

Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions

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Ms. Lee asserts that the trade in Asian mail-order brides is premised on the male consumer's racialized expectations of sexual and domestic labor services to be provided within the privacy of the home. The mail-order bride industry rests on the same foundation as the more visible trade in military prostitution and sex tourism—exploitation of the economic desperation of women in many Asian countries. Ms. Lee argues that an artificial shroud of legitimacy associated with marriage masks the exploitative nature of the mail-order bride business. She investigates the possibility that existing laws against prostitution and involuntary servitude can be applied to combat the industry's operations, concluding that anti-prostitution laws hold some promise.

“The Philippines’ most valuable overseas export is the Filipina—those exotic, dark-eyed, raven-haired, English-speaking girls who, as virgins still at the age of 25 or beyond, marry men from all over the globe.”¹

—Kenneth Morgan, *War of the Sexes*

INTRODUCTION

This Comment examines the international mail-order bride industry, which enables men in industrialized nations to procure wives from developing countries through agencies that specialize in marketing available women. Over the past two decades, the industry has steadily gained popularity as a vehicle for marriage, resulting in the migration of thousands of women to the United States. While mail-order brides hail from countries throughout the world, the discussion herein focuses on women from Asian Pacific countries, who constitute a significant portion of the market for mail-order brides.²

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1. Quoted in Ramon Isberto, *Philippines Trying to Stem "Wife Trafficking" to Australia*, Inter Press Service, May 21, 1993, available in LEXIS, News Library, Wires File.

2. Although virtually all mail-order brides are subject to sexual exploitation fueled by classism

The mail-order bride business promotes a form of sexual exploitation that resembles both prostitution and involuntary servitude. Nevertheless, while the law of this country seeks to eliminate prostitution and involuntary servitude, it does not prohibit the mail-order bride business, and, until recently, did not even impose any regulations on its operations. It may be possible, however, to utilize existing legal remedies to address this exploitative industry, and this Comment therefore takes the necessary preliminary step of examining what relationship mail-order bride marriages bear to prostitution and to involuntary servitude. Though both are explored here, I submit that laws aimed at combating prostitution provide a more appropriate starting point than those prohibiting involuntary servitude. The mail-order bride business rests on the same historical, social, and cultural institutions that have been and continue to be the genesis of prostitution. In fact, the mail-order bride industry is but one specific manifestation of the international prostitution of women and a direct outgrowth of that institution. While the mail-order bride business also possesses attributes of involuntary servitude, the dynamics of the industry more closely parallel those of prostitution.

Part I sets forth the external forces and motivations that lead male clients to seek mail-order brides and women to advertise themselves, the promotional techniques used to market the women and attract male consumers, and the transnational aspects of the business. Part II demonstrates the conceptual identity between prostitution—particularly transnational prostitution—and the mail-order bride business by examining several analogous elements of the two institutions. The close alliance between the mail-order bride business and prostitution becomes more apparent in light of the history of prostitution of Asian Pacific women in this country during the nineteenth century, as well as the modern-day commodification of these women through military prostitution and sex tourism in Asian Pacific countries.

Part III examines the concept of mail-order brides as victims of involuntary servitude. This Comment maintains that several aspects of a mail-order bride's experience could be construed as involuntary servitude. Under judicially-defined standards of involuntary servitude, however, mail-order bride marriages cross the line into involuntary servitude only in narrowly-prescribed circumstances. Finally, based on the conclusion that the institution of mail-order bride marriage is more appropriately analogized to prostitution than to slavery, Part IV offers recommendations for employing existing legal instruments to combat the mail-order bride industry.

and sexism, the sexism with respect to Asian Pacific women is heightened by racial and/or ethnic stereotyping, explaining in part the higher demand for these women. Thus, the dynamics of sexual exploitation in the mail-order bride industry are particularly evident in Asian Pacific mail-order brides.

Regardless of how one characterizes the mail-order bride business, the fact remains that women who decide to enter into mail-order bride marriages are generally seeking to escape adverse home-country socioeconomic circumstances through one of the few avenues open to them. After settling in a new country, language barriers, unfamiliarity with local social and legal institutions, and the husband's power to dissolve the marriage (and hence the woman's basis for residency), allow the husband to exercise significant control over the newly-arrived bride's daily life. In addition, men who utilize mail-order bride services often possess inaccurate expectations of their prospective partners; such expectations are based in part on mail-order bride agencies' racialized and gendered representations of Asian Pacific women, as well as enduring Western stereotypes of such women. Thus, for Asian Pacific mail-order brides in particular a lack of viable alternatives in the home country works together with an inherently unequal power dynamic to create a situation rife with sexually exploitative potential.

In recognizing the structural factors that create conditions for sexual exploitation, I do not wish to suggest that Asian Pacific women are the wholly passive victims of a larger process of racial and sexual subjugation, nor do I deny their potential capacity to defeat such exploitation. Asian Pacific women, both in the United States and abroad, through their individual daily lives and collective efforts, continuously demonstrate the ability to deal effectively with their life circumstances. It would likewise be improper to portray *all* cross-cultural or transnational marriages as inherently exploitative. Rather, it is the organized business of capitalizing on women's disadvantaged positions in pursuit of profit and for the benefit of male consumers, and the subsequent use of U.S. immigration law in such a way as to lead to exploitation, that render mail-order bride marriages objectionable. Although it is possible for individuals in a mail-order bride marriage to overcome this potential for exploitation, all too often, such marriages come to strongly resemble the international trafficking of women, their prostitution, and their involuntary servitude.

I. THE MAIL-ORDER BRIDE BUSINESS: MECHANICS OF THE INDUSTRY

A. *Mail-Order Bride Agencies—Background and Participants*

By all accounts, mail-order bride agencies are thriving around the globe. In 1992, approximately 200 agencies existed in the United States alone,³ having doubled in number since 1986.⁴ Similarly, in Australia the number of mail-order brides brought into the country increased by 270

3. See Melinda Henneberger, *Well, the Ukraine Girls Really Knock Them Out*, N.Y. TIMES, Nov. 15, 1992, § 4, at E6.

4. See Lisa Belkin, *The Mail-Order Bride Business*, N.Y. TIMES, May 11, 1986, § 6, at 28.

percent between 1981 and 1992.⁵ According to Congress' findings in Section 652 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), an estimated 2000 to 3500 men in the United States find wives each year through mail-order bride catalogs published and distributed by the agencies.⁶ As the market grows, many of these businesses have expanded their outreach to potential clients by establishing Internet sites, through which customers may view available women and purchase all agency services.⁷

Mail-order bride agencies, whether through their catalogs or their websites, do not always identify themselves as such. Instead, many profess to be "pen-pal" services.⁸ An examination of the mail-order bride business exposes the absurdity of this characterization. The primary function of the agencies is not to promote cultural exchange, but rather to turn a profit by charging men in industrialized nations for the service of connecting them with available women in developing countries such as the Philippines. Based on this author's survey of several catalogs, Filipina women in fact account for more advertised mail-order brides than any other nationality of women.⁹ Although agencies make occasional claims that Japanese women appear in their catalogs, few such women are actually found there. Moreover, a search of recent literature on the subject did not reveal any scholarly or media references or personal accounts of Japanese mail-order brides. In contrast, media accounts, academic research, and the personal anecdotes given in agency literature frequently discuss Filipina mail-order brides. The fact that Japanese women, who share an Asian Pacific origin with Filipina women but who experience vastly different economic realities, rarely use these services indicates that economic desperation may be a primary factor motivating women to advertise them-

5. See ELIZABETH UY EVIOTA, *THE POLITICAL ECONOMY OF GENDER: WOMEN AND THE SEXUAL DIVISION OF LABOUR IN THE PHILIPPINES* 140 (1992).

6. See *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104-208, § 652(a)(1), 110 Stat. 3009-712 (1996) [hereinafter IIRIRA].

7. An Internet search containing the words "mail-order brides" produces the web sites of several mail-order bride agencies. The Mail-Order Bride Warehouse, for example, can be found at <http://www.goodwife.com>. A Foreign Affair, based in Arizona, updates its list of women available on the Internet each week, at <http://www loveme.com/foreign-affair>. By clicking on the photograph of any one of several women's faces, the user can proceed to view a full-body color photograph of the woman and read her complete biography, including her measurements. Upon requests for information about its services, Soul Mates, based in Sydney, Australia, does not send information through the postal service, but rather, instructs men to refer to its website (<http://www.tmx.com.au/webads/soul>) to view women and other information. "Bulk order" addresses, catalogs, and other products such as the "Russian Ladies" video and "Philippine Ladies" video can all be paid for via the Internet with a credit card.

8. See, e.g., Sunshine International, *Promotional Materials* (1996), on file with author (stating that "Sunshine International is a correspondence/penpal service which promotes friendship."). This semantic difference is in part an attempt to evade the Philippine Government's 1990 prohibition on the mail-order bride business. See *infra* notes 85-86.

9. See, e.g., Sunshine International, *supra* note 8; U.S.-Asian Connection, *Promotional Materials* (1996), on file with author.

selves. The agencies themselves note that the majority of women who utilize mail-order bride services come from poorer regions of Asia, particularly the Philippines.¹⁰

Some agencies, such as Filipina Dream Girls, Life-Mates, and Pearls of the Orient, list Filipina women exclusively.¹¹ Several factors help to explain the relative abundance of Filipina women seeking foreign suitors. For example, the Philippines is plagued by high unemployment, poverty, and occasional political instability,¹² conditions which engender a desire among many Filipinos to immigrate to developed nations. Such migration, however, is more than just an issue of personal choice, as the Philippine government actively promotes overseas migration and export-led development in order to alleviate unemployment and generate foreign exchange.¹³ Filipino social and cultural practices also drive participation in the mail-order bride business. For instance, due to the preference for male inheritance of agricultural land and the expectation that daughters will help support their family financially, women have migrated to the cities in greater numbers than men in search of work.¹⁴ The high ratio of women to men in the cities, coupled with social pressure to marry, leads women to seek marriages abroad.¹⁵ The Philippines' history of foreign occupation, in addition to the resulting military sexual colonialism that persisted even after the country gained independence from the United States, also contributes to Filipinas' acceptance of marriage to foreigners, and in particular the belief that white foreigners are more desirable husbands. Hence, although economics is a central factor in a woman's decision to become a

10. U.S.-Asian Connection's information letter states that until 1992, 90% of the "lovely ladies featured" were Filipina. After 1992, according to the agency, the fall of Communism resulted in Russian women wanting to marry Americans as well. Nevertheless, the catalog itself, as well as that of others, demonstrates that Asian Pacific women, particularly Filipinas, continue to dominate the population of mail-order brides. See U.S.-Asian Connection, *supra* note 9. (Thai Asian Worldwide Ladies, however, boasts that 50% of their advertised women are from Thailand—another Asian Pacific country. See Thai Asian Worldwide Ladies, Promotional Materials (1996), on file with author [hereinafter TAWL].)

11. An examination of forty-four agencies which advertise Asian Pacific women reveals that almost half focus exclusively on Filipinas. (21 of the 44 agencies listed at <http://www.goodwife.com/asian.cgi> on March 30, 1998).

12. The Philippines' unemployment rate in 1989 was 8.4 percent; 32.4 percent of the population worked less than 40 hours a week or was seeking additional work. In the late 1980s, it was estimated that 50% of the population was at or below the poverty line. See SYLVIA CHANT & CATHY MCILWAINE, *WOMEN OF A LESSER COST: FEMALE LABOUR, FOREIGN EXCHANGE AND PHILIPPINE DEVELOPMENT* 57, 70 (1995); see also DELIA D. AGUILAR, *THE FEMINIST CHALLENGE: INITIAL WORKING PRINCIPLES TOWARD RECONCEPTUALIZING THE FEMINIST MOVEMENT IN THE PHILIPPINES* 8 (1988) (stating that the "raw material" for the mail-order bride industry is the lack of employment opportunities for women in Asian Pacific countries).

13. See CHRIS CUNNEEN & JULIE STUBBS, *GENDER, 'RACE,' AND INTERNATIONAL RELATIONS: VIOLENCE AGAINST FILIPINO WOMEN IN AUSTRALIA* 3-4 (1998).

14. See EVIOTA, *supra* note 5, at 140-41.

15. From 1988 to 1989, the number of women in the Philippines marrying foreign nationals went up by 94%. See KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY* 154 (1995).

mail-order bride, it does not fully explain the popularity of this business.¹⁶ In the Philippines and other countries as well, gendered norms embodied in particular social, cultural, and demographic processes also bear heavily on women's choices, or lack thereof.

Women enter the mail-order bride channel through the agencies' active recruitment of potential brides in economically depressed countries. The companies place advertisements in newspapers and magazines; some also solicit by mail after acquiring names and addresses from other mail-order bride agencies. In addition, women hear about agencies through word of mouth. Generally, in order to be listed by an agency, a woman must submit a photo and biographical data and complete a short form regarding her personality, interests, and preferences in men.¹⁷ Some agencies require more personal information. For instance, American Asian Worldwide Services' questionnaire asks whether the woman has flat, medium or full breasts, and also contains queries such as "Have you experienced premarital sex?" and "Which underwear do you like to wear?"¹⁸

The result of the recruitment process is a catalog packed with pictures of potential brides, accompanied by varying amounts of information on each woman. Although most of the photos are merely black and white head shots, the front and back covers often feature color photographs. Thai Asian Worldwide Ladies (TAWL), for instance, pictures a woman posing in a bikini surrounded by lush green flora. Above the picture are the woman's measurements and a brief description of herself and what she is looking for in a husband.¹⁹ Agencies on the Internet more frequently display full-body photos of the women, which can be seen by clicking on an individual woman's entry. While agencies frequently provide the women's hobbies below their photographs, this may well be a tactic to alert the men to women likely to make traditional wives, rather than to ensure that the women, by describing their interests, will find someone compatible. There is surprisingly little variation in the hobbies listed, cooking being one of the most common. No doubt women list hobbies that they believe are desired by men in industrialized nations. In any case, agencies generally present the women in such a way that men are encouraged to choose the women with whom they want to correspond primarily on the

16. Indeed, biographical data of the women in the catalogs reveal that these aspiring brides frequently are college-educated. In interviews conducted by the author, a number of Filipina women explained that one of their reasons for seeking marriage through mail-order bride catalogs was that they believed American men to be less critical, if not unconcerned, with a woman's background, including sexual history and economic class, than Filipino men. Such women, viewed mail-order bride marriage, somewhat ironically, as a way to find a husband who is "liberal" with respect to his views on women.

17. American Asian Worldwide Services asks, for example, whether potential brides are interested in correspondence from black men. See Gary Libman, *Lonely American Males Looking to the Orient for Mail-Order Brides*, L.A. TIMES, Sept. 14, 1986, § 6, at 1.

18. See *id.*; Belkin, *supra* note 4.

19. See TAWL, *supra* note 10.

basis of appearance; the women's interests become a secondary consideration.

The typical customer is an older²⁰ Caucasian man, who joins a mail-order bride agency in search of an "eternal treasure"²¹ or that "special lady."²² He is often divorced and disenchanted with the feminist movement, attributing his failure at relationships or marriage to what he considers to be the intolerable attitude of feminist women. The mail-order bride industry was "renewed, the brokers say, in the 1970s, when men who considered themselves casualties of the American women's movement began looking overseas for more traditional wives."²³ The men commonly characterize American women as "spoiled rotten"²⁴ and lacking family values, and Asian women, in contrast, as loyal and undemanding. As one man explained, "I do have some cultural expectations that I would not have with an American woman: she will keep house without making me feel guilty or lazy, she will not intentionally annoy me just to assert herself, and she will be loyal . . ."²⁵ These sentiments were echoed by another customer, who explained that Asian Pacific women are "truer, more loyal and have a mystical air or attitude or whatever the proper word is."²⁶ Another enthused that they are "like my grandmother's generation, conventional and conservative."²⁷

Mail-order bride agencies, aware of the more common demographic characteristics and attitudes of their male clients, present Asian Pacific women, in stark contrast to Western women, as ideally suited to fulfill men's needs. Life-Mates opens its introductory information with, "Are you still having trouble finding a GOOD American woman to love? One you can trust? One who likes being a woman[?] One who takes marriage seriously? One who doesn't have the morals of an alley cat? One who doesn't check your bank account first? One who's not fat?"²⁸ It paints

20. A 1983 survey conducted by Davor Jedlicka, a sociology professor, revealed that the median age was 37. The survey was sent to 607 clients of Rainbow Ridge Consultants, a mail-order service in Hawaii; 44% responded. See Belkin, *supra* note 4.

21. TAWL, *supra* note 10.

22. U.S.-Asian Connection, *supra* note 9. Male clients, however, are not limited to white men. Chinese-language newspapers "abound with advertisements for mail-order brides." James Leung, *Many Mail-Order Brides Find Intimidation, Abuse: Marriages Made in China for U.S. Citizenship*, S.F. CHRON., Sept. 4, 1990, at A9.

23. Henneberger, *supra* note 3.

24. Author's e-mail correspondence with Jim (not his real name), who at the time was planning to marry a Filipina woman he met through Asian Romance, October 22, 1997.

25. Author's e-mail correspondence with Jim, October 18, 1997.

26. Belkin, *supra* note 4.

27. Christopher Hanson, *Mail-Order Bride Business Booms in Backlash to U.S. Feminism*, Reuters North European Service, Apr. 27, 1987, available in LEXIS, News Library, Wires File. One agency asserts that "Filipinas like . . . the traditional role of being wives," and claims that the "Filipina genuinely seeks marriage because her culture is family oriented. No husband, no life." Life-Mates, Introductory Information (1997), on file with author.

28. Life-Mates, *supra* note 27.

Asian Pacific women, on the other hand, as “the charming and demure oriental women that men dream of,” and reassures readers that “[t]hey don’t mix with American women since they have almost nothing in common with them.”²⁹ Another agency exclaims, “Most, if not all are very feminine, loyal, loving . . . and virgins!”³⁰ Moreover, when it comes to pleasing a husband, “[t]he enthusiasm shown and the pleasure they derive in accomplishing this goal is almost embarrassing! . . . We wouldn’t be at all surprised if you entertained thoughts of polygamy.”³¹

The women—or girls—in the catalogs are as young as thirteen³² and most frequently in their early twenties. Agencies take pride in the fact that they can offer “ladies from their teens to forties.”³³ In an acknowledgment of the realities of the market, women in their early twenties commonly state in their personal data that they will accept correspondence from men aged thirty to sixty—in effect, men old enough to be their fathers or even grandfathers. One agency characterizes this willingness to accept a much older partner as a “pleasant difference” between Filipina and American women.³⁴ Another claims that this acceptance is due to the belief that older men are “associated with stability, wisdom, and strong character.”³⁵

Ralph Gilmore, for example, at age 71 married a 27-year-old bride from the Philippines. He describes his wife as “a beautiful thing.”³⁶ Gilmore found her through International Connections, which deals only in Filipina women, and, like many agencies, does not even have a business license.³⁷ The owner of International Connections, formerly stationed in the Philippines by the Navy, describes the women in the catalog as “girls” and the typical male customer as a “bull moose in heat.”³⁸ The same agency brought Timothy Blackwell and his now deceased mail-order bride together.³⁹ In 1995, Blackwell shot and killed his pregnant wife, as well as

29. *Id.*

30. Venny Villapando, *The Business of Selling Mail-Order Brides*, in MAKING WAVES 324 (Diane Yen-Mei Wong ed., 1989) (citing Hugh Patterson, *Brides Jump from Pages of Pamphlet*, THE CITIZEN (Ottawa), Mar. 3, 1982). Women promote their virginity as an asset in their self-descriptions, some explicitly stating “I am still a virgin.” *Id.* at 470 n.20 (citing Cherry Blossoms catalog, Sept./Oct. 1981).

31. Hanson, *supra* note 27 (quoting an Asian Experience brochure).

32. See Paul Watson, *Mail-Order Bride Firms Flourish in Canada*, TORONTO STAR, Nov. 9, 1991, at A1; see also <http://www.filipina.com> (listing Honeylen, #IMO5: age 13, weight 96 pounds, height 5’2”).

33. Sunshine International, *supra* note 8. The company also assures potential clients that “Asian women are very mature emotionally even in their late teens.” *Id.*

34. U.S.-Asian Connection, *supra* note 9.

35. Sunshine International, *supra* note 8.

36. Alex Tizon and Diedra Henderson, *Mail-Order Matchmaking Weds Poverty to Loneliness: Practice Blasted as Legal Slavery*, TIMES-PICAYUNE, Mar. 19, 1995, at A10.

37. See *id.*

38. *Id.*

39. See *id.*

her two friends, while she was at a Seattle county courthouse seeking a divorce.⁴⁰ Mail-order bride agencies, which profit by catering to the desires of their male customers, have little or no incentive to protect the interests of those brides who unknowingly enter such abusive or deadly relationships. The male client, on the other hand, has a wide variety of services available to him, as described in the following section.

B. Mail-Order Bride Agencies: Full-Service Businesses

In the spirit of selling a commodity, the mail-order bride industry offers a complete range of services. The compilation of women's photographs, addresses, phone numbers, and biographical information, all of which may be bought individually or received in periodic issues, is only one of many available services. Complimentary gifts and discounts for "bulk orders" are common. U.S.-Asian Connection's order form is replete with prices for elaborate address packages, catalogs, personal ad listings for men who wish to advertise themselves, and additional services to assist in the courting process. The agency, which reports over 1200 marriages resulting from its seven years of service, issues a list every month containing 240 women.⁴¹ The order form states that of the 240 in each list, approximately 180 are from the Philippines, and the remaining 60 are from other parts of Southeast Asia, Europe, and Latin America. The lists include addresses and available phone numbers of all 240 women. Depending on the number of lists purchased, a list costs between \$30 and \$44. Alternatively, individual women's addresses and phone numbers can be purchased for \$7 each. A direct mail personal ad listing, sent to 1000 women who write to the agency, costs \$99.⁴²

For men who are not content with just photographs, Pearls of the Orient offers videotapes of available women so that men can view them "in the privacy of your home and select the girl(s) you would like to correspond with. The girls are being interviewed LIVE . . . in a beautiful scenic setting . . . and they will talk to you, just as if they were with you . . . Ages range from 18-30 years."⁴³ If this option is not appealing, Rainbow Ridge, upon request, screens its women to meet a male client's specific requirements. In 1986, the service cost \$1000 to perform; if a marriage resulted, the agency charged another \$1000.⁴⁴ Pacific Overtures is even willing to write a client's first letter. Their brochure promises that

40. He was subsequently convicted of their murders and the manslaughter of Susan's unborn baby and sentenced to life in prison. See Anne Koch, *Blackwell Gets Life Without Parole; Triple Murderer Told: 'You Will Never Be Free'*, SEATTLE TIMES, June 25, 1996, at B3.

41. See U.S.-Asian Connection, *supra* note 9.

42. Advertised prices as of spring 1996. See U.S.-Asian Connection, *supra* note 9.

43. Pearls of the Orient, Special Services Catalog (1997), on file with author. The videotape costs \$39.95. See *id.*

44. See Belkin, *supra* note 4.

"[e]ach letter I send for you will be individually typed with her first name inserted strategically in enough places to make sure it has an individual, personal feel to it. Your first name will be signed by hand in blue ink—a nice touch."⁴⁵

For clients who want to take a more active role in their search for a bride, U.S.-Asian Connection publishes and markets a self-help guide entitled *How To Find a Beautiful, Faithful Asian Wife* for \$15 (free if the man becomes a "special" or "deluxe" member). The book suggests, as an alternative to merely writing letters, that male clients travel to the Philippines and locate potential brides using the addresses provided by the agency. "The worst that could happen is that the young lady . . . is already engaged or married. The cab driver could simply cross off her name and go find the next young lady on your list."⁴⁶ For those men who prefer to travel with an experienced tour guide, several agencies also offer package tours to the Philippines, so that male clients can be personally introduced to women with whom they have had no prior correspondence.⁴⁷

Such guided tours are reminiscent of the sex tours popular among men traveling to Thailand and other Asian Pacific countries.⁴⁸ Many mail-order bride agencies provide disturbingly similar services; the similarity is particularly apparent in their pledges of limitless numbers of women to choose from. For example, Pearls of the Orient offers a 21-day "Personalized Tour" to the Philippines for \$3295, during which the man will be introduced to an unlimited number of women that he previously selected after viewing the agency's videos of Filipina women. The agency provides accommodations, "all paperwork needed to contract marriage," the "lowest costs on the wedding arrangements," and helps with "your wife's papers When you return you will have all the documentation needed and you can file at once" for her immigration to the United States.⁴⁹

To assist clients in achieving their goals, one agency coaches male consumers on how to win the favor of prospective brides. For "popular modern girls, the beautiful or intelligent with many suitors or past experience in love," the agency advises the man to adopt a "hero-type courtship," using a nonchalant, aloof demeanor to catch her attention. For conservative, shy, rural, or inexperienced women, it suggests the "slave-type courtship," in which the man professes his steadfast devotion and true love. If all else fails, it recommends that the man be the "beast type." "If she can't be taken by [more subtle] tactics, use speed and force." Lest the agency be seen as suggesting violent tactics, it warns its clients to ex-

45. *Id.*

46. MARITES LEWIS & STEVEN LEWIS, *HOW TO FIND A BEAUTIFUL, FAITHFUL ASIAN WIFE* 30 (1991).

47. *See, e.g.*, Pearls of the Orient, *supra* note 43.

48. *See infra* notes 116-117 and accompanying text.

49. Pearls of the Orient, *supra* note 43.

ercise caution, "because you might be charged with rape and risk your reputation."⁵⁰

If the "courtship" is successful, the consumer male and his bride can either marry in her country and then apply for a spousal visa or, if they wish to marry in the United States, apply for a fiancee visa. The latter, a "K-1" visa, is good for a 90-day stay in the United States, during which the woman must marry or face deportation.⁵¹ In effect, the 90 days can serve as a trial period, after which the man may abandon the woman or have her deported if he is not pleased with her. There is no obligation to finance her trip home or to provide her assistance, financial or otherwise, simply because he is the sole reason for her presence in the country.

Of course, the marriage process involves a considerable financial investment on the part of the husband, with payments to the agency, visa application fees, airfare, etc. Buyers want a bargain for their money. The agencies thus hasten to assure men that a Filipina "doesn't cost as much as an American woman," and that the cost of a mail-order bride is "worth it" because "when you get that sweet little lady over here, [your friends] will drool with jealousy."⁵² Payment is simple—Soul Mates lists no less than eight ways, including via electronic mail, in which one can pay for its goods and services.⁵³ In short, the mail-order bride industry is a highly commercialized, developed, and profitable business that earns its revenues by positioning women in the Third World as commodities available for purchase.

C. *Worldwide Operation*

The mail-order bride industry is as transnational as it is commercialized. Not only does it extend to male clients and women in countless countries worldwide, but its basic functioning depends on the continuing power imbalance between First and Third World nations. In the same way that developing countries such as the Philippines export domestic labor to richer countries such as Canada and Singapore, developing nations supply mail-order brides to men in industrialized nations.⁵⁴

In *War of the Sexes*, Australian Kenneth Morgan explains how to marry a virgin from the Philippines, where and how to meet her, and how much it costs to bring her to Australia. In the book, he refers to Filipinas

50. Watson, *supra* note 32 (quoting Rodel Ramos, founder of Asian Connection).

51. See Belkin, *supra* note 4; Immigration and Nationality Act § 101(a)(15)(K) [hereinafter INA], 8 U.S.C. § 1101(a)(15)(K) (1994).

52. Life-Mates, *supra* note 27.

53. See Soul Mates, <http://www.tmx.com.au/webads/soul>.

54. See generally JAN JINDY PETTMAN, *WORLDING WOMEN: A FEMINIST INTERNATIONAL POLITICS* (1996). While recognizing that mail-order brides come from economically depressed countries not limited to those in Asia, consistent with the focus of this Comment on Asian Pacific women, this section illustrates how men—and less directly, governments—from all parts of the first world are involved in the trafficking of Asian Pacific mail-order brides.

as "the Philippines most valuable export."⁵⁵ Morgan, after three previous marriages and at age 64, married a 19-year-old Filipina he found in a mail-order bride catalog and publicly announced that she was a virgin.⁵⁶ The book's companion video, "Filipina Dreamgirls," was shot in the Philippines and shows Australians choosing brides from among several Filipinas.⁵⁷ As a result of the book and video's release, the Philippines' consulate in Australia began to receive requests for catalogs of "available virgins."⁵⁸ Australian men have also claimed that it is "cheaper to get an Asian wife than to get an Australian prostitute."⁵⁹

According to official Australian immigration data, as many as 20,000 Australian men have Filipina wives.⁶⁰ Stories of physical and emotional abuse against mail-order brides abound: one man kept his Filipina wife on an ankle chain; another beat his wife and convinced her it would be useless to report him because he had bought her.⁶¹ The experiences of women like these have forced the problem into public view. In particular, the practice of serial sponsorship, in which a man brings in one bride after another, has been recognized by the Australian Government as a serious problem which often leads to abuse.⁶² Of 110 men identified as multiple sponsors in a government report commissioned in 1992, 57 had sponsored at least three partners and one had sponsored seven.⁶³ Thus, in 1996, the Australian Government changed its immigration law to restrict sponsors to two spouses or fiancées within a lifetime and to require a five-year period between the first and second sponsorship.⁶⁴ Even with such restrictions, women who enter Australia as mail-order brides are vulnerable to domestic abuse, for reasons similar to those discussed below in Part III.

Fiji women of Indian descent are also increasingly marrying Australian men through the mail-order bride route. In addition to the perception that females are a burden to their families and should thus be married off,

55. Isberto, *supra* note 1.

56. See Redempto Anda, *Lawmakers Assail Book on Mail-Order Bride*, MANILA CHRON., May 11, 1993, at 7.

57. See *id.*; Isberto *supra* note 1.

58. Isberto, *supra* note 1.

59. Kalinga Seneviratne, *Australia: Filipino Mail Order Brides End Up Being Murdered*, Inter Press Service, July 20, 1991, available in LEXIS, News Library, Wires File.

60. See Debbie Singh, *Fiji Women: Marriages with Australians Less than Heavenly*, Sept. 19, 1994, Inter Press Service, available in LEXIS, News Library, Wires File.

61. See Kathleen Callo, *Philippine Mail-Order Brides Are Booming Export*, Reuters, Sept. 23, 1987, available in LEXIS, News Library, Wires file. Such abuse is by no means limited to mail-order brides living in Australia.

62. Serial sponsorship is also a problem in the United States. See BARRY, *supra* note 15, at 155. (discussing an encounter with an American man who had sponsored four wives and then had each deported, and noting cases of men marrying multiple women at the same time.)

63. Nikki Barrowclough, *The Shameful Story of Australia's Serial Husbands*, THE AGE (Good Weekend Special Report Section), May 6, 1995, at 46.

64. See CUNNEEN & STUBBS, *supra* note 13, at 24. There are no existing restrictions on the number of partners one may sponsor under U.S. immigration law.

Fiji parents have become anxious get their daughters out of the country in light of two military coups in 1987 and a high rate of unemployment.⁶⁵ The situation has created a particularly exploitative mail-order bride business. Not only are women being charged a minimum of \$100 by Australian agents for lists of foreign men to whom they may write, but some Fiji women report being forced to perform sexual favors so as to “experience” a white man before they are given access to potential spouses.⁶⁶ Here one can clearly see the link between the mail-order bride industry and the prostitution of Asian Pacific women to satisfy Western men’s sexual desires.

Further demonstrating the centrality of the racial dynamic in mail-order marriages, one woman operating an agency in China noted that many of the potential brides she listed were “telling us clearly they want real foreigners—white people from Australia, Canada or the United States.”⁶⁷ An Asian husband from Hong Kong or Singapore was unacceptable.⁶⁸ However, most women are open to marrying other Asians, as long as they are from a more prosperous country. For example, in 1995 a Japanese man was detained for operating a mail-order bride business in Shanghai for eight years.⁶⁹ The clients were Japanese men who came to Shanghai to pick “Miss Right” from groups of Chinese women assembled by the agency.⁷⁰ Elsewhere in China, in Shenzhen, ten mail-order bride agencies were in operation by 1994, fueled primarily by the demand from men in nearby Hong Kong for mainland Chinese women.⁷¹ The founder of a mail-order bride agency in Shenzhen predicts that China will soon overtake the Philippines and Thailand as a supplier of mail-order brides, because Chinese women “not only have a beautiful face but their heart and soul is also beautiful. They make excellent wives—they’re pure, gentle, and obedient.”⁷²

Asian women from China, the Philippines, and other countries are often falsely promised marriage and brought illegally into Western Europe as well, where they are marketed as passive, exotic beauties.⁷³ One German agency brochure reads:

They stand out against the greyness of everyday German routine, those beautiful creatures with black, satin hair and the charming almond-shaped

65. See Singh, *supra* note 60.

66. See *id.*

67. Nick Cater, *Women Look West for Perfect Mates*, SOUTH CHINA MORNING POST, Dec. 11, 1994, at 8.

68. See *id.*

69. See *Leader of Japanese Mail-Order Bride Ring Nabbed in China*, Xinhua, Oct. 12, 1995, available in LEXIS, News Library, Wires File.

70. See *id.*

71. See Cater, *supra* note 67.

72. *Id.*

73. In Austria, for example, one agency promotes Filipinas as “docile, exotic and available as bed partners and domestic help at the same time.” Callo, *supra* note 61.

eyes of the Malay. No one who falls prey to their charms need feel victimized. Ethnologists and world travelers, photographers and fashion designers agree that the Filipinas with their graceful, slim form, Chinese-influenced features, and dusky complexion, belong to the most beautiful and most desirable women in the world. Whoever enters into a marriage with such a creature gains something precious, as far as appearances go.⁷⁴

During the agencies' recruiting drives, some women are approached by salesmen acting for European mail-order bride agencies, while others respond to advertisements. According to Nick Enciso, president of the Federation of Provincial Press Clubs of the Philippines, local agents of one fraudulent operation screened respondents to a typical, albeit somewhat suspicious, newspaper ad.⁷⁵ If the agents approved a woman, they charged her a fee for a plane ticket and visa. After arriving in the new country, these women were passed along from client to client. Some women, rejected by all the men to whom they were offered, ultimately became prostitutes.⁷⁶

Lacking the necessary language skills, women often sign papers indebteding themselves to those who bring them into the country.⁷⁷ Even in the absence of such a signed agreement, a mail-order bride may find that the substantial expenses incurred by her husband in acquiring her are later used as a tool to reinforce control over her.⁷⁸ These expenditures tend to give men a sense that they are entitled to recoup their costs through sexual services, housekeeping, or other labor. Some brides are reduced to no more than "better-class slave[s] . . . I've also seen cases where husbands forced their wives into prostitution privately with their friends."⁷⁹ In fact, Philippine embassies in Europe have reported that a number of match-making agencies are simply fronts for prostitution rings preying on newly-arrived Filipinas.⁸⁰

Not surprisingly, agencies do not warn women of these dangers or of the risk of domestic violence. However, they do express concern that men may be duped by women who seek only a green card. John Broussard,

74. BARRY, *supra* note 15, at 153.

75. The advertisement, run in a Manila newspaper, read, "Wanted. Eligible wife for Italian millionaire desirous of life-time relationship. Preferably college educated. Give details of age, description, colour of eyes, hair etc." David Jones, *Filipino Women Said to be Forced into European Prostitution*, Reuters North European Service, May 22, 1987, available in LEXIS, News Library, Wires File.

76. *Id.* Said a spokesman for the Philippine Department of Foreign Affairs in response to these abuses, "We live in a free country and we can't stop people [from] traveling." *Id.*

77. See Nao Nakanishi, *Trade in Women Flourishing in Germany*, Reuters Library Report, Oct. 26, 1992, available in LEXIS News Library, Wires File.

78. In Germany, for example, mail-order bride agencies charge male clients 5000 marks (\$3500) for a wife, clothing for her, and a guarantee to exchange her if the man is not fully satisfied. See *id.*

79. *Id.* (quoting Renate Augstein of Germany's Ministry of Women's and Youth Affairs).

80. See Callo, *supra* note 61.

owner of Rainbow Ridge, advises his male subscribers: "Don't assume that because a lady is attractive she must be honest. In any case, she may not BE attractive. That may not be her photo at all. In fact, she may not even be a she!"⁸¹ While accounts of the duplicities that Broussard describes are rare, there are countless reports of physical and emotional abuse perpetrated against women who marry through these services. For instance, in 1996 Jack Reeves, a retired U.S. Army sergeant, was convicted of murdering his fourth wife, Emelita Reeves, a mail-order bride from the Philippines.⁸² Only months earlier, he was convicted of killing his second wife; his third wife, a mail-order bride from Korea, drowned under mysterious circumstances in 1986.⁸³ All of the women died after informing Reeves that they wanted a divorce.⁸⁴

Despite repeated and well-publicized accounts of abuse and fraudulent practices, governments have taken minimal or ineffective measures to stem the abuse, or none at all. In 1990, the Philippines banned the establishment or operation of mail-order bride businesses and the printing and distribution of material promoting the practice.⁸⁵ The law also prohibited the solicitation or inducement of "any Filipino woman to become a member in any club or association whose objective is to match women for marriage to foreign nationals either on a mail-order basis or through personal introduction for a fee."⁸⁶ However, the law is not enforced, and mail-order bride marriages in the Philippines are just as popular today as before the enactment of the law, if not more so.⁸⁷

Even a well-implemented and sincere effort on the part of the women's home countries to end the practice may fail without other countries' cooperation. But many nations have refused to intervene. The Swedish Ombudsman Against Ethnic Discrimination, for example, in 1989 concluded that the Asian mail-order bride trade is neither unlawful nor unethical, reasoning that "[e]ven if a woman who comes to Sweden is treated

81. See Hanson, *supra* note 27.

82. See Chris Payne, *Reeves Convicted in '94 Death of Fourth Wife; He Receives Maximum Punishment, 99 Years in Prison*, DALLAS MORNING NEWS, August 20, 1996, at 1A.

83. See *id.*

84. See Chris Payne, *Jack Reeves Convicted of Wife's Murder, Authorities Say 'Manipulator' Finally Caught*, DALLAS MORNING NEWS, August 20, 1996, at 1A. At the time of his arrest, Reeves was writing to women through the Cherry Blossoms mail-order bride agency, seeking a fifth wife. See Chris Payne, *Letter Indicates Reeves Sought Another Bride; Both Sides Wrap Up Testimony in Murder Trial*, DALLAS MORNING NEWS, August 17, 1996, at 1A.

85. Republic Act 6955, § (a)(1)-(2), Republic of the Philippines, Congress of the Philippines, Third Regular Session, approved June 13, 1990.

86. *Id.* § (a)(3); see also Aquino Signs Law Banning Mail-Order Bride Business, Kyodo News Service, June 13, 1990, available in LEXIS, News Library, Wires File.

87. See RP [Republic of the Philippines] *Mail-Order Brides in Demand*, FILIPINO REPORTER, Jan. 23, 1997, at 1 (reporting that "not one person has been arrested" in the first seven years of the law's existence). Further measures may be forthcoming. See, e.g., "The Anti-Trafficking in Filipino Women Act," currently under deliberation in the Congress of the Philippines (targeting, among other things, agencies' use of cyberspace to facilitate mail-order bride marriages).

like a slave and the man uses, abuses and violates her rights, it is not easy to cast the blame on the marriage broker It would be too difficult to decide on where to draw the line in a *free* society.”⁸⁸ This attitude ignores mail-order bride agencies’ role in exploiting and commodifying the women involved, the tremendous power imbalance inherent in these relationships, and the fact that many mail-order brides do not receive adequate information about their husbands prior to marriage—elements that hamper “free” decision-making by women and men alike. In the following sections, this Comment explores two possible legal constructions of the mail-order bride business and examines the legal instruments that might be used to curb the industry’s operations.

II. MAIL-ORDER BRIDES AND PROSTITUTION

This portion of the Comment explores the idea that the present mail-order bride industry is a form of prostitution legitimized by the private institution of marriage. The section first looks at how the mail-order bride business revives a distinct identity, based on the prostitution of Chinese women, that was imposed on Asian Pacific women in the late 19th and early 20th century. It then probes the origins of the mail-order bride business and its roots in prostitution, including military prostitution and sex tourism. Although the two industries satisfy male consumer demand in different social contexts, they nonetheless sustain identical forms of sexual, racial, and class exploitation. In light of these findings, I propose legal solutions (outlined in Part IV) derived from laws regarding prostitution, with the aim of eliminating the trafficking of mail-order brides.

Traditionally, the government has used distinctions between the public and private spheres to justify its refusal to intervene in circumstances that arise in the private sphere. In privatizing the family, the state has generally refused to protect family members from the harmful acts of other family members. Yet at the same time, the state has attempted to actively define the marital relationship,⁸⁹ revealing the inconsistency in its public/private sphere approach.

In the public sphere, the state has deemed it necessary to regulate and enforce marketplace relations so as to maximize individual opportunity. Such regulation includes penalizing those who engage in market activities the state considers harmful to the public welfare. Prostitution, viewed as a public crime in the scheme of public and private activity, is actively prosecuted, and prostitutes have suffered the brunt of the state’s opprobrium against prostitution. Conversely, in the private realm, battered wives have

88. *Swedish Study Says Mail-Order Brides are Legal*, Reuters Library Report, Feb. 14, 1989, available in LEXIS, News Library, Wires File (emphasis added).

89. See, e.g., the Defense of Marriage Act, which defines marriage as the union of a man and a woman, and thus excludes lesbian and gay couples. See Pub. L. No. 104-199, § 3(a), 110 Stat. 2419 (1996) (codified at 1 U.S.C.A. § 7 (West 1997)).

suffered the consequences of the state's refusal to intervene in what it deems to be private harm, despite its enforcement of patriarchal laws and social practices that help generate those harms. The public/private sphere dichotomy also defines mail-order bride marriage as a private-sphere activity, with the act of marriage converting what would be a stigmatized, unlawful public-sphere activity into a private, immunized, and condoned one. Below, this Comment explores the way in which the persistent sexual exploitation of Asian Pacific women in the United States and abroad has created an entrenched view of these women as being available to satisfy the sexual desires of male consumers, either "illicitly" as prostitutes, or "legitimately" as mail-order brides.

A. Asian Pacific Women's Prostitution in the 19th Century United States

The Asian Pacific mail-order bride industry resumes a 19th century tradition among Asian and European Americans of importing Asian Pacific women for prostitution. That tradition and the current mail-order bride industry both exist on a historical continuum of Asian Pacific women's sexual exploitation.

The earliest Asian Pacific immigrants in the United States were male laborers, primarily from China, who came in the mid-1800s to work on the railroads and in gold mines on the West Coast. A smaller number of women began arriving soon afterward. Prostitution of Chinese women became very lucrative during the Gold Rush years; the second Chinese female resident in America, arriving in 1848 or 1849, is believed to be a 20-year-old prostitute.⁹⁰ Hundreds of Chinese prostitutes followed. In the early years of their presence in America, they "received white clients almost exclusively."⁹¹ The current demand for Asian Pacific mail-order brides echoes this earlier white male demand for Chinese women, who were in every sense mysterious and exotic to American men.

By 1854, Chinese prostitution in San Francisco was a highly organized business controlled by Chinese men. The trade involved procurers who "kidnapped, enticed, or bought the women," importers, brothel owners, Chinese "thugs" who earned money by protecting the prostitutes from other thugs, white officials and police who accepted bribes to prevent the prostitutes' and thugs' arrests, and white property owners who charged excessive rent from resident prostitutes.⁹²

Over the next two decades, as the number of Chinese men arriving on the West Coast increased, so did the demand for Chinese prostitutes, since most of the arrivals were single or had left their wives behind in China.⁹³

90. See Lucie Cheng Hirata, *Chinese Immigrant Women in Nineteenth-Century California*, in *WOMEN OF AMERICA* 225 (Carol Ruth Berkin & Mary Beth Norton, eds., 1979).

91. *Id.*

92. See *id.* at 226-27.

93. See *id.* at 227.

White civic and religious leaders then began to brand Chinese women as lewd and immoral harlots who would jeopardize the nation's morals. In response, Congress enacted the Page Law in 1875 to target the importation of Asian prostitutes⁹⁴—just as it enacted the Immigration Marriage Fraud Amendments in 1986 in response to exaggerated concerns about foreign women entering the United States through fraudulent marriages.⁹⁵ The ultimate effect of the Page Law and similar laws was merely to increase the degree of scrutiny Chinese women received in Hong Kong and San Francisco, making it more expensive to import them: “Girls who were originally sold for 50 dollars at Canton now brought 1000 dollars in the San Francisco market.”⁹⁶

If more prostitutes were needed on the West Coast, Chinese immigrant “subagents” were sent to China to procure young women and girls through luring, kidnapping, contractual agreements, and sales. Chinese social norms held that girls were burdens to their families; moreover, China in the mid-1800s, plagued by foreign imperialism and population pressures, was so impoverished that girls were frequently sold, abandoned or killed. Those who were originally sold as domestic servants were often resold to brothels when they turned 12 years old. In other cases, persuaded by fraudulent promises of marriage, Chinese mothers unknowingly agreed to send their daughters into prostitution.⁹⁷ As a missionary described one man who performed such subagent work after living in the United States for some years:

He was attired in the height of fashion and came, he said, to seek a wife, and take her back to “The Flowery Country” (America), there to share with him the prosperity which abounds in the “Golden Hills” (California) . . . [Her mother] sighed with relief when the agreement was concluded, for she felt that now the family would not suffer from want. So Ah Yee became a happy bride and set sail for America . . . Nine days [after her arrival in America, the man] departed, leaving his bride in the keeping of [a brothel owner].⁹⁸

Upon arriving in San Francisco, girls and women were usually put in temporary quarters where they were physically inspected by potential buyers and displayed for bids. Some were locked permanently in small rooms and accessed only by men who paid the manager for the key, suffering fre-

94. See George Anthony Peffer, *Forbidden Families: Emigration Experiences of Chinese Women Under the Page Law, 1875-1882*, 6 J. AM. ETHNIC HIST., 28, 28 (1986).

95. See Michelle J. Anderson, *A License to Abuse: The Impact of Conditional Status of Female Immigrants*, 102 YALE L.J., 1401, 1404 (1993). Likewise, provisions in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) addressing the mail-order bride business were motivated in part by Congress' concern with marriage fraud among mail-order brides and their sponsors. See IIRIRA, *supra* note 6, § 652(a)(3).

96. Hirata, *supra* note 90, at 231.

97. See *id.* at 229.

98. *Id.*

quent abuse and beatings by their owners and customers.⁹⁹ Although some Chinese prostitutes were reported to make good money, in 1911 the federal Immigration Commission noted that most were instead held in bondage: "Unless they are redeemed through purchase by some man who is ready to marry them their position is practically that of permanent slavery."¹⁰⁰

The present day motivation for seeking an Asian Pacific woman as a sexual partner, and the socioeconomic circumstances under which mail-order brides enter into these marriages, hark back to this earlier period, in which Asian Pacific women were commonly sold into prostitution to satisfy the demand for their sexual services. Interestingly, the U.S. immigration system played a critical role in facilitating the 19th century prostitution of Asian Pacific women, not unlike its collaboration in the present mail-order bride industry. In the 19th century, restrictive immigration laws had the effect of fostering a greater demand for Asian prostitutes and making the trade in Chinese prostitutes more lucrative.¹⁰¹ Today, the immigration system plays a critical role in the entry of Asian Pacific women as mail-order brides into the United States, by making family relationships (including marriage) the key to obtaining permanent residency, and by basing a bride's residency on continued marriage to her sponsor, as will be discussed further in Part III.A. Moreover, by making it increasingly difficult to obtain a spouse or fiancée visa, the U.S. government is inadvertently creating additional business and profit for mail-order bride agencies, who often attract customers by offering immigration advice and assistance.¹⁰²

B. The Mail-Order Bride Industry and Modern-Day Prostitution

Perhaps because of the social stigma associated with prostitution, legislatures and judiciaries have often sought to provide narrow definitions of prostitution, so as to penalize only those women who project the traditional image of prostitutes as unsavory or dangerous individuals. Such definitions are often merely a descriptive interpretation of the stereotypical act deemed to constitute prostitution, with no treatment of its socioeconomic underpinnings.¹⁰³ In fact, some state laws prohibiting prostitution

99. See RUTH ROSEN, *THE LOST SISTERHOOD: PROSTITUTION IN AMERICA, 1900-1918*, at 121-22 (1982).

100. S. DOC. NO. 61-753, *Importation and Harboring of Women for Immoral Purposes*, 37 REPORTS OF THE IMMIGRATION COMMISSION 69 (1911).

101. By 1911, even the government itself was forced to acknowledge this consequence of U.S. immigration policy. See *id.* at 83 ("[O]wing in part to the small number of Chinese women in the United States, and in part to the difficulty of importing Chinese women on account of the Chinese-exclusion act, the prices paid for them range from \$2,000 to \$3,000, or even more.") This was five times more than the \$400 that was typically paid for Japanese women, who at the time were subject to less stringent immigration restrictions. See *id.* at 82.

102. See, e.g., *Life-Mates*, *supra* note 27 (claiming in its sales pitch to be "the only service qualified to handle your immigration requirements").

103. The laws of New York and Washington, among others, provide that the test for prostitution

do not explicitly define the offense; in such situations, courts have occasionally avoided the task of defining its elements by stating that prostitution has no common law or other legal meaning apart from the popular understanding of the term—whatever that may be.¹⁰⁴

Clearly, there is no universally accepted legal definition of prostitution, partly due to the inability of legislatures and judiciaries to construct a definition that takes into account the social, economic, and political aspects of prostitution. For instance, a number of states define prostitution as engaging/agreeing/offering to engage in sexual conduct with another person for a fee.¹⁰⁵ This definition reflects an extremely limited conception of the dynamics of prostitution and in doing so obscures the substantive similarities between mail-order bride marriage and prostitution. Prostitution, as conceptualized by this author, is the epitome of sexual exploitation. It occurs when a person is forced, either physically or due to adverse social and economic circumstances, to offer sexual services in exchange for material compensation. Prostitutes, rather than being evil women, are the products of unjust socioeconomic structures that marginalize women and reduce them to sexual objects. Such a formulation of prostitution is concededly more expansive than that frequently devised by courts. But bringing mail-order brides within the category of prostitutes, as this Comment proposes, requires this broader conception of prostitution to more accurately reflect the substantive nature of the institution.

Deep-rooted structural inequality exists on many levels in the Asian Pacific region, and it should therefore be no surprise that prostitution is an integral part of daily survival for a large number of Asian Pacific women. The first stage of the industrialization of prostitution began after World War II, as sex industries developed in many Asian countries to service foreign troops stationed there. This activity produced a flow of foreign exchange into these countries and fueled their weak economies. The Philippines is a prime example of how a foreign military presence has resulted in the large-scale prostitution of local women. In 1990, around Clark Air Base and Subic Naval Base, there were 1567 and 615 Rest and Recreation

is whether the person engages or agrees or offers to engage in sexual conduct with another person in return for a fee. See N.Y. PENAL LAW § 230.00 (McKinney 1997); WASH. REV. CODE § 9A.88.030 (1997). Missouri, however, does not limit the compensation received to a "fee," but rather, recognizes that one who engages in sexual conduct "in return for something of value" to that person or a third person engages in prostitution. MO. REV. STAT. § 567.010(2) (1997). Note that this type of broad definition could potentially encompass situations in which a mail-order bride implicitly agrees to provide sexual services in exchange for the husband's offer of permanent residency. However, because Missouri's definition fails to incorporate the structural elements of prostitution, it still falls short of capturing the actual dynamics of the institution.

104. See, e.g., *People v. Rice*, 50 N.E.2d 711, 713 (Ill. 1943); *State v. Clough*, 165 N.W. 59, 60 (Iowa 1917); *People v. Cummons*, 23 N.W. 215, 215 (Mich. 1885). The court in *People v. Rice* found that the meaning of "prostitution" was so "universally understood" that it was unnecessary to set forth the elements of "soliciting for prostitution," the offense for which the defendants were indicted. 50 N.E.2d at 713.

105. See *supra* note 103.

(R&R) establishments, respectively.¹⁰⁶ These establishments relied entirely on the sexual labor of Filipina women to attract patrons, mainly foreign servicemen. An estimated 55,000 prostitutes worked in two towns outside the bases, Angeles and Olongapo, alone.¹⁰⁷ Although the U.S. military withdrew from the bases in 1992, the enormous sex industry that fed off the demand of U.S. servicemen has not died; instead, it relies on the same labor, but caters to international tourists.¹⁰⁸

The start of the mail-order bride phenomenon in the Asian Pacific region coincided with the tourism boom of the 1970s¹⁰⁹ and furthermore, the growth of the sex tourism in that region. In the Philippines, for example, the government's active promotion of tourism in the 1970s resulted in an enormous growth in the prostitution of Filipina women for foreign men.¹¹⁰ Prostitution became a leading revenue-earner for the tourism industry, the main clients being Japanese, Australian, American, and European men.¹¹¹ Today, sex tourism, concentrated in certain Philippine cities, is an organized industry involving local, national, and foreign actors who all reap significant revenues from packaged sex tours (and from lone male tourists as well).¹¹² Establishments catering to this flesh trade generally operate free of police interference.¹¹³ Of course, sex tourism and military prostitution are not unique to the Philippines: prostitution for the benefit of foreign men is a major segment of the economy in many Asian Pacific countries

106. See Aida F. Santos, *Gathering the Dust: The Bases Issue in the Philippines*, in LET THE GOOD TIMES ROLL: PROSTITUTION AND THE U.S. MILITARY IN ASIA 37 (Saundra Pollock Sturdevant & Brenda Stoltzfus eds., 1992).

107. See *id.*

108. The "World Sex Guide" on the Internet provides extraordinarily detailed information about where and how to find prostitutes in cities around the world, based on the personal experiences of the writers. In his account, Hustler correspondent Antonelli reports that "Angeles City is where it's happening now," and recommends a Filipina Dreamgirl Tour to get to "Pussy Heaven"; he then describes the women and prices in more than ten Angeles bars. World Sex Guide, <http://www.paranoia.com/faq/prostitution/Angeles-City.txt.html>. The operators of the bars continue to be primarily foreigners. "Angeles City has become the centre for prostitution in the Philippines since the closing down of brothels in Manila's red light area When the Americans left Angeles City in 1991 . . . Australians bought up the bars and brothels" and "they have become major players in the sex tour industry in the Philippines." Meredith Burgmann, *Sex Tour with a Difference*, in CONFRONTING SEXUAL EXPLOITATION: CAMPAIGN AGAINST SEX TOURISM AND TRAFFICKING IN FILIPINO WOMEN, EXPOSURE/STUDY TOUR TO THE PHILIPPINES, JUNE 19-JULY 4, 1995, REPORT OF THE PARTICIPANTS FROM AUSTRALIA AND AOTEAROA/NEW ZEALAND 79, 79 (1996) [hereinafter CONFRONTING SEXUAL EXPLOITATION].

109. See Deborah Wall, *Study Tour: A Personal Reflection*, in CONFRONTING SEXUAL EXPLOITATION, *supra* note 108, at 80, 81. Although this source refers to Australian men only, it is applicable to men in other countries as well.

110. See EVIOTA, *supra* note 5, at 137.

111. See *id.* at 137-38.

112. See *id.* Interestingly, public opposition to sex tours in the Philippines has apparently resulted in a higher rate of Filipina migration to Japan to work in its domestic sex industry. See EVIOTA, *supra* note 5, at 138.

113. See Cally Sommerville, *Australasian Women's Delegation Confronts Flesh Merchants*, in CONFRONTING SEXUAL EXPLOITATION, *supra* note 108, at 75, 77.

where women are denied meaningful career opportunities, and military prostitution continues in countries such as South Korea where the U.S. military occupies bases.

The mail-order bride industry is largely built upon the foundations of military prostitution and sex tourism in that it relies on the racialized and gendered images of Asian Pacific women that have flourished in these institutions. While the supply of Filipina brides exceeds that of women from other countries, the demand for Filipina women is more than a simple market response to product availability. Among many men in the military, and in other occupations as well, the image of the Asian Pacific woman, exemplified by Filipinas, is that of "a doll, a useful toy or something to play with."¹¹⁴ In the early 1990s, a popular T-shirt sold right outside Subic Naval Base in the Philippines read "Little Brown F***ing Machines Powered With Rice."¹¹⁵ Taking a similar view of Asian Pacific women, G&F Tours promotes "fantasy love tours" to Thailand and the Philippines, promising some of "the world's biggest and steamiest nightlife."¹¹⁶ The tour's promotional materials feature photos of nude and semi-nude Thai and Filipina women draped over old white men or engaged in lesbian sex, and contain a three-page account of one man's experience with Thai prostitutes who are described as demure yet unbelievably eager to perform sexual favors day and night.¹¹⁷

Sex tourism of this sort, in conjunction with military prostitution, has firmly established the image of Asian Pacific women as docile playthings. Male consumers import these conceptions into the mail-order bride business, in effect recreating their past exploits or those of other men. It is no coincidence that the mail-order bride industry began to boom after the Vietnam War¹¹⁸ and that former members of the military are founders and common clients of mail-order bride agencies. Since they are no longer stationed in Asia or the Pacific and thus unable to access these prostitutes, the second best, or even better, alternative, is to buy these women so that they can be served within the confines of their own homes. Moreover, one need not have served in the military or traveled internationally to be familiar with these gross conceptions of Asian Pacific women. Popular music and film continuously eroticize Asian women.¹¹⁹

114. Evelyn Yoshimura, *GI's and Racism*, in *ASIAN WOMEN* 74 (1971) (quoting an Asian American soldier describing his fellow soldiers' attitude toward Asian women).

115. Santos, *supra* note 106, at 40.

116. See G&F Tours, *Promotional Materials* (1997), on file with author.

117. See *id.* (featuring a promotional write-up, *Sex and Sin in Siam: Thailand Tour*, by tour participant Howard Wells).

118. See BARRY, *supra* note 15, at 152.

119. See, e.g., DAVID BOWIE, *China Girl*, on *LET'S DANCE* (EMI Records 1983) (implying an erotically-charged power imbalance in the relationship between the male narrator and his "little China girl"); *THE ADVENTURES OF PRISCILLA, QUEEN OF THE DESERT* (Gramercy Pictures 1994) (portraying the film's sole Filipina as a sex-crazed former bar girl who only married her sincere, white Australian husband for his money).

In both prostitution and the mail-order bride business, male constructions of women's sexuality contribute to the latter's commodification. The image of the prostitute has always been that of the bad girl. By distinguishing between good and bad girls, men have effectively controlled the opportunities and lifestyles available to women. Moreover, this distinction provides men with a justification for doing what they please with prostitutes and for regarding prostitutes as less than fully human. Traditionally, only the bad girls serve as male sex objects, while good girls assume the roles of mothers and nurturers. Society nevertheless gives men rights over both good and bad girls; the only real question is which role patriarchal society desires to assign to a given woman.

The mail-order bride is ideal, from the perspective of the male consumer, because she fulfills both sides of a male fantasy: she is both the good and bad girl, proficient both in the kitchen and in the bedroom. He can buy not only her domestic services, but her sexual services as well. The male consumer looks upon her as he does any prostitute, except that he knows once he acquires her, he will most likely be her first, and thereafter only, customer. Confident that she is a virgin or very close to being one, he does not attach to her the stigma of a prostitute and is willing to take her as his wife. *Yet he has reduced her to no more than a prostitute by using money and other attributes of power to secure her.* In order to marry her, he must play a mind game with himself; he wants to have a prostitute and yet have no moral qualms about it. The woman who advertises herself in a catalog fulfills this need by stressing her purity, youth, and domesticity, thereby facially distinguishing herself from a prostitute.

Fully aware of the double-sided fantasy that their clients entertain, agencies in the business of sex tours, prostitution, and mail-order bride services often cross-promote, explicitly offering both marriage partners and prostitutes. For instance, G&F Tours sells not only sex tours and pornographic videos of Asian women, but also catalogs containing photos and addresses of Thai and Filipina women for "our marriage minded prospective tour members."¹²⁰ Viewed in this light, sex tourism, prostitution, and the mail-order bride business are overlapping forms of sexual exploitation.

Intense racism, a hallmark of prostitution, also plays a major role in the mail-order bride process, acting to blur the boundaries between the roles of wife and prostitute. In the same way that U.S. servicemen have viewed Asian Pacific women in Vietnam, Cambodia, Korea, the Philippines, and elsewhere as whores regardless of the women's actual profession,¹²¹ the trafficking of Asian Pacific mail-order brides fulfills the racist

120. G&F Tours, *supra* note 116.

121. In her biography *When Heaven and Earth Changed Places*, Le Ly Hayslip relates how whenever she was on the streets of Vietnam she was taken for a prostitute by military men. Even after she insisted she was not a prostitute, GI's would refuse to believe that she could not be bought if offered the right price. See BARRY, *supra* note 15, at 134.

appetites of male customers. When a man purchases the services of an Asian Pacific prostitute, he demands that she play the roles of both woman and colored-body woman as he imagines them, including all the behaviors he has decided inhere in her culture. The countless socially-constructed racial and sexual stereotypes that bombard women of color come fully into play when Asian Pacific women's sexual services are bought.

Race thus becomes another boundary that a "john" transgresses to satisfy his sexual desire. This racial difference heightens the thrill of being with a prostitute. The racial dynamics are no different in a marriage in which a white man declares from the outset his goal of marrying an Asian Pacific mail-order bride, and proceeds to find her in a catalog. As in traditional prostitution, the mail-order consumer does more than demonstrate an interest in that which is racially different. He actively participates in the sexual commodification of women's bodies, as well as their racial, ethnic, and cultural differences. The act of procuring an Asian Pacific mail-order bride reinforces the familiar racial hierarchy in which white is supreme, and allows the male consumer to believe that his bride, as with Asian Pacific prostitutes, exists for his pleasure.

Racism, like sexuality, creates imaginary grounds for distinguishing between good and bad women in the mail-order bride context. Here, white women—generally Americans or women in other industrialized countries—are portrayed as less fit to be mothers and wives, due to their "non-traditional" values. The Asian Pacific mail-order bride's race/ethnicity then becomes a marker that defines her as a good girl—loyal, eager to please, and a housewife. The pervasiveness of Asian racial and sexual stereotypes explains why the market for Asian Pacific women far exceeds the demand for those European women who face similarly impoverished socioeconomic circumstances. Thus, an Asian-Pacific woman's color becomes a detriment to the extent that it taps into deeply-held stereotypes, thus facilitating her reconceptualization as the ideal mail-order bride.

In short, the racial and sexual stereotyping of Asian Pacific women achieves an important function for men seeking to resist "feminist" challenges that they associate with Western women. Such stereotyping makes racially and sexually oppressive practices acceptable by casting them as natural and desirable when imposed on a given racial or ethnic group. Hence, the belief that Asian Pacific women are submissive and sexually accommodating serves to legitimize men's desire to assert masculine control over their partners and provides an outlet for the exercise of such control.

Above all, the demand for Asian Pacific women as mail-order brides is exploitative, in the same way as prostitution, because it takes advantage of women with few alternatives and little hope for an escape from the poverty of their home countries. In Sandra Pollock Sturdevant and Brenda

Stoltzfus' book, *Let the Good Times Roll: Prostitution and the U.S. Military in Asia*, many of the personal accounts of prostitutes in the Philippines, Okinawa and South Korea reveal one unifying aspiration: to secure the love of a foreigner so that he will marry her. Although GIs repeatedly abandon them for other prostitutes or for their families in the United States, these women continue to hope that ultimately one soldier will take them away from their wretched circumstances. Foreigners are known to take advantage of this situation in Angeles, Philippines by pretending they will marry sex workers in order "to get free sex and a willing domestic."¹²² Clearly, then, most women are not *physically* coerced into becoming mail-order brides or prostitutes, but their circumstances are such that resorting to either hardly represents a choice.

Accordingly, under the law, mail-order brides, commanding no more respect than sanctioned prostitutes, are assigned a legal status like that of prostitutes. Most laws prohibiting prostitution are disproportionately enforced against prostitutes (or mete out punishment *only* to prostitutes), rather than against the controlling pimp or male client. Similarly, with some exceptions, the law penalizes mail-order brides who do not remain in a marriage for the requisite period by requiring their deportation, while their citizen or permanent resident husbands remain unscathed.¹²³ Not until the recent enactment of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 did Congress impose even minimal regulations on mail-order bride agencies, in an attempt to reduce the risk of exploitative mail-order bride marriages before abuse occurs.¹²⁴

It is also common for governments to officially condemn prostitution while actively promoting its growth. In this case, authorities feel compelled to assert that what they are sanctioning is not prostitution. In the

122. Emere Distor, *Sex Tourism & Trafficking: Study Tour Ejected from Angeles Hotel*, in *CONFRONTING SEXUAL EXPLOITATION*, *supra* note 108, at 71, 73.

123. In the United States, a mail-order bride receives resident status on a conditional basis. The conditional period lasts for two years. Prior to the last 90 days of this period, both spouses must petition the Immigration and Naturalization Service (INS) to remove the wife's conditional status. See INA, *supra* note 51, § 216(c), 8 U.S.C. § 1186a(c) (1994). Removal is contingent on the INS' finding that the underlying marriage was valid and continues to exist. The wife may obtain a waiver of this joint petition requirement, and still graduate to permanent resident status, if she is able to show, for example, that her spouse batters her or her children, or that she would suffer "extreme hardship" if she were deported. *Id.* Although the law reflects efforts to minimize the potential for abuse against women immigrating on the basis of marriage during the conditional period, the necessity to remain in the marriage for two years in order to fulfill the joint petition requirement places many women at the mercy of their husbands, who not uncommonly use the threat of deportation to control their new wives. Moreover, women who are unfamiliar with U.S. law and the legal system, and not financially independent, as with many mail-order brides, are at an immeasurable disadvantage in the marriage. See Anderson, *supra* note 95, at 1420-22; Wendy Lin, *Is INS Hindering Abused Wives?: Rules Said to Undermine Law Meant to Help Them*, NEWSDAY, July 8, 1991, at 21; Deanna Hodgkin, 'Mail-Order' Brides Marry Pain to Get Green Cards, WASH. TIMES, Apr. 16, 1991, at E1.

124. See Part III for a discussion of the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) affecting the mail-order bride business.

areas neighboring U.S. military bases in the Philippines, government officials euphemistically called the prostitutes “entertainers” or “hospitality girls.”¹²⁵ Similarly, in the mail-order bride industry, the business’ promoters and clients refer to the women as “pen-pals,” despite the ultimate intent of all parties involved to consummate a marriage. Although the Philippine government enacted a law banning the establishment of mail-order bride agencies and the solicitation of Filipina women for mail-order bride marriages, the prevalence of mail-order bride activity in the Philippines suggests that the law is largely unenforced, as with prohibitions on prostitution.¹²⁶

Prostitution is in fact so widespread in some Asian countries that it no longer shocks the conscience of the local population to prostitute pre-pubescent girls.¹²⁷ This indicates a normalization of prostitution as a profitable, acceptable institution. The mail-order bride business is thus an unsurprising outgrowth in a society in which prostitution is rampant; offering oneself through a mail-order catalog, after all, cannot be any worse than offering oneself on the street, particularly when the prospect of a foreign husband is much higher in the mail-order bride business. As Kathleen Barry, among others, points out, prostitution has become an international industry,¹²⁸ in which women are marketed and trafficked as readily as canned goods. This, in turn, has opened the door to trafficking in women, both as prostitutes and as mail-order brides, to meet the otherwise unsatisfied marital and sexual demands of Western men.

Although prostitution is inherently sexually exploitative, marriage is not necessarily so. The mail-order bride need not, and probably does not, feel she is a prostitute—but the scenarios are not dissimilar: it would be oversimplifying to distinguish mail-order brides from prostitutes simply because they hold a marriage license. Any man that sexually exploits and commodifies his wife is for all purposes akin to a pimp or “john.” A pimp entices hopeless and dejected women with gifts, kindness, and promises of material happiness, only to later deny her these things while threatening her physical safety if she tries to leave. He controls her by instilling fear in her. He convinces her that she is worthless and enforces dependency on him, while selling her sexual services for his benefit.

125. Santos, *supra* note 106, at 39.

126. See *id.*; *RP Mail-Order Brides in Demand*, *supra* note 87.

127. For instance, Leonilla Olayres, a mother in the Philippines, willingly revealed that on five occasions in one year, she delivered her two daughters, aged 10 and 12, to a Japanese man, for cash. A karaoke system was purchased in part with the money earned from these transactions. Countless girls are sold to brothels so that the family can earn money for medical care or simply basic necessities. It is estimated that more than a million girls and boys, aged 17 and younger, are prostituted in Asia. The demand for girls—virgin girls—is increasing as foreigners seek to avoid contracting H.I.V., which is spreading throughout Asian countries in part because of the trafficking of prostitutes internationally. See Nicholas D. Kristof, *Asian Childhoods Sacrificed to Prosperity's Lust*, N.Y. TIMES, Apr. 14, 1996, at A1.

128. See BARRY, *supra* note 15, at 165.

Similarly, a mail-order bride is often so thankful that a man is willing to remove her from her existing circumstances that she readily accepts his offer of marriage and willingly enters her new role as sexual and domestic servant. As one satisfied customer beamed: "She is spoiling me, though, with all of the attention I get, all of my nails manicured, gives me a shower daily, body massage nightly, shines my shoes . . . She is well worth the price of your catalog."¹²⁹ Subjecting oneself to such a subordinate position, however, frequently renders one susceptible to further abuse and control by one's spouse. While the degree of control that a pimp exercises over a prostitute exceeds that which a mail-order bride agency exerts over the women it advertises, here it is the male consumer who assumes the role of the pimp—and the john—and who makes it difficult for the mail-order bride either to leave the marriage or to preserve the relationship should her spouse desire otherwise.

Radical feminism's concept of female subordination as the sexualization of female inequality¹³⁰ is pertinent in this context, in that a mail-order bride's subordination is rooted in the male definition of masculinity and femininity, and in the pervasiveness of sexuality in our social lives. Men are socialized to feel entitled to women as the means of satisfying their sexual needs. Male clients of mail-order bride agencies, therefore, find it permissible to purchase women's sexual services, even if it begins with purchasing only their addresses and pictures. Furthermore, they are attracted to the subordinate image that each mail-order bride conveys in promoting her wifely attributes.

However, if this conceptualization is applied too broadly we risk overlooking the inequality of power created by differences in class and race/ethnicity, in addition to gender. As demonstrated above, sexism alone cannot fully explain the sexual subordination that occurs in a mail-order bride marriage. The blatant racism that also serves as a foundation of the industry is apparent in the enormous demand for Asian Pacific women and the stereotypical characteristics they are deemed to possess. This might more accurately be termed ethnic (rather than racial) discrimination, as it often involves Asian Pacific men seeking Asian Pacific women of a different nationality. For instance, some Japanese men prefer non-Japanese Asian women because they are "easier to control than their Japanese counterparts."¹³¹ Even in the less common instance in which there is no racial or ethnic differential, as with Chinese American men who marry mail-order brides from mainland China, this dynamic of subordination still

129. BARRY, *supra* note 15, at 157.

130. See, e.g., Catharine A. MacKinnon, *A Feminist/Political Approach: Pleasure Under Patriarchy*, in THEORIES OF HUMAN SEXUALITY 65, 65-70 (James H. Geer & William T. O'Donohue eds., 1987).

131. Suvendrini Kakuchi, *Japan: Landmark Court Ruling Upholds Rights of "Mail-Order Brides"*, Inter Press Service, Feb. 21, 1991, available in LEXIS, News Library, Wires File.

persists.¹³² Regardless of the specific circumstances of an Asian Pacific mail-order bride or prostitute's situation, an isolated examination of sexism, classism, or racism/ethnicism alone will likely fail to fully capture the relational dynamics leading to her subordination.

Therefore, in order to meaningfully apply radical feminism's analytical framework to Asian Pacific women's experiences, its focus on gender to the exclusion of race/ethnicity and class must be avoided.¹³³ In doing so, one ultimately finds that it is not so much an Asian Pacific mail-order bride's gender, race/ethnicity, or class per se that is eroticized, but rather the *inequality of power* produced by the hierarchy of gender, class, and race/ethnicity. Thus, the ability of the consumer husband to create dependency and exercise control over a woman is what drives male demand for mail-order brides, just as these same factors underlie the demand for prostitutes. At the most fundamental level, the subordination of mail-order brides derives from the intersection of the same social, economic, and cultural forces that force women into prostitution.¹³⁴ There are, of course, differences between prostitution and mail-order bride marriages. However, such differences do not erase the similarities in form and substance, nor the undeniable linkage between them as intertwined institutions of sexual exploitation.

III. MAIL-ORDER BRIDES AND INVOLUNTARY SERVITUDE

A. *The Two-Year Conditional Residency Period Places Mail-Order Brides in a Situation That Can Lead to Involuntary Servitude.*

In the United States, the legal framework for obtaining permanent residency through marriage forces a mail-order bride to rely almost entirely on her citizen husband's continuing goodwill. This process of enforced dependency may begin even before the marriage itself. If the couple does not wed in the bride's home country, the groom-to-be must first apply for a fiancée visa, so that the bride may enter the United States. After the bride arrives, gets married, and fills out the appropriate paperwork with her new husband, she receives permanent resident status on a conditional basis.¹³⁵ Regardless of where the marriage took place, she will remain in this conditional status for the next two years. Ninety days prior to

132. See Leung, *supra* note 22.

133. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN.L.REV. 581 (1990).

134. For an "intersectionality" analysis of race, gender, and other identity categories in the context of rape and domestic abuse, see Kimberlé Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, in CRITICAL RACE THEORY 357 (Kimberlé Crenshaw et al. eds., 1995).

135. See INA, *supra* note 51, § 216(a), 8 U.S.C. § 1186a(a) (1994). Women who do not marry within the 90-day period are subject to deportation.

the end of the period, she and her spouse must jointly petition for removal of her conditional status so that she can acquire unrestricted permanent residency. The Immigration and Naturalization Service (INS), however, will not remove her conditional status unless the couple demonstrates that the underlying marriage is viable and was not fraudulent. In other words, she must convince the INS that she and her husband married with the intent to spend their lives together and that the marriage remains intact.¹³⁶

To reduce the possibility that a woman might remain with an abusive spouse in order to attain permanent residency, the Immigration and Nationality Act (INA) now provides for a waiver of the joint petition requirement in prescribed circumstances. The most significant provision of this waiver is based on spousal battering, which, if demonstrated to the INS' satisfaction, entitles the woman to self-petition for removal of her conditional resident status.¹³⁷ Despite these waiver provisions, the two-year conditional status period for mail-order brides can operate to create conditions equivalent to involuntary servitude, in that a mail-order bride often has little choice but to subject herself to her new husband's control in order to maintain her residency status.

Furthermore, other factors create an enormous potential for abusive relationships, both during the two-year conditional period and throughout the marriage. Often isolated by limited English skills and lacking an understanding of the U.S. legal system, mail-order brides are understandably fearful of authority, particularly that of the INS. A study reveals that the most common obstacle to seeking social services among Latina and Filipina immigrants (both mail-order brides and others) is fear of deportation.¹³⁸ According to Alice Fernandez, Director of Victim Services Agency in the Bronx, some immigrant women are effectively held hostage by their husbands. Nevertheless, these women respond that they "would rather be dead in this country than go back home."¹³⁹ As a self-protective mechanism, many women develop an aversion to confrontation; others who come from cultures in which marital harmony is highly valued may consider it shameful to reveal marital problems. These tendencies make them less likely to seek assistance for spousal abuse through the courts or

136. Concern over fraudulent marriages in the mid-1980s led to the adoption of the Immigration Marriage Fraud Amendments, which require heightened scrutiny and more in-depth, personal questions during INS interviews to determine the validity of a marriage. INS examiners enjoy broad discretion in selecting the questions they will use to determine whether the couple's marriage is bona fide; immigration practitioners note, however, that becoming pregnant or having a child is almost universally accepted as proof of a valid marriage, with few further questions asked.

137. See INA, *supra* note 51, § 216(c)(4)(C), 8 U.S.C. § 1186a(c)(4)(C) (1994).

138. See CHRIS HOGELAND & KAREN ROSEN, DREAMS LOST, DREAMS FOUND: UNDOCUMENTED WOMEN IN THE LAND OF OPPORTUNITY 17 (1991). A fear of deportation, however does not necessarily mean that a woman entered the country illegally through a fraudulent marriage, but that any risk of deportation (and a return to previously impoverished circumstances as well as the prospect of social ostracism in her home country), no matter how slight, is to be avoided. See *id.*

139. Vivienne Walt, *Immigrant Abuse: Nowhere to Hide*, NEWSDAY, Dec. 2, 1990, at 8.

other service organizations.¹⁴⁰ In addition, women with children may not separate from their spouses for fear that their husbands, having greater financial resources, would gain custody of the children. Factors such as these, combined with a lack of independent finances, multiply the tangible and psychological barriers to seeking help for spousal abuse. Such circumstances may also make it overwhelmingly difficult for a mail-order bride to successfully navigate the self-petition process for permanent residency and make effective use of the waiver provisions.¹⁴¹

Recognizing these problems, in 1996 Congress for the first time attempted to regulate the mail-order bride business and enable women to inform themselves about the potential for exploitation in mail-order marriages. The 1996 amendments to the INA, enacted in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), cover "international matchmaking organizations," defined as those entities that do "business in the United States and for profit offer[] to United States citizens" or permanent residents "dating, matrimonial, or social referral services to nonresident noncitizens" through the exchange of names, phone numbers, addresses, or statistics, the selection of photographs, or "a social environment provided by the organization in a country other than the United States."¹⁴² The amendments require that each international matchmaking organization disseminate to potential mail-order brides upon recruitment "such information as the Immigration and Naturalization Service deems appropriate, in the recruit's native language, including information regarding conditional permanent residence status and the battered spouse waiver," general information on permanent resident status, marriage fraud penalties, and "the unregulated nature of the business."¹⁴³ Violations of the information dissemination requirement are punishable by a fine of up to \$20,000.¹⁴⁴ Nevertheless, such information alone is insuffi-

140. See, e.g., Hodgin, *supra* note 123.

141. See Linda Kelly, *Stories from the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act*, 92 NW. U. L. REV. 665, 675-78 (1998). The waiver applies when a woman or her children have been subjected to battering or extreme cruelty by her husband, and is available regardless of the woman's current marital status. See 8 C.F.R. § 216.5(e)(3) (1998). "Extreme cruelty" explicitly encompasses sexual abuse, sexual exploitation and forced prostitution, among other acts. See *id.* However, the waiver is still discretionary, and applications must be accompanied by credible evidence of the abuse. In cases of physical violence, reports from social service agency personnel are acceptable proof, and for extreme mental cruelty the reports of licensed clinical social workers may be submitted. See *id.* Thus, women who are both aware of the waiver and have access to social services may benefit. Realistically, though, a large population of abused women will not be able to utilize the waiver due to the insurmountable barriers discussed in the text above.

142. IIRIRA, *supra* note 6, § 652(e)(1)(A). The provision expressly excludes from this definition "matchmaking organizations of a religious nature." *Id.* § 652(e)(1)(B).

143. *Id.* § 652(b)(1). The INS on July 16, 1997, announced its intent to promulgate regulations on this information dissemination requirement and solicited comments from the public on the substance of such regulations. The public comment period ended September 15, 1997. See International Matchmaking Organizations, 62 Fed. Reg. 38,041 (1997) (to be codified at 8 C.F.R. pt. 204).

144. See IIRIRA, *supra* note 6, § 652(b)(2)(A). Section 652 also directs the Attorney General, in

cient to prepare mail-order brides for the possibility that they will encounter abusive conditions. Many brides do in fact experience abuse,¹⁴⁵ and all brides are at risk of deportation if they attempt to leave the marriage.¹⁴⁶ In these situations, some mail-order brides may qualify as involuntary servants from a judicially-recognized legal perspective, as this Comment demonstrates next.

B. Federal Law on Involuntary Servitude: Is It Applicable?

Involuntary servitude, whether coerced through physical force, legal sanctions, or threats of either,¹⁴⁷ is illegal under the Thirteenth Amendment.¹⁴⁸ An enforcing statute, 18 U.S.C. § 1584, prohibits the importation of any person in a condition of involuntary servitude.¹⁴⁹ This Comment proposes that mail-order brides may be brought within the definition of involuntary servitude as construed by the courts under the Thirteenth Amendment and § 1584.¹⁵⁰ Since, as with prostitution, the legal system traditionally recognizes involuntary servitude only in the public sphere, analogizing mail-order brides to involuntary servants requires breaking down the public/private sphere distinction. While the caselaw seems to limit its scope to public-sphere relationships, one might argue that because Congress recognized slavery as both a public, economic institution, and a

consultation with the Commissioner of the INS and the Director of the Violence Against Women Initiative of the Department of Justice, to conduct a study of mail-order marriages to determine, among other things, the number of such marriages and the extent of marriage fraud and domestic abuse in mail-order bride marriages. *See id.* § 652(c).

145. *See, e.g.,* Hodgin, *supra* note 123.

146. Even if a bride is able to begin the self-petition process, the domestic abuse waiver is far from automatic. *See* Lin, *supra* note 123.

147. *See* Kozminski v. United States, 487 U.S. 931, 948 (1988).

148. The Thirteenth Amendment states: "neither slavery nor involuntary servitude . . . shall exist within the United States . . ." U.S.CONST. amend. XIII, § 1. It is not limited, by its terms, to state action.

149. Indentured servitude, a form of involuntary servitude, is also illegal under the Thirteenth Amendment and an enforcing statute, 18 U.S.C. § 1581, which prohibits peonage. Peonage is a form of involuntary servitude in which labor is coerced to pay off debt, whether through physical force, legal sanctions, or threats of either. *See* Clyatt v. United States, 197 U.S. 207, 215 (1905); Peonage Cases, 123 F. 671, 682 (M.D. Ala. 1903). Section 1581 would thus seem to be the most applicable section for the typical mail-order bride situation, in which a woman provides sexual and domestic services in exchange for residency in the United States and the husband's tacit agreement not to have her deported. However, peonage represents a subset of the activities prohibited by § 1584, and courts have thus generally tended to focus on § 1584, since its definition of involuntary servitude is conveniently broad.

150. In addressing the meaning of "involuntary servitude" under the Thirteenth Amendment, the Supreme Court has stated: "The word servitude is of larger meaning than slavery, as the latter is popularly understood in this country, and the obvious purpose was to forbid *all shades and conditions* of African slavery." Slaughter-House Cases, 83 U.S. 36, 69 (1873) (emphasis added). Female African slaves were commonly forced to provide sexual services to their masters, and hence prohibiting "all shades and conditions" of chattel slavery could therefore be read to include prohibiting coercion of sexual labor, including that of mail-order brides. The Thirteenth Amendment has also been used to find involuntary servitude in cases involving prostitution. *See, e.g.,* Pierce v. United States, 146 F.2d 84 (5th Cir. 1944).

private, personal, and social one, the Thirteenth Amendment should apply to the private sphere when the requisite coercion of services exists.¹⁵¹

Although most criminal convictions for imposing involuntary servitude have involved physically coercive wage labor,¹⁵² there is precedent for finding involuntary servitude even in the absence of actual physical coercion. As early as 1903, courts have recognized that voluntarily entering into a contract does not automatically negate a finding of involuntary servitude when the relationship thereafter became involuntary due to *threats* of physical or legal coercion.¹⁵³ Thus, the fact that the mail-order bride willingly enters into a marriage should not bar her from later meeting the definition of involuntary servitude. The cases also establish that being in involuntary servitude and failing to escape when the opportunity existed does not defeat a finding of involuntary servitude.¹⁵⁴

Two federal cases may help to bring mail-order brides, at least those demonstrating certain circumstances, within the meaning of involuntary servitude. In *United States v. Kozminski*,¹⁵⁵ farm operators threatened mentally ill farm workers with physical abuse and reinstitutionalization, and used psychological coercion to keep the men working on the farm. The U.S. Supreme Court held that the use or threatened use of physical or legal coercion is a necessary element of involuntary servitude under the Thirteenth Amendment and its enforcing statute, § 1584. Psychological pressure alone is insufficient, but a victim's "special vulnerabilities" are relevant in determining whether physical or legal coercion or the threat of either could plausibly have compelled the victim to serve against her will.¹⁵⁶ The Court noted, as one possible example, that threatening an immigrant with deportation could constitute the threat of legal coercion necessary to create involuntary servitude.¹⁵⁷

Cases finding involuntary servitude have in fact involved threats of deportation, although physical violence or restraint (beatings, use of weapons, physical confinement) or threats of such treatment (with the apparent ability to carry them out) were also present. For example, in 1995 the First Circuit in *United States v. Alzanki*¹⁵⁸ reversed a lower court decision,

151. See Joyce E. McConnell, *Beyond Metaphor: Battered Women, Involuntary Servitude, and the Thirteenth Amendment*, 4 YALE J.L. & FEMINISM 207 (1992).

152. See *U.S. v. Alzanki*, 54 F.3d 994, 1000 n.3 (1st Cir. 1995), *cert. denied*, 516 U.S. 1111 (1996) ("Most peonage and involuntary servitude cases in recent years have involved migrant agricultural workers.").

153. See *Peonage Cases*, 123 F. at 682.

154. See, e.g., *Bernal v. United States*, 241 F. 339, 341-42 (5th Cir. 1917), *cert. denied*, 245 U.S. 672 (1918) (finding threats of deportation sufficient to show coercion).

155. 487 U.S. 931 (1988).

156. *Id.* at 948. Justice Brennan, in his concurring opinion, supported an interpretation of involuntary servitude that would prohibit any means of coercion that breaks another person's will such that she or he is reduced to a condition of servitude resembling that of a chattel slave. See *id.* at 961-65.

157. See *id.* at 948.

158. 54 F.3d 994 (1st Cir. 1995), *cert. denied*, 516 U.S. 1111 (1996).

finding that a household employee had been subjected to involuntary servitude. In accordance with the *Kozminski* decision, the court stated that such servitude exists when "an individual, through an actual or threatened use of physical or legal coercion, intentionally causes the oppressed person reasonably to believe, given her 'special vulnerabilities,' that she has no alternative but to remain in involuntary service for a time."¹⁵⁹ The court thus reaffirmed that physical restraint need not be present to convict the defendants of violating § 1584, and held that legal coercion could be shown by evidence of "special vulnerabilities" of the person in servitude, which are to be determined by reference to the victim's "background and experience."¹⁶⁰

In *Alzanki*, the employer, in addition to physically abusing the domestic worker, told her that she would be shot if she left the home, and threatened to deport her as well as prevent her from returning to Sri Lanka, her native country. The domestic employee, having worked in Kuwait prior to being brought to the United States, was aware that alien movement was highly restricted in Kuwait, and had reason to believe that Americans treated aliens equally harshly. Moreover, she knew that if her employment with Alzanki were terminated, she would immediately lose her visa status and be subject to deportation. The court found these factors relevant in determining that Alzanki's threats could have reasonably caused her to work against her will, although her fears would not have been reasonable had she been an American citizen.¹⁶¹

In the mail-order bride context, the degree of coercion necessary to establish involuntary servitude could presumably be met when a husband batters or threatens battering to compel a mail-order bride's domestic and sexual services. In accordance with *Alzanki*, depending on a mail-order bride's particular personal background, threats of immigration sanctions may be sufficient coercion as well. A court may use factors such as the bride's previous financial circumstances or her lack of resources and social networks to find sufficient coercion in the marriage.

Basing involuntary servitude on legal coercion alone in this way, though possible, would presumably be more difficult than establishing such servitude on the basis of both physical and legal coercion. But if a finding of involuntary servitude instead depended, at a minimum, on the existence of psychological coercion, many mail-order brides would be deemed to be in conditions of involuntary servitude. For instance, a husband might behave in such a way as to make the bride believe that she has no choice but to perform household chores for him. Nonetheless, regardless of how much psychological pressure a woman might be under, courts

159. *Id.* at 1000.

160. *Id.* at 1000, 1002.

161. *See id.* at 1001 n.4.

are unlikely to recognize this alone as creating a condition of involuntary servitude.

The courts would additionally have to decide, as a threshold issue, whether the Thirteenth Amendment can pierce the veil of the intimate relationship between husband and wife. The larger issue here is whether one can judicially confine all the varied consequences of familial relationships to the private sphere, in disregard of their public-sphere aspects. Women's unpaid labor in the home, for instance, has vast implications for the larger national economy, yet remains within the private sphere. Ideally, involuntary servitude should be recognized regardless of the sphere in which it occurs; alternatively, the institution of marriage could be deprivatized in accordance with its undeniable public role, thus opening the door for legal intervention to protect its participants.¹⁶² However, it is vital to recognize that, even with such changes, since not all brides suffer from domestic abuse or overt threats of deportation, many will not meet the definition of involuntary servitude, regardless of the courts' interpretation of the public/private sphere dichotomy.

IV. LEGAL SOLUTIONS

If mail-order brides may be construed as prostitutes or victims of involuntary servitude, there will be corresponding changes in the legal means available to stem the mail-order bride business. Part II presented the case for regulating mail-order marriage as a form of prostitution, based on strong similarities in the social, historical, and cultural underpinnings of the two institutions. In Part III, we saw that the Thirteenth Amendment and its enforcing statutes provide an uncertain remedy for mail-order brides, who may be unable to prove domestic abuse or threats of deportation by their husbands. This limited applicability of protections against involuntary servitude further militates towards adopting remedies applicable to prostitution. Moreover, treating mail-order marriage as prostitution, rather than slavery, may have practical advantages as well.

For example, although the law is frequently not enforced against men who hire prostitutes, laws forbidding prostitution have recognized the consumer as an offender. In the context of slavery, however, consumers per se—those that buy the products of slave labor—are not subject to punishment. Conceptualizing mail-order brides as prostitutes, as opposed to slaves, thus makes male consumers potentially subject to legal penalties. In addition, the use of the term "prostitution" invokes the gendered aspects of the mail-order bride industry in a way that the term "slavery"

162. For example, a number of states have abolished laws which held that it was not a crime for a man to rape his wife, thereby expanding the degree of permissible state intervention into the marital relationship in order to protect one spouse from the other. *See, e.g.*, CAL. PENAL CODE § 262 (West 1998).

does not. As a transaction that entails a woman ultimately giving her body to a man in exchange for material wealth, the term "prostitution" captures the essence of mail-order bride activity.¹⁶³

Furthermore, a mail-order bride abandoned by her husband frequently is unable to remarry in her native country should she return there, since she has now acquired the stigma of a woman who has been used by another man, a stigma also borne by prostitutes. Slaves, on the other hand, are not generally blamed for their condition, and being a slave does not in itself carry a similar stigma. Here, too, the mail-order bride industry is better characterized as prostitution. These additional factors reinforce Part II's conclusion that legal efforts to stem the mail-order bride business should adopt remedies used in the context of prostitution.

A. Racketeer Influenced and Corrupt Organizations Act (RICO)

One possible remedy is a claim brought under the Racketeer Influenced and Corrupt Organizations Act (RICO).¹⁶⁴ RICO prohibits a number of organized criminal activities. Included among them are violations of the Mann Act (also known as the White Slave Traffic Act), aimed originally at halting the importation of immigrant prostitutes into the United States.¹⁶⁵ Mann Act violations are the most likely predicate acts for the purposes of a RICO suit, whether criminal or civil, against mail-order bride agencies and their male consumers.¹⁶⁶

Significantly, RICO provides for a private cause of action.¹⁶⁷ This ability to bring a private suit is advantageous because it affords mail-order brides the ability to remedy their injuries independent of the state's prose-

163. On the other hand, the term "slavery" may convey a condition that is universally condemned and regarded as incompatible with virtually any standard of human rights. In this sense, since not all people support the elimination of prostitution, characterizing mail-order brides as slaves might be viewed as a more effective means of mobilizing people to oppose the mail-order bride industry.

164. This cause of action is codified in 18 U.S.C. § 1964(c) (1994). RICO is just one possible source of legal remedies; this note explores RICO as an attractive option because it penalizes those who profit from the exploitation of women, rather than the women themselves. It is by no means, however, the only possible legal solution to the problem.

165. See 18 U.S.C. §§ 2421-24 (1994).

166. See 18 U.S.C. § 1961(1) (1994) for a list of predicate acts defined as "racketeering activity."

167. In her discussion of civil RICO as a remedy for forced prostitution, Lan Cao explicitly addresses only those women who are procured for prostitution forcibly or through fraudulent means. She states that "[w]omen who choose prostitution as a mode of employment will simply not exercise the option of instituting civil [RICO] suits." Lan Cao, *Illegal Traffic in Women: A Civil RICO Proposal*, 96 YALE L.J. 1297, 1297 n.1 (1987). In the context of mail-order brides, Cao applies her analysis to mail-order bride agencies that "are fraudulent organizations used as prostitution fronts," as opposed to "legitimate businesses set up to offer American men correspondence and marriage to foreign women." *Id.* at 1301. This Comment suggests that it is unnecessary to limit civil RICO remedies to women who are illegally trafficked in this manner. A mail-order bride who, after going through the typical agency-controlled channels, willingly comes to the United States with the intention of being married and in the absence of fraud or physical force should also be within the parameters of a civil RICO remedy.

ctorial arm. In addition, private claimants may establish predicate acts under a lower standard of proof—preponderance of the evidence—rather than guilt beyond a reasonable doubt, the standard required in criminal cases.¹⁶⁸

In essence, to establish a civil violation of RICO, a plaintiff must show the existence of (1) an “enterprise” (2) engaged in a “pattern” of (3) “racketeering activity” that has caused (4) injury to the plaintiff’s business or property.¹⁶⁹ A mail-order bride agency would appear to satisfy these elements. Under RICO, an individual, legal entity or “a group of individuals associated in fact” can constitute an enterprise.¹⁷⁰ Hence, a mail-order bride agency would appear to be an enterprise for these purposes, whether engaged in the “legitimate” promotion of pen pal and marital relationships or in “illegitimate” forced prostitution; whether existing as a legal business entity or merely an informal group of people engaging in the mail-order bride business; and regardless of the number of people operating the mail-order bride agency.

A mail-order bride plaintiff can also prove a “pattern” of “racketeering activity” by showing that an agency (or a male consumer constituting an enterprise) committed two of the predicate acts outlined in § 1961 of RICO within a ten-year period. Such acts include violations of the Mann Act, which prohibits “persuad[ing], induc[ing], entic[ing], or coerc[ing] any individual to travel in interstate or foreign commerce, to engage in prostitution.”¹⁷¹ Based on this Comment’s analysis of the mail-order bride business as a form of prostitution, recruiting women to market themselves as available brides can be construed as a violation of the Mann Act, and hence, a predicate act under RICO. Mail-order agencies engage in the requisite pattern by recruiting multiple women.¹⁷² Although less common, a male consumer may establish a pattern by acquiring two or more mail-order brides in succession (serial sponsorship).

The Mann Act until 1986 explicitly recognized that a violation could occur with or without the woman’s consent to be transported.¹⁷³ Congress’ removal of this language from the present provisions of the Mann Act might suggest a desire to make it more difficult to establish a violation.

168. See *id.* at 1310 n.68 (citing G. Robert Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 NOTRE DAME L. REV. 237, 259-60 n.59 (1982) and *Sedima S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 491 (1985)).

169. 18 U.S.C. §§ 1962(a), 1964 (1994).

170. 18 U.S.C. § 1961(4) (1994).

171. 18 U.S.C. § 2422 (1994).

172. Courts are divided as to the degree of relationship needed among predicate acts to establish a pattern, although they all require that the predicate acts be related to the enterprise’s affairs. See Cao, *supra* note 167, at 1310. Where an agency’s affairs involve the making of mail-order bride marriages, an agency that induces women to travel overseas to enter into mail-order bride marriages, and thus, prostitution, would appear to engage in a “pattern of racketeering activity” connected to the affairs of the enterprise.

173. See 18 U.S.C. § 2422, Historical and Revision Notes (1994).

However, the present provisions do not *require* that the woman be transported without her consent in order to claim a violation, and previous cases holding that a woman's consent to transport is not dispositive are still good law.¹⁷⁴ Setting aside the fact that consent is virtually a non-issue given the circumstances surrounding a woman's choice to be a mail-order bride or prostitute, even if one argues that a mail-order bride technically consented to travel overseas to enter into a mail-order bride marriage (induced by a mail-order bride agency or spouse/fiancee), she should still be able to proceed with her suit.

Finally, a woman's body can be viewed as her "property." As such, injury to the bride's body may qualify as injury to the woman's business or property, thereby fulfilling the last statutory element of a private cause of action under RICO.¹⁷⁵ Mail-order bride agencies utilize mail-order brides as instruments for profit: agencies market mail-order brides as commodities, often selecting women for publication in their catalogs on the basis of the women's physical attributes. Although they do not sell the women's bodies per se, they do use photos and videos of the women to sell their addresses and phone numbers, which are in turn the keys to the women themselves. Thus, the women's bodies are essentially the basis of the agencies' profits.

The more difficult question is determining the precise injury to a mail-order bride's body. One would imagine that actual injury to the woman's body due to physical or sexual abuse would certainly suffice. However, beyond immediate bodily damage, which might be difficult to prove, one author has suggested that in the context of forced prostitution, in which the enterprise promoter employs physical coercion or fraud to procure women for prostitution, injury to one's body as property includes lost opportunities.¹⁷⁶ The notion is that but for having been prostituted, the woman's body could have been put to better use. A similar argument can be made for mail-order brides, but its potential efficacy is uncertain, since a judge might not be persuaded that better or more lucrative opportunities were available. If the claim is successful, damages (which are treble damages if a civil violation is found) would take into account the woman's lost wages or lost opportunities.¹⁷⁷

174. *See, e.g.,* United States v. Pelton, 578 F.2d 701, 712-13 (8th Cir. 1978), *cert. denied*, 439 U.S. 964 (1978). ("Whatever [the woman's] degree of willingness to travel may have been, it does not vitiate the illegality of the agreement to transport her for purposes of prostitution.") Hence, even (seemingly) explicit consent on the part of a woman to be transported for the purpose of prostitution does not preclude a violation of the Mann Act. This is consistent with contract law's prohibition against contracts of peonage. Such a principle recognizes that restrictions are appropriate to prevent individuals from bargaining away too much personal liberty as a result of large disparities in bargaining power.

175. *See* Cao, *supra* note 167, at 1313.

176. *See id.* at 1316.

177. *See id.*

While the prospects of meeting the legal requirements of a civil RICO suit are hopeful, mail-order brides may not realistically have the resources or wherewithal to file RICO suits. In the absence of such initiative, the state is free to prosecute mail-order bride agencies under RICO's criminal provisions, on the premise that the agencies constitute enterprises engaged in a pattern of procuring women for prostitution. There is no requirement that the plaintiff suffer injury to her business or property in a criminal RICO suit. However, though the state has invoked RICO to prosecute organized prostitution rings,¹⁷⁸ it may continue to ignore the opportunity to eliminate the mail-order bride industry in this manner.

B. *International Law*

On an international level, several human rights conventions may be invoked to protect mail-order brides. There is a century-long tradition of international treaties aimed at stopping the trafficking of women for purposes of prostitution. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, ratified under the auspices of the United Nations (UN) in 1951 and currently in effect, criminalizes the actions of any person who "[p]rocures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person" or "[e]xploits the prostitution of another person, even with the consent of that person."¹⁷⁹ The Convention does not seek to punish the victims of prostitution, but those that "exploit" prostitution, such as brothel owners and managers. However, it is unclear whether the Convention was meant to address all types of prostitution or only forced prostitution.¹⁸⁰ In this respect, it might be necessary to expand or further define the focus of the Convention so as to clearly include mail-order brides within its scope.¹⁸¹

To remedy this ambiguity, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) and the Coalition Against Traffick-

178. See, e.g., *U.S. v. McLaurin*, 557 F.2d 1064 (1977).

179. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, art. 1, 96 U.N.T.S. 271, 274. Article 28 states that the Convention supersedes earlier conventions dealing with the trafficking of women: the International Agreement for the Suppression of the White Slave Traffic, signed in 1904; the International Convention for the Suppression of the White Slave Traffic, signed in 1910; the International Convention for the Suppression of the Traffic in Women and Children, concluded in 1921; and the International Convention for the Suppression of the Traffic in Women of Full Age, concluded in 1933. These earlier documents lose effect once their signatories ratify the Convention. See 96 U.N.T.S. at 288; see also Nora V. Demleitner, *Forced Prostitution: Naming an International Offense*, 18 FORDHAM INT'L L.J. 163, 172 (1994).

180. See Demleitner, *supra* note 179, at 174.

181. In any case, the United States is neither a party nor a signatory to the Convention, which could impair its usefulness to mail-order brides in this country. See UNITED NATIONS, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL 324 (1997) [hereinafter MULTILATERAL TREATIES]. It has been noted that the 1950 Convention suffers from a lack of enforcement and monitoring mechanisms. See COALITION AGAINST TRAFFICKING IN WOMEN-ASIA PACIFIC, TRAFFICKING IN WOMEN & PROSTITUTION IN THE ASIA PACIFIC 51 (1996).

ing in Women in the early part of this decade created the Draft Convention Against Sexual Exploitation, calling, in part, for an international approach to the mail-order bride business.¹⁸² In the Draft Convention, "sexual exploitation" is defined as "a practice by which person(s) achieve sexual gratification, or financial gain, or advancement, through the abuse of a person's sexuality by abrogating that person's human right to dignity, equality, autonomy, and physical and mental well-being."¹⁸³ Such exploitation specifically includes a "marriage of convenience for the purpose of sexual exploitation."¹⁸⁴

Like the 1950 Convention, the Draft Convention focuses on those who profit from the exploitation of women. Signatory nations specifically pledge to punish those "promoting, profiting from, or engaging in any business involving the matching of women in marriage to foreign nationals."¹⁸⁵ In addition, the Draft Convention requires signatory states to provide assistance to women that are sexually exploited, to enable them to "prosecute their perpetrators."¹⁸⁶ Protection would not be conditioned on the women's citizenship or lack thereof; instead, states would be required to provide such women with "refuge . . . and protection," and to repatriate those who desire to be repatriated.¹⁸⁷ These provisions address, even if only to a limited extent, the practical difficulties that mail-order brides face when they find themselves in abusive and exploitative circumstances without legal resources.

Another international convention useful in this context is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which the United Nations General Assembly ratified in 1981. CEDAW obliges state parties to take "all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."¹⁸⁸ State parties are also required to report regularly to the CEDAW monitoring committee regarding their progress in implementing this convention. Significantly, the CEDAW monitoring committee has recognized that "organised marriages between women from developing countries and foreign nationals" are a form of sexual exploita-

182. See BARRY, *supra* note 15, at 304-05.

183. Proposed Convention Against Sexual Exploitation, (Draft of Jan. 1994), art. 1, *reprinted in* BARRY, *supra* note 15, at 323-44 [hereinafter Draft Convention Against Sexual Exploitation]. According to Dr. Aurora Javate de Dios, Chair of the Asia-Pacific Board of the Coalition Against Trafficking in Women, further revisions to the Draft Convention have been suspended. Its language nevertheless remains noteworthy for future efforts to address trafficking in women and their sexual exploitation, as the document is the product of a series of consultations with numerous experts and women's groups. See Interview with Aurora Javate de Dios, Sept. 11, 1997, Manila, Philippines.

184. Draft Convention Against Sexual Exploitation, *supra* note 183, art. 2(d).

185. *Id.* art. 10(b).

186. *Id.* art. 5.

187. *Id.* art. 9(a).

188. CEDAW, art. 6, 1249 U.N.T.S. 13, 17. The United States is a signatory to the CEDAW, but has not ratified it. See MULTILATERAL TREATIES, *supra* note 181, at 169.

tion.¹⁸⁹

Lastly, the International Covenant on Civil and Political Rights (ICCPR) prohibits slavery and forced labor. As already noted, mail-order brides are subjected to a form of sexual exploitation not unlike prostitution as a result of socioeconomic forces beyond their control; in this way, they can be regarded as coming within the meaning of sexual slavery. In the alternative, depending on the circumstances of the marriage itself, they may also be subjected to actual slavery or forced labor, as demonstrated in Part III. Persons in countries that have accepted the First Optional Protocol under the ICCPR, moreover, may bring complaints alleging breaches of the ICCPR to the International Human Rights Committee in Geneva.¹⁹⁰ International law, when and where it may be enforced, thus provides a number of possible avenues for curtailing the operations of mail-order bride agencies.

CONCLUSION

Mail-order bride marriage need not include overt violence or any particular circumstances to assume the attributes of prostitution; the very nature of what it offers (sexual and domestic labor), the origins of the mail-order bride industry, the inequities surrounding the process, and the manner in which these services are acquired by male consumers all mark mail-order bride marriages as being remarkably similar, if not identical, to prostitution, particularly transnational prostitution.

In addition, a mail-order bride's situation may or may not fall within the prohibition on involuntary servitude, depending on the manner in which that condition is defined. An expansive interpretation of involuntary servitude would potentially encompass mail-order bride marriage. Such a reading draws support from the premise that the enslavement of women occurs whenever women are subject to sexual exploitation or sexual violence and are unable to alter the external conditions which force them to submit to such exploitation. Here, the primary, if not exclusive, reason that women offer themselves as mail-order brides is to escape from economic and social despair. Furthermore, the racial and sexual dynamics that lead male consumers to acquire Asian Pacific mail-order brides provide the basis for sexual exploitation, beginning at the courting stage and continuing during the marriage. These conditions alone could qualify mail-order brides as involuntary servants under this broader reading. In addition, as demonstrated in Part II, the sexual subordination of mail-order brides mirrors the type of exploitation experienced by prostitutes. As a re-

189. Sabina Lauber, *Pertinent Australian Laws and Other International Instruments on Inter-Cultural Marriages, Migration, and Prostitution*, in *CONFRONTING SEXUAL EXPLOITATION*, *supra* note 108, at 18, 20.

190. *See id.* Although the United States is a party to the ICCPR, it is neither a party nor a signatory to the Optional Protocol. *See MULTILATERAL TREATIES*, *supra* note 181, at 121, 159.

sult, we may then find that mail-order brides as a class are subject to involuntary servitude, with prostitution forming the involuntarily provided service.

On the other hand, a stricter interpretation of involuntary servitude, such as that used by the courts, limits involuntary servitude to only those mail-order brides who experience a certain degree of coercion, whether physical or legal. This restriction, taken together with the first finding that mail-order bride marriage is tantamount to prostitution, leads to the conclusion that the mail-order bride industry is invariably in the business of prostitution, but engenders conditions of involuntary servitude only in limited situations. Because viewing mail-order bride marriages as prostitution frees available legal remedies from these limitations, tactics to combat this business can more profitably draw on existing laws dealing with prostitution.

The greatest barrier to recognizing the mail-order bride industry as a form of prostitution or involuntary servitude is the artificial shroud of marriage that protects the agencies and their male clients from being identified as culprits. Until it is realized that there is little or no difference between mail-order brides and prostitutes or slaves, with respect to the degree of coercion, sexual exploitation, and abuse they suffer, the law will continue to immunize mail-order bride husbands and agencies from actions otherwise criminal in the public domain.

