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TO HAVE AND TO HOLD:

A POSTMODERN FEMINIST RESPONSE TO THE MAIL-ORDER BRIDE INDUSTRY

Kate O’Rourke*

I. INTRODUCTION

There are, of course, attractions for men other than the escape from feminist values to the traditional, family orientated [sic] females. We all know [P]hilippine women make perfect wives. In the [P]hilippines wives are very loyal house wives, As [sic] a mail bride they make excellent mailorder brides for [A]merican [sic] men . . . And the Filipina believes that men must have regular sexual activity. It is the nature of the beast. It is very unusual for a Filipina wife not to make herself available for her husband whenever requested: “It’s just a natural part of marriage.” She is there, among other things, to be a provider of quality sex. Headaches are fairly rare!

The above enticement is just one example of the hundreds of Internet sites currently facilitating the “mail-order bride” industry. The industry has boomed in recent years, with an estimated 2,700 matchmaking agencies worldwide, 500 of which can be found in the United States. While much of the recent boom can be attributed to the Internet, the industry in its modern form emerged as early as the 1970’s when one American-based entrepreneur decided to expand his Asian import business. Although proponents and those who profit from the industry describe the services provided through these agencies as akin to “pen-pal clubs,” the

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1. Homepage of www.hyman.ca, a website featuring access to Filipina “mail-order brides,” as well as pictures of deflowered hymens (last visited May 29, 2002).
2. A search for “mail-order bride” at www.google.com, on May 29, 2002, produced 55,500 hits. 41 of the first 50 hits were links to introduction agencies, or informational sites on the mail-order bride process. Additionally, one informational site contains links to a total of 270 Internet sites promoting mail-order bride services. See www.aarens.com (last visited May 29, 2002).
industry has faced heavy criticism, described by one author as "rel[ying] on stereotypes and transnational economic inequalities to support a profit-making commercial market[,] ... nurtur[ing] structures of subordination based on race, sex, and class within countries, among nations, and between individuals."\(^5\)

This paper will analyze the industry, including its current legal framework, through the lens of postmodern feminist legal theory. Part II provides a broad overview of the emergence of the mail-order bride industry, including the factors that perpetuate its existence, the interplay between feminism and international law, and the legal responses to the industry, focusing on the United States and the Philippines. Part III will analyze the postmodern feminist response to the industry as a social phenomenon and to the deficiencies in its legal framework. Finally, Part IV concludes that a more comprehensive approach to the industry is required, one that allows for an integrated, multilateral response to both supply and demand and that recognizes both the beneficial and harmful causes and effects of the industry.

II. BACKGROUND INFORMATION

A. The Mail-Order Bride Industry

1. How It Works

While opponents of the industry tend to characterize the process by which women in developing nations end up marrying Western men through the services of an agency as comparable to prostitution,\(^6\) and defenders of the industry characterize the service as facilitating "pen-pal clubs,"\(^7\) the reality lies somewhere in between these two poles (at least as far as the superficial processes and operations are concerned).\(^8\)

The bridal agencies initiate the process, primarily utilizing newspaper and magazine advertisements to recruit potential brides.\(^9\) Agencies have focused their recruitment efforts heavily in Asia, and the Philippines in particular, with a shift toward Russia and other Eastern block countries in the years following the fall of

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5. Chun supra note 4, at 1156.
6. See Donna R. Lee, Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions, 5 ASIAN L.J. 139, 154 (May 1998) (discussing the industry as "a form of prostitution legitimized by the private institution of marriage.").
7. See Lee supra note 6 id. at 142.
8. There is significant evidence that some of the agencies claiming to provide simple matchmaking services are actually fronts for the international sex trade, and lure unsuspecting women from developing nations into lives as sex slaves in the Western world. See, e.g., Susan W. Tiefenbrun, Sex Sells But Drugs Don't Talk: Trafficking of Women Sex Workers, 23 T. JEFFERSON L. REV. 199, 210-11 (2001). However, for the purposes of this paper, I will limit my analysis to those agencies providing "legitimate" mail-order bride services.
9. See Chun, supra note 4, at 1161.
the Soviet Union. One report estimates "that between 100,000 and 150,000 women from a variety of countries (including the United States, Canada, Europe and Australia) annually advertise themselves as available for marriage." Throughout the recruitment process, agencies weed out those women not deemed attractive enough to land a potential husband. The agencies, after screening and selecting the women, generally assign them a number and include their full-body photographs or headshots in either printed magazines or online catalogs. Additionally, women are required to provide personal information, ranging from their physical measurements, to personal interests (frequently cooking), breast size, and underwear preference.

Having stocked their magazine brochures or online catalogs with available women, usually focusing on a particular part of the world, the agencies next direct their energies toward attracting potential customers. Agencies provide varying degrees of service, but typical features include providing the mailing addresses and phone numbers of the women, additional biographical information, visa and immigration consultation, and even letter-writing on behalf of the male client. In addition to the initial screening process, some agencies provide their male clients with further evaluation tools, ranging from private investigators to clinical psychologists. Of course, these services are provided in exchange for fees, with many of the agencies offering both à la carte and package deals on the services available.

The most profitable service provided by the agency is the guided tour, usually purchased by a client after he has conducted correspondence with a number of women in a given country. The agency's package tour generally includes airfare and hotel, marriage contracts and paperwork, low-cost wedding arrangements, and social parties, some with female-to-male ratios approaching 2,000 available women for every twelve male customers. At the end of the day, the men using agencies to find a foreign wife may end up spending anywhere between $3,000 and $10,000.

11. Id.
12. See Chun, supra note 4, at 1162.
13. See id. at 1163.
14. See Lee, supra note 6, at 144.
15. See Lee, supra note 6, at 147.
16. See Chun, supra note 4, at 1183-84.
17. See Lee, supra note 6, at 147.
18. See id. at 148.
19. See id.; see also Kelly, supra note 3, at 178.
20. See Chun, supra note 4, at 1167.
2. Who Uses the Service?

Descriptions of the men who seek wives through the mail-order bride services vary little from source to source. One survey of American men, conducted in 1998, produced the following data: a median age of 37, where ninety-four percent were white; fifty percent had two or more years of college, while less than one percent lacked high school diplomas; fifty-seven percent had been married at least once before; and seventy-five percent hoped to father children through the mail-order marriage.\(^2\) Additionally, the men surveyed were, for the most part, politically and ideologically conservative and financially successful.\(^2\) The primary motivation for seeking a foreign wife tends to be a sense of frustration and dissatisfaction with the “liberated” Western woman, who is far too aggressive, selfish, and focused on her own career, combined with a belief that a foreign woman, particularly one from a less developed nation, will be more loyal and devoted to her husband’s needs.\(^2\) This underlying expectation builds the potential for a major disappointment in the “delivered product,” as the women who use these services may have completely different expectations of their Western marriage.\(^2\)

The women who enlist through these agencies do so for a variety of factors. First, many women seek escape from the developing world, where job and educational opportunities are limited for men and virtually non-existent for women.\(^2\) Additionally, the factor most often cited by the women themselves is an attraction to the “American Man.”\(^2\) Many of these women are raised in nations where violence toward women goes unchallenged, and has even been tacitly condoned by the State.\(^2\) Women in both Russia and the Philippines have expressed dissatisfaction with the men from their own countries, along with a belief that American men will treat their wives better and will be more faithful.\(^2\) Notably, many of the foreign women have based their opinions of Western men on the fantasy-like images created through books and movies, and may therefore be disappointed by the reality they face upon arrival in the United States, or some other Western nation.\(^2\)

\(^{21}\) See Scholes, supra note 10, at 4.
\(^{22}\) See id.
\(^{23}\) See id; see Chun, supra note 4, at 1176-77; see Lee, supra note 6, at 145.
\(^{24}\) See notes 25 to 29 and accompanying discussion, infra.
\(^{25}\) See Scholes, supra note 10, at 3.
\(^{26}\) See id.
\(^{28}\) See Markee supra note 27.; see Chun, supra note 4, at 1175-76.
\(^{29}\) See Chun, supra note 4, at 1175.
3. Mail-Order Bride Industry: A Perpetual Motion Machine

a. Economic Factors

The underlying force driving the entire industry is global economic inequality. Both the wealth of the consumer's country and the poverty of the bride's country are necessary elements to the equation. The wealthy male of the developed nation has both the power and the financial ability to "buy" a wife, while the potential bride has an incentive to leave her impoverished nation for the higher standard of living available in a developed nation.  

The primary "supply" countries for the mail-order bride industry, particularly the Philippines, have been plagued by economic and political instability, thereby creating high levels of poverty and unemployment. These economic woes have created a "push" on the Filipinas, who see foreign marriage as a very real solution to their plight. Agencies have responded to, and nurtured, this desire for escape by setting up shop in the impoverished nations. The nation itself then comes to rely on this micro-economic escape route – completing the cycle and ensuring its success for years to come. In fact, the Philippine government has had a long-standing tradition of encouraging the exportation of its women as Overseas Contract Workers (OCW's) in order to boost its domestic economy. It is this interdependency of economic factors that makes the industry such a difficult beast for any single country to tame.

b. Racial and Sexual Stereotypes

Economic factors alone did not create the mail-order bride industry. The intersection of racial and sexual subordination plays a significant role in shaping and perpetuating the industry. Particularly in the Philippines, the historical "military sexual colonialism" has permeated the relationship between the American male and the Filipina, establishing the notion of the Asian woman as sexually available to the American man. The Philippine's legacy as a sexual colony remains despite the passing of the Vietnam War era, when roughly 10,000 American soldiers daily sought entertainment in the Philippines. Indeed, the sex industry persists at the former locations of U.S. military bases, although mostly civilian tourists use the services today.

The notion of the Asian woman as sexually available to the white American

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30. See Chun, supra note 4, at 1170.
31. See id. at 1173; see Lee, supra note 6, at 143.
32. See Lee, supra note 6, at 141.
34. See Lee, supra note 6, at 143.
35. See IWRAW REPORT, supra note 33, at 3-4.
36. See id. at 4.
man did not emerge solely overseas. Asian women have been imported into America both as "picture brides"\textsuperscript{37} and as prostitutes since the 1800's.\textsuperscript{38} The focus on the intersection of race and sexuality in the American psyche, as well as the notion that Asian women are inherently sexual, was evident even then as prostitution laws specifically targeted the Asian prostitutes over those of other ethnicities.\textsuperscript{39}

\section*{B. Governmental & International Responses to the Industry}

1. International Law: The United Nations and The Plight of Women

a. Feminism and International Law

Historically, feminist legal theorists, particularly those writing in North America, paid little attention to the arena of international law in their scholarship.\textsuperscript{40} According to one article, if patriarchy, and its inherent male referent, has formed the basis for all political structures of the Western world, then its role in the international legal community is exponentially greater:

Our approach requires looking behind the abstract entities of states to the actual impact of rules on women within states. We argue that both the structures of international lawmaking and the content of the rules of international law privilege men; if women's interests are acknowledged at all, they are marginalized. International law is a thoroughly gendered system.\textsuperscript{41}

The international community has its own structure of subordination, where the capitalist, developed countries of the Western world create the institutions, and spell out the rules, which govern the global community – particularly the

\textsuperscript{37} The "picture bride" is in some ways the precursor to the modern mail-order bride industry. The tradition differs greatly, however, in that such relationships were almost universally arranged by the families in the couple's homeland. See Chun, supra note 4, at 1157-58.

\textsuperscript{38} See id. at 1178.

\textsuperscript{39} Chun, supra note 4, at 1178.; see also, Lee, supra note 6.

\textsuperscript{40} See generally, Hilary Charlesworth, Christine Chinkin & Shelly Wright, Feminist Approaches to International Law, 85 AMER. J. INT'L. L. 613 (Oct. 1991). Much of this section is based upon the discussion and analysis conducted by Charlesworth, Chinkin and Wright as to the scarcity of feminist criticism of international law. However, the arena of international law has transformed greatly in the decade since their article, with a great deal more attention being paid by the international legal community to the plight of women throughout the world. Accordingly, much more feminist scholarship has emerged to correspond with this new attention. In addition to the several articles regarding the mail-order bride industry and the trafficking of women cited in this article, see generally, e.g., Meri Melissi Hartley-Blecic, The Invisible Woman: The Taliban's Oppression of Women in Afghanistan, 7 ILSA J. INT'L. & COMP. L. 553 (Spring 2001); Adrien Katherine Wing, Polygamy from Southern Africa to Black Britannia to Black America; Global Critical Race Feminism as Legal Reform for the Twenty-First Century, 11 J. CONTEMP. LEGAL ISSUES 811 (2001).

\textsuperscript{41} Charlesworth, supra note 40, at 614-15.
developing nations of the world.\textsuperscript{42} In this way, the subordinate status of developing nations has been analogized to the position of women, as "[b]oth groups are said to encounter the paternalist attitude that they must be properly trained to fit into the world of developed countries and men, respectively."\textsuperscript{43}

Notably, within the developing nations, the oppressive nature of patriarchy can be even more extreme than in Western nations, particularly in nations where fundamentalist regimes retain political, religious and cultural power.\textsuperscript{44} For the women living in the developing nations, from which most mail-order brides emerge, the dilemma of being a woman directly intersects with the dilemma of living in the developing world; their needs are ignored by their own State and by the international community. Moreover, Western feminists, whose specific needs rarely overlap with those of Developing world women, tend to oversimplify, or completely ignore, the unique plight of women in developing nations.\textsuperscript{45} It is within this triple-bind that the mail-order bride industry must be analyzed.

In recent decades, the United Nations has played a pivotal role in addressing the situation of women, both within their respective nations and within a global context. Since its inception, the UN has officially recognized the importance of women’s rights; Article 8 of the UN Charter explicitly allowed for the participation of women in the organization.\textsuperscript{46} Moreover, in recent decades the UN has spearheaded efforts to evaluate and improve the various problems facing women worldwide. The following discussion highlights two such efforts.

b. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) represented the first comprehensive treaty on women’s rights.\textsuperscript{47} Based on a conviction "that the full and complete development of a country, the welfare of the world and the cause of peace requires the maximum participation of women on equal terms with men in all fields,"\textsuperscript{48} the Convention defines "discrimination against women" as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic,

\textsuperscript{42} Charlesworth, supra note 40, at 616.
\textsuperscript{43} Id. at 618.
\textsuperscript{44} See generally Purva Desphande, The Role of Women in Two Islamic Fundamentalist Countries: Afghanistan and Saudi Arabia, 22 WOMEN’S RTS. L.REP. 193 (Spring 2001).
\textsuperscript{45} See Charlesworth, supra note 40, at 619.
\textsuperscript{46} See UN CHARTER, art. 8.
\textsuperscript{48} See id. at Preamble.
social, cultural, civil or any other field.\textsuperscript{49}

CEDAW, in pursuing an end to this discrimination, urges parties to refrain from discriminatory practices, adopt affirmative measures providing legal protection for women, and "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."\textsuperscript{50} CEDAW seeks to ensure equal educational opportunities,\textsuperscript{51} equal access to health care,\textsuperscript{52} and freedom of reproductive choices for women.\textsuperscript{53}

While CEDAW is admirable in its goals, it lacks concrete guidance as to what kinds of cultural practices might be construed as discriminatory. Additionally, the allowance of reservations renders the document virtually worthless, as it is those countries with the most overt oppressive practices that use reservations to limit their liability. With approximately one hundred reservations, made by over 40 of the 105 parties to the original convention, nations have been able to limit their obligations in order to reflect their existing religious and cultural practices.\textsuperscript{54} Typical reservations have concerned inheritance and property rights, nationality laws, and laws limiting economic opportunities and freedom of movement.\textsuperscript{55} Moreover, Article 6 of the convention ordered parties "to suppress all forms of traffic in women and exploitation of prostitution in women," but failed to define precisely what activities constitute "trafficking."\textsuperscript{56}

c. Protocol on Trafficking in Persons

In November of 2000, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter Protocol on Trafficking) was established.\textsuperscript{57} The purpose of the Protocol on Trafficking was twofold: first, it sought to prevent, investigate and prosecute those guilty of trafficking; second, it sought to protect victims of trafficking.\textsuperscript{58} The Protocol also created the first common international definition of "trafficking in persons," defining it as:

the recruitment, transportation, harbouring or receipt of persons, by means of the

\textsuperscript{49} See CEDAW, supra note 47, at art. 1.
\textsuperscript{50} See id. at art. 2.
\textsuperscript{51} See id. at art. 10.
\textsuperscript{52} Id. at art. 12.
\textsuperscript{53} See id. at art. 16.
\textsuperscript{54} See Charlesworth, supra note 40, at 633.
\textsuperscript{55} See id.
\textsuperscript{56} See CEDAW, supra note 47, at art. 6.
\textsuperscript{58} See id. at art. 2(a-b).
threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of the person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs... The consent of a victim... shall be irrelevant.\textsuperscript{59}

The Protocol on Trafficking calls for an integration of States’ efforts to track and investigate the trafficking industry\textsuperscript{60} and for international cooperation in protecting and, where necessary, repatriating victims.\textsuperscript{61} This definition may well apply to certain segments within the mail-order bride industry, as the power dynamic and vulnerability of many of the women involved has been demonstrated above.\textsuperscript{62} Additionally, the efforts to integrate information exchange and training and to ensure cooperation in placing victims’ interests as a top priority may present the most comprehensive possible approach to the transnational aspect of the mail-order bride industry, at least in its most exploitative forms.

2. United States Immigration Law

a. Early Efforts: Consumer Protectionism

Congress was slow to respond to the emerging mail-order bride industry; its first substantive efforts came only in the 1980’s in response to concerns of marriage fraud.\textsuperscript{63} Until the passage of the 1986 Immigration Fraud Amendments (IMFA), the spouse of a United States citizen achieved permanent residency status with little delay or investigation.\textsuperscript{64} However, one particular incident illustrated the emerging fears that the American male was falling prey to the industry. Professor Lisa Ikemoto’s article, \textit{Male Fraud}, describes a scam whereby one man, Chris Barnes, created a fictional single Asian female, “Velma,” who sought correspondence and a possible relationship with an American man.\textsuperscript{65} The scam conned some 400 men into sending a total of $280,000, and resulted in correspondence with over 8,500 interested men.\textsuperscript{66}

The reaction of both Congress and the Immigration and Nationalization Service (INS) was a desire to protect men from falling prey not only to these
scams, but also to the greedy foreign woman who does not actually wish to be a wife, but will leave her new American husband immediately upon achieving permanent residency status. Notably, neither Congress nor the INS seemed particularly concerned about the commodification of the women through the industry, or about the potential for abuse faced by foreign women in a strange land; in their view, “the ‘purchaser’ who has been abandoned by his ‘purchase’ is the victim.”

The IMFA responded to these concerns by making the green card process much more complicated and drawn out. Upon marrying a foreign person, the American citizen had to petition for “conditional resident status” for his or her spouse. Following the subsequent two-year waiting period, during which the couple must remain married, the couple could jointly petition for an adjustment of status from conditional to permanent. The INS then conducted an investigation into the legitimacy of the marriage before granting permanent status.

The most problematic part of this process in the mail-order bride context is that it further increased the power disparity within the couple: the foreign bride not only became financially and culturally dependent upon her spouse, but also found that her legal status was within his complete control. She was able to petition for a change in her status only with his cooperation, and any effort on her part to revoke the marriage subjected her to the dangerous prospect of becoming an illegal resident.

Noting these problems, and the high incidence of domestic violence within such marriages, Congress passed a subsequent amendment in 1990 that allowed for a waiver of the spouse’s cooperation if the immigrant spouse was able to allege and prove by sufficient evidence that she had suffered battery and extreme cruelty within her marriage. These additional requirements placed an unrealistic burden on a foreign wife in an abusive relationship. For the most part, such women lack the financial independence and access to legal advice and information necessary to satisfy such requirements. Additionally, the very act of seeking immigration relief, thereby threatening the American man’s domination, can be a potentially deadly decision for a battered immigrant wife.

b. Violence Against Women Act (VAWA)

Recognizing the continuing dangers facing battered foreign wives, President

67. See Ikemoto, supra note 63, at 534-35.
68. Patricia Cain, Privileges and Stereotypes: A Commentary, 3 J. GENDER RACE & JUST. 659, 666 (Spring 2000).
70. See Immigration Marriage Fraud Amendments of 1986 at 1186(c)-(d).
71. See id.
73. See Chun, supra note 4, at 1197-98.
Clinton signed the Violence Against Women Act (VAWA) in 1994. Although the act allows an immigrant spouse to file for adjustment of status independently, the spouse must still demonstrate affirmatively her good moral character, her good faith upon entering into the marriage, that she has been a victim of abuse or extreme cruelty while with her husband, and that extreme hardship would result if she were to be deported. Additionally, the requirement that the couple be married at the time of the application, and the suspicion raised by a VAWA application filed too quickly, further disadvantaged the petitioner.

The numbers tell the story of VAWA's initial failure. Of the 1,000 wives seeking immigration relief under VAWA in 1996, only 27 were granted relief. A year later, only 178 of the 2,500 applicants obtained relief through VAWA. VAWA did little in its initial years to relieve the burden placed upon the battered foreign wife seeking to avoid deportation. Ultimately, however, after the publication of interim VAWA regulations in 1996, relief came. In fact, between the release of the interim regulations and July of 2000, the INS approved over 6,500 of the 11,000 plus VAWA self-petitions it received. Congress recognized this glimmer of potential, and aimed to improve and expand the relief to the thousands of remaining applicants unable to avail themselves of VAWA's protection when it passed the Victims Protection Act of 2000, discussed below.

c. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)

Between the passage of VAWA and its subsequent expansion in 2000, Congress for the first time expressly acknowledged the existence of the mail-order bride industry. The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) represents the first law to specifically address the industry and its presence in the United States. The law made the following significant recognitions regarding the industry:

1. There is a substantial “mail-order bride” business in the United States. With approximately 200 companies in the United States, an estimated 2,000 to 3,500 men in the United States findwives through mail-order

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75. See id. at 1154(a)(1)(C)(iii).
76. See id.
77. See id. at 1154(a)(1)(C)(I).
78. See id.
80. See Markee, supra note 27, at 290-91.
81. See id. at 291.
82. See id.
83. See House Subcommittee Considers Measure to Enhance VAWA Protections for Immigrants, 77 No. 28 INTERPRETER RELEASES 1009, 1011 (July 24, 2000).
84. See id.
86. See Chun, supra note 4, at 1201.
bride catalogs each year... 

2. The companies engaged in the mail-order bride business earn substantial profits.

3. Although many of these mail-order marriages work out, in many other cases, anecdotal evidence suggests that mail-order brides find themselves in abusive relationships. There is also evidence to suggest that a substantial number of mail-order marriages are fraudulent under United States Law.

4. Many mail-order brides come to the United States unaware or ignorant of United States immigration law. Mail-order brides who are battered often think that if they flee an abusive marriage, they will be deported. Often the citizen spouse threatens to have them deported if they report the abuse.

5. The Immigration and Naturalization Service estimates that the rate of marriage fraud between foreign nationals and United States citizens or aliens lawfully admitted for residence is 8 percent. It is unclear what percentage of these marriage fraud cases originate as mail-order marriages.87

Despite these significant findings, the actual response included in the IIRIA was fairly limited. Rather than restricting or seriously regulating the agencies, Congress merely required that bridal agencies provide the foreign women with access to information regarding the legal implications of a mail-order marriage “including information regarding conditional permanent status and the battered spouse waiver under such status, permanent resident status, marriage fraud penalties, [and] the unregulated nature of the business engaged in by such organizations.”88 Failure to comply with these requirements may result in a fine of up to $20,000 per violation for the agency.89 The act’s other key provision directed the Attorney General and the INS to conduct a study of the mail-order bride industry and its presence in the United States.90

IIRIRA, although significant in its recognition of the extensiveness of the mail-order bride industry, did little to improve the situation for foreign brides arriving in America. In fact, IIRIRA tacitly condones the nature of the industry by not only failing to regulate it, but by merely requiring agencies to inform the women of its unregulated nature.91

88. See IIRIRA at (b)(1).
89. See id. at (b)(2)(A).
90. See id. at (c)-(d). The report, supra note 10, was released in 1998.
91. See Chun, supra note 4, at 1202.
The most recent legislative effort at improving the situation of a battered foreign woman appeared in October 2000, in the Battered Immigrant Women Protection Act of 2000 (Title V of the Victims of Trafficking and Violence Protection Act of 2000). The law included the following significant findings:

The goal of the immigration protections for battered immigrants included in the Violence Against Women Act of 1994 was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships. . . . [T]here are several groups of battered immigrant women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their abusers are virtually immune from prosecution because their victims can be deported as a result of action by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.

Based on these findings, Congress sought to expand VAWA's protection by removing barriers to criminal prosecution for such abusers and by improving access to immigration protections for battered immigrant women. First, Congress eased requirements for a battered immigrant woman seeking to self-petition for legal status. Such women can apply for VAWA relief even the marriage was never legally valid, if she was never beaten while in the United States, and even if her husband had died, been deported, or divorced her. Additionally, Congress eliminated the “extreme hardship” showing requirement for the self-petitioning battered immigrant woman. The removal of this requirement for self-petitioners should have a dramatic effect, as this has typically been the most difficult requirement to satisfy. Frequently, immigration judges, in their discretion, have found that the hardship demonstrated relates only to the typical hardships associated with deportation, rather than any special or extreme hardship particular to deportation for a battered immigrant woman. Unfortunately, for those battered immigrant women that seek cancellation or suspension of deportation, but against whom deportation proceedings have already begun, the “extreme hardship” showing must still be satisfied.

92. See Victims Protection Act, supra note 85.
93. See id. at Sec. 1502(a).
94. See id. at Sec. 1502(b)(1).
95. See id. at Sec. 1503.
96. See id.
97. See id.
99. See Ignatius and Stickney supra note 98.
100. See Victims Protection Act, supra note 85, at Sec. 1504(a), 8 U.S.C. 1229(b)(2). For a good discussion of the significance of the extreme hardship requirement, see generally Leila Rothwell, VAWA 2000's Retention of the “Extreme Hardship” Standard for Battered Women in Cancellation of Removal Cases: Not Your Typical Deportation Case, 23 U. HAW. L. REV. 555 (Spring 2001). For advice on how to satisfy the “extreme hardship” requirement, see Ignatius & Stickney, supra note 98, at §12:32.
Despite these expanded protections, significant problems for the battered immigrant spouse persist. Evidentiary requirements are still hazy, allowing for significant discretion on the part of the immigration judge. They still place affirmative burdens on the battered wife before relief will become available.\footnote{101} The precarious nature of filing for VAWA relief remains, as the battered woman must choose between remaining in the abusive relationship or risking denial of relief from the government, as well as retaliatory violence from the husband if she seeks government relief.\footnote{102} Ultimately, mail-order brides in America face significant cultural and legal obstacles:

Overall, the VAWA law exemplifies a system-wide indifference to the cultural nuances of domestic violence, and places the bride at the mercy of a new dominator, the government. It forces a battered woman to leave before she may be logistically and emotionally prepared, and places her in a position in which she must be rid of her mate before she can knock at the government’s door. Certainly, the act of leaving is a threat to the batterer, one that ‘reflects his loss of power and control over his spouse,’ thus making separation assault a very real danger, one that is known and documented.\footnote{103}

3. The Philippines: Futile Efforts to Tame the Industry

a. Economic Conditions

The Philippines is the perfect supply country for the mail-order bride industry due largely to its political and economic instability.\footnote{104} With a population of nearly 83 million people, forty-one percent living below the poverty line, the economy continues to struggle.\footnote{105} Consequently, the Philippine economy has relied upon the export of its people, with 4.2 million overseas workers sending home their earnings as of 1997.\footnote{106} In 1994, sixty percent of overseas contract workers were women, an understandable statistic considering a report that “women workers in the Philippines earn only thirty percent of what male workers earn for similar work.”\footnote{107} Despite the government’s traditional role in encouraging such migration,\footnote{108} in recent years the government has taken a new approach to the situation. The June 1995 Republic Act 8042 makes the protection of overseas

\footnote{101. See Markee, supra note 27, at 293.}
\footnote{102. See id. at 293-94.}
\footnote{103. See id. at 294.}
\footnote{104. For a general discussion on the political and economic status, as well as the situation of the sex trade, of the Philippines as of January 1997, see IWRAW REPORT, supra note 33.}
\footnote{105. See CIA WORLD FACTBOOK COUNTRY REPORT [hereinafter CIA REPORT], available at www.cia.gov/cia/publications/factbook/geos/rp.html (last visited July 22, 2002).}
\footnote{106. See IWRAW REPORT, supra note 33.}
\footnote{107. See id.}
\footnote{108. See Sean Parlan, Mail-Order Brides, in PACIFIC RIM MAGAZINE ONLINE, available at www.langara.bc.ca/prm/2001/mailorderbrides.html (last visited Feb. 24, 2002). See also IWRAW REPORT, supra note 33, discussing a government-endorsed career manual highlighting the minimal requirements for becoming an overseas performing artist.}
workers a priority, and explicitly rejects the promotion of overseas workers as a means of supporting the Philippine economy.\textsuperscript{109} Despite these efforts, economic instability persists and large numbers of Filipinos, particularly women, continue to emigrate in search of work.

b. Legal Response to the Mail-Order Bride Industry

In addition to discouraging the migration of Philippine workers, the Philippine government has actively sought to eradicate the mail-order bride industry. In 1990, the Philippine Congress passed Republic Act No. 6955, which declared unlawful the mail-order bride industry and similar practices.\textsuperscript{110} This Act represented the government’s intent “to protect Filipino women from being exploited in utter disregard of human dignity in their pursuit of economic upliftment.”\textsuperscript{111} The government followed this legislation with several other acts intended to improve conditions for Filipinas, including acts that expanded the existing definition of rape,\textsuperscript{112} established crisis centers for rape victims,\textsuperscript{113} declared sexual harassment in the workplace unlawful,\textsuperscript{114} and, in 1999, passed several acts aimed at defining, preventing, and punishing acts of domestic violence against women.\textsuperscript{115}

Despite the Filipino government’s efforts to improve conditions for Filipinas at home and to outlaw the mail-order bride industry from within, Filipinas continue to marry foreigners through these matchmaking agencies in huge numbers -- as many as 2,000 annually according to one recent report.\textsuperscript{116} A significant obstacle to enforcing the ban on the mail-order bride industry is the fact that many of the most prominent agencies are actually based outside the Philippines, particularly in the United States.\textsuperscript{117} Recently, government officials, including Philippine Senate Majority Leader Loren Legarda, have called for action against any firms with partners or agents based in the Philippines.\textsuperscript{118} Senator Legarda has also called for amendments to strengthen the Anti-Mail-Order Bride Law, perhaps by designating

\begin{itemize}
\item 109. See IWRAW REPORT, supra note 33.
\item 111. Id. at Sec. 1.
\item 113. See Republic Act No. 8505, Rape Victim Assistance and Protection Act of 1998.
\item 114. See Republic Act No. 7322, 1992.
\item 115. See Senate Bill No. 292, An Act Defining Domestic Violence, Providing Penalties therefore [sic] and providing for protection orders, Senate Bill No. 527 - An Act to provide a comprehensive program against wife cruelty, increasing penalties for offenders thereof and for other purposes, and Senate Bill No. 1458 - An Act defining the crime of abuse of women in intimate relationships, prescribing penalties therefore, providing for protective measures for victims and for other purposes, available at http://www.philwomen.net/senate/news.htm (last visited July 22, 2002).
\item 117. See MANILA TIMES supra note 116.
\item 118. See id.
\end{itemize}
III. POSTMODERN FEMINIST RESPONSE TO THE MAIL-ORDER BRIDE INDUSTRY

In determining what the potential postmodern response would be to the mail-order bride industry, it is first necessary to understand the premises and ideals upon which postmodern feminism is based. Accordingly, the following analysis will provide a general overview of postmodern feminism, including a discussion of the postmodern responses to prostitution and marriage, by way of example, before moving on to the postmodern critique of the mail-order bride industry.

A. The Postmodern Feminist Agenda

The postmodern feminist approach is largely deconstructive—it focuses on picking apart commonly held notions to uncover the underlying forces that shape our understanding of who we are and of what surrounds us. The postmodern feminist views the individual as "formed within systems of social relations, and...gender hierarchy [as] reproduc[ing] itself through the identities and desires formed within these systems." A postmodern approach rejects essentialism—an approach toward women that treats all women as suffering from, or enjoying, the same basic condition—in favor of a more diverse understanding of the various factors determining an individual woman's identity. Key factors in shaping an identity include not only gender, but race, class, age and local/national culture as well.

The primary objective of postmodern feminist theory is a broader, more complex understanding of gender identity and the forces that create the individual. Although the postmodern approach has been criticized for its focus on theoretical debate, as opposed to concrete, legal and political objectives, some recent
scholarship has set forth a revised postmodern agenda that seeks to put the theory into practice. Maxine Eichner has proposed a more aggressive approach based on four crucial propositions. First, Eichner reiterates the postmodern premise that power relations are reproduced through social relations. Second, Eichner proposes an agenda that seeks "more fluid notions of gender identity that are less closely linked to a particular sex."125 Third, Eichner cautions against embracing all differences among women, but instead urges that differences be examined to uncover any power imbalances or oppression that may be producing them.126 Finally, Eichner sets forth her most concrete objective: that of material equality, a condition necessary for the true valuation of differences.127 Based upon these propositions, Eichner seeks to uncover and eliminate material and cultural inequalities through both legal and social action.128

1. Postmodern Feminism & Prostitution

The postmodern approach to prostitution has significantly opened up the feminist debate regarding prostitution. The approach has transformed the prostitution debate from its traditional "women as autonomous beings freely choosing a profession" versus "women as perpetual victim of economic and sexual exploitation" dichotomy to one recognizing the broad spectrum of factors that have prompted women to become prostitutes, including both free agency and victimization.129 Moreover, Shannon Bell has stressed the value of understanding and incorporating the various experiences of the prostitute into the feminist discourse in order to broaden our understanding of women's experience and ourselves.130

Additionally, Mary Joe Frug shifted the debate's focus onto the role of the law in sexualizing the female body, noting the impact of criminalization not only on prostitutes themselves, but on all women: "This sexualization of the female body explains an experience many women have: an insistent concern that this outfit, this pose, this gesture may send the wrong signal – a fear of looking like a

Scouts: Feminist Legal Theory and Police Misconduct, 34 Loy. L.A. L. Rev. 691 (2001) (acknowledging the philosophy's shortcomings, but still noting its potential to contribute to the feminist project: "Because of its emphasis on particularity and discontinuity, postmodern legal feminism does not readily translate into a coherent strategy for legal change, but it offers support for litigation and legislation that further equality and self-determination based on the complexity and variety of women's lives.")

125. Eichner, supra note 121, at 6.
126. See id. at 7.
127. See id.
128. See id.
129. For a general overview of the various feminist approaches to the issue, see Sylvia A. Law, Commercial Sex: Beyond Decriminalization, 73 S. Cal. L. Rev. 523, 534-42 (2000). Law concludes: "fundamentally, feminists disagree about whether a woman can ever authentically consent to commercial sex, and whether it would exist in a just society." Id. at 542.
whore.” Frug placed this sexualization in its context – a legal system that legalizes other forms of sex, particularly the sex that takes place within marriage. The combination of marriage laws and the criminalization of prostitution results, for Frug, in the “maternalization” of the female body. For postmodern feminists, prostitution presents an opportunity to uncover the interplay between gender identity, sexuality and the law.

2. Postmodern Feminism & Marriage

Like prostitution, marriage has presented postmodern feminists with an occasion to question the social constructs that define who we are and how we live. The postmodern approach questions the static definition of marriage, as it has existed within our society for centuries, as limited to a heterosexual couple. Additionally, Fran Olsen has questioned the notion of the public/private distinction, arguing that what has typically been described as non-intervention is actually just a different form of State intervention within the family. Olsen notes that what many have viewed as non-intervention, the State’s historic refusal to intervene in domestic violence, or to enforce contracts between family members, has really been a particular form of State intervention, where its chosen course has produced very real results for and within families. Olsen’s argument is most illuminating in the context of marriage, where virtually every aspect of it, indeed, the very right to participate in it and reap the legal and economic benefits it offers, is dictated by the State. Finally, Frug’s depiction of the State as regulating, sexualizing and maternalizing the female body through laws that incentivize marriage, for both physical safety and economic security, adds weight to Olsen’s argument.

The postmodern response to the social construct of marriage is to open up the definition, or reject it entirely. In other words, the postmodern feminists seek a broader understanding of what constitutes family; one that allows for relationships beyond the simple man/woman couple.

131. See Frug, supra note 120, at 1052-53.
132. See id. at 1055.
133. See id.
135. See id.
136. See Frug, supra note 120, at 1055.
137. See, e.g., Barbara Stark, Marriage Proposals: From One-Size-Fits-All to Postmodern Marriage Law, 89 Calif. L. Rev. 1749 (Oct. 2001)(proposing a “postmodern marriage law . . . that is, marriage law that explicitly contemplates varied, changing, contextualized forms of marriage.” Id. at 1482).
B. Postmodern feminism & The Mail-Order Bride Industry

1. The Industry as a Social Phenomenon

Postmodern feminists would treat the mail-order bride industry as yet another opportunity to learn from the multiplicity of women's experiences, and the social, cultural, economic and political forces that shape them. For the postmodern feminist, any response to the industry must necessarily acknowledge the interplay of these variables. Additionally, the postmodern feminist must exercise great caution in balancing its anti-essentialist approach against the pitfalls of cultural relativism, which might result in a legitimization of harmful practices simply for the sake of respecting “difference.”

Ultimately, the postmodern feminist must strive to avoid a condescending approach toward the women who become mail-order brides so as to avoid the perpetuation of the “victim subject” view of women living in the developing world. As one scholar has noted, such an approach reflects not only gender essentialism, but also cultural essentialism:

Women in the Third World are portrayed as victims of their culture, which reinforces stereotyped and racist representations of that culture and privileges the culture of the West. In the end, the focus on the victim subject reinforces the depiction of women in the Developing world as perpetually marginalized and underprivileged, and has serious implications for the strategies subsequently adopted to remedy the harms that women experience. It encourages some feminists in the international arena to propose strategies which are reminiscent of imperial interventions in the lives of the native subject and which represent the “Eastern” woman as a victim of a “backward” and “uncivilized” culture.

This approach ultimately provokes “protectionist, and even conservative” responses from other States that do little to further the condition of women in such developing nations. Postmodern feminists must then develop a response to the mail-order bride industry that avoids such a Western, paternalistic attitude toward developing nations, while still acknowledging the dangers to women inherent in the practice.

Maxine Eichner’s postmodern feminist legal agenda presents one framework for imagining such an approach. First, her agenda would acknowledge the variety of factors that create the individual mail-order bride and the corresponding level of

138. See Tracey E. Higgins, Anti-Essentialism, Relativism, and Human Rights, 19 Harv. Women’s L.J. 89 (Spring 1996). Higgins notes and attempts to reconcile this conflict between “increased awareness universally of the importance of cultural and economic rights for women... and... increased respect for cultural difference based on an awareness of the partiality of perspective, a skepticism of universal claims of authenticity.” Id.

139. See generally Ratna Kapur, The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics, 15 Harv. Hum Rts. J. 1 (Spring 2002).

140. See id. at 6.

141. See id.
resistance that would be necessary to overcome such factors. Second, Eichner’s goal of more fluid gender identities would, if realized, free many of the mail-order brides from the currently culturally-dictated mandate to become a wife, thereby de-constraining the decision process. Third, postmodern feminists would have to distinguish between the positive and negative differences associated with women. For example, this approach would reject any notion that women are somehow inherently submissive, inferior to men, or incapable of rational decision-making.

Finally, and most importantly with respect to the mail-order bride dilemma, Eichner’s approach focuses on achieving material equality as a necessary prerequisite for cultural equality. In other words, before the women who become mail-order brides can be considered as possessing cultural equality, they must have the same economic opportunities and resources as the men around them. In this way, a Filipina doctor cannot be considered equal, despite the fact that she is well-educated and in a highly esteemed profession, until her wage earning capacity matches that of her male counterparts. Taking this requirement a step further, the Filipina must also achieve comparable economic opportunity vis-à-vis the American male she intends to marry, before such a decision can be said to produce a couple of “equals.” Maxine Eichner’s agenda translates postmodern feminist theory into a concrete legal and political project, creating a more results-oriented, and therefore more satisfying, doctrine with which to tackle difficult issues facing women today.

2. The Currently Deficient Legal Response to the Industry

For the postmodern feminist, the reasons for choosing (or being forced into) a mail-order marriage are as numerous as the mail-order brides themselves. Accordingly, no single legal solution could respond to the needs, or respect the desires, of the thousands of women who marry through these agencies each year. Instead, a multi-tiered approach that sought to remove the negative forces propelling an otherwise unwilling woman into marriage with a foreign man, while at the same time maintaining the freedom for a woman to choose such a marriage under legitimate circumstances, would be required.

Fran Olsen’s critique of State intervention is particularly relevant in the context of the mail-order bride industry. After all, the industry, and the fears and concerns it has engendered within the American legal establishment, have helped to shape modern immigration law as well as modern legal reforms seeking to protect all women from violence in American society. Yet, even as Congress has recognized the industry, it has explicitly refused to “regulate” the industry, only requiring agencies to disclose their unregulated nature to the women whom they recruit. Ironically, as Olsen might point out, this explicit refusal to intervene constitutes a most devastating form of State intervention for the women who become abused within mail-order marriages. Certainly, the State’s reinforcement and affirmation of the power disparities within such marriages have

142. See discussion infra Part II.B, Section 2.
143. See supra note 88 and accompanying text.
only harmed women in this context. Moreover, Congress’s refusal to regulate or eliminate the industry within its primary demand country has directly thwarted the efforts of the Philippine government, a primary supply country, to eradicate the industry.

A more overt and comprehensive response to the industry and its dangers is necessary. The postmodern feminists present the most appropriate approach to the mail-order bride phenomenon. In recognizing the wide range of factors that go into the individual woman’s decision, as well as the wide range of conditions that underlie the industry, the postmodern approach allows for a more diverse and complete response to the needs of all the women involved. In seeking to fully understand both the institution of marriage, and the cultural factors that cause women of the developing world to seek not only a husband, but a Western husband, the postmodern feminists can acknowledge the potential for victimization while simultaneously recognizing the ability, and the legal right, of all women to make decisions regarding their marital status, their economic situation, and their nationality.

Under Maxine Eichner’s approach, postmodern feminism requires material equality as an underlying premise to a just mail-order marriage. Until such time as material equality can be achieved, however, the industry must be regulated and monitored. Such regulations should level the specific inequalities of the mail-order marriage. For instance, access to information must be addressed. Currently, a man seeking a bride frequently has access to her personal, physical and even psychological information, whereas his bride may know nothing more than that which the prospective husband chooses to reveal, leaving her unaware of any criminal record, serial history of mail-order brides, or serious psychological disorders. Additionally, the immigration challenges addressed above must be continually examined and improved, so that the newly arrived bride in a Western nation has the right to independently achieve legal status, and has an adequate knowledge of and ability to exercise that right.

Rather than universally condemn or praise the decision to become a mail-order bride, the postmodern feminist response would acknowledge the phenomenon and provide the necessary political and legal support to protect the women involved. Accordingly, the postmodern feminist approach is the most appropriate response to the mail-order bride industry in the new millennium.

144. See, e.g., Lee, supra note 6, at 153 (detailing a retired U.S. Army sergeant’s conviction for the murder of his fourth wife, a mail-order bride, his conviction for the murder of his second wife, and the mysterious circumstances surrounding the death of his third wife, also a mail-order bride). This is only one example of dangers faced by mail-order brides. Notably, Congress itself has acknowledged the extensive anecdotal evidence of such dangers. See 8 U.S.C. 1375a (1996).
145. See discussion infra Part IIIB, Section 3.
146. See supra note 120 and accompanying discussion.
147. See supra note 16 and accompanying discussion.
Currently, no approach responds to the multiple factors underlying the mail order bride industry, or incorporates the cultural practices and economic forces within both supply and demand countries. As demonstrated above, the supply countries simply cannot end the industry from the inside out, as the Internet has made the mail-order bride business easy to facilitate from virtually any country.\footnote{See supra notes 110-119 and accompanying text.} The demand countries must regulate the industry, as well as the individual consumers, in order to protect the mail-order brides as they arrive in a new land. At the end of the day, because no single nation can adequately respond to the industry on its own, only the concerted efforts of both the supply and demand countries, along with a heightened level of cooperation within the international community, will be enough to respond to the industry.

Some form of positive multilateral State intervention is necessary in order to protect and inform such women both before and after they make the decision to marry a virtually unknown Western male through an introduction agency. But who should determine the form and nature of such intervention? Modern notions of democracy and republicanism tell us that any State legislation or other action should be informed and consented to by those most affected. This becomes a daunting task where, as in the case of the mail-order bride industry, those most affected by such legislation generally lack the political opportunity to voice their wants and needs. Therefore, any multilateral response must, through dialogue and examination, strive to effectively and meaningfully represent the voice of the impoverished women of the developing world.

Ultimately, the response must be multifaceted not only in its international cooperation, but also in its theoretical approach to the industry. Because the cultural, economic, racial and sexual factors present a complex interplay, any response must be correspondingly complex in its solutions. The postmodern approach, which acknowledges the interplay of these factors, is the most appropriate. The material inequalities between countries, and between men and women within and without national borders, must be eliminated if gender, racial and economic power disparities are to be eradicated. Until these inequalities can be leveled, the mail-order bride industry must be heavily regulated and monitored in order to protect the lives of those seeking to escape the triple-bind of being a woman in a developing world country.