned in 1989. Her waiting period was fifteen years.

### **Tourist visa**

Since the waiting period for those being petitioned for family reunification is so long, many Filipinos enter the US as tourists who will eventually overstay and become undocumented. A total of 2.7 million undocumented people adjusted their status in 1986 under the Immigration Reform and Control Act and its legalization provisions. There has not been such a program since then. Undocumented immigrants can legalize their status through marriage to a US citizen, or by being sponsored by an immediate relative who is a US citizen. For most people, this is not a viable solution. Under these circumstances, thousands of undocumented Filipinos have sought work as caregivers and domestic workers in nursing facilities and private homes in the last two decades (see Parreñas 2001). Their employers often offer to sponsor them for an employment-based green card. However, there is little opportunity for these workers to ever gain professional work visa through means currently provided for by immigration policy. My interviews with immigration attorneys in the San Francisco Bay Area showed a considerable amount of Filipino domestic workers and caregivers spending thousands of dollars in green card petitions that never prosper. More often than not, they remain undocumented for years. This limits their opportunities in the labor market and their

opportunities to find decent working conditions<sup>6</sup> (Ezquerra 2006, 2007a, 2007b).

Paca, a thirty-year-old woman from Baguio, arrived in the US on a tourist visa last year. Within two weeks of her arrival she was already working as a caregiver. She hopes to acquire a professional work visa before her visitor's visa expires. However, her immigration lawyer is not optimistic.

I am allowed to stay in the United States until December. I am working as a caregiver under the table, but I would like to adjust my status before my visitor visa expires. I have just [talked] to a lawyer and he said that there are not [that many] professional visas left for this year ... Most people come on a one-entry tourist visa and then decide to stay hoping that they will eventually be able to adjust their status. They come here and basically never go back ... That is something about us, Filipinos. We will use anything to be able to come here and work. We have a lot of connections from our hometown, so we get jobs through the people in our community... Filipinos come here for money.

Consequently, since her entry working under the table, Paca has found herself not having any work contract, she receives lower wages than her documented counterparts, and she lacks work security. Her situation, as well as the experience of thousands of Filipinos entering the US on a tourist visa every year, needs to be understood side by side with family reunification visas, which are assigned and approved by a slow and inefficient immigration system.<sup>7</sup>

Millions of people in the Philippines do not have the option to be petitioned by anyone, and travel as tourists whenever they can. Although they tend to look for jobs once they find themselves in American soil, sometimes the worker is offered a job in her home country as a domestic worker. Once she arrives in the US, her working conditions and her life in general may vary substantially from what she had been promised. Due to her status as an undocumented worker, she has limited leverage to assert her rights.

This was the case of Irma Martinez. She went to the US twenty years ago to work as a domestic worker and nanny by a Filipino couple. Although my interviews show "less extreme" versions of the process that I described, I mentioned Irma's case here—vastly documented in the media—to illustrate my point. Irma testified that she worked sixteen hours a day, seven days a week. She earned about USD 100.00 a month or less than USD 4.00 a day for the first ten years and about USD 400.00 thereafter (*Milwaukee Journal Sentinel* 2006). She was often

verbally abused. Her employers did not allow her to leave the house or be seen by non-family members. Irma's story became a high profile case and set an example of how employers can be prosecuted for human trafficking.

Irma's employers constantly made threats that they will report her to US authorities. In addition, although she was in a difficult situation, she was still making more money than if she has stayed in the Philippines. She felt responsible to support her family back home. Her immigration status as undocumented, besides her family's need for her income back in the Philippines, was the main factor that allowed her employers to keep her from leaving such deplorable conditions. The coercion used to maintain her in the household made the judge define this episode as a case of labor trafficking. Her case shows, once again, how the combination of conditions of high unemployment and economic crisis in the home country and a vulnerable immigration situation are ingredients for exploitation and abuse (see Bonilla 2006; Mezzadra 2005; Varela 2007).

An increasingly rigid immigration system is resulting in slow family reunification channels, making it virtually impossible for Filipino caregivers or domestic workers intending to work in the United States to enter the country through legal means. Many women decide to travel on a tourist visa, and this has consequences on their legal and working conditions. Indeed, there are times when they become vulnerable to irregularities even if the entry has been conducted legally.

### **Legalized trafficking**

The last mechanism of entry by Filipino domestic workers documented by my research is through special domestic help visa programs for live-in employees, which contribute to what I call *legalized trafficking*. The B1, A3, and G5 visas allow diplomats from other countries, officers and employees in international organizations, and US citizens who reside abroad to "bring" their "domestic helpers" with them when visiting or temporarily residing in the United States. These visas are usually for a limited number of years and the worker enjoys legal status in the US for only as long as they work for the employer who sponsored them (Domestic Workers United and DataCenter 2006; Zarembka 2002).

This issue came up during my interview with a Philippine consular official in San Francisco, who told me he had "brought" his domestic workers with him from the Philippines under an A3 Visa. This visa

qualifies the workers as private staff of consular or diplomatic officers. It is usually valid for two years and binds the legal status of the workers to their employment at their sponsor's household. According to this particular official, if the domestic worker "escapes," she automatically loses legal status and is expected, by law, to go back to the Philippines.

What is particularly interesting about the interviewee's explanation is a two-fold issue. First, the domestic worker is considered private staff and therefore under the jurisdiction of her employer. Second, if, for whatever reason, the worker decided to change workplaces, she is automatically considered undocumented and thus required to leave the US.

In another case, Maria Luisa, a therapist at a women's shelter in San Francisco shared with me the case of a Filipino woman who arrived in the US as a foreign diplomat's domestic worker:

There was a woman who was working at an Embassy ... and they withheld wages from her for two years ... She came on a diplomatic visa, but she was trafficked in the sense that she was doing forced labor and she was not paid.

When asked if the employer was prosecuted, she said:

[The authorities] were going to, but they did not ... I cannot really say because it was confidential. It was an Arab embassy ... I think that there was a political intervention to stop prosecution because [it could] have become a very high profile case.

Maria Luisa's statement touches on some of the ways in which these special visa programs are problematic. The fact that a woman can only maintain her legal status as long as she stays with the person or family who sponsored her to come to the US can potentially contribute to situations of, essentially, indentured servitude. A policy that limits the movement and choices of immigrant workers is sanctioning a scenario where the employer can exert a disproportionate amount of power over the worker. The only difference between this case and Irma Martinez's story is the definition of legal and illegal. The content, though, is the same. Under this kind of visa, the worker is treated by US immigration law as being privately linked to the employer, which corresponds with a common treatment of household labor as something belonging to the private sphere. Their immigration and labor rights are indeed very limited. The fact that these employers are diplomatic officers or wealthy business people or both often makes the monitoring of the workers' laboring conditions even more difficult and problematic.

Despite their “legal” entry in the United States, these workers do not have any real protection from employers’ abuse. Walking away from an abusive or exploitative situation is legally seen as “abandonment.” The undocumented worker, instead of being seen as a victim is treated as the perpetrator.

### GENDER, RACE AND CLASS IN US IMMIGRATION LAWS

I argue that gender, race, and class dimensions underlie the current immigration legislation in the US. The types of work accounted for in legislation guarantees rights for immigrants whose work is considered important to the productive sector of the economy. These jobs constitute, with few exceptions, professional “male-type” work and are done by highly educated people coming from other countries.

Political and psychological assumptions place women as situated in the non-economic, unskilled, private sphere. Because different laws “inadequately deal with the public/private distinction, women’s cultural association with the home is a major explanatory factor in the failure of legal regimes to protect female migrants from extreme forms of exploitation” (Fitzpatrick and Kelly 1998, 12) and adapt migration policies to their particular projects and needs.

Despite the importance of reproductive work to the economy, the state often does not take responsibility to provide the kind of services that families need. At the same time, there is an absence of immigration legislation that regularizes immigrants’ provision of this kind of work and that provides protections for the immigrant workers residing in the US. When special programs take place to guarantee the entry of domestic workers, their main goal is to serve upper class employers in the diplomatic and business worlds, without ensuring protective measures for the worker. The waiting periods to enter the US through family reunification mechanisms make people more willing and likely to immigrate illegally. The *normalization of irregularity* and the facilitation of trafficking, both illegal and legalized, within the caregiving and domestic work sectors are the two main outcomes of current circumstances. Current immigration legislation pending to be voted in the US Congress will criminalize undocumented immigrants in an unprecedented way. It will put them in a more vulnerable situation, making them even more exploitable (Terrazas, Konet, and Gelatt 2007).

These processes shed light on a reality where the US, as well as many other receiving countries, is more interested in “importing workers” than in “receiving new citizens or national members.” In other words, the labor immigration system presents restrictions in terms of visa durations, freedom of movement, and access to rights. This results in the creation of a “second-class” workforce that, although technically has the same labor rights as local or state workers, often finds it really difficult to access these rights. US immigration law, far from incorporating new members into the nation, defines what kind of labor is needed in the local economy, and through different channels makes labor flexible and easily exploitable (see Garcés-Mascreñas 2004; Sadiq 2005). This repeats the past history of the *Bracero* or Guest Worker Program<sup>8</sup> and does not seem to be anecdotal. If President Bush manages to pass his new immigration legislation, further differentiation will be made between permanent and temporary migrants, which will strengthen the distinction between full citizens and mere temporary workers. This has enormous effects on the nation-building project and poses challenges to the definition of the American democracy.

As I will show in the next section, conceptual biases underlying employment law, combined with the nature of work in private households, also serve to strip immigrant caregivers and domestic workers of many rights.

## EMPLOYMENT LAW AND REPRODUCTIVE LABOR

There needs to be an examination of the effects of employment law on immigrant domestic workers in order to recognize their status not only as women from other countries but also as laborers. Hondagneu-Sotelo’s (2001) work constitutes one of the most comprehensive efforts to examine the work conditions of domestic workers and their regulation by state and federal law. I elaborate here on her discussion of reproductive work and labor law and discuss some of my findings during my field research.

### On minimum wage and overtime pay

Workers in the US are entitled to certain labor protections independent of their immigration status. However, this lack of distinction between documented and undocumented workers is often more theoretical than de facto. Domestic and agricultural works are often excluded from labor protections, and undocumented workers are often hesitant to

assert their rights. In addition, the US's federal system treats employment and immigration law differently. On the one hand, employment may be under the jurisdiction of a city, county, state, or nation. Immigration law, on the other hand, is always Congress's prerogative. When the two legal bodies come into conflict, it is always immigration law that prevails. For example, San Francisco and California minimum wage laws include undocumented workers. If these workers are processed for deportation as a result of their involvement in a labor case against their employer, there is nothing that local and state agencies could do to stop removal procedures (see Ezquerra 2007a, 2007b). When legal status is withheld, and occupations such as care or domestic work excluded, the outcome is generally the creation of a second, separate tier of workers and citizens in the receiving country (Misra, Merz, and Woodring 2006).

Since the inclusion of domestic work under the Fair Labor Standards Act in 1974, workers, including undocumented immigrants, have the right to receive minimum wages and overtime pay. Due to the very nature of a federal nation-state, employment law is written and enacted at different levels. Therefore, the current federal minimum wage of USD 5.85 an hour sets the minimum from which state law often departs. In the case of California the minimum wage is USD 7.50 an hour, which introduces a substantial improvement from federal law. However, not all states have a higher minimum wage than the federal and even some of them do not have one at all. In a nutshell, thirty-one states offer an improvement of federal minimum wage and nineteen states, either directly or indirectly, apply the federal minimum.<sup>9</sup>

However, the implementation of the law to reproductive labor is highly problematic. Domestic workers have far fewer protections than other workers under the federal and state wage statutes, and no protection at all under other key laws, such as the national labor relations law, employment discrimination laws, and the federal occupational safety law. First, domestic employees who do personal care work are explicitly excluded from the right to earn minimum wage and overtime pay. The right for wages in federal law is limited to people doing housekeeping as opposed to strictly care work. Although California employment law does provide minimum wage to care workers, it also exempts them from overtime pay provisions. Other states, such as Wisconsin, the District of Columbia, Florida, Montana, and Arizona also exclude domestic workers and caregivers from overtime provisions.

This has a significant impact on Filipina migrants, since they are concentrated in caregiving positions. According to the 2000 Census, in California alone, 9,685 Filipinas work in personal care and service occupations. This figure is conservative since it does not include the undocumented workers of the sector. These exemptions have an important impact on women—as opposed to men—within the Filipino community, since it is women who are largely concentrated in these occupations. According to the US Department of Labor, 94.5 percent of childcare workers are women, as well as 87.6 percent of personal and homecare aids (US Department of Labor 2005).

The exemptions mentioned above apply to live-in employees, which are not covered by overtime regulations under federal law either, regardless of the nature of their work. Maria, the twenty-six-year-old undocumented Filipina care provider introduced earlier, had recently quit her job taking care of an eighty-year-old woman when I interviewed her. In addition to strict carework, she was expected to clean, wash, cook, and iron. She regularly had to lift her employer and change her diapers. She only had Sundays off, and even during those days her employer pressured Maria to accompany her to Church, which she often did. She did not have her own room but rather slept in the same room as the elder lady she assisted. The line between her personal and work time was continually being crossed. She was paid USD 800.00 a month, a sum that compensated her at a rate lower than minimum wage and without consideration of overtime.

Maria's testimony shows that immigrant domestic workers are still expected to be available for their employers around the clock. The law sanctions and reinforces practices where the immigrant woman working as a domestic is not expected to set boundaries for herself or develop an existence independent from her employers. This logic inevitably assumes that, because of her gender, class, race, and nationality, Maria, as thousands of other live-in domestic workers, is less of a human than the human being that hired her. In addition, she is less deserving of labor rights than the average, local male worker. When a coalition of immigrant domestic workers in the San Francisco Bay Area lobbied last year to push through a bill that would award caregivers in the state the right to overtime pay, they were challenged by the contention that the state's budget could not ease this problem, since many clients would need to be institutionalized due to their inability to pay for their carer. The state could not afford to pick up the slack.

Many women are expected to do care work in US society. Many immigrant women of color are expected to do it twenty-four hours a

day and for often abusively low wages. The overly long hours worked by many immigrant women—excess of hours that, as I have shown, are sanctioned by employment law in the US—are a reflection of the gendered devaluation of household labor: reproduction is not work. This increases the vulnerability of the worker to abuse and exploitation. On call at all times and without remuneration reflecting this time, Filipino domestic and careworkers encounter a triple standard of sacrifice: the gendered expectation of selflessness similar to norms of conduct set for housewives, with the additional racialized and classed view of them by their employers as servants, placing them under a heavy cultural expectation of self-abnegation (see Fitzpatrick and Kelly 1998). When the worker is undocumented, she enjoys less leverage to assert her limited rights, or to move into another job, or both, even if she technically has the same rights as her documented counterparts.

### **On violence and collective rights**

Fitzpatrick and Kelly (1998) argue that, “[W]here the maid becomes a resident member of the household, she may face physical and psychological violence and subordination, including demands for sexual services, which replicates the general phenomenon of domestic violence” (4). Luisa’s experience supports this view. Luisa, an organizer of an immigrants’ organization in San Francisco, during my interview shared that:

They had these really horrible testimonies from women doing domestic work that were just horrible cases of abuse. Physical, sexual, like, you know, the conditions that people are put in that are absolutely deplorable, where they make them sleep, the kind of things that they make them do, and the way they were talked to...

Similar stories of this kind of treatment came up consistently during my interviews.

Title VII of the Federal Civil Rights Laws bars employment discrimination on the basis of “race, color, religion, sex, or national origin,” including sexual harassment, but applies only to employers with fifteen or more employees. Thus, virtually every domestic worker in the US is de facto excluded from Title VII’s protections. Most states either present also a minimum number of employees<sup>10</sup> or follow the federal minimum.

Representing one of the most liberal discrimination legislation in the country, California only requires the presence of one employee in the workplace in order to accept a case for sexual harassment or discrimination. However, there are numerous challenges to file a harassment case. For example, unless the victim considered the conduct or comments acceptable at the time they occurred, there is no actionable claim for sexual harassment regardless of their severity. This may present important hurdles in a situation where domestic workers and caregivers, due to immigration laws as well as structural constraints, do not have much leverage in the workplace, or the ability to easily find another job, or both.

The already weak federal and state wage protections for domestic and care workers become even more meaningless when we think about the lack of enforcement, or even encouragement to comply with these laws. In my interviews with officers at local, state, and federal labor standards enforcement agencies, they repeatedly acknowledged that they do not conduct labor inspections of private households. Securing minimum wages and overtime pay for domestic workers is definitely not a priority for employment law enforcement agents, since the inspection of private households as work places is perceived as highly inefficient and irrelevant. Luisa also confirmed that one of the main problems in the domestic work sector is the government's lack of will to enforce the law. In addition to the historical marginalization of reproductive labor from employment law, she also discussed a decreasing responsibility of the state to protect workers' rights, specifically that of low-wage female workers:

All the labor enforcement are underfunded and defunded, and it is not an accident. Women's rights [are] historically isolated and marginalized and left out of labor law in this country. The status quo is for the state not to get involved. Neoliberalism is changing the concept of what is the responsibility of the state toward its people. Its profit over people right now.

The US government and the state of California, by not targeting potential labor violations happening within private homes, are reproducing gender ideologies. The lack of minimum wage and overtime protections for these sectors leaves us thinking that reproductive labor is not seen as *real work* and the household is not perceived as a *workplace* by the government. In fact, the household is seen as a private issue, free from power relations, and none of the government's business.

Finally, paid domestic workers are not covered by the National Labor Relations Act. This means that they do not have legal rights to organize and therefore no protection from an employer's retaliation if they organize. This neglect expresses an ideology that does not see this work as economically or socially relevant and, as a result, the rights of domestic workers are not seen as relevant as those of other workers'. The fact that they are often immigrant women, with fewer rights than US citizens, worsens their conditions and limits their leverage. This legal ideology runs parallel to the inability (or lack of will) of the US Congress to recognize reproductive work as relevant to the economy and that the United States needs foreign workers. The sector therefore, as well as the women occupying it, remain invisible to both employment and immigration law.

## CONCLUSION

Rather than seeing these bodies of legislation as random or meaningless, I argue here that they are the outcome of class, gender, and race biases by the state. The situation of Filipino caregivers and domestic workers in the San Francisco Bay Area is as much an outcome of *political choices* as of *structural factors*. The structural reality is that Filipino women are needed there to fill jobs available in the economy. The global free market demands labor and these women supply it. Governments, both at the sending and at the receiving end of the migration process, facilitate this transaction through their regulation (or lack of it) of out migration and immigration flows. However, Filipino women, as well as women from other countries in Asia, are on the move regardless of what US, European, or Philippine migration laws say.

The reason why so many middle-class families find themselves in need for a domestic worker or a caregiver is that support by the government has been steadily decreasing during the past two decades. This constitutes a political choice, masked behind the ideology of neoliberal economic imperatives. As the government diminishes its role in providing services to families, it makes it cheap and convenient to purchase these services through lax regulation of highly gendered and racialized occupations. As pressures mount for working age household members to work, the means for hiring immigrant women—cheaply—are enhanced. The business and diplomatic elites are allowed to “freely import” their own household service without being held accountable, leaving the workers in a situation vulnerable to abuse and exploitation, as well as dependency.

The government is making two political choices, which require it to ignore two important elements concerning human rights. It withdraws its responsibility to meet the needs of local families and it denies basic labor and immigration rights to immigrant women, in this case Filipinas, who fill the void in reproductive care for these families. There is a perpetuation of ideologies and practices that ignore the relevance of reproductive work for the capitalist economy and have been increasingly discouraging family migration. These ideologies tend to *normalize irregularity* and sanction exploitation and abuse. They also promote situations of both illegal and *legalized trafficking*. I claim here that there is a need to further examine the role that the state has in these situations.

This paper has examined the connection between the experiences of Filipina domestic workers and the policies of the US government. Through a description of these experiences I have shown some of the ways in which, far from being neutral entities, state institutions recreate and reinforce gender biases. The inherent vulnerability that reproductive labor presents is further perpetuated by both immigration and employment policies, which fail to guarantee immigrant domestic workers full rights as human beings, citizens, and workers. ❀

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## NOTES

1. The Filipino Community Center (FCC) is an organization located in the Excelsior neighborhood whose main mission is to serve the needs of the poor and working class Filipino immigrants and their families. Founded in the 1994, it mainly targeted Filipino youth, Filipino and Filipino American women, and immigrant families for its services. The FCC is rapidly growing. It is currently developing a new program to support and organize immigrant workers within the Filipino community, in particular, caregivers and domestic workers.
2. Reproductive work comprises activities such as purchasing household goods, preparing and serving food, laundering and repairing clothing, maintaining furnishings and appliances, socializing children, providing care and emotional support for adults, and maintaining kin and community ties (Glenn 1992).

3. According to the US Census, services in private households were of 718,000 in 2000, 757,000 in 2002, 764,000 in 2003, and 779,000 in 2004. Thus there has been a steady increase of this occupation. The increase has probably been more accentuated if we take into account a lot of these jobs are done by undocumented women. Of these workers, 92.2 percent are female.
4. The paths of entry described here stem from my interviews conducted in San Francisco with Filipino reproductive workers between January and August 2006, as well as media analysis and participant observation. Other “minor” paths of entry for Filipinos, such as illegally entering through the Mexico or Canadian borders or applying for refugee status are not considered here.
5. In order to maintain the interviewees’ identity anonymous, I use pseudonyms in the form of first names. The only exception is Irma Martinez since her case was widely publicized in the media, and as such her identity had been disclosed prior to the completion of this paper.
6. In May 2006 the US Senate voted a bill that would allow the legalization of millions of undocumented immigrants in the US. The bill was controversial and has provoked a countrywide debate about immigration and immigrants’ rights in the US. It is not clear whether the bill will become a law.
7. Paca’s sister recently became a US citizen. If she were to sponsor Paca, however, the latter would need to wait around twenty years to obtain her green card. Furthermore, this means that the petition would not include her kids, since they would already be over twenty-one years old by then.
8. The Bracero Program was a joint labor program initiated in August, 1942 by the US Federal Government and the Mexican Federal Government. The program was designed to bring Mexican agricultural laborers to the US to fill gaps in the agriculture labor market, and it was in operation from 1942 to 1964.
9. These are: Alabama, none; Alaska, USD 7.15; Arizona, USD 6.75; Arkansas, USD 6.25; California, USD 7.50; Colorado, USD 6.85; Connecticut, USD 7.65; Delaware, USD 6.65; District of Columbia, USD 7.00; Florida, USD 6.67; Georgia, USD 5.15; Hawaii, USD 7.25; Idaho, USD 5.85; Illinois, USD 7.50; Indiana, USD 5.85; Iowa, USD 6.20; Kansas, USD 6.25; Kentucky, USD 5.85; Louisiana, none; Maine, USD 6.75; Maryland, USD 6.15; Massachusetts, USD 7.50; Michigan, USD 7.15; Minnesota, USD 6.15; Mississippi, none; Missouri, USD 6.50; Montana, USD 6.15; Nebraska, USD 5.85; Nevada, USD 6.33; New Hampshire, USD 5.85; New Jersey, USD 7.15; New Mexico, USD 5.15; New York, USD 7.15; North Carolina, USD 6.15; North Dakota, USD 5.85; Ohio, USD 6.85; Oklahoma, USD 5.85; Oregon, USD 7.80; Pennsylvania, USD 6.25; Rhode Island, USD 7.40; South Carolina, none; South Dakota, USD 5.85; Tennessee, none; Texas, USD 5.85; Utah, USD 5.85; Vermont, USD 7.53; Virginia, USD 5.85; Washington, USD 7.93; West Virginia, USD 6.55; Wisconsin, USD 6.50; Wyoming, USD 5.15 (Wikipedia).
10. For example, Rhode Island requires fifty or more, Massachusetts five or more, Connecticut two or more, and Alaska fourteen or more. Both federal and state required minimums show a prioritization of “big companies” and a neglect of the private household as a workplace.

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