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## White Sexual Imperialism: A Theory of Asian Feminist Jurisprudence

Sunny Woan

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# WHITE SEXUAL IMPERIALISM: A THEORY OF ASIAN FEMINIST JURISPRUDENCE

Sunny Woan \*

## *Abstract*

*This Article studies the intersection of race and gender, examining it through the lens of Western imperialism. Even though both critical race and feminist scholarship have addressed this intersection, few if any offer a precise theory for understanding the imperialized experience. This Article seeks to fill that void. The social inequality minority women face, in particular those of Asian descent, can be best articulated by a theory this Article calls white sexual imperialism.*

*The history of Western imperialism in Asia and its lingering effects present the greatest source of inequality for diasporic Asian women today. White sexual imperialism, through rape and war, created the hyper-sexualized stereotype of the Asian woman. This stereotype in turn fostered the over-prevalence of Asian women in pornography, the mail-order bride phenomenon, the Asian fetish syndrome, and worst of all, sexual violence against Asian women. These issues are each duly explored in the essay, drawing on Professor Catherine MacKinnon's dominance theory to support the white sexual imperialism principle.*

*The ultimate purpose of this Article is to gain greater recognition from both critical race and feminist theorists of imperialism's role in race and gender inequality.*

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\* J.D., Public Interest and Social Justice Law, emphasis in Critical Race Theory, Santa Clara University School of Law, 2007; B.A., Creative Writing and Rhetoric, Binghamton University, 2003. Professor Stephanie M. Wildman made this article possible, though all mistakes are my own. I dedicate this article to Professor Wildman, who had a profound impact on my legal education, and to the unnamed young female referenced in the first paragraph.

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### *I. Introduction*

One unwary weekend, a Korean American college female went clubbing downtown. She met a White male. He offered her a ride home, she accepted, and then he forced himself into her room and raped her in her own bed. All the while, he grunted the words "China doll," "Asian whore," and referred to her

genitals as "sushi."<sup>1</sup> On Monday morning, in a lecture hall across campus, a world history class discussed Western imperialism. At first, the two events may not seem related, but this Article posits a causal relationship between them, or more specifically, examines how sexual violence against Asian women perpetrated by White men results directly from the legacy of Western imperialism in Asia.

While much discourse addresses the correlation between rape and war in the context of Western imperialism in Asia<sup>2</sup> and has substantiated how sexual stereotypes of Asian women perpetuate commodification and exploitation of their bodies,<sup>3</sup> very little scholarship, if any, names White sexual imperialism as the theory explaining the intersectionality<sup>4</sup> of both sexual and racial inequality.

This Article proposes a new framework for studying the intersection of feminist jurisprudence and critical race theory. It claims that the underlying cause of sexual-racial inequality between White men and non-White women is White sexual imperialism. This principle holds that the history of Western political, military, and economic domination of developing<sup>5</sup> nations compelled women of these nations into sexual submission by White men. Moreover, at the global level, the vestige of Western imperialism has left women of color subordinate to White men even today. The White sexual imperialism principle applies to the prevailing rationale for social inequality whenever: (1) the sexual-gender dynamic involves a White male and a non-White female, and (2) the non-White female descends from a culture or community that has been historically colonized by European or Anglican nations. This Article will focus specifically

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<sup>1</sup> This is an account of actual events that happened to the author's close friend. Despite insistence from her loved ones to report the rape, the victim did not want her immediate family to find out about the incident, and therefore never reported it to the proper authorities. To this day, the perpetrator has not faced any legal consequences for his crime.

<sup>2</sup> See generally ANNE L. BARSTOW, *WARS DIRTY SECRET: RAPE, PROSTITUTION, AND OTHER CRIMES AGAINST WOMEN* (Pilgrim Press 2001); Marlene Epp, *Women, War, and Rape*, 38 *THE OTHER SIDE* 3 (2002).

<sup>3</sup> See generally 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 L.J.* 99 (1998); Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, 1 *J. GENDER RACE & JUST.* 177 (1997).

<sup>4</sup> See generally JOANE NAGEL, *RACE, ETHNICITY, AND SEXUALITY: INTIMATE INTERSECTIONS, FORBIDDEN FRONTIERS* (Oxford Univ. Press 2003); Virginia W. Wei, *Asian Women and Employment Discrimination: Using Intersectionality Theory to Address Title VII Claims Based on Combined Factors of Race, Gender and National Origin*, 38 *B.C. L. REV.* 771, 780 (1996).

<sup>5</sup> The adjective "developing" denotes countries like China, the Philippines, and Thailand, which are currently considered newly industrialized nations, but in the early nineteenth century were seen by the Western world as underdeveloped. See generally Merriam-Webster's Collegiate Dictionary 341-42 (11th ed. 2006). Presently, "developing" countries refer to certain parts of Africa, Central America, much of the Arab world, and much of Southeast Asia. In the context of imperialism, this term also connotes a country that sustains or historically sustained a strong U.S. military presence, such as South Korea, Japan, Vietnam, and the Philippines.

on how this theory applies to Asian feminist jurisprudence and the experiences of Asian and diasporic<sup>6</sup> Asian women.

The first part of the Article reviews the stereotype of the Asian woman as hyper-sexualized yet demure and submissive, and traces its origins back to White heterosexual male presence in East Asian wars, particularly the Philippine-American War, World War II, and the Vietnam War.<sup>7</sup> The following parts of this Article tackle some of the most crucial issues that Asian feminist jurisprudence confronts, such as the portrayal of Asian women in pornography,<sup>8</sup> the rise in popularity of mail-order brides,<sup>9</sup> the "Asian fetish" syndrome,<sup>10</sup> and the underreported rates of sexual violence against Asian women,<sup>11</sup> all through the context of White sexual imperialism. Briefly, the Article also will show how dominance theory affirms the principle of White sexual imperialism and how the problem of inequality can be addressed today through recognition of White sexual imperialism as a theory in both feminist and critical race jurisprudence.<sup>12</sup>

## II. *An American History of Hyper-Sexualizing Asian Women*

White sexual imperialism permeates through all events in history involving U.S.-Asian relations. The first part of this section discusses the stereotype of the hyper-sexed Asian woman.<sup>13</sup> The second part then briefly revisits the history of Western imperialism in the East and the interplay of it with Orientalism and sexism.<sup>14</sup> Finally, the third part expands on the correlation between rape and war and the role of that dynamic in shaping White-Asian relationships.<sup>15</sup>

### A. *"Me Love You Long Time" and the Hyper-sexed Asian Woman*

The Asian woman of White male sexual fantasies toddles into view—"small, weak, submissive and erotically alluring,"<sup>16</sup> her "eyes almond-shaped for

<sup>6</sup> In this essay, the term "Diasporic Asians" refers to individuals who, by ancestry, ethnicity, or culture, descend or relate from East Asia, Southeast Asia, or South Asia but have been dispersed to other parts of the world and who have, in significant parts, integrated or assimilated with society and culture outside their Asian nation of origin, e.g., Asian Americans, or U.S. citizens born in Asia or of Asian ancestry.

<sup>7</sup> See *infra* Part II.A–C.

<sup>8</sup> See *infra* Part III.B.1.

<sup>9</sup> See *infra* Part III.B.2.

<sup>10</sup> See *infra* Part III.B.3.

<sup>11</sup> See *infra* Part III.B.4.

<sup>12</sup> See *infra* Part IV.B.

<sup>13</sup> See *infra* Part II.A.

<sup>14</sup> See *infra* Part II.B.

<sup>15</sup> See *infra* Part II.C.

<sup>16</sup> Julie Yuki Ralston, *Geishas, Gays and Grunts: What the Exploitation of Asian Pacific Women*

mystery, black for suffering, wide-spaced for innocence, high cheekbones swelling like bruises, cherry lips."<sup>17</sup> She not only exemplifies hyper-sexuality, but hyper-heterosexuality, male-centered and male-dominated.<sup>18</sup> She is presented as the perfect complement to the exaggerated masculinity of the White Man, existing solely to serve men and be sexually consumed by them.<sup>19</sup> *Oriental Girls*, an article published in *Gentleman's Quarterly (GQ)*, described the Western male's fantasy<sup>20</sup> of the Asian female:

When you get home from another hard day on the planet, she comes into existence, removes your clothes, bathes you and walks naked on your back to relax you . . . She's fun you see, and so uncomplicated. She doesn't go to assertiveness-training classes, insist on being treated like a person, fret about career moves, wield her orgasm as a non-negotiable demand. . . . She's there when you need shore leave from those angry feminist seas. She's a handy victim of love or a symbol of the rape of third world nations, a real trouper.<sup>21</sup>

The dominant class often pits one marginalized group against another, compelling one group to feel inadequate in comparison to the other for not possessing a certain attribute or behaving in a manner that pleases the dominant class. This strategy incites enmity between the two groups, setting them as rivals who ought to battle for the approval of the dominant class.<sup>22</sup> In the end, though, this strategy only serves to both discipline and maintain the supremacy of the dominant class.

For example, mainstream white America often uses the "model minority"<sup>23</sup> myth associated with Asian Americans to overemphasize and blame

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*Reveals About Military Culture and the Legal Ban on Lesbian, Gay and Bisexual Service Members*, 16 LAW & INEQ. 661, 702 (1998).

<sup>17</sup> Tony Rivers, *Oriental Girls*, GENTLEMAN'S Q. (British ed.), Oct. 1990, at 158.

<sup>18</sup> See Ralston, *supra* note 16, at 702 (discussing the relationship between the American "Military Man" and the Asian (prostituted) woman); see also GAIL BEDERMAN, MANLINESS & CIVILIZATION 188–89, 197 (Univ. of Chicago Press 1995) (discussing the virile masculinity of American imperialism).

<sup>19</sup> See Ralston, *supra* note 16 and accompanying text.

<sup>20</sup> See *id.* at 158 ("The stereotype of the oriental girl is the greatest sexual shared fantasy among western men, and like all the best fantasies it is based on virtual ignorance and uncorrupted by actuality.").

<sup>21</sup> *Id.* at 158, 161, 163.

<sup>22</sup> See generally NANCY ABELMANN & JOHN LIE, BLUE DREAMS: KOREAN AMERICANS AND THE LOS ANGELES RIOTS (Harvard Univ. Press 1997).

<sup>23</sup> See Keith Osajima, *Asian Americans as the Model Minority: An Analysis of the Popular Press Image in the 1960s and 1980s*, in CONTEMPORARY ASIAN AMERICA: A MULTIDISCIPLINARY READER 449, 450 (Min Zhou & James V. Gatewood eds., 2000) (describing model minorities a minority group whose members achieve a higher degree of success than average). The article also notes that the emergence of the model minority theory is best understood within the context of race relations in the 1960s, where the success of Asian Americans was positioned as the model minority juxtaposed to America's other minorities. *Id.* See also Lucie Cheng & Philip Q. Yang, *The "Model Minority" Deconstructed*, in CONTEMPORARY ASIAN AMERICA: A MULTIDISCIPLINARY READER 459, 479 (Min Zhou & James V. Gatewood eds., 2000) (comparing and contrasting Asian Americans to other populations with regard to education, occupation, and income).

black Americans for their "non-model" attributes and behavior, mainly their political activism, resistance, and civil disobedience.<sup>24</sup> Similarly, the direct comparison in the passage above between Asian women and white women serves to denigrate white women for "go[ing] to assertiveness-training classes, insist[ing] on being treated like a person, fret[ting] about career moves," or "wield[ing] her orgasm as a non-negotiable demand."<sup>25</sup> In other words, for pursuing sex equality.<sup>26</sup> As Professor Sumi K. Cho phrased it, "Asian Pacific women are particularly valued in a sexist society because they provide the antidote to visions of liberated career women who challenge the objectification of women."<sup>27</sup> Their sexuality, viewed as "naturally excessive and extreme against a [w]hite female norm," clearly exists not only within a sexual construct but within a racial construct as well.<sup>28</sup> Furthermore, this sexual-racial stereotype emerged as a direct result of the colonial encounter of war,<sup>29</sup> presenting the Asian woman as an "object for western consumption and the satisfaction of western desires."<sup>30</sup>

While contemporary media and the arts portray women generally as objects for consumption, they cast Asian women into the most inferior of all positions, below the white woman. Portrayals of the interrelationships between white American GIs<sup>31</sup> who go overseas, the Asian women they meet there, and the white American women back home show this dynamic. The 1989 musical *Miss Saigon*<sup>32</sup> epitomizes the subordinate and objectified position of Asian women. In the musical, an American marine arranges a one-night-stand with

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<sup>24</sup> Osajima, *supra* note 23, at 450 ("[The] Civil Rights Movement, increased state intervention in race relations, urban riots, and black militancy collided in the mid-1960s, touching off intense debates on the direction of racial politics."); *see also* Cho, *supra* note 3, at 192 (noting how Asian Pacific Americans are frequently used in negative comparisons with their "non-model" counterparts, African Americans).

<sup>25</sup> Rivers, *supra* note 17, at 158, 161 & 163.

<sup>26</sup> *See generally* Michael Small, *For Men Who Want an Old-Fashioned Girl, The Latest Wedding March is Here Comes the Asian Mail-Order Bride*, PEOPLE, Sept. 16, 1985, at 127–29 (citing Cho, *supra* note 3, at 192).

<sup>27</sup> Cho, *supra* note 3, at 192 ("The Oriental Woman is therefore available to satisfy desires that would normally otherwise be socially and morally unacceptable if acted upon the bodies of white women."); *see also* Kwan, *supra* note 3, at 101 ("The Oriental Woman, for example, normatively permits acting out such desires such as pedophilia and sexual aggression and sexual violence upon the bodies of Asian women.").

<sup>28</sup> *See* Celine Parrenas Shimizu, *Queens of Anal, Double, Triple, and the Gang Bang: Producing Asian/American Feminism in Pornography*, 18 YALE J.L. & FEMINISM 235, 239 (2006) ("Asian/American women's hypersexuality, viewed as 'naturally' excessive and extreme against a White female norm, directly attaches to a specific race and gender ontology.").

<sup>29</sup> *Id.*

<sup>30</sup> Kwan, *supra* note 3, at 100–01.

<sup>31</sup> *See* Merriam-Webster's Collegiate Dictionary 527 (11th ed. 2006) (defining "GI" as "a member or former member of the U.S. armed forces; *esp.* : a man enlisted in the army").

<sup>32</sup> *See* Columbus Metropolitan Ballet Website, *Madam Butterfly, Story Origins* (2006) [hereinafter "Miss Saigon Ballet Met"], <http://www.balletmet.org/Notes/ButterflyStory.html> (last visited Nov. 19, 2008) (explaining that *Miss Saigon* reworks Giacomo Puccini's *Madame Butterfly* plot into a more contemporary setting—the Vietnam War) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

Kim, a Vietnamese bar-girl in Saigon shortly before the fall of the city.<sup>33</sup> After the destruction of her village, Kim flees to Saigon fantasizing about finding a "strong GI to protect her."<sup>34</sup> The American marine then leaves Vietnam, stranding Kim in Ho Chi Minh City with their son, Tam.<sup>35</sup> The marine returns home to the United States where he marries a white woman.<sup>36</sup> He continues with his life happily.<sup>37</sup> Meanwhile, Kim tries to escape and reunite with the marine.<sup>38</sup> She ends up in Bangkok, Thailand with her son, where she works at a massage parlor,<sup>39</sup> a consistent affirmation that Asian women in her position have no more function than to provide sexual services to men. The marine and his white wife meet Kim in Saigon.<sup>40</sup> When Kim realizes her American lover has no intention of marrying her, she commits suicide, leaving Tam under the care of the marine and his new wife,<sup>41</sup> quietly suggesting, perhaps, that Kim represents an unfit mother while the marine's wife, a white woman, is better suited to raise Tam. Lea Salonga, a Filipina singer-actress, became the first Asian to take on the leading role as Kim in the production.<sup>42</sup> Due to her immense popularity and success, producers of the show now hold regular casting calls in Manila and, in fact, anywhere with a sizable Asian female population.<sup>43</sup> Interestingly, the leading role as Kim is almost always played by a Filipina.<sup>44</sup> This casting suggests rather flippantly that all Asian women in this kind of situation are interchangeable and usable body parts, or "messy complications behind the male games of military history and foreign affairs."<sup>45</sup> Miss Saigon became an icon—an icon of the sex tour industry that sprouted in Asia as a result of American military presence.<sup>46</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> Rachel Bundang, *Scars ARE History: Colonialism, Written on the Body*, in NANTAWAN BOONPRASAT LEWIS & MARIE M. FORTUNE, *REMEMBERING CONQUEST: FEMINIST/WOMANIST PERSPECTIVES ON RELIGION, COLONIZATION, AND SEXUAL VIOLENCE* 60 (Haworth Press 1999).

<sup>35</sup> See Miss Saigon Ballet Met, *supra* note 32 (explaining the storyline of *Miss Saigon*).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> See Miss Saigon Ballet Met, *supra* note 32.

<sup>41</sup> *Id.*

<sup>42</sup> See Bundang, *supra* note 34, at 60 (examining how the development of Filipina womanhood is affected by the casting of a Filipina in *Miss Saigon*).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See *id.* ("Kim is an icon, albeit glamorized, in a soap/opera way, of the sex tour industry that has grown up around military installations in the Philippines and in other Asian nations with a history of significant U.S. military presence.").



### B. Imperialism, Orientalism, Sexism

In the late 1970s, Edward Said<sup>47</sup> described "Orientalism"<sup>48</sup> as a "Western style for dominating, restructuring, and having authority over the Orient."<sup>49</sup> He noted the confluence of Orientalism and Sexism: "[Orientalism] view[s] itself and its subject matter with sexist blinders. . . . [The local] women are usually the creatures of a male power-fantasy. They express unlimited sensuality, they are more or less stupid, and above all they are willing."<sup>50</sup> Moreover, "[w]hen women's sexuality is surrendered, the nation is more or less conquered."<sup>51</sup> Thus, the sexual conquest of Asia's women correlates with the conquest of Asia itself.

In 1899, Rudyard Kipling dubbed the West's imperialist campaign in the East as "the White Man's burden."<sup>52</sup> He coined the term in a poem written to rouse Americans to colonize and rule the Philippines.<sup>53</sup> One former U.S. President took this message to heart. From 1894 until his presidency in 1901, Theodore Roosevelt wrote and lectured widely on taking up Kipling's "White Man's burden."<sup>54</sup> He called imperialism a "manly" duty that American men must take up.<sup>55</sup> Civilized men had a "manly duty to 'destroy and uplift' lesser, primitive men," namely Asians, "for their own good and the good of civilization."<sup>56</sup> Roosevelt's express and blatant collocation of colonizing Asia and labeling that act as "manly" illustrates how throughout American history imperialism in and even Western scholarship on Asia has been viewed in a sexualized context.<sup>57</sup>

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<sup>47</sup> Edward W. Said was a Palestinian-born U.S. writer, educator, and literary theorist who wrote extensively on Orientalism of the nineteenth century and is regarded by most as a founding figure of post-colonial theory. See generally The Edward Said Archive, <http://www.edwardsaid.org> (last visited Apr. 28, 2007); EDWARD SAID, *ORIENTALISM* (New York 1979).

<sup>48</sup> Orientalism is "the study of Near and Far Eastern societies and cultures, languages and peoples by Western scholars. It also can refer to the imitation or depiction of aspects of Eastern cultures in the West by writers, designers, and artists." Wikipedia.org, *Orientalism*, <http://en.wikipedia.org/wiki/Orientalist> (last visited Apr. 28, 2007); see also Danielle Sered, *Orientalism*, Postcolonial Studies, Emory University, Fall 1996, <http://www.english.emory.edu/Bahri/Orientalism.html> (last visited Apr. 28, 2007) ("Orientalism is 'a manner of regularized (or Orientalized) writing, vision, and study, dominated by imperatives, perspectives, and ideological biases ostensibly suited to the Orient.' It is the image of the 'Orient' expressed as an entire system of thought and scholarship.").

<sup>49</sup> IMPERIALISM AND ORIENTALISM: A DOCUMENTARY SOURCEBOOK 49 (Barbara Harlow & Mia Carter eds., Blackwell Pub. 1999).

<sup>50</sup> Kwan, *supra* note 3, at 100.

<sup>51</sup> LEWIS & FORTUNE, *supra* note 34.

<sup>52</sup> BEDERMAN, *supra* note 18, at 187.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 189.

<sup>57</sup> Theodore Roosevelt's association with imperialism as "manly" shaped his domestic policies as well, especially in terms of interracial relations. See BEDERMAN, *supra* note 18, at 197 (investigating relationship between virility and racial dominance). For example, he believed that when men of different and incompatible races lived together, such as the Asians and the Blacks living among the Whites in the U.S., the races "would

During the Philippines' revolt against Spanish inquisition in the late 1800s, the Americans came, promising to help.<sup>58</sup> Though the Filipinos hesitated at first, fearing the U.S. might try to colonize their country, President William McKinley gave his word that the U.S. "had no design of aggrandizement and no ambition of conquest."<sup>59</sup> Thus, the Filipinos accepted help from the United States and together they defeated the Spanish.<sup>60</sup> Before a Republic of the Philippines could be established, however, the United States issued the Proclamation of Benevolent Assimilation in which President McKinley "announced the U.S.'s intention to annex the Philippines. To make it legal, the United States paid Spain twenty million silver pesos—or two silver pesos per Filipino."<sup>61</sup> The Filipinos resisted American colonization and the Philippine-American war raged on for more than a decade, murdering over 250,000 Filipinos.<sup>62</sup> Famine and disease decimated entire towns, as the United States Army slashed-and-burned its way through villages.<sup>63</sup> More than half the country lay in waste from American-caused destruction.<sup>64</sup>

While occupying the islands, the American soldiers referred to the Filipinas as "little brown fucking machines powered by rice."<sup>65</sup> A sex industry sprang up to cater the U.S. military men, offering "a girl for the price of a burger."<sup>66</sup> It was the imperialistic conquest of the islands by the Americans that jump-started the sex entertainment industry in the Philippines.<sup>67</sup> During the Vietnam War, five U.S. military bases stationed in Thailand sheltered 40,000 to 50,000 American GIs at any given time.<sup>68</sup> Between 1966 and 1969, as many as

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battle until one race reined supreme, just as they had on the American frontier." *Id.* See generally THOMAS G. DYER, ROOSEVELT AND THE IDEA OF RACE 89–122 (Louisiana State University Press, 2002); GEORGE SINKLER, THE RACIAL ATTITUDES OF AMERICAN PRESIDENTS 341–73 (Doubleday, 1971); Theodore Roosevelt, *National Life and Character* (1894) in AMERICAN IDEALS AND OTHER ESSAYS, SOCIAL AND POLITICAL (New York: G.P. Putnam's Sons, 1897).

<sup>58</sup> See Bundang, *supra* note 34, at 61 (explaining that American Admiral George Dewey offered his assistance to the Philippine Revolution Army (PRA) upon defeating the Spanish fleet at Manila on May 1, 1898).

<sup>59</sup> *Id.*

<sup>60</sup> See *id.* ("With this alliance, the PRA succeeded in thoroughly defeating Spanish forces throughout the [Philippine] archipelago.").

<sup>61</sup> *Id.* at 61–62.

<sup>62</sup> See Bundang, *supra* note 34, at 61–62 (noting that the war was billed by the Americans as a native insurgency).

<sup>63</sup> See *id.* at 62 ("Whole towns were decimated by famine and disease, not to mention the slash-and-burn techniques that would return in the Vietnam War.").

<sup>64</sup> See *id.* ("Literally half of the U.S. Army came to lay waste to any and all resistance.").

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> See *id.* (observing that the industry consumed both women and children, sometimes girls as young as seven or eight years old). UNICEF did a study recently on women prostitutes in the Philippines. *Id.* Of 500,000 women prostitutes, 100,000 were children. *Id.* The Philippines now ranks fourth among nine countries with the most number of prostituted children, all of which originated predominantly from the Philippine-American war. *Id.*

<sup>68</sup> See LEWIS & FORTUNE, *supra* note 34, at 8 ("During the Vietnam War there were at least five US

70,000 U.S. soldiers came to Thailand for "Rest and Recreation" ("R&R")<sup>69</sup> and ignited a sex industry.<sup>70</sup> R&R facilities have been, and continue to be, a vital component of the U.S. military policy.<sup>71</sup> With pervasive disregard for human rights, the military accepts access to indigenous women's bodies as a "necessity" for American GIs stationed overseas.<sup>72</sup>

After the Vietnam War ended, "there was a major campaign on tourism" targeting White men to sustain Thailand's sex industry.<sup>73</sup> By the early 1990s, several million tourists from Europe and the United States visited Thailand annually, many of them specifically for its sex and entertainment industry.<sup>74</sup> In 1995, for example, a study reported that sixty-five percent of tourists to Thailand "were reportedly single men on vacation."<sup>75</sup> The White conquest of Asia is "far from being 'a thing of the past' but is a lived experience of many."<sup>76</sup> As result of White imperialism, "Asians and members of the Asian Diasporas have existed and still exist through a colonized experience."<sup>77</sup>

### C. Twin Pillars of White Male Domination: Rape and War

Sexual violence against women functions as a fundamental "tool of war."<sup>78</sup> In wartime, the rape of women by armed and uniformed state forces pose

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military bases in northeastern and eastern parts of Thailand. There were 40,000–50,000 GIs located on these bases.").

<sup>69</sup> See Ralston, *supra* note 16, at 693 (noting that during the Vietnam War, the U.S. signed agreements with Thailand, Hong Kong, and the Philippines in which these Asian governments agreed to provide "Rest and Recreation" or "Rest and Recuperation" (R&R) stations for the U.S. military personnel). These R&R stations were also known colloquially as "Intoxication and Intercourse" (I&I) centers among the military men. *Id.*

<sup>70</sup> See LEWIS & FORTUNE, *supra* note 34, at 8 (remarking that all kinds of entertainment businesses were created for this purpose, including a sex entertainment business).

<sup>71</sup> See THANH-DAM TRUONG, SEX, MONEY AND MORALITY: PROSTITUTION AND TOURISM IN SOUTH-EAST ASIA 81–82 (1990) (reporting that the Republic of South Vietnam, Thailand, Hong Kong, and the Philippines signed agreements with the United States to provide their services as R&R centers).

<sup>72</sup> See *id.* at 82 (observing that prostitution deprives women of both intimacy and social significance through social roles such as marriage and motherhood).

<sup>73</sup> LEWIS & FORTUNE, *supra* note 34, at 8.

<sup>74</sup> See *id.* ("The [sex] industry ranked as the third highest reliable source for foreign currency.").

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 6.

<sup>77</sup> *Id.* at 5–6.

<sup>78</sup> See, e.g., Seth Mydans, *Sexual Violence as a Tool of War: Pattern Emerging in East Timor*, N.Y. TIMES, Mar. 1, 2001, at A1 (asserting that gender-specific war crimes include rape, forced prostitution, forced sterilization, genocidal rape, sexual mutilation, etc.); KELLY DAWN ASKIN, WAR CRIMES AGAINST WOMEN: PROSECUTION IN INTERNATIONAL WAR CRIMES TRIBUNALS 11–12 (1997); see also Angela M. Higgins, Comment, "Else We Are Condemned to Go From Darkness to Darkness": Victims of Gender-Based War Crimes and the Need for Civil Redress in U.S. Courts, 70 UMKC L. REV. 677, nn.9–10 (Spring 2002) (describing rape in the context of war). Higgins states:

Rape was a significant tactic of genocide during the conflict in the former Yugoslavia. Since, under Islamic tradition, a child bears the religion of its father, the Bosnian Serbs attempted to rape the Muslim population out of existence, by forcing Muslim women to bear children to Serbian men. . . .

the greatest direct threat to civilian women.<sup>79</sup> Often, combatants view the women of the conquered land as a "legitimate spoil of war."<sup>80</sup> Rape and sexual violence of indigenous women by military men have been tolerated "precisely because it is so commonplace."<sup>81</sup> Battle-hardened or brutalized soldiers, removed from the usual outlets for sexual frustration, are especially likely to become rapists.<sup>82</sup> Moreover, chiefly characteristic of Western armies, group machismo evolves in close-knit combat units where sexual performance is prized just as highly as combat performance.<sup>83</sup> In the first and second conflicts in Iraq, for example, U.S. troops were frequently shown violent pornography by their superiors to increase aggression.<sup>84</sup>

Although prostitution around any U.S. military base is commonly seen, "military prostitution around Asian Pacific bases occurs in a colonial context, which largely distinguishes it from such prostitution in the U.S. and Western locations."<sup>85</sup> Western societies often view Asian societies as less developed and sophisticated, and therefore inferior.<sup>86</sup> These perceptions color the interactions of U.S. servicemen and Asian women, a problem "further exacerbated by the sexually denigrating stereotypes of Asian Pacific women."<sup>87</sup> Filipina sex workers, for example, frequently report "being treated like a toy or a pig by the American [soldiers] and being required to do 'three holes'—oral, vaginal and anal sex."<sup>88</sup> The systems of prostitution perpetuated around U.S. military bases

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Muslim women were held captive in 'rape camps' until pregnant with Serbian children in an effort to pollute the very bloodline of the Muslim victims.") (citation omitted).

*Id.*

<sup>79</sup> See INTEGRATED REGIONAL INFORMATION NETWORKS (IRIN), *IN-DEPTH: OUR BODIES - THEIR BATTLE GROUND: GENDER-BASED VIOLENCE IN CONFLICT ZONES* (2004), <http://www.irinnews.org/InDepthMain.aspx?InDepthId=20&ReportId=62817> (last visited Nov. 19, 2008) ("In recent years, mass rape in war has been documented in various countries, including Cambodia, Liberia, Peru, Bosnia, Sierra Leone, Rwanda, the Democratic Republic of Congo, Somalia and Uganda.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice); IRIN, *PERPETRATORS AND MOTIVATION: BEHIND RAPE AND SEXUAL VIOLENCE IN WAR* 37 (2007) [hereinafter *Perpetrators and Motivation*] (discussing wide-spread use of rape as a tool of intimidation during war).

<sup>80</sup> *Id.* ("During the Vietnam war, 'as the American presence . . . multiplied, the unspoken military theory of women's bodies as not only a reward of war but as a necessary provision . . . turned into routine practice.'").

<sup>81</sup> *Id.* ("[R]ape in war routinely serves a strategic function and acts as an integral tool for achieving particular military objectives.").

<sup>82</sup> *Id.* at 36 ("Even when rape is not part of a particular military strategy, rape tends to be more common amongst armies/armed groups that lack discipline or operate in small numbers, with more independence and lower accountability to command structures.").

<sup>83</sup> *Id.* at 42 (arguing the same).

<sup>84</sup> See *id.* (noting aggression tacts).

<sup>85</sup> Ralston, *supra* note 16, at 700.

<sup>86</sup> See *id.* ("The Asian countries where such bases have been located (the Philippines, Korea, Japan, Thailand) are typically viewed as less developed or underdeveloped as compared to the United States, and thus inferior to the United States.").

<sup>87</sup> *Id.* at 701.

<sup>88</sup> *Id.*

in Asia reaffirm the West's perception of Asian women as sex objects.<sup>89</sup> In these contexts, Asian sex workers are registered and tagged like domestic pets, further relegating them to a less-than-human status.<sup>90</sup>

Despite significant improvements in racial and sexual equality over the last few decades, U.S. servicemen's treatment of women in Asia has failed to progress. In the mid-80's, international controversy flared over a Japanese incident in Japan in which two U.S. Marines and a U.S. Navy seaman gang-raped a twelve year old Japanese girl in Okinawa, Japan.<sup>91</sup> They ambushed the girl after watching her enter a stationery store.<sup>92</sup> The two Marines bound the girl with tape, pulled her shorts and underwear down to her ankles, and after the three men raped her, remarked that the girl looked like she enjoyed it.<sup>93</sup>

To filter an analysis of the Okinawa incident through the lenses of either sexual inequality or racial inequality exclusively, fails to convey fully why this twelve year old girl suffered. While many scholars see the convergence of sex and race stereotypes as the root cause of the incident, examination of only these two components is insufficient.<sup>94</sup> To comprehend the gravity of harm caused by sexual-racial disparities between White men and Asian women demands a tripartite inquest. This inquest must conjoin colonial history along with that of sex and race related forces.

First, the legacy of imperialism explains why the U.S. servicemen occupied Japan. After the Allies defeated the Axis powers in World War II, the United States decided to meddle in East Asian political affairs: Namely by regulating Japan to prevent it from engaging in imperialism. A sense of White supremacy meant the world could fall complacent to the idea that White imperialism was somehow "better" than Asian imperialism. Thus, while Japanese military presence in East Asia posed a world threat, American military presence would not.

Second, the prevailing attitude that Asian women occupy an inferior position to White women and more directly, to White men, in turn appeased the consciences of these three servicemen enough to rape and express belief that she enjoyed the sexual conquest. This underscores the idea that in the eyes of White

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<sup>89</sup> *Id.* at 702 (noting that labels such as "three-holer" dehumanize women); see generally GENA MARCHETTI, *ROMANCE AND THE "YELLOW PERIL"* 121-22 (1993).

<sup>90</sup> See Ralston, *supra* note 16, at 701 (asserting that Filipina sex workers reported being treated like "toys" or "pigs" by American soldiers).

<sup>91</sup> See *id.* at 661-62 (describing the story of two U.S. Marines and a U.S. Navy seaman gang-raped a twelve year old Japanese girl in Okinawa, Japan).

<sup>92</sup> See Braven Smillie, Associated Press, *Mothers of Two Marines Accused of Rape Ask for Change of Venue*, Dec. 28, 1995, 1995 WL 4421111, at 4 (describing the testimony presented on the last day of trial of the three U.S. servicemen for the gang rape of a twelve-year-old Okinawan girl).

<sup>93</sup> Ralston, *supra* note 16, at 661-62.

<sup>94</sup> See *id.* (arguing the same).

men, Asian women seem to exist solely for their sexual gratification as hyper-sexed and unconditionally submissive creatures.<sup>95</sup> The stereotype of Asian women always consenting to sex allowed the three servicemen to deny the act as a rape. It is this potent tripartite combination of imperialist thought, racial inequality, and sexual inequality that perpetuate violence against Asian women by White men. Had these components not come together under White sexual imperialism, the Okinawa incident probably would not have occurred.

### *III. Revealing the Undercurrent of White Sexual Imperialism in Contemporary Asian Feminist Issues*

Asian and diasporic Asian women face higher risks of racial and sexual harassment than their White female peers. One of the main theories behind this is that the Asian experience cannot escape the stain of sexual imperialism, a stain which simply does not apply to the White woman's experience.<sup>96</sup> Although the theory of intersectionality<sup>97</sup> between race and gender alone cannot fully articulate Asian and diasporic Asian women's lives; rather, the concurrent operation and interactive mutual dependency between race, sexuality, and dimensions of colonialism expound on their subordination.<sup>98</sup>

This section comments on the present-day ramifications of White male exploitation and domination of Asian women and the feminist issues raised by the grievous legacy of White sexual imperialism left in both Asia and Asian America. The first part surveys *Joo v. Japan*,<sup>99</sup> a recent court decision where Asian women, who were the victims of atrocious war and sex crimes, brought suit in U.S. courts.<sup>100</sup> The omission of an analysis through White sexual imperialism may explain why the court ruled against the women.<sup>101</sup> The second part then shows how White sexual imperialism provides a compelling rationale for several contemporary issues of sexual-racial inequality facing Asian and diasporic Asian women.<sup>102</sup>

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<sup>95</sup> See *supra* Part II.A.

<sup>96</sup> See Cho, *supra* note 3, at 182 (describing the root cause of sexual inequality facing Asian women as "the combustible and recombinant reaction of race with gender that produces sexualized racial stereotypes and racialized gender stereotypes"). Cho further writes, "Given this cultural backdrop of converging racial and gender stereotypes in which the model minority meets Suzie Wong, so to speak, APA [Asian and Asian American] women are especially susceptible to racialized sexual harassment." *Id.* at 194.

<sup>97</sup> See generally NAGEL, *supra* note 4.

<sup>98</sup> See generally Kwan, *supra* note 3, at 134.

<sup>99</sup> 413 F.3d 45 (D.C. Cir. 2005), *cert. denied*, 546 U.S. 1208 (2006).

<sup>100</sup> See *infra* Part III.A.1.

<sup>101</sup> See *infra* Part III.A.2.

<sup>102</sup> See *infra* Part III.B.

A. *Joo v. Japan: A Case Exemplifying How the Invisibility of White Sexual Imperialism Affects Asian Women*

1. *When is Prostitution Not a Commercial Activity?*

In *Joo*, fifteen women<sup>103</sup> from China, Taiwan, South Korea, and the Philippines brought suit against Japan in federal district court pursuant to the Alien Tort Claims Act ("ATCA").<sup>104</sup> Under the ATCA, federal district courts have jurisdiction over civil claims by aliens for torts committed "in violation of the law of nations or a treaty of the United States."<sup>105</sup> The women alleged that Japanese soldiers routinely raped, tortured and mutilated them during World War II and that such acts by the Japanese government caused a direct effect on the United States.<sup>106</sup> In response, the defendant, Japan, argued that the plaintiffs lacked personal jurisdiction under the Foreign Sovereign Immunities Act ("FSIA"),<sup>107</sup> which bars plaintiffs from bringing a cause of action against a sovereign nation.<sup>108</sup>

<sup>103</sup> In most of the *Joo* case history, the fifteen women remain unnamed, clumped together as if their stories were indistinguishable from one another. The fifteen women should be named individually: Hwang Geum Joo, Yuan Zhulin, Lola Tomasa Salinog, Liu Huang A-Tau, Kim Boon-sun, Kim Sang Hee, Kim Soon-duk, Yi Yong Nyo, Kim Bok-dong, Lu Xiuzhen, Guo Yaying, Zhu Qiaomei, Prescila Bartonico, Narcisa Claveria, and Maxima Regala de la Cruz. *Joo v. Japan*, 172 F. Supp. 2d 52, 53 (D.D.C. 2001). Aside from the roster listing under the "Counsel" section preceding the first district court opinion, the names did not appear individually in any other text encountered during the research of this essay. See *id.* To read about a few of the harrowing stories these women had to tell, see generally Mary De Ming Fan, Comment, *The Fallacy of the Sovereign Prerogative to Set De Minimis Liability Rules for Sexual Slavery*, 27 YALE J. INT'L L. 395, 396-402 (2002); see also Tom Zeller, Jr., *The Politics of Apology for Japan's 'Comfort Women'*, N.Y. TIMES, Mar. 5, 2007 (The Lede Blog), <http://thelede.blogs.nytimes.com/2007/03/05/the-politics-of-apology-for-japans-comfort-women> (last visited Apr. 25, 2007) (discussing the continuing impact of Japanese Prime Minister Shinzo Abe's denial that Chinese and Korean women were forced into sexual slavery) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

<sup>104</sup> See 28 U.S.C. § 1350 (2007) ("The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.").

<sup>105</sup> *Id.*

<sup>106</sup> See generally *Joo v. Japan*, 413 F.3d 45 (D.C. Cir. 2005), *cert. denied*, 546 U.S. 1208 (2006). Comfort women who refused to serve soldiers were beaten or forced into submission at the point of a sword. See Fan, *supra* note 103, at 401. Soldiers inflicted cigarette burns, bruises, bayonet stabs and even broke the bones of these women during their sexual servitude. *Id.* at 401-02. The women who became stricken with disease were killed. *Id.* at 402. When one comfort woman contracted venereal disease, she was sterilized by insertion of a hot iron bar into her vagina. *Id.* Resistance was often met by severe fatal consequences. *Id.* When one woman questioned why she was forced into sexual slavery, the soldiers beat her with a sword, stripped her naked and rolled her over a board covered in nails "until the nails were red with her blood and torn flesh," before they decapitated her. *Id.* Another woman who resisted by biting a soldier was decapitated and hacked to pieces while the other women were forced to watch. *Id.* After the Japanese surrendered, the soldiers murdered many of the remaining comfort women so that of the estimated 200,000 forced into prostitution, only a few hundred remained. *Id.*

<sup>107</sup> See 28 U.S.C. § 1605 (2007).

<sup>108</sup> *Id.* The plaintiffs also charged that Japan waived its immunity under FSIA when it accepted the Potsdam Declaration at the end of the war. See *Nonapplicability of FSIA Exceptions to "Comfort Women" Case*, 97 AM. J. INT'L L. 686, 686 (2003). The court, however, rejected this argument. See *id.* The plaintiffs also argued that there was an implied waiver of sovereign immunity under the *jus cogens* doctrine, but the court

FSIA does not apply, however, if, "the action is based upon a commercial activity carried on . . . outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States."<sup>109</sup> The plaintiffs contended that Japan's acts of prostituting the women to its military men constituted a "commercial activity"<sup>110</sup> within the meaning of the FSIA exception.<sup>111</sup> Furthermore, plaintiffs brought forth substantial evidence indicating that U.S. military men subsequently used the same prostituted "comfort women" for their own sexual gratification, thereby "caus[ing] a direct effect in the United States."<sup>112</sup>

The district court held that Japan's conduct did not constitute "commercial activity," and therefore FSIA immunity applied. Since the court found that the defendant's conduct was not "commercial activity," the court chose not to address the issue of direct effect by way of the American military men using the same "comfort women" after the Allies defeated Japan.

In 2005, the Court of Appeals for the District of Columbia Circuit heard the case on remand from the U.S. Supreme Court.<sup>113</sup> It affirmed the district court's decision "on the ground that Japan would have been afforded absolute immunity from suit in the United States at the time of the alleged activities."<sup>114</sup> In 2006, the Supreme Court denied certiorari,<sup>115</sup> and it seems no semblance of justice will likely be afforded to these women.

## 2. Criticisms of the Joo Decision

Scholars argue that "court precedents and legislation concerning the proper inquiry for what constitutes a commercial activity strongly support an argument that commodified sexual slavery qualifies as a 'commercial activity' under Section 1605(a)(2)."<sup>116</sup> Furthermore, the framers of the FSIA recognized that "states increasingly enter[ed] the marketplace [to] compete with private

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also rejected that argument. *See id.* The *jus cogens* doctrine relates to violations of preemptive norms of international law. *See id.* at 686–87. Furthermore, the court stated that "a sovereign cannot realistically be said to manifest its intent to subject itself to suit inside the United States when it violates a *jus cogens* norm outside the United States." *Joo v. Japan*, 332 F.3d 679, 686 (D.C. Cir. 2003).

<sup>109</sup> § 1605(a)(2).

<sup>110</sup> In determining whether a conduct constitutes a commercial activity, the conduct should be evaluated "by reference to its 'nature' rather than its 'purpose.'" *Adler v. Federal Republic of Nigeria*, 107 F.3d 720, 724 (9th Cir. 1997).

<sup>111</sup> *Joo v. Japan*, 172 F. Supp. 2d 52, 61 (D.D.C. 2001).

<sup>112</sup> *See id.* at 61–66 (finding no exception under the FSIA to be applicable for abrogating Japan's sovereign immunity and further, that the action involved a political question).

<sup>113</sup> *Id.* at 46.

<sup>114</sup> *Id.* at 47.

<sup>115</sup> *Joo v. Japan*, 546 U.S. 1208 (2006).

<sup>116</sup> Fan, *supra* note 103, at 405.



market players."<sup>117</sup> Thus, despite the theory of foreign sovereign immunity, the Act wanted to make sure foreign states would not be "immune for suits based on their commercial or private acts."<sup>118</sup> To level the market playing field between private players and states acting as private players, the Act wanted to make sure states would not be absolved from liability for torts.<sup>119</sup>

In making its case, the District of Columbia District Court "compared *Joo* to a prior Supreme Court [decision], *Saudi Arabia v. Nelson*,<sup>120</sup> to demonstrate how the activities conducted by the Japanese did not constitute 'commercial activity' under the FSIA."<sup>121</sup> In *Nelson*, the Saudi government arrested the plaintiff at the government hospital he worked at, took him to a prison, and allegedly tortured him.<sup>122</sup> The plaintiff then brought suit against Saudi Arabia, claiming the commercial activity exception under FSIA against Saudi Arabia's sovereign immunity.<sup>123</sup> The Supreme Court, however, held that the alleged act came at the "hands of the Saudi police, and not in connection with the hospital" where the plaintiff worked.<sup>124</sup> Thus, "the nature of his arrest did not qualify as a commercial activity."<sup>125</sup>

The *Joo* court applied *Nelson* to justify why Japan's operation of comfort women stations did not fall within the FSIA commercial activity exception. It reasoned that the act of kidnapping women from their homes was not enough to invoke the commercial activity exception.<sup>126</sup> Even though the Japanese military used and regulated the comfort women stations, required soldiers to pay a fee for use, a fee which depended on the woman's nationality and his length or time of visit based on his ranking, and even received a substantial portion of the revenue from these exchanges, the court nonetheless found Japan's activities to be non-commercial.<sup>127</sup> Critics of the *Joo* decision

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<sup>117</sup> *Id.* at 409.

<sup>118</sup> *Id.*

<sup>119</sup> *See id.* (describing the purposes of the Act).

<sup>120</sup> *Saudi Arabia v. Nelson*, 507 U.S. 349 (1993).

<sup>121</sup> L. David Nefouse, *Trials & Errors: The Rights of the Korean Comfort Women and the Wrongful Dismissal of the Joo Case by the District of Columbia Federal Courts*, 12 CARDOZO J.L. & GENDER 559, 563 (2006).

<sup>122</sup> *See id.* at 563–64 (describing the facts of *Saudi Arabia v. Nelson*).

<sup>123</sup> *See Nelson*, 507 U.S. at 354 (explaining the facts and circumstances surrounding the initiation of the law suit).

<sup>124</sup> Nefouse, *supra* note 121, at 564.

<sup>125</sup> *Id.*

<sup>126</sup> *See id.* (discussing the *Joo* decision).

<sup>127</sup> *Id.* Nefouse further writes:

These facts suggest that the nature of the activity described would qualify as commercial in nature because of the economic principles of supply and demand, the contractual principles employed by the Japanese, and the fact that the comfort women served under the category of military supplies. If, for example, another product would be substituted in for the word 'comfort women' in the facts provided, the nature of activities would indeed appear to be commercial because a private party

argue that the court did not properly distinguish *Joo* from *Nelson* and misapplied precedent to fit a conclusion it desired.<sup>128</sup> They note the striking similarity in arguments and word choice between the court's opinion and the Statement of Interest submitted by the U.S. State Department.<sup>129</sup> This suggests that perhaps the court "succumbed to the pressure of the Bush administration to dismiss the case."<sup>130</sup>

Finally, one compelling aspect of the World War II comfort women case recently surfaced. In the aftermath of the war, when American troops entered Japan, the U.S. soldiers used the same comfort women stations Japan had set up.<sup>131</sup> The "GIs paid upfront and were given tickets and condoms. . . . [T]he charge for a short session with a prostitute was fifteen yen, or about a dollar, roughly the cost of half a pack of cigarettes."<sup>132</sup> First, ignoring the court's ruling against the women, the opinion referred to the acts committed by the Japanese soldiers as a "violation of 'both positive and customary international law,'" human rights violations and war crimes.<sup>133</sup> It remained entirely silent, however, on the contention the women raised about American GIs using the comfort women stations.<sup>134</sup> What the Japanese men did to the plaintiffs seemed patently abhorrent to the women; however, when American soldiers were charged with the same crime against the same women, the court declined to find a violation of either customary or international law.<sup>135</sup>

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engages in such typical actions in the course of conducting commerce. The court in *Joo* states that even though the actions amounted to crimes against humanity and war crimes, they were not commercial in nature; however, this begs the question as to why the Japanese charged the soldiers for the women and had a set pricing plan?

*Id.* at 564–65.

<sup>128</sup> See Nefouse, *supra*, note 121, at 566 ("By using *Nelson* in its rationale to reject finding a commercial exception under the FSIA, the court attempted to fit a square puzzle-piece into a circular space because the facts as to the disputed activities differed greatly in the two cases.").

<sup>129</sup> See, e.g., Sue R. Lee, Comment, *Comforting the Comfort Women: Who Can Make Japan Pay?*, 24 U. PA. J. INT'L ECON. L. 509, 539 (2003) ("Although . . . war reparations claims are [not] *per se* nonjusticiable, on April 27, 2001, the U.S. State Department did issue a Statement of Interest advising the court to dismiss the case, arguing that it involved a political question that rendered the plaintiffs' claims nonjusticiable.").

<sup>130</sup> See *id.* at 510 ("[F]ormer comfort women brought their struggle against Japan to the United States, hoping that the District of Columbia . . . District Court would finally hold Japan liable for its crimes against humanity. However, with the Bush Administration's support, Japan prevailed; the case was dismissed.").

<sup>131</sup> See Associated Press, *U.S. Troops Used Japanese Brothels After WWII: American Military Ignored Japan's Sex Slave Abuses, New Records Show*, Apr. 27, 2007, available at <http://www.msnbc.msn.com/id/18355292/> (last visited April 27, 2007) ("Though arranged and supervised by the police and civilian government, the system mirrored the comfort stations established by the Japanese military abroad during the war.") (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

<sup>132</sup> *Id.*

<sup>133</sup> *Joo v. Japan*, 413 F.3d 45, 46 (D.C. Cir. 2005).

<sup>134</sup> *Id.*

<sup>135</sup> See generally *id.*

*B. What Happens In Asia Does Not Stay In Asia: Consequences of White Sexual Imperialism on Diasporic Asian Women*

American military men stationed in Asia brought back to the United States their stereotypes of Asian women as "cute, doll-like, and unassuming, with extraordinary sexual powers," which then became an expectation White men had of all women of Asian descent.<sup>136</sup> This section addresses the negative, and often dark, ramifications caused by the hyper-sexed stereotype has caused.

*1. Asian Women in American Pornography*

Few mediums reveal the White sexual imperialistic exploitation of Asian women more so than pornography.<sup>137</sup> In a 2002 study conducted by Jennifer Lynn Gossett and Sarah Byrne, out of thirty-one pornographic websites that depicted rape or torture of women, more than half showed Asian women as the rape victim and one-third showed White men as the perpetrator.<sup>138</sup> The study further uncovered a strong correlation between race and pedophilia, advertising with titles such as "Japanese Schoolgirls" or "Asian Teens."<sup>139</sup> Furthermore, images of Asian women in pornographic forms consistently came up through a keyword search for "torture."<sup>140</sup>

Many scholars warn that race-specific pornography contributes to race-specific sexual violence.<sup>141</sup> Since the overwhelming majority of violent pornography features Asian women in particular, it follows that Asian women are at even greater risk of sexual violence due to their role in violent pornography.<sup>142</sup> Helen Zia, a noted social activist, suggests a direct connection between racial-

<sup>136</sup> Jennifer Lynn Gossett & Sarah Byrne, *Click Here: A Content Analysis of Internet Rape Sites*, 16 GENDER & SOCIETY 5, 15 (Oct. 2002) (citing Tracy Lai, *Asian American Women: Not for Sale*, in RECONSTRUCTING GENDER: A MULTICULTURAL ANTHOLOGY (Estelle Disch ed., 1997)).

<sup>137</sup> For the purpose of this section, this Article adopts Dworkin and MacKinnon's definition of pornography: "[T]he graphic sexually explicit subordination of women through pictures and/or words." Andrea Dworkin & Catharine A. MacKinnon, *Pornography & Civil Rights: A New Day for Women's Equality*, Appendix D (1988), in MARY BECKER ET. AL., FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY, CASES AND MATERIALS 369 (3d ed. 1994).

<sup>138</sup> Gossett & Byrne, *supra* note 136, at 11. Curiously, even though the notion of women as wanting or deserving the rape and the characterization of women as deviant sexual creatures accompany rape depictions, when the victim is Asian, it is not the woman's sexual deviancy that propels the fantasy, but rather her innocence. *Id.* at 16. In the rape depictions of Asian women, markers of her youth, such as pictures or use of the words "schoolgirl" and "teen," suggest her innocence. *Id.* Thus the rape component comes in conjunction with the stereotype of Asian women as "cute, docile, and doll-like." *Id.*

<sup>139</sup> *Id.* at 12.

<sup>140</sup> *Id.* at 14 (internal citations omitted).

<sup>141</sup> See generally, e.g., Helen Zia, *When Race and Gender Meet: Racism, Hate Crimes, and Pornography*, in RECONSTRUCTING GENDER: A MULTICULTURAL ANTHOLOGY (Estelle Disch ed., 1997) (raising as an example, the incident of an eight-year-old Chinese girl being raped and lynched two months after *Penthouse* featured photographs depicting Asian women bound and tortured.).

<sup>142</sup> *Id.*

sexual stereotyped pornography and actual violence against Asian women.<sup>143</sup> Additionally, Kandice Chuh argues that "because Asian/American women are depicted as always consenting, they cannot be raped in the eyes of the law."<sup>144</sup>

Pornography leads to other alarming sexual-racial trends involving Asian women as well. For example, depictions of Filipinas as sexual commodities on the Internet have been linked to the mail-order bride industry in Australia.<sup>145</sup> Researchers further speculate that online sexual commodification of Filipinas may at least partially explain why Filipinas experience disproportionate levels of domestic violence compared to non-Filipina women.<sup>146</sup>

White men's fascination with Asian women in pornography stems from early nineteenth century Western imperialism.<sup>147</sup> To colonize the Asian nations, countries such as the United States flooded Asia with military forces.<sup>148</sup> As an inevitable result of military presence, prostitution centers consisting of local civilian women sprung up to cater to the White servicemen.<sup>149</sup> With these sexual experiences as their main, if not only, encounters with Asian women, White servicemen returned home with the generalization that Asian women are hyper-sexualized and always willing to comply with White man's prurient demands.<sup>150</sup>

This germinated even more interest in Asian women as sexual objects.<sup>151</sup> To sustain this increased interest, the Asian sex tour industry developed.<sup>152</sup> Asian sex tourism further perpetuates the stereotype of Asian women as hyper-sexualized and always willing.<sup>153</sup> If Asian women are perceived as hyper-sexual, it understandably follows that sexually explicit materials, pornography for example, would include a preponderance of Asian women.<sup>154</sup> The next two sub-sections on the Asian fetish syndrome and mail-order brides will discuss how depictions of Asian women in pornography have produced gravely detrimental consequences on the Asian and diasporic Asian woman's experience.

<sup>143</sup> See *id.* (suggesting the same).

<sup>144</sup> Shimizu, *supra* note 28.

<sup>145</sup> See Chris Cunneen & Julie Stubbs, *Male Violence, Male Fantasy and the Commodification of Women Through the Internet*, DOMESTIC VIOLENCE: GLOBAL RESPONSES 7:5–28 (2000) (discussing the phenomenon of Western males shopping for Asian women in cyberspace, in particular the male violence, male fantasy and the commodification of Filipinas through the Internet).

<sup>146</sup> See Sia Nowrojee & Jael Silliman, *Asian Women's Health: Organizing a Movement*, in DRAGON LADIES: ASIAN AMERICAN FEMINISTS BREATHE FIRE 78 (Sonia Shah ed., 1997) (noting that U.S. servicemen wore shirts describing Asian women as "little brown fucking machines"). See also *supra* note 145 (examining the high victimization rates of Filipinas in cases of spousal homicides compared to other Australian women).

<sup>147</sup> See generally LEWIS & FORTUNE, *supra* note 34, at 5–6.

<sup>148</sup> See generally *supra* Part II.B.

<sup>149</sup> See generally *supra* Part II.C.

<sup>150</sup> See generally Kwan, *supra* note 3, at 110–15.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

## 2. Bartering for Mail-Order Brides

In the 1970s when conservative White men grew discontent with the American feminist movement and White women's ensuing push for liberation, they turned to the mail-order bride industry in East Asia.<sup>155</sup> Believing American women to be too radical and career-oriented, many American men turned to mail-order bride companies for Asian wives who are "loyal and undemanding."<sup>156</sup> Guided by sexual stereotypes of Asian women as subservient, these men saw Asian mail-order brides as the much-welcomed antithesis to the White American woman.<sup>157</sup> Where the White feminist woman actively resisted subjugation, the Asian woman was portrayed as enjoying it.<sup>158</sup> While these perceptions of Asian women originated from the colonial era, they have endured through the decades, haunting the experiences of Asian women even today.<sup>159</sup>

## 3. Case of the Asian Fetish Syndrome

Michael Lohman, a third-year doctoral student at Princeton University, ranked in the top of his class in the applied and computational mathematics department.<sup>160</sup> In March 2005, the state charged him with reckless endangerment, tampering with a food product, harassment, and theft.<sup>161</sup> Lohman had surreptitiously cut locks of hair from at least nine Asian women and poured his urine and semen into the drinks of Asian women more than fifty times in Princeton's graduate student dining hall.<sup>162</sup> When investigators entered Lohman's apartment, which he shared with his wife, an Asian woman, they

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<sup>155</sup> See Christine S. Y. Chun, Comment, *The Mail-Order Bride Industry: The Perpetuation of Transnational Economic Inequities and Stereotypes*, 17 U. PA. J. INT'L ECON. L. 1155, 1168 (1996) ("Consumer-husbands tend to be white, much older than the bride they choose, politically conservative, frustrated by the Women's Movement, and socially alienated.") (internal citations omitted).

<sup>156</sup> See, e.g., Donna R. Lee, *Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions*, 5 ASIAN L.J. 139, 145 (May 1998) (noting that customers of the mail-order bride company "commonly characterize American women as 'spoiled rotten' and lacking family values") (internal citations omitted).

<sup>157</sup> See *id.* ("[T]hey are like my grandmother's generation, conventional and conservative.") (internal citations omitted).

<sup>158</sup> See Chun, *supra* note 155, at 1181 ("[T]he image of a subservient and compliant woman appeals to many divorced, middle-aged consumer-husbands tired of the Women's Movement.").

<sup>159</sup> See generally Kwan, *supra* note 3, at 110–15.

<sup>160</sup> See Lisa Wong Macabasco, *Princeton Incident Shows Extreme Case of Asian Fetish*, ASIANWEEK, Apr. 29, 2005, [www.asianweek.com](http://www.asianweek.com) (search "Princeton Incident"; then follow "Princeton Incident Shows Extreme Case of Asian Fetish") (last visited Apr. 28, 2007) (detailing the arrest of Michael Lohman) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

<sup>161</sup> See *id.*

<sup>162</sup> *Id.*

found stolen women's underwear and mittens filled with the hairs of Asian women, which they believe Lohman used to masturbate.<sup>163</sup>

When the University released e-mail notifications of the incident to the student body, it failed to mention that Lohman's victims were all Asian women.<sup>164</sup> While the institution treated the case as an isolated instance of a psychologically unstable man, Yin Ling Leung, organizational director of the National Asian Pacific American Women's Forum ("NAPAWF"), contended that the University misidentified the problem.<sup>165</sup> Leung argued that the Asian fetish syndrome triggered Lohman's behavior.<sup>166</sup>

Activists in the Asian American community complained about the fact that the University ignored how Lohman specifically targeted Asian women and clearly harbored a sexual fetish for them. For example, Leung said that to protect Asian American female students, the University should have been more "culturally competent."<sup>167</sup> Leung further stated: "Sexual assault of Asian women on college campuses is a major issue. You get a room of five Asian American women together, and they all have stories about sexual harassment."<sup>168</sup>

Mainstream America shrugs off the notion of Asian fetishes, believing men who have such fetishes "are harmless."<sup>169</sup> However, Leung warns, "It's not as innocent as it looks."<sup>170</sup> Helen Zia, a Princeton graduate, commented: "It's the image of Asian American women being exotic and passive and won't [sic] fight back and speak up. Predators think they have free rein with Asian American women."<sup>171</sup>

In another and even more disturbing case, David Dailey and Edmund "Eddie" Ball abducted, handcuffed, and blindfolded two Japanese schoolgirls, ages eighteen and nineteen, in Spokane, Washington.<sup>172</sup> The two girls were taken to a house and raped repeatedly over a span of seven hours.<sup>173</sup> Eddie Ball, the mastermind behind the crime, professed an avid fascination in bondage,

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<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* (noting that campus health and safety officials, in particular, must improve their knowledge of other cultures).

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> See Macabasco, *supra* note 160 (hinting at the harms that sometimes result from these seemingly benign fetishes). Macabasco further adds, "It's a form of hate crime. There's racist hate and racist love—this is a distorted form of racist love." *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> See Alex Tizon, *Rapists Bet on Victims' Silence—And Lose*, THE SEATTLE TIMES, May 31, 2001, at A1, available at <http://seattletimes.nwsources.com/html/home/index.html> (explaining that initially, three Japanese schoolgirls were abducted, but the third one, who reported the abduction to police, was released because, according to the assailants, they "could not handle more than two victims").

<sup>173</sup> See *id.* (noting the home was in Spokane Valley).

sadomasochism, and Japanese culture.<sup>174</sup> He collected Japanese bondage videos and was an expert in Japanese rope-tying techniques.<sup>175</sup> At his home, police found numerous Japanese-language books.<sup>176</sup> Ball specifically targeted Japanese students because he believed them to be submissive and thus, less likely to report the rapes.<sup>177</sup> However, he believed wrongly.<sup>178</sup> The students reported the crime and aided police in catching the perpetrators.<sup>179</sup> Dailey and Ball faced sentences of twenty-one to twenty-eight years in prison.<sup>180</sup>

Then there was the case of Lili Wang, a North Carolina State University ("NCSU") graduate student, who became the victim of what may have been a racially-motivated crime.<sup>181</sup> Richard Borelli Anderson had a strong sexual preference for Asian women because, as Anderson allegedly said, "they study hard, and they're very nice, soft speaking."<sup>182</sup> In October of 2002, Anderson fired four gunshots into Wang, killing her before turning the gun on himself.<sup>183</sup> Police found his body five feet away from Wang.<sup>184</sup>

Professor Andrew Chin maintained that this was a hate crime, but the NCSU police disagreed.<sup>185</sup> "There is no evidence to suggest that the offender, Richard Anderson, acted on any bias against Lili Wang because of her race," said John Daily, deputy director of the NCSU Police Department.<sup>186</sup> Professor Chin contended, "[I]f you view the chain of events and link the events together, including what may appeared to have been unwanted advances on a married

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<sup>174</sup> See *id.* ("The leader was Ball, a former truck driver and a devotee of bondage and sadomasochism. He co-founded the Spokane Power Exchange, or SPEX, a sex club of about 200 members, which met regularly for sex parties and bondage workshops.").

<sup>175</sup> See *id.* ("Ball's interest in Japanese culture was widely known. He traveled to Osaka, Japan, in 1997 as a student. SPEX members said he had a collection of Japanese bondage videos, and was expert in Japanese rope-tying techniques.").

<sup>176</sup> See *id.* ("Police found Japanese-language books at his home.").

<sup>177</sup> See *id.* (explaining that Lana Vickery, who was a clerk at an adult novelty store and the woman charged with abducting the raped women, apparently "told police it was Ball who targeted Japanese students because he thought they were submissive and would be too afraid and ashamed to report the assaults").

<sup>178</sup> See Tizon, *supra* note 172 (pointing out that Dick Cottam, a police spokesman, remarked, "The suspects bet their lives on a stereotype, and they lost").

<sup>179</sup> See *id.* ("Not only did the victims report the assault, they were willing—after some coaxing—to go to extraordinary lengths to help police catch the suspects.").

<sup>180</sup> See *id.* (adding that Lana Vickery, the driver, also faced this sentence).

<sup>181</sup> See May Chow, *North Carolina Shooting—Possibly Bias Related: Said He Had a Preference for APA Women*, ASIANWEEK, Nov. 11, 2002, [http://www.asianweek.com/2002\\_11\\_08/news\\_liliwang.html](http://www.asianweek.com/2002_11_08/news_liliwang.html) (reporting the tragic death of Lili Wang) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

<sup>182</sup> See *id.* (reporting that Professor Andrew Chin had said Anderson had confided in a friend that he preferred Asian Pacific Women because "they study hard, and they're very nice, soft speaking").

<sup>183</sup> See *id.* (noting that the murder occurred at approximately 5:15 p.m., while Wang was playing tennis on a court on the school campus).

<sup>184</sup> See *id.*

<sup>185</sup> See *id.* (explaining that the deputy came to his conclusion after an investigation by his Police Department, the State Bureau of Investigation and the Deputy Attorney's Office of Wake County).

<sup>186</sup> Chow, *supra* note 181.

woman [Wang], which lead to the murder, this may be a form of racial discrimination against an [Asian] woman."<sup>187</sup> Chin believed the victim did nothing to bring about the senseless act, other than being an Asian woman.<sup>188</sup>

#### 4. On Violence Against Asian and Diasporic Asian Women

During a U.S. Bureau of Justice statistical study on victimization and race that took place over the course of five years,<sup>189</sup> thirty-five percent of Asian victims of violence<sup>190</sup> reported the race of their offenders to be White.<sup>191</sup> Twenty-six percent of the Asian victims reported their offenders to be Black and thirty percent reported their offenders as "Other."<sup>192</sup> The greatest proportion of perpetrators on Asians were non-Asian, which is not the case for White and Black victims, where both groups reported the greatest proportion of perpetrators to be members of their own race.<sup>193</sup> Thus, while Blacks most often fall victim to Black offenders and Whites most often fall victim to White offenders, Asians most often fall victim to White offenders, not Asian.

For rape and sexual assault rates among women, the Bureau of Justice Statistics Study reported that Asian females had the lowest rate of rape and sexual assault.<sup>194</sup> The frequency of rapes and sexual assaults among women by race, however, is highly contested from study to study.<sup>195</sup> Some studies, like the one conducted by the Bureau of Justice Statistics, report no significant variation in the prevalence of rape among different ethnic groups.<sup>196</sup> Other studies,

<sup>187</sup> *Id.*

<sup>188</sup> *See id.* ("Chin believes Wang did nothing to bring this about, other than being APA. Chin hopes to reach out to the APA community and law enforcement agencies about how this could possibly be a case of discrimination with tragic consequences.").

<sup>189</sup> CALLIE RENNISON, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT—VIOLENT VICTIMIZATION AND RACE 1993–98 (2001), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/vvr98.pdf> (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

<sup>190</sup> *See id.* at 3 tbl.2 (distinguishing between "crimes of violence," which include simple assault, and "serious violent crimes," which include rape and sexual assault, robbery, and aggravated assault).

<sup>191</sup> *See id.* at 10 tbl.14 (capturing whether the victim perceived the offender's race to be white, black, other, mixed or unknown).

<sup>192</sup> *See id.* (failing to provide a description of those kinds of races that might have been identified in the "Other" category).

<sup>193</sup> *See id.* (showing that sixty-six percent of White victims of violence reported their perpetrators to be White, while only seventeen percent reported their offender as Black. For Black victims, twelve percent perceived their offenders as White and seventy-six percent perceived them as Black; for American Indians, fifty-eight percent said their offenders were White).

<sup>194</sup> *See id.* at 3 tbl.2 (explaining, in the accompanying text, that "Asian females had a rate of rape or sexual assault that was slightly lower than the rate for American Indian females and significantly lower than those for white and black females, 1993–98").

<sup>195</sup> *See generally* Joohee Lee et al., *Attitudes Toward Rape: A Comparison Between Asian and Caucasian College Students*, 11 VIOLENCE AGAINST WOMEN 177 (2005) (describing a study of 169 college students that, among other things, Asians have stronger beliefs that the victims caused the rapes).

<sup>196</sup> *See id.* at 178 (citing a 2000 study by Kalof and a 1999 study by Brenner, et al.).



however, suggest considerable variations, finding that Asian women appear to have lower incidences of rape.<sup>197</sup> A 2001 psychological study by Rozee and Koss on rape hypothesized that the conflicting results of these studies could be due to "methodological differences in the studies," "lack of disclosure due to mistrust of police," "language barriers," and "differences in defining rape."<sup>198</sup>

Increasingly, however, scholars and researchers realize that perhaps one crucial reason for the lower rate of reported rapes among Asian women comes from cultural differences.<sup>199</sup> Generally, Asian victims are the least likely to disclose their experiences of sexual victimization to authorities and even to friends or family.<sup>200</sup> Asians, both men and women, tend to hold much more negative attitudes toward rape victims and believed more strongly in rape myths than their White counterparts.<sup>201</sup>

Also, the Bureau of Justice study found that, at higher rates than any other race, Asians said the reasons they chose not to report violence to the police were because either there was small or no loss, lack of proof, or it was inconvenient.<sup>202</sup> One recent and haunting example of Asian women's hesitancy to come forward about rape and sexual assault is the Japanese women sexually exploited by American GIs in Japan after World War II.<sup>203</sup> In 2007, historical documents and records surfaced revealing how American authorities permitted official brothel systems to operate in Japan despite internal reports that the Japanese women were being coerced into prostitution to the U.S. servicemen.<sup>204</sup> Despite the blatant sexual exploitation and often violence perpetrated on these women, not one Japanese woman has come forward to seek compensation or an apology.<sup>205</sup> Under such astounding circumstance that would shock any conscience, Asian women still opt not to report the sex crime. Thus, the tremendously low numbers of reported sex crimes against Asian women not only

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<sup>197</sup> See *id.* (citing two studies—one by Tjaden and Thoennes in 1998 and another by Koss, Gidycz and Wisniewski in 1987—about the reporting of incidences of rape by women).

<sup>198</sup> *Id.*; see also Patricia D. Rozee & Mary P. Koss, *Rape: A Century of Resistance*, 25 PSYCHOL. WOMEN Q. 295, 295–311 (2001) (offering an overview of feminist contributions to the reframing and redefinition of rape over the last century).

<sup>199</sup> See Tizon, *supra* note 172 (stating that: "Sex crimes in Japan, compared with the U.S., are relatively rare. The victims of sex crimes are profoundly stigmatized. Many victims do not discuss rapes with family or counselors, much less with police").

<sup>200</sup> See Lee, *supra* note 195, at 178 ("Although rape is an underreported crime across ethnic groups, Asian victims are the least likely to disclose their experiences of sexual victimization to authorities and even to friends or family members.").

<sup>201</sup> See *id.* at 181 (comparing Asian and White attitudes towards rape).

<sup>202</sup> See RENNISON, *supra* note 189, at 8 (discussing reasons for not reporting rape).

<sup>203</sup> See Associated Press, *supra* note 131 (discussing surfacing stories of sex brothels during World War II).

<sup>204</sup> See *id.* (describing the brothel system).

<sup>205</sup> See *id.* (stating that the fund started to compensate former prostitutes was a failure because "[n]ot one Japanese woman has come forward").

seems unsurprising, but also leaves an indelibly strong suspicion that the numbers are inaccurate.

#### IV. *White Sexual Imperialism Within Existing Theoretical and Social Constructs*

##### A. *Revisiting MacKinnon: Dominance Theory Applied to Asian Feminist Jurisprudence*

Women are sexually assaulted because they are women: not individually or at random, but on the basis of sex, because of their membership in a group defined by gender. Forty-four percent of women in the United States have been or will be victims of rape or attempted rape at least once in their lives. Women of color experience disproportionately high incidence rates.<sup>206</sup>

The dominance approach to feminist theory frames the question of equality as "a question of the distribution of power."<sup>207</sup> Thus, gender equality, as a question of power, scrutinizes "male supremacy and female subordination."<sup>208</sup> Following this logic, racial equality scrutinizes White supremacy and non-White subordination. For the Asian woman at the intersection of gender and race, achieving equality means overthrowing not only male supremacy or White supremacy, but specifically White male supremacy. Since "sexuality appears as the interactive dynamic of gender as an inequality"<sup>209</sup> and "aggression against those with less power is experienced as sexual pleasure, an entitlement of masculinity,"<sup>210</sup> it is the White male's sexual dominance over the Asian female which emerges as the source of inequality that the Asian female suffers.

Moreover, for Asian feminist jurisprudence, "colonial and military domination are interwoven with sexual domination."<sup>211</sup> The Western military's involvement in Asia, both in colonial and neo-colonial history, has led to Asia's sex tourism industry.<sup>212</sup> This is an industry where the buyers of bodies for sexual pleasure are predominantly White men and the sellers of their bodies for sexual pleasure are predominantly Asian women. No other fact or condition confirms the imbalanced power relations between the East and the West. This imbalance

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<sup>206</sup> Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281, 1301 (1991).

<sup>207</sup> Catharine A. MacKinnon, *Difference and Dominance*, in FEMINISM UNMODIFIED 40 (1987).

<sup>208</sup> *Id.*

<sup>209</sup> Catharine A. MacKinnon, *Sexuality*, in FEMINISM UNMODIFIED 6 (1987).

<sup>210</sup> *Id.* at 6-7.

<sup>211</sup> Kwan, *supra* note 3, at 193.

<sup>212</sup> *See id.* (arguing that Western military involvement spawned the Asian sex industry, and, in turn, that this industry and military involvement has shaped and promoted stereotypes of Asian women).

of power came from White men imperializing Asia<sup>213</sup> and, in the course of conquest, the taking of Asian women's bodies as their spoils.<sup>214</sup> The pervasiveness of sexual objectification establishes in the minds of Westerners a stereotype of Asian women as hyper-sexualized, since their only utility to Westerners for centuries come from their sexual submission.<sup>215</sup>

### *B. Where Do We Go From Here?*

The U.S. recognizes the profound harms that the institution of slavery caused during the early parts of American history which still endure today. Yet what about imperialism? Students read of it from textbooks in neutral language. No sense of penance comes with the recounts of U.S. occupation in Asia. Considering the general trends of the Asian and diasporic Asian communities enumerated in this essay, chiefly, severe underreporting of violent crimes inflicted upon them and a lack of scholarship examining the role imperialism played in the subjugation of Asian women, it comes as no surprise that history, through America's eyes, would white-wash the imperialized experience Asians endure even well into this century. Asian men feel emasculated from the American media's portrayal of them as effeminate, and many Asian women's subconscious preference for dating White men over Asian men—a trend which has become increasingly popular. White men display the "Asian fetish" syndrome, a symptom of not only the desire for male dominance, but also the imported stereotype that Asian women *want* to be dominated. The mail-order bride industry flourishes, capitalizing on the "Asian fetish." Then, the overrepresentation of Asian women in pornography perpetuate the entire cycle of White sexual imperialism as experienced by Asian women today.

The action this Article calls for is humble, but significant: recognition. Recognize the pervasiveness of White sexual imperialism, understand its roots and where the branches pan out, and see how firmly implanted it is in the lives of those in the Asian community. The author asks for little more for now: merely recognition. "Oppressed groups need the law," said Professor Cynthia Bowman.<sup>216</sup> Thus, recognition of White sexual imperialism begins with the law.

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<sup>213</sup> See *supra* Part III.A.1 (discussing case where Japanese women were raped, tortured, and sold into sexual slavery during World War II).

<sup>214</sup> See Ralston, *supra* note 16 (discussing the rape of Japanese women in World War II by American soldiers).

<sup>215</sup> See *id.* (arguing that military and colonialism were the only exposure to Asian women for Americans).

<sup>216</sup> Cynthia Bowman, Roundtable Discussion at Santa Clara University Law School's Spring Social Justice Conference: Gender & Law: The Power of Women's Stories: Examining Women's Role in Law and the Legal System (Apr. 20, 2007).

### V. Conclusion

The Western world's desire for imperialistic domination over Asia relates to its desire for sexual domination over Asian women. In Asian feminist jurisprudence, the theoretical principle of White sexual imperialism explains the inequality Asian and diasporic Asian women face today. Without first undermining the White sexual imperialist regime, Asian feminists cannot effectively achieve sexual-racial equality for Asian and diasporic Asian women. Without first undermining the White sexual imperialist regime, violent crimes against Asian victims will continue to be largely perpetrated by White men and, moreover, women of Asian descent will find no peace from the hyper-sexed stereotypes.

Knowledge of social conditions as a vehicle for consciousness-raising shows women their situation in way that affirms they can change it.<sup>217</sup> Thus, knowledge of White sexual imperialism as a vehicle for consciousness-raising shows Asian feminists just how deep they must dig to uproot the systemic inequality. While much literature has focused on sexual violence against White women, Blacks and Latinas, very few studies have looked at sexual violence against Asian women.<sup>218</sup> This Article urges continued and active scholarship in Asian feminist jurisprudence, particularly through the fisheye lens of White sexual imperialism. Understanding intersectionality issues with the historical dimension of colonialism will help expose otherwise latent forces that work at conserving injurious sex and race disparities.

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<sup>217</sup> See Catharine A. MacKinnon, *Consciousness Raising*, in TOWARD A FEMINIST THEORY OF THE STATE 101 (1989) (discussing the theory whereby women examine the constraints imposed on them in order to effectively challenge them).

<sup>218</sup> See, e.g., Lee, *supra* note 195, at 181 (noting the majority of studies on rape attitudes to be comparisons between African Americans and Caucasian Americans or Caucasian Americans and Hispanic Americans, but relatively few on Asian Americans).

