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Beyond Suffrage: Intermarriage, Land, and Meanings of Citizenship and Marital Naturalization/Expatriation in the United States

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BEYOND SUFFRAGE: INTERMARRIAGE, LAND, AND MEANINGS OF CITIZENSHIP AND MARITAL NATURALIZATON/EXPATRIATION IN THE UNITED STATES

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Abstract

This dissertation investigates how the laws of marital naturalization/expatriation, namely the Citizenship Act of 1855, the Expatriation Act of 1907, and the Cable Act of 1922 and its amendments throughout the 1930s, impacted the lives of women who married foreigners, especially in the American West, and demonstrates how women directly and indirectly challenged the practice of marital naturalization/expatriation. Those laws demanded women who married foreigners take the nationality of their husbands depending on the race of women *and* their husbands, making married women's citizenship dependent on that of their husbands. Particularly under the Expatriation Act of 1907, all American women who married foreigners lost their U.S. citizenship by the mere fact of marriage. This, in particular, negatively affected women in the West, where international and/or interracial marriage was not uncommon and U.S. citizenship was closely tied not only to suffrage but also to land ownership and employment. By examining various issues women faced as a consequence of losing U.S. citizenship, this dissertation reveals what it meant for American women to lose formal U.S. citizenship, *even if it was only second-class citizenship*, and how gender, race, class, and the nationality of married couples complicated the idea of U.S. citizenship.

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Chapter 1

Introduction

On April 19, 2014, *The Los Angeles Times* reported that 61-year old Daniel Swalm, living in Minneapolis, came across his grandmother Elsie Knutson Moren's alien registration form during World War I.[1] He was perplexed by this document because his grandmother was born and raised in Minnesota, and thus there was no reason to doubt her American citizenship. But he soon learned that his grandmother became an alien when she married Swedish immigrant Carl Moren in 1914 and lost her birthright citizenship due to Section 3 of the Expatriation Act of 1907, which stipulated: "any American woman who marries a foreigner shall take the nationality of her husband."[2] Swalm had never heard of the Expatriation Act nor that his native-born grandmother had lost U.S. citizenship, since Mr. Moren, her Swedish husband, became a naturalized citizen in 1928.[3] Because the Expatriation Act made a wife's citizenship status completely dependent on that of her husband, it stood to reason that Mr. Moren's naturalization would have also made his wife a naturalized citizen. Mrs. Moren, however, died two years before his naturalization; therefore, at the age of thirty-five, she died in her native country as an alien.[4]

Daniel Swalm's "discovery" of his grandmother's loss of U.S. citizenship through marriage exemplifies why this dissertation on the history of marital naturalization/expatriation

[1] Richard Simon, "Spotlighting a Law That Stripped U.S.-Born Women of Citizenship," *The Los Angeles Times*, April 19, 2014, http://www.latimes.com/nation/la-na-apology-20140420-story.html (accessed October 3, 2018).
[2] Ibid.; Richard Simon, "Women Who Lost U.S. Citizenship for Marrying Foreigners Get Apology," *The Los Angeles Times*, May 16, 2014, http://www.latimes.com/nation/nationnow/la-na-nn-senate-apology-20140516-story.html (accessed October 3, 2018); Daniel Swalm, "The Citizens a Nation and Time Forgot," *Star Tribune* (Minneapolis), January 14, 2013, http://www.startribune.com/the-citizens-a-nation-and-time-forgot/186542121/ (accessed October 3, 2018); *Expatriation Act of 1907*, Public Law 59-193, *U.S. Statutes at Large* 34 (1907):1228.
[3] Simon, "Spotlighting a Law"; Simon, "Women Who Lost U.S. Citizenship." I refer to those who appeared in primary sources with their titles to clarify if I am discussing the wife or the husband because many of them are married couples as well as to indicate their marital status in the case of women.
[4] Ibid.; Swalm.

matters. By examining the laws of marital naturalization/expatriation, namely the Citizenship Act of 1855, the Expatriation Act of 1907, and the Cable Act of 1922 and its amendments throughout the 1930s, and their impacts on women's lives, this dissertation demonstrates how gender, race, class, and nationality of married couples complicated the idea of U.S. citizenship in the early twentieth century, especially in the American West.[5] One of the main foci of this dissertation is how women helped shape what citizenship, with its all rights and privileges, meant to them as individuals and as a group. The problems caused by the Expatiation Act of 1907 were once considered to be peculiar to women in the West because women in many Western states achieved suffrage prior to the Nineteenth Amendment; however, as the national debate over women's suffrage intensified throughout the 1910s, it was clear that women's citizenship meant more than suffrage, and the practice of marital naturalization/expatriation became a national issue. By examining various issues which women faced as a consequence of the loss of U.S. citizenship and activist women's efforts to repeal the Expatriation Act, this dissertation demonstrates how women directly and indirectly challenged married women's dependent citizenship and how their political consciousness sharpened, matured, and became more sophisticated as they demanded more legal and equal rights as full citizens, thus expanding our understanding of what efforts are needed to expand and achieve full civil and political rights for women.

This dissertation particularly focuses on the American West, because marital naturalization/expatiation negatively affected women in the American West in a number of ways. At the conclusion of the U.S.-Mexican War and with the signing of the Treaty of Guadalupe-Hidalgo in 1848, the United States acquired vast amounts of land from Mexico. In the same year,

[5] *Expatriation Act of 1907*; *Citizenship Act of 1855*, *Stats. at Large of USA* 10 (1855): 604; *Cable Act of 1922*, Public Law 67-346, *U.S. Statutes at Large* 42 (1923): 1022. There is no consensus on the popular name of this act. For the convenience, I refer to this law as the Citizenship Act of 1855 in this dissertation.

the discovery of gold in California attracted immigrants, many of whom were single men, from the rest of the United States and all over the world to California and other part of the American West. As a consequence, the population of the West became the most diverse in the nation with an extremely skewed gender ratio. Although the influx of diverse groups of immigrants along with the presence of Mexicans and indigenous people in the West led to various combinations of race, ethnicity, and nationality of intermarried couples, it also caused xenophobia and racism, leading to the enactment of various laws in which citizenship and/or race greatly mattered.[6] For example, as soon as California achieved statehood in 1850, its law prohibited "[a]ll marriages of white persons with negroes or mulattoes," and other Western states, namely Arizona, Colorado, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming, enacted similar miscegenation laws in the 1850s and 1860s.[7] Historian Peggy Pascoe argues that the invention of the scientific-sounding term "miscegenation" in the 1860s replaced the long-used general term of "amalgamation," which "marked a new and highly significant turn in the longer history of the regulation of interracial marriage" because along with myths that interracial marriage was unnatural, it created the foundation for "the rise of a social, political, and legal system of white supremacy that reigned through the 1860s and [...] beyond."[8] Therefore, as Pascoe claims, "with [a] remarkable history of cultural diversity, no area [than the American West] offers a better location for considering the theoretical questions of race, gender, and intercultural relations that are at the heart of the history of interracial marriage."[9]

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[6] I use the term "intermarriage" in the broadest way, not just interracial marriage.

[7] An Act Regulating Marriage, *The Statutes of California Passed at the First Session of the Legislature*, ch. 140, sec. 3 (1850); David Henry Fowler, *Northern Attitudes towards Interracial Marriage: Legislation and Public Opinion in the Middle Atlantic and the States of the Old Northwest, 1780-1930* (New York: Garland Publishing, 1987), 344, 350, 363, 400, 430, 436, 439.

[8] Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2009), 1, 13.

[9] Peggy Pascoe, "Race, Gender, and Intercultural Relations: The Case of Interracial Marriage," *Frontiers: A Journal of Women Studies* 12, no. 1 (1991): 15.

While Pascoe's scope is limited to inter-*racial* marriage, the diversity of nationalities in the American West made inter-*national* marriage common in the region. With its diversity of race, ethnicity, and nationality, the American West represented a place in which intense debates over race, gender, immigration, and citizenship emerged. This makes the American West the best place to examine not only inter-racial but also inter-national marriage, in which race, gender, and citizenship intersected in complex ways. Some international couples were *inter*-racial, while others were *intra*-racial, and marital naturalization/expatriation affected married women in different ways depending on their race as well as that of their husbands. In addition, public attitudes toward intermarriage were also different depending on the racial combination and class status of the couples. By focusing on the American West, this dissertation reveals how women's lives were impacted by the complicated and long-lived relationships among race, gender, class, and citizenship.

From the late nineteenth to the early twentieth century, women's citizenship in the West meant significantly more than any other region. Beginning with Wyoming in 1869, women in many Western states achieved suffrage prior to the Nineteenth Amendment, and women's citizenship in the West was constructed differently, especially with regards to not only suffrage but also the issues of land. The Homestead Act of 1862 and similar land laws clearly pointed out that U.S. citizenship or a formal declaration of the intention to become a naturalized citizen were required to make a land entry.[10] In addition, California's Alien Land Act of 1913, followed by many other Western states, prohibited "aliens ineligible for citizenship," namely Asian

[10] *Homestead Act of 1862*, *Stats.at Large of USA* 12 (1863): 392; *Desert-Land Act of 1877*, *U.S. Statutes at Large* 19 (1877): 377. Filing a declaration of the intention to become a naturalized citizen, which was the first step of naturalization in the United States, was often referred to as obtaining the "first papers" of naturalization.

immigrants, from purchasing or leasing land.[11] Thus, citizenship was closely tied to land acquisition in the West; yet, too often, this history of land and citizenship has only involved men, and at the same time, the history of women's fight for equal rights has focused on suffrage. In fact, as legal scholar Kif Augustine-Adams argues, "[f]or foreign women married to [American] citizen men, the value of U.S. citizenship was most often linked to property rights not to the franchise" "because both common law and state statutes in the U.S. limited an alien's right to hold or inherit real property."[12] In other words, for immigrant women, the rights to property were more important than the political rights of suffrage. By making women central to this issue, we can better discern how women participated in the constructions of race and citizenship and what it meant for them to acquire, or lose, U.S. citizenship.

In these social and political landscapes, the meanings of women's citizenship and what it meant to be a U.S. citizen were highly contested and a number of women's organizations collectively engaged in the campaign to repeal the Expatriation Act of 1907. Nevertheless, the pervasive and persistent sexism, racism, and xenophobia among Congressmen dictated that any change to the legislation on marital naturalization/expatriation only occurred in a piecemeal manner in the 1920s and 1930s. Pressured by various women's organizations, Congress enacted the Cable Act in 1922, which is often mistakenly believed to have completely abolished marital naturalization/expatriation; however, the Cable Act's racial clauses did not allow for its total abolishment.[13] The act allowed women who were racially eligible for citizenship to become *naturalized* citizens only if their *husbands were also* racially eligible for citizenship. To regain

[11] Alien Land Act of 1913, *The Statutes of California and Amendments to the Codes Passed at the Fortieth Session of the Legislature 1913*, ch. 113, sec. 2 (1913).
[12] Kif Augustine-Adams, "'With Notice of the Consequences': Liberal Political Theory, Marriage, and Women's Citizenship in the United States," *Citizenship Studies* 6, no. 1 (2002): 9-10.
[13] Leti Volpp, "Divesting Citizenship: On Asian American History and the Loss of Citizenship through Marriage," *UCLA Law Review* 53 (December 2005): 408.

U.S. citizenship, women had to apply for naturalization even if they were born in the United States.[14] The Cable Act and its amendments throughout the 1920s and 1930s cunningly used racial eligibility for citizenship to determine which group of women could re-join the U.S. citizenry, although it was by naturalization, not by direct repatriation. Therefore, marital naturalization/expatriation was arguably the most intense case in which gender, race, and citizenship intersected in extremely complex manners. By tracing the history of marital naturalization/expatriation, this dissertation reveals what it meant for women to lose formal American citizenship and how race hindered the immediate and complete restoration of married women's independent citizenship.

The issues of marital naturalization/expatriation and married women's loss of citizenship were widely discussed in the United States from the turn of the twentieth century to at least the early 1940s. It, nonetheless, quietly "disappeared" from the course of the U.S. history and as in the case of the abovementioned Daniel Swalm, few people know about marital naturalization/expatriation.[15] Although the reasons of this "disappearance" are unknown, in the past three decades, a handful of scholars have closely examined the practice of marital naturalization/expatriation in the United States.[16] Historian Nancy F. Cott approaches the issue through the institution of marriage. She argues: "the institution of marriage has […] been the vehicle for the state's part in forming and sustaining the gender order - or, it might be said, in

[14] *Cable Act of 1922*, 1022.
[15] Nancy F. Cott, "Marriage and Women's Citizenship in the United States, 1830-1934," *The American Historical Review* 103, no. 5 (December 1998): 1441. When I first learned about the Expatriation Act of 1907 in my first year of my master's program in Women's Studies, no professors or graduate students in my department heard of the Expatriation Act or the practice of marital naturalization/expatriation.
[16] Outside the United States, Swedish scholar Katarina Leppänen examines married women's citizenship in the 1930s. She offers an international perspective by focusing on the first international conference on women's nationality hosted by the League of Nation in The Hague in 1930 and Swedish national debates on the issue. See Katarina Leppänen, "The Conflicting Interests of Women's Organizations and the League of Nations on the Question of Married Women's Nationality in the 1930s," *NORA: Nordic Journal of Feminist and Gender Research* 17, no. 4 (December 2009): 240-255.

forming and sustaining gender itself" and "[a]ny modern nation state is likely to concern itself with marriage, most basically because of concern for reproduction of its population. Reproduction creates the qualities and characteristics of the body politic."[17] In a nation of immigrants like the United States, "[b]y defining sexual reproduction that is deemed legitimate, marriage joins naturalization and immigration policies in guarding the characteristics of the body politic, shaping (however imperfectly) 'the people.'"[18] In short, "[m]arriage itself served as a form of governance" because "the state becomes instrumental in forming gender or race via marriage policy."[19] While state governments directly regulated marriage, the federal government was also involved in controlling marriage through the laws of marital naturalization/expatriation.

Political scientist Priscilla Yamin, on the other hand, demonstrates how states institutionalized marriage to police undesirable reproduction during the Progressive Era.[20] Progressive reformers believed that efficiency and rationality supported by bureaucratization and centralization would solve the new social problems caused by rapid industrialization, urbanization, and mass immigration. They believed that the institutionalization of marriage "would promote a homogenous citizenry, in terms of both cultural values and biological capacities, and serve as the foundation of a stable nation and society" because "[p]olicies and decisions concerning marriage and family served to locate morality, sexuality, and the reproduction of civic values in the household as well as in the nation; to defend and reproduce biological purity and perfection as was demanded by the new eugenic science."[21] For this purpose, the state governments required registration and licenses of all marriages along with

[17] Cott, 1442.
[18] Ibid., 1442-1443.
[19] Ibid., 1443; Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2000), 7.
[20] Priscilla Yamin, "The Search for Marital Order: Civic Membership and the Politics of Marriage in the Progressive Era," *Polity* 41, no. 1 (January 2009): 87-88, 91-92.
[21] Ibid., 89, 92.

attendance of witnesses and state sanctioned officers at public wedding ceremonies.[22] By 1907, twenty-seven states required marriage registration.[23]

In addition to gatekeeping, Yamin argues that the institution of marriage connected household and family to the state. Prior to the Progressive Era, common law dictated marriage based on "the private nature of contracts," relying on "self-regulation" in the forms of "community acknowledgement, cohabitation, and reputation of a couple."[24] The institutionalization of marriage during the Progressive Era rejected such private accommodations. Yamin claims: "by publicly exchanging vows, citizens both produced and subjected themselves to state governance. The very act of marrying then connected citizens to the state" and "[t]he regulation of marriage meant greater state intervention into nuptials and an emphasis on the public act of marriage in supporting the nation."[25]

The solemnization statues that connected individuals to the state were crucial to the effective enforcement of the Expatriation Act of 1907. As I demonstrate in later chapters, the Expatriation Act treated American women who married foreigners as traitors to the U.S. nation, and the abridgment of their U.S. citizenship was considered a proper punishment. As Cott argues, "[b]y creating incentives for some kinds of marriages and disincentives for others, by preventing or punishing some marriages and not others, the states and the nation have sculpted the body politic."[26] The practice of marital naturalization/expatriation was (dis)incentive to achieve the ideal notion of the homogenous American nation. More specifically, the Expatriation Act of 1907 "punish[ed] American women who introduced foreign elements into the body politic" by

[22] Ibid., 93.
[23] Ibid.
[24] Ibid.
[25] Ibid., 96.
[26] Cott, "Marriage and Women's Citizenship," 1443.

depriving their birthright citizenship and it was "akin to state laws that criminalized or nullified marriages between whites and people of color."[27] Thus, historian Anne Marie Nicolosi argues:

> The penalty of denationalization threatened other American women in the early twentieth century. As a consequence of marital transgression, women who married aliens faced the same punishment as if they had committed treason. By its enforcement, the Expatriation Act of 1907 could help prevent American women from altering the delicate racial and ethnic balance that immigration restrictionists and racial purists feared was already threatened.[28]

With the institution of marriage functioning as a gatekeeper, public officials could ascertain who supported the white American nation and who "betrayed" it.

The institution of marriage also legitimized the hierarchal gender relationship between a husband and a wife. According to Cott, "[t]he institution of marriage required the wife to serve and obey her husband - to become his dependent - as he was to support and protect his wife."[29] In the eighteenth century, independence "meant heading a household and owning property of one's own so as not to have to look to anyone else for a job, credit, or support" and "[h]aving and supporting dependents was *evidence* of independence [emphasis in original]."[30] Political thinkers of the Revolutionary period argued that "personal independence [was] necessary to public virtue and political rights," and justified exclusion of women from the civic and political arenas.[31] Furthermore, those political thinkers rationalized the hierarchal relationship between a husband and a wife relying on the social contract theory that highly valued voluntary consent. Influenced by the Christian tradition of monogamy and the social contract theory, they made marriage a union of husband and wife based on consent and claimed that wives voluntarily consented to

[27] Ibid.,1461.
[28] Ann Marie Nicolosi, "'We Do Not Want Our Girls to Marry Foreigners': Gender, Race, and American Citizenship," *NWSA Journal* 13, no. 3 (Fall 2001): 11-12.
[29] Cott, "Marriage and Women's Citizenship," 1443, 1451.
[30] Ibid., 1451-1452.
[31] Ibid., 1451.

obey their husbands.[32] Therefore, "[t]he husband was not seen as expropriating his wife but as getting recompense for supporting, protecting, and representing her: marriage was understood as a reciprocal bargain arising from consent."[33] When Congress enacted the Citizenship Act in 1855, which automatically naturalized a foreign-born woman who married an American citizen, "[i]t underlined customary male headship of the marital couple as a civic and political norm."[34] Under the Citizenship Act of 1855, a woman's consent to marriage became "her definitive act of political consent" to "relate to the state through her husband as intermediary."[35] In 1907, with the Expatriation Act, the practice of marital naturalization/expatriation was applied to all American women who married foreigners, "[a]nnouncing a continuing commitment to the primacy of male citizenship and headship of the family" and "reiterat[ing] that a wife owed her primary political allegiance to her husband rather than to her nation."[36] Moreover, while the Citizenship Act of 1855 "welcomed" foreign-born wives of American citizens by giving them U.S. citizenship, the Expatriation Act of 1907 penalized American women who married foreigners by depriving their U.S. citizenship.[37] When Mrs. Ethel Mackenzie, whose husband was a British subject, challenged the Expatriation Act as unconstitutional, the U.S. Supreme Court ruled in 1915 that "[i]t deals with a condition voluntarily entered into, with notice of the consequences" and "its consequences must be considered as elected."[38]

Legal scholar Kif Augustine-Adams criticizes the way in which judges, legal scholars, and government officials used this classic liberal political theory, particularly the notion of

[32] Ibid., 1452. In the context of the emancipation of slaves, Cott aruges that the ability to consent to a marriage contract and freedom to choose a spouse were both privileged and attributed of a free person because slaves could not legally marry without a permission of their masters. Cott, *Public Vows*, 81.
[33] Cott, "Marriage and Women's Citizenship," 1452-1453.
[34] Ibid., 1456.
[35] Ibid.
[36] Ibid., 1462.
[37] Ibid., 1461.
[38] Mackenzie v. Hare *et al*. 239 U.S. 299, 311-312 (1915).

consent, to justify marital naturalization/expatriation. She argues that based on liberal political theory legal professionals assumed that a woman understood the consequence of her marriage with a foreigner, because, in the words of a nineteenth-century legal scholar Constantin Stoicesco, "she knows the nationality of her future husband at the time of her marriage."[39] Once she was married, however, legal professionals disregarded her legal ability to give consent as an independent legal subject because the English common law doctrine of *feme covert*, or simply coverture, merged a wife's legal identity into that of her husband and stripped her capacity as an independent, autonomous legal subject.[40] Augustine-Adams' critique goes even further; a marriage contract should not be equated with the social contract, because under the laws of marital naturalization/expatriation, "women faced a choice men never did" and men's consent to the social contract "did not mean civil annihilation, a suspension of self, or a reinvention of identity" as marital naturalization/expatriation demanded from women.[41] Thus, a woman's consent to marry a foreigner should not be viewed as her consent to marital naturalization/expatriation.

Political scientist Virginia Sapiro provides an overview of the legislative history of marital naturalization/expatriation from 1855 to 1934, and argues that the regulations on married women's citizenship in the United States were part of the larger immigration and naturalization policies based not only on sexism but also on racism and xenophobia pervasive in the U.S. society.[42] The Citizenship Act of 1855, according to Sapiro, was "debated in the context of nationwide discussion of immigration and a wave of xenophobia" and denotes the sexist

[39] Constantin Stoicesco, *Étude sur la naturalisation* (Paris: A. Maresco Ainé, 1876), quoted in Augustine-Adams, 15.
[40] Despite the doctrine of coverture, marital naturalization/expatriation was not practiced in Britain until the Aliens Act of 1844. The 1870 Act extended its reach to all married women in Britain. Aliens Act, 1844, 7 & 8 Vict., c. 66; An Act to Amend the Law Relating to the Legal Condition of Aliens and British Subjects, 1870, 33 & 34 Vict., c. 14; Virginia Sapiro, "Women Citizenship and Nationality: Immigration and Naturalization Policies in the United States," *Politics and Society* 13, no. 1 (1984): 6-7.
[41] Augustine-Adams, 17.
[42] Sapiro, 3-4, 8, 16-17.

ideology that "as socializer of her husband's children," a woman "should become more conscious of her duty to inculcate the appropriate national values in the children."[43] As sociologist Nira Yuval-Davis argues, a nation has special interests in women because of their reproductive abilities. She claims: "it is women [...] who reproduce nations, biologically, culturally, and symbolically."[44] Women are constructed not only as biological reproducers of future citizens, but also as responsible for transmitting culture to their children. Furthermore, women symbolize the nation and its future which men are supposed to defend particularly in the case of war. Therefore, as biological, cultural, and symbolic reproducers of the nation, foreign-born wives of U.S. citizens should not remain foreigners within the United States. Sapiro argues that combined with the nineteenth-century ideology of "cult of true womanhood," the Citizenship Act's automatic marital naturalization was designed to transform foreign-born wives into proper reproducers of the American nation.[45] At the same time, it severed a foreign-born wife's direct relationship to the state; her citizen husband, as the representative of the household, mediated between the state and his dependents in the family, reinforcing the patriarchal family model.[46] The Expatriation Act of 1907 applied these ideologies to any American woman who married a foreigner. Her national identity was subsumed into that of her foreign-born husband and her tie to the United States, in the form of citizenship, was severed because her choice of a husband was viewed as her "refusal" to make a commitment to the American nation, which made her inappropriate to be a reproducer of the nation.

Building on Sapiro's work, historian Candice Lewis Bredbenner explores how suffragists viewed marital naturalization/expatriation and how they mobilized advocates of women's

[43] Ibid., 8, 9.
[44] Nira Yuval-Davis, *Gender and Nation* (London: Sage Publications, 1997), 2.
[45] Sapiro, 9.
[46] Ibid.

independent citizenship to convince Congress to enact the Cable Act of 1922. Bredbenner argues that the Expatriation Act of 1907 was Congress' response to the social anxiety about the ever-increasing immigrants, particularly "new immigrants" from Eastern and Southern Europe.[47] The influx of immigrants was perceived as a threat to the homogenous nation and intensified the nativist movement with the slogan of "100% Americanism." While nativism regarded an American woman's marriage to a foreigner as "a brazenly un-American act" deserving the punishment of expatriation, suffragists took advantage of the xenophobic sentiment, arguing that immigrant voters would degrade American values and homogeneity but women who possessed "American nativity and education, civic virtue" could save the nation if given the right to vote.[48] In their view, the expatriation of native-born women who married foreigners was not only an injustice to women, but also a disservice to the American nation. Suffragists claimed that marital naturalization of immigrant wives of U.S. citizens helped neither the wives nor the nation because they became citizens without learning American principles.[49] Therefore, suffragists demanded the abolishment of marital naturalization/expatriation and argued that both native-born and foreign-born women should be guaranteed independent citizenship.

Although both Sapiro and Bredbenner's investigations extend to the 1930s, when the United States ceased the practice of marital naturalization/expatriation, their discussions of citizenship are limited to the political aspects, particularly women's suffrage. Prior to the Nineteenth Amendment, American women's citizenship did not have substantial *political* meanings unless they resided in the Western suffrage states. Nonetheless, in the nineteenth and twentieth centuries, formal citizenship was strongly tied to various civil rights, including making

[47] Candice Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Berkeley: University of California Press, 1998), 5-6.
[48] Ibid., 6, 46-49.
[49] Ibid., 51.

contracts, suing and testifying in court, serving on a jury, property ownership and inheritance, and pursuing an occupation such as a school teacher and a civil service worker at the federal, state, and municipal levels.[50] Many of these civil rights directly related to women's daily lives, and for some women, the lack of U.S. citizenship was a life-and-death issue. Therefore, equating citizenship only with political rights of suffrage distorts our understanding of what the loss of U.S. citizenship meant to American women and how they challenged that loss. This line of reasoning also leads us to a false understanding that marital naturalization/expatriation did not have any significant influence on women's lives because they did not have suffrage until the Nineteenth Amendment, and even after the Nineteenth Amendment, all they lost was the right to vote.

Moreover, the exclusive focus on suffrage also misleads us to overlook how race played a critical role in the practice of marital naturalization/expatriation. The Nineteenth Amendment virtually granted suffrage only to white women; thus, situating suffrage at the center of investigation of marital naturalization/expatriation limits its reach to white American women who *intra*-married with white foreigners, whom the Cable Act of 1922 "exempted" from marital expatriation. As noted earlier, many scholars mistakenly note that the Cable Act ended the practice of marital naturalization/expatriation.[51] Legal scholar Leti Volpp exclusively focuses on Asian American women in her investigation of marital naturalization/expatriation, particularly after the enactment of the Cable Act of 1922, and argues how the existing scholarship has focused on white women and overlooked the issues of race in the research of marital naturalization/expatriation, leaving out Asian/Asian American women as well as white American

[50] Cott, "Marriage and Women's Citizenship," 1446; J. Stanley Lemons, *The Woman Citizen: Social Feminism in the 1920s* (Urbana: University of Illinois Press, 1973), 63-64.
[51] Volpp, 408.

women who married Asian immigrants.[52] As Nicolosi illustrates, Japanese American women who married Japanese immigrants had no means or pathways to regain their U.S. citizenship.[53] Defined as racially ineligible for citizenship under the Naturalization Acts, once a Japanese American woman lost her U.S. citizenship, she could not be naturalized even after her marriage ended. As Volpp notes, Asian American women were more likely to marry Asian men because of miscegenation laws and extralegal pressures against interracial marriage.[54] Thus, she argues that marital naturalization/expatriation most negatively affected women who themselves and/or whose husbands were ineligible for citizenship.

Volpp also examines how the idea of independent citizenship *disadvantaged* Chinese immigrant wives. Beginning in 1882, the Chinese Exclusion Acts prohibited Chinese laborers' entry to the United States. Many Chinese women, however, entered the country as dependents of their husbands.[55] In other words, even if the women were actually laborers, their immigration status was contingent on that of their husbands. If the husbands were an exempted class under the Chinese Exclusion Acts, so were their wives. Historian Todd Stevens details how both immigrant and native-born Chinese utilized this logic and challenged the Chinese Exclusion Acts to bring their wives to the United States. As Stevens demonstrates, Chinese husbands took advantage of coverture and argued before immigration judges that they had the right to be with their wives. According to Stevens, this was often successful, especially when couples presented themselves as dutiful husbands and wives.[56] While coverture was a symbol of women's subjugation for (white) women, it benefitted some women like incoming Chinese women. As

[52] Ibid.
[53] Nicolosi, 2-14.
[54] Volpp, 435.
[55] Ibid., 457.
[56] Todd Stevens, "Tender Ties: Husband's Rights and Racial Exclusion in Chinese Marriage Cases, 1882-1924," *Law and Social Inquiry* 27, no. 2 (Spring 2002): 288.

seen in these cases of Asian women, race further complicated the meanings of (in)dependence; therefore, it is critical to consider race in the examination of marital naturalization/expatriation in the United States.

While aforementioned scholars all offer critical insights on the practice of marital naturalization/expatriation and women's (in)dependent citizenship, they consider the Cable Act as a milestone of a series of changes to the laws of marital naturalization/expatriation in the 1920s and 1930s while acknowledging that the Cable Act was not a comprehensive restoration of women's independent citizenship.[57] For example, Virginia Sapiro states: "[t]he Cable Act of 1922 *began* [emphasis added] the shift toward independent nationality for women, although it left much to be accomplished."[58] Similarly, Ann Marie Nicolosi notes: "the Cable Act, *started* [emphasis added] the process of repealing the Expatriation Act of 1907, but only in a piecemeal fashion that left many of the original provisions, including racial ineligibility, intact."[59] In the case of Bredbenner, "[i]n 1922, the federal government finally *began* a laborious *retreat from* derivative citizenship with the passage of the Cable Act [emphasis added]."[60] While I agree with their critique that the Cable Act left more problems than solved, I argue that it should not be considered as the beginning of the end of marital naturalization/expatriation. Instead, I argue that it merely re-codified the Expatriation Act of 1907 along color lines, making an exemption for racially-eligible women who married racially-eligible immigrant men.

This dissertation will be the foremost study of how marital naturalization/expatriation negatively impacted native-born women's lives in the early twentieth century with emphasis on

[57] Volpp offers the most critical and accurate critique of the Cable Act: "The Cable Act only ended the expatriation of white or black women married to white or black men; for them, the Cable Act was a victory. However, the Act was not a victory for Asian American women-or for any women married to 'aliens ineligible to citizenship.' In fact, for these women, the Cable Act was a defeat." Volpp, 432. Augustine-Adams' scope does not go beyond the Expatriation Act, and thus she does not mention the Cable Act.
[58] Sapiro, 11.
[59] Nicolosi, 15.
[60] Bredbenner, 7.

their civil rights. While many historians explored the limitation on women's citizenship, they have yet to explore these issues in relation with marital naturalization/expatriation.[61] In his influential essay, sociologist T. H. Marshall defines citizenship with three types of rights: civil, political, and social. He explains that "[t]he civil element is composed of the rights necessary for individual freedom - liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice" while the political element as "the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body" and the social element as "the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society."[62] The existing scholarship on women's citizenship focused initially on what Marshalls refers to as the political, and more recently on the social elements without considering the loss of formal citizenship. In other words, it examined the issues that women faced as second-class citizens, yet assumed that native-born women never lost formal citizenship. To fill in the gap of existing scholarship, this dissertation highlights the civil elements of citizenship and reveals what it meant for American women to lose formal U.S. citizenship, *even if it was only second-class citizenship*.

In order to advance this argument, this dissertation relies on the methodologies of critical race studies and feminist studies. Critical race studies regard race as a social construction. For example, in his examination of immigration and naturalization laws, legal scholar Ian Haney

[61] Some examples are Linda K. Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (New York: Hill and Wang, 1998); Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare, 1890-1935* (New York: Free Press, 1994); Amy Dru Stanley, *From Bondage to Contract: Wage, Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998).
[62] T. H. Marshall, *Citizenship and Social Class and Other Essays* (New York: Cambridge University Press, 1950), 10-11.

López argues that United States is ideologically a white nation by its design because law and court decisions legalized racial categories and created differences in physical appearance.[63] The differences were turned into material inequality as law attached meanings to those physical differences and defined the power relations.[64] Therefore law, even without any direct reference to race, is a mechanism to maintain a racial hierarchy.[65] Similarly, legal scholar Cheryl Harris argues that the law embodies and legitimizes benefits given to a white person and that the law's seemingly neutrality reinforces racial discrimination. She claims: "those who could lay 'legitimate' claims to whiteness could be legally recognized as "white,'" and "legal recognition of a person as white carried material benefits."[66] Therefore, white identity and whiteness are a form of property with vested interests and exclusive rights of possession, use, and disposition.[67] In addition, social relations of power are reflected in property because allocation of benefits and justice are determined by how much property an individual possesses.[68] Thus, the history of the United States coincides with the legal construction of whiteness and distribution of rights and wealth to those who are deemed as white.

Like critical race studies, feminist studies also regard gender as a social construction, and feminist history places women and gender at the center of analysis and emphasizes intersectionality. For instance, historian Linda K. Kerber examines how the state since the Revolutionary period imposed different obligations on men and women, and reveals the ways in which the gendered obligations justified the exclusion of women from full rights and entitlement

[63] Ian F. Haney López, *White by Law: The Legal Construction of Race* (New York: New York University Press, 1996), 10, 12-14, 82.
[64] Ibid., 12-14.
[65] Ibid., 99.
[66] Cheryl I. Harris, "Whiteness as Property," *Harvard Law Review* 106, no. 8 (June 1993): 1741.
[67] Ibid., 1725, 1734-1737.
[68] Ibid., 1728.

as a citizen.[69] In her examination of welfare and single-mothers in the early twentieth century, historian Linda Gordon argues that social services for women were based on ideas of a need-based public assistance program instead of a right-based system of welfare.[70] She claims that white middle-class women reformers criticized this gendered policy and demanded women's entitlement to welfare based on the citizen-mother ideology.[71] Nonetheless, this notion and definition of feminine citizenship disadvantaged poor, single-mothers as well as non-white mothers, because citizen-mothers' duty was to maintain white racial purity and reproduce "good" future white citizens under the ideal middle-class family model in which a husband/father was a breadwinner who earned enough to support the entire family.[72] As seen in these examples, placing women at the center of analysis is crucial to examine how the loss of U.S. citizenship influenced certain women's lives. At the same time, the emphasis on intersectionality is by all means necessary to reveal the complex relationship among race, gender, and citizenship embedded in the laws of marital naturalization/expatriation as well as the construction of U.S. citizenship.

This dissertation is essentially qualitative, not quantitative, research because it is concerned with *how women's lives were affected* by marital naturalization/expatriation, rather than *how many* women were affected by it.[73] A focus of feminist studies, along with other disciplines such as ethnic studies, has been socially marginalized minority groups. Even if there was only one woman who was facing injustice, we should not dismiss her case as an exception.

[69] Kerber, 10, 15.
[70] Gordon, 10-11, 62-63, 160-165.
[71] Ibid., 165.
[72] Ibid., 142, 276, 281, 291-295.
[73] It is extremely difficult to estimate how many American women lost U.S. citizenship by marriage, because marriage registration often recorded race but not nationality.

Injustice to one person is still injustice, and it is worth investigating that single instance in order to better understand the problem and to achieve a more just, fairer society.

To investigate the laws of marital naturalization/expatriation and their impacts on women, this dissertation examines a wide range of documents, from federal and state statutes and Congressional records, such committee hearings and reports on newly proposed bills, to court cases and newspapers. By conducting close textual analysis on these documents, this dissertation exposes ideologies and discourses on race, gender, class, and citizenship and traces how they changed depending on the social and political landscapes as well as married couples' race, class, and nationalities.

This dissertation relies on various newspapers, particularly those in the West, as its primary sources. While newspapers did not always represent the public opinions accurately, they still offer valuable clues to understand the social trends of a given time, such as what the contemporary general public were interested in and concerned with. By analyzing newspaper articles on married women's loss of U.S. citizenship, this dissertation demonstrates how the general public viewed and responded to marital naturalization/expatriation and various problems caused by it. At the same time, newspaper editors did not always blindly follow the dominant ideology. When they agreed, they supported and reinforced it. When they disagreed, they challenged it, even agitating readers with sensational language and arguments. Thus, newspapers were a space where editors and audience conversed and shaped the discourse on any given topic. Furthermore, newspaper articles shed light on more "ordinary" women and the realities they were experiencing by losing American citizenship. These realities are often unexpected consequences of marital naturalization/expatriation, and this dissertation highlights the gap between the realities and the intention of lawmakers.

To reveal the intention of lawmakers, this dissertation closely examines the entire text of laws on marital naturalization/expatriation. Although often neglected by non-legal scholars, the text of a law is structured in a way that shows how lawmakers viewed a particular problem and how they wanted to solve it, and most often what they consider the most important comes first. For example, scholars often "celebrate" the Naturalization Act of 1870 as it allowed black foreigners to become naturalized citizens. This was, however, very briefly stipulated in the last section of the very long act and looked like a supplement.[74] This structure demonstrates that naturalization of black immigrants was a low priority for Congressmen immediately after the Civil War. My close analysis of the text of laws contextualizes the sections on married women's citizenship in a larger structure and demonstrates what lawmakers were trying to achieve by enacting the laws that included regulations on married women's citizenship.

Congressional records, particularly committee hearings, are extremely useful to investigate how and why a certain bill was introduced, who supported it and who did not, and what rhetoric was used to support or disapprove it. A bill to repeal the Expatriation Act of 1907 was first introduced in 1912, ten years prior to the enactment of the Cable Act. Within that decade, a few similar bills were proposed by different members of Congress. Among them, this dissertation examines the hearings on the Kent Bill of 1912 and the Rankin Bill of 1917 to reveal both changes and continuity in the efforts to abolish marital naturalization/expatriation.

Court cases are rich sources to see challenges to a dominant ideology. For example, the constitutionality of the Expatriation Act of 1907 was challenged in *Mackenzie v. Hare* et al. The opinions of the California Supreme Court in 1913 and the U.S. Supreme Court in 1915 offer valuable information on the "official" ideology on marital naturalization/expatriation,

[74] *Naturalization Act of 1870, Stats. at Large of USA* 16 (1871): 254.

demonstrating the ideal relationship between a husband and a wife with regards to citizenship.[75] In addition, this dissertation views the *Mackenzie* case as a turning point where the discourses over marital naturalization/expatriation that appeared in newspaper articles and Congressional hearings changed tremendously.

Chapter 2 examines the development of U.S. citizenship during the Revolutionary period, and demonstrates how U.S. citizenship was constructed and functioned as a mechanism of exclusion along racial and gender lines. While colonists in the thirteen American colonies preferred lenient naturalization policies for the survival and growth of the colonies, the Revolutionary leaders granted newly constructed U.S. citizenship only to those who were deemed capable of independence, namely free white men who supported the Revolution. Conversely, those who were excluded, such as Loyalists, free and enslaved African Americans, and even white Patriot women, were considered dependents of the nation and the households, both of which were led by free white men. By demonstrating how U.S. citizenship and the notion of (in)dependence were constructed in gendered and racialized manners, this chapter lays the foundation that U.S. citizenship was intended to function as a mechanism of exclusion, which the practice of marital naturalization/expatriation was built upon.

Chapter 3 examines the U.S. policies on race, gender, citizenship, and immigration in the long nineteenth century with emphasis on the demographic change in the West and the enactment of the Citizenship Act of 1855. The conquest of the Southwest and the global migration triggered by the Gold Rush in the mid-nineteenth century made the population of the West the most diverse in the United States, while causing intense racism and xenophobia particularly against Mexicans, Native Americans, and Chinese immigrants. The Treaty of the Guadalupe-Hidalgo of 1848 by which the United States acquired the Southwest complicated the

[75] Mackenzie v. Hare, *et al.* 165 Cal. 776 (1913); Mackenzie v. Hare, *et al.* 239 U.S. 299 (1915).

relationship between race and U.S. citizenship because it granted U.S. citizenship to Mexicans in the Southwest when only whites could be U.S. citizens. At the height of Manifest Destiny, the Citizenship Act of 1855 was enacted, beginning the practice of marital naturalization in the United States. The Citizenship Act was designed to increase the number of "desirable" white American citizens to sustain and encourage Westward expansion, reinforcing the patriarchal family model and making a foreign-born woman's choice of a husband into a political choice of national allegiance. On the other hand, the influx of Chinese immigrants to the West Coast led to the enactment of the first federal immigration laws. Facing the exclusionary immigration laws, Chinese and Chinese American men relied on the patriarchal family model to bring their wives to the United States. By examining these issues, this chapter functions as a bridge to the next two chapters which investigates how the Expatriation Act of 1907 impacted American women who married foreigners.

Chapter 4 examines the struggles of white American women who lost U.S. citizenship by marriage to white immigrants under the Expatriation Act. This chapter focuses on three women introduced in Western newspapers. Mrs. Ethel C. Mackenzie, a prominent California suffragist, who challenged the Expatriation Act in the U.S. Supreme Court. Her cases received extensive newspaper attention, raising awareness of the injustice of marital naturalization/expatriation. On the other hand, Mrs. Hannah Miller Harju and Mrs. Mary Hook were homesteaders who lost their rights to the land because of their loss of U.S. citizenship. Unlike Mrs. Mackenzie, they were not elite women, yet their small traces left in newspapers give us important clues to understand how the loss of U.S. citizenship negatively affected women's acquisition of land and how the public understood the implications of the Expatriation Act on women.

Chapter 5 examines two white American women who married Japanese immigrants. The influx of Japanese immigrant at the beginning of the twenty century led to a number of anti-Japanese legislations, including the Alien Land Acts. Under the Expatriation Act, a white woman married to a Japanese immigrant lost not only U.S. citizenship but also the legal status as a white, becoming an "alien ineligible for citizenship." As such, she was subject to anti-Japanese and anti-Asian laws. One of the two couples that I examine in this chapter is Mr. Katsutaro Tanigoshi and Mrs. Ida May Tanigoshi, who challenged California's Alien Land Act in court by trying to own a piece of land under Mrs. Tanigoshi's name. The other couple is Dr. James Hatsuji Hara and Dr. Margaret E. Farr, both of whom were physicians employed by Los Angeles County. Upon losing U.S. citizenship, she could no longer work for the county but was willing to assist her husband at home, performing the ideal notion white womanhood. This chapter examines the changes in the discourse of the newspaper coverage of these couples, demonstrating the fine balance between the anti-Japanese sentiment and the desire to protect the white wives from the loss of U.S. citizenship.

Chapter 6 investigates how the efforts to abolish marital naturalization/expatriation began and how they grew out of a regional issue into a national movement. Focusing on two Congressional hearings in 1912 and 1917, this chapter demonstrates the ways in which activist women's political consciousness became more sophisticated and matured as they steadily discussed their cause at their own organizations' meetings and argued for at Congressional hearings. At the 1912 hearing, the main advocates of women's independent citizenship were Rep. William Kent (R-CA) and attorney Milton U'Ren, both of whom were "friends" of Mrs. Ethel E. Mackenzie. Their strategies were paternalistic and elitist, infantilizing prominent women who lost U.S. citizenship by marriage. At the same time, the committee left little time for Mrs. Ellen

Spencer Mussey, an attorney from Washington D.C., who was the only woman at the hearing. On the other hand, in 1917, women took the initiative, cited negative impacts of the loss of citizenship from a variety of standpoints, and advocated for not only prominent women but also poor women without infantilizing them. Their rhetoric and discourses demonstrate their maturity and sophistication as independent, first-class citizens.

Chapter 7 analyzes the Cable Act of 1922 and its amendments in the 1930s, and argues that the Cable Act did not mark the beginning of the end to the practice of marital naturalization/expatriation but only re-codified the Expatriation Act of 1907, making an exemption for racially-eligible women who married racially-eligible foreigners. In other words, it continued to treat native-born women's marriage with foreigners, especially those who were racially ineligible, as a treasonous act, and punished them by depriving them of U.S. citizenship. At the same time, the Cable Act had the legacy of the Citizenship Act of 1855; it offered simplified naturalization for racially-eligible immigrant wives of U.S. citizens. By close examination of the text and structure of the Cable Act of 1922, this chapter demonstrates that the Cable Act was not intended to dismantle the practice of marital naturalization/expatriation, and how marital naturalization/expatriation persistently remained on the book. Furthermore, this chapter compares and contrasts the laws that repatriated women who lost U.S. citizenship by marriage and WWI soldiers who lost U.S. citizenship by joining foreign militaries, demonstrating another gendered dimension of the construction of U.S. citizenship and who deserved it.

Chapter 8, the Coda, I hope, provides a bridge to the current debates over immigration and citizenship. The U.S. Supreme Court declared the Defense of Marriage Act as unconstitutional in June 2013, and on July 1, 2013, the Secretary of the Department of Homeland

Security announced that same-sex spouses should be treated in the same manner as opposite-sex spouses in the immigration visa petitions.[76] However, this does not mean that all same-sex transnational couples can marry and are entitled for the special immigration priority. On the other hand, the questions of who deserves U.S. citizenship and who is a "true" U.S. citizen are yet to be answered. As seen in the debates over "anchor babies" and the construction of walls at the U.S.-Mexican border, the questions over immigration and citizenship are even more heated. By adding the history of marital naturalization/expatriation to these debates, I aim to offer a more complete and constructive historical backgrounds for the current and future questions on marriage, immigration, and citizenship.

[76] Department of Homeland Security, "Implementation of the Supreme Court Ruling on the Defense of Marriage Act," https://www.dhs.gov/news/2013/07/01/implementation-supreme-court-ruling-defense-marriage-act (accessed December 26, 2018).

Chapter 2

Defaulted Revolutionary Ideology:
Development of U.S. Citizenship from the Colonial to Revolutionary Eras

<Introduction>

Since the founding of the nation, the construction of U.S. citizenship has been a highly contested issue. Needing to quickly establish a U.S. national character that clearly distinguished it from Britain, the Founders of the United States employed the concept of citizenship as opposed to that of British subjecthood, and it was arguably the most significant marker of the new nation. Influenced by Enlightenment philosophers, particularly John Locke, the Revolutionary leaders constructed U.S. citizenship as a modern, egalitarian, and democratic concept as opposed to Britain's feudal, hierarchical, and non-consensual subjecthood.

Nonetheless, there were limits to U.S. citizenship. The Founders envisioned the newly independent United States as a white, patriarchal nation in which free white men dominated all aspects of the society as they believed racial homogeneity and gender hierarchy as the source of a strong nation-state. Thus, they initially applied the egalitarian, democratic ideology of citizenship only to white male Patriots, who supported independence from Britain, and only this group could become U.S. citizens with full rights and privileges. The Founders completely excluded African Americans from formal U.S. citizenship in spite of their support and contributions to the Revolution. The distinction between citizens and non-citizens became more acute but also confusing as the new national leaders eventually extended U.S. citizenship to white Loyalists, the American colonists who remained loyal to the British king, because they were born or continued living in the United States after the Revolution. Some Loyalists' rights, however, were suspended due to their disloyalty to the Revolution and their property was

confiscated.[1] For white men, property ownership and citizenship began to intertwine in the aftermath of the Revolution. In terms of gender, both Patriot and Loyalist white women were considered formal U.S. citizens, but their citizenship did not entail any significant rights or privileges as their claim over property was mitigated by their relationship to men. Like African Americans who fought for the Revolution, Patriot women made significant contributions, yet the Revolutionary ideology of equality did not applied to them, either. As Gender and Ethnic Studies scholar Evelyn Nakano Glenn claims, "American citizenship is characterized by two conceptual dichotomies that have permeated discourse on citizenship since the beginning: public-private and independent-dependent. These dichotomies have been central elements in the conception of the 'ideal citizen.'"[2] Full citizenship was associated with the public sphere, independence, and masculinity, and thus any other social standing, such as white women and both free and enslaved African Americans, was associated with the private sphere, dependence, and femininity. Although the Revolutionary leaders embraced freedom, liberty, equality, and consent to demonstrate their incompatibility with Britain's feudal subjecthood and complete detachment from Britain, their construction of the new nation's definition of citizenship was exclusive based on a racial and gender hierarchy from the very beginning.

<Theoretical Foundation of U.S. Citizenship: John Locke and English Common Law>

John Locke, who informed American political values, had a great impact on the initial construction of the racialized and gendered U.S. citizenship. Particularly his notions of freedom, private property, and consent were influential in defining why full U.S. citizenship was only applied toward free independent white men. In 1690, Locke argued that men were, by nature, all

[1] Douglas Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union, 1774-1804*, (Charlottesville: University of Virginia Press, 2009), 57, 59.
[2] Evelyn Nakano Glenn, *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor* (Cambridge, MA: Harvard University Press, 2002), 20.

free, equal, and independent, and "[the] natural liberty of man [sic] is to be free from any superior power on earth."[3] According to Locke, every free man had the ability to labor and this self-ownership of labor was a source of private property and independence. No one except himself had the right to control a free man's labor, and nothing except his consent made the man work under or for another person.[4] As historian Nancy F. Cott claims, "[i]ndependence meant […] freedom of judgment - freedom from the imposition of the will of another - and in the eighteenth century that meant heading a household and owning property of one's own so as not to have to look to anyone else for a job, credit, or support."[5] Unlike slaves whose labor belonged to their master, a free man could decide how to utilize his labor and did not have to rely on another person to sustain his life. Because the founding of the United States was marked by independence from Britain, the Revolutionary leaders embraced independence as a national ideology and considered only free white men to be independent persons who deserved full U.S. citizenship.

Locke argued that through labor a man could acquire other forms of private property. To secure his freedom, a man utilized his labor to remove a piece of nature from the natural state for his use. His labor transformed a piece of nature into his private property, and no one else had the right to the product of his labor. For example, when a man caught a fish from a river, the fish became his private property because it was his labor that had removed the fish from the natural state, and no one else was entitled to use the fish without his consent. Locke claimed: "[t]he *labour* that was mine, removing them out of that common state [of nature] they were in, hath

[3] John Locke, *Second Treatise of Government*, ed. C. B. Macpherson (1690; repr., Indianapolis: Hackett Publishing Company, 1980), 9, 17, 52.
[4] Ibid., 19.
[5] Nancy F. Cott, "Marriage and Women's Citizenship in the United States, 1830-1934," *American Historical Review* 103, no. 5 (December 1998): 1451.

fixed my *property* in them [emphasis in original]."[6] This principle also applied to the acquisition of land as private property: "*As much land* as a man tills, plants, improves, cultivates, and can use the product of, so much is his *property* [emphasis in original]."[7] Therefore, labor was not only an individual's private property but also a source of further economic and social advancement.

According to Locke, even servants, who worked for another person, were also free independent persons, because, unlike slaves, they had exclusive ownership of their labor. Their decision to sell a portion of their labor in exchange for a wage and the subjection to a master were based on a mutually agreed contract.[8] Moreover, while slaves were uninterruptedly subjugated to their masters, servants' subjection was limited and determined by a contract. As Cott claims, "independence inhered in the self-governing individual who could dispose of his own labor profitably."[9] Therefore, self-ownership of labor was a critical marker that distinguished free persons from slaves, and independence from dependence, even when their labor was their only source of private property.

Another critical factor that distinguished free persons from slaves was the ability to consent. In Locke's view, consent was the only means that could justify an individual's subjugation to another.[10] Servants, for example, consented to work temporarily under unfree conditions in exchange for a wage. If they did not want to subjugate themselves to a master, they did not have to consent to work under such conditions. Contrary to servants, slaves were never

[6] Locke, 20.
[7] Ibid., 21. Locke set a limit on how much private property a man could acquire. According to him, a man should not own more than he could consume because no man was supposed to spoil or waste his private property derived from nature. This moderate possession would leave no room for dispute over the boundary between two men's private property as there would be a plenty of the natural state left for other men. If a man owned more than he could enjoy, he was wasting and thus violating another man's share and should be punished. Ibid., 20-24.
[8] Ibid., 45.
[9] Cott, 1453.
[10] Locke, 52, 63.

allowed the ability to consent. Whether they agreed to or not, they had to work under the conditions set by their master. Therefore, along with self-ownership of labor, the ability to consent allowed not only white property owners but also white workers, like servants, to construct their identities as free and independent persons as opposed to slaves who were characterized as unfree dependents belonging to their master and did not even have the ownership of their own labor.[11]

Like race, gender also structured the ideas of citizenship and independence. Women, as a whole, were supposed to be dependent, and particularly wives were defined as dependents of their husbands. Locke argued that marriage was a voluntary contract between a man and a woman.[12] Since a contract would be made by two parties on an equal level, he emphasized the mutual support and obligation between a husband and a wife.[13] He even stated that the husband's power was limited to

> the things of their common interest and property, leaves the wife in the full and free possession of what by contract is her peculiar right, and gives the husband no more power over her life than she has over his; the *power of the husband* being so far from that of an absolute monarch, that the *wife* has in many cases a liberty to separate from him, where natural right, or their contract allows it [emphasis in original].[14]

Locke seemed to suggest that equality existed between a husband and wife and as if the wife enjoyed almost as much freedom and independence as her husband. But, in his view, it was the husband who had the ultimate power and authority in a household. He argued: "[t]he last determination, i.e. the rule [of the household], […] naturally falls to the man's share, as the abler

[11] Glenn, 29.
[12] Locke, 43.
[13] Ibid., 35, 43.
[14] Ibid., 44.

and the stronger."[15] According to this view, a wife was supposed to obey her husband because she was essentially too weak and incompetent to make a decision for the benefit of the household.

Locke's essentialist view reflected the English common law doctrine of coverture. In the words of influential eighteenth-century English jurist William Blackstone, under the doctrine of coverture, "the husband and wife are one person in law: that is the very being or legal existence of the woman is suspended during the marriage, or at least incorporated and consolidated into that of the husband."[16] Therefore, "all compacts made between husband and wife, when single, are voided."[17] Nonetheless, the marriage contract itself remained valid despite the fact that it was made when a husband and a wife were single. Moreover, although the marriage contract and coverture made the wife legally disabled, Blackstone argued that "the disabilities which the wife lies under are for the most part intended for her protection and benefit" as her husband had the responsibility to represent, protect, and support his wife and other dependents in the household.[18] As Cott argues, for the husband, fulfilling this responsibility was a source of his independent and masculine identity because "[h]aving and supporting dependents was *evidence* [emphasis in original] of independence."[19] Since dependents in a household were most often women, children, slaves or those with physical or mental disabilities, independence was regarded as the characteristic of free, white, able-bodied men.

Both Locke and Blackstone were uncritical about the hierarchical gender order embedded in the marriage contract. In their view, the subjugation of women, as in the case of coverture, was only "natural" because men were inherently superior to women. Recent feminist scholars,

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[15] Ibid., 44.
[16] William Blackstone, *Commentaries on the Laws of England in Four Books*, vol. 1 (1765; repr., Philadelphia: Rees Welsh and Company, 1915), 445. Like Locke, Blackstone defined marriage as a civil contract in which a man and a woman had to be "in the first place, *willing* to contract; secondly, *able* to contract; and lastly, actually *did* contract, in the proper forms and solemnities required by law [emphasis in original]." Ibid., 433-434.
[17] Ibid., 442.
[18] Ibid., 445.
[19] Cott, 1452.

however, criticize the notions of free and voluntary consent and contract as justification in establishing the patriarchal order. For example, political scientist Carole Pateman argues that a contract seemingly based on a voluntary consent was a foundation of patriarchy. She claims: "contract is seen as the paradigm of free agreement" yet "[c]ontract is far from being opposed to patriarchy; contract is the means through which modern patriarchy is constituted," because "women are not born free; women have no natural freedom."[20] According to Pateman, the original compact to form a civil society was two-folds: social and sexual. While the social contract created a seemingly free and equal society of *men*, the sexual contract created a patriarchal social order between men and women, establishing men's "orderly access" to women's bodies as well as "men's political right over women."[21] Thus, the original social contract defined men's dominance over women in the civic, political, and private arenas, and thus freedom was reserved only for men.[22]

Building on Pateman's work, legal scholar Kif Augustine-Adams criticizes the liberal political theory's notions of voluntary consent and contract. She argues that the liberal political theory regards a woman voluntarily consent to the marriage contract like men's voluntarily consent to the social contract.[23] In other words, a woman's consent to marriage was the consent to subjugate herself to her husband. According to Locke, however, no man could "by compact, or his own consent, *enslave himself* [emphasis in original] to any one [sic]" and if a man mistakenly did so, the other party who became the master should refrain from causing any damage to him.[24] Nonetheless, Locke did not apply this principle to the marriage contract, even

[20] Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988), 2.
[21] Ibid., 1-2.
[22] Ibid., 2.
[23] Kif Augustine-Adams, "'With Notice of the Consequences': Liberal Political Theory, Marriage, and Women's Citizenship in the United States," *Citizenship Studies* 6, no. 1 (2002): 17.
[24] Locke, 17.

though he admitted that a husband had the ultimate power and authority over his wife. As Augustine-Adams argues, for women, a marriage contract meant a contract to abandon individual freedom and legal personhood, and thus to become dependent on the husband.[25] If Locke had fully understood the hierarchical relationship between a husband and a wife, he should have argued that the marriage contract was null and void as she could not consent to enslave herself to anyone, including her husband. Therefore, the argument that a wife voluntarily consented to the marriage contract and consented to obey her husband was flawed. As Augustine-Adams claims, international legal scholars of the nineteenth century who supported the liberal political theory ignored the hierarchy in the marital relationship.[26] Despite this logical flaw, Locke's argument remained as the "correct" understanding of the notions of voluntary consent and contract well into the twentieth century, and justified the patriarchal order as women's free will.

Nancy F. Cott also criticizes how Revolutionary political thinkers developed the institution of marriage in the United States and argues that by making a family a unit of governance, the institution of marriage made it easier to maintain the social order. Influenced by the social contract theory that highly valued voluntary consent, political thinkers combined Christian monogamy and the social contract theory, and made marriage a union of a man and a woman based on consent.[27] This not only created white Americans' sense of moral and racial superiority over non-Western cultures that practiced polygamy, but also made it possible to predict reproduction, labor supply, support for the young and dependent, and property

[25] Augustine-Adams, 17.
[26] Ibid., 16.
[27] Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge: Harvard University Press, 2000), 6-7, 9-10.

inheritance as sexual relationships were confined within monogamous marriage.[28] On the other hand, using the analogy between the social contract and the marriage contract, political thinkers emphasized a voluntary consent in both cases.[29] As Cott points out, however, unlike a conventional contract in which contracting parties set the terms of the contract, public authorities set the terms of the marriage contract.[30] They included a husband's obligation to support and protect his wife and children, and her obedience and the rendering of all her service, labor, and property to him.[31] Apparently, the marriage terms were not equal between a husband and a wife, but as discussed above, this inequality was justified because a wife gave a voluntary consent to obey her husband.

In the aftermath of the American Revolution, these understandings of consent and contract and women's dependence on men became the main rationale for excluding women from full citizenship. As dependents, they were considered to have no separate interests that needed to be addressed; their interests were assumed to be identical to those of the independent male head of the household. Thus, it was believed that women did not need full citizenship to be considered to have representation in the civil, economic, social, and political arenas.

<Parliamentary Naturalization vs. Naturalization in the American Colonies >

The issue of naturalization is often overlooked in the discussions of what caused the War of Independence, yet it was a crucial issue for both Parliament and the Revolutionary leaders. A naturalization policy determines who is eligible for full membership in a nation, defining the characteristics of the nation. Therefore, naturalization was an issue of autonomy and self-determination. In the seventeenth and eighteenth centuries, Parliament had a strict policy on

[28] Ibid., 6, 10.
[29] Ibid., 10.
[30] Ibid., 11.
[31] Ibid., 11-12.

naturalization, examining each applicant and decided if he/she was worthy of becoming an English subject.[32] On the other hand, for the colonies, populating the land with English subjects was a critical matter for their survival and growth. Being thousands of miles away from Parliament, the colonial authorities conducted naturalization on their own terms.[33] Although Parliament overlooked naturalization in the colonies for almost a century, at the end of the seventeenth century it started intervening in their practices and imposed a strict naturalization policy on the colonies.[34] For the colonies, Parliament's intervention threatened not only their survival, but also autonomy and self-determination. Thus, naturalization was one of the major reasons why the colonies broke away from Britain and why the Revolutionary leaders included the issue of naturalization in the Declaration of Independence: "He [George III] has endeavoured to prevent the population of these [thirteen] States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands."[35] Therefore, naturalization was a highly contested issue which helped the Revolutionary leaders to construct U.S. citizenship as the polar opposite of British subjecthood.

Upon breaking away from Britain, the Revolutionary leaders needed to create their own national character that clearly distinguished the pro-independence Americans from the oppressive and arbitrary British. As sociologist T. H. Marshall argues in his influential essay on

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[32] James H. Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill: University of North Carolina Press, 1978), 69. Historian Caroline Robbins traces a number of a general naturalization bills proposed in the seventeenth century. According to her, politicians intensely debated general naturalization during the seventeenth century, but after the immediate repeal of a general naturalization law in 1709, the debate toned down and no general naturalization law to be practiced in England was enacted. See Caroline Robbins, "A Note on General Naturalization under the Later Stuarts and a Speech in the House of Commons on the Subject in 1664," *The Journal of Modern History* 34, no. 2 (June 1962): 168-177.

[33] Kettner, 79.

[34] Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1997), 55.

[35] Thomas Jefferson, et al, U.S. Declaration of Independence.

citizenship, "citizenship is incompatible with medieval feudalism" because "[c]itizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed."[36] The Revolutionary leaders used the concept of citizenship in nation-building and defined themselves as the opposite of British subjects. Nevertheless, the transition from subjecthood to citizenship was by no means an easy matter. The Revolutionary leaders tried to distinguish U.S. citizens from British subjects based on their allegiance, yet it was not the sole determinant. According to William Blackstone, in a feudal society like England, individuals owed natural and perpetual allegiance to the king immediately upon their birth in his dominion; they, in turn, received the protection of the king.[37] According to historian Douglas Bradburn, "[e]very slave and slave holder, every servant and master, every governor or tenant farmer, every Indian and courtier, even man, woman, and child throughout the English realms was considered a subject of the Crown and Parliament. It was the fundamental status of membership in the British Empire."[38] Although subjects had different degrees of rights, anyone born in the king's territory automatically became his subject and this relationship could not be severed. Therefore, when English subjects left England to settle in North America, their departure canceled neither their allegiance to the English monarch nor their status as his subjects.[39] It did not matter if they settled in an English colony or not, because under English common law, "once a subject, always a subject."[40]

[36] T. H. Marshall, *Citizenship and Social Class and Other Essays* (New York; Cambridge University Press, 1950), 28-29, 31.
[37] Kettner, 54.
[38] Bradburn, 10.
[39] Kettner, 65.
[40] Bradburn, 105.

One of the most critical rights bestowed on the English subjects was land ownership in the English Empire. Foreigners, particularly those who wished to settle in English colonies, understood this advantage and many sought admission to English subjecthood.[41] In the seventeenth century, England had two methods to grant foreigners the rights equal or similar to natural-born subjects. One was naturalization by special parliamentary legislation, in which Parliament examined each applicant for naturalization.[42] Once approved, naturalized subjects received the same full rights as the natural-born subjects. However, parliamentary naturalization was expensive and took a long time.[43] In addition, since 1609, Parliament allowed only Protestants to become naturalized subjects, because English jurists' anti-Catholic sentiment made them trust only the Protestant faith as the divine binding power on the foreigners' oaths upon naturalization.[44] After experiencing the Puritan Revolution, the Restoration, and the Glorious Revolution throughout the seventeenth century, England remained predominantly anti-Catholic. On the other hand, in France, Louis XIV in 1685 repealed the Edict of Nante, which allowed religious freedom in France, to reinforce his authoritarian rule based on Catholicism, and suppressed Huguenots.[45] Thus, in England, Catholicism was associated with their traditional enemy, the French, and a danger to liberty because of the arbitrary and absolute rule by the

[41] Smith, 44.
[42] Kettner, 69.
[43] According Robbins, parliamentary naturalization costed fifty to sixty pounds in 1673. She notes that seventeenth-century politician Edmund Waller was infuriated when servants' wages in Buckingham rose from forty shillings to eight pounds a year. Robbins, 169n, 170, 175.
[44] Kettner, 67.
[45] Since the Reformation in the sixteenth century, Europe was torn between Catholics and Protestants of various sects. In England, since the establishment of the Church of England by Henry VIII in the 1530s, religious conflicts often took the form of conflicts between monarchs and Parliament as the monarchs imposed their religions (either Catholicism or the Anglian belief). On the other hand, France experienced a civil war between Catholics and Huguenots throughout the sixteenth century, including St. Bartholomew's Day Massacre in 1572. The Edict of Nante by Henri IV in 1598 ended the religious war in France by allowing religious freedom along with Henri IV's conversion to Catholicism.

monarchs, and this prejudice against Catholic France was pervasive beyond the seventeenth century.[46]

Despite its aim, the religious requirement also excluded Jews, as well as any others who believed in other religions, from naturalization in England. These non-Protestant groups had to resort to denization by a royal patent, in which denizens acquired limited rights, such as the rights to property ownership.[47] For example, despite the opposition from Parliament and the public, Charles II and James II both granted denization to Jews, allowing them to settle in the colonies in North America and participate in the colonial trade system.[48] Moreover, when Louis XIV suppressed the Huguenots in the late seventeenth century, Charles II accepted them to migrate to England and offered denization for free, although he was a Catholic.[49] According to one record, Gabriel Bernon, who led a group of about forty French people to Massachusetts in 1688, found the record of the denization patent issued on January 5, 1688 in London to more than four hundred Huguenot refugees and their families.[50]

Naturalized subjects and denizens were crucial to the English imperial project. In the seventeenth century, there were not many English subjects who were willing to emigrate from England to settle in the colonies. According to historian Caroline Robbins, in the latter half of the seventeenth century, there was "a feeling" that even England's population was not large enough to sustain its power.[51] Thus, as Kettner argues, "both private and official promoters saw the value of inviting foreigners to people the king's new dominions."[52] For example, the Virginia

[46] Robbins, 171.
[47] Kettner, 67-68; A. H. Carpenter, "Naturalization in England and the American Colonies," *The American Historical Review* 9, no. 2 (January, 1904): 290.
[48] Kettner, 67-68.
[49] Ibid., 68-69.
[50] Charles Washington Baird, *History of the Huguenot Emigration to America*, vol. 2 (New York: Dodd, Mead, and Company, 1885), 204, 204n2.
[51] Robbins, 170.
[52] Kettner, 78.

Company and other colonizing companies rigorously recruited any free person to the colonies and the companies' officers conducted naturalization in the colonies.[53] William Penn, in 1700, requested Parliament to create a general naturalization law instead of an individual-base special parliamentary legislation for faster naturalization.[54] He also asked Parliament to send more foreigners, arguing that they should have the same rights and liberties as English subjects because they were settling in "the King's Colonies."[55] Although Parliament did not formally grant any colonial official's authority to conduct naturalization, the colonizing companies and colonial governments' urgent need to populate the areas forced them to take naturalization into their own hands.[56] In the seventeenth century, European powers were competing against each other for acquisition of territories, and North America was not only the location of new colonies but also a site of their proxy wars. The population growth was necessary not only to increase the colonial labor supply and economic growth but also for military security. Thus, the colonial authorities liberally admitted other European settlers as fellow English subjects, especially if they were Protestants and had enough money to be self-sufficient and not be burdens to the local communities.

It was too costly for Parliament to closely police the colonies' naturalization practices, and therefore it condoned them during the seventeenth century.[57] Still, in England, it kept the strict naturalization policy and closely examined each applicant, granting naturalization by a

[53] Ibid., 79.
[54] Ibid., 73-74. Caroline Robbins traces a number of a general naturalization bills proposed in the seventeenth century. According to her, politicians intensely debated general naturalization during the seventeenth century, but after the immediate repeal of a general naturalization law in 1709, the debate toned down and no general naturalization law to be practiced in England was enacted. See Caroline Robbins, "A Note on General Naturalization under the Later Stuarts and a Speech in the House of Commons on the Subject in 1664," *The Journal of Modern History* 34, no. 2 (June 1962): 168-177.
[55] Kettner, 73-74.
[56] Ibid., 78.
[57] Ibid., 80, 83, 90..

special parliamentary legislation.[58] Although this process was much lengthier than the lenient naturalization practice in the colonies, it allowed Parliament to make sure that an applicant had exclusive loyalty to England.[59] At the height of the power struggle both in Europe and in the colonies, Parliament feared that a naturalized subject who kept allegiance to his/her native country might work for the benefit of that country and bring a detrimental consequence to England. To avoid this, Parliament maintained a strict naturalization policy in England. However, the process of an individual examination was burdensome, and thus Parliament admitted only a small number of applicants as English subjects in any given time, supplying even fewer naturalized subjects to the colonies.

Frustrated with Parliament's strict naturalization policy, American colonial governments performed simpler and faster naturalization. Like Parliament, they had a strong preference for Protestants, but the colonial governments of New York, Pennsylvania, Virginia, and Maryland naturalized Catholics until the end of the seventeenth century.[60] The lenient attitude toward naturalization reflected the idea that "[i]n America the foreign immigrant's contribution to the welfare of the community – its military security, its economic prosperity, its rapid and sustained growth – was obvious and highly valued. To limit his rights seemed senseless on grounds both of self-interest and of abstract justice."[61] As a consequence, during the eighteenth century, "England's hierarchical ranking of natives, naturalized [subjects], and denizens collapsed in America, and subjectship in the New World tended in practice to become a simplified and more uniform status."[62] The colonies' pragmatic needs of welcoming European settlers and quickly

[58] Ibid., 69.
[59] Ibid., 66-67, 69-70.
[60] Ibid., 114.
[61] Ibid., 69, 78-79, 86-87, 106, 108, 127.
[62] Ibid., 106.

processing naturalization remained as accepted practice into the era of Manifest Destiny in the United States.

After an almost century-long "neglect," Parliament began to intervene in the naturalization practice in the colonies, thus re-imposing the strict naturalization laws of England.[63] It could no longer ignore the colonies' naturalization admitting non-Protestants to English subjecthood. In 1689, Parliament applied the Protestant requirement for both naturalization and denization by the North American colonial governors.[64] While Quakers and Jews were exempted from the Protestant requirement and the wording of their oaths was changed to accommodate their faiths, Catholics were subject to the Protestant requirement and effectively barred from naturalization or denization.[65] Parliament by no means wanted Catholic Frenchmen to possibly assist France in the English colonies in North America. On the other hand, Quakers and Jews were marginalized groups in Europe and did not have any state-sanctioned support like the Catholics. Therefore, they were not considered a threat to England and thus exempted from the religious requirement. In 1699, Parliament deprived the colonial governors of the authority to conduct denization while still allowing naturalization.[66] Throughout the eighteenth century, Parliament increased intervention in naturalization in the colonies. In 1740, Parliament enacted the Plantation Act, allowing naturalization to those who lived in "any of his Majesty's Colonies in America" for seven years or more as long as they were Protestants, Quakers, or Jews and paid a maximum of two shillings.[67] This act, however, required each Secretary of the Colony to

[63] Smith, 55.
[64] Ketnner, 114.
[65] Ibid., 74, 114-115.
[66] Robbins, 172.
[67] Plantation Act, 1740, 13 Geo. 2, c. 7. This law acknowledged: "the increase of people is a means of advancing the wealth and strength of any nation or country: And […] many Foreigners and Strangers, from the lenity of our Government, the purity of our Religion, the benefit of our Laws, the advantages of our Trade, and the security of our Property, might be induced to come and settle in some of his Majesty's Colonies in America, if they were made partakers of the advantages and privileges which the natural-born Subjects of this realm do enjoy." Ibid.

submit a list of all naturalized subjects to England every year.[68] According to Kettner, although naturalization under the Plantation Act was "inexpensive and administratively simple," some colonial authorities either "neglected or refused to administer the act," and continued to perform naturalization on their own until 1773 when Parliament completely prohibited naturalization in the colonies.[69] For the colonies, Parliament's intervention threatened their autonomy and self-determination as well as their survival and growth. The colonies developed their own naturalization practices that accommodated their needs. Their practices, however, became a threat to British subjecthood as they continued to accept non-Protestants, which Parliament perceived as a sign of disobedience. For the colonies, however, Parliament's intervention was a symbolic infringement of autonomy and self-determination. Therefore, it became one of the reasons that supported rebellion against Parliament and the British monarch.

<Allegiance to Whom?>

While the Revolutionary leaders stated quite a few reasons for breaking away from Britain as listed in the Declaration of Independence, they needed a sound political and philosophical argument to justify their break from Britain; otherwise, their action would be considered treason. Therefore, the Revolutionary leaders first needed to decide if their allegiance was to the king or Parliament. The traditional concept of English subjecthood was based on perpetual and natural allegiance to the monarch; however, under the social contract theory that emerged during the Enlightenment, individuals consented to yield some of their rights and liberty to form a government. For the English, it was Parliament, not the monarch, to which they consented as the governing authority. In addition, the Bill of Rights of 1689 confirmed Parliamentary sovereignty over the monarch. Thus, English subjects owed allegiance to

[68] Ibid.

[69] Kettner, 75, 103-105. Kettner notes that between 1740 and 1773, 6,911 persons were naturalized in the American colonies, and nearly 92% of those cases were conducted in Pennsylvania. Ibid., 103.

Parliament. Some colonial leaders in America who opposed independence relied on this logic to argue that Americans were obliged to obey Parliament and that the American colonies' break away from Britain would be a breach of the social contract.[70] As Kettner states, "[a]s long as Parliament's sovereignty was acknowledged, […] there was little Americans could do in the face of persistent clashes between parliamentary power and their rights. The stark choice seemed to be either submission or denial of all authority."[71] Thus, the Revolutionary leaders interpreted the social contract differently and argued that their allegiance was not to Parliament but to the British king. They reasoned: "[t]he king in his legislature was the sovereign in each colony" and had the responsibility to intervene in a conflict and "prevent […] the violation by any one member of the empire of the rights guaranteed to others."[72] In other words, the parliamentary sovereignty did not apply to the colonies and the sovereignty of the colonies resided with the king. With this logic, the Revolutionary leaders argued that the monarch had the obligation to protect his subjects in return for their perpetual allegiance, yet George III failed to protect his subjects in the American colonies from parliamentary abuse.[73] Because George III breached the social contract, the Americans had a legitimate reason to sever their allegiance to him.

While they secured this legitimate reason to break away from Britain, the Revolutionary leaders envisioned the new states as republics consisting of citizens with equal status without any hereditary legal privilege.[74] According to Bradburn, "[t]he rejection of the legal establishment of hereditary power immediately transformed the meaning of American citizenship, from a status that expected and even required legal inequalities, as the English Constitution demanded, to a status that *expected equality*," because "subjecthood represent[ed] a feudal status of perpetual

[70] Ibid., 142.
[71] Ibid., 156.
[72] Ibid., 162, 163.
[73] Ibid., 167.
[74] Bradburn, 30-31.

allegiance and inferiority, [while] citizenship represent[ed] a 'modern' status of equality and freedom, a mark of a 'new order.'"[75] Historian Peter S. Onuf refers to this transformation as the "citizenship revolution [which] stripped away the superstructure of the British imperial state."[76] The republican form of government and citizenship not only symbolized the Americans' complete detachment and incompatibility with Britain but also functioned as the foundational principle of the new nation that shaped the national character.

The sense of urgency to successfully achieve independence made the Revolutionary leaders take drastic measures against those who opposed independence. The Continental Congress decided to suppress anti-Revolutionary activities as endangering the welfare of the community, yet there was no legal basis to punish civilian actions.[77] Furthermore, in order to charge civilians who committed anti-Revolutionary acts with treason, they had to be citizens whose allegiance belonged to the new republics.[78] British subjects' anti-Revolutionary acts were in accordance with their allegiance and the Revolutionary leaders could do nothing but treat them as enemy aliens. In order to punish civilian Americans for their treasonous acts, the Continental Congress decided on June 24, 1776:

> all persons abiding within any of the United Colonies, and deriving protection from the laws of the same, owe allegiance to the said laws, and are members of such colony; and that all persons passing through, visiting, or make [sic] a temporary stay in any of the said colonies, being entitled to the protection of the laws during the time of such passage, visitation, or temporary stay, owe, during the same time, allegiance thereto.[79]

In other words, anyone in America was automatically deemed a citizen. Those who maintained allegiance to Britain had to flee America to be considered loyal British subjects by the

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[75] Ibid., 11, 42.
[76] Peter S. Onuf, "Introduction: State and Citizen in British America and the Early United States," in *State and Citizen: British America and the Early United States*, eds. Peter Thompson and Peter S. Onuf (Charlottesville: University of Virginia Press, 2013), 15.
[77] Kettner, 176.
[78] Ibid., 181.
[79] Library of Congress, *Journals of the Continental Congress, 1774-1789* (Washington D.C.: Government Printing Office, 1906), 5: 475.

Continental Congress. Based on this Continental Congress' definition of allegiance and citizenship, each of the thirteen states established loyalty tests and suppressed anti-Revolutionary acts.[80]

Still, the Continental Congress' definition of citizens raised more questions than solved the problem, because it categorized people during the Revolution into three groups based on their allegiance, instead of two. On one side were Patriots, who supported the Revolution and became full members of the new republics as citizens. On the other end were "real" British subjects, whom Patriots considered as enemy aliens because of their continuous allegiance to the king. In-betweens were Loyalists, whose allegiance remained to the king but their continuing residence in America or other factors made them American citizens, not British subjects.[81] Loyalists' status as citizens fundamentally challenged the ideological ground of the Revolution because it contradicted the ideas of voluntary allegiance and the social contract. The Revolutionary leaders believed that "the American republics were to be legitimate governments firmly grounded on consent, not authoritarian states that ruled by force and fiat over involuntary and unwilling subjects."[82] Nonetheless, Loyalists, who voluntarily chose to keep their allegiance to Britain, became citizens without their consent.

The Revolutionary leaders reconciled this problem by arguing that "[the new] governments were the automatic successors to the sovereignty and obedience the king had commanded."[83] In 1812, more than thirty years after the Revolution, Chief Justice Theophilus Parsons of the Massachusetts Supreme Judicial Court declared that "the Revolution had worked

[80] Kettner, 176, 179.
[81] Ibid., 183-184.
[82] Ibid., 208.
[83] Smith, 102.

just such an automatic transfer of allegiance."[84] Those who remained in America after the Revolution were automatically deemed to have allegiance to the new republics regardless of their actual allegiance. In addition, the Revolutionary leaders also reasoned that the break from Britain was an act of the majority and thus bound the opposing minority.[85] Based on this logic, they argued that Loyalists, who remained in the colonies, implicitly gave consent to the formation of new republican governments and to be citizens. Whether each individual actually had allegiance to the new republics or not, the Revolutionary leaders equated an individual's choice of residence with the choice of political allegiance. On this logic, Bradburn notes that the Revolutionary leaders' reasoning and actions "actually reinforced the volitional model of citizenship and the contractual origins of the political world" because they believed that "all citizens either choose to join the people or choose to stay: love it or leave it."[86] Challenging Bradburn's argument, political scientist Rogers Smith claims that the Revolutionary leaders "abandoned consensualist discourses" of the social contract theory.[87] Because those who remained in America *automatically* became citizens of the new republics, he argues that the Revolutionary leaders continued to have "the feudal view that birth under a sovereign made one a natural member of that sovereign's community of allegiance."[88] The U.S. legal system, as later clarified by the Fourteenth Amendment, inherited this English common law doctrine of *jus soli* under which an individual acquires citizenship/nationality by virtue of his/her birth in the territory of the state. As opposed to the doctrine of *jus sanguinis* under which an individual inherits citizenship/nationality from the parent(s), *jus soli* may seem a liberal, inclusive citizenship policy because the place of birth is the only determinant of citizenship. In fact, in the

[84] Kettner, 191.
[85] Ibid., 187; Smith, 102.
[86] Bradburn, 58.
[87] Smith, 102.
[88] Ibid.

late nineteenth century, *jus soli* allowed those who were ineligible for naturalization, namely Asians, to be U.S. citizens as long as they were born in the United States.[89] Nevertheless, *jus soli* originated in English feudal subjecthood in which anyone born in the king's dominion was his subject.[90] For Loyalists, the Revolutionary leaders' use of *jus soli* was by no means democratic or consensual. They recognized Loyalists' allegiance to the king, yet forcefully made them citizens whose allegiance resided with the new republics. Thus, the U.S. citizenship policy had a coercive nature and agenda from the very beginning.

The Revolutionary leaders' forceful attitude toward Loyalists did not stop with imposing citizenship and allegiance against their will. Citizenship was based on the idea of equality and consent, and Loyalists, too, became citizens. Nevertheless, some of their civil and political rights were suspended due to their "disloyal" and "treasonous" acts. According to Bradbaum, they were "brought before local councils and committees of safety, 'committees for the detection of conspiracy,' and courts of oyer and terminer, and made to promise obedience, take oaths, post bail, or surrender themselves for punishment."[91] Even after taking the oaths, their loyalty to the newly independent states was suspected, and the states prohibited Loyalists from holding political offices, effectively suppressing their voices in the formal political arena. At the same time, their property was confiscated. According to historian Linda Kerber, in order to make citizens abide by the new social order of the United States, virtually every state had:

> a fairly standard trio of statutes, solidly in place by 1778, linking treason, oaths of allegiance, and the establishment of a system of confiscation. Together, the three were gestures of commitment to the revolution […]. Treason - the act of aiding the enemy - and misprision of treason - the knowledge and concealment of an enemy plot - was to be punished with death, banishment, or enforced service on a naval vessel (from which

[89] U.S. Supreme Court ruled in 1898 that U.S.-born Chinese were U.S. citizens even though their parents were neither U.S. citizens nor eligible for naturalization. United States v. Wong Kim Ark, 169 U.S. 649, 704-705 (1898).
[90] *Calvin's Case*, English legal case also known as the *Case of the Postnati*, confirmed the feudal subjectship, established the doctrine of *jus soli*, and was influential to the U.S. legal system. Kettner, 16-28.
[91] Bradbaum, 57-58.

> escape was virtually impossible). […] And the confiscation of property reached not only to self-interest but to the conditions for individual autonomy.[92]

Influenced by Locke's notion of independence, for the Revolutionary leaders, the definition of independence included economic independence in which a man had sufficient property to support himself and his family. Thus, confiscation of property undermined not only the livelihood of Loyalists but also their identity as autonomous, free independent persons.[93] Even when the Treaty of Paris of 1783 "recommended" the newly independent thirteen states to lift any restriction on Loyalists, many states refused to return the confiscated property.[94]

Loyalist women, on the other hand, faced even more twisted political and economic consequences. In the eighteenth century, the doctrine of coverture dictated that women had no separate interests from their husbands, and women's legal identity was "absorbed" into that of their husbands. Theoretically, women were not supposed to have their own political view, so that their allegiance during the Revolutionary War was supposed to be the same as that of their husbands. Nonetheless, the laws on treason and misprision employed the gender neutral term of "persons," because of the understanding that both men and women could commit those crimes.[95] Particularly Massachusetts' treason law not only used gender neutral terms but also explicitly stipulated that it applied both men and women.[96] Moreover, Massachusetts demanded women to take the oath of allegiance independently from their husbands. Despite the doctrine of coverture, these laws treated women as politically independent, being capable of choosing political allegiance on their own. The gap between coverture and the treason laws were revealed by *Martin v. Massachusetts* in 1805. In this case, the Supreme Judicial Court of Massachusetts ruled

[92] Linda K. Kerber, "The Paradox of Women's Citizenship in the Early Republic: The Case of *Martin vs. Massachusetts*, 1805," *The American Historical Review* 97, no. 2 (April 1992): 357.
[93] Ibid., 359.
[94] Bradburn, 58-59; Kettner, 185.
[95] Kerber, 357.
[96] Ibid., 358.

that a wife of a Loyalist who left the United States with her husband during the Revolutionary War was merely performing her duty to obey her husband; she fled with her husband not because she, too, was a Loyalist, but because she had to accompany her husband.[97] In other words, her departure from the United States was *not* her political act, and thus she was *not* a Loyalist regardless of her actual political view, if any. As a consequence, Loyalists women, at least in the case of *Martin v. Massachusetts*, were exempted from the treason and confiscation laws. Kerber criticizes this decision that "[t]he Federalist judges wanted […] to abandon patriarchy in politics but maintain it, in sentimental form, in their private lives."[98] The Revolutionary leaders often described independence as a son's legitimate rebellion against his tyrannical father, but they maintained subjugation of women in households.

<Defaulted Revolutionary Ideology>

It was not only Loyalists whom the Revolutionary leaders treated unfairly. Enslaved African Americans who fought for independence were promised freedom but not allowed to be citizens in the new republics. As Kerber notes, the traditional definition of citizenship since ancient Rome included the ability to bear arms to defend the republic and in return they participated in collective political decision making to use arms or not.[99] This connection between military service and political participation was integrated in the concept of U.S. citizenship and military contribution became a significant component in the constitution of U.S. citizenship.

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[97] Ibid., 373. Alexander Hamilton described a citizen's national allegiance as his fidelity to his wife: "To speak figuratively, he will regard his own country as a wife, to whom he is bound to be exclusively faithful and affectionate, and he will watch with a jealous attention every propensity of his heart to wander towards a foreign country, which he will regard as a mistress that may pervert his fidelity, and mar his happiness. Tis to be regretted, that there are persons among us, who appear to have a passion for a foreign mistress; as violent as it is irregular - and who, in the paroxisms [sic] of their love seem, perhaps without being themselves sensible of it, too ready to sacrifice the real welfare of the political family to their partiality for the object of their tenderness." Alexander Hamilton, "For the Gazette of the United States, [March–April 1793]," Founders Online, https://founders.archives.gov/documents/Hamilton/01-14-02-0158 (accessed January 30, 2019).

[98] Kerber, 375.

[99] Ibid., 370.

Many soldiers who fought in the War of Independence believed that their military service would demonstrate their good quality as citizens.[100] At the same time, both the American and British leaders considered military service to be men's genuine demonstration of patriotism and solid proof of loyalty.[101] Thus, both sides promised freedom to black slaves who fought for their causes. On November 7, 1775, Virginia governor Lord Dunmore declared that all indentured servants or enslaved blacks who would fight for Britain would be freed, and British soldiers also encouraged black slaves to leave their masters and join them, although Parliament did not issue any official policy on blacks during the war.[102] Black men who joined the British were often accompanied by women and children.[103]

On the other hand, the Revolutionary leaders, including George Washington and John Adams, opposed admitting both free and enslaved blacks into the military.[104] Nevertheless, by the time Washington demanded to no longer recruit blacks in October 1775, black troops were already well incorporated in the Continental Army, and when the Continental Congress prohibited recruitment of blacks in February 1776, Washington was forced to allow already enlisted blacks to stay with the military.[105] Still, the Patriots' side failed to adopt a uniform rule about freeing slaves who fought for their cause. While the Rhode Island legislature approved freeing slaves and enlisting them in February 1778, South Carolina refused the Continental Congress' urgent request to recruit three thousand slaves in March 1779, fearing that slaves

[100] Ricardo A. Herrera, "Self-Governance and the American Citizen as Soldier, 1775-1861," *The Journal of Military History* 65, no. 1 (January 2001): 27.
[101] Ibid., 24; Bradburn, 58.
[102] Douglas R. Egerton, *Death or Liberty: African Americans and Revolutionary America* (New York: Oxford University Press, 2009), 70, 72-73. Lord Dunmore's regiment was consisted of six hundred men, a half of which were blacks. When he fled the Chesapeake in August 6, 1776, roughly three hundred black Loyalist men, women, and children, who were in good condition to travel, left with Lord Dunmore. Ibid., 71, 73.
[103] Gary B. Nash, "The African Americans' Revolution," in *The Oxford Handbook of the American Revolution*, ed. Edward G. Gray and Jane Kamensky (New York: Oxford University Press, 2013): 260.
[104] Egerton, 74-75.
[105] Ibid.

would revolt against whites if they were given arms.[106] Thus, Patriot slaves most often had to rely on their masters' promise of freedom. According to historian Gary B. Nash, black Patriots re-enlisted multiple times while few white Patriots did, and black troops' desertion rate was significantly lower than whites.[107] During the Revolutionary War, approximately 9,000 enslaved blacks enlisted in the Patriot force, while 15,000 on the British side.[108]

Once black slaves achieved freedom, they painfully learned that freedom was not synonymous with being a citizen but only a necessary pre-condition. White citizens feared that the growth of the free African American population endangered their vision of White America in which they dominated all aspects of the society. For instance, the Militia Act of 1792 excluded African Americans from militias.[109] Military contributions were critical proof of good citizenship and loyalty to the United States, but by excluding African Americans from such opportunity, the Militia Act constructed them as incapable of the qualities of U.S. citizenship. In addition, the participants at the Constitutional Convention debated whether the United States should form a centralized national government or remain loosely-connected sovereign states. Despite this division between the Federalists and anti-Federalists, they both envisioned a racially homogenous nation as they believed that homogeneity was a source of a strong nation-state. Particularly Federalists "demanded a national vision of American citizenship, one that celebrated and defended a homogeneous American nation against the threat of international revolution posed by French universalism."[110] This racialized vision was further strengthened when the French Revolution inspired enslaved blacks in the French colony of Saint-Domingue to revolt

[106] Nash, 256.
[107] Ibid., 254-255.
[108] Ibid., 254; Egerton, 6.
[108] Bradburn, 260.
[109] Ibid.
[110] Douglas M. Bradburn, "'True Americans' and 'Hordes of Foreigners': Nationalism, Ethnicity and the Problem of Citizenship in the United States, 1789-1800." *Historical Reflections* 29, no. 1 (Spring 2003): 21.

against white plantation owners in 1791, leading to the independence of the Republic of Haiti from France in 1804. At the same time, pushed by the strong argument of Maximilien Robespierre, the French First Republic abolished slavery in its all colonies in 1794. White Americans, especially those who owned plantations in the South, viewed France's abolishment of slavery and the Haitian Revolution as too radical and strengthened their resolve to have full influence on black slaves in the United States. To guard white America from the French radicalism, Federalists argued for a homogenous nation in which only white men were entitled to full U.S. citizenship. In their view, "the citizens shared rights and duties consistent with their national character and toward a common national interest" based on shared "ancestry, manners, character, habits, language, and support for the government."[111] On the other hand, anti-Federalists "contended that liberty could only be preserved in small, homogeneous republics" as they believed that "homogeneity largely [served] as a tactic to breed the harmony of sentiments and ideas that helped republics thrive."[112] Although some Northerners opposed the complete rejection of formal citizenship to free African Americans on the ground that it was against the principle of equality in the Declaration of Independence, for most of the Founders, the idea of black citizens had no place in their agenda of creating a homogenous nation. Therefore, since the first Naturalization Act of 1790 until its post-Civil War revision in 1870, only "free white person[s]" were eligible to become naturalized citizens.[113]

The Founders' desire to create a homogenous white nation, as found in the "free white" clause of the Naturalization Acts, brought contrasting consequences to free blacks and the Irish in the post-Revolution Era. These groups fought for the Revolution, upholding the Revolutionary

[111] Bradburn, *The Civic Revolution*, 140.
[112] Smith, 85.
[113] *Naturalization Act of 1790*, *Stats. at Large of USA* 1 (1845): 103; *Naturalization Act of 1870*, *Stats. at Large of USA* 16 (1871): 254.

ideology of freedom, liberty, and equality for all men, yet they faced discrimination due to their race and ethnicity, culture, class, and/or religion. As historian David Noel Doyle claims, Irish immigrants in the American colonies were not homogenous.[114] According to him, those who migrated to the American colonies in the latter half of the eighteenth century were predominantly Presbyterians of Scottish origin from Ulster, while Catholic Irish, mostly indentured servants, constituted a small minority.[115] Therefore, before an era of mass migration of Catholic Irish beginning in the 1830s, many Irish were able to join the mainstream white American population.[116] For example, George Clinton, who served as the governor of New York and later the Vice President of the United States, and Thomas McKean, who signed the Declaration of Independence and served as the Governor of Pennsylvania, were both American-born Scotch-Irish.[117] Therefore, when the Irish demanded inclusion in the American nation based on their participation in the War of Independence, they achieved formal citizenship without completely abandoning their ethnic or religious identity.[118] Unlike the Irish, free blacks were excluded from the U.S. citizenry in spite of their military and other contributions to the Revolution, being Protestants, and the birth in the American colonies. According to Bradburn, by the time of the Revolution, the majority of the black population were born in the colonies and "[t]he spread of evangelical Christian religion among enslaved blacks contributed to making black cultural and

[114] David Noel Doyle, "Scots Irish or Scotch-Irish," in *Making the Irish American: History and Heritage of the Irish in the United States*, eds. J. J. Lee and Marion R. Casey (New York: New York University Press, 2006), 151.
[115] Ibid.; David Noel Doyle, "The Irish in North America, 1776–1845," in *Making the Irish American: History and Heritage of the Irish in the United States*, ed. J. J. Lee and Marion R. Casey (New York: New York University Press, 2006), 179. The Irish who began mass migration to the United States in the 1830s were mostly poor, unskilled Catholics. Because they lived in close proximity to African Americans and competed for menial jobs, the Irish were often conflated with blacks in the East and mid-West in the nineteenth century. In the West, however, in order to secure the Anglo-American hegemony, the Irish were considered Anglo-Americans, Euro-Americans, or whites. David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso, 1991), 133-134; Linda Gordon, *The Great Arizona Orphan Abduction* (Cambridge, MA: Harvard University Press, 1999), 42, 110-112.
[116] Doyle, "The Irish in North America," 178.
[117] Ibid., 175, 178.
[118] Bradburn, *The Civic Revolution*, 232-233.

spiritual life less alien to white society, even as Christianity provided a common spiritual touchstone for American blacks."[119] Despite these "shared" characteristics with white Patriots, free African Americans were treated like denizens under English law; they were neither citizens nor aliens, and as such, they were "not considered part of the body politic."[120] For most white Americans, including the abolitionists in the North, it was unimaginable to consider free African Americans as fellow citizens and to share the equal rights and privileges with them in the decades immediately after independence. Yet, treating them as aliens would leave a possibility for naturalization, although the "free white" clause eliminated such possibility until 1870. Thus, white American citizens consciously treated free African Americans as denizens, and their exclusion from the citizenry "was only complete when white Americans *openly* abandoned the promise of Revolutionary equality for all men, constructing a Union which provided no legal *national* remedy for free blacks [emphasis in original]" to be part of the American nation.[121] The Founders chose to accept the Irish as fellow citizens despite the ethnic, cultural, and religious differences, while rejecting African Americans despite that their support of the civic ideals, birth in the American colonies, and the "shared" belief in Protestantism. The Founders were inconsistent with the citizenship policies, and just like George III, they defaulted on the promise of the Revolution.

Another major group excluded from full citizenship was women. During the Revolutionary Era, female Patriots made significant contributions to independence in various ways. In the absence of their husbands, women protected their families, home, and other property, tended farms, and conducted business, while facing terrors, sexual and otherwise, of ferocious

[119] Ibid., 244.
[120] Ibid., 238, 244.
[121] Ibid., 239.

soldiers on both sides.[122] In addition, women used their feminine, domestic roles for the Revolutionary cause. They made uniforms and bandages for soldiers, while boycotting British goods.[123] Elite women organized fundraising, asking fellow women to refrain from a luxury lifestyle and instead contribute to the cause.[124] When food was scarce, women organized or participated in food riots.[125] A small number of women even followed military camps to cook or do laundry.[126] Furthermore, some women more directly crossed the gender boundaries to contribute to the war. For example, until the Civil War, nursing was considered men's job because women were believed to be too frail both physically and mentally. Despite this notion, some women worked as nurses and tended injured soldiers. There were even women, like Debora Sampson of Massachusetts, who joined the Continental Army by dressing as men.[127] Spying was another field in which women made contributions. Abigail Adams was so skillful in intelligence activities that her husband John became dependent on her information.[128] Nevertheless, when independence was achieved, "[v]irtues of female patriotism that were useful to win the war - like fortitude, bravery, intelligence, assertiveness, independence, and even aggression - were increasingly viewed as a threat to propriety and civilized manners."[129] Therefore, the Revolutionary leaders, who rejected the hierarchical relationship between the monarch and his subjects and embraced equality and freedom, kept the English common law doctrine of coverture, in which a husband represented his entire household as if "the husband

[122] Sarah M. S. Pearsall notes various women, Patriots, Loyalists, whites, African Americans, Native Americans, free, and enslaved, who experienced terrors during the war. Sarah M. S. Pearsall, "Women in the American Revolutionary War," in *The Oxford Handbook of the American Revolution*, ed. Edward G. Gray and Jane Kamensky (New York: Oxford University Press, 2013): 273, 275-276, 281-282.
[123] Ibid., 275, 283.
[124] Ibid., 281, 282-283.
[125] Ibid., 276.
[126] Ibid., 283.
[127] Ibid., 277.
[128] Pauline E. Schloesser, *The Fair Sex: White Women and Racial Patriarchy in the Early American Republic* (New York: New York University Press, 2005), 118.
[129] Ibid., 58.

[was] the wife's lord and stood to her as king did to subject."[130] Abigail Adams was aware that coverture contradicted with the Revolutionary ideologies and wrote to her husband, John, to "remember Ladies."[131] Although he benefitted from Abigail's intelligence activities, John did not take her seriously and replied to her that women were delicate and thus unfit for political and civic affairs.[132] According to Kerber, Abigail concluded that women's patriotism was "'the most disinterested of all virtues' [as] there was practically no way in which women's service to the state could be directly rewarded."[133] As in the case of black Patriots, the Revolutionary leaders benefitted from women's patriotic contributions but did not acknowledge them after the Revolution.

<Women, Race, and Nation: Prohibition of Interracial Marriage>

Still, there was a significant difference between white women and free blacks due to their relationships with white men; white women became formal citizens and played a crucial role in nation-building, even though they did not have legal rights to conduct political, civil, or economic activities on their own. As sociologist Nira Yuval-Davis argues, "it is women [...] who reproduce nations, biologically, culturally, and symbolically" and the myth of "common origin" plays a central role in the construction of most ethnic and national collectivities.[134] Because U.S. national identity depended on racial homogeneity, more specifically whiteness, interracial marriage that would produce mixed-race children as U.S. citizens was a fundamental problem to the idea of the new nation. Thus, white women were bestowed not only the responsibility to reproduce and educate white children as future citizens but also the obligation *not* to reproduce mixed-blood children. As sociologists Floya Anthias and Yuval-Davis argue, "[women] are […]

[130] Kerber, 351-352.
[131] Schlosser, 121.
[132] Ibid., 126.
[133] Kerber, 350.
[134] Nira Yuval-Davis, *Gender and Nation* (London: Sage Publications, 1997), 2, 26.

controlled in terms of the 'proper' way in which they should have [children] – i.e. in ways which will reproduce the boundaries of the symbolic identity of their group or that of their husband," because "[l]egal marriage is generally a condition if the child is to be recognised as a member of the group."[135] In the words of historian Nancy F. Cott:

> No modern nation-state can ignore marriage forms, because of their direct impact on reproducing and composing the population. The laws of marriage must play a large part in forming "the people." [...] [M]arriage policy underlies national belonging and the cohesion of the whole.[136]

The control of marriage ensures that "the character as well as the boundaries of the group can be maintained from one generation to the other."[137]

At the same time, the American nation was concerned with interracial marriage not only because of creating a racially "pure" and homogenous nation but also to keep economic resources and privileges only among whites. Marriage determines who can legitimately have access to property. As Frederick Engels argued in 1884, monogamy is a system of transferring private property along the patrilineal line, and in this system, women "became a mere instrument for the production of children."[138] While Engels' argument had a point, he overlooked the fact that marriage could break the line of inheritance, because it could also bring in an "outsider" as a legitimate family member and grant that person the right to inherit property. A spouse, who was originally outside of the family line of inheritance, could obtain the right of inheritance of the deceased by a will or otherwise; even the doctrine of coverture reserved one-third of a husband's real estate as dower for his wife in case of his death.[139] Furthermore, interracial marriage had the potential to break the racial line of inheritance. As legal scholar Rachel F. Moran notes,

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[135] Floya Anthias and Nira Yuval-Davis, "Introduction," in *Woman-Nation-State*, ed. Nira Yuval-Davis and Floya Anthias (New York: St. Martin's Press, 1989): 9.
[136] Cott, *Public Vows*, 5.
[137] Anthias and Yuval-Davis, 9.
[138] Frederick Engels, *The Origin of the Family, Private Property, and the State: In the Light of the Researches of Lewis H. Morgan*, ed. Eleanor Burke Leacock (1884; repr., New York: International Publishers, 1972), 121.
[139] Kerber, 359.

"[m]arriages across the color line could give blacks and their mixed-race offspring access to white economic privileges by affording them the property protections that marriage and inheritance laws afforded."[140] In order to avoid this scenario and keep wealth only among whites, it was critical to prohibit, and often criminalize, interracial marriage by law. Citing Randall L. Kennedy's work, sociologist Deenesh Sohoni notes that in the United States, every state in which African Americans constituted more than five percent of the population had laws that prohibited marriage between whites and blacks.[141]

Moreover, as a symbol of the white American nation and its future, white women were constructed as what male citizen-soldiers had to defend.[142] This is another instance in which the military service led to full citizenship. While citizen-soldiers had the duty to protect the symbol of the nation, white women were to *be protected* and not supposed to protect themselves. In other words, white women were forced to dependent on men for protection. This effectively excluded women from military service, and justified their status as second-class citizens. Although white women symbolized the nation and had specific roles in the nation-building, their fundamental *raison d'etre* both at home and in the nation was to be dependent on men.

<Conclusion>

As listed in the Declaration of Independence, naturalization was one of the most contested issues between the thirteen American colonies and Britain. Based on the necessity for survival, the American colonies practiced lenient naturalization policies despite Parliament's strict naturalization laws. When Parliament increased intervention in the lenient practice of naturalization in the eighteenth century, the colonies took it as a threat to their autonomy and

[140] Rachel F. Moran, *Interracial Intimacy: The Regulation of Race and Romance* (Chicago: University of Chicago Press, 2003), 19.
[141] Deenesh Sohoni, "Unsuitable Suitors: Anti-Miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities," *Law and Society Review* 41, no. 3 (September 2007): 588.
[142] Yuval-Davis, 2.

self-determination and as George III's breach of the social contract, and decided to break away from Britain. Influenced by John Locke, the Revolutionary leaders embraced freedom, liberty, equality, and employed the concept of citizenship to demonstrate their incompatibility with Britain. As opposed to Britain's feudal, hierarchical, and non-consensual subjecthood, citizenship was a modern, egalitarian, and consensual concept. Nonetheless, the Founders began constructing the new nation based on the racial and gender hierarchy, allowing only free white men who supported the Revolution to be full citizens of the United States. All other groups, free and enslaved African American men and women, male and female Loyalists regardless of race, and even white Patriot women, were excluded from U.S. citizenship, and only white Loyalist men were allowed to join the U.S. citizenry shortly after the Revolution. Even white women, who were deemed as a symbol of the white American nation and had distinct roles in the nation-building, did not enjoy a fair share of citizenship, because they were fundamentally constructed as dependents both at home and in the nation. Thus, the Founders betrayed not only these groups but also the grand Revolutionary ideologies; succeeding generations also failed to redeem the Founders' betrayal. Rather, they deliberately continued to reinforce the racial and gender hierarchies, which the Founders maintained since the colonial period, and marital naturalization/expatriation beginning in 1855 is one of such examples.

Chapter 3

Long Nineteenth Century in the American West:
Manifest Destiny, Chinese Immigration, and the Policies on Race, Gender, and Citizenship

<Introduction>

As discussed in Chapter 2, the Founders of the United States attempted to construct the newly independent United States as a white nation by granting full citizenship only to white male property owners. But in the nineteenth century, the boundaries of race, class, gender, and citizenship were highly contested, particularly in the U.S.-West, in which the political, social, and economic landscapes drastically changed due to Westward expansion supported by the doctrine of Manifest Destiny and California's Gold Rush of 1848. The United States' conquest of what is now the Southwest during the U.S.-Mexican War was one of the most important examples of Manifest Destiny. The 1848 Treaty of Guadalupe-Hidalgo, which formally ended the war, further complicated the U.S. policy on race and citizenship because it granted U.S. citizenship to former Mexican citizens residing in the newly acquired territory. At the same time, the Gold Rush attracted a large number of immigrants from all over the world. Both domestic and international migration made the population of the West the most diverse in the United States. This racial and ethnic diversity, however, was not always celebrated, causing intense racism and xenophobia particularly against Mexicans, Native Americans, and Asian immigrants. The influx of Chinese to the West also raised questions about who could or could not enter the United State and who should become a U.S. citizen.

In this historical context of Westward expansion and Gold Rush, the United States began regulating married women's citizenship by enacting the Citizenship Act of 1855. The act automatically made any foreign-born woman "who might lawfully be naturalized under the

existing laws" a U.S. citizen upon marriage to an American citizen.[1] The phrase "who might lawfully be naturalized under the existing laws" referred to the racial clause of the Naturalization Act of 1790, which allowed only "a free white person" to become a U.S. citizen.[2] In other words, the Citizenship Act made citizenship of a *white* foreign-born woman dependent on that of her American citizen husband. This served three purposes. First, it reinforced the patriarchal family model, making a foreign-born wife a dependent on the male head of the household. Second, it made a foreign-born woman's choice of a husband into a political choice. Citizenship was a matter of national allegiance, and the Citizenship Act equated a foreign-born woman's choice of a husband with her choice of national allegiance. Third, it encouraged Westward expansion, which demanded more white, Anglo-Americans as agents of Manifest Destiny. By becoming a U.S. citizen, a foreign-born woman could assist her citizen husband to advance Manifest Destiny.

This chapter examines the U.S. policies on race, gender, citizenship, and immigration in the nineteenth century and how the reality of the conquest and racial diversity in the West raised questions to the ideal notion of race, gender, and U.S. citizenship. To best understand the dynamic interplay of those policies, I begin this chapter with examination of the doctrine of Manifest Destiny and how the conquest of the U.S.-Southwest complicated the notion of race and U.S. citizenship. I, then, discuss the Citizenship Act of 1855 in the context of Manifest Destiny and how it reinforced the patriarchal family model by infantilizing foreign-born wives of U.S. citizens. Finally, I shift my focus to the development of federal immigration laws that primarily targeted Chinese immigrants and demonstrate a different way in which the patriarchal gender order affected incoming Chinese and European women who sought the entry to the United States.

[1] *Citizenship Act of 1855, Stats. at Large of USA* 10 (1855): 604.
[2] *Naturalization Act of 1790, Stats. at Large of USA* 1 (1845): 103; Kelly v. Owen *et al.*, 74 U.S. 496, 499 (1868).

<Manifest Destiny in Action>

In the nineteenth century, one of the major nationalistic ideologies of the United States was Manifest Destiny, which encompassed racial, religious, economic, and political ideologies, and materialized in the form of Westward Expansion. As sociologist Tomás Almaguer claims, "European Americans saw it as their providential mission to settle the entire North American continent with a homogeneous white population, bringing with them their superior political institutions, notion of progress and democracy, and economic system."[3] Similarly, historian David Montejano explains that "this [manifest] destiny called for an expansion of the nation westward to the Pacific Ocean and southward to the Isthmus of Panama; and it called for the ports that would assure the nation's future as a mercantile empire."[4] In this vision, there was no room for non-whites in North America, particularly in the United States, because "the most important result would be the extension of the progressive power of the American race," and in the nineteenth century, "the American race" meant the white, particularly Anglo-Saxon race, with the Protestant belief.[5] According to historian Anders Stephanson, "[t]he meaning of 'Anglo-Saxon' varied considerably, from the mythical pre-Norman purity to an identity of generic Americanized whiteness."[6] Nonetheless, based on the scientific racism of the nineteenth century, Anglo-Saxons were considered to be the "the most advanced" and "the most gifted" group within the white race.[7] Thus, Anglo-Americans considered themselves to be the foremost bearers of

[3] Tomás Almaguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California* (Berkeley: University of California Press, 1994), 32.
[4] David Montejano, *Anglos and Mexicans in the Making of Texas, 1836-1986* (Austin: The University of Texas Press, 1987), 24.
[5] Reginald Horsman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism* (Cambridge, MA: Harvard University Press, 1981), 164, 218, 226.
[6] Anders Stephanson, *Manifest Destiny: American Expansionism and the Empire of Right* (New York: Hill and Wang, 1995), 56.
[7] Ibid., 55; Horsman, 43-44.

Manifest Destiny, even though many of them were not "authentic" Anglo-Saxons but were other ethnic groups claiming to belong to the white race.

Manifest Destiny was by no means an abstract idea. In the nineteenth-century, it entailed the specific goal to conquer people of inferior races, which, in the American West, included Native Americans, Mexicans, African Americans, and Asians, and to spread an Anglo-American civilization. According to Almaguer, "[i]n symbolic terms, the notion of manifest destiny implied the domination of civilization over nature, Christianity over heathenism, progress over backwardness, and most importantly, of white Americans over the Mexican and Indian population that stood in their path."[8] Anglo-Americans used both violent and non-violent means to achieve that domination.

Anglo-Americans' attitude towards indigenous people shifted in the early nineteenth century, when the fight over land against the Indians intensified. Turning to scientific racism which challenged the idea that Native Americans could be assimilated, Anglo-Americans assigned the origin of racial differences in biology.[9] Based on the idea that "blood determined race," scientific racism considered race to be fixed and unchangeable.[10] These led to the belief that there was no point in attempting to educate and civilize indigenous people because the "natural" and "biological" difference between Anglo-Americans and indigenous people could not be erased. In short, indigenous people were not capable of assimilating into the Anglo-American civilization, and thus their proper place was outside of the boundaries of the United States, or be annihilated. There was no natural space for indigenous people within the Anglo-American society. Thus, as American Studies scholar Richard Slotkin argues, the United States

[8] Almaguer, 55.
[9] Stephanson, 55; Rosa Linda Fregoso, *Mexicana Encounters: The Making of Social Identities on the Borderlands* (Berkeley: University of California Press, 2003), 135.
[10] Stephanson, 55.

was "an Indian-killing and slaveholding power, with an ideological commitment to removing all alien races from the path of progress, or subordinating them coercively."[11]

Furthermore, Anglo-Americans believed that maintaining their racial "purity" would further advance their civilization.[12] While Spanish *conquistadores* in the Américas used racial and sexual mixture as a means of assimilating indigenous people,[13] Anglo-Americans viewed such mixture as a taint on the Anglo-American race.[14] In addition, reproducing more Anglo-American children meant more agents to carry out their mission of removing non-whites and spreading their civilization. As historian Reginald Horsman argues, in the mid-nineteenth century "[t]he conflict [in the United States] was no longer viewed as that of civilization against savagery, as in the eighteenth century; it was becoming the white race against the colored races."[15]

<Ambiguous Racial and Citizenship Status of the Mexicans in the United States>

Indigenous people were not the only ones displaced by Anglo-Americans in the processes of Manifest Destiny as Anglo-Americans expanded into Mexican territory. Believing that their racial purity supported the progress of their civilization, Anglo-Americans viewed the Mexicans as an inferior *mestizo* race, and were highly critical of how Spaniards and indigenous people had intermixed. Unlike Anglo-Americans who avoided interaction with indigenous people, Spaniards,

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[11] Richard Slotkin, *The Fatal Environment: The Myth of Frontier in the Age of Industrialization, 1880-1890* (New York: Atheneum, 1985), 179.
[12] Horsman, 130.
[13] In 1814, José Gaspar Rodríguez de Francia, the dictator of newly independent Paraguay in the early nineteenth century, prohibited *intra*-marriage of the Spanish, forcing them to marry indigenous people, mulattos, or blacks, in order to dismantle the elite Spanish's socioeconomic foundations. This was an extremely rare case prohibiting *intra*-racial marriage, because, as I discuss later in this chapter, despite racial and sexual mixture was a tool of assimilation, the racial purity of Spaniards was still highly valued in the Américas and the elite class was most often "pure-blood" Spaniards. Richard Alan White, *Paraguay's Autonomous Revolution, 1810-1840* (Albuquerque: University of New Mexico Press, 1978), 61-63; Christian Bolke Turner and Brian Turner, "The Role of Mestizaje of Surnames in Paraguay in the Creation of a Distinct New World Ethnicity," *Ethnohistory* 41, no. 1 (Winter 1993): 144.
[14] Susan Lee Jonson, *Roaring Camp: The Social World of the California Gold Rush* (New York: W. W. Norton & Company, 2000), 31.
[15] Horsman, 205.

and later Mexicans, viewed intermarriage with Indians as a strategy of assimilation. Racial and sexual mixture was a means to "bleach out" and uplift the indigenous race. At the same time, during the Spanish and Mexican periods, Catholic missionaries tried to convert indigenous people to Christianity, and colonial governments also attempted to assimilate neophytes into the nation.[16] For example, the Mexican Constitution of 1824 granted Mexican citizenship to indigenous people, acknowledging the lengthy practice of assimilations for centuries.[17] By 1846 when the U.S.-Mexican War broke out, Anglo-Americans viewed Mexicans as a mongrel race, innately inferior to Anglo-Americans due to their continuous racial and sexual mixture with indigenous people and blacks.[18]

Nonetheless, their partial European lineage, along with being Catholics, elevated the Mexicans' racial status above indigenous people and blacks. By the time the United States was considering its invasion of Mexico in the mid-nineteenth century, Mexico was by no means a pristine, "virgin land" as Anglo-Americans expected. For example, Mexico City was a metropolis, and California, New Mexico, and the Rio Grande Valley were already settled, indicating that Mexicans had already developed the area and their own civilization.[19] Although Anglo-Americans believed that Protestantism was the most proper Christian belief, Catholics were more acceptable than non-Christian heathens. As Almaguer claims:

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[16] Martha Menchaca, *Recovering History, Constructing Race: The Indian, Black, and White Roots of Mexican Americans* (Austin: University of Texas Press, 2001), 173.
[17] Ibid., 218; Rodolfo Acuña, *Occupied America: A History of Chicanos*, 4th ed. (New York: Longman, 2000), 135. In the absence of the Spanish crown due to the Napoleonic Wars, in 1812, the Spanish parliament called Cortes enacted the Constitution of Cádiz, which abolished most racial restrictions declaring that *peninsulares*, *criollos*, *mestizos*, and Indians were equal. The Mexican Constitution of 1824 abolished racial and class distinctions, granting citizenship to Indians. Ibid.; Menchaca, 158; Martha Menchaca, "Chicano Indianism: A Historical Account of Racial Repression in the United States," *American Ethnologist* 20, no. 3 (August 1993): 584-585, 586; María Raquél Casas, *Married to a Daughter of the Land: Spanish-Mexican Women and Interethnic Marriage in California, 1820-1880* (Reno: University of Nevada Press, 2007), 106.
[18] Horsman, 210
[19] Slotkin, 173, 181.

> Spanish colonization of the Southwest had conferred upon Mexicans a "white" racial status, Christian ancestry, a romance language, European somatic features, and a formidable ruling elite that contested "Yankee" depredations. Less cultural distance existed between Euro-American immigrants and "half civilized" Mexicans than between whites and other racialized, non-European ethnic groups. Mexicans, particularly the Californio elite, were as a result generally perceived as worthy of at least partial integration and assimilation into the new [Anglo-American] social order.[20]

Therefore, Anglo-Americans treated Mexicans better than indigenous people, but not equal to Anglo-Americans themselves.

While whiteness or European-ness meant higher social status with certain privileges, claiming whiteness was not strictly policed under the Spanish-Mexican racial classification system, known as *castas*. Under this system, *Peninsulares* (Spaniards born in Spain) occupied the top of the hierarchy, followed by *criollos* (Spaniards born in the Américas). On the other hand, *negros* (African slaves) were at the bottom and various types of *castas* (mixed-blood people) and *indios* (Indians) occupied the mid-strata. Nonetheless, the *casta* system was much more fluid than the American racial system and allowed upward racial mobility, because in addition to lineage and phenotype, various social factors determined an individual's racial status. Those factors included occupation/economic class, marriage, religion, (il)legitimate birth, honor, moral conduct, clothing, and an individual's declaration.[21] Moreover, an individual could obtain whiteness by purchasing a license.[22] Thus, it was not rare for an individual, or a family, to negotiate their racial classification in their lifetime, claiming that they belonged to a lighter and

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[20] Almaguer, 4.

[21] Lisbeth Haas, *Conquests and Historical Identities in California, 1769-1936* (Berkeley: University of California Press, 1995), 31; Barbara L. Voss, *Archaeology of Ethnogenesis: Race and Sexuality in Colonial San Francisco* (Berkeley: University of California Press, 2008), 85-87, 96. Another way to differentiate people in the Américas were *gente de razón* (people of reason) and *gente sin razón* (people without reason), which originally referred to Christians and non-Christians respectively. By the early nineteenth century, these categories were used to distinguish Spaniards and *mestizos* from Indians, or civilization from savagery, instead of Christians from non-Christians. Haas, 31; Menchaca, *Recovering History*, 166, 167.

[22] Haas, 31; Voss, 85; Magnus Mörner, *Race Mixture in the History of Latin America* (Boston: Little, Brown, and Company, 1967), 45.

higher category.[23] As historian Linda Gordon claims, under the *casta* system, "being white conveyed status, and becoming lighter was synonymous with upward mobility" and "high status made a family white no matter what the individual skin colors."[24] Similarly historians William D. Carrigan and Clive Webb notes, "[t]he racial identity of Mexicans was to a considerable degree determined by their class status."[25] Thus, in order to maintain their social status, wealthy, elite Mexicans had to be *criollos*. For example, José María Pico, father of Pío Pico, was listed as a Spaniard in the colonial Spanish census of 1790, while his brothers were listed as mulattoes.[26] Historian Carlos Manuel Salomon notes three possible reasons for this. First, José María Pico might have been "awarded" the status of a Spaniard for his military contribution. Second, he might have purchased a license or used "trickery" to legitimize his claim of being a Spaniard. Lastly, his marriage to an *española* might have uplifted his racial status.[27] In any case, José María Pico's actual lineage did not exclusively determine his status under the *casta* system. If mulattoes like José María Pico's brothers achieved a higher social status, their racial status needed to be elevated accordingly, and it was not taboo to adjust an individual's racial status based on his/her class and other factors.

To some extent, Anglo-American immigrants to Mexico also accepted the Spanish-Mexican notion of fluid racial status. In the early nineteenth century, Anglo-Americans seeking land and economic opportunities migrated to the northern Mexican borderlands. As foreigners who constituted a numerical minority, they needed to build cooperative relationships with Mexicans, particularly elite land owners who had political, economic, and social power. At the

[23] Haas, 30-31; Voss, 86.
[24] Linda Gordon, *The Great Arizona Orphan Abduction* (Cambridge, MA: Harvard University Press, 1999), 54.
[25] William D. Carrigan and Clive Webb, "The Lynching of Persons of Mexican Origin or Descent in the United States, 1848 to 1928," *Journal of Social History* 37 no. 2 (Winter 2003): 418.
[26] Carlos Manuel Salomon, *Pío Pico: The Last Governor of Mexican California* (Norman: University of Oklahoma Press, 2012), 15.
[27] Ibid.

same time, Anglo immigrants accommodate themselves into Mexican society by converting to Catholicism, marrying Mexican women, and/or becoming Mexican citizens.[28] To be accepted into Mexican society, it was crucial for Anglo-Americans to avoid racial insult and regarded elite Mexicans as white, pure-blood Spaniards.[29] This was particularly important when Anglo immigrants intermarried daughters of land-owning Mexican families.

Until the Anglo-Americans established their dominance in the U.S.-Southwest in the late nineteenth century, marriage to elite land-owning women was a vital option for Anglo-Americans seeking economic opportunities. Under the Spanish-Mexican laws, both single and married women were legally independent from their fathers and husbands. Women owned and inherited property, made contracts, and engaged in business on their own.[30] Daughters in a Mexican family had an equal right to inherit property. These legal conventions developed during *la Reconquista* in medieval Spain. As Spain tried to "reconquer" the Iberian Peninsula from Muslim invaders, Spanish towns and the crown granted female settlers legal rights, including property ownership, to encourage their participation in *la Reconquista*, and the Spanish authorities applied this strategy to the colonization of the Américas.[31] The transition from the Spanish to the Mexican rule made little change to women's legal independence.[32] For example, in her examination of the nineteenth-century California, historian Miroslava Chávez-García claims that women of *Californio* families inherited ranchos from their deceased fathers or

[28] Casas, 50, 51, 58; Miroslava Chávez-García, *Negotiating Conquest: Gender and Power in California, 1770s to 1880s* (Tucson: The University of Arizona Press, 2004), 59-60; Evelyn Nakano Glenn, *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor*, (Cambridge, MA: Harvard University Press, 2002), 165-166. Marrying a Mexican or becoming a Mexican citizen allowed Anglo-American immigrants eligible for receiving land grants in Mexico. Rosaura Sánchez, *Telling Identities: The Californio Testimonios* (Minneapolis: University of Minnesota Press, 1995), 202.
[29] Carrigan and Webb, 421.
[30] Chávez-García, 54, 58, 70; Gloria Ricci Lothrop, "Rancheras and the Land: Women and Properly Rights in Hispanic California," *Southern California Quarterly* 76, no. 1 (Spring 1994): 59; Under the Spanish-Mexican law, mothers had equal rights as fathers over their children. Ibid., 65.
[31] Casas, 30, 35-36.
[32] Lothrop, 59-60, 66.

husbands, giving them economic independence as well as a comfortable lifestyle.[33] Anglo-Americans marrying elite Mexican women could access their land and property. As Carrigan and Webb claim, "[t]he earliest Anglo settlers to the Southwest sought to increase their access to political control and possession of natural resources thorough intermarriage with the native ruling class."[34] Similarly, David Montejano notes that intermarriage "made it possible [for the Anglo immigrants] to amass a good-sized stock ranch without considerable expense."[35] In addition to property acquisition, intermarriage allowed Anglo-Americans to utilize kinship networks.[36] Kinship allowed them to establish "an effective everyday authority" in the Mexican community.[37] For Anglo-Americans, intermarriage with elite Mexican women brought various benefits by accessing economic, social, and cultural capital owned by their wives and in-laws. On the other hand, for Mexican families, Anglo-Americans were business partners and "represent[ed] an emergent class of capitalists."[38] In the decades before and after the U.S.-Mexican War of 1846-1848, Anglo-Mexican intermarriage served the purposes of both parties and was a common means to make an *intra*-class, *inter*-ethnic alliances.

Anglo-Americans' treatment of elite Mexicans as Spaniards were significant in how *The Los Angeles Times* depicted elite Mexican brides who married Anglo-Americans. According to its article entitled "Hymen Again," Maj. Patrick Sarsfield O'Reilly and Doña Maria Antonio Perez de Woodworth married in 1888.[39] Mrs. Woodworth was not only "the millionaire widow of the late Wallace Woodworth," but also had "a fine residence on San Pedro street, where she

[33] Chávez-García, 53-54, 57-59, 70
[34] Carrigan and Webb, 421.
[35] Montejano, 37.
[36] Haas, 73.
[37] Montejano, 37.
[38] Sánchez, 201.
[39] "Hymen Again," *The Los Angeles Times*, August 14, 1888. Throughout the article, Doña Maria's last name was spelled either Perez or Peres, and Woodworth or Woodsworth. Hymen is the god of marriage in Greek mythology. The term "hymen" used in anatomy is not associated with Hymen as the origin of "hymen" is the Greek word "humēn," which means thin skin or membrane.

resides, besided [sic] a large amount of valuable city property and several ranches."[40] *The Los Angeles Times* depicted her as "a member of one of the old *Spanish* [emphasis added] families of Southern California."[41] Even in 1904 when *The Los Angeles Times* reported the marriage of Mr. George Robert Williamson and Miss Lisita Pico, it did not describe her as Mexican, despite the fact that her grandfather Pío Pico was an *afromestizo* with black, Spanish, and indigenous lineage.[42] Instead, *The Los Angeles Times* explained that she was "a granddaughter of the noted Pío Pico, last *Spanish* [emphasis added] Governor of California" and her family "was known throughout the State when the *Castilians* [emphasis added] held sway in this magic land."[43] As these examples show, it was mutually beneficial to regard the small number of elite Mexicans as Spaniards, superior to *mestizos*, who constituted the majority of the population in the Spanish-Mexican borderlands.

The doctrine of Manifest Destiny and Anglo-Americans' racialized view of Mexicans (and indigenous people) led the United States to wage a war against Mexico in 1846. Almost five months after the fall of Mexico City, the Treaty of Guadalupe-Hidalgo was signed on February 2, 1848 and ended the war. Mexico ceded to the United States what is now California, Arizona, New Mexico, and parts of Nevada, Utah, Colorado, Oklahoma, Kansas, and Wyoming, which constituted nearly half of Mexico's land.[44] The ceded territory was by no means a pristine, untouched land; Spaniards, Mexicans, indigenous people, and blacks were living in the vast northern borderlands of Mexico. When the war ended, the United States had to determine their

[40] Ibid.
[41] Ibid.
[42] "Daughter of Picos," *The Los Angeles Times*, October 4, 1904; Menchaca, *Recovering History*, 170; Salomon, 15.
[43] "Daughter of Picos."
[44] Menchaca, *Recovering History*, 216; Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York: W.W. Norton & Company, 1987), 232.

citizenship status, and its decision stipulated in the Treaty of Guadalupe-Hidalgo of 1848 made the racial status of the U.S.-Mexicans even more ambiguous.

Article VIII of the Treaty of Guadalupe-Hidalgo allowed Mexicans in the ceded territory one year to decide whether they would remain Mexican citizens or become U.S. citizens. After one year, anyone in the ceded territory who did not declare to remain a Mexican citizen automatically became a U.S. citizen.[45] The article also guaranteed Mexicans' property ownership:

> In the said territories, property of every kind, not belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it, guaranties equally ample as if the same belonged to citizens of the United States.[46]

This article declared that Mexicans' property rights would be protected on the same level as those of U.S. citizens, and the guarantee was not limited to the contemporary owners but also their heirs and whoever made a contract with a property owner.

The incorporation of Mexicans into the U.S. citizenry and the guarantee of their property rights seem only fair and just by today's standard; nonetheless, the policy of the United States since its foundation was that only whites could be U.S. citizens, making Mexicans' racial status an even more complex issue after 1848.[47] By 1848, no law or court case in the United States defined who was considered a white person and who was not.[48] As discussed above, Anglo-

[45] "Treaty of Guadalupe Hidalgo," February 2, 1848, *Stats. at Large of USA* 9 (1851): 929.
[46] Ibid., 929-930.
[47] *Naturalization Act of 1790*, 103; Dred Scott v. Sandford, 60 U.S. 393, 419-420 (1856).
[48] California's Criminal Law and Civil Procedure Law of 1850 defined that anyone with "one-eight part of Negro blood" was a "mulatto" and "one-half of Indian blood" an "Indian." In 1851, Civil Procedure Law was amended to define persons with "one fourth or more of Indian blood" as "Indians" and "one half or more Negro blood" as "Negroes." Yet the federal government did not clarify the definition of a white person or Caucasian until the U.S. Supreme Court cases of *Ozawa v. United States* (1922) and *United States v. Thind* (1923). The U.S. Supreme Court declared that Takao Ozawa, as Japanese, was not a white person according to the scientific knowledge no matter how white his skin color was. On the other hand, Bhagat Singh Thind, a Hindu, was not a white person even if he was a Caucasian according to the scientific knowledge. An Act Concerning Crimes and Punishments, *The Statutes of California Passed at the First Session of the Legislature*, ch. 99, sec. 14 (1850); An Act to Regulate Proceedings in Civil Cases in the District Court, the Superior Court of the City of San Francisco, and Supreme Court, *The*

Americans' view of Mexicans depended on their class, but the vast majority were *mestizos* with indigenous heritage. To maintain the coherence of the policy on race and citizenship, the U.S.-Mexicans were legally considered white although they were *not* in the popular view.[49] Under the hypodescent policy which placed mixed-blood people to the "inferior" racial group, many Anglo-Americans believed that Mexicans were predominantly *mestizos*, and thus Indians.[50] As Latina Studies scholar Rosa Linda Fregoso argues, "To be sure, the Mexican inhabitants of the former Mexican territories disturbed the [U.S.] nation's investment in whiteness as the basis for citizenship and, more significantly, national identity."[51] To resolve the "disturbance," Anglo-Americans most often treated Mexicans as half-Indians, denying them the citizenship rights.[52] When they accepted Mexicans as U.S. citizens, it was for the benefit of Anglo-Americans.

In fact, it was the U.S. Senate that first refused to honor the former Mexican citizens' rights stipulated in the Treaty of Guadalupe-Hidalgo. During the debate over ratification of the treaty, the Senate modified Article IX to invalidate the stipulation of Article VIII. The original Article IX signed on February 2, 1848 followed the two precedents, namely Article III of the Louisiana Purchase Treaty of 1803 and Article VI of the Adams-Onís Treaty of 1819, which granted U.S. citizenship to French citizens in Louisiana and Spanish subjects in Florida respectively. The original Article IX of the Treaty of Guadalupe-Hidalgo read:

> The Mexicans who, in the territories aforesaid […] shall be incorporated into the Union of the United States, and admitted *as soon as possible* […] to the enjoyment of all the

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Statutes of California Passed at the First Session of the Legislature, ch. 142, sec. 306 (1850); An Act to Regulate Proceedings in Civil Cases, in the Courts of Justice of This State, *The Statutes of California Passed at the Second Session of the Legislature*, ch. 5, sec. 394 (1851); Ozawa v. United States, 260 U.S. 178, 197-198 (1922); United States v. Thind, 261 U.S. 204, 209-210, 214-215 (1923).

[49] Fregoso, 131; Menchaca, "Chicano Indianism," 589, 593.

[50] Ibid., 584, 587, 592.

[51] Fregoso, 130.

[52] In "Chicano Indianism," Martha Menchaca details various court cases from 1848 to 1947 in which Mexicans' racial status as whites was challenged, demonstrating that Anglo-Americans, particularly state legislators, treated Mexicans as Indians whenever they could in order to exclude them from the U.S. citizenry. Menchaca, "Chicano Indianism," 583-603.

> rights of citizens of the United States. In the mean time [sic] they shall be maintained and protected in the enjoyment of their liberty, their property, and the *civil rights* now vested in them according to the Mexican laws. With respect to *political rights*, their condition shall be on an equality with that of the inhabitants of the other territories of the United States, and at least equally good as that of the inhabitants of Louisiana and the Floridas [sic], when these provinces, by transfer from the French republic and the crown of Spain, became territories of the United States [emphasis added].[53]

Just like the Louisiana Purchase Treaty and the Adams-Onís Treaty, the Treaty of Guadalupe-Hidalgo was supposed to grant U.S. citizenship to the Mexicans in the ceded territory "as soon as possible." Until then, their civil and political rights were supposed to be protected in the same manner as those of the residents in French Louisiana and Spanish Florida. In fact, it was the principle of international laws of territorial cession to grant nationality to the residents of a ceded territory.[54] Nonetheless, the ratified version of Article IX of the Treaty of Guadalupe-Hidalgo was to admit Mexicans in the new territory to the U.S. citizenry only "at the proper time (to be judged of by the Congress of the United States)," not "as soon as possible."[55] At the same time, the guarantee of their rights during the moratorium was limited to "the free enjoyment of their liberty and property, and […] the free exercise of their religion," not the comprehensive "civil rights […] according to the Mexican laws" and "political rights […] on an equality with that of the inhabitants of the other territories of the United States" stipulated in the original Article IX.[56] Thus, referring to this state as "quasi-citizenship status," historian Ernesto Chávez claims:

> the article [Article IX] labeled them [Mexicans] as a conquered people. By deeming Mexicans as an in-between people who would be granted the rights of U.S. citizens but

[53] *Treaty of Guadalupe-Hidalgo of 1848*, 30th Cong., 1st sess., 1848, Exec. Doc.7, 10.
[54] Menchaca, "Chicano Indianism," 584.
[55] "Treaty of Guadalupe Hidalgo," 930; *Treaty of Guadalupe-Hidalgo of 1848*, 10. As late as 1870, Congress did not take any action to admit Mexicans in the ceded territory to the U.S. citizenry. Yet, in 1870, the California Supreme Court ruled in *People v. de la Guerra* that the admission of California as a state granted Mexicans the state citizenship, and thus U.S. citizenship. On the other hand, indigenous people were not granted the state citizenship, and thus not entitled to any protection of the Treaty of Guadalupe-Hidalgo, the California Constitution, or the U.S. Constitution. People v. de la Guerra, 40 Cal. 311, 341, 342 (1870); Richard Griswold del Castillo, *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict* (Norman: University of Oklahoma Press, 1990), 69.
[56] "Treaty of Guadalupe Hidalgo," 930; *Treaty of Guadalupe-Hidalgo of 1848*, 10.

> not always the ability to exercise them, Article IX allowed for the construction of a Mexican race in the United States.[57]

At the same time, the United States completely eliminated Article X of the Treaty of Guadalupe-Hidalgo, under which the United States would respect land grants issued by the Mexican governments.[58] The elimination of Article X jeopardized Mexicans' land ownership, but Congress' enactment of the California Land Act in 1851 further endangered their property rights. This act required all land grants issued by the Spanish or Mexican government to be validated by the newly established Board of Land Commissioners, putting the burden of proof and cost on land owners.[59] Many of the Mexican land titles were validated, but the expensive cost of long litigations, particularly the fees to Anglo-American attorneys, made many of the land owners sell their land at much lower than the market value or were forced into bankruptcy.[60] At the same time, Anglo-Americans squatted on the Mexican-owned land, claiming that the land was abandoned or not in use.[61] As Latina literature critics Rosaura Sánchez and Beatrice Pita claim, "the squatters [were] aware of the interconnection of economic, ethnic, and political practices in social antagonism. They too [knew] that the best weapon against their enemy [Mexicans] is an economic one and that there is no need to kill the *Californios* to destroy them."[62] The elimination of Article X of the Treaty of Guadalupe-Hidalgo, the California Land Act, and Anglo-American squatters all weakened elite Mexicans' position in the society.[63]

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[57] Ernesto Chávez, *The U.S. War with Mexico: A Brief History with Documents* (Boston: Bedford/St. Martin's, 2008), 26.
[58] *Treaty of Guadalupe-Hidalgo*, 11.
[59] Chávez, 28; California Land Act of 1851, *Stats. at Large of USA* 9 (1851): 632, 633.
[60] Griswold del Castillo, 74; Chávez, 28; Almaguer, 66. According to Miroslava Chávez-García, the average length of a litigation was seventeen years. She also notes that in the Los Angeles area, forty-six percent of the original owners went bankrupt during the litigations. Chávez-García, 125.
[61] Ibid., 126; Griswold del Castillo, 74-75; Menchaca, *Recovering History*, 265.
[62] Rosaura Sánchez and Beatrice Pita, introduction to *The Squatter and the Don*, by María Amparo Ruiz de Burton, ed. Rosaura Sánchez and Beatrice Pita (Houston: Arte Público Press, 1997), 25.
[63] Griswold del Castillo, 73-74; Almaguer, 66-67.

Along with the federal government, the California Constitution undermined Mexicans' political power by refusing to grant suffrage to Mexicans who became U.S. citizens. The California Constitution's Article 2, Section 1read:

> Every white male citizen of the United States, and every *white* male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of [Guadalupe-Hidalgo,] of the age of twenty-one years […] shall be entitled to vote at all elections which are now or hereafter may authorized by law [emphasis added]. [64]

While this might seem coherent with the Treaty of Guadalupe-Hidalgo's citizenship clauses, two legal issues arise. First, it made a distinction between "citizen[s] of the United States" and "citizen[s] of Mexico, who shall have elected to become a citizen of the United States." California established its constitution more than a year since the ratification of the Treaty of Guadalupe-Hidalgo of 1848. Therefore, all Mexicans in California, except those who had elected to remain citizens of Mexico, already became citizens of the United States. There was no ambiguity regarding the legal status of Mexicans in California, and thus there was no need to make a distinction between "citizens of the United States" and former "citizens of Mexico." Yet the California Constitution clearly separated the two, suggesting that they were fundamentally different groups.

Second, the California Constitution allowed suffrage only to *white* male former Mexican citizens along with white male U.S. citizens. As Ethnic and Gender Studies scholar Evelyn Nakano Glenn points out, this assumed that there were white and non-white Mexicans.[65] The U.S. discourse treated the vast majority of Mexicans as *mestizos*, who partially had indigenous lineage. As discussed earlier, in the nineteenth century, Anglo-Americans no longer believed that Native Americans were capable of assimilating into the Anglo-American societies with the rise of

[64] California Constitution of 1849, *The Statutes of California Passed at the First Session of the Legislature*, art. 2, sec. 1 (1850).
[65] Glenn, 159.

scientific racism, and the Treaty of Guadalupe-Hidalgo's "promise" of U.S. citizenship failed Native Americans who became Mexican citizens under the Constitution of 1824. Since the citizenship clause of the Treaty of Guadalupe-Hidalgo made no reference to race, Mexican citizens of any race could have been legally become U.S. citizens.[66] Nonetheless, the United States did not grant American citizenship to indigenous people. For example, in *Suñol v. Hepburn*, the California Supreme Court in 1850 declared that the Mexican Constitution granted citizenship to Indians, but their citizenship rights were limited with legal disabilities just like those of "[i]nfants, idiots, lunatics, spendthrifts, and married women."[67] Therefore, historian Rodolfo Acuña argues that the rights of indigenous people who were Mexican citizens were "grossly violated by the Treaty of the Guadalupe Hidalgo. In the end, the native was blamed for the lack of implementation of the Constitution because it was they who allegedly failed to integrate."[68]

Nonetheless, Anglo-Americans could not dismiss the political, economic, and social power of elite Mexicans, who claimed to be white Spaniards. Anglo-Americans took advantage of elite Mexicans' power by giving suffrage to "white Mexicans," allowing some class-based alliances to form between elites of both societies. For example, an Anglo-American political candidate's elite Mexican wife and her family could mobilize Mexican voters for him. Although elite Mexicans allied with Anglo-Americans, suffrage allowed them to resist against total Anglo-

[66] Menchaca, "Chicano Indianism," 584, 587. It was not until the Indian Citizenship Act of 1924 when the United States granted U.S. citizenship to all Native Americans. Before the Indian Citizenship Act, three laws granted U.S. citizenship to Native Americans if they satisfied the qualifications specified in each law. Those laws are the Dawes Act (1887), an Act in Relation to Marriage between White Men and Indian Women (1888), an Act Granting Citizenship to Certain Indians (1919). To become a U.S. citizen, the Dawes Act required a Native American to accept private ownership a piece (the maximum of 160 acre) of his/her tribal nation's reservation land. Under the 1888 intermarriage law, a Native American woman who married a white U.S. citizen automatically became a U.S. citizen. The 1919 law allowed Native Americans who served in the military during WWI to become U.S. citizens. *Dawes Act of 1887*, *U.S. Statutes at Large* 24 (1887): 390; *An Act in Relation to Marriage between White Men and Indian Women*, *U.S. Statutes at Large* 25 (1889): 392; *An Act Granting Citizenship to Certain Indians*, Public Law 66-75, *U.S. Statutes at Large* 41 (1921): 350.

[67] Suñol v. Hepburn, 1 Cal. 254, 279 (1850).

[68] Acuña, 135.

American control.[69] Nevertheless, the population of white Mexicans was small, and thus Anglo-Americans could dismiss their voting power once Anglo-Americans constituted the majority in the late nineteenth centuries. As Rosa Linda Fregoso argues, Anglo-Americans viewed Mexicans as a threat to "the nation's imaginary, especially its 'valorization of whiteness as treasured property,' as an attribute belonging only to the Anglo-Saxon race."[70] Therefore, the U.S.-Mexicans, even if they were white Mexicans, were never fully incorporated into the U.S. polity and citizenry; as a consequence, by the end of the nineteenth century, they became "foreigners" in their homeland.

<Desired Westward Expansion and the Citizenship Act of 1855>

At the height of Manifest Destiny when the U.S. policy on race and citizenship was complicated by the incorporation of Mexicans in the Southwest, the Citizenship Act of 1855 was enacted, initiating the practice of marital naturalization in the United States. In the late eighteenth to nineteenth century, Westward expansion supported by the doctrine of Manifest Destiny required a large population which natural increase alone could not supply.[71] The Citizenship Act of 1855 was designed to increase the number of "desirable" white American citizens to sustain and encourage Westward expansion. The Citizenship Act consisted of two sections. The first section declared that a foreign-born child was a natural-born U.S. citizen if his/her father was a U.S. citizen, and the second section stipulated that a foreign-born woman who married a U.S. citizen was also a U.S. citizen as long as she satisfied the racial clause of the Naturalization Act of 1790. While it was the second section that directly affected women's citizenship in the latter half of the nineteenth century, I examine both sections to contextualize women's dependent

[69] Almaguer, 46.
[70] Fregoso 131.
[71] Ronald Schultz, "'Allegiance and Land Go Together': Automatic Naturalization and the Changing Nature of Immigration in Nineteenth-Century America," *American Nineteenth Century History* 12, no. 2 (June 2011): 155.

citizenship in the Citizenship Act as a whole, and better situate the Citizenship Act in a larger historical context of Manifest Destiny.

The formal title of the Citizenship Act was "An Act to Secure the Right of Citizenship to Children of Citizens of the United States Born out of the Limits thereof."[72] As the title suggests, the primary purpose of the Citizenship Act was to grant citizenship to foreign-born children of U.S. citizens. Section 1 read:

> persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the Unites States, shall be deemed and considered and are hereby declared to be citizens of the United States.[73]

The doctrine of Manifest Destiny convinced many Anglo-Americans, particularly men, to migrate beyond the national boundaries as its agents.[74] Some of those men traveled with their wives and had children in a foreign land, while others married local women and had children. In either case, the citizenship status of children was ambiguous since the enactment of the Naturalization Act of 1802. Prior to this act, the Naturalization Act of 1790 stipulated that "the children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be considered as natural born citizens" unless "[their] fathers have never been resident [sic] in the United States."[75] Although this act required the father's residence in the United States at some point in his life, it did not specify if the father had to be a U.S. citizen for the children to be U.S. citizens. In reference to the parents, the act used the gender-neutral term

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[72] *Citizenship Act of 1855*, 604.
[73] Ibid.
[74] Women also went to "uncivilized" land outside the United States as agents of Manifest Destiny. They were often part of Christian missionaries, and the destinations included Hawaii (before the U.S. annexation) and other Pacific Islands, Africa, and Asia. See Patricia Grimshaw, *Paths of Duty: American Missionary Wives in Nineteenth-Century Hawaii* (Honolulu: University of Hawaii Press, 1989); David Igler, "Diseased Goods: Global Exchanges in the Eastern Pacific Basin, 1770-1850," *The American Historical Review* 109, no. 3 (June 2004): 693-719; Glenda Riley, *Taking Land, Breaking Land: Women Colonizing the American West and Kenya, 1840-1940* (Albuquerque: University of New Mexico Press, 2003); Mary Paik Lee, *Quiet Odyssey: A Pioneer Korean Woman in America*, ed. Sucheng Chan (Seattle: University of Washington Press, 1990).
[75] *Naturalization Act of 1790*, 104.

as in "an American *citizen*'s child." Therefore, it left a room for children born abroad to inherit U.S. citizenship from their American citizen mothers.

The Naturalization Act of 1802 repealed all previous laws on naturalization without clearly defining the citizenship status of children born abroad to U.S. citizens. In the 1790s, the United States, as a young nation, was still trying to figure out who should become U.S. citizens, and enacted three naturalization laws in a decade. Aside from being free white persons, the 1790 act required a two-year residency in the United States, good moral character, and the oath of allegiance to the U.S. Constitution.[76] Having the fear of the influx of immigrants who did not understand republican principles, the Federalist-led Congress enacted a new Naturalization Act in 1795. It extended the residency requirement from two years to five years and required renunciation of allegiance to any foreign state as well as any hereditary title and order of nobility.[77] In 1798, Congress drastically changed the residency requirement to fourteen years and required registration of all white foreigners.[78] According to historian Ronald Schultz, this move was to curb the power of the Jeffersonian opposition against the Federalists, so that when Thomas Jefferson was elected as the first non-Federalist president, Congress enacted a new naturalization law in 1802, making the residency requirement to five years.[79] Although minor changes were made, the Naturalization Act of 1802 settled the issues of who could and should be admitted to the U.S. citizenry for the rest of the nineteenth century, except citizenship of children born abroad to U.S. citizen parents.[80] Section 4 of the 1802 act read:

> the children of persons duly naturalized […] being under the age of twenty-one years, at the time of their parents being so naturalized or admitted to the rights of citizenship, shall,

[76] Ibid., 103.
[77] *Naturalization Act of 1795*. *Stats. at Large of USA* 1 (1845): 414-415.
[78] Schultz, 153; *Naturalization Act of 1798*. *Stats. at Large of USA* 1 (1845): 566-568.
[79] Schultz, 153; *Naturalization Act of 1802, Stats. at Large of USA* 1 (1845): 155.
[80] Douglas Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union, 1774-1804* (Charlottesville: University of Virginia Press), 104.

> if dwelling in the United States, be considered as citizens of the United States, and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States. […] [T]he right of citizenship shall not descend to persons whose fathers have never resided within the United States.[81]

The first half of this section declared that minor children of naturalized citizens were American citizens if living in the United States. The latter half stipulated that children born abroad to "persons who now are, or have been citizens of the United States" were U.S. citizens. The phrase "[p]ersons who now are, or have been citizens of the United States" referred to *naturalized* citizens, and the Naturalization Act of 1802 had no other stipulation on citizenship status of children. Therefore, there was no law that defined citizenship of children born abroad to *natural-born* U.S. citizens.

To solve this problem, Rep. Francis Cutting (D-NY), an attorney from New York City, proposed the Citizenship Bill in 1854 as he believed that it was "eminently necessary […] to correct a lamentable defect in the law."[82] Cutting viewed the U.S. citizens who went abroad as agents of Manifest Destiny who were making significant contributions to the United States. According to Schultz, by the mid-nineteenth century, the Jeffersonian agrarian ideal was pervasive not only among politicians but also among the general Americans public.[83] They took it for granted that European immigrants to the United States would develop and settle in the West, adapt to American values, and soon become naturalized citizens.[84] Thus, lawmakers kept the naturalization requirements and process lenient throughout the nineteenth century.[85] On the other hand, in Cutting's view, the U.S. laws did not provide enough protection for the natural-born citizens who went aboard as agents of Manifest Destiny. He argued that it was an "injustice" and

[81] *Naturalization Act of 1802*, 155.
[82] *Congressional Globe*, 33d Cong., 1st sess., 1854, 23, pt. 1: 169, 170.
[83] Shultz, 156.
[84] Ibid.
[85] Ibid.

"embarrassment" that the children born to those who "traveled abroad, either upon visits of pleasure or for the purpose of trade or business, or the higher purpose of spreading the Gospel and shedding the lights of Christianity upon darkened countries" were not U.S. citizens.[86] "Those persons who are out of our limits," he claimed, "look back to the country of their childhood and their early homes, with a degree of energetic affection that perhaps does not exist, or is not aroused within us while we are here, scarcely feeling the glory and the advantages that we derive from the fact of bearing the proud name of American citizens."[87] Cutting was suggesting that those who traveled abroad were "true" American citizens as they took the risks of leaving their country to make a contribution to the American nation. The missionaries had "the higher purpose" to spread Christianity, while those who were engaging in trade and business were part of building the budding American empire. He even admitted that those who stayed in the country were not as patriotic as those who went abroad. He claimed: "there is no more interesting portion of our people than those who leave the country for the purpose of extending the trade and commerce of the country, or for the purpose of carrying the great principles of our institutions, and of the institutions of Christianity, into foreign lands."[88] Whether their purpose was secular or religious, those who went abroad were absolutely agents of Manifest Destiny, who spread the Anglo-American civilization and Christianity to uncivilized, "darkened countries." For Cutting, "the legislation […] is necessary for the protection of this very interesting portion of what is supposed to be our population."[89] At the same time, if Congress could secure U.S. citizenship for the foreign-born children of American parents, it would encourage more Americans to migrate

[86] *Congressional Globe*, 170.
[87] Ibid.
[88] Ibid.
[89] Ibid., 169, 170.

beyond the national boundaries because they no longer had to worry about their children's citizenship.

In order to maximize the incentive to act as agents of Manifest Destiny, it was not enough to secure U.S. citizenship of foreign-born children. It was necessary to do so in a gender specific way. Section 1 of the Citizenship Act of 1855 stipulated that foreign-born children could be legitimated as U.S. citizens only through their U.S. citizen fathers, not through their American citizen mothers.[90] It removed the ambiguity in the Naturalization Acts from 1790 to 1802 with regards to which parent could pass down U.S. citizenship to foreign-born children. This meant, however, that children born abroad could be U.S. citizens only when their *fathers* were U.S. citizens. The Citizenship Act explicitly denied the mother-child tie in citizenship, even though it is always easier to identify the mother than the father upon the birth of a child.[91] Therefore, as historian Nancy F. Cott argues, the Citizenship Act was "remarkable in its gender specificity, giving a particular privilege to American male citizens only."[92] It reinforced a patrilineal and patriarchal family model, giving men exclusive control over their children's citizenship.

To solidify this family model, the second section of the Citizenship Act was added. It stipulated: "any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen."[93] A foreign-born woman who married a U.S. citizen automatically became a U.S. citizen. If her husband was a foreigner at the time of their marriage, she became a U.S. citizen

[90] *Citizenship Act of 1855*, 604.
[91] On the contrary to the Citizenship Act, during the slavery, the status of black women's children was dependent on their mothers, not fathers. All children who were born from black women were considered as black, even if their biological fathers were white. The increase of black population was not undesirable during the slavery because they were property. Thus, black women's body was perceived as a "means of increasing property." Cheryl I. Harris, "Whiteness as Property," *Harvard Law Review* 106, no. 8 (June 1993): 1719.
[92] Nancy F. Cott, "Marriage and Women's Citizenship in the United States, 1830-1934," *American Historical Review* 103, no. 5 (December 1998): 1456.
[93] *Citizenship Act of 1855*, 604.

when her husband completed the naturalization processes. Section 2 of the Citizenship Act established marital naturalization for foreign-born wives of U.S. citizens, making the wives' citizenship dependent on that of their husbands.

Section 2 of the Citizenship Act abandoned the tradition of married women's independent citizenship. Before the Citizenship Act of 1855, there was no statute on married women's citizenship, yet in 1830 the U.S. Supreme Court in *Shanks* et al. *v. Dupont* et al. confirmed the common law tradition of married women's *independent* citizenship and the extent to which the doctrine of coverture affected married women's rights. It declared:

> marriage with an alien, whether a friend or an enemy, produces no dissolution of the native allegiance of the wife. It may change her *civil* rights, but it does not effect [sic] her *political* rights or privileges. The general doctrine is, that no persons can by any act of their own, without the consent of the government, put off their allegiance, and become aliens [emphasis added].[94]

In other words, "[t]he incapacities of femes covert, provided by the common law, apply to their *civil rights*, and are for their protection and interest. But they do not reach their *political rights*, nor prevent their acquiring or losing national character [emphasis added]."[95] Although the decision did not provide the definitions of political and civil rights respectively, it made a distinction between the two. According to sociologist T. H. Marshall, the civil rights are "the rights necessary for individual freedom" including "the right to own property and to conclude valid contracts, and the right to justice" and the political rights are "the right to participate in the exercise of political power."[96] In the words of Cott, civil rights are "the right to make contracts, sue and testify in court, own and devise property, and pursue an occupation, all very important in

[94] Shanks *et al*. v. Dupont *et al*., 28 U.S. 242, 246 (1830).
[95] Ibid., 248.
[96] T. H. Marshall, *Citizenship and Social Class and Other Essays* (New York: Cambridge University Press, 1950), 10-11.

daily life and prosperity," while suffrage is one of the major political rights.[97] Since marriage contact fell into the civil domain, it could not affect political rights, including citizenship. At the same time, citizenship was a matter of national allegiance. Unlike Britain's feudal and perpetual subjecthood, citizenship was based on consent of an individual and the government.[98] Therefore, no individual could change his/her allegiance without the approval of the government, and the government could not dictate an individual's allegiance without his/her consent. For example, even if an American woman might have intended to renounce allegiance to the United States by marrying a foreigner, her renouncement required the consent of the U.S. government. Conversely, if a foreign-born woman wanted to pledge allegiance to the United States, a marriage contract was based on the consent of the foreign-born woman and her husband, and there was no space for the U.S. government. Thus, a marriage contract could change neither her allegiance nor citizenship. The Citizenship Act, however, dismissed these legal principles and *Shanks* et al. *v. Dupont* et al. As historian Candice Lewis Bredbenner claims, "working in coordination with the marital-expatriation laws in many foreign countries, [the Citizenship Act] robbed a large number of foreign-born women of a right that U.S. law had ostensibly ensured to all persons within its jurisdiction, regardless of sex or marital status – the right to consensual citizenship."[99] By 1855, many European countries including France, England, and Netherlands enacted laws stipulating that foreign-born wives had to take their husbands' nationality.[100] Just like those laws in Europe,

[97] Cott, 1446.
[98] Bradburn, 123.
[99] Candice Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Berkeley: University of California Press, 1998), 20.
[100] The practice of marital naturalization/expatriation began with the Napoleon Code of 1804. It stipulated that married women's nationality, both French-born women marring foreigners and foreign-born women marrying French men, were regarded as the same as that of their husbands. In 1844, British Parliament enacted the Aliens Act that declared that any woman who married a British subject was naturalized as a British subject. In 1848, the Dutch civil law made women's legal status that of their husbands. A Barrister of the Inner Temple, *The Code Napoleon, or, the French Civil Code* (London, UK: Thomas Davison, 1824), 4, 6; Aliens Act, 1844, 7 & 8 Vict., c. 66; Ann Laura

in the United States, the 1855 Citizenship Act denied the rule of consensual citizenship to foreign-born women. Under this act, the government did not explicitly give consent for naturalization to each foreign-born woman, and foreign-born women were naturalized without their explicit consent. They could negotiate to consent only through a choice of their husbands. The Citizenship Act turned women's choice of husbands into a political choice.

For American men, the control over their wives' civil rights prior to the Citizenship Act was not enough for asserting and sustaining their patriarchal power and dominance, even though a wife was treated as "chattel of her husband, who controlled her property, her earnings and even her children."[101] Men's desire for a more authoritarian patriarchal family model appeared in the way in which the Citizenship Act was constructed. By adding the section on foreign-born women's citizenship to the first section on children's citizenship, the act had two interrelated effects. On the one hand, it infantilized a foreign-born wife, equating her citizenship status with that of children. It made both the woman and children immature dependents under the male head of the household. On the other hand, by relegating adult women to the same grounds as children, the Citizenship Act made the husband responsible for educating and supporting the entire household. As an immature dependent, the wife was presumed to be in need of protection, care, and guidance of her husband. Particularly, the wife's "foreignness" fueled her perceived unfamiliarity with the United States, further reinforcing the notion that the foreign-born wife needed her citizen husband's protection and guidance. Rep. Cutting's testimony demonstrated that this was a desirable effect of making the foreign-born wife's citizenship dependent on that of her husband. He claimed that it would be "a relief to the husband, it aids him in the instilling of

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Stoler, *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule* (Berkeley: University of California Press, 2002), 101.

[101] Lothrop, 75.

proper principles in his children and cannot interfere with any possible right of a political character."[102]

The Cult of Domesticity was a dominant ideology that underlined the gender division of labor in the nineteenth century. Under this ideology, the domestic sphere was considered as women's sphere and their role was managing the household, including educating children. As sociologists Nira Yuval-Davis and Floya Anthias argue, women "teach and transfer the cultural and ideological traditions of ethnic and national groups" because "they are the main socialisers of small children."[103] Yet when these "ideological producers" and "cultural carriers" belong to ethnic minority groups, "they are often less assimilated socially and linguistically within the wider society."[104] Therefore, a foreign-born wife was considered to not easily assimilate into the U.S. society, and thus unfit to take full charge in managing the household, especially properly educating her children with U.S. core cultural, social, political, economic, and gender values. Instead, she was supposed to *be educated* along with the children by her husband. Although the Cult of Domesticity increased women's responsibilities within the household, a foreign-born wife's dependent status took away those responsibilities, undermining her authority and power as an adult.

A foreign-born wife's perceived inability and unfitness to properly educate children were ensured by immediate and automatic marital naturalization. In much of the nineteenth century, the Naturalization Acts demanded various requirements, including applying for naturalization in a court, five-year residency in the United States, and being a person of "good moral character." All requirements were designed to ensure that applicants learned U.S. values on their own for

[102] *Congressional Globe*, 170.
[103] Floya Anthias and Nira Yuval-Davis, "Introduction," in *Woman-Nation-State*, ed. Nira Yuval-Davis and Floya Anthias (New York: St. Martin's Press, 1989), 9.
[104] Ibid.

five years and that they deserved to join the U.S. citizenry. Marital naturalization, however, waived those requirements. Rep. Cutting argued: "there is no good reason why we should put a woman into a probationary term required by the naturalization laws, nor to the inconvenience of attending at the necessary courts, or places for the purpose of declaring her intention and renouncing her allegiance; nor […] put the husband to the expense of the proceeding."[105] Instead of the courts, a foreign-born woman's husband was to ensure that she had good moral character and understood American principles. In other words, her husband would teach her and their children how to be a good U.S. citizen. Despite the added responsibility to the citizen husband, according to Cutting, marital naturalization would be "a relief" for him because "by the act of marriage itself, the political character of the wife shall at once conform to the political character of the husband."[106] Even though "women possess no political rights,"[107] women's independence in citizenship was a threat to the patriarchal family model and psyche of American men. Thus, as Cott claims, the Citizenship Act "underlined customary male headship of the marital couple as a civic and political norm."[108]

In the nineteenth century, American men and their political leaders in general had a good reason to see married women's independence in citizenship as a threat because by the mid-nineteenth century, married women's citizenship as civil rights was gaining more meanings. For example, by 1850, twenty-three of the thirty-one states had Married Women's Property Acts allowing a married woman to own separate property from her husband and/or making her property not liable to the husband's debt.[109] According to legal scholar Richard Chused, the

[105] *Congressional Globe*, 170.
[106] Ibid.
[107] Ibid.
[108] Cott, 1456.
[109] Joan Hoff, *Law, Gender, and Injustice: A Legal History of U.S. Women* (New York: New York University Press, 1991), 379-382. In addition, in 1850, Congress enacted the Oregon Donation Act, allowing married women to obtain land titles. While other federal land laws, such as the Homestead Act of 1862, allowed single women, to claim land

Panic of 1837 motivated lawmakers to create means to protect women and children from their husbands/fathers' debts.[110] He notes that causes of the economic depression included excessive land speculation in the West, trade deficits, and states and territories' extensive borrowing for the construction of internal improvements in the 1830s.[111] Once the economy collapsed, many states enacted laws to protect debtors, including the exemption of a wife's property from her husband's debt.[112] It was paternalism that motivated lawmakers to enact the Married Women's Property Acts. As such, they were exemptions from the doctrine of coverture and did not bring a fundamental change to the patriarchal legal principles. Nevertheless, the Married Women's Acts provided a small sense of independence to married women and paved a way for later legal reforms that addressed equality between men and women.[113]

For both men and women, however, U.S. citizenship was required to own property. Without U.S. citizenship, a widow, for example, could not inherit her husband's property which could have been a major source of support.[114] In this case, the Citizenship Act was beneficial to a foreign-born widow of a U.S. citizen because it allowed her to inherit his property. Therefore, even though citizenship was considered political rights, by the mid-nineteenth century it was closely tied to civil rights, particularly property ownership, and for some women, this shift was a matter of life and death.

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titles, the Oregon Donation Act was the only federal land law under which married women were eligible for land patents. Unlike the state-level Married Women's Property Acts, no federal law protected married women's property from the husbands' debt. Richard H. Chused, "The Oregon Donation Act of 1850 and Nineteenth Century Federal Married Women's Property Law*," Law and History Review* 2, no. 1 (Spring 1984): 44.

[110] Richard H. Chused, "Married Women's Property Law: 1800-1850," *The Georgetown Law Journal* 71 no. 5 (June 1983): 1400-1401.

[111] Ibid., 1401-1402.

[112] Ibid., 1402.

[113] Ibid., 1412, 1425.

[114] Bredbenner, 21; Kif Augustine-Adams, "'With Notice of the Consequences': Liberal Political Theory, Marriage, and Women's Citizenship in the United States," *Citizenship Studies* 6, no. 1 (2002): 10.

In addition, the Citizenship Act saved some women from being stateless.[115] According to Nancy F. Cott, "the minimal definition of national citizenship mean[s] the individual's allegiance and the nation's reciprocal guarantee of protection."[116] Being stateless meant that she did not belong to any nation, and thus was not entitled to protection of any government. As noted earlier, married women's dependent citizenship was not uncommon in an international context in the nineteenth century.[117] Without the 1855 Citizenship Act, if a foreign-born woman came from a country that practiced marital expatriation, she became stateless when she married a U.S. citizen. Nowhere in the world could she exercise her rights as a citizen. No country would issue her a passport and protect her as its citizen. She physically existed but her existence had no legal meaning anywhere on the globe. Therefore, as legal scholar Kif Augustine-Adams claims, foreign-born women might have thought that automatic marital naturalization was a practical benefit to some extent.[118] Thus, the U.S. government thought that marital naturalization was "a benignant policy that protected women from the disabilities of alienage, properly rewarded wifely devotion to American men with the bestowal of U.S. citizenship."[119] Automatic marital naturalization protected women from being stateless and from being without property. U.S. citizenship was a desirable commodity for foreign-born women.[120]

Nonetheless, Section 2 of the Citizenship Act of 1855 did not naturalize all foreign-born women by marriage. As discussed earlier, the doctrine of Manifest Destiny designated Anglo-American as its bearers, so that the increase of Anglo-American population was desirable, but not others like Mexicans in the Southwest. The Citizenship Act limited marital naturalization

[115] Bredbenner, 20.
[116] Cott, 1446.
[117] Ibid., 1458; Bredbenner, 15.
[118] Augustine-Adams, 11.
[119] Bredbenner, 22.
[120] Augustine-Adams, 9.

only to women "who might lawfully be naturalized under the existing laws."[121] As noted earlier, the Naturalization Acts had various requirements, such as five-year residency, having a good moral character, and most importantly being a white person. Nevertheless, in 1869 the U.S. Supreme Court in *Kelly v. Owen* et al. declared that "being 'a free white person' and not an alien enemy" were the only prerequisites to *apply* for naturalization.[122] All other requirements were needed to be satisfied at the time when an applicant would actually become a naturalized citizen. In the case of marital naturalization, however, "applying" for naturalization and becoming a naturalized citizen took place simultaneously, yet the U.S. Supreme Court focused only on the time of application and disregarded the latter, making the racial eligibility the only requirement for marital naturalization. This served the purpose of increasing only white American citizens as agents of Manifest Destiny.

Historian Candice Bredbenner criticizes the U.S. Supreme Court's dismissal of all other qualifications.[123] Nonetheless, she does not fully elaborate on the implication of this ruling for the patriarchal gender order. She states that "the Supreme Court may have assumed [all other requirements] were set aside by the woman's status as a *feme covert*" or "may also have neglected to mention residence as a factor in naturalization simply because it was irrelevant in this case."[124] Her claims may have a valid point, but I argue that the U.S. Supreme Court in *Kelly v. Owen* et al. played a more active role in enhancing U.S. citizen husbands' patriarchal power over their wives. For example, men could assert the good moral character of their foreign-born wives as they functioned as husband *and* father who taught their dependents the American morals. The Citizenship Act of 1855 and the ruling of *Kelly v. Owen* et al. entrusted the

[121] *Citizenship Act of 1855*, 604.
[122] Kelly v. Owen *et al.*, 499.
[123] Bredbenner, 22-23.
[124] Ibid., 23.

gatekeeping power in naturalization to U.S. citizen husbands. As gatekeepers, they constantly oversaw if their wives and children were fit for U.S. citizenship. Again, their foreign-born wives were infantilized as the wives shared the status of dependents with their children, both of whom were under men's control and power. The Citizenship Act as a whole sustained both the gender hierarchy and Manifest Destiny in the latter half of the nineteenth century.

<Undesired Eastward Migration>

Only a week before the United States and Mexico signed the Treaty of Guadalupe-Hidalgo in 1848, gold was found in California. This attracted both domestic and international migrants to California and other Western states over the next few decades.[125] The Chinese were no exception. Attracted by "Gold Mountains (金山)" and the promise of work in the United States, a significant number of Chinese started migrating to the American West in 1849.[126] In addition to the Gold Mountains, the rapid industrialization in the West "pulled" a large number of Chinese workers. Along with these "pull" factors, the political, economic and social instability in Qing China "pushed" many Chinese to flee their country. In the mid-nineteenth century, overpopulation, natural disasters, famine, and the political turbulence caused by the Opium Wars of 1840-1842 and 1856-1860, and the Taiping Rebellion of 1850-1864, devastated the southeastern part of China such as Guandong.[127] Chinese in this area left for the United States to escape the difficult situations at home.

The influx of Chinese posed various questions on race, gender, class, and citizenship. Particularly, it led to the development of federal immigration laws and restrictive state and

[125] Daniel Widener, "'Perhaps the Japanese are to Be Thanked?' Asia, Asian Americans, and the Construction of Black California," *Positions* 11 no. 1 (Spring 2003): 141.
[126] Lucy E. Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill: University of North Carolina Press, 1995), 7.
[127] Almaguer, 154; Sue Fawn Chung, *In Pursuit of Gold: Chinese American Miners and Merchants in the American West* (Urbana: University of Illinois Press, 2014), 1-2; Gary Y. Okihiro, *The Columbia Guide to Asian American History* (New York: Columbia University Press, 2001), 68, 79.

municipal laws based on race and nationality. Along with Mexicans, Chinese immigrants added another layer to the complex issue of race and U.S. citizenship. In the words of literary critic Lisa Lowe, the Chinese Exclusion Act of 1882 was the first case of a "technology" of racialization and gendering.[128] This technology of immigration laws made all incoming Asians, including the second-generation who were born in the United States, suspects of unlawful, undesirable aliens. On the other hand, although Chinese wives were excluded from marital naturalization because of their race, some of them benefitted from their status as dependents in a different way from white foreign-born wives of U.S. citizens. As in the case of Loyalist women discussed in Chapter 2, the way in which Chinese immigrants, both men and women, benefitted from wives' dependent status demonstrates that the doctrine of coverture did not disadvantage married women in a monolithic way. Its effects varied depending on the race and class of those who were affected.

In the latter half of the nineteenth century, the railroad construction, mining boom, and agriculture in the American West demanded a large labor force, and Chinese immigrants were major suppliers of the much-needed labor.[129] Many Chinese workers were recruited by Chinese or American labor contractors in Guangzhou or Hong Kong, who optimistically advertised a comfortable life in the United States.[130] At the same time, the returnees' stories of a luxurious life in the United States along with their lavish Western goods brought back to China encouraged emigration.[131] Most of the Chinese immigrants were young men whose goals were to accumulate wealth in a short time and return to China, because they were often sent by impoverished families to supplement the household income.[132] Prospective Chinese emigrants often could not

[128] Lisa Lowe, *Immigrant Acts: On Asian American Cultural Politics* (Durham: Duke University Press, 1996), 11.
[129] Chung, 12.
[130] Ibid.
[131] Ibid., 3.
[132] Allerfeldt, 58-59; Johnson, 86; Keith Aoki, "No Right to Own: The Early Twentieth-Century Alien Land Laws as a Prelude to Internment," *Boston College Law Review* 40, no. 1 (December 1998): 44.

afford the passage to the United States, and had to rely on the credit-ticket system. Labor contractors advanced the cost of the voyage to the United States, and Chinese migrants were to repay the debt as they worked in the United States.[133] Despite the promising words of the returnees and labor contractors, Chinese immigrants were concentrated in low-wage jobs in the railroad construction, mining, and farming industries, which white Americans did not want to take.[134] Therefore, it was not easy to fulfill the labor contract and pay off the debt.

Because of the "unfree" labor contracting system, American capitalists and employers favored Chinese workers. It made Chinese workers cheap, readily available, and traceable.[135] According to historian Sue Fawn Chung, the majority of the workers for the Central Pacific Railroad were Chinese immigrants recruited from other industries in the United States.[136] Legal scholar Bill Ong Hing notes that "it was widely acknowledged that without Chinese, it would have been impossible to complete the western portion of the transcontinental railroad in the time required by Congress."[137] When the railroad construction and mining industries started declining in the late 1860s, Chinese immigrants moved to cities for employment.[138] Although the population of Chinese in California was approximately ten percent, by 1870 a quarter of the wage-earning workforce was Chinese.[139] In San Francisco, by 1882 when the Chinese Exclusion Act was enacted, eighty percent of woolen mill workers and ninety percent of cigar makers were Chinese.[140] Therefore, Chinese labor was crucial to the development of the American West, particularly California.

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[133] Almaguer, 154-155; Okihiro, 69.
[134] Ibid., 79.
[135] Almaguer, 166-167.
[136] Chung, 15; Salyer, 7.
[137] Bill Ong Hing, *Defining America Through Immigration Policy* (Philadelphia: Temple University Press, 2004), 29.
[138] Salyer, 7
[139] Ibid., 10; Allerfeldt, 54.
[140] Ibid.

Unlike capitalists and employers, working-class Americans considered Chinese immigrants competitors who belonged to an inferior racial group. As Thomás Almaguer notes, "white male laborers believed that Chinese workers threatened both their precarious class position and the underlying racial entitlements that white supremacy held out to them and to the white immigrants who followed them into the new class structure."[141] White American workers believed that Chinese laborers' acceptance of low-wages was depressing their wages and that Chinese were taking their jobs.[142] At the same time, as Lucy Salyer claims, they viewed Chinese immigrants as contract laborers or "coolies" similar to indentured servants or slaves, although Chinese workers often came to the United States voluntarily.[143] By the 1850s, on the eve of the Civil War, the free labor ideology became critical to Northerners as they opposed slavery.[144] Moral-based abolitionists believed that slavery "violated fundamental principles of freedom, equality, and justice."[145] For Republicans, slavery "threatened free labor and the wage labor system of the North," while Jacksonian Democrats believed that it "weakened the position of white workers."[146] In the middle of the contestation over free labor, "unfree" Chinese "coolies" were coming to the United States. This motivated working- and middle-class white Americans to start anti-Chinese movement.[147] Anti-coolie organizations were formed since the early 1850s, and many labor unions demanded a restriction on Chinese immigration.[148] As political scientist Gwendolyn Mink argues, white workers' mobilization against Chinese in San Francisco created trade-union nativism, adding a racial aspect to the conventional union interests, and racial

[141] Almaguer, 154.
[142] Gordon, 50.
[143] Chung, 15; Salyer, 10.
[144] Glenn, 64-65.
[145] Ibid., 64.
[146] Ibid., 64-65.
[147] Salyer, 10.
[148] Hing, 30.

consciousness became a source of union solidarity among "old labor."[149] At the same time, racial consciousness transformed "former victims of nativism," such as Irish immigrants, into nativists against the Chinese.[150] As historian David R. Roediger argues, the Irish were considered non-whites in the East, often treated as similar to blacks, because the Irish took on low-paying jobs that were typically performed by blacks and their communities were often next to each other.[151] At the same time, their Catholic belief also marked them the "Other." In the West, however, the population of Anglo-Americans, and more broadly white Americans, was significantly smaller. In order to establish the white dominance, Anglo-Americans needed to treat the Irish as white, and the Irish themselves claimed whiteness. Between the Irish and the Chinese, the former had more "proximity" to whiteness than the latter. Nativism and anti-Chinese sentiments led to California's Foreign Miner Taxes of 1850 and 1852, imposing a twenty-dollar monthly license on non-citizen miners.[152] Oregon also enacted a similar law in 1858, making Chinese miners and merchants to purchase a license for four dollars a month.[153] During the depression between 1873 and 1878, white working-class Americans blamed Chinese immigrants for their reduced wages and unemployment.[154]

When the Foreign Miner Taxes and other anti-Chinese measures, both legal and extra-legal, drove out Chinese from railroad and mining industries, many Chinese workers took domestic jobs in cities, such as laundry, food preparation, and other kinds of personal service.[155] These domestic jobs were *not* traditionally "men's jobs" in China, but they took on these jobs

[149] Gwendolyn Mink, *Old Labor and New Immigrants in American Political Development: Union, Party, and State, 1875-1920* (Ithaca: Cornell University Press, 1986), 71-73.
[150] Ibid., 76.
[151] David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso, 1991), 133-134.
[152] Hing, 29-30.
[153] Ibid., 30.
[154] Ibid., 31; Salyer, 9; Mink, 80.
[155] Johnson, 121-122, 125-127.

because they did not require much capital and there were not many women who would do "women's work" in the West where the population was disproportionally male. Particularly laundry business became the most stable source of income for Chinese immigrants.[156] According to Ethnic Studies scholar Yen Le Espiritu, a Chinese domestic worker in a private home became "the symbol of upper-class status in San Francisco" through the 1900s.[157] Nonetheless, because many Chinese men did "women's work" and were supervised not only by white men but also by white women, white Americans viewed Chinese men as "deviated" from the gender norms and less masculine than white American men. The feminization of Chinese men stigmatized them not only as "servile and dependent men" but also "a peril to republican liberty."[158] White Americans viewed Chinese immigrants' "deviance" from the gender norm as a threat that would bring disorder to their society.

In addition to the economic issue and Chinese immigrants' aberration from gender lines, the perceptions of Chinese as racially inassimilable and inferior also fueled anti-Chinese sentiments.[159] As legal scholar Keith Aoki claims, white Americans viewed Chinese immigrants as "utterly inassimilable, 'foreign' others, posing a variety of threats to the health of the white American polity […] both literally and metaphorically."[160] Along with white Americans' unfamiliarity and discomfort with Chinese' physical appearances and daily cultural practices, Chinese were perceived to be the complete opposite of the ideal notions of U.S. citizens and a democratic republic. As legal scholar Leti Volpp argues, "Chinese immigrants were thought incapable of assimilation into American understandings of republican government. They were

[156] Ibid., 126; Yen Le Espiritu, "All Men Are Not Created Equal: Asian Men in U.S. History," in *Men's Lives*, ed. Michael S. Kimmel and Michael A. Messner, 5th ed. (Boston: Allyn and Bacon, 2001), 34.
[157] Ibid.
[158] Gwendolyn Mink, "The Lady and the Tramp: Gender, Race, and the Origins of the American Welfare State" in *Women, the State, and Welfare*, ed. Linda Gordon (Madison: The University of Wisconsin Press, 1990): 96.
[159] Anna Pegler-Gordon, "Chinese Exclusion, Photography, and the Development of U.S. Immigration Policy," *American Quarterly* 58, no. 1(March 2006): 54.
[160] Aoki, 41.

believed to understand only despotic government and political absolutism, not democratic principles."[161] Under the U.S. political ideal, in order to maintain a democratic republic from tyranny, each citizen must be free and independent and engage in political and civic activities based on their own free will.[162] For white Americans, imperial China was losing its power both domestically and internationally because of the non-democratic, tyrannical government, and Chinese immigrants were its subjects who acted on the will of the emperor, not their own.

For many white American, the Chinese problem was created by unregulated immigration, so that the solution was to restrict the Chinese immigration by the act of Congress.[163] Here, anti-Chinese movement's race, class, and gender consciousness was tied to the national politics, and the Chinese presence became a national issue, not just regional.[164] As noted above, since the mid-nineteenth century, the anti-Chinese movement led to many restrictive state and municipal ordinances, and in 1882 Congress finally responded with the enactment of the Chinese Exclusion Act. The act prohibited "both skilled and unskilled [Chinese] laborers and Chinese employed in mining" to enter the United States for ten years, because "the coming of Chinese laborers to this country endangers the good order of certain localities within the territory."[165] In 1892, the Geary Act extended the prohibition for another ten years, and required all Chinese laborers in the United States to obtain a certificate of residence. The lack of a certificate constituted a reason for arrest.[166] Congress enacted another act in 1902, making the prohibition permanent unless it was "not inconsistent with treaty obligation" between China and the United States, namely the Angell Treaty of 1880, under which the United States suspended immigration of Chinese laborers

[161] Leti Volpp, "'Obnoxious to Their Very Nature': Asian Americans and Constitutional Citizenship," *Asian Law Journal* 8 (January 2001): 79.
[162] Mink, "The Lady and the Tramp," 94-95.
[163] Mink, *Old Labor and New Immigrants*, 73.
[164] Ibid.
[165] *Chinese Exclusion Act of 1882, U.S. Statutes at Large* 22 (1883): 58-59, 61.
[166] *Geary Act of 1892, U.S. Statutes at Large* 27 (1893): 25-26. It was optional for Chinese other than laborers to obtain a certificate of residence.

temporarily but guaranteed the protection of Chinese laborers in the United States.[167] Two years later, Chinese exclusion was made permanent "without modification, limitation, or condition."[168]

Although the Page Act of 1875 was the first federal immigration law, prohibiting "importation" and "transportation" of Asian prostitutes and contract laborers, the construction of the law and its language were significantly different from those of the Chinese Exclusion Acts, making the latter the first truly restrictive immigration law based on class, nationality, and race. Unlike the Chinese Exclusion Acts and later immigration laws, the Page Act made U.S. consuls and citizens responsible for the entry of Asian prostitutes and contract laborers to the United States.[169] The first section of the Page Act stipulated:

> in determining whether the immigration of any subject of China Japan, or any Oriental country, to the United States, is free and voluntary, […] it shall be the duty of the consul-generals or consul of the United States […] to ascertain whether such immigrant has entered into a contract or agreement for a term of service within the United States, for lewd and immoral purposes.

Similarly, the second section stipulated:

> if any U.S. citizen […] transported, to or from the United States any subject of China, Japan, or any Oriental country, without their free and voluntary consent, for the purpose of holding them to a term of service, such citizen or other person shall be liable to be indicted.

As seen in these sections, the Page Act was primarily directed to U.S. officials and citizens. On the other hand, it constructed Asian prostitutes and contract laborers as "victims" of human trafficking and unfree labor contracts. As historian Nancy J. Taniguchi notes, Chinese prostitutes were in high demand in the West during the Gold Rush, and it was not rare for impoverished families in China to sell their daughters as the Chinese culture disproportionally favored sons

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[167] *Chinese Exclusion Act of 1902*, Public Law 57-90, *U.S. Statutes at Large* 32 (1903): 176.
[168] *An Act Making Appropriations to Supply Deficiencies in the Appropriations for the Fiscal Year Ending June Thirtieth, Nineteen Hundred and Four, and for Prior Years, and for Other Purposes*, Public Law 58-189, *U.S. Statutes at Large* 33 (1905): 428.
[169] *Page Act of 1875*, *U.S. Statutes at Large* 18 (1875): 477-478.

over daughters.[170] Some of those daughters were taken to the United States as maids but many of them were forced to work as prostitutes. Section 1 of the Page Act specifically held the U.S. consul-general or consuls responsible to "rescue" those "victims" by not issuing "the required permit or certificate" to enter the United States. Furthermore, the Page Act voided all contracts in relation to prostitution, unlawful labor agreements, and "cooly-trade [sic]" to protect Asian immigrants. The construction of the Page Act clearly reflected the U.S. government's paternalism. At least in the language of the Page Act, it was *not* Asian immigrants' entry to the United States but U.S. citizens' "importation" or "transportation" of Asian prostitutes and contract laborers that constituted felony.

In practice, however, immigration officials severely interrogated incoming Asian women. In order to distinguish prostitutes from "real" wives, they required the women to submit photographs and extensive biographical information, including details of their sexual virtue, as well as visual inspection.[171] In addition, they demanded the incoming women's husbands or male family members to submit proof of their occupation because they often believed that women's likelihood of becoming prostitutes depended on their husbands' occupation and family background. Nonetheless, immigration officials did not consider the information provided by Chinese reliable. The immigration authorities often attempted to verify the information through external groups, such as the U.S. Consul in Hong Kong and the British colonial government.[172] As Gender Studies scholar Eithne Luibhéid argues, these procedure made Chinese women "describable, analyzable object(s)" and "transformed the relationship between the immigrant

[170] Nancy J. Taniguchi, "Weaving a Different World: Women and the California Gold Rush," *California History* 79, no. 2 (Summer 2000): 153.
[171] Eithne Luibhéid, *Entry Denied: Controlling Sexuality at the Border* (Minneapolis: University of Minnesota Press, 2002), 43.
[172] Ibid., 45.

Chinese woman and the immigration control-bureaucracy into one of discipline and subjection within sexualized, racialized, gendered, and classist parameters."[173]

Unlike the Page Act, the Chinese Exclusion Act of 1882 directly targeted Chinese laborers, stipulating that "the coming of Chinese laborers to the United States be […] suspended; and during such suspension, it shall not be lawful for any Chinese laborer to come" to the United States.[174] On the other hand, it was merely a misdemeanor, not a felony, if a master of a vessel "brought" Chinese laborers to the United States.[175] Furthermore, the Chinese Exclusion Act began establishing the bureaucratic record-keeping of immigrants by registering the incoming Chinese laborers' "name, age, occupation, last place of residence, physical marks or peculiarities and all facts necessary for the identification of each of such Chinese laborers, which books shall be safely kept in the custom-house."[176] As American Studies scholar Anna Pegler-Gordon notes, lawmakers and immigration officials believed that detailed yet standardized documentation ensured the real identity of incoming Chinese.[177] On the other hand, media historian Craig Robertson claims that the standardized record-keeping, particularly immigrants' physical characteristics, abstracted immigrants' identities into what appeared on paper and made their bodies as an object of inquiry.[178] Furthermore, the McCreary Act of 1893 amended the Geary Act of 1892 to require photographic identification on immigration documents and registration certificates. According to Pegler-Gordon, it criminalized Chinese immigrants in two ways. On the one hand, it criminalized Chinese without photographic identification. On the other hand, it treated all incoming Chinese similar to criminals. In the latter half of the nineteenth century, the

[173] Ibid., 43, 50.
[174] *Chinese Exclusion Act of 1882*, 59.
[175] Ibid.
[176] Ibid.
[177] Pegler-Gordon, 70.
[178] Craig Robertson, *The Passport in America: The History of a Document* (New York: Oxford University Press, 2010), 71-73, 79.

San Francisco Police kept photographs of people they arrested and created "mug books" or "rogues' galleries." This was the only systematic documentation of personal information with photographs comparable to that of Chinese immigrants at the immigration station.[179] The Chinese Exclusion Acts, particularly the bureaucratic documentation system, treated all incoming Chinese as criminals and the only exception was Chinese diplomats with Chinese passports.

Therefore, the Chinese Exclusion Acts were the first U.S. federal law that prohibited *entry* to the United States based on race, class, and nationality.[180] Historian Erika Lee argues that the Chinese Exclusion Acts:

> introduced a "gatekeeping" ideology, politics, law, and culture that transformed the ways in which Americans viewed and thought about race, immigration, and the United States' identity as a nation of immigration. It legalized and reinforced the need to restrict, exclude and deport "undesirable" and excludable immigrants. It established Chinese as the ultimate category of undesirable immigrants – as the models by which to measure the desirability (and "whiteness") of other immigrant groups.[181]

This is what Lisa Lowe calls the "technology" of racialization and gendering. [182] It institutionalized a way to sort desirable future U.S. citizens from undesirable immigrants.[183] Since the U.S. citizenship was associated with whiteness and masculinity, non-white, undesirable immigrants, such as Chinese men, were feminized by this technology. Not only class interests (unionism) but also racism, nativism, and gender stereotyping all intersected in the formation of anti-Chinese movement and immigration laws.

Incoming Chinese and the Chinese communities in the United States used various means to resist the Chinese Exclusion Acts ranging from diplomatic, legal, and political

[179] Pegler-Gordon, 57-59.
[180] Salyer, 17; Erika Lee, "The Chinese Exclusion Example: Race, Immigration, and American Gatekeeping, 1882–1924," *Journal of American Ethnic History* 21, no. 3 (Spring 2002): 36.
[181] Ibid., 37.
[182] Lowe, 11.
[183] Ibid.

challenges to forging immigration documents as "paper sons" or "paper families," manipulation of identification photographs to demonstrate themselves as respectable upper class or assimilated into the Western culture, and creating "coaching papers" to prepare for severe interrogation by immigration officials.[184] According to historian Todd Stevens, one of the strategies used by married Chinese couples was to take advantage of coverture and claim the husband's right to be with his wife and children.[185] The series of the Chinese Exclusion Acts prohibited the entry of Chinese *laborers* to the United States, yet Chinese merchants, teachers, and students were exempted from the acts. Due to the small number of Chinese women in the United States, the exempted class of Chinese, and later U.S.-born Chinese, had to find their wives in China. The Exclusion Acts allowed the exempted class to bring their household servants, yet there was no stipulation regarding their wives and children.[186] Therefore, based on coverture, the exempted class of Chinese men claimed that their wives belonged to the same class as themselves and the wives should be exempted from the Exclusion Acts. In 1900, the U.S. Supreme Court approved a Chinese wife's entry to the United States because as a wife of the exempted class, she was not subject to the Chinese Exclusion Acts.[187] Similarly, in the case of a Chinese female laborer who was facing deportation because she did not have a residence certificate required by the Geary Act of 1892, the Ninth Circuit Court of Appeals in 1902 ruled: "[b]y this act [lawful marriage to a U.S. citizen], her status was changed from that of a Chinese laborer to that of a wife of a native-born American" and "[t]he wife has the right to live with her husband; enjoy his society; receive his support and maintenance and all the comforts and privileges of the marriage relations. These

[184] Pegler-Gordon, 54, 60-65, 69-70.
[185] Todd Stevens, "Tender Ties: Husbands' Rights and Racial Exclusion in Chinese Marriage Cases, 1882-1924," *Law and Social Inquiry* 27 no. 1 (Spring 2002): 281.
[186] Ibid., 280-282.
[187] United States v. Mrs. Gue Lim, 176 U.S. 459, 466-468 (1900).

are her, as well as his, natural rights."[188] As I demonstrate in Chapter 6, activist women often criticized married women's dependent status, but these examples show that Chinese couples benefitted from the doctrine of coverture and the husband's rights to be with his wife and children, which were most often denied to non-whites, as in the case of black slaves.[189]

Nevertheless, the "benefit" of coverture was allowed only to the couples who presented themselves as dutiful husbands and wives.[190] For example, a Chinese wife/mother of a U.S.-born husband and a son was arrested for being on the premises of a brothel and faced deportation. Despite her husband's appeal of his right to remain with his family, the U.S. Supreme Court in 1912 ruled that "it is obvious that such right [to live with her husband in the United States] could have been retained by *proper conduct on her part* [emphasis added]" but she failed to do so by being at a brothel.[191] According to Stevens, "[w]hen it came to questions of 'defective' women, judges interpreted separating families as preserving the public health."[192] Therefore, he concludes: "[f]or a Chinese woman, marriage to a citizen promised a defense, a legal argument, but not immunity from being deported as an unlawful immigrant."[193]

The benefit of coverture allowed to "respectable" Chinese couples was denied to working-class European immigrants as well. Historian Martha Gardner argues that between 1880 and 1924 a number of incoming women were denied entry to the United States because of the "likely to become a public charge" (LPC) clause. The LPC clause existed since the colonial period; its intension was to prevent the entry of immigrants who were going to be economic

[188] Tsoi Sim v. United States, 116 F. 920, 925 (1902). Sociologist Deenesh Sohoni, however, argues that state-level miscegenation laws grouped U.S.-born and foreign-born Asians together and "privileged" their racial status as non-whites over their legal status as U.S. citizens. Deenesh Sohoni, "Unsuitable Suitors: Anti-Miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities," *Law and Society Review* 41, no. 3 (September 2007): 612-614.
[189] Stevens, 274.
[190] Ibid., 288.
[191] Low Wah Suey v. Backus, 225 U.S. 460, 476 (1912).
[192] Stevens, 296.
[193] Ibid., 297.

burdens on the local communities. However, as Gardner claims, the LPC clause was "uniquely gendered in ways that reflected a constrained and diminished evaluation of women's role in the economy."[194] Immigrant women who did not conform to the heteropatriarchal family model, such as single women, women who left their family behind, and unmarried pregnant women, were often found to be LPC.[195] While the republican ideal in the United States highly valued independence, economic self-sufficiency, and moral and family responsibilities, these traits were reserved only for white men. When a woman demonstrated these characteristics, she was considered "deviated" from the ideal notion of femininity and this perception was shared by immigration officials as they "stressed women's moral propriety or domestic responsibilities over their weekly earnings and employment history, and found large numbers of women LPC despite evidence of sustainable work skills."[196] Since the practice of the LPC clause emphasized women's appropriate roles, women who worked as domestic servants or nurses were exempt. Both domestic service and nursing were considered vital to sustaining the middle- and upper-class household. At the same time, women who worked as temporary agricultural laborers were also exempted as long as they were accompanied by their husbands or fathers. These women were considered "helpmates" of their husbands or fathers rather than independent laborers. For the eyes of immigration officials, women who engaged in any other occupation, such as seamstresses, laundresses, factory operatives, and retails clerks, were "beyond the limits of viability and self-sufficiency."[197] Therefore, Gardner claims: "[m]arriage and family were as

[194] Martha Mabie Gardner, *The Qualities of a Citizen: Women, Immigration, and Citizenship, 1870-1965* (Princeton: Princeton University Press, 2005), 88.
[195] Ibid., 91.
[196] Ibid., 93.
[197] Ibid., 111.

much economic institutions under immigration law as they were moral, civic, or religious entities."[198]

<Conclusion>

Throughout the nineteenth century, the United States encouraged Westward expansion supported by the doctrine of Manifest Destiny. One of its outcomes was the conquest of the U.S.-Southwest, but the incorporation of Mexicans into the U.S. citizenry revealed the complex issues over race, class, and citizenship in the latter half of the nineteenth century. The Treaty of Guadalupe-Hidalgo of 1848 granted U.S. citizenship to former Mexican citizens in the Southwest when only whites could be American citizens. In practice, however, their rights were grossly violated as Anglo-Americans considered most Mexicans *mestizos* or half-Indians, and thus not entitled to U.S. citizenship. On the other hand, Congress enacted the Citizenship Act of 1855 to further encourage expansion of the American civilization. Not only did it remove the concerns over the citizenship status of children born abroad to U.S. citizens, but also automatically naturalized foreign-born women who married U.S. citizens. By doing these, the Citizenship Act increased the number of white U.S. citizens who would act as agents of Manifest Destiny. While the Citizenship Act brought some benefits to foreign-born wives, infantalization of foreign-born women and their dependent citizenship reinforced the patriarchal family model.

Soon after the conclusion of the U.S.-Mexican War in 1848, gold was found in California, attracting both domestic and international migrants, including Chinese. Chinese immigrants took on low-wage jobs in the industries that sustained the development of the West, yet white Americans' unfamiliarity with Chinese as well as perception of them as "coolies" led to the strong anti-Chinese movement and the Chinese Exclusion Acts. Under the Chinese Exclusion Acts, the "technology" of racialization and gendering developed to effectively and efficiently

[198] Ibid., 93.

screen desirable and undesirable immigrants, but incoming Chinese used various strategies to resist the Exclusion Acts. One of them was to take advantage of coverture and claim a husband's rights to be with his wife and children. This strategy was, however, limited to middle- and upper-class couples who conformed to the patriarchal family model. Not only Chinese but also European immigrant women who showed a sign of "deviance" from the ideal notion of femininity, including economic independence and "immoral" behavior, were not entitled to the benefit of coverture. Thus, the effects of coverture were not monolithic. As we will see in the next chapter, the long nineteenth century greatly influenced how married women's dependent citizenship impacted white American women who married white immigrants in the early twentieth century.

Chapter 4

Homestead, Suffrage, and U.S. Citizenship:
Struggles of American Women Who Married White Immigrants under the Expatriation Act

<Introduction>

From August 6, 1913 to September 12, 1913, *The Los Angeles Times* published three articles on marriage and women's citizenship. On August 6, 1913, it published an article entitled, "Loses Ballot by Marriage," reporting that a native-born woman, Mrs. Ethel C. Mackenzie, would not be able to vote despite the fact that California granted women's suffrage in 1911.[1] On August 15, 1913, the same newspaper published an article entitled "When Is a Citizen?" reporting that Mrs. Hannah Miller Harju lost her right to homestead in the Imperial Valley, California.[2] According to the article, she was a widow of William Miller, who made a homestead entry on August 30, 1900. Within a month, *The Los Angeles Times* reported that Mrs. Mary Hook would lose her right to 320 acres of land in the Antelope Valley, California, for which she made a desert-land entry.[3] The article reported that she improved the land for three years as required by the Desert-Land Act of 1877. Both the Homestead Act of 1862 and the Desert-Land Act of 1877 allowed women to make land entries under their own names because of the gender neutral language of the acts.[4] At the same time, the state of California allowed married women's property ownership since 1872.[5] Nonetheless, Mrs. Miller Harju and Mrs. Hook were deprived of their right to land.

The common thread that bound these three women who appeared in *The Los Angeles Times* was that their husbands were all foreigners. Mrs. Mackenzie's husband was a British

[1] "Loses Ballot by Marriage," *The Los Angeles Times*, August 6, 1913.
[2] "When Is a Citizen?" *The Los Angeles Times*, August 15, 1913.
[3] "Woman Without a Country," *The Los Angeles Times*, September 12, 1913.
[4] *Homestead Act of 1862*, *Stats.at Large of USA* 12 (1863): 392; *Desert-Land Act of 1877*, *U.S. Statutes at Large* 19 (1877): 377.
[5] Donna C. Schuele, "'None Could Deny the Eloquence of This Lady': Women, Law, and Government in California, 1850-1890," *California History* 81 no. 3/4 (2003): 189.

subject, while Mrs. Miller Harju married a Finnish man in November 1908, and Mrs. Hook's husband was a British subject from Canada. The Homestead Act and Desert-Land Act required entrymen and entrywomen to be U.S. citizens or to have filed the declaration of intention to be naturalized.[6] Moreover, in order to receive a land title after 3-5 years of land cultivation, title recipients had to be U.S. citizens. In the case of foreigners, they had to complete the naturalization process by the time of receiving land titles. However, Section 3 of the Expatriation Act of 1907 stipulated: "any American woman who marries a foreigner shall take the nationality of her husband."[7] The Expatriation Act changed the nationality of women through the mechanism of marriage, making married women's citizenship dependent on that of their husbands. Under this law, Mrs. Mackenzie, Mrs. Miller Harju, and Mrs. Hook became foreigners in the United States, and thus they were not entitled to suffrage and homestead land titles.

This chapter examines the impacts of the Expatriation Act on U.S.-born women in the 1910s with emphasis on women in the American West. Through newspaper articles and legal cases, this chapter demonstrates women's challenges to the practice of marital naturalization/expatriation. The Expatriation Act and women's loss of citizenship were a great public concern in the early twentieth century, yet few people currently realize that many married women lost their birth-right citizenship upon marriage.[8] Until the ratification of the Nineteenth Amendment, the Expatriation Act affected women in the West most negatively because of homestead and state-level women's suffrage, where citizenship mattered enormously. After examining the government records in Lamar, Colorado, and Douglas, Wyoming, Sheyll Patterson-Black estimates that on average 11.9 percent of those who made homestead entries

[6] Other qualifications were being the head of a family, age, etc.
[7] *Expatriation Act of 1907*, Public Law 59-193, *U.S. Statutes at Large* 34 (1907): 1228.
[8] Nancy F. Cott, "Marriage and Women's Citizenship in the United States, 1830-1934," *American Historical Review* 103, no. 5 (December 1998): 1441; Leti Volpp, "Divesting Citizenship: On Asian American History and the Loss of Citizenship through Marriage," *UCLA Law Review* 53 (December 2005): 408.

were women, and 42.4 percent of the entrywomen successfully perfected their claims while only 37 percent of the entrymen did.[9] Therefore, women were active agents of land development in the West, and were important successful settlers who influenced how the region developed. The Expatriation Act, however, canceled entrywomen's efforts of cultivating land. Although the three aforementioned women who lost citizenship by marriage were "victimized" by the Expatriation Act, they never acted as stereotypical powerless and passive "victims" who quietly and patiently waited for someone, usually an active, independent man, to rescue them from their troubles.[10] Instead, they exercised their own agency to circumvent the negative impacts of the Expatriation Act by filing lawsuits and convincing foreign-born husbands to become naturalized citizens. By doing these, not only did they challenge the Expatriation Act, but they also challenged the tradition of marital naturalization/expatriation and the patriarchal gender order embedded in the notion of U.S. citizenship.

When the Expatriation Act was enacted in 1907, newspapers, particularly those in the American West, did not view the law as problematic. However, as they learned more about women's challenges to marital naturalization/expatriation throughout the 1910s, Western newspapers particularly reported about the problems caused by the Expatriation Act, revealing how widely it affected the lives of American women who married foreigners. In other words, women's active challenges compelled newspapers to criticize the injustice that women were experiencing due to the Expatriation Act. Therefore, although the above mentioned women who

[9] Sheryll Patterson-Black, "Women Homesteaders on the Great Plains Frontier," *Frontiers* 1, no. 2 (Spring 1976): 68.

[10] Many feminists refuse to refer to a woman who suffered from a difficult situation as a "victim" and instead use a "survivor" or other words, because "victim" suggests that she is helpless and lacks agency. However, I believe that "victim" indicates that the person is free of fault, and it is a powerful term to accuse a perpetrator. Therefore, I refer to women who experienced struggles due to marital naturalization/expatriation as "victims" who exercised their agency and took an action on their own to survive and remedy their situations. Chandra Talpade Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses," in *Third World Women and the Politics of Feminism*, ed. Chandra Talpade Mohanty, Ann Russo, and Lourdes Torres (Bloomington: Indiana University Press, 1991), 56-58.

appeared in *The Los Angeles Times* lost their U.S. citizenship, they were part of a larger effort to abolish marital naturalization/expatriation, paving a way to the restoration of married women's independent citizenship throughout the first half of the twentieth century.

<English Common Law and Marital Naturalization/Expatriation>

When the Expatriation Act was enacted in 1907, the practice of marital naturalization/expatriation was the international norm.[11] For example, *The Chicago Daily Tribune* on April 30, 1876 stated:

> In every country except where the common law of England prevails, the nationality of a woman on marriage merges in that of the husband; she loses her nationality and acquires his; whereas all English woman [sic], marrying an alien, still remains a British subject. This common law doctrine was changed in England by an act of Parliament passed in 1870, as it has been to a certain extent modified in the United States by the act of Congress in 1855. […] [T]he doctrine may be considered as settled and alike adopted by all Christian and civilized nations, that nationality of married woman is merged in that of her husband. I know of no exception to this doctrine in any nation of Europe.[12]

Marital naturalization/expatriation seems an ultimate form of the common law doctrine of *femme covert*. In a British legal scholar's words, "[t]he Common Law [...] was devoted to the theory of the unity of the married couple: a theory crudely expressed in the phrase, 'Husband and wife are one person; and that person is the husband!'"[13] However, as *The Chicago Daily Tribune* suggested, marital naturalization/expatriation did not derive from English common law. The origin of marital naturalization/expatriation was the Code Napoleon of 1804, which declared that a married woman "shall follow the condition of her husband."[14] Under this law, a foreign woman

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[11] Candice Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Berkeley: University of California Press, 1998), 59.
[12] "The Nationality of Married Women," *The Chicago Daily Tribune*, April 30, 1876.
[13] T. Baty, "The Nationality of a Married Woman at Common Law," *The Law Quarterly Review* 52 (1936): 247.
[14] Virginia Sapiro, "Women, Citizenship, and Nationality: Immigration and Naturalization Policies in the United States," *Politics and Society* 13, no. 1 (1984): 6-7; Katarina Leppänen, "The Conflicting Interests of Women's Organizations and the League of Nations on the Question of Married Women's Nationality in the 1930s," *NORA: Nordic Journal of Feminist and Gender Research* 17, no. 4 (December 2009): 241; J. Stanley Lemons, *The Woman Citizen: Social Feminism in the 1920s* (Urbana: University of Illinois Press, 1973), 64; A Barrister of the Inner Temple, *The Code Napoleon, or, the French Civil Code* (London, UK: Thomas Davison, 1824), 4, 6.

who married a French man automatically became a French, and a French woman who married a foreigner lost her French nationality. At the same time, when a husband either lost or acquired French nationality, his wife's nationality took the same effect.[15] In the first half of the nineteenth century, most European nations, except Britain, followed the French example.[16] Britain did not join them immediately because perpetual subjecthood and separate nationality between a husband and a wife were the tradition of English common law.[17] As discussed in Chapter 2, under English common law, the notion of feudal subjecthood was based on the perpetual relationship between the monarch and his/her subjects that could not be severed. Therefore, when a French subject, for example, married an English subject, marriage did not change their allegiance to their respective monarchs, leaving the nationalities of the husband and the wife separate. Since the U.S. legal tradition was strongly influenced by that of England, the United States did not employ marital naturalization/expatriation until Britain did.

While Britain weighed on the common law rule of separate and perpetual nationality, it was not completely free from the common law doctrine of coverture. A legal dispute in Britain in 1834, in which a French widow of a British husband claimed her entitlement to the dower, demonstrated a twisted relationship between those two common law principles. In the nineteenth century, only British subjects could own property in Britain, and the French widow's nationality was contested. Unwilling to grant property ownership to the "alien" widow, the British legal authorities ruled that "[c]overture […] was not regarded as a species of naturalization. *It produced a temporary change of allegiance, so long as the marriage lasted* [emphasis added]," so that "the alien wife of a British subject remains an incurable alien."[18] In other words, the

[15] Sapiro, 6.
[16] Ibid., 7; Leppänen, 241.
[17] Lemons, 64.
[18] Baty, 247-248, 251.

doctrine of coverture applied only to an existing marriage, making the French woman's status a wife of a British subject, and as such she owed allegiance to the British monarch. Once their marriage dissolved upon the husband's death, coverture no longer applied to her. In fact, influential eighteenth-century English jurist William Blackstone claimed that under the doctrine of coverture, "the husband and wife are one person in law: that is the very being or legal existence of the woman is suspended *during* [emphasis added] the marriage."[19] As a consequence, the French woman lost her status as a wife of a British subject when widowed, and thus was no longer entitled to property ownership, including the right to the dower. It is clear from this ruling that the British legal authorities held coverture that a husband and a wife should have the same national allegiance, but also upheld separate and perpetual nationality, declaring that marriage only suspended a woman's allegiance determined at her birth whether it was based on *juis sanguinis* (nationality/allegiance determined by that of a parent) or *jus soli* (nationality/allegiance determined by place of birth). The British legal authorities might have anti-French sentiment, leading to the decision against the French widow. Still, this case demonstrated that the doctrine of coverture did not have a permanent influence on married women's allegiance and nationality.

Nevertheless, as more European countries adopted the practice of marital naturalization/expatriation in the first half of the nineteenth century, Britain could not ignore this trend. In 1844, Parliament enacted the Aliens Act to apply marital naturalization to foreign women who married British subjects, stipulating that "any woman married, or who shall be married, to a natural-born subject or person naturalized, shall be deemed and taken to be herself

[19] William Blackstone, *Commentaries on the Laws of England in Four Books*, vol. 1 (1765; repr., Philadelphia: Rees Welsh and Company, 1915), 445. Blackstone defined marriage as a civil contract in which a man and a woman had to be "in the first place, *willing* to contract; secondly, *able* to contract; and lastly, actually *did* contract, in the proper forms and solemnities required by law [emphasis in original]." Ibid., 433-434.

naturalized, and have all the rights and privileges of a natural-born subject."[20] In 1870, Parliament enacted another act to apply marital naturalization/expatriation to *all* women in Britain, declaring that "[a] married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject."[21] Since the enactment of this act, a British woman who married a foreigner lost British subjecthood through the mere fact of marriage.

Since English common law strongly influenced the U.S. legal system, the United States' history of marital naturalization/expatriation closely resembles that of Britain. It first followed the common law rule of separate nationality. For example, as discussed in Chapter 2, during the Revolutionary Era, when the United States had yet to develop its own legal traditions, some wives of Loyalists managed to avoid property confiscation because their allegiance to the king attributed to their husbands, and not their own choice. On the surface level, this logic seemed to rely on the doctrine of coverture, but it essentially admitted that women's true allegiance was *not* necessarily the same as that of their husbands. Furthermore, as discussed in Chapter 3, in 1830, the U.S. Supreme Court in *Shanks* et al. *v. Dupont* et al. confirmed the common law rule of separate nationality and the doctrine of coverture only affected married women's civil rights, but no political rights.[22] Therefore, a woman's marriage to a foreigner did not automatically change her national allegiance or citizenship. She had a choice to retain her birthright citizenship or pursue naturalization in another country. Independent citizenship was one of the few political rights that women enjoyed in the early nineteenth century.

Nevertheless, when Britain began to legislate marital naturalization in 1844, the United States followed suit with the enactment of the Citizenship Act of 1855. The Citizenship Act

[20] Aliens Act, 1844, 7 & 8 Vict., c. 66.
[21] An Act to Amend the Law Relating to the Legal Condition of Aliens and British Subjects, 1870, 33 & 34 Vict., c. 14.
[22] Shanks *et al.* v. Dupont *et al.*, 28 U.S. 242, 246, 248 (1830).

automatically naturalized foreign-born women who married U.S. citizens as long as they were racially eligible for U.S. citizenship.[23] As discussed in Chapter 3, by 1855, the United States was in the process of conquering and settling the trans-Mississippi West, where population increase and territorial expansion made marital naturalization a vital means to increase the population of white U.S. citizens. Under the Citizenship Act of 1855, foreign-born wives of U.S. citizens became naturalized and their children were considered natural-born U.S. citizens as long as their fathers were U.S. citizens.[24] The Citizenship Act granted male U.S. citizens formal power to naturalize their foreign-born wives and children, overriding the regular naturalization processes and making women and children's citizenship dependent on their husbands/fathers.

While the Citizenship Act of 1855 did not affect the nationality of U.S.-born women who married foreigners, Section 3 of the Expatriation Act of 1907 extended the reach of married women's dependent citizenship to all American women regardless of their race. The Expatriation Act deprived U.S. citizenship from native-born women who married foreigners, denying all privilege and protection given to U.S. citizens. By 1907 the United States could no longer ignore the "international" norm of marital naturalization/expatriation. For example, Huntington Wilson, the acting Secretary of State, wrote in 1912: "[t]he [Expatriation] act of 1907 merely declares the rules which, it is believed, prevails [sic] in practically every civilized country in the world."[25] The United States was merely following the international norm to avoid any complication such

[23] *Citizenship Act of 1855*, *Stats. at Large of USA* 10 (1855): 604. In 1855, only free white persons were eligible for naturalization. Section 7 of the Naturalization Act of 1870 extended the racial eligibility to "aliens of African nativity and to persons of African descent." *Naturalization Act of 1790*, *Stats. at Large of USA* 1 (1845): 103; *Naturalization Act of 1870*, *Stats. at Large of USA* 16 (1871): 254.
[24] *Citizenship Act of 1855*, 604. The only exception to this rule was when U.S. citizen fathers never resided in the United States.
[25] House Committee on Foreign Affairs, *Relating to Expatriation of Citizens: Hearings on H.R. 21358*, 62nd Cong, 2d sess., 1912, 15.

as dual citizenship with other countries.[26] According to sociologist Ben Herzog, the practice of expatriation originated in the need to eliminate dual citizenship, because "multiple allegiances threaten the comprehensiveness of the national ideal" and "poses a great challenge to the national logic that assumes full loyalty to one's nation-state."[27] Since the national allegiance was often supposed to be exclusive, in 1793 Alexander Hamilton described a citizen's national allegiance as his fidelity to his wife:

> To speak figuratively, he will regard his own country as a wife, to whom he is bound to be exclusively faithful and affectionate, and he will watch with a jealous attention every propensity of his heart to wander towards a foreign country, which he will regard as a mistress that may pervert his fidelity, and mar his happiness.[28]

To use Hamilton's metaphor, having dual citizenship was like having two spouses, which was unthinkable by the moral and legal standards of "every civilized country in the world." By expatriating a U.S.-born woman who married a foreigner, the U.S. government tried to prevent her from having U.S. citizenship and nationality of her husband's native country and from having split and reduced national allegiance.[29]

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[26] Mrs. Maud Wood Park, President of the National League of Women Voters, testified at the Congressional hearing of the Cable Bill in 1922 that she personally knew a man who had triple citizenship. He was born in the United States to French citizen parents, and later in his life conducted business in Mexico. His birth in the United States made him a U.S. citizen according to *jus soli* while his birth to French citizens made him a French citizen according to *jus sanguinis*. A Mexican law *automatically* granted Mexican citizenship to foreigners who owned real estate in Mexico or had Mexican citizen children, unless they formally declared to retain their original citizenship. This made him a Mexican citizen, but, according to Mrs. Park, he was unaware that he acquired Mexican citizenship. House Committee on Immigration and Naturalization, *Naturalization and Citizenship of Women*, 67th Cong., 2d sess., 1922, 571-572.

[27] Ben Herzog, *Revoking Citizenship: Expatriation Policies in America from the Colonial Era to the War on Terror* (New York: New York University Press, 2015), 4, 5.

[28] Alexander Hamilton, "For the Gazette of the United States, [March–April 1793]," Founders Online, https://founders.archives.gov/documents/Hamilton/01-14-02-0158 (accessed January 30, 2019).

[29] The U.S. government tried to eliminate multiple nationalities, but had no control over other countries' laws. As a result, complete elimination of multiple nationalities was extremely difficult. According to Herzog, the United States informally began to admit multiple nationalities in the late 1950s. Currently, there is no U.S. law that regulates multiple nationalities. For example, by taking the oath of allegiance, new naturalized citizens are supposed to renounce any previous allegiance, but no U.S. law requires them to provide an evidence of such renunciation. Herzog, 37, 128; Bureau of Consular Affairs, "Dual Nationality," U.S. Department of State, https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/Advice-about-Possible-Loss-of-US-Nationality-Dual-Nationality/Dual-Nationality.html (accessed July 23, 2018).

<Meanings of the Expatriation Act>

Nevertheless, prevention of married women's dual citizenship was not the main purpose of the Expatriation Act. Rather, the act was intended to prevent abusive exercise of U.S. citizenship by naturalized citizens. At the turn of the twentieth century, the number of immigrants to the United States was about to reach its peak, and there were many naturalized citizens who returned to their home countries but demanded benefits of U.S. citizenship and protection by the U.S. government while abroad. For example, according to historian Mark Wyman, between 1899 and 1913, 24.3 percent of Hungarians, although not all of them were naturalized citizens, returned to Europe.[30] In the case of Italians, the return rate between 1901 and 1906 was 34 percent, and it kept increasing until the 1920s.[31] Wyman notes that "when immigrants returned permanently to Europe proudly flashing their U.S. citizenship papers – which let them avoid the Austro-Hungarian military draft – many still could not speak English."[32] Congress attributed the abusive exercise of U.S. citizenship to the fact that immigrants/naturalized citizens did not stay in the United States very long.[33] As historian Nancy F. Cott claims, "the minimal definition of national citizenship mean[s] the individual's allegiance and the nation's reciprocal guarantee of protection."[34] According to Herzog, since the nineteenth century, protection of citizens also meant that the government had the duty to protect its citizens abroad.[35] Thus, Craig Robertson argues: "[t]he passport identified the bearer as a U.S. citizen through the authority of the secretary of state in the form of a request for safe passage addressed

[30] Mark Wyman, *Round-Trip to America: The Immigrants Return to Europe, 1880-1930* (Ithaca: Cornell University Press, 1993), 10.
[31] Ibid.
[32] Ibid., 64.
[33] Ibid., 65.
[34] Cott, 1446.
[35] Herzog, 71.

to whomever the bearer presented the document."[36] According to Robertson, a passport was originally a diplomatic letter from an official of one country to an official of another country, requesting the safety of the bearer while in another country.[37]At the turn of the twentieth century, the U.S. government believed that naturalized citizens who left the United States lacked their allegiance to the United States and did not deserve protection of the U.S. government. In fact, during the discussion of the Expatriation Bill in the House of Representatives, Rep. James Breck Perkins (R-NY), who introduced the bill, explained that "full protection of the United States should be extended everywhere and at all times over every man who is a bona fide citizen of this land; *but the protection of the flag is intended for those who intend to dwell under it* [emphasis added]."[38] According to Perkins, there were naturalized citizens who "abuse[d]" U.S. citizenship by "return[ing] to their own country, to some other foreign country, without any intention of bearing their share in our lot, without any thought of returning to this land, with the intention of spending their entire days in a foreign land, but under the fraudulent protection of the United States."[39] The Expatriation Bill was designed to furnish the U.S. government, especially the State Department, legal grounds not to provide protection to naturalized citizens residing abroad. Thus, Attorney General George W. Wickersham also wrote in his official opinions in 1910 that the intention of the Expatriation Act was to relieve the government's duty from protecting naturalized citizens who resided abroad and had no intention to return to the United States.[40]

[36] Craig Robertson, *The Passport in America: The History of a Document* (New York: Oxford University Press, 2010), 22.
[37] Ibid., 22-25.
[38] *Congressional Record*, 59th Cong., 2d sess., 1907, 41, pt. 2: 1464.
[39] Ibid.
[40] U.S. Department of Justice, *Official Opinions of the Attorneys General of the United States: Advising the President and Heads of Departments, in Relation to Their Official Duties*, ed. James A. Finch and George Kearney (Washington, D.C.: U.S. Government Printing Office, 1912), 28: 507-508, 510.

In order to stop the abusive exercise of U.S. citizenship, the first section of the Expatriation Act of 1907 stipulated that the U.S. government would *not* protect persons who declared their intention to become U.S. citizens if they were back in their home countries:

> The Secretary of State shall be authorized, in his discretion, to issue passports to persons not citizens of the United States as follows: Where any person has made a declaration of intention to become such a citizen as provided by law and has resided in the United States for three years a passport may be issued to him entitling him to the protection of the Government in any foreign country: *Provided*, That such passport shall not be valid for more than six months and shall not be renewed, and that such passport shall not entitle the holder to the protection of this Government in the country of which he was a citizen prior to making such declaration of intention [italics in original].[41]

Because the government still issued passports to persons who were not U.S. citizens, it did not completely discard the pro-natalist goal embedded in the Citizenship Act of 1855. Section 1 of the Expatriation Act, however, required stricter qualifications to receive a U.S. passport and protection from the U.S. government. The U.S. government believed that those who declared the intention to become naturalized citizens would easily lose their loyalty to the United States once they were back in their home countries. Under the Expatriation Act, their lack of loyalty disqualified them from U.S. citizenship and protection by the United States. In order for them to be considered as full members of the nation who deserved full protection by the government, they had to be both emotionally and physically attached to the United States.

Moreover, Section 2 of the Expatriation Act suggested that the problems of dual nationality were more pervasive among male citizens. It prohibited dual citizenship, stipulating that "any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."[42] By requiring full fidelity to the United States from its citizens, Section 2 of the Expatriation Act ousted naturalized citizens from U.S. citizenship if they "have

[41] *Expatriation Act of 1907*, 1228.
[42] Ibid.

resided for two years in the foreign state from which [they] came, or for five years in any other foreign state."[43] The denial of dual citizenship meant that U.S. citizens were legally bound to the United States at all points, leaving no space for the development of any ties to other nations. Section 2 of the Expatriation Act was based on the idea that the loyalty of citizens, both native-born and naturalized, would grow only if they remained in the country. Therefore, as Bredbenner states, the Expatriation Act aimed to reduce "the number of Americans who, in the eyes of the federal government, had compromised their citizenship status by maintaining or establishing foreign ties of some type."[44]

The debate over the Expatriation Bill reveals that Rep. Perkins and other Congressmen did not discuss the marital expatriation of U.S.-born women in any substantial manner. While they debated in depth on how the Expatriation Bill should apply to naturalized citizens abroad, they assumed, without a doubt, that (naturalized) citizens exclusively meant men. Their brief discussion of the provision on married women's dependent citizenship simply clarified that it was "merely declaratory" of existing practice, and did not address whether if it should apply only to women living abroad or to those who in the United States as well. Furthermore, Rep. Perkins suggested that the Expatriation Bill would bring a positive effect on U.S.-born women who married foreigners because it clarified that they could regain U.S. citizenship when widowed or divorced. Their debates clearly show their male bias toward citizenship.

For U.S.-born women, the Expatriation Act was a testing ground of their loyalty to the United States because its Section 3 stipulated: "any American woman who marries a foreigner shall take the nationality of her husband."[45] In order for native-born women to retain their birth-right citizenship, it was not enough to satisfy the same requirement as men. Women had to

[43] Ibid.
[44] Bredbenner, 57.
[45] *Expatriation Act of 1907*, 1228.

demonstrate their loyalty to the United States through their choice of marriage partners. As Cott states, Section 3 of the Expatriation Act "reiterated that a wife owed her primary political allegiance to her husband rather than her nation."[46] Therefore, as Sapiro argues, "a woman's marriage to an alien [was] viewed as a voluntary statement on her part of her relation to the United States, indeed her lack of commitment to America and to its national character."[47] In other words, it was viewed as "a withdrawal of loyalty to the United States in favor of a foreign country."[48] If a woman failed the loyalty test by choosing a foreigner as her husband, she was deprived of her U.S. citizenship as punishment. Historian Ann Marie Nicolosi describes this penalty as "the same punishment as if they had committed treason."[49] Thus, Sapiro argues: "[w]omen who had left the protective cover of the United States or had refused the protection of an American husband [...] were seen as fickle, or as least of questionable loyalty, and likely of dubious moral quality."[50] In short, these women were viewed as traitors.

For historian Candice Lewis Bredbenner, the abridgment of suffrage embodied this punishment. She notes: "[u]ntil 1920, the suffrage issue continued to dominate the debate over equal nationality rights and thus temporarily limited the extent and gravity of that discussion."[51] However, suffrage was not the only reason for U.S.-born women to protest against the Expatriation Act. Sociologist T. H. Marshall argues that citizenship has three components: political, civil, and social.[52] While suffrage occupies a symbolic meaning of political citizenship, citizenship has civil and social meanings as well. For U.S.-born women in the early twentieth century, U.S. citizenship was required not only for suffrage but also for jury duty, various

[46] Cott, 1462.
[47] Sapiro, 17-18.
[48] Ibid., 17.
[49] Nicolosi, 11.
[50] Sapiro, 18.
[51] Bredbenner, 77.
[52] T. H. Marshall, "Citizenship and Social Class," *The Citizenship Debates: A Reader* (Minneapolis: University of Minnesota Press, 1998), 94.

employments, and property ownership. More specifically, civil service positions, elective or appointive positions in the federal or local governments, teaching at public schools, and practicing medicine or law all required U.S. citizenship.[53] With regards to property, inheritance, purchasing real estate, and receiving a homestead land title demanded U.S. citizenship.[54] As this wide range of issues indicates, the loss of citizenship affected women's civil and social lives as well as political one.[55] In the words of *The Las Vegas Age* in 1912, "[m]arriage destroys woman's [sic] legal individuality," and independence was "premium to single ones [women]."[56]

Although the Expatriation Act of 1907 was a great public concern in the 1910s, there was no major protest or newspaper coverage when the Expatriation Act of 1907 was enacted.[57] For instance, while both *The New York Times* and *The Chicago Daily Tribune* reported on the passage of the Expatriation Bill in the U.S. Senate on February 28, 1907, in California, where suffragists started a major campaign against the Expatriation Act in the early 1910s, neither *The San Francisco Chronicles* nor *The Los Angeles Times* remarked on its passage.[58] Only *The San Jose Mercury* briefly mentioned the passage of the Expatriation Bill among other bills in the U.S. Senate.[59] On March 2, 1907, the day when the Expatriation Act was enacted, *The San Francisco*

[53] Lemons, 63-64. For example, Los Angeles County employed only U.S. citizens for its civil service positions. Similarly, a law of the state of Washington required U.S. citizenship to join the bar association, and thus foreigners could not practice law. "Woman Physician Weds Japanese; Job Forfeit," *The Los Angeles Times*, July 29, 1921; Gabriel Jack Chin, "Twenty Years on Trial: Takuji Yamashita's Struggle for Citizenship," in *Race on Trial: Law and Justice in American History*, ed. Annette Gordon-Reed (New York: Oxford University Press, 2002), 103-108.
[54] Lemons, 64.
[55] Until World War I, the United States issued a "joint passport" to a husband and wife. The joint passport did not include the wife's name or physical description. It listed only the husband's full name while indicating the presence of his wife by "accompanied by his wife" or simply "and wife." Robertson, 49.
[56] "Woman's Department," *The Las Vegas Age*, September 21, 1912. This article did not mention suffrage because Nevada did not grant women's suffrage until 1914. Nevertheless, the article sharply criticized the Expatriation Act: "[m]arriage gives to a woman the citizenship of her husband; if he is a foreigner, she also becomes one. / Marriage destroys woman's legal individuality. It even takes away her name, and effaces her identity. / Marriage takes away the control of her earnings, and / Motherhood does not give her the control of her children." Ibid.
[57] Ann Marie Nicolosi, "'We Do Not Want Our Girls To Marry Foreigners': Gender, Race, and American Citizenship," *NWSA Journal* 13, no. 3 (Fall 2001): 4.
[58] "Expatriation Bill Passed," *The New York Times*, February 28, 1907; "Can't Be Yankee Peeress," *The Chicago Daily Tribune*, February, 28, 1907; "The Expatriation Bill," *The Chicago Daily Tribune*, March 2, 1907.
[59] "Congress Helps the Cause of Peace," *San Jose Mercury*, February 28, 1907.

Chronicles reported the voting result on the suffrage amendment in the state Senate, but not on the Expatriation Act.[60] Not until 1911, when California women achieved suffrage, did some Americans, especially women, become aware of the implications of the Expatriation Act on women.

Despite virtually no negative responses to the enactment of the Expatriation Act in 1907, within a couple of years, tremendous backlashes and various challenges to the Expatriation Act arose, particularly in Western states where women could vote prior to the Nineteenth Amendment. For instance, in the state of Washington, where women achieved suffrage in 1910, at least two newspapers published articles in 1910, informing that the Chief Examiner of the U.S. Naturalization Bureau for the Northwest remarked that the easiest way for foreign-born women to become naturalized was to marry a U.S. citizen.[61] If an immigrant woman did not want to marry a U.S. citizen, she had to satisfy the regular naturalization requirements, including a five-year residency in the United States. Yet, if she married a foreigner after becoming a naturalized citizen, her naturalization was canceled because her citizenship was dependent on that of her husband as stipulated in the Expatriation Act. In 1911, when California granted women's suffrage, *The Las Vegas Age* reported that Chief Deputy District Attorney in California announced that an American woman who married a foreigner ceased to be a U.S. citizen and adopted the nationality of her husband.[62] Three months later, *The Las Vegas Age* again reported that Attorney General Webb in California delivered an opinion that a native-born woman lost U.S. citizenship and suffrage upon her marriage with a foreigner. The article stated: "[t]his decision will probably create a great deal of consternation among those women born in the state

[60] "Senators Vote on the Suffrage Amendment," *San Francisco Chronicle*, March 2, 1907.
[61] "Marriage Easy Way for Women to Be Citizens," *Olympia Daily Recorder*, November 19, 1910; "Chance to Become Citizens," *Morning Olympians*, November 19, 1910.
[62] "Women Wedded to Aliens Lose Votes," *The Las Vegas Age*, November 18, 1911.

of California or other states of the Union, whose husbands have not become naturalized and who desire the right of suffrage."[63]

This prediction was correct. Within a month, *The Los Angeles Times* reported the situation of the aforementioned Mrs. Mackenzie.[64] Mrs. Ethel C. Mackenzie was born on November 3, 1885 in Redwood City, California to a prominent pioneer family of Santa Cruz.[65] She spent her early childhood in Santa Cruz and Santa Clara and was "carefully educated in the fashionable schools," and "[h]er charm and beauty won Mackenzie Gordon, who was considered a confirmed bachelor [...] and their wedding was a notable society event of two years ago."[66] Not only was she a well-educated socialite, but Mrs. Mackenzie was a devoted suffragist, being on the executive committee of voter registration campaign for women in the San Francisco area organized by the New Era League.[67] The New Era League was a state-wide suffrage organization with 2,500 female and male members, including Mrs. Elizabeth Kent and her husband Congressman William Kent (R-CA).[68] Despite this distinguished profile, Mrs. Mackenzie would not be able to vote because her husband, Gordon Mackenzie, was a British subject. In fact, on January 22, 1913, Mrs. Mackenzie was denied the right to register to vote.[69] Thus, on February 3, 1913, she filed a lawsuit directly to the California Supreme Court. On August 5, 1913, the Supreme Court of California delivered its opinion: "a female citizen who marries an alien becomes herself an alien, whether she intends that result as the consequence of her marriage or

[63] "Lose Vote by Marriage," *The Las Vegas Age*, February 17, 1912.
[64] "A Vote Getter But No Citizen," *The Los Angeles Times*, March 14, 1912.
[65] "Has Committed No Crime: Mrs. Mackenzie Gordon Would Vote," *The San Francisco Call*, February 4, 1913; "S.F. Women Are Hit by Court Ruling," *San Francisco Chronicle*, December 7, 1915.
[66] "A Vote Getter But No Citizen." Mr. Mackenzie, a singer, used Mackenzie Gordon as his stage name, while his legal name is Gordon Mackenzie. Newspapers used his stage name and legal name interchangeably. Therefore, Mrs. Mackenzie was occasionally referred to as Mrs. Gordon.
[67] "A Vote Getter But No Citizen."
[68] Selina Solomons, *How We Won the Vote in California: A True Story of the Campaign of 1911* (1912; repr., London: Forgotten Books, 2013), 28.
[69] Mackenzie v. Hare, *et al.*, 165 Cal. 776, 778 (1913).

not. […] [T]he wife should not have a citizenship, nor an allegiance, different from that of her husband."[70] Unsatisfied with this ruling, Mrs. Mackenzie appealed to the U.S. Supreme Court. On December 6, 1915, however, the U.S. Supreme Court affirmed the decision of the California Supreme Court. The U.S. Supreme Court ruled: "[t]he identity of husband and wife is an ancient principle of our jurisprudence" and "a change of citizenship cannot be arbitrarily imposed […] without the concurrence of the citizen. The [Expatriation Act] does not have that feature. It deals with a condition voluntarily entered into, with notice of the consequences."[71] According to this decision, Mrs. Mackenzie voluntarily consented to marry Mr. Mackenzie, so that she voluntarily consented to be expatriated. The Expatriation Act, now upheld by the U.S. Supreme Court, equated a U.S.-born woman's choice of her husband with her choice of citizenship and national allegiance.

Newspapers in the West widely reported on the U.S. Supreme Court's decision,[72] and *The Los Angeles Times* published a total of six articles on Mrs. Mackenzie between March 1912 and December 1915. Even after the U.S. Supreme Court's ruling, some California newspapers as well as *The New York Times* reported on Mr. Mackenzie's decision to be naturalized in order to give the right of suffrage to his wife.[73] Moreover, after Mr. Mackenzie's announcement to become a naturalized citizen, women in Oregon formed the "Mackenzie Club" to continue to "look […] into the matter" of marriage and citizenship.[74] In January 1921, *Oakland Tribune* and *Morning Oregonian* reported that Mrs. Ethel Mackenzie became a U.S. citizen again because Mr.

[70] Ibid., 783 (1913).
[71] Mackenzie v. Hare, *et al.*, 239 U.S. 299, 311 (1915).
[72] Some of them are: "S.F. Women Are Hit by Court Ruling"; "Prominent California Women Are Not Citizens of U.S.-Test Case Is Decided by the Court," *San Jose Evening News*, December 7, 1915; "She Will Vote Anyway," *The Los Angeles Times*, December 10, 1915.
[73] Ibid.; "Gordon Mackenzie Will Renounce His British Citizenship and Become American for Wife," *San Jose Evening News*, December 9, 1915; "Renounces Citizenship as Present for Wife," *San Jose Evening News*, December 23, 1915; "S. F. Clubman Will Become an American Citizen So That His Wife Can Use Right of Suffrage," *San Jose Evening News*, March 9, 1916; "To Be Citizen to Aid Wife," *The New York Times*, March 9, 1916.
[74] "S.F. Women Are Hit by Court Ruling," *San Francisco Chronicle*, December 7, 1915.

Mackenzie completed the five-year naturalization process.[75] The newspaper coverage and women's interest in Mrs. Mackenzie demonstrated that the Expatriation Act of 1907 was a growing public concern and associated with protecting women's rights.

<Homestead, Marriage, and U.S. Citizenship>

As noted earlier, the implications of the Expatriation Act on women was not limited to suffrage. The aforementioned Mrs. Hannah Miller Harju and Mrs. Mary Hook were two examples of native-born women who lost their rights to land ownership under the Homestead Act of 1862 and the Desert-Land Act of 1877 because they lost U.S. citizenship through marriage. Using gender-neutral language, both acts allowed women to make land entries as long as they satisfied other qualifications, such as being the head of a family and being a U.S. citizen or having declared the intention to become a naturalized citizen, because the ultimate aim of the Homestead Act and other land laws was to encourage the development of the West.[76] Section 1 of the Homestead Act read:

> any *person* who is the head of a family, or who has arrived at the age of twenty-one years, and *is a citizen of the United States, or who shall have filed his declaration of intention to become such* […] be entitled to enter […] public lands [emphasis added].[77]

Similarly, Section 1 of the Desert-Land Act read:

> any *citizen* of the United States, or any *person* of requisite age '*who may be entitled to become a citizen, and who filed his declaration to become such* […] to file a declaration […] that he intends to reclaim a tract of desert land […] by conduction water upon the same, within the period of three years thereafter [emphasis added].[78]

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[75] "Singer Gordon Is Admitted to Citizenship," *Oakland Tribune*, January 6, 1921; "Mrs. Gordon Now Citizen," *Morning Oregonian*, January 7, 1921.

[76] James Muhn, "Women and the Homestead Act: Land Department Administration of a Legal Imbroglio, 1863-1934," *Western Legal History* 7, no. 2 (Summer/Fall 1994): 283; Richard H. Chused, "The Oregon Donation Act of 1850 and Nineteenth Century Federal Married Women's Property Law," *Law and History Review* 2, no. 1 (Spring 1984): 65. As an incentive for women to migrate to the West, the Oregon Donation Act, which was a predecessor to the Homestead Act of 1862, gave a settler's wife the right to one-half of the land. Ibid., 55, 65.

[77] *Homestead Act of 1862*, 392.

[78] *Desert-Land Act of 1877*, 377.

While these land acts allowed those who applied for naturalization to make a land entry, they had to complete the naturalization process by the time when they would receive land titles as only U.S. citizens were entitled to land ownership. This provision, along with the Expatriation Act, erased any hope for Mrs. Miller Harju and Mrs. Hook to receive a title to the land which they had been cultivating.

According to historian Nancy J. Taniguchi, who examined the General Land Office's *Land Office Decisions* from 1881 to 1920 and found a total of 1,162 cases involving women, one of the major concerns for the entrywomen was whether they would lose their land if they married before receiving the land titles because that would remove them from being the head of a household.[79] The GLO, originally founded in 1812 under the Department of Treasury, was transferred to the newly established Department of Interior in 1849 where it administrated land entries, framed regulations and rules to practice the Homestead Act and other land laws, and resolved disputes between competing claims.[80] On the issue of marriage, the GLO announced in 1867 that as long as a woman satisfied all the qualifications at the time of entry, her marriage did not cancel her right to the land.[81] Nonetheless, the Commissioner of the GLO reversed this rule when Maria Good tried to finalize her claim in 1885. She appealed to the Secretary of the Department of the Interior, and in 1886, the Secretary concurred with the GLO's 1867 rule that allowed women to keep their claims even after their marriage.[82] This ruling was a relief to many women, yet after the enactment of the Expatriation Act in 1907, the ruling meant little, if

[79] Nancy J. Taniguchi, "Lands, Laws, and Women: Decisions of the General Land Office, 1881-1920: A Preliminary Report," *Great Plains Quarterly* 13, no. 4 (Fall 1993): 227.
[80] Muhn, 284; Bureau of Land Management, "History of the BLM," U.S. Department of the Interior, https://www.blm.gov/about/history/timeline (accessed July 31, 2018).
[81] Muhn, 291.
[82] Ibid.; Taniguchi, 227.

anything, for U.S.-born women whose husbands were foreigners. This was the circumstances which Mrs. Hanna Miller Harju and Mrs. Mary Hook found themselves in.

<Expatriated Entrywomen and Newspaper Coverage>

On August 30, 1906, Mrs. Miller Harju's first husband, William Miller, made a homestead entry for 160-acre land in Emmons Country, North Dakota.[83] However, he died on December 19, 1906, leaving Mrs. Miller and two minor children behind. As Section 2 of the Homestead Act specifically named a widow as the primary successor, Mrs. Miller succeeded the homestead rights and improved the land. In November 1908, two years after her husband's death, Mrs. Miller married Alec Harju, a Finnish immigrant. When Mrs. Miller Harju submitted her final proof of homestead on July 11, 1912, the GLO required her to provide a proof of Mr. Harju's U.S. citizenship as land patents were issued only to U.S. citizens. Unsatisfied with the GLO's requirement, Mrs. Miller Harju appealed to the Department of the Interior. On March 3, 1913, the Department delivered an opinion that due to the Expatriation Act of 1907, Mrs. Miller Harju was "incompetent" and "not entitled to patent," so that Mr. Miller's heirs would receive the title.[84] In fact, on May 16, 1913, the GLO at Bismarck, North Dakota, issued a patent to "The Heirs of William Miller."[85]

The Los Angeles Times reported the Mrs. Miller Harju's case on August 15, 1913. The article began: "[a] ruling received *yesterday* [emphasis added] from the general land office at Washington in regards to the homestead rights of a widow who marries an alien is of great interest to a number of entrymen in the Imperial and Antelope Valleys."[86] After this statement,

[83] U.S. Department of the Interior, *Decisions of the Department of the Interior in Cases Relating to the Public Lands*, ed. George J. Hesselman (Washington, D.C.: U.S. Government Printing Office, 1913), 41: 598.
[84] Ibid.
[85] Bureau of Land Management, "Serial Patent 334542," in *Federal Land Patents*, U.S. Department of the Interior, https://glorecords.blm.gov/details/patent/default.aspx?accession=334542&docClass=SER&sid=5g1j1ia4.0ce (accessed October 25, 2017).
[86] "When Is a Citizen?"

the rest of the article was almost a verbatim copy of the GLO's decision. While the article stated that the ruling was "of great interest" to those who made land entries, particularly women, its tone was sterile and detached.[87] It was not sympathetic, much less empathetic, to Mrs. Miller Harju's loss of citizenship or homestead rights.

More importantly, the article contained critical errors even though it was an almost verbatim repetition of the GLO's decision. First, the decision was made in March 1913, not August 1913. More than five months had passed since the GLO delivered the decision, yet *The Los Angeles Times* was reporting as if the decision was made recently. Second, Mr. Miller made a homestead entry in 1906, not in 1900. This could be attributed to a simple typographical error. But the more egregious error was the article's reporting that Mr. Miller made a homestead entry in the Imperial Valley. However, according to the GLO's decision and the land patent, his homestead was in North Dakota, not the Imperial Valley in California. Due to the scarce availability of records, there is no way to know why *The Los Angeles Times* made such errors. One possibility is that *The Los Angeles Times* wanted to alert its readers in California that native-born entrywomen would lose land rights if they married foreigners. However, *The Los Angeles Times* was afraid that North Dakota was too removed for its California readers and that it would be hard for them to imagine that the same issue could occur to women in California. The Gold Rush, along with the mining boom, and homesteading attracted people from around the globe, making California the most diverse and cosmopolitan state in the United States. As a result, intermarriage, including international marriage, was not rare in California. Mrs. Miller Harju's situation would not have been exceptional. Thus, *The Los Angeles Times* changed the location of

[87] When there were two or more family members were eligible to make land entries, they often chose adjoining lots, so that they could help each other as well as enlarge family economy. Thus, a woman's loss of the right to the land was not only an individual but also a family issue. Dee Garceau, "Single Women Homesteaders and the Meanings of Independence: Places on the Map, Places in the Mind," *Frontiers* 15, no. 3 (1995): 5-7.

Mrs. Miller Harju's homestead in order to show that any entrywoman in their state could lose citizenship and land rights if she married a foreigner.

Regardless of its intentions, *The Los Angeles Times* did not want to draw too much attention by sensationally reporting Mrs. Miller Harju's loss, because more than five months passed since the GLO decided the case. In other words, if it had drawn too much attention from readers, someone could have found that *The Los Angeles Times* neglected Mrs. Miller Harju's case when it was initially filed. As a consequence, *The Los Angeles Times* could not express its sympathy and empathy to Mrs. Miller Harju in the article. It needed to be in a plain, detached tone.

For *The Los Angeles Times*, Mrs. Miller Harju was not the first woman who lost U.S. citizenship by marriage. More than a year before the article on Mrs. Miller Harju, *The Los Angeles Times* empathetically reported how Mrs. Mackenzie would lose U.S. citizenship and suffrage.[88] The article asked from the beginning:

> Wouldn't it make you mad through and through - / If you had been born and raised in California? / If you had worked your head off for the privilege of suffrage for women? / If you passed up all the social prestige which your husband's position in the artistic world and your own wealth and beauty could give you? / If you had made your name a reproach and a by-word to the class of people who didn't believe in the political equality of the sexes? / If you had put aside personal qualms and had allowed the papers to publish your picture every time you had landed a blow for suffrage? / If, at the last when victory was imminent, you had sat up all night while the votes were being counted and had wept historical tears of pure joy when it was certain that suffrage had carried California and you at last found yourself a voting citizen of the great and glorious republic? / Wouldn't it make you mad to find you were not a citizen after all? / Wouldn't it peeve you to find that because your husband, whom you hadn't had more than a couple of years, is an Englishman with a Scotch name, you, too, had to consider yourself English with a Scotch name? / Such is the predicament in which Mrs. Mackenzie Gordon […] finds herself, all on account of the naturalization laws.[89]

[88] "A Vote Getter But No Citizen."
[89] Ibid.

The long list of questions asked readers to put themselves in Mrs. Mackenzie's shoes and illuminated the layers of injustice she was experiencing, evoking not only sympathy but even empathy. Although the tone of the article was rather plain, except for the questions, it successfully exposed the unfair treatment of native-born women who married foreigners without appearing too opinionated.

About a year after this article, and four months prior to the one on Mrs. Miller Harju's homestead case in 1913, *The Los Angeles Times* published two more articles on Mrs. Mackenzie. One of them reported the birth of Mr. and Mrs. Mackenzie's baby boy, explaining that until his birth "there was no American citizen in the Mackenzie Gordon family."[90] The article again illuminated the injustice imposed on Mrs. Mackenzie: "to date the only real pride of citizenship that has been hers is the thought that she has been a biological factor in giving a potential President of the United States."[91] Despite being a native-born woman, the U.S. government prohibited her from being a proud U.S. citizen. Mrs. Mackenzie's only legal standing to the United States was through her newborn son.

Moreover, in order to emphasize that Mrs. Mackenzie deserved U.S. citizenship, the article did not criticize or degrade Mr. Mackenzie, offering an explanation why Mr. Mackenzie "ha[d] never, in all the years of his residence here, been naturalized."[92] According to the article, Mr. Mackenzie began naturalization process by taking out his first papers "on the very first day of his arrival in the United States" because"[h]e was full of enthusiasm for the land of the free and the home of the brave, and he was determined to become an American man forever and aye."[93] Nevertheless, a long line at a naturalization office discouraged him and he never returned.

[90] "Child May Vote Mother Cannot," *The Los Angeles Times*, April 8, 1913.
[91] Ibid.
[92] Ibid.
[93] Ibid.

The article highlighted Mr. Mackenzie's excitement with the United States and immediate determination to become naturalized. This suggested that he immediately made an effort on his part for naturalization, so that it was not his loyalty to the British King or his own negligence that made him remain as a British subject. Indeed, the article on March 14, 1912 stated: "[i]t is not that he [Mr. Mackenzie] loves Britain more and America less, but because he has never had much time to devote to politics. He has been too absorbed in his art."[94] Mr. Mackenzie could have applied for naturalization before his marriage, and she would have remained a U.S. citizen after their marriage. The articles could have chastised Mr. Mackenzie for not returning to a naturalization office, yet they did not. Instead, *The Los Angeles Times* implicitly criticized the naturalization office for creating a long line and turning Mr. Mackenzie away. *The Los Angeles Times*' attitude toward Mr. Mackenzie suggested that Mrs. Mackenzie did not choose an undeserving man as a husband, and thus did not deserve the punishment meted out, because she was by no means a traitor of the United States. It was the U.S. government that missed opportunities to naturalize a prestigious musician like Mr. Mackenzie and to protect a loyal and prominent native-born woman.

Only three days later, *The Los Angeles Times* published another article on Mrs. Mackenzie. It reported that Mrs. Elizabeth Thacher Kent, suffragist and wife of Congressman William Kent, who in 1912 introduced a bill to repeal the Expatriation Act, was going to present a petition to Congress on behalf of Mrs. Mackenzie.[95] The article reminded readers about the recent birth of her baby, who "fairly started on his way to be the only voter in the family," as well as the prestigious background of Mr. and Mrs. Mackenzie.[96] It was a very short article, but

[94] Ibid.
[95] "Will Petition Congress for California Girl," *The Los Angeles Times*, April 11, 1913.
[96] Ibid.

it was accompanied by a big portrait of Mrs. Mackenzie, further humanizing and making her a sympathetic subject.

On August 6, 1913, only nine days before Mrs. Miller Harju's article, *The Los Angeles Times* reported on its front page that the California Supreme Court denied Mrs. Mackenzie's U.S. citizenship and thus the right to vote, offering details of the decision. Although much of the article was a verbatim copy of the ruling, it concluded: "[t]he decision effectually cuts off any attempt on Mrs. MacKenzie's [sic] part to exercise the rights of suffrage in California."[97] This reaffirmed the court decision that there was no possibility that she could exercise the right to vote, despite the fact that she was born and raised in California. The article conveyed a sense that the United States was losing a prominent citizen because of the Expatriation Act. Nevertheless, there was no way to save her under the current legal circumstances.

The series of the articles on Mrs. Mackenzie from March 1912 to August 1913 demonstrates that *The Los Angeles Times* viewed marital naturalization/expatriation as a serious problem. These articles offer a possible explanation why *The Los Angeles Times* did not report about Mrs. Miller Harju's homestead case immediately after the decision was delivered in March 1913. As I noted earlier, since 1910 various newspapers in Western states reported the problems of marital naturalization/expatriation. Nonetheless, until *The Los Angeles Times*' article on March 14, 1912, I found no newspaper which named an actual woman who lost U.S. citizenship due to marriage. In other words, most newspapers were reporting about a hypothetical situation. Only in January 1913, Mrs. Mackenzie applied for voter registration but was refused, providing a concrete example of how the Expatriation Act impacted a woman's life.[98] Therefore, in early

[97] "Loses Ballot by Marriage." Other newspapers that reported the case include "Mrs. Mackenzie Denied Suffrage Rights in State by High Court," *San Francisco Chronicle*, August 6, 1913 and "Women on Coast Lost Vote Because Wedded to Britons," *The Chicago Daily Tribune*, August 7, 1913.
[98] Mackenzie v. Hare, *et al.*, 778 (1913).

1913 when the GLO ruled on Mrs. Miller Harju's case, *The Los Angeles Times* had just begun to learn about the political implications of the Expatriation Act on women, and was yet to think about its civil and social impacts. However, as it followed Mrs. Mackenzie and other women who lost citizenship, it realized that the Expatriation Act affected more than suffrage. Before 1913, *The Los Angeles Times* did not understand the full implication of Mrs. Miller Harju's case.

On August 15, 1913, only a week after the California Supreme Court's decision on Mrs. Mackenzie's case, *The Los Angeles Times* finally reported on Mrs. Miller Harju's case. If the court had ruled that Mrs. Mackenzie retained U.S. citizenship after marriage, there would have been no need to report about Mrs. Miller Harju's case because she would also have retained U.S. citizenship and thus homestead rights. However, the court declared that since her marriage Mrs. Mackenzie was no longer a U.S. citizen; as a consequence, the GLO's decision remained valid. Now, equipped with a better understanding of how the Expatriation Act impacted women, *The Los Angeles Times* was compelled to report on Mrs. Miller Harju's case to alert homesteaders in California even though it needed to hide the fact that the decision was made five months before and her homestead was in another state.

In fact, on September 12, 1913, a month after Mrs. Miller Harju's article, *The Los Angeles Times* reported about Mrs. Mary Hook's case.[99] According to this article, Mrs. Hook was a native-born woman who made a desert-land entry in the Antelope Valley in 1909. After improving the land for three years but before perfecting her land title, she married John Hook, a British subject from Canada, and lost U.S. citizenship. As Mrs. Hook was aware that her loss of U.S. citizenship would result in the loss of the land rights, Mr. Hook filed his declaration of the intention to become a naturalized citizen. However, their marriage did not go well; Mr. Hook

[99] "Woman Without a Country."

went back to Canada, withdrawing from the naturalization process, but did not file for divorce.[100] Continuance of the marriage must have been devastating for Mrs. Hook because Section 3 of the Expatriation Act of 1907 allowed U.S.-born women to resume U.S. citizenship only after the termination of marriage. Therefore, if Mr. Hook had formally divorced her, Mrs. Hook would have been able to regain U.S. citizenship and maintained her eligibility for the land patent. However, as the article noted,"[i]n law and in fact Mrs. Hook [was] a British subject, and therefore barred from making an entry."[101]

As discussed earlier, the Expatriation Act "punished" U.S.-born women who chose foreigners as their husbands, a view shared by *The Los Angeles Times*. The article juxtaposed Mrs. Hook with Philip Nolan in Edward Everett Hale's short novel, "The Man Without a Country," where Nolan was tried for treason and sentenced to spend the rest of his life on the high seas without returning to or even hearing about the United States.[102] The article explained: "she ha[d] been completely expatriated, although her only punishment [wa]s an inability to complete a desert-land entry."[103]

Unlike the article on Mrs. Miller Harju, *The Los Angeles Times* did not hesitate to express compassion for Mrs. Hook. A sub-headline of the article reads: "Enters on Government Land, Weds and Englishman, Who Leaves Citizenship Process Unfinished, and Now Uncle Sam Will Take Her Land Away from Her as Foreigner."[104] On the other hand, in Mrs. Miller Harju's article, the sub-headline reads: "Widow Loses Right and Title to Homestead of First Husband When She Marries an Alien."[105] While Mrs. Miller Harju "loses" her right to the land, in the case

[100] Ibid.
[101] Ibid.
[102] Ibid.
[103] Ibid.
[104] Ibid.
[105] "When Is a Citizen?"

of Mrs. Hook, the government "will take away" her land. In addition, Mrs. Hook was "barred from" filing a land claim, not that she "could not" file a claim. The different wording suggests that Mrs. Hook did nothing wrong, but the government was depriving her land from her. She was a victim of the government's wrongdoing, but "[t]here is no help for her."[106]

Having discussed why the article on Mrs. Miller Harju needed to be in a plain tone, there are more reasons why *The Los Angeles Times* was more compassionate with Mrs. Hook than Mrs. Miller Harju. First, Mrs. Hook made a desert-land entry under her own name, while Mrs. Miller Harju succeeded her deceased husband's rights. Historian Dee Garceau notes that single women had various reasons and expectation for making land entries, yet many of them filed claims on the land adjoining their family members' claims in order to enlarge a family economy.[107] On the other hand, in the case of some single entrywomen without family near their land, they supported their land claims with non-agricultural work as nurses, teachers, stenographers, bank clerks, and horse trainers.[108] For these women, making a land entry was an investment, and they intended to accumulate cash upon the sale of the land.[109] *The Los Angeles Times* did not mention why Mrs. Hook made a desert-land entry or if she had family members nearby. Whatever reason and resources she had, Mrs. Hook made an entry under her own name and worked on the land. As discussed in Chapter 2, historically independence meant working on land for one's own and having dependents. Being the head of a household was a proof of one's independence. Mrs. Hook embodied this notion of independence. As a single woman, she was considered as the head of a family under the Desert-Land Act, made a land entry, and improved the land for three years until her marriage with a British subject. There was no doubt that she was an independent

[106] Ibid.
[107] Garceau, 5.
[108] Ibid., 6, 10-11.
[109] Ibid., 11.

woman who deserved U.S. citizenship because she embodied the ideal notions of independence embedded in U.S. citizenship. In fact, while *The Los Angeles Times* acknowledged that Mrs. Hook was "[i]n law and in fact" not a U.S. citizen, it advocated her that "[i]n every other sense she is an American."[110] In addition, her British husband returned to Canada without a formal divorce or completion of naturalization, leaving Mrs. Hook in limbo. The U.S. government could have protected her as a native-born citizen by repealing the Expatriation Act or enacting a special law to repatriate her or to exempt her from the citizenship requirement.[111] However, instead of offering protection, the government punished Mrs. Hook by depriving her of U.S. citizenship and the land. This clearly contradicted the core American value of independence and the duty of the U.S. government. Therefore, Mrs. Hook was doubly victimized, once by the U.S. government, which neglected its duty to protect its citizens but punished her for marrying a foreigner, and by her British-Canadian husband who left her without a divorce or completion of naturalization. For these reasons, *The Los Angeles Times* more eloquently reported Mrs. Hook's situation with compassion.

The Los Angeles Times did not report what happened to Mrs. Hook after this article, nor did it mention her maiden name, so that it is impossible to find any record about her desert-land entry. Nevertheless, we know that she knew about marital naturalization/expatriation and its

[110] "Woman Without a Country."

[111] According to *The Chicago Daily Tribune*, there were two native-born women who were repatriated by special acts of Congress. The first case was President Grant's daughter, Mrs. Nellie Grant Sartoris. According to a congressional hearing in 1912, she had married an English man and lived England. Upon her return to the United States, Congress passed a special act to repatriate her. The second case was Mrs. Frances Scoville-Mumm, a daughter of a Kansas banker. In 1913, she married Walter Mumm, a wine grower in France but divorced in 1918. Upon the outbreak of WWI, Mr. Mumm resumed his German citizenship. Although Mr. Mumm's properties in France were seized, Mrs. Scoville-Mumm continued living in France and worked for the allies as a nurse. According to the article, she was "legally separated" from Mr. Mumm, but the French courts regarded her as a German citizen and disregarded her claims to the properties. In order to protect her, the Senate adopted a special resolution to repatriate Mrs. Scoville-Mumm. "Repatriate," *The Chicago Daily Tribune*, October 10, 1919; House Committee on Foreign Affairs, 22; *Joint Resolution to Readmit Nellie Grant Sartoris to the Character and Privileges of a Citizen of the United States*, Private Resolution 55-36, *U.S. Statutes at Large* 30 (1899): 1496; *Joint Resolution to Readmit Frances Scoville-Mumm to the Character and Privileges of a Citizen of the United States*, Private Resolution 66-1, *U.S. Statutes at Large* 41 (1921): 1449.

impact on her desert-land entry and that she was active in preventing the loss of her land. Like *The Los Angeles Times*, which gradually learned about the full impact of the Expatriation Act on native-born women's lives, Congress also became more aware of its effect on entrywomen who married foreigners. On October 17, 1924, eleven years after *The Los Angeles Times* published the articles on Mrs. Harju and Mrs. Hook, Congress enacted a law allowing native-born entrywomen who married foreigners to remain entitled to the land rights.[112] While the law stipulated that the husband had to be "an alien, who is entitled to become a citizen of the United States," this law was intended to save native-born women like Mrs. Miller Harju and Mrs. Hook. Although they did not benefitted from this act, both Mrs. Miller Harju and Mrs. Hook, along with *The Los Angeles Times*, exposed the injustice of the Expatriation Act upon entrywomen, leading to the enactment of the law that remedied the injustice in the next decades.

<Conclusion>

The Expatriation Act of 1907 abridged the privileges and immunities given to U.S. citizens when native-born women married foreigners. However, the three women examined in this chapter did not passively accept the abridgement. Both Mrs. Miller Harju and Mrs. Mackenzie took a legal action and appealed to the highest authorities to confirm their rights and privileges as a U.S. citizen. Mrs. Hook tried to prevent the loss of her land by having her husband to become naturalized. By challenging the Expatiation Act, these women left traces of their actions in history. Particularly the traces of Mrs. Miller Harju and Mrs. Hook are crucial to understand that for women in the early twentieth century, citizenship meant more than suffrage. Unfortunately, neither Mrs. Hook nor Mrs. Miller Harju was able to keep the land. Mrs. Mackenzie lost her case at both the California Supreme Court and the U.S. Supreme Court, and it

[112] *An Act to Provide for Certificate of Title to Homestead Entry by a Female American Citizen Who Has Intermarried with an Alien*, Public Law 63-213, *U.S. Statutes at Large* 38 (1915): 740.

was not until 1921 when she reacquired U.S. citizenship. Nevertheless, their actions and newspaper coverage on them fueled the debate over women's citizenship, and directly and indirectly led to the repeal of the Expatriation Act and the abolishment of marital naturalization/expatriation.

The Expatriation Act affected all American women who married foreigners. Nonetheless, women who married "alien ineligible for citizenship" faced different struggles than those who married white immigrants as discussed in this chapter. Under the Expatriation Act, white American women who married Asian immigrants became "aliens ineligible for citizenship" upon marriage, and were subject to various anti-Asian laws. The next chapter discusses the challenges of those Japanese-white couples.

Chapter 5

Conflicting Desires:
Exclusion of Japanese Immigrants and Protection of Their White American Wives

<Introduction>

On March 22, 1908, *The Los Angeles Times* reported "a weird marriage" that Capt. Halstead witnessed on his boat as he transported a group of people to a large cruiser anchored off Long Beach, California.[1] While at a San Pedro dock, Capt. Ed Duffy, the captain of another boat approached Capt. Halstead, asking if he could take a group of three men and women, respectively, to the cruiser, three miles from the shore. Capt. Halstead agreed and when his boat traveled three miles from the shore, Capt. Duffy performed a marriage ceremony for "a young Jap and an American girl apparently about 17 years of age."[2] Neither Capt. Duffy, nor any of his company, said anything to Capt. Halstead about the couple, including their names, and the small group "disappeared" once they came back to the San Pedro dock. In this article, *The Los Angeles Timed* did not offer any explanation as to why the couple married on the high seas, leaving the readers just as perplexed as Capt. Halstead. However, it was not uncommon for Japanese men and white American women in California to marry on the high seas, because the California Civil Code prohibited a marriage between a white person and "a negro, mulatto, or Mongolian."[3] At the turn of the twentieth century, miscegenation laws targeting Asians were not peculiar to California. Beginning with Nevada in 1861, fifteen states had laws that prohibited marriage

[1] "Wed Out at Sea," *The Los Angeles Times*, March 22, 1908.
[2] Ibid.
[3] An Act to Amend the Civil Code of 1872, *The Acts Amendatory of the Code of California Passed at the Twenty-Third Session of the Legislature, 1880*, ch. 41, sec. 1 (1880); An Act to Revise the Civil Code of the State of California, *The Statutes of California and Amendments to the Codes, Passed at the Thirty-Fourth Session of the Legislature, 1901*, ch. 157, sec. 17, 20 (1901). In 1880, Section 69 of the California Civil Code was amended to add "Mongolian" at the end of the phrase "the said Clerk [county clerk] shall not issue a license authorizing the marriage of a white person with a negro or mulatto." In 1901, Section 60 of the Civil Code was amended to include "Mongolians": "[a]ll marriages of white persons with negros, Mongolians, or mulattoes are illegal and void."

between "whites" and Asians.[4] Nonetheless, according to Carl S. Seki, a Japanese resident in San Pedro, who himself married a white American woman on the high seas in 1912, there were 200 couples of Japanese men and white American women in Los Angeles in 1914.[5] Some of them married on the high seas, which was out of the jurisdiction of any country, while others married in other states, such as New Mexico, Illinois, or Washington, which did not prohibit interracial marriage between whites and Japanese.[6]

For those Japanese-white couples, miscegenation laws were not the only legal obstacles they faced. Unless the Japanese husbands were born in the United States as U.S. citizens, Section 3 of the Expatriation Act of 1907 deprived U.S. citizenship from American citizen wives, because it stipulated "any American woman who marries a foreigner shall take the nationality of her husband."[7] As a consequence, under the Expatriation Act, white American wives of Japanese immigrants were considered Japanese subjects and subject to anti-Japanese laws. Thus, the experiences of white American wives of Japanese immigrants were significantly different from the wives of white immigrants discussed in Chapter 4. Under the Expatriation Act of 1907, American women, particularly white women, who chose Japanese immigrants as their marriage partners were considered traitors to the white race *and* the U.S. nation, and subsequently were deprived of U.S. citizenship as a punishment for choosing "wrong" men as their husbands.

While the loss of U.S. citizenship threatened the livelihood of Japanese-white couples, white American wives refused to be considered "traitors" and challenged the Expatriation Act and the general anti-Japanese sentiment by demonstrating themselves to be the embodiment of

[4] Deenesh Sohoni, "Unsuitable Suitors: Anti-Miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities," *Law and Society Review* 41, no. 3 (September 2007): 587, 596, 599-600.
[5] "White Brides of Japs Prepare to Flee Laws," *The Los Angeles Times*, October 14, 1914.
[6] New Mexico repealed its miscegenation law in 1866, followed by Washington in 1868 and Illinois in 1874. David Henry Fowler, *Northern Attitudes towards Interracial Marriage: Legislation and Public Opinion in the Middle Atlantic and the States of the Old Northwest, 1780-1930* (New York: Garland Publishing, 1987), 365, 401, 437.
[7] *Expatriation Act of 1907*, Public Law 59-193, *U.S. Statutes at Large* 34 (1907):1228.

the ideal notions of white American womanhood. Newspapers in the West often reported on intermarriage between Japanese men and white American women in the early twentieth century as the anti-Japanese movement was intensifying. Nevertheless, the newspaper accounts on such interracial marriage were not always hostile. When white American wives, as well as their Japanese husbands, had middle-class backgrounds, the tone of the newspaper articles was more nuanced and ambivalent. While they were not hesitant to show anxiety toward interracial marriage along with the anti-Japanese sentiment, they simultaneously demonstrated the desire to protect white American wives from the Expatriation Act, anti-Japanese laws, and the stigma of marrying Japanese immigrants. The desire to protect those women led the newspapers to depict their Japanese husbands as non-threatening to the white American nation, maintaining a fine balance with the anti-Japanese sentiment. The Japanese husbands were often depicted as well-educated middle-class professionals who were thoroughly Americanized and sincerely cared about their wives. Nevertheless, the newspapers often did not spare much space for them, nor did they praise Japanese husbands to the extent of Mr. Gordon Mackenzie discussed in Chapter 4. Still, along with white American wives of Japanese immigrants, the newspaper coverage revealed the injustice of the Expatriation Act that was peculiar to Japanese-white interracial couples.

<Japanese Immigration, National Power, and the Anti-Japanese Movement in the West>

As discussed in Chapter 3, for Asian immigrants, California was the "gateway" to the United States due to its geographical location, and at the turn of the twentieth century, the population of Asian immigrants in California was larger than any other state or territory in the United States.[8] When the number of Chinese immigrants, who supplied "cheap labor" for

[8] Kristofer Allerfeldt, "Race and Restriction: Anti-Asian Immigration Pressures in the Pacific North-West of America during the Progressive Era, 1885-1924," *History* 88, no. 289 (January 2003): 54.

railroad construction, mining, agriculture, laundry, and other domestic services in the American West, declined due to the Chinese Exclusion Acts in the 1880s and 1890s, a significant number of Japanese started migrating to the United States. Due to their similarities with the Chinese, including physical appearance, male-dominant demography, and types of labor they engaged in the United States, Japanese immigrants not only replaced Chinese laborers, but also inherited the racism and xenophobia targeting the Chinese. The anti-Asian movement included federal, state, and municipal-level laws as well as hostility from private businesses and individuals. Legal scholar Keith Aoki claims that anti-Japanese laws was based on "a racial 'link' between the reviled Chinese immigrants of the nineteenth century and Japanese immigrants of the late-nineteenth and early-twentieth centuries [which] partially erased a specific nationality of these immigrants conflating a generalized Asiatic 'foreign-ness' marked by racial difference."[9]

Most of the earliest Japanese immigrants to the United States, roughly between 1885 and 1907, were laborers called *dekaseginin* (出稼ぎ人).[10] In Japan, *dekaseginin* were most often, if not all, small farmers or peasants. They worked in urban areas after the harvest season and went back home by the time of the planting season. Some of the *dekaseginin* who landed on the West Coast of the United States were actually *dekasegi-shosei* (出稼ぎ書生) or student-laborers who wished to learn English, western knowledge, and/or new skills that would help them to advance their careers in Japan.[11] In general, Japanese *dekasegi-shosei* were more educated than Chinese laborers.[12] Nonetheless, without financial resources except their own labor power, they had to work as contracted laborers in agriculture, railroad construction, mining, lumbering, and fishing

[9] Keith Aoki, "No Right to Own: The Early Twentieth-Century Alien Land Laws as a Prelude to Internment," *Boston College Law Review* 40, no. 1 (December 1998): 40.
[10] Yuji Ichioka, *The Issei: The World of the First Generation Japanese Immigrants, 1885-1924* (New York: Free Press, 1988), 3.
[11] Ibid., 7-8.
[12] Keith Aoki, "The Yellow Pacific: Transnational Identities, Diasporic Racialization, and Myth(s) of the 'Asian Century,'" *U.C. Davis Law Review* 44, no. 3 (February 2011): 914.

industries or took domestic jobs, replacing Chinese "coolies" removed by the Chinese Exclusion Acts. Unlike the Chinese, Japanese immigrants were particularly concentrated in farming. When Japanese started migrating to the United States, agriculture in California demanded large numbers of seasonal manual laborers, but not many white Americans wanted to do farm labor, and Japanese immigrants supplied the demand.[13] Farm labor through the labor contracting system was attractive to Japanese immigrants who came to the United States with little to no capital.[14] In addition, they could utilize their farming skills that they had learned in Japan.[15] Similar to U.S. companies that hired Chinese laborers, both small and large scale agriculture businesses preferred Japanese farm laborers because they were often viewed as diligent, reliable, and willing to accept lower wages.[16] As a consequence, by 1905, Japanese immigrants became the primary suppliers of seasonal farm labor in California.[17]

As in the case of Chinese immigrants, white Americans viewed the Japanese farm laborers as a threat to their job security and the larger U.S. society. At the same time, since Japanese and Chinese appearances were hard for the Americans to distinguish, the racist and xenophobic anti-Chinese movement was re-directed at Japanese immigrants.[18] A major protest against the Japanese broke out in the spring of 1900 when the number of Japanese who entered the United States quadrupled compared to the previous year.[19] The San Francisco Labor Council sponsored a mass meeting that urged the extension of the Chinese Exclusion Act and demanded

[13] Elias Manchester Boddy, *Japanese in America* (Los Angeles: E. M. Boddy, 1921), 29-30; Masao Suzuki, "Important or Impotent? Taking Another Look at the 1920 California Alien Land Law," *The Journal of Economic History* 64, no. 1 (March 2004): 127.
[14] Ichioka, 151.
[15] Tomás Almaguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California* (Berkeley: University of California Press, 1994), 184.
[16] Aoki, "No Right to Own," 52.
[17] Suzuki, 127.
[18] Ibid.
[19] Raymond Leslie Buell, "The Development of the Anti-Japanese Agitation in the United States," in *Japanese Immigrants and American Law*, ed. Charles McClain (New York: Garland Publishing, Inc., 1994), 28.

that the Japanese should fall under the Exclusion Act. At the meeting, San Francisco Mayor James D. Phelan and Stanford University's sociologist Edward Alsworth Ross also made anti-Japanese speeches.[20] In January 1901, California Governor Henry T. Gage emphasized the Japanese problem in his speech to the legislature.[21]

Despite the strong anti-Japanese movement, a diplomatic reason to maintain an amicable relationship with Japan did not allow the federal government to enact a restrictive immigration law against Japanese. As Qing China's power declined on the international political stage toward the end of the nineteenth century, Japan was becoming a mighty imperialist power in East Asia and the Pacific on a par with Western countries.[22] Japan's rapid modernization and industrialization in the latter half of the century translated into its military success as it defeated Qing China in the Sino-Japanese War of 1894-1895 and imperial Russia in Russo-Japanese War of 1904-1905. Japan's military success marked the shift in the American perceptions of Japan.[23] The Japanese victory decisively replaced China's hegemonic power in Asia and increased the admiration from the West. An example of American discernment between Japanese and Chinese can be seen through Miss Ethel Johnson, the daughter of an English clergyman, who married Mr. Eben Takashi Takamine, a Yale-graduate chemist and biologist, in New York City.[24] When Miss

[20] Ross' anti-Asian view made Jane Stanford, co-founder of Stanford University and widow of Leland Stanford, demand his resignation because Leland Stanford was the president of Southern Pacific Railroad, hiring a large number of Asian laborers. Brian Eule, "Watch Your Words, Professor," *Stanford Magazine*, January/February 2015, https://alumni-gsb.stanford.edu/get/page/magazine/article/?article_id=75857# (accessed January 13, 2019).
[21] Buell, 28-29.
[22] Brian J. Gaines and Wendy K. Tam Cho, "On California's 1920 Alien Land Law: The Psychology and Economics of Racial Discrimination," *State Politics and Policy Quarterly* 4, no. 3 (2004): 273.
[23] Rotem Kowner, "'Lighter Than Yellow, But Not Enough': Western Discourse on the Japanese 'Race,' 1854-1904," *The Historical Journal* 43, no. 1 (March 2000): 129.
[24] "American Girl Bride of Jap," *The Los Angeles Times*, September 30, 1915. Mr. Takamine's father, Dr. Jokichi Takamine, was a prominent chemist in Japan and the United States. In 1884, Dr. Takamine visited the United States as one of the two Japanese commissioners to the New Orleans World's Fair and Cotton Centennial. During this visit, he met Miss Caroline Hitch, and they married in New Orleans in 1887. Dr. Takamine was a leader of the Japanese community in New York. William Shurtleff and Akiko Aoyagi, *Jokichi Takamine (1854-1922) and Caroline Hitch Takamine (1866-1954): Biography and Bibliography* (Lafayette, CA: Soy Info Center, 2012), 6; Greg Robinson, "The Great Unknown and the Unknown Great: The Takamine Family's Three Generations of Marvels in Health

Johnson was asked about her interracial romance, she answered: "I must say that I do not consider the Japanese people Asiatics" because "[t]hey are so far advanced in every way over the other races in Asia […]. I don't believe I would have considered a Chinaman."[25] By the time of their marriage in 1915, China not only lost the war to Japan but the Qing dynasty had collapsed in 1912, and the political and social turmoil continued well into World War II. For Miss Johnson, Japan was an "advanced" nation, so that there was no problem with marrying a Japanese man. For the U.S. general public, however, the rise of Japan was alarming. According to historian Rotem Kowner, "[s]ince 1905, the Japanese were not depicted any more as a childish, immature, fun-loving, and good-humoured people."[26] Instead, they were "looked up as a threat" and "perceived as aggressive, insolent, and even dangerous imperialists."[27] Its military power made Japan look more like a threat to the Western imperialist countries rather than their reliable partner in Asia. Coinciding with Japan's military success was the United States' increased presence in the Pacific through its victory in the U.S.-Spanish War of 1898. It was obvious that the United States would have to face Japan if it continued its imperial ambitions.

In order to keep Japan in check while maintaining an amicable relationship, President Theodore Roosevelt as well as President Woodrow Wilson took various actions both internationally and domestically. First, Theodore Roosevelt intervened and pressured both antagonists to conclude the Russo-Japanese War, winning the Nobel Peace Prize in 1906 for this

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Science," Nichibei.org, October 17, 2013, https://www.nichibei.org/2013/10/the-great-unknown-and-the-unknown-great-the-takamine-familys-three-generations-of-marvels-in-health-science/ (accessed January 16, 2018); "Marries a Japanese," *The New York Times*, September 30, 1915. While *The Los Angeles Times* asked Miss Johnson what she thought about her interracial marriage, *The New York Times* only reported the factual information about the couple, their family background, and the marriage ceremony. The difference of the two newspapers shows the regional difference in the attitude toward Japanese-white interracial marriage.

[25] "American Girl Bride of Jap."

[26] Kowner, 130.

[27] Ibid., 129-130.

intervention.[28] Within the United States, he tried to ease the anti-Japanese movement as he was receiving formal protests from Japan. For example, when the San Francisco School Board decided in 1905 to segregate Japanese children from white children, Roosevelt negotiated with the School Board to reverse the decision.[29] When the California legislature initiated an Alien Land Bill, which would bar Japanese from purchasing and leasing land, there was a massive protest among Japanese legislators as well as the general public in Japan. President Wilson and Secretary of the State William Jennings Bryan unsuccessfully requested California Governor Hiriam Johnson and the legislature to reconsider the anti-Japanese Alien Land Bill.[30] The diplomatic interests made both Roosevelt and Wilson hesitant to support anti-Japanese laws both at the federal and state levels.

Despite the efforts of Roosevelt and Wilson, the rising power of the Japanese nation rather fueled anti-Japanese sentiment. Aoki argues:

> the Japanese were seen as threats to the American body politic from both within and without. They were seen as threats from within to the extent that stereotypes once attached to the Chinese (i.e., unfair competitors and ineradicably foreign) were easily transferred from one group of immigrants to another. The Japanese, however, were also perceived as a threat from without. Japan's growing industrial strength, its imperial military aspirations in the Pacific and the defeat of Russia in 1905, collectively enticed American politicians to inscribe on Japanese immigrants an image of disloyalty and allegiance to a threatening foreign military power. They were portrayed as an imminent fifth column threat within the United States waiting to be activated at the emperor's command - the plowshares of Japanese immigrant farmers transforming themselves into swords at the whim of a foreign power.[31]

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[28] Office of the Historian, "The Treaty of Portsmouth and the Russo-Japanese War, 1904–1905," Department of State, https://history.state.gov/milestones/1899-1913/portsmouth-treaty (accessed January 31, 2019); Theodore Roosevelt Center, "The Treaty of Portsmouth," Theodore Roosevelt Center, https://www.theodorerooseveltcenter.org/Learn-About-TR/TR-Encyclopedia/Foreign%20Affairs/The%20Treaty%20of%20Portsmouth (accessed January 31, 2019).

[29] Aoki, "No Right to Own," 48-49; Frank W. Van Nuys, "Progressive Confronts the Race Question: Chester Rowell, the California Alien Land Act of 1913, and the Contradictions of Early Twentieth-Century Racial Thought," *California History* 71, no. 1 (Spring 1994): 2.

[30] Ibid., 4-5; Herbert P. Le Pore, "Prelude to Prejudice: Hiram Johnson, Woodrow Wilson, and the California Alien Land Law Controversy of 1913," *Southern California Quarterly* 61, no. 1 (Spring 1979): 104-107.

[31] Aoki, "No Right to Own," 46-47.

Japanese immigrants in the United States were no longer simply viewed as convenient cheap labor; especially after 1905, Japanese immigrants in the United States were seen as threats to the U.S. national security as "the agents of a rising foreign power."[32] Senator James D. Phelan (D-CA), aforementioned mayor of San Francisco, claimed: "[w]e admire their Japanese industry and cleverness, but it is for that very reason, being a masterful people, that they are most dangerous" and that "it is our duty to exclude the Japanese for economic reasons."[33]

Due to the anti-Japanese movement and diplomatic interests, the United States and Japan concluded the Gentlemen's Agreement in 1907, in which the Japanese government agreed to "voluntarily" stop issuing passports to U.S.-bound laborers, while the U.S. government prohibited Japanese laborers from entering the continental United States.[34] Despite this restriction, the number of Japanese immigrants to the United States kept increasing, because the Gentlemen's Agreement targeted only Japanese laborers. Non-laborers, such as businessmen, financiers, and family members, were still allowed to enter the United States.[35] In fact, the majority of Japanese immigrants under the Gentlemen's Agreement were "picture brides" who were going to marry Japanese men in the United States. Picture marriage was a common practice in Japan where a single man sent his photograph along with brief background information to his family, relatives, or friends, asking to find a suitable woman as his wife. This practice was a convenient means of survival for many Japanese immigrants, because it was difficult for them to find wives in the United States due to anti-Japanese sentiment and miscegenation laws. As discussed in Chapter 3, the Chinese Exclusion Acts admitted a husband's rights to be with his wife and children, and an incoming Chinese wife's status was a dependent of her husband even if

[32] Suzuki, 127.
[33] James D. Phelan, quoted in Boddy, 122, 130.
[34] Arthur H. Elliot and Guy C. Calden, "The Law Affecting Japanese Residing in the State of California," in *Three Short Works on Japanese Americans*, ed. Roger Daniels (New York: Arno Press, 1978), 68.
[35] Ibid.; Suzuki 127.

she was actually a laborer, who was subject to the Chinese Exclusion Acts. The same principle was applied to the Gentlemen's Agreement, and as a consequence, a picture bride, even if she was actually a laborer, was able to enter the United States and join her husband. Therefore, during the 1910s, the majority of Japanese immigrants to the United States were wives.[36] With these newly arrived wives, Japanese immigrants formed families, shifting their attitude from *dekasegi* toward permanent settlement in the United States.

Japanese immigrants' success as farm laborers also motivated many Japanese to seek permanent settlement in the United States. According to historian Yuji Ichioka, Japanese immigrant leaders, such as Kyutaro Abiko, Otosaburo Noda, and Toyoji Chiba, encouraged other Japanese immigrants to discard their *dekasegi* ideal and to settle down in the United States permanently.[37] For example, Abiko's *Nichibei Shimbun* (Japanese American Newspaper) employed the slogan of *dohcaku eiju* (土着永住, settlement on land and permanent residency). After the first conference of Japanese farmers in 1909, Noda published *Hokubei Noho* (North American Agricultural Journal), for which Chiba served as an editor, also encouraging permanent settlement.[38] To some degree, these Japanese immigrant leaders thought that anti-Japanese sentiment came from their disengagement with the U.S. society, and permanent settlement would dissolve anti-Japanese hostility as continuous contact would create more opportunities for Americans to learn about the Japanese and their culture and avoid misunderstandings.[39] In fact, presidential candidate Woodrow Wilson in 1912 telegrammed to James D. Phelan: "[w]e cannot make a homogenous population out of people who do not blend with the Caucasian race. Their [Chinese and Japanese'] lower standard of living as laborers will

[36] Eithne Luibhéid, *Entry Denied: Controlling Sexuality at the Border* (Minneapolis: University of Minnesota Press, 2002), 55.
[37] Ichioka, 148.
[38] Ibid., 148-149.
[39] Ibid., 146-147.

crowd out the white agriculturalist and is […] a most serious industrial menace."[40] To establish a solid economic foundation, Japanese immigrant leaders promoted agriculture.[41] Many Japanese seasonal farm laborers saved money and shifted their work conditions from contracted labor to share-tenancy, cash-leasing, and landowning.[42] They preferred tenant farming because they could apply the traditional Japanese ways of farming in which all family members, including women, children, and extended family members, participated to increase productivity.[43] By 1910, the Japanese produced nearly a half of the entire agricultural products in California.[44] In the case of Hood River County, Oregon, the residents of the Japanese community, many of whom were farmers, improved the appearance of their homes in the late 1910s, raising the standards of the community to ease anti-Japanese sentiment.[45]

Despite the Japanese communities' efforts, white Americans, both employers and workers, viewed the success of the Japanese farmers as a threat. Americans no longer viewed Japanese immigrants as just docile, cheap, and convenient contract laborers. As historian Erika Lee states, Japanese immigrants were feared because of their success in agriculture and their tendency for permanent settlement to start families in the United States.[46] In order to dismantle the foundation of Japanese livelihood, California enacted the Alien Land Act in 1913, followed by many other Western states.[47] It prohibited aliens ineligible for citizenship and corporations

[40] Woodrow Wilson, quoted in Herbert P. Le Pore, 102.
[41] Ichioka, 148.
[42] Ibid., 151-153.
[43] Suzki, 128.
[44] Allerfeldt, 54.
[45] Daniel P. Johnson, "Anti-Japanese Legislation in Oregon, 1917-1923," *Oregon Historical Quarterly* 97, no. 2 (1996): 186.
[46] Erika Lee, "The Chinese Exclusion Example: Race, Immigration, and American Gatekeeping, 1882-1924," *Journal of American Ethnic History* 21, no. 3 (2002): 44.
[47] The following states enacted the Alien Land Acts: Arizona (1917), Washington, Texas, and Louisiana (1921), New Mexico (1922), Idaho, Montana, and Oregon (1923), Kansas (1925), Florida (1926), Missouri (1939), Arkansas (1925 and 1943), Utah, and Wyoming (1943). Minnesota and Nebraska also enacted the Alien Land Acts during WWII. In 1927, Arkansas Supreme Court declared the 1925 law was against the Arkansas state constitution because the state constitution guaranteed all foreigners in the state, whether eligible for citizenship or not, the same

whose majority members were aliens ineligible for citizenship to "acquire, possess, enjoy and transfer real property" and to "lease lands […] for agricultural purposes for a term not exceeding three years."[48]

Although the Alien Land Act did *not* specifically name the Japanese, and instead used "aliens ineligible for citizenship," referring to all Asians, it was obvious that the act targeted Japanese immigrants, who were successful in agriculture. This phrase was derived from the racial clause of the Naturalization Acts of 1790 and 1870. The Naturalization Act of 1790 only allowed "any alien, being a free white person" to become naturalized citizens and the 1870 Naturalization Act extended the racial eligibility to "aliens of African nativity and to persons of African descent."[49] Since Asians were neither white nor African, they were considered "aliens ineligible for citizenship" and this phrase was widely used in discriminatory laws targeting Asian immigrants.[50] According to Aoki, this language was "a disingenuous euphemism designed to disguise the fact that the target of such laws were first-generation Japanese immigrants, or

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property rights as native-born citizens. While the 1925 law employed the language of "aliens ineligible to citizenship," the 1943 law explicitly named "Japanese people," including those who were born in the United States. Suzuki, 130-131; Gabriel J. Chin, "Citizenship and Exclusion: Wyoming's Anti-Japanese Alien Land Law in Context," *Wyoming Law Review* 1, no. 2 (2001): 500-501; Stephanie Hinnershitz, *A Different Shade of Justice: Asian American Civil Rights in the South* (Chapel Hill: University of North Carolina Press, 2017), 48, 54-55, 59-62, 66.

[48] Alien Land Act of 1913, *The Statutes of California and Amendments to the Codes Passed at the Fortieth Session of the Legislature 1913*, ch. 113, sec. 2 (1913).

[49] *Naturalization Act of 1790, Stats. at Large of USA* 1 (1845): 103; *Naturalization Act of 1870, Stats. at Large of USA* 16 (1871): 256.

[50] The Chinese Exclusion Act of 1882 was the first federal immigration law to single out a nationality to prohibit a certain type of people from entering the United States. Because the Naturalization Acts did not define who was considered as "white," Asian immigrants, including Japanese, argued that they were whites, and thus eligible for naturalization. For example, Takao Ozawa claimed his legitimacy to become a U.S. citizen based on the whiteness of his Japanese skin color and his complete detachment from Japan and Japanese communities in the United States. The U.S. Supreme Court, however, denied his claim, because according to the "scientific authorities, he was clearly not a Caucasian, and thus not a white. Ian Haney López, *White by Law: The Legal Construction of Race* (New York: New York University Press, 1996), 80-81; Ozawa v. United States, 260 U.S. 178, 198 (1922).

Issei.'"[51] Thus, the 1913 Alien Land Act stigmatized the Japanese as aliens ineligible for citizenship who deserved discriminatory treatment.[52]

Although the Alien Land Act of 1913 aimed to dismantle the livelihood of Japanese immigrants in California, it had quite a few loopholes. For instance, Japanese could still lease land as long as it was for less than three years. More importantly, those who had U.S.-born children registered the land under their children's names because these Nisei (second generation) children were U.S. citizens, and therefore managed to keep their land. In addition to these legal loopholes, an agricultural boom during World War I allowed Japanese farmers to continue expanding their agriculture businesses.[53] To close the loopholes in the original act, in 1920, the California legislature revised the Alien Land Act, prohibiting aliens ineligible for citizenship to be members of agricultural landowning corporations and to be guardians of legal minors. As a consequence, Issei no longer could use their Nisei children's names to own land. The 1920 Alien Land Act aimed to completely devastate the livelihood of Japanese immigrants. Ironically, the anti-Japanese movement motivated Japanese immigrants to seek permanent settlement, but their growing numbers, success in agriculture, formation of family, and permanent settlement led to an even more massive anti-Japanese movement.

<Miscegenation Laws in the West>

In addition to the issues of labor and land, white Americans feared that the influx of Asian immigrants would lead to miscegenation, and many Western states enacted miscegenation laws to prevent Japanese' family formation with white Americans. Since the colonial period, interracial marriage that (re)produced mixed-blood children was unacceptable; racial and sexual mixture evoked anxiety that the United States would become a racially impure nation. At the

[51] Aoki, 39.
[52] Ichioka, 156.
[53] Suzuki, 130.

same time, marriage is also about property inheritance. There was antagonism against interracial marriage because white dominant ideologies did not want non-white widows to inherit their white husbands' property.[54] According to historian Peggy Pascoe, it was believed that "setting racial boundaries was crucial to the maintenance of ordered society" and miscegenation laws "function[ed] as the ultimate sanction of the American system of white supremacy."[55] Interracial marriage was a significant occasion in which racial and gender lines were disrupted, and the disruption not only undermined the imagined racial purity but also deteriorated the social order. Therefore, as early as 1661, the Maryland colony prohibited interracial between white servants and black slaves.[56] While the miscegenation laws in the South predominantly prohibited marriage between whites and blacks, the racial diversity in the West made Western miscegenation laws more complex and comprehensive as they targeted Asians and Native Americans as well as blacks. For example, California prohibited "[a]ll marriages of white persons with negroes or mulattoes" as soon as it achieved statehood in 1850.[57] Throughout the 1850s and 1860s, other Western states and territories of Arizona, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming enacted similar miscegenation laws.[58] Upon the influx of Chinese immigrants in the mid-nineteenth century, Nevada (1861), Idaho (1864), Arizona (1865), Oregon (1866), and Wyoming (1869) prohibited marriage between whites and Asians.[59] As Asian immigration continued to increase in the early twentieth century, other states revised their laws to include various Asian groups. For example, in 1880, California revised the

[54] Peggy Pascoe, "Race, Gender, and Intercultural Relations: The Case of Interracial Marriage," *Frontiers* 12, no. 1 (1991): 7.
[55] Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2009), 49, 51.
[56] Alex Lubin, *Romance and Rights: The Politics of Interracial Intimacy, 1945-1954* (Jackson: University Press of Mississippi, 2005), 5.
[57] An Act Regulating Marriage, *The Statutes of California, Passed at the First Session of the Legislature*, ch. 140, sec. 5 (1850).
[58] Fowler, 344, 350, 363, 400, 430, 436, 439.
[59] Pascoe, *What Comes Naturally*, 79-80.

1850 law to include "Mongolians," which was the most common term in the miscegenation laws to refer to Asians.[60] In 1861, Nevada's law used "Chinese," but it was revised in 1912 employing the more comprehensive phrase of "Malay or brown race, Mongolian or yellow race" to refer to Asians.[61] By the end of the 1930s, fifteen states, ten of which were in the West, prohibited marriage between whites and Asians.[62]

The pervasive presence of miscegenation laws in Western states indicates that interracial (and international) marriage was not uncommon because the presence of a law often reflects the lawmakers' desire to create the ideal state by controlling the reality in which people were taking undesirable actions. Therefore, the presence of miscegenation laws in the West not only indicated the general desire to maintain an imagined purity of the white race but also confirmed that interracial marriage was common enough that the racial purity could not be maintained without miscegenation laws.

Moreover, the fear of miscegenation between Japanese men and white women was associated with the fear of Japanese immigrants' economic success in agriculture. Historian Herbert P. Le Pore claims:

> Progressives in California believed that economic self-preservation was closely united with racial preservation. It was believed that, if the Japanese were allowed to make economic inroads [to California's agriculture], it would be only a matter of time before they would make racial inroads. Inter-marriage [sic] and propagation of their race would impair the Anglo-Saxon racial purity so important to the Progressives' concept of economic leadership.[63]

A front-page article in *The Los Angeles Times* demonstrates the conflation of the "economic inroads" and "racial inroads." The article, entitled "Jap Spud King Favors Inter-racial Marriages," reported George Shima's testimony before Congress' Immigration and Naturalization Committee,

[60] An Act to Amend the Civil Code of 1872.
[61] Fowler, 400. Arizona's 1931 miscegenation law included "Hindus."
[62] Pascoe, *What Comes Naturally*, 587.
[63] Le Pore, 100.

of which Senator James D. Phelan was a member.[64] Shima was the president of the Japanese Association of America and known as the "potato king" for his success in potato farming. Despite his claim that he reduced the size of his business and was supervising approximately forty Americans on his potato field, the article used "Jap *Bosses* [emphasis added] Americans" as a section title.[65] This title sounded as if Shima was a malicious, arrogant boss who exploited the American workers. In addition, with regards to interracial marriage, Shima was actually not in strong support. He stated: "[t]here may be objection now, but a hundred years from now we will look back upon it as all right."[66] More importantly, he said: "[t]o be sure, a good many Japanese don't make enough money to support Yankee girls. They are too expensive."[67] His words suggested that there might be Japanese men who married white American women, but the number must have been small as Japanese were not making enough money for Americans to be concerned about this matter. On California's miscegenation laws, Japanese American attorney Megumi Dick Osumi notes:

> The public's fear of miscegenation expressed itself in two forms. One was Californians' belief in the familiar stereotype, first applied to the Chinese and then the Japanese, of an immoral, sexually aggressive Asiatic. […] The second manifestation of this fear was hostility against interracial marriage between whites and Japanese. The anti-Japanese advocates exploited this sentiment with inflammatory propaganda.[68]

Similarly, Peggy Pascoe claims that newspaper coverage on Asian-white intermarriage both racialized and sexualized Asian men, depicting them as "sexual dangers" and white women as "deluded victims."[69] The way in which *The Los Angeles Times* misconstrued Shima's words fit into the claims of Osumi and Pascoe that as "racial inroads," Japanese were "aggressively"

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[64] "Jap Spud King Favors Inter-racial Marriages," *The Los Angeles Times*, July 13, 1920.
[65] Ibid.
[66] Ibid.
[67] Ibid.
[68] Megumi Dick Osumi, "Asians and California's Anti-Miscegenation Laws," in *Asian and Pacific American Experiences: Women's Perspectives*, ed. Nobuya Tsuchida (Minneapolis: Asian/Pacific American Learning Resource Center and General College University of Minnesota, 1982): 13.
[69] Pascoe, *What Comes Naturally*, 90-91, 93.

seeking white American women as their wives. *The Los Angeles Times*'s headline, "Jap Spud King Favors Inter-racial Marriages," stoked white Americans' racial fear that Japanese immigrants desired to marry white American women and that they were actually trying to take over the United States both economically and racially.

<Western Newspapers' Coverage on Japanese-White Marriage>

Although *The Los Angeles Times*' story on Shima's views was meant to warn Americans and expressed anti-Japanese sentiment, when the newspaper reported about actual Japanese-white couples, its tone was more nuanced than a simplistic agitation against the Japanese and interracial marriage. Under the racial clause of the Naturalization Acts and the Expatriation Act of 1907, an American woman who married a Japanese immigrant lost not only her birthright U.S. citizenship but also her racial status as a white person, and she herself became an alien ineligible for citizenship upon marriage. As a traitor to the white American nation, the Expatriation Act punished a white American woman who married a Japanese immigrant by depriving her U.S. citizenship and racial status. Nonetheless, her subjection to anti-Japanese laws was an unexpected consequence. In order to protect some of those women who married Japanese immigrants, newspapers provided details of their backgrounds, suggesting that they were respectful women whose husbands "happened" to be Japanese immigrants. In addition, newspapers provided their Japanese husbands' backgrounds to illustrate how Americanized they were and to demonstrate that they were not a threat to the white American nation. While newspapers did not completely celebrate Japanese-white interracial and international marriage, they tried to make it at least acceptable to save "our white American daughters" from the stigma of interracial marriage as well as the loss of U.S. citizenship and the racial status as whites.

The newspaper coverage on Mr. Katustaro Tanigoshi and Mrs. Ida May Tanigoshi is one of those cases that revealed the desire to protect a white American wife of a Japanese immigrant from the anti-Japanese laws and the stigma of interracial marriage. On October 27, 1916, Mrs. Ida May Tanigoshi purchased a piece of land in Ivanhoe in Los Angeles County from Mr. Philo Galpin Forsythe. As demanded by California's Torrens Land Act, under which all ownerships and transfers of land had to be registered at the county register offices, Mr. Forsythe had a certificate of the land title notarized by Mr. Earl Newmire, Notary Public and attorney, and delivered it to Mrs. Tanigoshi. In November 1916, on behalf of Mrs. Tanigoshi, Mr. Newmire went to the Los Angeles County Recorder Office with Mr. Forsythe's title to register the transfer of the land. County Recorder C. L. Logan, however, refused to register the land transfer to Mrs. Tanigoshi under the provisions of the Expatriation Act of 1907 and California's Alien Land Act of 1913.[70] Mrs. Tanigoshi was a white woman born in the United States, and in 1908 married Mr. Katsutaro Tanigoshi, a Japanese immigrant, in Illinois, where interracial marriage between an Asian and a white was *not* prohibited.[71] For County Recorder Logan, Mrs. Tanigoshi was no longer a U.S. citizen and was subject to the Alien Land Act. Unsatisfied with his refusal, Mrs. Tanigoshi filed a lawsuit, claiming her right to the property as a white American citizen.

From November 1916 to January of 1917, *The Los Angeles Times* followed Mrs. Tanigoshi's case and published a total of five articles.[72] All of the articles reflected the conflicting desires to exclude the Japanese from the United States and to protect a white American woman from the anti-Japanese laws. The first article published on November 26, 1916 explained the situation as follows:

[70] Los Angeles County Superior Court, "People of the State of California v. Ida May Tanigoshi," in *Memorandum on Motion to Set Case for Trial* (1917), 2-4.
[71] "Cannot Record Property Here," *The Los Angeles Times*, November 26, 1916.
[72] Despite the multiple reports, *The Los Angeles Times* was inconsistent with the spelling of the name "Tanigoshi."

> The white wife of a Japanese cannot hold property in California, if the opinions of County Counsel Hill and Deputy County Counsel Faries are sustained in courts, to which the matter will probably be taken by Katsutaro Tanigoshi, a local interpreter and American university man, who tried to buy a plot of ground in the name of Mrs. Ida May Tanigoshi, his spouse.[73]

Despite the fact that the land transfer and lawsuit was under *Mrs.* Tanigoshi's name, the article stated that her husband, Mr. Tanigoshi, would "take the matter" to court. At the same time, it was he, not Mrs. Tanigoshi, who tried to buy land. The article denied Mrs. Tanigoshi's agency both in the purchase of the land and in the lawsuit. Instead, it suggested that Mr. Tanigoshi was the mastermind of the land scheme, taking advantage of his white spouse. In other words, Mr. Tanigoshi cleverly used his wife's race to circumvent the anti-Japanese law. Even though the court record indicated that Mr. Earl Newmire, Mrs. Tanigoshi's attorney, went to the County Recorder Office, *The Los Angeles Times* reported it was "[Katsutaro] Tanigoshi," who "appeared before County Recorder Logan, asking to have the transfer of seven lots from Philo Galpin Forsythe to Mrs. Tanigoshi, an American woman, placed on the county records."[74] As the article reported, Mr. Tanigoshi was an attorney graduated from Northwestern University in Illinois, but unable to practice law in California because the state law allowed only "white male citizen[s], or white male person[s]" who had already applied for naturalization to practice law.[75] Therefore, Mrs. Tanigoshi needed Mr. Newmire as her attorney. Nonetheless, *The Los Angeles Times* highlighted Mr. Tanigoshi's cunningness, emphasizing his initiative in the attempt to register the land under Mrs. Tanigoshi. In fact, the article's disrespect was evident as it conferred the title of

[73] "Cannot Record Property Here."
[74] Ibid.
[75] Civil Procedure Code of 1872, *The Code of Civil Procedure of the State of California*, sec. 275 (1872). In 1911, Mr. Tanigoshi wrote a comprehensive book on laws in the United States. The book consisted of nearly five hundred pages and explained in Japanese both federal and state laws that were relevant to Japanese immigrants and their communities. Katustaro Tanigoshi, *Jitsuyō Beikoku hōritsu yōgi* [Practical Laws of the United States] (Los Angeles: K. Tanigoshi, 1911). According to Elias Manchester Boddy, when Mr. Tanigoshi came to California, his legal knowledge was highly valued and he served as the president of the Los Angeles Japanese Association from 1918 to 1919. Boddy 183.

"Mrs." to the wife throughout the article, yet "Mr." was not used unless it referred to "Mr. and Mrs. Tanigoshi." The article subtly constructed Mrs. Tanigoshi as a "deluded victim," who was possibly manipulated by her Japanese husband.[76] Therefore, after explaining the Expatriation Act's effect on Mrs. Tanigoshi, the article introduced that there had been opposition to the Expatriation Act even though the U.S. Supreme Court upheld the act in the *Mackenzie* case in the previous year. By doing this, it hinted about a possibility that the Expatriation Act could be repealed, and in that case Mrs. Tanigoshi would be "rescued" from being "an alien ineligible for citizenship."

Nonetheless, *The Los Angeles Times* did not fully support Mrs. Tanigoshi. The article confirmed the legitimacy of Mr. and Mrs. Tanigoshi's marriage in Illinois, and acknowledged that she gave consent in marrying Mr. Tanigoshi. Although California honored marriage licenses issued in other states, Mr. and Mrs. Tanigoshi's marriage went against the racial ideology of California and the United States. As such, Mrs. Tanigoshi deserved the punishment of becoming an alien ineligible for citizenship. In the end, *The Los Angeles Times* concluded that she should not be able to own land under the Alien Land Act:

> the State would be the loser by the registration of land in the name of Mrs. Tanigoshi. Unless a court of competent jurisdiction orders the granting of title to the white wife of the Japanese, the advice is against the writing of the certificate desired by her.[77]

Here, the tone of the article was unsympathetic, even hostile, to Mrs. Tanigoshi. The latter sentence no longer referred to Mrs. Tanigoshi with her name and instead used "the white wife of the Japanese." The article's ambivalent tone both generated and reflected the general public's attitude toward the notion of ideal white womanhood. White women were supposed to protect the purity of the white American race and raise children accordingly. If a white woman failed to

[76] Pascoe, *What Comes Naturally*, 90.
[77] "Cannot Record Property Here."

uphold this ideal, a cunning and sexually aggressive non-white man must have manipulated her. Nonetheless, in reality, Mrs. Tanigoshi's marriage to Mr. Tanigoshi was valid. For the white general public, she betrayed the white American nation by marrying a Japanese immigrant, and deserved some forms of punishment.

As *The Los Angeles Times* continued to report on Mrs. Tanigoshi's land case, the conflicting desires were expressed in a more explicit manner. Less than a week later, *The Los Angeles Times* published the second article, entitled "Alien's Wife Demands Land," reporting that the court date was set for January 20, 1917.[78] According to the article, there were two cases in which Asians were challenging the Alien Land Act; one was a Japanese in Riverside and the other was a Chinese in Santa Barbara. But Mrs. Tanigoshi's case was "the first instance of the white woman of an alien claiming the right to own property in the State."[79] In this second article, *The Los Angeles Times* was unsure about the best solution to Mrs. Tanigoshi's case. This article correctly reported that Mr. Earl Newmire was an attorney for Mrs. Tanigoshi, and Mr. Forsythe, from whom she bought the land, also believed that the Alien Land Act was unconstitutional. Because Mrs. Tanigoshi's attorney was a white man, *The Los Angeles Times* could no longer use Mr. Tanigoshi as the scapegoat of the land scheme. Thus, the second article remained silent about Mr. Tanigoshi except in the headline and sub-headlines in which he was identified as an "alien" and a "Jap." Still, *The Los Angeles Times* was not fully convinced that Mrs. Tanigoshi should be able to own land. If it had supported Mrs. Tanigoshi, it would have faced a strong anti-Japanese backlash. Thus, at this point, referring to Mr. Tanigoshi in a derogatory manner was the best it could do to appeal to the anti-Japanese audience and those who might be sympathetic to Mrs. Tanigoshi even though she married a Japanese immigrant. The article concluded that if the

[78] "Alien's Wife Demands Land," *The Los Angeles Times*, December 1, 1916.
[79] Ibid.

court did not allow the land transfer from Mr. Forsythe to Mrs. Tanigoshi, "[t]he next step […] involving a question unusual in the State is whether Mrs. Tanigoshi can be naturalized."[80] In the case of a single white woman, there would be no question that she was eligible for naturalization. In the case of a married woman, her husband's naturalization made her a naturalized citizen. In Mrs. Tanigoshi's case, however, she was "physically" and socially a white woman born in the United States, yet legally an alien ineligible for citizenship. The Expatriation Act's intent to punish American women who married foreigners created these two realities, and the gap between the two raised an "unusual" question.[81]

On January 18, 1917, four days before the court date,[82] *The Los Angeles Times* reminded its readers about Mrs. Tanigoshi's case with the article entitled "Can White Wife of Japanese Own Land Here?"[83] This short article, consisted of three paragraphs, highlighted the gap between the two realities of Mrs. Tanigoshi's racial and citizenship status as the point of dispute. The sub-headline of the article read: "State Asks Forfeiture of Lot, Which Woman Seeks to Register Under Torrens Act, on Ground that Marriage to Oriental Automatically Cancelled Citizenship."[84] The article further explained: "[t]hat the white wife of a Japanese subject takes the citizenship of her husband is the position taken by the State in the case of Ida May Tanigoshi […]. The Attorney General asks that the title to the lot reverted to the State" "on the ground that she is a Japanese subject and therefore cannot have title to real property in California under the anti-alien act."[85] On the other hand, according to the article, "Mrs. Tanigoshi, who is the wife of K. Tanigoshi, an interpreter who has a college education, contends that as a Caucasian she is

[80] Ibid.
[81] Ibid.
[82] Although "Alien's Wife Demands Land" stated that court date was January 20, 1917, according to "Can White Wife of Japanese Own Land Here," it was scheduled on January 22, 1917. "Can White Wife of Japanese Own Land Here?" *The Los Angeles Times*, January 18, 1917.
[83] Ibid.
[84] Ibid.
[85] Ibid.

entitled to citizenship and can properly own property."[86] The argument of the state relied on the legal status of Mrs. Tanigoshi, while hers was based on the physical and social reality of her racial status. Although the article spent two of the three paragraphs on the position of the state, its tone became more sympathetic to Mrs. Tanigoshi. The previous two articles' headlines were "Cannot Record Property Here" and "Alien's Wife Demands Land," while the third article's headline was "Can White Wife of Japanese Own Land Here?" The first two were in an assertive tone. The former suggested that there was no possibility of Mrs. Tanigoshi's land ownership, yet she nonetheless insisted on her "entitlement" as suggested by the latter. In addition, the use of the term "alien" rather than "foreigner" or "Japanese" alienated Mrs. Tanigoshi from the white American nation. In fact, as noted above, a sub-headline referred to Mr. Tanigoshi as a "Jap," further hinting that she betrayed the white American nation. Although the second article had an ambivalent tone, its headlines constructed Mrs. Tanigoshi not only as a traitor of the nation but also as a land-hungry woman. On the contrary, the third article's headline raised the question whether Mrs. Tanigoshi could own the land or not, instead of asserting that she could not. Furthermore, while the first two articles silenced Mrs. Tanigoshi, the third article stated: "Mrs. Tanigoshi […] contends that as a Caucasian she is entitled to citizenship and can properly own property."[87] It was neither Mr. Tanigoshi nor Attorney Newmire who was taking the initiative in the lawsuit. It was Mrs. Tanigoshi who was at the center of the case. Unlike the previous two articles, the third article gave agency to Mrs. Tanigoshi.

At the same time, the third article took a more lenient attitude toward Mr. Tanigoshi. The headline described him as a "Japanese," not a "Jap" or an alien. In addition, it introduced him as

[86] Ibid.
[87] Ibid.

"K. Tanagashi [sic], an interpreter who has a college education."[88] Although his name was misspelled and the first name was not completely revealed, he was not silenced in this third article. Moreover, his occupation and educational level suggested that he was not a laborer or a lower-class person. His background information in this short article had a significant meaning, because the article was published only four days before the court date. The readers of *The Los Angeles Times* might remember this article but not the first two with detailed information. Given that Mr. Tanigoshi was an educated man, they might accept Mrs. Tanigoshi's choice of husband, although reluctantly, and support her land ownership.

Thus, *The Los Angeles Times* continued describing Mr. Tanigoshi as "Japanese" and "an interpreter and college graduate," and the fourth article, entitled "Will She Lose Her Property?" published on the day before the court date, raised an issue.[89] While the earlier articles suggested that Mrs. Tanigoshi should not own the land, the title of the fourth article did not question her land ownership. Instead, it suggested that Mrs. Tanigoshi *already* owned the property, but her ownership was jeopardized. Similarly, one of the sub-headline stated: "Alien Act *may* Prevent Her Retaining Title [emphasis added]."[90] This also suggested that Mrs. Tanigoshi already had the title in her hand. At the same time, the word "may" might be interchangeable with "shall" or "must," meaning that the Alien Land Act must prohibit Mrs. Tanigoshi's property ownership. Nevertheless, "may" could also mean possibility, in which the sub-headline meant that there was a possibility that the Alien Land Act would not allow Mrs. Tanigoshi to own property. Unlike the previous articles, this fourth article expressed more sympathy for Mrs. Tanigoshi. Thus, the article supported Mrs. Tanigoshi's land ownership when introducing the state's position: "[t]he claim of the State that the lot *owned* [emphasis added] by Mrs. Tanigoshi […] who is seeking to

[88] Ibid.
[89] "Will She Lose Her Property?" *The Los Angeles Times*, January 21, 1917.
[90] Ibid.

have the property registered under the Torrens Land Act, escheats to the State promises."[91] She had already owned the land, but merely could not have it registered. This is a stark contrast to the second and third articles' headlines, "Alien's Wife Demands Land" and "Can White Wife of Japanese Own Land Here?" The former implied that Mrs. Tanigoshi was a land-hungry woman, while the latter questioned her land ownership itself, not the ability to register. In addition, the fourth article explained a more liberal interpretation of the Torrens Land Act. It stated that the Torrens Land Act "holds generally that all persons not under 'legal disability' are entitled to register land, and in another portion provided that any person may do so. The question is here what constitutes legal disability."[92] Although it left the interpretation of legal disability to a judge, its use of "all persons" and "any person" suggested that the Torrens Land Act was very inclusive and Mrs. Tanigoshi was supposed to be included in "all persons" and "any person."

To support Mrs. Tanigoshi's land ownership, the article detailed Mr. and Mrs. Tanigoshi's background similar to the first article. It informed the audience that they married in Illinois in 1908 and had one daughter and two sons, one of whom attended a local public school.[93] Mr. Tanigoshi graduated from Northwestern University with a law degree, but was prohibited from practicing law because of his nationality. More importantly, Mrs. Tanigoshi was sick at home, so that Mr. Tanigoshi was:

> doing everything he can to save her from annoyance, fearing that any excitement might make her condition worse. He is very much averse to the publicity the case has caused because of its unpleasantness for his wife and because of his children.[94]

This description implied that it was not Mr. Tanigoshi who wanted the property. *The New York Times* also published an article on Mrs. Tanigoshi's lawsuit as a test case, reporting that Mr.

[91] Ibid.
[92] Ibid.
[93] Ibid.
[94] Ibid.

Tanigoshi was more concerned with his wife's health and wanted a quite environment for her and their children.[95] The depiction feminized Mr. Tanigoshi as a humble, gentle, and caring man who would do anything, including domestic work, for his sick wife. The feminization implied that he was not endangering his wife and her white womanhood. He and his wife had mixed-blood children, but the couple was raising their children as U.S. citizens. Sending their child to a public school had a significant meaning in this context. Issei parents often sent their U.S.-born Nisei children to Japan for the "proper" Japanese education.[96] The fact that one of Mr. and Mrs. Tanigoshi's children was going to a U.S. public school meant that Mr. Tanigoshi was detached from Japan and assimilated into the U.S. society. Therefore, even though "[h]e said last night it would be most unjust if his wife should lose her property," the article quoted his words as conclusion: "the laws are for deciding these questions. This is a test case and we will know the verdict very soon."[97] While Mr. Tanigoshi believed in his wife's property ownership, if the court ruled against her, he was willing to obey the ruling and abide by the laws of the land. Unlike the first article, *The Los Angeles Times* no longer suspected his entitlement to the property. Mr. Tanigoshi was not in question. He was an educated professional who was willing to assimilate. Ultimately, he was not a threat to the white America. The depiction of Mr. Tanigoshi suggested that Mrs. Tanigoshi was one of the United States' loyal citizens whose husband happened to be from a different race. Her choice of husband did not constitute betrayal to the white American nation. Therefore, the articles suggested that Mrs. Tanigoshi deserved the protection of the U.S. legal system. By depicting Mr. and Mrs. Tanigoshi in these manners, the articles successfully

[95] "New Japanese Test Case in California," *The New York Times*, January 19, 1917.
[96] Yuji Ichioka, *Before Internment: Essays in Prewar Japanese American History*, ed. Gordon H. Chang and Eiichiro Azuma (Stanford: Stanford University Press, 2006), 32-33.
[97] "Will She Lose Her Property?"

negotiated a nationalistic sentiment and white dominant ideologies, while still articulating anti-Japanese sentiment.

It was not only *The Los Angeles Times*, who negotiated those ideologies. On January 23, 1917, the final article reported the judgement of the court.[98] According to the article, Judge York acknowledged that Mrs. Tanigoshi, as a wife of a Japanese, was a subject of Japan. However, the Torrens Land Act's legal disability meant "minors and idiots," so that Mrs. Tanigoshi should be allowed register her land. At the same time, he ruled that the County Recorder did not have any authority to question her right to own property and County Recorder Logan was supposed to register Mrs. Tanigoshi's land. Nevertheless, Judge York ruled that as a Japanese subject, Mrs. Tanigoshi was prohibited from transferring the land. In short, she could own the land, but not transfer it. Just like the series of the articles, this court decision on Mrs. Tanigoshi's case compromised two conflicting desires. On the one hand, white Americans wanted to exclude Japanese immigrants and their families, including their white American wives, from the United States; on the other hand, they also wanted to protect the white wives who were treated as "traitors" under the Expatriation Act of 1907. Mrs. Tanigoshi's case revealed ambivalence in the racial and gender ideologies of the United States.

Still, anti-Japanese sentiment continued to intensify. In February 1920, State Senator J. M. Inman, the president of the California Oriental Exclusion League, made an anti-Japanese speech at a conference of the District Federation of Women's Clubs of Los Angeles County.[99] The Women's Clubs invited Senator Inman from Sacramento to their conference in Los Angeles and he met some of the board of the directors of the Los Angeles County Anti-Asiatic Association. In his speech, Senator Inman provided the statistics on Japanese immigrants since 1860. Between

[98] "Japanese Land Rights Fixed," *The Los Angeles Times*, January 23, 1917.
[99] "Japs Seeking White Wives," *The Los Angeles Times*, February 8, 1920.

1860 and1869, according to Inman, the number of Japanese who enter the United States was 137, and increased to 139,712 between 1900 and 1909. Nonetheless, the number dropped to 77,744 between 1909 and 1919. As Senator Inman explained, the drop was because of the Gentlemen's Agreement of 1907, which informally prohibited entry of Japanese laborers. As noted earlier, the Gentlemen's Agreement, however, allowed non-laborers to enter the United States.

As a consequence, many of those who came to the United States form Japan after 1907 were wives and children. With the presence of a miscegenation law in California, interracial couples of Japanese and whites had to go to states without a miscegenation law, such as New Mexico, Washington, or Illinois. Or they had to marry on the high seas. In addition, as noted earlier, George Shima, the potato king, testified before the Immigration and Naturalization Committee in July 1920 that Japanese immigrants did not necessarily want to marry white American women.[100]

Nonetheless, Senator Inman argued in his speech that the "Japanese of California, ever increasing in numbers, want not only our fertile lands, the business of our farmers, […] but they want our daughters as their wives."[101] Inman claimed that "[Japanese farmers] raised vegetables and stuff valued at $62,000,000" with the following statistics:

> the Japanese today control almost 92 percent of the bean crop of California. […] They also control 90 percent of the celery, 82 per cent of the asparagus crop, 79 per cent of the seed crop, 66 percent of the onion, 63 per cent of the cantaloupes, and 50 percent of the beet sugar crop.[102]

Providing the concrete numbers on how much Japanese farmers dominated the production of multiple crops served two purposes. On the one hand, Senator Inman argued that the Japanese were taking over agriculture in California, and their success was attributed to farming on "our

[100] "Jap Spud King Favors Inter-racial Marriages."
[101] Inman, quoted in "Japs Seeking White Wives."
[102] Ibid.

fertile land." On the other hand, by arguing agriculture along with interracial marriage, he suggested that the Japanese would gain greater access to white American women just like they did in agriculture.

To support his argument, Senator Inman relied on a Japanese clergy as his source:

> A Japanese clergyman was in my office recently and he told me the Japs want to intermarry with whites. He said their aim in this is to increase the weight and stature of the Japanese. This clergyman told me that the Japanese felt themselves the equal of any white nation and were seeking recognition as such.[103]

Because clergymen were in position of authority, this Japanese clergyman, whose name was not revealed, was used as a representative of the Japanese in California. The office, a private space, implied that the clergyman told his sentiments honestly to Senator Inman. The lack of the clergy's name and their conversation in a private space remained a possibility that Senator Inman might have made up the story. Nevertheless, as a State Senator and Japanese clergyman as his source, Inman convinced the anti-Japanese audience that the Japanese perceived white American women as a tool to advance their status. Since Inman's audience was primarily the club women, who were most likely to be white, middle- to upper-class women, his speech particularly evoked the fear of Japanese men's sexual aggression toward white women. According to the article, his speech was "frequently interrupted by burst of applause."[104] For Senator Inman and his audience, marriage of the Japanese with "our daughters" was absolutely unacceptable.

The Japanese dominance in agriculture was curbed by the Alien Land Act of 1920.[105] Nonetheless, the fear that Senator Inman evoked in his audience became a reality with the

[103] Ibid.
[104] "Japs Seeking White Wives."
[105] Suzuki, 130-131, 133-136, 139-140; Aoki, "No Right to Own," 59.

marriage of Dr. James Hatsuji Hara and Dr. Margaret E. Farr.[106] The first half of this long article published in *The Los Angeles Times* introduced Mrs. Hara's background. According to the article, Mrs. Hara was a white physician employed by Los Angeles County. She was well-recommended and passed the civil service examination with an almost perfect score. In 1918, the county health officer Dr. Pomeroy started a survey on "the alarming Japanese birthrate in Los Angeles county [sic]" and employed Dr. Hara. Dr. Pomeroy assigned Dr. Farr to assist Dr. Hara, and "[i]t was during this canvass of the county that the Japanese and Dr. Farr, a native American girl from New England, began the friendship which later developed into love and marriage."[107]

As noted earlier, a white person's marriage with "a negro, mulatto, or Mongolians" was prohibited in California. Therefore, the couple asked if they could legally marry and were told legal if the ceremony was performed on the high seas. So they married on the high seas, three miles away from land. Nonetheless, the legality of their marriage was questioned, forcing them to travel to New Mexico, where interracial marriage between a white and an Asian was not prohibited by law, and they remarried.[108]

The article reported that Mrs. Hara could not work for the county because she was no longer a citizen of the United States as a result of her marriage with a Japanese immigrant. The article stated that Dr. Pomeroy missed Mrs. Hara, saying that "the loss of Mrs. Hara by the health department will be grievously felt, as she has been one of its most valued attaches, doing her work efficiently and well."[109] The article praised Mrs. Hara and demonstrated her value and status as a physician.

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[106] "Woman Physician Wed Japanese; Job Forfeit," *The Los Angeles Times*, July 29, 1921. Readers of *The Los Angeles Times* could know Dr. Hara's full name because his wife was introduced as Mrs. James Hatsuji Hara in the beginning of the article. Throughout the article, he was referred to only as Dr. Hara.
[107] Ibid.
[108] Ibid.
[109] Ibid.

In addition to Mrs. Hara's background, the first half of the article also introduced Mrs. Hara's father, Rev. Frederick Farr, a pastor of the Calvary Baptist Church. It stated: "Dr. Farr has been estranged from her family by her marriage. Her father said […] he would have preferred to see her dead."[110] Rev. Farr told the newspaper reporter:

> Would that I had laid her away in a grave beside her dead mother before she met this oriental. […] It was heart-breaking to me. The life she had chosen was worse than a thousand deaths to her. […] I have prayed that something could be done to have the Federal authorities have that man deported.[111]

Although Rev. Farr was a pastor, who was supposed to be respectful and respectable, he had no desire to celebrate his daughter's marriage. He expressed strong anti-Japanese sentiment and even sought a way to deport Dr. Hara in order to cancel their marriage. In anticipation of her father's objection, Mrs. Hara did not tell him and her stepmother about her marriage with Dr. Hara.

While Mrs. Hara's father was furious about her marriage with a Japanese man, Mrs. Hara stated that she was very happy with her husband. She said: "[m]y marriage to Dr. Hara was prompted purely by my feelings of admiration for him."[112] Mrs. Hara demonstrated that their marriage was by no means political, stating that the marriage was solely based on love. Her comment implied that she was not an instrument to improve her Japanese husband's social status as argued in the anti-Japanese speeches discussed earlier. She also told the reporter that she voluntarily resigned her job at the County Health Office and was helping her husband in his practice. In addition, she stated that her relationship with her family was not severed. The article reported, "she said she would continue to visit her father at least once a week."[113] Mrs. Hara's comments conveyed that she was a virtuous wife who was willing to quit her job to help her

[110] Ibid.
[111] Ibid.
[112] Ibid.
[113] Ibid.

husband. At the same time, she was a considerate daughter who loved her father very much. In short, Mrs. Hara presented herself as the embodiment of ideal white womanhood. The only problem was that her husband happened to be a Japanese man.

The sympathetic depiction of Mrs. Hara as an ideal woman functioned in two ways. On the one hand, *The Los Angeles Times* supported her father's anti-Japanese position that Mrs. Hara was too good for a Japanese man. On the other hand, it evoked sympathy among readers. She was such a wonderful, accomplished woman, who deserved to be happy, even as a wife of a Japanese man. In other words, the article did not depict Mrs. Hara as a traitor to the United States as the Expatriation Act suggested. The article included contradictory feelings: a desire to exclude Japanese as expressed by Rev. Farr, but also a desire to protect a white wife and daughter. The article attempted to solve this contradiction by describing Dr. Hara as "a Christianized Japanese," giving the impression that Mrs. Hara did not marry a savage, uncivilized yellow man who belonged to an inferior race. The article concluded with Dr. Hara's background:

> *Dr. Hara stated* that he came to America from Japan twenty years ago. He is 36 years old and his wife is 33. *Dr. Hara also stated* that he is a descendant of the Samurai, an upper class in his native country. He graduated from the Mt. Vernon High School, Mt Vernon, Wash., and in 1918 graduated from the medical college of the Seventh-Day Adventists at Loma Linda [emphasis added].[114]

According to this depiction, Dr. Hara was quite Americanized because he lived in the country for twenty years and received his high-school and college education in the United States. At the same time, he was from the upper class of samurai. Dr. Hara was not the most desirable husband for Mrs. Hara, but he might be acceptable as he was assimilated and not a threat to white America.

Nonetheless, the article did not completely trust Dr. Hara. Most of his background information was just based on what *he stated*. In order to verify his claim that he was a Christian,

[114] Ibid.

Dr. N. J. Waldorf, a pastor of the church he attended, was cited. Dr. Hara was introduced as "a member of that church and also consulting physician at the White Memorial Hospital."[115] Dr. Hara's claims needed to be confirmed by someone, probably white, hopefully in respectable position. The article on Dr. and Mrs. Hara represented ambiguous desires towards interracial marriage, including the one between an upper class Japanese man and a white American woman.

<Conclusion>

Throughout the twentieth century, the United States continued its effort to maintain a racially pure white nation. Intolerance against all immigrants, but especially Asians at the turn of the century, led to the enactment of the anti-Asian laws, such as the Alien Land Acts and miscegenation laws. These laws undoubtedly embodied racist and sexist national ideologies, and tried to completely dismantle the livelihood of Japanese immigrants. Nonetheless, the Expatriation Act of 1907 brought unexpected consequences. White American women who married Japanese immigrants lost their U.S. citizenship and racial status as white, which affected a broad spectrum of their everyday life. The impacts of the loss of citizenship were significantly different between white women who married Japanese immigrants and those who married European immigrants. Citizenship meant not only a right to political participation, but also property ownership and job qualifications. Mrs. Tanigoshi was denied the right to transfer her land. Both Mr. Tanigoshi and Mrs. Hara could not perform their chosen professions because they were not U.S. citizens. Citizenship was an essential part of life that provided access to political, economic, and social resources, and interracial couples challenged the Expatriation Act and anti-Japanese laws that used citizenship and/or racial eligibility for citizenship to deny access to resources. As a response to the challenge, newspapers reported on the interracial couples with conflicting desires. On the one hand, they did not hesitate to express anti-Japanese sentiment. On

[115] Ibid.

the other hand, they did not treat white American women who married Japanese men as "traitors" to the white American nation. While interracial marriage was not completely celebrated, white American wives' loss of citizenship as well as the newspaper coverage on them demonstrated that in the early twentieth century, being a white woman born in the United States did not necessarily mean that she was a citizen of the United States who was immune to anti-Asian laws, and illuminated the unfairness of the Expatriation Act.

Chapter 6

"Just Beginning to Be Citizens"[1]:
Emerging Critiques of Marital Naturalization/Expatriation and Women's Political Consciousness

<Introduction>

On March 14, 1912, *The Los Angeles Times* published an article entitled "A Vote Getter But No Citizen," reporting that Mrs. Ethel C. Mackenzie, a California-born woman, was denied the opportunity to register to vote because her husband, Gordon Mackenzie, was a British subject.[2] This denial was especially offensive not only because Californian women had achieved suffrage in 1911, but also because Mrs. Mackenzie was a devoted suffragist and an active member of a state-wide suffrage organization, the Clubwoman's Franchise League of San Francisco, which evolved into the New Era League of California in October, 1911 after Californian women achieved suffrage.[3] The Clubwoman's Franchise League conducted suffrage campaigns throughout California through its local branches.[4] As a suffragist, Mrs. Mackenzie was the "chairman" of the New Era League's voter registration campaign committee whose mission included escorting women to the voter registration desk at the city hall as well as offering assistance for registration.[5] Women in San Francisco who completed the voter registration by February 27, 1912 could cast their first ballots on March 28.[6] Mrs. Mackenzie was, however, denied the right to vote, because Section 3 of the Expatriation Act of 1907

[1] House Committee on Immigration and Naturalization, *Relative to Citizenship of American Women Married to Foreigners*, 65th Cong., 2d sess., 1917, 53.
[2] "A Vote Getter But No Citizen," *The Los Angeles Times*, March 14, 1912.
[3] "New League of Clubwomen to Watch Politics," *The San Francisco Call*, November 1, 1911; Selina Solomons, *How We Won the Vote in California: A True Story of the Campaign of 1911* (1912; repr., London: Forgotten Books, 2013), 28.
[4] Ibid.; Susan Englander, "'We Want the Ballot for Very Different Reasons': Clubwomen, Union Women, and the Internal Politics of the Suffrage Movement, 1896-1911," in *California Women and Politics: From the Gold Rush to the Great Depression*, ed. Robert W. Cherny, Mary Ann Irwin, and Ann Marie Wilson (Lincoln: University of Nebraska Press, 2011), 224.
[5] "God of Love Loses His Dignity," *The San Francisco Call*, February 11, 1912. Members of the New Era League took women to the registration in automobiles which they put a large banner of "Register Today!" The New Era League's automobiles stopped for any woman who wanted to register and took them to the city hall.
[6] Ibid.

stipulated: "any American woman who marries a foreigner shall take the nationality of her husband."[7] The Expatriation Act changed the nationality of a woman by the mere fact of marriage, making a married woman's citizenship completely dependent on that of her husband.

This chapter examines the beginning of the efforts to repeal the Expatriation Act in the 1910s and demonstrates how women's political consciousness as independent citizens matured as they increasingly understood what it meant to lose independent citizenship. Through close analysis of the two Congressional hearings in the 1910s, this chapter not only illustrates how the contemporaries viewed the Expatriation Act, but also reveals the strategies which the advocates of married women's independent citizenship utilized to advance their cause. During the first Congressional hearing conducted in 1912, those who argued for the repeal of the Expatriation Act were Congressmen William Kent and Everis A. Hayes from California and attorney Milton U'Ren, who later represented Mrs. Mackenzie in her legal fight against the Expatriation Act.[8] Their strategies relied on upper-class Californian women's loss of U.S. citizenship to illustrate the injustice caused by the Expatriation Act. They referred to the women who lost U.S. citizenship as "daughters" of California, treating them as immature women incapable of taking full responsibilities as independent citizens. By infantilizing women in this way, these male advocates asked for the U.S. government to rescue and protect white American women from the loss of citizenship, yet saw no need to challenge the patriarchal gender order embedded in the Expatriation Act.

Five years later, Miss Jeannette Rankin, the first woman in Congress, proposed the second bill to repeal the Expatriation Act. While the 1912 Congressional hearing virtually silenced women's voices, at the 1917 hearing activist women took the initiative, cited negative

[7] *Expatriation Act of 1907*, Public Law 59-193, *U.S. Statutes at Large* 34 (1907): 1228.
[8] "Mrs. Gordon to Rescue of Voteless Women," *The San Francisco Call*, January 23, 1913.

impacts of the loss of citizenship from a variety of standpoints, and eloquently argued for the abolition of marital naturalization/expatriation. All eleven witnesses were women, and gone was the infantalization of women; instead, their critique of the Expatriation Act was shrewd and exhaustive. They attacked the Expatriation Act for not only denying them suffrage, but also as an infringement of property ownership, employment, patriotic duties, and the international reputation of the United States. By 1917, women's citizenship was gaining substantial meanings, and the rhetoric and discourse of the activist women who demanded the repeal of the Expatriation Act reflected their political maturity and sophistication. Their collective effort and consciousness as independent, first-class citizens who argued for themselves and challenged the injustice paved a way to abolish marital naturalization/expatriation for coming decades. In other words, they exercised their own agency to shape their lives and future as well as those of the nation.

<Expatriation Act of 1907, *Mackenzie* Case, and More >

As discussed in Chapter 4, no major protest or newspaper coverage occurred when Congress enacted the Expatriation Act of 1907.[9] At that time, marital naturalization/expatriation was the international norm among European and North American countries.[10] Thus, the United States was merely following the international trend to avoid any complication, such as dual citizenship, with other countries. In 1907, marital naturalization/expatriation was not a completely new practice in the United States. The Citizenship Act of 1855 automatically naturalized foreign-born women who married U.S. citizens as long as they were racially eligible

[9] Candice Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Berkeley: University of California Press, 1998), 61, 63; Ann Marie Nicolosi, "'We Do Not Want Our Girls to Marry Foreigners': Gender, Race, and American Citizenship." *NWSA Journal* 13, no. 3 (Fall 2001): 4.
[10] Bredbenner, 59.

for U.S. citizenship.[11] While the Citizenship Act of 1855 did not affect the nationality of U.S.-born women who married foreigners, the Expatriation Act of 1907 extended the practice of marital naturalization/expatriation to all American women, regardless of race.

Within a few years of the enactment of the Expatriation Act, tremendous responses to the act arose as native-born women who married foreigners were denied all privileges and protection given to U.S. citizens. As discussed in Chapter 4, for women in many Western states, the loss of citizenship meant the loss of suffrage, which they had achieved prior to the Nineteenth Amendment. Therefore, in 1912, the abovementioned Mrs. Ethel C. Mackenzie demanded redress through the courts for the Expatriation Act's impediment of her rights as a U.S. citizen, arguing that the Expatriation Act was unconstitutional. Her loss of citizenship and legal fight drew much attention from newspapers nationwide as the United States was at the height of debate over women's suffrage. In addition, newspapers also reported that Mrs. Mackenzie received support from the New Era League as well as Californian Congressman William Kent and his suffragist wife Mrs. Elizabeth Kent.[12] Mrs. Mackenzie's legal challenge and wide newspaper coverage on women's loss of U.S. citizenship by marriage helped to raise the consciousness about the injustice imposed on married women by the Expatriation Act. Thus, Mrs. Mackenzie challenged not only the act per se, but also the patriarchal tradition of U.S. citizenship.

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[11] *Citizenship Act of 1855, Stats. at Large of USA* 10 (1855): 604. As of 1855, only "free white person[s]" were eligible for naturalization. Section 7 of the Naturalization Act of 1870 extended the racial eligibility to "aliens of African nativity and to persons of African descent." The only exception to marital naturalization was wives and minor children of foreigners who applied for naturalization and made a homestead entry, yet became insane before the completion of naturalization process. *Naturalization Act of 1790, Stats. at Large of USA* 1 (1845): 103; *Naturalization Act of 1870, Stats. at Large of USA* 16 (1871): 256; *An Act Providing for the Naturalization of the Wife and Minor Children of Insane Aliens, Making Homestead Entries under the Land Laws of the United States*, Public Law 61-413, *U.S. Statutes at Large* 36 (1911): 929.

[12] John William Leonard, ed., *Woman's Who's Who of America: A Biographical Dictionary of Contemporary Women of the United States and Canada, 1914-1915* (New York: The American Commonwealth Company, 1914), 453.

While suffrage was one of the more obvious issues to oppose marital naturalization/expatriation, other problems caused by the Expatriation Act soon emerged, and the contemporaries, such as Congressmen, newspapers, and women themselves, gradually learned that married women's loss of U.S. citizenship affected not only women's right to suffrage but also various aspects of women's lives throughout the nation. U.S. citizenship was required for property ownership, including the right to homestead land, and various civil service positions. In addition, the Expatriation Act was a testing ground for U.S.-born women's loyalty to the United States. This implication became more momentous in 1917 when the United States entered World War I, which tremendously intensified the debates over patriotism and citizenship. Women who married Germans or Austrians were not only legally but also socially stigmatized as "enemy aliens." Thus, the Expatriation Act impacted women's political, civil, and social lives.

<The First Bill to Repeal the Expatriation Act – Kent Bill of 1912>

In March 1912, five years after the enactment of the Expatriation Act of 1907, Congressman William Kent (R-CA) introduced the first bill aimed to abolish marital naturalization/expatriation, and the Committee on Foreign Affairs subsequently conducted a hearing in April 1912. Kent's wife, Mrs. Elizabeth Kent, was a leading figure of California's suffrage movement, and since April 1911, she served as the president of the Clubwoman's Franchise League's Marin County branch, just north of San Francisco.[13] When the Clubwoman's Franchise League was reorganized as the New Era League in October 1911, Mrs. Kent served on the New Era League's board of directors.[14] According to *The Los Angeles Times*, Mrs. Kent "ha[s] always believed in suffrage" because it "relates so intimately with homes and families and

[13] Ibid.; "Wife of Congressman Made Suffrage Leader," *The San Francisco Call*, April 10, 1911. A year after the 1912 hearing, Mrs. Kent prepared herself to present a petition for Mrs. Mackenzie to Congress. "Will Petition Congress for California Girl," *The Los Angeles Times*, April 11, 1913.
[14] "New League of Clubwomen to Watch Politics."

the raising the standards for all classes," and thus "[w]e want better school conditions everywhere, sanitary and artistic. We want better protection for life and health among women and children and […] among all kinds of laborers."[15] She believed that women's suffrage would directly impact child welfare because "women will use the ballot to make conditions of life more moral, cleaner and safer [while m]en govern principally from the commercial standpoint."[16] Rep. Kent shared his wife's strong belief that women's suffrage would improve the political arena, and served as a vice-president of the Clubwoman's Franchise League.[17]

The Kent Bill's proposal was very simple: to repeal Section 3 of the Expatriation Act in order to "protect the votes of women in suffrage States."[18] By 1912, California recognized no difference between men and women with regards to property ownership and suffrage.[19] Nonetheless, as Rep. Kent explained, "a large number of women in California have been barred from voting" because they married foreigners.[20] For example, twelve members of the New Era League, including Mrs. Mackenzie, lost U.S. citizenship by marriage.[21] Rep. Kent learned about married women's loss of citizenship from his fellow suffragists, but soon realized that the issue was more multifaceted than he had originally anticipated.[22] In many states, women served as board members of public schools and other positions that required U.S. citizenship.[23] In addition, according to Mrs. Ellen Spencer Mussey, a lawyer from Washington D.C. and the only female witness at the 1912 hearing, foreigners could neither own property nor be an executor or

[15] "Mrs. William Kent," *The Los Angeles Times*, August 4, 1912.
[16] "Franchise Leagues of Ross Valley Hold Enthusiastic Rally," *The San Francisco Call*, September 11, 1911.
[17] Ibid.; Solomons, 28; Mrs. Arthur W. Cornwall, "Kent's Conscience Alone His Political Guide," *The Woman Citizen: A Home Journal for Western Women* 2, no. 2 (September 1912): 3.
[18] House Committee on Foreign Affairs, *Relating to Expatriation of Citizens: Hearings on H.R. 21358*, 62d Cong., 2d sess., 1912, 3.
[19] Ibid., 8, 12.
[20] Ibid., 3.
[21] "A Vote Getter But No Citizen."
[22] House Committee on Foreign Affairs, 4.
[23] Ibid., 4.

administrator in Washington D.C.[24] As Rep. Kent stated, "the question is a good deal wider than the question of suffrage."[25] His personal connection with upper-class women who lost U.S. citizenship and strong belief in women's suffrage compelled him to "rescue" those women, including Mrs. Mackenzie.

Unlike Rep. Kent, other Congressmen who constituted the Committee were quite ignorant about the implication of the marital naturalization/expatriation for women and did not take the issue seriously. After Kent explained that the Expatriation Act disallowed Californian women to vote, some men became convinced by his argument. For instance, William Sulzer (D-NY) asserted: "In my opinion, these women because they marry should not lose their right to vote."[26] Others, however, did not grasp Kent's urgent demand. Richard Bartholdt (R-MO) asked: "why should these women not wait until their husbands become naturalized?"[27] Nathan Edward Kendall (R-IA) was even more dismissive and asked: "[t]hey have waited several thousand years for the suffrage privilege; why not wait a little longer?"[28] Although the Expatriation Act of 1907 was a federal law, both Democrats and Republicans on the committee believed that suffrage was a state-level issue, so that the problem should be handled by the state, not the federal government.[29]

Many of the male committee members were at first dismissive, but it did not take long for them to realize the absurdity of the Expatriation Act. By the time they were ready for the first witness, some Congressmen articulated that the Expatriation Act was a violation of the Fourteenth Amendment, which stipulates:

[24] Ibid., 20, 26. Mrs. Mussey is one of the founders of the Washington College of Law. Bredbenner, 71.
[25] House Committee on Foreign Affairs, 20.
[26] Ibid., 3.
[27] Ibid., 4.
[28] Ibid.
[29] Ibid., 4, 7.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[30]

The Expatriation Act's depravation of women's birthright citizenship contradicted the Fourteenth Amendment. At the same time, it conflicted with the equal protection and the due process of law. Therefore, as Byron Pat Harrison (D-MO) stated, "here is discrimination and […] it is clearly unconstitutional," so that Kendall argued that Section 3 of the Expatriation Act should be repealed.[31]

Despite the gradual understanding among the committee members that the Expatriation Act might be unconstitutional, some of them, including advocates of independent citizenship, believed that the Expatriation Act was a legitimate punishment on American women who married foreigners. When Everis A. Hayes (R-CA), an advocate of women's independent citizenship, explained the problems caused by the Expatriation Act, Cyrus Cline (D-IN) asked: "[t]he question here is whether a woman shall be penalized for marrying a foreigner?" to which Hayes answered "[y]es" without hesitation.[32] In fact, Mrs. Mackenzie felt that she was treated like a criminal and punished for marrying a foreigner. She told *The San Francisco Call*: "[p]ickpockets, murderers, embezzlers and ex-convicts of all kinds are deprived of the right of suffrage […] but I have done nothing criminal unless it be a crime to marry a foreigner."[33] To resolve this, Hayes argued: "I do not wish to penalize the foreign element in California or our *daughters* [emphasis added] by saying our women shall not marry foreigners unless they are

[30] U.S. Constitution, amend. 14, sec. 1.
[31] House Committee on Foreign Affairs, 5-6. Interestingly, Harrison compared women with African Americans, who were granted U.S. citizenship by the Fourteenth Amendment: "It is a matter where apparently we treat the negro a little better than we do the women." Ibid., 6.
[32] Ibid., 8.
[33] "Has Committed No Crime: Mrs. Mackenzie Gordon Would Vote," *The San Francisco Call*, February 4, 1913.

willing to give up the rights their sisters have" and "women in California shall not be penalized simply because their husbands happen to be unnaturalized aliens."[34] Despite Hayes's argument, some committee members believed that those women deserved punishment. When Mrs. Mussey explained that women in Washington D.C. had to give up their property upon marriage to foreigners, Nathan Kendall and Mrs. Mussey exchanged the following dialogue:

> Kendall: Perhaps Congress thought that [giving up property upon marriage] one of the penalties women ought to be subject to if they married foreigners.
> Mussey: We do not want our property handled by aliens.
> Kendall: We do not want our *girls* [emphasis added] to marry foreigners, either.[35]

For Kendall, only women who married U.S. citizens were entitled to the right and privilege of property ownership. Richard Bartholdt echoed Kendall that women who married foreigners "ought to be held responsible" for their loss of U.S. citizenship.[36]

Despite the claim that women should be responsible for the consequence of their choice of husbands, both opponents and proponents of independent citizenship on the committee infantilized women during the debate. As seen in Kendall's quote above, opponents of independent citizenship implied that women were incapable of independence and thus their citizenship should remain dependent on that of their husbands. On the other hand, Everis Hayes, an advocate of independent citizenship, three times referred to Californian women as "daughter[s] of California" during the hearing. By addressing married, adult women as "daughters," Hayes suggested that Californian women were not full-grown, independent women, nor were they mature enough to fully understand the consequences of their international marriage. In other words, just like a child who needs parental protection, women who married

[34] House Committee on Foreign Affairs, 8.
[35] Ibid., 20.
[36] Ibid., 6. Similarly, *The Los Angeles Times*, which had been following Mrs. Mackenzie since March 1912, referred to her as a "California Girl" in two different articles in 1913. "Will Petition Congress for California Girl"; "Loses Ballot by Marriage," *The Los Angeles Times,* August 6, 1913.

foreigners needed protection to handle the loss of U.S. citizenship as a consequence of their marriage. But for those who demanded the repeal of the Expatriation Act, it was not women's parents who could protect them from the loss of U.S. citizenship; it was solely the U.S. government who could protect their citizenship by repealing the Expatriation Act.

Another strategy emphasized how prominent native-born women were impacted by the loss of U.S. citizenship. In order to defend his client, Milton T. U'Ren cited four *San Francisco Post* articles and explained that Mrs. Mackenzie "came from one of the best families, moves in the best circles, has an excellent education, and has been most prominent in the suffrage movement."[37] Despite this profile, she no longer belonged to the United States because of the Expatriation Act. Similarly, newspapers only reported elite women's loss of U.S. citizenship by marriage. For example, sub-headlines of a *San Francisco Chronicle* article reporting on the U.S. Supreme Court's decision on the *Mackenzie* case read: "Many Socially Prominent Who Are Wed to Aliens Must Relinquish Voting Right" and "Prominent Women Lose U.S. Citizenship."[38] Similarly, an article of San Jose's *Evening News* was entitled "Prominent California Women Are Not Citizens."[39] Both articles listed Baroness Van Eck, Countess van Faulkenstein, Mrs. John Hubert Ward, and Baroness von Brincken along with Mrs. Mackenzie as prominent women who lost U.S. citizenship by marriage. In addition, *The San Francisco Call* also reported how Herman J. Whitaker, English novelist living in the United States for 18 years, would become a naturalized citizen, so that his native-born wife, whom the article referred to as "a San Francisco girl," could exercise her right to vote.[40] The discourse suggested not only that the United State

[37] House Committee on Foreign Affairs, 9. U'Ren was William Kent's campaign manager and was a vice-president of the Clubwomen's Franchise League. Solomons, 28; "Land Fencing Case Peeves Wm. Kent," *The San Francisco Call*, September 17, 1912.
[38] "S.F. Women Are Hit by Court Ruling," *San Francisco Chronicle*, December 7, 1915.
[39] "Prominent California Women Are Not Citizens - Test Case Is Decided by the Court," *San Jose Evening News*, December 7, 1915.
[40] "Novelist Whitaker Renounces King So His Wife May Vote," *The San Francisco Call*, December 10, 1913.

was losing its prominent "daughters" like Mrs. Mackenzie but also that the Expatriation Act unjustly punished these native-born "daughters" who married elite European men and brought prestige to the United States. Therefore, they did not betray the American nation. Rather, the United States benefitted from their marriage; thus, they deserved U.S. citizenship and protection of the U.S. government, not the punishment of expatriation. There were two options to bring them back to the U.S. citizenry. One was to have their husbands become naturalized citizens, as in the case of the abovementioned Mrs. Whitaker; however, as U'Ren pointed out, it would take four years to complete the processes of naturalization after filing the declaration of intention to become a naturalized citizen, and during those years, the women would remain foreigners.[41] The other option was to use the power of Congress and repeal the Expatriation Act. The emphasis on how elite women were harmed by the loss of U.S. citizenship suggested that Congress had the power, authority, and even duty to protect them from the damage caused by an act of Congress.

To further illustrate that prominent native-born women deserved U.S. citizenship and the protection of the government, Milton U'Ren did not forget to speak highly of Mrs. Mackenzie's husband, Gordon Mackenzie. According to the *Pacific Coast Musical Review*, Mr. Mackenzie was a "Distinguished Concert Tenor and Vocal Teacher Whose Pupils Score Professional Successes."[42] At the same time, he was a member of the Bohemian Club of San Francisco since 1907 and was named in 1911 as one of the fifty distinguished members, called the "List of Fifty."[43] The Bohemian Club, established in 1872 in San Francisco, was "the association of gentlemen connected professionally with literature, art, music, the drama," and had nearly 800

[41] House Committee on Foreign Affairs, 11.
[42] Alfred Metzger, "Sembrich Laments End of Pure Singing," *The Pacific Coast Musical Review*, 23 no. 10 (1912): 12.
[43] Bohemian Club, *Constitution and By-laws and Rules, Officers, Committees, and Members* (San Francisco, 1911), 39, 87, 109.

regular members in 1911.[44] To be a member, an applicant needed recommendation from two regular members along with the application fee of $300, and the regular membership fee was $7.50 per month.[45] Thus, Mr. Mackenzie's membership in the Bohemian Club indicated not only his prestigious status as a singer but also his higher socio-economic class. Therefore, U'Ren told the committee members that Mr. Mackenzie was "a very prominent man, a club man, who has lived in California 20 years, his occupation being that of a teacher of singing."[46] Since Mr. Mackenzie lived in the United States for two decades, he had an opportunity to apply for naturalization. In fact, when he arrived in New York from Britain in 1889, he went to a naturalization office only to find that he had to wait 10 hours in line in the snow, and therefore left the office without applying for naturalization.[47] In 1913, he applied for naturalization in Arizona, yet did not complete the process and remained a British subject.[48] As U'Ren stated, "the fact that Mr. [Mackenzie] is not naturalized penalizes Mrs. [Mackenzie]. In other words, she is penalized by his failure to become naturalized."[49] Mr. Mackenzie himself admitted that his impatience to wait at the naturalization office imposed damage on his suffragist wife: "if I had known that you [Mrs. Mackenzie] were going to have all this trouble in securing the right to vote I would have stayed in that line for 10 days instead of 10 hours in order to obtain my [naturalization] papers."[50] It is obvious that Mr. Mackenzie failed to protect his wife from the loss of U.S. citizenship. Nonetheless, instead of criticizing his negligence, U'Ren defended Mr. Mackenzie that "he has been so busy that he never thought of applying for citizenship" and

[44] Ibid., 15-16.
[45] Ibid., 35-36, 43.
[46] House Committee on Foreign Affairs, 9.
[47] "Has Committed No Crime"; "Child May Vote Mother Cannot," *The Los Angeles Times*, April 8, 1913; "Gordon Mackenzie Will Renounce His British Citizenship and Become American for Wife," *San Jose Evening News*, December 9, 1915.
[48] Ibid.; "Has Committed No Crime."
[49] House Committee on Foreign Affairs, 11.
[50] "Has Committed No Crime."

"being deeply engrossed in his profession overlooked the matter of naturalization."[51] *The San Francisco Post* agreed with U'Ren: "[i]t is not that he [Mr. Mackenzie] loves Britain more and America less, but because he has never had much time to devote to politics. He has been too absorbed in his art."[52] By defending Mr. Mackenzie, they pointed out that Mrs. Mackenzie had not chosen a "wrong" man as her marriage partner; she had chosen a highly cultured and renowned singer and devoted music teacher. Therefore, she was not a "traitor" of the United States and deserved U.S. citizenship with all entailing rights and privileges, including suffrage.

To demonstrate that Congress could rescue Mrs. Mackenzie and other women from the loss of U.S. citizenship, Everis Hayes introduced the case of President Ulysses S. Grant's daughter, Nellie. In 1874, she had married Algernon Sartoris, a British subject, and lived in England after the wedding.[53] When widowed, Mrs. Sartoris returned to the United States in 1894; however, Britain's Aliens Act of 1844 applied marital naturalization to foreign women who married British subjects and the United States honored that law according to the 1870 convention with Britain.[54] As a consequence, when Mrs. Sartoris returned to the United States, she was considered a British subject in her native country. Thus, she petitioned Congress in 1898 and was unconditionally readmitted to the U.S. citizenry by a joint resolution.[55] Hayes' explanation of Mrs. Nellie Grant Sartoris' case was very brief, yet enough for the committee members to understand that it would have been absurd and disgraceful if a daughter of the

[51] House Committee on Foreign Affairs, 9.
[52] Ibid., 10.
[53] Christopher Gordon, "A White House Wedding: The Story of Nellie Grant," *Gateway* 26 no. 1 (Summer 2005): 11, 17.
[54] Ibid., 19; Sapiro, 7; Aliens Act, 1844, 7 & 8 Vict., c. 66; *Joint Resolution to Readmit Nellie Grant Sartoris to the Character and Privileges of a Citizen of the United States*, Private Resolution 55-36, 55th Cong., 2d sess., *U.S. Statutes at Large* 30 (1898): 1496. Great Britain extended marital naturalization/expatriation to all women by the act of 1870. Sapiro, 7; An Act to Amend the Law Relating to the Legal Condition of Aliens and British Subjects, 1870, 33 & 34 Vict., c. 14.
[55] "Mrs. Sartoris Asks Citizenship," *The Washington Post*, April 21, 1898. *Joint Resolution to Readmit Nellie Grant Sartoris*.

President remained an alien in her native country and was treated as a traitor or a criminal. By bringing up Mrs. Nellie Grant Sartoris' expatriation and repatriation, Hayes hoped that Congress would similarly repatriate Mrs. Mackenzie and other prominent American "daughters."[56]

The gender, class, and racial biases of the committee members quickly became evident as they were unwilling to protect native-born women who did not contribute to the national prestige, even if the women were from the elite class. They criticized U.S.-born women who married foreigners *and* resided abroad for the perceived lack of loyalty to the United States. This stigma was clearly a double standard. On the one hand, the committee members believed that native-born women who married foreigners and resided abroad did not deserve U.S. citizenship and the protection of the U.S. government as they assumed that those women had abandoned the United States. On the other hand, they believed that native-born men who did the same never had to give up their U.S. citizenship. Even William Kent, who proposed the bill to repeal the Expatriation Act, stated that there was no great necessity to protect native-born women who married foreigners *and* left the United States.[57] Therefore, at the end of the hearing, instead of completely repealing Section 3 of the Expatriation Act, the committee members reached an agreement to add a provision that it should not apply to a woman who "continue[s] to be a resident of the United States" as this exemption would not change the intention of the Expatriation Act to punish women who married foreigners and left the United States.[58]

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[56] Other well-known women who lost U.S. citizenship by marriage included Ruth Bryan Owen, daughter of William Jennings Bryan, Gladys Vanderbilt Széchenyi, great-granddaughter of Cornelius Vanderbilt, Consuelo Vanderbilt, daughter Alva Vanderbilt Belmont and another great-granddaughter of Cornelius Vanderbilt, Harriot Stanton Blatch, daughter of Elizabeth Cady Stanton, Inez Milholland Boissevain, suffragist active in the National Woman's Party, and Emma Goldman. Emma Goldman was born in Russia and came to the United States as a child with her parents. She married a naturalized citizen, Jacob K. Kersner, and became a citizen, but his citizenship was later cancelled, making her a foreigner again. J. Stanley Lemons, *The Woman Citizen: Social Feminism in the 1920s* (Urbana: University of Illinois Press, 1973), 65; "Emma Goldman Now Alien," *The New York Times*, April 9, 1909; "May Bar Emma Goldman," *The Chicago Daily Tribune*, April 9, 1909.
[57] House Committee on Foreign Affairs, 18.
[58] Ibid., 25, 26.

Even among the native-born women who married foreigners and continued to live in the United Stated, both proponents and opponents of independent citizenship were willing to protect only elite, deserving daughters who chose the "right" kind of men. For instance, U'Ren articulated: "[i]t is not a question, as has been perhaps facetiously suggested, of reserving to certain women who have married Chinamen or Japanese their citizenship."[59] In Hayes' words, these "Japs and Chinamen" were not "admissible" to the U.S. citizenry.[60] For the committee members, U.S.-born women who married "Japs and Chinamen" created a reason for the undesirables to settle in the United States, which would undermine and degrade the white American nation. Moreover, U'Ren elucidated that under California's miscegenation law, it was a felony for a white person to marry "a person of Mongolian or Negro blood," so that those who intermarried came from other states where there was no miscegenation law.[61] In other words, intermarried white women were not "real" Californian women, because they married in states that did not have a miscegenation law and moved to California with undesirable husbands and mixed-blood children. For U'Ren and Hayes, these women deserved expatriation for their betrayal of the white nation not merely by choosing foreigners but also by contaminating the perceived notion of the pure white American blood. On the other hand, "real" elite Californian "daughters" maintained racial and sexual purity abiding by the miscegenation law, and thus deserved U.S. citizenship and the protection of the U.S. government.

Despite the efforts of the prominent Californian men in advocating women's independent citizenship, the Kent Bill failed to repeal the Expatriation Act. Unlike Mrs. Nellie Grant Sartoris, prominent Californian women like Mrs. Mackenzie were not sufficiently compelling or symbolic enough to either repeal the Expatriation Act or pass a new law that would exempt women who

[59] Ibid., 9.
[60] Ibid., 22.
[61] Ibid., 9.

met certain criteria from marital expatriation. Five years later, however, Rep. Jeannette Rankin, Mrs. Ellen Spencer Mussey, and nine other women representing various national and international women's organizations demanded the abolishment of marital naturalization/expatriation not only for elite but also for poor and ordinary women. They demonstrated their increasing political maturity and evolving political ideologies as independent citizens who desired to exercise political agency of their own.

<Women's Collective Effort – Rankin Bill of 1917>

Five years after the failure of the Kent Bill, a new bill to abolish marital naturalization/expatriation was introduced in May1917, and on December 13 and 14, 1917 a hearing on the new bill was held. By this time, the social and political landscape in the United States had changed significantly. Not only had the U.S. Supreme Court upheld the Expatriation Act in the *Mackenzie* case in 1915, but also the United States entered World War I in1917. In addition, the ratification of a constitutional amendment to grant women's suffrage was becoming more realistic. Moreover, the hearing was held before the Committee on Immigration and Naturalization, instead of the Committee on Foreign Affairs, and the make-up of the committee had completely changed, except for Everis A. Hayes (R-CA). Unlike the committee members of the Kent Bill of 1912, those of the 1917 hearing supported the Expatriation Act, arguing that it would harm family unity if husband and wife had different nationalities and that U.S.-born women who married foreigners, particularly the European nobility, were "title hunters," who were interested not only in accessing their European husbands' wealth but also in acquiring the status and title as members of the aristocracy. Most importantly, the representative who introduced the new bill was Miss Jeannette Rankin (R-MT), the first woman in Congress. She

co-authored the bill with Mrs. Mussey, who was the only female witness at the 1912 hearing but had been given very little chance to articulate the problems caused by the Expatriation Act.[62]

Furthermore, all eleven witnesses at the 1917 hearing were women, representing various national and international women's organizations. For example, Mrs. Janet Harris was the president of the National Council of Jewish Women and the vice president of the National Council of Women, representing 25,000 and seven million members respectively. The National Council of Women was an umbrella organization for twenty-eight national and international women's organizations, including the National American Woman Suffrage Association, National Federation of Colored Women, Women's Peace Party, and Women's Christian Temperance Union as well as other women's organizations whose representatives testified at the hearing. Miss Mary Wood represented the General Federation of Women's Clubs, which had four million members not only in the United States, but also in Canada, Japan, China, Australia, the Philippines, India, and the West Indies. Mrs. Mary M. North represented 160,000 members of the Woman's Relief Corps as well as the Women's Rivers and Harbors Congress. Dr. Kate W. Barrett was the president of the National Florence Crittenden Mission and Mrs. Myra K. Miller, the president of the National Federation of College Women, represented 50,000 women.[63] As Mrs. W. R. Thomas testified, "the last three years in war, the increase of voting powers of women, etc., make these questions [of citizenship] alive in all countries alike."[64] Therefore, the abolishment of marital naturalization/expatriation became a central issue among various national and international women's organizations.[65] Historian Candice Lewis Bredbenner argues that the

[62] Bredbenner, 71.
[63] House Committee on Immigration and Naturalization, 20-24; R. Pamela Jay Gottfried, "Janet Harris," in *Jewish Women: A Comprehensive Historical Encyclopedia*, ed. Paula Ellen Hyman and Dalia Ofer, Jewish Women's Archive (2009), http://jwa.org/encyclopedia/article/harris-janet (accessed October 25, 2017).
[64] House Committee on Immigration and Naturalization, 51.
[65] For instance, as I discuss later, in 1917, the National Council of Women, which had seven million members, sponsored the Rankin bill to repeal the Expatriation Act. Ibid., 23-24.

1917 hearing was "the first to prompt a hearing on marital expatriation before the House Committee on Immigration and Naturalization" and marked "a historically significant confrontation. It was a benchmark event, organized women's first opportunity to present their case for independent citizenship before a Congressional committee."[66]

Coordinating their organizations and arguments, the women at the hearing powerfully attacked the Expatriation Act. As the first witness, Miss Rankin clearly expressed women's collective ideas about the Expatriation Act: "[w]e think most of your laws about marriage are *awful*, and we will change them *all* if you give us the opportunity [emphasis added]," and particularly the Expatriation Act was "a very bad law."[67] Mrs. Mussey was no less powerful or blunt. She argued: "I am not blaming this committee, but gentlemen, you have the vote and you voted for an unconstitutional law," and continued:

> I would like to ask a question: When an American woman who is naturalized in this way – these German or Austrian women and any of those who have these strong sympathies abroad – who is responsible for that? Can you make the husbands responsible for them? The husband naturalized her. Who is responsible for her? And to-day [sic] we all know, and you all practically admit, that women are citizens because you gave suffrage to so many of us in the States, and you are going to give it to us all through the amendment pretty soon, because we are your equals – [68]

While she was making this statement, John E. Raker (D-CA) interrupted her to ask a question, yet she ignored him and continued: "[a]nd why should we not be entrusted with the right to say what country we want to be citizen of?"[69] Her belief was: "American woman married to [a] foreigner shall have the right to choose to become an American, and [...] you shall make her responsible for her American citizenship."[70] Other women were also earnest and used strong,

[66] Bredbenner, 71, 74.
[67] Ibid., 5, 6.
[68] Ibid., 8.
[69] Ibid.
[70] Ibid., 9.

determined language. Mrs. Myra K. Miller claimed that the Expatriation Act was "[w]rong."[71] Dr. Kate W. Barrett stated three times during the hearing that the practice of marital naturalization/expatriation was "pathetic."[72] As seen in these claims, the women at the hearing had a firm grasp of injustice to which marital naturalization/expatriation was subjugating women and were ready to attack it at all levels.

The rhetoric and discourse that the advocates of independent citizenship used were more sophisticated than those at the 1912 hearing. Although some, such as Mrs. Mussey, who had "long experience as an advisor of women" and "over 25 years as a practicing attorney,"[73] occasionally used the term "girls," they did not rely on infantilizing discourse for their cause. Instead, they argued that women were independent citizens equal to men. Mrs. Mussey claimed: "[t]he prime principle of this bill should be the recognition of equal rights of women and men as to citizenship."[74] In Miss Rankin's words, "we submit an American man has the right to citizenship, regardless of his marriage, and that the woman has the same right."[75] Similarly, Mrs. Miller claimed: "[t] here is no reason why women should not be treated equally,"[76] and Mrs. Thomas was "interested in an equal status of men and women."[77] When Miss. Kate D. Blake was asked if a French woman who married an American man should be a U.S. citizen or not, she answered: "[n]ot until you make us equal."[78] Each woman understood the inequality embedded in the practice of marital naturalization/expatriation, and was determined that they would no longer accept this unequal status.

[71] Ibid., 39.
[72] Ibid., 25-26.
[73] Ibid., 34.
[74] Ibid., 46.
[75] Ibid., 5.
[76] Ibid., 40.
[77] Ibid., 44.
[78] Ibid., 20.

The women's demand for equality between the sexes was essential to women's status as independent citizen, and they understood that being an independent citizen meant not only gaining equal rights but also fulfilling the responsibility and duty to contribute to the nation. The U.S. public opinion against the Germans and Austrians steadily increased after 1914 when war broke out in Europe, and U.S.-born women who married German immigrants were increasingly stigmatized as "enemy aliens." When the United States entered the war in 1917, the stigma of being labeled as traitors imposed great hardship on women in the United States who married Germans and Austrians. As historian Cecilia Elizabeth O'Leary claims, "[a]fter the United States declared war, a hardening of political lines quickly led to the conflation of ethnicity and patriotism. Assimilation became a battle cry, and the cultural homogeneity of the nation-state was now infused with issues of national security. […] the war years accelerated demands for '100 percent Americanism.'"[79] As a consequence, "[c]itizens with German, Polish, Italian, or Russian cultural roots were denounced as 'hyphenates,' while groups of 'Yankee Protestants, southern Anglo-Saxons, mid-western Wasps, and western 'Anglos' laid claim to being the only true Americans."[80] In fact, the committee members brought up marriage between German men and American women a number of times during the hearing, and some of them believed that native-born women who married Germans or Austrians should be penalized for choosing enemy aliens as their husbands. For instance, Benjamin F. Welty (D-OH) asked: "[w]ould not that [losing property because of marriage to a German] be a good lesson to our American girls to marry American boys?"[81]

[79] Cecilia Elizabeth O'Leary, *To Die For: The Paradox of American Patriotism* (Princeton: Princeton University Press, 1999), 236.
[80] Ibid., 237.
[81] House Committee on Immigration and Naturalization, 33.

This type of questions could have undermined the women's argument demanding independent citizenship; however, they astutely used the state of war as an opportunity to articulate the injustice brought about by the Expatriation Act and demonstrated native-born women's patriotism. Mrs. W. R. Thomas claimed: "[w]e who were born in this country are now being asked to serve our country in ways which we have never before been called upon to serve it. You are asking for extreme and supreme expressions of loyalty" and pointed out that under the Expatriation Act, American women who married Germans were considered enemy aliens while German women who married Americans formally became U.S. citizens.[82] She argued that women's dependent citizenship, therefore, disadvantaged the United States, while regrettably admitting that women might not be as patriotic as men. However, it was because "our citizenship has never had sufficient value set upon it to arouse the kind of patriotism that men have."[83] Even though native-born women were considered formal citizens based on their birth in the United States, they were not allowed to enjoy the rights and privileges as their male counterparts. With little, if any, recognition as citizens, it was no wonder that women would not make patriotic contributions to the nation. Thus, Rep. Rankin claimed: "[w]omen have never been citizens of this country. We are just beginning to be citizens."[84] Their claims suggested that women could and would be as patriotic as men once they were treated as independent citizens, equal to men.

Other women, however, linked the war and patriotism, pointing out that native-born women were already fulfilling their patriotic duty and making a significant contribution, even though their citizenship did not have substantial meanings. Mrs. Mussey argued:

> We are good American citizens. Do you think we would bear our sons to give them up to slaughter, if we were not? Do you not know that there are 15,000 women sacrificed every year in giving birth to their children? Do you not think we love our country? Can you

[82] Ibid., 43.
[83] Ibid.
[84] Ibid., 53.

> claim anything like that? Are there 15,000 soldiers a year that are slaughtered for their country? We women do that, and we take it gladly.[85]

This statement suggests that women's patriotism was stronger and more genuine than men's, because men enjoyed rights and privileges as rewards for their patriotic, military contributions, yet women did not receive such rewards despite their willingness to sacrifice their sons for the nation. In fact, as mentioned in Chapter 2, Abigail Adams, during the Revolutionary Era, argued that women's patriotism was the most dedicated service to the nation because they did not receive any reward from the nation.[86] As political scientist Gwendolyn Mink argues, "[v]irtue demanded courage as well as willingness to sacrifice self-interest and risk life in defense of the republic. The capacity to soldier was thus the sine qua non of fearless and disinterested citizenship."[87] Similarly, historian Linda Gordon claims: "[m]ilitary service was a symbolic basis of citizenship and one particularly responsible for citizenship's traditional masculinity. Feminists [in the early twentieth century] consciously constructed a maternal citizenship in opposition, imagining a citizen mother who could stand as an equal beside the citizen soldier."[88] Nonetheless, according to Mink, "[s]uch martial patriotism [of men was] celebrated in schools and rewarded by wages from the state."[89] On the other hand, as O'Leary claims, "[w]omen's relationship to the nation-state was complex, at once affecting and being affected by their roles as biological and cultural reproducers, abstract symbols, and active participants in economic, cultural, political, and military struggles."[90] In the case of war, as patriotic mothers, women had to "gladly" "give [their sons] up to slaughter" "for their country" even though their virtue, courage, willingness to

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[85] Ibid., 38.
[86] Linda K. Kerber, "The Paradox of Women's Citizenship in the Early Republic: The Case of *Martin vs. Massachusetts*, 1805," *The American Historical Review* 97, no. 2 (April 1992): 350.
[87] Gwendolyn Mink, "The Lady and the Tramp: Gender, Race, and the Origins of the American Welfare State," in *Women, the State, and Welfare*, ed. Linda Gordon (Madison: The University of Wisconsin Press, 1990): 94.
[88] Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare, 1890-1935* (New York: Free Press, 1994), 165.
[89] Mink, 94.
[90] O'Leary, 92.

sacrifice, and contribution were not recognized as those of men. In short, women's patriotism was gratuitous with no cost to the nation, while men received compensation for their service in the form of being recognized as first-class citizens. It was time to recognize women's genuine contributions by granting them independent citizenship with the same value as that of men.

Furthermore, the female activists at the 1917 hearing articulated that American women were not entirely dependent on their husbands, and strongly argued for their influence on Americanization of their foreign-born husbands. Miss Mary Wood claimed:

> the American woman who married to the foreigner who may retain her citizenship has an immense power with that husband to cajole, to coerce, and to gently lead him into American citizenship. We claim that she will use that power and that it will be of the greatest benefit to us [...] We need [...] every American woman, from her very birth breathes the air of freedom and loyalty and devotion to her country.[91]

Native-born women, they argued, served as the most effective agents of Americanization. This was true in the case of Mr. and Mrs. Mackenzie. When Mrs. Mackenzie lost her case at the U.S. Supreme Court in 1915, she stated: "[m]y husband kindly delayed his citizenship until my case might be presented in the courts. Now that it is decided, he will become a citizen."[92] When she was refused voter registration, Mr. Mackenzie was willing to apply for naturalization to give her suffrage, yet she refused his offer because "I [Mrs. Mackenzie] don't want to get the ballot through my husband's naturalization."[93] At the same time, she was determined to challenge the Expatriation Act not only for herself but also other women who lost U.S. citizenship by marriage. She claimed: "[m]y case and fight for the right to vote is essentially a public one, and not personal. If Mr. Gordon, my husband, were to become an American citizen, and […] solve this particular case, it would still avail nothing to the other women who married [foreigners]."[94] Thus,

[91] House Committee on Immigration and Naturalization, 21.
[92] "S. F. Women Were Hit by Court Ruling."
[93] "Mrs. Gordon to Appeal Case," *San Francisco Call*, September 1, 1913.
[94] "Novelist Whitaker Renounces King So His Wife May Vote."

until the U.S. Supreme Court ruled on the case, Mrs. Mackenzie chose to remain a foreigner despite her husband's offer. It is obvious that Mr. Mackenzie's decision to apply or not to apply for naturalization was based on Mrs. Mackenzie's request. When the U.S. Supreme Court declared in December 1915 that the Expatriation Act was constitutional because deprivation of U.S. citizenship was "no arbitrary exercise of the government" as marriage to a foreigner was "a condition voluntarily entered into, with notice of the consequences,"[95] Mr. Mackenzie immediately announced that "I have decided to give my wife citizenship, [...] I, a British subject, will give her something that your highest courts could not give her,"[96] which San Jose's *Evening News* described "a fitting Christmas present to his wife."[97] As Miss Wood argued, Mrs. Mackenzie influenced her husband into becoming a naturalized citizen.

The women at the hearing ingeniously utilized how this "awful" law damaged the reputation of the United States in the international politics. As political scientist Virginia Sapiro claims, "[i]t has been suggested that the treatment of women can serve as an important national symbol in international politics; in other words, the treatment of 'the weaker sex' can be a sign that is used to enhance the image of a nation."[98] The women at the hearing pushed forward this understanding. As noted earlier, marital naturalization/expatriation was an international norm; however, this also meant that there was an international effort to abolish the practice. Mrs. Myra K. Miller argued: "I think this should be treated as an international problem, and the women everywhere are working toward that same end."[99] According to Mrs. Mussey, women in Sweden,

[95] Mackenzie v. Hare *et al*., 239 U.S. 299, 312 (1915).
[96] "She Will Vote Anyway," *The Los Angeles Times*, December 10, 1915.
[97] "Renounces Citizenship as Present for Wife," *San Jose Evening News*, December 23, 1915.
[98] Sapiro, 21-22.
[99] House Committee on Immigration and Naturalization, 40.

Switzerland, Holland, Great Britain, Canada, New Zealand, South Africa, and France were also working for the same cause.[100] Thus, Dr. Barrett argued:

> Suppose Canada or Great Britain or the entente at the present time takes action, it would look as if we were taking action antagonistic to them. If we take our action before any of these other countries take action, we have taken action upon the merits of the question without any consideration to the merits of the individual.[101]

Mrs. Mussey claimed, "[o]f course, we women in the United States would be glad if our country could lead. It always has led in these things [women's issues], and we want it to lead in this."[102] Likewise, Miss Blake praised the United States: "I think there is no country under the sun like America. I feel with all my intensity that I could not bear to lose my citizenship any way [sic], unless I decided there was some place more wonderful than America."[103] These testimonies suggested that as the moral leader of the advanced nations, United States should set the example of equal and independent citizenship. If the United States abolished marital naturalization/expatriation before any other country did, it could further strengthen its reputation as a leading modern civilized nation. As Sapiro notes, "[a]t one time, the United States altered its policies on women's citizenship in order to come into line with powers like Britain and France. Now the United States used the same issues to try to move ahead."[104] While the Congressmen who enacted the Expatriation Act of 1907 were at the back in following the international norm, in 1917 the female advocates of independent citizenship were trying to lead the world in abolishing marital naturalization/expatriation.

Like the women at the hearing, other entities also used equality, responsibility, patriotism, and the reputation of the United States to criticize the Expatriation Act. Even after the Nineteenth

[100] Ibid., 25.
[101] Ibid., 52.
[102] Ibid., 25.
[103] Ibid., 19.
[104] Sapiro, 22.

Amendment was ratified in 1920, Congress did not make any change to the practice of marital naturalization/expatriation until 1922, so that the attack on the Expatriation Act continued. For example, an editorial of *The Los Angeles Times* in 1921 used that rhetoric in support of the repeal of the Expatriation Act. By describing an American woman as "the original producer of citizens," it claimed: "[o]ur women have been encouraged to be capable and *independent*, to think for themselves, shoulder *responsibilities* and in war time at least we made it plain that *patriotism* was as surely their affair as men's [emphasis added]."[105] Furthermore, "[t]he United States enjoys the *reputation* of being a woman's country, the country par excellence in which women enjoy *equal* opportunities [emphasis added]."[106] Therefore, "[t]he argument that loyal American women citizens should only marry Americans is weak and unfair."[107] Echoing the advocates of independent citizenship at the 1917 hearing, *The Los Angeles Times* powerfully criticized marital naturalization/expatriation.

Bredbenner claims that until 1920, the issues of suffrage dominated the debate over married women's citizenship.[108] In fact, at the 1912 hearing, the debate almost exclusively focused on prominent women's loss of U.S. citizenship with a little attention to suffrage. However, the female witnesses at the 1917 hearing laid out various concrete problems caused by the Expatriation Act ranging from suffrage to property ownership and birth-registration laws to convince the committee members to repeal the Expatriation Act. With regards to suffrage, the problem was not only that native-born women could not vote; as Miss Rankin explained, foreign-born wives of U.S. citizens, whether native-born or naturalized, could enter the country and vote as U.S. citizens without any knowledge of the United States, as they were automatically

[105] "Her Citizenship," *The Los Angeles Times,* April 13, 1921.
[106] Ibid.
[107] Ibid.
[108] Bredbenner, 77.

naturalized upon marriage.[109] Moreover, according to Dr. Barrett, there were seven states that allowed foreigners with the first papers of naturalization, which was the proof of the formal declaration of the intention to become naturalized citizens, to vote.[110] Because few people were familiar with the naturalization process or voting laws, many believed that the foreigners who voted with their first papers were already naturalized. As a result, U.S.-born women who married these men lost U.S. citizenship without knowing it.[111] If, for any reason, a foreign-born man with the first papers did not complete the naturalization process, his U.S.-born wife had to remain a foreigner in her native country as long as their marriage continued. Therefore, the problems caused by the Expatriation Act were more than native-born women's loss of suffrage, yet the issues of foreign-born women's marital naturalization, their automatic acquisition of rights and privileges as U.S. citizens, suffrage of foreigners with first papers, and its implication to their native-born wives were entirely omitted at the 1912 hearing.

In addition, the women at the 1917 hearing criticized the lack of a uniform and competent system of recording the place of birth that should provide the proof of U.S. citizenship by birth. Dr. Barrett was particularly resentful for the lack of proper birth-registration laws: "one of the most outrageous things is that when we put the citizenship upon the basis of birth we have no proper protection to know where children are born in this country."[112] As a consequence, there were "many children [...] born on the border between Canada and the United States who do not know whether they were born American citizens or not."[113] According to Rep. Rankin, in her home state of Montana, women married Canadians, who "do not seem like foreigners [...]

[109] House Committee on Immigration and Naturalization, 3-4.
[110] Ibid., 26. According to historian Nancy F. Cott, in the nineteenth century, twenty-two states and territories allowed white male foreigners with the first papers of naturalization to vote. She notes that by the early twentieth century, only a few states allowed such foreigners to vote. Nancy F. Cott, "Marriage and Women's Citizenship in the United States, 1830-1934," *The American Historical Review* 103, no. 5 (December 1998): 1445, 1461.
[111] House Committee on Immigration and Naturalization, 26-27.
[112] Ibid., 17.
[113] Ibid., 16.

because we [people of Montana] go back and forth over the line so much."[114] Some Canadians mistakenly believed that they were born in the United States as there was no system to prove that they were actually not born in the United States, and married U.S.-born women without knowing their wives' loss of U.S. citizenship. If proper birth-registration laws had existed, they could have consulted the birth-registration record before marriage. The lack of the proper birth-registration system, however, meant that U.S.-born women in the border regions married Canadians without knowing their husbands' nationality and the loss of their birth-right U.S. citizenship. Therefore, Dr. Barrett demanded the proper birth-registration laws to document who were born in the United States. Without proof of U.S. citizenship, native-born women would have to "put up with the indignities that they have to put up with in the matter of property" as well as other rights and privileges attributed to U.S. citizenship.[115]

In addition to the "new" types of rhetoric and arguments, the women at the 1917 hearing also produced a symbolic prominent woman who lost U.S. citizenship by marriage. Dr. Ella D. Cuinet introduced the case of Mrs. Harriot Stanton Blatch, a granddaughter of Judge Daniel Cady, a justice of the New York Supreme Court and the U.S. Court of Appeals at Albany, and a daughter of Elizabeth Cady Stanton.[116] In 1882, she married Mr. William Henry Blatch, a wealthy Englishman, and they moved to England.[117] Like her mother, Mrs. Blatch was active in the suffrage movement and wanted to keep her U.S. citizenship; however Mr. Blatch naturalization meant losing his property in England and she learned "very severely" that she was

[114] Ibid., 3.
[115] Ibid., 33.
[116] Ibid., 35; U.S. Congress, *The Biographical Directory of the United States Congress*, s.v. "Cady, Daniel," http://bioguide.congress.gov/scripts/biodisplay.pl?index=C000014 (accessed October 25, 2017).
[117] House Committee on Immigration and Naturalization, 35-36; Ellen Carol DuBois, "The Next Generation: Harriot Stanton Blatch and Grassroots Politics," in *Votes for Women: The Struggle for Suffrage Revisited*, ed. Jean H. Baker (New York: Oxford University Press, 2002), 160.

"an alien" to the United States.[118] According to Dr. Cuinet, Mrs. Blatch was "a woman who knew a great deal about the law" but "it did not occur to her 40 years ago what would happen to her later in life."[119] Despite that Mrs. Blatch's illustrious family "[f]or generations" had made contributions to the United States, the practice of marital naturalization/expatriation made her an alien. Mrs. Blatch came back to the United States in 1902 with her husband and daughter Nora and took a leadership role in the suffrage movement in New York and nationwide, but remained an alien until his sudden, accidental death in 1915.[120]

Despite the women's sharp critiques of the Expatriation Act, the male committee members still ignored and were dismissive of the problems caused by marital naturalization/expatriation. As Miss Blake perceptively stated, they were looking at the issues "from a purely masculine standpoint [...] the standpoint of the man who is safe in his citizenship."[121] For instance, Harold Knutson (R-MN) stated: "[t]he purpose of this bill, as I understand it, is to allow the American woman to 'eat her cake and still have it.'"[122] As in the case of the 1912 hearing, Riley J. Wilson (D-LA) asked: "[w]hy not have those men [who married American women] become American citizens?"[123] In the same manner, Knutson asked: "[w]hy does not the average American woman who desires to marry a foreigner make it a condition of marriage that he become [sic] an American citizen?"[124] Furthermore, the committee members assumed that it was not difficult to correctly understand laws on citizenship and marriage despite their own misunderstanding and the claims of Dr. Barrett, Mrs. Mussey, and

[118]Ibid.; House Committee on Immigration and Naturalization, 35-36.
[119] Ibid., 36.
[120] Ibid.; DuBois, 161, 170.
[121] House Committee on Immigration and Naturalization, 19.
[122] Ibid., 5.
[123] Ibid., 10.
[124] Ibid., 6.

Rep. Rankin that the laws were in fact quite complicated and that the lack of the proper birth-registration laws made it difficult to know who were U.S. citizens by birth.[125]

The most belligerent and unconvinced committee member was John E. Raker (D-CA). Just like the opponents of independent citizenship at the 1912 hearing, Raker was unhappy with U.S.-born women who married foreigners. During Rep. Rankin's testimony, he stated: "I felt hurt because these rich women in the East did not come out to your State [of Montana] and mine and marry some of those good boys whom we know make such splendid citizens and help build up the country."[126] He did not understand that even if native-born women from the East migrated to the West to find their marital partners, there were many miners who came from different countries and women could mistakenly believe that their husbands were U.S. citizens because of their casting ballot with first papers of naturalization or the lack of the birth registration records. In addition, it was not limited to U.S.-born men who contributed to the development of the West and the United States in general. Both native- and foreign-born men and women made contributions in various ways. As Miss Wood testified, "[t]he plain women of this country [...] married foreign laborers that help to develop this country and whom we depend so largely to-day [sic] to maintain the industries which are necessary to keep this Nation where it is today, at the head of the whole world."[127] As noted earlier, native-born women were the most influential Americanization agents to their foreign-born husbands. Nonetheless, Raker ignored the presence of immigrant miners and other types of workers in the West, many of whom were eligible for

[125] Ibid., 34.
[126] Ibid., 6.
[127] Ibid., 21. During the 1917 hearing, there were only two instances where race was mentioned. The first instance was when Meeker asked Dr. Barrett her opinion on international marriages with Chinese and Japanese. She answered that, as an Anglo-Saxon, she "would not marry anybody who was not an Anglo-Saxon" because "[a]t the present time the Anglo-Saxon is the highest type." Yet she did not think it was "the highest ideal," because "[t]he time may come when ... a higher type of humanity has developed." The other instance was when the chairman confirmed that children born to Chinese or Japanese parents were U.S. citizens if born in the United States. Ibid., 27, 47.

naturalization, and believed that only native-born "boys" were working in the West and native-born women should marry only those "boys" to make "splendid citizens."

At the 1912 hearing, the elite Californian men, namely William Kent, Everis A. Hayes, and Milton U'Ren, demanded the repeal of the Expatriation Act. Nonetheless, in 1917 the advocates of independent citizenship did not receive any support from the two Californian representatives on the committee. One of them, John E. Raker, was the biggest opponent of independent citizenship. The other representative, Everis A. Hayes, was absent at the 1917 hearing. Although the advocates of independent citizenship lost support of the Californian Congressmen, they gained the support of Jacob E. Meeker (R-MO). He did not explicitly advocate for independent citizenship, but made sensible comments throughout the hearing. For instance, he posed a question on the second section of the Rankin Bill that would allow native-born women who resided in the United States to resume their U.S. citizenship *by filing a declaration*. He asked: "[w]hy is it necessary to put in here that this American woman shall file a declaration that she intends to remain an American citizen? We do not ask that of a man."[128] He suggested not to require a declaration, because "she is an American all the time."[129] Furthermore, when Raker asked the number of American women who married foreigners, Meeker claimed: "[i]t has not seemed to me it is a question of numbers at all; it is a question of public policy. It is either right or wrong, whether it involves one or a million."[130]

Despite the passionate arguments for independent citizenship, none of the committee members supported the repeal of the Expatriation Act. This could be because the U.S. Supreme Court upheld the Expatriation Act in the 1915 *Mackenzie* case, declaring that "the identity of husband wife is an ancient principle of our jurisprudence. [...] [T]his relation and unity [of

[128] Ibid., 10.
[129] Ibid., 11.
[130] Ibid., 22.

husband and wife] may make it of public concern in many instances to merge their identity, and give dominance to the husband."[131] The committee members of the 1917 hearing were cognizant of this decision, and thus were reluctant to support the repeal of the Expatriation Act. At the same time, the U.S. Supreme Court's use of the unity of husband and wife to uphold the Expatriation Act encouraged the committee members to do the same. Indeed, the issue of family unity was very briefly mentioned only once during the 1912 hearing.[132] However, the committee members in 1917 used the rhetoric and discourse of family unity quite frequently in their support of marital naturalization/expatriation. According to them, women were supposed to have primary allegiance to their husbands and not to their country. For instance, Raker asked: "is not now the worst time for this country to put itself where we would have American citizens as wives of alien enemies ...? I think the wife would stay with her husband first, would she not?"[133] When Mrs. Mumford argued that the U.S. government should protect an American wife of a foreigner even if she resided abroad, Benjamin F. Welty asked: "[p]rotect her against her own husband and the Government she is living under?"[134] Although Raker, who posed a question to Mrs. Mumford, used Sweden, not Germany, as an example of the husband's nationality, Welty thought that if the U.S. government protected the American wife living in her husband's native country, it would create an antagonistic relation with his native country and the husband himself. Furthermore, Welty explicitly asked Mrs. Mumford: "[d]o you not think that that [husband and wife having different nationalities] would tend to divide the household?"[135] Nonetheless, Miss Blake brilliantly used the same discourse *for* independent citizenship. She claimed: "[t]he present law

[131] Mackenzie v. Hare *et al*., 311 (1915).
[132] House Committee on Foreign Affairs, 7.
[133] House Committee on Immigration and Naturalization, 37.
[134] Ibid. Somehow, the record does not indicate Mrs. Mumford's first name.
[135] House Committee on Immigration and Naturalization, 37.

breaks up homes."[136] She knew a U.S.-born woman who divorced from her German husband to avoid the stigma of being an enemy alien. Even before WWI, according to an article of *The San Francisco Call* in 1913, Mrs. Madge C. Swanson, a native-born woman, sued her foreign-born husband for divorce because he would not complete the naturalization process and thus neither she, nor he, could vote.[137] Therefore, when Harold Knutson asked Rep. Rankin if she thought the Rankin bill was "dangerous" to family unity, she answered: "I think it is very dangerous not to pass it."[138]

The committee members' masculine bias demonstrated twisted courtesy toward women. Raker believed that by "becoming a citizen under the tutelage of her kind American citizen husband she [a foreign-born wife] has become an American and a patriot at heart."[139] Therefore, he asked: "[w]ould not that theory [that foreign-born women should be naturalized independently] put an extraordinary burden upon these women who marry American citizens?" because "[t]hey have got to wait five years."[140] Of course, he faced sharp criticism as Dr. Barrett asked: "[m]ay I ask Judge Raker why he is so interested in seeing French women get their rights, when the rights of the American women are not considered?" He defended himself: "[n]ow, ladies, I want you to understand this. [...] I am not trying to be an annoyance to anybody. [...] [S]ometimes the more embarrassing questions I ask, the more information I obtain: and there may be no member on the committee more strongly in favor of this legislation, so you can not [sic] tell where I am."[141] As this comment shows, Raker understood that he was annoying the advocates of independent citizenship, but he did not want to be seen as the obvious obstacle in

[136] Ibid., 20.
[137] "Novelist Whitaker Renounces King So His Wife May Vote."
[138] House Committee on Immigration and Naturalization, 5.
[139] Ibid., 8.
[140] Ibid., 39, 40
[141] Ibid., 43

advancing the United States' reputation as the most civilized country where women were treated as equals to men.

In addition to the rhetoric of family unity, another major opposition to women's independent citizenship was an assumption that American women who married foreigners were "title hunters" who wanted to acquire the European nobility's status as well as access to their wealth. Raker stated: "we have found in the history of this country that it has been a sort of fad for American girls, rich ones, to marry titles."[142] Harold Knutson added: "[a]nd all they considered was property," because he believed that "they lose absolutely nothing by marrying a foreigner."[143] Furthermore, Adolph J. Sabath (D-IL) claimed that those title hunters did not deserve protection of the U.S. government. He stated: "I am not greatly interested in the American women who marry for glory and titles, and take away from this country millions and millions of money and retain their citizenship just for protection of their property acquired here and expanded foolishly abroad. I am not interested in those ladies."[144]

The female advocates of independent citizenship sharply criticized these committee members who assumed that women married for titles and wealth. Mrs. Myra K. Miller, the president of the National Federation of College Women, was the "chairman" of a committee that conducted a survey on women's citizenship and found that "only 3 per cent of the women in the United States who have married aliens have married men with titles."[145] Therefore, she argued: "you people have laid so much stress on that. It seems to me you are ignoring the other 97 per cent who need your interest. You should pay much more attention to the 97 per cent than the 3 per cent. Is not the 97 per cent the number you should consider in discussing this bill, rather than

[142] Ibid., 13.
[143] Ibid., 13-14.
[144] Ibid., 44-45.
[145] Ibid., 38.

this 3 per cent?"[146] Despite her ardent appeal, the committee members completely missed Mrs. Miller's point. Benjamin F. Welty, Adolph J. Sabath, and John L. Burnett (D-AL) did not trust Mrs. Miller's evidence, because they believed that the number was too high.[147] Sabath said: "It is impossible that there should be 3 per cent of our women that were so foolish as to marry titles."[148] If, as the committee members believed, the number of American women who married titles was even smaller than three percent, there would have been more American women marrying common men, supporting Mrs. Miller's argument. However, the committee members were so dismayed by the number presented by Mrs. Miller and could not even comprehend that they were making illogical remarks. Moreover, Raker and Knustson's assumption that U.S.-born women had nothing to lose by marrying foreigners is a stark contrast to Dr. Barrett's argument that U.S. citizenship was the only protection for native-born women, especially working-class women. Again, in Miss Blake's words, the committee members were safe in their citizenship and could not imagine the detrimental impacts of losing U.S. citizenship.

The women at the 1917 hearing advocated independent citizenship not only for elite, prominent women, but also for ordinary and poor women. Mrs. Miller sharply criticized Raker, who again demonstrated his patronizing courtesy by making an obsequious comment that American women were as educated as men. Mrs. Miller questioned: "are you working only for the intelligent women? Are you not going to take care of the ignorant women as well? Are you going to make laws for only the intelligent? I think we ought to take care of the ignorant people also."[149] Similarly, Mrs. Alice Park claimed that the committee members had to pay much more

[146] Ibid.
[147] Ibid., 39.
[148] Ibid.
[149] Ibid., 40.

attention to "the very poor than we do to the very rich"[150] She personally knew a native-born woman whose foreign-born husband died fifty years ago when she was only 22; yet she did not take any legal step to regain her U.S. citizenship. As a consequence, when she applied for relief, "it worked a very great injustice to her."[151] While Raker blamed this widow's ignorance, Mrs. Park defended her: "the woman who is as poor as this is not thinking about her legal rights or any advantages of citizenship, and the only time she does think about it is when she is in very sudden need, and it is then too late."[152] For her part, Dr. Barrett also advocated for poor women: "[i]t is pathetic, because the only thing these [working-class] women have to protect them[selves] is their American citizenship. It is perfectly useless to tell them they ought to know they are marrying a foreigner and all that sort of thing."[153] As noted earlier, even educated women with resources, like Mrs. Harriot Stanton Blatch, did not think about the negative impacts of their international marriage and only later faced the consequences of losing their birth-right citizenship.

Before these committee members, women severely criticized marital naturalization/expatriation and demanded independent citizenship for all women, exemplifying the "New Woman," the newly developed image of the modern woman who embraced equality between the sexes, women's independence, freedom, and social and political participation; yet it is worth noting that Mrs. Mussey cleverly used the traditional notion of the ideal womanhood and presented herself as a reserved, modest, and feminine woman.[154] For instance, she stated: "[w]e have arrived at an age now that the American woman – *thanks to the decent, honorable,*

[150] Ibid., 41. The congressional record, including her testimony, does not provide any information about Mrs. Alice Park, besides her name. She is most likely to be a leading pacifist and suffragist in California.
[151] Ibid.
[152] Ibid., 42.
[153] Ibid., 26.
[154] Ibid., 34.

lovable American man [emphasis added] – owns her own real estate just the same when she is a married woman."[155] She also stated: "[n]ot long ago, *in the kindness of your hearts* [emphasis added], you passed a bill to remove this disability from a woman" regarding property ownership.[156] Unlike Miss Rankin, who fearlessly argued that women themselves would fix the "awful" laws on marriage and citizenship, Mrs. Mussey said: "we are ready to *help you* [emphasis added] to work out the difficulties."[157] As an experienced lawyer for women in the male-dominated world, Mrs. Mussey knew how to negotiate with, or even manipulate, men; therefore, she presented herself as a modest woman who appreciated and admired kindness of men, not as an angry, powerful, "new woman." Nonetheless, the committee members denied these women's demand to repeal the Expatriation Act despite their earnest and sophisticated arguments.

<Conclusion>

In the 1910s, two bills were introduced to abolish the practice of marital naturalization/expatriation. At the first Congressional hearing conducted in 1912, the major advocates of women's independent citizenship were elite men from California. In their view, women who married foreigners were only "girls" who were not mature enough to understand the consequence of their international marriages, and thus needed protection of the government. At the same time, the advocates relied on prominent women to illustrate the injustice brought by the Expatriation Act. In direct contrast, at the Congressional hearing in 1917, it was women themselves who proposed the bill and demanded independent citizenship. They attacked marital naturalization/expatriation from various points – from (in)equality between the sexes and women's patriotic contribution to the reputation of the United States in the international politics.

[155] Ibid., 7.
[156] Ibid., 8.
[157] Ibid., 9.

As the social and political environment changed in which women's citizenship gained more substantial meanings, women crystallized their political consciousness, and the rhetoric and discourse that they used at the 1917 hearing reflected their more sophisticated, mature political consciousness as responsible independent citizens.

Despite their efforts, women had to wait until the Cable Act of 1922 to see any change to the practice of marital naturalization/expatriation. The Cable Act, however, should not be considered as the beginning of restoration of women's independent citizenship. The next chapter examines the problems of the Cable Act and its subsequent amendments, and demonstrates how and why the Cable Act reinforced marital naturalization/expatriation and contributed to the construction of White America by manipulating women's choice of their husbands and their citizenship.

Chapter 7

Re-Codifying the Expatriation Act:
Problems of the Cable Act of 1922 and Repatriation of Married Women and WWI Soldiers

<Introduction>

Despite the 1915 U.S. Supreme Court's decision on *Mackenzie v. Hare* et al. that the Expatriation Act of 1907 was constitutional, female advocates of women's independent citizenship proposed the Rankin Bill in 1917 to abolish marital naturalization/expatriation and shrewdly criticized the Expatriation Act at the Congressional hearing. While they were unsuccessful to convince the members of Congress to repeal the Expatriation Act, their effort, along with the wide newspaper coverage of the *Mackenzie* case, women's wartime patriotism, and their rigorous suffrage movements, increased the public awareness of the Expatriation Act and stimulated the demand to abolish the practice of marital naturalization/expatriation. With the prospect of the Constitutional amendment on women's suffrage, more and more Congressmen realized the Expatriation Act allowed immigrant wives of U.S. citizens to vote while native-born wives of foreigners could not. On the other hand, xenophobia and nativism intensified not only because of the influx of "undesirable" immigrants from East Asia and Southern and Eastern Europe but also because of World War I, the Russian Revolution, and the Red Scare. The Immigration Act of 1917 imposed a literacy test, primarily targeting Southern and Eastern Europeans, while prohibiting immigration from the newly created Asiatic Barred Zone.[1] Moreover, the Immigration Act of 1921 created a national quota system, providing visas to three percent of the number of persons of each nationality in the United States as recorded in the 1910

[1] *Immigration Act of 1917*, Public Law 64-301, *U.S. Statutes at Large* 39 (1917): 876, 877. The literacy test was conducted in various languages and dialects, including Hebrew and Yiddish.

census.[2] Without naming any specific nationality, the quota system restricted immigration from Southern and Eastern Europe while giving preference to Western Europe immigrants. This discriminatory quota system was further enhanced by the Immigration Act of 1924, which completely prohibited immigration from Asia as well.[3]

In these historical contexts, the demand to abolish marital naturalization/expatriation grew larger and larger. Between February 1920 and March 1922, a few bills to repeal the Expatriation Act were unsuccessfully proposed.[4] In June 1922, Rep. John L. Cable (R-OH) introduced a bill to bring a change to the practice of marital naturalization/expatriation, which was endorsed by various women's organizations, such as the National Council of Jewish Women, Daughters of the American Revolution, Business and Professional Women's Clubs, National Woman's Christian Temperance Union, General Federation of Women's Clubs, National League of Women Voters, American Association of University Women, and National Women's Trade

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[2] *Immigration Act of 1921*, Public Law 67-5, *U.S. Statutes at Large* 42 (1923): 5. The quota did not apply to countries in the Asiatic Barred Zone. Japan and China were excluded from the Asiatic Barred Zone because the Gentlemen's Agreement and the Chinese Exclusion Acts already existed. Immigrants from Canada, Newfoundland, and Latin America, including Cuba, were exempted from the quota system.

[3] *Immigration Act of 1924*, Public Law 68-139, *U.S. Statutes at Large* 43 (1925): 159, 162. Between 1924 and 1927, the quota was reduced to two percent of the number of persons of each nationality in the 1890 census. From 1927, the total number of quota-immigrants was capped at 150,000 and the quota was determined as the same ratio to 150,000 as the number of persons of each nationality living in the continental United States in 1920. The Republic of Haiti, the Dominican Republic, and the Panama Canal Zone were added to the non-quota countries.

[4] The major Congressmen who proposed the bills were Daniel R. Anthony (R-KS), John Jacob Rogers (R-MA), Albert Johnson (R-WA), and Samuel Shortridge (R-CA). Rogers sponsored two bills in February and December 1920 respectively. In 1922, Johnson and Shortridge proposed a comprehensive reform of naturalization laws. Interestingly, John E. Raker (D-CA), who adamantly opposed the Rankin Bill, also introduced a bill which resembled the Rogers Bill. The Committee on Immigration and Naturalization conducted a hearing of the Raker Bill, the Anthony Bill, and the Rogers Bill on February 28, 1920 as the topic was the same. House Committee on Immigration and Naturalization, *Proposed Changes in Naturalization Laws*, 66th Cong., 3d sess., 1920, 3; House Committee on Immigration and Naturalization, *Citizenship and Naturalization of Married Women*, 66th Cong., 3d sess., 1920, 7; *A Bill to Provide a Uniform Rule of Naturalization and to Amend and Codify the Laws Relating to the Acquisition and Loss of Citizenship; to Equalize the Citizenship Status of Men and Women; to Establish a Method for the Registration of Aliens for Their Better Guidance and Protection; and for Other Purposes*, H.R. 10860, 67th Cong., 2d sess., March 11, 1922; *A Bill to Provide a Uniform Rule of Naturalization and to Amend and Codify the Laws Relating to the Acquisition and Loss of Citizenship; to Equalize the Citizenship Status of Men and Women; to Establish a Method for the Registration of Aliens for Their Better Guidance and Protection; and for Other Purposes*, S. 3403, 67th Cong., 2d sess., April 5, 1922, Candice Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Berkeley: University of California Press, 1998), 89n23.

Union League, as well as both Republican and Democratic Parties.[5] Three months later, Congress finally enacted the Cable Act in September 1922.

The Cable Act of 1922 is often considered a milestone in the history of marital naturalization/expatriation because it was the first legislation since 1907 that allowed independent citizenship to *a certain type* of women,[6] and scholars often mistakenly state that the Cable Act completely ended the practice of martial naturalization/expatriation in the United States.[7] They believe that the Cable Act allowed *all* U.S.-born women who married *any* kind of foreigners to retain their American citizenship, and that *all* U.S.-born women who lost citizenship by marriage could regain their birthright citizenship. However, as I demonstrate in this chapter, the Cable Act was by no means designed to dismantle the practice of marital naturalization/expatriation. Rather, it re-codified marital naturalization/expatriation along the color line, making the racial and gender ideologies more explicit because the Cable Act granted independent citizenship to women *not only* when they were racially eligible for citizenship *but also* when their husbands were also racially eligible as defined by the Naturalization Acts.[8]

Between 1870 and 1952, the Naturalization Acts allowed only "free white person[s]" and "aliens of African nativity and persons of African descent" to become naturalized citizens, defining Asians as racially ineligible for U.S. citizenship.[9] Therefore, no matter how "white" or "American" native-born women were, the Cable Act did not allow them to become American

[5] House Committee on Immigration and Naturalization, *Naturalization and Citizenship of Married Women*, 67th Cong., 2d. sess., 1922, H. Rep. 1110, 1-2.
[6] Bredbenner, 7; Virginia Sapiro, "Women Citizenship and Nationality: Immigration and Naturalization Policies in the United States," *Politics and Society* 13, no. 1 (1984): 11; Ann Marie Nicolosi, "'We Do Not Want Our Girls to Marry Foreigners': Gender, Race, and American Citizenship," *NWSA Journal* 13, no. 3 (Fall 2001): 15.
[7] Leti Volpp, "Divesting Citizenship: On Asian American History and the Loss of Citizenship through Marriage," *UCLA Law Review* 53 (December 2005): 408.
[8] *Cable Act of 1922*, Public Law 67-346, *U.S. Statutes at Large* 42 (1923): 1022.
[9] *Naturalization Act of 1790*, *Stats. at Large of USA* 1 (1845): 103; *Naturalization Act of 1870*, *Stats. at Large of USA* 16 (1871): 256.

citizens if their husbands were racially-ineligible Asian immigrants.[10] Moreover, even in the case of racially-eligible couples, the Cable Act required the native-born wives to apply for naturalization if they wished to regain U.S. citizenship. In other words, instead of restoring their birthright citizenship, the Cable Act continued treating U.S.-born wives of foreigners as aliens to the United States. Furthermore, these provisions effectively deprived Asian American women who lost citizenship by marriage of the opportunity to regain U.S. citizenship, because they became aliens *ineligible* for citizenship upon marriage, and it was not until 1952 when the racial clause was removed from the Naturalization Acts, making all Asian immigrants eligible for naturalization.[11]

Thus, the Cable Act continued to treat native-born women's marriage with foreigners, especially those who were racially ineligible, as a treasonous act, and punished them by depriving them of U.S. citizenship. As historian Nancy F. Cott argues "the federal government has incorporated particular expectations for marriage in many initiatives, and especially in citizenship policies, even though there is no federal power to regulate marriage directly (except in federal territories)."[12] Just like the Expatriation Act of 1907, the Cable Act was a significant case in which "the federal laws, policies, and values attach influential incentives and disincentives to marriage forms and practices."[13] In the end, the Cable Act of 1922 essentially entailed the same ideologies on race, gender, and citizenship as the Expatriation Act through its façade of repealing the third and fourth sections of the Expatriation Act of 1907. As such, the

[10] Native-born Asian Americans were U.S. citizens, and thus their native-born wives did not lose U.S. citizenship by marriage. United States v. Wong Kim Ark, 169 U.S. 649, 704-705 (1898). As I discuss later in this chapter, the only exception to Asian immigrants' ineligibility for naturalization was Asian men who served in the military during WWI.
[11] *McCarran-Walter Act of 1952*, Public Law 82-414, *U.S. Statutes at Large* 66 (1953): 239.
[12] Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2000), 5.
[13] Ibid.

Cable Act was by no means supposed to be considered a milestone of ending marital naturalization/expatriation.

<Meaning of the Cable Act (1): Rewards to Foreign-Born Wives of U.S. Citizens>

When the Cable Act was enacted in 1922, the Expatriation Act of 1907 had been in effect for fifteen years, and ten years had passed since the Kent Bill of 1912, which was the first bill aimed at repealing the Expatriation Act. During those years, native-born women experienced various problems due to the loss of U.S. citizenship, and newspapers exposed those injustices to the public as discussed in previous chapters. In order to redress those various problems, Congress could have completely abolished marital naturalization/expatriation, restored native-born women's birthright citizenship, and required foreign-born women who married U.S. citizens to go through the regular naturalization process required of male immigrants. Congress, however, did none of these; instead, Congress enacted the Cable Act in 1922 and continued treating a woman's choice of husband as her choice of national allegiance. For the members of Congress, foreign-born women who married American citizens deserved U.S. citizenship, because they pledged their allegiance to the United States by choosing American citizens as their husbands. On the other hand, native-born women who married foreigners, even when the husbands were racially eligible for citizenship, were questioned about their loyalty to the United States, and had to apply for naturalization in their native country to re-acquire U.S. citizenship. If white American women chose Asian immigrants as their husbands, those women were treated as traitors to the white American nation, as the United States tried to completely exclude Asians from the nation. In other words, the Cable Act of 1922 regarded foreign-born wives more loyal to the United States and worthy of U.S. citizenship than native-born women who married

foreigners. This preference for immigrant wives of U.S. citizens was clearly reflected in the structure of the Cable Act.

The first two sections of the Cable Act stipulated immigrant women's right to become naturalized citizens independently from their husbands. Section 1 declared: "the right of any woman to become a naturalized citizen of the United States shall not be denied or abridged because of her sex or because she is a married woman."[14] For Congress, this stipulation was the first and foremost priority among all stipulations of the Cable Act; guaranteeing immigrant women's right to naturalization was more important than restoring independent citizenship for native-born women. In fact, the Committee on Immigration and Naturalization's report on the Cable Bill stated that the purpose of the first section of the bill was "for the recognition of alien married women who desire and are qualified to become American citizens by permitting such women to become naturalized."[15] It was more important to acknowledge immigrant women's interest in becoming U.S. citizens than to responding to native-born women's demand to redress their loss of U.S. citizenship.

This preference for immigrant women is a stark contrast to the previous bills unsuccessfully proposed to repeal the Expatriation Act. Those bills aimed to protect U.S.-born women's birthright citizenship. For example, in 1912, Californian attorney Milton T. U'Ren, in support of the Kent Bill, argued before the Committee on Foreign Affairs: "[t]his amendment [to the Expatriation Act] as now proposed is presented for the purpose of *relieving American women* [emphasis added]."[16] As I demonstrated in the previous chapter, the Rankin Bill was predominantly discussed in terms of problems of native-born women's loss of U.S. citizenship.

[14] *Cable Act of 1922*, 1021-1022.
[15] House Committee on Immigration and Naturalization, *Naturalization and Citizenship of Married Women*, 2.
[16] House Committee on Foreign Affairs, *Relating to Expatriation of Citizens: Hearings on H.R. 21358*, 62nd Cong, 2d sess., 1912, 9.

Nonetheless, the primary concern of the Cable Act was foreign-born women's right to naturalization, not native-born women's (in)dependent citizenship.

Congress' desire to benefit foreign-born women who married U.S. citizens was even more significant in the second section of the Cable Act:

> Sec. 2: […] any woman who marries a citizen of the United States after the passage of this Act, or any woman whose husband is naturalized after the passage of this Act, shall not become a citizen of the United States by reason of such marriage or naturalization; but, if eligible to citizenship, she may be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:
> (a) No declaration of intention shall be required;
> (b) In lieu of the five-year period of residence within the United States and the one-year period of residence within the State or Territory where the naturalization court is held, she shall have resided continuously in the United States, Hawaii, Alaska, or Porto [sic] Rico for at least one year immediately preceding the filing of the petition.[17]

Although Section 2 clearly stipulated that marital naturalization would no longer apply to foreign-born women, it merely tweaked the Citizenship Act of 1855 and Expatriation Act of 1907, which naturalized racially-eligible immigrant wives of U.S. citizens. The language of Section 2, such as "*full and complete* compliance with *all* requirements of the naturalization laws [emphasis added]," appears as if foreign-born women who married U.S. citizens were treated as equal as male immigrants with regards to naturalization and as if there were no exception to the naturalization laws. Section 2, however, created critical "exceptions" to the "full and complete compliance with all requirements of the naturalization laws" and offered simplified naturalization to foreign-born wives of U.S. citizens.

First, a foreign-born wife did not have to file in court a formal declaration of intention to become a naturalized citizen. The formal declaration was often referred to as "(obtaining) the first papers" and a pivotal first step toward naturalization. At the Congressional hearing of the Rankin Bill in 1917, Dr. Kate W. Barret, President of the National Florence Crittenton Mission,

[17] *Cable Act of 1922*, 1022.

claimed that "[m]ost people" mistakenly believed that obtaining the first papers was the end of the naturalization processes, and that three states even allowed immigrant men only with the first papers, not the final papers, of the naturalization to vote.[18] For men, obtaining the first papers was a critical step toward naturalization, yet the Cable Act treated immigrant women's marriage vows as having the same legal effect as the formal declaration of intention to become a naturalized citizen. Second, it significantly reduced the residency requirement from the regular five years to one year. Compared to automatic and immediate naturalization under the Citizenship Act of 1855 and the Expatriation Act of 1907, the one-year residency requirement might appear as a step closer to making naturalization more equal between men and women. In fact, during the Congressional hearing of the Rankin Bill in 1917, the advocates of independent citizenship pointed out that under the Expatriation Act, immigrant women, who did not know anything about the United States, acquired U.S. citizenship immediately upon marriage to American citizens, and argued that automatic marital naturalization did not help those immigrant women to become American citizens who fully understood American values.[19] The Committee on Immigration and Naturalization, conducting a hearing on the Cable Bill, shared this concern and acknowledged that *independent* citizenship would benefit both immigrant wives and the United States, believing that immigrant women would learn the English language and their rights and duties as U.S. citizens, and subsequently teach those values to their children.[20]

Despite this shared concern, Section 2 of the Cable Act reduced the residency requirement to one year. The one-year residency requirement also reinforced the same patriarchal ideology by establishing American citizen husbands as the heads of the households

[18] House Committee on Immigration and Naturalization, *Relative to Citizenship of American Women Married to Foreigners*, 65th Cong., 2d sess., 1917, 17-18.
[19] Ibid., 4, 8.
[20] House Committee on Immigration and Naturalization, *Naturalization and Citizenship of Married Women*, 2.

and the most intimate and influential persons to their wives and children; the citizen husbands were supposed to ensure that their foreign-born wives were learning U.S. principles just like children. This patriarchal and infantilizing ideology assumed that with the influence of American citizen husbands, foreign-born wives would be Americanized faster than male immigrants who were independent from spousal influence. In the report on the Cable Bill, the Committee on Immigration and Naturalization stated that a foreign-born woman who married a U.S. citizen "ha[d] every incentive to qualify herself as rapidly as possible" for U.S. citizenship and the regular five-year residency requirement was "inexpedient and undesirable" for her.[21] Furthermore, the report also stated that "it [was] desirable to relieve her [an immigrant woman who married a U.S. citizen] of the embarrassment of being without a country as soon as may be consistent with the welfare of the United States."[22] There were U.S.-born women who married foreigners and suffered from being stateless. Nonetheless, Congress' priority in rescuing married women from statelessness rested with foreign-born women, not those who were born and raised in the United States. It was embarrassing for Congress to leave foreign-born wives of U.S. citizens stateless, but it was *not* embarrassing to deprive their birthright citizenship from U.S.-born women who married foreigners and leave them stateless. Thus, the Cable Act was by no means acknowledgement of equality between men and women regarding citizenship. It operated within the existing framework of marital naturalization/expatriation only with minor modifications of the Citizenship Act and Expatriation Act.

Congress' preference of immigrant women over native-born women is also evident in the last two sections, namely Sections 6 and 7, of the Cable Act. Section 6 repealed Section 2 of the

[21] Ibid. Similarly, John E. Raker (D-CA), a member of the Committee on Immigration and Naturalization that conducted the hearing of the Rankin Bill of 1917, believed that the five-year residency requirement would "put an extraordinary burden" on immigrant wives of U.S. citizens. House Committee on Immigration and Naturalization, *Relative to Citizenship of American Women*, 39.

[22] House Committee on Immigration and Naturalization, *Naturalization and Citizenship of Married Women*, 2.

Citizenship Act of 1855 and Section 4 of the Expatriation Act, both of which stipulated that white immigrant women were deemed U.S. citizens upon their marriage to U.S. citizens. Similarly, Section 7 of the Cable Act repealed Section 3 of the Expatriation Act, which made native-born women's citizenship dependent on that of their husbands.[23] In short, Section 6 of the Cable Act repealed the stipulations on marital naturalization and Section 7 did the same on marital expatriation. In addition, both sections stipulated that the repeal would not apply retrospectively; as a result, immigrant women retained U.S. citizenship acquired by marriage, while native-born women who lost citizenship by marriage continued to be aliens. Here, again, Congress prioritized foreign-born women over native-born women. The order of these two sections might appear as a minor issue, yet it parallels the larger structure of the Cable Act, confirming Congress' solid preference of foreign-born women who married American citizens and belief that a woman's choice of a husband reflected her choice of national allegiance. Immigrant women who chose American citizens as their spouses were more loyal to the United States than those who were born and raised in the United States yet happened to marry foreigners.

Furthermore, Congress' preference of immigrant women extended to single women who obtained U.S. citizenship through regular naturalization. Under the Expatriation Act of 1907, a female naturalized citizen lost U.S. citizenship upon marriage to a foreign-born man because "any American woman who marries a foreigner shall take the nationality of her husband."[24] In order to for her to become a U.S. citizen again, her foreign-born husband needed to be naturalized or she had to re-apply for naturalization after divorce or widowed. The Cable Act's first section, which stipulated "the right of any woman to become a naturalized citizen of the United States shall not be denied or abridged because of her sex or because she is a married

[23] *Cable Act of 1922*, 1022.
[24] *Expatriation Act of 1907*, Public Law 59-193, *U.S. Statutes at Large* 34 (1907): 1228.

woman," rescued naturalized immigrant women from becoming foreigners again when they married foreigners.[25] According to this stipulation, these naturalized women were worth protecting because of their willingness to become formal members of the nation, complying with the U.S. ideologies, including the notion of independence embedded in the U.S. citizenship and the racial ideology expressed in the Naturalization Act. In addition, these single immigrant women applied for regular naturalization on their own, waited for five years demonstrating "good moral character," and explicitly took the oath of allegiance to the United States. Their naturalization depended on neither their husbands nor fathers. It was clearly their own choice. The Expatriation Act overlooked these foreign-born women's efforts to learn and uphold U.S. values, but the Cable Act acknowledged them by rewarding them with the independent right to naturalization.

<Meaning of the Cable Act (2): Remission for Maintaining the White Race>

While the first two sections of the Cable Act rewarded immigrant women who married U.S. citizens, the third and fourth sections carefully defined citizenship of native-born women who married foreigners based on the race of their husbands *and* themselves. The structure of these two sections revealed that Congress was more interested in punishing native-born women who did not comply with the racial ideology of the United States than securing independent citizenship for them. Just like the first section, Section 3 of the Cable Act seemed to guarantee independent citizenship for native-born women who married foreigners. It stipulated: "a woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after the passage of this Act" unless she formally renounced her U.S. citizenship.[26] But this was only a façade. It continued: "any woman citizen who marries an alien ineligible to

[25] *Cable Act of 1922*, 1021-1022.
[26] Ibid., 1022.

citizenship shall cease to be a citizen of the United States."[27] As noted earlier, "an alien ineligible to citizenship" referred to an Asian immigrant. When the Cable Act was enacted in 1922, many Western states, in which the Asian population was concentrated, specifically banned marriage between whites and Asians with the exception of New Mexico and Washington.[28] Some interracial couples had marriage ceremonies performed in those states and returned to their homes with marriage licenses. Other couples married on the high seas, where no U.S. laws, whether federal or state, applied.[29] Although these interracial couples did not violate any miscegenation law, the racial clause in Section 3 of the Cable Act punished native-born women for marrying Asian immigrants because they "betrayed" the white American nation. The Expatriation Act of 1907 punished all American women who married foreigners as if such marriage were treason against the nation. Compared to this, the Cable Act explicitly highlighted the U.S. racial ideology; the act made it clear that U.S.-born women should only marry racially-eligible immigrants, more specifically white native-born women should marry only white immigrants, if not white American citizens. Native-born women who did not comply with this racial ideology were regarded as not worthy of U.S. citizenship.

Section 3 of the Cable Act excluded another group of native-born women from the U.S. citizenry: those who married racially-eligible foreigners *and* resided abroad. As discussed in Chapters 4 and 6, Section 3 of the Expatriation Act of 1907 was intended to punish native-born

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[27] Ibid.

[28] David Henry Fowler, *Northern Attitudes towards Interracial Marriage: Legislation and Public Opinion in the Middle Atlantic and the States of the Old Northwest, 1780-1930* (New York: Garland Publishing, 1987), 365, 401, 437; Nevada's 1861 miscegenation law was the first statute that prohibited marriage between "whites" and "Chinese." In 1912, it was revised to be more comprehensible, using the language of "Malay or brown race" and "Mongolian or yellow race" instead of "Chinese." In the 1860s, four other Western states banned white-Asian marriage, using the language of "asiatic" and "Mongolian" along with "Chinese." By the end of the 1930s, ten Western states prohibited marriage between whites and Asians. Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (Oxford: Oxford University Press, 2009), 79-80, 91-93.

[29] "Wed Out at Sea," *The Los Angeles Times*, March 22, 1908; "White Brides of Japs Prepare to Flee Laws," *The Los Angeles Times*, October 14, 1914; "Woman Physician Wed Japanese; Job Forfeit," *The Los Angeles Times*, June 29, 1921.

women who married foreigners *and* left the United States to live in another country, yet Congress failed to include the latter in the act, causing much confusion and debate during the Congressional hearings in the 1910s. Section 3 of the Cable Act avoided making the same mistake by stipulating:

> If at the termination of the marital status she is a citizen of the United States she shall retain her citizenship regardless of her residence. If during the continuance of the marital status she resides continuously for two years in a foreign State of which her husband is a citizen or subject, or for five years continuously outside the United States, she shall thereafter be subject to the same presumption as is a naturalized citizen of the United States under the second paragraph of section 2 of the [Expatriation Act].[30]

Because this residency clause followed the racial clause, Congress did not view native-born women's marriage to racially-eligible foreigners *and* residence outside the United States as treasonous as marriage to racially-ineligible foreigners. While *inter*-racial marriage violated the ideology of white racial purity and the U.S. national character, *intra*-racial marriage with racially-eligible foreigners only violated the latter because native-born women "rejected" marrying U.S. citizens and raising their children as future American citizens. Thus, the Cable Act granted a "grace period" to native-born women who married racially-eligible foreigners and resided abroad as opposed to those who married racially-ineligible foreigners living in the United States or not. If *intra*-racial couples returned to the United States during the grace period, the native-born wives were considered to have maintained their loyalty to the United States and were allowed to keep U.S. citizenship. If they did not return, they were presumed to have lost their allegiance to the United States

The grace period was, in a sense, reasonable because some native-born wives moved abroad with their husbands permanently. In this case, it might have been better for them to acquire citizenship of the country in which they reside. However, "the second paragraph of

[30] *Cable Act of 1922*, 1022.

section 2 of the [Expatriation Act]" in Section 3 of the Cable Act stipulated that when a naturalized citizen resided in his/her country of origin for two years or in any other foreign country for five years, he/she would lose American citizenship.[31] The grace periods stipulated in this second paragraph of Section 2 of the Expatriation Act are the same as those in the third section of the Cable Act. This means that the Cable Act treated native-born women who married racially-eligible foreigners as the same as naturalized citizens. In other words, although those women were born and raised in the United States, their loyalty to the United States and birthright citizenship were suspected just because their husbands happened to be foreigners. Even in a foreign country, if an American woman's husband was a U.S. citizen, he would protect her from the influence of the foreign environment and she would maintain her American identity worthy of U.S. citizenship. When her husband was a foreigner, however, she did not have such protection. Thus, she was exposed to foreign influences both at home and outside the home, and she was not considered independent enough to deter those influences. Thus, Section 3 of the Cable Act did not regard married women as independent citizens fully capable of maintaining American identity regardless of the environment. At the same time, it still treated a native-born woman's choice of husband as her choice of national allegiance; from the moment she chose a racially-eligible foreigner as her husband, her loyalty to the United States was suspected, and her birthright citizenship was not inalienable. If she resided abroad, her citizenship was deprived just like naturalized citizens' American citizenship was contingent on where they resided and how long. As long as these ideologies persisted, it was "dangerous" to grant independent citizenship to U.S.-born women who married foreigners, even if they were racially-eligible foreigners.

As discussed above, the first three sections of the Cable Act carefully regulated married women's citizenship based on race and residence. Section 4, on the other hand, addressed

[31] *Expatriation Act of 1907*, 1228.

another critical issue: what to do with native-born women who had lost U.S. citizenship under the Expatriation Act of 1907. While Section 4 allowed some of them to re-acquire U.S. citizenship, the underlying ideology was the same as the Expatriation Act: an American woman who married a foreigner should be punished even if her husband was racially eligible for citizenship. Section 4 of the Cable Act read:

> a woman who, before the passage of this Act, has lost her United States citizenship by reason of her marriage to an *alien eligible for citizenship* may be *naturalized* as provided by section 2 of this Act [emphasis added].[32]

This section appears to offer redress to U.S.-born women who lost their citizenship by marriage; yet it entailed three major problems that attributed to the national ideologies on race and gender. First, in order for a native-born woman to re-acquire U.S. citizenship, her immigrant husband had to be racially eligible for citizenship. Just like the previous sections, this racial clause also demonstrated that U.S.-born women who conformed to the ideology of white America deserved U.S. citizenship but not others. If the husband was an Asian immigrant, she continued to be excluded from the American citizenry. Second, this section did not restore a native-born woman's birthright citizenship. Instead, it demanded her to apply for naturalization on the same ground as an immigrant wife of a U.S. citizen as defined by Section 2 of the Cable Act. It regarded a native-born wife of a foreigner as an "alien" no matter how long she lived in the United States. Even if she had never left the United States, she had to go through naturalization just like an immigrant wife of a U.S. citizen. A white American woman who married a white immigrant, for example, did not cross the racial boundary, yet she was considered to have abandoned the American nation. Thus, in order for her to become a U.S. citizen again, she had to prove that she had lived in the United States for at least a year and apply for naturalization. In short, unless she proved her quality as a U.S. citizen, she could not be granted U.S. citizenship.

[32] *Cable Act of 1922*, 1022.

Just like the Expatriation Act of 1907, the Cable Act continued to regard a married woman not independent enough to withstand her husband's patriarchal foreign influence.

As historian Candice Bredbenner argues, the one-year residency requirement made it nearly impossible for native-born women who lost citizenship by marriage and resided abroad.[33] As noted earlier, the Immigration Act of 1921 created a national quota system, and native-born wives of foreigners who came back to the United States were subject to the quota. If a husband's country was allocated a small quota, his native-born wife had a very slim chance of returning to her home country. If she could not return to the United States, there was no way for her to satisfy the one-year residency requirement for naturalization. As a result, she was barred from both the United States and U.S. citizenship. Thus, the Cable Act meant little, if any, for native-born wives of foreigner who resided abroad. Third, demanding naturalization made it impossible for an Asian American woman who married any kind of a foreigner to become an American citizen because she herself had become an alien *ineligible* for U.S. citizenship. As long as naturalization remained the only option for a native-born wife of a foreigner to become a U.S. citizen again, an Asian American woman who lost citizenship by marriage continued to be excluded from U.S. citizenship.

Furthermore, despite that the Cable Act demanded a native-born wife of a racially-eligible foreigner to apply for naturalization, Sections 4 and 7 declared that her naturalized citizenship would be treated as the same as birthright citizenship before marriage.[34]
Some may argue that there was not any meaningful difference between birthright and naturalized citizenship for women in the early twentieth century. Nevertheless, it could have a substantial meaning to their identity and pride as Americans. The loss of U.S. citizenship under the

[33] Bredbenner, 99.
[34] *Cable Act of 1922*, 1022.

Expatriation Act itself insulted native-born women as they were treated as traitors to the U.S. nation. Demanding them to apply for naturalization on the same ground as an immigrant wife of a U.S. citizen was an additional humiliation. If Congress had genuinely wanted to offer redress to native-born women who lost U.S. citizenship by marriage, it could have restored their birthright citizenship without making them apply for naturalization. In fact, during the Congressional hearing of the Rankin Bill of 1917, the committee members and the advocates of the bill discussed that it was unjust to require a native-born woman who married a foreigner to file a declaration of intention to *retain* U.S. citizenship because she was a U.S. citizen from her birth.[35] Even though the committee members in 1917 agreed that it was a valid point, it was disregarded in the Cable Act. This indicates Congress' reluctance to accept native-born women as U.S. citizens because they once betrayed the U.S. nation. It admitted them to the U.S. citizenry only after they were "deservingly" punished by being treated as "aliens." Thus, the Cable Act of 1922 was operating on the same ideologies as the Expatriation Act of 1907, and it was by no means a beginning to end the practice of marital naturalization/expatriation. It merely eased the application for women who conformed to the ideology of white America by *intra*-racial marriage. <Meaning of the Cable Act (3): Punishing "Traitors" of the White American Nation>

The U.S. ideologies on race, gender, and citizenship to exclude Asians from U.S. citizenship and penalize interracial marriage were particularly evident in Section 5 of the Cable Act: "no woman whose husband is not eligible to citizenship shall be naturalized during the continuance of the marital status."[36] Whether she was native-born or an immigrant, a woman who married an Asian immigrant could not become a naturalized citizen as long as her marriage continued. Therefore, this section forced a racially-eligible wife of an Asian immigrant to choose

[35] House Committee on Immigration and Naturalization, *Relative to Citizenship of American Women*, 10-11.
[36] *Cable Act of 1922*, 1022.

either the right to naturalization by divorcing him or continuance of marriage without U.S. citizenship. If she wanted to regain U.S. citizenship but did not want to divorce, she had to wait until her husband's death. Just like the Expatriation Act of 1907, Section 5 of the Cable Act punished women who chose "wrong" husbands, which functioned as a "lesson" to other women not to choose Asian immigrants as their spouses. By ostracizing both husband and wife from the U.S. citizenry, Section 5 of the Cable Act attempted to completely dismantle their livelihood in the United States as American citizenship was required for property ownership and various jobs. As historian Katarina Leppänen notes, "[w]omen's right to own property, the right to employment, the access to social benefits such as pensions and welfare, and the right to cast a political vote, could all be revoked in a second if she married the wrong man."[37] Even after the enactment of the Cable Act, Mrs. Ida May Tanigoshi and Mrs. Margaret Hara, whom I discussed in Chapter 5, for example, were not allowed naturalization despite both being white women born in the United States, because their husbands were Japanese immigrants.

Moreover, neither divorce nor a husband's death offered the option of naturalization to an Asian American woman who married an Asian immigrant.[38] As noted earlier, many states and territories, especially those in the West with large Asian populations, prohibited miscegenation between Asians and whites. At the same time, various Asian cultures often had stigma against interracial marriage. These encouraged *intra*-racial marriage among Asians.[39] Despite their

[37] Katarina Leppänen, "The Conflicting Interests of Women's Organizations and the League of Nations on the Question of Married Women's Nationality in the 1930s," *NORA: Nordic Journal of Feminist and Gender Research* 17, no. 4 (December 2009): 241.
[38] Although the Fourteenth Amendment granted U.S. citizenship to anyone born in the United States, a U.S.-born Chinese descendant's birthright citizenship was challenged during the Chinese Exclusion era of the late nineteenth century. The U.S. Supreme Court ruled that the Fourteenth Amendment's principle of *jus soli* granted U.S. citizenship to all those who were born within the jurisdiction of the United States. Chief Justice Fuller and Justice Harlan, however, dissented that Chinese immigrants were not allowed to settle permanently in the United States, and their children's "accidental birth" in the United States should grant U.S. citizenship to them. United States v. Wong Kim Ark, 169 U.S. 649, 731-732 (1898).
[39] Volpp, 435.

compliance with miscegenation laws and the U.S. racial ideology to maintain the white race "pure," not only during marriage but also after the termination of marriage, Asian American women were unable to regain U.S. citizenship because they became aliens ineligible for citizenship by marriage. Again, as long as naturalization was the only way for women to re-acquire U.S. citizenship, Asian American women were forced to experience the injustice of marital naturalization/expatriation. Thus, the Cable Act crystalized the U.S. ideologies on gender, race, and citizenship embedded in the Expatriation Act of 1907.

<International Demand and Slow Abolishment of Marital Naturalization/Expatriation >

Although the history of marital naturalization/expatriation was relatively short, its ideologies on gender, race, and citizenship were so firmly ingrained that it required several amendments to the Cable Act and new laws in the 1930s to completely abolish the practice of marital naturalization/expatriation and repatriate native-born women who lost U.S. citizenship by marriage. As the advocates of independent citizenship claimed during the Rankin Bill hearing in 1917, there had been international efforts to abolish marital naturalization/expatriation in the first half of the twentieth century. Since the 1890s, there was a demand from the international legal community to codify married women's nationality.[40] In 1924, the League of Nations started preparation for the first conference on codification of international laws, and a conference was finally held in The Hague in March and April 1930.[41] The conference had three major subjects: Nationality, Territorial Waters, and the Responsibility of States, and forty-eight countries, including the United States, sent their delegates to The Hague.[42]

[40] Leppänen, 241.
[41] Hunter Miller, "The Hague Codification Conference," *The American Journal of International Law* 24, no. 4 (October 1930): 674-675.
[42] Ibid., 676.

The preparation processes as well as the conference revealed that the League of Nations and activist women viewed the issue of married women's nationality very differently. The League of Nation wanted to solve the problems of married women's dual nationality and statelessness by codifying women's nationality, while activist women demanded independent nationality based on the principle of equality between men and women.[43] For example, Miss Chrystal Macmillan, representing the Joint Conference of the International Council of Women and the International Alliance of Women for Suffrage and Equal Citizenship, argued at the initial meeting with the Bureau of the Conference consisted of the Conference's President, Vice-Presidents, Secretary-General, and Assistant Secretary-General: "[w]e ask that a woman shall be treated as an adult human being with full responsibility to decide upon one of the most important of all questions - namely, the country towards which her loyalty should be given."[44] Two weeks later, when the Committee on Nationality finally heard from activist women, she argued:

> The abolition of statelessness, or the prevention of double nationality, are not the fundamentals, from our point of view. What we ask for is that the woman should be considered as a responsible citizen whose consent should be asked, and that is specially necessary with respect to this most fundamental of all political rights.[45]

Activist women's demand was "the recognition of women as fully capable, adult, independent citizens," not as "comparable to […] children, criminals, and mental patients."[46] Miss Doris Stevens, the "Chairman" of the Inter-American Commission of Women, pressured the committee not to codify the discriminatory *status quo*:

> We beg of you, gentlemen, not to begin the Codification of International Law on this subject, by writing into it in any form whatsoever, existing national discrimination against women, in the face of the manifest tendency towards equality in nationality throughout the world and in the face of the rapidly changing legal position of women.[47]

[43] Leppänen, 242.
[44] League of Nations, *Acts of the Conference for the Codification of International Law* (Geneva, 1930), 1: 14, 2: 317.
[45] Ibid., 2: 179.
[46] Ibid., 181, 182.
[47] Ibid., 182.

Various women's organizations around the globe widely supported these demands for married women's independent nationality. The International Council of Women and the International Alliance of Women for Suffrage and Equal Citizenship each had their branches in more than forty countries.[48] Organizations that could not send their representatives to The Hague also expressed their support of married women's independent nationality. For example, the National Women's Party had endorsed the proposal of the Inter-American Commission of Women and "[was] in complete accord with the principle it embodies."[49] The chairman of the Committee on Nationality stated that he "received a number of letters and telegrams from various parts of the world and from every kind of women's association, all expressing the general desire that the Committee should pronounce in favour of the principle of equality of the sexes."[50] Despite the efforts of women's organizations, the conference did not offer any satisfactory solution to the issues of married women's (in)dependent nationality.[51] Still, it drew much needed attention to the point that the international and national communities could no longer ignore.[52] Mrs. Ruth B. Shipley, one of the U.S. delegates and the Chief of the Passport Division under the Department of State, claimed before the Committee on Nationality at The Hague Conference:

> It is well known to all here present that my country has gone very far in its legislation toward the removal of discrimination based on sex, in matters of nationality. […] The Government of the United States, therefore, most naturally supports with cordial sympathy the thought that the question of the removal of discrimination, based on sex in nationality laws, should be carefully considered by all the Governments of the world.[53]

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[48] Ibid., 178.
[49] Ibid., 180-181.
[50] Ibid., 184.
[51] Leppänen, 246.
[52] Ibid., 246-247, 248.
[53] League of Nations, 2: 187. Mrs. Shipley was the chief of the Passport Division from 1928 to 1955. Three years before she became the chief, the Department of State began issuing a passport to a married woman in her maiden name, followed by "wife of," if she requested. In 1937, under the direction of Mrs. Shipley, the Passport Division decided to delete "wife of" when a passport was issued in a married woman's maiden name. Upon recommending this change, she claimed that a passport issued to a married man never indicated "husband of." Jeffrey Kahn, *Mrs. Shipley's Ghost: The Right to Travel and Terrorist Watchlists* (Ann Arbor: The University of Michigan Press, 2013),

Although Mrs. Shipley's statement completely disregarded the issues of race and the proposals of the U.S. delegates at the conference were moderate at most, the conference presented, in Mrs. Shipley's words, "the idea of the progressive removal of such discrimination [based on sex in nationality]."[54]

On July 3, 1930, three months after the conclusion of The Hague Conference, Congress enacted two amendments to the Cable Act of 1922. Although one of them still demonstrated Congress' preferential treatment of immigrant wives of U.S. citizens, the other was the first step to redress native-born women's loss of U.S. citizenship.[55] The former exempted racially-eligible immigrant wives of U.S.-born veterans of World War I from the literacy test demanded by Section 3 of the Immigration Act of 1917 to curb immigration from Southern and Eastern Europe.[56] Underlying this law was the two intersecting ideologies; one was the ideology of marital naturalization, which rewarded racially-eligible foreign-born women who chose U.S. citizens as their husbands, and the other was rewarding veterans and their wives. As discussed in Chapters 2 and 6, military contribution was a critical factor in constituting U.S. citizenship; therefore, foreign-born wives of U.S. veterans deserved a special reward. Nonetheless, given the ever-growing opposition to marital naturalization/expatriation, Congress probably did not and

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11; Craig Robertson, *Passport in America: The History of a Document* (New York: Oxford University Press, 2010), 52-53.

[54] League of Nations, 2: 187.

[55] *An Act to Amend an Act Entitled "An Act Relative to Naturalization and Citizenship of Married Women," Approved September 22, 1922,* Public Law 71-499, *U.S. Statutes at Large* 46 (1931): 849; *An Act to Amend the Law Relative to the Citizenship and Naturalization of Married Women, and for Other Purposes*, Public Law 71-508, *U.S. Statutes at Large* 46 (1931): 854.

[56] *An Act to Amend an Act Entitled "An Act Relative to Naturalization and Citizenship of Married Women," Approved September 22, 1922,* 849.

could not reward them by marital naturalization; allowing them to enter the United States without any restriction was the best that Congress could offer.[57]

On the other hand, the other amendment enacted on July 3, 1930 allowed native-born women who married foreigners and resided abroad to retain U.S. citizenship.[58] At the same time, it lifted the one-year residency requirement from native-born women's naturalization.[59] The laws of marital naturalization/expatriation had given preference to immigrant wives of U.S. citizens over native-born women who married foreigners, and the Cable Act was no exception. It treated those two groups of women the same in terms of naturalization requirement, disregarding native-born women's attachment to the United States, which they developed since their birth. Under the amendment of July1930, the residency requirement was the only difference, but it suggested that Congress finally started to take native-born women's right to U.S. citizenship as important as that of immigrant wives.

In 1931, Congress finally made substantial changes by further amending the Cable Act. First, the 1931 amendment finally abolished the practice of marital *expatriation* by declaring: "[a] woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage" unless she formally renounced her citizenship.[60] Women's marriage to racially-*in*eligible immigrants no longer constituted a reason to deprive U.S. citizenship from them. Native-born women did not have to make an either-or choice between retaining U.S. citizenship and marriage to racially-ineligible foreigners. Although state-level miscegenation

[57] Still, the act excluded the following types of women from the exemption: 1) "persons afflicted with a loathsome or dangerous contagious disease, except tuberculosis in any form," 2) polygamists, 3) prostitutes, 4) convicted persons, 5) previously deported persons, and 6) contract laborers. Ibid.
[58] *An Act to Amend the Law Relative to the Citizenship and Naturalization of Married Women, and for Other Purposes*, 854.
[59] Ibid. In addition to these two regulations, the act amended the Immigration Act of 1924 to include a woman who lost U.S. citizenship by marital expatriation as non-quota immigrants.
[60] *An Act to Amend the Naturalization Laws in Respect of Posting Notices of Petitions for Citizenship, and for Other Purposes,* Public Law 71-829, *U.S. Statutes at Large* 46 (1931): 1511.

laws were still in effect, native-born women's marriage to Asian immigrants was no longer a treasonous act under the federal law.

Second, this amendment opened up a possibility for U.S.-born women, including Asian Americans who married Asian immigrants, to regain U.S. citizenship by naturalization. The amendment stipulated: "[a]ny woman who was a citizen of the United States at birth shall not be denied naturalization […] on account of her race."[61] At the same time, it explicitly repealed Section 5 of the Cable Act, which prohibited wives of Asian immigrants from naturalization during the continuance of marriage. The previous amendment of 1930 allowed only racially-eligible wives of racially-eligible immigrants to become naturalized without any residency requirement. The 1931 amendment extended that eligibility to *all* native-born women regardless of race of their own and their husbands. Although it was not direct repatriation, native-born wives of foreigners could enjoy their rights and privileges as U.S. citizens once their naturalization was completed. For example, they could apply for civil service jobs that required U.S. citizenship, own property under their own names, exercise the right to vote, perform jury duty, and even circumvent anti-Asian laws that applied to their Asian husbands as Mrs. Ida May Tanigoshi in Chapter 5 attempted.

Third, the 1931 amendment allowed naturalization to native-born wives of foreigners who lost U.S. citizenship by marriage *and* residence abroad.[62] As discussed earlier, Section 3 of the Cable Act treated such women as incapable of being independent from foreign influences. At the same time, it regarded their choice of foreign-born husbands as their lack of loyalty to the United States. Combined with the 1930 amendment that abolished the residency requirement, under the 1931 amendment, women could acquire U.S. citizenship independent from their

[61] Ibid., 1511-1512.
[62] Ibid., 1512.

husbands. Nonetheless, the 1931 amendment still demanded native-born women to apply for naturalization, instead of repatriation. Despite this flaw, the abolishment of marital *expatriation* was a significant milestone in the history of marital naturalization/expatriation in the United States that began with the Citizenship Act of 1855. Native-born women no longer had to worry about losing U.S. citizenship even if they resided abroad with their foreign-born husbands or if their husbands were Asian immigrants.

As Congress amended the Cable Act in a piecemeal manner in 1930 and 1931, the international efforts for married women's independent nationality continued. In December 1933, the Pan American Convention on Nationality of Women was held in Montevideo, Uruguay, and the United States' plenipotentiaries signed the treaty on December 26, 1933.[63] Its first article, which was the only non-procedural article of the treaty, declared: "[t]here shall be no distinction based on sex as regards nationality, in their legislation or in their practice."[64] At the time of the Convention, the United States had not yet abolished marital *naturalization* completely.[65] On May 24, 1934, the Senate recommended ratification of the Pan American Treaty on Nationality of Women, and Congress made another amendment to the Cable Act to finally abolish the practice of marital naturalization:

> an alien who marries a citizen of the United States, […] or an alien whose husband or wife is naturalized after the passage of this Act […] shall not become a citizen of the United States by reason of such marriage or naturalization.[66]

[63] "Pan American Convention on Nationality of Women," December 26, 1933, *U.S. Statutes at Large* 49 (1936): 2957.
[64] Ibid., 2960, 2966.
[65] In 1932, Congress amended the Cable Act to treat women born in Hawai'i prior to June 14, 1900 as native-born citizens of the United States. This amendment aimed to solve the ambiguous citizenship status of women born in Hawai'i before it became a territory of the United States. *An Act Relating to the Naturalization of Certain Women Born in Hawaii*, Public Law 72-248, *U.S. Statutes at Large* 47 (1933): 571.
[66] *An Act to Amend the Law Relative to Citizenship and Naturalization, and for Other Purposes*, Public Law 73-250, *U.S. Statutes at Large* 48 (1934): 797.

For the first time in the history of marital naturalization/expatriation in the United States, Congress did not make any distinction between men and women with regards to naturalization. Whether male or female, marriage to a U.S. citizen did not naturalize his/her immigrant spouse. At the same time, an immigrant husband's naturalization no longer naturalized his immigrant wife, either. Both men and women had to apply for naturalization on their own if they wished to acquire U.S. citizenship.

With the amendment of 1934, the United States guaranteed independent citizenship to women regardless of marital status, which scholars often consider as the end of the history of marital naturalization/expatriation.[67] Nonetheless, the amendment of 1934 should not be regarded as the end of the history of marital naturalization/expatriation for two reasons. First, the amendment of 1934 still gave preference to an immigrant spouse of a U.S. citizen in naturalization. Second and more importantly, it did not resume U.S. citizenship of native-born and naturalized American women who lost citizenship by marriage. Until those women were completely repatriated, the history of marital naturalization/expatriation should not be considered to have ended.

Like the Cable Act of 1922, the amendment of 1934 offered reduced naturalization requirements to a spouse of a U.S. citizen; it waived a formal declaration of intention to become a naturalized citizen and the residency requirement was three years instead of five years.[68] Compared to the Cable Act's one-year residency requirement, the three-year residency requirement appears to be fairer. Above all, the three-year residency requirement applied to both male and female spouses of U.S. citizens, not just wives. The amendment, however, continued using marital status to determine if an immigrant deserved simplified naturalization. In other

[67] Sapiro, 1, 15; Nicolosi, 16; Nancy F. Cott, "Marriage and Women's Citizenship in the United States, 1830-1934," *The American Historical Review* 103, no. 5 (December 1998): 1442, 1469.
[68] *An Act to Amend the Law Relative to Citizenship and Naturalization, and for Other Purposes*, 797.

words, marriage to a U.S. citizen was still viewed as a commitment and allegiance to the United States, and the 1934 amendment rewarded immigrants who married U.S. citizens with an easy path to U.S. citizenship.[69] At the same time, it did not offer any significant redress to American women who lost their U.S. citizenship by marriage. Congress continued to put the burden of naturalization on American women who wished to regain U.S. citizenship. It was not until the Repatriation Act of 1936 when Congress began repatriating American women who had lost U.S. citizenship by marriage.[70]

Nonetheless, the Repatriation Act of 1936 brought back the gender and racial ideologies embedded in the laws of marital naturalization/expatriation, specifically the Expatriation Act of 1907 and the Cable Act of 1922. The Repatriation Act stipulated:

> a woman, being a *native-born* citizen, who has or is believed to have lost her United States Citizenship solely by reason of her marriage prior to September 22, 1922 [when the Cable Act was enacted], to an alien, and whose *marital status with such alien has or shall have terminated*, shall be deemed to be a citizen of the United States to the same extent as though her marriage to said alien had taken place on or after September 22, 1922: […] no such woman shall have or claim any rights as a citizen of the United States *until she shall have duly taken the oath of allegiance* [emphasis added].[71]

The Repatriation Act finally began to repatriate native-born women who lost their birthright citizenship by marriage. They no longer needed to apply for naturalization. Nonetheless, there were three major problems with the Repatriation Act. First, it applied to only native-born citizens who lost U.S. citizenship by marriage. There were immigrant women who became naturalized citizens as minor dependents, as single adult women, or by marriage to U.S. citizens or by naturalization of their immigrant husbands, but later married foreigners and lost naturalized

[69] The preferential treatment of immigrant spouses of U.S. citizens, particularly those of U.S. military personnel and veterans, continued in different forms and still exists today.
[70] *Repatriation Act of 1936*, Public Law 74-793, *U.S. Statutes at Large* 49 (1936): 1917.
[71] Ibid.

citizenship. The Repatriation Act did not consider naturalized women's loss of U.S. citizenship by marriage. These women still had to apply for naturalization to become U.S. citizens *again*.

Second, the Repatriation Act offered redress to native-born women only when their marriage to immigrant husbands had ended; they had to be either divorced or widowed to be eligible for repatriation. Under the Cable Act and its amendments, women, whether native-born or immigrants, were able to become naturalized citizens independently from their husbands. Consequently, their citizenship could be different from that of their husbands. The Repatriation Act, however, kept imposing an either-or choice between U.S. citizenship and immigrant husbands just like the Expatriation Act of 1907 and the racial clause of the Cable Act of 1922. While the Repatriation Act was a milestone in the history of marital naturalization/expatriation in the United States, it was not free from the gender ideologies strongly embedded in marital naturalization/expatriation.

Lastly, the Repatriation Act demanded native-born women to take an oath of allegiance to become U.S. citizens again.[72] Women who lost U.S. citizenship by marriage had never taken an oath of allegiance to another country, nor did they explicitly consent to renounce U.S. citizenship. They only made a marriage vow to their immigrant husbands; they had never explicitly expressed their loss of allegiance to the United States. Although it was Congress, not women who married foreigners, that was at fault for the loss of U.S. citizenship, Congress yet again insulted native-born women by demanding an oath of allegiance. For Congress, once an American woman committed a treasonous act of choosing a foreigner as her husband, she should not be easily allowed to rejoin the U.S. citizenry even after her marriage dissolved. Thus, the Repatriation Act demanded an oath of allegiance from divorced or widowed native-born women to assure that their allegiance was with the United States, not their foreign-born husbands.

[72] Ibid.

These legacies of marital naturalization/expatriation were still apparent in the 1940 amendment to the Repatriation Act, which extended the eligibility for repatriation to a native-born woman who "ha[d] resided continuously in the United States since the date of such marriage [with an alien]."[73] This allowed native-born wives of immigrants to become U.S. citizens unless they resided abroad with their husbands. They did not have to wait for divorce or their husbands' death to regain U.S. citizenship. Nonetheless, as it was apparent in the 1912 Congressional hearing of the Kent Bill discussed in Chapter 6 as well as the foreign residency clause of the Cable Act discussed earlier in this chapter, Congress was unwilling to repatriate native-born women who married foreigners and resided abroad. Any government had an obligation to protect its citizens, and the WWI wartime made it clear that the protection of the government was a matter of life-and-death to citizens abroad. Yet, the Repatriation Act continued to refuse protection of native-born wives of foreigners who left the United States. This, too, indicated that the gender ideology of marital naturalization/expatriation that it was the husband who would primarily protect his wife because her primary allegiance was with him. Even in 1940, Congress did not fully believe that a woman could be independent, free from the foreign influence of her husband or foreign surroundings. Although the United States advocated married women's independent citizenship in the international political arena, such as The Hague Convention of 1930 and the Pan-American Convention of 1933, the piecemeal manner to abolish marital naturalization/expatriation and repatriate native-born women who lost U.S. citizenship marriage rather demonstrated Congress' reluctance to accept married women's independent citizenship.

[73] *Repatriation Act of 1940*, Public Law 76-704, *U.S. Statutes at Large* 54 (1941): 715. Congress comprehensively reorganized citizenship policies in to the Nationality Act of 1940. Its Section 317 regulated repatriation of women who lost citizenship by marriage. *Nationality Act of 1940*, Public Law 76-853, *U.S. Statutes at Large* 54 (1941): 1146-1147.

<Repatriation of American Women: Comparison with WWI Soldiers>

The repatriation of native-born women who lost citizenship by marriage was a stark contrast to the repatriation of native-born men who lost U.S. citizenship during WWI due to taking an oath of allegiance to a foreign country to join its military.[74] Prior to the U.S. entry into WWI in April 1917, quite a few American men went to Europe and enlisted in foreign militaries. According to the 1896 U.S. Supreme Court case, *Wiborg v. United States*, "it was not a crime or offence against the United States under the neutrality laws of this country for individuals to leave the country with intent to enlist in foreign military service."[75] Section 2 of the Expatriation Act of 1907, however, stipulated: "any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state […] or *when he has taken an oath of allegiance to any foreign state* [emphasis added]."[76] Because of this stipulation, an American man who enlisted in the British military, for example, lost his U.S. citizenship because Britain required a new military recruit to take an oath of allegiance to the king after passing a series of medical and physical tests.[77] Therefore, during WWI, it was not uncommon for American men to lose U.S. citizenship.

While it took years to abolish the practice of marital naturalization/expatriation and repatriate native-born women, once the United States entered WWI in April 1917, Congress moved quickly to repatriate American men who lost U.S. citizenship by enlisting in the Allies' militaries. As discussed in Chapter 2, since the Revolutionary period, there had been a strong link between U.S. citizenship and military service and WWI was no exception. As historian Lucy

[74] WWI broke out in Europe on July 28, 1914 upon the assassination of Franz Ferdinand of Austria-Hungary and his wife Sophie in Sarajevo.
[75] Wiborg v. United States, 163 U.S. 632, 653-654 (1896).
[76] *Expatriation Act of 1907*, 1228.
[77] Laura Clouting, "From Civilian to First World War Soldier in 8 Steps," Imperial War Museum, http://www.iwm.org.uk/history/from-civilian-to-first-world-war-soldier-in-8-steps (accessed October 27, 2017).

E. Salyer claims, "[i]n the hyperpatriotic atmosphere of the war, in which all men were called to demonstrate their 'unqualified loyalty,' military service became the ultimate test of a man's Americanness and a compelling organizing principle for U.S. citizenship policy."[78] American men who joined the Allies' militaries were precursors to the United States' formal entry to the war. In his speech asking Congress to declare war against Germany, President Woodrow Wilson claimed that Germany's submarine warfare was "a warfare against mankind" and "a war against all nations."[79] Therefore, the United States' motivation and goal in fighting against Germany must be "only the vindication of right, of human right, of which we [the United States] are only a single champion" and "to vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really free and self-governed peoples of the world."[80] American soldiers in the Allied militaries were considered to have upheld and practiced these values without being urged to do so by the U.S. government. As historian Christopher Capozzola notes, "the Selective Service Act of 1917 was the centerpiece of wartime citizenship and its defining obligation. America's first mass draft […] demanded that its citizens die for it."[81] Unlike other men who enlisted in the U.S. military upon the United States' declaration of war, the American soldiers enlisted in European militaries apprehended this obligation and risked their lives for peace, justice, freedom, and autonomy when the U.S. government remained undecided about the war. Thus, those American soldiers "truly" embodied the ideal notion of wartime citizens. Depriving them of U.S. citizenship because of their *pro forma* allegiance to another country was an injustice as it contradicted the fundamental value of

[78] Lucy E. Salyer, "Baptism by Fire: Race, Military Service, and U.S. Citizenship Policy, 1918-1935," *The Journal of American History* 91, no. 3 (December 2004): 848.
[79] Woodrow Wilson, "An Address of the President of the United States Delivered at a Joint Session the Two Houses of Congress," 65th Cong., 1st sess., 1917, S. Doc. 5, serial 7264, 1, 4.
[80] Ibid., 1, 4, 5.
[81] Christopher Capozzola, *Uncle Sam Wants You: World War I and the Making of the Modern American Citizen* (Oxford: Oxford University Press, 2008), 21.

U.S. citizenship. Therefore, on October 5, 1917, Congress enacted the Repatriation Act, allowing American men in the Allies' militaries to "reassume and acquire the character and privileges of a citizen of the United Sates" by "tak[ing] an oath declaring his allegiance to the United States […] and abjuring and disclaiming allegiance to such foreign State and to every foreign prince, potentate, Sate, or sovereignty."[82] Under this act, American soldiers only had to submit evidence that they enlisted in the Allies' militaries after WWI broke out in Europe and take an oath of allegiance to the United States. They had to neither apply for naturalization nor wait a year before their U.S. citizenship was resumed. Moreover, their citizenship could be resumed even while they were abroad. These requirements under the Repatriation Act of 1917 were significantly simpler than what the Cable Act of 1922 demanded for American women who married foreigners to re-acquire U.S. citizenship. Moreover, when the Repatriation Act of 1917 was amended in 1918, taking an oath of allegiance to the United States was all American soldiers had to do to resume their citizenship.[83] Unlike women who lost U.S. citizenship by marriage, American soldiers in the Allies' militaries explicitly took an oath of allegiance to another country and lost U.S. citizenship. Nonetheless, they could regain U.S. citizenship immediately when a court or consular officer approved their applications to have U.S. citizenship resumed.

In addition to the Repatriation Act of 1917, the United States took another measure to protect American soldiers from the loss of U.S. citizenship. In 1918, the United States made the reciprocal military service treaties with the Britain (including Canada), France, Italy, and Greece.[84] For example, the treaty with Britain declared: "[n]o citizen or subject of either country,

[82] *Repatriation Act of 1917*, Public Law 65-55, *U.S. Statutes at Large* 40 (1919): 340.
[83] *Naturalization Act of 1918*, Public Laws 65-144, *U.S. Statutes at Large* 40 (1919): 545-546.
[84] "Convention with Great Britain for Reciprocal Military Service," June 3, 1918, *U.S. Statutes at Large* 40 (1919): 1620-1622; "Convention with Great Britain for Reciprocal Military Service with Canada," June 3, 1918, *U.S. Statutes at Large* 40 (1919): 1624-1626; "Convention with France for Reciprocal Military Service," September 3, 1918, *U.S. Statutes at Large* 40 (1919): 1629-1632; "Convention with Italy for Reciprocal Military Service," August

who […] enters the military service of the other, shall […] be considered, […] to have lost his nationality or to be under any allegiance to His Britannic Majesty or to the United States."[85] Under this provision, an American soldier in the British military did not lose U.S. citizenship despite that he had taken an oath of allegiance to the British king. At the same time, he was considered to have served conscription demanded by the U.S. law, and vice versa. The reciprocal military service treaties removed the fear and inconveniences of losing U.S. citizenship from American soldiers who fought in Europe to defend, in Woodrow Wilson's words, "the principles of peace and justice" in "partnership of democratic nations."[86]

It was not only native-born U.S. citizens but also naturalized citizens that the reciprocal military service treaties protected. Compulsory military service was common in Europe but those who were naturalized in other countries were often exempted.[87] In fact, some Europeans immigrants to the United States became naturalized citizens to avoid conscription in their native countries.[88] In Italy, however, naturalization in another country did not cancel the responsibility of compulsory military service as an Italian citizen. Therefore, an Italian man who became a naturalized citizen of the United States was subject to conscription when he returned to Italy.[89] Because of this, a naturalized U.S. citizen from Italy was unable to visit his native country if he wished to avoid the military service. Indeed, the U.S. Department of State issued a notice to Italian-Americans that naturalization in the United States did not exempt them from the

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24, 1918, *U.S. Statutes at Large* 40 (1919): 1633-1636; "Convention with Greece for Reciprocal Military Service," August 30, 1918, *U.S. Statutes at Large* 40 (1919): 1637-1640.

[85] "Convention with Great Britain for Reciprocal Military Service," 1622.

[86] Wilson, 5, 6.

[87] "Dual Citizenship," *The American Journal of International Law* 9, no. 4 (October 1915): 947.

[88] Bahar Gürsel, "Citizenship and Military Service in Italian-American Relations, 1901-1918," *The Journal of the Gilded Age and Progressive Era* 7, no. 3 (July 2008): 360.

[89] "Dual Citizenship," 947. Italian men between the ages of twenty and thirty-nine were subject to compulsory military service. Gürsel, 360.

compulsory military service in Italy.[90] This issue was even more complicated in the case of the second-generation Italian-Americans whose fathers remained un-naturalized in the United States. Italy employed the doctrine of *jus sanguinis*, under which a child acquired citizenship from the parent (most often father) as opposed to being born in the land (*jus soli*). Therefore, a second-generation Italian-American born in the United States was a U.S. citizen according to *jus soli* embedded in the Fourteenth Amendment, but also an Italian citizen under the Italian law of *jus sanguinis*.[91] As a consequence, the second-generation Italian-Americans with Italian citizen fathers were subject to draft in both countries. The U.S. government had the responsibility to protect its citizens abroad, yet it has no control over laws of another country. Thus, the reciprocal military service treaty with Italy functioned as the protection of Italian-American citizens from the draft in Italy and allowed them to visit Italy without the fear of conscription. While the Cable Act of 1922 continued to expatriate American women who married foreigners and lived abroad for a certain period of time, specifically two years in their husbands' home countries and five years in other countries, the reciprocal military service treaty with Italy allowed naturalized citizens to freely go back to Italy without losing U.S. citizenship. The reciprocal military service treaties exemplified the gendered aspect of U.S. citizenship. American "boys," whether U.S.-born or foreign-born, who risked their lives in the military, deserved U.S. citizenship and various rights and privileges attributed to it. On the other hand, American women who married foreigners were expected to stay in the United States. Particularly American women who married

[90] Ibid.

[91] Ibid., 357-358. To avoid dual citizenship, the United States and various European countries, namely Germany, Austria-Hungary, Britain, Belgium, Denmark, Norway, Sweden, and Portugal, had naturalization treaties. Under these treaties, naturalized citizens/subjects would be considered to have lost their native citizenship/subjecthood when they resided in the country of naturalization for a certain period of time with no intention to return to their native country permanently. Conversely, naturalized citizens/subjects would lose naturalized citizenship/subjecthood and resume that of birth when they resided in their native country for a certain period of time with no intention to permanently return to the country of naturalization. The United States unsuccessfully negotiated with Italy, and thus the issues of dual citizenship remained unsolved. "Dual Citizenship," 947-948; Gürsel, 371-373.

European men and left the United States for Europe were stigmatized to be "title-hunters" whose interests were merely acquiring the status and wealth of the noble class. Moreover, the Cable Act of 1922 allowed racially-eligible women whose husbands were also racially-eligible to re-acquire U.S. citizenship, but it did not completely waive the burden of naturalization.

The heightened value of men's military contribution brought a temporal change to the United States' fundamental policy on race and citizenship. Asians, unless they were born in the United States, remained excluded from the U.S. citizenry until 1952 because of their race.[92] The Naturalization Act of 1918, however, allowed "any alien serving in the military or naval service of the United States" during WWI to apply for naturalization with reduced requirements.[93] This law meticulously stipulated different requirements for different groups of foreigners and U.S. nationals of the Philippines and Puerto Rico. But in general, the law waived the formal declaration of the intention to become a naturalized citizen, the five-year residency requirement, and the application fees. The common requirement was to provide the certificate of enlistment or honorable discharge and the affidavit of two U.S. citizens that the applicant was a person of good moral character. Moreover, the Naturalization Act of 1918 offered an immediate hearing of the application. According to Lucy E. Salyer, the intention of Congress and the Bureau of Naturalization was to offer U.S. citizenship to European immigrant soldiers and veterans as a

[92] Due to the issues over sovereignty and the assimilation policies, the history of Native Americans and U.S. citizenship is significantly different from that of African/African Americans, Asians, and Latinos. For example, the Dawes Act of 1887 granted U.S. citizenship to Native Americans who took the land allotment from the Federal government, removed themselves from the indigenous culture, and adopted the "civilized" lifestyle. In 1888, a law granted U.S. citizenship to Native American women who married U.S. citizens. The Indian Citizenship Act of 1924 made all Native Americans born in the United States American citizens. *Dawes Act of 1887*, *U.S. Statutes at Large* 24 (1887): 390; *An Act in Relation to Marriage between White Men and Indian Women*, *U.S. Statutes at Large* 25 (1889): 392; *Indian Citizenship Act of 1924*, Public Law 68-175, *U.S. Statutes at Large* 43 (1925): 253.

[93] In addition to the enlistees and veterans, the Naturalization Act of 1918 offered simplified naturalization requirements to those who worked on the U.S. commercial or fishing vessels for three years. *Naturalization Act of 1918*, 544.

reward for their contribution to the adopted country.[94] In fact, the Selective Service Act of 1917 stipulated that only U.S. citizens and immigrant men who had declared their intention to become naturalized citizens were liable to be drafted.[95] However, it required *all* men in the United States of the ages between 21 and 30, except those who were classified as "alien enemies," to register for the draft, and all registered persons were subject to draft.[96] Non-citizens, including Asian immigrants who had been prohibited from naturalization, had to respond to the draft call and risk their lives in the U.S. military despite that they did not have the rights and privileges of U.S. citizenship. The war created the surveillance state and communities which most severely targeted the Germans, both native-born and immigrants. Nonetheless, for immigrant communities, including German communities, the wartime provided an opportunity to demonstrate their commitment and loyalty to the United States. As Salyer claims, "[t]he conferring of citizenship […] meant not only a shift in nationality but also the potential dismantling of the racial and cultural stereotypes that kept Asians on the literal and figurative boundaries of American society. The symbolic value of being recognized as members, with the capacity to declare allegiance to the United States, gave citizenship a powerful allure."[97] Thus, leaders of ethnic communities conducted campaigns encouraging their fellow men to register for the draft and volunteer for the military and others to contribute to the war effort through various means.[98] Particularly for Asian immigrants, their military service functioned as a powerful proof that Asians were willing and capable to fulfill the duty of U.S. citizenship and be part of the U.S. society as "100%

[94] Salyer, 853-854.
[95] *Selective Service Act of 1917*, Public Law 65-12, *U.S. Statutes at Large* 40 (1919): 77-78.
[96] Ibid., 80. In 1918, the draft and registration age was extended to between 18 and 45. *Man-Power Act of 1918*, Public Law 65-210, *U.S. Statutes at Large* 40 (1919): 955. According to Salyer, almost sixteen percent of the total of 24 million registered men were non-citizens. Salyer, 851.
[97] Ibid., 856.
[98] Capozzola, 32.

Americans."[99] Therefore, the Naturalization Act of 1918 was a righteous reward for Asian soldiers as much as for racially-eligible immigrant soldiers.

Nonetheless, once Asian soldiers and veterans started applying for naturalization, the question of racial (in)eligibility arose among officials of the Bureau of Naturalization and judges who processed naturalization applications. For example, in Hawai'i, where the Japanese-Americans and non-citizen Japanese constituted forty percent of those who registered for draft, federal district judge Horace W. Vaughan liberally interpreted the language of the Naturalization Act of 1918 and naturalized a number of Asian soldiers and veterans while within the Bureau of Naturalization, Commissioner Richard Campbell and Deputy Commissioner Raymond Crist intensely debated the issue.[100] Without the definite answer to the question, courts started cancelling the naturalization of Asian veterans on the ground of racial ineligibility as anti-Asian movement and nativism revived in the early 1920s. Finally, on May 25, 1925, the U.S. Supreme Court, in *Toyota v. United States*, ruled that in spite of his service in the U.S. Coast Guard between 1913 and 1923 and obtaining the certificate of naturalization in 1921, Hidemitsu Toyota, a native of Japan, was not eligible for naturalization, because the Naturalization Act of 1918 did not extend the racial eligibility to Asians except Filipinos.[101] This ruling upset not only Asians and Asian Americans but also native-born veterans as it depreciated the contributions of Asian veterans. Ethnic organizations, particularly the Japanese American Citizens League, and veterans' organizations, such as the American Legion and the Veterans of Foreign Wars, actively lobbied for naturalization of Asian veterans, leading to the Nye-Lea Act of 1935 that allowed "any alien

[99] Salyer, 854.
[100] Ibid., 854, 856-857, 858-861. Judge Vaughan did not always support naturalization of Asian immigrants. In 1916, he rejected the naturalization application of Takao Ozawa because he was a Japanese and thus not white. Ozawa fought for his eligibility at the U.S. Supreme Court but lost the case in 1922. Judge Vaughan also denied the Filipinos' racial eligibility for naturalization. Ibid., 856-857.
[101] Toyota v. United States, 268 U.S. 402, 407, 412 (1925).

veteran of the World War heretofore ineligible for citizenship" to become a naturalized citizen as long as he "[r]esumed his previous permanent residence in the United States," "ha[d] maintained a permanent residence continuously since the date of discharge," and was a permanent resident of the United States.[102] Although the veterans' organizations most often held nativist and anti-Asian sentiments, their recognition of Asian veterans' sacrifice and contributions surpassed their exclusionist sentiment.[103] In Salyers' words, Asian veterans were "comrades-in-arms" who "had passed the ultimate test in demonstrating their Americanness."[104] The Nye-Lea Act temporarily challenged the policy on race and citizenship, but it also suggested the masculine aspect of U.S. citizenship. For those who were deemed unworthy or incapable of being U.S. citizens because of race, the only way to prove that they deserved U.S. citizenship was sacrificing their lives for the nation during war.

Furthermore, President Calvin Coolidge in 1924 pardoned military deserters and "fully remitted […] any relinquishment or forfeiture of their rights of citizenship as well as their right to become citizens."[105] Soldiers who deserted the U.S. military were deprived of U.S. citizenship because desertion was considered as a treasonous act. Nevertheless, President Coolidge pardoned their crime and restored their citizenship, while women who lost U.S. citizenship by marriage never received such treatment even though they did not formally commit treason. The Cable Act of 1922, enacted only two years before the presidential pardon, continued to punish American women who married foreigners. An American woman's marriage to a foreigner, particularly to an Asian, was more treasonous than deserting the military in wartime.

[102] Salyer, 866; *Nye-Lea Act of 1935*, Public Law 74-162, *U.S. Statutes at Large* 49 (1936): 397.
[103] Salyer, 866, 871-872.
[104] Ibid., 872.
[105] Calvin Coolidge, Proclamation, "Granting Amnesty and Pardon, etc., in Certain Cases," *U.S. Statutes at Large* 43 (1925): 1940.

<Conclusion>

The Cable Act of 1922 and its amendments in the 1930s continued to treat a woman's choice of husband as her choice of national allegiance. The structure of the Cable Act reveals that Congress was more interested in rewarding racially-eligible immigrant women who married U.S. citizens than protecting native-born women who married foreigners from the loss of U.S. citizenship. The Cable Act offered the simplified naturalization requirements to racially-eligible foreign-born wives of U.S. citizens, while punishing native-born women who married foreigners. Yet the degrees of the punishment were different depending on the race of an American wife and her immigrant husband. While the Expatriation Act of 1907 treated all native-born women who married foreigners in the same manner, a decade of the debate on marital naturalization/expatriation since the Kent Bill of 1912 and the various changes in the political and social landscapes, including the ratification of the Nineteenth Amendment and the intensified xenophobia, particularly anti-Asian movement, made Congress to re-codify the Expatriation Act. The Cable Act had a façade of repealing the Expatriation Act, but it merely modified the Expatriation Act, maintaining the same racial and gender ideologies as the Expatriation Act. Particularly the Cable Act's use of racial (in)eligibility highlighted a clear distinction between who was accepted to the U.S. citizenry and who was not. A native-born woman's marriage to a racially-eligible foreigner was not ideal but at least acceptable because her immigrant husband could be assimilated into White America. On the other hand, the Cable Act continued to deprive U.S. citizenship from any native-born woman who married a racially-ineligible foreigner. But its consequences were different depending on women's race. If a native-born woman herself was racially eligible, she could regain U.S. citizenship by naturalization when her marriage ended. However, if she was an Asian American woman, she did not have

such option and remained expatriated from the U.S. citizenry until the 1931 amendment to the Cable Act. Thus, the Cable Act was by no means an attempt to abolish the practice of marital naturalization/expatriation; it meticulously redefined who could be part of the U.S. nation as citizens and who was not.

Juxtaposing the Cable Act of 1922 and the Repatriation Act of 1936 with the wartime and post-war citizenship policies reveals a highly masculine dimension of U.S. citizenship. The U.S. government significantly relaxed its policies on citizenship of soldiers in the Allies' militaries, Asian veterans, and military deserters, yet women who married foreigners could not be repatriated easily even under the Repatriation Act of 1936 and its amendment of 1940. A native-born woman who lost citizenship by marriage did not take an oath of allegiance to any foreign country; she only took a marriage vow to her foreign-born husband. Nonetheless, the Cable Act of 1922 and its amendments in the 1930s made her to apply for naturalization, instead of restoring her birthright citizenship. At the same time, under the Cable Act of 1922, race of a husband and a wife was the decisive factor for the wife's eligibility for naturalization. No matter how white and how American a woman was, her marriage to an Asian immigrant "downgraded" her racial and citizenship status same as that of her husband. On the other hand, WWI soldiers who lost U.S. citizenship formally and explicitly took an oath of allegiance to a foreign country, yet their citizenship was "resumed" immediately upon application. Moreover, despite the racial policy on citizenship since the founding of the United States, Asian soldiers and veterans of WWI were allowed to become naturalized citizens although for a limited time. Men's willingness to risk their lives for the United States during the war constituted a solid evidence of being worthy of U.S. citizenship. Furthermore, military deserters' lost citizenship was restored

by the presidential pardon, while American women who married foreigners continued to be punished on various levels depending on race.

The Cable Act of 1922 is often mistakenly said to be the end of the practice of marital naturalization/expatriation. As a consequence, the amendments the Cable Act in the 1930s and the Repatriation Act of 1936 and its 1940 amendment are most often neglected not only in the discussion of the history of married women's (in)dependent citizenship, but also in a larger discussion of the history of how U.S. citizenship was constructed and who deserved U.S. citizenship. As this chapter demonstrated, the Cable Act and its amendments were arguably the most complex, intense, and explicit case in which gender, race, and citizenship intersected as Congress meticulously used those factors to determine who could be accepted to the U.S. nation as formal citizens. Overlooking the history of marital naturalization/expatriation and repatriation since the Cable Act of 1922 would hinder our effort to understand how U.S. citizenship was manipulated during the crucial time periods in the United States when the meanings of U.S. citizenship was constantly changing due to women's suffrage, WWI, xenophobia, and others.

Chapter 8

Coda:
"Will Not Erase the Past, but Will Highlight the Injustices of the National Experience and Help Build a Better, Stronger, and More Equal Nation"[1]

After learning that the Expatriation Act of 1907 made his Minnesota-born grandmother Elsie Knuston Moren register as an alien during World War I, Daniel Swalm contacted Senator Al Franken (D-MN), asking him to introduce a resolution to address the injustice of the Expatriation Act of 1907.[2] On May 14, 2014, two days before what would have been Mrs. Moren's 123rd birthday, the Senate passed a resolution, "acknowledg[ing] that section 3 of the Expatriation Act […] is incompatible with and antithetical to the core principle that all persons, regardless of gender, race, religion, or ethnicity, are created equal," and "express[ed] sincere sympathy and regret to the descendants of individuals whose citizenship was revoked […] who suffered injustice, humiliation, and inequality, and who were deprived of constitutional protections accorded to all citizens of the United States."[3] This resolution acknowledged not only Mrs. Moren, but also "thousands of women born in the United States" who experienced various kinds of hardship, including Mrs. Ethel Mackenzie.[4] The resolution also admitted that the Expatriation Act was "similar to discriminatory State laws that criminalized or nullified marriages between individuals of different races."[5] As Swalm's "discovery" of his grandmother's loss of U.S. citizenship and the Senate's formal apology demonstrate, the history of marital naturalization/expatriation has continued even after the practice had legally ceased.

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[1] *Expressing the Regret of the Senate for the Passage of Section 3 of the Expatriation Act of 1907 (34 Stat. 1228) That Revoked the United States Citizenship of Women Who Married Foreign Nationals*, S. Res. 402, 113th Cong., 2d sess., *Congressional Record* 160, no. 49, daily ed. (March 27, 2014): S1831.
[2] Richard Simon, "Spotlighting a Law That Stripped U.S.-Born Women of Citizenship," *The Los Angeles Times*, April 19, 2014; Richard Simon, "Women Who Lost U.S. Citizenship for Marrying Foreigners Get Apology," *The Los Angeles Times*, May 16, 2014.
[3] *Expressing the Regret of the Senate*, S1832.
[4] Ibid., S1831.
[5] Ibid.

While the 1934 amendment to the Cable Act of 1922 abolished the practice of marital naturalization/expatriation, neither its history nor discussion should end there. As discussed in Chapter 6, the repatriation of American women who lost U.S. citizenship by marriage only began with the Repatriation Act of 1936 in a piecemeal manner. Between 1937 and 1948, I found several Congressional reports and hearings on the repatriation of women who lost citizenship by marriage, some of which were about women who were born in Hawai'i. Since Hawai'i was annexed by the United States on August 12, 1898 and the Hawaiian Organic Act of 1900 granted U.S. citizenship to "all persons who were citizens of the Republic of Hawaii on August [12, 1898]," excluding all Asians, who constituted about sixty percent of the population.[6] This stipulation raised two questions. First, it did not clarify if those who became U.S. citizens would be considered native-born or naturalized citizens. This distinction was crucial for women who wanted to re-acquire U.S. citizenship because the 1931 amendment to the Cable Act of 1922 and the Repatriation Act of 1936 allowed naturalization and repatriation respectively only to native-born women who lost U.S. citizenship by marriage. If women born in Hawai'i were not considered native-born citizens, they would not be eligible to naturalization or repatriation. Second, the Hawaiian Organic Act remained silent about the citizenship status of those who were born in Hawai'i between the annexation in 1898 and the enactment of the Hawaiian Organic Act in 1900. During this short period of time, Hawai'i was an unincorporated territory in which the U.S. Constitution only partially applied. As legal scholar Lisa Maria Perez states, in the 1901 *Insular Cases*, in which the citizenship status of the newly acquired territories as the consequence of the Spanish-American War of 1898 was contested, the U.S. Supreme Court held

[6] *Hawaiian Organic Act of 1898, U.S. Statutes at Large* 31 (1901): 141; Alfred S. Hartwell, "The Organization of a Territorial Government for Hawaii," *The Yale Law Journal* 9, no. 3 (December 1899): 112; U.S. House of Representatives, "Hawaii," in *Asian and Pacific Islander Americans in Congress*, History, Art and Archives, https://history.house.gov/Exhibitions-and-Publications/APA/Historical-Essays/Exclusion-and-Empire/Hawaii/ (accessed December 24, 2018).

that the Fourteenth Amendment did not apply to those unincorporated territories, and thus the residents of the territories were not U.S. citizens.[7] When this principle was applied to Hawai'i, those who were born in Hawai'i in 1899, for example, were not U.S. citizens. On the other hand, they were not citizens of the Republic of Hawai'i, either because the republic was dissolved upon the annexation by the United States. Therefore, the Hawaiian Organic Act did not apply to them and their citizenship status was unclear. Unlike the former Spanish territories, Hawai'i had a significant number of English-speaking white inhabitants whom the United States would have willingly incorporated as its citizens. In fact, the 1932 amendment to the Cable Act stipulated that "a woman born in Hawaii prior to June 14, 1900, shall […] be considered have been a citizen of the United States at birth."[8] The issues of women born in Hawai'i raise the fundamental questions of who deserved U.S. citizenship and who should be considered as native-born U.S. citizens. Furthermore, according to historian Linda K. Kerber, even in the 1950s, some native-born women could not obtain U.S. passports because of their marriage with foreigners before 1922.[9] Therefore, there were women who were punished by marital naturalization/expatriation well beyond 1934, but these issues have yet to be investigated.

In order to fully examine those issues, we need to re-think what factors constitute an individual's experience. Feminist scholarship made it indispensable to consider the intersection of gender, race, class, and sexual orientation in our research, and more recent scholarship has added (dis)ability and expanded the notion of gender from the binary opposition to a much more

[7] Lisa Maria Perez, "Citizenship Denied: The *Insular Cases* and the Fourteenth Amendment," *Virginia Law Review* 94, no. 4 (June 2008): 1037-1041. In his concurring opinion in one of the *Insular Cases*, Justice Gray wrote: "If Congress is not ready to construct a complete government for the conquered territory, it may establish a temporary government, which is not subject to all the restrictions of the Constitution." Downes v. Bidwell, 182 U.S. 244, 247 (1901).

[8] *An Act Relating to the Naturalization of Certain Women Born in Hawaii*, Public Law 72-248, *U.S. Statutes at Large* 47 (1933): 571.

[9] Linda K. Kerber, "The Paradox of Women's Citizenship in the Early Republic: The Case of *Martin vs. Massachusetts*, 1805," *American Historical Review* 97, no. 2 (April 1992): 378.

fluid and inclusive concept. While these are extremely important advancements, we need to keep thinking outside of the box to include other factors that constitute an individual's experience. As this dissertation has demonstrated, in the case of marital naturalization/expatriation, it was not only women's gender, race, and class, but also their marital status, loss of formal citizenship, places of birth and residence, and even the race, class, and nationality of their husbands all significantly mattered, but in different ways. In her argument that subjects are discursively constructed, historian Joan W. Scott notes: "[w]hat counts as experience is neither self-evident nor straightforward; it is always contested, and always therefore political."[10] She further argues: "[e]xperience is […] not the origin of our explanation, but that which we want to explain. This kind of approach does not undercut politics by denying the existence of subjects; it instead interrogates the processes of their creation and, in so doing, refigures history and the role of the historian and opens new ways for thinking about change."[11]

Each of the women discussed in this dissertation believed in her own sense of justice and challenged the patriarchal, racist, and/or xenophobic laws within the context and understanding of her time period. They challenged laws and their supporting ideologies to protect their own rights, but the multifaceted nature of legislation develop a pattern over time that perpetually made women's claim to citizenship and nationality a contested state. Once legitimized as law, ideology appeared to be natural and/or normal, and the sanction on those who acted against it was justified. In this process, ideology reproduced and reinforced itself, and individuals in the society unconsciously internalized it through legal practice in everyday life. In other words, law attempted to make ideology ahistorical and thus a universal truth. Nevertheless, law was not simply a site of enforcing and reinforcing ideology. As legal historian David Delaney states,

[10] Joan W. Scott, "The Evidence of Experience," *Critical Inquiry* 17, no. 4 (1991): 790.
[11] Ibid., 797.

"legal practice has been important to efforts both to reinforce relations of domination and to *challenge* [emphasis added] them."[12] Law is also a site of negotiation. The women discussed in this dissertation understood this, and negotiated with and within the ideologies on gender, race, and citizenship by refusing to simply accept the laws. Californian suffragist Mrs. Ethel C. Mackenzie fought for the right to vote at the U.S. Supreme Court, and her case drew much public attention and raised political awareness about the Expatriation Act, leading to women's collective effort to repeal the Expatriation Act. On the other hand, Mrs. Hannah Miller Harju and Mrs. Mary Hook tried to keep their homestead land titles, and *The Los Angeles Times*' coverage on them revealed the consequence of losing U.S. citizenship to entrywomen. Mrs. Ida May Tanigoshi and Mrs. Margaret E. Hara, both white wives of Japanese immigrants, negotiated with the laws on race, gender, and citizenship in different ways. Mrs. Tanigoshi challenged California's Alien Land Act in court, successfully achieving the right to own land but not the right to transfer. Her legal case, however, revealed conflicting desires: the desire to exclude Japanese and their families from the United States and the desire to protect a white woman from anti-Japanese laws. On the other hand, Mrs. Hara performed the ideal notion of white womanhood to make her interracial marriage less controversial. In addition to these women's individual and collective efforts, various Western newspapers created a space to expose the injustice of marital naturalization/expatriation and raised awareness among the audience. Newspapers, or any media, cannot exactly reflect the fullness of public opinion. Still, they cannot arbitrarily make up what they wanted to tell to its readership. Between a mission of journalism to tell the facts and their collective political belief, the newspapers examined in this dissertation also negotiated with the ideologies on race, gender, and citizenship in their reports on women who lost citizenship by marriage.

[12] David Delaney, *Race, Place, and the Law, 1836-1948* (Austin: University of Texas Press, 1998), 28.

The women in this dissertation were rather ordinary women who might not be featured in conventional history textbooks; still, they left a trace in history for us to understand what it meant for women to lose formal citizenship in the early twentieth century in the American West. As Kerber claims, "it should now be possible for historians to reconsider what counts as citizenship. […] If we broaden the discussion and recognize that citizenship involves wide-ranging issues of claims of rights and of political behavior, as well as matters of allegiance, support, and analysis, then it is not difficult to find many occasions when women addressed political matters."[13] Today, citizenship is most often discussed in regards to suffrage. As revealed in this dissertation, formal citizenship meant more than suffrage; it was directly associated with access to land, property, employment, and more. In the words of Congressman William Kent, who in 1912 introduced a bill to repeal the Expatriation Act, "the question is a good deal wider than the question of suffrage."[14] Unless we pay due attention to those issues, not just suffrage, we cannot achieve a more complete understanding of the meanings of citizenship.

In addition, the institution of marriage has been discussed in terms of sexual orientation. Thus, when the U.S. Supreme Court declared that the Defense of Marriage Act of 1996 was unconstitutional in 2013 in *United States v. Windsor*, the discussion quieted down.[15] However, we should never normalize and accept the institution of marriage as essential. Fundamentally, it demands an individual to report to the state about his/her monogamous sexual partner by disseminating certain benefits and privileges as incentive. For example, as soon as the *Windsor* case was ruled, the U.S. Citizenship and Immigration Services started to accept immigration visa applications for the same-sex spouses of U.S. citizens and permanent residents in the same

[13] Kerber, 354-355.
[14] House Committee on Foreign Affairs, *Relating to Expatriation of Citizens*, 62d Cong., 2d sess., 1912, 20.
[15] United States v. Windsor, 570 U.S. 744, 775 (2013).

manner as those of the opposite-sex.[16] While the U.S. Supreme Court's decision and the USCIS's quick resolution are both commendable, they do not answer why individuals need to be in a legal, monogamous sexual relationship to receive benefits, such as an immigration visa. The practice of marital naturalization/expatriation discriminated against married women who married foreigners because they were denied the right to independent citizenship. Then, it can be argued that the institution of marriage that provides benefits and privileges only to legally married couples discriminates against single persons whether they are in a sexual relationship or not.

The history of marital naturalization/expatriation begs the questions on the meanings of marriage and citizenship as well as the relationship between the two. The interplay of how laws are created and what problems they try to solve too often opens other avenues of conflict that punish or do not protect all people. Women, especially racial and ethnic minority women, are arguably the most vulnerable in these conflicts. This dissertation asks its audience to also look at patterns over time, not just short periods, to challenge how we will continue to study the relationship between marriage and citizenship. Any attempt to answer these questions offer valuable insights to the recent debates over who is a "true" native-born U.S. citizen, who deserves full U.S. citizenship, and who deserves to enter and continue to live in the United States. In order to have a constructive and provocative conversation on these questions, we should recover the history of marital naturalization/expatriation and understand why the United States deprived U.S. citizenship from women who married foreigners as well as why the restoration of independent citizenship and the repatriation of women who lost citizenship by marriage were achieved only in piecemeal manners.

[16] U.S. Citizenship and Immigration Services, "Same-Sex Marriages," https://www.uscis.gov/family/same-sex-marriages (accessed December 26, 2018).

We tend to venerate how laws, though slowly, protect marginalized groups, and eventually treat them as full citizens. Nonetheless, a failure to recognize long-lasting effects of discriminatory laws leads us to continue to turn away from understanding how those laws sustain and reinforce inequality. If we fully believe that laws instill truth and justice for all, we must sincerely engage with the vulnerability of marginalized groups, including but not limited to women of racial/ethnic minorities. Otherwise, we will overlook how some of them are denied their full citizenship rights in all dimensions of their lives.

Appendix

<Citizenship Act of 1855>

An Act to secure the Right of Citizenship to Children of Citizens of the United States born out of the Limits thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States: *Provided, however*, That the rights of citizenship shall not descend to persons whose fathers never resided in the United States.

Sec. 2. *And be it further enacted*, That any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen.

Approved, February 10, 1855.

<Expatriation Act of 1907>

An Act In reference to the expatriation of citizens and their protection abroad.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State shall be authorized, in his discretion, to issue passports to persons not citizens of the United States as follows: Where any person has made a declaration of intention to become such a citizen as provided by law and has resided in the United States for three years a passport may be issued to him entitling him to the protection of the Government in any foreign country: *Provided*, That such passport shall not be valid for more than six months and shall not be renewed, and that such passport shall not entitle the holder to the protection of the Government in the country of which he was a citizen prior to making such declaration of intention.

Sec. 2. That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.

When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen, and the place of his general adobe shall be deemed his place of residence during said years: *Provided, however*, That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may proscribe: And provided also, That no American citizen shall be allowed to expatriate himself when this country is at war.

Sec. 3. That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marriage relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein.

Sec. 4. That any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation if she continue [sic] to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens, or if she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of such marital relation.

Sec. 5. That a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent: *Provided*, That such naturalization or resumption takes place during the minority of such child: *And provided further*, That the citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States.

Sec. 6. That all children born outside the limits of the United States who are citizens of thereof in accordance with the provisions of section nineteen hundred and ninety-three of the Revised Statutes of the United States and who continue to reside outside the United States shall, in order to receive the protection of the Government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States and shall be further required to take the oath of allegiance to the United States upon attaining their majority.

Sec. 7. That duplicates of any evidence, registration, or other acts required by this Act shall be filed with the Department of State for record.

Approved, March 2, 1907.

<Cable Act of 1922>

An Act Relative to the naturalization and citizenship of married women.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of any woman to become a naturalized citizen of the United States shall not be denied or abridged because of her sex or because she is a married woman.

Sec. 2. That any woman who married a citizen of the United States after the passage of this Act, or any woman whose husband is naturalized after the passage of this Act, shall not become a citizen of the United States by reason of such marriage or naturalization; but, if eligible to citizenship, she may be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

(a) No declaration of intention shall be required;

(b) In lieu of the five-year period of residence within the United States and the one-year period of residence within the State or Territory where the naturalization court is held, she shall have resided continuously in the United States, Hawaii, Alaska, or Porto [sic] Rico for at least one year immediately preceding the filing of the petition.

Sec. 3. That a woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after the passage of this Act, unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens: *Provided*, That any woman citizen who marries an alien ineligible to citizenship shall cease to be a citizen of the United States. If at the termination of the marital status she is a citizen of the United States she shall retain her citizenship regardless of her residence. If during the continuance of the marital status she resides continuously for two years in a foreign State of which her husband is a citizen or subject, or for five years continuously outside the United States, she shall thereafter be subject to the same presumption as is a naturalized citizen of the United States under the second paragraph of section 2 of the Act entitled "An Act in reference to the expatriation of citizens and their protection abroad," approved March 2, 1907. Nothing herein shall be construed to repeal or amend the provisions of Revised Statutes 1999 or of section 2 of the Expatriation Act of 1907 with reference to expatriation.

Sec. 4. That any woman who, before the passage of this Act, has lost her United States citizenship by reason of her marriage to an alien eligible to citizenship, may be naturalized as provided by section 2 of this Act: *Provided*, That no certificate of arrival shall be required to be filed with her petition if during the continuance of the marital status she shall have resided within the United States. After her naturalization she shall have the same citizenship status as if her marriage had taken place after the passage of this Act.

Sec. 5. That no woman whose husband is not eligible to citizenship shall be naturalized during the continuance of the marital status.

Sec. 6. That section 1994 of the Revised Statutes and section 4 of the Expatriation Act of 1907 are repealed. Such repeal shall not terminate citizenship acquired or retained under either of such sections nor restore citizenship lost under section 4 of the Expatriation Act of 1907.

Sec. 7. That section 3 of the Expatriation Act of 1907 is repealed. Such repeal shall not restore citizenship lost under such section nor terminate citizenship resumed under such section. A woman who has resumed under such section citizenship lost by marriage shall, upon the passage of this Act, have for all purposes the same citizenship status as immediately preceding her marriage.

Approved, September 22, 1922.

<Repatriation Act of 1936>

An Act To repatriate native-born women who have heretofore lost their citizenship by marriage to an alien, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter a woman, being a native-born citizen, who has or is believed to have lost her United States Citizenship solely by reason of her marriage prior to September 22, 1922, to an alien, and whose marital status with such alien has or shall have terminated, shall be deemed to be a citizen of the United States to the same extent as though her marriage to said alien had taken place on or after September 22, 1922: *Provided*, *however*, That no such woman shall have or claim any rights as a citizen of the United States until she shall have duly taken an oath of allegiance as prescribed in section 4 of the Act approved June 29, 1906 (34 Stats. 596; U. S. C., title 8, sec. 381), at any place within or under the jurisdiction of the United States before a court exercising naturalization jurisdiction thereunder or, outside of the jurisdiction of the United States, before a secretary of embassy or legation or a consular officer as prescribed in section 1750 of the Revised Statutes of the United States (U.S. C., title 22, sec. 131); and such officer before whom such oath of allegiance shall be taken shall make entry thereof in the records of his office or in the naturalization records of the court, as the case may be, and shall deliver to such person taking such oath, upon demand, a certified copy of the proceedings had, including a copy of the oath administered, under the seal of his office or of such court, at a cost not exceeding $1, which shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department of the United States.

Approved, June 25, 1936.

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