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When Her Feet Touch the Ground: Conflict Between the Roma Familistic Custom of Arranged Juvenile Marriage and Enforcement of International Human Rights Treaties

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When Her Feet Touch the Ground: Conflict Between the Roma Familistic Custom of Arranged Juvenile Marriage and Enforcement of International Human Rights Treaties

Cover Page Footnote

University of Northern Iowa, B.A., 1999; staff member, *Journal of Transnational Law and Policy*, and 2005 J.D. candidate, the Florida State University College of Law. This article is dedicated to Ludmila Martanovschi, wherever you may be.

**WHEN HER FEET TOUCH THE GROUND:
CONFLICT BETWEEN THE ROMA FAMILISTIC
CUSTOM OF ARRANGED JUVENILE MARRIAGE
AND ENFORCEMENT OF INTERNATIONAL HUMAN
RIGHTS TREATIES**

JEFF TIMMERMAN*

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“Sit your daughter in a chair and if her feet touch the ground, she’s ready for marriage.”¹

Romani Proverb

I. INTRODUCTION

When self-declared Romanian Gypsy king Florin Cioaba married his twelve-year-old daughter Ana Maria to fifteen-year-old suitor Birită Mihai in September 2003, the international human rights community finally decided to cry foul.² The controversial marriage was the second to make major international headlines in a six-month period. In May 2003, fifteen-year-old Gypsy bride Narcisa Tranca was reluctantly married to another Gypsy juvenile, consequently ending her dream of studying medicine.³ In response to this outcry, the Child Protection Service in Sibiu, Romania, with the written consent of both sets of parents, returned the children to their respective homes so they could continue attending school, and initiated counseling sessions at the Child Protection Service until the children reach legal marriage age.⁴

Culturally speaking, her parents faced an unthinkable paradox: if Narcisa hadn’t married, her father said, she would have faced imminent “abduction by potential suitors who wouldn’t wait for negotiation.”⁵ Juvenile marriage is prototypical of time-honored Roma — or Gypsy — tradition, left alone for centuries by governments more concerned with state-sanctioned positive discrimination against Roma rights in other social forums. In 2000, the European Roma Rights Center (ERRC) submitted a statement for consideration to the United Nations Committee on the Elimination of Racial Discrimination, highlighting substantive violations of the International Convention on the Elimination of All Forms of Racial Discrimination, specifically: Article 2 (widespread discrimination and violence without adequate legal protection),

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1. Romany Information Service, *Roma in the Czech Republic, Adolescence* (June 4, 2000), at <http://www.romove.cz/en/article/18091> [hereinafter *Adolescence*].

2. Associated Press, *Activists Condemn Gypsy Girl’s Arranged Wedding In Romania* (Sept. 30, 2003), at <http://www.cnn.com/2003/WORLD/europe/09/30/romanian.Gypsy.ap/index.html>.

3. Associated Press, *Compelled To Wed At 15, Gypsy Bride Buries Dream of Studying Medicine* (June 28, 2003), at http://www.usatoday.com/news/world.2003-06-28-Gypsy-bride_x.htm [hereinafter *Associated Press*].

4. Statement from the European Roma Rights Center to the author (Oct. 7, 2003) (on file with author).

5. Associated Press, *supra*, note 3.

Article 3 (racially segregating governmental social policy), Article 4 (official encouragement of racism), Article 5 (equal protection under the law), Article 6 (ineffective protection and non-existent remedies for breaches), and Article 7 (insufficient or absent educational campaigns).⁶ In response to the current media frenzy, the ERRC, while condemning forced juvenile marriage as violative of international human rights standards and applauding Romanian intervention, carefully notes that it is equally “crucial that Romanian authorities show an even-handed approach in their acts to counter human rights abuses [against Roma].”⁷

The question naturally begs its own answer: Why is the international human rights community so concerned with containing arranged juvenile marriage now, a concern with potentially punitive implications for internalized Roma lawmaking, at a time when so many other serious positive violations of Roma rights, often state-sanctioned, are embedded in host country⁸ legal systems?⁹

This article spans three major substantive areas implicated in the juvenile arranged marriage dialogue specifically in the Balkan region. Section II focuses on demystifying the myths and traditions surrounding Roma origin and marriage customs. Section III attempts to piece together the latticework of international authority and sociological scholarship underlying the juvenile arranged marriage dilemma. Section IV explores the implications involved in imposing state-made law onto encapsulated ethnic communities,¹⁰ taking special note of the problems inherent in externally criminalizing behavior internally viewed as permissible and socially accredited,¹¹ especially heightened in countries renowned for positive discrimination against Roma. Lastly, Section V concludes the article by discussing political pressures vertically applied on Balkan countries by European Union mandates in the ongoing

6. *Racial Discrimination and Violence against Roma in Europe: Statement submitted by the European Roma Rights Center*, U.N. CERD, 57th Sess., at 3-33 (2000), available at http://www.errc.org/publications/legal/cerd_thematic_aug_2000.pdf.

7. Statement from the European Roma Rights Center to author, *supra* note 4.

8. Hereinafter, the term “host country” refers to a State with a Roma constituency.

9. See generally John A. Andrews, *Gypsies and the Law*, 22 EUR. L. REV. 365 (reviewing Buckley v. The United Kingdom, *infra* note 20, the seminal Gypsy-related case from the European Court of Human Rights, about which Andrews notes that the Court did not consider the minority rights of Gypsies until 1996).

10. See Edo Banach, *The Roma And The Native Americans: Encapsulated Communities Within Larger Constitutional Regimes*, 14 FLA. J. INT'L. L. 353, 356 (2002) (concentrating on “Roma sovereignty as an encapsulated nation,” and attempting to “clarify the constitutional position of a neglected and misunderstood group.”).

11. See Walter O. Weyrauch, *Romaniya: An Introduction to Gypsy Law*, 45 AM. J. COMP. L. 225, 231-232 (1997).

process of accession toward a unified European Union — a realm dominated by developed countries insisting on unfettered compliance with international human rights standards and policies.

II. SQUARING MYTHICAL ROMA ORIGINS WITH CUSTOMARY MARRIAGE PRACTICES

To understand Roma marriage customs, one must first understand the shroud of curiosity surrounding Roma genesis, a topic broad enough to independently fill the pages of numerous scholarly articles. Historians have known the accurate point of Roma origin since the eighteenth century, when Istvan Vali, a Hungarian pastor, linked a thousand-word lexicon compiled in southwestern India to a local Roma population in Hungary.¹² Gypsy migratory patterns have subsequently been “likened to a fishbone,”¹³ quickly becoming convoluted as half the ethnicity’s thousand-year migratory history contains no contemporary account, amplified by the fact that Gypsies have “never kept records of their own.”¹⁴

Indeed, in terms of accuracy, history has offered the Roma culture little shelter. The five hundred-year gap in accredited Gypsy history, combined with pollutive Gypsy stereotypes originating in early Western accounts, helped create and intensify a Roma culture mystified to the extreme edges of absurdity.¹⁵ Opportunistic “eye-of-the-beholder” biblical speculations, supported by selective *gadje* (outsider) textual interpretations, cast the Roma as descendants of Cain. This presumptive history is complicated by the lack of Western ideals within Roma history. Gypsies “have no heroes . . . no myths of a great liberation, of the founding of the ‘nation,’ [or] of a promised land,”¹⁶ making such prominent Western stereotypes virtually irrebuttable.

Perhaps the most popular origination myth involves the crucifixion of Christ at Golgotha, an iconic image tinged with shame and hatred, malleably lending itself to contortive mystification. According to legend, Roman jailers charged with purchasing nails for Yeshua ben Miriam’s crucifixion¹⁷ set out to commission a

12. ISABEL FONSECA, BURY ME STANDING: THE GYPSIES AND THEIR JOURNEY 85-86 (1995) [hereinafter *Fonseca*].

13. *Id.* at 83.

14. *Id.* at 86.

15. *Id.* at 87-88. For example, to make his accounts of Gypsy origination more exotic and compelling, eighteenth century linguistic paleontologist Heinrich Grellmann wrote of “wanton women, of carrion-eaters . . . who had a ‘relish for human flesh.’” These myths abounded for more than a century.

16. *Id.* at 88-89. *Gadje* is the generic Romani term for non-Gypsies, or outsiders, used fairly liberally within Roma communities.

17. Yeshua ben Miriam is another name for Jesus Christ.

blacksmith to forge four such nails. After two Jewish blacksmiths refused to comply and were viciously murdered in retribution, the soldiers happened upon a Gypsy who eagerly pocketed the money and began the task.¹⁸ When completed, the fourth nail remained red hot, taking on an aggressive personality and committing itself to incessantly chasing the Gypsy for all eternity. This is the reason why Christ was only crucified with three nails — and the reason why Gypsies were forced to adopt a nomadic lifestyle.¹⁹

In the context of all that is misunderstood about Gypsy heritage and cultural genesis, it is clear that Roma marriage customs are viewed with equally disconcerted speculation. From an outsider's perspective, the Gypsy marriage process involves colorful, ornate displays of courtship and is tainted with implications of possessory interest. This perception is further jaded by internalized discrimination and criminalization of Gypsy ethnicity, an imploding relationship often propelled by positive state action and lack of state-sponsored ethnic education. Indeed, at times it seems as if, rather than remedying ongoing human rights violations, Balkan host countries, themselves often perpetrators of hate crimes against Gypsies and immune from prosecution, choose instead to selectively enforce laws *further* criminalizing Gypsy behavior and reinforcing cultural stereotypes.²⁰

Contrary to popular myths of prevalent immorality, Roma marriage is neither socially integrated nor culturally demoralized. The process of juvenile arranged marriage is culturally self-contained and affects only Roma youth. In this sense, it poses a unique dilemma for international human rights scholars: while it is undeniably true that Roma youth are being denied the right to choose whom and when to marry in some instances, the Roma community itself openly embraces juvenile arranged marriage as a protectionist strategy and means of cultural, economic, and societal preservation and autonomy. Choice of partner is culturally restricted in an effort to insulate "tribal and social purity,"²¹ and Roma who marry *gadji* (a female "outsider") or *gadjo* (a male "outsider") are ostracized and forced to struggle for community acceptance.²² As Isabel Fonseca observed, "[a]mong the Roma one felt as they did: utterly safe, as in a family . . . [f]ar from suggesting a demoralized culture, endogamy here seemed the mark

18. *Id.* at 90-91.

19. *Id.* at 91-92.

20. See generally *Buckley v. United Kingdom*, 23 Eur. Ct. H.R. 101 (1996) (the seminal Gypsy-related case from the European Court of Human Rights).

21. Patrin, *Romani Customs and Traditions: Marriage*, at <http://www.geocities.com/Paris/5121/marriage.htm> (last visited March 24, 2004).

22. *Id.*

of a buoyantly confident group, settled in their skin and not needing outsiders."²³

Traditionally, Roma marriage customs involve engagement, *pliashka*,²⁴ and the marriage ceremony. In addition to possible human rights violations imbued in the notion of arranged marriage itself, Roma marriage embodies certain uncodified spousal rules and troubling gender-based social roles that potentially heighten human rights violations.

A. Engagement, Pliashka, and Marriage

Roma marriage traditionally occurred between the ages of nine and fourteen,²⁵ a practice increasingly threatened with complete eradication by Balkan countries that somewhat opportunistically seek to save face in the eyes of the international community. Social research seems to support Roma practice, suggesting that, to some extent, Romani girls are more socially prepared at an earlier age due to the fact that transformative years — adolescent years normally associated with “defiance and rebellion” — are entrusted to a future husband.²⁶

It is important to note early in this article that, although Roma tradition still relies heavily on archaic marital bartering mechanisms like bride prices and dowries, not all Romani marriages are arranged — especially intercultural marriages between Roma and *gadjo*. Indeed, even within the framework of ritualistic arranged marriage, elopement is still recognized, albeit skeptically, as a viable alternative to dynastic marriage in the eyes of the Roma community.²⁷ Largely due to the fact that Roma place such a high value on sexual purity and virginity, elopement serves as a sort of marital euphemism “tantamount to marriage.”²⁸ Elopement simply entails the couple escaping together, often only a short distance from home for a single evening, subsequently returning to the community renouncing virginity.²⁹ Successful elopement leaves

23. FONSECA, *supra* note 12, at 24.

24. Patrin, *supra* note 21. *Pliashka*, or *plotchka*, is a ceremony held after a marriage agreement has been reached.

25. *Id.*

26. *Adolescence*, *supra* note 1. This entrustment is largely due to the fact that Romani mothers continue having children. The repercussions of an increased reproductive period are briefly discussed *infra*. Citing Daniela Sivakova, *Antropologické výskumy Ciganov (Romov) na Slovensku z roku 1992* (“Anthropological research on Gypsies (Roma) in Slovakia in 1992”).

27. FONSECA, *supra* note 12, at 130.

28. *Id.*

29. *See Id.* *See also* Patrin, *supra* note 21. The young couple often returns to the community with a bloody sheet, indicative of lost virginity, which is presented to the boy's mother, who treats the blood with *rakia* (plum brandy). If the *rakia* removes the blood in the shape of a flower, the girl's virginity has truly been lost — Gypsy folklore suggests that “pig's

Romani parents with no alternative but to allow marriage. The couple, while initially chastised, is not banished and eventually achieves community acceptance.³⁰

Traditionally, a Roma engagement ceremony, or *mangavipen*, was conducted in the following manner:

The young couple, in the accompaniment of each of their parents, swore before witnesses to be faithful to each other until death. The master of ceremonies, most often a chief elder (*chhibalo* or *vajda*), bound the hands of the couple together with a scarf and then poured wine or some spirit into their palms which they would then drink . . . [f]rom this moment, they are considered by Romani society to be husband and wife, and they may live together and produce children.³¹

The arranged engagement process assumes an air of negotiation with each child's father engaging in long discussions in an attempt to hash out an acceptable *darro* — or dowry — to compensate for the bride-to-be's earning potential.³² Instead of physical appearance or romantic love, a potential bride's monetary value is calculated using factors "such as health, stamina, strength, dispositions, manners, and domestic skills . . . character of the girl's family, as well as [her family's] prestige in the community," taking into consideration the cost of raising her from birth.³³

When the fathers reach an agreement as to all terms, the engagement enters a celebratory phase called a *pliashka*, or *plotchka*.³⁴ The celebration essentially serves as a coming-out party for the young couple, a proclamation of the engagement, and, more importantly, an announcement that the bride is no longer available to potential suitors.³⁵ At the conclusion of the *pliashka*, the couple prepares for the wedding ceremony.

The *abaiu* — or wedding — has little legal or religious significance to the Roma community aside from sheer symbolic value.³⁶ Participation in a formal civil ceremony is often nothing

blood doesn't bloom right," protecting against false alarm and deception.

30. See generally *Adolescence*, *supra* note 1; Patrin, *supra* note 21; FONSECA, *supra* note 12, at 130.

31. *Adolescence*, *supra* note 1.

32. Patrin, *supra* note 21.

33. Patrin, *supra* note 21.

34. *Id.*

35. *Id.*

36. *Id.*

more than a method of conforming to and appeasing local host country laws and customs since Gypsies “simply do not believe in the importance of a formal wedding ceremony under the jurisdiction of a church or state.”³⁷ Traditionally, the civil or religious ceremony, or *bijav*, would not take place until the couple had been together for a few years and had produced a child.³⁸

The non-symbolic qualities of Gypsy marriage create an initial enforcement barrier for host countries. Devaluation of civil and religious recognition means Romani are less likely to officially register marriages in civil records.³⁹ It is difficult to prove that a couple is legally married, as opposed to some legally bewildering type of common law cohabitation⁴⁰ popular amongst Gypsies, and without this proof it is even more difficult to charge “spouses” with violating national or international rights laws. Moreover, attempts by host countries to *require* registration could face challenges under European Human Rights Convention standards.⁴¹

B. Romani Spousal Roles: Implicit Gender-Based Human Rights Violations

After a long, ceremonious Gypsy wedding celebration, a newlywed couple settles down into traditional gender-based social roles primarily dictated by sexuality. Spousal relationships are constantly overshadowed by the threat of *mahrime* or *magherdo*, a concept of impurity and uncleanness solely associated with women.⁴² Roma adhere to strict gender-driven rules concerning commitment, adultery, and infertility — rules which may give rise to independent violations of important international human rights norms and create added remedial pressures on host countries.

37. *Id.*

38. *Adolescence*, *supra* note 1.

39. *Id.*

40. For the American equivalent, compare *Marvin v. Marvin*, 18 Cal. 3d 660 (1976) (seminal case turning to rules of express contract in division of unmarried cohabitants' property) with *Hewitt v. Hewitt*, 77 Ill. 2d 49 (1979) (rejecting Marvin on grounds that it revived common law marriage). These examples demonstrate how common law marriage and unmarried cohabitation are universal sources of judicial contention and confusion.

41. See Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, available at <http://www.echr.coe.int/Convention/webConvenENG.pdf>. Mandatory registration would likely be challenged under Article 8 (Right to respect for private and family life), Article 11 (Freedom of assembly and association), Article 12 (Right to marry), and Article 14 (Prohibition of discrimination). *But see* CEDAW, *infra* note 62. Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) expressly makes official registry compulsory. The two Convention bodies may fundamentally conflict.

42. See generally FONSECA, *supra* note 12, at 9.

Young Romani brides are expected to forgo education in lieu of domestic chores and perpetuation of the Gypsy race. Fifteen-year old Narcisa, the Gypsy bride described in the introduction who dreamt of becoming a pediatrician, withdrew from school before completing the eighth grade stating, “[i]t would have been useless to continue . . . As of tomorrow, I’ll just be stooped over a pot or a broom all day anyway.”⁴³ Although her parents attempted to ensure Narcisa’s continued education through negotiation with her husband’s family (and, as previously noted, the children were ultimately separated by government officials), substantive success is not likely because, as her parents admit, education of young women is simply “not the Gypsy way.”⁴⁴

Additionally, Romani women face stiff stereotypes and unequal treatment regarding infertility and infidelity. Because the ultimate goal of a Roma family unit is maximized reproduction, it is permissible for a husband to abandon his wife if she fails to produce children after a few years of marriage.⁴⁵ Instead of scorning such abandonment, Gypsy culture endorses the husband’s conduct and, quite oppositely, stigmatizes *the wife* for failing her matrimonial duty.⁴⁶ Not only is the young woman deprived of her initial choice of husband, she is left materially limited once more. The process of devaluation brands the abandoned woman as a damaged divorcee, or “used goods,” and, regardless of her age, usually means she will only attract a widowed or divorced man.⁴⁷

Similarly, infidelity is treated with great inequality within the spousal relationship. While it is permissible — even expected — for a husband to abandon an adulterous wife, a husband’s infidelity *increases* his social prestige to the point that his wife uses it as social leverage to tout her husband’s qualitative worth.⁴⁸

Host countries have an unquestionably inherent interest in interfering and reconciling such inequitable conditions with international human rights pacts. The following section attempts to patch together a cogent body of international law, squaring the chronology of human rights violations that merely begin with juvenile marriage and ultimately result in extended discrimination against women within traditional Gypsy cultural life.

43. *Associated Press*, *supra* note 3. The European Union is currently sponsoring television spots promoting Roma education.

44. *Id.*

45. *Adolescence*, *supra* note 1.

46. *Id.*

47. FONSECA, *supra* note 12, at 134.

48. *Adolescence*, *supra* note 1 (explaining that if a husband fails to leave his wife upon discovery of infidelity, he is at least expected to punish her in public view using means such as cutting off her hair or beating her).

III. FROM CHILD BRIDE TO *PURI DAJ*: A LIFELONG VIOLATION OF INTERNATIONAL HUMAN RIGHTS STANDARDS⁴⁹

The practice of early marriage has received little attention from women's and children's rights movements, while "[t]here has been virtually no attempt to examine the practice as a human rights violation in *itself*."⁵⁰ While juvenile marriage unequivocally causes more comprehensive harm to child brides than to male counterparts, the custom itself is merely the beginning of a much larger culturally embedded tradition of lifelong discrimination against Roma women. This section is dedicated to detailing bodies of international law which expressly and impliedly outlaw discrimination against Roma women, beginning with early arranged marriage — bodies which extend to protect against stereotypes imbued in Roma spousal unions. In correlation with these violations, this section also explores the sociological and physical ramifications of forcing young girls into premature marriage and corresponding communal reverberations.

A. Implicated Consequences of Arranged Juvenile Marriage

The combination of early marriage with forced arrangement creates four distinctly compartmentalized human rights dilemmas in relation to child brides. These violations encapsulate what UNICEF has described as psychosocial disadvantages, adolescent health and reproductive repercussions, the denial of education, and a propensity for violence and abandonment.⁵¹

From a psychosocial perspective, arranged juvenile marriage results in loss of adolescence, forced sexual relations, and stunted personal development⁵² — substantive effects virtually ignored by social researchers. Of special import in the Roma context, UNICEF points to the isolation caused by imposed marriage, especially pertinent because a Gypsy bride is forced to leave her own family and is expected to seamlessly assimilate into her husband's matriarchal hierarchy.⁵³ As a result, a new bride is virtually friendless in her husband's household, the process of social assimilation gruelingly allotted with the progression of time.

Reproductive health presents multi-faceted concerns hindering both physical and social development, violative of a young woman's

49. *Puri daj* is the Romani word for grandmother.

50. United Nations Children's Fund Innocenti Research Centre, *Early Marriage: Child Spouses*, INNOCENTI DIGEST, Mar. 2001, at 2-3 [hereinafter UNICEF].

51. *Id.* at 9-12.

52. *Id.* at 9.

53. UNICEF, *supra* note 50, at 9.

“right not to engage in sexual relations and the right to exercise control over reproduction.”⁵⁴ UNICEF reports that sex within juvenile marriage is not likely consensual in the truest sense of the word, that few young married women have access to contraceptives,⁵⁵ while more suffer from higher susceptibility to STDs, and that pregnancy related diseases (such as recto-vaginal fistulas or RVF) and deaths are up to 200 percent higher than an older sampling of mothers aged twenty to twenty four.⁵⁶ Furthermore, research indicates that infant mortality rates are higher among younger mothers, while potentially large family sizes also depress local economies.⁵⁷

Finally, UNICEF research confirms earlier assertions that juvenile arranged marriage results in denial of education, as well as violence and abandonment.⁵⁸ Lack of education translates into the loss of a chance at identity, meaning that girls are left with no qualifications, a hypothesis directly corroborated by “a strong link between very poor, women-headed households . . . and menial occupations . . . [and] the ‘feminization of poverty’ and its resulting impact on children.”⁵⁹

B. Scrutinizing Arranged Juvenile Marriage Under ICCPR, CEDAW, and CRC

As the ERRC openly admits, forced marriage “is a violation of fundamental human rights, implicating a wide range of international standards and laws.”⁶⁰ Among the most substantive convention violations, the ERRC notes Article 23(3) of the International Covenant on Civil and Political Rights (ICCPR), which states that “[n]o marriage shall be entered into without the *free and full consent* of the intending spouses.”⁶¹

Concurrently, Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) expressly denounces *both* juvenile and arranged marriages in separate yet equally strong terms:

54. *Id.*

55. *Id.* at 10. Most cultures which encourage juvenile arranged marriage also encourage rapid and massive reproduction.

56. *Id.* at 11.

57. *Id.*

58. *Id.* at 12.

59. *Id.*

60. Statement from the European Roma Rights Center to the author, *supra* note 4.

61. *Id.* (citing International Covenant on Civil and Political Rights, Mar. 23, 1976, art. 23(3), 6 I.L.M. 360, 999 U.N.T.S. 171, available at <http://www.molossia.org/civilrights.html> (emphasis added)).

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right *freely to choose* a spouse and to enter into marriage only with their free and full consent;

....

2. The betrothal and the marriage of a child *shall have no legal effect*, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.⁶²

Both the ICCPR and CEDAW facially allow women the opportunity to freely choose a husband, a concept that becomes problematic in terms of cultural relativism and customary margin of appreciation. The larger problem, however, is enforcement, heightened by the fact that no judicial body exists to enforce the ICCPR or CEDAW. For example, of the Balkan host countries implicated in this article, Romania (Sept. 4, 1980), Bulgaria (July 17, 1980), and Hungary (June 6, 1980), were all CEDAW signatories within twelve months of the original date of signing and all ratified the Convention by the end of 1982.⁶³ However, none of these countries have actively applied CEDAW standards to Gypsy culture, perhaps due to stagnation and lack of urgency. Romania, the host country with the largest Romani constituency,⁶⁴ completely ignored

62. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, art. 16, available at <http://www.un.org/womenwatch/daw/cedaw/econvention.htm> [hereinafter CEDAW] (emphasis added).

63. See U.N. Division for the Advancement of Women, States Parties, at <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last modified Mar. 17, 2004) (emphasis added).

64. Ian Hancock, On the Origin and Current Situation of the Romani Population in Europe and the Responsibility of the American Media to Make that Situation Known, Report Before the Congressional Human Rights Hearing on Abuses Against Gypsies in Eastern Europe (April 14, 1994), in The Romani Archive and Documentation Center, On-line Archive, Responsibility of the Media, available at http://radoc.net:8088/Responsibility_of_the_Media.htm.

juvenile arranged marriage throughout the remaining decade of post-CEDAW communist rule and continued to ignore the issue entirely until recently succumbing to a flurry of international human rights pressure, despite the existence of a Romanian law establishing a minimum age of sixteen for marriage with parental consent.⁶⁵

While ICCPR and CEDAW regulations expressly provide shelter for child brides, the Convention on the Rights of the Child (CRC) implicitly bans child marriage in a much broader fashion.⁶⁶ Procedurally, Article 1 of the Convention establishes the scope of protection by defining a child as “any human being below the age of eighteen,” although allowing some margin to legislate a lower applicable age under relevant state law (for instance, the aforementioned Romanian minimum age of sixteen).⁶⁷ Article 3 requires states to take appropriate legislative and administrative measures and ensure institutional compliance in the best interests of children.⁶⁸ Article 2 prohibits discrimination against children within a state’s jurisdiction, which protectively encapsulates ethnic Roma.⁶⁹

Substantively, CRC protects a child’s identity (Article 8), right to education (Article 28), and right to survival and development (Article 6).⁷⁰ These concepts seem directly contradictory to arranged marriage customs, as women are forced to cease education and assume discriminatory spousal roles, thus stunting development and hindering identity.

Bulgaria, Hungary, and Romania had all similarly ratified CRC by November 1991.⁷¹ Parallel to ICCPR and CEDAW, no judiciary body exists to enforce CRC rights and host countries have literally and practically ignored Romani youth.⁷² Interestingly, CRC also provides an apparent “buffer” for indigenous subcultures within host countries⁷³ which could prove problematic in strict application

65. *Associated Press*, *supra* note 3.

66. Convention on the Rights of the Child, Nov. 20, 1989, available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm> [hereinafter CRC].

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. Office of the United Nations High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, at <http://www.unhchr.ch/pdf/report.pdf> (last modified Nov. 2, 2003).

72. See *Racial Discrimination and Violence Against Roma in Europe: Statement submitted by the European Roma Rights Center*, *supra* note 6, at 31-2 (stating that about 75% of Romani children in the Czech Republic are relegated to “special schools,” and children integrated in regular schools often face a “series of racially motivated obstacles”).

73. CRC, *supra* note 66.

and enforcement. For example, children have the right to freedom of association (Article 15), and Article 30 provides that a child belonging to a “minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture.”⁷⁴ In this respect, while the explicit language in CEDAW makes it unlikely that discriminatory practices would be allowed any margin of appreciation in relation to cultural practices,⁷⁵ CRC does implicitly suggest a point of collision — the point where violative cultural practices solicit international human rights regulation.⁷⁶ Sadly, CRC is silent as to a procedural resolution at this point of collision.⁷⁷

C. *Post-Marital Discrimination under CEDAW*

Choice of husband is not the only choice a Romani woman learns to live without; it is merely the first in a long series of repressions defining a wife’s spousal role. Roma women are relegated to performing household duties, and it is not uncommon for a husband to forbid his wife from leaving the home.⁷⁸ Paradoxically, Roma women see nothing unfair about mandatory spousal roles — “[q]uite the opposite: they had the comfort of having a clear role in a world of unemployment without end [T]he men, jobless and bored . . . looked the worse off.”⁷⁹

Consent to abide by a discriminatory customary practice — even if such consent is garnered by the victimized segment of a population itself — most certainly does not redeem that practice in the eyes of international human rights laws. Even if a juvenile consents to an arranged marriage, the entire text of CEDAW could be viewed as wholly anathema to Roma spousal customs. Most significantly, Article 5 mandates States to take appropriate notice of discriminatory customary practices:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.⁸⁰

74. *Id.*

75. CEDAW, *supra* note 62.

76. CRC, *supra* note 66.

77. *Id.*

78. *See generally* FONSECA, *supra* note 12, at 40-52.

79. *Id.* at 47.

80. CEDAW, *supra* note 62.

Moreover, the nature of such consent in terms of potential physical and sociological ramifications seems to wholly obviate consent itself — if it were considered to be otherwise, the exception would truly swallow the rule. Nor does any notion of *ex post facto* consent, i.e., an arranged bride consenting to marriage at a later point in time after reaching maturity, seem to offer the practice any substantive retroactive protection. Instead, analogizing to the common law rule of contracts involving juveniles is instructive. For example, if a child consents to enter into a binding contract, and subsequently breaches the contract, she cannot be held liable *regardless* of her consent because of her inexperience and incapacitation. Similarly, when considering the actions of a juvenile in the commission of a common law tort, one looks to a juvenile reasonable person standard, correspondingly possessing diminished capacity and decision-making capabilities.

As in the case of arranged juvenile marriage, Balkan state parties to CEDAW are doing nothing to infiltrate and end discriminatory customary practices within Roma communities. Conversely, host countries are positively discriminating against these communities instead of taking negative limitative measures. Unless these countries get serious about holistically eliminating lifelong patterns of discrimination against Roma women, sanctioning the internal practice of arranged juvenile marriage will merely push the problem forward while uselessly impeding an imbued cultural tradition — an action which, in light of the already horrific human rights atrocities committed upon Gypsies, would serve as a double blow of sorts.

D. Possible Enforceability under the European Human Rights Convention

The power of judicial review afforded by the European Human Rights Court might prove a hypothetically viable yet practically infeasible alternative for Roma women wishing to agitate host countries into enforcing stricter human rights standards. Most notably, Article 12 of the Convention states that “[m]en and women of *marriageable age* have the right to marry and to found a family, according to the national laws governing the exercise of this right.”⁸¹

The obvious problem inherent in this solution is one akin to standing — potential claims must be made by individuals — in this instance, women whose rights are violated through Roma customary practices would be forced to bring suit against host countries for

81. The European Convention on Human Rights, art. 1-18, Nov. 4, 1950, *available at* <http://www.hri.org/docs/ECHR50.html> (emphasis added).

failing to enforce the European Human Rights Convention. In light of the extensive discussion concerning the cultural subjugation of Roma brides, and the forthcoming discussion of embedded Roma law, the likelihood of this type of suit being litigated is next to none.

IV. CHOICE OF LAW: IMPOSING INDIVIDUALIST STATE LAW ON COLLECTIVIST ROMA COMMUNITIES

While states are beginning to enact legislation attuned to codifying international human rights standards, enforcement standards prove doubly problematic when applying state-made law to indigenous groups with self-contained autonomous informal legal systems. The resulting legal interplay places criminal emphasis on different behaviors in different societies. Behavior criminalized by host country legislation may maintain societal importance within the Roma community, and vice versa — a phenomenon Lea and Young have designated “realist criminology.”⁸² Conversely, behavior deemed criminal by informal Roma law may go unpunished by host countries.

Underlying the enforcement problem is a much more deeply rooted human fundamental contradiction. While international standards focus principally on the individual, Gypsy law is “primarily concerned with the collective rights of the Gypsy community.”⁸³ Historical inability to juxtapose a host country’s own criminal law with informal clan law, even disregarding codification of human rights agreements, signifies the impending difficulty looming in the process of legal and policy harmonization. The vertical pressures of heightened international human rights standards add a third entangled tier of enforcement: rights standards must first be codified into host state law and then applied to embedded communities such as the Roma. There appears to be no alternative for the international community to bypass host states and apply international norms directly.

Moreover, if host states attempt to cooperatively criminalize Roma behavior according to international human rights standards, there is a danger of failing miserably unless the same host states also get serious about ending state-encouraged discrimination and blatant racism against Roma. Simply put, discriminative host societies offer no incentive for cooperative compliance — a

82. Susan Caffrey & Gary Mundy, *Informal Systems of Justice: The Formation of Law Within Gypsy Communities*, 45 AM. J. COMP. L. 251, 262-63 (1997) (relying on JOHN LEA & JOCK YOUNG, *WHAT IS TO BE DONE ABOUT LAW AND ORDER*, Penguin Books 1984).

83. Caffrey, *supra* note 82, at 259.

relationship akin to the fox requesting the henhouse door be left wide open.

This final substantive area deals specifically with a skeletal structure of informal law within Gypsy communities, the interplay of subordinating encapsulated Gypsy law to formal host state law, and the convoluted practice of behavioral criminalization.

A. The Power of Misperception: Practically Interfacing Informal Roma Law and Formal Host Country Law

Long before human rights standards may be appropriately superimposed on Roma communities, host countries must strive to reconcile fundamental differences in harmonization between these informal bodies of law and formal codified state-made law. In many definitional areas, the three overarching bodies of law square off in an arena of mutual exclusivity.⁸⁴ Much scholarship has been dedicated to *describing* the lapses and overlays between these tiered relationships, and it would be redundant to simply recapitulate well-reasoned arguments.⁸⁵ Instead, this article looks to *apply* Roma jurisprudence as it relates to the practice of arranged juvenile marriage in light of impending formal host country law.

An initial barrier to universal understanding of Roma law is that, much like the culture it regulates, this unwritten code is mired in uncertainty and mystery. This barrier is compounded by host countries disinterested in any modicum of education. Romani law is confusing because it is corporeal in nature and based largely on arbitrary rules and distinctions — notions which run anathema to logic-based abstract Roman law.⁸⁶ Arranged juvenile marriage is better understood when considering its sustentative importance, based on the apparent perception among Roma that “[s]exuality, procreation and marriage . . . sustain law.”⁸⁷ In light of the oppressive sexual regime dominant within Gypsy culture, it appears from the onset that Roma law perpetuates stereotypical myths and gender bias. Quite contrarily, Weyrauch⁸⁸ argues that, while gender is indeed concurrently important and perplexing to outside observers, *women* hold vast concealed legal power through

84. See generally Banach, *supra* note 10, at 382-90 (arguing that four overlapping layers of law frame the Roma legal situation: International versus State, State versus District, District versus Roma, and Roma private law).

85. See, e.g., *id.*

86. Walter O. Weyrauch, *Romaniya: An Introduction to Gypsy Law*, 45 AM. J. COMP. L. 225, 226 (1997).

87. *Id.* at 227.

88. It is worth noting that Walter O. Weyrauch is considered to be a leading expert on internalized Gypsy law. For example, see Walter O. Weyrauch & Maureen A. Bell, *Autonomous Lawmaking: The Case of the “Gypsies,”* 103 YALE L.J. 323 (1993).

manipulation of sexual taboos (in accordance with the aforementioned notion of *mahrime*):

The very foundation of law is protected by taboos that, although . . . adhered to, prevent their discussion and explanation . . . [The] appearance of male dominance conceals the powerful position of women. Women have the power to curse and to pollute . . . They are also the guardians of law, because they communicate the taboos to their offspring from early infancy.⁸⁹

In this sense, arranged juvenile marriage is a valid cultural attempt at sustaining social structure and value perpetuation at an early age, before potential young brides and grooms have the opportunity to choose a different lifestyle. Strict spousal rules and roles, heinous from an outsider's perspective, may be nothing more than a taboo-driven façade designed to promote the Roma way of life. While such legal mechanisms undoubtedly strip a child of precious identity, the practice, when considered from an insider's perspective, must be viewed as possessing some redeeming cultural value.

Further complicating the matter, arranged juvenile marriage seems wholly irrational in respect to modern women's rights and international human rights movements. Indeed, the practice seems overtly foreign to an individualist society. In practice, Roma dogmatism preserves the dogma itself — much like, when asking a Christian to empirically prove how she knows God exists, she will likely respond "because He does." In this sense, the differentiation between irrationality regarding internalized law encouraging arranged juvenile marriage and arcane "civilized" irrationality is merely a battle of form over substance, depending on which set of standards establishes the high-water mark.

As a more benign example of a similar Gypsy irrationality, Weyrauch calls to attention a Romani rule which dictates "that the presence of women on higher floors . . . pollutes the occupants of lower floors."⁹⁰ Weyrauch discounts attempts to discredit such rules as irrational as merely "expressions of ethnocentrism. To the equally ethnocentric Gypsy the validity of the rules of *Romaniya* is beyond dispute . . . The whole distinction between rationality or irrationality of rules may be irrelevant for the Roma."⁹¹ From a

89. Weyrauch, *Romaniya: An Introduction to Gypsy Law*, *supra* note 11, at 227.

90. *Id.* at 228-229.

91. *Id.* at 229-230.

human rights perspective, there is obviously a qualitative disconnect between those internal rules addressing such issues as placement in houses and arranged child marriage. However, this irrationality dichotomy, a further byproduct of impeded cross-cultural observation,⁹² only serves to further entrench the collectivist/individualist paradox rather than bridging the substantive gap between international, state, and Gypsy law.

This gap poses a dangerous crossroads. While the constitutions of most Eastern European countries incorporate clauses that make anti-discriminatory international human rights standards take precedence even over domestic law, laws which fail to protect minority groups while concurrently passing international muster “can only be detrimental” to an enforcement system loosely based on standards akin to an honor system.⁹³ The pendulum swings the other way as well. State criminalization of Gypsy behavior without education or understanding of that behavior’s internal importance or cultural value is a similarly disingenuous attempt to comply with international human rights standards. Under-enforcement and over-enforcement are birds of the same feather. Gypsies are relegated to cultural exposure and exploitation.

B. That Which Must Be Criminal: Criminalization as the Result of Social Compartmentalization

Social misperception — derived from this underlying sense of confusion and irrationality — quickly evolves into a need to define that which must be criminal. This is the logical conclusion to a host society’s desire to mitigate perceived negative behavior and perpetuate a dominant legal code, regardless of apparent ingenuousness or bad faith. The price of misperception is social upheaval for the Roma. Host states fail to recognize key parts of informal law.⁹⁴ In pursuing their objectives, these states allow “fundamental nonrecognition or ignorance of a foreign legal system . . . result[ing] in the criminalization of that foreign legal culture.”⁹⁵

The downfall of communism in Eastern European host countries created a social equation ripe for promoting discriminatory behavior — a change largely attributed to the disruptive paradigm shift. In

92. See W. Michael Reisman, *Autonomy, Interdependence, and Responsibility*, 103 YALE L.J. 401, 403-404 (1993) (describing the phenomenon of cross-cultural observation as referencing differing interpretations of the term “law . . . depending on . . . whether the observer is a member of the system observed . . . [or] is an outsider or is on the margin”).

93. Maxine Sleeper, *Anti-Discrimination Laws in Eastern Europe: Toward Effective Implementation*, 40 COLUM. J. TRANSNAT’L L. 177, 188 (2001).

94. W. Michael Reisman, *supra* note 92, at 410.

95. Weyrauch, *Romaniya: An Introduction to Gypsy Law*, *supra* note 11, at 235.

a report before Congress detailing human rights abuses against Gypsies in Eastern Europe, Ian Hancock revealed that “[w]hereas under Communism, popular blame for mismanagement was directed upwards, it is now being directed downwards, and Romanies [sic], at the bottom of the social hierarchy, have become everybody’s scapegoat, and are being subjected to increasingly blatant and virulent hatred.”⁹⁶

The result is an uncritically supervised one-sided approach to crime, as demonstrated by the dispositive facts in the European Court of Human Rights *Assenov* decision.⁹⁷ In *Assenov*, the father of a Romani teenager arrested and beaten for gambling in a public square rushed to his son intending to further punish his son with a wooden plank, in accordance with internal Roma custom.⁹⁸ Instead of allowing the father to punish his son, police arrested the father as well.⁹⁹ In this sense, *Assenov* represents a direct conflict between informal Roma law and criminalized host state criminal law.

Such anti-crime legislation fails in another complicated manner, that of the harmonization (or cohesion) of two distinct cultures. Host states, in an attempt to further compliance with international human rights standards, conversely aim anti-cohesive measures at Gypsy populations, thus missing an opportunity to commandeer the type of internal “manipulating” Reisman argues could potentially expedite the harmonization process.¹⁰⁰ Caffrey and Mundy make the case that such directed manipulation, as a “return to traditional forms of informal involvement in the process of control,” would have voluminous benefits, including an enhanced quality of life, increased sensitivity to undesirable behavior and reporting of social deviance, community empowerment and sense of internalized control (tending to shift preventative criminalization to proactive criminalization), the availability of moral rights principles to maintain order, and concentric impact analysis (ensuring that offenders retain full realization of criminal impacts).¹⁰¹

Even if host states continue to criminalize Gypsy behavior in this convoluted, inefficient manner, the issue of time still serves as

96. Hancock, *supra* note 64.

97. *Assenov and Others v. Bulgaria*, 96 Eur. Ct. H.R. 3264 (1998). The ECHR held that “failure to adequately investigate the claims of police brutality” amounted to a violation of Article 3 of the European Human Rights Convention, imposing, for the first time, “a positive mandate to actively secure the rights guaranteed by Article 3.” For an in-depth analysis of the legal significance of *Assenov*, see Banach, *supra* note 10, at 379-381.

98. *Assenov*, 96 Eur Ct. H.R. at 3271.

99. *Id.*

100. W. Michael Reisman, *supra* note 92, at 410 (citing Walter O. Weyrauch & Maureen A. Bell, *Autonomous Lawmaking: The Case of the “Gypsies,”* 103 YALE L.J. 323 (1993).

101. See Caffrey & Mundy, *supra* note 82, at 263-65.

an effective, although largely unexplored, bar to implementation. As demonstrated by the aforementioned Florin Cioaba case, the same host states which for decades ignored the practice of arranged juvenile marriage are suddenly choosing to selectively enforce human rights measures without providing any form of substantive notice. This type of expedited enforcement seems to cut against the process of cooperative harmonization, leaving Gypsies to wonder which culturally imbedded remnant is next on the sacrificial chopping block. For example, could Romania, in an effort to enforce its obligations under the CEDAW treaty, infiltrate Roma communities and flush women into the workplace? At what point do tactics aimed at enforcing human rights standards *themselves* violate human rights? A well-tempered harmonization effort, coupled with education and effective notice procedures, stands a much better chance of realizing successful compliance with human rights standards.

C. Baseline Human Rights Boundaries: Limiting of Deference

Taking this deference argument to its logical conclusion, it becomes clear that host states should inevitably allow themselves to internalize some aspects of informal Roma legalities, while concurrently fostering equitable developmental compliance with international human rights standards. In a spectral sense, host states should hypothetically allow inconsequential Gypsy practices to continue unimpeded. This spectrum, however, should be framed by a general sense of injustice and does have its own inherent set of limits.¹⁰² At the opposite end, restriction of blatantly violative behavior is inarguably the right thing to do.

Arranged child marriage falls within the realm of this inarguable position, and this article should by no means be interpreted as validating the substantive worth of the practice, but rather as criticizing the regulatory procedures employed by host states — particularly the general cultural misapprehension and shroud of mystery that are curable through education and tolerance. As Reisman proposes:

The rights of group formation and the tolerated authority of group elites over their members extend insofar as they are indispensable for the achievement

102. *Id.* at 266 (suggesting that repressive Gypsy practices exercised in the name of protectionism are best understood from a societal cost-spreading approach. Rather than viewing these violations as internalized within a single community, they must be seen as extending marginally, e.g. state repression against homosexuals).

of individual rights. They cannot be justified if their effect is to abridge or limit basic individual rights ... the practices of all groups must be appraised in terms of the international code of human rights The contention that suppressing [mahrim] practices that subordinate women may weaken Romani cohesion is about as compelling as the argument that prohibiting female mutilation in East Africa will undermine the indigenous cultures of the peoples who practice it.¹⁰³

In light of the numerous human rights conflicts aforementioned, arranged juvenile marriage is truly an indefensible custom falling outside the limits of cultural autonomy. In this sense, there is no such thing as complete group autonomy. And while this article has suggested measures host states must take in order to fully comply with international standards, the fact remains that the Roma must correspondingly take internally proactive cooperative steps as well. The road to harmonization is replete with intersections.

V. CONCLUSION — TOWARDS ACCESSION TO THE EUROPEAN UNION

Eliminating arranged juvenile marriage customs within Gypsy cultures will not obviate the need to take further action protecting women within these cultures. In this sense, such elimination should not be viewed as a cure-all solution to an ongoing gender imbalance — even if Roma couples were forced to marry at a statutory age and under the guise of a legal registration system, Roma women are still likely to fulfill traditional gender roles. While the causation element is present, it is certainly not absolute.

Rather, the situation of child brides within Gypsy cultures more closely resembles the logic behind a graduated loss-of-a-valid-chance threshold. At this threshold, a Roma woman is deprived of the opportunity to make her first substantive decision, one which entails life-long repercussions. The result emulates a domino effect. Roma women are subsequently deprived of an education, instead forced at a young age into distinct spousal roles and begin the trend of living a life less important. More importantly, after passing through this threshold and losing the chance to make her first culturally valid decision, a Gypsy woman succumbs to a system of subjugation carefully constructed around gender-imbalanced entrenchment. While the cultural end is inarguably the same, manipulation of the means to that end might, at the very most, liberate Roma women from strict gender-based roles, or, at the very

103. See W. Michael Reisman, *supra* note 92, at 416-17.

least, allow these women the opportunity to mature to an age where non-conventional decision-making is more than a remotely defunct possibility. Under either scenario, the house of cards relationship that structures Roma gender imbalance will most certainly endure some rattling.

At the very top of the enforcement pyramid, host countries are attempting to rapidly assimilate to European Union human rights standards to further effectuate a seamless ascension process (for example, as aforementioned, Romania is tabbed for entry in 2007, all things considered). While the legitimacy of the EU's motivation for compliance is unquestionable, the application of force at inopportune times runs the risk of jumping the gun. By effectively forcing host countries to unilaterally ban customary practices within embedded cultures while simultaneously turning the collective other cheek to host state-sanctioned positive discrimination against these same cultures, EU policy risks sacrificing substance for form. Instead, a proper EU mandate, in the true spirit of international human rights, should guarantee not only that when her feet touch the ground a young Romani girl will not be forced into an arranged marriage; rather, when her feet touch the ground, she should be free from gender imbalance and discriminatory complacency — free to live a life more important.

