

FEMINISM IN YELLOWFACE

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INTRODUCTION

A recent episode from the final season of the popular television show *How I Met Your Mother*¹ sparked outrage among the Asian American community for portraying several of its main characters in yellowface using racialized gender stereotypes.² The stereotypical representations operated in the same historic tradition of portraying Asians as villains, exotic temptresses, and prostitutes in American media.³ In the episode, one of the male leads is dressed as Fu Manchu; the two female leads similarly don identifiably Asian ethnic garb⁴ but also assume posture and gestures that play to the

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¹ *How I Met Your Mother: Slapsgiving 3: Slapappointment in Slapmarra* (CBS television broadcast Jan. 13, 2014).

² Greg Botelho, *Asian-Americans Up in Arms Over “How I Met Your Mother” Episode*, CNN (Jan. 16, 2014), <http://www.cnn.com/2014/01/15/showbiz/how-i-met-your-mother-controversy>, archived at <http://perma.cc/9XKG-J4VL>; Amelia Butterly, *How I Met Your Mother Creators Apologise for Racism Row*, BBC NEWSBEAT (Jan. 6, 2014), <http://www.bbc.co.uk/newsbeat/25755552>, archived at <http://perma.cc/LXD8-28NJ>.

³ See generally DARRELL Y. HAMAMOTO, MONITORED PERIL: ASIAN AMERICANS AND THE POLITICS OF TV REPRESENTATION (1994) (describing the symbolic social subordination of Asian Americans on television); Cynthia W. Liu, *When Dragon Ladies Die, Do They Come Back as Butterflies? Re-Imagining Anna May Wong*, in COUNTERVISIONS: ASIAN AMERICAN FILM CRITICISM 23 (Darrell Y. Hamamoto & Sandra Liu eds., 2000) (examining Asian American depictions of actress Anna May Wong and her career).

⁴ *How I Met Your Mother: Slapsgiving 3: Slapappointment in Slapmarra*, *supra* note 1.

stereotype of the exotic, demure, and sexually available Asian woman popularized in the mid-twentieth century through the fictional character Suzie Wong.⁵ In fact, actress Cobie Smulders appears in the episode wearing the same iconic red cheongsam dress⁶ that actress Nancy Kwan wore in her portrayal of the title character in the 1960 film adaptation of *The World of Suzie Wong*.⁷ In the film and the original novel, Suzie Wong is an Asian sex worker who falls in love with Robert Lomax, a white, expatriate Westerner living in Hong Kong.⁸ Suzie Wong eventually leaves her life as a prostitute to enter a domesticated relationship with Lomax.⁹ The Suzie Wong stereotype fetishizes the Asian woman into an object of desire and consumption for the Western white man,¹⁰ which contributes to a broader sexualization of Asian women in the American popular imagination both domestically and internationally.¹¹ The insensitive and oblivious use of racist portrayals in a popular mainstream television show like *How I Met Your Mother* demonstrates how sexualized stereotypes of Asian women have tremendously affected and continue to affect the ways Asian American women are perceived in the United States,¹² and why

⁵ See Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, 1 J. GENDER RACE & JUST. 177, 194 (1997).

⁶ *How I Met Your Mother: Slapsgiving 3: Slapointment in Slapmarra*, *supra* note 1.

⁷ THE WORLD OF SUZIE WONG (Paramount Pictures 1960).

⁸ *Id.*; RICHARD MASON, THE WORLD OF SUZIE WONG (1957).

⁹ THE WORLD OF SUZIE WONG, *supra* note 7; MASON, *supra* note 8.

¹⁰ GINA MARCHETTI, ROMANCE AND THE "YELLOW PERIL": RACE, SEX, AND DISCURSIVE STRATEGIES IN HOLLYWOOD FICTION 2 (1993) ("Asian females are often depicted as sexually available to the white hero.").

¹¹ See Linda Trinh Võ & Marian Sciachitano, *Moving Beyond "Exotics, Whores, and Nimble Fingers": Asian American Women in a New Era of Globalization and Resistance*, 21 FRONTIERS: J. WOMEN STUD. 1, 4 (2000) ("The trafficking of Asian women as commodities in the global sex trade continues because of the U.S. military presence in Asia, the sex tour industry in Asia, and the Asian mail-order bride business. The construction of Asian women as hyperfeminine erotic exotics who willingly and passively service male desires has contributed to these thriving sex industries." (footnote omitted)).

¹² See Cho, *supra* note 5, at 193 ("Through mass media and popular culture, these stereotypes are internationally transferred so that they apply to women both in and outside of Asia."); Anna Y. Park, *The Marriage Fraud Act Revised: The Continuing Subordination of Asian and Pacific Islander Women*, 1 UCLA ASIAN PAC. AM. L.J. 29, 37-38 (1993) ("Stereotypical preconceptions perpetuate the suppression of Asian and Pacific Islander women in a class below that of men, forcing not only a double barrier of oppression but a multi-layered one of race, gender, culture, economic, and language oppression. Asian and Pacific Islander women are dehumanized and alternatively characterized as non-threatening, diminutive, indolent, alluring, sexy, submissive and mysterious."); see also Esther Ngan-Ling Chow, *The Development of Feminist Consciousness Among Asian American Women*, 1 GENDER & SOC'Y 284, 288 (1987) ("The legacy of the Chinese prostitute and the slave girl from the late nineteenth century still lingers. American involvement in Asian wars continues to perpetuate the image of Asian women as cheap whores and exotic sexpots (e.g., images such as 'Suzie Wong' for Chinese women, the 'geisha girl' in the Japanese teahouse, the bar girls in Vietnam). The 'picture bride' image of Asian women is still very much alive, as U.S. soldiers and business men brought back Asian wives from China, Japan, Korea, and Vietnam with the expectation that they would make perfect wives and homemakers.").

continued vigilance and sensitivity to racialized gender stereotypes are needed.¹³

Suzie Wong represents an interesting evolution of how Asian women in the United States have been imagined and reimagined over time, specifically as a matter of immigration law. Monolithically classified as prostitutes that threatened the integrity of the American family and therefore required exclusion in the nineteenth century,¹⁴ Asian women were reconfigured in the post-World War II era as potentially redeemable and admissible through marriage to American servicemen with the passage of the War Brides Act in 1945.¹⁵ Suzie Wong is a post-war adaptation of the Madame Butterfly trope,¹⁶ which plays to a fantasy of Asian femininity constructed by the American imperialist imagination.¹⁷ In a major change from the Madame Butterfly source, Suzie Wong is not a naïve adolescent but a seasoned sex worker. She is thus configured into a new stereotype for Asian femininity, as the “hooker with a heart of gold” who is ultimately redeemed by the white man, which suggests that beneath the veneer of exotic and carnal Eastern sexuality there lies a subject open and available to Western domestication and assimilation.¹⁸ The Suzie Wong stereotype functioned in tandem with immigration reforms of the era that centered on marriage,¹⁹ which subsequently allowed immigrant Asian women to be constructed, in some instances, as hyper-domesticated, conservative foils to progressive feminism.²⁰ In this way, Asian women are

¹³ See Keith Aoki, “Foreign-ness” & Asian American Identities: *Yellowface*, *World War II Propaganda, and Bifurcated Racial Stereotypes*, 4 UCLA ASIAN PAC. AM. L.J. 1, 44–47 (1996).

¹⁴ See Page Act, ch. 141, § 3, 18 Stat. 477 (1875) (repealed 1974).

¹⁵ See War Brides Act, Pub. L. No. 79-271, 59 Stat. 659 (1945).

¹⁶ See generally Sandra Kumamoto Stanley, *Settling Scores: The Metamorphosis of Madame Butterfly and Her Transnational Legacy*, 42 PAC. COAST PHILOLOGY 257 (2007) (explaining how Madame Butterfly reflects an American national narrative that cannot accommodate Asian women).

¹⁷ SUSAN KOSHY, *SEXUAL NATURALIZATION: ASIAN AMERICANS AND MISCEGENATION* 29 (2004).

¹⁸ See Peter X. Feng, *Recuperating Suzie Wong: A Fan’s Nancy Kwan-dary*, in *COUNTERVISIONS: ASIAN AMERICAN FILM CRITICISM* 40, 41–43 (Darrell Y. Hamamoto & Sandra Liu eds., 2000) (explaining how the depiction of Suzie Wong is “classic racist, sexist text[,]” which casts obedience as a desirable trait in potential marriage partners, but simultaneously demonizes it as a product of “Asia’s immorality and Asian women’s submissiveness” while the “spectator is simultaneously reassured that Asian women want to be beaten and allowed to displace the revulsion onto the ‘Orient’”).

¹⁹ Immigration and Nationality Act Amendments of 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965).

²⁰ See CELINE PARREÑAS SHIMIZU, *THE HYPERSEXUALITY OF RACE: PERFORMING ASIAN/AMERICAN WOMEN ON SCREEN AND SCENE* 79–80 (2007) (“Suzie is also posited as a more ideal version of femininity compared to the aggressive white woman. . . . Her appeal is also secured with lines exemplifying anti-feminism in an era when civil rights movement involved women’s rights activism.”); Donna R. Lee, *Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions*, 5 ASIAN L.J. 139, 145 (1998) (describing how customers of Asian mail order bride agencies are “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”).

stereotyped into ideal wives in the American male imagination,²¹ thus becoming a sexual model minority. Whereas in nineteenth-century immigration policy the alien prostitute was regarded as a palpable threat that needed to be excluded from the national borders, in the twentieth century the alien prostitute evolved into the sympathetic subject of rescue, inclusion, and assimilation. In its most recent permutation, the trope of the “hooker with a heart of gold” who can be redeemed and assimilated has resurfaced in United States immigration policy with the T-visa, an immigration remedy allowed under the Victims of Trafficking and Violence Protection Act (TVPA) of 2000.²²

This article analyzes the relationship between sexualized stereotypes of Asian women, specifically the Asian prostitute epitomized in the Suzie Wong stereotype, and the tendency of American immigration law, even in pro-women legislation such as the TVPA, to promote conservative norms regarding female sexuality and domesticity. Part I explains the significance of Asian prostitution in the history and evolution of United States immigration policy. In the nineteenth century, the Asian prostitute was constructed as the antithesis to normative American sexuality, as a foreign peril that threatened the integrity of the American domestic unity and therefore required rejection and exclusion. Part II traces how the stereotype of the Asian prostitute evolved during the twentieth century to be reconfigured in the American legal imagination as the unwitting sex trafficking victim who is no longer threatening to the American family unit, but is capable of finding refuge and redemption through normative American domesticity. Part III analyzes the ways in which the TVPA, through a system of compulsory confession under the T-visa regulations, requires female applicants to see themselves as victims, reinforcing conservative norms and traditions regarding immigrant female sexuality. The confession also functions as a cultural repudiation, which further ensconces a moral hierarchy of Western above Eastern cultural values surrounding sexuality. Part IV considers how the selection and legitimization of immigrant subjects who demonstrate normative sexuality, even in facially benevolent legislation such as the TVPA, nevertheless perpetuate stereotypes that are damaging not only to minority immigrant communities but also to women generally. The stereotyping of Asian women

²¹ See Shawn Ho, *Co-Synthesis of Dynamics Behind the Dearth of Asian American Law Professors: A Unique Narrative*, 18 *ASIAN AM. L.J.* 57, 67 (2011) (“The Asian sex tourism industry, coupled with the arrival of Asian war brides and Asian mail-order brides in America, continually reproduced the stereotype of submissive Asian women in the United States. Some Americans continue to see Asian American women in this light, buying into the stereotype that Asian American women are only ideal for the domestic sphere as perfect wives, which runs counter to the recognition of Asian American women as professionals in their own right.” (footnotes omitted)).

²² See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464; see also William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (renewing and expanding upon the original TVPA).

as sexual model minorities like Suzie Wong legitimizes laws that continue to exclude aliens deemed to possess illegitimate sexualities, which more broadly perpetuates cultural and legal assumptions regarding the proper conduct of women.

I. STARTING FROM THE FIRST “PAGE”: HISTORICIZING STEREOTYPES OF ASIAN PROSTITUTES IN EARLY UNITED STATES IMMIGRATION POLICY

Regulation of sex, particularly sex trafficking from Asia, was quite important in the history of United States immigration policy.²³ Indeed, the first significant federal immigration restriction in the United States was a direct response to the perceived problem of prostitution and sex trafficking from Asia.²⁴ For the first century of the nation’s existence, the United States government did not generally regulate immigration into the country.²⁵ However, in the late nineteenth century, anti-immigrant sentiment grew nationally and began focusing on the exclusion of Chinese immigrants.²⁶ Chinese prostitutes, in particular, were targeted for exclusion as gendered configurations of the Yellow Peril stereotype, which portrayed Asians as inassimilable aliens who threatened American labor, public health, and morality.²⁷ Widespread prostitution was evidence of a morally bankrupt culture when juxtaposed with the position of domestic American women.²⁸ While Chinese male labor-

²³ Eithne Luibhéid, *Heteronormativity, Responsibility, and Neo-liberal Governance in U.S. Immigration Control*, in *PASSING LINES: SEXUALITY AND IMMIGRATION* 69 (Brad Epps et al. eds., 2005) (“Sexuality has long been a concern to the framers of U.S. immigration law and policy, and it has consistently comprised an important axis for the regulation of newcomers.”).

²⁴ Lisa C. Ikemoto, *Male Fraud*, 3 J. GENDER RACE & JUST. 511, 536 (2000) (“The Page Law . . . was the first federal anti-Asian immigration exclusion act.”).

²⁵ Jan C. Ting, “*Other Than a Chinaman*”: *How U.S. Immigration Law Resulted from and Still Reflects a Policy of Excluding and Restricting Asian Immigration*, 4 TEMP. POL. & CIV. RTS. L. REV. 301, 302 (1995) (“During its first century, the United States maintained a policy of open borders; legal restrictions on immigration to the United States did not exist.”); Gerald L. Neuman, *The Lost Century of American Immigration Law (1776–1875)*, 93 COLUM. L. REV. 1833, 1834 (1993).

²⁶ See SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY* 48–55 (1991).

²⁷ See Erika Lee, *The “Yellow Peril” and Asian Exclusion in the Americas*, 76 PAC. HIST. REV. 537, 546–47, 550 (2007); Ting, *supra* note 25, at 302–03 (“The popular view of Chinese as criminals and prostitutes led to the enactment of the first federal statute restricting immigration in 1875, an act which excluded criminals and prostitutes from immigrating to the United States.”); see also Keith Aoki, *The Yellow Pacific: Transnational Identities, Diasporic Racialization, and Myth(s) of the “Asian Century,”* 44 U.C. DAVIS L. REV. 897, 910–12 (2011); Stanford M. Lyman, *The “Yellow Peril” Mystique: Origins and Vicissitudes of a Racist Dialogue*, 13 INT’L J. POL., CULTURE & SOC’Y 683, 695–96 (2000).

²⁸ See generally LAURA WEXLER, *TENDER VIOLENCE: DOMESTIC VISIONS IN AN AGE OF U.S. IMPERIALISM* (2000) (examining the ways in which normative, nineteenth-century, middle class ideologies of gender and sexuality were configured as empowering to white women in relation to racialized Others using the works of first American female photojournalists).

ers were ostracized as threats to white labor, Chinese prostitutes were demonized as immoral and menacing figures that threatened the racial and moral integrity of the American family and thus required increasing scrutiny, surveillance, and ultimately regulation.²⁹

Historian Nayan Shah explains how during the nineteenth century anti-Chinese advocates characterized Chinese immigration as a “racial war [where] the most pernicious weapon was the Chinese female prostitute, who . . . was ‘infusing a poison into the Anglo-Saxon blood’ and imperiling the ‘future of the American nation.’”³⁰ The Chinese threat was often framed in terms of moral and sexual pollution with the prostitute as the immediate vehicle of contagion.³¹ Chinese prostitutes were defined specifically against the nuclear family unit of mainstream American society.³² Shah notes that between 1870 and 1880, the U.S. tasked census takers with classifying San Francisco Chinatown residents “into groups that conformed either to definitions of family or of distinctive types of prostitution.”³³ Statistics from 1870 showed that approximately 71% of Chinese women living in San Francisco³⁴ and 67% of Chinese women living in California were employed as prostitutes.³⁵ Figures such as these bolstered the popular perception that Chinese women were almost universally prostitutes and required regulation.³⁶

California began rigorously targeting prostitution as a first effective step towards the ultimate goal of Chinese exclusion.³⁷ Initial attempts to limit Chinese immigration in the state were struck down as unconstitutional for infringing upon federal power over immigration and foreign commerce.³⁸

²⁹ See generally Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641 (2005) (discussing how the “regulation of sexuality, morality, and marriage was a pervasive regulatory force in the development of immigration law”).

³⁰ NAYAN SHAH, *CONTAGIOUS DIVIDES: EPIDEMICS AND RACE IN SAN FRANCISCO’S CHINATOWN* 107 (2001) (quoting Dr. Mary Sawtelle).

³¹ See ELMER CLARENCE SANDMEYER, *THE ANTI-CHINESE MOVEMENT IN CALIFORNIA* 52 (1939).

³² ABRAMS, *supra* note 29, at 653 (“The impulse to exclude Chinese prostitutes stemmed from the profound differences between Chinese attitudes toward sexuality and family structure and the more rigid American system in which monogamous marriage was the only permissible outlet for female sexuality.”).

³³ SHAH, *supra* note 30, at 82–83.

³⁴ Lucie Cheng Hirata, *Free, Indentured, Enslaved: Chinese Prostitutes in Nineteenth-Century America*, 5 SIGNS 3, 24 (1979).

³⁵ GEORGE ANTHONY PEPPER, *IF THEY DON’T BRING THEIR WOMEN HERE: CHINESE FEMALE IMMIGRATION BEFORE EXCLUSION* 32 (1999).

³⁶ Noga Firstenberg, *Marriage and Morality: Examining the International Marriage Broker Regulation Act*, 18 ASIAN AM. L.J. 83, 91 (2011).

³⁷ See Charles J. McClain, Jr., *The Chinese Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850–1870*, 72 CALIF. L. REV. 529, 534–37 (1984).

³⁸ See, e.g., *Lin Sing v. Washburn*, 20 Cal. 534, 564 (1862) (striking down the Act of April 26, 1862, entitled “[a]n act to protect free white labor against competition with Chinese coolie labor, and discourage the immigration of the Chinese into the State of California”); *People v. Downer*, 7 Cal. 169, 169 (1857) (striking down “[t]he Act of 1855, imposing a tax of fifty dollars on every person arriving in this State by sea, who is incompetent to become a citizen”); see also Gabriel J. Chin & Marc L. Miller, *The Un-*

Thus, attention turned toward controlling a particularly visible and more easily targetable demographic of the Chinese population: prostitutes.³⁹ Such regulation made the “Chinese problem” less an issue of labor competition and more an issue of public morality.⁴⁰ In 1870 the California legislature passed “[a]n Act to prevent the kidnapping and importation of Mongolian, Chinese and Japanese females, for criminal or demoralizing purposes.”⁴¹ The Preamble to the 1870 California law explicitly stated that it was enacted in response to “the business of importing into this State Chinese women for criminal and demoralizing purposes has been carried on extensively during the past year, to the scandal and injury of the people of this State, and in defiance of public decency.”⁴² The law required that every Chinese female who thereafter sought to enter California provide evidence “that such female desires voluntarily to come into this State, and is a person of correct habits and good character” before being issued a permit for entry.⁴³

Not long thereafter, the issues of Chinese prostitution and Chinese exclusion grew to national proportions and were similarly used as moral rallying points for federal action.⁴⁴ Public morality became a rallying point for exclusion of the Chinese, who were collectively stereotyped as “thieves” and “prostitutes.”⁴⁵ After his 1874 annual address to the nation, in which he became the first president to speak about the “Chinese problem,”⁴⁶ President

constitutionality of State Regulation of Immigration Through Criminal Law, 61 DUKE L.J. 251, 265–66 (2011).

³⁹ PEFFER, *supra* note 35, at 31–32.

⁴⁰ *Id.* at 32.

⁴¹ Act of Mar. 18, 1870, ch. 230, 1870 Cal. Stat. 330.

⁴² *Id.* at 330–31.

⁴³ *Id.* at 331.

⁴⁴ PEFFER, *supra* note 35, at 28 (“[T]he Page Law marked a stop on the road to exclusion—an important step in the transformation of Chinese immigration from a western to a national issue.”).

⁴⁵ Additionally, white labor unions successfully fomented public sentiment against the Chinese by adding a moral dimension to the argument for exclusion. PETER KWONG & DUSANKA MISCEVIC, CHINESE AMERICA: THE UNTOLD STORY OF AMERICA’S OLDEST NEW COMMUNITY 92 (2005) (“An article published in their mouthpiece, the *Journal of United Labor*, maintained that the Chinese . . . [were] ‘natural thieves’ and referred to all Chinese women as ‘prostitutes.’”).

⁴⁶ ROGER DANIELS, ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED STATES SINCE 1850, at 44 (1990) (quoting President Grant’s 1874 annual address that stated: “I call the attention of Congress to a generally conceded fact—that the great proportion of the Chinese immigrants who come to our shores do not come voluntarily, to make their homes with us and their labor productive of general prosperity, but come under contracts with headmen, who own them absolutely. In a worse form does this apply to Chinese women. Hardly a perceptible percentage of them perform any honorable labor, but they are brought for shameful purposes, to the disgrace of communities where settled and to the great demoralization of the youth of those localities. If this evil practice can be legislated against, it will be my pleasure as well as my duty to enforce any regulation to secure so desirable an end.”). Proponents of federal action also held the view that the Chinese were culturally conditioned to condone slavery and sexual debasement. See Abrams, *Polygamy*, *supra* note 29, at 659 (“Chinese culture, then, was believed to condone a form of slavery that was antithetical to American notions of marriage and consent. This culture had almost biological roots in the Chinese race; their ‘servile disposition’ was ‘inherited from ages of benumbing despotism.’” (footnotes omitted)).

Ulysses S. Grant went on to sign the Page Act of 1875, which would abrogate the immigration of Chinese women because they were presumed to be prostitutes.⁴⁷ On its face, the Page Act was anti-prostitution legislation designed to ensure that “the immigration of any subject of China, Japan, or any Oriental country, to the United States, is free and voluntary” and not “for lewd and immoral purposes.”⁴⁸ However, the Page Act was discriminatorily applied and aimed to exclude all Chinese women based on a constructed stereotype that Chinese women had a cultural inclination toward prostitution.⁴⁹ As a result, the already disproportionate ratio between Chinese men and women living in the United States skewed even further.⁵⁰ As the subject of the first immigration law enacted within the United States,⁵¹ the Asian prostitute was politically utilized in the nineteenth century as a racial “Other” against which normative citizen and immigrant subjects who could racially and culturally belong in America were defined.

The Page Act was followed by the Chinese Exclusion Act of 1882,⁵² which also capitalized on stereotypes of Chinese women as moral and sexual deviants.⁵³ The Chinese Exclusion Act halted all Chinese immigration originally for a period of two years, but was subsequently renewed and expanded in 1884, 1888, and 1892.⁵⁴ The Chinese Exclusion Act became the first in a series of laws that systematically excluded Asians from immigrating for decades on the basis of race. In 1917, Congress enacted the Immigration Act that created the “Asiatic Barred Zone,” which banned immigration from virtually all parts of Asia.⁵⁵ The 1917 Act was followed by the Immigration Act of 1924, which extended exclusion to all “alien[s] ineligible for citizenship,” including Asians, and established the national origins quota.⁵⁶ World

⁴⁷ Page Act, ch. 141, 18 Stat. 477 (1875) (repealed 1974).

⁴⁸ *Id.*

⁴⁹ See PEPPER, *supra* note 35, at 102. See generally Abrams, *Polygamy*, *supra* note 29 (explaining that the Page Law aimed to prevent Chinese women from immigrating to the United States).

⁵⁰ See, e.g., SHAH, *supra* note 30, at 85 (noting how “[a]lthough, according to the census, the overall number of San Francisco Chinese nearly doubled, from 12,022 in 1870 to 21,745 in 1880, the population of Chinese women hovered at 2,000”).

⁵¹ Ikemoto, *supra* note 24, at 536.

⁵² Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882) (repealed 1943).

⁵³ Kitty Calavita, *Collisions at the Intersection of Gender, Race, and Class: Enforcing the Chinese Exclusion Laws*, 40 LAW & SOC’Y REV. 249, 259–60 (2006); see also LUCY E. SALYER, *LAW HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW* 15 (1995).

⁵⁴ See generally H. Res. 282, 112th Cong. (2011) (reviewing the passage of discriminatory laws against the Chinese beginning in the nineteenth century).

⁵⁵ Immigration Act, ch. 29, § 3, 39 Stat. 876 (1917) (repealed 1952); see also Bill Ong Hing, *The Immigrant as Criminal: Punishing Dreamers*, 9 HASTINGS WOMEN’S L.J. 79, 88–89 (1998).

⁵⁶ Immigration Act, ch. 190, 43 Stat. 153 (1924) (repealed 1952) (restricting immigration for all “alien[s] ineligible for citizenship” and setting an annual quota of 150,000 immigrant entries per year based on national origin, where immigration from each eligible nation was limited to 2% of the number of foreign-born persons of that nationality residing in the United States as of the 1890 census).

War II marked a slight shift in this line of United States immigration policy, as Asian exclusionary laws were repealed. The Magnuson Act of 1943 repealed the Chinese Exclusion Acts,⁵⁷ and the Luce-Celler Act of 1946 lifted immigration restrictions on Filipinos and Asian Indians.⁵⁸ However, because there were so few Asians living in the United States by that time due to exclusion, the national origins quota set by the 1924 Act still severely limited immigration from Asia. Despite the gradual modification of exclusionary immigration policies,⁵⁹ Asian immigration during the middle of the twentieth century remained virtually non-existent.

The only significant deviation during this era was the relatively large influx of Asian women immigrating through interracial marriages with United States servicemen following the passage of the War Brides Act.⁶⁰ The War Brides Act of 1945 allowed current and former U.S. servicemen to sponsor spouses and children as non-quota immigrants.⁶¹ Some of these women, however, faced sexual ostracization due to perceived and real social, sexual, and cultural inequities. Due to the history of American military involvement in Asia and camptown prostitution,⁶² some Asian brides of American servicemen were popularly assumed to have been prostitutes who worked in the camptowns.⁶³ For example, Japanese War Brides were often shunned as former prostitutes and race traitors,⁶⁴ and many Korean War Brides were former prostitutes who married the American servicemen whom

⁵⁷ Magnuson Act, ch. 344, 57 Stat. 600 (1943).

⁵⁸ Luce-Celler Act, ch. 534, 60 Stat. 416 (1946).

⁵⁹ See Neil Gotanda, *Towards Repeal of Asian Exclusion: The Magnuson Act of 1943, The Act of July 2, 1946, The Presidential Proclamation of July 4, 1946, The Act of August 9, 1946, and The Act of August 1, 1950*, in *ASIAN AMERICANS AND CONGRESS: A DOCUMENTARY HISTORY* 309, 309 (Hyung-Chan Kim ed., 1995).

⁶⁰ Ikemoto, *supra* note 24, at 517; see also EVELYN NAKANO GLENN, *ISSEI, NISEI, WAR BRIDE: THREE GENERATIONS OF JAPANESE AMERICAN WOMEN IN DOMESTIC SERVICE* 27 (1986).

⁶¹ War Brides Act, ch. 591, Pub. L. No. 79-271, 59 Stat. 659 (1945).

⁶² See, e.g., SUSAN BROWN MILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 93–94 (1975); KATHARINE H. S. MOON, *SEX AMONG ALLIES: MILITARY PROSTITUTION IN U.S.-KOREA RELATIONS* 2 (1997); Gwyn Kirk & Carolyn Bowen Francis, *Redefining Security: Women Challenge U.S. Military Policy and Practice in East Asia*, 15 *BERKELEY WOMEN'S L.J.* 229, 244–45 (2000); Na Young Lee, *The Construction of Military Prostitution in South Korea During the U.S. Military Rule, 1945–1948*, 33 *FEMINIST STUD.* 453, 453–56 (2007). See generally SAUNDRA POLLACK STURDEVANT & BRENDA STOLTZFUS, *LET THE GOOD TIMES ROLL: PROSTITUTION AND THE U.S. MILITARY IN ASIA* (1993) (discussing women who lived around U.S. military bases and worked in economies built on the sale of sex).

⁶³ See Rebecca Forgash, *Negotiating Marriage: Cultural Citizenship and the Reproduction of American Empire in Okinawa*, 48 *ETHNOLOGY* 215, 221 (2009) (“Popular stereotypes linked women who dated and married GIs with the sex trade flourishing outside the gates of the larger Okinawan bases.”).

⁶⁴ Masakazu Tanaka, *The Sexual Contact Zone in Occupied Japan: Discourses on Japanese Prostitutes or Panpan for U.S. Military Servicemen*, 31 *INTERSECTIONS: GENDER & SEXUALITY ASIA & PAC.* 1, 23 (2012), <http://intersections.anu.edu.au/issue31/tanaka.htm#t1>, archived at <http://perma.cc/E4H5-HB8R>.

they met in the camptowns.⁶⁵ The Suzie Wong trope of the Asian sex worker rescued through marriage to a white man was, in many respects, a sexualized emblem of American military involvement in Asia during the Cold War era.⁶⁶

The War Brides Act eventually led to a new wave of interracial couples in the United States through immigration.⁶⁷ Due in large part to the War Brides Act, women became the most significant demographic of immigrants entering the United States from Asia until the immigration reforms of 1952 and 1965,⁶⁸ helping to set family reunification as an overarching priority in modern immigration policy.⁶⁹ Initial applications for immigration under the War Brides Act, however, were met with resistance. Many early applicants encountered barriers due to conflicts with existing immigration, military, and anti-miscegenation laws.⁷⁰ For decades, Asian women had popularly been stereotyped as the antithetical threat to the prototypical American family. Yet suddenly after the war, interracial families with white husbands and Asian wives represented a new face in American family unity.⁷¹ War Brides

⁶⁵ See generally Ji-Yeon Yuh, *BEYOND THE SHADOW OF CAMPTOWN: KOREAN MILITARY BRIDES IN AMERICA* (2002) (tracing the history of Korean military brides).

⁶⁶ Gary McDonogh & Cindy Hing-Yuk Wong, *Orientalism Abroad: Hong Kong Readings of The World of Suzie Wong*, in *CLASSIC HOLLYWOOD, CLASSIC WHITENESS* 210, 230 (Daniel Bernardi ed., 2001) (“*The World of Suzie Wong* is, in many ways, a story of the cold war era, highlighting both the military presence of American and British sailors in the Nam Kwok and the supply of young women who filled the bars and the dangerous squatter settlements on Hong Kong’s slopes.”).

⁶⁷ Rose Cuison Villazor, *The Other Loving: Uncovering the Federal Government’s Racial Regulation of Marriage*, 86 N.Y.U. L. REV. 1361, 1422 (2011); see also XIAOJIAN ZHAO, *REMAKING CHINESE AMERICA: IMMIGRATION, FAMILY, AND COMMUNITY, 1940–1965*, at 80–84 (2002).

⁶⁸ Marion F. Houstoun et al., *Female Predominance in Immigration to the United States Since 1930: A First Look*, 18 INT’L MIGRATION REV. 908, 919–20 (1984); Gerald T. White, *The Chinese and Immigration Law*, 19 FAR E. SURV. 68, 68 (1950) (“One reason for the influx of non-quota Chinese immigrants was the general GI War Brides Act of December 1945, which admitted alien wives and alien minor children of GIs on a non-quota basis until its expiration on December 28, 1948.”).

⁶⁹ David M. Reimers, *Post-World War II Immigration to the United States: America’s Latest Newcomers*, 454 ANNALS AM. ACAD. POL. & SOC. SCI. 1, 4–5, 7 (1981) (“First, the sex composition of immigration has altered. Since the 1930s, a slight majority have been female. Historically, a male of prime working years constituted the traditional immigrant, but this has not been the case since the 1930s. The fact that so many immigrants are refugees or are coming under the family preferences explains much of this pattern.”).

⁷⁰ See generally Villazor, *supra* note 67 (exploring how early anti-miscegenation, immigration, and military laws perpetuated federal policing of interracial marriages).

⁷¹ See, e.g., Keith Aoki, *Is Chan Still Missing? An Essay About the Film Snow Falling on Cedars and Representations of Asian Americans in U.S. Films*, 7 UCLA ASIAN PAC. AM. L.J. 30, 42–43 (2001) (“Changing geopolitics are further exemplified in director Josh Logan’s 1957 film *Sayonara*, in which the shift between World War II politics and Cold War ideology is very much evident. Most notably, while Japan is still the ‘east,’ this film represents a ‘new’ Japan that has been tranquilized and feminized. . . . Once the Japanese military threat was deposed, the only hope for Japan, metaphorically, was an “interracial” coupling with the U.S.” (footnotes omitted)); see also HELEN ZIA, *ASIAN AMERICAN DREAMS: THE EMERGENCE OF AN AMERICAN PEOPLE* 114–15 (2000) (“As American GIs married brides from Japan, Korea, the Philippines, and Vietnam, the tough

were met with suspicion, as potentially subversive enemy elements that still threatened the legitimacy of the family unit through deception and fraud.⁷² The continued sexualized stereotyping of Asian women as prostitutes in this era exacerbated this distrust.⁷³ Mainstream reception of the Robert Lomax-Suzie Wong dyad of the white man with the Asian prostitute-turned-wife was therefore mixed. Anthropologist Agehananda Bharati hypothesized that continued cultural resistance to anti-miscegenation during the 1960s and the negative reception of Suzie Wong was tied to enduring popular stereotypes of hypersexual Asian femininity that white men could not resist.⁷⁴

II. "TONIGHT I WILL BE MISS SAIGON . . . I'LL WIN A G.I. AND BE GONE": MARRIAGE FRAUD AND NEW CONCEPTIONS OF ASIAN PROSTITUTION IN TWENTIETH CENTURY IMMIGRATION POLICY

Eventually the female Asian immigrant subject was integrated into American culture through the family. Immigration policy analysts Philip Wolgin and Irene Bloemraad trace the current prioritization of family unity in immigration law to the War Brides Act.⁷⁵ As the racist national origins quota was ultimately abandoned during the Civil Rights Era and family reunification became the centerpiece of immigration reform,⁷⁶ the impetus for immigration control shifted away from race and onto normative conceptions of family.⁷⁷ As a matter of immigration policy, xenophobia could no

dragon-lady edges were smoothed into the subservient, self-sacrificial, and eminently pliable geisha of *Madama Butterfly*.”).

⁷² See Comment, *Sham Marriages*, 20 U. CHI. L. REV. 710, 717 (1953) (“Moreover, it has been said that, instead of becoming a valuable asset to society, these marriages [under the War Brides Act] will become a detriment by preventing the parties from entering into more satisfactory unions; and that perpetuating such marriages will prove injurious to the stability of the family.”); see also *Lutwak v. United States*, 344 U.S. 604, 611 (1953) (finding fraud in three War Brides Act petitions where the couples failed to demonstrate that they “have undertaken to establish a life together and assume certain duties and obligations”).

⁷³ See Julie Yuki Ralston, *Geishas, Gays and Grunts: What the Exploitation of Asian Pacific Women Reveals About Military Culture and the Legal Ban on Lesbian, Gay and Bisexual Service Members*, 16 L. & INEQUALITY 661, 685–89 (1998).

⁷⁴ Agehananda Bharati, *Love, Miscegenation and Anthropology*, 17 TRANSITION 14, 17 (1964) (describing how disdain for “an ‘oriental’ white couple—(American slang for anyone with an epicanthic fold on his or her eyes)—is not so much their sense of impropriety on the basis of the thought that a decent person sticks to his own ancestry, but the lurking, unformulated suspicion that the white partner contracted the liaison in the lurid hope for, or experience of, greater sexual pleasure”).

⁷⁵ Philip E. Wolgin & Irene Bloemraad, “*Our Gratitude to Our Soldiers*”: *Military Spouses, Family Re-Unification, and Postwar Immigration Reform*, 41 J. INTERDISC. HIST. 27, 28–29 (2010) (“The combination of wartime service, patriotism, and marriage proved stronger than latent unease about Asian migration, tipping the scales in favor of reform.”).

⁷⁶ Immigration and Nationality Act, Pub. L. No. 89-236, 79 Stat. 911 (1965).

⁷⁷ See Kerry Abrams, *Immigration Law and the Regulation of Marriage*, 91 MINN. L. REV. 1625, 1637–38, 1658-60 (2007); Nora V. Demleitner, *How Much Do Western De-*

longer persist in the form of overt ethnic discrimination, but resurfaced and manifested as residual suspicions regarding the bona fides of immigrant marriages. In the same way that War Brides were met with suspicion, foreign spouses entering through new family unity provisions were met with similar doubts as to their motives for marriage. A rise in spousal petitions increased attention to definitions of good faith marriage. In *Bark v. INS*, the Immigration Service sought to deny permanent residence for an immigrant spouse from Korea on the basis that the marriage was fraudulent.⁷⁸ The government interpreted the fact that the couple lived in separate quarters and had conflicting testimony on how much time they spent together as evidence that the marriage was a sham.⁷⁹ Though the Ninth Circuit decided the case in favor of the immigrant on a constitutional issue of privacy,⁸⁰ it revealed the government's new preoccupation of defining and evaluating the legitimacy of marriage for immigrant applicants.

In *Bark*, the court was cognizant of how cultural assumptions regarding marriage—what a real versus a fake marriage is supposed to look like—can easily dominate the legal prescriptions for eligibility. In *Stokes v. INS*, a New York District Court upheld intrusive interviews used by immigration officers to ferret out marriage fraud.⁸¹ Using these interviews, immigration officers often look to culturally idealized signifiers of a genuine relationship.⁸² These idealizations, however, are often based on assumptions from normative American culture.⁸³ In *Stokes*, for instance, the fact that the couple resided separately after marriage was interpreted as evidence that the marriage was not genuine, even though they had done so based on the cultural belief that they should not cohabit until they had completed a special Indian relig-

mocracies Value Family and Marriage?: Immigration Law's Conflicted Answers, 32 *HOFSTRA L. REV.* 273, 293–96 (2003).

⁷⁸ 511 F.2d 1200, 1201 (9th Cir. 1975).

⁷⁹ *Id.*

⁸⁰ *Id.* at 1201-02. (“The concept of establishing a life as marital partners contains no federal dictate about the kind of life that the partners may choose to lead. Any attempt to regulate their life styles, such as prescribing the amount of time they must spend together, or designating the manner in which either partner elects to spend his or her time, in the guise of specifying the requirements of a bona fide marriage would raise serious constitutional questions. Aliens cannot be required to have more conventional or more successful marriages than citizens.” (citations omitted)).

⁸¹ 393 F. Supp. 24, 29–32 (S.D.N.Y. 1975).

⁸² See Note, *The Constitutionality of the INS Sham Marriage Investigation Policy*, 99 *HARV. L. REV.* 1238, 1242–43 (1986) (“The INS may, for example, ask questions about the couple’s courtship, their wedding ceremony, the decor of their residence, the division of household chores, or what they had for breakfast on the morning of the interview. More important, although they are advised against doing so, INS officials often inquire into the most intimate aspects of the marital relationship. Probing questions about the method of birth control used, the consummation of the marriage, and the sexual conduct of the couple before and after marriage are not uncommon.” (footnotes omitted)).

⁸³ *Id.* at 1246 & n.60 (“The danger that INS practices will interfere with rights of privacy by imposing specific marital norms is magnified because many marriages between aliens and American residents or citizens involve cultural values and marriage customs foreign to the traditional American model.”).

ious ceremony.⁸⁴ For immigrant spouses, there is heightened scrutiny of the relationship above and beyond inquiries that occur even in state family law cases alleging fraud as a basis for nullity.⁸⁵

In order to curtail the perceived incidence of immigration sham marriages,⁸⁶ Congress enacted the Immigration Marriage Fraud Amendments (IMFA) in 1986, which created a two-year conditional residency requirement for immigrants entering through marriages to United States citizens or legal permanent residents.⁸⁷ In legislative arguments for the IMFA, Asian women were again targeted as morally problematic transgressors requiring oversight and regulation, and they were portrayed as engaging in a new type of prostitution: sexual services in exchange for immigration benefits.⁸⁸ Congress cited surveys estimating “approximately 30% of all petitions for immigrant visas involve suspect marital relationships” as evidence that reform was needed.⁸⁹ Even though *Bark* had mandated that “[a]liens cannot be required to have more conventional or more successful marriages than citizens,”⁹⁰ the IMFA regulations essentially required immigrants to exemplify the ideal vision of the American family. This is because the guidelines that immigration officers used to evaluate good faith marriages included typical mainstays of ideal American family life such as the birth of children, joint ownership of property, and comingling of finances.⁹¹ In other words, in order for immigrants to enter as spouses, their marriages needed to epitomize the model American family.

⁸⁴ *Id.* at 1246 n.60 (citing Brief in Support of Plaintiffs’ Motion for Preliminary Injunction, Cross Motion, Three-Judge Court, Intervention and Joinder, and Compelling Discovery at 17–18, *Stokes v. INS*, 393 F. Supp. 24 (S.D.N.Y. 1975) (No. 74-1022)).

⁸⁵ See Abrams, *Immigration Law*, *supra* note 77, at 1634 (“In contrast to state family law, the federal immigration system passes judgment on and influences decision making in marriages involving immigrants throughout the four stages of marriage: courtship, entry, intact marriage, and exit.”).

⁸⁶ See James A. Jones, *The Immigration Marriage Fraud Amendments: Sham Marriages or Sham Legislation?*, 24 FLA. ST. U. L. REV. 679, 681 (1997).

⁸⁷ Immigration Marriage Fraud Amendments, Pub. L. No. 99-639, 100 Stat. 3537 (1986).

⁸⁸ Ikemoto, *supra* note 24, at 535–36 (“Mail-order brides are figuratively Asian in popular representations and disproportionately Asian and Pacific Islander in fact. In addition, the emphasis on the exchange of money or benefits for marriage paired the concerns about abuse of immigration laws with the image of American citizens being induced into prostitution by aliens and the use of immigration law as a cover for a new form of Asian female prostitution.” (footnotes omitted)).

⁸⁹ H.R. REP. NO. 99-906, at 6 (1986).

⁹⁰ *Bark v. INS*, 511 F.2d 1200, 1201–02 (9th Cir. 1975).

⁹¹ 8 C.F.R. § 216.4(a)(5)(i)–(vi) (2005); see also *Agyeman v. INS*, 296 F.3d 871, 882–83 (9th Cir. 2002) (“Evidence of the marriage’s bona fides may include: jointly-filed tax returns; shared bank accounts or credit cards; insurance policies covering both spouses; property leases or mortgages in both names; documents reflecting joint ownership of a car or other property; medical records showing the other spouse as the person to contact; telephone bills showing frequent communication between the spouses; and testimony or other evidence regarding the couple’s courtship, wedding ceremony, honeymoon, correspondences, and shared experiences.”).

Despite increased regulation and scrutiny, societal anxieties over foreign brides, especially from Asia, continued to increase; mail-order brides were stereotypically perceived as seeking to subvert the legitimacy of marriage through immigration fraud.⁹² Mail-order brides were regarded as selling themselves into marriage in order to come to the United States for better economic opportunities, and thus their marriages were analogized to prostitution.⁹³ Their immigration through marriage was likened to another form of sex trafficking.⁹⁴ Asia, and more specifically the Philippines and Southeast Asia, was deemed a particularly problematic region from which the majority of mail-order brides were thought to have originated.⁹⁵ Estimating that “2,000 to 3,500 men in the United States find wives through mail-order bride catalogs each year” and that “the rate of marriage fraud between foreign nationals and United States citizens or aliens lawfully admitted for permanent residence is 8 percent,” Congress enacted a mail-order bride provision in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) to regulate international matchmaking organizations and impose penalties on violators.⁹⁶ The mail-order bride industries that were targeted by the legislation, however, also capitalized upon and further entrenched popular Suzie Wong stereotypes of Asian women as hypersexual-

⁹² See Christine So, *Asian Mail-Order Brides, the Threat of Global Capitalism, and the Rescue of the U.S. Nation-State*, 32 FEMINIST STUD. 395, 399 (2006) (“Deployed as a symbol of the danger, seduction, excess, and shame of global capitalism, the mail-order bride links sexuality to economic profit while unmasking the anxiety surrounding the indeterminate process of establishing the value of Asian women’s bodies and labor.”).

⁹³ See Eddy Meng, *Mail-Order Brides: Gilded Prostitution and the Legal Response*, 28 U. MICH. J.L. REFORM 197, 223, 226 (1994); see also Lee, *Mail Fantasy*, *supra* note 20, at 154, 161–66.

⁹⁴ See, e.g., Douglas MacLean, *Commercial Marriage Trafficking: Uncovering a Growing New Form of Transnational Human Trafficking, and Shaping International Law to Respond*, 19 U.C. DAVIS J. INT’L L. & POL’Y 67, 83–84 n.61 (2012); Suzanne H. Jackson, *To Honor and Obey: Trafficking in “Mail-Order Brides,”* 70 GEO. WASH. L. REV. 475, 494–96, 510 (2002); Rachele Sico, *In the Name of “Love”: Mail Order Brides—The Dangerous Legitimization of Sex, Human & Labor Trafficking*, 18 PUB. INT. L. REP. 199, 201 (2013); Carin M. Bowes, *‘Male’ Order Brides and International Marriage Brokers: The Costly Industry that Facilitates Sex Trafficking, Prostitution, and Involuntary Servitude*, 18 CARDOZO J. L. & GENDER 1, 15–17 (2011).

⁹⁵ See Beverly Encarguez Perez, *Woman Warrior Meets Mail-Order Bride: Finding An Asian American Voice in the Women’s Movement*, 18 BERKELEY WOMEN’S L.J. 211, 217 n.48 (2003) (“A study sponsored by the INS shows that, of 1400 Asian women listed in five mail-order bride catalogs, seventy percent were Filipino, sixteen percent Indonesian, eight percent Thai, two percent Malaysian and Japanese, and one percent Chinese and Korean.”); see also Lee, *Mail Fantasy*, *supra* note 20, at 142–43 (“[M]edia accounts, academic research, and the personal anecdotes given in agency literature frequently discuss Filipina mail-order brides. . . . The agencies themselves note that the majority of women who utilize mail-order bride services come from poorer regions of Asia, particularly the Philippines.”).

⁹⁶ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 652, 110 Stat. 3009, 3009-712 (“Any international matchmaking organization that the Attorney General determines has violated subsection (b) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than \$20,000 for each such violation.”).

ized objects of desire for white men.⁹⁷ The most popular sources of mail-order brides in Asia, the Philippines and Southeast Asia, were key sites of American military presence and involvement in the middle of the twentieth century. Mail-order brides, therefore, continue to have a connection to racialized sexual hierarchies of American military domination and control in Asia during the Cold War, which are associated with the Suzie Wong stereotype.⁹⁸

Congress eventually replaced the mail-order bride provision of the IIRIRA with the International Marriage Broker Regulation Act (IMBRA) of 2005 to highlight and combat the abuse often prevalent in the immigration of mail-order brides.⁹⁹ IMBRA did not eliminate the tradition of suspicion against foreign brides, but evidenced growing sympathy for those who might be regarded as exploited victims rather than devious immigration capitalizers.¹⁰⁰ Public policy expanded from simply distinguishing between good faith versus fraudulent marriages to differentiating between sexual victims and sexual opportunists. In popular perception, mail-order brides became increasingly regarded as victims.¹⁰¹ Roughly contemporaneous with the IMBRA reforms, the United States government also gave heightened attention to and compassion for victims of trafficking. At the behest of the Clinton administration,¹⁰² Congress passed the Trafficking Victims Protection Act in 2000.¹⁰³

The TVPA marks perhaps the most recent turn in the reenvisioning of the Suzie Wong stereotype. As discussed above, Asia is often portrayed in the American popular imagination as a place of prostitutes and mail-order brides. However, within current immigration policy the Asian prostitute has

⁹⁷ See NICOLE CONSTABLE, ROMANCE ON A GLOBAL STAGE: PEN PALS, VIRTUAL ETHNOGRAPHY AND “MAIL-ORDER” MARRIAGES 13–14 (2003); see also Lee, *Mail Fantasy*, *supra* note 20, at 145–46.

⁹⁸ See KUMIKO NEMOTO, RACING ROMANCE: LOVE, POWER, AND DESIRE AMONG ASIAN AMERICAN/WHITE COUPLES 20–23 (2009); Roland B. Tolentino, *Bodies, Letters, Catalogs: Filipinas in Transnational Space*, 48 *SOCIAL TEXT* 49, 56 (1996).

⁹⁹ International Marriage Broker Regulation Act, Pub. L. 109-162 §§ 831–34, 119 Stat. 2960, 3068–77 (2005).

¹⁰⁰ See Brandon Robinson, *The Disruption of Marital E-Harmony: Distinguishing Mail-Order Brides From Online Dating in Evaluating “Good Faith Marriage,”* 13 *LOYOLA PUB. INT. L. REP.* 252, 254, 255–56 (2008) (“[T]here is evidence to show that married immigrant women may be even more vulnerable to abuse than unmarried immigrant women.”); Firstenberg, *Marriage & Morality*, *supra* note 36, at 120; Nora V. Demleitner, *Forced Prostitution: Naming an International Offense*, 18 *FORDHAM INT’L L.J.* 163, 187 (1994) (arguing that prostitution resulting from economic necessity should also be considered forced).

¹⁰¹ Nicole Constable, *The Commodification of Intimacy: Marriage, Sex, and Reproductive Labor*, 38 *ANN. REV. ANTHROPOLOGY* 49, 56 (2009) (“So called mail-order brides are depicted as though they are literally bought and sold and connected to human trafficking.”).

¹⁰² Memorandum from William J. Clinton, President of the United States, on Steps to Combat Violence Against Women and Trafficking in Women and Girls 413 (Mar. 11, 1998).

¹⁰³ Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

come to occupy a dual position of apprehension and sympathy within the American political landscape. As such, discourse on the matter has shifted from exclusion to rescue. Whether rightly or wrongly, Asia is popularly perceived as a stronghold of international sex trafficking,¹⁰⁴ with the sex industry typically capitalizing on hypersexualized stereotypes of Asian women.¹⁰⁵ They are made into unwitting objects of desire and exploitation for unprincipled consumers.¹⁰⁶ Yet the rhetoric has shifted attention away from the demand side of sex industry¹⁰⁷ and from the role of Western colonialism and militarism¹⁰⁸ and presumes instead that sexual exploitation is a problem caused by the patriarchy and backwardness of the culture.¹⁰⁹ The IMBRA

¹⁰⁴ See Cheryl Nelson Butler, *Sex Slavery in the Lone Star State: Does the Texas Human Trafficking Legislation of 2011 Protect Minors?*, 45 AKRON L. REV. 843, 844 (2012) (“Most people think human trafficking happens elsewhere in places like Thailand and Cambodia but the reality is that this is happening in our own backyard.”) (internal quotation marks omitted); see also Heather Montgomery, *Defining Child Trafficking & Child Prostitution: The Case of Thailand*, 9 SEATTLE J. FOR SOC. JUST. 775, 781 (2011) (“Thailand has a long history of being linked with prostitution and trafficking; while the country’s problems are not necessarily the most acute, it is often perceived as having particularly severe problems.”).

¹⁰⁵ Harriet D. Lyons, *The Representation of Trafficking in Persons in Asia: Orientalism and Other Perils*, in TRAFFICKING IN PERSONS IN SOUTH ASIA 100, 102–04 (Hugh J.M. Johnston & Sonā Khan eds., 1998).

¹⁰⁶ Darren Leonard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics*, 47 BUFF. L. REV. 1, 93–96 (1999) (describing how popular conceptions of Asian women as “docile, servile, and heterosexually submissive” have contributed to the mail-order bride industry).

¹⁰⁷ *But see* Belinda Brooks-Gordon, *Bellwether Citizens: The Regulation of Male Clients of Sex Workers*, 37 J.L. & SOC’Y 145, 166 (2010) (“[T]here is no evidence either way to state whether sex markets are demand-driven or supply-led.”); Samantha H. Vardaman & Christine Raino, *Prosecuting Demand as a Crime of Human Trafficking: The Eighth Circuit Decision in United States v. Jungers*, 43 U. MEM. L. REV. 917, 921–28 (2013) (discussing the role of demand in sex trafficking); Iris Yen, *Of Vice & Men: A New Approach to Eradicating Sex Trafficking By Reducing Male Demand Through Education Programs and Abolitionist Legislation*, 98 J. CRIM. L. & CRIMINOLOGY 653, 686 (2008) (explaining that “the most effective way to drive immediate and long-term change is to apply pressure on the ‘weak link’ in the sex trafficking chain: the male demand”).

¹⁰⁸ *But see* Sunny Woan, *White Sexual Imperialism: A Theory of Asian Feminist Jurisprudence*, 14 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 275, 283–84 (2008) (“It was the imperialistic conquest of the islands by the Americans that jump-started the sex entertainment industry in the Philippines. During the Vietnam War, five U.S. military bases stationed in Thailand sheltered 40,000 to 50,000 American GIs at any given time. Between 1966 and 1969, as many as 70,000 U.S. soldiers came to Thailand for ‘Rest and Recreation’ (‘R&R’) and ignited a sex industry. R&R facilities have been, and continue to be, a vital component of the U.S. military policy. With pervasive disregard for human rights, the military accepts access to indigenous women’s bodies as a ‘necessity’ for American GIs stationed overseas.” (footnotes omitted)).

¹⁰⁹ See generally Leti Volpp, *(Mis)Identifying Culture: Asian Women and the “Cultural Defense”*, 17 HARV. WOMEN’S L.J. 57 (1994) (examining the effect of defendants’ use of a cultural defense to excuse criminal behavior or mitigate culpability from an Asian American woman’s perspective); Leti Volpp, *On Culture, Difference, and Domestic Violence*, 11 AM. U. J. GENDER SOC. POL’Y & L. 393 (2003) (analyzing considerations of cultural difference with a focus on domestic violence in Asian American communities); Nilda Rimonte, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense*, 43 STAN. L. REV. 1311 (1991)

and TVPA deploy the rhetoric of rescue, which draws upon stereotypes of Asian culture and Asian women and mirrors the rescue of Suzie Wong by Robert Lomax. This model regards Asian women as exotic sexual products of patriarchal cultures,¹¹⁰ which evidences their foreignness,¹¹¹ yet indicates that they can be redeemed by and assimilated into mainstream American domesticity.

III. CONFESS, REPUDIATE, ASSIMILATE: THE DISCURSIVE POLITICS OF THE T-VISA DECLARATION

Sex trafficking is the third largest criminal enterprise in the world,¹¹² with an estimated 700,000 individuals, primarily women and children, being trafficked across international borders each year.¹¹³ Congress enacted the TVPA largely in response to the perceived problem of an estimated 50,000 individuals being trafficked into the United States each year.¹¹⁴ Sex trafficking is believed to be the most prevalent,¹¹⁵ as well as the most lucrative,¹¹⁶ type of trafficking. As a measure of humanitarian relief, the TVPA created the T-visa, which allows trafficking victims who cooperate in the prosecution of their traffickers to stay in the United States.¹¹⁷ T-visa holders are allowed to adjust their status to legal permanent residents¹¹⁸ and eventually become eligible for citizenship through naturalization.¹¹⁹ Congress autho-

(exploring the “ways in which culture facilitates the decriminalization of violence against women”).

¹¹⁰ See Cho, *Converging Stereotypes*, *supra* note 5, at 191.

¹¹¹ Natsu Taylor Saito, *Model Minority, Yellow Peril: Functions of “Foreignness” in the Construction of Asian American Legal Identity*, 4 *ASIAN AM. L.J.* 71, 76 (1997); see also Leti Volpp, “*Obnoxious to Their Very Nature*”: *Asian Americans and Constitutional Citizenship*, 5 *CITIZENSHIP STUD.* 57, 59 (2001).

¹¹² Erin Bistricher, “*U* Stands for Underutilization: The U Visa’s Vulnerability for Underuse in the Sex Trafficking Context”, 18 *CARDOZO J.L. & GENDER* 449, 450 (2012); April Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 *HARV. J.L. & GENDER* 231, 231 (2007).

¹¹³ Shelly George, *The Strong Arm of the Law Is Weak: How the Trafficking Victims Protection Act Fails to Assist Effectively Victims of the Sex Trade*, 45 *CREIGHTON L. REV.* 563, 566 (2012); see also Rieger, *supra* note 112, at 231 (“[T]he total number of people trafficked across international borders each year varies from 700,000 to 2 million.”); Crystal Twitty, *Pretty Pennies for Pretty Faces: Trafficking of Women for the International Sex Trade*, 2 *REGENT J. INT’L L.* 115, 116 (2004) (noting that “4,000,000 people worldwide are bought and sold each year for the purpose of sexual exploitation”).

¹¹⁴ 22 U.S.C. § 7101(b)(1) (2000).

¹¹⁵ Approximately 80% of all individuals trafficked are women, of whom 70% are trafficked for the purposes of sexual exploitation. Rieger, *supra* note 112, at 231.

¹¹⁶ Vidyamali Samarasinghe, *Confronting Globalization in Anti-trafficking Strategies in Asia*, 10 *BROWN J. WORLD AFF.* 91, 91 (2003) (estimating that trafficking is a \$7 billion industry, with sex trafficking being an integral part of the economy for several countries).

¹¹⁷ 22 U.S.C. § 7105(b) (2012).

¹¹⁸ 8 U.S.C. § 1255(l) (2012).

¹¹⁹ 8 U.S.C. § 1427 (2012).

rizes the Immigration Service to grant up to 5,000 T-visas each year.¹²⁰ Yet more than a decade after the enactment of the TVPA, the statistics for relief do not appear to support the original estimates.¹²¹ The number of T-visas issued annually has never come near the maximum allowance. Between 2000 and 2010, only approximately 2,300 T-visas were issued out of 50,000 available.¹²²

The low application and approval rate can in part be attributed to the scarcity of eligible applicants.¹²³ Jayashri Srikantiah and other scholars argue that the eligibility criterion to obtain relief under the TVPA is too stringent to be effective.¹²⁴ The language of the TVPA is explicit in differentiating between a person who is a true victim of trafficking and a person who is merely an accessory to smuggling,¹²⁵ or a willful and complicit prostitute. This was precisely the problem I faced in identifying and evaluating viable T-visa applicants during my ten years of practice as a staff attorney in the domestic violence unit of the Asian Pacific American Legal Center (APALC).¹²⁶ T-visa applications were among the most difficult to assess, not

¹²⁰ 8 U.S.C. § 1184(o)(2) (2012).

¹²¹ See Richard Danziger, *Where Are the Victims of Trafficking?*, 25 FORCED MIGRATION REV. 10, 10 (2006); Cynthia L. Wolken, *Feminist Legal Theory and Human Trafficking in the United States: Towards a New Framework*, 6 U. MD. L.J. RACE RELIGION GENDER & CLASS 407, 408 (2006).

¹²² Ankita Patel, *Back to the Drawing Board: Rethinking Protections Available to Victims of Trafficking*, 9 SEATTLE J. FOR SOC. JUST. 813, 822–23 (2011).

¹²³ The State Department reports in the 2007 Trafficking in Persons Report that Health and Human Services had certified 1,175 victims of trafficking as of March 2007. U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT 49 (2007), archived at <http://perma.cc/7BBK-7HMB>. The 2011 Trafficking in Persons Report notes that “[i]n FY 2010, 449 such certifications were issued to foreign adults and 92 eligibility letters were issued to foreign children, an increase from 330 for adults and 50 for children in FY 2009.” U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT 375 (2011), archived at <http://perma.cc/3V3W-KUSE>. However, these certifications still only account for a small fraction of the estimated people trafficked through the United States in any given year.

¹²⁴ See Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 159–61 (2007); see also Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1679–80, 1706 (2010); George, *supra* note 113, at 573–77; Samuel Vincent Jones, *Human Trafficking Victim Identification: Should Consent Matter?*, 45 IND. L. REV. 483, 484, 501–02 (2012); Robert Uy, *Blinded by Red Lights: Why Trafficking Discourse Should Shift Away From Sex and the “Perfect Victim” Paradigm*, 26 BERKELEY J. GENDER L. & JUST. 204, 207–08 (2011).

¹²⁵ Jennifer M. Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 2986–87 (2006) (“Trafficking victims also include individuals who are not a subset of the group of ‘voluntary migrants’ previously identified, for it also encompasses those who are forcibly taken from their homes or sold by their own families and placed in positions of forced labor. The latter group is typically evoked in discussions of human trafficking, but the former—voluntary migrants who later become subject to coerced labor, including sex work—is actually the larger category. This disconnect between perception and reality has resulted in a law that is too narrow to reach a significant portion of the domestic trafficking problem.” (footnotes omitted)); see also Jones, *Human Trafficking Victim Identification*, *supra* note 124, at 493–96.

¹²⁶ The organization has since been renamed Asian Americans Advancing Justice – Los Angeles.

for want of potential applicants, but because of the potential legal ambivalences that their stories posed for their eligibility. Whereas the statute requires complete noncompliance with the trafficking, it was not uncommon for trafficked individuals to be at least cognizant of the possibility that they would be engaging in prostitution. During our client assessment meetings, our task was to determine which clients possessed stories that we could frame in a way to meet the eligibility criterion to be legally classified as victims of trafficking under the statute.

To illustrate, during my time at APALC I encountered one archetypical client who was from South Korea and was referred to our office by a prominent local anti-trafficking organization. While in Korea, she was investigating overseas work in the United States and was put in contact with her eventual traffickers. She admitted that she suspected that their operations were likely illegal, and that there would be a strong possibility that the work could possibly entail sex work, but she did not enquire further. Instead, she added, she held to a naïve hope that the work would be some other type of menial labor such as sweatshop garment work. She said that for her, not knowing for sure at the time that she was leaving her country helped her cope, and for this reason she did not ask her traffickers about the specifics of the work prior to coming. She said that she signed a contract with her traffickers agreeing that she would pay them back for their expenses in transporting her and housing her in the United States. Once she arrived in the United States, she was told that she would be a prostitute. The traffickers told her that if she chose not to or if she quit before she paid them back, they would go after her family in South Korea for the money owed. She said that she lived in a communal apartment with other prostitutes, but when questioned, she said that her traffickers imposed no restrictions on her movement. She was even able to purchase a car after some time. Yet, she said that she did not dare try to leave her situation because she knew about the repercussions for her family back home.

We accepted her case, and in crafting her affidavit, we focused on certain aspects of her story. Ultimately, we were successful in helping her obtain a T-visa, and she was able to move on with her life. We told her to come back to us for assistance once she met the three-year continuous physical presence requirements to adjust status to legal permanent residence. However, scarcely a year following her approval, she returned to us. She had just gotten married to a United States citizen and was now expecting a child, and she was calling to make sure that the circumstances under which she obtained her legal status in the country remained confidential. Her spouse wanted to sponsor her for legal permanent residence, and she was incredibly stressed out that he might find out about her past. We explained that if her husband were to petition for her green card that he would need to at least submit some documentation of her current status and would know about her visa; as a result, she elected to wait until she was eligible to adjust under the TVPA. She told us that she did not want her husband or children to know

about her T-visa because she was ashamed of the way she got into the country, wanted to put it behind her, and desired to focus on being a good wife and mother.

When we drafted her declaration, we were unintentionally constructing her in the image of Suzie Wong. In order to fit the mold of the “perfect victim” required by the statutory definitions,¹²⁷ we needed to present her, in essence, as a “hooker with a heart of gold” like the fictional Suzie Wong. We were arguing that even though she might have engaged in sexually illicit behavior, it was coerced and therefore did not reflect her true self. So long as she was a victim and not a willing accomplice, her actions did not reflect her true self.¹²⁸ In other words, her actions as a “hooker” did not reflect the sexual values of her true self and her “heart of gold” underneath. Rather, her traffickers used coercion to suppress her true, respectable self. She required, therefore, rescue and restoration through the American legal system. The most striking aspect of our client’s story was the ways in which she adopted her persona. Her narrative of eligibility eventually affected the way she thought of herself. As illustrated by the story of my client, current American public policy on sex trafficking involves the semiotic transformation of the former prostitute, the “hooker with a heart of gold,” into her true self, the good wife and mother.

In order for an individual to qualify as a “victim of a severe form of trafficking,” the applicant must specifically meet the definition of a victim¹²⁹ as construed by Congress or the Department of Health and Human Services (HHS).¹³⁰ First, the applicant must meet that definition externally: someone with the authority to make such a determination must believe that the applicant is a “victim of a severe form of trafficking.”¹³¹ In virtually all cases, a trafficking victim must obtain a certification from a Law Enforcement Agency (LEA), which under the T-visa regulations, is considered to be the primary evidence of victimization.¹³² The determination of victimization for LEA evaluation and approval, however, is also delimited by the Congress-

¹²⁷ See Srikantiah, *Perfect Victims and Real Survivors*, *supra* note 124, at 187.

¹²⁸ See generally Beverly Balos & Mary Louise Fellows, *A Matter of Prostitution: Becoming Respectable*, 74 N.Y.U. L. REV. 1220, 1230 n.35, 1231 (1999) (examining the relationship between consent/coercion and degeneracy/respectability in popular perceptions and legal treatments of prostitutes).

¹²⁹ For sex trafficking to qualify as a severe form of trafficking under the statute, it must be “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.” 22 U.S.C. § 7102(8)(A) (2012).

¹³⁰ 22 U.S.C. § 7105(b)(1)(C) (2012).

¹³¹ 8 U.S.C.A. § 1101(a)(15)(T)(i)(I) (2012); see also 22 U.S.C. § 7102(8)(A) (“The term ‘severe forms of trafficking in persons’ means—

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”).

¹³² 8 C.F.R. § 214.11(f)(2) (2005).

sional definition, which in the context of sex trafficking means that the “commercial sex act is induced by fraud, force, or coercion.”¹³³ As contained in the interim rules and guidance for the T-visa, Congress specifically intended to distinguish circumstances “where the alien has voluntarily contracted to be smuggled” from “severe forms of trafficking in persons . . . [which] must involve both a particular means such as the use of force, fraud, or coercion, and a particular end such as involuntary servitude or a commercial sex act.”¹³⁴ The iconic victim imagined under the TVPA cannot have had any responsibility for her victimization. Congress decided, during deliberations over the act, that it was interested in admitting innocent victims, not willing prostitutes.¹³⁵ With the TVPA, Congress engaged in the classification of sexual subjects that distinguishes between those who deserve protection and those who do not.¹³⁶ As the T-visa applicant attempts to conform to the statutory definition through the retelling of her narrative, she participates in a structure that legitimizes one version of sexual expression and agency over another.

The statutory definition of a trafficking victim is an imagined fiction. Peter Schuck has argued that there is a gap between the ideal that legislators imagined “in their minds” and real cases encountered in practice.¹³⁷ Similarly here, there is often a disparity between how sex trafficking actually occurs in the real world and how it is popularly believed to occur. For example, Nora Demleitner discusses the following:

Many media reports focus on the very small number of women who were forcibly abducted from their home country, transported to Western Europe, and there forced into prostitution. Although these cases do occur, they constitute the least likely scenario of sexual slavery. Nevertheless, they are frequently used as paradigmatic cases.¹³⁸

¹³³ 8 C.F.R. § 214.11(a) (2005).

¹³⁴ Protection and Assistance for Victims of Trafficking, 66 Fed. Reg. 38,514, 38,515 (July 24, 2001) (to be codified at 40 C.F.R. pt. 1100).

¹³⁵ Kelly E. Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN'S L.J. 29, 33–34 (2001).

¹³⁶ See Balos & Fellows, *A Matter of Prostitution*, *supra* note 128, at 1233 (“A woman who engages in sexually provocative conduct behaves like a prostitute and is less worthy of the laws protection.”).

¹³⁷ Peter Schuck, *Rethinking Informed Consent*, 103 YALE L.J. 899, 904 (1994) (“Although some realists do not concede that the law in action actually deviates from the law in their minds, many others readily admit that a gap does in fact exist. To them, however, this gap simply demonstrates how impractical the idealists’ vision is and why it cannot be implemented in the demanding world of contemporary clinical practice.”).

¹³⁸ Nora V. Demleitner, *The Law at Crossroads: The Construction of Migrant Women Trafficked into Prostitution*, in GLOBAL HUMAN SMUGGLING: COMPARATIVE PERSPECTIVES 257, 264 (David Kyle & Rey Koslowski eds., 2001) (citation omitted).

A successful T-visa application often depends on narrowing the gap between the real and imagined. Even though the iconic victim is a contrived fiction, the T-visa applicant is called to conform herself to that fiction.

Thus, the trafficking victim must, to a certain degree, adopt the statutory identity of a trafficking victim internally: she must see herself as a victim. Though the statutory standard for a trafficking victim was deeply contested during Congressional debate over the law,¹³⁹ the resulting definition promotes a specific type of sexual victimization that is characterized by the naïve passivity that I encouraged my client to take in her declaration. In addition to the LEA endorsement, which already produces a confessional story at the time of an applicant's initial rescue,¹⁴⁰ the T-visa regulations also require, as secondary evidence, "an original statement by the applicant indicating that he or she is a victim of a severe form of trafficking."¹⁴¹ The applicant's declaration memorializes her continuing confession and performance of her victim subjectivity, through a statement that unequivocally says, "I am a victim of a severe form of trafficking." This consciousness becomes the method by which the T-visa applicant positions herself in relation to the American body politic as she justifies the legitimacy of her claim for immigration benefits. The T-visa, therefore, calls the victim to further subject her sexuality as the object of scrutiny and evaluation by experts who will then categorize her. The T-visa applicant must participate in a series of confessional affirmations and validations of her victim identity, first to HHS who certifies her, then to the prosecuting authority who signs off on her certification, and finally to herself in her declaration. She legitimizes herself by proving her compliant victim subjectivity under the statutory definitions, which in turn reinforces the normative standards and expectations behind the statute as appropriate, reasonable, and legitimate.

In adopting the persona of the statutory defined "victim of a severe form of trafficking," she discursively rewrites herself as a proper and conforming immigrant subject. In many ways, the T-visa declaration illustrates the discursive evolution of the alien into an immigrant into a potential citizen subject. In the declaration, the T-visa applicant aligns herself with the

¹³⁹ See E. BENJAMIN SKINNER, *A CRIME SO MONSTROUS: FACE-TO-FACE WITH MODERN-DAY SLAVERY* 51–54 (2008) (describing how conservative abolitionists opposed and eventually led to the failure of the Comprehensive Anti-Trafficking in Persons Act of 1999, the predecessor to the TVPA, because they believed the language to be overly general and not specific enough to sexual victimization and coercion). The TVPA that eventually passed distinguishes between "sex trafficking" that does not involve coercion, and "severe forms of trafficking" that must involve "force, fraud, or coercion." 22 U.S.C. § 7102(8)–(9). T-visas are available only to victims of a "severe form of trafficking."

¹⁴⁰ Srikantiah, *Perfect Victims and Real Survivors*, *supra* note 124, at 187 ("Once in the trafficking enterprise, the victim must remain passive until rescued by law enforcement, as reflected in the regulatory preferences for rescue over escape. She must then fully reveal her story to law enforcement upon rescue, given the regulatory requirement of the LEA endorsement.")

¹⁴¹ 8 C.F.R. § 214.11(f)(3) (2005).

same sexual values of the society in which she wishes to enter. In *Giving an Account of Oneself*, Judith Butler stresses the importance of retelling narratives in the constitution of the individual subject within a democratic society.¹⁴² For Butler, the self becomes aware through discursively engaging herself in reference to other normative relations,¹⁴³ which is an expansion of Michel Foucault's hypothesis that "the dissemination and reinforcement of heterogeneous sexualities, are perhaps two elements of the same deployment: they are linked together with the help of the central element of a confession that compels individuals to articulate their sexual peculiarity."¹⁴⁴ The TVPA requires its beneficiary subjects, trafficking victims, to situate themselves in reference to normative sexuality that is associated with the culture of the rescuer. In contrast, victims are called to regard their native culture as exhibiting sexual pathology that allows their victimization. The T-visa declaration requires a victim to visibly denounce that pathology, lest she be seen as complicit with it and therefore ineligible. Understanding herself in relation to the normative ideal of the iconic victim, then, becomes a process of cultural alienation through which the victim emerges into an immigrant subject who will then later be able to naturalize into a full citizen subject.

Butler, furthermore, examines the constitutive process of account-giving, which are attempts, whether successful or not, by subjects to render oral justifications for their actions. She asks as the central question of her book, "[d]oes the postulation of a subject who is not self-grounding, that is, whose conditions of emergence can never fully be accounted for, undermine the possibility of responsibility and, in particular, of giving an account of oneself?"¹⁴⁵ In respect to victimization, Butler's thesis suggests that the victim must in some sense reject responsibility and agency for her actions. Ironically, the confession required in the T-visa declaration does not function so much as a confession, but as a repudiation of the victim subject. In order to reconstitute herself as an immigrant subject who deserves to belong in the United States, the T-visa applicant must confess not her own responsibility for her actions, but rather her absolute victimization. She cannot exhibit agency. Her declaration must communicate a definitive subject position; the verbal identification, "I am a victim," communicates that she is entirely the passive subject of someone else's actions. She cannot have any responsibility or agency for her actions, otherwise she will not be admitted as a victim of

¹⁴² JUDITH BUTLER, *GIVING AN ACCOUNT OF ONESELF* 15 (2005) ("I come into being as a reflexive subject in the context of establishing a narrative account of myself when I am spoken to by someone and prompted to address myself to the one who addresses me.").

¹⁴³ *Id.* at 33 (referencing Hegel and Cavarero's ideas of self: "Am I, in relation to the norm, substitutable? And yet, as a being constituted bodily in the public sphere, argues Cavarero, I am exposed and singular, and this is as much a part of my publicity, if not my sociality, as is the way I become recognizable through the operation of norms.").

¹⁴⁴ 1 MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY: AN INTRODUCTION* 61 (Robert Hurley trans., Vintage Books ed. 1990) (1979).

¹⁴⁵ BUTLER, *GIVING AN ACCOUNT*, *supra* note 142, at 19.

trafficking but will be excluded as an accomplice to smuggling. Rather, she must repudiate her illicit activities as not attributable to her but to another source.

Further in respect to victimization, Butler suggests that the victim subject generally does not conceive of her agency according to her own actions, “but by virtue of the relation to the Other that is established at a level of [her] primary and irreversible susceptibility, [her] passivity prior to any possibility of action or choice.”¹⁴⁶ In other words, the victim confesses what appear to be her actions, but deems them the actions of an “Other.” As Butler elaborates: “For Levinas, who separates the claim of responsibility from the possibility of agency, responsibility emerges as a consequence of being subject to the unwilling address of the other. This is part of what he means when he claims, maddeningly, that persecution creates a responsibility *for the persecuted*.”¹⁴⁷ The declaration represents the discursive emergence of the trafficking victim into an acceptable immigrant subject, a “me” who is ethically defined opposite to the trafficker.

As the T-visa applicant refrains from exhibiting agency in her own actions during her confessions, she intuitively attributes them to another source. The declaration required for T-visa relief under the federal regulations subconsciously necessitates the applicant to position herself as the victim of her own culture,¹⁴⁸ which then takes the place of the “Other” that Butler suggests. As she repudiates her actions, she attributes them to not only her traffickers but also a culture from which she must be rescued.¹⁴⁹ For the sex trafficking survivor in particular, this Othering occurs across the axis

¹⁴⁶ *Id.* at 88; see also EDWARD W. SAID, *ORIENTALISM* 120 (1978) (critiquing the construction and marginalization of the East as an “Other” culture against which Western culture defines and legitimates itself as an archetypal standard).

¹⁴⁷ BUTLER, *GIVING AN ACCOUNT*, *supra* note 142, at 85; see also *id.* (“Only through a certain accusation does the ‘me’ emerge . . . responsibility does *not* emerge as self-preoccupation or self-beratement, and it requires recourse to an understanding of the ethical relation to the Other that does not rely on casual links between a doer and a deed.”).

¹⁴⁸ Srikantiah, *Perfect Victims and Real Survivors*, *supra* note 124, at 201–02 (“Reliance on an iconic victim standard that requires sexual exploitation is easily justified if practices in the source country are characterized as involving barbaric acts of male domination, including sexual exploitation of women and girls. The victim mythology begins with the source countries. Iconic victims originate from cultures in Asia, Latin America, or Africa stereotyped as suppressing the individuality of women and girls and rendering them simple prey for manipulation by clever traffickers. The iconic victim concept is thus consistent with stereotypes of foreign women and women of color as meek, helpless, and belonging to repressive male dominant cultures.”).

¹⁴⁹ See Jonathan Todres, *Law, Otherness, and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 622–23 (2009) (“[O]therness operates to construct the dominant view of who is responsible for the gross human rights violations of human trafficking. The dichotomous view of the virtuous Self and the barbarous Other leads many in the Global North to blame the problem exclusively on peoples and governments ‘over there’ who ‘do not value life (or their children) the way we do’ rather than recognizing the interconnected nature of global problems, and the fact that the Self and the Other have much more in common—good and bad—than most are willing to acknowledge.”); see also Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT’L L.J. 201, 2030–34 (2001).

of sexuality. Obtaining immigration benefits involves acceptance of and assimilation to American standards of sexual normativity, while repudiating the sexual deviance of the “Other” culture.¹⁵⁰ Ratna Kapur critiques legislation that seeks to rescue immigrant women as problematic when it participates in “cultural essentialism . . . [where] [w]omen in the Third World are portrayed as victims of their culture, which reinforces stereotyped and racist representations of that culture and privileges the culture of the West.”¹⁵¹ By saying, “I am a victim of a severe form of human trafficking,” and taking a passive subject position, she dissociates her identity from her previous culture as that which is “not herself.” Furthermore, she aligns herself with the normative vantage point of the rescuer, which further perpetuates the Othering of her original culture.¹⁵² At the same time, in seeking the status of a legal versus illegal immigrant, she participates in and reproduces the systematized approval of normative sexuality in the United States.

IV. CHINA DOLLS IN PORCELAIN WHITE: BEYOND THE RACIAL POLITICS OF THE SUZIE WONG STEREOTYPE

By requiring a discursive document of confession and cultural alienation, the TVPA engages in a racialized politics of rescue similar to the same tradition of the Suzie Wong stereotype. However, rather than an individual Western man, it is an entire Western country that acts as rescuer who redeems the fallen Asian woman through a rewriting of her sexual identity. Peter Kwan, in analyzing the racial politics of Suzie Wong’s seduction scene, explains:

Suzie, however, is fallen. She can pretend that she is virtuous but she cannot redeem herself except by artifice. Here, however, not only does Lomax as white knight carry away Suzie, he does the impossible—he makes her into a virgin so that she can offer herself up to him. Through his agency, the first time he is to make love to her, Suzie is “cleansed by a miracle of beginning.”¹⁵³

¹⁵⁰ See Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181, 1185–87 (2001).

¹⁵¹ Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1, 6 (2002); see also Ratna Kapur, *The Citizen and the Migrant: Postcolonial Anxieties, Law, and the Politics of Exclusion/Inclusion*, 8 THEORETICAL INQ. L. 537, 560–61 (2007).

¹⁵² See Jonathan Todres, *Widening Our Lens: Incorporating Essential Perspectives in the Fight Against Human Trafficking*, 33 MICH. J. INT’L L. 53, 61 (2011) (“In the United States, for example, there is frequently an ‘othered’ conception of the problem. When sex trafficking occurs in Thailand, Brazil, or another foreign locale, many in the United States point to ‘those cultures’ as the culprit; yet when the same abuses happen in the United States, they are written off as not a problem of culture but rather a problem caused by a few deviants or bad actors.”).

¹⁵³ Peter Kwan, *Invention, Inversion and Intervention: The Oriental Woman in The World of Suzie Wong, M. Butterfly, and The Adventures of Priscilla, Queen of the Desert*, 5 ASIAN AM. L.J. 99, 113 (1998).

In order to become the subject of rescue, a renewed virginal self must figuratively emerge. It is this reborn virgin who is able to consent to offer herself up to become the suitable mate for the Western man. As Srikantiah has commented, the “perfect victim” imagined by the TVPA does not accurately represent “real survivors” found in practice and advocacy,¹⁵⁴ and the way the TVPA constructs her victimization perpetuates a fictional figment of American cultural superiority.¹⁵⁵ Kwan states:

[H]er farce of innocence is equally necessary to her identity, for it is her desire to be redeemed which makes this fallen creature worthy of the salvation offered by the white knight. Furthermore, that salvation must be convincing in its reality or else the potency of the white knight would be questioned.¹⁵⁶

Ultimately, the rescue motif in the Suzie Wong story reinforces a hierarchy of white heterosexual masculinity.¹⁵⁷ By capitalizing on the same rhetoric of rescue, the TVPA camouflages its own promotion of patriarchal, sexually normative values in American culture, while ostensibly appearing pro-women in condemning the patriarchy of Asian cultures.¹⁵⁸ In the rescue and assimilation narrative of the T-visa applicant, attention is almost entirely drawn to the evils of Asian patriarchy that are repudiated, overcome, and left behind. The fact that the trafficking victim must assume the Western masculinist idealization of a virginal woman who is worthy to be rescued remains latent and hidden because all the focus is shifted to stereotypical assumptions of Asian culture as backwards and foreign. Thus, the TVPA performs feminism in yellowface, where racialized constructions working in tandem with feminist interests mask, conceal, and legitimize otherwise blatant misogynist values hidden beneath.

The sexist male fantasy of the submissive rescued woman is made somehow more palpable and acceptable to Western sensibilities when cast in an Asian body—the sexualized hierarchy that places Suzie Wong in a sub-

¹⁵⁴ Srikantiah, *supra* note 124, at 187.

¹⁵⁵ Leti Volpp, *Talking “Culture”: Gender, Race, Nation, and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573, 1604–05 (1996) (critiquing the notion that the “fictive unified culture [of the United States] is *per se* more progressive and more protective of women and children than the culture of Asian and African immigrants”).

¹⁵⁶ Kwan, *supra* note 153, at 113.

¹⁵⁷ See Elaine H. Kim, *Defining Asian American Realities Through Literature*, 6 CULTURAL CRITIQUE 87, 89 (1987) (“Familiar representations of Asians—always unalterably alien—as helpless heathens, comical servants, loyal allies and, only in the case of women, exotic sex objects imbued with an innate understanding of how to please, serve, and titillate, extend directly to Asian Americans and exist in all cases to define as their dialectical opposite the Anglo man as heroic, courageous, and physically superior, whether as soldier, missionary, master, or lover.”).

¹⁵⁸ See, e.g., Stewart Chang, *Dreams of My Father, Prison for My Mother: The H-4 Nonimmigrant Visa Dilemma and the Need for an “Immigration-Status Spousal Support.”* 19 ASIAN PAC. AM. L.J. 1, 2 n.2, 18–19 (2014) (discussing how juxtaposing patriarchal preferences in Asian family law processes against the presumed egalitarianism of the American system often masks residual patriarchal values in American family law).

missive role is regarded as a product of her Asian culture rather than her relationship with Robert Lomax. Submissive femininity is imagined as the racial predisposition of the Asian wife rather than the projected desire of the white husband. However, the Suzie Wong stereotype is not a reflection of the way Asian women actually act but of how white men desire Asian women to act—which is really an extension of how white men desire all women to act. The Suzie Wong stereotype, the culturally victimized “hooker with a heart of gold” who requires rescue by the white man, is a yellowface construction of the white imagination.

Yellowface is the tradition of employing white actors wearing yellow makeup to play Asian characters on stage, and later in film, due in part to the shortage of Asian actors during the exclusionary era.¹⁵⁹ These portrayals were based on popularly held stereotypes of Asians that were then further perpetuated in popular media consumption of the time.¹⁶⁰ The first visual representations of Asians in American media depicted them with slanted eyes and yellow skin,¹⁶¹ which became the basis for stereotyped yellowface roles on the stage and screen. As grossly negative caricatures of Asians, yellowface performances reinforced cultural attitudes of Asians as inassimilable outsiders, which in turn solidified political sentiment supporting their exclusion and segregation.¹⁶² Asian men were stereotypically portrayed as threatening foreign menaces such as Fu Manchu, or benign but effeminized model minorities such as Charlie Chan.¹⁶³ Asian women were exoticized sexually either as aggressive dragon ladies or as demure lotus blossoms,¹⁶⁴ but both were set in contrast to Western norms of femininity. Asian women, as they were imagined in yellowface, were sexual “Others” that required taming or rescuing by white men. Concerning these stereotypical representations of Asians in visual culture, literary scholar Elaine Kim argues, “Asian women are only sexual for the same reason that Asian men are asexual: both exist to define the white man’s virility and the white race’s superiority.”¹⁶⁵

Even as Asian actors began breaking into film in the post-exclusion era, they often found themselves needing to acquiesce to stereotypical portrayals

¹⁵⁹ See KRISTYN R. MOON, *YELLOWFACE: CREATING THE CHINESE IN AMERICAN POPULAR MUSIC AND PERFORMANCE, 1850s–1920s*, at 6 (2005).

¹⁶⁰ See *id.*

¹⁶¹ See *id.* at 40.

¹⁶² Aoki, “*Foreign-ness*,” *supra* note 13, at 21 (“In minstrel shows, dime museums, circuses, the early vaudeville stage, and early cinema, the misappropriation, recreation, and distortion of immigrant identities by white actors in Yellowface also served to reinforce the segregation of Chinese immigrants from the whites.”); see also Richard A. Oehling, *The Yellow Menace: Asian Images in American Film*, in *THE KALEIDOSCOPIC LENS: HOW HOLLYWOOD VIEWS ETHNIC GROUPS* 182, 187 (Randall M. Miller ed., 1980).

¹⁶³ Aoki, “*Foreign-ness*,” *supra* note 13, at 35–36.

¹⁶⁴ See generally Renee E. Tajima, *Lotus Blossoms Don’t Bleed: Images of Asian Women*, in *MAKING WAVES: AN ANTHOLOGY OF WRITINGS BY AND ABOUT ASIAN AMERICAN WOMEN* 308 (Asian Women United of Cal. ed., 1989) (discussing how images of Asian women are inaccurate and simplistic).

¹⁶⁵ Elaine H. Kim, “*Such Opposite Creatures*”: *Men and Women in Asian American Literature*, 29 *MICH. Q. REV.* 68, 70 (1990).

defined by white filmmakers in order to find work, such as Nancy Kwan did with her role as Suzie Wong.¹⁶⁶ Even though their race is consistent with the role they are playing, Asian actors playing stereotyped roles are still performing in yellowface, exaggerated caricatures of how white filmmakers think Asians should act. Asian actors are often confronted with the difficult choice of perpetuating negative stereotypes in certain roles that they accept or not working at all. These stereotypes, furthermore, have consequences not only for actors in those films, but also for audiences consuming those films,¹⁶⁷ which then affects the ways in which Asian women are perceived and treated in society.¹⁶⁸ Filmmaker and scholar Celine Parreñas Shimizu, for instance, describes a formative episode in her life while she was a student at Berkeley when a white male veteran propositioned her under his assumption that Asian women were sex workers like Suzie Wong.¹⁶⁹

Yellowface has been treated chiefly as a problem of race, thus allowing yellowface portrayals of Asian women upon which the Suzie Wong stereotype is based, to more surreptitiously advance sexism. The controversy surrounding the episode of *How I Met Your Mother* mentioned at the start of this article focused only on the yellowface, that white women were playing stereotyped Asian roles, rather than the misogyny underlying those roles. Yellowface, however, is not purely racial performance, it is also gender performance. In her early scholarship, Judith Butler describes how gender is constructed through a series of reiterated, performative acts.¹⁷⁰ Gender performance is intertwined with community expectations of how members of each gender must behave, and when those expectations are not followed, society sanctions and marginalizes deviant actors.¹⁷¹ The redemption of Suzie Wong, then, is a performance through which the deviant sexual actor is brought into a conforming gender expectation. She is assimilated into American culture by denouncing her old sexual identity as the prostitute in

¹⁶⁶ See Peter X. Feng, *Recuperating Suzie Wong: A Fan's Nancy Kwan-dary*, in *COUNTERVISIONS: ASIAN AMERICAN FILM CRITICISM* 40, 50–51 (Darrell Y. Hamamoto & Sandra Liu eds., 2000).

¹⁶⁷ See Celine Parreñas Shimizu & Helen Lee, *Sex Acts: Two Mediations on Race and Sexuality*, 30 *SIGNS* 1385, 1387 (2004) (discussing how these stereotypes create an “ambivalent experience [for] spectators of color, who must . . . partake in the white male fantasy of sexy Asian female subservience in *Suzie Wong*”).

¹⁶⁸ Lalaie Ameeriar, *Pedagogies of Affect: Docility and Deference in the Making of Immigrant Women Subjects*, 40 *SIGNS* 467, 479 (2015) (discussing how stereotypes of docile Asian women in popular media such as *Madame Butterfly* and *The World of Suzie Wong* have “disabling effects” for Asian women in the workplace).

¹⁶⁹ Shimizu & Lee, *supra* note 167, at 1385–86.

¹⁷⁰ See, e.g., JUDITH BUTLER, *BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF “SEX”* 7 (1993); JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* 24–25 (1990); Judith Butler, *Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory*, 40 *THEATRE J.* 519, 520 (1988); Clare Huntington, *Staging the Family*, 88 *N.Y.U. L. REV.* 589, 591 (2013) (noting that “Butler famously argued that gender is not a natural, stable category but rather a ‘competing illusion,’ construed through a series of acts”).

¹⁷¹ See Butler, *Performative Acts*, *supra* note 170, at 525–27 (“Gender performances . . . are governed by . . . punitive and regulatory social conventions.”).

Asia and donning her new sexual role as the domesticated wife in America. Applying Butler's theory to stereotypes of Asian women, the Suzie Wong role is not a reflection of reality, but a performance—a yellowface mask that contains strong elements of gender performance. This yellowface role becomes a vision of what is expected of all women. Through the yellowface stereotype of Suzie Wong, Asian women are constructed as a fictional sexual model minority imagined by white men as a disciplinary model for all women.¹⁷² Yellowface female characters are women acting the way society tacitly thinks all women should ideally act—as stereotyped Asian women.

The TVPA similarly requires gender performance, which reveals the ways in which American culture remains patriarchal despite the veneer of being pro-women. In order to qualify for relief, applicants must act the way society thinks all women should properly behave. Though imposed on the immigrant and therefore racially “Other” body, the trafficking victim becomes the model of assimilation into normative ideals of American femininity according to men. Like Suzie Wong, the iconic trafficking victim is a sexual model minority; she acts the way a white man would want any woman to act: the submissive object of rescue and domestication.

The immigration narrative of the T-visa applicant is a story that legitimizes American models of marriage, which centers on seemingly divergent,¹⁷³ but ultimately coinciding, notions of consent. The legislative history of the TVPA reveals how both the Democratic and Republican parties worked together to pass TVPA, creating a rare and unlikely alliance between representatives of liberal women's rights advocates and conservative anti-prostitution Christians, respectively.¹⁷⁴ Though the abolitionist and autonomy positions had differing motivations, the resulting anti-trafficking solution converged on the issue of consent.¹⁷⁵ In repudiating their own agency, T-visa applicants must demonstrate that their ability to consent was frustrated. Coercion indicates that they were not able to consent to their actions. Through the application process, T-visa immigrants evolve from being foreign subjects who are not able to consent into American subjects who now possess

¹⁷² Tajima, *supra* note 164, at 309 (“The Lotus Blossom Baby, a sexual-romantic object, has been the prominent type throughout the years. These ‘Oriental flowers’ are utterly feminine, delicate, and welcome respites from their often loud, independent American counterparts. Many of them are the spoils of the last three wars fought in Asia.”).

¹⁷³ Alicia W. Peters, “*Things That Involve Sex are Just Different*”: *US Anti-Trafficking Law and Policy on the Books, in Their Minds, and in Action*, 86 ANTHROPOLOGICAL Q. 221, 226 (2013) (“As a result of the diverse constituencies involved in the negotiations—anti-prostitution feminists, evangelical Christians, and human rights practitioners, among others—the resulting law embodies the wide range of values, beliefs, and anxieties held by the parties active in the drafting effort.”).

¹⁷⁴ See Kelly E. Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN'S L.J. 29, 60–61 (2001); Jackson, *supra* note 94, at 517–19.

¹⁷⁵ Jane E. Larson, *Prostitution, Labor, and Human Rights*, 37 U.C. DAVIS L. REV. 673, 680–81 (2004).

the absolute power to freely choose their partners.¹⁷⁶ In this way, however, the TVPA also advocates the idea that a proper woman cannot consent to prostitution.¹⁷⁷ Women are not permitted the same ranges of absolute volition and agency in their sexual decisions—there are some boundaries they cannot cross. In terms of T-visa eligibility, those who transgress these sexual normative expectations are the ones who are left out. The TVPA therefore creates judgments about not only the sexual practices of cultures deemed foreign, but also the sexual behavior of women generally.¹⁷⁸ Proper women exercise their sexual agency within the confines of normative heterosexual relationships determined by men.

These tacit sexual expectations of women implied in the TVPA have ultimately remained unchanged since the nineteenth century. In the nineteenth century, white feminism became a disciplinary model for mainstream American morality defined against patriarchal immigrant practices such as prostitution.¹⁷⁹ Reform measures focused on restoring vulnerable women to normative domesticity.¹⁸⁰ Yet as discussed earlier, the majority of Asian women were constructed as the antithesis of respectable American sexuality, and summarily excluded. In some ways, white women served as a policing mechanism for the proper conduct of women in the nineteenth century, and

¹⁷⁶ Mindy J. Roseman & Alice M. Miller, *Normalizing Sex and Its Discontents: Establishing Sexual Rights in International Law*, 34 HARV. J.L. & GENDER 313, 325 (2011) (“The consent standard in human rights pushes for law to validate and protect the decision of a woman (or any other person), regardless of the identity of her partner and whatever the nature of their sexual conduct.”); see also Janie Chuang, *Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 84–90 (1998).

¹⁷⁷ Ronald Weitzer, *The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade*, 35 POL. & SOC’Y 447, 453 (2007) (describing how a moral crusade against trafficking “rejects the very concept of benign migration for the purpose of sex work, since prostitution is defined as inherently exploitative and oppressive”); see also Lise Gotell, *Rethinking Affirmative Consent in Canadian Sexual Assault Law: Neoliberal Subjects and Risky Women*, 41 AKRON L. REV. 865, 894 n.132 (2008).

¹⁷⁸ Judith Resnik, *Law’s Migration: American Exceptionalism, Silent Dialogues, and Federalism’s Multiple Ports of Entry*, 115 YALE L.J. 1564, 1664 (2006) (“Such laws [like the TVPA] were not only aimed at the protection of women but also at the enforcement of ideas about the moral propriety of certain forms of sexual behavior.”).

¹⁷⁹ Emily S. Rosenberg, *Rescuing Women and Children*, 89 J. AM. HIST. 456, 458 (2002) (“Western evolutionary science of the late nineteenth century postulated a strong correlation between the evolved status of any group and the condition of the women belonging to it. International reformers in the United States and elsewhere often linked the eradication of male oppression (whether in the form of drunkenness, domestic violence, polygamy, patriarchal economic control, or harmful factory labor conditions) to the notion of a maternalist order—one in which women’s supposedly ‘natural’ gifts for civilizing and purifying the social order would uplift the entire nation. Reformers dedicated to Americanizing new immigrants to the United States frequently targeted what they regarded as old-country patterns of gender oppression.”).

¹⁸⁰ Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, 28 CRIM. JUST. 9, 10–11 (2013) (“Accounts of girls’ treatment in the late 1800s and early 1900s show that the juvenile justice system frequently intervened to save wayward girls from perceived futures in prostitution or criminality and redirect them toward marriage, motherhood, and home life. Girls in need of intervention were seen as both sexually vulnerable and sexually precocious; the system’s role was to instill in them appropriate morality.”).

Asian women were defined against them. In the twentieth century, however, the Asian immigrant woman epitomized by the Suzie Wong stereotype became the model that pointed women toward normative domesticity, and continues to do so now in the twenty-first century. She is virginal and passive in her sexual agency, per the T-visa requirements, and has not been motivated by anything else except for starting a life together with her husband,¹⁸¹ per the good faith marriage requirements. She is the new sexual model minority against which all women are normatively measured, and thus she is the new policing mechanism of the modern age. Yet as the iconic victim and a stereotype, she is also an invented fiction.

Fictive stereotypes of Asian immigrant women, such as the iconic victim and the Suzie Wong “hooker with a heart of gold,” are deployed as methods to control the general population, which illustrate Michel Foucault’s hypothesis of state power.¹⁸² The TVPA, IMFA, and IMBRA are immigration regulations that access imagined stereotypes of Asian women to propagate normative standards of sexual conduct, and thus act as broader mechanisms of population control. They determine what types of individuals are allowed to thrive and enjoy life in society. Foucault describes this phenomenon as biopower:

The old power of death that symbolized sovereign power was now carefully supplanted by the administration of bodies and the calculated management of life . . . in the field of political practices and economic observation, of the problems of birthrate, longevity, public health, housing, and migration.¹⁸³

Immigration regulations function as methods of population control by determining the demographic characteristics of certain sectors of the population. For immigrant families, those who subscribe to definitions of normative sexuality and good faith marriage are those allowed to enter—these are the ones allowed to live in the United States. Those who do not conform are those who are excluded—these are the ones who are not allowed to live in the United States, which leads to their figurative “death” in society.

Regulations across the axes of immigration and sexuality are crucial to population dynamics; as Foucault has postulated:

This is the background that enables us to understand the importance assumed by sex as a political issue. . . . On the one hand it was tied to the disciplines of the body: the harnessing, intensification, and distribution of forces, the adjustment and economies of

¹⁸¹ See *The Constitutionality of the INS Sham Marriage Investigation Policy*, *supra* note 82, at 1242–43.

¹⁸² See Victor Tadros, *Between Governance and Discipline: The Law and Michel Foucault*, 18 OXFORD J. LEGAL STUD. 75, 77–79 (1998) (explaining how Foucault’s notion of power describes “any form of power which attempts to prevent a certain type of action through the threat of legal or social sanctions”).

¹⁸³ FOUCAULT, *supra* note 144, at 139–40.

energies. On the other hand, it was applied to the regulation of populations, through all the far-reaching effects of its activity.¹⁸⁴

In the nineteenth century, Asian women were not allowed to live in the United States due to an immigration regulation policing sexuality, the Page Act. As a result, the Chinese population living in America dwindled rapidly during that time.¹⁸⁵ Unable to form families in significant numbers,¹⁸⁶ the early Chinese-American population literally died off.¹⁸⁷ Thus even though the Chinese have historically been present in the country since the nineteenth century, very few Chinese Americans today can trace their ancestry to those roots; rather, the majority of Chinese currently living in America are foreign born.¹⁸⁸ A similar intersection of immigration and sexual regulation occurs in the twentieth century. The TVPA operates in the same tradition of the IMFA and IMBRA: differentiating the lawful immigrant subject from the excludable alien across normative conceptions of proper sexuality. Those who subscribe to sexual normative standards are allowed in, whereas those who do not remain inadmissible.¹⁸⁹ The demographic of immigrants who make it inside, therefore, will skew towards those normative sexual standards.

As Eithne Luibhéid has suggested, “public discourses on sexuality legitimate the exclusion, condemnation, or acceptance of particular migrants.”¹⁹⁰ Yet traditionally, immigration exclusion has so focused on racial markers of sexual excludability that their implications for gender relations often remain veiled, as it were, behind yellowface masks. Sexualized stereo-

¹⁸⁴ *Id.* at 145.

¹⁸⁵ *Brief of Amici Curiae Asian Pacific Islander Legal Outreach and 28 Asian Pacific America Organizations, in Support of All Respondents in the Six Consolidated Marriage Cases, Lancy Woo and Cristy Chung, et al., Respondents, v. Bill Lockyer, et al., Appellants on Appeal to the Court of Appeal of the State of California, First Appellate District, Division Three*, 13 *ASIAN AM. L.J.* 119, 128–29 (2006) (“After the implementation of the Page Act of 1875, it was virtually impossible for Asian women to immigrate to the United States. Thus, the government attempted to prevent Chinese Americans from forming families; Chinese Americans were barred from marrying whites through the anti-miscegenation statutes, and the government tried to prohibit them from marrying other Chinese Americans by ending female Chinese immigration. . . . This policy proved itself to be devastatingly effective. Between 1880 and 1950, the Chinese American community virtually disappeared as an aging male population gradually died or was forced to return to China in order to marry, never to return. The 1860 Census shows that API people constituted 9.2% of the total California population. However, by 1900, that number had declined to 3.8%. By 1950, the API population had dwindled to a mere 1.7% of the California population, according to the census data.” (footnotes omitted)).

¹⁸⁶ CHAN, *supra* note 26, at 103; PEPPER, *supra* note 35, at 42.

¹⁸⁷ ROBERT CHANG, *DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE* 82–83 (1999); DANIELS, *supra* note 46, at 69.

¹⁸⁸ *ASIAN PAC. AM. LEGAL CTR. & ASIAN AM. CTR. FOR ADVANCING JUSTICE, A COMMUNITY OF CONTRASTS: ASIAN AMERICANS IN THE UNITED STATES*: 2011 63 (2011) (estimating that 61% of the Chinese American population is foreign-born based on 2010 census numbers).

¹⁸⁹ 8 U.S.C. § 1182(a)(2)(D) (2012) (rendering those who have committed crimes of commercial vice and prostitution inadmissible).

¹⁹⁰ EITHNE LUIBHÉID, *ENTRY DENIED: CONTROLLING SEXUALITY AT THE BORDER* 144 (2002).

types of Asian women, such as Suzie Wong, are dangerous and damaging because they have in some ways become the normative standard. Foucault describes the ways in which the government exercises power over individuals primarily through surveillance and disciplinary regulation.¹⁹¹ Sexualized stereotypes of Asian women, as implemented in the history of American immigration policy, operate within Foucault's panopticon,¹⁹² whereby spectacle and public visibility effectuate state power over subjects through surveillance and supervision applied by institutional mediums of state authority.¹⁹³ The stereotyped Asian immigrant woman becomes the object of spectacle and scrutiny on two fronts. She is first scrutinized and studied by immigration officials before being deemed fit for entry. Once inside, she is put on display as a sexual model minority for consumption, study, and emulation by the public at large. Through consumption of the normative models, the subjects sometimes become self-policing,¹⁹⁴ and regulate their own sexual conduct,¹⁹⁵ as in the case of my client. These self-policing subjects, in turn, are constructed into a model minority, which are idealized symbols that indirectly police the conduct of the larger population, but particularly other minority groups.¹⁹⁶

My client's story demonstrates the ways in which fictions can become reality when they are normalized. There is often a pressure for minority groups to conform to stereotypes, which in the case of Asian immigrant

¹⁹¹ MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 76–78, 96, 136–38 (Alan Sheridan trans., 1977); see also Assaf Likhovski, "Training in Citizenship": Tax Compliance and Modernity, 32 L. & SOC. INQUIRY 665, 667 (2007) (describing how Foucault's theory sees "the rise of modern states and related nonstate institutions (for example, mental hospitals or schools) not as part of a progressive trajectory of growing individual liberty but instead in terms of growing constraints on the freedom of action of individuals, who become subject to various practices designed to make them self-policing, model citizens. Thus, Foucault argued in works written in the 1960s and early 1970s that the history of modernity is inextricably connected to the rise of various disciplinary institutions used to normalize deviant individuals.").

¹⁹² See Foucault, *Discipline and Punish*, *supra* note 191, at 200–02.

¹⁹³ See Yair Sagy, *A Triptych of Regulators: A New Perspective on the Administrative State*, 44 AKRON L. REV. 425, 454–57 (2011).

¹⁹⁴ See also Eric Engle, *Taking the Right Seriously: Hohfeldian Semiotics and Rights Discourse*, 3 CRIT. CRITICAL LEGAL STUD. J. 84, 105 (2010) ("But the state and its laws are so much more than a fiction backed up by guns. These fictions are also backed up by expectations, desires, social sanctions, *even hopes and dreams*. The result? *Voluntary compliance with rules, and their enforcement by the ruled on the not-so-voluntarily compliant*. Though the state and its laws are fictions, we ignore them at our own peril, and they have predictable operationality—unlike a band of criminals. The legal system uses logic as a tool for self-policing so that the system is persuasive, self enforcing, attractive, and thus reproductive of hierarchy.").

¹⁹⁵ Gotell, *supra* note 177, at 897 ("[N]ormative feminine sexual subjects are constituted as individualized agents of sexual assault prevention, diligently self-policing their behaviors to avoid sexual dangers.").

¹⁹⁶ See Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1258–65 (1993).

women, becomes a hyper-actualized fiction of sexual normativity.¹⁹⁷ Defenders of the *How I Met Your Mother* stereotypes argued that the portrayals were harmless and that Asian Americans were being overly sensitive,¹⁹⁸ which has been evoked in other contexts to blame minority victims for being offended by racism.¹⁹⁹ Yet the Suzie Wong stereotype is harmful because, whether consciously malicious or not, the stereotype not only affects the ways that Asian American women are perceived but can also affect the ways in which they perceive themselves within the American public landscape. Furthermore, the constructed standards of proper sexual behavior necessitated by trafficking and good faith marriage provision of immigration law can have effects beyond immigrant subjects. As stereotyped sexual model minorities, Asian immigrant women can become instruments for disciplining female behavior more generally.²⁰⁰ As such, sexualized stereotypes of Asian women are not only damaging to Asians,²⁰¹ they are damaging to all women. Greater sensitivity and appreciation to the structural origins and consequences of the stereotypes are needed in order to reveal, and perhaps challenge, the larger structures of American patriarchy and gender hierarchy underneath the yellowface.

¹⁹⁷ Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 905–08 (2002) (describing how minority women are called to conform to stereotypes, which he describes as “reverse covering,” as compared to the pressure to assimilate to normative mainstream standards, which he calls “covering”).

¹⁹⁸ See Erin Burnett *OutFront* (CNN television broadcast Jan. 16, 2014), <http://transcripts.cnn.com/TRANSCRIPTS/140116/ebo.01.html>, archived at <http://perma.cc/DDR8-N8JH> (recounting CNN anchor Don Lemon’s suggestion that “people are so sensitive” in response to public outcry against the yellowface stereotypes on *How I Met Your Mother*).

¹⁹⁹ See, e.g., Emily Houh, *Toward Praxis*, 39 U.C. DAVIS L. REV. 905, 933 (2006) (describing a hypothetical situation where Asian Americans are blamed for taking offense to harmful stereotypes: “then one night at a cocktail hour, during a conversation with Christina and the Asian American partner, Jim, Dave comments on how much work Christina has done on his big case, and refers jokingly to Christina as his ‘hard-working geisha.’ He quickly follows this with, ‘I’m just kidding, of course, but she is doing great work for me.’ Christina is stunned and is sure her face is giving her away. To her surprise, Jim simply laughs and says, ‘Well, Christina is of course a hard worker. Christina, keep up the good work.’ Jim then walks away. Christina says to Dave, ‘I really object to your use of the term “geisha” and . . .’ Before she can finish, Dave simply says, ‘Can’t you take a joke? Anyway, I meant it as a compliment—even Jim got that.’ Dave then walks away.”); Mari Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 MICH. L. REV. 2320, 2328 (1989) (describing an incident in Seattle involving a Japanese American employee: “As the employer’s use of slurs and racist slogans in the workplace increased, so did the employee’s discomfort. His objections were viewed as overly sensitive and uncooperative.”).

²⁰⁰ See So, *supra* note 92, at 395 (“[A]s white U.S. women continue to ‘value’ themselves more highly, by ‘putting themselves on a pedestal’ and by entering the workforce in greater numbers, U.S. men must necessarily move outside the nation’s borders to locate new domestic and sexual partners.”).

²⁰¹ See generally Cho, *supra* note 5 (exploring how the convergence of racial and gender stereotypes impacts Asian Pacific American women in the workplace); see also Virginia Wei, *Asian Women and Employment Discrimination: Using Intersectionality Theory to Address Title VII Claims Based on Combined Factors of Race, Gender and National Origin*, 37 B.C. L. REV. 771, 786–87 (1996).