

**ROMANCE IS DEAD:
MAIL ORDER BRIDES AS SURROGATE CORPSES**

Nataliya Mikhaylovna and James Fox were married in November 1998 with the help of Encounters International, an international marriage broker.¹ Within two months of their marriage, James Fox had begun to subject his new bride to emotional abuse, from cruel name calling to his angrily smashing a glass against a wall when she refused to drink his spit.² By May 1999, James had physically abused Nataliya by chasing her into a closet, pinning her against a wall, screaming loudly in her ear, and biting her finger so hard that she had bite and bruise marks on it for two weeks.³ In December 1999, “James Fox threw [Nataliya], then four months pregnant, on the bed, violently grabbed her leg with both hands in his expressed intent to break it, and hit [her] in the face causing her lip to bleed when she screamed in pain.”⁴

Nataliya’s tragic story of abuse is a familiar one. Sex-trafficked women and girls are commonly HIV positive, abducted or conned into sexual submission, and irreversibly scarred by the flesh-trading system.⁵ This global sex industry presents clear and tangible harms to world health by creating victims who suffer from psychological harm while serving as the sexual hosts for the transmission of disease.⁶ While world health

¹ *Fox v. Encounters Int'l*, No. 05-1404, 2006 U.S. App. LEXIS 9269, at *6 (4th Cir. Apr. 13, 2006)).

² *Id.* at *7

³ *Id.*

⁴ *Id.*

⁵ *In Fight to Prevent Abuse of Women and Children, Researchers Expand Focus to Include Human Trafficking*, HARVARD PUBLIC HEALTH NOW, Apr. 27, 2007, at <http://www.hsph.harvard.edu/now/20070427/silverman.html>, citing Jay Silverman, J. ACQUIRED IMMUNE DEFICIENCY SYNDROME, Dec. 2006) (noting that one-quarter of sex-trafficked women and girls are HIV positive).

⁶ Congress has defined sex trafficking as the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” 22 U.S.C. § 7102(9) (2006); *see, e.g.*, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, OFFICE OF ACQUISITION & ASSISTANCE, ACQUISITION & ASSISTANCE POLICY DIRECTIVE 05-04, IMPLEMENTATION OF THE U.S. LEADERSHIP AGAINST HIV/AIDS, TUBERCULOSIS AND MALARIA ACT OF 2003 - TLIGIBILITY LIMITATION ON THE USE OF FUNDS AND OPPOSITION TO OPPOSITION TO PROSTITUTION AND SEX TRAFFICKING (June 9, 2005) [hereinafter “Policy

scholarship on trafficking focuses on whether sex workers are a vortex of disease in the HIV epidemic, it ignores important public health issues related to the institutions and contexts of sex trafficking, the vulnerability of victims, and what causes these problems in the first place.⁷

The origins and causes of abuse raise red flags in all instances of sex-trafficking, especially in the mail-order bride industry in which paid-for relationships receive the legal protection of recognized marriages.⁸ Pervasive in the United States, the mail-order bride industry flourishes because American males have the money to purchase their foreign spouses, empowering them to exert substantial control over these foreign brides.⁹ This imbalance of power promulgates violence upon immigrant brides.¹⁰

The economic imbalance between the male purchaser and the foreign spouse serves as one of many catalysts of abuse. American men spend thousands of dollars in fees to use the mail-order bride services provided by international marriage brokers (“IMBs”).¹¹ The prospective brides are on sale from “economically depressed countries”

Directive”] http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd05_04.pdf (last visited Apr. 5, 2008).

⁷ *Id.* See Edi C. M. Kinney, *Appropriations for the Abolitionists: Undermining Effects of the U.S. Mandatory Anti-Prostitution Pledge in the Fight Against Human Trafficking and HIV/AIDS*, 21 BERKELEY J. GENDER L. & JUST. 158 (2006).

⁸ International Marriage Broker Regulation Act of 2003, H.R. 3657, 109th Cong., 1st Sess. (2005) [hereinafter *IMBRA*]. Eight to twelve thousand individuals purchase wives from international marriage brokers (“IMBs”) each year. COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE AND THE DIRECTOR OF THE VIOLENCE AGAINST WOMEN OFFICE AT THE DEPARTMENT OF JUSTICE, INTERNATIONAL MATCHMAKING ORGANIZATIONS: A REPORT TO CONGRESS, at 7 (1999) [hereinafter *INS Report*].

⁹ *Id.* Consumer-husbands control the marriage because many of their spouses are forced into the relationships simply because the alternatives are worse. *INS Report*, *supra* note 8, at 3, 5.

¹⁰ Pub. L. No. 103-322, 108 Stat. 1941-42 (VAWA); *IMBRA*.

¹¹ *European Connections & Tours, Inc. v. Gonzales*, 480 F. Supp. 2d 1355, 1359 (N.D. Ga. 2007); see also *Fox v. Encounters International*, 318 F. Supp. 279, 282 (D. Md. 2002) *aff'd* (*Fox v. Encounters Int'l*, 2006 U.S. App. LEXIS 9269 (4th Cir. 2006)). Section 833(e)(4)(A) of *IMBRA* (note 8, *infra*) defines an IMB as “a corporation, partnership, business, individual, or other legal entity, whether or not organized under any law of the United States, that charges fees for providing dating, matrimonial, matchmaking services, or social referrals between United States citizens or nationals or aliens lawfully admitted to the United States

and have minimal ability to speak English, leaving them with little bargaining power as they marry American men.¹² In addition to these economic imbalances, there is significant disparity in the legal rights of the purchasing male versus the purchased spouse. For one, these foreign-bought brides have no knowledge of the American legal system¹³ and fall at the mercy of their citizen-husbands who hold the power of petitioning the prospective bride's citizenship status.¹⁴ This knowledge barrier coupled with the everpresent threat of deportation,¹⁵ leaves abusers virtually immune from prosecution and further stymies the brides' access to legal help.¹⁶ "Consumer husbands" is the foreign bride industry's term for the male purchasers who use the paid-for status of a relationship to exercise control over women.¹⁷

The International Marriage Broker Regulation Act of 2005 ("IMBRA") reflects Congress's most recent attempt to resolve these problems in the mail-order bride system. IMBRA differs from past policies by focusing on the informed-decision making ability of the prospective brides. The Act requires that prospective brides receive critical information about potential buyers including background information on the prospective purchasers and legal information about conditional permanent residency and the battered spouse waiver.¹⁸ Additionally, the United States now thoroughly profiles the men

as permanent residents and foreign national clients by providing personal contact information or otherwise facilitating communication between individuals." *European Connections & Tours, Inc. v. Gonzales, infra*, at 1369.

¹² *Id.* at 1362-66.

¹³ Pub. L. 104-208, Div. C, 110 Stat. 3009-712. Sept. 30, 1996. Sec. 652 "Mail-Order Bride Business."

¹⁴ *Id.* at 1361; *see* § 216, Immigration and Nationality Act (hereinafter "INA") (K-Visa requirements).

¹⁵ *Id.*

¹⁶ Under the 1994 VAWA Act, abusers were immune from prosecution. VAWA 2000 § 1502(a); 8 U.S.C. § 1101.

¹⁷ Sexual consumption dehumanizes women by defining them as the passive, submissive and static objects of male consumption and control. *INS Report*, at p. 5.

¹⁸ IMBRA.

seeking to purchase foreign spouses.¹⁹ Despite Congress's continued progress in the regulation of the mail-order bride industry, the practice remains under the legal radar even though widely condemned.²⁰ Notwithstanding the country's negative opinion of sexual trade, this sexual "consumption" continues to define the mail-order bride industry and its players within the United States.²¹

This Comment examines consumption in the mail-order bride industry as a normative explanation for the public health risks posed by sex trafficking.²² Sex trafficking, when deconstructed into an epidemic of consumption, produces a conceptual tool for understanding the health risks of the industry.²³ Consumption exposes the international trafficking of women as a manifestation of necrophilia.²⁴ Psychoanalyst Erich Fromm described necrophilia as representative of a disposition of manipulation, control, violence and force and not merely the attraction to and intercourse with dead bodies.²⁵ The public health risks posed by sexual trafficking are intimately related to the psychological health of the consumer husband-as-necrophile.²⁶ Part I of this Comment explores the relationship between law and violence in the mail-order bride practice. The

¹⁹ *Id.* at subpart D, § 833.

²⁰ American common law leans toward the presumption that marriage brokering is illegal. *Ureneck v. Ping Cui*, 59 Mass. App. Ct. 809, 810 (2003); *see also Recent Decisions: Contracts. Marriage Brokerage, Invalidity of Promise to Pay Made in Exchange for Securing Marriage*, 27 COLUM. L. REV., 322-323 (1927) (courts have feared that interference into marriage by persons whose chief interest is pecuniary gain would mean that "dishonest and misleading influences would be exercised upon the third party.")

²¹ Kathleen Barry describes consumer husbands as "pathetic" because the "[mail order bride industry] sustains men who are incapable of egalitarian relationships with women, or of relationships with independent women." KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY* 154, 162 (1995).

²² Deborah L. Rhode, *Social Research and Social Change: Meeting the Challenge of Gender Inequality and Sexual Abuse*, 30 HARV. J. L. & GENDER 11, 16-19 (2007).

²³ *Id.*

²⁴ Tyler Trent Ochoa & Christine Newman Jones, *Defiling the Dead: Necrophilia and the Law*, 18 WHITTIER L. REV. 539, 540 (1997). ("Necrophilia is a psychosexual disorder and is categorized with the group of disorders which comprise the paraphilias, a subtype of psychosexual disorder involving unusual or bizarre fantasies or acts that are necessary for full sexual excitement").

²⁵ ERICH FROMM, *THE ANATOMY OF HUMAN DESTRUCTIVENESS*, 375 (1970).

²⁶ Necrophilia makes death and disease both psychosis and reality. *See* notes 24, 187, *infra*.

mail-order bride industry is widespread and the United States has devoted substantial legislative energy to curing the abuses that have resulted from the industry. Part II discusses how the economy of purchased sex perpetuates abuse. The economic basis of the mail-order relationship degrades the foreign spouse precisely because she is financially worse-off than her husband. Part III explores how the consumer husband is a symbol of the sexuality he consumes. The consumer husband's distorted view of sexuality is fueled through the dehumanization of women. Part IV connects the consumer husband's dehumanizing impulses to necrophilia.

I. THE LEGAL BACKGROUND OF THE MAIL-ORDER BRIDE INDUSTRY.

A. The Mail-Order Bride Industry Has a Substantial Worldwide Impact

There is a substantial IMB business worldwide,²⁷ known as the mail-order bride industry in the United States.²⁸ IMBs have grown significantly in recent years due to the Internet, and studies now suggest that 500 such companies operate in the United States.²⁹ The Immigration and Naturalization Service ("INS") once estimated that there were 200 IMBs operating in the United States.³⁰

"The IMB industry has grown rapidly in response to increasing demand by some American men for foreign 'traditional' wives."³¹ "Since 1999, the number of foreign fiancées who came into the United States on the K-1 visa have increased by more than 50 percent, and there has also been a corresponding increase in the number of domestic

²⁷ IMBRA, *supra* note 8.

²⁸ *Supra* note 14 at 1361.

²⁹ *Id.*

³⁰ IMBRA. These IMBs assisted approximately 6,000 American men each year in finding foreign spouses.

³¹ Robert Scholes, "AILA InfoNet Doc. No. 990309998 (posted Mar. 9, 1999) (accessed at <http://www.aila.org/content/default.aspx?bc=1016%7C6715%7C16871%7C17119%7C13775>); see also Appendix A, *THE "MAIL-ORDER BRIDE" INDUSTRY AND ITS IMPACT ON U.S. IMMIGRATION* at 1 (Immigration and Naturalization Serv. and Violence Against Women Office at the Dep't of Justice, 1998) (SCHOLES STUDY).

violence cases involving women brokered through IMBs.”³² That same year, the INS reported that “over 200 U.S.-based businesses paired 4,000 to 6,000 American men each year with foreign women.”³³ In just five years, this rate more than doubled.³⁴ Due to such growth, every year, 8,000 to 12,000 American males find their foreign spouses through for-profit international marriage brokers.³⁵

IMBs advertise their prospective brides through online matchmaker services. One court found that “IMBs often charge their male clients fees of up to several thousand dollars to gain access to these foreign women.”³⁶ Service members can access databases of up to 400 women. The user makes his selections, contacts the service, and is free to contact its women to attain a relationship with one of them.³⁷ Matching services require a prospective buyer to complete an online profile, send a picture, send a check or money order, and establish a petty cash account to facilitate correspondence between the service and the potential brides.³⁸ Unlike the consumer-husbands, the brides signing up for these services use the system free of charge.³⁹ The IMB matching services enable prospective husbands to take the legal steps toward securing a foreign bride.

American men seeking to marry the foreign women they bring back to States must “obtain a ‘K-1 Visa’ or a ‘fiancée visa’ pursuant to regulations promulgated under

³² *European Connections & Tours*, 480 F. Supp. 2d 1355, 1362; *See also* note 22, *infra*. Over fifty thousand women enter the United States each year and are forced to perform non-consensual sex work. Susan W. Tiefenbrun, *Sex Sells But Drugs Don't Talk: Trafficking of Women Sex Workers*, 23 T. JEFFERSON L. REV. 199 (2001).

³³ *INS Report* at 7.

³⁴ IMBRA; *see, e.g.*, Vanessa Brocato, *Profitable Proposals: Explaining and Addressing the Mail-Order Bride Industry Through International Human Rights Law*. 5 SAN DIEGO INT'L L.J. 229 (2004).

³⁵ *Id.*

³⁶ *European Connections & Tours*, 480 F. Supp. 2d 1355, 1362 (citing the trial transcript (Tr.) at 113).

³⁷ *Id.* at 1375.

³⁸ *Fox v. Encounters International*, 318 F. Supp 279, 282 (D. Md. 2002) *aff'd* (*Fox v. Encounters Int'l*, 2006 U.S. App. LEXIS 9269 (4th Cir. 2006)).

³⁹ *Id.*

the authority of the United States Department of Homeland Security.”⁴⁰ The K-1 visa regulations, by threatening that “[u]nless a waiver is obtained, women who enter the country . . . must return to their countries if they divorce the U.S. sponsor within a two-year period” effectively places “[t]he legal status of women who emigrate [under the program]” into the hands of their male purchasers.⁴¹ These rigid legal requirements pressure foreign brides into being dependent on their husbands.

B. The Growth of IMBs Has Spurred Abuse

Dependency breeds abuse. The INS well documents the considerable abuse in the unregulated mail-order bride industry.⁴² The source of this abuse lies in the nature of those American men who use mail-order bride services “to seek relationships with women whom they feel they can control.”⁴³ Many mail-order brides come to the United

⁴⁰ *European Connections & Tours*, at 1361. The K-1 visa refers to the nonimmigrant visa for a fiancée to travel to the United States to get married. The citizen-sponsor must file the Petition for Alien Fiancé(e), Form I-129F, with the Department of Homeland Security’s U.S. Citizenship and Immigration Services (USCIS) office. After the USCIS approves the petition, it sends the petition to the National Visa Center for processing, prior to sending it to the embassy or consulate where the fiancé(e) will apply for a K-1 nonimmigrant visa for a fiancé(e). The Form I-129F, Petition for Alien Fiancé(e) has detailed information about the IMBRA petition requirements. See U.S. Department of State, Nonimmigrant Visa for a Fiancé(e) (K-1) http://travel.state.gov/visa/immigrants/types/types_2994.html (last visited Oct. 15, 2007).

⁴¹ *Id.* at 1361. An estimated seventy-percent of abusive consumer husbands withhold the filing of the proper paperwork necessary to validate the legal status of their immigrant female partners: to cause these women to fall out of legal status and to threaten them with jail or deportation.

⁴² *Id.*

⁴³ *European Connections & Tours*, 480 F. Supp. 2d 1355, 1366. Consumer husbands hold erotic impulses for submissive, easily dominated, dependent, controllable, passive and weak women. See Bishop Michael Ingham, *A More Positive Approach to Sexuality; Faithfulness—Not Orientation, Propagation or even Marriage—Ought to be the Basis for Christian Sexual Ethics*, GLOBE AND MAIL (Canada), Mar. 10, 2007, at A21. Consumption fetishizes the ideal female as lacking human agency. Barry characterizes paid-for sexual relationships as dehumanizing. Barry, *supra* note 21, at 26. Because this distorted view of sexuality feeds upon the dehumanization of women, its ultimate host is the fully dehumanized woman. See e.g. Alfonso Cardinal López Trujillo, *The Nature of Marriage and Its Various Aspects*, 4 AVE MARIA L. REV. 297, 305 (2006) (describing the depersonalization of the relationships between spouses as dehumanizing, “producing a kind of ‘thingification’ of the husband and wife . . . converting these persons into objects or things.”). See *infra* Part IV. Necrophilia, a health defect in its own right, describes impulses for women as passive, subdued objects, perfected by male tactics of control. See also Lisa Limor Rabie, *Can You Put On Your Red Light?: Lawrence’s Sexual Citizenship Rights in Terms of International Law*, 43 COLUM. J. TRANSNAT’L L. 613, 617 (2005). Rabie discusses that “[t]he idea of the sexual citizen as a sexual consumer explores the concept of identification through the acquisition of appropriate commodities . . . [I]ndividuals must consume to express . . . individuality . . . [C]onsumer power, and thus rights, are limited or delineated by sexualities.” *Id.*

States unaware or ignorant of its immigration laws.⁴⁴ Moreover, victims of battery mistakenly believe that if they choose to end the abusive marriage, they risk deportation. This belief is perpetuated by misinformation fed daily to victims by their spouses.⁴⁵

In order to counter these power imbalances, Congress enacted the 1994 Violence Against Women Act⁴⁶ (VAWA), recognizing the high domestic violence rates in marriages between alien women and U.S. men.⁴⁷ Under VAWA, “Congress found that an American man’s control over his foreign wife’s visa, together with her lack of knowledge about domestic abuse remedies, kept many foreign women locked in abusive relationships,” with the omnipresent threat or fear of deportation “deter[ing] [the battered spouse] from taking action to protect . . . herself, such as filing for a civil protection order, filing criminal charges, or calling the police.”⁴⁸

Congress’s first step toward regulating the mail-order bride industry came in 1996 with the Mail-Order Bride Act, which was passed based on findings that “‘mail order brides find themselves in abusive relationships’ . . . [are] ignorant of United States immigration law [and] . . . think that if they flee an abusive marriage, they will be deported.”⁴⁹ The Mail-Order Bride Act required international matchmaking organizations (“IMOs”) to “disseminate to [female] recruits information regarding

⁴⁴ *European Connections & Tours*, 480 F. Supp. 2d. at 1363. Most of the women advertised by IMBs come from economically depressed countries in Asia and Eastern Europe and have limited or no English proficiency. *Id.* at 1362.

⁴⁵ *Id.* at 1363.

⁴⁶ VAWA, Pub. L. No. 103-322, title IV, 108 Stat. 1796 (1994) (codified in scattered sections of 8 and 42 U.S.C., repealed 2006). Since domestic violence is a critical component behind the dangers of the mail-order bride industry, VAWA directly impacts the industry.

⁴⁷ H.R. REP. No. 103-395, at 26 (1993); *European Connections & Tours*, 480 F. Supp. 2d. at 1363.

⁴⁸ *Id.* VAWA created a self-petitioning process for battered immigrants who are spouses of United States citizens or permanent residents to prevent the citizen sponsor from using the visa petitioning process as a means to control or abuse the alien spouse. VAWA, 108 Stat. at 1941-42; *European Connections & Tours*, 480 F. Supp. 2d. at 1363.

⁴⁹ Mail-Order Bride Act, 8 U.S.C. § 1375, § 1375(a)(3), (a)(4) (2000) (repealed 2006) (*cited by European Connections & Tours*, 480 F. Supp. 2d. at 1363). The Mail-Order Bride Act foreshadows IMBRA. *See infra* notes 63-65 and the accompanying text.

conditional permanent resident status and the battered spouse waiver under such status, permanent resident status, marriage fraud penalties, [and] the unregulated nature of the business engaged in such organizations.”⁵⁰

Further, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,⁵¹ which paralleled the Mail-Order Bride Act, required that IMOs provide immigration and naturalization information to aliens using the IMOs’ services and imposed civil penalties for failure to provide such information.⁵² These requirements “include warnings that foreign women are vulnerable to domestic abuse, as well as information regarding [the] plaintiff’s ability to remain in the United States, even if she were to leave her husband, if she were to suffer domestic abuse.”⁵³

On July 16, 1997, the INS notified the IMB industry “that the United States government was considering additional regulation of the IMB industry to safeguard against domestic abuse.”⁵⁴ In its report to Congress, the INS explained that

with the burgeoning number of unregulated international matchmaking organizations and clients using their services, the potential for abuse in mail-order marriages is considerable[,] . . . [and that] [a]n unregulated international matchmaking industry presents numerous opportunities for exploitation.⁵⁵

The report also emphasized that

[t]hese are relationships fostered by for-profit enterprises, where the balance of power between the two individuals is skewed to empower the male client who may be seen as “purchasing” a bride and a woman who

⁵⁰ *Id.* § (b)(1).

⁵¹ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208, Div. C, 110 Stat. 3009-546 (codified as amended in scattered sections of 8 and 18 U.S.C.).

⁵² 8 U.S.C. § 1375(b)(1)-(2) (repealed 2006).

⁵³ *Id.* § (b)(1), (c). See *supra* note 48 regarding VAWA’s self-petitioning process for battered immigrant spouses of U.S. citizens or permanent residents.

⁵⁴ *European Connections & Tours, Inc. v. Gonzales*, 480 F. Supp. 2d 1355, 1364 (N.D. Ga. 2007); Advanced Notice of Proposed Rulemaking, 62 Fed. Reg. 38,041 (July 16, 1997) (to be codified at 8 C.F.R. pt. 204); see also INS REPORT, *supra* note 8.

⁵⁵ INS REPORT, *supra* note 8.

has everything to gain from entering into this arrangement and staying in it, no matter what the circumstances.⁵⁶

The report distinguished the mail-order bride industry from dating services or personal ads because it is “one where the consumer-husband holds all the cards.”⁵⁷ Consequently, IMBs are the brand name for servicing the enormous power differential between the consumer-husband and his foreign spouse.

These power differences keep women silent and abusers untouched by law. In the 2000 reauthorization of VAWA, Congress found that “there [were] several groups of battered immigrant women and children who [did] not have access to the protections of the Violence Against Women Act of 1994 [implying] that ‘their abusers are virtually immune from prosecution.’”⁵⁸ The United States now requires that IMBs provide their recruits with information regarding “conditional permanent resident status and the battered spouse waiver under that status.”⁵⁹ However, mail-order brides can only enter the United States by having the future spouse petition for a K-1 visa on their behalf.⁶⁰

The Secretary of the Department of Homeland Security, together with the Secretary of State, the Attorney General and non-governmental immigrant victim advocacy organizations, developed informational pamphlets concerning the illegality of domestic violence in the United States as well as the legal rights of immigrant victims of abuse.⁶¹ The government mails this information to the K-visa petitioner and includes any information about the criminal convictions of the citizen sponsor (by definition, the K-

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ VAWA 2000 Reauthorization, 8 U.S.C. 1101 note (2000) (reauthorized 2005). (The VAWA 2000 Reauthorization is contained within the Victims of Violence and Trafficking Protection Act of 2000. Pub. L. 106-386, 114 Stat. 1464 (2000) (codified as amended in scattered sections of 8 and 14 U.S.C.)). *See also European Connections & Tours, Inc. v. Gonzales*, 480 F. Supp. 2d 1355, 1362-69 (N.D. Ga. 2007).

⁵⁹ IMBRA, 8 U.S.C. 1375a(a)(2)(A) (Supp. V 2005).

⁶⁰ *See supra* note 40 and accompanying text.

⁶¹ *See* IMBRA, 8 U.S.C. § 1375a(a)(1), (2).

visa petitioner).⁶²

This evolution of legislative developments culminated in IMBRA. Congress enacted IMBRA after fifteen years of “investigation . . . into abuses perpetrated by American men against foreign women.”⁶³ IMBRA addresses “domestic violence and human trafficking against . . . ‘mail order brides’ who . . . developed personal relationships [with American men] through IMBs.”⁶⁴ IMBRA requires limits on the number of visa petitions an individual can make for mail-order brides within a period of two years and requires the Secretary of the Department of Homeland Security to create databases that track fiancée and spouse visa petitions.⁶⁵

IMBRA’s parallel legislation, the Violence Against Women and Department of Justice Reauthorization Act of 2005, makes foreign victims of trafficking eligible for status adjustment to permanent resident if they have continuously resided in the United States during the lesser period of either three years or the completion of the trafficking investigation or prosecution.⁶⁶

Notwithstanding these developments, conditional permanent residency—the residency status based on a two-year conditional basis—mandates that the U.S. and foreign national clients marry within ninety days of the bride’s arrival in the United

⁶² See *id.* § 1375a(a)(5).

⁶³ *European Connections & Tours, Inc.*, 480 F. Supp. 2d. at 1362. At the 1989 House Judiciary Committee on Immigration, Refugees and International Law, Representative Louis M. Slaughter testified that “battered conditional residents had no viable legal options” under the current law. SCHOLÉS STUDY, *supra* note 31, at 6; *European Connections & Tours, Inc.*, 480 F. Supp. 2d. at 1362. Scholés study available at http://www.uscis.gov/files/article/MobRept_AppendixA.pdf. For a discussion of the legislative history of IMBRA, see *European Connections & Tours, Inc. v. Gonzales*, at 1367-68.

⁶⁴ *European Connections & Tours, Inc.*, 480 F. Supp. 2d. at 1362.

⁶⁵ IMBRA, 8 U.S.C. 1184(d)(2), (r)(4).

⁶⁶ Violence Against Women and Department of Justice Reauthorization Act of 2005, 8 U.S.C. 1255(l)(1)(A). IMBRA also relaxes the provisions which restrict relief for failure to depart voluntarily from the United States, including the permanent resident adjustment status, in cases where aliens filed as VAWA self-petitioners or as battered spouses. (The Violence Against Women and Department of Justice Reauthorization Act of 2005 is found at Pub. L. 109-162. IMBRA is incorporated into this act). *European Connections & Tours, Inc.*, 480 F. Supp. 2d. at 1367.

States.⁶⁷ Conditional permanent residency, of course, is contingent upon the consent of the husband.⁶⁸ In *Fox v. Encounters International*, a battered mail order bride was encouraged by the manager of her brokerage service to “stay in the marriage,” with the additional threat that “she would face deportation and financial ruin” if she left her abusive husband.⁶⁹ It was not until three weeks after the spouse gave birth to her child—and the ensuing assault by her husband which left her with a broken chest bone—that she was able to reside at a battered women’s shelter and “learn[] of her ability to leave the marriage permanently without facing deportation . . . pursuant to the protections guaranteed to battered women aliens under 8 U.S.C. § 1154.”⁷⁰

In *Fox*, the plaintiff alleged that the brokerage service “owed her a special or fiduciary duty to engage in certain conduct that would have protected her from further violence [by her husband].”⁷¹ The court, however, claimed that “ordinarily a person does not have a duty to protect another from the conduct of third persons.”⁷² The court was nonetheless “convinced that the alleged facts create a special relationship between Ms. Spivack and Mrs. Fox that gave rise to a duty of care. Admittedly, no case law exists unequivocally recognizing that such duty exists in this factual situation.”⁷³ *Fox* represents an important step in mail-order bride jurisprudence because it recognizes that IMBs can be liable in tort for the way they manage their matching services.

Nowhere in the progeny of cases relevant to Congress’s recent attempts to control the IMB industry do reviewing courts recognize IMB marriages as void. For instance, in

⁶⁷ 8 U.S.C. § 1186a (d)(2) (2000).

⁶⁸ See *id.* § 1154(a)(1)(A)(i). See also *supra* note 14 and accompanying text.

⁶⁹ *Fox v. Encounters International*, 318 F. Supp 2d 279, 283 (D. Md. 2002) *aff’d* (*Fox v. Encounters Int’l*, 2006 U.S. App. LEXIS 9269 (4th Cir. 2006)).

⁷⁰ *Id.*

⁷¹ *Id.* at 294.

⁷² *Id.*

⁷³ *Id.* at 295.

the Massachusetts case *Ureneck v. Ping Cui*, the court held that marriage brokerage contracts were void on public policy grounds.⁷⁴ The *Ureneck* court, in denouncing marriage brokerage contracts as “pernicious,” cited to Congress’s recognition that “a virtually ‘unregulated international matchmaking industry presents numerous opportunities for exploitation.’”⁷⁵ One wonders why courts have not been harsher on brokered marriages considering that “there is no reason to believe that IMBs will be driven from the marketplace by IMBRA.”⁷⁶

IMBRA now requires that “a U.S. petitioner applying to sponsor a foreign fiancée or spouse . . . report . . . arrests and/or criminal convictions for violent crimes, including domestic violence, sexual assault, and child abuse.”⁷⁷ IMBRA prohibits “IMB[s] from disclosing . . . ‘personal contact information’ of a foreign national client to a United States client or representative without first obtaining the foreign national client’s ‘informed consent.’”⁷⁸

The *European Connections & Tours, Inc. v. Gonzales* court heard testimony that for-profit IMBs are incentivized to disregard the safety of the immigrant women because “the companies are more concerned with the satisfaction of the men ‘who are the paying customers over safeguarding female customers.’”⁷⁹ In recognizing the importance of IMBRA as a defense against incentivized negligence, the *European Connections & Tours*

⁷⁴ *Ureneck v. Ping Cui*, 798 N.E.2d. 305, 306 (Mass. App. Ct. 2003). *See also Recent Decisions: Contracts. Marriage Brokerage, Invalidity of Promise to Pay Made in Exchange for Securing Marriage*, 27 COLUM. L. REV., 322, 323 (1927) (discussing the defense of a contract being against public policy, and providing that courts have “feared that interference [into marriage] by persons whose chief interest is pecuniary gain would mean that dishonest and misleading influences would be exercised upon the third party.”).

⁷⁵ *Ureneck*, 798 N.E.2d. at 308 (quoting *INS REPORT*, *supra* note 8).

⁷⁶ *European Connections & Tours, Inc.*, 480 F. Supp. 2d. at 1380.

⁷⁷ *Id.* at 1368.

⁷⁸ *Id.* See 1375a(d)(1), (d)(3)(A).

⁷⁹ *European Connections & Tours, Inc.*, 480 F. Supp. 2d. at 1378.

court found that IMBRA is “highly likely to reduce domestic abuse – and may actually save lives.”⁸⁰

C. The Abuse of Mail-Order Brides Is Substantial in the United States.

In the United States, mail-order brides are six times more likely to experience domestic violence than other women.⁸¹ A mail-order bride coming to America can expect to be battered, imprisoned, sadistically sexually abused and even murdered by her consumer-husband.⁸² She would have a perpetual fear of deportation and thus is deterred from reporting her abuse or cooperating with enforcement efforts.⁸³ She lacks family and support networks and the language and employment skills necessary for financial independence, much less legal assistance.⁸⁴ She has little freedom to escape harm and the prevalence of unreported abuse reveals legal protections as under-inclusive and thus ineffective at stopping the victimization of mail-order brides.⁸⁵

Considering that “over 73 percent of domestic violence cases go unreported,” the even higher rate of domestic violence against immigrant women is startling.⁸⁶ Despite the many unreported cases, instances of extreme violence committed by United States

⁸⁰ *Id.* at 1381.

⁸¹ Peter Clough, *Mail-Order Bride Phenomenon—Conclusion of a Series: Internet Brides Roll the Dice for Love or Misery*, VANCOUVER PROVINCE (Canada), Oct. 31, 2004. 2004 WLNR 11829049. Around 30.4 percent of all U.S. women are physically abused by their husbands or male-cohabitants at some point in their lives. IMBRA, *cited in European Connections & Tours*, at 1366. 49.3 percent of immigrants reported physical abuse by an intimate partner during their lifetimes with 41.2 percent reporting severe physical or sexual abuse. *Id.* Among immigrants who were married or formerly married, the lifetime abuse rate rises as high as 59.5 percent. *Id.* An estimated 72.3 percent of abusive citizen spouses never file the immigration papers for their abused spouses and the 27.7 percent who eventually do file wait approximately four years to do so. *Id.* at 1367.

⁸² Donna M. Hughes, *Human Trafficking: Mail-Order Bride Abuses, Testimony to the Subcommittee on East Asian and Pacific Affairs*, Senate Foreign Relations Committee, July 13, 2004.

⁸³ 22 USC §7107(d)(1)(2005), §107(c).

⁸⁴ Christine S.Y. Chun, *The Mail-order Bride Industry: The Perpetuation of Transnational Economic Inequalities and Stereotypes*, 17 U. PA. J. INT’L ECON. L. 1155, 1157-1158 (1996); *see also* Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U. J. GENDER SOC. POL’Y & L. 95, 103 (2001).

⁸⁵ *Id.*

⁸⁶ *European Connections & Tours*, *supra* note 11, at 1361.

citizens toward mail-order brides are especially notorious, with the Senate reporting that many cases involve “the drugging, isolation, stalking, sexual abuse, mental abuse, physical abuse, and, in some instances, even the murder of the female, immigrant spouse.”⁸⁷ A 2003 study by the Tahirih Justice Center found that “over 50 percent of legal and social services providers surveyed reported having served women who were abused by men they met through IMBs.”⁸⁸ Such abuse has an enormous social and economic cost. Rape and sexual assault in the United States is estimated to cost \$127,000,000,000 per year.⁸⁹ The health-related cost of intimate partner violence in the United States exceeds \$5,800,000,000 annually.⁹⁰

II. INTERNATIONAL SEX TRAFFICKING IS A FORM OF SEXUAL SLAVERY

A. *The Industry Perpetuates The Economic Objectification of Sex*

A significant number of mail-order bride agencies are connected to commercial sex trafficking operations.⁹¹ The websites that catalogue mail-order brides are venues for pornography and prostitution.⁹² Many of the thousands of newly American-wed mail-order brides become victims of violence, sexual exploitation, and sex trafficking.⁹³ Women who find partners through marriage agencies are at higher risk of becoming victims of violence and exploitation.⁹⁴ Brokers market their women as sexual objects, dedicated to male subservience and solely oriented toward pleasing men.⁹⁵

Many of these women suffer levels of poverty and abuse so severe in their home

⁸⁷ *Id.* (citing 151 Congr. Rec. S 17353 (2005)).

⁸⁸ *Id.* (citing Def.’s Ex. L at p.3; Tr. At pp. 72-73).

⁸⁹ 109 P.L. 162, 201, *see also* 42 U.S.C. § 13925.

⁹⁰ *Id.* at 501 (studies discuss violence as a whole, not merely that directed against mail-order brides).

⁹¹ INS REPORT, *supra* note 8, at 3.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

countries that entering the mail-order bride service might be their only option for survival.⁹⁶ The current trafficking of women via the mail-order bride industry effectively sells these women into bondage.⁹⁷ Other than drugs and guns, sex trafficking is the most profitable activity of organized crime, with annual profits nearing 7 billion dollars.⁹⁸ The mail-order bride industry subordinates women by uniting men with power to women without it.⁹⁹

In 2000, Congress passed the Victims of Violence and Trafficking Protection Act to “combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”¹⁰⁰ Congress specifically found that

Victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked [and] are often subjected to coercion and intimidation including physical detention and debt bondage, and ... often fear retribution and forcible removal to countries in which they will face retribution or other hardship.¹⁰¹

As a result, “these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.”¹⁰²

Consumer-males spend thousands of dollars in order to obtain a wife they can control—a process replete with images of women as sexual commodities who will

⁹⁶ KATHLEEN BARRY, *FEMALE SEXUAL SLAVERY* (1979), at 40.

⁹⁷ Alexandra V. Orlova, *Trafficking of Women and Children for Exploitation in the Commercial Sex Trade: The Case of the Russian Federation*, 6 *GEO. J. GENDER & L.* 157 (2005).

⁹⁸ Abigail Schwartz, *Sex Trafficking in Cambodia*, 17 *COLUM. J. ASIAN L.* 371, 374 (2004).

⁹⁹ Vanessa Brocato, *Profitable Proposals: Explaining and Addressing the Mail-Order Bride Industry Through International Human Rights Law*, 5 *SAN DIEGO INT’L. L. J.* 225, 230 (2004).

¹⁰⁰ 22 U.S.C. § 7101 (2000).

¹⁰¹ 22 U.S.C. § 7102 (2000), cited in *European Connections & Tours*, *infra* at 1366.

¹⁰² *Id.*

assume a submissive role toward their husbands.¹⁰³ Moreover, the great amount of money that is spent on acquiring a wife, “subscriptions costs, overseas visits, telephone calls, and gifts,” causes consumer-husbands to believe that they have purchased and now own their foreign-spouse.¹⁰⁴ As these women enter America, their newfound freedoms immediately threaten the purpose for which they were purchased.¹⁰⁵ In order to reconstruct the purchased ideal, consumer-husbands abuse their wives into assimilation.¹⁰⁶ Abuse in mail-order marriages results from the male’s desire for a submissive wife and the woman’s desire for a better life.¹⁰⁷ Eventually, the foreign bride’s new independence conflicts with the consumer-husband’s domination.¹⁰⁸

The mail-order bride industry “rests on the same historical, social and cultural institutions,” as well as assumptions and biases, which “have been and continue to be the genesis of prostitution.”¹⁰⁹ Both prostitution and the mail-order bride industry promote commodification of women through masculine constructions of female sexuality.¹¹⁰ For instance, if autonomy, independence, and intellectual freedom for women become

¹⁰³ *Supra* note 99, at 240.

¹⁰⁴ Vanessa B.M. Vergara, *Abusive Mail-Order Bride Marriage and the Thirteenth Amendment*, 94 *Nw. U. L. REV.* 1547, 1558 (2000).

¹⁰⁵ *Id.*

¹⁰⁶ Robert Scholes, “AILA InfoNet Doc. No. 990309998 (posted Mar. 9, 1999) (accessed at <http://www.aila.org/content/default.aspx?bc=1016%7C6715%7C16871%7C171119%7C13775>); see also Appendix A, *THE “MAIL-ORDER BRIDE” INDUSTRY AND ITS IMPACT ON U.S. IMMIGRATION* at 1 (Immigration and Naturalization Serv. and Violence Against Women Office at the Dep’t of Justice, 1998) (SCHOLES STUDY).

¹⁰⁷ See e.g., Robert J. Scholes, *AF ISO WM: How Many Mail-Order Brides?* *IMMIGRATION REVIEW*, No. 28, Spring (1997).

¹⁰⁸ *Id.*

¹⁰⁹ Donna R. Lee, *Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions*, 5 *ASIAN L. J.* 139, 140 (1998)

¹¹⁰ *Id.*

transaction costs to the male consumer's impulse for a submissive and malleable female object, then those traits are immediately denied from the female's sexual identity.¹¹¹

By fetishizing femininity in the context of prostitution, men use commodification to control the opportunities and lifestyles available to women.¹¹² The institutions that depend upon female sexual objects for their survival only further contribute to a masculine moral image that views the dehumanized woman as socially acceptable.¹¹³

The mail-order bride industry and its derivatives reflect an underlying connection between idealized masculinity and violence toward women. Donna Lee's discussion of the allure of the "bad" and "good" girl distinguishes between the bad girl who serves as a male sex object while the good girl assumes the role of mother and nurturer.¹¹⁴ Lee claims that the male consumer views the mail-order bride as ideal because she fulfills both sides of the male fantasy: she is both the good and bad girl by being proficient on the stove and in the bed.¹¹⁵

Mail-order brides are bought for their domestic and sexual services.¹¹⁶ Paradoxically, most male purchasers are confident that these women are virgins and, by not attaching to them the stigma of a prostitute, are willing to take them on as wives.¹¹⁷ Because consumer-husbands use money and power to secure their brides, the image of the wife-as-prostitute, if not explicitly recognized, is woefully everpresent, especially

¹¹¹ See Viviana A. Zelizer, *Sex for Sale: Keynote Address: Money, Power, and Sex*, 18 YALE J.L. & FEMINISM 303 (2006).

¹¹² *Id.*

¹¹³ Lee, *supra* note 109, at 162. See also Olatokunbo O. Laniya, *Street Smut: Gender, Media, and the Legal Power Dynamics of Street Harassment, Or "Hey Sexy" And Other Verbal Ejaculations*, 14 COLUM. J. GENDER & L. 91, 103 (2005) ("[A] woman is taught to accept, and silently endure, injuries as a definitional part of her sexuality.")

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Linda Kelly, *Marriage for Sale: The Mail-Order Bride Industry and the Changing Value of Marriage*, 5 J. GENDER RACE & JUST. 175, 186-187 (2001)

¹¹⁷ Lee, *supra* note 109, at 161.

when, as one commentator has noted, “it’s cheaper to get an Asian wife than an Australian prostitute.”¹¹⁸

B. From Economic Object to Racial Other

Lee contends that “[s]ex tourism, prostitution, and the mail-order bride business are overlapping forms of sexual exploitation.”¹¹⁹ Consumer husbands fetishize these women as purchased objects as well as racialized others who affirm the dominance of white masculinity through acts of sexual subservience.¹²⁰ Consumer-husbands actively participate in the sexual commodification of women’s bodies by participating in a system of procurement that hierarchializes white male supremacy and its guarantee of pleasure through the subjugation of the racialized female other.¹²¹ Racism, like sexuality, serves to develop imaginary categories for differentiating “between good and bad” women in the mail-order bride context.¹²²

White American women are seen as less fit to be mothers and wives because of their “non-traditional” values.¹²³ Lee claims that these stereotypes make racially and sexually oppressive behaviors acceptable “by casting them as natural and desirable when imposed on a given racial or ethnic group.”¹²⁴ The allure of mail-order brides as submissive and sexually accommodating legitimizes men’s desire to assert “masculine control” over their partners and provides an outlet for the exercise of that control.¹²⁵ Lee claims that the demand for mail-order brides is exploitative because “it takes advantage

¹¹⁸ Kalinga Seneviratne, *Australia: Filipino Mail-Order Brides End Up Being Murdered*, Inter Press Service, July 20, 1991, available in LEXIS, News Library, Inpres File.

¹¹⁹ Lee, *supra* note 109, at 161.

¹²⁰ *Id.* at 162.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

of women with few alternatives and little hope for an escape from the poverty of their home countries.”¹²⁶

Because of these venues, mail-order brides are not merely bought but seen (the catalogue) and the visual objectification of the erotic and economic “reproduces [the] tension between property, propriety, and the fetishization of a familial tale of economic and bodily promise.”¹²⁷ The men who purchase mail-order brides subscribe to a fetish of the woman-as-object, instigating those historical norms that viewed the wife as owned property of her husband.¹²⁸

The advertisements of mail-order brides reconstitute their identity: as mail-order brides are auctioned off, there is the economic vision of ownable property, as well as erotic visions of future sexual partners.¹²⁹ These reconstituted visions fail to disclose, and yet are constructed by, the harsh realities that many of these women have suffered. Moreover, these women can only escape these harsh conditions by becoming the fictional objects of male-fetish, at the expense of preserving their own intimate identities.¹³⁰

The reality of American slavery was one where female slaves were auctioned off as economic modes of production and internally eroticized by their male purchasers. Only in stripping down these women of their ties to family or community were purchasers able to fully reconstitute their subjects as economic objects; that is, oppression

¹²⁶ *Id.* See also Holly B. Fechner, *Three Stories of Prostitution in the West: Prostitutes' Groups, Law, and Feminist 'Truth'* 4 COLUM. J. GENDER & L. 26, 33, 34, 37, 40-45 47-50 (1994).

¹²⁷ P. Gabrielle Foreman, *Who's Your Mama? 'White' Mulatta Genealogies, Early Photography, and Anti-Passing Narratives of Slavery and Freedom*, 14 AMERICAN LITERARY HISTORY 505, 505-539 (2002).

¹²⁸ Martha M. Ertman, *Legal Tenderness: Feminist Perspectives on Contract Law*, 18 YALE J.L. & FEMINISM 545 (2006).

¹²⁹ Kate O'Rourke, *To Have And To Hold: A Postmodern Feminist Response to the Mail-Order Bride Industry*, 30 DENV. J. INT'L L. & POL'Y 475, 478 (2002) (“[Mail-order bride 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.”)

¹³⁰ See Dorothy E. Roberts, *Rape, Violence and Women's Autonomy, Is the Law Male?* 69 CHI.-KENT L. REV. 359, 378 n.95 (1993).

and denigration were the procedural modes by which an individual's intimate self-understanding was converted into the fantasy of subjugation.¹³¹ The mail-order bride industry, therefore, functions as the moral equivalent of slavery: male sexual gratification depends upon the female's selling off an intrinsic part of herself.¹³²

While American slavery hid eroticism under the obtrusive layer of economics, the mail-order bride industry hides economic inequality under the erotic. Wealthy males from a developed country provide the potential bride with an opportunity to leave her impoverished nation.¹³³ A foreign marriage represents the hope that women from less developed countries can escape their plight.¹³⁴

During American slavery, the competing politics of race and sexuality interiorized guilt: the economic transaction was a public, disclosed vision, while race as sexual slavery was a private, tacit perception.¹³⁵ The law legitimated the sale and purchase of slave women as an instrument of economic development.¹³⁶ But the reality of that growth was the sexual outlet these women provided towards their purchasers, to which the law was silent.¹³⁷

The mail-order bride industry reverses this image by making sexuality a legally permissible, public and disclosed vision while the economic reality—the abusive

¹³¹ *Supra* note 99, at 230, 235 (Mail order bride brokers display their women in catalogues as if items of stock who even have money-back guarantees).

¹³² Shaheen P. Torgoley, *Trafficking and Forced Prostitution: A Manifestation of Modern Slavery*, 14 TUL. J. INT'L & COMP. L. 553 (2006).

¹³³ Kate O'Rourke, *To Have and to Hold: A Postmodern Feminist Response to the Mail-Order Bride Industry*, 30 DENV. J. INT'L L. & POL'Y, 475, 480 (2002).

¹³⁴ *Supra* note 109, at 154 (discussing the industry as "a form of prostitution legitimized by the private institution of marriage").

¹³⁵ Marilyn R. Walter, *Trafficking in Humans: Now And In Herman Melville's Benito Cereno*, 12 WM. & MARY J. WOMEN & L. 135, 147 (2005).

¹³⁶ EDMUND S. MORGAN, AMERICAN SLAVERY-AMERICAN FREEDOM: THE ORDEAL OF COLONIAL VIRGINIA 164-69, 304-05 (1975).

¹³⁷ Geiza Vargas-Vargas, *White Investment in Black Bondage*, 27 W. NEW ENG. L. REV. 41 (2005); *See also* Devon W. Carbado, *(E)racing the Fourth Amendment*, 100 MICH. L. REV. 946, 953-63 (2002).

objectification—is privatized and hidden.¹³⁸ The notion that mail-order brides are purchasable pleasure conceals the reality that consumer-husbands are motivated by an expectation that their new wives will be economically dependent upon and thus powerless without them.¹³⁹ In short, the mail-order bride industry becomes private sector slavery.

C. Stigmatization Deters Legal Recourse

The men who seek wives through the mail-order bride industry have a median age of 37.¹⁴⁰ Ninety-four percent of consumer husbands are white, at least half of them had two or more years of college, and most are politically conservative and financially successful.¹⁴¹ These men seek foreign wives because they are frustrated and dissatisfied with the “‘liberated’ Western woman, who is far too aggressive, selfish and focused on her own career.”¹⁴²

Consumer-husbands believe that “a foreign woman, particularly one from a less developed nation, will be more loyal and devoted to her husband’s needs.”¹⁴³ These men want wives who will not be career-oriented and thus will view their primary goal as that of being a wife.¹⁴⁴ Expectations for bridal servitude that are “slavery-like” and “abusive” become easily camouflaged as “traditional” family values of the bride as mother, caregiver, household servant, chore-doer, and domestic provider.¹⁴⁵

¹³⁸ See Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 983-985 (1991).

¹³⁹ Thomas W. Simon, *Suspect Class Democracy: A Social Theory*, 45 U. MIAMI L. REV. 107, 111 (1990).

¹⁴⁰ *Supra* note 133, at 476.

¹⁴¹ *Id.*

¹⁴² *Supra* note 133, at 479. See also *SCHOLES STUDY*, at 2, Appendix A.

¹⁴³ *Id.* at 479, 480.

¹⁴⁴ *Supra* note 99, at 232.

¹⁴⁵ LOUISE LANGEVIN & MARIE-CLAIRE BELLEAU, *TRAFFICKING IN WOMEN IN CANADA: A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK GOVERNING IMMIGRANT LIVE-IN CAREGIVERS AND MAIL-ORDER BRIDES*, 112 (2000).

Upon entering their American marriages, mail-order brides are at increased risk for abuse and discouraged from reporting such abuse due to their economic dependency, unfamiliarity with American culture and law, and fear of deportation.¹⁴⁶ Mail-order brides can rarely speak fluent English, may be illiterate even in their native languages, and are unlikely to have access to bilingual shelters or the assistance of an interpreter if reporting to the police.¹⁴⁷ These language problems are only exacerbated once a victim reaches the levels of lawyers and courts.¹⁴⁸ Mail-order brides who attempt to escape the abuse of their husbands will be unable to obtain the financial assistance necessary for survival and risk further retaliation by their husbands.¹⁴⁹

These systemic harms can be easily perpetrated by the vagueness of legislative or agency enactments, coupled with the refusal by courts to resolve interpretive difficulties when they arise. In the case of *Singh v. DOJ*,¹⁵⁰ the court recognized a tension between, on the one hand, the “extreme hardship” provision of the INA,¹⁵¹ which authorizes the Attorney General to determine extreme hardship only upon the basis of the period that the alien was admitted as a conditional permanent resident, and, on the other hand, the INS regulation which suggests that only those factors that “arose subsequent to” the alien’s entry as a conditional permanent resident will be considered for extreme hardship purposes.¹⁵² Judge Calabresi, in writing the opinion in *Singh*, did not “seek to resolve the

¹⁴⁶ *Supra* note 99, at 236.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Leslie E. Orloff et al., *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L. Q. 313, 317-18 (1995).

¹⁵⁰ *Singh v. U.S. Dep’t of Justice*, 461 F.3d 290 (2d Cir. 2006).

¹⁵¹ 8 U.S.C. § 1186a(c)(4) (2000).

¹⁵² 8 C.F.R. § 216.5(e)(1) (2008).

conflict” in the statutes, contending that such a move was unnecessary given the BIA’s disregard for its own regulations.¹⁵³

In addition to the harms caused by statutory vagueness, further exploitation results under the conditional permanent residency requirement to prove a viable marriage, e.g. “offer sexual services . . . domestic labor . . . or void the warranty by being abused.”¹⁵⁴ One commentator has argued that the INS viability standard “not only creates obstacles for mail-order brides to leave consumer-husbands, but also tells them that they may be deported unless they give their consumer-husbands their money’s worth.”¹⁵⁵ Conditional permanent residency thus becomes a form of consumer protection “by giving consumer-husbands a . . . two-year guaranty that they get what they paid for.”¹⁵⁶

III. MASCULINITY AND THE CONSUMER-HUSBAND

The subordination of mail-order brides is rooted in male definitions of masculinity and femininity.¹⁵⁷ Men are socialized to regard themselves as the means of fulfilling women’s sexual needs.¹⁵⁸ Catharine MacKinnon claims that male sexual interest and a woman’s experience of that interest is defined by “the male pursuit of control over women’s sexuality—men not as individuals nor as biological beings, but as a gender group characterized by maleness as socially constructed.”¹⁵⁹

¹⁵³ *Singh*, 461 F. 3d 290, 296.

¹⁵⁴ Eddy Meng, *Mail-Order Brides: Gilded Prostitution and the Legal Response*, 28 U. MICH. J. L. REFORM 197, 225 (1994).

¹⁵⁵ *Id.*

¹⁵⁶ *Supra* note 154, at 225. *See also supra* note 109, at 166. (In the United States, a mail-order bride receives resident status on a conditional basis. The conditional period lasts for two years. Prior to the last 90 days of this period, both spouses must petition the Immigration and Naturalization Service (INS) to remove the wife’s conditional status.) *See* 8 U.S.C. § 1186a(c) (1994).

¹⁵⁷ *Supra* note 109, at 163.

¹⁵⁸ *Id.*

¹⁵⁹ Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS: J. WOMEN IN CULTURE & SOC’Y 515, 532 (1982).

For MacKinnon, coercive sexual behavior appears as ordinary heterosexual conduct in an environment of gender inequality.¹⁶⁰ Masculinity is preserved by the control and subordination of women, and uses violence to perpetuate that control.¹⁶¹ As such, masculinity is a socially-constructed identity.¹⁶² The mail-order bride evidence suggests that the masculine scripts of control and subordination are objectives requiring violence towards women.¹⁶³ Several studies have identified a connection between domestic violence and traditionally patriarchal heterosexual families.¹⁶⁴ The law facilitates this position when it allows men to abuse women who provoke the domestic violence. In *People v. Berry*, the medical expert for the defendant testified that the abuser's state of mind was one of provocation, a "state of uncontrollable rage" which results when a male is confronted with "an incredibly provocative situation, an incredibly provocative young woman . . . encountered . . . time and time again."¹⁶⁵

In *State v. Norman*, Justice Martin compared spousal abuse to the "dehumanization process suffered by prisoners of war under the Nazis . . . and to the brainwashing techniques of the Korean War."¹⁶⁶ Battered wives are paralyzed by abuse, fear, and the conviction that their husband are "invincible and inescapable."¹⁶⁷ Research illustrates that a woman's dependence on her husband for legal residence increases the

¹⁶⁰ *Id.*

¹⁶¹ Robert Jensen, *Cruel To Be Hard: Men and Pornography*, SEXUAL ASSAULT REP. Jan.-Feb. 2004, at 33-48.

¹⁶² Gail Dines, *Sex for Sale: The White Man's Burden: Gonzo Pornography and the Construction of Black Masculinity*, 18 YALE J.L. & FEMINISM 283, 283-86 (2006).

¹⁶³ *See id.*

¹⁶⁴ MURRAY A. STRAUS ET AL., BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY, 194 (1980), cited in BARTLETT ET AL., GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY 475 (Aspen Law and Business 3d. ed. 2002).

¹⁶⁵ 556 P.2d 777 & 782 (Cal. 1976).

¹⁶⁶ 378 S.E.2d 16, 17 (N.C. 1989) (Martin, J., dissenting).

¹⁶⁷ *Id.*

likelihood that he will abuse her.¹⁶⁸ The examples of masculinities of consumption abound in our culture. Serial killer Ted Bundy sought “complete power, mastery, and control” over women.¹⁶⁹ Bundy’s sexuality involved a preoccupation with the hue of a corpse’s fingernails, the skin discoloration after death, a sexual attraction to dead bodies and possession of a female corpse.¹⁷⁰

The implications of mass death for the mail-order bride business are profound. Darrell Hamamoto claims that “there is a strong causal connection between an ever-increasingly militarized American society and the attendant rise of serial and mass murder over the past few decades.”¹⁷¹ Like in the mail-order bride business, the nexus of militarization and gender violence is linked with race, especially when faced toward the East. For example, Hamamoto shares a story about Sergeant Jack Wayne Reeves who married South Korean Myong Hui Chong and beat, drugged and forced her to reenact scenes from Asian-themed porn videos.¹⁷² Sergeant Reeves drowned his wife the day after he drugged and raped her sister. Reeves then found a mail-order Asian bride service and selected a Filipina named Emelita Villa for his next wife. Her murdered body was later discovered as the victuals for wild animals. Sociopath Warren James Bland, who raped, tortured and murdered a seven-year-old Taiwanese girl, claimed that “[W]hat I did to the kid was no different than what we did in [My Lai (Vietnam)] in 1968 to the women and children when we burned their huts.”¹⁷³

¹⁶⁸ *Supra* note 99, at 238 (referencing a study showing that 77 percent of immigrant women, who have not yet obtained conditional resident status, are abused by their American spouses).

¹⁶⁹ Darrell Y. Hamamoto, *Empire of Death: Militarized Society and the Rise of Serial Killing and Mass Murder*, 24 NEW POL. SCI. 105,107 (2002).

¹⁷⁰ ROBERT D. KEPPEL & WILLIAM J. BIRNES, *THE RIVERMAN: TED BUNDY AND I HUNT FOR THE GREEN RIVER KILLER* 454 (Pocket Books 1995) *cited in supra* note 169.

¹⁷¹ *Supra* note 169, at 109.

¹⁷² *Id.* at 115.

¹⁷³ KATHY BRAIDHILL, *EVIL SECRETS* 147 (Pinnacle Books 1996), *cited in id.* at 116.

The slaughter of women has been likened to an “orgasmic, charismatic experience.”¹⁷⁴ To describe militarization and the attendant rise of serial killing and mass murder, Chalmers Johnson uses the term “blowback,” which is “shorthand for saying that a nation reaps what it sows.”¹⁷⁵ Indeed:

If wartime killing does legitimate homicidal violence . . . then one would expect increases in violent crime in postwar societies. In addition, since civilians and soldiers alike could be influenced by the legitimization process, . . . increases will occur among both veterans and nonveterans.¹⁷⁶

Militarization and consumer masculinity, then, are paired discourses attached to a shared end: death.

The connection of militarization and gender violence is perhaps most obvious in the “War Brides Act”¹⁷⁷ passed in December 28, 1945, “to expedite the admission into the United States of alien spouses and alien minor children of citizen members of the United States armed forces.” The Act specifically detailed that:

[A]lien spouses . . . of United States citizens serving in, or having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise admissible under the immigration laws and if application for admission is made within three years of the effective date of this Act, be admitted to the United States.¹⁷⁸

Economic and military power become the social justifications for a masculinity of consumption.¹⁷⁹

¹⁷⁴ JOANNA BOURKE, AN INTIMATE HISTORY OF KILLING: FACE TO FACE KILLING IN 20TH CENTURY WARFARE 3, 15 (1999).

¹⁷⁵ CHALMERS JOHNSON, BLOWBACK: THE COSTS AND CONSEQUENCES OF AMERICAN EMPIRE 223 (Owl Books 2001).

¹⁷⁶ DANE ARCHER & ROSEMARY GARTNER, VIOLENCE AND CRIME IN CROSS-NATIONAL PERSPECTIVE 76 (Yale U. Press 1984).

¹⁷⁷ War Brides Act, ch. 591, 59 Stat. 659 (1945) (codified in 8 U.S.C. § 232 which expired Dec. 28, 1948).

¹⁷⁸ *Id.*

¹⁷⁹ Susan Estrich explains that “being treated like an object whose words or actions are not even worthy of consideration....[is a form of]...dehumanization [that] exacerbates the denial of dignity and autonomy.”

The mail-order bride industry is a global manifestation of male dominance.¹⁸⁰ Despite representing themselves as sexually inexperienced, the majority of mail-order brides have a history of sexual abuse and were socialized into “sex work” at an early age when “consent is meaningless and choice is an illusion.”¹⁸¹ In the discussion of mail-order brides, one must not merely consider the economies of the purchaser and purchased but also recognize that the law’s investment in this power relation is a greater reflection that the law, itself, has interiorized these modes in the way it polices the state.¹⁸²

Perpetrators of domestic violence will use rape and other forms of sexual intimidation to force their victims into subordinated positions.¹⁸³ In patriarchal societies, sexuality becomes a tool of male domination through sexual objectification.¹⁸⁴ Past laws that subjugated women are reborn in the mail-order bride context, as foreign brides become surrogate corpses.¹⁸⁵

IV. THE SURROGATE CORPSE

Necrophilia is defined as “a sick abnormal fascination with death and the dead; or more particularly, an erotic attraction to corpses.”¹⁸⁶ The American Psychiatric

Susan Estrich, *Real Rape*, UNDERSTANDING INEQUALITY: THE INTERSECTION OF RACE/ETHNICITY, CLASS AND GENDER (BARBARA A. ARRIGHI, ed. 2d ed. Rowman & Littlefield 2007) 318.

¹⁸⁰ Dorchen Leidholdt, *Prostitution: A Violation of Women’s Human Rights*, 1 CARDOZO WOMEN’S L.J. 133, 136-141 (1993).

¹⁸¹ *Id.* at 136.

¹⁸² See MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 11, 222 (Alan Sheridan ed. Penguin 1979).

¹⁸³ *Supra* note 109, at 135.

¹⁸⁴ *Id.*

¹⁸⁵ *Supra* note 182. Foucault discusses the notion of *infra-laws*, which are described as the remnants of old institutional structures that become reincorporated through bureaucratic change.

¹⁸⁶ Tyler Trent Ochoa and Christine Newman Jones, *Defiling the Dead: Necrophilia and the Law*, 18 WHITTIER. L. REV. 539, 540 (1997). See “necrophilia, n.,” OXFORD ENGLISH DICTIONARY (2d ed. 1989) <<http://dictionary.oed.com/cgi/entry/00322336>>.

Association defines necrophilia as a “psychosexual disorder involving unusual or bizarre fantasies or acts that are necessary for full sexual excitement.”¹⁸⁷

Necrophilia has been characterized as a clinical behavior “in which self-abandonment to the ecstasy of the sinful act of lust can be achieved only if the partner qualifies as ‘eligible’ by being beyond the limits, privileges, and protection of being undefilable.”¹⁸⁸ Necrophilia is characterized by a partner who has “no power to resist, and is therefore capable of being absolutely subjugated.”¹⁸⁹ Necrophilic behavior is concealed in less severe equivalents of “fantasies or situations where the other person is drugged, asleep, or is asked to assume a passive, inert role in sexual intercourse, especially in a coffin.”¹⁹⁰

As one commentator notes:

Necrophilia allows destructive urges toward the sexual partner, and fear of retaliation for those wishes, to be controlled because the partner, being or playing dead, is already destroyed and cannot strike back. The inert partner creates a sense of power because the dead body is unable to attack or abandon the necrophile, which provides relief from feelings of inadequacy and a heightened sense of control [akin to sadomasochistic fantasies].¹⁹¹

Psychoanalyst Erich Fromm claimed that necrophilia is a character orientation that is not necessarily sexual.¹⁹² He claimed that it was expressed in an attraction to that which is

¹⁸⁷ *Id.* See also AMERICAN PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 576 (4th ed. 1994).

¹⁸⁸ *Supra* note 186, at 541. See also JOHN MONEY, VENUSES PENUSES: SEXOLOGY, SEXOSOPHY, AND EXIGENCY THEORY 445 (1986).

¹⁸⁹ *Id.* at 542 (1997) (*citing* WILLIAM B. ARNDT, JR., GENDER DISORDERS AND THE PARAPHILIAS, 330 (1991) (Reporting a necrophile in one case study as saying, “if they were dead they could not object to my company and my behavior. . . . If you were dead, I could kiss and hug you as much as I liked, and you could not refuse.”)).

¹⁹⁰ *Id.* at 541.

¹⁹¹ *Id.* at 542.

¹⁹² See e.g., ERICH FROMM, THE HEART OF MAN 38-44 (1964).

dead or totally controlled.¹⁹³ The metaphor of dead bodies provides a further introspection into our own sexuality. In the United States, the dead are treated with dignity and respect and violation of that respect goes against basic social norms.¹⁹⁴ Necrophilia is typified in the mail-order bride cases when the ultimate result of marriage to a violent consumer-husband is death.¹⁹⁵ A necrophilic actor is the necessary catalyst for dehumanization.¹⁹⁶

CONCLUSION

Ending violence in the mail-order bride context requires laws that target the consumer husband's role in perpetuating public health risks. One possibility on the federal level is to require evaluations that provide information concerning necrophilia through the background checks carried out under IMBRA, given that the motives of consumer-husbands parallel those of necrophiles. However, broadened state sexual misconduct laws, which include prohibitions against necrophilia as an integral statutory subpart (instead of as a separate enactment) will prove more successful at reducing sexual abuse.¹⁹⁷

¹⁹³ See e.g., ERICH FROMM, THE ANATOMY OF HUMAN DESTRUCTIVENESS 325 (1970).

¹⁹⁴ *Supra* notes 24, 186, at 543.

¹⁹⁵ *Supra* note 99, at 238.

¹⁹⁶ See EDWARD O. WILSON, BIOPHILIA (Harvard U. Press 1984) 7-12, 60-68 (contending that all human beings have an instinctual love of life).

¹⁹⁷

<u>State with law against necrophilia</u>	<u>2005 rank (forcible rape)</u>	<u>(State population ranking)</u>	<u>Year law passed</u>	<u>Specificity</u>
Alaska –	1	(48 th)	1978	abuse of corpse
Washington –	6	(14 th)	1994	necrophilia
Nevada –	11	(36 th)	1983	necrophilia
Utah –	18	(35 th)	2005	abuse of corpse
Florida –	19	(4 th)	1996	abuse of corpse
Oregon –	21	(28 th)	1993	abuse of corpse
Indiana –	32	(15 th)	1997	abuse of corpse
Iowa –	35	(31 st)	N/A	abuse of corpse
North Dakota –	41	(49 th)	1973	deviate sexual act

This Comment recommends that laws against necrophilia be integrated into the general state prohibitions on sexual misconduct. The argument holds that such laws would work as a normative screen against the entrance of necrophilic types into the market of mail-order bride purchasers.¹⁹⁸ This logic supposes that while the prospective class of necrophilous consumer husbands does not consider the abuse of purchased spouses to be violative of any social norms, the integration of prohibitions against necrophilia into general state sexual misconduct laws would change this class’s view. To use Eric Posner’s terminology, such a law would have the *behavioral* effect of defining necrophilia as a form of sexual misconduct while having the *hermeneutic* effect of identifying those mail-order bride purchasers who abuse their wives as necrophiles.¹⁹⁹

Current state laws on necrophilia are injudiciously myopic. In California, for instance, the Health and Safety Code states, “Every person who willfully mutilates, disinters, removes from the place of interment, or commits an act of sexual penetration on, or has sexual contact with, any remains known to be human, without authority of law, is guilty of a felony.”²⁰⁰ In terms of more general criminal sanctions against necrophilia, California’s Penal Code mentions only prohibitions against “possession of an appropriate[ion] [of] articles of value from a dead human body” and the criminal codes in

Georgia –	43	(9 th)	1977	necrophilia
Minnesota –	44	(21 st)	1967	bestiality
Connecticut –	48	(30 th)	N/A	sexual assault
New York – misconduct	49	(3 rd)	1967	sexual

(Information compiled by the author from state statutes, FBI crime rankings and U.S. Census Bureau reports).

¹⁹⁸ See Eric A. Posner, *Symbols, Signals and Social Norms in Politics and Law*, 27 J. LEGAL STUDIES 765, 778 (1998) (“When the state announces some prohibitions . . . we can distinguish two kinds of effect that the prohibition may produce. First, the law has an effect on behavior . . . This effect will be called the *behavioral* effect of the law. Second, the law might change people’s understanding of the behavior it influences . . . The law’s effect on people’s beliefs about the kind of person who engages in a particular action will be called that law’s *hermeneutic* effect.”).

¹⁹⁹ *Id.*

²⁰⁰ Cal Health & Saf Code § 7052(a) (2007).

Arizona²⁰¹, Michigan²⁰², Ohio²⁰³ and Tennessee²⁰⁴ merely apply to funeral businesses. The Georgia Code has a prohibition against the throwing away or abandonment of dead bodies,²⁰⁵ while Wyoming limits prosecution to “a person who dissects or mutilates a dead human body.”²⁰⁶

Such laws are paradoxically limited. While California’s health code is a model example of the relationship between sexual deviance and public health, it ignores the reality that necrophilia is a psychosis that cannot merely be limited to the single act of sex with a dead body.²⁰⁷ Moreover, the California penal code makes no mention of necrophilia.²⁰⁸ Even well-intended sexual assault statutes that target perpetrators who take advantage of their victim’s lack of understanding (e.g. the mail-order bride context), like Nevada’s,²⁰⁹ nevertheless will fail to reduce abuse when state legislation is construed

²⁰¹ A. R. S. § 32-1364 (2007) (Arizona’s laws against necrophilia are part of a general crime statute governing funeral directors and embalmers, thus revealing the limits of such laws on having a significant normative impact).

²⁰² MCLS § 750.160c (2007).

²⁰³ ORC Ann. § 4717.266 (1998).

²⁰⁴ Tenn. Code Ann. §62-5-507 (2003).

²⁰⁵ O.C.G.A. §31-21-44.2 (2004). *See Lipham v. State*, 257 Ga. 808, 809 (1998) (In a criminal case involving whether sexual penetration occurred before or after the victim was killed, the Lipham court disagreed with prior authority which held that “For the petitioner to be guilty of rape, the victim must have been a person, a living human being; if dead before the act – as terrible and disgusting as it may be – the act is not rape” *citing Gibson v. Jackson*, 443 F. Supp. 239 (M. D. Ga. 1977)).

²⁰⁶ Wyo. Stat. § 6-4-502 (1996).

²⁰⁷ Edward S. Tauber, *Symbiosis, Narcissism, Necrophilia: Disordered Affect in the Obsessional Character*, 9 J. AMER. ACAD. PSYCHOANAL. 33-49. (“necrophilia . . . refers to activity against life, and not to sexual congress with the deceased . . . [it] defines qualitatively a negation of life.”). *Id.* at 33.

²⁰⁸ Cal Pen Code § 642 (2005) (“Every person who willfully and maliciously removes and keeps possession of and appropriates for his own use articles of value from a dead human body, the theft of which articles would be petty theft is guilty of a misdemeanor, or if the theft of the articles would be grand theft, a felony. This section shall not apply to articles removed at the request or direction of one of the persons enumerated in section 711 of the Health and Safety Code.”).

²⁰⁹ NRS § 200.366 (2002) (“A person who subjects another person to sexual penetration . . . against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual conduct.”).

“to recognize distinction[s]” between sexual misconduct laws and “necrophilia statute[s] with . . . more flexible sentencing guidelines.”²¹⁰

For obvious practical reasons, states need not, nor should, revise their necrophilia laws to prosecute certain sexual crimes that do not end in death even if they mirror the psychological profile of necrophilic behaviors. The argument of this Comment is normative: by injecting prohibitions against the *acts* of necrophilia into the general prohibitions against sexual misconduct, legal norms against subjugation and consumption will be established, thus providing an extra-judicial remedy to preventing abuse against women. As the chart in footnote 197 indicates, the states which make clear delineations between their sexual misconduct laws and their necrophilia prohibitions actually have higher per capita instances of forcible rape—to use the most nefarious example of sexual violence—than those states which include their prohibitions against necrophilia within their general sexual misconduct laws.

Such legislative efforts will also have the likely effect of broadening the way courts interpret sexual violence in cases where the female victim was murdered. In *Lipham v. State*, a Georgia case, the court broadly read the criminal rape code to conclude that “There is nothing in this code section which precludes a finding of rape if the victim is not alive at the moment of penetration. What the jury must find is that the defendant had carnal knowledge of the victim ‘forcibly and against her will.’”²¹¹ Problematically, the *Lipham* court—due to the nature of Georgia’s code²¹²—distinguished rape from necrophilia on grounds that “[t]he use of force in the former and the absence of force in

²¹⁰ *Id.* (citing *Doyle v. State*, 112 Nev. 879, 921 P. 2d (1996)).

²¹¹ *Lipham v. State*, 257 Ga. 809.

²¹² O.C.G.A. §16-6-7 (2007) (“A person commits the offense of necrophilia when he performs any sexual act with a dead human body involving the sex organs of the one and the mouth, anus, penis, or vagina of the other.”).

the latter is the difference.”²¹³ Such conclusions are paradoxical precisely because the use of force during a rape aims to render the victim thoroughly passive in order for her violation to be successful—and such passivity invigorates the necrophile to act.²¹⁴

An alternative solution to the proposal advocated in this Comment is one taken by Wisconsin in enacting its prohibitions against sexual morality. The first section of the statute claims that “The legislature intends that the authority to prosecute violations of this section shall be used primarily to combat the obscenity industry and shall never be used for harassment or censorship purposes against materials or performances having serious artistic, literary, political, educational or scientific value” and goes on to define “necrophilia” as “Sexual conduct.”²¹⁵ This statute coexists with Wisconsin’s general sexual assault code that states “This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.”²¹⁶

While the attempt to link necrophilia to general sexual misconduct is a step in the right direction, Wisconsin’s attempt may be overinclusive by limiting speech and underinclusive by not specifying the mail-order bride industry as part of the “obscenity

²¹³ *Lipham v. State*, at 810.

²¹⁴ See e.g. the testimony between prosecutor and physician-psychiatrist in *West v. State*:

Q. Dr. Galvez, can you tell us then in the field of psychiatry and your studies what you have learned with respect to why it is that someone would want to have sex with an individual who's dead or totally physically incapacitated?

A. Yes. Usually the individual, they have a psychic conflict. The main conflict is control and what is the ultimate control, you know. Control life and absolute control of a dead body. ‘I can do whatever I want to. I can go as far as I want to.’ The body will not respond or react in any way. Is the final, the ultimate control, okay?

Q. All right. The desire to control, can you tell me whether or not that's characteristic of all forms of sexual assault?

A. In sexual assault, in rape, control is the main issue. Control and -- and terrorize the victim. The sexual gratification is achieved by absolute control and if a woman or the victim -- it can be a child or a man -- is terrorized, then it will be extremely gratifying for them, yes.

Q. But what is the ultimate form of control over a victim of sexual assault?

A. Yes, is death. Death. There's nothing beyond death. Once you kill somebody, that is it.

553 So. 2d. 8, 14-15 (Miss. 1989)

²¹⁵ Wis. Stat. § 944.21(1), (2)(e) (2006).

²¹⁶ Wis. Stat. § 940.225(1)-(7) (2006).

industry” and thus further ignoring the reality that abuse and victimization have psychological origins that have been tacitly condoned by our culture of masculinity. Additionally, the existence of the two statutes may fail to address the psychological links between necrophilia and sexual misconduct.²¹⁷ Another approach would be to model those antiquated statutes that illegalized necrophilia as sodomy.²¹⁸ While such sodomy laws are ineffectual in our contemporary moral landscape,²¹⁹ they do signal the practical effects of integrating necrophilia prohibitions into the law’s general prohibitions on deviant sexual behaviors.

This Comment has attempted to portray abusive consumer-husbands as necrophiles because of the subconscious death instinct that motivates their behavior: from searching online catalogues to psychologically and physically abusing their spouses. By incorporating laws against necrophilia into general sexual misconduct laws, states would promote an expanded view of public health—one that could account for the links between distorted male sexual drives and the victimization of mail-order brides—as well as place necrophilic urges in the same context of other sexually deviant behaviors, thus sending the message that sexual consumption is unhealthy, unmanly and dangerous.

If the scope of this Comment has swelled beyond practicality, then its attempt at consciousness raising shall not be pyrrhic, for the recognition that the mail-order bride industry is driven by a necrophilic engine is the first step to stopping its violence.

²¹⁷ A Wisconsin court recently held that the statute “is ambiguous because it is subject to more than one reasonable interpretation. The more reasonable interpretation is that § 940.225(7) is intended by the legislature to allow a sexual assault charge to succeed where a defendant sexually assaults and causes the death of his victim and the sequence of events is unclear, rather than to criminalize necrophilia generally. *State v. Grunke*, 2007 WI App 198, 738 N.W. 2d 137, 2007 Wisc. App. LEXIS 662 (2007).

²¹⁸ Minn. St. § 617.14 [Repealed, 1967 c 507 s 12] (2007) (*cited in State v. Schwartz*, 10 N.W. 2d 370, 371).

²¹⁹ *See generally Bowers v. Hardwick*, 478 U.S. 186 (1986).