

**Married Women's Citizenship in the United States for a Century and a Half:
An Overview**

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In Revolutionary America, the ideology of John Locke concerning government and the new nation was respected and heeded. In his first treatise, Locke promoted the ideals of subjugation for married women believing that as with any relationship, there would be disputes between husband and wife, but that the rule would “naturally fall with man” as he was the “abler and stronger”. His interpretation of the Garden of Eden story in which the superiority of man over woman and woman's need to be punished for her actions was established and thus subjugation to her husband was the obvious result. In his second treatise, Locke reiterates his belief in male dominion over his wife lasting for the duration of the wife's life. As such, Locke served as one of the original theorists concerning women's citizenship (Locke, 1764).

The tenets of marital British law regarding coverture and legal rights of married women were stated in 1765 in a legal text by Sir William Blackstone. He wrote:

By marriage, the husband and wife are one person in law: that 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 under whose wing, protection and cover she performs every thing and is called a feme-covert...and her condition during her marriage is called her coverture. For this reason a man cannot grant anything to his wife... for the grant would be to suppose her separate existence. (Blackstone, 1765, p.442)

The letters of Abigail Adams to her husband John Adams, 2nd President of the United States during 1776 highlight the influence and continuation of British marital law in the colonies. Abigail wrote the following to her husband John:

I long to hear that you have declared an independency. And, by the way, in the new code of laws which I suppose it will be necessary for you to make, I desire you would remember the ladies and be more generous and favorable to them than your ancestors...Do not put such unlimited power into the hands of the husbands.

Remember, all men would be tyrants if they could. If particular care and attention is not paid to the ladies, we are determined to foment a rebellion, and will not hold ourselves bound by any laws in which we have no voice or representation. (Adams, 1876, pp.149-150) In another letter she wrote:

I cannot say that I think you are very generous to the ladies; for, whilst you are proclaiming peace and good-will to men, emancipating all nations, you insist upon retaining an absolute power over wives. But you must remember that arbitrary power is like most other things which are very hard, very liable to be broken; and, notwithstanding all your wise laws and maxims, we have it in our power, not only to free ourselves, but to subdue our masters, and without violence, throw both your natural and legal authority at our feet. (Adams, 1876, p.169)

Judith Sargent Murray purports several ideas concerning the inequality of women, such as the fact that men and women are created equal, otherwise God would not have given them similar souls, that women are as intelligent, but in the new republic are seen as creatures for the kitchen and needle, and that men generate inequality and formulate

rules of society for their own benefit with no regard for women's needs (Murray, 1790).

The Uniform Naturalization Act (March 26, 1790) was passed by the United States Congress establishing that any free white adult alien male or female who resided within the United States for 2 years and one of the two years within the particular state in which the person was applying, was eligible for citizenship. Those applying must take an oath of allegiance to the United States Constitution and prove to the satisfaction of the court that they are of good moral character. Interpreting this law indicates that the only persons eligible were Caucasian and although females are mentioned in the Act, it was unwritten that married women's citizenship was derivative in nature. The derivative citizenship did not just apply to alien women, but also to native born women.

The Naturalization Act (January 29, 1795) adjusted the residency requirement of the 1790 Naturalization Act to 5 years, in the state of application to two years, added a public declaration of becoming a United States citizen and a renunciation of allegiance to any other country. Otherwise, the essence was the same as the Naturalization Act of 1790.

Seven years later, a Naturalization Act (April 14, 1802) was passed which added informational requirements of all aliens entering the United States when applying for citizenship, such as, name, date, birthplace, age, nation of allegiance and intended place of residence. The Naturalization Acts of 1790, 1795 and 1802, although not limited by gender, remained derivative for married women.

To highlight the attitude of the Federal Government concerning married women's citizenship, a congressional sponsor of the 1855 Act, Francis Cutting of New York emphasized the intent of the proposed act. He stated, "By the act of marriage itself the

political character of the wife shall at once conform to the political character of the husband... marriage to a U.S. citizen husband was an act of political consent to the U.S. nation state... the wife could only relate to the state through her husband... women possessed no political rights to be infringed.” (Cutting, 33d Congress, 1854)

The Naturalization Act was passed on February 10, 1855 which revised the 1802 law. The Statute allowed for citizenship of women to follow that of their husbands if the husband had been naturalized so long as the wife was within the eligible class described by Congress, namely a free white woman and not an alien enemy. The citizenship was automatically granted to the eligible wife without the wife having to provide any documentation.

An application of the 1855 Act is illustrated by the Supreme Court case Kelly v. Owen (1868) in which Kelly, an Irish immigrant became a United States citizen by naturalization. Kelly was married to an alien woman and also had two alien sisters married to naturalized United States citizens. Kelly died intestate and the three alien women of eligible class claimed portions of his property under the laws of intestacy. The United States Supreme Court referring to Section 2 of the 1855 Congressional Act which states that any woman who might lawfully be naturalized under the existing laws, married to a citizen of the United States shall be deemed a citizen. As such, the Court found that the widow and the sisters of the decedent had all become citizens by the naturalization of their respective husbands and as such each was entitled to take as a result of the death of the decedent.

In 1866, Congress established a ruling that an American born woman married to an alien would lose her United States citizenship if she left the United States to live abroad

with her alien husband (Cleveland, F., 1927). Two years later, in 1868, the 14th Amendment was ratified in which Congress, for the first time, defined citizens as males only. This again emphasized the derivative nature of married women's citizenship.

The first case before the Supreme Court specifically addressing women's citizenship rights was Bradwell v. Illinois (1873). It was brought on appeal of an Illinois State court decision denying Bradwell (a woman) admission to the state bar based on her sex. She argued that her fourteenth amendment rights were abridged based on denial of equal privileges and rights. The Supreme Court upheld the lower court's decision claiming that this was not an infringement of her citizenship rights, but rather was based on a state having the ability to restrict any profession. In a concurring opinion, one of the judges, Justice Bradley wrote that the very idea of woman having a distinct career from her husband would interfere with family harmony and "the paramount destiny and mission of woman is to fulfill the noble and benign offices of wife and mother. This is the law of the Creator."

Married women choosing to live abroad with their husbands is referenced in 1892 by James Blaine, then Secretary of State, in discussing men's and women's duties to the United States. He commented,

Every woman who abuses the freedom of American womanhood by abandoning herself to unfaithfulness lends the powerful incitement of her personality to the slavery of the past and to the failure of the republic. Every woman who leaves the duty and decorum of her native land and prostitutes her American name to the scandals, the vices, the social immoralities and moral impurities of foreign cities not

only compasses her own shame, but mars the fair fame of the republic... (Blaine, 1892, p.62)

In March 1907, the Expatriation Act, a United States Congressional Act was ratified. It defines citizenship of women married to aliens as follows: “women assume the citizenship of their husbands irregardless of residency and therefore if a woman with United States citizenship marries an alien, she forfeits her citizenship unless he becomes a citizen. If he becomes a citizen, she regains citizenship.” On the other hand, an alien woman who married a United States citizen was eligible for United States citizenship. If a woman married an Asiatic alien, i.e., nationalities deemed ineligible for United States citizenship, she would permanently relinquish her United States citizenship. The consequences for women marrying aliens as a result of the 1907 Act, were the same as if they had committed treason, namely expatriation.

Attorney Ellen Spencer Mussey appeared before the Committee on Foreign Affairs to discuss provisions of the 1907 Act which had adversely affected her clients. The exchange which occurred offers insight into the background of the Act and the views of lawmakers. Mussey highlighted the inequities her clients faced including losing property rights simply because they had married aliens. Congressman Kendell commented to Mussey that perhaps losing property rights among other things was one of the penalties Congress intended for women who chose to marry aliens. Mussey responded, “We (U.S. citizens) do not want our property handled by aliens.” Kendell retorted, “Actually, we don’t want our girls to marry foreigners, either.” (Mussey, 1912, 20)

New York State Law Librarian Frederick Colson in a letter to *The New York Times* discussed two cases that illustrate the unequal treatment of a native born American

woman citizen and an alien woman as a result of the 1907 Act. He pointed out that the American born woman citizen had fewer rights than an alien woman even though both were married to alien men. The first case cited was In Re Martorana (1908) in which an American born woman married to an alien could not vouch for her husband in his naturalization application because of her status as an alien as a result of her marriage to the petitioner. The second case cited, United States v. Cohen (1910) illustrates an alien woman married to an alien man (both residing in the United States) who could apply for naturalization based on her independent status as an alien, something the American born woman married to an alien had no right to do as her status was based solely upon her husband's nationality and citizenship status (Colson, 1914, p.8).

The ramifications of the 1907 Act are further highlighted in cases such as, MacKenzie v Hare (1915) in which Mrs. Gordon MacKenzie born in the U.S. married a British citizen. In 1909, the couple lived in the U.S. He never petitioned for naturalization and as such, based upon the 1907 Expatriation Act, she lost her citizenship. She attempted to register to vote in California and was denied based on her marriage to an alien. She argued that because she and her husband never left the U.S., they committed no overt act of expatriation. However, the Supreme Court upheld the provision of the Expatriation Act interpreting the law to mean the above wife became an alien even if the marriage ceremony took place in the U.S. and the couple continued to reside in the United States. Although in 1919, Congress passed the 19th Amendment, married women's citizenship eligibility remained an issue for many as a result of the provisions of the 1907 Act.

Further injustices of the 1907 Expatriation Law for an American born woman married

to an alien resulted in her being named on Federal Census records as an alien, not being able to vote after the 19th Amendment was passed, not eligible for civil service examinations, not eligible for municipal jobs on any level and in case of war, her loyalties perhaps being suspect. “A husband is a matter of luck and a career is a matter of preparation and determination...the country welcomed foreigners and adopted them legally while at the same time closed the door upon the daughters of our own flesh and blood.” (Gibbs, 1922, p.47) Congress, at the time had proposed seven bills for independent citizenship for married women and all were rejected.

Superintendent of New York City Schools, in a letter reported in *The New York Times* to district superintendents and principals, requested that they impress on their women teachers that if they marry an alien they not only forfeit their citizenship, but by law cannot be permitted to continue working for the Board of Education (Ettinger, 1922, p.31). A case in point is that of Florence Bain Gual, a New York City school teacher who lost her 15 year tenure because of marrying a Cuban. Her husband ultimately deserted her and their child without having become naturalized. She pointed out that she was the daughter of an American citizen and the mother of an American citizen, but was being deprived of employment and citizenship because of having married an alien (Bredbenner, 1998, p.83).

New York County Clerk, James Donegan commented concerning injustices of the Expatriation Act of 1907. He stated:

The law as it now stands puts a premium on feminine bachelorhood. A woman may be a patriotic American, an American born and bred, but if she marries a foreigner she would lose her American citizenship. Another bad feature of the law is

that a foreign born woman who does not understand our language or anything about our country, may come over here, marry an American and become automatically entitled to vote. (Donegan, 1922, p.5)

A law was passed by Congress September 22, 1922 known as the Cable Act or Married Women's Act which granted women separate citizenship. The act made two major changes to existing law, one that an alien woman who marries a United States citizen or whose husband is naturalized shall not become a citizen by reason of such marriage or naturalization and a woman citizen shall not cease to be a citizen by reason of her marriage to an alien unless she marries an alien ineligible for citizenship. This law required that women who married after the passage of the Act had to meet the requirements of naturalization on their own merits. This resulted in native born American women having to meet all the requirements of naturalization, whereas American women who had expatriated themselves by swearing allegiance to other countries during WWI were permitted to simply take an oath of allegiance to restore their citizenship. Although the Cable Act permitted an American born woman to retain her nationality after marriage to an alien, she never regained her native status, but rather was classified as a naturalized citizen.

Although the 1922 Cable Act purported to give women independent citizenship, it did not result in equality of citizenship. If an American man married a woman ineligible for citizenship, he retained his citizenship. If an American woman married an alien who was ineligible for citizenship, she lost her American citizenship. An alien who married an American woman had to meet a five year requirement for residence while an alien

woman who married an American man only had to meet a one year requirement. Finally, if an American woman married an alien and remained abroad with him, she was considered the same as an alien who has been naturalized. This was not true for an American man.

Prior to the Cable Act, Asian aliens were racially ineligible for U.S. citizenship and this did not change with the ratification of the Act. The following are cases and events that illustrate the citizenship injustices concerning ineligible aliens.

The ineligibility is illustrated in the case of Ny Fung Sing (1925) who was born in the U.S. to Chinese parents in 1898. She moved with her parents to China and there married a Chinese national. After her husband's death, she attempted to return to the U.S. as an American citizen, but was denied entry based on her marriage to an ineligible alien.

In the case, Takao Ozawa v. United States (1922), the appellant (of Japanese race) had lived in the United States for 20 years and sought citizenship. The Supreme Court reiterated section 2169 of the revised statutes of the 1875 Law that he must be a free white person or a person of African nativity or descent, otherwise he was ineligible for citizenship in the United States. Based on this case, Bhagat Singh Thind, a white native of Punjab in North India, and a Caucasian, attempted to obtain United States citizenship based on his color as was the determinant in the Ozawa Case the preceding year. Thind who had immigrated to the U.S. in 1913, attended the University of California and had enlisted and served in WWI and desired U.S. citizenship. Although it was acknowledged that he was white, he lacked what the Supreme Court viewed as a common man profile. His petition for citizenship was denied by the Supreme

Court (Bhagat Singh Thind v. United States, 1923).

The Supreme Court in its summation stated:

It is a matter of familiar observation and knowledge that the physical group characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country commonly recognized as white. The children of English, French, German, Italian, Scandinavian, and other European parentage, quickly merge into the mass of our population and lose the distinctive hallmarks of their European origin.

On the other hand, it cannot be doubted that the children born in this country of Hindu parents would retain indefinitely the clear evidence of their ancestry. It is very far from our thought to suggest the slightest question of racial superiority or inferiority. What we suggest is merely racial difference, and it is of such character and extent that the great body of our people instinctively recognize it and reject the thought of assimilation.

The above cases, *Ozawa* and *Thind*, although not involving married women, had a definite influence on existing marriages and future ones involving ineligible aliens. The Supreme Court in Thind v. United States determined that Caucasian was synonymous with white according to the understanding of common man. Because of this decision, many Indians who were already naturalized had their citizenship rescinded.

The *Thind* case affected the marriage of Mary Das, a Mayflower descendent who was married to an Asian, Taraknath Das, an Indian independence activist in the United States. He became a naturalized United States citizen in 1914, but his citizenship was revoked retroactively after the 1923 Supreme Court decision in United States v. Thind which

ruled that Indians were not white for purposes of citizenship. At that point, both Taraknath and Mary Das were no longer United States citizens (Volpp, 2005).

The following testimony was given before the House Committee on Immigration and Naturalization on March 23, 1926, by Elizabeth Kite, a scholar at the Library of Congress concerning the citizenship of Indians and specifically the case of Mary Das.

One of these [Indian nationalists] has married an American wife ... a member of an old American family from the South, of Revolutionary ancestry, a woman of wealth and prominence. She married this particularly brilliant man because she is interested in the same line of work that he is ... I found a letter ... that the terrible blow had fallen, that this particular individual was likely to lose her American citizenship, that the Cable Act, which had passed unknown to this woman, had rendered her absolutely stateless. Because, under the system of Great Britain in her colonies she takes away citizenship from any one who applies for citizenship in another country; automatically they lose their British citizenship. She has no desire to divorce him to regain her citizenship, but she has the greatest desire to remain an American citizen. It has never been a question of title, or anything of that sort; she is one of the noblest of American citizens. But there are other things that are very seriously menaced, particularly the humiliation and the thought of not being wanted as an American citizen.

Mary Das wrote:

I am an American-born woman. My ancestors came from England to America in the year 1700. By the existing double standard of the American Government, I

am not only rendered alien, but a stateless alien. Some Representatives and Senators, members of the Immigration Committee of the two Houses of Congress, hold that the ideal of Americanism should keep any American woman from marrying any foreigner, particularly an Asiatic. (Das, 1926, 105-06)

Another issue resultant from the Cable Act was the fact that prior to the Act, a wife of a naturalized American citizen was admitted into the United States, even if she were suffering from a curable disease. Now under the Act, she would be treated as other aliens and if sick and needed to enter a public facility and become a public ward, she would face deportation (Hill, 1924).

Conflicts of domestic laws between countries arose as a result of the Cable Act. For example, a British woman who married an American lost her British citizenship, but no longer gained American citizenship until she went through the naturalization process to obtain it. In the meantime she was stateless and could not obtain a passport from either country. The same was true of an American woman who married an Englishman. She could not obtain a British visa on an American passport because of her marriage to a British subject and is likewise considered stateless. The Domestic Law conflict which effected many married women who were married to British subjects was brought to the attention of the House of Commons in 1930 by the British Foreign Secretary, Arthur Henderson who pointed out that when an English woman married an American, she ceased to be a British subject and under American law did not become a citizen of the United States for one year during which time she was without a country (*The New York Times*, 1930, p.20).

Other incongruities of domestic law are illustrated in the following cases. The dancer,

Isadora Duncan married a Russian in April 1922 and under Soviet law, she had a choice of preference of citizenship. She chose to remain an American and as such in America, based on the law, she was a Russian (citizenship of the husband) and in Russia she was an American (preference of the woman) (*The New York Times*, 1923, p.x7). A case reported by the Italian Consulate in New York City to *The New York Times* concerned an American woman who had married an Italian man prior to the Cable Act and was therefore considered an Italian citizen, but her husband in 1923 had become an American citizen. The husband was able to travel on an American passport, whereas she, because of having married an Italian, was an Italian citizen and thus carried an Italian passport, until she obtained independent citizenship (Torrance, 1924, p.sm6).

There were exceptions made by special order of Congress, such as, the case of Ruth Bryan Owens, (daughter of William Jennings Bryan) who was elected to Congress in 1929. Her election was contested by her opponent, Republican William C. Lawson because he pointed out that she had lost her citizenship under the 1907 Act by marrying an alien and although she had petitioned for repatriation, her residency period had not been met prior to her taking office. This made her ineligible to hold office. She argued her case before the House Committee on Elections pleading that no man had ever lost his citizenship because of marriage and therefore she was being penalized for being a woman, not because of marital status. The House voted in her favor. (Encyclopedia of Biography 2004).

In 1929, women who married and gained citizenship as a result of their husband's naturalization, now could obtain a Certificate of Derivative Citizenship giving them a

separate document. In 1931, in a statement to the Naturalization Court before presenting her petition, Rebecca Shelley stated, “I am not a chattel. As a free human being, an individual unit of sovereign people, the undisputed possessor of my own means of livelihood, I deny the right of Congress to legislate away my citizenship.” The Cable Act of 1922 was amended in 1931 allowing women to retain their citizenship even if they married ineligible aliens. To address the class of women married prior to the 1907 Act, the State Department and the Department of Labor stated, “the marriage of an American woman to an alien before March 2, 1907 did not divest her native allegiance, nor did the continuation of coverture after that date render her an alien.” (Hover, 1932, p.708).

Finally, in 1936, Congress amended the 1922 Act to allow women who had lost their citizenship by marrying aliens between 1907 and 1922 to regain their American Citizenship if they were either divorced or widowed by taking an oath of allegiance. Eleanor Taylor Suarez, an American born woman, member of the DAR and descendant of Robert Fulton was told in the American Embassy in Madrid that instructions from Washington D.C. informed that she (and all married women in the same circumstance) could not be protected by the U.S. Embassy in Madrid where she lived with her Spanish husband and 2 children nor could she be granted a United States passport to travel outside Spain because of her marriage in 1920 to a Spanish native. The Embassy personnel suggested that she might consider divorce (*The New York Times*, 1936, p.16). In 1940, Congress permitted all women who had lost their citizenship by marrying aliens to regain citizenship by taking an oath of allegiance. In addition, women who had married men who were citizens could now obtain a certificate. However, American women who had married between March 2, 1907 and September 22, 1922 and were citizens by

naturalization, not by birth, still had to register as aliens as of 1940 (*The New York Times*, 1940, p.6).

For the most part, the purpose of the aforementioned acts and laws was to prevent married women from individual citizenship either by granting them derivative citizenship or no citizenship until the 1922 Cable Act which granted individual citizenship, albeit not equality of citizenship. Historically, the United States accepted and followed the prototype of English derivative law from the 1790 Act until revisions in the 1930's regarding married women's citizenship. Seemingly, aside from the attitude of male domination and superiority adopted from English derivative law, race, economic and political considerations were also part of the motivational factors of the lawmakers as illustrated in the following examples.

The statement of Cutting (1854) previously mentioned (p.7) was disputed by Knop who believes that a woman's alleged obedience and consent to her husband's state was a fiction and thus the 1855 Act was simply a justification to continue derivative citizenship for married women. (Knop, 2001). The regulations imposed on married women by the 1907 Expatriation Act had the possible intention of attempting to prevent racial and ethnic mixing. The Act, not only imposed a penalty on women who married aliens, but also served as a deterrent to same and indirectly restricted future generations of mixed children through punishment of women for such marriages (Bredbenner, 1998). Several months prior to the ratification of the Cable Act, an editorial appeared in the *Chicago Tribune* in opposition to the ratification of the Cable Act and implying an economic motivation for the existent 1907 law, as follows: "Women sentimentally adopt the land

of their husbands when they marry abroad. Generally they marry because of social ambition and they take a great deal of money abroad in doing so. A law which regarded them as American citizens in spite of their transfer of allegiance would be a harmful fiction.” (*Chicago Tribune*, 1922, p.36) In spite of pressure to the contrary, the Cable Act was passed subsequent to the passage of the 1921 Act (41 U.S. St. at L. 1147) which allowed the release of property held by the Alien Property Custodian to American born women whose classification was seen as alien enemies by reason of marriage. This was one of the reasons why independent citizenship provided by the 1922 Cable Act was advisable in that it would prevent potential seizure of American women’s property as a result of marriage (Hill, 1924).

The ineligibility of Asians was not only due to the attitude of white race superiority, but also for economic reasons. For example, The Chinese Exclusion Act of 1882 was passed as a result of Chinese laborers being accused of causing economic ramifications and social unrest by working for low wages thus taking jobs from whites. Because of Chinese support of the U.S. in WWII, the exclusion was repealed with a quota in 1943 allowing 150 Chinese to enter the United States per year. Finally, Das, regarding Congress, points out that those proposing the ideas of Asiatic exclusion and citizenship ineligibility as advantageous both economically and patriotically would do well to consider the words of Theodore Roosevelt, as follows:

Our nation fronts on the pacific, just as it fronts on the Atlantic. We hope to play a constantly growing part in the great ocean of the Orient. We wish, as we ought to wish, for a great commercial development in our dealing with Asia, and it is out of the question that we should permanently have such development unless we freely

and gladly extend to other nations the same measure of justice and good treatment as we expect to receive in return. (Das, 1926, 105)

Thus, the attitudes of lawmakers, as seen through the laws and acts reviewed in this paper, concerning the citizenship of married women, had the possible agendas of perpetuating male domination, racial superiority and national and international economic and political considerations, rather than concern for the individual and equitable citizenship of married women.

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