9-1-2000

Buying a Wife but Saving a Child: A Deconstruction of Popular Rhetoric and Legal Analysis of Mail-Order Brides and Intercountry Adoptions

Ryiah Lilith
American University Washington College of Law (Student)

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/bwlj

Part of the Family Law Commons, Human Rights Law Commons, and the International Law Commons

Recommended Citation
Available at: https://digitalcommons.law.buffalo.edu/bwlj/vol9/iss1/15

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Women's Law Journal by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.
BUYING A WIFE BUT SAVING A CHILD:
A DECONSTRUCTION OF POPULAR RHETORIC AND
LEGAL ANALYSIS OF MAIL-ORDER BRIDES AND
INTERCOUNTRY ADOPTIONS

RYIAH LILITH *

I. INTRODUCTION

David Lauer first saw a picture of Malia in a magazine produced by an international matchmaking organization which markets Asian females to Americans. After paying over $10,000 to the organization, he traveled to Hong Kong to collect Malia and bring her back to the U.S., where she became Malia Lauer and could eventually become a naturalized citizen.¹

In the 1990s, Americans spent over $300 million to adopt 18,751 children from China,² almost all girls.³ Adoption costs

* J.D. Candidate, American University Washington College of Law, 2001; B.S. Florida State University, 1997. I would like to thank Leti Volpp and the members of the Fall 2000 Asian Pacific Americans and the Law seminar for their comments and suggestions on earlier drafts.


² This figure was derived by multiplying the total number of children adopted from China in the 1990s—18,751—by $16,000, an estimated median cost of adoption per child. See, Immigrant Visas Issued to Orphans Coming to the US, at http://www.travel.state.gov/orphan_numbers.html (visited Nov. 22, 2000) [hereinafter Immigrant Visas] (listing the number of visas issued annually to children from the 21 top countries of origin).

have risen from an estimated $12,000 to $17,000 per child in 1992,\(^4\) to $20,000 to $27,000 per child in 1999.\(^5\) In spite of changes in Chinese law intended to encourage domestic adoption of Chinese children,\(^6\) U.S. adoptions increased steadily throughout the 1990s.\(^7\)

Timothy Blackwell first saw a picture of Susana in a magazine produced by an international matchmaking organization which markets Asian females to Americans. After paying approximately $10,000, he traveled to the Philippines to collect Susana and bring her back to the U.S., where she became Susana Blackwell and could eventually become a naturalized citizen.\(^8\)

In the 1990s, Americans spent over $84 million to marry approximately 13,500 Filipina mail-order brides.\(^9\) Mail-order bride

\(^1\) NI HAO MA, Jan. 1999, at http://www.fwcc.org/itsaboy.html (citing Gregory Hulka of the American Consulate in Guangzhou, who reports that "of the 250 visas that are currently processed for orphaned children each month, less than 1% are for orphaned boys"). Given this enormous gender disparity, this paper generally refers to children adopted from China as girls.


\(^7\) This figure—more like a guestimate—was derived by first estimating total number of marriages between American men and Filipina mail-order brides in the 1990s. As of 1996, American men engaged in approximately 2000 to 4000 mail-order marriages per year; after 1996, the number grew to 4000 to 6000. See, Immigration & Naturalization Service, International Matchmaking Organizations: A Report to Congress 11-12, available at http://www.ins.usdoj.gov/graphics/aboutins/repsstudies/index.htm (last modified Dec. 14, 1999) [hereinafter INS Report]. Listings for Asian women in mail-order bride agencies ranged from 25% (at goodwife.com) to 66% (at Cherry
costs have risen from an estimated $4000 to $6000 in 1995,\textsuperscript{10} to $6000 to $10,000 in 1999.\textsuperscript{11} In spite of changes in Philippine law intending to curb mail-order brides by banning organizations and advertisements which promote marriages between Filipinas and foreign nationals,\textsuperscript{12} the number of Filipina mail-order brides brought to U.S. increased steadily throughout the 1990s.\textsuperscript{13}

Blossoms) of the women listed. Of the 1400 Asian women listed in "five popular catalogs," 70\% were Filipinas. Thus, assuming that 50\% of mail-order brides are Asian, and 75\% of Asian mail-order brides are Filipina, then Filipinas comprise 37.5\% of mail-order brides. Taking the median estimates for mail-order marriages each year, American men married 36,000 mail-order brides in the 1990s, 37.5\% of which are 13,500 Filipina brides. The total number of Filipina brides from 1990-1996, 37.5\% of 21,000, or 7875, was then multiplied by $5000, the median estimated cost for a mail-order bride at that time, for a total of $39,375,000, and added to $45,000,000, the total number of Filipina brides from 1997-1999, 37.5\% of 15,000, or 5625, multiplied by $8000, the median estimated cost at that time, for a grand total of $84,375,000.

Some commentators assert that the vast majority of mail-order brides are Filipina. See, e.g., Donna R. Lee, Note and Comment, Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions, 5 ASIAN L.J. 139, 142 (1998). Based on their own assessments of mail-order bride listings and the fact that "media accounts, academic research, and personal anecdotes given in agency literature frequently discuss Filipina mail-order brides." Indeed, this paper focuses on Filipina brides precisely because of this media and academic attention. Admittedly, this paper’s estimates may be too conservative, and should not be construed as disputing claims of higher proportions of Filipina brides. Rather, these rough estimates were created using the only set of “official” or governmental statistics available, for the sole purpose of comparison with another set of rough statistics, those regarding intercountry adoptions.


\textsuperscript{12} Philippines Ban Brides Via Mail, CHICAGO TRIBUNE, June 14, 1990, available at 1990 WL 2840854.

\textsuperscript{13} See INS Report, supra note 9, at 12 (explaining that the total number of mail-order brides is increasing because of “rapid growth in the part of the industry featuring women from the former Soviet Union, and equally rapid growth of e-mail ‘pen-pal’ clubs”).
This paper identifies and explores the parallels between intercountry adoptions and mail-order brides, focusing on American acquisition of Chinese girls and Filipina women. Despite the similarity in American expenditures for Asian brides and children, the numbers of Asian brides and children procured by Americans, the upward trend of increasing numbers of Asian brides and children being brought into the U.S., and the similarity in procedures and laws governing these two forms of immigration, popular rhetoric and legal analysis draws a sharp distinction between them. Although intercountry adoptions are generally viewed as altruistic and praiseworthy actions by open-minded white American families, mail-order bride exchanges are generally characterized as deplorable and exploitative actions by socially inept white men. The financial aspect of purchasing a bride is

14 The term “intercountry adoption” has been criticized when applied to white individuals and families adopting Asian children because it obscures the interracial nature of those adoptions. See, M. Elizabeth Vonk et al., Political and Personal Aspects of Intercountry Adoption of Chinese Children in the United States, FAM. SOC.: J. CONTEMP. HUM. SERV., Sept. 1, 1999, available at 1999 WL 12201461 (referring to the adoption of Chinese children by white Americans as “transracial” or “transcultural”). Rather than using an more accurate term, such as “international transracial adoption,” “intercountry adoption” is used in this paper precisely because it indicates advocates’ failure to recognize the imperialist and Orientalist implications of Americans adopting Asian children.

15 This paper uses the phrase “mail-order bride” to refer to both the actual brides, as well as the act of mail-ordering a bride; the reference in a particular sentence to either brides or the act of ordering a bride will hopefully be apparent from the context. The term “mail-order bride” has been criticized as being an inaccurate stereotype, which suggests that the brides are selected on the basis of photographs in mail-order catalogs and then mailed to their purchasers—a stereotypes that reduces the brides to passive objects who have no agency or choice. See, e.g., Nora V. Demleitner, In Good Times and In Bad: The Obligation to Protect “Mail-Order Brides,” in WOMEN & INTERNATIONAL HUMAN RIGHT LAW 614 (Kelly D. Askin & Dorean M. Koenig, eds., 2000). Recognizing the validity of this criticism, “mail-order bride” is deliberately used in this paper because it is the term used in popular and legal writing—usually without any sort of critical explanation or conscious reflection—as a means of highlighting the stereotyped assumptions and problematic discussions prevalent in popular and legal writings.
often emphasized, and the brides deemed prostitutes, while the financial aspect of purchasing a child is often euphemistically minimized as a "donation." Legal writers often argue for the continuation of intercountry adoptions and the prohibition of mail-order brides.

This paper assumes a different perspective and argues that the modern phenomena of mail-order brides and intercountry adoptions are indistinguishable, at least in regards to U.S.—Asian transactions. Mail-order brides and intercountry adoptions are both by-products of Western/U.S. colonial and imperial activities in Asia and enduring Orientalism within U.S. culture. Differentiating between mail-order brides and intercountry adoptions obscures the imperialism and commodification underlying intercountry adoptions. Mail-order brides cannot be sanitized and rationalized as a humanitarian effort to save Asian innocents, in the way that intercountry adoptions have been characterized. Mail-order brides make explicit what is implicit in intercountry adoptions—the purchase of Third World citizens to complete the families of a (former) colonial and imperial power.

In Part II, this paper outlines the common themes which are emphasized in popular and legal writings that criticize the mail-order bride industry and illustrates how those same criticisms are applicable to intercountry adoptions. This section also identifies Orientalist, stereotyped, and other problematic aspects of discussions about mail-order brides and international adoptions. In Part III, this paper examines and unpacks constructions of mail-order brides as prostitutes and intercountry adoptions as noble, humanitarian acts. These notions are crucial to the polarization of mail-order brides and intercountry adoptions, and once they are stripped away, the equivalence of these two practices is more readily apparent.
II. TRAFFICKING IN WOMEN AND GIRLS?

Critics of mail-order brides have equated the practice with trafficking in women, prostitution, and involuntary servitude. Regardless of the characterization, writers generally focus on the same elements: push factors in the Philippines; U.S. military involvement; commodification of women; deception or fraud in the transaction; and abuse of women by their consumer-husbands. Without disputing these characterizations or arguing that these aspects of the mail-order bride trade are not extremely problematic, a similar analysis can be applied to intercountry adoptions, where many of the same or analogous elements are present.

A. Push Factors: Poverty and Patriarchy

Articles, legal and popular, about intercountry adoptions explain that the abundance of orphaned Chinese girls stems from the "strict one-child-per-family [policy]," combined with the cultural imperative that "having no son who will care for aging parents and pass on the family name is considered a dishonor." A few articles are quick to defend the Chinese by pointing out that "those who assume the Chinese to be heartless and cruel to give

---

16 See, e.g., Amy L. Elson, The Mail-Order Bride Industry and Immigration: Combating Immigration Fraud, 5 Ind. J. Global Legal Stud. 367 (1997). "[T]he mail-order bride industry is comprised of an international network that trafficks women from less developed countries to men in industrialized nations." Lloyd, supra note 11, at 341 (referring to mail-order brides as a "form of trafficking women"); Christopher Cox, The Body Snatchers: Romantic Dreams of a Better Life Often Lead Unsuspecting Immigrant Women into Sordid World of Prostitution, UMass Professor Finds, BOSTON HERALD, Aug. 3, 1999, available at 1999 WL 3404745 (noting that "trafficking is a multibillion-dollar industry involving prostitution, sex tourism and mail-order bride businesses").

17 See, e.g., Lee, supra note 9, at 140 (1998). "The mail-order bride business promotes a form of sexual exploitation that resembles both prostitution and involuntary servitude."


away or abandon infant girls don't understand the facts . . . . The Chinese love their children . . . . They feel badly about it. They do care. It's just the circumstances of their life." These life circumstances are colored in by other articles that report on adoptive parents' travels and travails in China:

[O]n a six-lane freeway where the traffic pays little attention to lane markers. Old women walk in the outer and center lanes, pushing litter and dust along with handmade brooms. This is Chinese full employment. The air is filthy and unbreathable. On Sunday we hide out in the hotel, eating Western food [and] watching Asian MTV (captured from satellite).

We thought, could we ever go to China. Wow. Just amazing. Just to go . . . . You know, we've been to Europe a couple of times and always very civilized places . . . . Beijing is not a modern runway. It's got grass growing between some of the cracks. And we saw people riding bicycles right near the plane . . . . [In Changsa, we were] passing people sleeping outdoors on bamboo mats or sitting on the sidewalk eating and talking . . . . [O]n Monday evening, [we] flew to Guangzhou, formerly Canton, a cosmopolitan city where [we] stayed in the White Swan, a five-star hotel, and sated [our] cravings for Western food and ice and swimming pools.

Coupled with these depictions of a foreign China, "an exotic faraway place on the other side of the earth," articles often


22 Sege, supra note 4.

23 Id.
assume a congratulatory, self-righteous tone about American families who "clawing their way through the Communist bureaucracy"\textsuperscript{24} to rescue orphans from ugly, cold orphanages run by "Mao-faced director[s]."\textsuperscript{25}

Yet legal and popular articles about mail-order brides do not applaud American men for saving Filipina women from undesirable conditions in the Philippines. Although articles about mail-order brides do not tend to be as descriptive of the brides’ homeland, several motifs emerge. Writers explain that because of a cultural "preference for male inheritance of agricultural land,"\textsuperscript{26} Filipinas often travel to urban areas to seek employment:

She lived in a bamboo hut, helping her father plant rice on a patch of mountainside above this coastal village on the island of Leyte . . . . She was 18 years old . . . . when she first left the rice paddies of Talisayan for another jungle, Manila, [where] fake papers sell like dried mangoes in Manila’s Chinatown.\textsuperscript{27}

As a result of this female migration, there is a higher ratio of women to men in urban areas and "pressures on women to marry before age 30."\textsuperscript{28} In addition, "[s]ocial programs to aid the population to obtain jobs are generally considered insufficient to meet the needs of Filipinas, who face tremendous gender discrimination in the job market. Despite their inferior economic position, gender roles place the burden of family maintenance and support on women,"\textsuperscript{29} even if women have to seek work or marriage abroad:

\textsuperscript{25} Seese, supra note 21.
\textsuperscript{26} Lee, supra note 9, at 143.
\textsuperscript{28} Elson, supra note 16, at 368.
\textsuperscript{29} Lloyd, supra note 11, at 346.
Her village is waterlogged and lush, a crush of huts on the Camotes Sea. It has a roster of roosters and yapping dogs. Scents of mildew and bougainvillea float in its liquid air. . . . Her extended family lives in a concrete house, a sign of manna from [a married sister in] America. 30

Filipinas' resistance to going abroad is apparently of no consequence to their families:

Born on the Philippine island of Panay, Gigi was only 19 when she was introduced to Rob, a lumber mill worker from [Canada] . . . . She didn't want to wed him but her family pressured her. Her father scolded her when she grew teary-eyed on her wedding night, telling her: “You are bringing shame on this family. If you don’t go through with this marriage, I will kill you.”31

Instead of being saviors, American men are portrayed as being “often divorced and disenchanted with the feminist movement, attributing [their] failure at relationships or marriage to what [they] consider[] to be the intolerable attitude of feminist women.”32 Mail-order bride transactions are not considered beneficial to the women, even though it facilitates their emigration from the Philippines, because of the commodification, deception, and abuse considered to be inherent in the process—elements which are also potentially present, but ignored, in intercountry adoptions.

Descriptions of China and the Philippines as male-dominated or patriarchal, especially in reference to the Chinese preference for sons or the Filipino pattern of male inheritance of familial property, ignore similar American norms of patrilineal

30 Newman, supra note 27.
32 Lee, supra note 9, at 145.
descent and male preference. Likewise, the abandonment of girls in China and Filipino familial complicity in their daughters' sales are used to dichotomize America and Asia, as though no American parent has ever abandoned, abused, or sold their child. Instead of emphasizing global trends of patriarchy and the commodification of women and children, these writers choose to highlight elements of Chinese and Filipino culture as foreign. These articles create the impression that Chinese and Filipino individuals are indistinct from their culture and are unable to deviate from cultural mandates; the complex web of considerations that lead some Chinese families to surrender their daughters for adoption is not addressed, let alone developed. Adoptive American families' relief when they are finally able to cloister themselves in hotels which offer Western food and amenities is described as though it

33 See generally, Leti Volpp, Blaming Culture for Bad Behavior, 12 YALE J.L. & HUMAN. 89, 98 (2000) (explaining that "colonialism associated tradition with colonized peoples, ancient ritual, despotism, and barbarity").

34 Id. The tendency in American periodicals to assume or conclude that people of color "behave in certain ways and make particular choices because they follow cultural dictates" is discussed.


Three cases involved unwed mothers. . . . Almost 90% of the abandoned children were girls. . . . But only rarely was a girl abandoned if she were the first child born to a family. Many of them were second, third, fourth, or even fifth born girls; but 87% of them had no brothers. In all cases of abandonment where there were no sons in the family . . . the primary reason for abandoning a daughter was the desire to have a son . . . . Sometimes people also mentioned the fear of being fined for an over-quota birth. But the authors also concluded that girls are not readily abandoned . . . . People often manage to have one more over-quota children—either by hiding them or by paying fines—before turning to abandonment. Most people want to have a daughter in addition to a son. In two cases families abandoned healthy baby boys because they wanted to try again for a girl, and several families paid the steep fines in order to try again for a girl or to adopt an abandoned infant girl.
suggests something negative about Chinese life, rather than something negative about American ethnocentricity.

B. U.S. Military Involvement

Numerous legal writers have commented on the role played by the U.S. military in fomenting the sex trade in Asian countries where military bases were located. In addition, some credit the U.S. military with furthering the mail-order bride industry, often by linking mail-order brides with sex workers. According to one author, "even after the withdrawal of the Western military from Southeast Asia, prostitution continued and expanded through demand on military bases and mail order brides, creating the market demand for traffic to the United States and other industrialized nations." Another commentator explains that "the mail-order bride industry is largely built upon foundations of military prostitution." Others connect mail-order brides to the military not through prostitution, but rather as a legacy of war brides:

As a result of the deployment of troops in Asia during World War II, over 200,000 Japanese, Vietnamese, Thai, Korean, and Filipina women immigrated to the United States by marrying American servicemen as "war brides". The

---


37 The tendency of legal writers to equate mail-order brides with prostitutes is discussed in Part III A.

38 Raghu, supra note 36, at 153.

39 Lee, supra note 9, at 160.
experiences of Asian Pacific war brides are strikingly similar to the experiences of many mail-order brides today.\textsuperscript{40}

However, war brides are also sometimes described in disparaging terms as prostitutes:

[A]t the close of the Vietnam War, American servicemen brought Vietnamese prostitutes into the United States by using family preferences in immigration law. Within a week of the end of the war, there were few beautiful prostitutes in Saigon. Young Americans made the rounds of virtually every bar and whorehouse in the capital to round up women and sponsor them out of the country.\textsuperscript{41}

War brides were not the only Vietnamese citizens to be removed from Vietnam by the American military at the end of the Vietnam War. During “Operation Babylift,” between 2000 and 2700 Vietnamese children were airlifted out of Vietnam in 1975 by the U.S. military. Operation Babylift is still vaunted 25 years later in popular articles and books with titles such as \textit{A Journey of Hope} and \textit{After Sorrow Comes Joy},\textsuperscript{42} despite evidence that many of the children were not actually orphans.\textsuperscript{43} According to Kirsten

\begin{itemize}
  \item \textsuperscript{40} Meng, supra note 36, at 233, n. 222.
  \item \textsuperscript{41} \textit{Id.} at 233.
  \item \textsuperscript{42} See, e.g., \textit{CHERIE CLARK, A AFTER SORROW COMES JOY} (2000); Mark Wolf, \textit{A Journey of Hope in Vietnam}, ROCKY MTN. NEWS, July 13, 2000, at 3D, available at 2000 WL 6601175. \textit{But see}, Bonnie Kae Grover, \textit{Aren't these our Children? Vietnamese Amerasian Resettlement and Restitution}, 2 VA. J. SOC. POL'Y & L. 247, 259 (1995) (remarking that “[t]he United States government offered Operation Babylift to show the wonderful, last-ditch heroics of America—the ‘rescue’ of ‘Vietnamese orphans,’ portrayed as the most helpless, most precious little people of all, snatched from the hands of the rapidly advancing North Vietnamese forces and evacuated at great risk even as Saigon fell.” Grover is critical of Operation Babylift, and other post-Vietnam U.S. policies, because of their disregard for the “Amerasian” offspring of American soldiers and Vietnamese women.).
  \item \textsuperscript{43} There have been several cases brought in federal and state courts by parents and other family members of children who were adopted following Operation Babylift. \textit{See}, Nguyen Da Yen v. Kissinger, 528 F.2d 1194 (9th Cir. 1975);
Lovelock, "the processing of these children for adoption was carried out within a very tight time frame, and it appears that personnel did not research the backgrounds of these children very thoroughly." Another article recounts the story of an infant being "jammed on one of the last flights out of Saigon, [and traveling] with the birth certificate of a child killed in the crash of another evacuation flight a few days before," and reports that one adoption agency in Vietnam acquired a van and "began making regular trips through the countryside, taking babies to a Saigon orphanage where they were processed for adoption."

Lest Operation Babylift be dismissed as an aberrant example of military involvement in intercountry adoption, Lovelock points out that the "military involvement and presence of the United States in Asia had shaped the earliest intercountry adoptions from this region." Indeed, the first intercountry adoptions by Americans involved Japanese children in 1946, presumably World War II orphans. In the aftermath of the Korean War, legislation was enacted in 1953 and 1957 granting special visas for adopted children. More children were adopted from Japan (1315) than from Korea (461) under the 1953 Refugee

---


Some of the children have a living parent, and were merely left in orphanages for safekeeping . . . . Other children were apparently released with the understanding that the parents would be reunited with the children here [in the U.S.]; still others were released by hysterical parents terrorized by the fear that the approaching forces would murder the child.

528 F.2d at 1197.


46 Lovelock, supra note 44.


48 Id. at 282.
Relief Act—the number of Japanese children adopted was almost equal to the number of children adopted from all the European countries combined (1622)—but under the 1957 laws over twice as many Korean children were adopted (3701) as Japanese (1385). 49 Between 1963 and 1975, more children were adopted from Vietnam (2110—not counting Operation Babylift) than from any other country except for Korea (14,684). 50 Lovelock suggests that public pressure by potential adoptive parents contributed to Operation Babylift, perhaps fueled by fears that no more Vietnamese babies would be available for adoption after America withdrew. 51 In fact, after 1975, the number of intercountry adoptions of Vietnamese children decreased annually, from 424 in 1976, to 60 in 1978, to 1 per year in 1979-1981. 52

There is an absence of similar U.S. military involvement in China—which may explain why intercountry adoptions of Chinese children were not prevalent until the mid-1990s. 53 However, the history of U.S. military involvement in other Asian countries, and the concomitant acquisition of Asian brides and children, is a striking example of modern U.S. imperialism.

C. Commodification of Women and Girls

Both legal and popular writings about mail-order brides emphasize the market component, where "women are served up like commodities." 54 Articles report that prospective men are first introduced to various women through catalogs displaying their photographs—catalogs which are "part Playboy and part Sears Roebuck," 55 and whose "descriptions of the women the companies market do not differ from a department store's listing of

49 Id. at 280-81 (Table 1).
50 Id. at 283 (Table 2).
51 Lovelock, supra note 44. "It is important when considering this airlift to remember intercountry adoptions from Vietnam had begun in 1963 and . . . [were] increasingly meeting a domestic need in North America."
52 Weil, supra note 47, at 286-78 (Table 3).
53 Immigrant Visas, supra note 2.
55 Meng, supra note 36, at 206.
merchandise." After perusing catalogs, men can then complete their transaction. "Paying these agencies . . . is comparable to buying women. You're paying an agency to give you a woman. . . . It's one way of exploiting women. They are selling women, and women are objectified." The ordering process is sometimes equated with slavery. "[T]he industry of mail-order brides [i]s a modern form of slavery that exploits Third World poverty. We have a slogan: 'A paid-for wife is a slave for life.'"

Although potential adoptive parents also select their future children on the basis of a photograph and pay large sums of money to secure them, intercountry adoptions are rarely labeled as commodifying. Instead, writers describe these objectifying aspects of intercountry adoptions with a frank, but uncritical, tone:

Six and a half months after submitting the paperwork to Chinese Center for Adoption Affairs in Beijing, the families received a photo of the child selected for them . . . . When they see the children, the adopting families try to match the children's faces with the pictures they've stared at.

Far from being critical, one legal writer extols the virtues of intercountry adoption, replete with romantic notions of imperialist bounty:

China's adoption resources are practically endless for those desiring to adopt a healthy infant female. The Chinese adoption system allows parents to enjoy a vast resource of healthy children, an advantage not commonly found in other countries offering similar services . . . . Cradled in the arms of an efficient law, the new Chinese export—the healthy baby girl—is the reason why China has

---

56 Lloyd, supra note 11, at 346.
58 Lee, supra note 54.

In addition, the decision to adopt internationally is often reported as based in part on convenience, a highly valued modern commodity:

You might think that their decision to adopt an abandoned girl from China had something to do with well-considered ideas about the brotherhood, or sisterhood, of humankind and the plight of girls in China. It didn’t. [The adoptive parents] heard that international adoptions were easier than domestic adoptions.\footnote{Sege, supra note 4.}

Compared to domestic adoptions, the wait for a child is often shorter. There may also be less risk than with domestic adoptions . . . . People are becoming more and more aware of the Baby Jessica case . . . [in which] an adopted child, after a lengthy court battle, was returned to her birth parents . . . . A lot of people don’t want to become involved with open adoptions . . . [which] allow contact or visits with the birth mother.\footnote{Colleen O’Connor, \textit{International Families: More are Embracing the Challenge of Adopting from Abroad}, DALLAS MORNING NEWS, Aug. 28, 1994, at 1F, available at 1994 WL 6849888.}

On the other hand, when depicting the details of the monetary exchange, a subtle tone of resentment will sometimes emerge, along with insinuations that “the Chinese”—not just Chinese adoption officials—are overly fastidious or greedy. The Chinese expect their fees in cash. "They want crisp $100 bills and have
been known to reject ones that are nicked, marked with ink, or even folded too much."63

Critics of mail-order brides have identified the Orientalism involved in the industry, noting that "stereotypes of Asian women as exotic sexual toys for white-male consumption pervade company catalogs,"64 and that, antithetically, "Asian Pacific mail-order brides' race/ethnicity then becomes a marker that defines her as a good girl—loyal, eager to please, and a housewife."65 Likewise, a company's name—such as Asian Rose66 or Cherry Blossoms67—often belies an eroticized and fetishized notion of Asian women.

Conversely, advocates of intercountry adoptions have not acknowledged the parallel Orientalist components of Americans' desire to adopt Chinese children. Lilian Thogersen, the assistant director of the World Association for Children and Parents, an organization which facilitates intercountry adoptions, admits that "there is an element of racism . . . There is no question that white families look at a Chinese child, for example, as being very physically attractive. It's the stereotype of them being cute."68 Another article refers to an adoptive child as a "China doll," who "showed no emotion."69 A disturbing tendency in many popular articles is to give the child's Chinese name, and its English translation, along with the "normal American name"70 that the child is subsequently given. "The child that Glen and Sherry Clegg

63 Huettel, supra note 5.
64 Lloyd, supra note 11, at 335.
65 Lee, supra note 9, at 162.
70 Megan Donnell, Welcome Arrival Adds Spark to Celebration, TULSA WORLD, July 4, 1994, at LA, available at 1994 WL 8882550 (quoting Susanna Hill, the director of development for Dillon International. Hill reports that "once they adopt a child . . . most couples choose 'a normal American name'".)
adopted was named Mao Jia Ji, which means excellence . . . However, the couple renamed her Jazmyn (pronounced Jasmine)."71 "That glimpse of Shang Qi—which means luckiness in Chinese—was all they needed to pack their bags and embark on a 14,000 mile round trip . . . to adopt the little girl they now call Olivia."72 "Jenna’s Chinese name was Qiu Ru, which means autumn, and the Chinese have always held a moon festival in the middle of autumn."73 "[T]hey were handed their daughter, Mao Xiao Meng, meaning 'little dream.' Although the Greens renamed her Grace Suzanne Green, Mrs. Green says she will always be her little dream."74 One family not only gave their adopted daughter a new American name, but a new Chinese name as well:

A female pediatrician in a white coat handed us a fidgety bundle, announcing “Yang Lai Jian,” our child’s Chinese name . . . which means to become healthy . . . . Next morning, we stopped using her orphanage name and began calling her Claire and “Lin Chunyang.” Lin is a surname meaning forest, chun means spring, and yang means poplar tree (and is also a homonym for Yangzhou).75

Christening the child with an American name affirms the property rights of the adoptive parents in their new child. The reporting of the former Chinese name, with translation, offers readers a glimpse into the foreign place that is China, where girls are given exotic names with bucolic or philosophical meanings. In contrast, American names are not translated: readers are not told that Jenna

---

72 David McIntosh, The First We Saw of Our China Girl was a Blurred Photo . . . Now We’re Finding Her a Sister, EVEN. NEWS, Feb. 18, 1999, available at 1999 WL 10328808.
means "wife of the Roman god Janus" and "guardian of doors and the turn of the year."  

D. Deception or Fraud in the Transaction

Although some definitions of trafficking do not require deception or fraud,  
most notions of sexual trafficking—the trafficking of women and girls for sexual and reproductive purposes, as opposed to trafficking in boys for non-sexual labor—include some degree of fraud or deception.  
Under these more limited definitions, mail-order brides are trafficked only if "there is deception, fraud or fraudulent non-disclosure of known facts concerning the nature of the relationship being entered into or the criminal or abusive background or tendencies of the [potential husband]."  
Legal writers who consider mail-order brides to be a form of trafficking thus underscore companies' failure to provide potential brides with information about the men and point out that "because the potential brides lack resources, there is little

77 See, e.g., Lloyd, supra note 11, at 343 (defining trafficking in women to include "any situation where women or girls cannot change the immediate conditions of their existence, where regardless of how they got into those conditions, they cannot get out; and where they are subject to sexual violence and exploitation") (citations omitted).
78 Ali Miller & Alison N. Stewart, Report from the Roundtable on the Meaning of "Trafficking in Persons": A Human Rights Perspective, 20 WOMEN'S RTS. L. REP. 11, 14 (1998). This roundtable of scholars and activists defined the elements of trafficking as:
[1] within or across borders; [2] whether for financial or other gain or not; [3] and in which material deception, coercion, force, direct or indirect threats, abuse of authority, fraud, or fraudulent non-disclosure is used; [4] for the purpose of placing a person forcibly, against her/his will or without his/her consent; [5] in exploitative, abusive or servile situations, such as forced prostitution, sweatshop labor, domestic servitude or other abusive forms of labor or family relationships, whether for pay or not.
79 Id. at 17.
opportunity for them to verify anything their suitors tell them before emigrating to the United States.”

Popular articles confirm the potential for deception and report that mail-order brides often find their new husbands to be leading very different lives than they described. "Dean wasn’t rich, he was unemployed and lived with his mother." "When she arrived in Squamish, Gigi discovered that Rob was unemployed." "Lanie left her home . . . in the Philippines . . . . She ended up living in a filthy trailer. . . . After her son, Tony, was born, Lanie learned that her husband had been accused of molesting a son from a previous marriage."

In contrast, most intercountry adoption agencies require potential adoptive parents to undergo a series of home studies and background checks. Articles which address possible fraud either focus on illegal baby selling, noting that China is the second “leading exporter of children for illegal adoption, behind only Russia,” or on the potential for deception on the part of the Chinese, especially in disclosing the conditions within orphanages and children’s medical histories. Ironically, these exposes have

80 Lloyd, supra note 11, at 348.
82 Bell, supra note 31.
83 Id.
84 See, e.g., Great Wall Adoption Services, What Services Do We Offer?, at http://www.eden.com/~gwcadopt/steps.html (last visited Nov. 25, 2000) (describing the intercountry adoption process).
come under attack by adoption advocates, who fear that negative reports will cause China to limit adoptions. For example, after CBS aired an "Eye to Eye" episode about the conditions of Chinese orphanages, one article refuted the program's depiction in the "hope that the CBS program does not deter anyone considering adoption." Another article reports:

Allegations of abuse in Chinese orphanages may delay adoptions for about 35 families here . . . . Chinese officials have stopped approving adoptions since the allegations were made Jan. 6 by a human rights group in New York . . . . "We are ready to bring her home," Gail Wood said. "We were just waiting for the (Chinese) Ministry of Civil Affairs to sign the final approval. We had no idea all this might affect us so directly."

Although Gail Wood seemed more concerned that the allegations were delaying her adoption than with the possibility of her future child being abused or unhealthy, other parents discovered that their malnutrition; growth retardation; nutritional deficiencies, including rickets, anemia, lead poisoning and hypothyroidism; inadequate immunizations; and a markedly increased risk of many infectious diseases, including hepatitis A, B and C, intestinal parasites and tuberculosis. For many girls there are long-term challenges including undiagnosed congenital defects and medical conditions such as cerebral palsy, significant global developmental delays, especially in speech and language, and behavioral problems such as poor social skills, attachment disorders and school failure.

See also, Charles W. Henderson, CDC Reports Elevated Lead Levels in Children from Overseas, NEWSRX.COM, Feb. 22, 2000, available at 2000 WL 11943611. "The CDC analyzed data from nine centers that screened adopted children . . . [and found] that 8% to 13% of children adopted from China had elevated levels of lead in their blood, compared with a U.S. rate of 2% to 6%.


adoptive children's health had been misrepresented and sued their adoption agencies. Such actions were also met with disapproval: Parents involved in adopting children from China were stunned yesterday by a controversial lawsuit alleging that [an] adoption agency had misrepresented the health of a little girl. “I'm mortified by the lawsuit,” said 42-year-old Erica Kerr, who is now in the process of adopting a child from China.89

Prospective parents willful blindness to potential deceptions in the intercountry adoption process furthers the perpetuation of possible fraud. In this sense, although adoptive parents are not themselves behaving in a deceptive or fraudulent manner, they knowingly engage in a potentially fraudulent transaction to procure a human, just as a man ordering a mail-order bride does.

E. Abuse of Women and Girls by their American Families

One law review article on mail-order brides opens with an idealized fictional account of a mail-order marriage, which is then contrasted with:

Reality: In Seattle, a pregnant Filipina mail-order bride was shot to death by her husband, who she claimed had previously beaten her.90

Hundreds of popular, academic, and legal articles, in local, national, and international media, reported, discussed, and analyzed this 1995 shooting of a Filipina mail-order bride by her American husband.91 This tragedy, seen as epitomizing the

90 Meng, supra note 36, at 198.
dangers faced by mail-order brides, galvanized widespread criticisms of the industry. In response, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which required the Attorney General to conduct a study of the mail-order bride industry to determine the number of mail-order marriages and the extent of domestic violence in such marriages. The IIRIRA also required the mail-order bride agencies to provide potential brides with “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.” Although the sufficiency of such legislation is debatable, it at least indicates an acknowledgement of the problem and a willingness to work towards a solution.

In contrast, abuse of internationally adopted children has not received much media attention or federal inquiry. For example, only 4 articles covered the 1992 killing of an adopted Chinese baby by her American mother, all of them in local newspapers. In that case, the mother, Lisa Hawkins-Rusch, was

---


93 INS Report, supra note 9, at 6. This report itself makes mention of the 1995 shooting, calling it an example of “the deadly ramifications of domestic violence and immigration.”

94 Id. at § 652(b)(1).

accused of "violently shaking her baby to death or causing her daughter's death by striking her head with a hard object." Hawkins-Rusch initially told police that the child, Meghan, fell in the living room and injured herself. At trial, the defense attorney argued that Meghan's injuries were sustained "while she was in China before her adoption." Although Hawkins-Rusch was charged with two counts of second-degree murder, two counts of first-degree manslaughter, and one count of second-degree manslaughter, the jury only found her guilty of second-degree manslaughter (criminally negligent homicide).

This case might not be anomalous. According to the American Academy of Pediatrics, the lack of "medical or social information about the birth family, pregnancy, birth process or medical issues after birth," combined with institutional care in an orphanage "of variable quality in terms of physical facilities, nutritional support and caregiver-to-child ratio," means that many children adopted from China will have special needs that American families are not prepared for:

All too often, pediatricians encounter families who did not appreciate that their adopted ... children had significant medical, psychological, and/or development problems. Reassured by "happy family" stories in the agency literature or on the Internet, the parents thought they were adopting a child who was basically healthy, needing only some tender loving care and attention to become perfectly "normal." Instead, they have committed to raising a child with significant developmental delays or disabilities, psychological damage from abuse or neglect, and/or very challenging behavior problems.

---

96 Masullo, supra note 95.
97 Id.
98 Id.
99 Id.
100 Pediatric Testimony, supra note 86.
This parental surprise and disappointment can lead to abuse or neglect of the adopted child.\textsuperscript{101}

Adoptive parents and advocates of intercountry adoptions may be quick to stifle media reports of child abuse because of fears that such reports will cause China to limit or prohibit future adoptions. Indeed, Russia imposed a moratorium in 1998 on foreign adoptions because of two high-profile cases of American parents abusing adopted Russian children.\textsuperscript{102} Although this ban was eventually lifted, a reporting requirement that internationally adopted Russian children be tracked until they became 18 years-old was created.\textsuperscript{103}

III. BUYING A WIFE BUT SAVING A CHILD

Despite the similarities outlined in the previous section, many readers may still be hesitant to liken mail-order brides and intercountry adoptions. Part of this reluctance undoubtedly stems from a sense that the two are somehow qualitatively different. One is seen as purchasing a woman for prurient reasons—no different from prostitution really—while the other is seen as a selfless act of giving a needy child a good home. Indeed, parallels between mail-order brides and intercountry adoptions are not readily apparent because the two phenomena evolved from different historical motivations, which contributed to their radically different modern connotations. These histories need to be identified, and the

\textsuperscript{101} Id.

\textsuperscript{102} Kimberly A. Chadwick, Comment, The Politics and Economics of Intercountry Adoption in Eastern Europe, 5 J. INT’L LEGAL STUD. 113, 123 (1999); Vladimir Isachenkov, Russians Moving to Tighten Laws on Foreign Adoptions, ARIZ. REP., Nov. 29, 1997, at A1, available at 1997 WL 8411319. “Russian lawmakers are drafting rules to tighten control of adoptions by foreigners in light of several high-profile cases of reported abuse, including that of a Phoenix couple accused of striking their newly adopted children during the flight to the United States;” see also, Joe Garner, “I Fought Him,” Mom Tells Court of Day Boy was Beaten to Death: Jailed Greeley Woman Seeks Reduced Time in Unruly Son’s Slaying, DENV. ROCKY MOUNT. NEWS, June 14, 2000, at 7A, available at 2000 WL 6598589 (explaining that a woman “thrashed her adopted [Russian] son to death with a wooden spoon” in 1995).

\textsuperscript{103} Chadwick, supra note 102, at 123.
modern constructions which derive from them unpacked, in order to remove the veneer that disguises mail-order brides and intercountry adoptions as separate practices.

The first Asian women introduced to the white American public were Chinese prostitutes in the mid-19th century; these early encounters sparked the construction of hypersexual stereotypes of Asian women. However, assertions that all or most early immigrant Chinese women were prostitutes, without additional discussion, further reifies this stereotype. Likewise, the equation of mail-order brides with prostitutes does nothing to help capture the complexities of Filipina women's lives.

In contrast, the adoption of Asian children began with military efforts to save war orphans, but missionaries and other religious leaders and laypeople had become involved in intercountry adoptions by the Vietnam War. While some attempts were made by white Christian women, in the late 19th and early 20th centuries, to reform Chinese prostitutes, these efforts are lackluster in comparison to the religious orphanages that were established in Vietnam. However well intended, such missionary work often arose from and reflected Orientalist and imperialist paradigms—needing to "save," both physically and spiritually,

104 GEORGE PFEFFER, IF THEY DON'T BRING THEIR WOMEN HERE 3 (1999). Pfeffer explains that fears of vast hordes of Chinese prostitutes led to the enactment of the Page Law of 1875, which prohibited the immigration of Chinese women for prostitution. As a result of this legislation, Chinese women had to go through a habeas corpus trial before being allowed to enter the United States.

105 Id. at 103. Pfeffer notes that:

Although the [Page Law] limited its official focus to prostitution, enforcement officer expanded it in a way that could also protect those who employed Chinese labor from the threat of increased wages due to dependent immigration. By using a common assessment of Chinese womanhood, held at least since the 1830s, they could turn away the wives and daughters of workingmen as "immoral women," thereby excluding virtually all prospective female immigrants.

106 See supra notes 46-52 and accompanying text.
107 See infra notes 147-50 and accompanying text.
108 See infra note 116 and accompanying text.
heathen children. Present day prospective parents often articulate religious reasons for wanting to adopt a child from China, but such claims of divine will conceal the commodifying or market component of the adoption.

A. Disaggregating Mail-Order Brides and Prostitutes

In equating mail-order brides with prostitutes, legal authors rely on two different analogies. In one, mail-order brides are seen as "reviv[ing] a distinct identity, based on the prostitution of Chinese women, that was imposed on Asian Pacific women in the last 19th and early 20th century." In the other, mail-order brides overlap or become synonymous with present-day prostitutes.

Analogies to historical prostitution begin by explaining the demographics of Chinese laborers in the 19th century, focusing on the gender imbalance created by immigration laws that excluded Chinese women and contributed to the rise in prostitution. For example, according to Eddy Meng:

Separated from the women in their home countries and prevented from having relations with white women, Asian Pacific male laborers felt a certain social dislocation that produced a demand for Asian Pacific prostitutes. Despite exclusionary immigration measures, a traffic of Asian Pacific women as prostitutes: by the late 1800s, the majority of Chinese women allowed to immigrate in California worked as prostitutes.

While Meng is generally correct in his recitation of demographic trends, his discussion of Chinese prostitutes is oversimplified. Other scholars have argued that the number of Chinese prostitutes was inflated. According to Mary Coolidge, "with the general tendency to enhance anything adverse to the Chinese, it would be

109 See infra note 151 and accompanying text.
110 See infra notes 142-44 and accompanying text.
111 Lee, supra note 9, at 154.
112 See id. at 157-65; Meng, supra note 36, at 223-24.
113 Id.
inevitable that the number of lewd women would be greatly exaggerated and the number of wives underestimated." George Pfeffer explains that:

[C]ensus enumerators, operating in a political and social environment that sensationalized Chinese prostitution often appear to have also ignored the existence of women who were not prostitutes. The apparent objectivity of their reports has, in turn, further obscured the presence of all but the prostitutes and reinforced stereotypical images of Chinese women who immigrated to the United States before 1882.

In addition, not all Chinese prostitutes remained prostitutes for life. Peggy Pascoe has studied the efforts of Christian Mission Homes to rescue Chinese prostitutes and facilitate their marriage to acceptable (i.e. Protestant, middle-class) Chinese men and argues that "both the skewed sex ratio and the absence of established in-laws created unique opportunities for immigrant prostitutes to marry in order to leave prostitution behind."

Meng's problematic reduction of 19th century immigrant Chinese women to prostitutes is mirrored by Donna Lee's essentialist linking of mail-order brides and prostitutes. Aside from cases in which mail-order brides are lured to the United States with promises of marriage and then forced into prostitution, mail-order brides are distinct from prostitutes. Nora Demleitner postulates that mail-order brides "might determine their fate more freely than prostitutes, because in most cultures marriage is a highly desirable status" and argues that

114 PFEFFER, supra note 104, at 7 (quoting and citing Mary Coolidge).
115 Id. at 9-10.
117 Lee, supra note 9, at 179.
118 See Cataloguing Coercion, supra note 31.
119 Demleitner, supra note 15, at 626.
"the contention that 'mail-order' wives engage in prostitution reflects the deep-seated belief that monetary motives should not play a role in marriage." Demleitner explains that the equation mail-order brides with prostitutes is a one-dimensional critique, which assume that the brides have a single motivation—economic security. Instead, mail-order brides express a wide range of reasons for marrying foreigners and emigrating. Perhaps surprisingly, many Filipina mail-order brides have college or professional degrees and view marriage as a means of securing a better job in the U.S. While Lee offers a disclaimer in her introduction that she is not "suggest[ing] that Asian Pacific women are the wholly passive victims of a larger process or racial and sexual subjugation," her characterization of mail-order brides as victimized prostitutes, implies, in Demleitner's terms, "that all of these women want to leave the relationship in which they are involved. However, such an assumption merely revictimizes the women and turns them truly into objects who can be told what to desire."

In fact, both Meng and Lee fail to give mail-order brides a voice. Lee devotes quite a bit of space to discussions of potential husbands' motivations and expectations, often providing direct quotes. However, while she mentions in a single footnote interviews that she conducted with Filipina mail-order brides,

---

120 Id. at 622.
121 Id.
122 Id. at 625-26.
123 Prof. Vidya Samarasinghe, Presentation at the International Trafficking of Women Panel Discussion at the Washington College of Law (Oct. 17, 2000); see also, Demleitner, supra note 15, at 642-43. Demleitner is critical of immigration policies that "make it relatively easy for their citizens to bring in a foreign spouse [but] make it very difficult for a foreign worker to immigrate." She suggests that the U.S. immigration system should be reconsidered, so that these mail-order brides can qualify for a work visa without having to marry a U.S. citizen.
124 Lee, supra note 9, at 141.
125 Demleitner, supra note 15, at 625.
126 Lee, supra note 9, at 145 nn. 20-27.
127 Id. at 144 n.16 "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
the results of these interviews are not reported. Likewise, Meng offers multiple "customer testimonials," but tucks away one Filipina bride's expression of her motivations in a footnote. Although popular media articles hardly qualify as representative samples, these interviews still provide a much needed infusion of at least some mail-order brides' voices. Without these voices, it is easier to characterize mail-order brides as undifferentiated victimized prostitutes—as "other" rather than as individuals.

Many mail-order brides seem cognizant of dangers associated with the industry:

They're just taking advantage of these very innocent people who want to do well . . . . It's not properly handled, it's not properly assisted because they have these abusive and older husbands.

I know about the murders, but I feel that if it is your time to die, you die.

Even if some of the men who write are bad, our lives can't be worse than they are here, so I'm not afraid.

Others express confidence in their ability to discern the truth about potential husbands:

He's not a bad guy, but I won't marry him because I found out that he knows many other women . . . .

---

not unconcerned, with a woman's background, including sexual history and economic class, than Filipino men."

Meng, supra note 36, at 208.

Id. at 204 n.44 "One Filipina bride explained that feeling lonely, having few friends, and initially experiencing nightmares is a small price to pay: 'there is a better life [in the United States]. American men are sincere and loving when it comes to marriage. I want to have a baby with blue eyes.'"

Demleitner, supra note 15, at 622.

Bell, supra note 81.

Matthew Fischer, Mail-Order Brides: Pen Pals or Prey? Why Desperate Young Filipinas Flock to the "E-mail Sex Trade," OTTAWA SUN, Mar. 6, 1999, available at 1999 WL 13778138.

Id.
While I was staying with him another Filipina rang him. So, it's his fault we didn't marry not mine . . . . I can see in their faces that some who wrote to me are bad men. They are lechers. They would ask me about sex.\(^{134}\)

I've made a folder for each one and keep their letters and photos in it . . . . I haven't chosen yet. I'm still fixing my mind.\(^{135}\)

Several expressed irritation or annoyance with the Philippine government's efforts to protect them:

I know our government doesn't like this. But I don't care . . . . We have our freedom and we choose for ourselves. There is nothing that can be done to stop us from giving our names to pen pal companies. I don't think of this as a dirty business. That's a bad image to have. We're not being forced. This is what we want.\(^{136}\)

They can call us mail-order brides if they want, but it's a really good idea because it is practical . . . . Our priority is to improve our financial situation and this is the best way to do it.\(^{137}\)

Lee equates mail-order brides with prostitutes in the hopes that laws against prostitution, such as The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,\(^{138}\) can be utilized to prohibit mail-order brides\(^{139}\)—a goal shared by Meng.\(^{140}\) However, there are a number of pragmatic problems associated with prohibition: the potential

\(^{134}\) Id.

\(^{135}\) Id.

\(^{136}\) Id.

\(^{137}\) Id.


\(^{139}\) Lee, supra note 9, at 176-77.

\(^{140}\) Meng, supra note 36, at 200.
for the industry to continue underground, subject to even less regulation and scrutiny; constitutional problems with infringement on U.C. citizens’ fundamental right to marry; the potential for racist immigration restrictions placed on women perceived to be mail-order brides; and the likelihood that enforcement would lead to disproportionate prosecutions of the brides, rather than the grooms or the agencies. Instead of considering mail-order brides to be prostitutes, and therefore subject to anti-prostitution laws, recognizing the parallel between mail-order brides and intercountry adoptions raises the question of why mail-order brides should be regulated by laws different from those governing intercountry adoptions.

B. Ignoring the Costs of Saving a Child

Parents who adopt children from China often express religious motivations:

The Lord led us, our hearts were drawn to China . . .
We had friends who were missionaries in China and had heard stories about the children there. Instead of considering mail-order brides to be prostitutes, and therefore subject to anti-prostitution laws, recognizing the parallel between mail-order brides and intercountry adoptions raises the question of why mail-order brides should be regulated by laws different from those governing intercountry adoptions.

We prayed about it, and my husband felt God gave him a plan. Smith is a single, Baptist-turned-Jew . . . [who,] having heard about . . . Lottie Moon, a legendary Baptist missionary to China, felt comfortable with the [Chinese] culture.

Adoption agencies and officials, both in the U.S. and China, also claim to depend upon divine inspiration and intervention:
They were at the Number One Social Welfare Center in Changsha, China . . . meeting the Chinese

141 Demleitner, supra note 15, at 645-46.
142 Edwards, supra note 69.
daughter that Mr. Liang, guided by what he calls "the hand of God," had chosen for them.\textsuperscript{145}

We are a Christian organization, but our true goal is to find loving parents for China's orphans . . . . We do not consider a parent's religious affiliation an exclusionary factor to adopt a child but we do request families to agree to the following statements: We promise to the best of our ability to:

- Raise our adopted child/children according to Deuteronomy 6 and John 14.\textsuperscript{146}

Such religious impulses have historically been central in intercountry adoptions of Asian children. Orphanages in Vietnam during the war era were often established by churches as part of their missionary efforts.\textsuperscript{147} Present-day orphanages in Vietnam retain this religious nature.\textsuperscript{148} Operation Babylift has taken on biblical associations:

Some of the Vietnamese said they still didn't understand why their mothers had abandoned them to orphanages. Traynor says he wanted to tell them a story of faith and survival from the Old Testament, the story of a Hebrew mother who abandoned her son to save him from being killed because of his race. "I wanted to tell them the story of Moses," Traynor says.\textsuperscript{149}

\textsuperscript{145} Sege, \textit{supra} note 4.
\textsuperscript{147} Fulcher, \textit{supra} note 45.
\textsuperscript{148} Wolf, \textit{supra} note 42.
"We had prayed about it, and decided it was what the Lord wanted us to do," Ann Smith recalls. The couple sought a Vietnamese child.\textsuperscript{150}

While religious intervention in Asia is facially intended to rescue or save innocent children, it can also be interpreted as "a continuation of the church's modeling of the 'unclean' Third World as a pastoral terrain over which it has exercised paternalistic control in the name of God."\textsuperscript{151} Viewed in this manner, religious motivations for intercountry adoptions are no different from other imperialist motivations; indeed, religious and missionary activity have often been used as justifications for imperialism. To be clear though, religious motivation is \textit{not} what makes intercountry adoptions problematic. Rather, religious sentiments tend to deflect accusations of imperialism: people are not "buying children," but instead doing "God's work."

Intercountry adoptions have been recognized as a potential form of imperialism by many legal and non-legal academics. Legal articles often quote Howard Altstein and Rita J. Simon, who explain that "what the West has generally viewed as charitable, humane—even noble—behavior, developing countries have come to define as imperialistic, self-serving, and a return to a form of colonialism in which whites exploit and steal natural resources."\textsuperscript{152} Yet, despite this recognition, most legal articles quickly dismiss charges of imperialism and focus primarily on improving the

\textsuperscript{150} Id.
process of intercountry adoptions for white Americans. Legal authors avoidance of imperialist issues cannot be entirely explained by assuming that they have accepted humanitarian or religious justifications.

It is particularly interesting that feminist scholars, who have actively criticized, analyzed, and deconstructed other areas of family and international law, have generally shied away from addressing the role that imperialism and commodification play in intercountry adoptions. However, Twila L. Perry points out that:

Women writing about feminism are likely to be middle or upper-middle class women who have devoted a great deal of time to their careers over a period of many years. Often, they have delayed childbearing until their mid-thirties or later. Such women might become, or are at least likely to see themselves, as possible adoptive mothers. Identification with the women seeking children rather than with the women surrendering them might result in a reluctance to confront some of the issues that a feminist analysis of adoption would inevitably pose.

Perry states that a feminist analysis of intercountry adoption must begin with the understanding that adoption is not simply an "altruistic, apolitical, individual transaction;" feminists must consider "the larger political, economic, and racial context in which adoption takes place." Perry then identifies several factors that could be examined as starting points in developing a feminist analysis of intercountry adoptions, such as disputing analyses that focus solely on economic models of supply and demand, questioning the degree of birth mothers' autonomy and

153 See, e.g., Kleem, supra note 152, at 325-26. Kleem devotes a total of three paragraphs to considerations of "International Adoptions as New Imperialism."
154 Perry, supra note 152, at 139.
155 Id. at 140
156 Id.
157 Id. at 145-46.
choice in surrendering their children, analyzing private versus public adoptions, and incorporating the narratives of birth mothers' into feminist discussions.

In addition to the general factors suggested by Perry, a feminist analysis of intercountry adoptions from China must also consider the gender ratio of adoptive children and the consequences for China created by Americans' acquisition of Chinese girls. Imperialism creates a situation where the development of the subjugated nation is determined by the imperialist power. While exporting female infants to American probably does not go as far as determining the future development of China, this billion dollar industry will certainly affect future Chinese economic development. Further, Chinese social and cultural development will be shaped by the population's gender imbalance. According to a 1995 Chinese national sample population census, the ratio of male children under 5 to female children under 5 was 118 to 100. A U.S. Census Bureau projection predicts that by 2020 the ratio of Chinese men in their early twenties to the Chinese women of the same age range will be 116 to 100. Scholars are already investigating the sociological impact of the looming "bride shortage" in China. One augurs that "forced marriages, girls stolen for wives, bigamy, visiting prostitutes, rape, adultery...homosexuality...and weird sexual habits appear to be unavoidable." Another offers the seemingly simplistic solution that "a significant fraction of China's young men will have to be socialized to forego marriage and parenthood."

158 Id. at 148-49.
159 Id. at 151-54.
160 Perry, supra note 152, at 156-59.
163 Id.
165 Id.
It could be argued that adopting unwanted Chinese girls does not create this gender imbalance—that this imbalance is instead caused by exogenous factors such as the cultural preference for male children and the one-child policy. However, while intercountry adoptions may not be the sole cause of the Chinese gender imbalance, they are a contributing factor: logically, without intercountry adoptions, fewer female children would leave China. In addition, the possibility of intercountry adoptions may exacerbate the gender imbalance by encouraging families who want a son to place their daughter up for adoption; according to the International Social Service organization, the existence of intercountry adoption facilities in Korea in the 1960s and 1970s actually functioned as an incentive for the surrender of Korean children.\(^\text{166}\)

Feminists have been among the vanguard of those critical of the mail-order bride industry, analyzing and approaching it from multiple angles: from attempting to understand why women make the choice to become mail-order brides, to criticizing the law’s failure to protect mail-order brides, to community organizing to provide services and support for mail-order brides in the U.S. Similar efforts need to be made with respect to intercountry adoptions. While some feminists may conclude that the mail-order bride industry is inherently degrading, exploitative, and commodifying and should be completely prohibited, other feminists may consider such an attitude to be paternalistic and naïve. Likewise, some feminists may conceive of intercountry adoption as a worthwhile humanitarian practice which needs only minimal tweaking in order to fix minor problems on both sides, while other feminists may be adamant that the West should not abscond with potentially productive future members of disadvantaged countries. Regardless of the specific stance taken, feminists—as well as other scholars, activists, writers, and adoptive parents—must recognize that intercountry adoptions are, simply stated, the exchange of American dollars for an Asian child,

\(^{166}\) Weil, supra note 47, at 282. Interestingly, there is also a gender imbalance in Korea. See Eberstadt, supra note 162, which, until recently, was the country which sent the most children to the U.S.
and that in this respect intercountry adoptions are no different than mail-order brides.

IV. CONCLUSION

While relying on religious or humanitarian sentiment may give some American adoptive parents a sense of justification or entitlement to acquire Chinese orphans, such rationales mask the reality of imperialism and commodification. Juxtaposing mail-order brides with intercountry adoptions reveals parallels and similarities that prospective adoptive parents and adoption advocates may not want to confront. The potentially abusive and exploitative nature of the mail-order bride industry has received national and international attention, as legislative and other political efforts are increasingly being made to curb the practice. Yet intercountry adoptions have the same potential for abuse, commodification, and fraud, and an even greater market potential—over three times as much money was spent in the last decade to "adopt" Chinese children as was spent on mail-order marriages to Filipina women.167 The double standard of condemning mail-order brides as prostitutes, while uncritically supporting intercountry adoptions must be reconsidered, for when the historical notions and modern constructions that enable mail-order brides and intercountry adoptions to be considered discrete practices are removed, what remains in both cases is the essential fact that white Americans, who cannot satisfy their desires for wives and children in the U.S., are paying billions of dollars to enable Asian women and children to immigrate to the U.S. in order to join these Americans' families.

167 See supra Part I.