

MIGRANT BRIDES IN SINGAPORE: WOMEN STRATEGIZING WITHIN FAMILY, MARKET, AND STATE

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INTRODUCTION

“Migrant Brides” refers to a growing group of Asian women¹ from developing countries who migrate to marry. Migrant Brides are able to settle in Singapore only by virtue of their marriages to Singapore citizens. They typically lack the education and income levels required to migrate into Singapore through more conventional routes. Since the purpose of their migration is purely to fulfill reproductive and familial roles, they are essentialized as “Brides.” Not every woman who migrates to Singapore through marriage is a “Migrant Bride.”² Singapore’s immigration policies create a hierarchy of international marriages “characterized by their relative potential contributions (especially economic) to Singapore, ease of social integration, and their perceived likely demand on the public welfare system.”³ Legitimization

¹ These women are predominantly from Southeast Asia and China. Migrant Brides in Singapore should be seen in context of the wider phenomenon in East Asia, in which migrant women marry local male citizens in countries including Japan, South Korea, and Taiwan. Migrant Brides in East Asia generally find it difficult to become naturalized due to laws restricting that possibility. See generally Gavin W. Jones, *International Marriage in Asia: What We Do Know, and What Do We Need to Know?* (Asia Research Inst., Working Paper Series No. 174, 2012) (discussing statistical trends in International Marriage in the East and Southeast Asian Region and the factors contributing to these trends); Nicola Piper, *Gender and Migration* 1 (Sept. 2005) (unpublished paper), archived at <http://perma.cc/8QE8-VTM8> (“[G]ender-differentiated population movements [such as marriage migration] . . . act like a mirror for the way gender divisions of labor are incorporated into spatially uneven processes of economic development.”).

² According to the National Population Secretariat, of all marriages involving at least one Singapore citizen in 2012, 39.9% involved a foreigner. Of these marriages, 75.9% were between local men and foreign women. NAT’L POPULATION AND TALENT DIV., POPULATION IN BRIEF 2013 19 (2013), archived at <http://perma.cc/B5U4-WDVF>. Migrant Brides form a sub-group within this category. I choose to use the term “Migrant Bride” to distinguish them from the broader group of “Migrant Wives,” who are not disenfranchised, and may be allowed permanent residency and citizenship due to their educational qualifications.

³ Eugene K. B. Tan, *A Union of Gender Equality and Pragmatic Patriarchy: International Marriage and Citizenship Laws in Singapore*, 12 CITIZENSHIP STUD. 73, 84 (2008).

(through the granting of permanent status or citizenship) of a marital union between a Singapore citizen and a non-Singaporean is conditioned on the foreign spouse's potential productivity, or on the Singaporean spouse's ability to provide for them.

Migrant Brides are perceived as unable to contribute to economic growth and as potential burdens on the State.⁴ Their husbands tend to be older and of lower income, which impedes their sponsorship of more permanent status for their wives.⁵ Migrant Brides are thus often denied Permanent Residency ("PR") and citizenship. Instead, they are given Long Term Visit Passes ("LTVPs"), which must be renewed every year through their husbands' sponsorship.⁶ This results in a glaring incongruity: Migrant Brides are perpetually transient outsiders, even though they have acquired permanent links to Singapore as wives and mothers of citizens.

Migrant Brides are said to be treated instrumentally within the household as "maids-cum-sex partners-cum-caregivers,"⁷ but their labor remains unrecognized by the State in its citizenship calculus. The repercussions of being denied permanent residency and citizenship are manifold. Migrant Brides are disproportionately poor; they have no right to work in Singapore and no access to the welfare system. They are isolated and extremely vulnerable to domestic abuse due to the skewed power relations stemming from their dependency on their husbands to sponsor their temporary immigration status.⁸ If their husbands cease sponsorship, voluntarily or involuntarily (through death, divorce, or imprisonment), Migrant Brides may be deported back to their home countries without their children. As a result, family law (the law of domestic violence, marriage dissolution, and property division) has a disparate impact on Migrant Brides, even though they are formally covered by the same provisions as Singaporean women.

I analyze the phenomenon of Migrant Brides in Singapore through the lens of Janet Halley and Kerry Rittich's deconstruction of family law excep-

⁴ See *Singapore Parliamentary Debates, Official Report* (21 October 2008) vol 84 at cols 155–57 (Wong Kan Seng, Minister of State for Home Affairs), archived at <http://perma.cc/4CUX-G8Z6> (explaining that the guidelines with respect to the permanent residence application for foreign spouses should ensure that immigrants "have the means to take care of themselves," because otherwise they might "become a burden to their families and society.").

⁵ Brenda S. A. Yeoh, Heng Leng Chee & Grace H. Y. Baey, *The Place of Vietnamese Marriage Migrants in Singapore*, 34 *THIRD WORLD Q.* 1927, 1931 (2013) (observing that Singaporean working-class men have found themselves marginalized in the marriage market. The largest group of single males consists of those aged between forty-five and fifty-four who have not completed a high school education. These men are chief seekers of Migrant Brides).

⁶ See *BEYOND SOC. SERVS., INTERNAL REPORT, EXPERIENCES OF FOREIGN BRIDES IN SINGAPORE* (2009) (on file with the organization) at 5–6.

⁷ Theresa Tan, *Bride and Gloom*, *STRAITS TIMES* (Sing.), Mar. 19, 2011, at D2–D4 (referring to Migrant Brides as "the new social underbelly").

⁸ *BEYOND SOCIAL SERVICES*, *supra* note 6, at 8.

tionalism (“FLE”).⁹ Family law exceptionalism is premised on the observation that the family and family law are treated as occupying a “unique and autonomous domain” apart from the market.¹⁰ The family is cast as an exceptional domain because it houses private and emotional relationships, carrying with it the expectation of altruism. The altruistic family is in opposition to the arms-length and individualized nature of the market, which carries the expectation of freedom to transact. Halley and Rittich believe that FLE is an ideology, precipitated by the rise of contract law as the law of the market. They endeavor to strip away “exceptionalism” and “put the family and market . . . back into contiguity.”¹¹ Hence, they prefer the terms “household” or “economic family,” as these terms better emphasize the distributive functions and social negotiations of a family unit within the market.¹²

The critical paradigm of FLE leads us to recognize that the regulation of the household does not simply occur within the artificially sequestered zone of family law, but rather, that it takes place in multiple legal sites. The foreground rules of family law (i.e., laws concerning marriage, divorce, and parent-child relationships) provide only a superficial snapshot of the true dynamic. In the Singaporean context, it is the background rule systems of immigration, labor, and welfare law that engineer the family as a productive economic unit and leave Migrant Brides as outsiders. I go further to argue that background rule systems condition the Migrant Brides’ experience of family law and constrain its application. The disparate impact of family law on Singaporean wives and Migrant Brides results in a bifurcation of women’s rights in Singapore. This conclusion echoes Jacobus tenBroek’s conception of a “dual system of family law,” in his case formally and substantively divided by income, and in this case, not only by income but also by immigration status.¹³

My project is to map these background rule systems as the terrain Migrant Brides must navigate and on which they construct their identities in Singapore. I am interested in both formal and informal norms—in both the letter of the law and how the law is understood and interacted with in practice. I argue that the background rule systems do not act monolithically; rather, they create vulnerabilities and advantages that Migrant Brides translate into bargaining endowments. Migrant Brides actively use these bargain-

⁹ Janet Halley & Kerry Rittich, *Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies of Family Law Exceptionalism*, 58 AM. J. COMP. L. 753 (2010).

¹⁰ *Id.* at 754.

¹¹ *Id.* at 758.

¹² *Id.*

¹³ Jacobus tenBroek, *California’s Dual System of Family Law: Its Origin, Development, and Present Status: Part I*, 16 STAN. L. REV. 257 (1964) (arguing that a different system of family law applies for the poor and the rich. The “family law of the poor” is characterized by higher state intervention into the private realm of the family. It derives its substantive rules and characteristic features from the central concept of the “poor law system,” public provision for the care and support of the poor.).

ing endowments in strategizing within Family, Market, and State. Thus, they are not passive victims trapped within coercive legal norms (or are rarely reduced to such immiseration), but rather active agents working within the background rules to shape the distributional consequences of their marriages.

In order to map the background rules and the women's negotiations within the household, I conducted in-depth interviews with ten Migrant Brides in Singapore in January 2012.¹⁴ I gathered their reflections on their family dynamic, household role division, and interactions with the State and Market through immigration, labor, and welfare laws. The experiences of these women form the fabric of my arguments, and their words are woven throughout this paper.¹⁵ It is worth noting that eight out of the ten Migrant Brides I interviewed were HIV-positive. While no specific statistics are available, Migrant Brides seem to be HIV-positive at a disproportionately higher rate than other women in Singapore.¹⁶ The disease is most often transmitted to them through sexual contact with their husbands. Being HIV-positive immediately creates a dead end for Migrant Brides, since individuals with HIV are banned from achieving permanent residence or citizenship in Singapore.¹⁷ Though the Ministry of Home Affairs typically deports foreigners with HIV, they have taken a more flexible stance on the foreign spouses of Singapore citizens (for the women I interviewed, this was manifested in the form of a Long Term Visit Pass).¹⁸ HIV-positive status exacerbates Migrant Brides' struggle with the background rule systems, increases their diffi-

¹⁴ I recorded more than twenty hours of interviews with two Indonesians, three Thais, three Filipinos, a Burmese, and a Cambodian. I identified my interviewees mainly through a volunteer who has worked closely with Migrant Brides at the Patient Care Centre for women with HIV for five years and has forged close friendships with them. I contacted some of these women through a church-run support group for Migrant Brides and others through a domestic worker who was related to one of them. The women's ages ranged from twenty-nine to forty-seven. Their Singaporean husbands were in their late forties to sixties. Full audio recordings, transcripts, and consent forms are on file with the author and available upon request, subject to redactions to protect the interviewees' privacy. I have footnoted each interview the first time it is referenced in the Article. Subsequently, I only footnote an interview when the interviewee is not already identified within the text.

¹⁵ To protect their anonymity, only pseudonyms are used. All quotes from the interviewees are italicized within the paper to distinguish them from academic quotes.

¹⁶ There are 4,193 people reportedly living with HIV in Singapore. In recent years, fewer than ten percent of reported cases have been among women, who are much more likely to be married than male HIV patients. See Ministry of Health, *Update on the HIV/AIDS Situation in Singapore 2012*, http://www.moh.gov.sg/content/moh_web/home/statistics/infectiousDiseasesStatistics/HIV_Stats.html, archived at <http://perma.cc/R3YH-M4MW>. Of the women seeking help at the Patient Care Center, which make up a large proportion of the total HIV patients in Singapore, most of them were foreign.

¹⁷ Prohibited immigrants include "any person suffering from Acquired Immune Deficiency Syndrome or infected with the Human Immunodeficiency Virus." Immigration Act (Cap 133, 2008 Rev. Ed.) s 8(3)(ba) (Sing.)

¹⁸ *News Release: Deportation of HIV-Positive Foreign Spouses of Singaporeans*, MINISTRY OF HOME AFFAIRS (MAY 27, 2000), http://www.mha.gov.sg/news_details.aspx?nid=MjUw-ko%2FYoh7M%2BM%3D, archived at <http://perma.cc/WTG7-W397>.

culties in achieving independence from their husbands, and seals their fate as perpetual outsiders in Singapore. However, I observed that the HIV-positive women were not incapacitated. They came up with remarkably creative strategies to circumvent the background rules. Their example speaks volumes about how women may strategize to change their circumstances even with limited legal endowments. Analyzing it enhances our understanding of Migrant Brides' agency.

In Part I of this Article, I dissect the phenomenon of Migrant Brides in Singapore and contextualize it within a broader framework of globalized labor and transnational female migration. I also examine the policy implications of the phenomenon. In Part II, I describe the theory of agency I employ and characterize Migrant Brides as complex agents who strategize both as individuals and in groups within the background rule systems. In Part III, I elaborate on the critical paradigm of family law exceptionalism and analyze the family as a site of power and negotiation on two levels: First, as the site of negotiations between private individuals within the household, and second, as a site of the State's ideological power. I theorize that on the household level, Migrant Brides are negotiating within a continuum ranging from "Sentimental Marriage" (characterized by romantic altruism of the "Family") to "Transactional Marriage" (characterized by pure individualistic "Market" relations).

In Part IV, I lay out the foreground rules of family law and show that they apply disparately to Migrant Brides as compared to Singaporean women, implicitly depriving them of many rights and duties in marriage. In Part V, I delve into the specific background systems of immigration, labor, and welfare law and the accompanying informal norms that arise out of Migrant Brides' interactions with these systems. I demonstrate that the background rules form the prism through which the State applies the foreground rules of family law to Migrant Brides, resulting in its distortion. In Part VI, I return to Migrant Brides as agents within the household and demonstrate how the background and foreground rules structure "breaking points" (Migrant Brides' levels of tolerance to their familial circumstances) and alternatives to the bargaining situation (their options should they choose to leave their marriages). In the Conclusion, I examine how the government's recent decision to allow a limited group of Migrant Brides access to work and healthcare subsidies, which took effect on April 1, 2012,¹⁹ may affect the bargaining endowments and strategies of Migrant Brides.

I. DISSECTING THE PHENOMENON

While international marriages in Singapore are not new, the Migrant Brides phenomenon has become increasingly prevalent in recent years. From

¹⁹ *Singapore Parliamentary Debates, Official Report* (1 March 2012) vol 88 (Mr. Teo Chee Hean, Deputy Prime Minister).

2000 to 2010, there was a twenty-nine percent increase in marriages of Singapore citizens to non-residents (defined as people who do not have permanent status in Singapore).²⁰ The Migrant Bride phenomenon appears to be a reaction to changes in gender roles in recent decades; Singaporean women have made great advances in the workplace and now form forty-four percent of the resident workforce.²¹ There has been a corresponding decline in marriage rates²² as women prioritize careers ahead of family formation.²³ Household and traditional care roles have been outsourced to live-in domestic workers from developing countries.²⁴ Now it appears that marriage itself is being outsourced.

The movement of Southeast Asian women into Singapore as Migrant Brides has been accelerated by regional economic disparities and is a manifestation of the general trend towards the feminization of migration.²⁵ The feminization of poverty in developing countries and the lack of opportunities for women at home have encouraged many to migrate. The patriarchal structure of Asian society may also encourage families to send female members overseas to marry and work to increase household income.²⁶ This movement correlates with a demand in developed countries such as Singapore for gendered work—as domestic workers, sex workers, and wives—and for non-gendered low-wage work.²⁷

²⁰ NAT'L POPULATION AND TALENT DIV., POPULATION IN BRIEF 2011 23 (2011), archived at <http://perma.cc/K56Y-BCVR>. Marriages between citizen grooms and non-citizen brides made up a majority (seventy-seven percent) of such marriages in 2010. *Id.* at 11.

²¹ MANPOWER RESEARCH AND STATISTICS DEP'T, MINISTRY OF MANPOWER, SINGAPORE WORKFORCE, 2012 1 (2012), archived at <http://perma.cc/VU8Q-SX5P>.

²² See NAT'L POPULATION AND TALENT DIV., *supra* note 20, at 22.

²³ See Gavin Jones, *Late Marriage and Low Fertility in Singapore: The Limits of Policy*, 10 JAPANESE J. POPULATION 89, 95 ("The tensions between making the most of the opportunities opened by their education and raising a family is particularly acute for educated women.").

²⁴ The Ministry of Manpower reports 214,500 domestic workers in Singapore in December 2013. See *Foreign Workforce Numbers*, MINISTRY OF MANPOWER, <http://www.mom.gov.sg/statistics-publications/others/statistics/Pages/ForeignWorkforceNumbers.aspx> (last visited March 30, 2014), archived at <http://perma.cc/GR85-N5Y6>. This amounts to approximately one foreign domestic worker for every five households in Singapore. See SINGAPORE DEP'T. OF STATISTICS, SINGAPORE CENSUS OF POPULATION 2010 STATISTICAL RELEASE 2: HOUSEHOLDS AND HOUSING 3 (2011) (noting that Singapore has 1.15 million households).

²⁵ Bernadette P. Resurreccion, *Gender Trends in Migration and Employment in Southeast Asia*, in GENDER TRENDS IN SOUTHEAST ASIA: WOMEN NOW, WOMEN IN THE FUTURE 31–33 (Theresa W. Devasahayam ed., 2009); see also KEIKO YAMANAKA & NICOLA PIPER, UNITED NATIONS RESEARCH INST. FOR SOC. DEV., FEMINIZED MIGRATION IN EAST AND SOUTHEAST ASIA: POLICIES, ACTIONS AND EMPOWERMENT 7–11 (2005) (discussing the economic and social reasons for the feminization of migration in Southeast Asia).

²⁶ Jan Jindy Pettman, *Women on the Move: Globalisation and Labour Migration from South and Southeast Asian States*, 12 GLOBAL SOC'Y 389, 392–93 (1998).

²⁷ See Brenda S. A. Yeoh et al., *Global Cities, Transnational Flows and Gender Dimensions, The View from Singapore*, 91 TIJDSCHRIFT VOOR ECONOMISCHE EN SOCIALE GEOGRAFIE 147, 153–56 (2000).

The dominant Singaporean feminist reading of the Migrant Bride phenomenon is that Singaporean men are trying to substitute the “assertive and confident women” in their own country with “docile and submissive wives” from the developing world.²⁸ The phenomenon has also been cast in terms of the East-West dichotomy. Singaporean women have lost the Asian feminine ideals of purity, subservience, and devotion to the family unit. The ideology posits that Migrant Brides recapture these traditional ideals, in which the wife defers to the husband as head of the household, undermining the model of “equal partnership” increasingly preferred by Singaporean women.²⁹ Academics have observed that “[t]he increasing proportion of Singaporean men seeking ‘foreign brides’ . . . reflects the growing mismatch in marriage expectations between the two largest groups of singles [in Singapore]: the independent-minded, financially well-resourced, graduate women with sophisticated expectations of marriage partners, and . . . blue-collar male workers . . . with a preference for women willing to uphold traditional gender roles and values.”³⁰

The migrant women I interviewed were remarkably aware of the mechanics of their marriages and their husbands’ less-than-romantic motivations for marrying them. They intuitively articulated what social scientists refer to as “hypergamy”: the practice of women marrying men who are socially and economically better off than they are for the purpose of advancement. Kamala, a forty-one-year-old Thai woman and Migrant Bride said:

Singapore men look for women who are lower than them. Singapore women look for men who are higher than them. My husband says that the standard and expectation of Singaporean girl is higher and higher and he cannot make it That’s why most of the Singaporean men looked for foreigners. . . . Singaporean ladies’ standards are different from us After they marry, they always think they have the right to choose their own lives. They are not like foreign ladies, dependent on

²⁸ ASS’N OF WOMEN FOR ACTION AND RESEARCH, BEYOND HAPPILY EVER AFTER: MAKING A MATCH BETWEEN SINGAPOREAN GROOMS AND FOREIGN BRIDES 1 (2006), archived at <http://perma.cc/5ZKQ-QC7M>.

²⁹ This ideology is evidenced in advertising material for matchmaking agencies. See, e.g., Cathryn Tan, *Why You Should Choose Vietnam Village Girl Over City Girl*, LOVE IN VIETNAM (Jan. 2011), <http://vietnamvillagegirls.blogspot.com/2011/01/why-i-choose-vietnam-girl-over.html>, archived at <http://perma.cc/P5L3-MNDP>. This blog post, which is tagged “Why I Choose [sic] Vietnam Village Girl over Singaporean Girl,” contrasts “pure and innocent” village girls with “polluted and corrupted” city girls. *Id.* It is also captured in an interview with a forty-two-year-old technician married to a Balinese woman. Theresa Tan, *Singapore Men and Their Foreign Asian Brides*, SUNDAY TIMES (Sing.), Sept. 30, 2012, at 11. He states that that he could not “go near” a Singaporean woman, much less date one, as they are “fussy,” whereas “to a Balinese woman, money is not everything.”

³⁰ Brenda S. A. Yeoh, Chee Heng Leng & Vu Thi Kieu Dung, *Commercially Arranged Marriage and the Negotiation of Citizenship Rights Amongst Vietnamese Marriage Migrants in Multiracial Singapore*, 14 ASIAN ETHNICITY 139, 145 (2013).

*their husbands, we just do what our husbands wants, whatever they want to eat, we will cook. Singaporean ladies won't do this We always submit.*³¹

Kamala evocatively described how Migrant Brides recognize the instrumentality of their marriages for both their husbands and themselves. She also indicated an awareness of a perceived hierarchy of women, with their Singaporean counterparts as more independent. This hierarchy is reinforced by the disparate family law that applies to each group.

A. *Avenues of Marriage Migration*

Migrant Brides enter Singapore in three principal ways: through commercial matchmaking agencies, through social matchmaking, or as transient domestic workers.³² Commercial matchmaking agencies organize whirlwind five-day marriage tours in developing countries, during which a prospective groom can expect to have a bevy of women paraded before him, make a selection, and marry a bride.³³ These matchmaking agencies entered the market in the year 2000 and have since burgeoned.³⁴ The price of procuring a foreign bride has fallen sharply in recent years as matchmakers fly women into Singapore to make it easier for men to pick wives.³⁵ This has made it more affordable for low-income men.

The second and far more common way for Migrant Brides to enter Singapore is through social matchmaking. Introductions are made informally by other Brides who are already settled in Singapore or by migrant men who work in Singapore. The intermediaries may receive a small commission (of up to S\$3,000), which blends a commercial element into the traditional Asian practice of matchmaking.³⁶

³¹ Interview with Kamala, in Singapore (Jan. 5, 2012) (transcript on file with the author).

³² Eight interviewees were socially matched with their Singaporean husbands while still in their home countries. Two interviewees met their husbands while working in Singapore on work permits. None came via commercial matchmaking, although they were friends with women who did.

³³ Theresa Tan, *Silent Cries of Foreign Brides*, STRAITS TIMES (Sing.), Sept. 16, 2009, at A2.

³⁴ Tan, *Bride and Gloom*, *supra* note 7, at D2. The process of acquiring a foreign bride used to cost around S\$16,000 (U.S. \$12,900), but it now costs about S\$800 (U.S. \$685) as matchmakers fly women into Singapore to make it easier for men to pick wives. *Id.* There are also schemes to pay for these brides in installments; in 2007, a Singapore matchmaking agency offered Chinese brides for a down payment of just S\$1 (U.S. \$0.70). Crystal Chan, *Pay \$167 a Month for Credit Card Brides*, NEW PAPER (Sing.), June 1, 2009, at 2–3.

³⁵ Tan, *Bride and Gloom*, *supra* note 7, at D2.

³⁶ Theresa Tan, *Vietnamese Brides Harder to Get Now*, SUNDAY TIMES (Sing.), Aug. 5, 2012, at 6 (describing that social matchmaking supersedes commercial matchmaking agencies as the chief way in which Migrant Brides are introduced to Singaporean husbands, due to stringent rules regulating marriage brokering in sending countries such as Vietnam).

Migrant Brides also meet and form relationships with Singaporean men while on work permits in Singapore, predominantly as domestic workers. This method compounds the difficulty in achieving permanent immigration status. The Work Permit Conditions (“Conditions”) for domestic workers prohibit migrant women from marrying Singapore citizens or permanent residents, inside or outside of Singapore, even after their work permit has expired, without permission of the Work Permit Controller.³⁷ In granting permission for such a marriage, the Work Permit Controller will consider whether the couples are likely to be financially self-reliant. These standards are far from transparent, and it can be tremendously difficult to win permission.³⁸ The Conditions also prohibit migrant women from becoming pregnant or delivering any child in Singapore even after their work permits expire.³⁹

In addition, the Conditions explicitly state that domestic workers “shall not be involved in any illegal, immoral or undesirable activities, including breaking up families in Singapore.”⁴⁰ This prohibition exemplifies the perception of migrant women as “invaders” and “destroyers” of the Singaporean family unit. The Conditions ensure that the lives of female transient workers are regulated long after their labor contracts are completed, resulting in the transnational separation of some Migrant Brides and their Singaporean families. Bernadette, a former domestic worker, lives with her two-year-old daughter in the Philippines and visits her husband in Singapore three times per year on a tourist visa.⁴¹ She feels she has no hope of living in Singapore permanently and has to adjust to living between two countries.

The avenues for migration reveal that Market/Family and Contract/Status are distinctly segregated in Singapore’s immigration regime. “Unskilled” migrant women are locked into the cast-iron categories of “Bride” or “Worker” when they enter Singapore. The law makes it extremely difficult to transcend this dichotomy. Domestic workers are waged employees of households, charged with performing care-giving functions in a detached way. They are hired on a purely contractual basis for a “limited purpose,”⁴²

³⁷ Employment of Foreign Manpower (Work Passes) Regulations, First Schedule: Conditions of Work Permit Part II (Conditions To be Complied with by Foreign Employee who is Domestic Worker) (Cap 29) [hereinafter Work Permit Conditions for Domestic Workers], cl 8.

³⁸ The extent of this difficulty is revealed in the example of a Singaporean man who appealed to the Ministry of Manpower twenty times over six years for permission to marry his Filipina girlfriend, a former domestic worker. The man’s appeal was rejected because his S\$1,700 income was deemed too low to support a family. He was rejected again when his income increased to S\$2,500. Desmond Ng, *We’re Not Young Anymore*, NEW PAPER (Sing.), Oct. 22, 2008.

³⁹ Work Permit Conditions for Domestic Workers, *supra* note 37, at cl 9.

⁴⁰ *Id.* at cl 10.

⁴¹ Telephone interview with Bernadette (Jan. 15, 2012) (transcript on file with author).

⁴² *Singapore Parliamentary Debates, Official Report* (17 March 1982) vol 41 at col 1035 (Prof. S. Jayakumar, Minister of State for Law and Home Affairs).

with no possibility of achieving any sort of status by virtue of their connection to a Singapore family, even though many form deep emotional connections with the children under their care. The Marriage Restriction Policy (as the government bluntly terms it) in the Conditions is designed to stop domestic workers from settling in Singapore.⁴³

In contrast, unskilled women who enter as “Brides” are forever unable to shake off that designation in government policy and popular terminology. Nicola Piper and Mina Roces argue that Migrant Brides “almost never become ‘women,’ [and] still less do they become workers, or political actors and cultural mediators.”⁴⁴ In the legal rules and the ideology that shapes them, these women are frozen in a relational identity bestowed upon them on their wedding day. The term “Brides” is a status within the domain of Family, carrying with it reproductive and care-giving duties, which cannot be translated to the Market. My analysis of Migrant Brides as agents who strategize challenges this classification and presents a multi-dimensional view of their role as conscious social actors and potential contributors to Singapore society.

B. Policy Implications of the Phenomenon

The popular portrayal of Migrant Brides in radical feminist advocacy is that of victims coerced into loveless marriages by oppressive structures of poverty and patriarchy.⁴⁵ Some radical feminist advocates propose a complete prohibition of commercialized matchmaking as a solution to the problem.⁴⁶ They conflate commercialized matchmaking with trafficking, and

⁴³ *Singapore Parliamentary Debates, Official Report* (21 September 2004) vol 78 at cols 665–69 (Mr. Hawazi Daipi, Senior Parliamentary Secretary to the Minister of Manpower). Mr. Daipi states that large numbers of foreign work permit holders are permitted to work in Singapore only if they agree to Singapore’s marriage restriction policy, in order to maintain Singapore’s social equilibrium. *Id.* See also *Singapore Parliamentary Debates, Official Report* (19 April 2004) vol 77 at cols 2738–40 (Dr. Ng Eng Hen, Acting Minister for Manpower). Dr. Ng responds to a question about what recourse Singaporean husbands have if their foreign wives (who were formerly domestic workers) are unable to settle in Singapore by stating, “I would advise them to realise that work permit holders have this explicit condition and not to be in that situation in the first place.”

⁴⁴ Nicola Piper & Mina Roces, *Introduction: Marriage and Migration in an Age of Globalization, in WIFE OR WORKER?: ASIAN WOMEN AND MIGRATION* 1, 5 (Nicola Piper & Mina Roces eds., 2003).

⁴⁵ See, e.g., ABIGAIL STEPINITZ, *THE POPPY PROJECT, MALE-ORDERED: THE MAIL-ORDER BRIDE INDUSTRY AND TRAFFICKING IN WOMEN FOR SEXUAL AND LABOR EXPLOITATION* 4–5 (2009) (arguing that women may be “forced into servile marriage” when they enter a marriage for predominantly socio-economic reasons, as the men “rescuing” these women will often expect a certain level of domestic and sexual labor as repayment. The report advocates for women in “servile marriages” to be acknowledged as victims of trafficking, and their “consumer-husbands” to be identified as traffickers).

⁴⁶ See Kathryn A. Lloyd, Comment, *Wives for Sale: The Modern International Mail Order-Bride Industry*, 20 *N.W. J. INT’L L. & BUS.* 341, 344 (2000) (identifying the mail-order bride industry as “one of the most open forms of trafficking women into developed nations”). In this comment, Lloyd describes various arguments that scholars and advocates have made for a complete prohibition of commercialized match-making, *id.* at

sideline the possibility of a woman's agency in marriage migration. Jane Kim argues that the "Foreign-Bride Industry" facilitates trafficking "[v]eiled behind the . . . sanctified institution of marriage and behind protections of liberty and [marital] privacy."⁴⁷ The marriage relationship obscures the exploitative commercial transaction allowing trafficking "to be overlooked, tolerated, and often excluded from criminalization."⁴⁸ Suzanne Jackson draws a connection between migrant matchmaking and "women's experiences of slavery" in nineteenth-century America, as to her, they both involved experiences of forced and coerced sexual domestic services.⁴⁹

Other feminists link migrant matchmaking and prostitution by asserting that the two practices are "founded upon a power imbalance, which ultimately, creates a nesting ground for exploitation."⁵⁰ They assert that their theoretical justifications for outlawing prostitution apply and may be "even stronger" in the matchmaking context, as the structural coercion is heightened by how "brides are legally bound to their male consumers through the marriage contract and immigration regulations."⁵¹ Some feminist advocates go as far as to allege that international marriage brokering does not simply facilitate trafficking but per se constitutes the trafficking of women.⁵² They assert that the informational and power imbalances between Migrant Brides and their husbands are so severe that even women who consent to matchmaking can be deemed to be trafficked.⁵³ The concept of per se trafficking is a perverted extension of the international law definition of Trafficking in Persons as defined in the Trafficking Protocol, which requires that the prohibited means of threat, use of force, or other forms of coercion should be present before trafficking can be found.⁵⁴ According to the Guidance Note

351–58, and ultimately she suggests international regulation to control the supply and demand forces in the "mail-order bride industry" on a global level. *Id.* at 364.

⁴⁷ Jane Kim, Note, *Trafficked: Domestic Violence, Exploitation in Marriage, and the Foreign-Bride Industry*, 51 VA. J. INT'L L. 443, 445 (2011).

⁴⁸ *Id.*

⁴⁹ Suzanne H. Jackson, *Marriages of Convenience: International Marriage Brokers, "Mail-Order Brides," and Domestic Servitude*, 38 U. TOL. L. REV. 895, 912 (2007); see also Suzanne H. Jackson, *To Honor and Obey: Trafficking in "Mail Order Brides"*, 70 GEO. WASH. L. REV. 475 477–78 (2002) ("When marriage provides cover for severe exploitation of immigrant women, abuses are more likely to be categorized as domestic violence rather than sex trafficking.")

⁵⁰ 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, 4 (2011).

⁵¹ Lloyd, *supra* note 46, at 357–58.

⁵² Kirsten M. Lindee, *Love, Honor, or Control: Domestic Violence, Trafficking and the Question of How to Regulate the Mail-Order Bride Industry*, 16 COLUM. J. GENDER & L. 551, 554, 566–68 (2007).

⁵³ *Id.*

⁵⁴ " 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person . . ." Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against

promulgated by the United Nations Office on Drugs and Crime, the “abuse of a position of vulnerability” limb of the Trafficking Protocol definition would only qualify as a means of trafficking in persons if “that situation of vulnerability has been abused to the extent that the victim’s consent is negated” and the victim believes that “submitting to the will of the abuser is the only real or acceptable option available to him or her.”⁵⁵ A woman’s consensual participation in international marriage brokering would only in very exceptional circumstances cross this high threshold.

The ideology of Brides as trafficked victims without agency has seeped into policy-making in both receiving countries and the Brides’ countries of origin. The title of the 2004 United States Senate hearings, “Human Trafficking: Mail Order Bride Abuses,” speaks volumes about this dangerous conflation in policy.⁵⁶ In the hearings, John R. Miller, then Director of the Trafficking in Persons Office in the State Department, reduced Migrant Women to a series of “vulnerabilit[ies]” (informational, economic, cultural, and legal) in his call for protective regulation for these women.⁵⁷ The resultant International Marriage Broker Regulation Act (2005) legislates a host of requirements to regulate commercialized matchmaking agencies in the United States and to reduce the ability of citizen husbands to sponsor the status of their wives, including a lifetime limit on the husband’s ability to obtain fiancée or spousal visas.⁵⁸ However, these limitations may simply drive potential husbands to offshore marriage brokers or social matchmaking.⁵⁹ The Philippines has prohibited commercialized matchmaking in its entirety in order to “protect Filipino women from being exploited in utter disregard of human dignity in their pursuit of economic upliftment.”⁶⁰

Transnational Organized Crime, art. 3(a), Dec. 12, 2000, 2237 U.N.T.S. 319. The concept of *per se* trafficking originates from Kathleen Barry, who describes it as a “situation[] where women or girls cannot change the immediate conditions of their existence; where regardless of how they got into those conditions, they cannot get out; and where they are subject to sexual violence and exploitation.” KATHLEEN BARRY, *FEMALE SEXUAL SLAVERY* 40 (1984).

⁵⁵ UNITED NATIONS OFFICE ON DRUGS AND CRIME, GUIDANCE NOTE ON ‘ABUSE OF POSITION OF VULNERABILITY’ AS A MEANS OF TRAFFICKING IN PERSONS IN ARTICLE 3 OF THE PROTOCOL TO PREVENT SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME 2–3 (2012). *See generally* UNITED NATIONS OFFICE ON DRUGS AND CRIME, ABUSE OF POSITION OF VULNERABILITY AND OTHER “MEANS” WITHIN THE DEFINITION OF TRAFFICKING IN PERSONS (2012).

⁵⁶ *See Human Trafficking: Mail Order Bride Abuses: Hearing Before the Subcomm. on East Asian and Pacific Affairs of the Comm. on Foreign Relations*, 108th Cong. (2004) [hereinafter *Hearing on Human Trafficking*].

⁵⁷ *Id.* at 19–22 (statement of John Miller, Dir. of State Dep’t Office to Monitor and Combat Trafficking in Persons).

⁵⁸ International Marriage Broker Regulation Act of 2005, 8 U.S.C. §§ 1184(d); 1184(r); & 1375a (2006).

⁵⁹ *See* Linda Kelly, *Marriage for Sale: The Mail-Order Bride Industry and Changing Value of Marriage*, 5 J. GENDER RACE & JUST. 175, 185 (2001) (describing an argument that criminalizing the mail-order bride industry could drive the practice underground).

⁶⁰ Rep. Act No. 6955, § 1 (1990) (Phil.); *see also* Lindee, *supra* note 52, at 597–98 (describing the prohibition of commercialized matchmaking in the Philippines).

Vietnamese law similarly prohibits commercialized matchmaking for foreigners; brokers of such marriages can face hefty fines and long jail sentences. Local newspapers report occasional crackdowns on operators.⁶¹

In Singapore, a Member of Parliament questioned what the government was doing to ensure that the foreign brides of Singaporean men were not victims of abuse and trafficking. The Minister of Home Affairs responded by referencing Singapore's framework of border control, specifically that "tough enforcement actions and security checks [are] conducted at the various checkpoints [to] deter and detect the movement of illegal immigrants."⁶² This does not yet represent a clear government policy to prohibit commercialized marriage migration. However, the automatic association of marriage migration with the abuse and trafficking of women and the idea that increased border security may protect these women is nonetheless deeply worrying.

While trafficking may indeed occur in some cases of migrant marriages, I argue that they are in the minority and certainly not grounds for prohibiting the practice of matchmaking. It is an insult to migrant women's agency to regard them as uniformly unable to consent to their marriages and as trapped within their circumstances. My research demonstrates that many see themselves as actively making choices and strategizing within the household. Defining Migrant Brides as a category is not just a technical exercise, but rather a deeply political one. Drawing from Michel Foucault's analysis of governmentality,⁶³ this exercise involves "competing attempts to depict the domain . . . in a way that grasps its real nature and represents it as a field for governmental intervention."⁶⁴ For example, the term "Mail-Order Brides," prevalent in the West, portrays women as passive commodities brought into the country at the will of men who "buy" them and consume their services. A key Singapore feminist group is now seeking to reshape the discourse within the country by advocating that "Foreign Brides" be reconceived as "Wives of Singapore Citizens" and thus deserving of greater legal endowments and options.⁶⁵ My project adds ammunition to their intervention.

⁶¹ Hong-zen Wang and Shu-ming Chang, *The Commodification of International Marriages: Cross-border Marriage Business in Taiwan and Viet Nam*, 40 INT. MIGRATION 93, 102 (2002); Tan, *Vietnamese Brides Harder to Get Now*, *supra* note 36. A Singaporean operator of a commercial matchmaking agency described how his Vietnamese middle man was sentenced to twelve years of jail in Vietnam for human trafficking. *Id.*

⁶² *Singapore Parliamentary Debates, Official Report* (19 July 2010) vol 87 at col 805 (Mr. Wong Kan Seng, then-Minister of State for Home Affairs). Mr. Wong spoke about Singapore's framework of criminalizing prostitution and trafficking in women and girls, which can be invoked against "unscrupulous agencies." *Id.*

⁶³ Michel Foucault, *The Subject and Power*, in MICHEL FOUCAULT: BEYOND STRUCTURALISM AND HERMENEUTICS 208–26 (Hubert L. Dreyfus & Paul Rabinow eds., 1982).

⁶⁴ CLAUDIA ARADAU, *RETHINKING TRAFFICKING IN WOMEN: POLITICS OUT OF SECURITY* 19 (2008).

⁶⁵ ASS'N OF WOMEN FOR ACTION AND RESEARCH, *HELPING WIVES OF SINGAPORE CITIZENS* (May 2012) (publication forthcoming) (on file with the organization) [hereinafter *AWARE Report 2012*]; *see also* ASS'N OF WOMEN FOR ACTION AND RESEARCH, *CEDAW SHADOW REPORT* (May 2011) at 37–38, *archived at* <http://perma.cc/99Z-KD76>.

C. *The Marriage Migration Decision*

Ignoring a woman's active decision to migrate reiterates the tired concept that female migrants are merely "passive" or "associative" movers who do not make the economic decision to migrate in their own right.⁶⁶ It is too simplistic to deem marriage migration as wholly disempowering for women. Women may enter marriage for a host of instrumental purposes. For women in developing countries, marriage migration can be a valuable tool for advancement.⁶⁷ My interviewees affirmed that, for them, marriage migration was a self-conscious individual and family strategy to achieve economic improvement, social mobility, and other intangibles like emotional fulfillment and respect from their community.

Samnang from Cambodia, for example, represented her choice to move to Singapore as a way of breaking away from oppressive local conditions. Her life story embodies the full catalogue of the worst ills that plague women in Southeast Asia: child labor, human trafficking, sexual slavery, and gender violence. At age seven, she was sent away from Cambodia to work as a housemaid in Vietnam to fuel her mother's gambling addiction. When Samnang was fifteen, her mother sold her to be a sex slave to a sixty-year-old man who raped her every night for two years. She ran away and was subsequently sold by a trusted friend to a brothel on the Laos/Cambodia border. There, she was forced to have sex with tourists and regularly beaten by pimps. All this happened before she reached the age of eighteen. Several years after escaping the brothel, Samnang chose to marry a Singaporean in order to depart from her life of victimization. "*I wanted to die or to go as far as possible away from my country . . . I have been controlled. I have been tortured . . . I can never forget,*" she said.⁶⁸ Samnang described her sense of destiny on her first plane ride ever to Singapore to marry her husband: "*Singapore was so beautiful. I felt that just being here would give me meaning.*"

For some of these women, marrying a foreign man had been a lifelong ambition. Elsa from the Philippines said candidly, "*I have a dream from when I was a child—I want to marry a foreigner. An American man. Because I wanted blonde and curly hair for my child.*"⁶⁹ For Fauziah, marriage migration was an intergenerational strategy within her family. After her Indonesian father's death, her mother remarried three times, the last to a Sin-

⁶⁶ Rajni Palriwala & Patricia Uberoi, *Exploring the Links: Gender Issues in Marriage and Migration*, in MARRIAGE, MIGRATION AND GENDER 23, 25 (Rajni Palriwala & Patricia Uberoi, eds., 2008).

⁶⁷ LUCY WILLIAMS, GLOBAL MARRIAGE: CROSS-BORDER MARRIAGE MIGRATION IN GLOBAL CONTEXT 70 (2010).

⁶⁸ Interview with Samnang, in Singapore (Jan. 7, 2012) (transcript on file with the author). This interview was conducted in Mandarin and translated into English by the author.

⁶⁹ Interview with Elsa, in Singapore (Jan. 6, 2012) (transcript on file with the author).

gaporean man.⁷⁰ My interviewees' decisions to marry were reinforced by their communities, as migrant marriages gave them social capital. Kamala said, "*The people in my village said it is good for you to go further, not just everyday be a farmer, life never change.*" Fauziah's relatives encouraged her marriage because they hoped to benefit when she became rich.⁷¹

Six of the women I interviewed were dating local men at the time they met their Singaporean husbands. While we may imagine them to be caught in the perennial dilemma of "romantic love" and "cold pragmatism," the trope of a woman torn between listening to her head or her heart was simply not part of their conceptions. In reflecting on their decision-making process, they were remarkably devoid of sentimentality. Elsa's careful weighing of the costs and benefits of her decision, balancing personal aspiration and family responsibility through alternate realities with both men was illustrative:

If I marry [my Filipino boyfriend], I won't have a future, as he does not have a permanent job. . . . My sisters [who are married to Filipino men] are not happy. They have so many children that they cannot afford to raise and their husbands are drunks. My father struggled a lot to raise me. I told him I will give him happiness before he dies. I can provide for him if I marry a Singaporean. I have suffered a lot since I was young, why should I suffer again? So I said, if I get married, I want a good future. I am going to depend on my husband and he is not going to depend on me.

Elsa ended up marrying the Singaporean even before she broke up with her Filipino boyfriend. Her thought process affirms Eleonore Kofman's idea that migrant women have complex and layered motivations, which cannot be boiled down to a simple economic rationale.⁷² The desire to achieve an emotionally fulfilling family life is inextricable from "aspirations to an adequate level of prosperity, safety and security."⁷³

Four interviewees stated that they married Singaporeans because they were not well-placed in the marriage market back home. Marcia was unmar-

⁷⁰ Interview with Fauziah, in Singapore (Jan. 3, 2012) (transcript on file with the author).

⁷¹ See generally Danièle Bélanger & Tran Giang Linh, *The Impact of Transnational Migration on Gender and Marriage in Sending Communities of Vietnam*, 59(1) CURRENT SOC. 59 (2011) (describing the enhanced power and status enjoyed by emigrant daughters at home due to their remittances and the resulting significant transformation of the position of women in households).

⁷² Eleonore Kofman, *Female 'Birds of Passage' a Decade Later: Gender and Immigration in the European Union*, 33 INT. MIGRATION REV. 269, 271 (2009) (highlighting the diversity of nationalities, backgrounds, class positions, employment and familial situations of migrant women to challenge the reductionist frameworks in which immigrant women are still placed).

⁷³ See WILLIAMS, *supra* note 67, at 72 (suggesting that it is a mistake to treat emotional fulfillment and pragmatic concerns as separable in the context of Migrant marriages).

ried at twenty-seven, old by Filipino standards.⁷⁴ Mali and Kamala faced a similar situation at ages twenty-five and twenty-three, respectively. Dawan had a young son out of wedlock, which Thai men could not accept.⁷⁵ Samnang had a past in sex work; she said, “*I was damaged, and [my husband] accepted me.*” Migrant women’s vulnerabilities in the marriage market parallel their husbands’ rationales for marrying foreign women. Singaporean husbands’ low-income and blue-collar jobs limit their bargaining endowments for marriage with “demanding” Singaporean women. Their relative disabilities cast both Migrant Bride and husband as equally interested parties meeting in the market for the purpose of forming a household.

The women I interviewed consistently viewed their decision to marry a Singaporean as an inroad to achieving lifestyles that would not be possible in their countries. Fauziah saw migration as a way of leaving gender inequalities she faced: “*In Indonesia, women no need to go school. Women must go kitchen.*” Kamala felt she was escaping the more oppressive dynamic in a relationship with a Thai man: “*Singapore man is more responsible than Thai man . . . Thai man always . . . slap and beat you.*” Elsa felt she had more control over her reproductive choices in Singapore: “[In the Philippines,] *we have too many children . . . [Here] I have just one child. I can give her anything she wants.*” She also took pride in the material comforts she gained, which would have been impossible in the Philippines: “*I am so proud of my nice house, my clean surroundings.*” Migrant Brides strongly felt that marriage was a strategy for familial progress as it opened up opportunities for their children: “*My children . . . [in high school] learn more than at my country’s university,*” said Fauziah proudly.

Kamala was adamant that her friends who came to Singapore through commercialized matchmaking had chosen to marry Singaporean men, stating “[*t*]they are living in a poor country. . . . They cannot move on in the world. This is how they find a way to make their life and their future better. Nobody is forcing them.” Her view is affirmed by an empirical study of Vietnamese wives involved in commercially-matched marriages in Singapore, which concluded that the women were active agents in the negotiation of their marriages.⁷⁶ The way Migrant Brides express their will in their marriage decisions militates against the idea that they are compelled solely by structural factors and prompts us to reexamine our concept of agency.

⁷⁴ Interview with Marcia, in Singapore (Jan. 8, 2012) (transcript on file with the author).

⁷⁵ Interview with Dawan, in Singapore (Jan. 15, 2012) (transcript on file with the author).

⁷⁶ Brenda S. A. Yeoh et al., *Global Householding and the Negotiation of Intimate Labour in Commercially-Matched International Marriages between Vietnamese Women and Singaporean Men*, 51 GEOFORUM 284, 290–91 (2011).

II. MIGRANT BRIDES AS AGENTS

According to social anthropologist Norman Long, “The notion of agency attributes to the individual actor the capacity to process social experience and to devise ways of coping with life, even under the most extreme forms of coercion.”⁷⁷ By characterizing Migrant Brides as active agents, I do not intend to blithely dismiss the coercive conditions they face or to deny their victimization in Singapore. However, I do endeavor to depart from the traditional interpretations of Migrant Brides, which focus solely on their weakness and vulnerability as women, by turning the focus onto their *capacity*. I believe that reconceiving migrant women as agents may be a crucial corrective to the pure victimhood narrative. Stereotypes of suffering⁷⁸ feed into the State’s justification for denying Migrant Brides permanent residence and citizenship, as they reinforce the idea that these women are burdens to society. The victimhood narrative may also lead to overly protective legislation, as we have already seen in sending and receiving countries, such as the Philippines and the United States. This “protectionist” approach limits migration options and potential avenues of progress for women from the developing world. Recognizing Migrant Brides as agents paves the way for viewing them as contributors to social and political life in the receiving state.

At the same time, I do not seek to romanticize “resistance,” with no regard to the backdrop of conditions that precipitate it. I strive for balance in my conception of agency. Ratana Tosakul emphasizes that it is inaccurate to view women as either “passive victims or liberated characters independent from existing socio-political-economic structures.”⁷⁹ In a similar vein, Saba

⁷⁷ Norman Long, *From Paradigm Lost, to Paradigm Regained; The Case for an Actor-Oriented Sociology of Development*, in BATTLEFIELDS OF KNOWLEDGE: THE INTERLOCKING OF THEORY AND PRACTICE IN SOCIAL RESEARCH AND DEVELOPMENT 16, 22 (Norman Long & Ann Long eds., 1992).

⁷⁸ A notable example of perpetuating stereotypes of suffering can be found in the writings of *New York Times* columnist Nicholas Kristof. His overt focus on the structural incapacitation of third-world women, as opposed to their agency, re-inscribes them into a narrative of Western superiority, which casts them as victims and objects to be acted upon. See, e.g., Nicholas D. Kristof, *From ‘Oprah’ to Building a Sisterhood in Congo*, N.Y. TIMES, Feb. 3, 2010, archived at <http://perma.cc/7NG2-KCPL>; Nicholas D. Kristof, *Sewing Her Way Out of Poverty*, N.Y. TIMES, Sept. 14, 2011, archived at <http://perma.cc/QP49-PEA4>. In a Singaporean context, the media has been equally preoccupied with stereotypes of suffering. Newspaper articles on “Foreign Brides” cast them as victims, and construct “a ‘third-world’ Asia representing poverty and backwardness” in opposition to developed Singapore. Ting Ting Chen, *Marrying from ‘Asia’ to Singapore: Gender and Ethnicized Citizenship* (2010) (unpublished Master’s Thesis, Lund University) (on file with author). Ting Ting Chen analyzes how Foreign Brides are represented in Singapore media. The headlines of newspaper articles are illustrative: “Imported wives left in the lurch,” “Silent cries of foreign brides.” *Id.* at 58. Chen points out that in an article about the abandonment of a Migrant Bride by her husband, the lawyer, matchmaker, and husband are quoted directly, but the woman remains unquoted. *Id.* at 37.

⁷⁹ Ratana Tosakul, *Cross-Border Marriages: Experiences of Village Women from Northeastern Thailand with Western Men*, in ASIAN CROSS-BORDER MARRIAGE MIGRATION: DEMOGRAPHIC PATTERNS AND SOCIAL ISSUES 179, 197 (Wen-Shan Yang & Melody Chia-Wen Lu eds., 2010). See also Piper & Roces, *supra* note 44, at 8–10.

Mahmood argues that an error of post-structural feminism is to construe agency through the simple binary of “subordination” and “subversion.”⁸⁰ My interviews demonstrate that the individual aspirations and circumstances of Migrant Brides are scattered along a spectrum spanning between these two axes.⁸¹ The concept of agency I adopt strives to accommodate and validate the significant diversity in migrant women’s experience. As Arlene MacLeod notes in relation to women in Egypt, agency is “complex and ambiguous,” and within it “women accept, accommodate, ignore, resist, or protest—sometimes all at the same time.”⁸²

Crucially, this flexible definition of agency does not “misattribut[e] to [women] forms of consciousness or politics that are not part of their experience.”⁸³ Sharon Wray warns that “dominant western conceptions of agency are often used uncritically” such that agency becomes equated solely with the direct subversion of social norms or disruption of existing power relations.⁸⁴ Nor should agency be conflated with “autonomy,” a broader concept, which carries with it the idea of individualism and independence of action. “Agency as autonomy” excludes the notion that women (particularly non-Western women) may act meaningfully with reference to their communities.⁸⁵ Finally, Mahmood argues that agency should be “delinked from the goals of progressive politics.”⁸⁶ This does not mean abandoning our critical standpoint to accept what we perceive as unjust practices. Rather, our critique is sharpened when we “leave[] open the possibility that we might also be remade in the process of engaging in another’s world view,” instead of believing that our preconceptions will be vindicated.⁸⁷

The model of subjectivity used within the theory of agency is central to my project of situating the individual as bounded by legal structures and yet

⁸⁰ SABA MAHMOOD, *POLITICS OF PIETY: THE ISLAMIC REVIVAL AND FEMINIST SUBJECT* 14 (2005).

⁸¹ This is a distinctly “postmodern feminist” construction. I attempt to restore the experiences of the female subject to the center of academic discourse. This has been done in the study of prostitution by Shannon Bell in *READING, WRITING, AND REWRITING THE PROSTITUTE BODY* (1994). In the field of marriage migration in East Asia, I join sociologists Lucy Williams, Nicola Piper, and Mina Roces in contributing to the scholarship in this area. WILLIAMS, *supra* note 67; Piper & Roces, *supra* note 44.

⁸² Arlene Elowe MacLeod, *Hegemonic Relations and Gender Resistance: The New Veiling as Accommodating Protest in Cairo*, 17 *SIGNS* 533, 534 (1992).

⁸³ Lila Abu-Lughod, *The Romance of Resistance: Tracking Transformations of Power Through Bedouin Women*, 17 *AM. ETHNOLOGIST* 41, 47 (1990).

⁸⁴ Sharon Wray, *What Constitutes Agency and Empowerment for Women in Later Life?*, 52 *SOC. REV.* 22, 24 (2004).

⁸⁵ Women may exercise autonomy with reference to community values, interests or relationships, and their cultural and ethnic identities. This may include cases in which women self-consciously adopt what are alleged to be practices of oppression, propagated and reinforced by their communities, *see, e.g.*, MacLeod, *supra* note 82 (discussing the Islamic practice of veiling), and cases in which women appear to act solely according to familial expectations (*e.g.*, expectations that migrant marriage will produce benefits).

⁸⁶ MAHMOOD, *supra* note 80, at 34.

⁸⁷ *Id.* at 36.

capable of strategizing.⁸⁸ Subjectivity is “the agonistic and practical activity of engaging identity . . . patterned . . . in historically contingent settings and mediated by institutional processes and cultural forms.”⁸⁹ The model of subjectivity recasts the working of institutions by exposing the “concrete constellations” or strictures within which people “forge and foreclose their lives.”⁹⁰ I employ Foucault’s account of the subject in his later work.⁹¹ According to Foucault, formation of the subject is an active process, which takes place within established social practices, discourses, and institutions.⁹² To Foucault, “these practices are . . . not something that the individual invents by himself.”⁹³ The actively constituting subject is not engaged in an “exercise [of] solitude, but a true social practice.”⁹⁴ An agent is thus not a disembodied consciousness, but rather is firmly embedded within his or her social context, the local and the particular. Yet the agent is active in her own self-constitution and not merely a passive recipient of social and cultural determinants.

Daniel O’Hara argues that Foucault’s model of agency allows for “plurality, mobility, and conflict.”⁹⁵ Foucault’s emphasis on particular social practices means that his theory is agnostic and therefore capable of accommodating diverse responses as “agency.” Hence, agency must be examined according to the “grammar of concepts,” in which its particular effects, meaning, and form resides.⁹⁶ In the context of *Migrant Brides*, the background rule systems (of immigration, welfare, and labor law) have both enabling and delimiting effects on their agency, defining their latitude of action. Background rules may constrain, but at the same time they also provide possibilities for creative and strategic action. In addition, agency is also informed by the expectations and values to which these women subscribe. Mi-

⁸⁸ João Biehl et al., *Introduction: Rethinking Subjectivity*, in *SUBJECTIVITY: ETHNOGRAPHIC INVESTIGATIONS* 1, 1 (João Biehl et al. eds., 2007) (exploring how defining subjectivity is crucial to how we “think and write about human agency”).

⁸⁹ *Id.* at 5.

⁹⁰ *Id.*

⁹¹ I am aware of the opposing idea within feminist thought that Foucault’s account of subjectivity, as produced within power relations, results in a subject wholly determined by social forces, and thus incapable of meaningful agency and resistance. However, I join Margaret McLaren in arguing that this opposing reading of Foucault stems from his genealogical work. His later work on ethics, particularly *The Care of the Self*, suggests that there is indeed space for agency. See MARGARET A. McLAREN, *FEMINISM FOUCAULT AND EMBODIED SUBJECTIVITY* 2–3, (2002); 3 MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY: THE CARE OF THE SELF* (Robert Hurley trans., 1986).

⁹² FOUCAULT, *supra* note 91.

⁹³ Raúl Fornet-Betancourt et al., *The Ethic of Care for the Self as a Practice of Freedom: An Interview with Michel Foucault on January 20, 1984* (J. D. Gauthier trans.), in *THE FINAL FOUCAULT* 1, 11 (James Bernauer & David Rasmussen eds., 1988).

⁹⁴ FOUCAULT *supra* note 91, at 51.

⁹⁵ DANIEL T. O’HARA, *RADICAL PARODY: AMERICAN CULTURE AND CRITICAL AGENCY AFTER FOUCAULT* 66 (1992).

⁹⁶ MAHMOOD, *supra* note 80, at 34.

grant Brides as agents may not have been allowed to design their world, but they are actively living within its strictures.

A. *Storytelling as an Expression of Agency*

My interview methodology was informed by the belief that agency is reflected in storytelling and that testimony is a site of subject-formation.⁹⁷ Hence, my interviews were loosely structured by themes, and I encouraged the women to tell me their stories.⁹⁸ Migrants, especially women, often have roles and motivations foisted upon them in academic literature. Their actions are portrayed as structurally compelled, rather than as positive decisions.⁹⁹ Steven Lukes argues that “insufficient recognition” of identities can fix people in dependent positions,¹⁰⁰ and these patterns of value in academic discourse may be institutionalized in laws by the State. It was my hope that my interviews would be a space in which women could represent themselves and craft their own identities as migrants.

The women’s narratives were highly textured. Many saw storytelling as part of reclaiming a sense of self. Several expressed that nobody in Singapore had ever wanted to hear their stories before, and they were glad for the chance to tell them. Samnang, the Cambodian who was sold into prostitution, started our interview with an impassioned and confessional monologue:

I want people to hear my story. I want them to hear about the pain in my life. Sometimes I type fragments of my life story into my mobile phone, but I don’t know how to write properly, so I fear no one will ever read it. I have never experienced the warmth of a

⁹⁷ For other examples of literature that attempts to construct subjecthood through narrative and interviews, see Maki Kimura, *Narrative as a Site of Subject Construction: The ‘Comfort Women’ Debate*, 9 FEMINIST THEORY 5, 6–7 (2008); and Isabel Dyck & Arlene Tigar McLaren, *Telling It Like It Is? Constructing Accounts of Settlement with Immigrant and Refugee Women in Canada*, 11 GENDER, PLACE & CULTURE 513, 514–15 (2004).

⁹⁸ The themes I used to structure my interviews included the women’s personal backgrounds, the circumstances of their marriages, household arrangements (including relations within the immediate and extended family), life in Singapore, issues of cultural identity, and their experiences with the various background rule systems. I preferred to let them speak freely, rather than impose a strict question-and-answer format. The interviews took place in locations suggested by the women themselves, in order to ensure they would be comfortable. I interviewed them in their own homes, in their friend’s or relative’s homes, and at public parks near their apartments.

⁹⁹ See, e.g., *Hearing on Human Trafficking*, *supra* note 56, at 12–13 (statement of John Miller, Dir. of State Dep’t Office to Monitor and Combat Trafficking in Persons) (stating that Migrant Brides face informational, economic, cultural, and legal vulnerabilities when they migrate to marry); STEPINITZ, *supra* note 45, at 4 (arguing that impoverished women from developing countries may be forced into “servile marriage” when they enter a marriage for predominantly socio-economic reasons); Lindee, *supra* note 53, at 566 (noting that the informational and power imbalances between Brides and their husbands can be so severe that even those who consent may be deemed to be per se trafficked).

¹⁰⁰ STEVEN LUKES, *POWER: A RADICAL VIEW* 119 (2d ed. 2005).

home or a parent's love. I have never experienced love at all. I attempted suicide countless of times, from when I was very young.

Samnang's words suggest an acute sense of victimization but also represent an attempt to reclaim herself through narrative significance and truth-telling—as Foucault might term it, “technologies of the self.”¹⁰¹

Many Migrant Brides spoke of how they developed different techniques for dealing with the constrained circumstances of their lives in Singapore. Wati from Indonesia said poignantly, after detailing the discrimination she faced from her husband's family, society, and the law, “[W]hen you married Singaporeans, your heart has to grow bigger [to deal with the pain].” For Elsa, financial difficulties and domestic abuse from her controlling husband brought about a sense of independence she never had in her home country: “[E]very time I talk about my problems I would cry. . . . In Singapore, I am alone. I have to be strong. . . . No one is here to protect me. If you show people your weakness, they will condemn you.” With her independence came a sense of individualism that she did not previously possess: “I have become more selfish. I think of myself and my daughter first. I don't think of others anymore.”

Migrant Brides also gave different accounts of themselves in relation to the law and the background rules. Marcia's account of her relationship to the rules encapsulates my thesis perfectly:

I am happy to be in Singapore because my family is here. But I cannot easily move into the conditions I want because I am still considered a foreigner. I just have to follow the rules, [but] I try to move within these rules to make things better for me and my family.

Curiously, Naw from Myanmar (formerly an oppressive military regime) had an opposite response to the law: “I don't feel alive here. There are so many rules and regulations here that I don't know.”¹⁰² She expressed that even though there were more draconian laws in Myanmar, at least one could bribe the government to get around them. Marcia and Naw's opposing accounts of the rules draw out how agency operates within varied boundaries; each woman viewed her capacity to act differently. To Naw, the rules in Singapore were immovable and inflexible; in her words, the rules turned people in Singapore into “robots” programmed to blindly follow rules. In

¹⁰¹ See Michel Foucault, *Technologies of the Self*, in TECHNOLOGIES OF THE SELF: A SEMINAR WITH MICHEL FOUCAULT 16, 18 (Luther H. Martin et al. eds., 1988). According to Foucault, technologies of the self are crucial to the subject's self-constitution. They “permit individuals to effect by their own means or with the help of others a certain number of operations on their own bodies and souls, thoughts, conduct, and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection, or immortality.” *Id.*; see also *id.* at 35 (discussing truth telling).

¹⁰² Interview with Naw, in Singapore (Jan. 10, 2012) (transcript on file with the author).

contrast, Marcia saw herself as mobile “*within*” the static rules, able to engage in covert and strategic action.

B. *Social Organization as an Expression of Agency*

Migrant Brides exercised agency as a group through social organization. The women were isolated when they arrived in Singapore and a key strategy to navigate the system involved quickly creating support networks. The women formed networks through whatever little opportunity they had for social interaction. They looked out for fellow Migrant Brides while shopping in markets,¹⁰³ while waiting to renew their passports in embassies, and in lines at the Immigration Authority.¹⁰⁴ Even fellow Migrant Brides they met on the plane to Singapore became part of their network.¹⁰⁵

Migrant Brides are driven into networks with one another partly because they find it hard to socialize with Singaporeans due to cultural stereotypes associated with their status and nationality. Singaporeans labeled them as “*maids*,” “*prostitutes*,” “*cheap women*,” “*gold-diggers*,”¹⁰⁶ “*backward*,” and “*stupid*.”¹⁰⁷ Singaporean women were most hostile and overt in their discrimination. Kamala described how her Singaporean landlady would spy on her in the bathroom and gratuitously lecture her about feminine hygiene. Singaporean men tended to treat Migrant Brides as sex objects. Men in Fauziah’s neighborhood would leer at her when she revealed she was Indonesian because they perceived her as having looser sexual morals. Even in the absence of active discrimination, Migrant Brides found socializing with Singaporeans intimidating: “*I feel inferior as a foreigner. I just keep quiet, because I am scared [Singaporeans] will not answer me,*” said Kamala.

Because of their social exclusion, these women rallied together, with their identities as Migrant Brides as the basis for group-formation. This common identity transcended nationality, language, and race. Eight of the interviewees, from five different countries, knew each other through attending the Patient Care Centre for HIV-positive women. They text message each other regularly in English, their only common language. Text messaging is integral to communication, as many do not have the liberty to meet face-to-face due to domestic duties and controlling husbands. Apart from sharing emotional problems via text messages, the women also shared job opportunities in the informal market, bursaries available to them from charities, activities, and support groups organized by volunteers. The power of their network was demonstrated to me in the way they shared information about

¹⁰³ Interview with Samnang, *supra* note 68.

¹⁰⁴ *Id.*

¹⁰⁵ Interview with Dawan, *supra* note 75.

¹⁰⁶ Interview with Fauziah, *supra* note 70.

¹⁰⁷ Interview with Kamala, *supra* note 31.

my project, introducing their friends to me and advising them what to expect from the interview.

The social group is a crucial site of agency amongst Migrant Brides. Fauziah describes how her group meets monthly at a park to share their problems and discuss how to solve them: “*We don’t know how to depend on Singaporeans, so we depend on each other.*” Migrant Brides describe their knowledge of Singaporean law as stemming from information from their network of friends. Immigration procedures and their wistful aspirations for permanent residency and eventual citizenship are the most common subjects of conversation.¹⁰⁸ These groups develop strategies for moving within the background rules based on their collective experiences. They then disseminate and practice these strategies. Most of the informal norms I detail in the coming sections were generated through group discussion and practice. However, the network does not always serve the women well. The network means that even erroneous knowledge is passed on pervasively, magnifying misunderstandings about the law. Accounts of other women’s interactions with the rules were occasionally sensationalized, including a false tale that the Prime Minister intervened on behalf of a migrant woman to allow her to stay.¹⁰⁹ Also, the strategies that the group disseminates sometimes work, but sometimes backfire drastically.

While it is tempting to analogize this group strategy to “consciousness-raising” feminist groups in the Women’s Liberation movement in the United States,¹¹⁰ I found that there were only flickers of feminist consciousness amongst the Migrant Brides’ group. Their strategies were tailored to overcoming specific difficulties with the law, rather than an organized effort to counter the “oppressive” system as a whole. They did not adopt a wholly oppositional attitude toward the law, but focused instead on actively improving their lives within constraints. This could equally mean both subverting and using the law, depending on the circumstances.

Through storytelling and social organization, Migrant Brides reveal themselves as agents who are able to act within the Family, Market, and State. While structural factors such as poverty and patriarchy do influence these women, they do not prevent Migrant Brides from making meaningful choices about their lives. My Article supports this account of Migrant Brides as self-reflexive, resourceful, and innovative agents who are relentlessly moving within the background and foreground rules of law.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See, e.g., Redstockings, *Redstockings Manifesto*, in *SISTERHOOD IS POWERFUL: AN ANTHOLOGY OF WRITINGS FROM THE WOMEN’S LIBERATION MOVEMENT* 598, 600 (Robin Morgan ed., 1970) (advocating consciousness-raising as the “chief task” for women’s liberation).

III. THE FAMILY AS A SITE OF POWER AND NEGOTIATION

A central project of Halley and Rittich's deconstruction of family law exceptionalism is to "de-exceptionalize the family" and "recontextualize it in the market," so that the household's role in economic orders can be illuminated.¹¹¹ To them, the Market/Family ideology, with its roots in Friedrich Carl von Savigny's *System of the Modern Roman Law*,¹¹² masks the distributive functions of the household. It also results in a binary conception of the Market as global and dynamic, capable of being governed by universalized rules and the Family as local and static, the territory of custom.¹¹³ In fact, the Market and the Family are not in opposition, but are correlative and interpenetrative spheres. The Family is a tool of society—it is a private welfare system filling the gaps where the Market fails to provide, a unit of labor, and site of reproduction. Hence, what has been characterized as "Market" relations—conflict and negotiation of individual interest—are just as likely to take place as altruism within the Family. The marriages of Migrant Brides expose the significant breakdown of the Market/Family distinction as they typically have a blend of transactional and affective elements. Further, the cross-border nature of their marriages challenges the idea that Family is local.

If the Family is a zone of negotiation, the background legal rules are what structure the bargaining. The idea of "background rules" is an analytical paradigm derived from Robert Hale's seminal article, "Coercion and Distribution in a Supposedly Non-Coercive State."¹¹⁴ Hale identifies two categories of rules that determine bargaining strength: the rules that govern the conduct of parties during bargaining and the rules that govern the alternatives to remaining in the bargaining situation (in the case of Migrant Brides, divorce or separation).¹¹⁵ I study how both categories operate in the lives of Migrant Brides. I also argue that legal uncertainty and lack of legal knowledge function as impediments to Migrant Brides in the bargaining context. To be recognized by the State, a marriage must match up to an invisible mold, but the exact form remains unclear to these women. Hence, Migrant Brides generate informal norms to bridge this gap.

¹¹¹ Halley & Rittich, *supra* note 9, at 770.

¹¹² FRIEDRICH CARL VON SAVIGNY, *SYSTEM OF THE MODERN ROMAN LAW* (William Holloway trans., Hyperion Press 1979) (1867) (Savigny's taxonomy of law sets family law against the law of obligations. In his family/contract dichotomy, the rules of contract were universally replicable, while the rules of family law were necessarily local because each nation's family law expresses the spirit of the people.). Halley and Rittich argue that Savigny's dichotomy had immense global influence in the development of legal thought. Halley & Rittich, *supra* note 9, at 753.

¹¹³ Halley & Rittich, *supra* note 9, at 771.

¹¹⁴ Robert Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 *POL. SCI. Q.* 470 (1923).

¹¹⁵ Duncan Kennedy, *The Stakes of Law, or Hale and Foucault!*, 15 *LEGAL STUD. F.* 327, 330 (1991) (interpreting Hale's seminal article).

Duncan Kennedy draws a crucial intersection between Foucault and Hale. Hale's idea that bargaining power is structured not by one single logic, but by multiple rule systems operating in an institutional context is complemented by Foucault's idea that power is diffuse and immanent everywhere.¹¹⁶ As Foucault puts it:

Between each point of a social body, between a man and a woman, in a family, . . . between the one who knows and the one who doesn't, there pass relations of power which are not the pure and simple projection of the great sovereign power over individuals; *rather they are the mobile and concrete ground upon which power comes to be anchored*, they are the conditions of possibility for its functioning.¹¹⁷

To Foucault, power exists at every level; it operates through social practices and seeps deeply from social bodies into individual bodies.¹¹⁸ Foucault's power is not domination or sovereignty; it is not the circumscribed province between the ruler and the ruled. It is a "moving substrate of force relations," constantly shifting through struggles and confrontations.¹¹⁹ The corollary to Foucault's theory of power as relational, involving a "multiplicity of force relationships," is the existence of a "plurality of resistances."¹²⁰ These resistances operate inside power, as a species of power itself, the energy that drives its very shifting. These resistances are not necessarily oppositional; they may "play the role of adversary, target, support, or handle in power relations."¹²¹

Reading Foucault leads us to see the Family not only as a site of negotiation, but of power. Negotiation may occur explicitly (through actual dialogue) or implicitly as a result of differences in bargaining power.¹²² Reading Hale and Foucault together, with Kennedy as mediator, drives us further to conclude that legal parameters condition this bargaining power and result in a range of distributional consequences.

In this section, I also demonstrate that the Family is a public site of power and negotiation; the same exercises of power and resistance that took place on an intra-familial level also take place in the State's ideological shaping of the Family. I follow Foucault in arguing that even within a paternalistic and autocratic State, the structures of power are far from monolithic. The

¹¹⁶ *Id.* at 351.

¹¹⁷ Michel Foucault, *Interview with Lucette Finas*, in MICHEL FOUCAULT: POWER, TRUTH, STRATEGY 67, 70 (Meaghan Morris & Paul Patton eds., 1979) (emphasis added).

¹¹⁸ MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY, VOLUME 1: AN INTRODUCTION* 92-96 (Robert Hurley trans., 1978).

¹¹⁹ *Id.* at 93.

¹²⁰ *Id.* at 95-96.

¹²¹ *Id.* at 95.

¹²² See Bina Agarwal, "Bargaining" and Gender Relations: *Within and Beyond the Household*, 3 FEMINIST ECON. 1, 7 (1997) (arguing that both explicit and implicit processes shape bargaining outcomes).

is another's loss. With that comes a tendency for conflict and tension; the need to fight for the fulfillment of one's interests. A Sentimental Marriage is aligned with what is perceived as Family relations: altruism, affective cooperation, sharing of resources, and a sense of harmony in decision-making. There is an overlap in the "utility functions" of both spouses; due to the sentimental tie, when one gains the other gains too.¹²⁶ Thus, there is increased facilitation of mutual interests.

An economic analysis reinforces my thesis that marriage is never purely Sentimental. The traditional conception of marriage is a couple choosing to "share a life together," superseding egoistic goals with common ones.¹²⁷ However, the reality is that conflict may arise whenever the interests of two individuals fail to coincide, which undoubtedly occurs within even the best of marriages. According to Amy Wax, "conflict" is not necessarily manifested in acrimonious disagreement but rather "in the sense that both partners cannot simultaneously maximize the satisfaction of *all* their preferences and desires."¹²⁸ The level of conflicting interests is dependent on whether affective or adversarial relations of the Family and Market are predominant.

Migrant Brides enter the continuum at a point that is determined by the circumstances in which their marriage is formed. Their position on the continuum continuously shifts during the course of marriage. Events within marriage (such as the loss of a second income or the birth of children) may change the dynamic, pushing the relationship in either direction. Migrant Brides may also strategize and shift their positions along the scale by their own volition. In such cases, the background rules determine bargaining power and are therefore a crucial determinant of the latitude that Migrant Brides may move along the scale.

This continuum is intended to be a descriptive model of the dynamic within marital relations. It is not designed to be a qualitative assessment of whether a marriage is equal. Equality is a measurement of the relative levels of bargaining power between husband and wife. Thus, "equality" is not a specific location on the Transactional/Sentimental continuum and can be achieved at various sites. Indeed, women may differ in their judgment on whether equality within the marriage may be enhanced by moving toward more affective or transactional relations. The dichotomy of dependence/independence in relation to their husbands is similarly not associated with either side of the continuum, and it too can be achieved at multiple sites. Individualized, market-type relations within the household, do not necessarily imply independence within the domain of the Market.

¹²⁶ Amy L. Wax, *Bargaining in the Shadow of the Market: Is There a Future for Egalitarian Marriage?*, 84 VA. L. REV. 509, 572 (1998).

¹²⁷ See Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1520-21 (1983).

¹²⁸ Wax, *supra* note 126, at 618-19.

Migrant Brides are agents who are capable of strategizing along the continuum. However, the background rules endow them with less bargaining power than their Singaporean husbands because they have fewer desirable alternatives to the bargaining situation. The background rules create high levels of dependence on their husbands as the default position, and Migrant Brides can be seen as strategizing away from this dependence by moving along the continuum in either direction. This may involve creating more alternatives to their bargaining situations or increasing their bargaining power, either by expanding the sites of affective cooperation or by closely guarding their own self interests. While Migrant Brides are strategizers, their moves are limited—they are playing chess with missing rooks. As Foucault would put it, each move they make shifts the bargaining power within the marriage itself. Where formal norms restrict them, Migrant Brides employ informal norms, the creative and covert territory in the shadow of the law—it is still possible to checkmate without those rooks.

B. Power and Negotiation Within the Household

1. Position on the Continuum at Marriage Formation

Women enter into a point on the continuum at marriage formation. Migrant marriages are predisposed to being more transactional from their inception. Lucy Williams states that cross-border marriage migration can be understood in part as a contractual relationship between individuals with different national residency statuses; marriage increases the immigration entitlement of the migrating partner.¹²⁹ Migrant Brides accept this transaction with the understanding that their rights will not be equal to those of citizens. They accept the “paradoxical hypergamy” that their marriage may entail, where their economic status is bettered through marriage in Singapore, but their social status is correspondingly lowered, as they are excluded from full participation in political and economic life.¹³⁰ Indeed, the stakes for women are higher in a migrant marriage. Since physical and cultural relocation is involved, their “sunk costs” are greater if the marriage dissolves than within a locally bound marriage.¹³¹

My interviews demonstrate that many Migrant Brides knowingly accepted the risk of marrying a man whom they barely knew. Elsa pointed out that the risk she took is not unique to the migratory context and is present even in a marriage to a local man, stating, “*You never know when you marry someone what it [will be] like. It’s always a trial.*” It was quite possible that risk-taking would not lead to fulfilled expectations; as Samnang put it, Mi-

¹²⁹ WILLIAMS, *supra* note 67, at 5.

¹³⁰ See Nicole Constable, *Introduction to CROSS-BORDER MARRIAGES: GENDER AND MOBILITY IN TRANSNATIONAL ASIA 1, 1–3* (Nicole Constable ed.) (2005).

¹³¹ See Wax, *supra* note 126, at 546 (identifying “sunk costs” of marriage-specific investments as a reason women fare less well than men in divorce).

grant Brides are taking a “*gamble*.” Still, there was a sense that Migrant Brides took ownership of the risk and believed they could moderate the level of risk. Fauziah’s husband barely provided for her and was violent. Fauziah expressed that she should have checked his background, instead of “*blindly believing*” him. “*Maybe this is my punishment. I was too greedy. I wanted a comfortable life without having to do anything,*” she said. To her, her circumstances resulted from her own lack of judiciousness in choice of a spouse.

The more “transactional” nature of migrant marriage is articulated in the women’s expectations of marriage in my interviews. Only two out of the ten women mentioned the word “love” in their responses. The word “care” featured more commonly in their framing of marriage expectations. However, “care” was construed not in terms of affection, but rather in terms of basic material provision—the desire to lead a “*comfortable*”¹³² or “*better life*”¹³³ and be materially “*look[ed] after*”¹³⁴ by their husbands. Kamala explicitly deprioritized the Sentimental Marriage, stating “*I did not expect much from my husband. . . . I wanted to . . . have a good husband who would take care of me and my [extended] family. . . . I did not need him to be romantic. I just want us to understand each other.*” The level of affection she desires is simply basic mutual understanding, not the lofty heights of romantic love. Mali and Bernadette were more interested in the products of marriage than in spousal affection; their answer to what they expected from marriage was simply “*children*.” Dawan and Wati were more overt about seeing their marriage as a means to an end, specifically, to be able to work in Singapore. Dawan was willing to give up exclusive affection within marriage in exchange, saying “*I don’t mind if my husband has affairs with other women.*” This is reflective of the extent to which she views marriage as a transaction.

The interviews further revealed that the altruistic relations of a Sentimental Marriage are not necessarily based on romantic love but can also be rooted in mutual pity. Mali’s marriage, one of the most Sentimental marriages among the women I interviewed, demonstrates this. Mali said, “*My husband pitied me [because I had to use all my money to support my family]. At the same time, I pitied him because he does all his housework on his own These things are what women are supposed to do for men in Thailand.*” Her pity for him drove their affective relations. On their very first meeting, she volunteered to do his laundry for him. Thus, “romantic love” is far from the defining principle of even the most sentimental marriages.

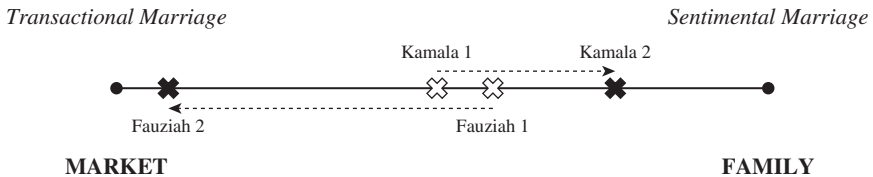
¹³² Interview with Fauziah, *supra* note 70.

¹³³ Interview with Dawan, *supra* note 75; Interview with Naw, *supra* note 102.

¹³⁴ Interview with Wati, in Singapore (Jan. 4, 2012) (transcript on file with the author).

2. *Moving Through the Continuum in the Course of Marriage*

In this section, I analyze Fauziah's and Kamala's marriages in order to characterize the nature of marriages on each end of the Transactional/Sentimental spectrum and illustrate how Migrant Brides can move along the continuum in the course of marriage. I pay particular attention to role division within the household (including the immediate and extended family) and interactions involving property. Their cases are especially interesting because both women are highly active strategizers and are looked up to by women in the group as authorities on the background rules. Fauziah is a thirty-eight-year-old Indonesian woman married to an Arab Singaporean in his sixties. She has two children and is on a Long Term Visit Pass, which has to be renewed every year. Kamala is a forty-one-year-old Thai woman married to a forty-six-year-old Chinese Singaporean. She has no children (because of her HIV-positive status). She is the only woman in the group who has achieved permanent residency, as she applied in 1997, just months before blood tests were made mandatory. Both women contracted HIV from their husbands.



The diagram above plots the original position at marriage formation (“Position 1”) and the position at the time of the interviews in January 2012 (“Position 2”). The shift from Position 1 to Position 2 has, in fact, taken place in a series of smaller moves, some of which may have gone back and forth along the continuum, rather than straightforwardly in the direction of the arrows. Position 1 reflects that Fauziah’s relationship started off as more Sentimental than Kamala’s at marriage formation, but their marriages evolved in opposite directions. I focus on Position 2 in analyzing how Fauziah’s relationship has solidified into an archetypal Transactional Marriage and Kamala’s relationship has solidified into an archetypal Sentimental Marriage.

a. *Kamala’s “Sentimental Marriage”*

Kamala’s marriage started off toward the Transactional side of the scale. Originally from a village, she met her husband through a friend’s introduction. She said she wanted to find a man who would take care of her. Her marriage gradually moved toward a Sentimental Marriage after formation, as evidenced by a high level of affection within the relationship. She is happy with her marriage and describes her husband as “*supportive.*” If she has any

problems, he is the first person she consults, ahead of her family in Thailand. Her husband also protects her against the discrimination she faces from his family, which treats her “*as a maid . . . in [her] own house.*” Kamala and her husband share resources within the household, without demarcating the boundaries of ownership. There is a sense of trust in their property interactions; in her words, “*If I [die] first, you take. If you [die] first, I take.*” As she is a permanent resident, they are able to hold their government-subsidized apartment in both of their names, and Kamala also qualifies to work legally as a part-time clerk. She keeps her salary in a separate bank account, to which only she has access. Her husband sees this as savings for their family. She sends part of these savings to her extended family in Thailand.

However, even though she has considerably more freedom than her fellow Migrant Brides, Kamala tends to defer to her husband’s judgment on many issues. The following two statements, which she made in succession, are particularly illustrative of this dynamic:

- (1) “*We don’t say this is ‘mine’ or ‘yours’ but I always talk to [my husband] when I want to send money home.*”
- (2) “*My husband gives me freedom, but I inform my husband about where I am going because I am a foreigner, so we [foreigners] don’t really know where we are going.*”

This demonstrates that while her husband grants her latitude of action, Kamala chooses to make decisions in consultation with him and to give him the final say. Her husband does not correspondingly consult her. She trusts her husband to make the best decisions for the family and has never opposed him or questioned his role as decision-maker. She said, “*I have no opinion inside the house. I am a simple person. I’m not fussy about what he does in running the household.*”

Even though they are a dual-income household, there is a clear breadwinner/homemaker role division. The household expenditures come entirely out of her husband’s salary (Kamala’s salary is saved), and Kamala is responsible for all the domestic work. Kamala does all the domestic work, not because her husband refuses to share it, but because she has actively decided to make it her exclusive responsibility. She has strong feelings about a Migrant Bride’s duty of domestic work:

You should not employ a maid or the [foreign] wife would have nothing to do in the home. The wife will go out to hang out with her friends. [The] husband will realize ‘I married someone who is good for nothing!,’ so he starts having affairs outside.

Interestingly, she does not believe that this principle applies to Singaporean women. This indicates that Kamala still sees an element of transaction within the Migrant Marriage. She defines her value to her husband based on the tasks that she performs and the utility she provides in the household. Exclusively performing domestic duties can be thus seen as a

strategic move to validate her role as a wife and to preserve the current favorable dynamic of her marriage.

b. Fauziah's "Transactional Marriage"

Fauziah met her husband while working in a Jakarta hotel and was won over by his charm and money. Her marriage seemed “*perfect*” at first; she was treated “*like a princess*” and showered with expensive gifts. She saw her relationship as “*different*” from other migrant marriages and developed affectionate feelings for her husband. Her marriage was closer to a Sentimental Marriage than most Migrant Brides. Her husband generously shared his resources with her family, paying for university education for Fauziah’s siblings and buying them a house—these actions indicate that he benefitted from her happiness, a mark of an affective relationship. However, the Sentimental Marriage quickly unraveled when Fauziah discovered that she was her husband’s third wife. At the time of her marriage, he was still married to his second wife in another jurisdiction. She described her devastation poignantly: “*I felt like glass broken. . . . I felt cheated. . . . His children [from previous marriages] was as big as me. Our age, the same.*” Fauziah had believed her marriage was based on exclusive affection and did not want to “*share*” her husband with other women. The revelation resulted in huge tensions, and her husband began to beat her, a pattern that still continues twelve years on. The marriage steadily moved closer to a Transactional Marriage.

At the time of the interview in January 2012, Fauziah’s relationship was characterized by the heavy presence of individualized “Market” relations. In her words, “*he does his business, I do my own business.*” A few years ago, her husband announced, “*I’m tired. Now it is your job to find money to raise the children.*” With this, he effectively withdrew from the economic family, even though they continued living in the same apartment. He kept a separate bank account for his salary as a security guard, to which Fauziah had no access, and he refused to contribute to any household or childcare expenses apart from paying half the electricity bill. He told her he had no money after paying his personal costs of food.

When asked to describe the role division in her household, Fauziah said, “*I do it all. . . . In name, my husband is the head of the household. But I’m in charge of everything I take care of the children. I pay all the bills.*” Fauziah works four jobs illegally, as she has no legal right to work. She is also sole caregiver of her children. She saves any surplus income for them. Fauziah considers her husband a disembodied “*signature,*” as she only needs him to sign off on her immigration documents and on the rent and utilities bill (which must be in a citizen’s name). They only talk out of necessity, and she confessed that they have not had sex in years. They live extremely separate lives; he spends his free time visiting his ex-wife and children from previous marriages. The only site of cooperation, or archetypal

relations of the “Family,” is regarding major decisions about their children’s education, which they come together to discuss. Still, it is entirely up to Fauziah to execute these decisions, for example by finding the money to buy her children a laptop for school. As Fauziah’s children grow into their teens, they are resisting their uninvolved father’s decision-making about their lives, thus eroding the final site of affective relations between husband and wife.

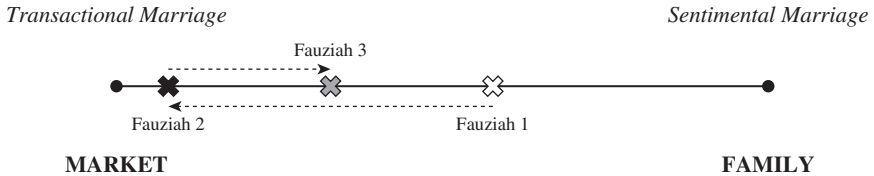
Even though her husband contributes nothing to the household, he still retains a large element of control. Fauziah has to seek her husband’s permission about when she works, as he wants her to get flexible hours so she can spend time with the children. Her husband also exercises control in terms of property ownership. Fauziah has no property of her own and no personal bank account; her salary goes into a joint bank account. Her husband once gave her jewelry, which she pawned to help her family in Indonesia after a drought. This led to him reacting in anger: “*I thought when he gave it to me, it is mine. But he said, ‘No, even if I give it to you it is still mine.’*” To her, this incident demonstrated that their relationship is “*not equal.*” Her husband is unwilling to let her benefit in any way, however small, from their relationship without giving him something in return. She is treated as an employee within the home: “*My husband does not see me as a wife, but as a maid to take care of him. I feel that he just wants me to take care of children and take care of the house. He calls this my job.*” Thus the role of the “wife” in Fauziah’s marriage has moved entirely from a status grounded in affection to the pure performance of duties in a marriage contract.

Fauziah’s relationship illustrates that on the extreme end of Transactional Marriage is a noncooperative equilibrium of spouses moving into separate spheres,¹³⁵ in which each party self-interestedly guards his or her individual welfare. The proverbial cards come off the table and are brought close to each party’s chest. There are limited territories of coordination over shared projects (i.e., the electricity bill and the children’s education). The pattern of non-cooperation is sustained because divorce is not a credible threat for either party—both have self-interested reasons for staying in the marriage. In migrant marriage, the reasons usually go beyond “staying together for the kids.” For the wife they are grounded in a desire to stay in the country, and for the husband these reasons are rooted in the value that he places on her free domestic labor or maternal care for his children. Fauziah encapsulated this self-interest in her statement: “*I think that if I did not have children, my husband would 100% kick me out.*”

Yet Fauziah’s relationship is not an unadulterated Transactional Marriage. There are signs of altruism; Fauziah is putting her husband’s welfare

¹³⁵ The term “separate spheres” as a bargaining model of distribution within marriage was pioneered by Shelly Lundberg and Robert A. Pollak. See Shelly Lundberg & Robert A. Pollak, *Separate Spheres Bargaining and the Marriage Market*, 101 J. POL. ECON. 988, 990 (1993). However, the idea of “separate spheres” I adopt here should be distinguished from theirs, as I do not see the spheres as being necessarily crafted by “traditional gender roles.” In fact, Fauziah’s example illustrates the opposite.

first and not acting entirely individualistically. She drew out this tension evocatively, “*I hate my husband, but I pity him. I have mixed feelings. . . . When I see him I get angry. But now he is old, he needs someone to take of him.*” Thus, she is very much negotiating within the continuum of Transactional/Sentimental Marriage, rather than being situated firmly at the pole of Transactional Marriage.



In a follow-up interview in April 2012, I found that Fauziah had yet again shifted her marriage from the extreme end of Transactional Marriage toward Sentimental Marriage as represented by Position 3 on the diagram above.¹³⁶ In February, Fauziah opened her husband’s bank statement and discovered that he had been withdrawing thousands of dollars from his personal bank account and their joint account, which was meant to be used for their children’s expenses. He was using this money to see prostitutes. Fauziah was devastated that her husband had been lying to her about not having money while she slaved away to support the family. She described her discovery as one of the lowest points in her life; she was deeply distressed by her household arrangements and desperately wanted to change them.

Fauziah decided that she would stop paying the bills and rent, which were in her husband’s name. Because he was the debtor, the Public Utilities Board and landlord would “*come after him*” for payment and not her. She effectively used her husband’s formal legal obligations to force him to take responsibility and to accept a more cooperative role division in the household. Fauziah gave up some jobs and only paid her personal mobile phone bill. When he realized that he was no longer getting a free ride from Fauziah, her husband began to pay the bills. Fauziah’s husband was impressed with her move, and asked her somewhat sarcastically, “*So clever . . . who taught you how to do this?*” This strategy’s origin was entirely Fauziah’s ingenuity from examining what levers of power she had within her constrained options. Since she could not employ the “soft” persuasion of Sentimental Marriage to make her husband take on more familial responsibility, she found a way to employ the power of the Market through her husband’s obligations to his creditors. Soon after, Fauziah’s husband stopped seeing prostitutes altogether and began to be more emotionally invested in the wellbeing of their family. Her strategy demonstrates the extent to which Migrant Brides can use the law to their advantage.

¹³⁶ Telephone Interview by Alison Tan with Fauziah (Mar. 20, 2012).

C. *Power and Negotiation Within the State*

The artificial separation of Market and Family as a result of FLE reinforces another dichotomy—the idea that the Market is a public domain, but the Family is private. This public/private dichotomy implies that while the rules of the Market may be universal, the rules of Family are local, varying from place to place. This view was perpetuated during colonialism, when colonial powers propagated Western models of contract, land, equity, and criminal law for public regulation but left family law as a residual area of local governance.¹³⁷ Singapore was no exception; the British left intact the custom of polygamy, which prevailed among the local Malays, Indians, and Chinese.¹³⁸

The Family is a site of the State's exercise of power. It is pervasively regulated, indirectly through the background rules and directly through family law itself. In Singapore, a relatively autocratic state known for heavily interventionist social policy, the regulation of the Family is even more pronounced. The State has never positioned itself as “neutral” toward the structure of the household and has constantly interfered in the activities and priorities of the Family, “reinvent[ing] the ethos that surrounds it.”¹³⁹ Eddie Kuo and Aline Wong argue that the Singaporean Family is not a passive recipient or object of social and economic policy, but rather the State's “instrument for achieving national economic goals.”¹⁴⁰ The Family is used as an “intermediary between the individual and the State”;¹⁴¹ a conduit for the transmission of policy to the lives of individuals, who then act within the Market.

The private/public distinction obscures the Family as a site of State regulation. As Frances Olsen argues, even nonintervention—the refusal of the State to intervene in the Family (exemplified in the classic American case on marital privacy, *McGuire v. McGuire*¹⁴²)—should be construed as a particular form of State intervention.¹⁴³ By reinforcing the Family as a private do-

¹³⁷ Halley & Rittich, *supra* note 9, at 771.

¹³⁸ The Indian Penal Code written by the British was introduced in Singapore in 1871. See Penal Code (Cap 224, 1871) (Sing.). The English common law, equity, and statutes relating to contract, commerce, and torts were incorporated into Singapore Law under Civil Law Ordinance 1870, § 29 (Cap 43, 1988) (Sing.).

¹³⁹ Kerry Rittich, *Black Sites: Locating the Family and Family Law in Development*, 58 Am. J. Comp. L. 1023, 1025 (2010).

¹⁴⁰ EDDIE C. Y. KUO & ALINE K. WONG, THE CONTEMPORARY FAMILY IN SINGAPORE 11 (1979). The idea of the family as an “instrument for the government of the population” has roots in Foucault's work. See Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-1978*, 103–05 (Michel Senellart ed., Graham Burchell trans. 2007).

¹⁴¹ KUO & WONG, *supra* note 140, at 11.

¹⁴² 59 N.W.2d 336, 345 (Neb. 1953) (declining to give an order mandating a husband to provide his wife with more subsistence support, as the marital relationship was still intact).

¹⁴³ Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1509 (1983).

main, the State ratifies the existing practices and role division within a marriage. In the context of migrant marriages, the State effectively allows a husband to deport his wife (even without the official dissolution of marriage) through its lack of intervention to limit the circumstances in which a husband may discontinue his wife's immigration status. The State's nonintervention endows the husband with a large measure of coercive power—an effective veto over his wife's legal existence in the country, conditional on his desire for her presence. This has clear implications for the power relations within the marriage.

1. *Singapore's State Ideology of the Family*

The Family plays two key functions, which serve the State's main ideologies of economic pragmatism and communitarianism (as defined by numerous political scientists).¹⁴⁴ Firstly, the Family is an economic tool, a source of productive units of labor, which should also function as a self-sufficient, private welfare system. Secondly, the Family is a tool of social integration, an "anchor" of Asian communitarian values in an ever-changing Market environment in which Western individualism prevails. According to the Ministry of Community Development and Sports, the Family "contribute[s] to social stability and national cohesiveness" by developing socially responsible individuals and deepening patriotic bonds.¹⁴⁵ Such an overwrought characterization indicates the extent to which Family has been mythologized as a tool of State power in Singapore.

Conflicting goals make up the State's regulation of the Family. On one hand, the State engineers the Family to be a highly functional labor unit deeply involved in Market relations. On the other hand, the Family is also

¹⁴⁴ See BENG-HUAT CHUA, *COMMUNITARIAN IDEOLOGY AND DEMOCRACY IN SINGAPORE* 6–7 (1995) (Chua argues that Singapore, under People's Action Party regime, has built an ideology of pragmatism, grounded in economic instrumental rationality, in order to ensure the survival of the nation-state in the tumultuous post-colonial years. While the second generation PAP government began to shed some of their predecessors' authoritarian strictures, this potential democratization was prevented from taking the course of liberal democracy. Instead, democratic participation is framed by "a communitarian" ideology, which draws its roots from Confucianism and the "collectivism" of Asian traditions.); CHUA BENG HUAT, *Communitarian Without Competitive Politics in Singapore, in COMMUNITARIAN POLITICS IN ASIA* 78, 95 (Chua Beng Huat ed. 2004) ("The emphasis on community, from family to race to nation, has led to the development of a political language that severely delimits political discussion. A very elaborate set of concepts of responsibilities to social units has been developed over time at the cost of language of rights."). See generally LINDA LOW, *THE POLITICAL ECONOMY OF A CITY-STATE: GOVERNMENT-MADE SINGAPORE* (1998) (examining how Singapore overcame economic and socio-political odds as a small migrant city-state through market-supporting public policies); CHRIS TREMEWAN, *THE POLITICAL ECONOMY OF SOCIAL CONTROL IN SINGAPORE* (1994) (describing the development of Singaporean policies on public housing, welfare, and education, through different political and economic transitions).

¹⁴⁵ Youyenn Teo, *Shaping the Singapore Family, Producing the State and Society*, 39 *ECON. & SOC'Y* 337, 339 (2010) (citing MINISTRY OF CMTY. DEV. AND SPORTS, <http://www.mcys.gov.sg> (2003)).

expected to be a bastion of traditional values in the face of the “unstoppable logic” of the Market.¹⁴⁶ Thus, the State itself also moves between two poles of the Transactional Family and the Sentimental Family, as characterized by a site of market or affective relations, in defining its ideal vision of the Family. Women are most disadvantaged by this tension, as they are expected to perform both market and reproductive roles. Paulin Tay Straughan argues that traditional expectations and family policies continue to structure gender roles, with Singaporean women still being responsible for most domestic work.¹⁴⁷ Yet, the organization of paid work in the Market functions within a paradigm that does not always recognize family responsibilities.¹⁴⁸

One of the first legislative endeavors of the post-colonial People’s Action Party government (which has ruled since Singapore’s independence from the British in 1959) was to reform family law and the position of women in society.¹⁴⁹ To this end, they introduced the Women’s Charter in 1961, which governed the formation and dissolution of marriage.¹⁵⁰ Its central project was to make monogamous marriages compulsory for all, except Muslims whose “religious beliefs permit polygamy.”¹⁵¹ The key rationale for the legislation was to grant women economic independence, so they may increase involvement in the Market, multiplying the productivity of the labor-driven economy.¹⁵²

While women were expected to be active within the Market, the State envisioned that they would not forsake their reproductive roles. The State was preoccupied with ensuring reproduction and this goal was championed in rhetoric such as “children are the spring source of our nation” and “our only resources are our people.”¹⁵³ Controversially, Lee Kuan Yew, Singapore’s post-colonial Prime Minister from 1959 to 1990, expressed regret in a 1983 speech that giving women the opportunity to study and work had affected their role as “creators and protectors of the next generation.”¹⁵⁴ Nirmala Purushotam posits that Lee’s statement reveals that the State did not conceive women’s rights as a “natural right,” but simply a conditional right

¹⁴⁶ Youyenn Teo, *Gender Disarmed: How Gendered Policies Produce Gender-Neutral Politics in Singapore*, 34 *SIGNS* 533, 551 (2009).

¹⁴⁷ PAULIN TAY STRAUGHAN, *MARRIAGE DISSOLUTION IN SINGAPORE* 27 (2009).

¹⁴⁸ *Id.* at 28.

¹⁴⁹ Leong Wai Kum, *Fifty Years and More of the Women’s Charter of Singapore*, 2008 *SING. J. LEGAL. STUD.* 1, 3.

¹⁵⁰ *Id.* at 4.

¹⁵¹ *Id.* at 3.

¹⁵² *Singapore Parliamentary Debates, Official Report* (1960) vol 12 at col 469 (Dr. Toh Chin Chye, Deputy Prime Minister). Dr. Toh stated that “the security of women can only be attained if their economic independence is assured, and conditions of work are the same both for women as well as for men.” *Id.* at col 470. See also Michelle M. Lazar, *For the Good of the Nation: ‘Strategic Egalitarianism’ in the Singapore Context*, 7 *NATIONS & NATIONALISM* 59, 63–65 (2001).

¹⁵³ Yong Nyuk Lin, *Spring Source of Our Nation*, in 2 *THE TASKS AHEAD* 5–6 (1959).

¹⁵⁴ Lee Kuan Yew, *Talent for the Future*, Prepared Text Delivered at the National Day Rally (Aug. 14, 1983), reprinted in *SAW SWEE-HOCK, POPULATION POLICIES AND PROGRAMMES IN SINGAPORE* app. A at 243, 247–48 (2005).

bestowed due to economic pragmatism.¹⁵⁵ While the State expects women to take on market roles in addition to reproductive roles, men are not expected to take on correspondingly greater roles within the household. This is reflected in the tax structure, in which only working women receive subsidies for children, hiring domestic workers, and taking care of their elderly parents.¹⁵⁶

The State's preoccupation with the "Family as Labor" is evidenced in how it continually manipulates family size and women's reproductive choices in order to meet economic and social objectives.¹⁵⁷ The manipulation of the Family is very much connected to the vagaries of the Market. There was a rapid switch between its anti-natalist and pro-natalist policies, which was reflected in the slogans, "Boy or Girl – Two is Enough" in 1979 and "Have Three or More if You Can Afford It" in 1987.¹⁵⁸ From the early 2000s, there was an explicit monetizing of women's reproductive resources through cash incentives for Singapore citizen women via the "Baby Bonus Scheme," in which women were given up to \$20,000 in total for the births of their first four children.¹⁵⁹

In addition, the State was preoccupied with the quality of children the Family was producing, to the point that its policies took an open turn toward eugenics. The State was particularly concerned that highly educated women were producing fewer children. Then Prime Minister Lee said, "If we reproduce ourselves in this lop-sided way, then society would decline."¹⁶⁰

¹⁵⁵ Nirmala Purushotam, 'Woman' as Boundary: Raising the Communitarian Against Critical Imaginings, 3 INTER-ASIA CULTURAL STUD. 337, 347 (2002). Purushotam argues that Lee Kuan Yew's 1983 speech impressed upon feminists of the era that women's rights and mobility could be easily withdrawn by the State. *Id.* Such fears led middle-class professional women to form Singapore's most prominent feminist advocacy organization, the Association of Women for Action and Research ("AWARE") in 1985. *Id.*

¹⁵⁶ See *Filing Tax: Deductions to Save Tax*, INLAND REVENUE AUTHORITY OF SINGAPORE, <http://www.iras.gov.sg/irasHome/page.aspx?id=110> (last visited Apr. 3, 2014), archived at <http://perma.cc/P7DR-2RVE> (identifying the "Maid Levy Relief," "Working Mother's Child Relief," and "Grandparent Caregiver Relief" as relief available for female taxpayers).

¹⁵⁷ See CHRISTOPHER TREMEWAN, THE POLITICAL ECONOMY OF SOCIAL CONTROL IN SINGAPORE 103 (1994) (discussing Singapore's introduction of abortion and voluntary sterilization laws as a means of "maximi[zing] its skilled human resources"). Indeed, the State is unabashed in interfering in all realms of its citizens' private lives. As former Prime Minister Lee Kuan Yew stated, "[W]e would not have made economic progress, if we had not intervened on very personal matters. . . . We decide what is right. Never mind what the people think. That's another problem." *Id.* at 2 (quoting Lee Kuan Yew, Speech at National Day Rally 1986, STRAITS TIMES (Sing.), Apr. 20, 1987).

¹⁵⁸ SAW SWEE-HOCK, THE POPULATION OF SINGAPORE 193, 215 (2012).

¹⁵⁹ THERESA WONG & BRENDA S.A. YEOH, ASIAN METACENTRE, SER. NO. 12, FERTILITY AND THE FAMILY: AN OVERVIEW OF PRO-NATALIST POPULATION POLICIES IN SINGAPORE 14, 23 (2003); see also *Child Development Co-Savings (Baby Bonus) Scheme*, BABY BONUS BRANCH, MINISTRY OF SOC. & FAMILY DEV., <http://www.babybonus.gov.sg/bbss/html/index.html> (last updated Mar. 2014), archived at <http://perma.cc/QP6E-956G>. According to the current scheme, families will receive a "cash gift of up to \$6,000 each for [their] 1st and 2nd child and \$8,000 each for [their] 3rd and 4th child." *Id.*

¹⁶⁰ Lee, *supra* note 154, at 247.

Thus, in 1984 the “graduate mother scheme” gave women with “an acceptable university degree or approved professional qualifications” first choice of schools for their offspring.¹⁶¹ Two state-run matchmaking agencies, the Social Development Unit and the Social Development Service were set up, segregating college graduates from non-graduates as potential partners.¹⁶² There were also sterilization incentives (\$10,000) for low-educated women to stop at two children.¹⁶³ Incentives for voluntary sterilization of women in low-income families continue in a thinly disguised form today.¹⁶⁴

The treatment of migrant women is an extension of the State’s instrumentalization of the Family as labor-production unit. Migrant Brides are at the bottom of the State’s hierarchical conception of women, according to their education level and the desirability of their reproductive abilities. The State devalues Migrant Brides, because as “uneducated foreigners,” they are perceived as being unable to contribute to the economy through their own talents in the Market. Since they are outsiders to society, they are also unable to perform the social integration function of the Singaporean family. The sole value of Migrant Brides lies in their ability to give birth to Singaporean children to alleviate the aging population. The background rules of immigration, labor, and welfare laws reflect this conception of their limited role.

Four of the women I interviewed used the same phrase in describing the impact of the laws on them in Singapore. They were made to feel like “*nothing*,”¹⁶⁵ reflecting a profound sense of disempowerment. They are extremely aware of the State ideology of the Family and feel a strong sense of injustice about the way in which the State sees their reproductive role as their only utility. In the words of Marcia: “*They [the State] want our produce, but not the producer. . . . We are producing babies for them only, and if they want to send us home, they can get rid of us.*” The Migrant Brides described themselves as being “*thrown away*” by the State through deportation.¹⁶⁶ Without the legal right to work, they are restricted to duties in the domestic sphere. Yet, even their reproductive role is not necessarily valued enough to warrant full inclusion within Singaporean society.

¹⁶¹ Mui Teng Yap, *Fertility and Population Policy: The Singapore Experience*, 1 JAPANESE J. OF POPULATION 643, 652 (2003).

¹⁶² Jones, *supra* note 23, at 91. These agencies were united in 2009 to form the Social Development Network. *Id.*

¹⁶³ Voluntary Sterilization Act (Cap 347, 1974).

¹⁶⁴ It continues as the innocuously titled “Home Ownership Plus Education” (HOPE) Scheme. Under HOPE, women who undertake to “keep their famil[ies] small” may receive bursaries for their children’s education up to university level, as well as a \$60,000 housing grant. See *Home Ownership Plus Education (HOPE) Scheme*, MINISTRY OF SOC. & FAMILY DEV., <http://app.msf.gov.sg/Assistance/HomeOwnershipPlusEducationHOPEScheme.aspx> (last visited Apr. 3, 2014), archived at <http://perma.cc/M8YB-QRRY>.

¹⁶⁵ Interview with Wati, *supra* note 134; Interview with Fauziah, *supra* note 70; Interview with Samnang, *supra* note 68; Interview with Dawan, *supra* note 75.

¹⁶⁶ Interview with Wati, *supra* note 134; Interview with Samnang, *supra* note 70.

2. *Contesting the State Ideology of the Family*

The State ideology of the Family is a looming omnipresence across the background rules. My analysis of the background rules in Part V will demonstrate this connection. In this section, I argue that Migrant Brides' actions within the background rule systems should be seen as negotiations with the State, contesting the State's ideal of the Singapore Family and the value that the State attributes to them in its ideology of the Family. Laws may have unintended side effects, and Migrant Brides are innovative agents who interpret and take advantage of them, even if they were not originally enacted with their benefit in mind.¹⁶⁷

There is room for this contestation and negotiation because the State does not exercise power monolithically. It is responding to global forces of the market to ensure national survival, as evidenced by its abrupt turn-arounds in family policy. Further, State power is interacting with the individual's power of autonomy. Youyenn Teo suggests that the reason why family regulation is so successful in Singapore is because individuals collectively agree to negotiate around the boundaries set by the State.¹⁶⁸ State power thus effectively "disciplines" the individual's choices in terms of self and mutual surveillance, as well as normalization of visions of the family, which results in the regulation and predictability of individual behavior vis-à-vis the state.¹⁶⁹ Teo's empirical research also demonstrates that while Singaporeans are skeptical and critical of some of the State's methods, most affirm that the State should intervene in the family.¹⁷⁰ The idea of the State as a site of negotiation and shifting power also militates against the notion that the State is uniformly or transhistorically "male," as famously proposed by Catharine MacKinnon.¹⁷¹ Instead, the State should be seen as a differentiated structure through and within which gender relations are constituted through a process of contestation and bargaining between the State and the individual.¹⁷²

In Singapore, society affirms the State's characterization of Migrant Brides as having merely reproductive roles. Immigration officials are especially rude to Migrant Brides, at times callously announcing the women's HIV-positive status to the entire room;¹⁷³ Wati said, "*from their faces I can see they think I am rubbish.*" Border control officers intrusively interrogate Migrant Brides about whether they are having sex with their Singaporean partners.¹⁷⁴ Their husbands' families also discriminate against them;

¹⁶⁷ WILLIAMS, *supra* note 67, at 162.

¹⁶⁸ Teo, *supra* note 145, at 346, 351.

¹⁶⁹ *Id.* at 352.

¹⁷⁰ *Id.* at 353.

¹⁷¹ CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 161–62 (1989).

¹⁷² Agarwal, *supra* note 122, at 32.

¹⁷³ Interview with Fauziah, *supra* note 70.

¹⁷⁴ See Interview with Wati, *supra* note 134.

Samnang was told by her husband's mother, "*you bring nothing into this marriage.*" Her ability to care for her husband's son was also questioned: "*this woman is dumb. What can she teach your son?*" Samnang reported that she was nicknamed "*outsider*" in Mandarin by her husband's family, and that her sister-in-law refuses to allow her to sit in the front seat of her husband's car. All of these examples demonstrate how society endorses the State's conception of Migrant Brides as hierarchically lower than Singaporean women.

Migrant Brides try to push back against the State's official narrative of them. They explicitly try to prove that they can be contributing members of Singaporean society and should not be characterized as burdens to the State or defined solely by domestic roles. Fauziah and Marcia volunteer regularly in community centers in their neighborhoods, delivering bread to needy residents and organizing outings for children and senior citizens. Other Migrant Brides volunteer in parental support groups at their children's schools. For them, volunteering within the community serves a larger goal than personal altruism. Fauziah says, "*When I [work in the community], people don't see me as just 'Indonesian,' but they see me as human. I feel that I am still useful and I am proud of myself.*" These acts of engagement with society work to reshape Singaporeans' view of Migrant Brides and to define their own conception of self in face of devaluation by the State.

Migrant Brides also strive to perform their reproductive roles exceptionally well to push back against the State's idea that low-educated women only serve to increase the quantity of the population but not its quality. Several interviewees were preoccupied with their children's academic success, wanting them to go to the best schools and to top their classes.¹⁷⁵ Even Samnang, who is illiterate, dotted out the outlines of the alphabet to teach her young son how to write. Having children also helps to shift the impressions of their husband's family; according to Fauziah, "*when they see my children grow up, and they are pretty and smart, their attitude changed.*" Migrant Brides are thus challenging the State's and individual's conception of them through deliberate acts.

IV. DISTORTION OF FOREGROUND RULES

To lay the ground for my analysis of background rules, I discuss the disparities in the application of the foreground rules of family law. The State asserts that "[f]oreign wives of Singaporean men receive equal protection under the law as Singaporean wives" and that the Women's Charter—the statute that contains all provisions of family law and criminalizes domestic

¹⁷⁵ See Interview with Fauziah, *supra* note 70; Interview with Marcia, *supra* note 74.

violence—applies to all women equally.¹⁷⁶ However, I argue that the background rules distort the application of the foreground rules on Migrant Brides by severely limiting their bargaining power. Thus there is a de facto dual system of family law, one that applies to Migrant Brides and the other to Singaporean women. I demonstrate that even though the legal endowments of family law are considerably narrowed, Migrant Brides are strategizing powerfully with those pieces available to them.

A. *Marriage as an Equal Partnership*

The Women's Charter envisions marriage as a co-operative partnership of different efforts. Section 46 of the Women's Charter sets out the rights and duties of marriage:

Section 46— Rights and Duties

- (1) . . . The husband and the wife shall be mutually bound to co-operate with each other in safeguarding the interests of the union and in caring and providing for the children.
- (2) The husband and the wife shall have the right separately to engage in any trade or profession or in social activities. . . .
- (4) The husband and the wife shall have equal rights in the running of the matrimonial household.¹⁷⁷

Singaporean family law expert Leong Wai Kum asserts that this provision is “powerful beyond its substantive content” despite having no power of direct enforcement.¹⁷⁸ Due to concerns of marital privacy, this provision may only come into play when one spouse pursues legal proceedings against the other. Thus, the language referring explicitly to “rights” is misleading, as Section 46(1) does not confer direct rights. Rather it functions as a touchstone principle, which guides the application of the provisions on marriage in the Women's Charter. It is worth pointing out that the notable exception to marriage as a relationship of mutual duties, as conceived in Section 46(1), is that the law only requires a husband to maintain his wife during and after marriage.¹⁷⁹ There is no corresponding duty for a wife. Leong construes Section 46(1) as having a pedagogical and aspirational purpose.¹⁸⁰ It exemplifies what it takes to be a moral spouse, but does not punish failure to do so. This purpose is characteristic of the Women's Charter's legislative history as an effort to introduce a new model of monogamous marriage influenced by

¹⁷⁶ *Singapore Parliamentary Debates, Official Report* (19 July 2010) vol 87 at col 805 (Mr. Wong Kan Seng, Minister of State for Home Affairs, “Managing the Increase of Foreign Spouses”).

¹⁷⁷ Women's Charter, (Cap 353, 2009 Rev Ed) s 46 (Sing.)

¹⁷⁸ LEONG WAI KUM, *ELEMENTS OF FAMILY LAW IN SINGAPORE* 84 (2007).

¹⁷⁹ Women's Charter (Cap 353, 2009 Rev Ed) s 69 (Sing.) (allowing any woman to make a complaint to the family court to order her husband to provide her reasonable maintenance through either a lump sum or a monthly allowance).

¹⁸⁰ Leong, *supra* note 149, at 11.

Western principles to Singapore. In fact, Section 46 was heavily influenced by a provision in the Swiss Civil Code,¹⁸¹ which saw it as “the ideal formulation”¹⁸² for a marital union, predicated on gender equality and economic independence of women.

Migrant Brides are excluded from the progressive vision of marriage embodied in Section 46(1), even when one considers its aspirational purpose. The background rules are specifically conditioned against the achievement of the ideal and work to militate against its realization. Migrant Brides have no right to work in Singapore, and thus are unable “separately to engage in any trade or profession.”¹⁸³ Their inability to be listed as joint owners of property (even if their husband desires to list them as such) and the fact that they are dependent on their husbands for immigration status, privileges the husband’s rights in the running of the matrimonial household, instead of the model of “equal rights.”¹⁸⁴

The background rules result in imbalanced partnerships in which one partner has disproportionate power to structure the matrimonial household. Husbands may decide to completely remove themselves from household affairs. For example, Marcia insisted that she is both “*mother and father of [her] children*” because her husband chooses to be uninvolved and she has few legal endowments to persuade him otherwise. On the other hand, husbands are also able to choose to assert full control over matrimonial affairs. For example, Samnang says: “*When I ask my husband for money, he always yells at me. . . . Even when my son was ill, I was scared to ask for money I feel my life is meaningless if I can’t even take my kid to the doctor.*” The household power imbalance can be so acute that it leads Migrant Brides to believe that conditions in their home countries are better. Samnang exclaimed, “*why is your country not like mine? In Cambodia, husbands give wives money for the home!*” This is despite the fact that Cambodia has no equivalent legal provision for equality of women in marriage. The Women’s Charter has thus fallen from its aspirations to regulate a basic measure of equality within households. Its vision of equality is impotent against the bedrock of deeply unequal background rules. Any sort of balance Migrant Brides achieve in their marriages is due to their ingenuity in strategizing out of the position of dependence that the background rules place them in.

¹⁸¹ *Id.* at 13; see also Fifth Title of the Swiss Civil Code (English Translation by Robert P. Shick, *The Swiss Civil Code of December 10, 1907*).

¹⁸² Leong Wai Kum, *Supporting Marriage Through Description as an Equal Partnership of Efforts*, in *THE INTERNATIONAL SURVEY OF FAMILY LAW* 379, 381 (Andrew Bainham ed., 2002).

¹⁸³ See Women’s Charter (Cap 353, 2009 Rev Ed) s 46(2) (Sing.).

¹⁸⁴ See *id.* s 65(4).

B. The Law of Divorce

Migrant Brides may be excluded from the process of divorce because of the time bar for filing for divorce in the Women's Charter, which states that the court only has jurisdiction over divorces filed at least three years after marriage.¹⁸⁵ If a marriage fails before this three-year bar, a husband may simply cease sponsorship of his migrant wife's visa, in which case she can be deported even without him formally divorcing her. She is thus excluded from the rights that arise from the process of divorce, and her husband can easily avoid the duties that come after marriage dissolution. Deportation entails immediate separation from her Singaporean children, without recourse to the court for custody arrangements. She will also not be able to access financial relief from her husband. Neither will she be able to initiate a divorce unless she finds the money to return to Singapore after the three-year period to make the application.¹⁸⁶ Her husband can avoid all responsibilities arising from divorce indefinitely, since if his wife is overseas his marriage becomes invisible and therefore disposable. He will only be required to divorce his wife if he wants to remarry, and he can serve the divorce papers to her by simply sending them via registered mail.¹⁸⁷

There is a limited exception to the three-year time bar if the applicant proves that the case is either one (1) of "exceptional hardship suffered by the [applicant]" or (2) of "exceptional depravity on the part of the defendant."¹⁸⁸ The Court has held that the burden of proof is onerous, as it does not want to encourage "rush[ing] into and out of marriage capriciously."¹⁸⁹ Interestingly, the seminal case decided in the High Court on "exceptional hardship" grounds involved a migrant marriage. A husband was held to have suffered "exceptional hardship" caused by the "abnormal behaviour" of his migrant wife (match-made through an agency) who refused to be intimate with him and ran away from their marital home. The court allowed for divorce to be granted as "there [was] nothing left to reconcile in this situation. One cannot rekindle a flame that was never lit."¹⁹⁰ This case may debatably be a sign that Migrant Brides can use the exception to their advantage, presuming (perhaps too optimistically) that the court would treat them in the same way it treats Singaporean husbands. However, I argue that, in any case, Migrant Brides would have tremendous difficulty even bringing proceedings

¹⁸⁵ Women's Charter (Cap 353, 2009 Rev Ed) s 94(1) (Sing.).

¹⁸⁶ The practice of the Immigration Authority is to not grant a visa to allow migrant women to stay in Singapore unless divorce proceedings have been actually filed. See AWARE Report 2012, *supra* note 65.

¹⁸⁷ Women's Charter (Solemnization of Marriages) Rules (Cap 353, R 11, 2009 Rev Ed) (Sing.).

¹⁸⁸ Women's Charter (Cap 353, 1961) s 94(2) (Sing.).

¹⁸⁹ *Wong Pee Wei v. Ho Soo Hua Anna Laurene* [2002] SGDC 239 (Sing.).

¹⁹⁰ *Ng Kee Shee v. Fu Gaofei* [2005] SGHC 171 at [2], [5], [21] (Sing.).

under this exception, as their husbands can cancel their visa before they are able to do so.

The process of divorce in Singapore has two stages. In the first stage, the applicant spouse must succeed in proving that a marriage has “irretrievably broken down.”¹⁹¹ The second stage is for ancillary matters,¹⁹² such as property division, custody, and alimony to be determined before the final judgment of divorce. Migrant Brides are driven to settle at both stages, such that the divorce remains uncontested and ancillary matters are decided by consent (effectively by private settlement approved by the court). According to my interviewees, the typical pattern is that men have lawyers but most migrant women do not. Singaporean husbands are more likely to have the financial means to hire lawyers, or if they do not, they may apply for state-funded legal aid. The Migrant Bride, as a non-citizen, is not entitled to legal aid and simply has to represent herself as a litigant-in-person. This creates unequal bargaining power in negotiating divorce. Kamala pithily expressed the resultant dynamic of Migrant Brides in divorce proceedings as “*we just follow*”; they simply agree to whatever consent orders are drafted, and turn up to court when necessary, without practically influencing the outcome of the proceedings.

The background rules of immigration law, which entail the deportation of Migrant Brides after divorce, create further problems regarding the enforcement of court orders for property division. In Kamala’s words, “*husbands never follow the law. First month he will pay, but by the fourth month he will disappear because you are in Thailand. Even if you call him and ask, he will just tell you he has no money.*” Since Migrant Brides would have been forced out of Singapore by that stage, they are not able to file enforcement proceedings with the same ease as Singaporean women.¹⁹³ To circumvent this enforcement problem, the informal norm propagated by the network of Migrant Brides is to ask their husbands for lump sums upon divorce, rather than periodic payments. However, this typically results in lower settlements as there is less cash to distribute at the time of divorce. Further, it results in Migrant Brides quickly settling for a sum without contesting the terms of property division.

The background immigration rules also override the application of custody orders.¹⁹⁴ Citizen children will be separated from their mothers, who no longer have the right to stay in Singapore. Singapore does not allow dual citizenship. Therefore, if Singaporean children were to accompany their mothers, they would have to give up the benefits of Singaporean citizenship and go through the arduous process of reapplying for permanent status in

¹⁹¹ Women’s Charter (Cap 353, 1961) s 95(1) (Sing.).

¹⁹² *Id.* ss 112–21.

¹⁹³ See Maintenance Orders (Facilities for Enforcement) Act (Cap 168, 1985) (Sing.); Maintenance Orders (Reciprocal Enforcement) Act (Cap 169, 1985) (Sing.).

¹⁹⁴ See Women’s Charter (Cap 353, 2009 Rev Ed) ss 122–32 (Sing.).

their mothers' home countries. Since Singaporean citizenship (and its accompanying benefits) for their children may have been the very reason why they migrated, Migrant Brides are unlikely to give this up. Fauziah said, "*I cannot divorce because Singapore will take my children.*" She sees the intersection between the "*meaningless*" custody proceedings, which would almost always entail her children staying in Singapore, and the State ideology that treasures children as national resources of labor.

Migrant Brides have varying levels of legal knowledge about divorce law. Some are completely unaware of the rights of property division at divorce; "*In my country, we don't have this,*" said Fauziah. Those who contemplate divorce speak to the group or to Singaporean volunteers to deepen their patchy knowledge. This knowledge may be erroneous; for example, the incorrect idea that property division is based on "fault" in divorce was being circulated amongst the group. Marcia, who was seriously thinking about divorcing her husband, read newspaper articles on high-profile divorces to find out about the relevant legal provisions. Migrant Brides make a decision on whether they should bring divorce proceedings based on the legal knowledge they have available to them. Marcia concluded that divorce would not be worth her while; the process is too difficult and she gets no added benefits in exchange; "*I don't rely on property division or alimony because my husband earns nothing.*" Samnang, who is HIV-positive, rationalized that while she is married at least her husband is obliged to pay for her healthcare through his state-subsidized insurance. If she divorces him, she would lose this privilege and be required to pay her medical fees in full, which she cannot afford.

C. *The Law of Domestic Violence*

Singapore terms domestic violence "Family Violence" in the Women's Charter, as the statute only covers violence between those who have a recognized familial tie (not including cohabiting or gay couples, roommates, or neighbors).¹⁹⁵ Migrant Brides are extremely vulnerable to domestic abuse—four out of ten interviewees experienced it.¹⁹⁶ Their vulnerability is increased because they are separated from their familial support systems. Elsa spoke about how her husband's behavior changed drastically upon her migration, "*When I was in the Philippines, he couldn't do anything to me, because my family was there. But when I moved to Singapore . . . I found out that he had a bad temper.*"

¹⁹⁵ See *id.* s 64.

¹⁹⁶ Migrant Brides comprised a third of the women who sought help at Pave (a leading agency against family violence in Singapore) between March 2012 and March 2013. Theresa Tan, *More Abused Foreign Brides Seeking Help*, SUNDAY TIMES (Sing.), Sept. 8, 2013, at 6.

The Women's Charter allows those who face family violence to file for Personal Protection Orders ("PPOs").¹⁹⁷ According to Section 65 of the Women's Charter, the applicant must prove: (1) An act of family violence has been committed or is likely to be committed and (2) a protection order is necessary for the protection of the family member.¹⁹⁸ The court may make specific orders for a party to restrain from violence, grant exclusive occupation of all or part of a shared residence, or refer one or both parties to counseling.¹⁹⁹ Any failure to comply with the PPO is punishable as contempt of court.²⁰⁰

The classic problems of underreporting and underutilization of domestic violence laws are accentuated amongst Migrant Brides. Many women are unaware of the laws relating to domestic violence or fear retaliatory action from their husbands if they report.²⁰¹ Migrant Brides' husbands wield tremendous coercive power due to the background immigration rules. Migrant Brides face a massive bar to reporting domestic violence because they fear their husbands may retract sponsorship of their immigration status. Elsa's husband exploits her vulnerability; he has taunted her about calling the police after beating her: "*he knows I am so scared because if I call the police then they may send me back [to the Philippines].*" She does not even dare see the doctor for her injuries because she fears that the doctor, too, would deport her. Her husband was even bold enough to beat her with an umbrella before she went to the Immigration Authority, where there is high police presence. He believes himself to be immune from her reporting. He heckled her, "*Let [the immigration officials] see your face! All blue and black.*" Elsa is caught in a Catch-22 between experiencing more domestic violence and being separated from her daughter.

Migrant Brides may only call the police in the most extreme incidents of violence, which Samnang's experience illustrates. She is regularly verbally abused by her husband, who taunts her with insults including: "*This woman is ugly and useless. She has nothing. No other man would ever want her. She has a smelly and broken vagina.*"²⁰² She described the severe violence she experiences: "*he beats me as if he wants to take my life.*" Her nine-year-old son is so traumatized by the violence that he has to sleep with the lights on. Samnang only called the police once, when she was sure that her husband would have killed her, since he came at her with a knife. However, she declined to press charges, mainly due to her fear of deportation. To

¹⁹⁷ *Personal Protection Orders*, STATE COURTS OF SING., <https://app.statecourts.gov.sg/family/page.aspx?pageid=3768> (last updated July 23, 2013), archived at <http://perma.cc/V5BJ-D4LF>.

¹⁹⁸ Women's Charter (Cap 353, 2009 Rev Ed) s 65(1) (Sing.).

¹⁹⁹ *Id.* s 65(4)–(5).

²⁰⁰ *Id.* s 65(5), (9).

²⁰¹ See Kumaralingam Amirthalingam, *A Feminist Critique of Domestic Violence Laws in Singapore and Malaysia* 18–19 (Asia Research Inst., Working Paper No. 6, 2003).

²⁰² Interview with Samnang, *supra* note 68.

her, the background rules on health subsidies also made a huge difference; she said, “*I still need my medicine.*”

Marcia’s alcoholic husband hits her almost every week until she is bruised in the face. She filed a PPO against her husband, but she withdrew it in court because her husband began seeking treatment for his alcoholism. She also said, “*our house [a studio apartment] is so small. There is no point. My husband is always here. If he reaches out he can hit me. I have nowhere else to move.*” Marcia’s situation reveals a broader problem that migrant women face—they lack options upon separation from their husbands. Shelters for domestic violence survivors give priority to Singapore citizens and permanent residents; Migrant Brides are only housed if space is available.²⁰³

However, not every narrative of domestic violence is an account of the powerlessness of the law. Although the application of the law is remarkably constrained, Migrant Brides find ways to use the law to shift the conditions of domestic violence and power imbalance. For Fauziah, it was a watershed moment when her social worker told her of Singapore’s strict laws against domestic violence and that women were equal to men in Singapore society. This enabled her to redress the unequal power throughout her marriage:

I used to be really really scared of my husband. After living in Singapore I know my rights. Me and my husband are same. We are equal. In my country, when [women] complain to the police [that they are beaten by their husbands], they will not interfere as these are family matters. . . . When I come to Singapore, I was still scared of my husband, but my social worker told me the law will protect me. [So if my husband beats me], I tell him “This is Singapore, not Indonesia. I will call the police.” . . . If he screams, I scream back.

The background rules create inequality for Migrant Brides. However, Fauziah’s knowledge that gender equality was the legislated social order in Singapore, backed by the coercive power of the State (through policing), allowed her to shift the power relations within the household.

Elsa was highly controlled by her husband; she needed his permission to even leave the house. She felt so imprisoned that she would “*escape*” with her daughter at night to take walks in shopping malls. She said that she initially thought that domestic violence was simply part of being husband and wife; “*If he beats me, I just cry.*” However, greater knowledge of the immigration rules allowed Elsa to change power relations in her household. She realized that she could get the right to stay in Singapore through her daughter (a Singapore citizen):

I became brave. . . . When he hit me, I got so angry, I took a bamboo stick and hit him back. I told him “You think I cannot

²⁰³ AWARE Report 2012, *supra* note 65, at 47.

protect myself? You are too much!" Since I did that, he never hit me anymore. But before that, he would hit me at least once a week.

Even though she never attempted to apply for status under her daughter's sponsorship, this small piece of legal knowledge gave Elsa a real alternative to the bargaining situation. Now Elsa is emboldened against her husband. She is the one in the position of control, and is able to make threats. She reminds her husband that she is the only family member looking after him through his sickness and that he would be destitute if she abandoned him. This has forced him to value her household contributions more. She tells him that if he hits her again, "*you will regret it, and you will lose me.*" The tables have turned in their relationship; she is the one physically and verbally intimidating him: "*Sometimes he tells me he prays God will heal him. I tell him I hope God will kill him.*"

These examples show that small pieces of legal knowledge can be wielded to great effect by Migrant Brides and used to drastically shift the power relations in marriage. I do not intend this to be a justification for not pursuing any further reform of domestic violence laws. In fact, I intend to illustrate the opposite; if Migrant Brides are given greater legal endowments or alternatives (such as the increased provision of shelters for migrant women), and are made aware of them, they will use them to great effect to transform their situations.

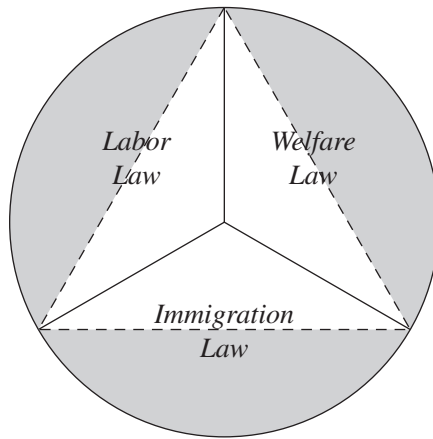
V. BARGAINING WITHIN BACKGROUND RULE SYSTEMS

In the earlier sections, I characterized the role of Migrant Brides as agents strategizing within the background rules and set out the parameters of the bargaining process in terms of negotiation within the private household and with the State. Now, I move on to the substantive analysis of the background rules within which Migrant Brides operate. I outline the formal legal norms and then analyze the informal norms, as the "real action" is not merely within the written law, but constituted by complex social interactions of players with varying interests. I also note how imperfect legal knowledge and lack of transparency of the norms play a huge role in these interactions.

I take Bina Agarwal's analysis of the role of social norms in the bargaining process to be equally applicable in the analysis of legal norms.²⁰⁴ Agarwal identifies four ways in which norms can impinge on bargaining: first, they demarcate the boundaries of what can be bargained about; second, they determine and constrain bargaining power; third, they affect the manner in which bargaining proceeds; and fourth, they constitute a subject of bargaining, since they, too, are malleable.²⁰⁵

²⁰⁴ Agarwal, *supra* note 122, at 14–21.

²⁰⁵ *Id.* at 15.



The diagram above represents the background rules—white triangles indicate the formal rules, and grey areas, the informal norms. The background rules form a prism that filters the application of foreground rules to Migrant Brides, narrowing the women’s legal endowments. Hence, I conclude that the only way to truly make legal endowments in family law apply equally to all women in Singapore is to change some of the formal background rules.

A. *Immigration Law*

1. *Legal Norms*

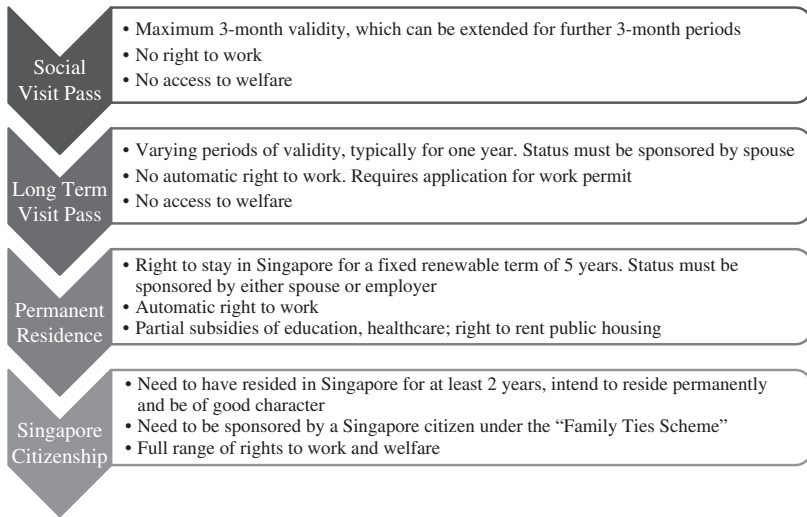
There is no automatic right to entry and residence for any foreign spouse married to a Singaporean.²⁰⁶ The State justifies its strict immigration policy in view of its limited land, resources, and the strain a more open policy would cause to public goods.²⁰⁷ There are four tiers of immigration status through which spouses of Singapore citizens must progress, as detailed in the diagram below. Each status has different requirements and results in different levels of rights.²⁰⁸

Migrant Brides are typically stuck at the stage of “Long Term Visit Pass” in the immigration progression, although they aspire to achieve permanent residence and eventually, full citizenship. There is a small group of

²⁰⁶ See *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at col 368 (Assoc. Prof. Ho Peng Kee, Senior Minister of State for Home Affairs and Law).

²⁰⁷ *Singapore Parliamentary Debates, Official Report* (17 March 1982) vol 41 at cols 1034, 1039 (Prof. S. Jayakumar, Minister of State for Law and Home Affairs).

²⁰⁸ Immigration Regulations (Cap 133, Rg 1, 2009 Rev Ed) s 55(1) (Sing.); see *Singapore Citizenship: Your Privileges and Rights*, eCITIZEN (Mar. 17, 2014), <http://www.ecitizen.gov.sg/Topics/Pages/Singapore-citizenship-Your-privileges-and-rights.aspx>, archived at <http://perma.cc/5GFD-G7WF> (detailing the various subsidies and privileges for each immigration status).



Migrant Brides who are stuck at the initial stage of a three-month "Social Visit Pass" in cases in which they were previously domestic workers,²⁰⁹ or their "family circumstances [need to] improve"²¹⁰ due to their husband's unstable income and unemployment (in some cases, due to imprisonment).²¹¹ According to one minister, if the husband's finances do not improve, "[i]t is a matter of separation [with the Migrant Bride returning to her home country] until the husband meets the requirements."²¹² This shows that in some cases the State explicitly mandates the separation of the family in order to prevent Migrant Brides from becoming a burden on its limited resources.

If immigration status is rescinded, the Migrant Bride is automatically cast as an immigration offender and must leave Singapore within a fixed timeframe, even if she has Singaporean children. The State treats this as a pure immigration issue; any familial tie to a citizen is typically ignored, as are concerns of family unity. There is no official avenue of appeal, and Migrant Brides must rely on the sympathetic discretion of the Immigration Authority to reconsider its decision.²¹³ In *Re Mohamed Saleem Ismail*, the High Court preserved the Immigration Authority's wide discretion, holding that even if a foreign wife of a Singapore citizen does not fall under "prohibited classes" of "undesirable immigrants" under the Immigration Act,²¹⁴ this does not make her automatically eligible for entry or residence in Singa-

²⁰⁹ See *supra* Part I.A.

²¹⁰ *Singapore Parliamentary Debates, Official Report* (20 Jan. 2014) vol 91 at col 3 (Mr. Teo Chee Hean, Deputy Prime Minister and Minister for Home Affairs).

²¹¹ *Singapore Parliamentary Debates, Official Report* (17 July 2007) vol 83 at col 1196 (Assoc. Prof. Ho Peng Kee, Senior Minister of State for Home Affairs).

²¹² *Id.* at col 1196 (Assoc. Prof. Ho Peng Kee, Senior Minister of State for Home Affairs).

²¹³ Immigration Regulations (Cap 133, Rg 1, 2009 Rev Ed) s 8(2) (Sing.).

²¹⁴ Immigration Act (Cap 133, 2008 Rev Ed) s 8 (Sing.).

pore.²¹⁵ The Immigration Authority has the discretion to admit individuals based on prevailing policy and the interests of the majority of Singaporeans.²¹⁶ The Court further held that the right to have a foreign spouse achieve permanent status was not within Article 123 of the Singapore Constitution, which provides for the right of “Citizenship by Registration.”²¹⁷

The criteria for a Migrant Bride to get a Long-Term Visit Pass (“LTVP”) is unclear; there are no established timelines or substantive requirements. A government minister stated that, “[t]he key consideration is whether the Singaporean can support his or her foreign spouse financially,” suggesting that “most Singaporeans are aware of this,” despite it not being formalized in law.²¹⁸ The subtext here is that it is in the State’s interest to prevent Migrant Brides from becoming a financial burden on society. The application process requires submitting the sponsor’s highest education certificate, a letter of employment, an income tax assessment, processing and issuance fees, and (sometimes) a security deposit.²¹⁹ No guidance is given as to what minimum level of income or education is necessary.²²⁰ If the application is refused, no reasons for refusal are given by the Immigration Authority, nor is there a legal obligation to give reasons.²²¹ The lack of transparency is deliberate, as it allows the State to adjust its acceptance of migrants according to its demand. Approval rates for the LTVP for Migrant Brides were at 86% in 2007, coinciding with the State’s drive to increase labor and consumption to feed the expanding economy. Approval rates dropped to 71.9% in November 2011, after Singaporeans expressed dissatisfaction about the influx of immigrants at the General Election.²²² The highly variable rates led to a perception amongst Migrant Brides of great legal uncertainty in the context of constantly changing laws. Kamala explained that previously immigration approval relied on a “*checklist approach*” (the basic fulfillment of certain criteria), but now, Singapore laws are stricter and less transparent. The formal requirements for permanent residency have, in fact, not varied since the 1980s.

²¹⁵ *Re Mohamed Saleem Ismail* [1987] 27 SLR(R) 380 (HC) at 384, [11] (Sing.).

²¹⁶ *Id.*

²¹⁷ *Id.*; Constitution of the Republic of Singapore (1965) Art 123.

²¹⁸ *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at cols 368–69 (Assoc. Prof. Ho Peng Kee, Former Senior Minister of State for Home Affairs, Applications for Long-Term Visa Passes); *see also Singapore Parliamentary Debates, Official Report* (2 March 2012) vol 87 at col 3293 (Deputy Prime Minister Wong Kan Seng, Speech on Population at the Committee of Supply) (arguing that citizenship policy should ensure that foreign spouses do “not result in increased burden to society”).

²¹⁹ *Visitor Whose Spouse Is a Singapore Citizen (SC) or Singapore Permanent Resident (SPR)*, IMMIGRATION & CHECKPOINTS AUTH. OF SING., <http://www.ica.gov.sg/page.aspx?pageid=175&secid=171> (last updated Nov. 1, 2013), *archived at* <http://perma.cc/9HXD-VKRS>.

²²⁰ *Id.*

²²¹ Immigration Act (Cap 133, 2008 Rev Ed) s 39A (Sing.). Section 39A is an ouster clause that excludes judicial review in any court of any decision made by the Minister or Controller of Immigration.

²²² AWARE Report 2012, *supra* note 65, at 14.

Immigration law entrenches a wife's dependence on her husband by requiring his sponsorship of her status. Under the LTVP regime, the worth of a Migrant Bride as an immigrant is measured entirely with reference to her husband, rather than her own potential contributions to the State. Immigration law precipitates an unequal dynamic in migrant marriages. Fauziah expressed that having to ask her husband for sponsorship every few months lowers her worth in his eyes and damages her self-esteem: "*When I ask my husband to sign [my immigration forms], sometimes he ignores me . . . when we argue he says, 'because of me you can stay here,' . . . I feel like I owe him a lot. I feel like I am worth nothing.*" Samnang, who is illiterate and therefore completely reliant on her husband to fill in her immigration forms, said her husband often threatens to send her back home in order to silence her in disputes. In an extreme exploitation of this dependency, some husbands extort money from their wives each time they sponsor their applications.²²³

The need to renew the LTVP on a yearly basis also creates a great deal of uncertainty within the family. My interviewees cited deportation and disruption of their family lives as their greatest fears.²²⁴ Dawan feels her vulnerability acutely, stating, "*I have to always be prepared for something bad to happen. . . . I may have to leave if something happens to my husband.*" However, the immigration rules may not always have a uniform effect on power relations within the household; some Migrant Brides express that they "*think little*" of their husbands, as their incomes are insufficient to give them permanent status. They blame their husbands for not being able to fulfill their expectations of permanent status in Singapore.²²⁵

The LTVP application criteria does not consider the extent to which a Migrant Bride has sunk roots in Singapore or her level of assimilation into society. Marcia expressed her frustration that this counts for nothing, saying, "*my life is totally focused on Singapore. I speak, think, and act like a Singaporean. My family is here and I want to stay here. Why do I need a lot of money to show that I deserve [immigration status]?*" Dawan determined that it is because the system is discriminatory, stating, "*Singapore is only good for rich people, but not for poor people like us.*"

Permanent Residence ("PR") has similarly hazy criteria. The application process requires evidence of the husband's education qualifications and his income, as well as a security deposit. Additionally, the State assesses the educational qualifications of the Migrant Bride to test her individual merit for a permanent status.²²⁶ Those with lower education levels are less likely to

²²³ Interview with Kamala, *supra* note 31.

²²⁴ Interview with Mali in Singapore (Jan. 9, 2012) (transcript on file with the author); Interview with Marcia, *supra* note 74; Interview with Naw, *supra* note 102; Interview with Fauziah, *supra* note 70; Interview with Dawan, *supra* note 75.

²²⁵ Interview with Fauziah, *supra* note 70; Interview with Marcia, *supra* note 74.

²²⁶ *Explanatory Notes: Application for Permanent Residence for Spouse and/or Children of a Singapore Citizen/Permanent Resident*, IMMIGRATION & CHECKPOINTS AUTH.

succeed. The State has recommended that those who fail to qualify for PR should simply continue to reapply for LTVPs, while they attempt to improve their eligibility for PR by “work[ing] on their income and marriage, keep[ing] the family intact,” though this is far easier said than done.²²⁷

2. Informal Norms

While the formal norms mandate dependence, many Migrant Brides actively strategize to limit their reliance on their husbands by taking responsibility of the immigration process and navigating the system on their own. More than half of my interviewees independently print out the forms to renew their visas, fill them in, and make copies of their husband’s documents for the paperwork. If they are not proficient in English, they copy old forms that their husbands have previously helped them with.²²⁸ They only require their husband’s signature. In the words of Elsa, “*I prefer to act smart and be independent.*” Some wait in the long immigration lines alone, only calling their husbands when it is their turn at the counter. Others do not involve their husbands at all and simply bring their husbands’ identity cards along to the Immigration Authority in lieu of their presence.²²⁹ In addition, a few women paid the \$120 security deposit to the Immigration Authority with their own money.²³⁰ These moves prevent their husbands from wielding the full power that arises from their wives’ dependence on them for sponsoring their status.

The lack of transparent legal criteria leads to Migrant Brides generating informal norms about the required standards and propagating them amongst the group as authoritative advice. For example, Migrant Brides say that husbands need to have stable jobs for at least three years before their wives may apply for PR.²³¹ They also suggest that when you are applying for PR, you should not leave the country for the preceding six months, as this demonstrates a lack of commitment to Singapore.²³² Those who are HIV-positive have advised each other to bring a doctor’s letter, which indicates they have been attending their medical appointments regularly, and are thus not a threat to public health.²³³

The most central informal norm is that children are the key to achieving permanent status. The Senior Minister of State for Home Affairs publicly

OF SING. (Mar. 2014), [http://www.ica.gov.sg/data/resources/docs/PR%20Services/1%20Mar%2014Explanatory%20Notes_FTS_Form%204_\(final\).pdf](http://www.ica.gov.sg/data/resources/docs/PR%20Services/1%20Mar%2014Explanatory%20Notes_FTS_Form%204_(final).pdf), archived at <http://perma.cc/SW4Y-G8TR>.

²²⁷ *Singapore Parliamentary Debates, Official Report* (25 February 2013) vol 90 at col 4 (Ms. Grace Fu Hai Yien, The Minister, Prime Minister’s Office, Foreign Spouses in Singapore). Ms. Fu stated that about 50% of PR applications from foreign spouses are rejected every year. *Id.*

²²⁸ Interview with Mali, *supra* note 224.

²²⁹ *Id.*; Interview with Fauziah, *supra* note 70.

²³⁰ Interview with Elsa, *supra* note 69; Interview with Fauziah, *supra* note 70.

²³¹ Interview with Fauziah, *supra* note 70.

²³² Interview with Kamala, *supra* note 31.

²³³ Interview with Wati, *supra* note 134.

stated that “starting a family may ‘strengthen [a Migrant Bride’s] case.’”²³⁴ Immigration officials also routinely suggest that Migrant Brides should have children to improve their chances. Mali thus believed that “*children can protect me*” from deportation. Samnang moved quickly from a Social Visit Pass to getting an LTVP because she was pregnant. Marcia put it more bluntly: “*If you don’t have children, bye bye to you,*” in the sense that Migrant Brides who do not produce potential labor are disposable to the State. At least one of the Migrant Brides held the view that, when making PR determinations, the government prefers Migrant Brides with sons over those with daughters. Boys may be viewed as more valuable to the State, as they will serve compulsory national service and form part of the citizen army that Singapore relies upon for defense.²³⁵

According to the Migrant Brides, their lack of permanent status ironically dissuades them from having children even though their reproductive resources give them value in the eyes of the State and may be their only route to achieving permanent status. Samnang said, “*Why must I give birth to a child when we are going to be separated one day? I will be so worried if I had to leave my child in Singapore. Is my child eating? Is my child going to school? Is my child doing the right thing?*” Reproduction does not by any means guarantee permanent status; Marcia does not have PR despite having four Singaporean children. She said, “*I am raising these children and it is a lot of work. I want to be vindicated.*” She hoped that her reproductive role would be validated by the State through granting her citizenship.

In addition to providing a potential boost to immigration applications, having children allows Migrant Brides to eventually rely on them to sponsor their immigration status when they reach the age of majority.²³⁶ This is another tactic to gain independence from their husbands and to improve their alternatives to the bargaining situation by making separation or divorce a real option. Just knowing that they may have an independent right to settle in the country in the future functions as a huge legal endowment, which can palpably shift the power relations. After discovering that she may have a right to stay on account of her children, Marcia was empowered to tell her husband, “*If you are not happy with things in the house, you can just go.*”

In a highly discretionary system without strict standards, the immigration officer’s view of a Migrant Bride is crucially important to her case. Migrant Brides may try to improve their chances of better treatment by approaching officers of similar race to them²³⁷ or by speaking English in order

²³⁴ *Singapore Parliamentary Debates, Official Report* (17 July 2007) vol 83 at col 1198.

²³⁵ Interview with Marcia, *supra* note 74.

²³⁶ Aged parents of Singapore citizens may apply for PR under their sponsorship. See *Apply for Permanent Residence*, IMMIGRATION & CHECKPOINTS AUTH. OF SING., <http://www.ica.gov.sg/page.aspx?pageid=151> (last updated Apr. 1, 2014), archived at <http://perma.cc/9FGK-Q8LF>.

²³⁷ Interview with Fauziah, *supra* note 70.

to appear educated and integrated into Singapore society.²³⁸ Some feel that bringing their husbands to advocate on their behalf also grants them greater credibility, which they hope will convince the officer to grant them more than the default one-year stay through the LTVP.²³⁹ Sometimes Migrant Brides attempt to directly subvert the system; according to Fauziah, some women falsify their husband's income by buying fake documents which sell on the market for between \$500 to \$1000. Curiously, she said that she received this piece of advice from a sympathetic immigration official.

B. Labor Law

1. Legal Norms

Migrant Brides who hold LTVPs have no automatic right to work in Singapore, but they may apply for Work Permits, a category of employment pass available to unskilled foreign workers.²⁴⁰ Foreign spouses who hold work permits are given two advantages over regular work permit holders: their employers do not need to pay a foreign worker levy, and their employment will not be counted towards the company's quota of foreign workers.²⁴¹ However, the employer remains responsible for medical insurance, repatriation (if applicable), and posting of a \$5000 security bond.²⁴² These requirements pose an additional financial burden not present in the hiring of citizens or PRs. Women with HIV have even greater difficulties, as their employers have to pay twice the bond, to insure against the potential public health risks.²⁴³ The practical effect of these policies is that Migrant Brides are excluded from the job market; none of my interviewees on LTVPs had ever been employed in Singapore.

In addition, there is a clear "moral" criterion for the type of jobs that LTVP holders may apply for. The Ministry of Manpower's policy guidance indicates that LTVP holders may not engage in "objectionable occupations such as dance hostesses, masseurs, etc."²⁴⁴ This reflects the idea that Migrant

²³⁸ Interview with Wati, *supra* note 134.

²³⁹ Interview with Kamala, *supra* note 31.

²⁴⁰ See Employment of Foreign Manpower Act (Cap 91A, 1990) ss 2–5 (Sing.). The Work Permit is the lowest rung of Singapore's tiered work visa system, which provides different terms of entry according to a foreigner's income and skill. The duration of a work permit is generally two years. The worker is only allowed to work for the employer and in the specified occupation. See also *id.* s 7 (setting out the provisions for application of a work pass).

²⁴¹ Employment of Foreign Manpower (Levy) Order 2011 (GN No S 371/2011) s 12 (Sing.).

²⁴² Employment of Foreign Manpower (Work Passes) Regulations 2009 (GN No S 339/2007) (Sing.).

²⁴³ Employment of Foreign Manpower (Levy) Order 2011 (GN No S 371/2011) (Sing.).

²⁴⁴ *Employment of Long Term Visit Pass Holders*, MINISTRY OF MANPOWER, <http://www.mom.gov.sg/foreign-manpower/passes-visas/Pages/employment-of-long-term-visit-pass-holders.aspx> (last updated Dec. 17, 2013), archived at <http://perma.cc/B8W7-J7YY>.

Brides' primary roles are as wives and mothers and they should not "corrupt" the Singaporean family. Their sexuality must remain familial and not part of the market. This is also a clear value judgment about the women who do those sorts of work.

The labor laws reinforce a Migrant Bride's dependence on her husband's income and create a cyclical problem for the advancement of the entire household. Women are unable to contribute to family income, and thus families remain caught in poverty, which means the State continues to see Migrant Brides as burdens. Migrant Brides find it exceedingly difficult to correct this perception and achieve permanent status. Their inability to work creates household tensions, including criticism from their husband's family. Naw points out the ironies of this situation: "*If you want to help your own people, you have to help their wives as well. . . . We can generate more income if we are allowed to work. We can support each other and our families.*" Elsa says that if she could work, her family would no longer need to "beg" from the State. Compounding the problem of their prohibitions on working, Migrant Brides lack opportunities to increase their employability through skills development. Most state-subsidized retraining schemes, including the ones that are actively promoted to Singaporean women to rejoin the workforce, are not available to Migrant Brides.²⁴⁵ Thus the law forces Migrant Brides to stagnate within their reproductive roles and impedes economic advancement.

2. *Informal Norms*

The inability to work in Singapore is intensely damaging to Migrant Brides' sense of pride and identity. Eight interviewees said that their greatest wish was to be able to work to contribute to their family income. All ten interviewees had worked in their home countries, mainly in the hospitality and sales industries. Naw had a mathematics degree and was the most educated Migrant Bride that I interviewed. However, her status as an HIV-positive LTVP holder renders her unemployable. She feels "*demoralized,*" as "*all [her] education is just thrown away.*" Other Migrant Brides echoed the sentiment that they are being de-skilled by the State; any qualifications they received in their home countries remain unrecognized and unutilized.²⁴⁶

Migrant Brides' exclusion from the labor market feeds into a broader exclusion in Singaporean social and political life. "*I wish I could . . . work so I can get more experience of life and more friends. Every time . . . I see*

²⁴⁵ See *Continuing Education & Training*, MINISTRY OF MANPOWER, <http://www.mom.gov.sg/skills-training-and-development/adult-and-continuing-education/cet-master-plan/Pages/default.aspx> (last updated Mar. 27, 2014), archived at <http://perma.cc/XD2J-DYDC> (describing a number of workforce training programs available to Singaporeans).

²⁴⁶ Interview with Fauziah, *supra* note 70 ("*[M]y cert [educational certificate] is rubbish . . . maybe they think I just can buy this cert.*"); Interview with Marcia, *supra* note 74.

women being cashiers [and] salesgirls, I am jealous of them,” Wati said. To Migrant Brides, being part of the workforce is a crucial way of being engaged in society. As workers in their home countries, they also had the opportunity to be political actors; some had even protested on the streets.²⁴⁷ In contrast, they are now cooped up within the domestic sphere in Singapore. The Migrant Brides I interviewed found it profoundly embarrassing that they lack the sense of dignity that comes with work. Wati lies to her family in Indonesia that she is unemployed because her husband does not allow her to work and not because she cannot get a job. Similarly, Mali tells her family in Thailand that she cannot work because she is too busy caring for her nephew. There is a corresponding sense of pride from having a job; Dawan feels liberated because she has savings from her illegal job as a cleaner and can pay for her own HIV medication.

The primary way that Migrant Brides subvert labor law is by working jobs in the informal economy. They rely on job connections from people with whom they have relationships of trust, such as nurses and volunteers at the hospital. These jobs are almost always restricted to “feminine” types of labor, especially domestic work. Naw had to learn to make handicrafts to sell informally, abandoning skills from her previous job as a concierge. Fauziah worked four illegal jobs, all of which were associated with “female” forms of labor: a housemaid, a cleaner at a food court at night, a baker, and a paid guardian of Indonesian students studying in Singapore. At the time of the interview, she had not slept in over 30 hours. The illegal nature of the work is such that their bargaining power over salary is limited—they feel they cannot charge too much because they need to compensate their employers for the risk of hiring an illegal worker.²⁴⁸

However, not all women are at liberty to achieve economic independence through illegal work. Wati’s husband is fearful of legal sanctions: “*My husband tells me I have to keep quiet at home, if I don’t have PR, I cannot work.*” Elsa’s husband specifically prohibits her from working because he is worried that interacting with Singaporean women may influence her to be rebellious or that she may be unfaithful to him with Singaporean men.

C. Welfare Law

In this section, I analyze the laws concerning the provision of public housing, financial assistance, and subsidized healthcare. The State conceives of its welfare system as being built on principles of “rugged self-reliance” and meritocracy, rather than the coddling “soft welfarism” and egalitarianism of the West.²⁴⁹ It thus rejects income redistribution and proliferation of

²⁴⁷ Interview with Wati, *supra* note 134; Interview with Naw, *supra* note 102.

²⁴⁸ Interview with Marcia, *supra* note 74; Interview with Dawan, *supra* note 75.

²⁴⁹ See Christopher Tremewan, *Welfare and Governance: Public Housing Under Singapore’s Party-State*, in *THE EAST ASIAN WELFARE MODEL: WELFARE ORIENTALISM AND THE STATE* 77, 78 (Roger Goodman et al. eds., 1998).

state services for individuals in need.²⁵⁰ Instead, the Singapore government prefers to meet social goals through a macroeconomic policy that encourages wealth accumulation and enhances people's capabilities to participate productively in the economy.²⁵¹

The Singapore State "acts merely as the regulator of public welfare, not as the provider."²⁵² Singapore's welfare system is rooted in personal initiative guided by the hand of the State to ensure that basic needs are met. To encourage self-reliance and individual responsibility, no service is provided for free, and co-payment is the norm in education and healthcare.²⁵³ The centerpiece of welfare policy is the Central Provident Fund ("CPF"), a system of forced savings for citizens and permanent residents, paid out directly from one's wages and employer's contributions.²⁵⁴ A citizen may utilize their CPF funds for the limited functions of financing personal ownership of public housing, subsidizing healthcare for their family, and paying for their children's college education. At retirement, the funds are released monthly to provide a pension income and can also be used as a form of insurance for one's family upon death.²⁵⁵

Through CPF, the State ensures social security of its citizens with minimal direct financial contributions to their welfare. However, the State guarantees a minimum 2.5% return per annum on an individual's CPF account through State investments of funds.²⁵⁶ There is no redistribution of wealth via the CPF, as its size varies directly with an individual's wage.²⁵⁷ By making employee and employer contributions mandatory and linking the CPF to an individual's wage, the CPF system effectively puts welfare in the hands of the market. However, this move paradoxically leaves out those who may require "welfare" the most; the unemployed receive no money in their CPF.

²⁵⁰ See Sock-Yong Phang, *The Singapore Model of Housing and the Welfare State*, in HOUSING AND THE NEW WELFARE STATE 15, 16 (Richard Groves et al. eds., 2007) (describing the role of housing in Singapore's welfare state).

²⁵¹ See Christian Aspalter, *Singapore: A Welfare State in a Class by Itself*, in DISCOVERING THE WELFARE STATE IN EAST ASIA 169, 179 (Christian Aspalter ed., 2002).

²⁵² *Id.* at 170.

²⁵³ See Phang, *supra* note 250, at 18.

²⁵⁴ Central Provident Fund Act (Cap 36, 2013 Rev Ed) (Sing.). Contributions for the CPF are varied according to the life cycle of the worker, and contributions are reduced with age to give employers an incentive to hire older workers. *CPF Contribution*, CENT. PROVIDENT FUND BD., <http://mycpf.cpf.gov.sg/Members/Gen-Info/Con-Rates/ContriRA> (last updated Nov. 5, 2013), archived at <http://perma.cc/YD3M-TTE8>.

²⁵⁵ Aspalter, *supra* note 251, at 170. See generally *About the Central Provident Fund*, CENT. PROVIDENT FUND BD., <http://www.oecd.org/finance/private-pensions/46260911.pdf> (last visited Apr. 6, 2014), archived at <http://perma.cc/5KPL-JXQ8> (outlining the key features of Singapore's CPF scheme).

²⁵⁶ The State keeps the additional profit from the investment of citizens' CPF in its famously large reserves. See Vernon Loke & Reid Cramer, *Singapore's Central Provident Fund: A National Policy of Life-Long Asset Accounts 2-4* (New Am. Found., 2009), archived at <http://perma.cc/HQD9-Z6N5>.

²⁵⁷ See S. Vasoo & James Lee, *Singapore: Social Development, Housing and the Central Provident Fund*, 10 INT. J. SOC. WELFARE 276, 278 (2001).

As non-citizens, Migrant Brides without permanent resident status are excluded from the CPF system and do not have social security.²⁵⁸

1. *Public Housing Laws*

a. *Legal Norms*

Eighty percent of Singaporeans live in government-subsidized Housing Development Board apartments (known locally as “HDB Flats”).²⁵⁹ Private housing is the province of the wealthy in land-scarce Singapore. The HDB scheme encourages home ownership (although direct rental of apartments from the government is possible for the poor) and is designed to give citizens an appreciable immovable asset in the country, a means of financial security, and a sense of belonging in Singapore.²⁶⁰ Public home ownership is also designed as a form of welfare, as those in financial difficulty may sell their apartments back to the State and downgrade to apartments of a smaller size. This allows them to get a lump sum of cash very quickly.

Family is heavily regulated through public housing laws. The State gives additional monetary subsidies or priority to privileged household formations. Married couples who live within two kilometers of their aged parents receive priority in the housing balloting process.²⁶¹ Multigenerational sharing of an apartment by adult children and their parents garners a higher amount of State subsidies than nuclear families.²⁶² These policies incentivize families to function as private welfare systems by encouraging the care of elderly parents and the caregiving of grandchildren by retired grandparents.²⁶³ In line with the State’s preoccupation with reproduction, Singapore citizens married to citizens or PRs are also given priority in the application process if they have more than two Singapore citizen children who are “natural offspring from a lawful marriage.”²⁶⁴

Only Singapore citizens are eligible to benefit from public housing. They may do so in three ways. First, they may apply for a new HDB flat bought directly from the State. This is most beneficial to them as the State subsidizes the cost far below market price. Second, citizens may publicly

²⁵⁸ See *CPF Contributions*, MINISTRY OF MANPOWER, <http://www.mom.gov.sg/employment-practices/employment-rights-conditions/workright/Pages/cpf-contributions.aspx> (last updated Dec. 13, 2012), *archived at* <http://perma.cc/M3UJ-468S>. Only Singaporeans and Permanent Residents can benefit from CPF. *Id.*

²⁵⁹ MAH BOW TAN, MINISTRY OF NAT’L DEV., REFLECTIONS ON HOUSING A NATION 15 (2011), *archived at* <http://perma.cc/TWV3-PEGZ> (The author was the former Minister of National Development from June 1999 to May 2011.).

²⁶⁰ *Id.* at 45.

²⁶¹ *Priority Schemes: Married Child Priority Scheme*, HOUS. & DEV. BD., <http://www.hdb.gov.sg/fi10/fi10321p.nsf/w/BuyingNewFlatPriority?OpenDocument> (last updated Feb. 3, 2014), *archived at* <http://perma.cc/3ZBE-6X4K>.

²⁶² *Id.*

²⁶³ To prevent people from capitalizing on the schemes, residents are not allowed to move outside the town within a five-year occupation period.

²⁶⁴ *Priority Schemes: Third Child Priority Scheme*, *supra* note 261.

rent a studio apartment from the government—an option reserved for society’s most destitute.²⁶⁵ Third, they may buy HDB apartments from private owners in the open market at resale. This is the most expensive way to obtain an HDB home, as property prices are determined by the free market and are correspondingly less regulated by the government.²⁶⁶ The first two ways are heavily regulated by the state-defined concept of the “family nucleus,” which is central to public housing law. Only applicants who conform to an approved set of household arrangements are eligible for ownership of a new flat or for the direct “public rental” of a flat.²⁶⁷ The “family nucleus” may take several specific forms, including²⁶⁸:

- Singapore Citizen applicant and *either* Citizen/PR Spouse *or* Citizen children of the marriage
- Singapore Citizen applicant and Citizen/PR parents (if the applicant is single)
- Singapore Citizen applicant and children under custody if widowed/divorced

Public housing is denied to cohabiting couples, single parents, gay couples, and young single people living alone, silently designating them as household formations that are undesirable to the State. The concept of family nucleus also rules out foreigners from benefiting from public housing. While citizen husbands and foreign spouses with PR are eligible for public housing, they are awarded \$10,000 less housing subsidies than citizen couples.²⁶⁹ The subsidies can be “topped up” when the couple has a citizen child, or if the PR spouse becomes a citizen. Citizen husbands and Migrant Brides without PR are not recognized as a “family nucleus” unless they have citizen children.²⁷⁰

Before July 2013, the only option for a childless Singapore citizen husband and his non-PR Migrant wife was to buy a resale flat on the open market as they were not eligible for public housing.²⁷¹ If a husband and Mi-

²⁶⁵ *Priority Schemes: Tenants Priority Scheme*, *supra* note 261.

²⁶⁶ *Eligibility to Buy: Public Scheme*, HOUS. & DEV. BD., <http://www.hdb.gov.sg/fi10/fi10321p.nsf/w/BuyResaleFlatPublicScheme?OpenDocument> (last updated Aug. 29, 2013), *archived at* <http://perma.cc/W6JM-UAHP>.

²⁶⁷ *Eligibility Conditions for Renting a Flat*, HOUS. & DEV. BD., <http://www.hdb.gov.sg/fi10/fi10323p.nsf/w/RentDirectHDBEligibility?OpenDocument> (last updated Jan. 3, 2013), *archived at* <http://perma.cc/U7Y7-BZ22>.

²⁶⁸ *Eligibility to Buy New HDB Flat: Family Nucleus*, HOUS. & DEV. BD., <http://www.hdb.gov.sg/fi10/fi10321p.nsf/w/BuyingNewFlatEligibilitytobuynewHDB-flat?OpenDocument> (last updated Mar. 6, 2014), *archived at* <http://perma.cc/CS67-LY9V>.

²⁶⁹ *CPF Housing Grant for Family*, HOUS. & DEV. BD., <http://www.hdb.gov.sg/fi10/fi10321p.nsf/w/BuyResaleFlatCPFGrantFamily?OpenDocument> (last updated Aug. 30, 2013), *archived at* <http://perma.cc/F9ZU-2JXV>.

²⁷⁰ *Id.*

²⁷¹ *Meeting the Housing Needs of Singaporeans with Non-Citizen Spouses*, REACH (Aug. 15, 2013, 11:21 AM), *archived at* <http://perma.cc/NG6U-P2V5>. In July 2013, the Housing Development Board launched the Non-Citizen Spouses Scheme, which would

grant Bride acquire a resale HDB flat together, the wife may be registered as owning the property in joint tenancy. In the event her husband dies, a Migrant wife may gain the full beneficial interest of the property through the right of survivorship.²⁷² However, if she is an LTVP holder, she will not have the right of occupancy after her husband's death, as the right of occupancy as sole tenant in public housing is restricted to citizens and PRs.²⁷³ Unless she has Singaporean children, she will be effectively kicked out of the apartment and forced to sell the property and service any outstanding debt with the sales proceeds.

Public housing laws also make it difficult for Migrant Brides to divorce or separate, as they lack independent housing options. Their only option is to rent a flat or a room on the open market, and these are priced substantially higher than other housing. At property division in divorce, Migrant Brides will not be able to take over the occupancy of the matrimonial HDB flat, since they are not citizens or PRs.²⁷⁴ The best they can hope for is a division of the sales proceeds, but the courts may be averse to ordering the sale of the only matrimonial home for cases in which this may leave citizen husbands homeless.

b. Informal Norms

The restrictive rules result in Migrant Brides and their husbands simply being unable to hold property in joint names, as they typically cannot afford the higher prices of resale flats on the open market. Often, Migrant Brides live in property legally owned by their husbands and their husbands' parents jointly (as the "family nucleus") or in property owned solely by their husbands' parents.²⁷⁵ This increases the opportunity for conflict between Migrant Brides and their husbands' families, as the families often feel that Migrant Brides are obliged to repay them for free housing by doing domestic work

enable some Singaporeans with non-citizen spouses (with LTVPs of at least six months) to buy new two-room flats directly from the HDB. *Id.* This scheme appears to be targeting families of Migrant Brides in particular, as the requirements are that the Singapore citizen applicant must be at least 35 years old and the household income must be below \$5000. *Id.* This fits the profile of most Migrant Brides' husbands, who tend to be older and of lower income. It remains to be seen how much of an impact this new scheme has had. It should be noted that there are several limiting factors. The scheme only applies to first-time applicants of public housing, and the Singaporean applicant will only receive the same level of subsidies as Singaporean singles. *Id.* This still sends the subtle message that Migrant Brides are not part of the State's ideal conception of the "family nucleus."

²⁷² *Demise of Joint Owner*, HOUS. & DEV. BD., <http://www.hdb.gov.sg/fi10/fi10326p.nsf/w/ChgOwnerDemiseJoint?OpenDocument> (last updated Mar. 19, 2014), archived at <http://perma.cc/A8S4-QNL2>.

²⁷³ *Change Owners' Proportion of Shares: Eligibility Criteria*, HOUS. & DEV. BD., <http://www.hdb.gov.sg/fi10/fi10326p.nsf/w/ChgOwnerEligCriteriaShareProportion?OpenDocument> (last updated Mar. 19, 2014), archived at <http://perma.cc/PYN8-3CEW>.

²⁷⁴ *Eligibility to Buy New HDB Flat: Family Nucleus: Citizenship*, *supra* note 268.

²⁷⁵ Interview with Elsa, *supra* note 69; Interview with Wati, *supra* note 134.

for the entire household.²⁷⁶ Alternatively, Migrant Brides and their husbands sublet rooms within strangers' flats on the open market, as this is considerably cheaper than renting a flat in its entirety.²⁷⁷ This can result in an unstable living situation; for example, Kamala had to move every few months from room to room until she was granted PR.

When Singaporean husbands are poor and do not own property, their only housing option, other than with their parents or subletting, is public rental of studio apartments from the State.²⁷⁸ Since they are unable to apply for public rental flats with their migrant wives, they often end up sharing a small space with other relatives (who make up the requisite "family nucleus"). Dawan shared a studio apartment with her husband and his cousin. She had to place a wardrobe in the middle of the room so she and her husband could have privacy. Some Migrant Brides without children are driven to the illegal subletting of public rental flats because they have no other options, in some cases even after petitioning the Housing Development Board numerous times.²⁷⁹ The illegality drives up the rent; while Mali's landlady pays the government a heavily subsidized rate of \$20 a month, she charges Mali \$400. Migrant Brides' husbands are also disenfranchised by their inability to purchase or rent flats with their wives. Mali's husband always bemoans, "*I am Singaporean, but I have no house to stay [in].*" This shows that poor citizens are penalized for their migrant marriages by being denied public goods.

The housing laws severely limit Migrant Brides' opportunities to be listed as joint owners of the property. This results in a Migrant Bride getting no beneficial interest in the property upon her husband's death. Instead the property ownership reverts to his Singapore citizen family or to the State.²⁸⁰ To circumvent this legal consequence, Migrant Brides rely on private ordering through their husband's will. This method has been circulating around the Migrant Brides network and many have been requesting volunteers to draft wills for their husbands.²⁸¹ This provides them with much-needed se-

²⁷⁶ Interview with Wati, *supra* note 134; Interview with Marcia, *supra* note 74.

²⁷⁷ Interview with Kamala, *supra* note 31; Interview with Mali, *supra* note 224; Interview with Dawan, *supra* note 75.

²⁷⁸ Subletting of Public Rental Flats is illegal. See *Conditions of Tenancy*, HOUS. & DEV. BD., <http://www.hdb.gov.sg/fi10/fi10323p.nsf/w/RentalTenantRenewal?OpenDocument> (last updated Nov. 20, 2011), archived at <http://perma.cc/93CZ-V7FZ>.

²⁷⁹ Interview with Mali, *supra* note 224.

²⁸⁰ If the flat owners cannot retain the flat, they will need to dispose of the flat in the open market provided they have completed the minimum occupation period at the point of change of ownership to a non-citizen. Otherwise HDB will acquire the flat and pay compensation at a sum determined by HDB. See *Transfer Flat Ownership*, HOUS. & DEV. BD., <http://www.hdb.gov.sg/fi10/fi10326p.nsf/w/ChgOwnerEligibilityCriteria?OpenDocument> (last updated Oct. 8, 2013), archived at <http://perma.cc/H6Z4-M9VT>; see also *Retain Flat Ownership: Loss of Citizenship*, HOUS. & DEV. BD., <http://www.hdb.gov.sg/fi10/fi10326p.nsf/w/ChgOwnerLossCitizenship?OpenDocument> (last updated Dec. 27, 2013), archived at <http://perma.cc/X5VL-3ZNL>.

²⁸¹ Interview with Elsa, *supra* note 69; Interview with Wati, *supra* note 134.

curity, especially since their husbands are usually much older. There are clear differences in how this private ordering is arrived at, depending on where their marriage falls on the spectrum from Transactional or Sentimental.

Elsa's husband owns the HDB apartment in which their family currently resides solely in his name. Her husband is more than twenty-five years older than she is, has HIV, and is in poor health. Their marriage is closer to the Transactional side of the continuum with very few affective relations between them. Elsa wants to be able to stay in the house with her citizen daughter or to get half of the proceeds from the sale after her husband's death. On her fellow Migrant Brides' advice, Elsa dedicatedly "*psychoed*" (psychologically manipulated) her husband to persuade him to will her the property, using tactics of reverse psychology and guilt-tripping.²⁸² This demonstrates that within a Transactional Marriage, it may not be the partner's first instinct to support his wife after his death or to think that she is deserving of such support. He may prefer the property to revert to his Singaporean family, as it does by default. In these cases, Migrant Brides have to strategize to protect their own interests.

On the other hand, in Wati's relatively Sentimental Marriage, it was her husband who decided to will her the property, as he was worried about financial provision for her after his death. He decided that his property's beneficial interest would be divided into 60% and 40% shares between Wati and his daughter (from a previous marriage). He also willed Wati all the money in his bank account. In addition, he made Wati the trustee and executor of the will, giving her the power to decide when the sale of his property should occur. Wati's example demonstrates the ethic of sharing within a Sentimental Marriage and the cooperative way in which some couples facilitate the future security of each other through private-ordering. Wati hopes to use the money to buy a house and open a small business in Indonesia. Even though she will have to move back to Indonesia after her husband's death, her future there is reasonably secured, and she has the autonomy to make financial decisions for herself from her husband's estate.

2. *Laws Surrounding Financial Assistance and Subsidized Healthcare*

a. *Legal Norms*

Singapore is averse to directly providing financial assistance for the poor, in line with its philosophy of self-reliance. Assistance for the poor is

²⁸² "I just kept telling him, if something happens to you, what will happen to me and my daughter? I told him, 'You can take your house and bring it to heaven! . . . I am not forcing you, if you want to give me, you can give it to me. My daughter and I can work. I am not after your money. But are you sure your money will go to the right person when you die?'" Interview with Elsa, *supra* note 69.

delivered through what the State terms the “many helping hands” approach, in which the government delegates its social support function to organizations within the community.²⁸³ The family (including the extended family) is emphasized as the “first line of support” for needy individuals.²⁸⁴ Charities (“Voluntary Welfare Organizations” in State terminology) and ethnicity-based community organizations are responsible for delivering a wide range of social services, including care for the elderly and disabled, accommodation, food rations, and financial support of the poor. The State acts as regulator and facilitator of these charities. It centrally allocates State funding from public donations and the budgets of ministries to approved programs within the charities.²⁸⁵ Any programs sponsored by State funding are only available to citizens and permanent residents even though they may be delivered through Voluntary Welfare Organizations (“VWOs”). Foreigners are only eligible to benefit from charitable programs that are funded through direct donations of private individuals.²⁸⁶

Financial assistance schemes directly funded and administered by the State (through their geographically based Community Development Councils (“CDCs”)) are also restricted solely to Singapore citizens. There are several State-run schemes designed for temporary relief during periods of financial difficulty. The names of the schemes (“Work Support Programme”²⁸⁷ and “Workfare”²⁸⁸) are indicative of the State’s aversion to the word and concept of “welfare.” Through these schemes, the State supplements low wages and emphasizes eventual independence. Direct long-term public assistance from the State is limited to citizens who are absolutely incapable of working and have no income or family support.²⁸⁹

Singapore has a means-tested healthcare subsidy system for citizens and PRs, who may receive up to 80% subsidies if they are hospitalized.²⁹⁰

²⁸³ See, e.g., *Singapore Parliamentary Debates, Official Report* (22 February 1991) vol 57 at col 11 (President Wee Kim Wee, President’s Address) (describing the philosophy behind the HDB flat programs for poor families).

²⁸⁴ Ambassador Ong Keng Yong, Dir., Inst. of Policy Studies, Singapore’s Social Polices: Vision, Accomplishments, and Challenges, Speech at the Centre for Social Development (Asia) Conference (June 8, 2010), *archived at* <http://perma.cc/J435-PWPS>.

²⁸⁵ David Seth Jones, *Welfare and Public Management in Singapore: A Study of State and Voluntary Sector Partnership*, 24 *ASIAN J. PUB. ADMIN.* 57, 57–58 (2002).

²⁸⁶ NAT’L COUNCIL OF SOC. SERV., ASSISTANCE SCHEMES FOR INDIVIDUALS & FAMILIES IN SOCIAL & FINANCIAL NEED (2013), *archived at* <http://perma.cc/7TAV-WHZS>. The document catalogues a full range of state-funded assistance and programs for families in Singapore; virtually all of them are restricted to Citizens and Permanent Residents. *Id.*

²⁸⁷ See *Employment Assistance*, MINISTRY OF SOC. & FAMILY DEV. (Feb. 8, 2012), <http://app.msf.gov.sg/ComCare/FindTheAssistanceYouNeed/EmploymentAssistance.aspx>, *archived at* <http://perma.cc/CYP8-VKQ6>.

²⁸⁸ See *WORKFARE*, <http://www.workfare.sg> (last visited Apr. 6, 2014), *archived at* <http://perma.cc/HHE4-TG9V>.

²⁸⁹ See *Permanently Unable to Work*, MINISTRY OF SOC. & FAMILY DEV. (Feb. 6, 2012), <http://app.msf.gov.sg/ComCare/FindTheAssistanceYouNeed/PermanentlyUnableToWork.aspx>, *archived at* <http://perma.cc/LSR8-JUNK>.

²⁹⁰ *Revised Healthcare Subsidy Rates for Permanent Residents*, MINISTRY OF HEALTH, http://www.moh.gov.sg/content/moh_web/home/pressRoom/pressRoomItem

Foreigners, including Migrant Brides on LTVPs, are not subsidized at all.²⁹¹ However, migrant women can pay their hospitalization expenses at full price by using the money in their husband's Central Provident Fund account. One incident of hospitalization of his wife can have a devastating effect on a husband's CPF savings.²⁹² The lack of access to medical subsidies means that Migrant Brides with HIV have to pay the full price for their drugs.

b. Informal Norms

Migrant Brides rely heavily on religious charities for direct financial assistance, as these charities tend to have programs funded by private donors that are therefore not restricted to citizens and PRs. Fauziah, a Muslim, gets \$300 a month for her HIV medicine from a Christian church. Some Migrant Brides also buy generic HIV drugs imported from Thailand through a private business, which cost less than half the price of brand name HIV drugs administered to Singapore patients.²⁹³

Despite their lack of personal eligibility, Migrant Brides often use their husbands' and children's names to acquire aid for the family from State-run financial assistance schemes. For those interviewees whose families were on public assistance, it was the women, rather than their husbands, who had initiated the bureaucratic application process. They apply for aid to supplement their husband's incomes or to provide for specific needs of their children, especially since they are unable to do so through employment. Migrant Brides demonstrate themselves to be active securers of their family's wellbeing through aid applications. They keep an eye out for notices of relevant welfare programs in the newspaper and around their neighborhoods and share the information through their networks.²⁹⁴ They employ their skills of negotiation and economic judgment; Elsa represents her family's needs to VWOs to develop a plan of assistance: "*Everything is under my husband's name, but I am the one who goes there to talk.*" Elsa thus cast herself as chief negotiator for her family. She brings back the application form for her husband to simply sign. She says she is much more effective because her husband is impatient and yells at the staff, which compromises the success of their aid applications. Migrant Brides also have a better idea of the material needs within the household, which enables them to secure aid-in-kind such as clothes and school supplies for their children.

Release/2012/revised_healthcaresubsidyratesforpermanentresidents0.html (last updated Apr. 12, 2012), archived at <http://perma.cc/L8WS-V3XL>.

²⁹¹ Abigail See Shyang Ling et al., The Roles of ICTs in the Lives of Foreign Wives in Singapore, in Conference Proceedings, International Conference on Communication, Media, Technology and Design 469, 469 (May 9–11, 2012), <http://www.cmdconf.net/2012/Proceedings/Proceedings.pdf>, available at <http://perma.cc/568R-8C2Y>.

²⁹² Interview with Samnang, *supra* note 68.

²⁹³ My interviewees suggest that generic drugs from Thailand cost \$300 a month as opposed to over \$1000 for brand-name drugs. Interview with Fauziah, *supra* note 70; Interview with Wati, *supra* note 134.

²⁹⁴ Interview with Marcia, *supra* note 74.

Migrant Brides are extremely savvy with the application processes for various forms of aid to provide for their families. Marcia has three teenage daughters and a three-year-old son with Down's Syndrome. She has lived in a public rental flat for sixteen years in overcrowded conditions. Her husband is unemployed and uninterested in the family's wellbeing. She has an illegal job cleaning houses, three hours per week, earning \$120 a month, but she is unable to work more as she is the sole caregiver of her son. She supplements her meager income with assistance from VWOs and the State. Marcia actively strategizes to improve her family's condition. Her priority is to ensure that her children receive a good education for the purpose of family advancement. She attends workshops for low-income families on how to manage limited finances. As she puts it, "*I find out all these ways to help myself.*" The number of different aid programs she has applied for in order to assemble piecemeal a comprehensive plan to cover her children's basic needs demonstrates her resourcefulness. Marcia gets assistance from a church to pay her electricity bill. She applies to different organizations including State-funded schemes for help with her children's school fees, pocket money, and for free tutoring. A Methodist charity provides diapers and milk for her son. She takes along her children's birth certificates and husband's identity card to her meetings as proof of her family's citizenship and entitlement to assistance.

Marcia also goes to the Meet-the-People sessions of the Member of Parliament ("MP") in her constituency. These sessions are typically restricted to citizens who are part of the electorate and an identity card (as proof of citizenship) is required to enter. Marcia takes along her husband's identity card to get herself through the door, so she may ask the MP to appeal for additional assistance for her children from State-funded schemes. She uses the opportunity of speaking to an elected official to advocate for Migrant Brides as a group by telling of their hardships. There is indication that efforts like these have had some success. MPs have successfully drawn legislative attention to Migrant Brides resulting in recent policy changes, which will be discussed in the Article's conclusion.²⁹⁵

By being in control of welfare applications, Migrant Brides also ensure that they are the ones who collect the checks or donated items for the family. Some VWOs specifically ensure financial aid is cashed into the women's bank accounts. This gives Migrant Brides a valuable element of control over household finances and expenditure, as their husbands may be prone to squandering their salaries. The women are able to achieve a measure of independence through managing these funds.

²⁹⁵ See, e.g., *Singapore Parliamentary Debates, Official Report* (1 March 2012) vol 88 at col 51 (Mr Ang Hin Kee, Mr Muhamad Faisal Bin Abdul Manap, Dr Intan Azura Mokhtar, and Mr Hri Kumar Nair) (statements all highlight struggles of Migrant Brides within their constituencies).

In spite of these benefits, the Migrant Brides I interviewed have an uncomfortable relationship with charity. They do not enjoy relying on others for survival: to them welfare is a last resort. Fauziah said tearfully, *“I’d rather work than have someone pay for me. But since I cannot work I just have to swallow my pride.”* This reflects the indignity she feels relying on handouts. Marcia was convinced that if she were able to work legally and earn \$30–\$40 per day, it would be more than enough to raise her four children without relying on charity. Both Marcia and Fauziah give back to the VWOs that help their families by volunteering within the organization, and they make sure their children volunteer as well. Fauziah said, *“[What] you owe . . . you must pay back. We must give and take. Some days we take, but when we can give back, we give back.”* Many of the Migrant Brides I interviewed are trying to mitigate the indignity of reliance and they do not want to take anything for free. The way they give back their labor in exchange for financial assistance should go some way into defeating the assumption that they are mere burdens on the State.

Since most of the aid they receive is because of their citizen families, Migrant Brides are fearful about how they will provide for themselves when their children are grown and they no longer play a reproductive role. Marcia asked, *“[A]re they [the State] still going to recognize me when my children are grown? I can’t rely on welfare organizations because I am not a citizen.”* She concluded that since she is excluded from most forms of State provision, her children will be her social security in her old age and are her only hope of survival in Singapore. This reveals the depth of dependence that Migrant Brides have on their Singaporean family. The background rules are structured such that they move from dependence on their husband to their children and never achieve complete independence in Singapore.

VI. BREAKING POINTS AND ALTERNATIVES TO BARGAINING

I have demonstrated how the background rules limit Migrant Brides’ alternatives to the bargaining situation. Divorce and separation are very limited options because the law severely circumscribes the independence they have from their husbands. Due to the background rules, the “breaking point” for a Migrant Bride in terms of exiting the bargaining situation is a lot higher than in Singaporean marriages, which leads to greater toleration of unconventional domestic arrangements. In the words of Marcia, *“If Singaporeans have [these] kind of problems they would divorce very quickly.”* I argue that although the predominant theme is “endurance,” in situations of extreme coercion “endurance” is not necessarily associated with the passive victimization of being oppressed and silenced by men. Rather, there is evidence that Migrant Brides are calculating the levels of coercion they are willing to put up with, and actively working to mitigate the effects of these circumstances.

I have already discussed how the background rules make marriage dissolution especially difficult for Migrant Brides when divorce may also mean deportation. In addition, there is tremendous cultural stigma of being divorced in their home countries. Marcia, from the Philippines (a predominantly Catholic country), said, “[B]ecause of our culture, [we] need to stay married. There is no divorce in my country.” The sense of shame from divorce is accentuated by the fact that women are seen as having left their birth families at marriage. Divorce thus has distinct implications on a woman’s value and identity. In the words of Samnang, “If I get divorced . . . people will laugh at me behind my back. They will say, this woman has nothing. Her family is gone. . . . I will be like a used article of clothing, that [my husband] has worn and cast aside.” Many Migrant Brides would not even tell their families back home of their marital problems because they feel that they will lose respect from their communities.²⁹⁶

The limited alternatives to the bargaining situation result in Migrant Brides tolerating unconventional household arrangements. Half of my interviewees had husbands who were flagrantly engaging in extramarital affairs, and out of those five, four women faced regular domestic violence. Many Migrant Brides described having to do all the work that a domestic worker would be employed to do, except for free. Wati described the tremendous burden of being treated like domestic labor by her husband’s family: “When I come home, even before I put down my bag, they ask me to do everything around the house . . . I cook, clean for them, wash all their clothes.” In an extreme case of outsourcing of household labor from the extended family, Mali has raised her nephew since birth, because her Singaporean sister-in-law said she had no time to look after him. Mali receives no money in exchange for her caregiving and the boy’s parents only visit on weekends. Migrant Brides may also have to drastically sever ties with their families; Dawan left her son from a previous relationship in Thailand when she married a Singaporean. Migrant Brides are often unaware of their husbands’ personal histories before marriage. Marcia did not know that her husband was an alcoholic. It was only three months into marriage that Samnang found out that her husband had a first wife who committed suicide by jumping out of the window in her present marital bedroom and a son who was seriously ill in the hospital.

What Migrant Brides determine as tolerable within a marriage is crucially informed by their own set of goals and self-interests. We must not simplistically assume that, because these women are tolerating extreme circumstances, they are powerless within their marriages. Marcia adamantly asserted several times in the interview that she could definitely leave her marriage if she wanted to, as she could rely on her children to renew her immigration status. Interestingly, Migrant Brides represent their toleration of

²⁹⁶ See Interview with Fauziah, *supra* note 70; Interview with Marcia, *supra* note 74.

these extreme circumstances as a choice. As Kamala put it, "*all my friends . . . we choose to endure.*" While they all welcome having a greater range of options than simply staying in the marriage, their endurance is not simply a one-dimensional narrative of suffering; instead they construct it as a site of agency. The decision to withdraw into "separate spheres" of a Transactional Marriage and increasingly separate their interests from their husbands' can be seen as a strategic response to limit the harms of their onerous marriage arrangements by minimizing conflict and their husbands' control. For Fauziah, regret about her choice of an abusive husband is mixed with a sense of pride about the opportunities her migrant marriage has given to her children. She says in the same breath, "*I regret coming to Singapore. But I must endure all these things. I keep my regret away from my children. I am proud to be here, for [their] sake.*" This substantiates my earlier point that our concept of agency should accommodate the complex and ambiguous responses Migrant Brides often have to their marriages.

Agency is also present in how Migrant Brides alleviate the harms of their unconventional household arrangements through positive action. When Marcia found out her husband was having an affair with a Filipino maid, she secretly checked the maid's particulars on the computer system of the remittance company where she worked. She took advantage of her superior social status as a Filipino wife of a Singapore citizen and told the Philippines embassy, "*There is a maid here who is disturbing my life here.*" The maid was sent back home. Fauziah was saddled with taking care of a baby that her husband had fathered with a Chinese prostitute. Her husband continually denied his paternity but simply told Fauziah she had to take care of the child. Fauziah sent the baby for DNA testing to affirm that it was indeed her husband's. After a few months, she could not cope emotionally with having to look after the child: "*When I saw the baby, I saw how my husband treats me and I felt angry. . . . I was scared I might do something to the child.*" So she gave it up to her sister in Indonesia for adoption, pretending it was her own. She used the DNA test to persuade her husband to agree to this arrangement by threatening to reveal the truth of his infidelity to his children.

The level of agency that Migrant Brides exercise within extremely constrained circumstances works to shift the "helpless victim" narrative. It supports the argument that these women would not be helped by protectionist legislation that limits their options through restricting migration. Rather, Migrant Brides are already strategizing, and their lives would be vastly improved if they were given more options to increase their bargaining power within marriage and to improve their alternatives to the bargaining situation. This does not require that family law itself be reformed. Significant increments to the bargaining power of Migrant Brides can be added by making small changes in the background rule systems. This will limit the distortion of family law as it is applied to Migrant Brides. To bring back a previous analogy, we do not need to change the rules of the chess game or exclude Migrant Brides from playing the game itself for their own protection. We

just need to restore perhaps just one or two of the missing rooks. In other words, we need to increase the level of power that Migrant Brides wield as they strategize, so they have greater latitude of movement.

CONCLUSION

The background rules relating to Migrant Brides in Singapore are shifting even as I write. At the time I conclude this Article, new legal rules are coming into effect. In April 2012, the government introduced a new status called the “Long Term Visit Pass Plus” (“LTVP+”) which is located in between LTVP and PR status in terms of legal entitlements and was created specifically to help Singaporean families with foreign spouses.²⁹⁷ LTVP+ has a three-year period of validity, although Singaporean husbands still have to sponsor their wives’ status.²⁹⁸ In addition, LTVP+ holders are eligible for healthcare subsidies at a level similar to that of Permanent Residents.²⁹⁹ Further, LTVP+ holders do not have to apply for work permits. Instead they will apply for a “Letter of Consent” from the Ministry of Manpower in order to be employed. There are no administrative fees or security bonds necessary to get a “Letter of Consent,” and applications are supposed to be approved within one week.³⁰⁰ This is designed to make it easier for Migrant Brides to find employment.

On closer examination, these changes are not so revolutionary. The new rules only apply to women who have citizen children. This simply gives legal effect to what was already a powerful informal norm (that having children would improve one’s immigration status) and draws the State ideology of using Migrant Brides instrumentally for reproduction to the fore. The new status and its resultant legal entitlements do not benefit women without children or women with HIV. Further, not all women with citizen children will necessarily benefit from LTVP+, as the status remains subject to the discretion of the immigration authority and will not be given as of right.³⁰¹ There-

²⁹⁷ Press Release, Immigration & Checkpoints Authority, New Long-Term Visit Plan Scheme (LTVP+) (Mar. 1, 2012), *archived at* <http://perma.cc/GLB8-U7XQ>.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Letter of Consent for Long-Term Visit Pass-Plus (LTVP+) Holders*, MINISTRY OF MANPOWER, <http://www.mom.gov.sg/foreign-manpower/passes-visas/letter-of-consent-ltvp-plus-holders/Pages/default.aspx> (last updated Dec. 26, 2012), *archived at* <http://perma.cc/TBR8-KS8H>; *FAQs on Letter of Consent (LOC) for Long Term Visit Pass Plus (LTVP+) Holders*, MINISTRY OF MANPOWER, http://www.mom.gov.sg/Documents/services-forms/passes/LOC_for_LTVP_Plus_FAQ.pdf (last visited Apr. 6, 2014), *archived at* <http://perma.cc/QDU2-SS6C>.

³⁰¹ Pham Thi Ngoc Anh, *Dilemma of a Foreign Bride with No Long-Term Pass*, STRAITS TIMES (Sing.), Feb. 12, 2013, at A23 (a letter published in the Forum pages). The author, a Vietnamese Migrant Bride, states that her application for the LTVP+ was rejected despite the fact that her husband and young son are Singaporeans. She highlights that she is a university graduate from Vietnam and that she is contributing socially by taking care of her Singaporean son and aged mother-in-law. As she was not eligible for healthcare subsidies, her husband paid almost \$20,000 in delivery charges when her son

fore, a significant proportion of women will have to continue bargaining within the framework of the rules that I have analyzed in this Article. The excitement many of my interviewees had over the reforms turned into disappointment when they found out that they could not benefit from them in any way.

As for Migrant Brides who do have citizen children, by creating a new category of LTVP+, the State is simply freezing them in an additional transient state. Similar power relations between their husbands are being reinscribed. While Migrant Brides have a longer period of stability in Singapore with the LTVP+, husbands' threats of revoking sponsorship of their immigration statuses remain just as heavy. Although sponsorship only needs to be exercised once every three years, it does not mean that husbands cannot continually wield this threat within the relationship. Further, the new rules suffer the same flaw of the old rules: they lack transparency. The level of official discretion in granting immigration status remains just as broad. Also, the requirements to achieve employment through the "Letter of Consent" (as an alternative to the work permit system) are not explained, and it is difficult to discern whether this would be easier to fulfill in practice than the older procedures.

Still, I applaud the general policy these new rules embody, as they recognize Migrant Brides as wives of Singapore citizens and grant more options to them in healthcare and employment, albeit in a limited way. The LTVP+ may not have such a widespread application to Migrant Brides on first analysis. However, the shifting of small legal levers within the background rules can have a tremendous effect on the bargaining situation. As the comparative force between the parties is reconfigured, the boundaries of legality and illegality of new norms are no longer clear (if they ever were), and new bargaining tactics and informal norms are provoked. Therefore, even with small changes in the law, distributional outcomes can be altered dramatically.³⁰² I look forward to observing how Migrant Brides strategize within the context of these new rules. I foresee that the rules designed to make achieving employment easier would be particularly empowering. Social workers have said that since 2012, at least five Migrant Brides have used

was born at a public hospital. See also Jennifer Dhanaraj, *Living and Waiting in Hope*, NEW PAPER, Jan. 20, 2013, at 15–16. The article profiles Fatimah Castillo Buang, a Filipino Migrant Bride who has been rejected from PR and LTVP+, despite having lived in Singapore for twenty years and having seven children (six of whom are Singaporeans). She speculates that this is due to her husband's low salary of \$2000 a month.

³⁰² Ten percent of all personal protection orders ("PPOs") filed between 2011 and 2013 were by foreign wives against their violent husbands. Tan, *supra* note 196, at 6. This is an increase from about only 2–3% of all PPOs filed between 2006 and 2010. *Id.* While no formal studies have been done, the increased number of PPOs filed by foreign wives has a strong correlation with the increased options that the government has been extending to Migrant Brides, and the increased attention in Parliament and the media to their plight from 2011 to 2013. Social workers have attributed the increase to Migrant Brides' having greater legal awareness of PPOs.

LTVP+ to gain financial independence through seeking employment, and thereby escape their husbands' abuse.³⁰³

International law remains the silent spectator to the domestic law I have discussed. Singapore has been particularly resistant to the influence of international human rights law on its domestic legislation. Although Singapore has ratified the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"),³⁰⁴ it has limited effect, as the State has made a reservation to Article 2(a)–(f); the centerpiece of the treaty that obligates State parties to ensure domestic law "practical[ly] realiz[es]" the principle of equality between men and women.³⁰⁵ Singapore's reservation is such that any strategic litigation utilizing CEDAW in the domestic context is impotent, as the State has no obligation to bring its legislation or institutions in line with gender equality. Singapore has ignored the calls of the CEDAW Committee in the past several years to "develop a system of granting citizenship to foreign wives within a clear and reasonable time frame after marriage, rather than considering citizenship applications case by case."³⁰⁶ The new LTVP+ scheme perpetuates the broad, case-specific discretion of the Immigration Authority. The law of trafficking in persons is also undoubtedly growing in relevance. Singapore has expressed plans to sign and ratify the Trafficking in Persons ("TIP") Protocol after pressure from the U.S. State Department through its TIP Report. I worry that similar ideologies of protection and prohibition, which operate in the U.S. context in marriage migration, may seep into Singapore. My Article can thus be seen as an intervention into the narrative of Migrant Brides as victims and to the conflation of trafficking and marriage migration. These correctives are even more crucial given the new context.

Migrant Brides are experts on the conditions of their own lives. They are working to guarantee their own survival within Singapore society by strategizing on the levels of the Family, Market, and State. The deconstruction of the Family/Market dichotomy through family law exceptionalism helps to expose this site of agency by demonstrating that "market relations"

³⁰³ Toh Yong Chuan & Janice Tai, *Visa Helps Abused Foreign Brides*, STRAITS TIMES (Sing.), Mar. 3, 2014, at B2.

³⁰⁴ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]. Singapore ratified CEDAW on 5 October 1995. See U.N. TREATY COLLECTION, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en (last visited Mar. 29, 2014), archived at <http://perma.cc/TM29-GSL5>.

³⁰⁵ CEDAW, *supra* note 304, art. 2.

³⁰⁶ U.N. Committee on Elimination of Discrimination Against Women, *Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Singapore*, ¶ 26, U.N. Doc. CEDAW/C/SGP/CO/3 (July 23–Aug. 10, 2007); see also U.N. Committee on Elimination of Discrimination Against Women, *Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Singapore*, ¶ 31–32, U.N. Doc. CEDAW/C/SGP/CO/4/Rev.1 (July 29, 2011) (reiterating the Committee's concern about the situation of foreign wives of Singapore citizens, especially their right to work and to permanent residence in Singapore).

can very well take place in the realm of the Family, and that, conversely, the Family is also very much a public site of State power. Migrant Brides are cast as negotiators within both contexts, making decisions to resist and tolerate different circumstances, as they move along the continuum of Sentimental/Transactional marriage. It is hoped that other scholars may employ these frameworks of analysis to capture a more nuanced picture of women's agency in ostensibly oppressive contexts. My Article demonstrates that mapping the background rules behind any given scenario can enable us to uncover the substratum of bargaining endowments and hence the rich possibilities for creative and strategic action.

Legislators must bear in mind that they are not making policies for women who are passive recipients of the law, but rather for women who are perfectly capable of utilizing the legal endowments that they have. At the same time, legislators need to see women's agency within the context of the values and expectations that women hold before simply jumping into the conclusion that they are oppressed by structural factors and need to be protected. As Kamala pointed out to me, "*I don't say you [as a Singapore woman], with your ideas of relationships, are wrong. . . . But for us, with the standard that Singapore men provide for us, we are happy.*"

